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0365 Committees on: Joint Agriculture Committee, Joint Business Affairs and Labor Committee, Capital Development Committee, Policemen's and Firemen's Pens



COLORADO

GENERAL ASSEMBLY

Legislative Council
Research Publication No. 365
November 1991

Joint Agriculture Committee

**Joint Business Affairs and Labor
Committee**

Capital Development Committee

**Policemen's and Firemen's Pension
Reform Commission**

COLORADO LEGISLATIVE COUNCIL

REPORT TO THE

COLORADO GENERAL ASSEMBLY

JOINT AGRICULTURE COMMITTEE

JOINT BUSINESS AFFAIRS AND LABOR COMMITTEE

CAPITAL DEVELOPMENT COMMITTEE

**POLICEMEN'S AND FIREMEN'S PENSION
REFORM COMMISSION**

Research Publication No. 365

December 1991

COLORADO GENERAL ASSEMBLY

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November 20, 1991

To Members of the Fifty-Eighth General Assembly:

Submitted herewith are the final reports of the following interim committees: Joint Agriculture Committee, Joint Business Affairs and Labor Committee, Capital Development Committee, and Policemen's and Firemen's Pension Reform Commission.

The Joint Committees on Agriculture and Business Affairs and Labor were created pursuant to Senate Joint Resolution 91-32; the Capital Development Committee is a statutory committee established under section 2-3-1301, C.R.S.; and the Policemen's and Firemen's Pension Reform Commission is a statutory committee established under section 31-30-901, C.R.S.

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

Respectfully submitted,

/s/ Senator Ted L. Strickland
Chairman
Legislative Council

TLS/pn

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JOINT AGRICULTURE COMMITTEE

Committee Charge

Senate Joint Resolution 91-32 authorized the Joint Agriculture Committee to meet four times during the interim. The resolution did not specify committee topics for study.

Committee Activities

The committee addressed the following major issues:

- review of House Bill 91-1293, concerning reorganization of environmental activities within the Department of Health;
- implementation in Colorado of the federal "Clean Air Act Amendments of 1990";
- review of federal and state legislation concerning water quality control;
- interstate water compact agreements and litigation (e.g., Kansas v. Colorado) relating thereto;
- amendments to statutes relating to the Water Conservation Board Construction Fund;
- the development of the Habitat Partnership Program by the Division of Wildlife; and
- simplification of water well permitting procedures.

Committee Recommendations

As a result of the committee's activities, the following bills are recommended to the Colorado General Assembly.

Concerning the Simplification of Water Well Permitting Requirements – Bill A

Recommendations of the Legislative Audit Committee and testimony by a representative of the Division of Water Resources indicated the need for simplification of requirements imposed upon water well applicants.

Bill A clarifies procedural requirements for proving that a water resource has been put to beneficial use for purposes of allowing a permit to remain in effect. The bill provides an exemption to the hearing requirement for any well to be located less than 600 feet from existing wells if the proposed well will serve an individual residential site and the proposed pumping rate will not exceed 15 gallons per minute. Bill A includes completion of a well as a basis for allowing a well construction permit to remain in effect.

The following are other major components of Bill A:

- The authority of the State Engineer to issue permits for wells used exclusively for monitoring and observation purposes is confirmed.
- Clarification is provided in section 37-92-602, C.R.S., by stating that wells which are drilled only for monitoring and observation purposes do not impact water rights determinations.
- Requirements are specified that no well construction contractor, pump installer, or private driller can construct a new well or otherwise do work on any well requiring authority from the State Engineer or Ground Water Commission until a permit with respect thereto has been secured for such work.

Concerning the Water Conservation Board – Bill B

Bill B changes the date upon which water conservation board members' terms expire from May 12 to February 12 of each year. Members are required to have experience in specific areas in order to be qualified for appointment to the board. No more than five appointees to the board may be from the same political party.

The bill authorizes financial assistance loans to water resource projects out of the Colorado Water Conservation Board Construction Fund. This fund provides low-interest loans after projects have been authorized by the Colorado General Assembly. These loans are for projects which increase the beneficial consumptive use of Colorado's compact entitled waters or for projects which repair and rehabilitate existing water storage and delivery systems.

Concerning the Creation of Partnership Committees to Address Concerns about Wildlife Habitat, and in Connection Therewith, Creating the Habitat Partnership Cash Fund – Bill C

An explanation of the Habitat Partnership Program (HPP) was given to the committee. The HPP is a program authorized by the Colorado Wildlife Commission designed to assist in alleviating rangeland forage and fence conflicts between big game animals (e.g., deer, elk, and antelope) and livestock on private and public lands. Habitat partnership areas with big game distribution management plans in effect or in process are the following: North Fork Gunnison River, Middle Park, Craig, Walden, Westcliffe, and Gunnison. It is anticipated that other areas will be added each fiscal year until the entire state is covered.

To provide a funding source for the HPP, Bill C creates in the state treasury the Habitat Partnership Cash Fund. The fund consists of moneys annually appropriated to the Division of Wildlife for the partnership program and any gifts, donations, and reimbursements made to the program from other sources.

To disseminate funds from the Habitat Partnership Cash Fund, an eight-member Habitat Partnership Council is created. The council, which has statewide responsibility and authority, is appointed by the director of the Division of Wildlife. Other duties of the council include the following:

- to advise local habitat partnership committees which may be formed in communities where conflicts between wildlife and rangeland managers exist;
- to assist in disseminating information concerning the Habitat Partnership Program; and
- to facilitate and monitor the effectiveness of the program and to recommend any necessary changes in guidelines and game damage regulations.

Concerning Air Pollution Control, and, in Connection Therewith, Making Changes in the Law to Comply with and to Implement the Federal “Clean Air Act Amendments of 1990” – Bill D

Representatives of the Department of Health provided a summary of the 1990 amendments to the federal “Clean Air Act” and an overview of their efforts to implement said Act in Colorado. Bill D is recommended to ensure compliance with stationary source requirements set forth in that Act.

The bill has the following major components:

- The short title of Colorado's clean air statute is renamed the "Colorado Air Pollution Prevention and Control Act."
- Definitions in the Act are amended and definitions are added to bring Colorado into compliance with the federal "Clean Air Act Amendments of 1990."
- Additional duties are assigned to the Air Quality Control Commission to ensure implementation of the federal law. The commission is directed to promulgate regulations concerning appliances and industrial process refrigeration for ozone depleting substances listed in the federal law. The commission is also required to promulgate rules and regulations to implement a clean fuel vehicle fleet program.
- The commission is authorized to adopt, if necessary, emergency emission control regulations to comply with federal law.
- The commission is directed to promulgate rules and regulations necessary for the establishment of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The small business assistance program is mandated by the "Clean Air Act Amendments of 1990".
- Extensive revisions are mandated for the permit program administered by the Air Pollution Prevention and Control Division.
- Guidelines are provided for the annual setting of renewable operating permit fees. The commission is directed to adopt an emission reduction permit fee credit program for permittees who reduce their baseline regulated pollutants.
- Procedures are revised relating to division enforcement of the emission control regulations promulgated by the commission.
- The commission is authorized to designate hearing officers to conduct commission hearings. All decisions of an administrative law judge or a hearing officer may be appealed to the commission within thirty days of the date of the decision.
- Civil penalties are specified for violations of air pollution laws and related rules and regulations.
- Criminal penalties are set forth for persons who have knowingly or intentionally violated emission control regulations promulgated by the commission or any permit required pursuant to this bill.
- Enforcement actions pursuant to this bill must be brought within two years of the date that the division has knowledge that the violation for which the action is brought has occurred.

Materials Available

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

- 1) Summary of meetings:
 - July 16, 1991: reorganization of environmental activities within the Department of Health;
 - August 7, 1991: implementation of Federal Clean Air Act Amendments of 1990 and water-related issues;
 - October 30, 1991: interstate water compacts, Colorado Water Quality Control Act, and wildlife issues; and
 - November 12, 1991: review of interim committee bills.
- 2) Memorandum dated July 10, 1991, "Summary of the Provisions of HB 91-1293."
- 3) Memorandum dated August 1, 1991, "Impact of the 1990 Federal Clean Air Act Amendments on Colorado."
- 4) Memorandum dated August 6, 1991, "Air Quality Control Local Government Mandates."

AGRICULTURE BILL A

A BILL FOR AN ACT

1 CONCERNING THE SIMPLIFICATION OF WATER WELL PERMIT
2 REQUIREMENTS.

Bill Summary

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

Confirms authority of the state engineer to issue permits for wells used for monitoring and observation and places those wells in the small capacity and exempt well category. Clarifies procedural requirements for proving that a water resource has been put to beneficial use for purposes of allowing a permit to remain in effect. Clarifies certain definitions. Updates procedural requirements for proving that a well has been constructed for purposes of allowing construction permits to remain in effect. Provides an exemption to the hearing requirement for any well to be located within a certain number of feet of another well if such well will be for an individual residential site and will not pump over a certain number of gallons of water per minute. Includes completion of a well as a basis for allowing a well construction permit to remain in effect. Provides that wells which are drilled only for monitoring purposes do not impact water rights determinations.

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

1 SECTION 1. 37-90-103 (13), Colorado Revised Statutes,
2 1990 Repl. Vol., is amended and the said 37-90-103 is further
3 amended BY THE ADDITION OF A NEW SUBSECTION, to read:

4 37-90-103. Definitions. As used in this article, unless
5 the context otherwise requires:

6 (12.5) "QUARTER-QUARTER" MEANS A FOURTH OF A FOURTH OF A
7 SECTION OF LAND AND IS EQUAL TO APPROXIMATELY FORTY ACRES.

8 (13) "Replacement ~~or~~-substitute well" means a new well
9 which replaces an existing well and which shall be limited to
10 the yield of the original well and shall take the date of
11 priority of the original well, which shall be abandoned upon
12 completion of the new well.

13 SECTION 2. 37-90-105 (1) (b) and (1) (c), Colorado
14 Revised Statutes, 1990 Repl. Vol., are amended, and the said
15 37-90-105 (1) is further amended BY THE ADDITION OF A NEW
16 PARAGRAPH, to read:

17 37-90-105. Small capacity wells. (1) The state engineer
18 has the authority to approve permits for the following types
19 of wells in designated ground water basins without regard to
20 any other provisions of this article, but ground water
21 management districts may by rules and regulations further
22 restrict issuance of small capacity permits:

23 (b) Wells not exceeding fifty gallons per minute and
24 used for watering of livestock on range and pasture; ~~or~~

25 (c) One well not exceeding fifty gallons per minute and
26 used in one commercial business; OR

1 (d) WELLS TO BE USED EXCLUSIVELY FOR MONITORING AND
2 OBSERVATION PURPOSES IF SAID WELLS ARE CAPPED AND LOCKED AND
3 USED ONLY TO MONITOR WATER LEVELS OR FOR WATER QUALITY
4 SAMPLING.

5 SECTION 3. 37-90-108 (4), (5) (c), and (6), Colorado
6 Revised Statutes, 1990 Repl. Vol., are amended to read:

7 37-90-108. Final permit - evidence of well construction
8 and beneficial use - limitations. (4) The procedural

9 requirement that a statement of beneficial use shall be filed
10 shall apply to all permits wherein the water was put to
11 beneficial use since May 17, 1965. If information pertaining
12 to completion of the well as required in subsection (1) of
13 this section has been received but evidence that water has
14 been placed to beneficial use has not been received as of
15 three years from the date of issuance of the conditional
16 permit the commission shall so notify the applicant by
17 certified mail. The notice shall give the applicant the
18 opportunity to submit proof that the water was put to
19 beneficial use prior to three years from the date of issuance
20 of the conditional permit but, due to excusable neglect,
21 inadvertence, or mistake, the applicant failed to submit the
22 evidence on time. The proof must be received by the
23 commission within twenty days of receipt of the notice by the
24 applicant and must be accompanied by a filing fee of thirty
25 dollars. If the proof can be given favorable consideration by
26 the ground-water commission there, within thirty days, a

1 synopsis of the proof shall be published, specifying that
2 objections shall be filed within thirty days. After the
3 expiration of the time for filing objections, if no such
4 objections have been filed, the commission shall, if it finds
5 the proof to be satisfactory, find that the conditional permit
6 should SHALL remain in force and effect. If objections have
7 been filed together with a nonrefundable filing fee of ten
8 dollars, the commission shall set a date for a hearing on the
9 proof and the objections thereto and shall notify the
10 applicant and the objectors of the time and place. The
11 commission shall consider all AVAILABLE evidence presented at
12 the hearing and all other matters set forth in this section in
13 determining whether the conditional permit should remain in
14 force and effect.

15 (5) All final permits shall set forth the following
16 information as a minimum:

17 (c) The forty-acre subdivision QUARTER-QUARTER in which
18 the well is located;

19 (6) The procedural requirement that the well completion
20 information required by subsection (1) of this section be
21 furnished to the commission shall apply to all permits issued
22 after May 17, 1965. If the well has been constructed within
23 twenty-four months of the date of issuance of the permit where
24 the permit was issued before June 7, 1979, or within twelve
25 months of the date of issuance of the permit where the permit
26 was issued on or after June 7, 1979, but the completion

1 information has not been furnished to the commission within
2 eighteen months after said issuance date, the commission shall
3 so notify the applicant by certified mail. The notice shall
4 give the applicant the opportunity to submit proof that the
5 well was completed within the time specified above or within
6 the expiration date of the permit and to submit the
7 information required by subsection (1) of this section and a
8 showing that due to excusable neglect, inadvertence, or
9 mistake the applicant failed to submit the evidence and
10 information on time. The proof and information must be
11 received by the commission within twenty days of receipt of
12 the notice by the applicant and must be accompanied by a
13 filing fee of thirty dollars. If ~~the proof can be given~~
14 ~~favorable consideration by the commission, then, within thirty~~
15 ~~days, a synopsis of the proof shall be published, specifying~~
16 ~~that objection shall be filed within thirty days. After the~~
17 ~~expiration of the time for filing objections, if no such~~
18 ~~objections have been filed, the commission shall, if it finds~~
19 the proof to be satisfactory, find that the permit shall
20 remain in force and effect. If ~~objections have been filed~~
21 ~~together with a nonrefundable filing fee of ten dollars, the~~
22 ~~commission shall set a date for a hearing on the proof and the~~
23 ~~objections thereto and shall notify the applicant and the~~
24 ~~objectors of the time and place.~~ The commission shall
25 consider all AVAILABLE evidence ~~presented at the hearing~~ and
26 all other matters set forth in this section in determining

1 whether the permit should remain in force and effect.

2 SECTION 4. 37-90-111 (1) (c), Colorado Revised Statutes,
3 1990 Repl. Vol., is amended to read:

4 37-90-111. Powers of the ground water commission -
5 limitations. (1) (c) To issue permits for the construction of
6 replacement ~~or substitute~~ wells. Any permits issued shall set
7 forth the conditions under which a well may be modified by a
8 change of the well itself or the pumping equipment therefor,
9 by the drilling of a ~~substitute~~ REPLACEMENT well, or
10 otherwise, in order to make it possible for the owner of a
11 well to obtain the water to which such owner may be entitled
12 by virtue of his original appropriation.

13 SECTION 5. 37-90-137 (2) and (3) (c), Colorado Revised
14 Statutes, 1990 Repl. Vol., are amended to read:

15 37-90-137. Permits to construct wells outside designated
16 basins - fees - permit no ground water right - evidence - time
17 limitation - well permits. (2) Upon receipt of an application
18 for a replacement well or a new, increased, or additional
19 supply of ground water from an area outside the boundaries of
20 a designated ground water basin, accompanied by a filing fee
21 of sixty dollars, the state engineer shall make a
22 determination as to whether or not the exercise of the
23 requested permit will materially injure the vested water
24 rights of others. If the state engineer finds that there is
25 unappropriated water available for withdrawal by the proposed
26 well and that the vested water rights of others will not be

1 materially injured, and can be substantiated by hydrological
 2 and geological facts, he THE STATE ENGINEER shall issue a
 3 permit to construct a well, but not otherwise; except that no
 4 permit shall be issued unless the location of the proposed
 5 well will be at a distance of more than six hundred feet from
 6 an existing well, but if the state engineer, after a hearing,
 7 finds that circumstances in a particular instance so warrant,
 8 he THE STATE ENGINEER may issue a permit without regard to the
 9 above limitation SPECIFIED IN THIS SUBSECTION (2). THE
 10 HEARING REQUIREMENT SHALL NOT APPLY TO WELLS LOCATED LESS THAN
 11 SIX HUNDRED FEET FROM EXISTING WELLS IF THE PROPOSED WELL WILL
 12 SERVE AN INDIVIDUAL RESIDENTIAL SITE AND THE PROPOSED PUMPING
 13 RATE WILL NOT EXCEED FIFTEEN GALLONS PER MINUTE. The permit
 14 shall set forth such conditions for drilling, casing, and
 15 equipping wells and other diversion facilities as are
 16 reasonably necessary to prevent waste, pollution, or material
 17 injury to existing rights. The state engineer shall endorse
 18 upon the application the date of its receipt, file and
 19 preserve such application, and make a record of such receipt
 20 and the issuance of the permit in his office so indexed as to
 21 be useful in determining the extent of the uses made from
 22 various ground water sources. The state engineer shall act
 23 upon an application filed under this section within forty-five
 24 days after its receipt.

25 (3) (c) If evidence that water has been placed to
 26 beneficial use OR NOTICE OF WELL COMPLETION as required

1 pursuant to paragraph (a) of this subsection (3) has not been
 2 received as of the expiration date of the permit to construct
 3 a well, the state engineer shall so notify the applicant by
 4 certified mail. The notice shall give the applicant the
 5 opportunity to submit proof that the water was put to
 6 beneficial use prior to the expiration date OR NOTICE THAT THE
 7 WELL WAS COMPLETED PRIOR TO THE EXPIRATION DATE, but, due to
 8 excusable neglect, inadvertence, or mistake, the applicant
 9 failed to submit the evidence OR NOTICE on time. The proof
 10 must be received by the state engineer within twenty days of
 11 receipt of the notice by the applicant and must be accompanied
 12 by a filing fee of thirty dollars. If the proof can be given
 13 favorable consideration by the state engineer then, within
 14 thirty days, a synopsis of the proof shall be published,
 15 specifying that objections shall be filed within thirty days.
 16 After the expiration of the time for filing objections, if no
 17 such objections have been filed, the state engineer shall, if
 18 he finds the proof to be satisfactory find that the permit
 19 should SHALL remain in force and effect. If objections have
 20 been filed together with a nonrefundable filing fee of ten
 21 dollars, the state engineer shall set a date for a hearing on
 22 the proof and the objections thereto and shall notify the
 23 applicant and the objectors of the time and place. The state
 24 engineer shall consider all AVAILABLE evidence presented at
 25 the hearing and all other matters set forth in this section in
 26 determining whether the permit should remain in force and

1 effect.

2 SECTION 6. 37-90-138 (3), Colorado Revised Statutes,
3 1990 Repl. Vol., is amended to read:

4 37-90-138. Waste - violations - permits. (3) No well
5 driller CONSTRUCTION CONTRACTOR, PUMP INSTALLER, PRIVATE PUMP
6 INSTALLER, or private driller shall drill CONSTRUCT a new well
7 or otherwise do work on any well requiring authority from the
8 state engineer OR COMMISSION until a permit with respect
9 thereto has been secured for such work. ~~Any structure which~~
10 ~~would fall into the classification of a "well" as defined in~~
11 ~~section 37-90-103 (21), except for the fact that the same is~~
12 ~~made for the purpose of a test only, shall be completely~~
13 ~~filled within thirty days after completion of the test, and if~~
14 ~~not so filled shall be deemed a "well" as defined in said~~
15 ~~subsection (21).~~

16 SECTION 7. 37-92-602 (1), Colorado Revised Statutes,
17 1990 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH
18 to read:

19 37-92-602. Exemptions - presumptions - legislative
20 declaration. (1) The provisions of this article, except for
21 sections 37-92-201 and 37-92-202, shall not be applicable to:

22 (f) WELLS TO BE USED EXCLUSIVELY FOR MONITORING AND
23 OBSERVATION PURPOSES IF SAID WELLS ARE CAPPED AND LOCKED AND
24 USED ONLY TO MONITOR WATER LEVELS OR FOR WATER QUALITY
25 SAMPLING.

26 SECTION 8. 37-92-602 (5), Colorado Revised Statutes,

1 1990 Repl. Vol., is amended to read:

2 37-92-602. Exemptions - presumptions - legislative
3 declaration. (5) Any wells exempted by this section which
4 were put to beneficial use prior to May 8, 1972, and any wells
5 exempted DEFINED by section 37-90-105 WHICH WERE PUT TO
6 BENEFICIAL USE PRIOR TO MAY 8, 1972, AND ANY WELLS WHICH WERE
7 USED EXCLUSIVELY FOR MONITORING AND OBSERVATION PURPOSES PRIOR
8 TO AUGUST 1, 1988, not of record in the office of the state
9 engineer may be recorded in that office upon written
10 application, payment of a processing fee of sixty dollars, and
11 permit approval. The record shall include the date the water
12 is claimed to have been appropriated or first put to
13 beneficial use.

14 SECTION 9. Safety clause. The general assembly hereby
15 finds, determines, and declares that this act is necessary
16 for the immediate preservation of the public peace, health,
17 and safety.

AGRICULTURE BILL B

A BILL FOR AN ACT

1 CONCERNING THE WATER CONSERVATION BOARD.

Bill Summary

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

Changes the date upon which water conservation board members' terms expire. Requires appointees to have experience in enumerated areas to be qualified for appointment to the board. Sets a maximum for the number of appointees from the same political party.

Authorizes the board to make loans for certain water resource projects.

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

3 SECTION 1. 37-60-104, Colorado Revised Statutes, 1990
4 Repl. Vol., is amended to read:

5 37-60-104. Personnel. (1) The board shall consist of
6 fourteen members. The executive director of the department of
7 natural resources shall be a voting member ex officio. The
8 attorney general, state engineer, director of the division of

1 wildlife, and director of said board shall be nonvoting
2 members ex officio. The nine remaining members shall be
3 qualified electors of the state, well-versed in water matters,
4 and shall be appointed by the governor, with the consent of
5 the senate, for terms of three years; EXCEPT THAT NO
6 APPOINTMENT SHALL BE MADE WHICH DOES NOT CONFORM TO THE
7 REQUIREMENTS OF SUBSECTIONS (3) AND (4) OF THIS SECTION. The
8 appointments shall be made in such a manner that the terms of
9 three members shall expire on ~~May-12~~ FEBRUARY 12 of each year.
10 ~~The--members--of--said--board--who--were--appointed--and--are--now~~
11 ~~serviag--as--such--members--shall--continue--to--serve--as--such~~
12 ~~members.~~ In case a vacancy occurs in the appointed membership
13 of the board by death OR resignation ~~or--otherwise,~~ the
14 governor shall appoint a successor to serve the unexpired term
15 of any member of the board WITHIN THIRTY DAYS AFTER THE
16 CREATION OF SUCH VACANCY.

17 (2) The appointed members of said board shall be chosen
18 geographically as follows: Four from the western slope and
19 five from the eastern slope; but, of the five members to be
20 appointed from the eastern slope, one shall be from the Rio
21 Grande drainage basin, one from the North Platte drainage
22 basin, one from the Arkansas drainage basin, one from the
23 South Platte drainage basin outside of the city and county of
24 Denver, and one from the city and county of Denver and
25 intimately familiar with its water problems; and that of the
26 four members to be appointed from the western slope, one shall

-14-

1 be from the Yampa-White drainage basin, one from the main
2 Colorado drainage basin, one from the Gunnison-Uncompahgre
3 drainage basin, and one from the San Miguel-Dolores-San Juan
4 drainage basins. Before entering upon the discharge of his
5 duties, each appointed member shall make, subscribe, and file
6 with the secretary of state the oath prescribed by the
7 constitution.

8 (3) APPOINTMENTS TO THE BOARD SHALL INCLUDE: ONE MEMBER
9 WHO SHALL BE EXPERIENCED IN WATER PROJECT FINANCING; ONE
10 MEMBER WHO SHALL BE EXPERIENCED IN THE ENGINEERING ASPECTS OF
11 WATER PROJECTS; TWO MEMBERS WHO SHALL BE EXPERIENCED IN THE
12 PLANNING AND DEVELOPMENT OF WATER PROJECTS; AND ONE MEMBER WHO
13 SHALL BE EXPERIENCED IN WATER LAW. MEMBERS OF THE BOARD SHALL
14 BE REPRESENTATIVES OF THE WATER DISTRICTS FROM WHICH THEY ARE
15 APPOINTED.

16 (4) NO MORE THAN FIVE APPOINTEES TO THE BOARD SHALL BE
17 MEMBERS OF THE SAME POLITICAL PARTY.

18 (5) THE REQUIREMENTS SET FORTH IN SUBSECTIONS (3) AND
19 (4) OF THIS SECTION SHALL BE IMPLEMENTED OVER A THREE-YEAR
20 PERIOD BEGINNING FEBRUARY 12, 1993, SO THAT UPON MAKING THE
21 APPOINTMENTS FOR THE VACANCIES WHICH OCCUR ON FEBRUARY 12,
22 1995, ALL REQUIREMENTS SET FORTH IN THIS SECTION SHALL HAVE
23 BEEN MET.

24 SECTION 2. Project authorization. (1) Pursuant to
25 section 37-60-122 (1) (b), Colorado Revised Statutes, the
26 Colorado water conservation board is hereby authorized to loan

1 moneys to enable the construction of the following water
2 resources projects:

3	Repayment				
4	Project	Board	Period	Total	
5	<u>Priority</u>	<u>Name</u>	<u>Loan</u>	<u>(years)</u>	<u>Repayment</u>

6 TOTAL

7 * The moneys for this project shall not be made available by
8 the board until the board has, in its sole discretion,
9 determined the project is technically and financially
10 feasible.

11 (2) The Colorado water conservation board may make loans
12 for the construction of the projects specified in subsection
13 (1) of this section from such moneys as are, or may hereafter
14 become, available to the Colorado water conservation board
15 construction fund. Said loans shall be in the amounts listed
16 in subsection (1) of this section plus or minus such amounts,
17 if any, as may be justified by reason of ordinary fluctuations
18 in constructions costs as indicated by the engineering cost
19 indices applicable to the types of construction required for
20 each project or as may be justified by reason of changes in
21 the plans for a project if those changes are required by final
22 engineering drawings and specifications or by federal, state,
23 or local governmental requirements.

1 (3) Contracts entered into by the Colorado water
 2 conservation board pursuant to section 37-60-119 (2), Colorado
 3 Revised Statutes, for loans to enable the construction of the
 4 projects specified in subsection (1) of this section shall be
 5 subject to the repayment periods and total repayments set
 6 forth therein; except that the total repayment for a project
 7 shall be adjusted to reflect any changes in the amount loaned
 8 by reason of subsection (2) of this section. Pursuant to
 9 section 37-60-120 (1), Colorado Revised Statutes, the board
 10 shall require terms and conditions in such contracts as will
 11 ensure repayment of funds made available by it. The board
 12 shall not disperse any moneys for any loan authorized by
 13 subsection (1) of this section unless and until it is
 14 satisfied, in its sole discretion, that the recipient of any
 15 such loan will be able to make repayment pursuant to the terms
 16 and conditions established by the board and by subsection (1)
 17 of this act.

18 SECTION 3. Safety clause. The general assembly hereby
 19 finds, determines, and declares that this act is necessary
 20 for the immediate preservation of the public peace, health,
 21 and safety.

AGRICULTURE BILL C

A BILL FOR AN ACT

1 CONCERNING THE CREATION OF PARTNERSHIP COMMITTEES TO ADDRESS
2 CONCERNS ABOUT WILDLIFE HABITAT, AND IN CONNECTION
3 THEREWITH, CREATING THE HABITAT PARTNERSHIP CASH FUND.

Bill Summary

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

Creates the "habitat partnership council". Mandates duties for the council. Specifies who shall serve as members of the council. Grants authority to the director of the division of wildlife to appoint the members of the council. Grants authority to the director of the division of wildlife to create "habitat partnership committees", as needed. Specifies who shall serve as members on any committee created. Specifies the jurisdiction of any committee created. Mandates duties for any committee created. Creates the habitat partnership cash fund. Specifies what moneys will constitute the moneys in the fund. Specifies how the moneys in the fund may be expended.

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

5 SECTION 1. 33-1-110, Colorado Revised Statutes, 1984
6 Repl. Vol., is amended BY THE ADDITION OF THE FOLLOWING NEW

1 SUBSECTIONS to read:

2 33-1-110. Duties of the director of the division.
3 (7) (a) THE DIRECTOR SHALL APPOINT A COMMITTEE OF EIGHT
4 PERSONS TO ACT AS THE "HABITAT PARTNERSHIP COUNCIL", REFERRED
5 TO IN THIS SECTION AS THE "COUNCIL". THE COUNCIL SHALL HAVE
6 STATEWIDE RESPONSIBILITY AND AUTHORITY.

7 (b) (I) THE COUNCIL SHALL CONSIST OF THE FOLLOWING
8 MEMBERS: TWO PERSONS REPRESENTING THE PUBLIC WHO PURCHASE BIG
9 GAME LICENSES ON A REGULAR BASIS IN COLORADO; TWO PERSONS
10 REPRESENTING LIVESTOCK GROWERS IN COLORADO; ONE PERSON FROM
11 THE UNITED STATES DEPARTMENT OF AGRICULTURE FOREST SERVICE;
12 ONE PERSON FROM THE UNITED STATES DEPARTMENT OF THE INTERIOR
13 BUREAU OF LAND MANAGEMENT; ONE PERSON FROM THE COLORADO STATE
14 UNIVERSITY RANGE EXTENSION PROGRAM; AND ONE PERSON FROM THE
15 COLORADO DIVISION OF WILDLIFE.

16 (II) FOR THE INITIAL APPOINTMENTS TO THE COUNCIL, THE
17 TERMS OF THE FOUR MEMBERS REPRESENTING PURCHASERS OF BIG GAME
18 LICENSES AND LIVESTOCK GROWERS SHALL BE TWO YEARS FOR ONE
19 MEMBER OF EACH GROUP AND FOUR YEARS FOR THE OTHER MEMBER OF
20 EACH GROUP, AFTER WHICH ALL APPOINTMENTS SHALL BE FOR FOUR
21 YEARS. THE TERM LENGTHS FOR THE MEMBERS REPRESENTING THE
22 VARIOUS AGENCIES SHALL BE AT THE DISCRETION OF THE RESPECTIVE
23 AGENCIES. THERE SHALL BE NO LIMIT ON THE NUMBER OF TERMS A
24 MEMBER MAY SERVE.

25 (c) THE DUTIES OF THE COUNCIL ARE THE FOLLOWING:

26 (I) TO ADVISE LOCAL HABITAT PARTNERSHIP COMMITTEES;

1 (II) TO ASSIST IN THE DISSEMINATION OF INFORMATION
2 CONCERNING THE HABITAT PARTNERSHIP PROGRAM;

3 (III) TO REVIEW DRAFT PLANS FOR COMPLIANCE WITH PROGRAM
4 GUIDELINES ESTABLISHED BY THE COMMISSION AND TO RECOMMEND
5 REVISIONS TO SUCH PLANS OR APPROPRIATE ACTION BY THE
6 COMMISSION;

7 (IV) TO FACILITATE AND MONITOR PROGRAM EFFECTIVENESS AND
8 TO RECOMMEND CHANGES IN GUIDELINES AND GAME DAMAGE REGULATIONS
9 AS NECESSARY;

10 (V) TO SUBMIT VOUCHERS TO THE STATE TREASURER FOR ANNUAL
11 DISBURSEMENT OF FUNDS FROM THE HABITAT PARTNERSHIP CASH FUND,
12 CREATED IN SECTION 33-1-112, TO THE LOCAL HABITAT PARTNERSHIP
13 COMMITTEES AND TO COUNCIL MEMBERS FOR REASONABLE AND NECESSARY
14 EXPENSES INCURRED FULFILLING THEIR DUTIES;

15 (VI) TO REPORT TO THE COMMISSION AND TO THE GENERAL
16 ASSEMBLY PURSUANT TO SECTION 33-1-112 (8).

17 (8) (a) THE DIRECTOR SHALL HAVE THE AUTHORITY TO APPOINT
18 A "HABITAT PARTNERSHIP COMMITTEE", REFERRED TO IN THIS SECTION
19 AS A "COMMITTEE", IN ANY COUNTY WHERE CONFLICTS BETWEEN
20 WILDLIFE AND RANGELAND MANAGERS EXIST.

21 (b) A COMMITTEE SHALL CONSIST OF THE FOLLOWING
22 MEMBERS: ONE PERSON REPRESENTING THE PUBLIC WHO PURCHASE BIG
23 GAME LICENSES ON A REGULAR BASIS IN COLORADO; THREE PERSONS
24 REPRESENTING LIVESTOCK GROWERS IN THE COUNTY IN WHICH THE
25 COMMITTEE IS BEING ESTABLISHED; ONE PERSON FROM EACH OF THE
26 FEDERAL AGENCIES THAT HAS LAND MANAGEMENT RESPONSIBILITIES IN

1 THE COUNTY; AND ONE PERSON FROM THE COLORADO DIVISION OF
2 WILDLIFE.

3 (c) THE DUTIES OF A COMMITTEE ARE THE FOLLOWING:

4 (I) TO DEVELOP BIG GAME DISTRIBUTION MANAGEMENT PLANS TO
5 RESOLVE RANGELAND FORAGE AND FENCE CONFLICTS SUBJECT TO
6 COMMISSION APPROVAL;

7 (II) TO REQUEST FOR THE COMMITTEE, ON AN ANNUAL BASIS,
8 FUNDS FROM THE COUNCIL CONSISTENT WITH THE DISTRIBUTION
9 MANAGEMENT PLAN DEVELOPED BY ANY SUCH COMMITTEE;

10 (III) TO EXPEND FUNDS ALLOCATED BY THE COUNCIL OR
11 ACQUIRED FROM OTHER SOURCES AS NECESSARY TO IMPLEMENT
12 DISTRIBUTION MANAGEMENT PLANS;

13 (IV) TO MAKE AN ANNUAL REPORT OF EXPENDITURES AND
14 ACCOMPLISHMENTS OF THE COMMITTEE TO THE COUNCIL BY JULY 1 OF
15 EACH YEAR BEGINNING JULY 1, 1993.

16 SECTION 2. 33-1-112 (1), Colorado Revised Statutes, 1984
17 Repl. Vol., as amended, is amended, and the said 33-1-112 is
18 further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

19 33-1-112. Funds and cost accounting. (1) Except as
20 provided in ~~subsection~~ SUBSECTIONS (7) AND (8) of this
21 section, sections 33-1-112.5 and 33-6-105, and in part 7 of
22 article 22 of title 39, C.R.S., all moneys received from
23 wildlife license fees, and all moneys from all other wildlife
24 sources, and all interest earned on such moneys shall be
25 deposited in the state treasury and credited to the wildlife
26 cash fund, which fund is hereby created, and such moneys shall

1 be utilized for expenditures authorized or contemplated by and
2 not inconsistent with the provisions of articles 1 to 6 of
3 this title for wildlife activities and functions and for the
4 financing of impact assistance grants pursuant to part 3 of
5 article 25 of title 30, C.R.S. All moneys so deposited in the
6 wildlife cash fund shall remain in such fund to be used for
7 the purposes set forth in the provisions of articles 1 to 6 of
8 this title and shall not be deposited in or transferred to the
9 general fund of the state of Colorado or any other fund.

10 (8) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY
11 THE HABITAT PARTNERSHIP CASH FUND. THE MONEYS IN THE HABITAT
12 PARTNERSHIP CASH FUND SHALL CONSIST OF THOSE MONEYS ANNUALLY
13 APPROPRIATED TO THE DIVISION OF WILDLIFE FOR THE PARTNERSHIP
14 PROGRAM AND ANY GIFTS, DONATIONS, AND REIMBURSEMENTS MADE TO
15 THE PROGRAM FROM OTHER SOURCES. THE MONEYS IN THE FUND SHALL
16 BE USED IN ACCORDANCE WITH THE DUTIES OF THE HABITAT
17 PARTNERSHIP COUNCIL AS SPECIFIED IN SECTION 33-1-110 (7) AND
18 (8). ALL INTEREST DERIVED FROM THE INVESTMENT OF MONEYS IN
19 THE HABITAT PARTNERSHIP CASH FUND SHALL BE CREDITED TO THE
20 FUND. ANY BALANCE REMAINING IN THE FUND AT THE END OF ANY
21 FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL BE SUBJECT TO
22 APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE PURPOSES FOR
23 WHICH THE FUND WAS CREATED.

24 (b) THE COUNCIL SHALL SUBMIT AN ANNUAL REPORT TO THE
25 COMMISSION AND THE GENERAL ASSEMBLY SPECIFICALLY STATING THE
26 ITEMS FOR WHICH IT HAS EXPENDED MONEYS FROM THE FUND AND THE

1 PURPOSE OF SUCH ITEMS.

2 (c) IF THE COUNCIL CEASES TO EXIST, ALL MONEYS IN THE
3 HABITAT PARTNERSHIP CASH FUND SHALL REVERT TO THE WILDLIFE
4 CASH FUND.

5 SECTION 3. 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.

AGRICULTURE BILL D

A BILL FOR AN ACT

1 CONCERNING AIR POLLUTION CONTROL, AND, IN CONNECTION
2 THEREWITH, MAKING CHANGES IN THE LAW TO COMPLY WITH AND
3 TO IMPLEMENT THE FEDERAL "CLEAN AIR ACT AMENDMENTS OF
4 1990".

Bill Summary

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

Makes changes in Colorado law to comply with the federal "Clean Air Act Amendments of 1990".

Changes the short title of the law to the "Colorado Air Pollution Prevention and Control Act".

Makes changes to definitions in said act and adds other definitions for purposes of compliance with federal law.

Specifies that members of the air quality control commission not employed by the state shall receive a per diem equal to that paid to members of the general assembly for attendance at interim committee meetings. Repeals obsolete statutory language related to the commission.

Makes changes in the duties of the commission to comply with changes made in federal law. Authorizes the commission to adopt interim emission control regulations to comply with federal law on an emergency basis. Creates the small business stationary source technical and environmental compliance assistance program and the compliance advisory panel.

Specifies that emission data from emission sources may not be withheld from the air pollution prevention and control division as confidential information. Makes extensive

revisions to the division's permit program and delineates the terms of specific types of permits required of emission sources. Specifies fees for certain types of permits as well as adjustments to be made to such fees under certain circumstances.

Makes changes in the procedures of the division to enforce the emission control regulations of the commission. Authorizes the commission to designate hearing officers to conduct commission hearings. Sets time limits for appealing decisions of administrative law judges or hearing officers to the commission. Clarifies the authority of the division and the commission to seek enforcement of final orders through injunctions. Changes the amount of the civil penalties which may be imposed for violations of the air pollution laws and rules and regulations. Sets forth standards for courts to consider in imposing such penalties. Sets forth certain situations in which civil enforcement of the air pollution laws and rules and regulations will not be allowed. Establishes criminal penalties for violating the air pollution statutes and rules and regulations. Sets forth a statute of limitations period for actions to enforce the air pollution statutes through civil penalties and other enforcement actions.

Establishes an income tax credit for investments by owners and operators of vehicle fleets in compliance with state air pollution laws and rules and regulations.

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

2 SECTION 1. 25-7-101, Colorado Revised Statutes, 1989
3 Repl. Vol., is amended to read:

4 25-7-101. Short title. This article shall be known and
5 may be cited as the "Colorado Air Quality POLLUTION PREVENTION
6 AND Control Act".

7 SECTION 2. 25-7-103 (1), (9), (11), (12), (13), and
8 (19), Colorado Revised Statutes, 1989 Repl. Vol., are amended,
9 and the said 25-7-103 is further amended BY THE ADDITION OF
10 THE FOLLOWING NEW SUBSECTIONS, to read:

11 25-7-103. Definitions. (1) "Air--pollutant"--means-any
12 fume, smoke, particulate matter, vapor, or gas or any

1 combination--thereof-which-is-emitted-into-or-otherwise-enters
2 the-atmosphere,-including,-but-not-limited-to,-any--physical,
3 chemical,-biological,-radioactive-(including-source-material,
4 special-nuclear-material,-and-by-product--material)--substance
5 or-matter,-but-"air-pollutant"-does-not-include-water-vapor-or
6 steam--condensate. "ADVERSE ENVIRONMENTAL EFFECT", AS A TERM
7 USED IN THE CONTEXT OF REGULATING HAZARDOUS AIR POLLUTANTS,
8 MEANS ANY SIGNIFICANT AND WIDESPREAD ADVERSE EFFECT, WHICH MAY
9 REASONABLY BE ANTICIPATED, TO WILDLIFE, ACQUATIC LIFE, OR
10 OTHER NATURAL RESOURCES, INCLUDING ADVERSE IMPACTS ON
11 POPULATIONS OF ENDANGERED OR THREATENED SPECIES OR SIGNIFICANT
12 DEGRADATION OF ENVIRONMENTAL QUALITY OVER BROAD AREAS.

13 (1.5) "AIR POLLUTANT" MEANS ANY FUME, SMOKE, PARTICULATE
14 MATTER, VAPOR, OR GAS OR ANY COMBINATION THEREOF WHICH IS
15 EMITTED INTO OR OTHERWISE ENTERS THE ATMOSPHERE, INCLUDING,
16 BUT NOT LIMITED TO, ANY PHYSICAL, CHEMICAL, BIOLOGICAL,
17 RADIOACTIVE (INCLUDING SOURCE MATERIAL, SPECIAL NUCLEAR
18 MATERIAL, AND BY-PRODUCT MATERIAL) SUBSTANCE OR MATTER, BUT
19 "AIR POLLUTANT" DOES NOT INCLUDE WATER VAPOR OR STEAM
20 CONDENSATE OR ANY OTHER EMISSION EXEMPTED BY THE COMMISSION
21 CONSISTENT WITH THE FEDERAL ACT. SUCH TERM INCLUDES ANY
22 PRECURSORS TO THE FORMATION OF ANY AIR POLLUTANT, TO THE
23 EXTENT THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL
24 PROTECTION AGENCY OR THE COMMISSION HAS IDENTIFIED SUCH
25 PRECURSOR OR PRECURSORS FOR THE PARTICULAR PURPOSE FOR WHICH
26 THE TERM "AIR POLLUTANT" IS USED.

1 (9) "Division" means the AIR POLLUTION PREVENTION AND
2 CONTROL DIVISION CREATED WITHIN THE division of administration
3 of the department of health.

4 (9.5) "EFFECTS ON PUBLIC WELFARE" MEANS ALL LANGUAGE
5 REFERRING TO EFFECTS ON PUBLIC WELFARE, WHICH INCLUDES, BUT IS
6 NOT LIMITED TO, EFFECTS ON SOILS, WATER, CROPS, VEGETATION,
7 MANMADE MATERIALS, ANIMALS, WILDLIFE, WEATHER, VISIBILITY,
8 CLIMATE, DAMAGE TO AND DETERIORATION OF PROPERTY, AND HAZARDS
9 TO TRANSPORTATION, AS WELL AS EFFECTS ON ECONOMIC VALUES AND
10 ON PERSONAL COMFORT AND WELL-BEING, WHETHER CAUSED BY
11 TRANSFORMATION, CONVERSION, OR COMBINATION WITH OTHER AIR
12 POLLUTANTS.

13 (11) "Emission control regulation" means and includes
14 any standard promulgated by regulation which is applicable to
15 all air pollution sources within a specified area and which
16 prohibits or establishes permissible limits for specific types
17 of emissions in such area, and also any regulation which by
18 its terms is applicable to a specified type of facility,
19 process, or activity for the purpose of controlling the
20 extent, degree, or nature of pollution emitted from such type
21 of facility, process, or activity, and--also any regulation
22 adopted for the purpose of preventing or minimizing emission
23 of any air pollutant in potentially dangerous quantities, AND
24 ALSO ANY REGULATION THAT ADOPTS ANY DESIGN, EQUIPMENT, WORK
25 PRACTICE, OR OPERATIONAL STANDARD. Except-for Emission control
26 regulations pertaining-to-hazardous-air-pollutants,-as-defined

1 in subsection (12) of this section, "emission control
 2 regulation" shall not include standards which describe maximum
 3 ambient air concentrations of specifically identified
 4 pollutants or which describe varying degrees of pollution of
 5 ambient air. EMISSION CONTROL REGULATIONS PERTAINING TO
 6 HAZARDOUS AIR POLLUTANTS, AS DEFINED IN SUBSECTION (13) OF
 7 THIS SECTION, SHALL CONFORM TO THE EMISSION STANDARDS
 8 PROMULGATED UNDER SECTION 112 OF THE FEDERAL ACT, SHALL ONLY
 9 UTILIZE MACT AND GACT, AS DEFINED IN SUBSECTIONS (12.1) AND
 10 (16.5) OF THIS SECTION FOR REDUCING OR PREVENTING EMISSIONS OF
 11 HAZARDOUS AIR POLLUTANTS, AND MAY INCLUDE APPLICATION OF
 12 MEASURES, PROCESSES, METHODS, SYSTEMS, OR TECHNIQUES,
 13 INCLUDING, BUT NOT LIMITED TO, MEASURES WHICH:

14 (a) REDUCE THE VOLUME OF, OR ELIMINATE EMISSIONS OF,
 15 SUCH POLLUTANTS THROUGH PROCESS CHANGES, SUBSTITUTION OF
 16 MATERIALS, OR OTHER MODIFICATIONS;

17 (b) ENCLOSE SYSTEMS OR PROCESSES TO ELIMINATE EMISSIONS;

18 (c) COLLECT, CAPTURE, OR TREAT SUCH POLLUTANTS WHEN
 19 RELEASED FROM A PROCESS, STACK, STORAGE, OR FUGITIVE EMISSIONS
 20 POINT;

21 (d) ARE DESIGN, EQUIPMENT, OR WORK PRACTICE STANDARDS
 22 (INCLUDING REQUIREMENTS FOR OPERATOR TRAINING OR
 23 CERTIFICATION); OR

24 (e) ARE A COMBINATION OF THE PROVISIONS OF PARAGRAPHS

25 (a) TO (d) OF THIS SUBSECTION (11).

26 (11.5) "EMISSION DATA" MEANS, WITH REFERENCE TO ANY

1 SOURCE OF EMISSION OF ANY SUBSTANCE INTO THE AIR:

2 (a) INFORMATION NECESSARY TO DETERMINE THE IDENTITY,
 3 AMOUNT, FREQUENCY, CONCENTRATION, OR OTHER CHARACTERISTICS (TO
 4 THE EXTENT RELATED TO AIR QUALITY) OF ANY EMISSION WHICH HAS
 5 BEEN, OR WILL BE, EMITTED BY THE SOURCE (OR OF ANY POLLUTANT
 6 RESULTING FROM ANY EMISSION BY THE SOURCE), OR ANY COMBINATION
 7 THEREOF;

8 (b) INFORMATION NECESSARY TO DETERMINE THE IDENTITY,
 9 AMOUNT, FREQUENCY, CONCENTRATION, OR OTHER CHARACTERISTICS (TO
 10 THE EXTENT RELATED TO AIR QUALITY) OF THE EMISSION WHICH,
 11 UNDER AN APPLICABLE STANDARD OR LIMITATION, THE SOURCE WAS
 12 AUTHORIZED TO EMIT (INCLUDING, TO THE EXTENT NECESSARY FOR
 13 SUCH PURPOSES, A DESCRIPTION OF THE MANNER OR RATE OF
 14 OPERATION OF THE SOURCE), OR ANY COMBINATION THEREOF;

15 (c) A GENERAL DESCRIPTION OF THE LOCATION OR NATURE, OR
 16 BOTH, OF THE SOURCE TO THE EXTENT NECESSARY TO IDENTIFY THE
 17 SOURCE AND TO DISTINGUISH IT FROM OTHER SOURCES (INCLUDING, TO
 18 THE EXTENT NECESSARY FOR SUCH PURPOSES, A DESCRIPTION OF THE
 19 DEVICE, INSTALLATION, OR OPERATION CONSTITUTING THE SOURCE).

20 (12) "Federal act" means the federal "Clean Air Act", 42
 21 U.S.C. 7401 et seq. (1970), as the same is in effect on June
 22 20, 1979 NOVEMBER 15, 1990.

23 (12.1) "GENERALLY AVAILABLE CONTROL TECHNOLOGY" OR
 24 "GACT" MEANS STANDARDS PROMULGATED PURSUANT TO SECTION 112 OF
 25 THE FEDERAL ACT WHICH PROVIDE FOR THE USE OF GENERALLY
 26 AVAILABLE CONTROL TECHNOLOGIES OR MANAGEMENT PRACTICES FOR THE

1 CONTROL OF HAZARDOUS AIR POLLUTANTS FOR AREA SOURCES, AS
2 DEFINED IN SECTION 112 OF THE FEDERAL ACT.

3 (13) "Hazardous air pollutant" means an air pollutant to
4 ~~which no national ambient air quality standard is applicable~~
5 ~~and which in the judgment of the commissioner after a hearing~~
6 ~~conducted pursuant to section 24-4-103, C.R.S., causes or~~
7 ~~contributes to air pollution which may reasonably be~~
8 ~~anticipated to result in an increase in mortality or an~~
9 ~~increase in serious irreversible or incapacitating reversible~~
10 ~~illness or injury~~ WHICH PRESENTS THROUGH INHALATION OR OTHER
11 ROUTES OF EXPOSURE, A THREAT OF ADVERSE HUMAN HEALTH EFFECTS
12 (INCLUDING, BUT NOT LIMITED TO, SUBSTANCES WHICH ARE KNOWN TO
13 BE, OR MAY REASONABLY BE ANTICIPATED TO BE CARCINOGENIC,
14 MUTAGENIC, TERATOGENIC, NEUROTOXIC, WHICH CAUSE REPRODUCTIVE
15 DYSFUNCTION, OR WHICH ARE ACUTELY OR CHRONICALLY TOXIC) OR
16 ADVERSE ENVIRONMENTAL EFFECTS WHETHER THROUGH AMBIENT
17 CONCENTRATIONS, BIOACCUMULATION, DEPOSITION, OR OTHERWISE AND
18 WHICH HAS BEEN LISTED PURSUANT TO SECTION 112 OF THE FEDERAL
19 ACT.

20 (16.5) "MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY" OR "MACT"
21 MEANS EMISSION STANDARDS PROMULGATED UNDER SECTION 112 OF THE
22 FEDERAL ACT REQUIRING THE MAXIMUM DEGREE OF EMISSIONS
23 REDUCTION THAT HAS BEEN DEMONSTRATED TO BE ACHIEVABLE FOR THE
24 CONTROL OF HAZARDOUS WASTE POLLUTANTS.

25 (18.3) "OWNER OR OPERATOR" MEANS ANY PERSON WHO OWNS,
26 LEASES, OPERATES, CONTROLS, OR SUPERVISES A STATIONARY SOURCE.

1 (18.4) "OZONE DEPLETING SUBSTANCE" MEANS SUBSTANCES
2 LISTED AS PROVIDED IN SECTION 602 OF THE FEDERAL ACT AND
3 INCLUDE, BUT ARE NOT LIMITED TO, SUBSTANCES SUCH AS
4 CHLOROFLUOROCARBONS, HALONS, CARBON TETRACHLORIDE, METHYL
5 CHLOROFORM, AND HYDROCHLOROFLUOROCARBONS.

6 (19) "Person" means any individual, public or private
7 corporation, partnership, association, firm, trust, estate,
8 THE UNITED STATES OR the state or any department, institution,
9 or agency thereof, any municipal corporation, county, city and
10 county, or other political subdivision of the state, or any
11 other legal entity whatsoever which is recognized by law as
12 the subject of rights and duties.

13 SECTION 3. 25-7-104 (5), (7), and (9), Colorado Revised
14 Statutes, 1989 Repl. Vol., are amended to read:

15 25-7-104. Air quality control commission created.

16 (5) Each member of the commission not otherwise in full-time
17 employment of the state shall receive a per diem of ~~forty~~
18 ~~dollars~~ WHICH SHALL BE THE SAME AMOUNT AS THAT PAID TO MEMBERS
19 OF THE GENERAL ASSEMBLY FOR ATTENDANCE AT INTERIM COMMITTEES
20 for each day actually and necessarily spent in the discharge
21 of official duties, but not to exceed twelve hundred
22 eighty-four dollars in any one year; and all members shall
23 receive traveling and other necessary expenses actually
24 incurred in the performance of official duties.

25 (7) All members shall have a vote. A ~~majority~~ TWO
26 THIRDS of the commission shall constitute a quorum, and the

1 concurrence of a majority of A QUORUM OF the commission in any
2 matter within its powers and duties shall be required for any
3 determination made by the commission.

4 (9) ~~The individuals serving as members of the air
5 pollution control commission, as it existed pursuant to this
6 article prior to June 20, 1979, shall serve as the commission
7 created by this article after said date until the expiration
8 dates of the respective terms to which they were appointed and
9 until their successors are appointed and qualified; except
10 that, if they continue to serve pursuant to this subsection
11 (9), such individuals shall immediately comply with subsection
12 (8) of this section.~~

13 SECTION 4. 25-7-105 (8) and (11), Colorado Revised
14 Statutes, 1989 Repl. Vol., are amended, and the said 25-7-105
15 is further amended BY THE ADDITION OF THE FOLLOWING NEW
16 SUBSECTIONS, to read:

17 25-7-105. Duties of commission. (8) To the extent that
18 any provision of this article or any standard or regulation
19 promulgated pursuant thereto is not required by Part C
20 (Prevention of Significant Deterioration), or Part D
21 (Nonattainment), OR SUBCHAPTER V (MINIMUM ELEMENTS OF A PERMIT
22 PROGRAM) of the federal act or is more stringent than other
23 requirements of the federal act, such provision, standard, or
24 regulation is hereby declared to be adopted under powers
25 reserved to the state of Colorado pursuant to section 116 of
26 the federal act. Any such provision, standard, or regulation

1 adopted exclusively under state authority shall not constitute
2 part of the state implementation plan, and, whenever the
3 division or commission grants relief to an owner or operator
4 of a new or modified stationary source from that part of a
5 state standard or regulation which is not required by Part C
6 (Prevention of Significant Deterioration), or Part D
7 (Nonattainment), OR SUBCHAPTER V (MINIMUM ELEMENTS OF A PERMIT
8 PROGRAM) of the federal act or which is more stringent than
9 other requirements of the federal act and is not included as
10 part of the state implementation plan, such relief shall be
11 governed exclusively by the laws of this state and the
12 regulations of the commission.

13 (11) The commission shall promulgate regulations
14 concerning ~~refrigerants containing GFC's~~ APPLIANCES AND
15 INDUSTRIAL PROCESS REFRIGERATION FOR OZONE DEPLETING
16 SUBSTANCES LISTED AS PROVIDED IN SECTION 602 OF THE FEDERAL
17 ACT as follows:

18 (a) Regulations requiring the recycling or reuse of any
19 refrigerant containing GFC CFC'S OR OTHER OZONE DEPLETING
20 SUBSTANCES which is removed from the refrigeration system of a
21 retail store, cold storage warehouse, or commercial or
22 industrial building by any person who installs, services,
23 repairs, or disposes of such system as a result of service to
24 or disposal of such system;

25 (b) Regulations prohibiting the intentional venting or
26 disposal of any refrigerant containing CFC by the owner or

1 operator of a retail store, cold storage warehouse, or
2 commercial or industrial building and requiring the recycling
3 or reuse of such refrigerant;

4 (c) REGULATIONS REQUIRING THE USE OF REFRIGERANT
5 RECYCLING EQUIPMENT FOR PERSONS REPAIRING OR SERVICING MOTOR
6 VEHICLE AIR CONDITIONERS, CONSISTENT WITH THE REQUIREMENTS OF
7 SECTION 609 OF THE FEDERAL ACT. SUCH REGULATIONS SHALL ALSO
8 REQUIRE APPROPRIATE TRAINING AND CERTIFICATION FOR PERSONS
9 PERFORMING SUCH SERVICE AND OPERATING SUCH REFRIGERANT
10 RECYCLING EQUIPMENT.

11 (12) THE COMMISSION SHALL PROMULGATE SUCH RULES AND
12 REGULATIONS AS ARE NECESSARY TO IMPLEMENT THE MINIMUM ELEMENTS
13 OF A PERMIT PROGRAM PROVIDED IN SUBCHAPTER V OF THE FEDERAL
14 ACT.

15 (13) THE COMMISSION SHALL PROMULGATE RULES AND
16 REGULATIONS REQUIRING MOTOR VEHICLES WHICH HAVE
17 MANUFACTURER-INSTALLED DIAGNOSTIC SYSTEMS FOR EMISSION
18 CONTROLS TO HAVE SUCH DIAGNOSTIC SYSTEMS INSPECTED AND
19 MAINTAINED CONSISTENT WITH SECTION 202 OF THE FEDERAL ACT AS
20 PART OF THE PERIODIC INSPECTION OF VEHICLE EMISSION CONTROL
21 SYSTEMS REQUIRED PURSUANT TO THIS ARTICLE.

22 (14) (a) THE COMMISSION SHALL PROMULGATE RULES AND
23 REGULATIONS AS ARE NECESSARY TO IMPLEMENT, CONSISTENT WITH
24 SECTION 246 OF THE FEDERAL ACT, A CLEAN FUEL VEHICLE FLEET
25 PROGRAM REQUIRING THAT AN APPROPRIATE PERCENTAGE OF NEW FLEET
26 VEHICLES BE CLEAN FUEL VEHICLES, AN APPROPRIATE CREDIT

1 PROGRAM, AND PROVISIONS EXEMPTING CLEAN FUEL FLEET VEHICLES
2 FROM APPROPRIATE AND OTHERWISE GENERALLY APPLICABLE
3 TRANSPORTATION CONTROL MEASURES IN THE STATE IMPLEMENTATION
4 PLAN.

5 (b) THE CREDIT PROGRAM SHALL PROVIDE FOR AN EMISSIONS
6 CREDIT FOR FLEET OWNERS PROVIDED THE PURCHASE OF CLEAN
7 VEHICLES IS IN QUANTITIES IN EXCESS OF APPLICABLE MINIMUM
8 REQUIREMENTS OR IS MADE ONE YEAR OR MORE IN ADVANCE OF THE
9 TIME FRAMES PROVIDED BY SECTION 246 OF THE FEDERAL ACT.

10 (c) THE CREDIT PROGRAM SHALL CONTAIN AN EMISSIONS
11 REDUCTION OFFSET PROVISION CONSISTENT WITH SECTION 25-7-304
12 WHICH PRESERVES FOR FUTURE USE AND CREDIT EMISSION REDUCTIONS
13 ACHIEVED BY VEHICLE FLEET OWNERS ACHIEVED IN ADVANCE OF OR IN
14 EXCESS OF THE MINIMAL REQUIREMENTS PROVIDED IN SECTION 246 OF
15 THE FEDERAL ACT.

16 (d) THE COMMISSION AND DIVISION SHALL CONSULT WITH
17 OWNERS AND OPERATORS OF FLEETS, VEHICLE MANUFACTURERS, AND
18 FUEL PRODUCERS, DISTRIBUTORS, AND DISPENSERS IN DEVELOPING
19 SUCH RULES AND REGULATIONS.

20 (e) THE DIVISION SHALL CONSULT AND COOPERATE WITH THE
21 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE IN
22 IMPLEMENTING THE TAX CREDIT PROVISION CONTAINED IN SECTION
23 39-22-516, C.R.S.

24 (15) THE COMMISSION SHALL PROMULGATE RULES AND
25 REGULATIONS AS ARE NECESSARY TO PROVIDE AN EMISSION REDUCTION
26 INCENTIVE PERMIT FEE CREDIT PROGRAM WHICH PROVIDES FOR A

1 PERMIT FEE REDUCTION IN THE YEAR FOLLOWING THE YEAR IN WHICH A
2 PERMITTEE ACHIEVES AN EARLY REDUCTION IN EMISSIONS OF
3 HAZARDOUS AIR POLLUTANTS, CONSISTENT WITH THE PROVISIONS OF
4 SECTION 112 OF THE FEDERAL ACT AND SECTION 25-7-114.3.

5 SECTION 5. 25-7-109 (2) (h) and (4), Colorado Revised
6 Statutes, 1989 Repl. Vol., is amended to read:

7 25-7-109. Commission to promulgate emission control
8 regulations. (2) Such emission control regulations may
9 include, but shall not be limited to, regulations pertaining
10 to:

11 (h) ~~Toxic-gases~~ HAZARDOUS AIR POLLUTANTS.

12 (4) The commission shall promulgate appropriate
13 regulations pertaining to hazardous air pollutants WHICH ARE
14 NOT MORE STRINGENT THAN THE EMISSION STANDARDS PROMULGATED
15 PURSUANT TO SECTION 112 OF THE FEDERAL ACT.

16 SECTION 6. Part 1 of article 7 of title 25, Colorado
17 Revised Statutes, 1989 Repl. Vol., as amended, is amended BY
18 THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

19 25-7-109.1. Emergency rule-making. IN ADDITION TO ALL
20 OTHER POWERS OF THE COMMISSION, THE COMMISSION, PURSUANT TO
21 SECTION 24-4-103 (6), C.R.S., SHALL HAVE THE AUTHORITY TO
22 CONDUCT EMERGENCY RULE-MAKING FOR THE PURPOSE OF ADOPTING AN
23 INTERIM EMISSION CONTROL REGULATION TO APPLY FOR A SPECIFIED
24 PERIOD OF TIME IN PLACE OF AN EXISTING EMISSION CONTROL
25 REGULATION OR TO CREATE AN EMISSION CONTROL REGULATION
26 WHENEVER FEDERAL REGULATIONS HAVE BEEN ADOPTED AND BECOME

1 EFFECTIVE PURSUANT TO SECTION 111 OF THE FEDERAL ACT AND WHICH
2 ADD TO THE LIST OF CATEGORIES OF STATIONARY SOURCES, OR ADD
3 NEW OR MORE RESTRICTIVE STANDARDS OF PERFORMANCE FOR NEW
4 SOURCES, OR WHENEVER FEDERAL REGULATIONS ARE ADOPTED AND
5 EFFECTIVE PURSUANT TO SECTION 112 OF THE FEDERAL ACT AND WHICH
6 MODIFY OR ADOPT MACT OR GACT FOR NEW OR EXISTING SOURCES, AND
7 SUCH REGULATIONS ARE REQUIRED TO BE IMPLEMENTED BY THE STATES.
8 INTERIM EMISSION CONTROL REGULATIONS ADOPTED PURSUANT TO THIS
9 SECTION SHALL NOT BE EFFECTIVE FOR A PERIOD GREATER THAN
10 TWELVE MONTHS FROM THE DATE OF ADOPTION.

11 25-7-109.2. Small business stationary source technical
12 and environmental compliance assistance program. (1) THE
13 COMMISSION SHALL PROMULGATE SUCH RULES, REGULATIONS, AND
14 PROCEDURES AS ARE NECESSARY TO ESTABLISH AND ADMINISTER THE
15 COLORADO SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND
16 ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM CONSISTENT WITH
17 THE REQUIREMENTS OF THE FEDERAL ACT.

18 (2) THERE IS HEREBY CREATED A COMPLIANCE ADVISORY PANEL
19 WHICH SHALL:

20 (a) RENDER ADVISORY OPINIONS CONCERNING THE
21 EFFECTIVENESS OF THE SMALL BUSINESS STATIONARY SOURCE
22 TECHNICAL AND ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM,
23 DIFFICULTIES ENCOUNTERED, AND DEGREE AND SEVERITY OF
24 ENFORCEMENT;

25 (b) MAKE PERIODIC REPORTS TO THE GOVERNOR AND THE
26 ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION

1 AGENCY;
2 (c) REVIEW INFORMATION FOR SMALL BUSINESS STATIONARY
3 SOURCES TO ASSURE SUCH INFORMATION IS UNDERSTANDABLE BY THE
4 LAYPERSON; AND

5 (d) HAVE THE SMALL BUSINESS STATIONARY SOURCE TECHNICAL
6 AND ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM SERVE AS THE
7 SECRETARIAT FOR THE DEVELOPMENT AND DISSEMINATION OF SUCH
8 REPORTS AND ADVISORY OPINIONS.

9 (3) THE PANEL SHALL CONSIST OF:

10 (a) TWO MEMBERS WHO ARE NOT OWNERS OR REPRESENTATIVES OF
11 OWNERS OF SMALL BUSINESS STATIONARY SOURCES, APPOINTED BY THE
12 GOVERNOR TO REPRESENT THE GENERAL PUBLIC;

13 (b) TWO MEMBERS WHO ARE OWNERS OR WHO REPRESENT OWNERS
14 OF SMALL BUSINESS STATIONARY SOURCES, ONE APPOINTED BY THE
15 SPEAKER OF THE HOUSE OF REPRESENTATIVES AND ONE APPOINTED BY
16 THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES;

17 (c) TWO MEMBERS WHO ARE OWNERS OR WHO REPRESENT OWNERS
18 OF SMALL BUSINESS STATIONARY SOURCES, ONE APPOINTED BY THE
19 PRESIDENT OF THE SENATE AND ONE APPOINTED BY THE MINORITY
20 LEADER OF THE SENATE; AND

21 (d) ONE MEMBER APPOINTED BY THE EXECUTIVE DIRECTOR OF
22 THE DEPARTMENT OF HEALTH TO REPRESENT SUCH DEPARTMENT.

23 (4) THE TERMS OF THOSE MEMBERS OF THE PANEL INITIALLY
24 APPOINTED BY THE GOVERNOR, THE SPEAKER OF THE HOUSE OF
25 REPRESENTATIVES, AND THE MINORITY LEADER OF THE HOUSE OF
26 REPRESENTATIVES, SHALL EXPIRE ON JANUARY 31, 1994. THE TERMS

1 OF THOSE MEMBERS INITIALLY APPOINTED BY THE PRESIDENT OF THE
2 SENATE, THE MINORITY LEADER OF THE SENATE, AND THE EXECUTIVE
3 DIRECTOR OF THE DEPARTMENT OF HEALTH, SHALL EXPIRE ON JANUARY
4 31, 1995. THEREAFTER, MEMBERS OF THE PANEL SHALL SERVE FOR
5 TERMS OF TWO YEARS, SUCH TERMS TO COMMENCE ON FEBRUARY 1 OF
6 THE YEAR OF APPOINTMENT. VACANCIES OCCURRING DURING THE TERM
7 OF OFFICE OF ANY MEMBER OF THE PANEL SHALL BE FILLED FOR THE
8 UNEXPIRED PORTION OF THE REGULAR TERM IN THE SAME MANNER AS
9 FOR THE ORIGINAL APPOINTMENT.

10 (5) IN FURTHERANCE OF THE SMALL BUSINESS STATIONARY
11 SOURCE TECHNICAL AND ENVIRONMENTAL COMPLIANCE ASSISTANCE
12 PROGRAM ESTABLISHED UNDER THIS SECTION, THE GOVERNOR SHALL
13 DESIGNATE AN OFFICE WITHIN STATE GOVERNMENT AND SEPARATE FROM
14 THE DIVISION TO SERVE AS OMBUDSMAN FOR SMALL BUSINESS
15 STATIONARY SOURCES.

16 (6) SUBSECTIONS (2), (3), AND (4) OF THIS SECTION AND
17 THIS SUBSECTION (6) ARE REPEALED, EFFECTIVE JULY 1, 1998.
18 PRIOR TO SAID REPEAL, THE COMPLIANCE ADVISORY PANEL SHALL BE
19 REVIEWED AS PROVIDED IN SECTION 2-3-1203, C.R.S.

20 SECTION 7. 25-7-111 (2) (c), Colorado Revised Statutes,
21 1989 Repl. Vol., is amended, and the said 25-7-111 is further
22 amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTION, to
23 read:

24 25-7-111. Administration of air quality control
25 programs. (2) In addition to authority specified elsewhere in
26 this article, the division has the power to:

1 (c) Enter and inspect any property, premises, or place
 2 for the purpose of investigating any actual, suspected, or
 3 potential source of air pollution or ascertaining compliance
 4 or noncompliance with any requirement of this article or any
 5 order or permit, or term or condition thereof, issued or
 6 promulgated pursuant to this article; and the division may, at
 7 reasonable times, have access to and copy any record, inspect
 8 any monitoring equipment or method, or sample any emissions
 9 required pursuant to section 25-7-106 (6) or part 5 of this
 10 article; except that, if such entry or inspection is denied or
 11 not consented to and no emergency exists, the division is
 12 empowered to and shall obtain from the district or county
 13 court for the district or county in which such property,
 14 premises, or place is located a warrant to enter and inspect
 15 any such property, premises, or place prior to entry and
 16 inspection. The district and county courts of this state are
 17 empowered to issue such warrants upon a proper showing of the
 18 need for such entry and inspection. Any information relating
 19 to secret processes or methods of manufacture or production
 20 obtained in the course of the inspection or investigation
 21 shall be kept confidential; EXCEPT THAT EMISSION DATA SHALL
 22 NOT BE WITHHELD FROM THE DIVISION AS CONFIDENTIAL. A duplicate
 23 of any analytical report or observation of an air pollutant by
 24 the division shall be furnished promptly to the person who is
 25 suspected of causing such air pollution.

26 (3) THE DIVISION SHALL ASSUME THAT ANY INFORMATION

1 OBTAINED BY THE DIVISION WHICH IS ENTITLED TO PROTECTION AS A
 2 TRADE SECRET UNDER FEDERAL OR COLORADO LAW IS KEPT
 3 CONFIDENTIAL AND PROTECTED AGAINST DISCLOSURE.

4 SECTION 8. 25-7-113 (1), Colorado Revised Statutes, 1989
 5 Repl. Vol., is amended to read:

6 25-7-113. Air pollution emergencies endangering public
 7 health, welfare, or the environment anywhere in this state.

8 (1) Whenever the division determines, after investigation,
 9 that any person is either engaging in any activity involving a
 10 significant risk of air pollution or is discharging or causing
 11 to be discharged into the atmosphere, directly or indirectly,
 12 any air pollutants and such activity or discharge does not
 13 constitute a clear, present, and immediate danger to the
 14 health of the public, but is of such a nature as to cause
 15 extreme discomfort or that it ~~is an immediate danger to the~~
 16 ~~welfare of the public because such pollutants make habitation~~
 17 ~~of residences or the conduct of businesses subjected to the~~
 18 ~~pollutants extremely unhealthy or disruptive~~ PRESENTS AN
 19 IMMINENT AND SUBSTANTIAL ENDANGERMENT TO THE PUBLIC HEALTH OR
 20 WELFARE, OR THE ENVIRONMENT, the division shall:

21 (a) Issue a written cease and desist order to said
 22 person requiring immediate discontinuance of such activity or
 23 the discharge of such pollutant into the atmosphere, and, upon
 24 receipt of such order, such person shall immediately
 25 discontinue such activity or discharge; or

26 (b) Apply to any district court of this state for the

1 district in which the said activity or discharge is occurring
2 for a temporary restraining order, temporary injunction, or
3 permanent injunction as provided for in the Colorado rules of
4 civil procedure. Any such action in a district court shall be
5 given precedence over all other matters pending in such
6 district court. The institution of such injunction
7 proceedings by the division shall confer upon said district
8 court exclusive jurisdiction to determine finally the subject
9 matter of the proceeding; or

10 (c) Both issue such a cease and desist order and apply
11 for any such restraining order or injunction.

12 SECTION 9. 25-7-114, Colorado Revised Statutes, 1989
13 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH
14 AMENDMENTS, to read:

15 25-7-114. Permit program - definitions. AS USED IN
16 SECTION 25-7-114 TO SECTION 25-7-114.7, UNLESS THE CONTEXT
17 OTHERWISE REQUIRES:

18 (1) "AFFECTED SOURCE" MEANS A SOURCE THAT INCLUDES ONE
19 OR MORE FOSSIL FUEL-FIRED COMBUSTION DEVICES SUBJECT TO
20 EMISSION REDUCTION REQUIREMENTS OR LIMITATIONS UNDER
21 SUBCHAPTER IV OF THE FEDERAL ACT OR THIS ARTICLE.

22 (2) "MAJOR SOURCE" MEANS ANY STATIONARY SOURCE THAT IS
23 ONE OF THE FOLLOWING:

24 (a) ANY STATIONARY SOURCE OR GROUP OF STATIONARY SOURCES
25 LOCATED WITHIN A CONTIGUOUS AREA AND UNDER COMMON CONTROL THAT
26 EMITS OR HAS THE POTENTIAL TO EMIT CONSIDERING ENFORCEABLE

1 CONTROLS, IN THE AGGREGATE, TEN TONS PER YEAR OR MORE OF ANY
2 HAZARDOUS AIR POLLUTANT OR TWENTY-FIVE TONS PER YEAR OR MORE
3 OF ANY COMBINATION OF HAZARDOUS AIR POLLUTANTS, OR SUCH LESSER
4 QUANTITY OF HAZARDOUS AIR POLLUTANTS AS MAY BE ESTABLISHED
5 PURSUANT TO THE FEDERAL ACT;

6 (b) ANY STATIONARY SOURCE WHICH DIRECTLY EMITS, OR HAS
7 THE POTENTIAL TO EMIT, ONE HUNDRED TONS PER YEAR OR MORE OF
8 ANY AIR POLLUTANT;

9 (c) ANY STATIONARY SOURCE AS DEFINED IN PART D OF
10 SUBCHAPTER I OF THE FEDERAL ACT.

11 (3) "SCHEDULE OF COMPLIANCE" MEANS A SCHEDULE OF
12 REQUIRED MEASURES, INCLUDING AN ENFORCEABLE SEQUENCE OF
13 ACTIONS OR OPERATIONS, LEADING TO COMPLIANCE WITH AN
14 APPLICABLE IMPLEMENTATION PLAN, EMISSION STANDARD, EMISSION
15 LIMITATION, EMISSION PROHIBITION, OR EMISSION CONTROL
16 REGULATION.

17 SECTION 10. Part 1 of article 7 of title 25, Colorado
18 Revised Statutes, 1989 Repl. Vol., as amended, is amended BY
19 THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

20 25-7-114.1. Air pollutant emission notices (APEN).

21 (1) NO PERSON SHALL PERMIT EMISSION OF AIR POLLUTANTS FROM,
22 OR CONSTRUCTION OR ALTERATION OF, ANY FACILITY, PROCESS, OR
23 ACTIVITY EXCEPT RESIDENTIAL STRUCTURES FROM WHICH AIR
24 POLLUTANTS ARE, OR ARE TO BE, EMITTED UNLESS AND UNTIL AN AIR
25 POLLUTANT EMISSION NOTICE HAS BEEN FILED WITH THE DIVISION
26 WITH RESPECT TO SUCH EMISSION. AN AIR POLLUTANT EMISSION

1 NOTICE SHALL BE VALID FOR A PERIOD OF FIVE YEARS. FOR ALL
2 SOURCES IN EXISTENCE ON JULY 1, 1992, AND HAVING A VALID
3 PREEXISTING AIR POLLUTANT EMISSION NOTICE, SUCH AIR POLLUTANT
4 EMISSION NOTICE SHALL BE CONSIDERED TO BE VALID FOR A PERIOD
5 OF FIVE YEARS AFTER JULY 1, 1992. A REVISED EMISSION NOTICE
6 SHALL BE FILED WHENEVER A SIGNIFICANT CHANGE IN EMISSIONS, IN
7 PROCESSES, OR IN THE FACILITY IS ANTICIPATED OR HAS OCCURRED.
8 THE REVISED AIR POLLUTANT EMISSION NOTICE SHALL BE VALID FOR
9 FIVE YEARS OR UNTIL THE UNDERLYING PERMIT EXPIRES. THE
10 COMMISSION SHALL EXEMPT THOSE SOURCES OR CATEGORIES OF SOURCES
11 WHICH IT DETERMINES TO BE OF MINOR SIGNIFICANCE FROM THE
12 REQUIREMENT THAT AN AIR POLLUTANT EMISSION NOTICE BE FILED.

13 (2) EACH SUCH NOTICE SHALL SPECIFY THE LOCATION AT WHICH
14 THE PROPOSED EMISSION WILL OCCUR, THE NAME AND ADDRESS OF THE
15 PERSON OPERATING OR OWNING SUCH FACILITY, PROCESS, OR
16 ACTIVITY, THE NATURE OF SUCH FACILITY, PROCESS, OR ACTIVITY,
17 AND AN ESTIMATE OF THE QUANTITY AND COMPOSITION OF THE
18 EXPECTED EMISSION. THE DIVISION SHALL MAKE AVAILABLE AT ALL
19 AIR POLLUTION CONTROL AUTHORITY OFFICES APPROPRIATE FORMS ON
20 WHICH THE INFORMATION REQUIRED BY THIS SECTION SHALL BE
21 FURNISHED.

22 25-7-114.2. Construction permits. NO PERSON SHALL
23 CONSTRUCT OR SUBSTANTIALLY ALTER ANY BUILDING, FACILITY,
24 STRUCTURE, OR INSTALLATION, EXCEPT SINGLE-FAMILY RESIDENTIAL
25 STRUCTURES, OR INSTALL ANY MACHINE, EQUIPMENT, OR OTHER
26 DEVICE, OR COMMENCE THE CONDUCT OF ANY SUCH ACTIVITY, OR

1 COMMENCE PERFORMANCE OF ANY COMBINATIONS THEREOF, OR COMMENCE
2 OPERATIONS OF ANY OF THE SAME WHICH WILL OR DO CONSTITUTE A
3 NEW STATIONARY SOURCE OR A NEW INDIRECT AIR POLLUTION SOURCE
4 WITHOUT FIRST OBTAINING OR HAVING A VALID CONSTRUCTION PERMIT
5 THEREFOR FROM THE DIVISION OR COMMISSION, AS THE CASE MAY BE;
6 EXCEPT THAT NO CONSTRUCTION PERMIT SHALL BE REQUIRED FOR NEW
7 INDIRECT AIR POLLUTION SOURCES UNTIL REGULATIONS REGARDING
8 CONSTRUCTION PERMITS FOR SUCH SOURCES HAVE BEEN PROMULGATED BY
9 THE COMMISSION BUT IN NO EVENT SHALL REGULATIONS GOVERNING
10 INDIRECT AIR POLLUTION SOURCES BE MORE STRINGENT THAN THOSE
11 REQUIRED FOR COMPLIANCE WITH THE FEDERAL ACT AND FINAL RULES
12 AND REGULATIONS ADOPTED PURSUANT THERETO. ANY SOURCE HAVING AN
13 EMISSION PERMIT WITH FINAL APPROVAL PRIOR TO JULY 1, 1992, AND
14 NOT OTHERWISE SUBJECT TO THE REQUIREMENTS OF THIS SECTION OR
15 SECTION 25-7-114.3 SHALL BE DEEMED TO HAVE COMPLIED WITH ANY
16 REQUIREMENT TO OBTAIN AN OPERATING PERMIT.

17 25-7-114.3. Operating permits required for emission of
18 pollutants. (1) NO PERSON SHALL OPERATE ANY OF THE FOLLOWING
19 SOURCES WITHOUT FIRST OBTAINING A RENEWABLE OPERATING PERMIT
20 FROM THE DIVISION FOR SUCH SOURCE IN A MANNER CONSISTENT WITH
21 THE REQUIREMENTS OF THIS ARTICLE AND THE FEDERAL ACT:

- 22 (a) ANY AFFECTED SOURCE;
23 (b) ANY MAJOR SOURCE;
24 (c) ANY SOURCE REQUIRED TO COMPLY WITH STANDARDS OF
25 PERFORMANCE FOR NEW STATIONARY SOURCES UNDER SECTION 111 OF
26 THE FEDERAL ACT;

1 (d) ANY SOURCE SUBJECT TO EMISSION STANDARDS OR
2 REGULATIONS FOR HAZARDOUS AIR POLLUTANTS UNDER SECTION 112 OF
3 THE FEDERAL ACT;

4 (e) ANY SOURCE REQUIRED TO HAVE A PERMIT PURSUANT TO
5 PART 2 (PREVENTION OF SIGNIFICANT DETERIORATION PROGRAM) OR
6 PART 3 (ATTAINMENT PROGRAM) OF THIS ARTICLE, OR PART C
7 (PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY) OR
8 PART D (PLAN REQUIREMENTS FOR NONATTAINMENT AREA) OF
9 SUBCHAPTER I OF THE FEDERAL ACT;

10 (f) ANY OTHER SOURCE DESIGNATED UNDER FEDERAL LAW AS
11 REQUIRING AN OPERATING PERMIT;

12 (2) FOR THOSE SOURCES LOCATED IN THE STATE AND
13 PARTICIPATING IN THE FEDERAL EARLY REDUCTIONS PROGRAM AS
14 SPECIFIED IN SECTION 112 (1) (5) OF THE FEDERAL ACT, OR THE
15 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY'S 33/50 PROGRAM,
16 OR THE STATE EARLY REDUCTIONS PROGRAM AS SET FORTH IN
17 SUBSECTION (3) OF THIS SECTION, OR ANY OF SUCH PROGRAMS, THE
18 COMMISSION AND DIVISION SHALL ESTABLISH A SYSTEM TO CREDIT
19 EMISSION PERMIT FEES TO BE ESTABLISHED PURSUANT TO SECTIONS
20 25-7-114.6 AND 25-7-114.7 AND TO BE ASSESSED AGAINST SUCH
21 SOURCES AT A RATIO OF AT LEAST TWO-FOR-ONE FOR EVERY TON OF
22 EMISSIONS REDUCED PURSUANT TO THE FEDERAL EARLY REDUCTIONS
23 PROGRAM, THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCIES
24 33/50 PROGRAM, OR THE STATE EARLY REDUCTIONS PROGRAM. A
25 PARTICIPATING SOURCE SHALL BE OFFERED A ONE-TIME PERMIT FEE
26 CREDIT OF TWO TONS FOR EACH CORRESPONDING TON OF ITS REDUCED

1 EMISSIONS THAT ARE VERIFIED BY THE DIVISION. THE PERMIT FEE
2 CREDIT SHALL BE AVAILABLE IN THE YEAR FOLLOWING THE YEAR IN
3 WHICH THE EARLY REDUCTION IN EMISSIONS IS ACHIEVED.

4 (3) THE COMMISSION SHALL EITHER ADOPT THE FEDERAL EARLY
5 REDUCTIONS PROGRAM SPECIFIED IN SECTION 112 (1) (5) OF THE
6 FEDERAL ACT OR PROMULGATE A STATE EARLY REDUCTIONS PROGRAM
7 WHICH SHALL INCLUDE THE FOLLOWING ELEMENTS:

8 (a) ANY STATE EARLY REDUCTIONS PROGRAM SHALL BE
9 CONSISTENT WITH THE FEDERAL EARLY REDUCTIONS PROGRAM; AND

10 (b) A SIX-YEAR EXTENSION OF COMPLIANCE FOR EXISTING
11 SOURCES WITH EMISSION STANDARDS PROMULGATED PURSUANT TO
12 SECTION 112 (d) OF THE FEDERAL ACT IF THE SOURCE HAS ACHIEVED
13 AN EMISSION REDUCTION OF NINETY PERCENT OR MORE OF HAZARDOUS
14 AIR POLLUTANTS (NINETY-FIVE PERCENT OR MORE FOR HAZARDOUS AIR
15 POLLUTANTS WHICH ARE PARTICULATES); AND

16 (c) IF A SOURCE IS GRANTED A COMPLIANCE EXTENSION, AN
17 ALTERNATIVE LIMITATION TO BE ESTABLISHED BY PERMIT TO ENSURE
18 CONTINUED ACHIEVEMENT OF THE EMISSION REDUCTION; AND

19 (d) SOURCES SUBSCRIBING TO AN ENFORCEABLE COMMITMENT
20 UNDER THE FEDERAL EARLY REDUCTIONS PROGRAM SHALL BE CONSIDERED
21 IN COMPLIANCE WITH ALL STATE REGULATIONS AND REQUIREMENTS FOR
22 HAZARDOUS AIR POLLUTANTS.

23 (4) THE REGULATION OF HAZARDOUS AIR POLLUTANTS SHALL BE
24 CONSISTENT WITH THE FEDERALLY MANDATED, TECHNOLOGY-BASED
25 PROGRAM ESTABLISHED BY SECTION 112 OF THE FEDERAL ACT. NOT
26 UNTIL NOVEMBER 15, 1995, OR SUCH OTHER TIME AFTER THE UNITED

1 STATES ENVIRONMENTAL PROTECTION AGENCY HAS REPORTED TO THE
2 UNITED STATES CONGRESS ON THE METHODS FOR CALCULATING RISKS TO
3 PUBLIC HEALTH THAT REMAIN OR THAT ARE LIKELY TO REMAIN AFTER
4 THE IMPLEMENTATION OF SECTION 112 (d) STANDARDS, MAY THE
5 COMMISSION AND DIVISION COMMENCE STUDIES WITH RESPECT TO THE
6 DEVELOPMENT OF AMBIENT AIR QUALITY STANDARDS OR EMISSION
7 CONTROL REGULATIONS FOR ADDRESSING ANY RISKS REMAINING AFTER
8 IMPLEMENTATION OF THE EMISSION STANDARDS REQUIRED UNDER
9 SECTION 112 (d) OF THE FEDERAL ACT. IN SUCH CASE, THE STUDIES
10 AUTHORIZED IN THIS SUBSECTION (4) SHALL BE LIMITED TO THAT
11 LIST OF HAZARDOUS AIR POLLUTANTS ESTABLISHED PURSUANT TO
12 SECTION 112 (b) OF THE FEDERAL ACT.

13 25-7-114.4. Permit applications and contents. (1) THE
14 COMMISSION SHALL PROMULGATE SUCH REGULATIONS AS MAY BE
15 NECESSARY AND PROPER FOR THE ORDERLY AND EFFECTIVE
16 ADMINISTRATION OF CONSTRUCTION PERMITS AND RENEWABLE OPERATING
17 PERMITS. SUCH REGULATIONS SHALL BE CONSISTENT WITH THE
18 PROVISIONS OF THIS ARTICLE AND WITH FEDERAL REQUIREMENTS,
19 SHALL BE IN FURTHERANCE OF THE POLICY CONTAINED IN SECTION
20 25-7-102, AND MAY PERTAIN TO AND IMPLEMENT, AMONG OTHER
21 MATTERS, PERMIT AND PERMIT APPLICATION CONTENTS, PROCEDURES,
22 REQUIREMENTS, AND RESTRICTIONS WITH RESPECT TO THE FOLLOWING:

23 (a) IDENTIFICATION AND ADDRESS OF THE OWNER AND OPERATOR
24 OF THE SOURCE OR FACILITY FROM WHICH THE EMISSION OR EMISSIONS
25 ARE TO BE PERMITTED;

26 (b) LOCATION, QUANTITY, AND QUALITY CHARACTERISTICS OF

1 THE PERMITTED EMISSIONS;

2 (c) INSPECTION, MONITORING, RECORD-KEEPING, AND
3 REPORTING REQUIREMENTS CONSISTENT WITH STANDARD PROCEDURES,
4 METHODS, AND REQUIREMENTS ESTABLISHED BY THE DIVISION;

5 (d) DEADLINES FOR SUBMITTING PERMIT APPLICATIONS AND
6 COMPLIANCE PLANS, WHICH, FOR APPLICATIONS FOR RENEWABLE
7 OPERATING PERMITS, SHALL BE NO LATER THAN TWELVE MONTHS AFTER
8 THE SOURCE BECOMES SUBJECT TO AN APPROVED PERMIT PROGRAM.
9 DEADLINES FOR SUBMITTING PERMIT APPLICATIONS FOR RENEWAL OF
10 RENEWABLE OPERATING PERMITS SHALL BE NO LATER THAN EIGHTEEN
11 MONTHS PRIOR TO PERMIT EXPIRATION.

12 (e) CONTENTS OF COMPLIANCE PLANS TO BE SUBMITTED WITH
13 RENEWABLE OPERATING PERMIT APPLICATIONS, WHICH SHALL INCLUDE
14 SCHEDULES OF COMPLIANCE AND PROGRESS REPORTS AT LEAST EVERY
15 SIX MONTHS;

16 (f) ANNUAL CERTIFICATIONS OF FACILITY COMPLIANCE WITH
17 PERMIT REQUIREMENTS, WITH PROMPT REPORTING OF DEVIATIONS FROM
18 PERMIT REQUIREMENTS;

19 (g) SUBMISSION OF PERTINENT PLANS AND SPECIFICATIONS FOR
20 THE FACILITY OR SOURCE FROM WHICH THE EMISSION IS TO BE
21 PERMITTED;

22 (h) RESTRICTIONS ON TRANSFERS OF THE PERMIT;

23 (i) PROCEDURES TO BE FOLLOWED IN THE EVENT OF EXPANSION
24 OR MODIFICATION OF THE SOURCE OR FACILITY FROM WHICH THE
25 EMISSION OCCURS, OR CHANGE IN THE QUALITY, QUANTITY, OR
26 FREQUENCY OF THE EMISSION;

1 (j) DURATION OF THE PERMIT AND RENEWAL PROCEDURES. THE
2 DURATION OF CONSTRUCTION PERMITS SHALL BE UNTIL THE RENEWABLE
3 OPERATING PERMIT IS ISSUED. THE DURATION OF RENEWABLE
4 OPERATING PERMITS IS FIVE YEARS;

5 (k) PROCEDURES TO TERMINATE, MODIFY, OR REVOKE AND
6 REISSUE PERMITS FOR CAUSE; FOR MAJOR SOURCES SUBJECT TO
7 RENEWABLE OPERATING PERMITS, PROCEDURES TO REVISE THE PERMIT
8 TO INCORPORATE APPLICABLE STANDARDS AND REGULATIONS
9 PROMULGATED UNDER THIS TITLE AFTER SUCH PERMIT IS ISSUED.
10 SUCH REVISIONS SHALL OCCUR EIGHTEEN MONTHS AFTER PROMULGATION
11 OF THE STANDARD OR REGULATION, OR BOTH; EXCEPT THAT NO SUCH
12 REVISION SHALL BE REQUIRED IF THE EFFECTIVE DATE OF THE
13 STANDARDS OR REGULATION OCCURS AFTER THE PERMIT TERM EXPIRES,
14 SUCH REVISION SHALL BE TREATED AS A PERMIT RENEWAL;

15 (l) PROCEDURES FOR INCORPORATING EMISSION LIMITATIONS
16 AND OTHER REQUIREMENTS FROM AN APPLICABLE IMPLEMENTATION PLAN,
17 AND OTHER APPLICABLE REQUIREMENTS, INTO NEW OR RENEWED
18 PERMITS;

19 (m) PROCEDURES FOR NOTIFYING OTHER CONTIGUOUS STATES
20 WHOSE AIR QUALITY MAY BE AFFECTED BY THE EMISSIONS OR THAT ARE
21 WITHIN FIFTY MILES OF THE SOURCE AND FOR SUBMITTING COMMENTS
22 REGARDING THE PROPOSED PERMIT;

23 (n) PROCEDURES FOR MODIFYING OR AMENDING PERMITS, AND
24 PROCEDURES FOR AUTHORIZING ANY CHANGE WITHIN A PERMITTED
25 FACILITY WITHOUT REQUIRING A PERMIT REVISION, SO LONG AS ANY
26 SUCH CHANGE IS NOT A MODIFICATION UNDER ANY PROVISION OF

1 SUBCHAPTER I OF THE FEDERAL ACT, AND ANY SUCH CHANGE DOES NOT
2 EXCEED THE EMISSIONS ALLOWABLE UNDER THE PERMIT, AND
3 THIRTY-DAY ADVANCE NOTICE IS GIVEN TO THE DIVISION. FAILURE
4 OF THE DIVISION TO RESPOND BY THE THIRTY-FIRST DAY ALLOWS THE
5 SOURCE TO PROCEED WITH ANY SUCH CHANGE;

6 (o) PROCEDURES TO MAKE AVAILABLE TO THE PUBLIC ANY
7 PERMIT APPLICATION, COMPLIANCE PLAN, PERMIT, AND MONITORING OR
8 COMPLIANCE REPORT, SUBJECT TO THE PROVISIONS OF SECTION
9 25-7-119 (4). IF AN APPLICANT IS REQUIRED TO SUBMIT
10 INFORMATION ENTITLED TO PROTECTION FROM DISCLOSURE, THE
11 APPLICANT MAY SUBMIT SUCH INFORMATION SEPARATELY.

12 (p) PROCEDURES FOR ISSUING GENERAL PERMITS AFTER NOTICE
13 AND AN OPPORTUNITY FOR HEARING, COVERING NUMEROUS SIMILAR
14 SOURCES;

15 (q) PROCEDURES FOR ISSUING SINGLE PERMITS FOR A FACILITY
16 WITH MULTIPLE SOURCES;

17 (2) THE DIVISION SHALL EXAMINE APPLICATIONS FOR AND MAY
18 ISSUE, SUSPEND, REVOKE, MODIFY, DENY, AND OTHERWISE ADMINISTER
19 ALL PERMITS REQUIRED UNDER THIS ARTICLE. SUCH ADMINISTRATION
20 SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE AND
21 REGULATIONS PROMULGATED BY THE COMMISSION.

22 (3) (a) COMPLIANCE WITH ALL RENEWABLE OPERATING PERMIT
23 TERMS AND CONDITIONS SHALL BE DEEMED COMPLIANCE WITH SECTION
24 25-7-114.3 AND SHALL BE AN ABSOLUTE DEFENSE TO ALL ENFORCEMENT
25 ACTIONS IF:

26 (1) THE PERMIT INCLUDES THE APPLICABLE REQUIREMENTS OF

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1 SUCH PROVISIONS; OR

2 (II) THE DIVISION OR COMMISSION, IN ACTING ON THE PERMIT
3 APPLICATION, MAKES A DETERMINATION THAT SUCH OTHER PROVISIONS
4 ARE NOT APPLICABLE AND THE PERMIT INCLUDES THE DETERMINATION
5 OR A CONCISE SUMMARY THEREOF. SUCH OTHER PROVISIONS AS ARE
6 NOT APPLICABLE IN EACH PERMIT SHALL BE IDENTIFIED UPON THE
7 REQUEST OF THE PERMITTEE.

8 (b) NOTHING IN PARAGRAPH (a) OF THIS SUBSECTION (3)
9 SHALL ALTER OR AFFECT THE PROVISIONS OF SECTION 303 OF THE
10 FEDERAL ACT, INCLUDING THE AUTHORITY OF THE ADMINISTRATOR
11 UNDER SAID FEDERAL ACT.

12 25-7-114.5. Application review and public participation.

13 (1) PRIOR TO SUBMITTING AN APPLICATION FOR A PERMIT, THE
14 APPLICANT MAY REQUEST AND, IF SO REQUESTED, THE DIVISION SHALL
15 GRANT A PLANNING MEETING WITH THE APPLICANT. AT SUCH MEETING,
16 THE DIVISION SHALL ADVISE THE APPLICANT OF THE APPLICABLE
17 PERMIT REQUIREMENTS, INCLUDING THE INFORMATION, PLANS,
18 SPECIFICATIONS, AND DATA REQUIRED TO BE FURNISHED WITH THE
19 PERMIT APPLICATION.

20 (2) THE DIVISION SHALL EVALUATE PERMIT APPLICATIONS TO
21 DETERMINE, FOR CONSTRUCTION PERMITS, WHETHER OPERATION OF THE
22 PROPOSED NEW SOURCE AT THE DATE OF START-UP AND FOR OPERATING
23 PERMITS, WHETHER THE PERMITTED EMISSIONS, WILL COMPLY WITH ALL
24 APPLICABLE EMISSION CONTROL REGULATIONS, REGULATIONS FOR THE
25 CONTROL OF HAZARDOUS POLLUTANTS, AND REQUIREMENTS OF PART 2 OR
26 3 OF THIS ARTICLE.

1 (3) THE DIVISION SHALL ALSO DETERMINE WHETHER
2 APPLICATIONS ARE FOR A NEW SOURCE ACTIVITY THAT MAY HAVE AN
3 IMPACT UPON AREAS WHICH, AS OF THE PROJECTED NEW SOURCE
4 START-UP DATE, ARE IN COMPLIANCE WITH NATIONAL AMBIENT AIR
5 QUALITY STANDARDS AS OF THE DATE OF THE PERMIT APPLICATION, OR
6 FOR NEW SOURCE ACTIVITY THAT MAY HAVE AN IMPACT UPON AREAS
7 WHICH, AS OF THE PROJECTED NEW SOURCE START-UP DATE, ARE NOT
8 IN COMPLIANCE WITH NATIONAL AMBIENT AIR QUALITY STANDARDS AS
9 OF THE DATE OF THE PERMIT APPLICATION.

10 (4) THE DIVISION SHALL PREPARE ITS PRELIMINARY ANALYSIS
11 REGARDING COMPLIANCE, AS SET FORTH IN SUBSECTION (2) OF THIS
12 SECTION, AND REGARDING THE IMPACT ON ATTAINMENT OR
13 NONATTAINMENT AREAS, AS SET FORTH IN SUBSECTION (3) OF THIS
14 SECTION, AS EXPEDITIOUSLY AS POSSIBLE. FOR CONSTRUCTION
15 PERMITS AND RENEWABLE OPERATING PERMITS NOT SUBJECT TO PART 2
16 OF THIS ARTICLE, SUCH PRELIMINARY ANALYSIS SHALL BE COMPLETED
17 NO LATER THAN THIRTY CALENDAR DAYS AFTER RECEIPT OF A
18 COMPLETED PERMIT APPLICATION. APPLICANTS MUST BE ADVISED
19 WITHIN THIRTY CALENDAR DAYS AFTER RECEIPT OF ANY APPLICATION,
20 OR SUPPLEMENT THERETO, IF AND IN WHAT RESPECTS THE SUBJECT
21 APPLICATION IS INCOMPLETE. UPON FAILURE OF THE DIVISION TO SO
22 NOTIFY THE APPLICANT WITHIN THIRTY CALENDAR DAYS OF ITS
23 FILING, THE APPLICATION SHALL BE DEEMED COMPLETE.
24 APPLICATIONS FOR CONSTRUCTION PERMITS SUBJECT TO PART 2 OF
25 THIS ARTICLE SHALL BE APPROVED OR DISAPPROVED WITHIN TWELVE
26 MONTHS OF RECEIPT OF A COMPLETE APPLICATION. APPLICATIONS FOR

1 RENEWABLE OPERATING PERMITS SHALL BE APPROVED OR DISAPPROVED
2 WITHIN EIGHTEEN MONTHS AFTER THE RECEIPT OF THE COMPLETED
3 PERMIT APPLICATION; EXCEPT THAT THOSE APPLICATIONS SUBMITTED
4 WITHIN THE FIRST YEAR AFTER THE EFFECTIVE DATE OF THE
5 OPERATING PERMIT PROGRAM, SHALL BE SUBJECT TO A PHASED
6 SCHEDULE FOR ACTING ON SUCH PERMIT APPLICATIONS ESTABLISHED BY
7 THE DIVISION. THE PHASED SCHEDULE SHALL ASSURE THAT AT LEAST
8 ONE-THIRD OF SUCH PERMITS WILL BE ACTED ON BY THE DIVISION
9 ANNUALLY OVER A THREE-YEAR PERIOD. THE COMMISSION MAY
10 ESTABLISH A PHASED SCHEDULE FOR ACTING ON APPLICATIONS FOR
11 WHICH A DEFERRAL HAS BEEN GRANTED PURSUANT TO THE FEDERAL ACT.
12 A COMPLETED PERMIT APPLICATION OPERATES AS AN ABSOLUTE DEFENSE
13 TO ENFORCEMENT ACTION FOR OPERATING WITHOUT A PERMIT UNTIL
14 SUCH TIME THAT THE DIVISION OR THE COMMISSION MAKES A FINAL
15 DETERMINATION ON THE PERMIT APPLICATION.

16 (5) FOR THOSE TYPES OF PROJECTS OR ACTIVITIES FOR WHICH
17 A CONSTRUCTION PERMIT APPLICATION HAS BEEN FILED, DEFINED, OR
18 DESIGNATED BY THE COMMISSION AS WARRANTING PUBLIC COMMENT WITH
19 RESPECT THERETO, THE DIVISION SHALL, WITHIN FIFTEEN CALENDAR
20 DAYS AFTER IT HAS PREPARED ITS PRELIMINARY ANALYSIS, GIVE
21 PUBLIC NOTICE OF THE PROPOSED PROJECT OR ACTIVITY BY AT LEAST
22 ONE PUBLICATION IN A NEWSPAPER OF GENERAL DISTRIBUTION IN THE
23 AREA IN WHICH THE PROPOSED PROJECT OR ACTIVITY, OR A PART
24 THEREOF, IS TO BE LOCATED OR BY SUCH OTHER METHOD THAT IS
25 REASONABLY DESIGNED TO ENSURE EFFECTIVE GENERAL PUBLIC NOTICE.
26 THE DIVISION SHALL ALSO DURING SUCH PERIOD OF TIME MAINTAIN IN

1 THE OFFICE OF THE COUNTY CLERK AND RECORDER OF THE COUNTY IN
2 WHICH THE PROPOSED PROJECT OR ACTIVITY, OR A PART THEREOF, IS
3 LOCATED A COPY OF ITS PRELIMINARY ANALYSIS AND A COPY OF THE
4 APPLICATION WITH ALL ACCOMPANYING DATA FOR PUBLIC INSPECTION.
5 THE DIVISION SHALL RECEIVE AND CONSIDER PUBLIC COMMENT THEREON
6 FOR A PERIOD OF THIRTY CALENDAR DAYS THEREAFTER.

7 (6) (a) FOR ANY CONSTRUCTION PERMIT APPLICATION SUBJECT
8 TO THE REQUIREMENTS FOR PREVENTION OF SIGNIFICANT
9 DETERIORATION AS PROVIDED IN PART 2 OF THIS ARTICLE, OR FOR
10 ANY APPLICATION FOR A RENEWABLE OPERATING PERMIT, WITHIN
11 FIFTEEN CALENDAR DAYS AFTER THE ISSUANCE OF ITS PRELIMINARY
12 ANALYSIS, THE DIVISION SHALL:

13 (I) FORWARD TO THE APPLICANT WRITTEN NOTICE OF THE
14 APPLICANT'S RIGHT TO A FORMAL HEARING BEFORE THE COMMISSION
15 WITH RESPECT TO THE APPLICATION; AND

16 (II) GIVE PUBLIC NOTICE OF THE PROPOSED SOURCE OR
17 MODIFICATION AND THE DIVISION'S PRELIMINARY ANALYSIS THEREOF
18 BY AT LEAST ONE PUBLICATION IN A NEWSPAPER OF GENERAL
19 DISTRIBUTION IN THE AREA OF THE PROPOSED SOURCE OR
20 MODIFICATION, OR BY SUCH OTHER METHOD THAT IS REASONABLY
21 DESIGNED TO ENSURE EFFECTIVE GENERAL PUBLIC NOTICE. SUCH
22 NOTICE SHALL ADVISE OF THE OPPORTUNITY FOR A PUBLIC HEARING
23 FOR INTERESTED PERSONS TO APPEAR AND SUBMIT WRITTEN OR ORAL
24 COMMENTS TO THE COMMISSION ON THE AIR QUALITY IMPACTS OF THE
25 SOURCE OR MODIFICATION, THE ALTERNATIVES TO THE SOURCE OR
26 MODIFICATION, THE CONTROL TECHNOLOGY REQUIRED, IF APPLICABLE,

1 AND OTHER APPROPRIATE CONSIDERATIONS. THE DIVISION SHALL
2 RECEIVE AND CONSIDER ANY WRITTEN COMMENTS SUBMITTED.

3 (b) IF WITHIN THIRTY CALENDAR DAYS OF PUBLICATION OF
4 SUCH PUBLIC NOTICE THE APPLICANT OR AN INTERESTED PERSON
5 SUBMITS A WRITTEN REQUEST FOR A PUBLIC HEARING TO THE
6 DIVISION, THE DIVISION SHALL TRANSMIT SUCH REQUEST TO THE
7 COMMISSION ALONG WITH THE APPLICATION, THE DIVISION'S
8 PRELIMINARY ANALYSIS, AND ANY WRITTEN COMMENTS RECEIVED BY THE
9 DIVISION, WITHIN FIVE CALENDAR DAYS OF THE END OF SUCH
10 THIRTY-DAY PERIOD. THE COMMISSION SHALL, WITHIN SIXTY
11 CALENDAR DAYS AFTER RECEIPT OF THE APPLICATION, COMMENTS, AND
12 ANALYSIS, UNLESS SUCH GREATER TIME IS AGREED TO BY THE
13 APPLICANT AND THE DIVISION, HOLD A PUBLIC HEARING TO ELICIT
14 AND RECORD THE COMMENT OF ANY INTERESTED PERSON REGARDING THE
15 SUFFICIENCY OF THE PRELIMINARY ANALYSIS AND WHETHER THE PERMIT
16 APPLICATION SHOULD BE APPROVED OR DENIED. AT LEAST THIRTY
17 CALENDAR DAYS PRIOR TO SUCH PUBLIC HEARING, NOTICE THEREOF
18 SHALL BE MAILED BY THE COMMISSION TO THE APPLICANT, PRINTED IN
19 A NEWSPAPER OF GENERAL DISTRIBUTION IN THE AREA OF THE
20 PROPOSED SOURCE OR MODIFICATION, AND SUBMITTED FOR PUBLIC
21 REVIEW WITH THE COUNTY CLERK AND RECORDER OF THE COUNTY
22 WHEREIN THE PROJECT OR ACTIVITY IS PROPOSED.

23 (7) (a) WITHIN THIRTY CALENDAR DAYS FOLLOWING THE
24 COMPLETION OF THE DIVISION'S PRELIMINARY ANALYSIS FOR
25 APPLICATIONS FOR CONSTRUCTION PERMITS NOT SUBJECT TO PART 2 OF
26 THIS ARTICLE, OR WITHIN THIRTY CALENDAR DAYS FOLLOWING THE

1 PERIOD FOR PUBLIC COMMENT PROVIDED FOR IN SUBSECTION (5) OF
2 THIS SECTION , OR FOR APPLICATIONS FOR CONSTRUCTION PERMITS
3 SUBJECT TO PART 2 OF THIS ARTICLE AND FOR RENEWABLE OPERATING
4 PERMITS, IF A HEARING IS HELD, WITHIN THE APPROPRIATE TIME
5 PERIOD ESTABLISHED PURSUANT TO THIS ARTICLE, THE DIVISION OR
6 THE COMMISSION, AS THE CASE MAY BE, SHALL GRANT OR DENY THE
7 PERMIT APPLICATION. ANY PERMIT REQUIRED PURSUANT TO THIS
8 ARTICLE SHALL BE GRANTED BY THE DIVISION OR THE COMMISSION, AS
9 THE CASE MAY BE, IF IT FINDS THAT:

10 (I) THE SOURCE OR ACTIVITY WILL MEET ALL APPLICABLE
11 EMISSION CONTROL REGULATIONS AND REGULATIONS FOR THE CONTROL
12 OF HAZARDOUS AIR POLLUTANTS;

13 (II) THE SOURCE OR ACTIVITY WILL MEET THE REQUIREMENTS
14 OF PART 2 OR 3 OF THIS ARTICLE, IF APPLICABLE; AND

15 (III) THE SOURCE OR ACTIVITY WILL MEET ANY APPLICABLE
16 AMBIENT AIR QUALITY STANDARDS AND ALL APPLICABLE REGULATIONS;

17 (IV) FOR RENEWABLE OPERATING PERMITS, THE UNITED STATES
18 ENVIRONMENTAL PROTECTION AGENCY HAS NOT MADE A TIMELY
19 OBJECTION TO ISSUANCE OF SUCH PERMIT PURSUANT TO THE FEDERAL
20 ACT.

21 (b) FAILURE OF THE DIVISION OR COMMISSION, AS THE CASE
22 MAY BE, TO GRANT OR DENY THE PERMIT APPLICATION OR PERMIT
23 RENEWAL APPLICATION WITHIN THE TIME PRESCRIBED SHALL BE
24 TREATED AS A FINAL PERMIT ACTION FOR PURPOSES OF OBTAINING
25 JUDICIAL REVIEW IN THE DISTRICT COURT IN WHICH THE SOURCE IS
26 LOCATED.

1 (c) IF AN APPLICANT HAS SUBMITTED A TIMELY AND COMPLETE
2 APPLICATION FOR A RENEWABLE OPERATING PERMIT REQUIRED BY THIS
3 ARTICLE, INCLUDING RENEWALS, BUT FINAL ACTION HAS NOT BEEN
4 TAKEN ON SUCH APPLICATION, AND, IF REQUIRED TO HAVE A
5 CONSTRUCTION PERMIT, SUCH CONSTRUCTION PERMIT IS IN PLACE AND
6 VALID, THE SOURCE'S FAILURE TO HAVE A RENEWABLE OPERATING
7 PERMIT SHALL NOT BE A VIOLATION OF THIS ARTICLE, UNLESS THE
8 DELAY IN FINAL ACTION WAS DUE TO THE FAILURE OF THE APPLICANT
9 TIMELY TO SUBMIT INFORMATION REQUIRED OR REQUESTED BY THE
10 DIVISION TO PROCESS THE APPLICATION.

11 (8) IF THE DIVISION DENIES A PERMIT OR IMPOSES
12 CONDITIONS UPON THE ISSUANCE OF A PERMIT WHICH ARE CONTESTED
13 BY THE APPLICANT OR IF THE DIVISION REVOKES A PERMIT PURSUANT
14 TO SUBSECTION (12) OF THIS SECTION, THE APPLICANT MAY REQUEST
15 A HEARING BEFORE THE COMMISSION. THE HEARING SHALL BE HELD IN
16 ACCORDANCE WITH SECTIONS 25-7-119 AND 24-4-105, C.R.S. THE
17 COMMISSION MAY, AFTER REVIEW OF THE EVIDENCE PRESENTED AT THE
18 HEARING, AFFIRM, REVERSE, OR MODIFY THE DECISION OF THE
19 DIVISION BUT SHALL, IN ANY EVENT, ASSURE THAT ALL THE
20 REQUIREMENTS OF SUBSECTIONS (6) AND (7) OF THIS SECTION ARE
21 MET.

22 (9) IF A SOURCE OBTAINS A RENEWABLE OPERATING PERMIT AND
23 CONDUCTS ITS OPERATIONS IN COMPLIANCE WITH THE PERMIT TERMS,
24 IT WILL BE DEEMED IN COMPLIANCE WITH ALL PROVISIONS OF THE
25 THIS ARTICLE, THE STATE IMPLEMENTATION PLAN, AND THE FEDERAL
26 ACT AS LONG AS THE APPLICABLE PROVISIONS ARE INCLUDED IN THE

1 PERMIT. RENEWABLE OPERATING PERMITS SUMMARIZE EXISTING
2 OPERATING RESTRICTIONS PURSUANT TO SECTION 25-7-114.4 (3).

3 (10) A PERMIT AMENDMENT WILL NOT BE REQUIRED TO
4 AUTHORIZE A CHANGE IN PRACTICE WHICH IS OTHERWISE PERMITTED
5 PURSUANT TO THIS ARTICLE, THE STATE IMPLEMENTATION PLAN, OR
6 THE FEDERAL ACT MERELY BECAUSE AN EXISTING PERMIT DOES NOT
7 ADDRESS THE PRACTICE. CHANGES IN INDUSTRIAL PRACTICES AND
8 PROCEDURES THAT ARE NOT INCONSISTENT WITH THE TERMS OF A
9 RENEWABLE OPERATING PERMIT CAN BE MADE WITHOUT SEEKING ANY
10 CHANGE TO THE TERMS OF SAID PERMIT.

11 (11) AN ORDER OF THE DIVISION OR COMMISSION SHALL BE
12 FINAL UPON ISSUANCE. ANY PARTICIPANT IN THE PUBLIC COMMENT
13 PROCESS AND ANY OTHER PERSON WHO COULD OBTAIN JUDICIAL REVIEW
14 UNDER APPLICABLE LAW, SHALL HAVE STANDING FOR PURPOSES OF
15 SEEKING REVIEW OF ANY FINAL ORDER OF THE COMMISSION OR
16 DIVISION REGARDING APPLICATIONS, RENEWALS, OR REVISIONS OF ANY
17 PERMITS. THE PUBLIC PARTICIPATION REQUIREMENTS OF SUBSECTIONS
18 (5) AND (6) OF THIS SECTION SHALL APPLY TO ALL RENEWABLE
19 OPERATING PERMIT APPLICATIONS, REVISIONS, AND RENEWALS.

20 (12) (a) NO PERSON SHALL COMMENCE THE OPERATION OF ANY
21 PROJECT OR THE CONDUCT OF ANY ACTIVITY FOR WHICH A
22 CONSTRUCTION PERMIT HAS BEEN ISSUED WITHOUT GIVING AT LEAST
23 THIRTY CALENDAR DAYS' PRIOR NOTICE TO THE DIVISION OF THE DATE
24 ON WHICH SUCH COMMENCEMENT IS TO TAKE PLACE. WITHIN ONE
25 HUNDRED EIGHTY DAYS AFTER COMMENCEMENT OF OPERATION, THE
26 SOURCE SHALL DEMONSTRATE TO THE DIVISION COMPLIANCE WITH THE

1 TERMS AND CONDITIONS OF THE CONSTRUCTION PERMIT AND THE
2 DIVISION SHALL INSPECT THE PROJECT OR ACTIVITY TO DETERMINE
3 WHETHER OR NOT THE TERMS AND CONDITIONS OF THE CONSTRUCTION
4 PERMIT HAVE BEEN PROPERLY SATISFIED. AT THE END OF ONE
5 HUNDRED EIGHTY DAYS, THE DIVISION MUST:

- 6 (I) REVOKE THE CONSTRUCTION PERMIT; OR
- 7 (II) RENEW THE CONSTRUCTION PERMIT, IF APPLICABLE; OR
- 8 (III) NOTIFY THE OWNER OR OPERATOR THAT THE SOURCE HAS
9 DEMONSTRATED COMPLIANCE WITH THE CONSTRUCTION PERMIT. A
10 RENEWABLE OPERATING PERMIT WILL BE ISSUED WITHIN THE
11 APPROPRIATE TIME PERIODS IF ALL REQUIREMENTS FOR A RENEWABLE
12 OPERATING PERMIT ARE MET BY THE SOURCE. THE CONSTRUCTION
13 PERMIT REQUIREMENTS SHALL REMAIN IN EFFECT UNTIL THE RENEWABLE
14 OPERATING PERMIT IS ISSUED.

15 (13) THE COMMISSION SHALL, WHEREVER PRACTICABLE,
16 PROMULGATE REGULATIONS FOR RENEWABLE OPERATING PERMIT
17 APPLICATION REQUIREMENTS THAT COMBINE REQUIREMENTS FOR
18 CONSTRUCTION PERMITS WITH RENEWABLE OPERATING PERMITS TO AVOID
19 DUPLICATIVE EFFORTS BY THE SOURCE AND THE DIVISION.

20 (14) THE COMMISSION SHALL DESIGNATE A MEMBER OF THE AIR
21 POLLUTION CONTROL DIVISION WHO SHALL REVIEW AND APPROVE ALL
22 INVOICES FOR ANY PERMIT WHICH REQUIRED FIVE OR MORE HOURS
23 PROFESSIONAL STAFF TIME TO PROCESS. THE COMMISSION SHALL
24 REVIEW, ON AN ANNUAL BASIS, A LIST OF SOURCES AND INVOICES
25 WHICH REQUIRED FIVE OR MORE HOURS OF PROFESSIONAL STAFF TIME
26 TO PROCESS.

1 (15) THE AIR POLLUTION CONTROL DIVISION SHALL SUBMIT A
2 REPORT TO THE GENERAL ASSEMBLY NO LATER THAN JANUARY 15 OF
3 EACH YEAR WHICH DETAILS THE VARIOUS CATEGORIES OF PERMITS AND
4 THE AVERAGE TIME REQUIRED TO PROCESS SIMILAR PERMITS. THE
5 REPORT SHALL SET FORTH THOSE CLASSES OF MINOR OR INSIGNIFICANT
6 SOURCES OF AIR POLLUTION WHICH ARE EXEMPT FROM THE REQUIREMENT
7 FOR A PERMIT BECAUSE OF THEIR NEGLIGIBLE IMPACT UPON AIR
8 QUALITY AND SHALL SPECIFY A FEE STRUCTURE FOR VARIOUS
9 CATEGORIES OF SOURCES.

10 25-7-114.6. Emission notice - fees. (1) THE COMMISSION
11 SHALL DESIGNATE BY REGULATIONS THOSE CLASSES OF MINOR OR
12 INSIGNIFICANT SOURCES OF AIR POLLUTION WHICH ARE EXEMPT FROM
13 THE REQUIREMENT FOR AN EMISSION NOTICE BECAUSE OF THEIR
14 NEGLIGIBLE IMPACT UPON AIR QUALITY. ANY PERSON REQUIRED BY THE
15 COMMISSION TO FILE AN AIR POLLUTANT EMISSION NOTICE WITH THE
16 DIVISION SHALL PAY A NONREFUNDABLE FEE OF SIXTY DOLLARS;
17 EXCEPT THAT THE COMMISSION MAY DESIGNATE THOSE ACTIVITIES OR
18 CLASSES OF SOURCES WHICH SHALL BE EXEMPT FROM THE PAYMENT OF
19 SUCH FEE.

20 (2) AN AIR POLLUTION EMISSION NOTICE SHALL BE DEEMED TO
21 RUN WITH THE LAND. THE MONEYS COLLECTED PURSUANT TO THIS
22 SECTION AND SECTIONS 25-7-403, 25-7-407, AND 25-7-510 SHALL BE
23 REMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO
24 THE STATIONARY SOURCES CONTROL FUND CREATED IN SECTION
25 25-7-114.7 AND SUBJECT TO THE PROVISIONS OF SAID SECTION.

26 (3) THE GENERAL ASSEMBLY SHALL DIRECT THE COMMISSION TO

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1 ADJUST ANY FEES IMPOSED BY THIS SECTION SO THAT THE REVENUES
2 APPROXIMATE THE ANNUAL APPROPRIATIONS TO THE DIVISION TO CARRY
3 OUT ITS DUTIES UNDER THIS SUBSECTION (3) WITH RESPECT TO
4 STATIONARY SOURCES.

5 25-7-114.7. Renewable operating permit fees. (1) AS
6 USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 (a) "REGULATED POLLUTANT" MEANS:

8 (I) A VOLATILE ORGANIC COMPOUND;

9 (II) EACH POLLUTANT REGULATED UNDER SECTION 25-7-109 OR
10 SECTION 111 OF THE FEDERAL ACT;

11 (III) EACH POLLUTANT REGULATED UNDER SECTION 112 (b) OF
12 THE FEDERAL ACT;

13 (IV) EACH POLLUTANT FOR WHICH A NATIONAL PRIMARY AMBIENT
14 AIR QUALITY STANDARD HAS BEEN PROMULGATED, EXCEPT FOR CARBON
15 MONOXIDE.

16 (b) "CONSUMER PRICE INDEX" MEANS:

17 (I) FOR ANY CALENDAR YEAR, THE AVERAGE OF THE CONSUMER
18 PRICE INDEX FOR ALL URBAN CONSUMERS PUBLISHED BY THE FEDERAL
19 DEPARTMENT OF LABOR, AS OF THE CLOSE OF THE TWELVE MONTH
20 PERIOD ENDING ON AUGUST 31 OF EACH CALENDAR YEAR; AND

21 (II) THE REVISION OF THE CONSUMER PRICE INDEX WHICH IS
22 MOST CONSISTENT WITH THE CONSUMER PRICE INDEX FOR CALENDAR
23 YEAR 1989 SHALL BE USED. THE COMMISSION AND THE DIVISION
24 SHALL CONSULT WITH AND INFORM THE JOINT BUDGET COMMITTEE OF
25 THE GENERAL ASSEMBLY ON THE ONGOING IMPLEMENTATION OF THIS
26 PARAGRAPH (b).

1 (2) (a) EVERY OWNER OR OPERATOR SUBJECT TO REQUIREMENTS
2 OF AN OPERATING PERMIT SHALL PAY AN ANNUAL FEE FOR SUCH
3 PERMIT. THE TOTAL AMOUNT OF FEES COLLECTED SHALL BE _____
4 DOLLARS PER TON OF REGULATED POLLUTANT. UNLESS OTHERWISE
5 DETERMINED APPROPRIATE TO COVER DIRECT AND INDIRECT COSTS, THE
6 FEES CALCULATED IN THIS SECTION SHALL BE INCREASED IN EACH
7 YEAR BEGINNING AFTER THE YEAR OF ENACTMENT OF THIS SECTION, BY
8 THE PERCENTAGE, IF ANY, BY WHICH THE CONSUMER PRICE INDEX FOR
9 THE MOST RECENT CALENDAR YEAR ENDING BEFORE THE BEGINNING OF
10 SUCH YEAR EXCEEDS THE CONSUMER PRICE INDEX FOR THE CALENDAR
11 YEAR 1989. INDIRECT AND DIRECT COSTS INCLUDE:

12 (I) REVIEWING AND ACTING UPON ANY APPLICATION FOR SUCH A
13 PERMIT;

14 (II) IMPLEMENTING AND ENFORCING THE TERMS AND CONDITIONS
15 OF ANY SUCH PERMIT (NOT INCLUDING ANY COURT COSTS OR OTHER
16 LEGAL COSTS ASSOCIATED WITH ANY ENFORCEMENT ACTION);

17 (III) EMISSIONS AND AMBIENT MONITORING;

18 (IV) PREPARING GENERALLY APPLICABLE REGULATIONS OR
19 GUIDANCE;

20 (V) MODELING, ANALYSES, AND DEMONSTRATIONS; AND

21 (VI) PREPARING INVENTORIES AND TRACKING EMISSIONS;

22 (b) THE MONEYS COLLECTED PURSUANT TO THIS SECTION SHALL
23 BE REMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME
24 TO THE STATIONARY SOURCES CONTROL FUND, WHICH FUND IS HEREBY
25 CREATED. FROM SUCH FUND, THE GENERAL ASSEMBLY SHALL
26 APPROPRIATE TO THE DEPARTMENT OF HEALTH, AT LEAST ANNUALLY,

1 SUCH MONEYS AS MAY BE NECESSARY TO COVER THE DIVISION'S DIRECT
2 AND INDIRECT COSTS REQUIRED TO DEVELOP AND ADMINISTER THE
3 RENEWABLE OPERATING PERMIT PROGRAM. ANY PERMIT FEE MONEYS NOT
4 APPROPRIATED BY THE GENERAL ASSEMBLY AND ANY APPROPRIATED
5 FUNDS NOT SPENT BY THE DIVISION SHALL REMAIN IN THE STATIONARY
6 SOURCES CONTROL FUND AND SHALL NOT REVERT TO THE GENERAL FUND
7 OF THE STATE AT THE END OF ANY FISCAL YEAR. ANY SUCH MONEYS
8 SHALL BE SEPARATELY ACCOUNTED FOR AND USED TO REDUCE THE
9 PERMIT FEES TO BE ASSESSED AGAINST SOURCES PURSUANT TO THIS
10 ARTICLE. ANY INTEREST EARNED ON MONEYS IN THE STATIONARY
11 SOURCES CONTROL FUND PURSUANT TO THIS ARTICLE SHALL REMAIN IN
12 THE FUND AND SHALL NOT REVERT TO THE GENERAL FUND OF THE STATE
13 AT THE END OF ANY FISCAL YEAR. ANY SUCH INTEREST SHALL BE
14 SEPARATELY ACCOUNTED FOR AND USED TO REDUCE THE PERMIT FEES TO
15 BE ASSESSED AGAINST SOURCES PURSUANT TO THIS ARTICLE.

16 (c) THE GENERAL ASSEMBLY SHALL ASSURE THAT ADEQUATE
17 PERSONNEL AND FUNDING WILL BE AVAILABLE TO ADMINISTER THE
18 PERMIT PROGRAM.

19 (d) NO PERMIT WILL BE ISSUED IF THE ADMINISTRATOR
20 OBJECTS TO ITS ISSUANCE IN A TIMELY MANNER UNDER THIS TITLE.

21 25-7-114.8. Permit fee credits. THE COMMISSION SHALL
22 ADOPT AN EMISSION REDUCTION PERMIT FEE CREDIT PROGRAM FOR
23 PERMITTEES THAT REDUCE THEIR BASELINE REGULATED POLLUTANTS.
24 SUCH PROGRAM SHALL PROVIDE ECONOMIC INCENTIVES FOR PERMITTEES
25 TO PARTICIPATE AND PROVIDE FOR VERIFICATION OF THE ACTUAL
26 EMISSION REDUCTIONS. THE AMOUNT OF THE CREDIT OR OTHER

1 ECONOMIC INCENTIVES AND BASELINE, OR BOTH, SHALL BE DEFINED BY
2 THE COMMISSION. "REGULATED POLLUTANT" SHALL HAVE THE SAME
3 MEANING AS SET FORTH IN SECTION 25-7-114.7.

4 SECTION 11. 25-7-115 (1) (a), (2), (3) (b), and (5) (c),
5 Colorado Revised Statutes, 1989 Repl. Vol., are amended to
6 read:

7 25-7-115. Enforcement. (1) (a) The division shall
8 enforce compliance with the emission control regulations of
9 the commission, the requirements of the state implementation
10 plan, and the provisions of parts 1 to 4 of this article,
11 INCLUDING TERMS AND CONDITIONS OF ANY PERMIT REQUIRED PURSUANT
12 TO THIS ARTICLE.

13 (2) If a written and verified complaint is filed with
14 the division alleging that, or if the division itself has
15 cause to believe that, any person is violating or failing to
16 comply with any regulation of the commission issued pursuant
17 to parts 1 to 4 of this article, order issued pursuant to
18 section 25-7-118, requirement of the state implementation
19 plan, provision of parts 1 to 4 of this article, ~~or~~ INCLUDING
20 ANY term or condition of a permit required pursuant to ~~part~~-2
21 ~~or~~-3-~~of~~ this article, the division shall cause a prompt
22 investigation to be made; and, if the division investigation
23 determines that any such violation or failure to comply
24 exists, the division shall send written notice to the owner or
25 operator of such air pollution source within thirty days after
26 the discovery of the alleged violation or noncompliance or

1 within such other period as is expressly required or
2 authorized by law. Such notice shall specify the provision
3 alleged to have been violated or not complied with and the
4 facts alleged to constitute the violation or noncompliance.

5 (3) (b) If, after any such conference, a violation or
6 noncompliance is determined to have occurred, the division
7 shall issue an order requiring the owner or operator or any
8 other responsible person to comply, unless the owner or
9 operator demonstrates that such violation occurred during a
10 period of start-up, shutdown, or malfunction, AND TIMELY
11 NOTICE WAS GIVEN TO THE DIVISION OF SUCH CONDITION. Such
12 order may also require the calculation of a noncompliance
13 penalty under subsection (5) of this section. Unless
14 enforcement of its order has been stayed as provided in
15 paragraph (b) of subsection (4) of this section, the division
16 may seek enforcement, pursuant to section 25-7-121 or
17 25-7-122, of the applicable regulation of the commission,
18 order issued pursuant to ~~section~~ SECTIONS 25-7-121 OR
19 25-7-122, OF THE APPLICABLE REGULATION OF THE COMMISSION,
20 ORDER ISSUED PURSUANT TO SECTION 25-7-118, requirement of the
21 state implementation plan, provision of this article, or terms
22 or conditions of a permit required pursuant to ~~section~~
23 ~~25-7-114--(4)--(g)~~ THIS ARTICLE in the district court for the
24 district where the affected air pollution source is located.
25 The court shall issue an appropriate order, which may include
26 a schedule for compliance by the owner or operator of the

1 source.

2 (5) (c) Any penalty assessed pursuant to subsections (5)
3 to (11) of this section shall be paid in equal quarterly
4 installments (except as provided in sub-subparagraph (B) of
5 subparagraph (I) of paragraph (b) of this subsection (5)) for
6 the period which begins either August-7, 1979 _____, if
7 notice pursuant to subsection (2) of this section is issued on
8 or before such date or which begins on the date of issuance of
9 notice pursuant to subsection (2) of this section if such
10 notice is issued after August-7, 1979 _____, and which
11 period ends on the date on which such stationary source is
12 estimated to come into compliance.

13 SECTION 12. 25-7-118 (1), (3), and (5) (a), Colorado
14 Revised Statutes, 1989 Repl. Vol., are amended to read:

15 25-7-118. Delayed compliance orders. (1) The division
16 may, after notice and an opportunity for a public hearing,
17 issue an order for any stationary source which specifies a
18 date for final compliance with any requirement of the state
19 implementation plan later than the ~~date-for-attainment-of-any~~
20 ~~national-ambient-air-quality-standard-specified-in--such--plan~~
21 EFFECTIVE DATE OF A REQUIREMENT APPLICABLE TO THAT SOURCE IF
22 the requirements of this section are met. If a public hearing
23 is requested by an interested person, the request shall,
24 within twenty days of its receipt, be transmitted to the
25 commission. The commission shall, within sixty days of its
26 receipt of the request, hold a public hearing with respect

1 thereto and, within thirty days of such hearing, issue its
2 decision and order.

3 (3) If any stationary source not in compliance with any
4 requirement of the state implementation plan gives notice to
5 the division or commission that such stationary source intends
6 to comply by means of replacement of the facility, a complete
7 change in its production process, or a termination of its
8 operations, the division or commission may issue an order
9 under this section permitting the stationary source to operate
10 until July-1, 1979 _____, without any interim schedule of
11 compliance. As a condition of the issuance of any such order,
12 the owner or operator of such stationary source shall post a
13 bond or other surety in an amount equal to the cost of actual
14 compliance by such facility and any economic value which may
15 accrue to the owner or operator of such stationary source by
16 reason of the failure to comply. If the owner or operator of
17 a stationary source for which the bond or other surety
18 required by this subsection (3) has been posted fails to
19 replace the facility, change the production process, or
20 terminate the operations as specified in the order by the
21 required date, the owner or operator shall immediately forfeit
22 on the bond or other surety, and the commission shall have no
23 discretion to modify the order under this subsection (3) or to
24 compromise the bond or other surety.

25 (5) (a) If, on the basis of any information available to
26 it, the division has reason to believe that a stationary

1 source to which an order has been issued pursuant to this
2 section is in violation of any requirement of such order or of
3 any provision of this section, it shall notify the commission
4 and the owner or operator of the alleged violation and shall
5 also--~~commence~~ MAY REVOKE SUCH ORDER OR MAY COMMENCE AN
6 APPROPRIATE ENFORCEMENT action pursuant to ~~section--25-7-115~~
7 THIS ARTICLE, OR BOTH.

8 SECTION 13. 25-7-119 (4), (6), and (10), Colorado
9 Revised Statutes, 1989 Repl. Vol., are amended, and the said
10 25-7-119 is further amended BY THE ADDITION OF A NEW
11 SUBSECTION, to read:

12 25-7-119. Hearings. (4) Any information relating to
13 secret processes or methods of manufacture or production which
14 may be required, ascertained, or discovered shall not be
15 publicly disclosed in public hearings or otherwise and shall
16 be kept confidential by any member, officer, or employee of
17 the commission or the division. Any person seeking to invoke
18 the protection of this subsection (4) in any hearing shall
19 bear the burden of proving its applicability. INFORMATION
20 CLAIMED TO BE RELATED TO SECRET PROCESSES OR METHODS OF
21 MANUFACTURE OR PRODUCTION BUT WHICH CONSTITUTES EMISSION DATA
22 MAY NOT BE WITHHELD AS CONFIDENTIAL; EXCEPT THAT SUCH
23 INFORMATION MAY BE SUBMITTED UNDER A CLAIM OF CONFIDENTIALITY,
24 AND THE DIVISION SHALL NOT DISCLOSE ANY SUCH INFORMATION TO
25 THE PUBLIC.

26 (6) After due consideration of the written and oral

1 statements, the testimony, and the arguments presented at any
2 such hearing, the commission shall make its findings and
3 order, based upon evidence in the record, or make such
4 determination of the matter as it shall deem appropriate,
5 consistent with the provisions of this article and any rule,
6 regulation, or determination made PROMULGATED by the
7 commission pursuant thereto. Unless a time period is
8 otherwise specifically provided for in this article, such
9 finding and order or determination shall be made within thirty
10 calendar days after the completion of such hearing.

11 (10) Every hearing granted by the commission shall be
12 conducted by the commission or by THE COMMISSION MAY DESIGNATE
13 A HEARING OFFICER, OR an administrative law judge designated
14 by the commission pursuant to part 10 of article 30 of title
15 24, C.R.S., subject to appropriations for such administrative
16 law judges made to the department of administration. and WHEN
17 APPROPRIATE, THE HEARING OFFICER MAY BE AN EMPLOYEE OF THE
18 DEPARTMENT OF HEALTH OR A MEMBER OF OR THE ADMINISTRATOR OF
19 THE COMMISSION. Every hearing shall comply with the
20 provisions of this article and the provisions of article 4 of
21 title 24, C.R.S.

22 (11) ALL DECISIONS OF AN ADMINISTRATIVE LAW JUDGE OR A
23 HEARING OFFICER MAY BE APPEALED TO THE COMMISSION WITHIN
24 THIRTY DAYS OF THE DATE OF THE DECISION. A DECISION BY THE
25 COMMISSION TO AFFIRM, SET ASIDE, OR MODIFY THE ORDER OR ANY
26 PORTION THEREOF, CONSTITUTES FINAL AGENCY ACTION FOR PURPOSES

1 OF JUDICIAL REVIEW. ALL APPEALS PURSUANT TO THIS SUBSECTION
2 (11) SHALL COMPLY WITH THE PROVISIONS OF THIS ARTICLE AND THE
3 PROVISIONS OF ARTICLE 4 OF TITLE 24, C.R.S.

4 SECTION 14. 25-7-120 (1) and (2), Colorado Revised
5 Statutes, 1989 Repl. Vol., are amended to read:

6 25-7-120. Judicial review. (1) Any final order or
7 determination by the division or the commission, WHICH
8 CONSTITUTES FINAL AGENCY ACTION, shall be subject to judicial
9 review in accordance with the provisions of this article and
10 the provisions of article 4 of title 24, C.R.S.

11 (2) Any party may move the court to remand the case to
12 the division or the commission in the interests of justice for
13 the purpose of adducing additional specified and material
14 evidence and findings thereon; but such party shall show
15 reasonable grounds for the failure to adduce such evidence
16 previously before the division, or the commission, OR THE
17 ADMINISTRATIVE LAW JUDGE.

18 SECTION 15. 25-7-121, Colorado Revised Statutes, 1989
19 Repl. Vol., is amended to read:

20 25-7-121. Injunctions. (1) In the event any person
21 fails to comply with a final order of the division, or the
22 commission, OR AN ADMINISTRATIVE LAW JUDGE, that is not
23 subject to stay pending administrative OR JUDICIAL review, or
24 in the event any person ~~constructs, modifies, or commences~~
25 ~~operation of an air-pollution source in violation of section~~
26 ~~25-7-114-(4)~~ VIOLATES ANY EMISSION CONTROL REGULATION OF THE

1 COMMISSION, THE REQUIREMENTS OF THE STATE IMPLEMENTATION PLAN,
2 OR ANY PROVISION OF PARTS 1 TO 4 OF THIS ARTICLE, INCLUDING
3 ANY TERM OR CONDITION CONTAINED IN ANY PERMIT REQUIRED UNDER
4 THIS ARTICLE, the division or the commission, as the case may
5 be, may request the district attorney for the district in
6 which the alleged violation occurs or the attorney general to
7 bring, and if so requested it is his duty to bring, a suit for
8 an injunction to prevent any further or continued violation.
9 ~~of such order or of section 25-7-114(4).~~

10 (2) In any proceedings brought pursuant to this section
11 to enforce an order of the division or the commission, a
12 temporary restraining order or preliminary injunction, if
13 sought, shall not issue if there is probable cause to believe
14 that granting such temporary restraining order or preliminary
15 injunction will cause serious harm to the affected person or
16 any other person and:

17 (a) That the alleged violation or activity to which the
18 order pertains will not continue OR BE REPEATED; or

19 (b) That granting such temporary restraining order or
20 preliminary injunction would be without sufficient
21 corresponding public benefit.

22 (3) NOTWITHSTANDING ANY OTHER PROVISION IN THIS SECTION,
23 NO ACTION FOR INJUNCTION MAY BE TAKEN WHERE:

24 (a) THE VIOLATION COMPLAINED OF IS A VIOLATION OF AN
25 AMBIENT AIR QUALITY STANDARD; OR

26 (b) THE SOURCE HAS OBTAINED A RENEWABLE OPERATING PERMIT

1 AND CONDUCTS ITS OPERATIONS IN COMPLIANCE WITH THE PERMIT
2 TERMS, AS PROVIDED IN SECTION 25-7-114.4 (3).

3 SECTION 16. 25-7-122, Colorado Revised Statutes, 1989
4 Repl. Vol., is amended to read:

5 25-7-122. Civil penalties. (1) Penalties shall be
6 determined and collected by the district court for the
7 district in which is located the air pollution source affected
8 upon action instituted by the division for the determination
9 and collection of said penalty under this section and in
10 accordance with the following provisions:

11 (a) Any person who violates any final order of the
12 division, ~~or~~ commission, OR ADMINISTRATIVE LAW JUDGE issued
13 pursuant to this article and not subject to a stay pending
14 administrative OR JUDICIAL review shall be subject to a civil
15 penalty of not more than ~~twenty-five~~ TEN thousand dollars per
16 day ~~of~~ FOR EACH violation.

17 (b) Any person who violates ~~the requirements of section~~
18 ~~25-7-114--(4)---regarding---construction,---modification,---or~~
19 ~~commencement-of-operation-of-an-air-pollution-source-without-a~~
20 ~~permit-from-the-division-or-the-commission-and-who-operates-or~~
21 ~~commences--operation-of-an-air-pollution-source-without-such-a~~
22 ~~permit~~ ANY REQUIREMENT OR PROHIBITION OF AN APPLICABLE
23 EMISSION CONTROL REGULATION OF THE COMMISSION, THE STATE
24 IMPLEMENTATION PLAN, PERMIT REQUIRED UNDER THIS ARTICLE, OR
25 OTHER APPLICABLE PROVISION OF SECTION 25-7-114.2 TO
26 25-7-114.4, shall be subject to a civil penalty of not more

1 than ~~twenty-five~~ TEN thousand dollars per day for each
2 VIOLATION FOR EACH day of operation after receipt of the
3 notice of noncompliance or violation.

4 (c) Any person failing to comply with the provisions of
5 section ~~25-7-114--(1)~~ 25-7-114.1 shall be subject to a civil
6 penalty of not more than one hundred dollars.

7 (2) In determining the amount of any civil penalty to be
8 assessed pursuant to paragraphs (a) and (b) of subsection (1)
9 of this section, the court shall take into account: The size
10 of the business, the economic impact of the penalty on the
11 business, the seriousness of the violation, THE VIOLATOR'S
12 FULL COMPLIANCE HISTORY AND GOOD FAITH EFFORTS TO COMPLY, THE
13 DURATION OF THE VIOLATION AS ESTABLISHED BY ANY CREDIBLE
14 EVIDENCE (INCLUDING EVIDENCE OTHER THAN THE APPLICABLE TEST
15 METHOD), PAYMENT BY THE VIOLATOR OF PENALTIES PREVIOUSLY
16 ASSESSED FOR THE SAME VIOLATION, THE ECONOMIC BENEFIT OF
17 NONCOMPLIANCE, THE IMPACT ON, OR THREAT TO, THE PUBLIC HEALTH
18 OR WELFARE, OR THE ENVIRONMENT AS A RESULT OF THE VIOLATION,
19 and other relevant factors. The court shall also consider
20 whether the violation was due to malfeasance or nonfeasance
21 and the reason for the request for administrative or judicial
22 review of the determination and, in such consideration, shall
23 take into account whether the legal or factual issues raised
24 were frivolous or raised primarily for the purpose of delay.

25 (4) NOTWITHSTANDING ANY OTHER PROVISION IN THIS SECTION,
26 NO ACTION FOR CIVIL ENFORCEMENT OF THIS ARTICLE MAY BE TAKEN

1 WHERE:

2 (a) THE VIOLATION COMPLAINED OF IS A VIOLATION OF AN
3 AMBIENT AIR QUALITY STANDARD; OR

4 (b) THE SOURCE HAS OBTAINED A RENEWABLE OPERATING PERMIT
5 AND CONDUCTS ITS OPERATIONS IN COMPLIANCE WITH THE PERMIT
6 TERMS, AS PROVIDED IN SECTION 25-7-114.4 (3).

7 SECTION 17. Part 1 of article 7 of title 25, Colorado
8 Revised Statutes, 1989 Repl. Vol., as amended, is amended BY
9 THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

10 25-7-122.1. Criminal penalties. (1) GENERAL PROVISIONS.
11 WHENEVER THE DIVISION HAS REASON TO BELIEVE THAT A PERSON HAS
12 KNOWINGLY, INTENTIONALLY, OR WITH CRIMINAL NEGLIGENCE VIOLATED
13 ANY REQUIREMENT OR PROHIBITION OF AN APPLICABLE EMISSION
14 CONTROL REGULATION OF THE COMMISSION, STATE IMPLEMENTATION
15 PLAN, PERMIT REQUIRED UNDER THIS ARTICLE, OR OTHER APPLICABLE
16 PROVISION OF SECTION 25-7-114.2 TO 25-7-114.4, THE DIVISION
17 MAY REQUEST EITHER THE ATTORNEY GENERAL OR THE DISTRICT
18 ATTORNEY FOR THE DISTRICT IN WHICH THE ALLEGED VIOLATION
19 OCCURS, TO PURSUE CRIMINAL PENALTIES UNDER THIS SECTION.

20 (2) FALSE STATEMENTS.

21 (a) ANY PERSON WHO KNOWINGLY:

22 (I) MAKES ANY FALSE MATERIAL STATEMENT, REPRESENTATION,
23 OR CERTIFICATION IN, OR OMITTS MATERIAL INFORMATION FROM, OR
24 KNOWINGLY ALTERS OR CONCEALS ANY NOTICE, APPLICATION, RECORD,
25 REPORT, PLAN, OR OTHER DOCUMENT REQUIRED PURSUANT TO THIS
26 ARTICLE TO BE EITHER FILED OR MAINTAINED;

1 (II) FALSIFIES, TAMPERS WITH, OR RENDERS INACCURATE ANY
2 MONITORING DEVICE OR METHOD REQUIRED TO BE MAINTAINED OR
3 FOLLOWED UNDER THIS ARTICLE;

4 (b) IS GUILTY OF A FELONY, AND UPON CONVICTION THEREOF,
5 SHALL BE PUNISHED BY A FINE OF NOT MORE THAN TEN THOUSAND
6 DOLLARS, OR BY IMPRISONMENT FOR NOT MORE THAN TWO YEARS, OR BY
7 BOTH SUCH FINE AND IMPRISONMENT. UPON A SECOND CONVICTION FOR
8 A VIOLATION OF THIS SECTION WITHIN TWO YEARS, THE MAXIMUM
9 PUNISHMENT SHALL BE DOUBLED WITH RESPECT TO BOTH FINE AND
10 IMPRISONMENT.

11 (3) (a) KNOWING ENDANGERMENT. ANY PERSON WHO KNOWINGLY
12 RELEASES INTO THE AMBIENT AIR ANY HAZARDOUS AIR POLLUTANT
13 LISTED PURSUANT TO SECTION 112 OF THE FEDERAL ACT, OR ANY
14 EXTREMELY HAZARDOUS SUBSTANCE LISTED PURSUANT TO SECTION 302
15 (a) (2) OF THE FEDERAL "SUPERFUND AMENDMENTS AND
16 REAUTHORIZATION ACT OF 1986", OR ANY OTHER HAZARDOUS AIR
17 POLLUTANT AS DEFINED BY THIS ARTICLE, AND WHO KNOWS AT THE
18 TIME THAT SUCH PERSON THEREBY PLACES ANOTHER PERSON IN
19 IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY IS GUILTY OF
20 A FELONY, AND UPON CONVICTION THEREOF, SHALL BE PUNISHED BY A
21 FINE OF NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS, OR BY
22 IMPRISONMENT FOR NOT MORE THAN FIFTEEN YEARS, OR BOTH SUCH
23 FINE AND IMPRISONMENT. ANY PERSON COMMITTING SUCH VIOLATION
24 WHICH IS AN ORGANIZATION SHALL, UPON CONVICTION UNDER THIS
25 SUBSECTION (3), BE SUBJECT TO A FINE OF NOT MORE THAN ONE
26 MILLION DOLLARS FOR EACH SUCH VIOLATION. UPON A SECOND

1 CONVICTION FOR A VIOLATION OF THIS SECTION, THE MAXIMUM
2 PUNISHMENT SHALL BE DOUBLED WITH RESPECT TO BOTH FINE AND
3 IMPRISONMENT. FOR ANY AIR POLLUTANT FOR WHICH AN EMISSIONS
4 STANDARD HAS BEEN SET, OR FOR ANY SOURCE FOR WHICH AN
5 OPERATING PERMIT HAS BEEN ISSUED UNDER THIS ARTICLE, A RELEASE
6 OF SUCH POLLUTANT IN ACCORDANCE WITH THAT STANDARD OR PERMIT
7 SHALL NOT CONSTITUTE A VIOLATION OF THIS SUBSECTION (3).

8 (b) IN DETERMINING WHETHER A DEFENDANT WHO IS AN
9 INDIVIDUAL KNEW THAT THE VIOLATION PLACED ANOTHER PERSON IN
10 IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY:

11 (I) THE DEFENDANT IS RESPONSIBLE ONLY FOR ACTUAL
12 AWARENESS OR ACTUAL BELIEF POSSESSED; AND

13 (II) KNOWLEDGE POSSESSED BY A PERSON OTHER THAN THE
14 DEFENDANT, BUT NOT BY THE DEFENDANT, MAY NOT BE ATTRIBUTED TO
15 THE DEFENDANT.

16 (c) (I) IT IS AN AFFIRMATIVE DEFENSE TO A PROSECUTION
17 THAT THE CONDUCT CHARGED WAS FREELY CONSENTED TO BY THE PERSON
18 ENDANGERED AND THAT THE DANGER AND CONDUCT CHARGED WERE
19 REASONABLY FORESEEABLE HAZARDS OF:

- 20 (A) AN OCCUPATION, A BUSINESS, OR A PROFESSION; OR
- 21 (B) MEDICAL TREATMENT OR MEDICAL OR SCIENTIFIC
- 22 EXPERIMENTATION CONDUCTED BY PROFESSIONALLY APPROVED METHODS
- 23 AND SUCH OTHER PERSON HAD BEEN MADE AWARE OF THE RISKS
- 24 INVOLVED PRIOR TO GIVING CONSENT.

25 (II) THE DEFENDANT MAY ESTABLISH AN AFFIRMATIVE DEFENSE
26 UNDER THIS PARAGRAPH (c) BY A PREPONDERANCE OF THE EVIDENCE.

1 (4) ALL GENERAL DEFENSES, AFFIRMATIVE DEFENSES, AND BARS
2 TO PROSECUTION THAT MAY APPLY WITH RESPECT TO OTHER CRIMINAL
3 OFFENSES MAY APPLY UNDER THIS SECTION AND SHALL BE DETERMINED
4 BY THE COURTS OF THIS STATE ACCORDING TO THE PRINCIPLES OF
5 COMMON LAW AS THEY MAY BE INTERPRETED IN THE LIGHT OF REASON
6 AND EXPERIENCE. CONCEPTS OF JUSTIFICATION AND EXCUSE
7 APPLICABLE UNDER THIS SECTION MAY BE DEVELOPED IN THE LIGHT OF
8 REASON AND EXPERIENCE.

9 (5) FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT
10 OTHERWISE REQUIRES:

11 (a) "ORGANIZATION" MEANS A LEGAL ENTITY, OTHER THAN A
12 GOVERNMENT, ESTABLISHED OR ORGANIZED FOR ANY PURPOSE, AND SUCH
13 TERM INCLUDES A CORPORATION, COMPANY, ASSOCIATION, FIRM,
14 PARTNERSHIP, JOINT STOCK COMPANY, FOUNDATION, INSTITUTION,
15 TRUST, SOCIETY, UNION, OR ANY OTHER ASSOCIATION OF PERSONS;

16 (b) "PERSON" INCLUDES, IN ADDITION TO THE ENTITIES
17 REFERRED TO IN SECTION 25-7-103 (19), ANY RESPONSIBLE
18 CORPORATE OFFICER;

19 (c) "SERIOUS BODILY INJURY" MEANS BODILY INJURY WHICH
20 INVOLVES A SUBSTANTIAL RISK OF DEATH, UNCONSCIOUSNESS, EXTREME
21 PHYSICAL PAIN, PROTRACTED AND OBVIOUS DISFIGUREMENT, OR
22 PROTRACTED LOSS OR IMPAIRMENT OF THE FUNCTION OF A BODILY
23 MEMBER, ORGAN, OR MENTAL FACULTY.

24 25-7-122.6. Administrative and judicial stays.

25 (1) EXCEPT WITH RESPECT TO EMERGENCY ORDERS ISSUED PURSUANT
26 TO SECTIONS 25-7-112 AND 25-7-113, AND DELAYED COMPLIANCE

1 ORDERS ISSUED PURSUANT TO SECTION 25-7-118, ANY PERSON TO WHOM
2 AN ORDER HAS BEEN ISSUED BY THE DIVISION, COMMISSION, OR
3 ADMINISTRATIVE LAW JUDGE, OR AGAINST WHOM AN ADVERSE
4 DETERMINATION HAS BEEN MADE, MAY PETITION THE COMMISSION,
5 ADMINISTRATIVE LAW JUDGE, OR THE DISTRICT COURT FOR THE
6 DISTRICT IN WHICH IS LOCATED THE AIR POLLUTION SOURCE
7 AFFECTED, AS APPROPRIATE, FOR A STAY OF THE EFFECTIVENESS OF
8 SUCH ORDER OR DETERMINATION.

9 (2) SUCH PETITIONS MAY BE FILED PRIOR TO ANY SUCH ORDER
10 OR DETERMINATION BECOMING FINAL OR DURING ANY PERIOD IN WHICH
11 SUCH ORDER OR DETERMINATION IS UNDER JUDICIAL REVIEW.

12 (3) SUCH STAY SHALL BE GRANTED IF THERE IS PROBABLE
13 CAUSE TO BELIEVE:

14 (a) THAT THE MOVANT WILL SUFFER IRREPARABLE HARM IF THE
15 MOTION IS DENIED;

16 (b) THAT THERE WILL BE NO IRREPARABLE HARM TO HUMAN
17 HEALTH, WELFARE, OR THE ENVIRONMENT IF THE MOTION IS GRANTED;
18 AND

19 (c) THAT THE MOVANT WILL SUCCEED ON THE MERITS OF ITS
20 CASE.

21 (4) SUCH ORDER SHALL BE STAYED PENDING DETERMINATION BY
22 THE COMMISSION.

23 25-7-123.1. Statute of limitations - penalty assessment
24 criteria. (1) ENFORCEMENT ACTIONS UNDER THIS ARTICLE MUST BE
25 BROUGHT WITHIN TWO YEARS OF THE DATE THAT THE DIVISION HAS
26 KNOWLEDGE THAT THE VIOLATION FOR WHICH THE ACTION IS BROUGHT

1 HAS OCCURRED.

2 (2) A PENALTY MAY BE ASSESSED FOR EACH DAY OF VIOLATION.
3 FOR PURPOSES OF DETERMINING THE NUMBER OF DAYS OF VIOLATION
4 FOR WHICH A PENALTY MAY BE ASSESSED UNDER SECTION 25-7-122 AND
5 25-7-122.1 (1), OR AN ASSESSMENT MAY BE MADE UNDER SECTION
6 25-7-115 (5), WHERE THE DIVISION HAS NOTIFIED THE SOURCE OF
7 THE VIOLATION, THE DIVISION MUST ESTABLISH BY A PREPONDERANCE
8 OF THE EVIDENCE THE NUMBER OF DAYS DURING WHICH THE VIOLATION
9 OCCURRED OR CONTINUED.

10 (3) THE DIVISION MAY REQUEST THE DISTRICT ATTORNEY FOR
11 THE DISTRICT IN WHICH THE ALLEGED VIOLATION OR NONCOMPLIANCE,
12 OR ANY PART THEREOF, OCCURRED OR MAY REQUEST THE ATTORNEY
13 GENERAL TO BRING, AND IF SO REQUESTED, IT IS THE DUTY OF SUCH
14 OFFICIAL TO BRING A SUIT FOR RECOVERY OR ANY PENALTY OR
15 NONPAYMENT PENALTY, WITH INTEREST, IMPOSED PURSUANT TO
16 SECTIONS 25-7-122 (CIVIL PENALTIES) OR 25-7-122.1 (CRIMINAL
17 PENALTIES), IF THE PENALTY IS NOT PAID WHEN DUE. THE DIVISION
18 MAY NOT REVOKE A PERMIT ISSUED PURSUANT TO PARTS 1 TO 4 OF
19 THIS ARTICLE OR CERTIFICATION ISSUED PURSUANT TO PART 5 OF
20 THIS ARTICLE SOLELY FOR FAILURE TO PAY PENALTIES WHEN DUE,
21 UNLESS AN ORDER IS FIRST ISSUED AND ALL ADMINISTRATIVE AND
22 JUDICIAL REMEDIES ARE PURSUED UNSUCCESSFULLY.

23 SECTION 18. 2-3-1203 (3), Colorado Revised Statutes,
24 1980 Repl. Vol., as amended, is amended BY THE ADDITION OF A
25 NEW PARAGRAPH to read:

26 2-3-1203. Sunset review of advisory committees. (3) The

1 following dates are the dates for which the statutory
2 authorization for the designated advisory committees is
3 scheduled for repeal:

4 (k) THE COMPLIANCE ADVISORY PANEL TO THE AIR POLLUTION
5 PREVENTION AND CONTROL DIVISION IN THE DIVISION OF
6 ADMINISTRATION OF THE DEPARTMENT OF HEALTH, CREATED IN
7 SECTION 25-7-109.2, C.R.S.

8 SECTION 19. Part 5 of article 22 of title 39, Colorado
9 Revised Statutes, 1982 Repl. Vol., as amended, is amended BY
10 THE ADDITION OF A NEW SECTION to read:

11 39-22-516. Credit for pollution reduction investments of
12 vehicle fleet owners and operators. THERE SHALL BE ALLOWED TO
13 ANY PERSON AS A CREDIT AGAINST THE INCOME TAXES IMPOSED BY
14 THIS ARTICLE AN AMOUNT EQUAL TO THE TOTAL OF _____ PERCENT OF
15 EXPENDITURES FOR INVESTMENTS BY OWNERS AND OPERATORS OF
16 VEHICLE FLEETS IN COMPLIANCE WITH ARTICLE 7 OF TITLE 25,
17 C.R.S.

18 SECTION 20. Effective date. This act shall take effect
19 July 1, 1992.

20 SECTION 21. 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.

LEGISLATIVE COUNCIL

JOINT BUSINESS AFFAIRS AND LABOR COMMITTEE

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JOINT BUSINESS AFFAIRS AND LABOR COMMITTEE

Committee Charge

Senate Joint Resolution 91-32 directed the Joint Business Affairs and Labor Committee to focus its efforts on the following topics:

- 1) insurance company insolvency;
- 2) uninsured motorists and other auto insurance costs;
- 3) the Uniform Corporation Code; and
- 4) the Uniform Commercial Code.

Committee Activities and Recommendations

The committee held three meetings between July and October. The first meeting was devoted to consideration of legislative proposals related to insurance company insolvency. Auto insurance issues were addressed at the following meeting. Draft legislation proposed to amend the Uniform Corporation Code and the Uniform Commercial Code was considered at the final committee meeting.

Insurance Company Insolvency

The regulation of the insurance industry is considered to be predominantly a function of the states. A prime objective of state regulation is the safety and soundness of insurance companies. The National Association of Insurance Commissioners (NAIC) was formed to help state regulators supervise the financial condition of interstate companies. The NAIC has recently developed accreditation standards to significantly improve the solvency oversight function of state regulators.

Representatives of the Colorado Division of Insurance reported to the committee that they have reviewed the NAIC solvency standards. Testimony indicated that a number of statutory changes are required to bring Colorado insurance laws into compliance with the national standards, which to a significant degree are embodied in several NAIC model laws. Adoption of statutory changes would help to ensure that Colorado would meet the national accreditation standards.

In response to these concerns, Bill A is recommended. The bill has the following major components:

- The Commissioner of Insurance is authorized to issue cease and desist orders against any insurance company committing any act which justifies revocation or suspension of its certificate.
- The Commissioner may conduct an investigation or examination of any company as often as deemed appropriate but shall, at a minimum, conduct an examination of every insurer licensed in Colorado at least once every five years.
- The commissioner and examiners appointed by the commissioner are given subpoena powers in connection with examinations. Penalties are set forth for persons connected with the company who knowingly or willfully testify falsely or make any false entries upon any of the books or papers of the company.
- Sharing of information in examination reports with enforcement authorities in other states is permitted, subject to confidentiality rules.
- Qualified immunity from liability is given to the commissioner or representatives of the commissioner in conducting company examinations.
- For the purpose of protecting the interests of insureds, claimants, creditors, and the public generally, the bill adopts the NAIC "Insurers Rehabilitation and Liquidation Model Act" as a substitute for the existing "Uniform Insurers Liquidation Act."
- The commissioner is given exclusive power to commence or authorize delinquency proceedings. The district court in and for the City and County of Denver is given jurisdiction over all such proceedings.
- Authority is given to the commissioner to rehabilitate the business of a domestic insurer or an alien insurer which is domiciled in Colorado. The rehabilitator (i.e. the commissioner or persons designated by the commissioner) may take whatever actions are deemed necessary to reform and revitalize the insurance company.
- If the commissioner determines that further attempts to rehabilitate an insurer would be futile or increase the risk of loss to creditors, policyholders, or the public, the commissioner may petition the district court for an order of liquidation. An order to liquidate the business of a domestic insurer includes provision for the appointment of the commissioner as liquidator. The liquidator is authorized to take possession of the assets of the insurer and to administer them under the supervision of the district court.

- The liquidator is required to submit to the district court a plan for the distribution of assets.
- A listing of classes of claims for a share in distributions of the insurer's assets is set forth in the bill. Every claim in each class must be paid in full, or adequate funds must be retained for such payment, before the members of the next class receive any payment. All unclaimed funds will escheat to the state.
- Standards and controls are set forth in Part 12 for the transaction of business with producer-controlled property (i.e. a producer who, directly or indirectly, controls an insurer) and casualty insurers. The requirements of Part 12 apply if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is five percent or more of the admitted assets of the controlled insurer, as reported in the controlled insurer's annual statement filed as of December 31 of the prior year. Reporting requirements are set forth relating to information annually submitted by controlled insurers to the commissioner.
- Life insurance companies are required to annually submit to the commissioner actuarial opinions as to the sufficiency of their reserves. The commissioner is authorized, through the promulgation of regulations, to specify the contents of such opinions.
- The commissioner is given authority to promulgate regulations prescribing minimum standards applicable to the valuation of sickness and accident plans and products.

Auto Insurance Issues

Representatives from the insurance industry, the medical community, Colorado Public Interest Research Group (COPIRG), the Colorado Trial Lawyers Association, and the Division of Insurance provided a briefing on such automobile insurance issues as the high cost of automobile insurance and the problems of uninsured motorists.

Cost of automobile insurance. The 1973 "Colorado Auto Accident Reparations Act" requires every owner of a motor vehicle who operates or permits the operation of the vehicle on Colorado highways to carry minimum insurance coverage. A representative from COPIRG stated that for the years 1987 through 1989, auto insurance premiums have increased at a rate of four times the rate of inflation. Reasons cited for this dramatic increase include: skyrocketing repair and medical costs, increasing auto theft and insurance fraud, and higher injury claims and resulting legal costs. On the other hand, statistics provided by a representative of the National Association of Independent Insurers noted that, comparatively, Colorado has affordable

auto insurance. Colorado's average private auto insurance premium was \$603 in 1989, which was under the nationwide average annual premium of \$636.

Uninsured motorists. Pursuant to section 10-4-705, C.R.S., any automobile owner who fails to have insurance is subject to sanctions provided under the "Motor Vehicle Financial Responsibility Act." According to testimony, Colorado has a significant uninsured motorist problem. Estimates given of the number of uninsured motorists range from 8.7 percent to 20 percent. A profile of the typical uninsured motorist indicates that he tends to be a young, "high risk" male driver with a bad driving record, who lives in a high claims frequency urban area.

As indicated in testimony and documents presented to the committee, reasons for the high incidence of uninsured motorists include the following:

- a person's driving record can have a dramatic effect on auto insurance premiums and possibly make the purchase of insurance unaffordable;
- some individuals are not able to afford the high cost of insurance;
- people choose not to insure in favor of alternative purchases; and
- enforcement of the law is perceived by some as weak, therefore the monetary savings outweigh the risk of noncompliance.

A number of proposed solutions to this growing problem were discussed. They include more aggressive use of existing financial responsibility laws; confiscating the drivers license of offenders; and imposing more severe penalties than are currently levied. No specific ideas for legislation were presented to the committee and the committee is not submitting legislation on this topic to the General Assembly at this time.

Colorado Corporation Code

Representatives of the Colorado Bar Association reviewed a redraft of Senate Bill 91-106, amending the "Colorado Corporation Code." Senate Bill 91-106 was postponed indefinitely by the Senate Business Affairs and Labor Committee. The major purpose of the bill was to update basic corporate law.

The draft legislation provided for:

- allowing shareholders to take action, by written consent in lieu of a meeting, without unanimous consent unless the articles of incorporation provide otherwise;

- altering provisions governing dissolution to require a dissolved corporation to amend its name to reflect its dissolved status;
- setting the vote required for approval of major corporate action at a simple majority of all shares entitled to vote on the action rather than the present two-thirds requirement;
- allowing a person of any age to serve as an officer; and
- permitting "routine" amendments to the articles of incorporation to be made by the board of directors without shareholder approval.

Committee questions were raised on a number of provisions in the draft legislation, including protections against hostile corporate takeovers, provisions regarding corporate dissolution, methods for determining a corporation's financial condition, and the enhancement of authority given to corporation directors.

Recommendation. No action was taken by the committee on the legislation described above. The committee recommends that the General Assembly consider a recodification of the Colorado Corporation Code during the 1992 session.

Uniform Commercial Code

A spokesperson for the National Conference of Commissioners on Uniform State Laws testified on the need for amendments to Articles 3 and 4 of the "Uniform Commercial Code." Article 3 provides for all negotiable instruments, including checks and certificates of deposit. Article 4 is entitled "Bank Deposits and Collections." In every state, payment by check and other paper instruments is governed by Articles 3 and 4 of the Uniform Commercial Code (UCC) which was first drafted more than 40 years ago. Testimony indicated that those articles need to be updated to provide essential rules for the new technologies and practices in payment systems. At the time the UCC was first drafted, only banks offered checking privileges. Banks, savings and loans, credit unions and other brokerage houses now offer accounts upon which checks and other payment orders can be drawn, but only banks and checks are now clearly governed by the UCC.

Although a total of ten states have adopted the amendments to the UCC, said amendments have not been approved in such major commercial states as New York and California. Concern was expressed about Colorado amending the Uniform Commercial Code in a manner which is not compatible with the UCC requirements in neighboring states and major commercial states.

Recommendation. Although the committee does not recommend changes to the Uniform Commercial Code at this time, it has endorsed thoughtful consideration by the General Assembly in 1992 to amendments to Articles 3 and 4 of the UCC.

Materials Available

The following materials relevant to the Joint Business Affairs and Labor Committee hearings are available from the Legislative Council.

- 1) Summary of meetings:
 - July 29, 1991 — insurance company insolvency;
 - August 29, 1991 — auto insurance issues including no-fault insurance, uninsured motorists, and insurance premiums;
 - October 14, 1991 — review of legislation relating to the Colorado Corporation Code and the Uniform Commercial Code.
- 2) Memorandum dated July 24, 1991, "1991 Insurance Company Solvency Legislation."
- 3) Memorandum dated August 21, 1991 "Automobile Insurance in Colorado."
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BUSINESS AFFAIRS BILL A

A BILL FOR AN ACT

1 CONCERNING THE REGULATION OF INSURERS, AND, IN CONNECTION
2 THEREWITH, ADOPTING THE INSURERS' REHABILITATION AND
3 LIQUIDATION MODEL ACT AND OTHER UNIFORM LEGISLATION.

Bill Summary

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

Permits suspension or revocation of an insurance company's certificate of authority based upon practices or conditions which render the company's financial position unsound, in addition to other bases set forth in existing law. Grants the insurance commissioner authority to issue cease-and-desist orders against a company committing any act justifying revocation or suspension of its certificate.

Adopts the "Model Law on Examinations" suggested by the National Association of Insurance Commissioners ("NAIC"). Requires financial examination of companies at the commissioner's discretion or on request of policyholders, and in any event at least at a certain specified interval. Provides for examination of persons and entities related to a company, in addition to the company itself, and for consideration of the company's "market conduct practices". Allows adoption of examination reports from other states and imposes a requirement, effective as of a specified date, that reports may be so adopted only if produced by states accredited by the NAIC. Vests the commissioner and examiners appointed by the commissioner with subpoena power in connection with examinations and sets forth penalties for noncompliance by a company or its agents. Specifies contents

of examination reports and procedures for administrative and judicial review. Permits sharing of information with enforcement authorities in other states, subject to confidentiality rules. Prohibits conflicts of interest on the part of examiners. Grants qualified immunity from liability to those conducting or assisting in examinations.

Changes the statutory standard for reinsurance of excess risk from reinsurance with a "good and reputable company" to reinsurance in compliance with applicable laws and regulations.

Adopts the NAIC "Insurers' Rehabilitation and Liquidation Model Act" in place of the existing "Uniform Insurers Liquidation Act". Vests the commissioner with exclusive power to commence or authorize delinquency proceedings under the statute. Vests the district court in and for the city and county of Denver with jurisdiction over all such proceedings and any related proceedings. Authorizes injunctions and seizure orders against companies in the course of or prior to the formal institution of delinquency proceedings. Names the commissioner as the rehabilitator in rehabilitation proceedings and as the liquidator in liquidation proceedings, granting the commissioner defined powers and duties including the power to take all steps necessary to preserve, protect, and recover an insurance company's assets during the pendency of proceedings and the power to appoint persons to carry out the commissioner's powers and duties. Requires cooperation in such proceedings by the subject company and its agents and sets forth penalties for failure to do so. Specifies the grounds on which rehabilitation or liquidation proceedings may be instituted and the conditions under which they may be terminated. Subjects all such proceedings to supervision by the court.

Stays all pending litigation involving a company for a time sufficient to allow the rehabilitator to assume control of the company's representation. Tolls the running of limitation periods during the stay. In the event of appeal from an order of liquidation, requires filing of a plan for payment of certain of the company's obligations pending appeal. Sets forth rules for the collection and listing of assets and the avoidance of preferences and liens in the course of liquidation. Requires filing of a plan of distribution of assets and, in lieu of sale of assets, permits sale of the company as a going concern. Lists categories of claims and assigns them priorities for purposes of payment from the company's assets. Provides that unclaimed funds will escheat to the state. Allows for interstate cooperation in proceedings involving companies doing business in more than one state. Establishes choice-of-law rules and other governing principles for such cases.

Adopts statutory standards for the transaction of business with producer-controlled property and casualty insurers. Applies where the aggregate amount of gross written premium on business placed with a controlled insurer by a

controlling producer equals or exceeds a certain percent of the insurer's admitted assets during any calendar year, with specified exceptions. Requires all such business to be subject to a written contract containing specified terms including provisions for separate recordkeeping, disclosure of the insurer's underwriting standards, rules, and procedures, and limits on the producer's writings in relation to the insurer's surplus and total writings for all or specified lines of business. Imposes periodic audit and reporting requirements, including the annual reporting of loss ratios for each line of business. Authorizes the commissioner to issue cease-and-desist orders and specifies penalties for noncompliance.

Eliminates the current requirement that the commissioner promulgate rules on the export of classes of coverage or risk for which no reasonable or adequate in-state market exists and, instead, makes the promulgation of such rules permissive. Amends statutory requirements for placement of surplus line insurance with nonadmitted insurers, setting forth detailed financial standards to be met by such nonadmitted insurers. Repeals statutory specifications for disclosure of terms of claims-made policies by surplus line brokers or insurers, granting the commissioner power to prescribe the details of such disclosures.

Requires life insurance companies annually to submit actuarial opinions as to the sufficiency of their reserves and sets out requirements for the contents of such opinions.

Authorizes the commissioner to promulgate rules prescribing minimum standards for the valuation of sickness and accident plans and any plans or products not specifically included in existing statutes relating to such valuation.

1 Be it enacted by the General Assembly of the State of Colorado:
2 SECTION 1. 10-1-111, Colorado Revised Statutes, 1987
3 Repl. Vol., is amended to read:
4 10-1-111. Grounds and procedure for suspension or
5 revocation of certificate. (1) The certificate of authority
6 of an insurance company to do business in this state may be
7 revoked or suspended by the commissioner for any reason
8 specified in this title, ~~{except--part--7--of--article--4--and~~
9 ~~article--16}~~, articles 7 and 53 of title 12, and article 14 of

1 title 24, C.R.S. Specifically, the certificate may be
2 suspended or revoked by the commissioner for the following
3 reasons:

4 (a) Insolvency or impairment, as defined in section
5 10-3-212;

6 (b) Failure to meet the requirements of section
7 10-3-201;

8 (c) Refusal or failure to submit an annual report, as
9 required by section 10-3-109, or any other report required by
10 law or by lawful order of the commissioner;

11 (d) Doing an unauthorized insurance business in another
12 state, as set forth in section 10-1-121;

13 (e) Failure to comply with the provisions of its own
14 charter or bylaws, if such failure renders its operation
15 hazardous to the public or to its policyholders;

16 (f) Failure to submit to examination or any legal
17 obligation relative thereto;

18 (g) Refusal to pay the cost of examination, as
19 authorized by law;

20 (h) Use of methods which, although not otherwise
21 specifically proscribed by law, nevertheless render its
22 operation hazardous, or its condition unsound, to the public
23 or to its policyholders;

24 (i) Failure to otherwise comply with the law of this
25 state, if such failure renders its operation hazardous to the
26 public or to its policyholders.

1 (j) USE OF PRACTICES OR EXISTENCE OF CONDITIONS WHICH
2 RENDERS ITS FINANCIAL POSITION UNSOUND TO THE PUBLIC OR ITS
3 POLICYHOLDERS.

4 (2) If the commissioner finds upon examination, hearing,
5 or other evidence that any foreign or domestic insurance
6 company has committed any of the acts specified in subsection
7 (1) of this section, or any other act specified in this title
8 ~~(except part 7 of article 4 and article 15)~~, articles 7 and 53
9 of title 12, and article 14 of title 24, C.R.S., for which the
10 penalty is suspension or revocation of the certificate of
11 authority, the commissioner may suspend or revoke such
12 certificate of authority, if he deems it in the best interest
13 of the public and the policyholders of the company,
14 notwithstanding any other provision of said references. Notice
15 of any revocation shall be published in one or more daily
16 newspapers in Denver which have a general state circulation.
17 Before suspending or revoking any certificate of authority of
18 an insurance company, the commissioner shall grant the company
19 fifteen days in which to show cause why such action should not
20 be taken.

21 (3) IF THE COMMISSIONER FINDS UPON EXAMINATION, HEARING,
22 OR OTHER EVIDENCE THAT ANY FOREIGN OR DOMESTIC INSURANCE
23 COMPANY HAS COMMITTED ANY ACT SPECIFIED IN SUBSECTION (1) OF
24 THIS SECTION, THE COMMISSIONER MAY ISSUE AN ORDER REQUIRING
25 THAT THE INSURANCE COMPANY CEASE AND DESIST COMMITTING SUCH
26 ACT.

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

4 PART 2
5 EXAMINATIONS

6 10-1-201. Legislative declaration. THE GENERAL ASSEMBLY
7 FINDS, DETERMINES, AND DECLARES THAT IT IS NECESSARY TO
8 ESTABLISH AN EFFECTIVE AND EFFICIENT SYSTEM FOR EXAMINING THE
9 ACTIVITIES, OPERATIONS, FINANCIAL CONDITIONS, AND AFFAIRS OF
10 ALL PERSONS TRANSACTING THE BUSINESS OF INSURANCE IN THIS
11 STATE AND ALL PERSONS OTHERWISE SUBJECT TO THE JURISDICTION OF
12 THE COMMISSIONER. THE PROVISIONS OF THIS PART 2 ARE INTENDED
13 TO ENABLE THE COMMISSIONER TO ADOPT A FLEXIBLE SYSTEM OF
14 EXAMINATIONS WHICH DIRECTS RESOURCES AS MAY BE DEEMED
15 APPROPRIATE AND NECESSARY FOR THE ADMINISTRATION OF THE
16 INSURANCE AND INSURANCE-RELATED LAWS OF THIS STATE.

17 10-1-202. Definitions. AS USED IN THIS PART 2, UNLESS
18 THE CONTEXT OTHERWISE REQUIRES:

19 (1) "COMPANY" MEANS ANY PERSON OR GROUP OF PERSONS
20 ENGAGING IN OR PROPOSING OR ATTEMPTING TO ENGAGE IN ANY
21 TRANSACTION OR KIND OF INSURANCE OR SURETY BUSINESS AND ANY
22 PERSON OR GROUP OF PERSONS WHO MAY OTHERWISE BE SUBJECT TO ANY
23 ADMINISTRATIVE, REGULATORY, OR TAXING AUTHORITY OF THE
24 COMMISSIONER.

25 (2) "DIVISION" MEANS THE DIVISION OF INSURANCE.

26 (3) "EXAMINATION" MEANS A FORMAL FINANCIAL EXAMINATION

1 OR MARKET CONDUCT EXAMINATION, AS WELL AS INFORMAL
2 INVESTIGATIONS CONDUCTED BY THE COMMISSIONER FOR THE PURPOSE
3 OF DETERMINING COMPLIANCE WITH THE LAW.

4 (4) "EXAMINER" MEANS ANY INDIVIDUAL OR FIRM AUTHORIZED
5 BY THE COMMISSIONER TO CONDUCT AN EXAMINATION UNDER THIS PART
6 2.

7 (5) "INSURANCE DEPARTMENT" MEANS THE COMMISSIONER OR
8 OTHER GOVERNMENT OFFICIAL OR AGENCY OF A STATE OTHER THAN
9 COLORADO EXERCISING POWERS AND DUTIES SUBSTANTIALLY EQUIVALENT
10 TO THOSE OF THE COMMISSIONER OR THE DIVISION.

11 (6) "INSURER" MEANS ANY PERSON, FIRM, CORPORATION,
12 ASSOCIATION, OR AGGREGATION OF PERSONS DOING AN INSURANCE
13 BUSINESS AND SUBJECT TO THE INSURANCE SUPERVISORY AUTHORITY
14 OF, OR TO LIQUIDATION, REHABILITATION, REORGANIZATION, OR
15 CONSERVATION BY, THE COMMISSIONER OR ANY EQUIVALENT INSURANCE
16 SUPERVISORY OFFICIAL OF ANOTHER STATE.

17 (7) "PERSON" MEANS ANY INDIVIDUAL, AGGREGATION OF
18 INDIVIDUALS, TRUST, ASSOCIATION, PARTNERSHIP, OR CORPORATION,
19 OR ANY AGENT OR AFFILIATE THEREOF.

20 10-1-203. Authority, scope, and scheduling of
21 examinations. (1) THE COMMISSIONER OR THE COMMISSIONER'S
22 DESIGNEE MAY CONDUCT AN EXAMINATION OR INVESTIGATION OF ANY
23 COMPANY AS OFTEN AS THE COMMISSIONER IN THE COMMISSIONER'S
24 SOLE DISCRETION DEEMS APPROPRIATE BUT SHALL, AT A MINIMUM,
25 CONDUCT AN EXAMINATION OF EVERY INSURER LICENSED IN THIS STATE
26 NOT LESS FREQUENTLY THAN ONCE EVERY FIVE YEARS. IN SCHEDULING

1 EXAMINATIONS AND IN DETERMINING THEIR NATURE, SCOPE, AND
2 FREQUENCY, THE COMMISSIONER SHALL CONSIDER SUCH MATTERS AS THE
3 RESULTS OF FINANCIAL STATEMENT ANALYSES AND RATIOS, CHANGES IN
4 MANAGEMENT OR OWNERSHIP, ACTUARIAL OPINIONS, REPORTS OF
5 INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS, AND OTHER CRITERIA
6 AS SET FORTH IN THE MOST RECENT AVAILABLE EDITION OF THE
7 EXAMINERS' HANDBOOK ADOPTED BY THE NATIONAL ASSOCIATION OF
8 INSURANCE COMMISSIONERS.

9 (2) FOR PURPOSES OF COMPLETING AN EXAMINATION OF ANY
10 COMPANY UNDER THIS PART 2, THE COMMISSIONER MAY EXAMINE OR
11 INVESTIGATE ANY PERSON, OR THE BUSINESS OF ANY PERSON, INsofar
12 AS SUCH EXAMINATION OR INVESTIGATION IS, IN THE SOLE
13 DISCRETION OF THE COMMISSIONER, NECESSARY OR MATERIAL TO THE
14 EXAMINATION OF THE COMPANY.

15 (3) IN LIEU OF AN EXAMINATION UNDER THIS PART 2 OF ANY
16 FOREIGN OR ALIEN INSURER LICENSED IN THIS STATE, THE
17 COMMISSIONER MAY ACCEPT, UNTIL AND INCLUDING DECEMBER 31,
18 1993, AN EXAMINATION REPORT ON THE COMPANY AS PREPARED BY THE
19 INSURANCE DEPARTMENT FOR THE COMPANY'S STATE OF DOMICILE OR
20 PORT-OF-ENTRY STATE. ON AND AFTER JANUARY 1, 1994, SUCH
21 REPORTS MAY ONLY BE ACCEPTED IF:

22 (a) THE INSURANCE DEPARTMENT WAS, AT THE TIME OF THE
23 EXAMINATION, ACCREDITED UNDER THE NATIONAL ASSOCIATION OF
24 INSURANCE COMMISSIONERS' FINANCIAL REGULATION STANDARDS AND
25 ACCREDITATION PROGRAM; OR

26 (b) THE EXAMINATION IS PERFORMED UNDER THE SUPERVISION

1 OF AN ACCREDITED INSURANCE DEPARTMENT OR WITH THE
 2 PARTICIPATION OF ONE OR MORE EXAMINERS WHO ARE EMPLOYED BY
 3 SUCH AN ACCREDITED STATE INSURANCE DEPARTMENT AND WHO, AFTER A
 4 REVIEW OF THE EXAMINATION WORK PAPERS AND REPORT, STATE UNDER
 5 OATH THAT THE EXAMINATION WAS PERFORMED IN A MANNER CONSISTENT
 6 WITH THE STANDARDS AND PROCEDURES REQUIRED BY THE EXAMINERS'
 7 INSURANCE DEPARTMENT.

8 10-1-204. Conduct of examinations. (1) UPON DETERMINING
 9 THAT AN EXAMINATION SHOULD BE CONDUCTED, THE COMMISSIONER OR
 10 THE COMMISSIONER'S DESIGNEE SHALL ISSUE AN EXAMINATION WARRANT
 11 APPOINTING ONE OR MORE EXAMINERS TO PERFORM THE EXAMINATION
 12 AND INSTRUCTING THEM AS TO THE SCOPE OF THE EXAMINATION. IN
 13 CONDUCTING THE EXAMINATION, THE EXAMINERS SHALL OBSERVE THOSE
 14 GUIDELINES AND PROCEDURES SET FORTH IN THE EXAMINERS' HANDBOOK
 15 ADOPTED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
 16 AND THE COLORADO INSURANCE EXAMINERS HANDBOOK. THE
 17 COMMISSIONER MAY ALSO EMPLOY SUCH OTHER GUIDELINES OR
 18 PROCEDURES AS THE COMMISSIONER MAY DEEM APPROPRIATE. AN
 19 EXAMINATION UNDER THIS ARTICLE SHALL NOT BE LIMITED TO AN
 20 EXAMINATION OF THE FINANCIAL CONDITION OF A COMPANY BUT MAY,
 21 IN THE DISCRETION OF THE COMMISSIONER, ALSO INCLUDE ALL OTHER
 22 ACTIVITIES AND AFFAIRS OF THE COMPANY INCLUDING ITS MARKET
 23 CONDUCT PRACTICES.

24 (2) EVERY COMPANY OR PERSON FROM WHOM INFORMATION IS
 25 SOUGHT AND ALL OFFICERS, DIRECTORS, AND AGENTS THEREOF SHALL
 26 PROVIDE TO THE EXAMINERS APPOINTED UNDER SUBSECTION (1) OF

1 THIS SECTION TIMELY, CONVENIENT, AND FREE ACCESS AT REASONABLE
 2 HOURS AT ITS OFFICES TO ALL BOOKS, RECORDS, ACCOUNTS, PAPERS,
 3 TAPES, COMPUTER RECORDS, AND OTHER DOCUMENTS RELATING TO THE
 4 PROPERTY, ASSETS, BUSINESS, AND AFFAIRS OF THE COMPANY BEING
 5 EXAMINED. THE REFUSAL OF ANY COMPANY OR ANY OF ITS OFFICERS,
 6 DIRECTORS, EMPLOYEES, OR AGENTS TO SUBMIT TO EXAMINATION OR TO
 7 COMPLY WITH ANY REASONABLE WRITTEN REQUEST OF THE EXAMINERS
 8 SHALL BE GROUNDS FOR SUSPENSION, REVOCATION, DENIAL, OR
 9 NONRENEWAL OF ANY LICENSE OR AUTHORITY HELD BY THE COMPANY AND
 10 SUBJECT TO THE COMMISSIONER'S JURISDICTION. PROCEEDINGS FOR
 11 ANY SUSPENSION OR REVOCATION PURSUANT TO THIS SUBSECTION
 12 (2) SHALL BE CONDUCTED IN ACCORDANCE WITH SECTION 10-1-111.

13 (3) THE COMMISSIONER AND ALL EXAMINERS SHALL HAVE THE
 14 POWER TO ISSUE SUBPOENAS, ADMINISTER OATHS, AND EXAMINE UNDER
 15 OATH ANY PERSON AS TO ANY MATTER PERTINENT TO THE EXAMINATION.
 16 UPON THE FAILURE OR REFUSAL OF ANY PERSON TO OBEY A SUBPOENA,
 17 THE COMMISSIONER MAY PETITION A COURT OF COMPETENT
 18 JURISDICTION FOR AN ORDER, WHICH SHALL BE ENFORCEABLE THROUGH
 19 CONTEMPT PROCEEDINGS, COMPELLING THE PERSON TO APPEAR AND
 20 TESTIFY OR PRODUCE DOCUMENTARY EVIDENCE. THE COMMISSIONER MAY
 21 ARRANGE FOR THE SERVICES OF AN ADMINISTRATIVE LAW JUDGE
 22 APPOINTED PURSUANT TO PART 10 OF ARTICLE 30 OF TITLE 24,
 23 C.R.S., TO TAKE EVIDENCE AND TO MAKE FINDINGS AND REPORT THEM
 24 TO THE COMMISSIONER.

25 (4) ANY PERSON WHO KNOWINGLY OR WILLFULLY TESTIFIES
 26 FALSELY IN REFERENCE TO ANY MATTER MATERIAL TO AN

1 INVESTIGATION, EXAMINATION, OR INQUIRY IS GUILTY OF A
2 MISDEMEANOR AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY
3 A FINE OF NOT MORE THAN FIVE HUNDRED DOLLARS, OR BY
4 IMPRISONMENT IN THE COUNTY JAIL FOR NOT MORE THAN THREE
5 MONTHS, OR BY BOTH SUCH FINE AND IMPRISONMENT.

6 (5) ANY PERSON WHO KNOWINGLY OR WILLFULLY MAKES ANY
7 FALSE CERTIFICATE, ENTRY, OR MEMORANDUM UPON ANY OF THE BOOKS
8 OR PAPERS OF A COMPANY OR UPON ANY STATEMENT FILED OR OFFERED
9 TO BE FILED IN THE DIVISION OR USED IN THE COURSE OF ANY
10 EXAMINATION, INQUIRY, OR INVESTIGATION, WITH THE INTENT TO
11 DECEIVE THE COMMISSIONER OR ANY PERSON APPOINTED BY THE
12 COMMISSIONER TO MAKE SUCH EXAMINATION, INQUIRY, OR
13 INVESTIGATION, IS GUILTY OF A MISDEMEANOR AND, UPON CONVICTION
14 THEREOF, SHALL BE PUNISHED BY A FINE OF NOT MORE THAN ONE
15 THOUSAND DOLLARS, OR BY IMPRISONMENT IN THE COUNTY JAIL FOR
16 NOT LESS THAN TWO MONTHS NOR MORE THAN TWELVE MONTHS, OR BY
17 BOTH SUCH FINE AND IMPRISONMENT.

18 (6) IN ADDITION TO ANY OTHER POWERS GRANTED TO THE
19 COMMISSIONER IN THIS SECTION OR IN ANY OTHER PROVISION OF LAW,
20 THE COMMISSIONER MAY REQUIRE ANY COMPANY, ENTITY, OR NEW
21 APPLICANT TO BE EXAMINED BY INDEPENDENT EXAMINERS CERTIFIED BY
22 THE SOCIETY OF FINANCIAL EXAMINERS, ACTUARIES WHO ARE MEMBERS
23 OF THE AMERICAN ACADEMY OF ACTUARIES, OR BY ANY OTHER
24 QUALIFIED AND COMPETENT LOSS RESERVE SPECIALISTS, INDEPENDENT
25 RISK MANAGERS, INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS, OTHER
26 EXAMINERS OF INSURANCE COMPANIES, OR COMBINATION OF SUCH

1 PERSONS; AND ANY DOMESTIC COMPANY MAY MAKE A REQUEST TO THE
2 COMMISSIONER TO BE SO EXAMINED. THE COMMISSIONER MAY ACCEPT,
3 AS PART OF ANY SUCH EXAMINATION, REPORTS MADE BY ANY PERSON
4 QUALIFIED AND COMPETENT TO CONDUCT THE EXAMINATION AS SET
5 FORTH IN THIS SUBSECTION (6). NO SUCH PERSON NOR ANY MEMBER
6 OF SUCH PERSON'S IMMEDIATE FAMILY SHALL BE OFFICERS OF,
7 CONNECTED WITH, OR FINANCIALLY INTERESTED IN THE COMPANY,
8 ENTITY, OR APPLICANT BEING EXAMINED OTHER THAN AS
9 POLICYHOLDERS, NOR SHALL THEY BE FINANCIALLY INTERESTED IN ANY
10 OTHER CORPORATION OR PERSON AFFECTED BY THE EXAMINATION OR BY
11 ANY RELATED INVESTIGATION OR HEARING. SUCH PERSONS SHALL KEEP
12 STRICTLY CONFIDENTIAL ALL INFORMATION, REGARDLESS OF ITS
13 SOURCE, OBTAINED THROUGH ANY EXAMINATION OR ABOUT ANY EXAMINEE
14 AND SHALL DISCLOSE SUCH INFORMATION ONLY TO THE COMMISSIONER
15 OR THE EXAMINEE UPON THE SPECIFIC REQUEST OF EITHER. THE
16 COMMISSIONER SHALL ESTABLISH GUIDELINES FOR ASSURING THE
17 NEUTRALITY OF THOSE PERSONS TO BE AUTHORIZED TO SUPPLEMENT THE
18 EXAMINATION PROCEDURES AUTHORIZED IN THIS SECTION. THE
19 REASONABLE EXPENSES AND CHARGES OF PERSONS SO RETAINED OR
20 DESIGNATED SHALL BE PAID DIRECTLY BY THE EXAMINEE TO SUCH
21 PERSONS. THE EXAMINEE MAY CONTEST THE AMOUNT OF FEES, COSTS,
22 AND EXPENSES CHARGED TO IT BY SUCH PERSONS BY FILING AN
23 OBJECTION WITH THE COMMISSIONER WHICH SETS FORTH THE CHARGES
24 WHICH THE EXAMINEE CONSIDERS TO BE UNREASONABLE AND THE BASIS
25 FOR THE CLAIM THAT THE CHARGES ARE UNREASONABLE. NO AMOUNTS
26 WHICH ARE SO DISPUTED WILL BE DUE TO THE EXAMINER UNLESS AND

1 UNTIL THE COMMISSIONER HAS REVIEWED THE OBJECTION AND MADE A
2 WRITTEN FINDING THAT THE DISPUTED CHARGES WERE REASONABLE IN
3 RELATION TO THE EXAMINATION PERFORMED.

4 (7) NOTHING CONTAINED IN THIS PART 2 SHALL BE CONSTRUED
5 TO LIMIT THE COMMISSIONER'S AUTHORITY TO TERMINATE OR SUSPEND
6 ANY EXAMINATION IN ORDER TO PURSUE OTHER LEGAL OR REGULATORY
7 ACTION PURSUANT TO THE INSURANCE LAWS OF THIS STATE. FINDINGS
8 OF FACT AND CONCLUSIONS MADE PURSUANT TO ANY EXAMINATION SHALL
9 BE PRIMA FACIE EVIDENCE IN ANY LEGAL OR REGULATORY ACTION.

10 (8) NOTHING CONTAINED IN THIS PART 2 SHALL BE CONSTRUED
11 TO LIMIT THE COMMISSIONER'S AUTHORITY TO USE AND, IF
12 APPROPRIATE, TO MAKE PUBLIC, IF CONSISTENT WITH SECTION
13 10-3-414, ANY FINAL OR PRELIMINARY EXAMINATION REPORT, ANY
14 EXAMINER OR COMPANY WORKPAPERS OR OTHER DOCUMENTS, OR ANY
15 OTHER INFORMATION DISCOVERED OR DEVELOPED DURING THE COURSE OF
16 ANY EXAMINATION IN THE FURTHERANCE OF ANY LEGAL OR REGULATORY
17 ACTION WHICH THE COMMISSIONER MAY, IN THE COMMISSIONER'S SOLE
18 DISCRETION, DEEM APPROPRIATE.

19 (9) THE COSTS OF EXAMINATIONS OF FOREIGN COMPANIES MADE
20 OUTSIDE THE BORDERS OF THIS STATE AND OF EXECUTIVE OR BRANCH
21 OFFICES OF DOMESTIC COMPANIES LOCATED OUTSIDE THE BORDERS OF
22 THIS STATE SHALL BE PAID BY THE COMPANY EXAMINED AND SHALL
23 INCLUDE THE EXPENSES OF THE COMMISSIONER AND THE
24 COMMISSIONER'S ASSISTANTS, WHO SHALL BE PAID THE SAME
25 COMPENSATION AS OTHER EXAMINERS ON SUCH EXAMINATIONS. WHEN
26 INSURANCE COMPANIES NOT ADMITTED TO DO BUSINESS IN THIS STATE,

1 COMPANIES ADJUDGED INSOLVENT, OR COMPANIES FOR ANY CAUSE
2 WITHDRAWING FROM THE STATE NEGLECT, FAIL, OR REFUSE TO PAY THE
3 CHARGES FOR EXAMINATION AS APPROVED BY THE COMMISSIONER, SUCH
4 CHARGES SHALL BE PAID BY THE STATE TREASURER FROM THE GENERAL
5 FUND UPON THE ORDER OF THE COMMISSIONER, AND THE AMOUNT SO
6 PAID SHALL BE A FIRST LIEN UPON ALL ASSETS AND PROPERTY OF
7 SUCH COMPANY AND MAY BE RECOVERED BY SUIT BY THE ATTORNEY
8 GENERAL ON BEHALF OF THE STATE OF COLORADO AND RESTORED TO THE
9 GENERAL FUND.

10 (10) THE COMMISSIONER MAY ALSO EXAMINE A COMPANY UPON
11 THE REQUEST OF FIVE OR MORE OF THE COMPANY'S POLICYHOLDERS
12 REPRESENTING AT LEAST ONE HUNDRED THOUSAND DOLLARS' WORTH OF
13 INSURANCE IN FORCE, WHO SHALL MAKE AFFIDAVIT OF THEIR BELIEF,
14 WITH SPECIFICATIONS OF THEIR REASONS THEREFOR IN WRITING, THAT
15 SUCH COMPANY IS IN AN UNSOUND OR INSOLVENT CONDITION; BUT ONLY
16 THE UNITED STATES BRANCHES OF COMPANIES INCORPORATED IN
17 FOREIGN COUNTRIES SHALL BE EXAMINED BY THE COMMISSIONER.

18 10-1-205. Examination reports. (1) EXAMINATION REPORTS
19 SHALL COMPRISE ONLY FACTS APPEARING UPON THE BOOKS, RECORDS,
20 OR OTHER DOCUMENTS OF THE COMPANY, ITS AGENTS OR OTHER PERSONS
21 EXAMINED, OR AS ASCERTAINED FROM THE TESTIMONY OF ITS OFFICERS
22 OR AGENTS OR OTHER PERSONS EXAMINED CONCERNING ITS AFFAIRS,
23 AND SUCH CONCLUSIONS AND RECOMMENDATIONS AS THE EXAMINERS FIND
24 REASONABLY WARRANTED BASED UPON THE FACTS.

25 (2) NO LATER THAN SIXTY DAYS AFTER COMPLETION OF THE
26 EXAMINATION, THE EXAMINER IN CHARGE SHALL FILE WITH THE

1 DIVISION A VERIFIED WRITTEN REPORT OF EXAMINATION UNDER OATH.
2 UPON RECEIPT OF THE VERIFIED REPORT, THE DIVISION SHALL
3 TRANSMIT TO THE COMPANY EXAMINED BOTH THE REPORT AND A NOTICE
4 WHICH SHALL AFFORD THE COMPANY EXAMINED A REASONABLE
5 OPPORTUNITY OF NOT MORE THAN THIRTY DAYS TO MAKE A WRITTEN
6 SUBMISSION OR REBUTTAL WITH RESPECT TO ANY MATTERS CONTAINED
7 IN THE EXAMINATION REPORT.

8 (3) WITHIN THIRTY DAYS AFTER THE END OF THE PERIOD
9 ALLOWED FOR THE RECEIPT OF WRITTEN SUBMISSIONS OR REBUTTALS,
10 THE COMMISSIONER SHALL FULLY CONSIDER AND REVIEW THE REPORT,
11 ANY WRITTEN SUBMISSIONS OR REBUTTALS, AND ANY RELEVANT
12 PORTIONS OF THE EXAMINER'S WORKPAPERS AND SHALL ENTER AN ORDER
13 WHICH:

14 (a) ADOPTS THE EXAMINATION REPORT AS FILED OR WITH
15 SPECIFIED MODIFICATIONS OR CORRECTIONS; AND IF THE EXAMINATION
16 REPORT REVEALS THAT THE COMPANY IS OPERATING IN VIOLATION OF
17 ANY LAW, REGULATION, OR PRIOR ORDER OF THE COMMISSIONER, THE
18 COMMISSIONER MAY ORDER THE COMPANY TO TAKE ANY ACTION THE
19 COMMISSIONER CONSIDERS NECESSARY AND APPROPRIATE TO CURE SUCH
20 VIOLATION; OR

21 (b) REJECTS THE EXAMINATION REPORT AND DIRECTS THE
22 EXAMINERS TO REOPEN THE EXAMINATION FOR PURPOSES OF OBTAINING
23 ADDITIONAL DATA, DOCUMENTATION, OR INFORMATION AND TO REFILE
24 THE REPORT PURSUANT TO SUBSECTION (1) OF THIS SECTION; OR

25 (c) CALLS FOR AN INVESTIGATORY HEARING, UPON NO LESS
26 THAN TWENTY DAYS' NOTICE TO THE COMPANY, FOR PURPOSES OF

1 OBTAINING ADDITIONAL DOCUMENTATION, DATA, INFORMATION, AND
2 TESTIMONY.

3 (4) (a) ALL ORDERS ENTERED PURSUANT TO PARAGRAPH
4 (a) OF SUBSECTION (3) OF THIS SECTION SHALL BE ACCOMPANIED
5 BY FINDINGS AND CONCLUSIONS RESULTING FROM THE COMMISSIONER'S
6 CONSIDERATION AND REVIEW OF THE EXAMINATION REPORT, RELEVANT
7 EXAMINER WORKPAPERS, AND ANY WRITTEN SUBMISSIONS OR REBUTTALS.
8 ANY SUCH ORDER SHALL BE CONSIDERED A FINAL AGENCY DECISION AND
9 SHALL BE SERVED UPON THE COMPANY BY CERTIFIED MAIL TOGETHER
10 WITH A COPY OF THE ADOPTED EXAMINATION REPORT. REVIEW OF SUCH
11 DECISION MAY BE SOUGHT IN THE DISTRICT COURT IN AND FOR THE
12 CITY AND COUNTY OF DENVER AND SHALL BE GOVERNED BY THE "STATE
13 ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24, C.R.S.
14 WITHIN THIRTY DAYS OF THE ISSUANCE OF THE ADOPTED REPORT, THE
15 COMPANY SHALL FILE AFFIDAVITS EXECUTED BY EACH OF ITS
16 DIRECTORS STATING UNDER OATH THAT THEY HAVE RECEIVED A COPY OF
17 THE ADOPTED REPORT AND RELATED ORDERS.

18 (b) ANY HEARING CONDUCTED UNDER PARAGRAPH (c) OF
19 SUBSECTION (3) OF THIS SECTION BY THE COMMISSIONER OR AN
20 AUTHORIZED REPRESENTATIVE SHALL BE CONDUCTED AS A
21 NONADVERSARIAL, CONFIDENTIAL, INVESTIGATORY PROCEEDING AS
22 NECESSARY FOR THE RESOLUTION OF ANY INCONSISTENCIES,
23 DISCREPANCIES, OR DISPUTED ISSUES APPARENT UPON THE FACE OF
24 THE FILED EXAMINATION REPORT OR RAISED BY OR AS A RESULT OF
25 THE COMMISSIONER'S REVIEW OF RELEVANT WORKPAPERS OR BY THE
26 WRITTEN SUBMISSION OR REBUTTAL OF THE COMPANY. SUCH HEARING

1 SHALL NOT BE SUBJECT TO THE "STATE ADMINISTRATIVE PROCEDURE
 2 ACT", ARTICLE 4 OF TITLE 24, C.R.S. WITHIN TWENTY DAYS AFTER
 3 THE CONCLUSION OF ANY SUCH HEARING, THE COMMISSIONER SHALL
 4 ENTER AN ORDER PURSUANT TO PARAGRAPH (a) OF SUBSECTION
 5 (3) OF THIS SECTION.

6 (c) THE COMMISSIONER SHALL NOT APPOINT AN EXAMINER AS AN
 7 AUTHORIZED REPRESENTATIVE TO CONDUCT THE HEARING. THE HEARING
 8 SHALL PROCEED EXPEDITIOUSLY WITH DISCOVERY BY THE COMPANY
 9 LIMITED TO THE EXAMINER'S WORKPAPERS WHICH TEND TO
 10 SUBSTANTIATE ANY ASSERTIONS SET FORTH IN ANY WRITTEN
 11 SUBMISSION OR REBUTTAL. THE COMMISSIONER OR REPRESENTATIVE MAY
 12 ISSUE SUBPOENAS FOR THE ATTENDANCE OF ANY WITNESSES OR THE
 13 PRODUCTION OF ANY DOCUMENTS DEEMED RELEVANT TO THE
 14 INVESTIGATION, WHETHER UNDER THE CONTROL OF THE DIVISION, THE
 15 COMPANY, OR OTHER PERSONS. THE DOCUMENTS PRODUCED SHALL BE
 16 INCLUDED IN THE RECORD. TESTIMONY TAKEN BY THE COMMISSIONER OR
 17 REPRESENTATIVE SHALL BE UNDER OATH AND PRESERVED FOR THE
 18 RECORD.

19 (d) THE HEARING SHALL PROCEED WITH THE COMMISSIONER OR
 20 REPRESENTATIVE POSING QUESTIONS TO THE PERSONS SUBPOENAED.
 21 THEREAFTER THE COMPANY AND THE DIVISION MAY PRESENT TESTIMONY
 22 RELEVANT TO THE INVESTIGATION. CROSS-EXAMINATION SHALL BE
 23 CONDUCTED ONLY BY THE COMMISSIONER OR REPRESENTATIVE. THE
 24 COMPANY AND THE DIVISION SHALL BE PERMITTED TO MAKE CLOSING
 25 STATEMENTS AND MAY BE REPRESENTED BY COUNSEL OF THEIR CHOICE.

26 (5) UPON THE ADOPTION OF THE EXAMINATION REPORT PURSUANT

1 TO PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION, THE
 2 COMMISSIONER SHALL CONTINUE, FOR AT LEAST THIRTY DAYS, TO HOLD
 3 THE CONTENT OF THE EXAMINATION REPORT AS PRIVATE AND
 4 CONFIDENTIAL INFORMATION EXCEPT TO THE EXTENT PROVIDED IN
 5 SUBSECTION (2) OF THIS SECTION. THEREAFTER, THE COMMISSIONER
 6 MAY OPEN THE REPORT FOR PUBLIC INSPECTION UNLESS A COURT OF
 7 COMPETENT JURISDICTION HAS STAYED ITS PUBLICATION.

8 (6) NO PROVISION OF THIS TITLE SHALL PREVENT OR BE
 9 CONSTRUED AS PROHIBITING THE COMMISSIONER FROM DISCLOSING THE
 10 CONTENT OF AN EXAMINATION REPORT, PRELIMINARY EXAMINATION
 11 REPORT OR RESULTS, OR ANY MATTER RELATING THERETO TO THE
 12 INSURANCE DIVISION OF THIS OR ANY OTHER STATE OR COUNTRY, OR
 13 TO LAW ENFORCEMENT OFFICIALS OF THIS OR ANY OTHER STATE, OR TO
 14 ANY AGENCY OF THE FEDERAL GOVERNMENT AT ANY TIME SUBJECT TO
 15 THE WRITTEN AGREEMENT OF THE RECIPIENT TO HOLD SUCH
 16 INFORMATION CONFIDENTIAL AND TO TREAT IT IN A MANNER
 17 CONSISTENT WITH THIS PART 2.

18 (7) IN THE EVENT THE COMMISSIONER DETERMINES THAT
 19 REGULATORY ACTION IS APPROPRIATE AS A RESULT OF ANY
 20 EXAMINATION, THE COMMISSIONER MAY INITIATE ANY PROCEEDINGS OR
 21 ACTIONS AS PROVIDED BY LAW.

22 (8) Confidentiality of ancillary information. ALL
 23 WORKING PAPERS, RECORDED INFORMATION, DOCUMENTS, AND COPIES
 24 THEREOF WHICH ARE PRODUCED OR OBTAINED BY OR DISCLOSED TO THE
 25 COMMISSIONER OR ANY OTHER PERSON IN THE COURSE OF AN
 26 EXAMINATION MADE UNDER THIS PART 2 SHALL BE GIVEN CONFIDENTIAL

1 TREATMENT, ARE NOT SUBJECT TO SUBPOENA, AND MAY NOT BE MADE
 2 PUBLIC BY THE COMMISSIONER OR ANY OTHER PERSON EXCEPT TO THE
 3 EXTENT PROVIDED IN SUBSECTION (5) OF THIS SECTION; EXCEPT
 4 THAT ACCESS TO SUCH MATERIALS MAY BE GRANTED TO THE NATIONAL
 5 ASSOCIATION OF INSURANCE COMMISSIONERS. DISCLOSURE OF THE SAID
 6 MATERIALS SHALL BE MADE ONLY UPON THE PRIOR WRITTEN AGREEMENT
 7 OF THE RECIPIENT TO HOLD SUCH INFORMATION CONFIDENTIAL AS
 8 REQUIRED BY THIS SECTION OR UPON THE PRIOR WRITTEN CONSENT OF
 9 THE COMPANY TO WHICH IT PERTAINS.

10 10-1-206. Conflict of interest. (1) NO EXAMINER MAY BE
 11 APPOINTED BY THE COMMISSIONER IF SUCH EXAMINER, EITHER
 12 DIRECTLY OR INDIRECTLY, HAS A CONFLICT OF INTEREST OR IS
 13 AFFILIATED WITH THE MANAGEMENT OF OR OWNS A PECUNIARY INTEREST
 14 IN ANY PERSON SUBJECT TO EXAMINATION UNDER THIS PART 2; EXCEPT
 15 THAT THIS SECTION SHALL NOT BE CONSTRUED TO AUTOMATICALLY
 16 PRECLUDE AN EXAMINER FROM BEING:

17 (a) A POLICYHOLDER OR CLAIMANT UNDER AN INSURANCE
 18 POLICY;

19 (b) A GRANTOR OF A MORTGAGE OR SIMILAR INSTRUMENT ON THE
 20 EXAMINER'S RESIDENCE TO A REGULATED ENTITY IF DONE UNDER
 21 CUSTOMARY TERMS AND IN THE ORDINARY COURSE OF BUSINESS;

22 (c) AN INVESTMENT OWNER IN SHARES OF REGULATED
 23 DIVERSIFIED INVESTMENT COMPANIES; OR

24 (d) A SETTLOR OR BENEFICIARY OF A "BLIND TRUST" INTO
 25 WHICH ANY OTHERWISE IMPERMISSIBLE HOLDINGS HAVE BEEN PLACED.

26 (2) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE

1 CONTRARY, THE COMMISSIONER MAY RETAIN FROM TIME TO TIME, ON AN
 2 INDIVIDUAL BASIS, QUALIFIED ACTUARIES, CERTIFIED PUBLIC
 3 ACCOUNTANTS, OR OTHER SIMILAR INDIVIDUALS WHO ARE
 4 INDEPENDENTLY PRACTICING THEIR PROFESSIONS EVEN THOUGH SAID
 5 PERSONS MAY FROM TIME TO TIME BE SIMILARLY EMPLOYED OR
 6 RETAINED BY PERSONS SUBJECT TO EXAMINATION UNDER THIS PART 2.

7 10-1-207. Immunity from liability. (1) NO CAUSE OF
 8 ACTION SHALL ARISE, NOR SHALL ANY LIABILITY BE IMPOSED,
 9 AGAINST THE COMMISSIONER, THE COMMISSIONER'S AUTHORIZED
 10 REPRESENTATIVES, OR ANY EXAMINER APPOINTED BY THE COMMISSIONER
 11 FOR ANY STATEMENTS MADE OR CONDUCT PERFORMED IN GOOD FAITH
 12 WHILE CARRYING OUT THE PROVISIONS OF THIS PART 2.

13 (2) NO CAUSE OF ACTION SHALL ARISE, NOR SHALL ANY
 14 LIABILITY BE IMPOSED, AGAINST ANY PERSON FOR THE ACT OF
 15 COMMUNICATING OR DELIVERING INFORMATION OR DATA TO THE
 16 COMMISSIONER OR THE COMMISSIONER'S AUTHORIZED REPRESENTATIVE
 17 OR EXAMINER PURSUANT TO AN EXAMINATION MADE UNDER THIS PART 2,
 18 IF SUCH ACT OF COMMUNICATION OR DELIVERY WAS PERFORMED IN GOOD
 19 FAITH AND WITHOUT FRAUDULENT INTENT OR THE INTENT TO DECEIVE.

20 (3) THIS SECTION DOES NOT ABROGATE OR MODIFY IN ANY WAY
 21 ANY COMMON-LAW OR STATUTORY PRIVILEGE OR IMMUNITY HERETOFORE
 22 ENJOYED BY ANY PERSON IDENTIFIED IN SUBSECTION (1) OF THIS
 23 SECTION.

24 (4) A PERSON IDENTIFIED IN SUBSECTION (1) OF THIS
 25 SECTION SHALL BE ENTITLED TO AN AWARD OF ATTORNEY'S FEES AND
 26 COSTS IF SUCH PERSON IS THE PREVAILING PARTY IN A CIVIL ACTION

1 FOR LIBEL, SLANDER, OR ANY OTHER RELEVANT TORT ARISING OUT OF
2 ACTIVITIES IN CARRYING OUT THE PROVISIONS OF THIS PART 2 AND
3 THE PARTY BRINGING THE ACTION WAS NOT SUBSTANTIALLY JUSTIFIED
4 IN DOING SO. FOR PURPOSES OF THIS SECTION, A PROCEEDING IS
5 "SUBSTANTIALLY JUSTIFIED" IF IT HAD A REASONABLE BASIS IN LAW
6 OR FACT AT THE TIME THAT IT WAS INITIATED.

7 SECTION 3. 10-3-102 (3), Colorado Revised Statutes, 1987
8 Repl. Vol., is amended to read:

9 10-3-102. Purpose of organization or admittance. (3) No
10 foreign, alien, or domestic insurance company, excluding life
11 insurance companies and title insurance companies, shall
12 expose itself to loss in an amount exceeding ten percent of
13 its paid-up capital or guaranty fund and surplus on any one
14 risk or hazard, unless the same is reinsured in some other
15 ~~good-and-responsible-company~~ COMPLIANCE WITH OTHER APPLICABLE
16 LAWS AND REGULATIONS.

17 SECTION 4. 10-3-119, Colorado Revised Statutes, 1987
18 Repl. Vol., is repealed as follows:

19 10-3-119. Application for receivership. ~~No application~~
20 ~~or proceeding for a receivership of any domestic insurance~~
21 ~~company shall be made in any court in this state by any~~
22 ~~person, nor shall any court receive or entertain any such~~
23 ~~application or proceeding unless and until such application is~~
24 ~~approved by the commissioner, and then such application shall~~
25 ~~be made only by the attorney general of the state; but the~~
26 ~~commissioner shall not give his approval until after the~~

1 ~~examination and hearing by him and the attorney general, which~~
2 ~~shall not be made public, at which the company affected shall~~
3 ~~be given ample opportunity to submit the facts as to its~~
4 ~~condition. Any person who violates any provisions of this~~
5 ~~section is guilty of a misdemeanor and, upon conviction~~
6 ~~thereof, shall be punished by a fine of not less than one~~
7 ~~thousand dollars, or by imprisonment in the county jail for~~
8 ~~not less than one month nor more than one year, or by both~~
9 ~~such fine and imprisonment.~~

10 SECTION 5. 10-3-401, Colorado Revised Statutes, 1987
11 Repl. Vol., is amended to read:

12 10-3-401. Legislative declaration. (1) The purpose of
13 this part 4 is to make available to the commissioner
14 supplemental remedial authority in instances of insurance
15 company delinquencies of various kinds and degrees which
16 demand regulation and control by the commissioner in order to
17 effectuate his responsibility that the business of insurance
18 in this state is conducted according to law and his
19 responsibility to protect the policyholders and public of this
20 state. Most delinquencies are of such a kind or degree as to
21 not justify the imposing of the remedy or sanction of loss of
22 certificate or of receivership REHABILITATION OR LIQUIDATION
23 by court order. Either of the remedies of loss of certificate
24 or of receivership REHABILITATION OR LIQUIDATION by court
25 order would in many instances defeat any realistic opportunity
26 to rehabilitate the delinquent company. Such remedies are

1 likely to destroy or diminish one or more of the following
2 values or assets: The value of the insurance account or
3 in-force business of the insurer; the value of the insurer as
4 a going concern; the value of its agency force; and the value
5 of other of its assets.

6 (2) ~~Under this part 4, the commissioner is provided with~~
7 ~~varying degrees of control of an insurance company to~~
8 ~~correspond with varying degrees and kinds of delinquency.~~ The
9 remedial steps provided by this part 4 are provided with the
10 purpose in mind that insurance companies committing or
11 suffering a delinquency be rehabilitated where and whenever
12 possible with no loss of public confidence in the companies,
13 and thus avoid the loss of a certificate of or the institution
14 of receivership REHABILITATION OR LIQUIDATION proceedings, BY
15 COURT ORDER, against any insurance company, where possible.
16 Furthermore, the remedial steps provided in this part 4 are
17 provided to protect the assets of an insurer pending
18 determination of whether or not the insurer can be
19 successfully rehabilitated. In instances where receivership
20 and REHABILITATION OR liquidation BY COURT ORDER are
21 inevitable, it is nevertheless the purpose of this part 4 to
22 allow preliminary or emergency supervision to prevent a
23 dissipation of assets from taking place, and thus benefit the
24 policyholders of the company. In such an instance, this part
25 4 shall operate in conjunction with part 5 of this article.

26 SECTION 6. 10-3-402, Colorado Revised Statutes, 1987

1 Repl. Vol., is amended to read:
2 10-3-402. Definitions. All terms defined in section
3 10-1-102 shall have the same meaning in this part 4. As used
4 in this part 4, unless the context otherwise requires:

5 (1) ~~"Conservatorship" means the assumption of managerial~~
6 ~~direction and control of an insurance company by order of the~~
7 ~~commissioner, with the authority to act for and on behalf of~~
8 ~~the company. The term specifically excludes any such~~
9 ~~managerial control or direction by order of a court or any~~
10 ~~other individual or body otherwise empowered to give such an~~
11 ~~order; it further excludes any assumption of direction of an~~
12 ~~insurance company of a lesser degree than managerial direction~~
13 ~~and control, although such assumption is taken by order of the~~
14 ~~commissioner.~~

15 (2) "Delinquency" means any act, omission, or condition,
16 or combination thereof, which is contrary to the applicable
17 laws of this state or any other state, including any
18 regulation lawfully promulgated by the commissioner of
19 insurance of any state or any other person or state agency
20 having supervision of the business of insurance. It includes,
21 but is not limited to, any such act, omission, or condition,
22 or combination thereof, committed or created by or under the
23 direction or authority of any insurance company or any officer
24 or representative thereof. Specifically, it includes any act,
25 omission, or condition, or combination thereof, which,
26 although not otherwise proscribed by law, nevertheless renders

1 the operation of the insurance company hazardous to the public
2 or its policyholders.

3 (3) "Direct supervision" means the institution of
4 control of an insurance company by order of the commissioner
5 whereby one or more specifically enumerated acts shall be
6 required of the company by order of the commissioner, or one
7 or more specifically enumerated acts or decisions of the
8 company shall not be permitted without prior written approval
9 of the commissioner. IN ADDITION, SUCH TERM INCLUDES THE
10 POWER TO TAKE ALL STEPS NECESSARY TO PRESERVE, PROTECT, AND
11 RECOVER AN INSURANCE COMPANY'S ASSETS AS SET FORTH IN SECTION
12 10-3-405 (2). It is a condition of control beyond normal
13 regulation by the division of insurance and beyond the
14 notifying of an insurance company of a determination of
15 delinquency by the commissioner and supplying the company a
16 list of requirements to abate the condition. ~~Direct~~
17 ~~supervision--falls-short-of-conservatorship-as-defined-in-this~~
18 ~~part-4.~~

19 (4) "Rehabilitation" means OR "TO REHABILITATE" REFERS
20 TO THE removal of an existing delinquency and restoration of
21 the company to a condition of compliance with the law.

22 SECTION 7. 10-3-405, Colorado Revised Statutes, 1987
23 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to
24 read:

25 10-3-405. Direct supervision. (1) Any insurance company
26 placed under direct supervision shall remain under direct

1 supervision until all delinquencies are remedied, or until the
2 commissioner deems such direct supervision no longer is
3 necessary or desirable. During the period of direct
4 supervision, the commissioner may appoint a supervisor other
5 than himself to supervise the company and may provide that the
6 company may not take any of the following actions without
7 prior approval in writing of the commissioner or his duly
8 appointed supervisor:

9 (a) Dispose of, convey, or encumber any of its assets or
10 its business in force;

11 (b) Withdraw any of its bank accounts;

12 (c) Lend any of its funds;

13 (d) Invest any of its property;

14 (e) Transfer any of its property;

15 (f) Incur any debt, obligation, or liability;

16 (g) Merge or consolidate with another company;

17 (h) Enter into any new reinsurance contract or treaty.

18 (2) IN ADDITION TO THE POWER TO REQUIRE PRIOR WRITTEN
19 APPROVAL OF ANY OF THE ACTIONS SET FORTH IN SUBSECTION (1) OF
20 THIS SECTION, THE COMMISSIONER OR THE COMMISSIONER'S DULY
21 APPOINTED SUPERVISOR MAY TAKE ANY FURTHER STEPS NECESSARY TO
22 PRESERVE, PROTECT, AND RECOVER ANY ASSETS OR PROPERTY OF AN
23 INSURANCE COMPANY UNDER DIRECT SUPERVISION.

24 SECTION 8. 10-3-408, Colorado Revised Statutes, 1987
25 Repl. Vol., is repealed as follows:

26 10-3-408. Conservatorship. ~~{1}--At--any--time--after--a~~

1 determination-of-delinquency-has-been-made-by-the-commissioner
 2 and-while-such-delinquency-exists,-the-commissioner-may
 3 appoint-a-conservator-by-his-order,-who-shall-immediately-take
 4 charge-of-such-insurance-company-suffering-or-committing-the
 5 delinquency,-The-conservator-shall-take-charge-of-all
 6 property-of-the-company,-and-all-books-and-records-thereof,
 7 and-take-such-steps-towards-the-removal-of-the-causes-and
 8 conditions-which-necessitated-the-order-of-conservatorship-as
 9 the-commissioner-may-direct,-During-the-conservatorship,-the
 10 conservator-shall-make-such-reports-to-the-commissioner-from
 11 time-to-time-as-may-be-required-by-the-commissioner,-and-is
 12 empowered-to-take-all-necessary-measures-to-preserve,-protect,
 13 and-recover-any-assets-or-property-of-such-insurance-company,
 14 including-claims-or-causes-of-action-belonging-to-or-which-may
 15 be-asserted-by-such-insurance-company,-and-may-deal-with-the
 16 same-in-his-own-name-as-conservator,-and-is-empowered-to-file,
 17 prosecute,-and-defend-any-suit-filed-by-or-against-such
 18 insurance-company-which-is-deemed-by-the-conservator-to-be
 19 necessary-to-protect-all-of-the-interested-parties-or-any
 20 property-affected.

21 (2)-If,-at-the-time-of-appointment-of-a-conservator-or
 22 at-any-time-during-the-conservatorship,-it-appears-that-the
 23 interest-of-the-policyholders-or-certificate-holders-of-such
 24 insurance-company-can-best-be-protected-by-reinsuring-the
 25 same,-the-conservator-may,-with-the-approval-or-at-the
 26 direction-of-the-commissioner,-Reinsure-less-than-all-of-such

1 insurance-company's-policies-or-certificates-of-insurance-as
 2 may-be-necessary-to-relieve-such-delinquency-with-some-solvent
 3 insurance-company-authorized-to-transact-business-in-this
 4 state;-and,-to-the-extent-that-such-insurance-company-in
 5 conservatorship-is-possessed-of-reserves-attributable-to-such
 6 policies-or-certificates-of-insurance,-the-conservator-may
 7 transfer-to-the-reinsuring-company-such-reserves-or-any
 8 portion-thereof-as-may-be-required-to-consummate-the
 9 reinsurance-of-such-policies,-and-any-such-reserves-so
 10 transferred-shall-not-be-deemed-a-preference-of-creditors.

11 (3)-The-commissioner,-or-his-duly-appointed-deputy,-may
 12 be-appointed-to-serve-as-the-conservator.

13 SECTION 9. 10-3-409, Colorado Revised Statutes, 1987
 14 Repl. Vol., is repealed as follows:

15 10-3-409. Protest of order of conservatorship. In-the
 16 event-the-delinquent-insurance-company-protests-the-order-of
 17 conservatorship-or-the-determination-of-delinquency
 18 predicated-such-order,-the-commissioner-shall-stay-his-order
 19 or-determination-and-give-the-insurance-company-not-less-than
 20 fifteen-days-to-show-cause,-at-a-hearing-conducted-by-the
 21 commissioner,-why-such-a-determination-or-order-should-not-be
 22 made,-In-case-of-emergency,-the-commissioner-may-allow-his
 23 determination-or-order-to-stand-until-the-insurance-company,
 24 under-the-show-cause-order-or-at-the-hearing,-gives-sufficient
 25 proof-that-the-commissioner's-determination-or-order-was
 26 erroneous-or-unnecessary.

-21-

BUSINESS AFFAIRS BILL A

1 SECTION 10. 10-3-410, Colorado Revised Statutes, 1987
2 Repl. Vol., is repealed as follows:

3 10-3-410. Costs of conservatorship. ~~The--costs--incident~~
4 ~~to--the-conservator's-service-shall-be-fixed-and-determined-by~~
5 ~~the-commissioner-and-shall-be-a-charge-against-the-assets--and~~
6 ~~funds--of-the-insurance-company,-to-be-allowed-and-paid-as-the~~
7 ~~commissioner-may-determine.~~

8 SECTION 11. 10-3-411, Colorado Revised Statutes, 1987
9 Repl. Vol., is amended to read:

10 10-3-411. Penalties for noncompliance. Any insurance
11 company or any officer or official thereof who willfully fails
12 to comply with an order of the commissioner while such
13 insurance company is under direct supervision of the
14 commissioner ~~or---under---conservatorship~~ is guilty of a
15 misdemeanor and, upon conviction thereof, shall be punished by
16 imprisonment in the county jail for not more than two years,
17 or by a fine of not more than five thousand dollars, or by
18 both such fine and imprisonment.

19 SECTION 12. 10-3-412, Colorado Revised Statutes, 1987
20 Repl. Vol., is amended to read:

21 10-3-412. Review of action while under direct
22 supervision. At any time during the period of direct
23 supervision, ~~or--conservatorship~~ or at any time pending
24 abatement of the commissioner's determination of delinquency,
25 the insurance company may request the commissioner, or his
26 duly appointed deputy, to review an action taken or proposed

1 to be taken by the direct supervisor, ~~or--conservator,~~
2 specifying in what manner the action complained of is believed
3 not to be in the best interests of the insurance company. The
4 insurance company shall be entitled to a hearing on such a
5 request, if desired by the company.

6 SECTION 13. The introductory portion to 10-3-413 (1),
7 Colorado Revised Statutes, 1987 Repl. Vol., is amended to
8 read:

9 10-3-413. Appeal from a final determination or order of
10 the commissioner. (1) Upon exhausting all means of
11 administrative appeal provided in this part 4, or in case the
12 commissioner, under section 10-3-406, ~~or-10-3-409,~~ refuses to
13 stay his order or determination pending the show cause order
14 and hearing, the insurance company aggrieved by such
15 determination or order may avail itself of the following
16 procedure of appeal and none other:

17 SECTION 14. Part 5 of article 3 of title 10, Colorado
18 Revised Statutes, 1987 Repl. Vol., as amended, is REPEALED AND
19 REENACTED, WITH AMENDMENTS, to read:

PART 5

INSURERS' REHABILITATION AND LIQUIDATION

22 10-3-501. Legislative declaration - intents and
23 purposes. (1) THIS PART 5 SHALL NOT BE INTERPRETED TO LIMIT
24 THE POWERS GRANTED THE COMMISSIONER BY OTHER PROVISIONS OF
25 LAW.

26 (2) THIS PART 5 SHALL BE LIBERALLY CONSTRUED TO EFFECT

1 THE PURPOSE STATED IN SUBSECTION (3) OF THIS SECTION.

2 (3) THE PURPOSE OF THIS PART 5 IS TO PROTECT THE

3 INTERESTS OF INSUREDS, CLAIMANTS, CREDITORS, AND THE PUBLIC

4 GENERALLY, WITH MINIMUM INTERFERENCE WITH THE NORMAL

5 PREROGATIVES OF THE OWNERS AND MANAGERS OF INSURERS, THROUGH:

6 (a) EARLY DETECTION OF ANY POTENTIALLY DANGEROUS

7 CONDITION IN AN INSURER, AND PROMPT APPLICATION OF APPROPRIATE

8 CORRECTIVE MEASURES;

9 (b) IMPROVED METHODS FOR REHABILITATING INSURERS,

10 INVOLVING THE COOPERATION AND MANAGEMENT EXPERTISE OF THE

11 INSURANCE INDUSTRY;

12 (c) ENHANCED EFFICIENCY AND ECONOMY OF LIQUIDATION,

13 THROUGH CLARIFICATION OF THE LAW, TO MINIMIZE LEGAL

14 UNCERTAINTY AND LITIGATION;

15 (d) EQUITABLE APPORTIONMENT OF ANY UNAVOIDABLE LOSS;

16 (e) LESSENING THE PROBLEMS OF INTERSTATE REHABILITATION

17 AND LIQUIDATION OF INSURERS BY FACILITATING COOPERATION

18 BETWEEN STATES IN THE LIQUIDATION PROCESS AND BY EXTENDING THE

19 SCOPE OF PERSONAL JURISDICTION OVER DEBTORS OF INSURERS

20 OUTSIDE THIS STATE;

21 (f) REGULATION OF THE INSURANCE BUSINESS BY MEANS OF

22 LAWS RELATING TO DELINQUENCY PROCEDURES AND SUBSTANTIVE RULES

23 RELATING TO THE INSURANCE BUSINESS GENERALLY; AND

24 (g) THE PROVISION OF A COMPREHENSIVE SCHEME FOR THE

25 REHABILITATION AND LIQUIDATION OF INSURANCE COMPANIES AND

26 THOSE SUBJECT TO THIS PART 5 AS PART OF THE REGULATION OF THE

1 BUSINESS OF INSURANCE, THE INSURANCE INDUSTRY, AND INSURERS IN

2 THIS STATE.

3 (4) THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES

4 THAT PROCEEDINGS IN CASES OF INSURER INSOLVENCY AND

5 DELINQUENCY ARE AN INTEGRAL ASPECT OF THE BUSINESS OF

6 INSURANCE AND ARE OF VITAL PUBLIC INTEREST AND CONCERN.

7 10-3-502. Definitions. AS USED IN THIS PART 5, UNLESS

8 THE CONTEXT OTHERWISE REQUIRES:

9 (1) "ANCILLARY STATE" MEANS ANY STATE OTHER THAN A

10 DOMICILIARY STATE.

11 (2) "CREDITOR" MEANS A PERSON HAVING ANY CLAIM, WHETHER

12 MATURED OR UNMATURED, LIQUIDATED OR UNLIQUIDATED, SECURED OR

13 UNSECURED, FIXED OR CONTINGENT, OR ABSOLUTE.

14 (3) "DELINQUENCY PROCEEDING" MEANS ANY PROCEEDING

15 INSTITUTED AGAINST AN INSURER FOR THE PURPOSE OF LIQUIDATING,

16 REHABILITATING, REORGANIZING, OR CONSERVING SUCH INSURER.

17 (4) "DOING BUSINESS" INCLUDES ANY OF THE FOLLOWING ACTS,

18 WHETHER EFFECTED BY MAIL OR OTHERWISE:

19 (a) ISSUING OR DELIVERING CONTRACTS OF INSURANCE TO

20 PERSONS RESIDENT IN THIS STATE;

21 (b) SOLICITING APPLICATIONS FOR SUCH CONTRACTS, OR OTHER

22 NEGOTIATIONS PRELIMINARY TO THE EXECUTION OF SUCH CONTRACTS;

23 (c) COLLECTING PREMIUMS, MEMBERSHIP FEES, ASSESSMENTS,

24 OR OTHER CONSIDERATION FOR SUCH CONTRACTS;

25 (d) TRANSACTING MATTERS SUBSEQUENT TO EXECUTION OF SUCH

26 CONTRACTS AND ARISING OUT OF THEM; OR

1 (e) OPERATING UNDER A LICENSE OR CERTIFICATE OF
2 AUTHORITY, AS AN INSURER, ISSUED BY THE COMMISSIONER OR THE
3 INSURANCE DEPARTMENT OF ANY STATE OTHER THAN COLORADO.

4 (5) "DOMICILIARY STATE" MEANS THE STATE IN WHICH AN
5 INSURER IS INCORPORATED OR ORGANIZED, OR, IN THE CASE OF AN
6 ALIEN INSURER, ITS STATE OF ENTRY.

7 (6) "FAIR CONSIDERATION" IS GIVEN FOR PROPERTY OR AN
8 OBLIGATION WHEN:

9 (a) IN EXCHANGE FOR SUCH PROPERTY OR OBLIGATION IN GOOD
10 FAITH AND AS A FAIR EQUIVALENT THEREFOR, PROPERTY IS CONVEYED
11 OR SERVICES ARE RENDERED OR AN OBLIGATION IS INCURRED OR AN
12 ANTECEDENT DEBT IS SATISFIED; OR

13 (b) SUCH PROPERTY OR OBLIGATION IS RECEIVED IN GOOD
14 FAITH TO SECURE A PRESENT ADVANCE OR ANTECEDENT DEBT IN AN
15 AMOUNT NOT DISPROPORTIONATELY SMALL AS COMPARED TO THE VALUE
16 OF THE PROPERTY OR OBLIGATION OBTAINED.

17 (7) "FOREIGN COUNTRY" MEANS ANY OTHER JURISDICTION NOT
18 IN ANY STATE.

19 (8) "GENERAL ASSETS" MEANS ALL PROPERTY, REAL, PERSONAL,
20 OR OTHERWISE, NOT SPECIFICALLY MORTGAGED, PLEDGED, DEPOSITED,
21 OR OTHERWISE ENCUMBERED FOR THE SECURITY OR BENEFIT OF
22 SPECIFIED PERSONS OR CLASSES OF PERSONS. AS TO SPECIFICALLY
23 ENCUMBERED PROPERTY, "GENERAL ASSETS" INCLUDES ALL SUCH
24 PROPERTY OR ITS PROCEEDS IN EXCESS OF THE AMOUNT NECESSARY TO
25 DISCHARGE THE SUM OR SUMS SECURED THEREBY. ASSETS HELD IN
26 TRUST AND ON DEPOSIT FOR THE SECURITY OR BENEFIT OF ALL

1 POLICYHOLDERS OR ALL POLICYHOLDERS AND CREDITORS, IN MORE THAN
2 A SINGLE STATE, SHALL BE TREATED AS GENERAL ASSETS.

3 (9) "GUARANTY ASSOCIATION" MEANS THE COLORADO INSURANCE
4 GUARANTY ASSOCIATION CREATED IN PART 5 OF ARTICLE 4 OF THIS
5 TITLE, THE LIFE AND HEALTH INSURANCE PROTECTION ASSOCIATION
6 CREATED IN ARTICLE 20 OF THIS TITLE, AND ANY OTHER SIMILAR
7 ENTITY NOW OR HEREAFTER CREATED BY THIS STATE FOR THE PAYMENT
8 OF CLAIMS OF INSOLVENT INSURERS. "FOREIGN GUARANTY
9 ASSOCIATION" MEANS ANY SIMILAR ENTITY NOW IN EXISTENCE IN, OR
10 HEREAFTER CREATED BY, ANY OTHER STATE.

11 (10) "INSOLVENCY" OR "INSOLVENT" MEANS:

12 (a) FOR AN INSURER ISSUING ONLY ASSESSABLE FIRE
13 INSURANCE POLICIES:

14 (I) THE INABILITY TO PAY ANY OBLIGATION WITHIN THIRTY
15 DAYS AFTER THE OBLIGATION BECOMES PAYABLE; OR

16 (II) IF AN ASSESSMENT IS MADE WITHIN THIRTY DAYS AFTER
17 THE DATE THE OBLIGATION BECOMES PAYABLE, THE INABILITY TO PAY
18 SUCH OBLIGATION THIRTY DAYS FOLLOWING THE DATE SPECIFIED IN
19 THE FIRST ASSESSMENT NOTICE ISSUED AFTER THE DATE OF LOSS.

20 (b) FOR ANY OTHER INSURER, THAT IT IS UNABLE TO PAY ITS
21 OBLIGATIONS WHEN THEY ARE DUE, OR THAT IT IS DEEMED INSOLVENT
22 PURSUANT TO SECTION 10-3-212.

23 (11) "INSURANCE DEPARTMENT" MEANS THE COMMISSIONER OR
24 OTHER GOVERNMENT OFFICIAL OR AGENCY OF A STATE OTHER THAN
25 COLORADO EXERCISING POWERS AND DUTIES SUBSTANTIALLY EQUIVALENT
26 TO THOSE OF THE COMMISSIONER OR THE DIVISION.

1 (12) "INSURER" MEANS ANY PERSON WHO HAS DONE, PURPORTS
 2 TO DO, IS DOING, OR IS LICENSED TO DO AN INSURANCE BUSINESS,
 3 AND IS OR HAS BEEN SUBJECT TO THE AUTHORITY OF, OR TO
 4 LIQUIDATION, REHABILITATION, REORGANIZATION, SUPERVISION, OR
 5 CONSERVATION BY, THE COMMISSIONER OR ANY INSURANCE DEPARTMENT.
 6 IN ADDITION, FOR PURPOSES OF THIS PART 5, ANY OTHER PERSONS
 7 INCLUDED UNDER SECTION 10-3-503 SHALL BE DEEMED TO BE
 8 INSURERS.

9 (13) "PREFERRED CLAIM" MEANS ANY CLAIM WITH RESPECT TO
 10 WHICH THE TERMS OF THIS PART 5 ACCORD PRIORITY OF PAYMENT FROM
 11 THE GENERAL ASSETS OF THE INSURER.

12 (14) "RECEIVER" MEANS A RECEIVER, LIQUIDATOR,
 13 REHABILITATOR, OR CONSERVATOR.

14 (15) "RECIPROCAL STATE" MEANS ANY STATE OTHER THAN THIS
 15 STATE IN WHICH, IN SUBSTANCE AND EFFECT, SECTIONS 10-3-517
 16 (1), 10-3-551, 10-3-552, 10-3-554, 10-3-555 AND 10-3-556 ARE
 17 IN FORCE, AND IN WHICH PROVISIONS ARE IN FORCE REQUIRING THAT
 18 THE COMMISSIONER OR EQUIVALENT OFFICIAL BE THE RECEIVER OF A
 19 DELINQUENT INSURER, AND IN WHICH SOME PROVISION EXISTS FOR THE
 20 AVOIDANCE OF FRAUDULENT CONVEYANCES AND PREFERENTIAL
 21 TRANSFERS.

22 (16) "SECURED CLAIM" MEANS ANY CLAIM SECURED BY
 23 MORTGAGE, TRUST DEED, PLEDGE, DEPOSIT AS SECURITY, ESCROW, OR
 24 OTHERWISE, BUT NOT INCLUDING SPECIAL DEPOSIT CLAIMS OR CLAIMS
 25 AGAINST GENERAL ASSETS. THE TERM ALSO INCLUDES CLAIMS WHICH
 26 HAVE BECOME LIENS UPON SPECIFIC ASSETS BY REASON OF JUDICIAL

1 PROCESS.

2 (17) "SPECIAL DEPOSIT CLAIM" MEANS ANY CLAIM SECURED BY
 3 A DEPOSIT MADE PURSUANT TO STATUTE FOR THE SECURITY OR BENEFIT
 4 OF A LIMITED CLASS OR CLASSES OF PERSONS, BUT NOT INCLUDING
 5 ANY CLAIM SECURED BY GENERAL ASSETS.

6 (18) "STATE" MEANS ANY STATE, DISTRICT, OR TERRITORY OF
 7 THE UNITED STATES AND THE PANAMA CANAL ZONE.

8 (19) "TRANSFER" INCLUDES THE SALE AND ANY OTHER OR
 9 DIFFERENT MODE, DIRECT OR INDIRECT, OF DISPOSING OF OR PARTING
 10 WITH PROPERTY OR ANY INTEREST THEREIN, OR WITH THE POSSESSION
 11 THEREOF, OR OF FIXING A LIEN UPON PROPERTY OR UPON ANY
 12 INTEREST THEREIN, ABSOLUTELY OR CONDITIONALLY, VOLUNTARILY,
 13 EITHER BY OR WITHOUT JUDICIAL PROCEEDINGS. THE RETENTION OF A
 14 SECURITY TITLE TO PROPERTY DELIVERED TO A DEBTOR SHALL BE
 15 DEEMED A TRANSFER SUFFERED BY THE DEBTOR.

16 10-3-503. Persons covered. (1) THE PROCEEDINGS
 17 AUTHORIZED BY THIS PART 5 MAY BE APPLIED TO:

18 (a) ALL INSURERS WHO ARE DOING, OR HAVE DONE, AN
 19 INSURANCE BUSINESS IN THIS STATE AND AGAINST WHOM CLAIMS
 20 ARISING FROM THAT BUSINESS MAY EXIST NOW OR IN THE FUTURE;

21 (b) ALL INSURERS WHO PURPORT TO DO AN INSURANCE BUSINESS
 22 IN THIS STATE;

23 (c) ALL INSURERS WHO HAVE INSUREDS RESIDENT IN THIS
 24 STATE;

25 (d) ALL OTHER PERSONS ORGANIZED OR IN THE PROCESS OF
 26 ORGANIZING WITH THE INTENT TO DO AN INSURANCE BUSINESS IN THIS

1 STATE;

2 (e) ALL FRATERNAL BENEFIT SOCIETIES AND BENEFICIAL
3 SOCIETIES SUBJECT TO ARTICLE 14 OF THIS TITLE;

4 (f) ALL TITLE INSURANCE COMPANIES SUBJECT TO THE "TITLE
5 INSURANCE CODE OF COLORADO", ARTICLE 11 OF THIS TITLE;

6 (g) ALL HEALTH CARE PLANS SUBJECT TO THE "PREPAID DENTAL
7 CARE PLAN LAW OF COLORADO", ARTICLE 16.5 OF THIS TITLE, OR THE
8 "COLORADO HEALTH MAINTENANCE ORGANIZATION ACT", ARTICLE 17 OF
9 THIS TITLE; AND

10 (h) ALL EMPLOYERS' SELF-INSURANCE POOLS CREATED PURSUANT
11 TO SECTION 8-44-205, C.R.S.

12 10-3-504. Jurisdiction and venue. (1) NO DELINQUENCY
13 PROCEEDING SHALL BE COMMENCED UNDER THIS PART 5 BY ANYONE
14 OTHER THAN THE COMMISSIONER, AND NO COURT SHALL HAVE
15 JURISDICTION TO ENTERTAIN, HEAR, OR DETERMINE ANY PROCEEDING
16 COMMENCED BY ANY OTHER PERSON.

17 (2) THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF
18 DENVER SHALL HAVE JURISDICTION TO ENTERTAIN, HEAR, OR
19 DETERMINE ANY COMPLAINT PRAYING FOR THE DISSOLUTION,
20 LIQUIDATION, REHABILITATION, SEQUESTRATION, CONSERVATION, OR
21 RECEIVERSHIP OF ANY INSURER, OR PRAYING FOR AN INJUNCTION OR
22 RESTRAINING ORDER OR OTHER RELIEF PRELIMINARY TO, INCIDENTAL
23 TO, OR RELATING TO SUCH PROCEEDINGS OTHER THAN IN ACCORDANCE
24 WITH THIS PART 5.

25 (3) IN ADDITION TO OTHER GROUNDS FOR JURISDICTION
26 PROVIDED BY LAW, THE DISTRICT COURT IN AND FOR THE CITY AND

1 COUNTY OF DENVER HAS JURISDICTION OVER A PERSON SERVED
2 PURSUANT TO THE RULES OF CIVIL PROCEDURE OR OTHER APPLICABLE
3 PROVISIONS OF LAW IN AN ACTION BROUGHT BY THE RECEIVER OF A
4 DOMESTIC INSURER OR AN ALIEN INSURER DOMICILED IN THIS STATE
5 IF:

6 (a) THE PERSON SERVED IS AN AGENT, BROKER, OR OTHER
7 PERSON WHO HAS AT ANY TIME WRITTEN POLICIES OF INSURANCE FOR
8 OR HAS ACTED IN ANY MANNER WHATSOEVER ON BEHALF OF AN INSURER
9 AGAINST WHICH A DELINQUENCY PROCEEDING HAS BEEN INSTITUTED IN
10 ANY ACTION RESULTING FROM OR INCIDENT TO SUCH A RELATIONSHIP
11 WITH THE INSURER; OR

12 (b) THE PERSON SERVED IS A REINSURER WHO HAS AT ANY TIME
13 ENTERED INTO A CONTRACT OF REINSURANCE WITH AN INSURER AGAINST
14 WHICH A DELINQUENCY PROCEEDING HAS BEEN INSTITUTED, OR IS AN
15 AGENT OR BROKER OF OR FOR THE REINSURER, IN ANY ACTION ON OR
16 INCIDENT TO THE REINSURANCE CONTRACT; OR

17 (c) THE PERSON SERVED IS OR HAS BEEN AN OFFICER,
18 DIRECTOR, MANAGER, TRUSTEE, ORGANIZER, PROMOTER, OR OTHER
19 PERSON IN A POSITION OF COMPARABLE AUTHORITY OR INFLUENCE OVER
20 AN INSURER AGAINST WHICH A DELINQUENCY PROCEEDING HAS BEEN
21 INSTITUTED, IN ANY ACTION RESULTING FROM OR INCIDENT TO SUCH A
22 RELATIONSHIP WITH THE INSURER; OR

23 (d) THE PERSON SERVED IS OR WAS AT THE TIME OF THE
24 INSTITUTION OF THE DELINQUENCY PROCEEDING AGAINST THE INSURER
25 HOLDING ASSETS IN WHICH THE RECEIVER CLAIMS AN INTEREST ON
26 BEHALF OF THE INSURER, IN ANY ACTION CONCERNING SUCH ASSETS;

1 OR
2 (e) THE PERSON SERVED IS OBLIGATED TO THE INSURER IN ANY
3 WAY WHATSOEVER, IN ANY ACTION ON OR INCIDENT TO THE
4 OBLIGATION.

5 (4) IF THE COURT ON MOTION OF ANY PARTY FINDS THAT ANY
6 ACTION SHOULD AS A MATTER OF SUBSTANTIAL JUSTICE BE TRIED IN A
7 FORUM OUTSIDE THIS STATE, THE COURT MAY ENTER AN APPROPRIATE
8 ORDER TO STAY FURTHER PROCEEDINGS ON THE ACTION IN THIS STATE.

9 (5) ALL ACTIONS AUTHORIZED PURSUANT TO THIS PART 5 SHALL
10 BE BROUGHT IN THE DISTRICT COURT IN AND FOR THE CITY AND
11 COUNTY OF DENVER.

12 10-3-504.5. Application for receivership. NO APPLICATION
13 OR PROCEEDING FOR A RECEIVERSHIP OF ANY DOMESTIC INSURANCE
14 COMPANY SHALL BE MADE IN ANY COURT IN THIS STATE BY ANY
15 PERSON, NOR SHALL ANY COURT RECEIVE OR ENTERTAIN ANY SUCH
16 APPLICATION OR PROCEEDING, UNLESS AND UNTIL SUCH APPLICATION
17 IS APPROVED BY THE COMMISSIONER, AND THEN SUCH APPLICATION
18 SHALL BE MADE ONLY BY THE ATTORNEY GENERAL OF THE STATE. THE
19 COMMISSIONER SHALL NOT GIVE SAID APPROVAL UNTIL AFTER THE
20 EXAMINATION AND HEARING BY THE COMMISSIONER AND THE ATTORNEY
21 GENERAL, WHICH SHALL NOT BE MADE PUBLIC, AT WHICH THE COMPANY
22 AFFECTED SHALL BE GIVEN AMPLE OPPORTUNITY TO SUBMIT THE FACTS
23 AS TO ITS CONDITION. ANY PERSON WHO VIOLATES ANY PROVISIONS
24 OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND, UPON
25 CONVICTION THEREOF, SHALL BE PUNISHED BY A FINE OF NOT LESS
26 THAN ONE THOUSAND DOLLARS, OR BY IMPRISONMENT IN THE COUNTY

1 JAIL FOR NOT LESS THAN ONE MONTH NOR MORE THAN ONE YEAR, OR BY
2 BOTH SUCH FINE AND IMPRISONMENT.

3 10-3-505. Injunctions and orders. (1) ANY RECEIVER
4 APPOINTED IN A PROCEEDING UNDER THIS PART 5 MAY AT ANY TIME
5 APPLY FOR, AND ANY COURT OF GENERAL JURISDICTION MAY GRANT,
6 SUCH RESTRAINING ORDERS, PRELIMINARY AND PERMANENT
7 INJUNCTIONS, AND OTHER ORDERS AS MAY BE DEEMED NECESSARY AND
8 PROPER TO PREVENT:

9 (a) THE TRANSACTION OF FURTHER BUSINESS;

10 (b) THE TRANSFER OF PROPERTY;

11 (c) INTERFERENCE WITH THE RECEIVER OR WITH A PROCEEDING
12 UNDER THIS PART 5;

13 (d) WASTE OF THE INSURER'S ASSETS;

14 (e) DISSIPATION OR TRANSFER, OR BOTH, OF BANK ACCOUNTS;

15 (f) THE INSTITUTION OR FURTHER PROSECUTION OF ANY
16 ACTIONS OR PROCEEDINGS;

17 (g) THE OBTAINING OF PREFERENCES, JUDGMENTS,
18 ATTACHMENTS, GARNISHMENTS, OR LIENS AGAINST THE INSURER, ITS
19 ASSETS, OR ITS POLICYHOLDERS;

20 (h) THE LEVYING OF EXECUTION AGAINST THE INSURER, ITS
21 ASSETS, OR ITS POLICYHOLDERS;

22 (i) THE MAKING OF ANY SALE OR DEED FOR NONPAYMENT OF
23 TAXES OR ASSESSMENTS THAT WOULD TEND TO LESSEN THE VALUE OF
24 THE ASSETS OF THE INSURER;

25 (j) THE WITHHOLDING FROM THE RECEIVER OF BOOKS,
26 ACCOUNTS, DOCUMENTS, OR OTHER RECORDS RELATING TO THE BUSINESS

1 OF THE INSURER; OR

2 (k) ANY OTHER THREATENED OR CONTEMPLATED ACTION THAT

3 MIGHT TEND TO LESSEN THE VALUE OF THE INSURER'S ASSETS OR

4 PREJUDICE THE RIGHTS OF POLICYHOLDERS, CREDITORS, OR

5 SHAREHOLDERS OR THE ADMINISTRATION OF ANY PROCEEDING UNDER

6 THIS PART 5.

7 (2) THE RECEIVER MAY, IF NECESSARY, APPLY TO ANY COURT

8 OUTSIDE OF THE STATE FOR THE RELIEF DESCRIBED IN SUBSECTION

9 (1) OF THIS SECTION.

10 10-3-506. Cooperation of officers, owners, and

11 employees. (1) ANY OFFICER, MANAGER, DIRECTOR, TRUSTEE,

12 OWNER, EMPLOYEE, OR AGENT OF ANY INSURER, OR ANY OTHER PERSON

13 WITH AUTHORITY OVER OR IN CHARGE OF ANY SEGMENT OF THE

14 INSURER'S AFFAIRS, SHALL COOPERATE WITH THE COMMISSIONER IN

15 ANY PROCEEDING UNDER THIS PART 5 OR ANY INVESTIGATION

16 PRELIMINARY TO THE PROCEEDING. THE TERM "PERSON" AS USED IN

17 THIS SECTION SHALL INCLUDE ANY PERSON WHO EXERCISES CONTROL

18 DIRECTLY OR INDIRECTLY OVER ACTIVITIES OF THE INSURER THROUGH

19 ANY HOLDING COMPANY OR OTHER AFFILIATE OF THE INSURER. "TO

20 COOPERATE" SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, THE

21 FOLLOWING:

22 (a) TO REPLY PROMPTLY IN WRITING TO ANY INQUIRY FROM THE

23 COMMISSIONER REQUESTING SUCH A REPLY; AND

24 (b) TO MAKE AVAILABLE TO THE COMMISSIONER ANY BOOKS,

25 ACCOUNTS, DOCUMENTS, OR OTHER RECORDS OR INFORMATION OR

26 PROPERTY OF OR PERTAINING TO THE INSURER AND IN THE PERSON'S

1 POSSESSION, CUSTODY, OR CONTROL.

2 (2) NO PERSON SHALL OBSTRUCT OR INTERFERE WITH THE

3 COMMISSIONER IN THE CONDUCT OF ANY DELINQUENCY PROCEEDING OR

4 ANY INVESTIGATION PRELIMINARY OR INCIDENTAL THERETO.

5 (3) THIS SECTION SHALL NOT BE CONSTRUED TO ABRIDGE

6 OTHERWISE EXISTING LEGAL RIGHTS, INCLUDING THE RIGHT TO RESIST

7 A PETITION FOR LIQUIDATION OR OTHER DELINQUENCY PROCEEDINGS OR

8 OTHER ORDERS.

9 (4) ANY PERSON INCLUDED WITHIN SUBSECTION (1) OF THIS

10 SECTION WHO FAILS TO COOPERATE WITH THE COMMISSIONER, OR ANY

11 PERSON WHO OBSTRUCTS OR INTERFERES WITH THE COMMISSIONER IN

12 THE CONDUCT OF ANY DELINQUENCY PROCEEDING OR ANY INVESTIGATION

13 PRELIMINARY OR INCIDENTAL THERETO, OR WHO VIOLATES ANY VALID

14 ORDER OF THE COMMISSIONER ISSUED PURSUANT TO THIS PART 5 MAY:

15 (a) BE SUBJECT TO A FINE NOT TO EXCEED TEN THOUSAND

16 DOLLARS OR TO IMPRISONMENT FOR A TERM OF NOT MORE THAN ONE

17 YEAR, OR BOTH; OR

18 (b) AFTER A HEARING, BE SUBJECT TO THE IMPOSITION BY THE

19 COMMISSIONER OF A CIVIL PENALTY NOT TO EXCEED TEN THOUSAND

20 DOLLARS OR TO THE REVOCATION OR SUSPENSION OF ANY INSURANCE

21 LICENSES ISSUED BY THE COMMISSIONER, OR TO BOTH SUCH CIVIL

22 PENALTY AND SUCH REVOCATION OR SUSPENSION.

23 10-3-507. Continuation of delinquency proceedings. EVERY

24 PROCEEDING COMMENCED PRIOR TO JULY 1, 1992, SHALL BE DEEMED TO

25 HAVE BEEN COMMENCED UNDER THIS PART 5 FOR THE PURPOSE OF

26 CONDUCTING THE PROCEEDING THEREAFTER; EXCEPT THAT, IN THE

1 DISCRETION OF THE COMMISSIONER, THE PROCEEDING MAY BE
2 CONTINUED, IN WHOLE OR IN PART, AS IT WOULD HAVE BEEN
3 CONTINUED HAD THIS PART 5 NOT BEEN ENACTED.

4 10-3-508. Condition on release from delinquency
5 proceedings. (i) NO INSURER SUBJECT TO ANY DELINQUENCY
6 PROCEEDINGS, WHETHER FORMAL, INFORMAL, ADMINISTRATIVE, OR
7 JUDICIAL, SHALL:

8 (a) BE RELEASED FROM SUCH PROCEEDING, UNLESS SUCH
9 PROCEEDING IS CONVERTED INTO A JUDICIAL REHABILITATION OR
10 LIQUIDATION PROCEEDING;

11 (b) BE PERMITTED TO SOLICIT OR ACCEPT NEW BUSINESS OR
12 REQUEST OR ACCEPT THE RESTORATION OF ANY SUSPENDED OR REVOKED
13 LICENSE OR CERTIFICATE OF AUTHORITY;

14 (c) BE RETURNED TO THE CONTROL OF ITS SHAREHOLDERS OR
15 PRIVATE MANAGEMENT; OR

16 (d) HAVE ANY OF ITS ASSETS RETURNED TO THE CONTROL OF
17 ITS SHAREHOLDERS OR PRIVATE MANAGEMENT UNTIL ALL PAYMENTS OF
18 OR ON ACCOUNT OF THE INSURER'S CONTRACTUAL OBLIGATIONS BY ALL
19 GUARANTY ASSOCIATIONS, ALONG WITH ALL EXPENSES THEREOF AND
20 INTEREST ON ALL SUCH PAYMENTS AND EXPENSES, SHALL HAVE BEEN
21 REPAYED TO THE GUARANTY ASSOCIATIONS OR A PLAN OF REPAYMENT BY
22 THE INSURER SHALL HAVE BEEN APPROVED BY THE GUARANTY
23 ASSOCIATION.

24 10-3-509. Court's seizure order. (1) THE COMMISSIONER
25 MAY FILE IN THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY
26 OF DENVER A PETITION ALLEGING, WITH RESPECT TO A DOMESTIC

1 INSURER:

2 (a) THAT THERE EXISTS ANY FACT OR CIRCUMSTANCE THAT
3 WOULD JUSTIFY A COURT ORDER FOR A FORMAL DELINQUENCY
4 PROCEEDING AGAINST AN INSURER UNDER THIS PART 5;

5 (b) THAT THE INTERESTS OF POLICYHOLDERS, CREDITORS, OR
6 THE PUBLIC WILL BE ENDANGERED BY DELAY; AND

7 (c) THAT AN ORDER, THE CONTENTS OF WHICH SHALL BE
8 FURNISHED TO THE COURT BY THE COMMISSIONER, IS NECESSARY TO
9 PROTECT THE INTERESTS OF POLICYHOLDERS, CREDITORS, OR THE
10 PUBLIC.

11 (2) UPON A FILING PURSUANT TO SUBSECTION (1) OF THIS
12 SECTION, THE COURT MAY ISSUE FORTHWITH, EX PARTE, AND WITHOUT
13 A HEARING, THE REQUESTED ORDER WHICH SHALL DIRECT THE
14 COMMISSIONER TO TAKE POSSESSION AND CONTROL OF ALL OR A PART
15 OF THE PROPERTY, BOOKS, ACCOUNTS, DOCUMENTS, AND OTHER RECORDS
16 OF AN INSURER, AND OF THE PREMISES OCCUPIED BY THE INSURER FOR
17 TRANSACTION OF ITS BUSINESS, AND SHALL UNTIL FURTHER ORDER OF
18 THE COURT ENJOIN THE INSURER AND ITS OFFICERS, MANAGERS,
19 AGENTS, AND EMPLOYEES FROM DISPOSITION OF ITS PROPERTY AND
20 FROM THE TRANSACTION OF ITS BUSINESS EXCEPT WITH THE WRITTEN
21 CONSENT OF THE COMMISSIONER.

22 (3) THE COURT SHALL SPECIFY IN THE ORDER WHAT ITS
23 DURATION SHALL BE, WHICH SHALL BE SUCH TIME AS THE COURT DEEMS
24 NECESSARY FOR THE COMMISSIONER TO ASCERTAIN THE CONDITION OF
25 THE INSURER. ON MOTION OF EITHER PARTY OR ON ITS OWN MOTION,
26 THE COURT MAY FROM TIME TO TIME HOLD SUCH HEARINGS AS IT DEEMS

1 DESIRABLE AFTER SUCH NOTICE AS IT DEEMS APPROPRIATE, AND MAY
2 EXTEND, SHORTEN, OR MODIFY THE TERMS OF THE SEIZURE ORDER. THE
3 COURT SHALL VACATE THE SEIZURE ORDER IF THE COMMISSIONER FAILS
4 TO COMMENCE A FORMAL PROCEEDING UNDER THIS PART 5 AFTER HAVING
5 HAD A REASONABLE OPPORTUNITY TO DO SO. AN ORDER OF THE COURT
6 PURSUANT TO A FORMAL PROCEEDING UNDER THIS PART 5 SHALL IPSO
7 FACTO VACATE THE SEIZURE ORDER. FOR PURPOSES OF THIS SECTION,
8 A "FORMAL PROCEEDING" MEANS ANY LIQUIDATION OR REHABILITATION
9 PROCEEDING.

10 (4) ENTRY OF A SEIZURE ORDER UNDER THIS SECTION SHALL
11 NOT CONSTITUTE AN ANTICIPATORY BREACH OF ANY CONTRACT OF THE
12 INSURER.

13 (5) AN INSURER SUBJECT TO AN EX PARTE ORDER UNDER THIS
14 SECTION MAY PETITION THE COURT AT ANY TIME AFTER THE ISSUANCE
15 OF SUCH ORDER FOR A HEARING AND REVIEW OF THE ORDER. THE COURT
16 SHALL HOLD SUCH A HEARING AND REVIEW NOT MORE THAN FIFTEEN
17 DAYS AFTER THE REQUEST. A HEARING UNDER THIS SUBSECTION (5)
18 MAY BE HELD PRIVATELY IN CHAMBERS AND IT SHALL BE SO HELD IF
19 THE INSURER PROCEEDED AGAINST SO REQUESTS.

20 (6) IF, AT ANY TIME AFTER THE ISSUANCE OF SUCH AN ORDER,
21 IT APPEARS TO THE COURT THAT ANY PERSON WHOSE INTEREST IS OR
22 WILL BE SUBSTANTIALLY AFFECTED BY THE ORDER DID NOT APPEAR AT
23 THE HEARING AND HAS NOT BEEN SERVED, THE COURT MAY ORDER THAT
24 NOTICE BE GIVEN TO SUCH PERSON. AN ORDER THAT NOTICE BE GIVEN
25 SHALL NOT STAY THE EFFECT OF ANY ORDER PREVIOUSLY ISSUED BY
26 THE COURT.

1 10-3-510. Confidentiality of hearings. IN ALL
2 PROCEEDINGS AND JUDICIAL REVIEWS THEREOF UNDER SECTION
3 10-3-509, ALL RECORDS OF THE INSURER, OTHER DOCUMENTS, AND ALL
4 DIVISION FILES AND COURT RECORDS AND PAPERS, SO FAR AS THEY
5 PERTAIN TO OR ARE A PART OF THE RECORD OF THE PROCEEDINGS,
6 SHALL BE AND REMAIN CONFIDENTIAL EXCEPT AS IS NECESSARY TO
7 OBTAIN COMPLIANCE THEREWITH, UNLESS AND UNTIL THE COURT, AFTER
8 HEARING ARGUMENTS FROM THE PARTIES IN CHAMBERS, SHALL ORDER
9 OTHERWISE OR UNLESS THE INSURER REQUESTS THAT THE MATTER BE
10 MADE PUBLIC. UNTIL SUCH COURT ORDER, ALL PAPERS FILED WITH THE
11 CLERK OF THE COURT SHALL BE HELD IN A CONFIDENTIAL FILE.

12 10-3-511. Grounds for rehabilitation. (1) THE
13 COMMISSIONER MAY APPLY BY PETITION TO THE DISTRICT COURT IN
14 AND FOR THE CITY AND COUNTY OF DENVER FOR AN ORDER AUTHORIZING
15 THE COMMISSIONER TO REHABILITATE A DOMESTIC INSURER OR AN
16 ALIEN INSURER DOMICILED IN THIS STATE ON ANY ONE OR MORE OF
17 THE FOLLOWING GROUNDS:

18 (a) THE INSURER IS IN SUCH CONDITION THAT THE FURTHER
19 TRANSACTION OF BUSINESS WOULD BE HAZARDOUS FINANCIALLY TO ITS
20 POLICYHOLDERS OR CREDITORS OR TO THE PUBLIC.

21 (b) THERE IS REASONABLE CAUSE TO BELIEVE THAT THERE HAS
22 BEEN EMBEZZLEMENT FROM THE INSURER, WRONGFUL SEQUESTRATION OR
23 DIVERSION OF THE INSURER'S ASSETS, FORGERY OR FRAUD AFFECTING
24 THE INSURER, OR OTHER ILLEGAL CONDUCT IN, BY, OR WITH RESPECT
25 TO THE INSURER THAT IF ESTABLISHED WOULD ENDANGER ASSETS IN AN
26 AMOUNT THREATENING THE SOLVENCY OF THE INSURER.

1 (c) THE INSURER HAS FAILED TO REMOVE ANY PERSON WHO IN
2 FACT HAS EXECUTIVE AUTHORITY IN THE INSURER, WHETHER SUCH
3 PERSON IS AN OFFICER, MANAGER, GENERAL AGENT, EMPLOYEE, OR
4 OTHER PERSON, IF THE PERSON HAS BEEN FOUND AFTER NOTICE AND
5 HEARING BY THE COMMISSIONER TO BE DISHONEST OR UNTRUSTWORTHY
6 IN A WAY AFFECTING THE INSURER'S BUSINESS.

7 (d) CONTROL OF THE INSURER, WHETHER BY STOCK OWNERSHIP
8 OR OTHERWISE, AND WHETHER DIRECT OR INDIRECT, IS IN A PERSON
9 OR PERSONS FOUND AFTER NOTICE AND HEARING TO BE UNTRUSTWORTHY.

10 (e) ANY PERSON WHO IN FACT HAS EXECUTIVE AUTHORITY IN
11 THE INSURER, WHETHER AN OFFICER, MANAGER, GENERAL AGENT,
12 DIRECTOR OR TRUSTEE, EMPLOYEE, OR OTHER PERSON, HAS REFUSED TO
13 BE EXAMINED UNDER OATH BY THE COMMISSIONER CONCERNING THE
14 INSURER'S AFFAIRS, WHETHER IN THIS STATE OR ELSEWHERE, AND
15 AFTER REASONABLE NOTICE OF THE FACT, THE INSURER HAS FAILED
16 PROMPTLY AND EFFECTIVELY TO TERMINATE THE EMPLOYMENT AND
17 STATUS OF THE PERSON AND ALL OF SUCH PERSON'S INFLUENCE ON
18 MANAGEMENT.

19 (f) AFTER DEMAND BY THE COMMISSIONER UNDER SECTION
20 10-1-204 OR UNDER THIS PART 5, THE INSURER HAS FAILED TO
21 PROMPTLY MAKE AVAILABLE FOR EXAMINATION ANY OF ITS OWN
22 PROPERTY, BOOKS, ACCOUNTS, DOCUMENTS, OR OTHER RECORDS, OR
23 THOSE OF ANY SUBSIDIARY OR RELATED COMPANY WITHIN THE CONTROL
24 OF THE INSURER, OR THOSE OF ANY PERSON HAVING EXECUTIVE
25 AUTHORITY IN THE INSURER INSOFAR AS THEY PERTAIN TO THE
26 INSURER.

1 (g) WITHOUT FIRST OBTAINING THE WRITTEN CONSENT OF THE
2 COMMISSIONER, THE INSURER HAS TRANSFERRED, OR ATTEMPTED TO
3 TRANSFER, IN A MANNER CONTRARY TO PART 7 OR 8 OF THIS ARTICLE,
4 SUBSTANTIALLY ITS ENTIRE PROPERTY OR BUSINESS, OR HAS ENTERED
5 INTO ANY TRANSACTION THE EFFECT OF WHICH IS TO MERGE,
6 CONSOLIDATE, OR REINSURE SUBSTANTIALLY ITS ENTIRE PROPERTY OR
7 BUSINESS IN OR WITH THE PROPERTY OR BUSINESS OF ANY OTHER
8 PERSON.

9 (h) THE INSURER OR ITS PROPERTY HAS BEEN OR IS THE
10 SUBJECT OF AN APPLICATION FOR THE APPOINTMENT OF A RECEIVER,
11 TRUSTEE, CUSTODIAN, CONSERVATOR, SEQUESTRATOR, OR SIMILAR
12 FIDUCIARY OF THE INSURER OR ITS PROPERTY OTHERWISE THAN AS
13 AUTHORIZED UNDER THE INSURANCE LAWS OF THIS STATE, AND SUCH
14 APPOINTMENT HAS BEEN MADE OR IS IMMINENT, AND SUCH APPOINTMENT
15 MIGHT OUST THE COURTS OF THIS STATE OF JURISDICTION OR MIGHT
16 PREJUDICE THE ORDERLY CONDUCT OF DELINQUENCY PROCEEDINGS
17 PURSUANT TO THIS PART 5.

18 (i) THE INSURER HAS WILLFULLY VIOLATED ITS CHARTER OR
19 ARTICLES OF INCORPORATION, ITS BYLAWS, ANY INSURANCE LAW OF
20 THIS STATE, OR ANY VALID ORDER OF THE COMMISSIONER.

21 (j) THE INSURER HAS FAILED TO PAY WITHIN THIRTY DAYS
22 AFTER THE DUE DATE ANY OBLIGATION TO ANY STATE OR ANY
23 SUBDIVISION THEREOF OR ANY JUDGMENT ENTERED IN ANY STATE, IF
24 THE COURT IN WHICH SUCH JUDGMENT WAS ENTERED HAD JURISDICTION
25 OVER SUCH SUBJECT MATTER; EXCEPT THAT SUCH NONPAYMENT SHALL
26 NOT BE A GROUND FOR REHABILITATION UNTIL THIRTY DAYS AFTER THE

1 TERMINATION OF ANY GOOD-FAITH EFFORT BY THE INSURER TO CONTEST
2 THE OBLIGATION, WHETHER SUCH EFFORT IS MADE BEFORE THE
3 COMMISSIONER OR IN THE COURTS, OR THE INSURER HAS
4 SYSTEMATICALLY ATTEMPTED TO COMPROMISE OR RENEGOTIATE
5 PREVIOUSLY AGREED SETTLEMENTS WITH ITS CREDITORS ON THE GROUND
6 THAT IT IS FINANCIALLY UNABLE TO PAY ITS OBLIGATIONS IN FULL.

7 (k) THE INSURER HAS FAILED TO FILE ITS ANNUAL REPORT OR
8 OTHER FINANCIAL REPORT REQUIRED BY STATUTE WITHIN THE TIME
9 ALLOWED BY LAW AND, AFTER WRITTEN DEMAND BY THE COMMISSIONER,
10 HAS FAILED TO GIVE AN ADEQUATE EXPLANATION FOR SUCH FAILURE
11 IMMEDIATELY.

12 (1) THE BOARD OF DIRECTORS OF, OR THE HOLDERS OF A
13 MAJORITY OF THE SHARES ENTITLED TO VOTE IN, OR A MAJORITY OF
14 THOSE INDIVIDUALS ENTITLED TO THE CONTROL OF, THOSE ENTITIES
15 SPECIFIED IN SECTION 10-3-503 REQUEST OR CONSENT TO
16 REHABILITATION UNDER THIS PART 5.

17 (m) THE INSURER IS IMPAIRED AS DEFINED IN SECTION
18 10-3-212.

19 10-3-512. Rehabilitation orders. (1) AN ORDER TO
20 REHABILITATE THE BUSINESS OF A DOMESTIC INSURER OR AN ALIEN
21 INSURER DOMICILED IN THIS STATE SHALL APPOINT THE COMMISSIONER
22 AS THE REHABILITATOR AND SHALL DIRECT THE REHABILITATOR
23 FORTHWITH TO TAKE POSSESSION OF THE ASSETS OF THE INSURER AND
24 TO ADMINISTER SUCH ASSETS UNDER THE GENERAL SUPERVISION OF THE
25 COURT. THE FILING OR RECORDING OF THE ORDER WITH THE CLERK OF
26 THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER OR

1 WITH THE RECORDER OF DEEDS OF THE COUNTY IN WHICH THE
2 PRINCIPAL BUSINESS OF THE COMPANY IS CONDUCTED OR THE COUNTY
3 IN WHICH ITS PRINCIPAL OFFICE OR PLACE OF BUSINESS IS LOCATED
4 SHALL IMPART THE SAME NOTICE AS WOULD BE IMPARTED BY A DEED,
5 BILL OF SALE, OR OTHER EVIDENCE OF TITLE DULY FILED OR
6 RECORDED WITH SUCH RECORDER OF DEEDS. THE ORDER TO
7 REHABILITATE THE INSURER SHALL BY OPERATION OF LAW VEST TITLE
8 TO ALL ASSETS OF THE INSURER IN THE REHABILITATOR.

9 (2) ANY ORDER ISSUED UNDER THIS SECTION SHALL REQUIRE
10 ACCOUNTING TO THE COURT BY THE REHABILITATOR. ACCOUNTING SHALL
11 BE AT SUCH INTERVALS AS THE COURT SPECIFIES IN ITS ORDER, BUT
12 NO LESS FREQUENTLY THAN SEMIANNUALLY. EACH ACCOUNTING SHALL
13 INCLUDE A REPORT CONCERNING THE REHABILITATOR'S OPINION AS TO
14 THE LIKELIHOOD THAT A PLAN UNDER SECTION 10-3-513 (4) WILL BE
15 PREPARED BY THE REHABILITATOR AND THE TIMETABLE FOR DOING SO.

16 (3) ENTRY OF AN ORDER OF REHABILITATION SHALL NOT
17 CONSTITUTE AN ANTICIPATORY BREACH OF ANY CONTRACT OF THE
18 INSURER, NOR SHALL IT BE A BASIS FOR RETROACTIVE REVOCATION OR
19 RETROACTIVE CANCELLATION OF ANY CONTRACT OF THE INSURER,
20 UNLESS SUCH REVOCATION OR CANCELLATION IS DONE BY THE
21 REHABILITATOR PURSUANT TO SECTION 10-3-513.

22 10-3-513. Powers and duties of the rehabilitator.
23 (1) THE COMMISSIONER AS REHABILITATOR MAY APPOINT ONE OR MORE
24 SPECIAL DEPUTIES, WHO SHALL HAVE ALL THE POWERS AND
25 RESPONSIBILITIES OF THE REHABILITATOR GRANTED UNDER THIS
26 SECTION, AND THE COMMISSIONER MAY EMPLOY SUCH COUNSEL, CLERKS,

1 AND ASSISTANTS AS DEEMED NECESSARY. THE COMPENSATION OF THE
 2 SPECIAL DEPUTY, COUNSEL, CLERKS, AND ASSISTANTS AND ALL
 3 EXPENSES OF TAKING POSSESSION OF THE INSURER AND OF CONDUCTING
 4 THE PROCEEDINGS SHALL BE FIXED BY THE COMMISSIONER, SUBJECT TO
 5 THE APPROVAL OF THE COURT, AND SHALL BE PAID OUT OF THE FUNDS
 6 OR ASSETS OF THE INSURER. THE PERSONS APPOINTED UNDER THIS
 7 SECTION SHALL SERVE AT THE PLEASURE OF THE COMMISSIONER. THE
 8 COMMISSIONER, AS REHABILITATOR, MAY, WITH THE APPROVAL OF THE
 9 COURT, APPOINT AN ADVISORY COMMITTEE OF POLICYHOLDERS,
 10 CLAIMANTS, OR OTHER CREDITORS INCLUDING GUARANTY ASSOCIATIONS
 11 SHOULD SUCH A COMMITTEE BE DEEMED NECESSARY. SUCH COMMITTEE
 12 SHALL SERVE AT THE PLEASURE OF THE COMMISSIONER AND SHALL
 13 SERVE WITHOUT COMPENSATION OTHER THAN REIMBURSEMENT FOR
 14 REASONABLE TRAVEL AND PER DIEM LIVING EXPENSES. NO OTHER
 15 COMMITTEE OF ANY NATURE SHALL BE APPOINTED BY THE COMMISSIONER
 16 OR BY THE COURT IN REHABILITATION PROCEEDINGS CONDUCTED UNDER
 17 THIS PART 5.

18 (2) IN THE EVENT THAT THE PROPERTY OF THE INSURER DOES
 19 NOT CONTAIN SUFFICIENT CASH OR LIQUID ASSETS TO DEFRAY THE
 20 COSTS INCURRED, THE COMMISSIONER MAY ADVANCE THE COSTS SO
 21 INCURRED OUT OF ANY APPROPRIATION FOR THE MAINTENANCE OF THE
 22 DIVISION OF INSURANCE. ANY AMOUNTS SO ADVANCED FOR EXPENSES OF
 23 ADMINISTRATION SHALL BE REPAYED TO THE COMMISSIONER FOR THE USE
 24 OF THE DIVISION OUT OF THE FIRST AVAILABLE MONEY OF THE
 25 INSURER.

26 (3) THE REHABILITATOR MAY TAKE SUCH ACTION AS THE

1 REHABILITATOR DEEMS NECESSARY OR APPROPRIATE TO REFORM AND
 2 REVITALIZE THE INSURER, AND SHALL HAVE ALL THE POWERS OF THE
 3 INSURER'S DIRECTORS, OFFICERS, AND MANAGERS, WHOSE AUTHORITY
 4 SHALL BE SUSPENDED EXCEPT INSOFAR AS THEY ARE REDELEGATED BY
 5 THE REHABILITATOR. THE REHABILITATOR SHALL HAVE FULL POWER TO
 6 DIRECT, MANAGE, HIRE, AND DISCHARGE EMPLOYEES SUBJECT TO ANY
 7 CONTRACT RIGHTS THEY MAY HAVE, AND TO DEAL WITH THE PROPERTY
 8 AND BUSINESS OF THE INSURER.

9 (4) IF IT APPEARS TO THE REHABILITATOR THAT THERE HAS
 10 BEEN CRIMINAL OR TORTIOUS CONDUCT OR BREACH OF ANY CONTRACTUAL
 11 OR FIDUCIARY OBLIGATION DETRIMENTAL TO THE INSURER BY ANY
 12 OFFICER, MANAGER, AGENT, BROKER, EMPLOYEE, OR OTHER PERSON,
 13 THE REHABILITATOR MAY PURSUE ALL APPROPRIATE LEGAL REMEDIES ON
 14 BEHALF OF THE INSURER.

15 (5) IF THE REHABILITATOR DETERMINES THAT REORGANIZATION,
 16 CONSOLIDATION, CONVERSION, REINSURANCE, MERGER, OR OTHER
 17 TRANSFORMATION OF THE INSURER IS APPROPRIATE, THE
 18 REHABILITATOR SHALL PREPARE A PLAN TO EFFECT SUCH CHANGES.
 19 UPON APPLICATION OF THE REHABILITATOR FOR APPROVAL OF THE
 20 PLAN, AND AFTER SUCH NOTICE AND HEARINGS AS THE COURT MAY
 21 PRESCRIBE, THE COURT MAY EITHER APPROVE OR DISAPPROVE THE PLAN
 22 PROPOSED, OR MAY MODIFY IT AND APPROVE IT AS MODIFIED. ANY
 23 PLAN APPROVED UNDER THIS SECTION SHALL BE, IN THE JUDGMENT OF
 24 THE COURT, FAIR AND EQUITABLE TO ALL PARTIES CONCERNED. IF THE
 25 PLAN IS APPROVED, THE REHABILITATOR SHALL CARRY OUT THE PLAN.
 26 IN THE CASE OF A LIFE INSURER, IF ALL RIGHTS OF SHAREHOLDERS

1 ARE FIRST RELINQUISHED, THE PLAN PROPOSED MAY INCLUDE THE
2 IMPOSITION OF LIENS UPON THE POLICIES OF THE COMPANY. A PLAN
3 FOR A LIFE INSURER MAY ALSO PROPOSE IMPOSITION OF A MORATORIUM
4 UPON LOAN AND CASH SURRENDER RIGHTS UNDER POLICIES, FOR SUCH
5 PERIOD AND TO SUCH AN EXTENT AS MAY BE NECESSARY.

6 (6) THE REHABILITATOR SHALL HAVE THE POWER UNDER
7 SECTIONS 10-3-525 AND 10-3-526 TO AVOID FRAUDULENT TRANSFERS.

8 10-3-514. Actions by and against rehabilitator. (1) ANY
9 COURT IN THIS STATE BEFORE WHICH ANY ACTION OR PROCEEDING IN
10 WHICH THE INSURER IS A PARTY, OR IS OBLIGATED TO DEFEND A
11 PARTY, IS PENDING WHEN A REHABILITATION ORDER AGAINST THE
12 INSURER IS ENTERED SHALL STAY THE ACTION OR PROCEEDING FOR A
13 MINIMUM OF NINETY DAYS AND FOR SUCH ADDITIONAL TIME AS IS
14 NECESSARY FOR THE REHABILITATOR TO OBTAIN PROPER
15 REPRESENTATION AND PREPARE FOR FURTHER PROCEEDINGS. THE
16 REHABILITATOR SHALL TAKE SUCH ACTION RESPECTING THE PENDING
17 LITIGATION AS THE REHABILITATOR DEEMS NECESSARY IN THE
18 INTERESTS OF JUSTICE AND FOR THE PROTECTION OF CREDITORS,
19 POLICYHOLDERS, AND THE PUBLIC. THE REHABILITATOR SHALL
20 IMMEDIATELY CONSIDER ALL LITIGATION PENDING OUTSIDE THIS STATE
21 AND SHALL PETITION THE COURTS HAVING JURISDICTION OVER THAT
22 LITIGATION FOR STAYS WHENEVER NECESSARY TO PROTECT THE ESTATE
23 OF THE INSURER.

24 (2) NO STATUTE OF LIMITATIONS OR DEFENSE OF LACHES SHALL
25 RUN WITH RESPECT TO ANY ACTION BY OR AGAINST AN INSURER
26 BETWEEN THE FILING OF A PETITION FOR APPOINTMENT OF A

1 REHABILITATOR FOR THAT INSURER AND THE ORDER GRANTING OR
2 DENYING THAT PETITION. ANY ACTION AGAINST THE INSURER THAT
3 MIGHT HAVE BEEN COMMENCED WHEN THE PETITION WAS FILED MAY BE
4 COMMENCED WITHIN A PERIOD OF NOT LESS THAN SIXTY DAYS AFTER
5 THE ORDER OF REHABILITATION IS ENTERED OR THE PETITION IS
6 DENIED. THE REHABILITATOR MAY, UPON AN ORDER FOR
7 REHABILITATION, WITHIN ONE YEAR OR SUCH OTHER LONGER TIME AS
8 APPLICABLE LAW MAY PERMIT, INSTITUTE AN ACTION OR PROCEEDING
9 ON BEHALF OF THE INSURER UPON ANY CAUSE OF ACTION AGAINST
10 WHICH THE PERIOD OF LIMITATION FIXED BY APPLICABLE LAW HAD NOT
11 EXPIRED AT THE TIME OF THE FILING OF THE PETITION UPON WHICH
12 SUCH ORDER IS ENTERED.

13 (3) ANY GUARANTY ASSOCIATION OR FOREIGN GUARANTY
14 ASSOCIATION COVERING LIFE OR HEALTH INSURANCE OR ANNUITIES
15 SHALL HAVE STANDING TO APPEAR IN ANY COURT PROCEEDING
16 CONCERNING THE REHABILITATION OF A LIFE OR HEALTH INSURER IF
17 SUCH ASSOCIATION IS OR MAY BECOME LIABLE TO ACT AS A RESULT OF
18 THE REHABILITATION.

19 10-3-515. Termination of rehabilitation. (1) WHENEVER
20 THE COMMISSIONER BELIEVES FURTHER ATTEMPTS TO REHABILITATE AN
21 INSURER WOULD SUBSTANTIALLY INCREASE THE RISK OF LOSS TO
22 CREDITORS, POLICYHOLDERS, OR THE PUBLIC, OR WOULD BE FUTILE,
23 THE COMMISSIONER MAY PETITION THE DISTRICT COURT IN AND FOR
24 THE CITY AND COUNTY OF DENVER FOR AN ORDER OF LIQUIDATION. A
25 PETITION UNDER THIS SUBSECTION (1) SHALL HAVE THE SAME EFFECT
26 AS A PETITION UNDER SECTION 10-3-516. THE COURT SHALL PERMIT

1 THE DIRECTORS OF THE INSURER TO TAKE SUCH ACTIONS AS ARE
2 REASONABLY NECESSARY TO DEFEND AGAINST THE PETITION AND MAY
3 ORDER PAYMENT FROM THE ESTATE OF THE INSURER OF SUCH COSTS AND
4 OTHER EXPENSES OF DEFENSE AS JUSTICE MAY REQUIRE.

5 (2) THE PROTECTION OF THE INTERESTS OF INSURED,
6 CLAIMANTS, AND THE PUBLIC REQUIRES THE TIMELY PERFORMANCE OF
7 ALL INSURANCE POLICY OBLIGATIONS. IF THE PAYMENT OF AN
8 INSURER'S POLICY OBLIGATIONS IS SUSPENDED IN SUBSTANTIAL PART
9 FOR A PERIOD OF SIX MONTHS AT ANY TIME AFTER THE APPOINTMENT
10 OF THE REHABILITATOR AND THE REHABILITATOR HAS NOT FILED AN
11 APPLICATION FOR APPROVAL OF A PLAN UNDER SECTION 10-3-513 (5),
12 THE REHABILITATOR SHALL PETITION THE COURT FOR AN ORDER OF
13 LIQUIDATION ON GROUNDS OF INSOLVENCY.

14 (3) THE REHABILITATOR MAY AT ANY TIME PETITION THE
15 DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER FOR AN
16 ORDER TERMINATING REHABILITATION OF AN INSURER. THE COURT
17 SHALL ALSO PERMIT THE DIRECTORS OF THE INSURER TO PETITION THE
18 COURT FOR AN ORDER TERMINATING REHABILITATION OF THE INSURER
19 AND MAY ORDER PAYMENT FROM THE ESTATE OF THE INSURER OF SUCH
20 COSTS AND OTHER EXPENSES OF SUCH PETITION AS JUSTICE MAY
21 REQUIRE. IF THE COURT FINDS THAT REHABILITATION HAS BEEN
22 ACCOMPLISHED AND THAT GROUNDS FOR REHABILITATION UNDER SECTION
23 10-3-511 NO LONGER EXIST, IT SHALL ORDER THAT THE INSURER BE
24 RESTORED TO POSSESSION OF ITS PROPERTY AND THE CONTROL OF THE
25 BUSINESS. THE COURT MAY ALSO MAKE SUCH A FINDING AND ISSUE
26 SUCH AN ORDER AT ANY TIME UPON ITS OWN MOTION.

1 10-3-516. Grounds for liquidation. (1) THE COMMISSIONER
2 MAY PETITION THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY
3 OF DENVER FOR AN ORDER DIRECTING THE COMMISSIONER TO LIQUIDATE
4 A DOMESTIC INSURER OR AN ALIEN INSURER DOMICILED IN THIS STATE
5 ON THE BASIS:

6 (a) OF ANY GROUND FOR AN ORDER OF REHABILITATION AS
7 SPECIFIED IN SECTION 10-3-511, WHETHER OR NOT THERE HAS BEEN A
8 PRIOR ORDER DIRECTING THE REHABILITATION OF THE INSURER;

9 (b) THAT THE INSURER IS INSOLVENT; OR

10 (c) THAT THE INSURER IS IN SUCH CONDITION THAT THE
11 FURTHER TRANSACTION OF BUSINESS WOULD BE HAZARDOUS,
12 FINANCIALLY OR OTHERWISE, TO ITS POLICYHOLDERS, ITS CREDITORS,
13 OR THE PUBLIC.

14 10-3-517. Liquidation orders. (1) AN ORDER TO LIQUIDATE
15 THE BUSINESS OF A DOMESTIC INSURER SHALL APPOINT THE
16 COMMISSIONER AS LIQUIDATOR AND SHALL DIRECT THE LIQUIDATOR
17 FORTHWITH TO TAKE POSSESSION OF THE ASSETS OF THE INSURER AND
18 TO ADMINISTER THEM UNDER THE GENERAL SUPERVISION OF THE COURT.
19 THE LIQUIDATOR SHALL BE VESTED BY OPERATION OF LAW WITH TITLE
20 TO ALL OF THE PROPERTY, CONTRACTS, RIGHTS OF ACTION, AND BOOKS
21 AND RECORDS OF THE INSURER ORDERED LIQUIDATED, WHEREVER
22 LOCATED, AS OF THE ENTRY OF THE FINAL ORDER OF LIQUIDATION.
23 THE FILING OR RECORDING OF THE ORDER WITH THE CLERK OF THE
24 DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER AND
25 THE RECORDER OF DEEDS OF THE COUNTY IN WHICH ITS PRINCIPAL
26 OFFICE OR PLACE OF BUSINESS IS LOCATED OR, IN THE CASE OF REAL

1 ESTATE, WITH THE RECORDER OF DEEDS OF THE COUNTY WHERE THE
2 PROPERTY IS LOCATED, SHALL IMPART THE SAME NOTICE AS WOULD BE
3 IMPARTED BY A DEED, BILL OF SALE, OR OTHER EVIDENCE OF TITLE
4 DULY FILED OR RECORDED WITH THAT RECORDER OF DEEDS.

5 (2) UPON ISSUANCE OF THE ORDER, THE RIGHTS AND
6 LIABILITIES OF ANY SUCH INSURER AND OF ITS CREDITORS,
7 POLICYHOLDERS, SHAREHOLDERS, MEMBERS, AND ALL OTHER PERSONS
8 INTERESTED IN ITS ESTATE SHALL BECOME FIXED AS OF THE DATE OF
9 ENTRY OF THE ORDER OF LIQUIDATION EXCEPT AS PROVIDED IN
10 SECTIONS 10-3-518 AND 10-3-536.

11 (3) AN ORDER TO LIQUIDATE THE BUSINESS OF AN ALIEN
12 INSURER DOMICILED IN THIS STATE SHALL BE IN THE SAME TERMS AND
13 HAVE THE SAME LEGAL EFFECT AS AN ORDER TO LIQUIDATE A DOMESTIC
14 INSURER; EXCEPT THAT THE ASSETS AND THE BUSINESS IN THE UNITED
15 STATES SHALL BE THE ONLY ASSETS AND BUSINESS INCLUDED THEREIN.

16 (4) AT THE TIME OF PETITIONING FOR AN ORDER OF
17 LIQUIDATION OR AT ANY TIME THEREAFTER, THE COMMISSIONER, AFTER
18 MAKING APPROPRIATE FINDINGS OF AN INSURER'S INSOLVENCY, MAY
19 PETITION THE COURT FOR A JUDICIAL DECLARATION OF SUCH
20 INSOLVENCY. AFTER PROVIDING SUCH NOTICE AND HOLDING SUCH
21 HEARING AS IT DEEMS PROPER, THE COURT MAY MAKE THE
22 DECLARATION.

23 (5) ANY ORDER ISSUED UNDER THIS SECTION SHALL REQUIRE
24 FINANCIAL REPORTS TO THE COURT BY THE LIQUIDATOR. FINANCIAL
25 REPORTS SHALL INCLUDE, AT A MINIMUM, THE ASSETS AND
26 LIABILITIES OF THE INSURER AND ALL FUNDS RECEIVED OR DISBURSED

1 BY THE LIQUIDATOR DURING THE CURRENT PERIOD. FINANCIAL REPORTS
2 SHALL BE FILED WITHIN ONE YEAR OF THE LIQUIDATION ORDER AND AT
3 LEAST ANNUALLY THEREAFTER.

4 (6) WITHIN FIVE DAYS AFTER THE EFFECTIVE DATE OF THIS
5 SECTION, OR, IF LATER, WITHIN FIVE DAYS AFTER THE INITIATION
6 OF AN APPEAL OF AN ORDER OF LIQUIDATION, UNLESS SUCH ORDER HAS
7 BEEN STAYED, THE COMMISSIONER SHALL PRESENT FOR THE COURT'S
8 APPROVAL A PLAN FOR THE CONTINUED PERFORMANCE OF THE DEFENDANT
9 COMPANY'S POLICY CLAIMS OBLIGATIONS, INCLUDING THE DUTY TO
10 DEFEND INSUREDS UNDER LIABILITY INSURANCE POLICIES, DURING THE
11 PENDENCY OF THE APPEAL. SUCH PLAN SHALL PROVIDE FOR THE
12 CONTINUED PERFORMANCE AND PAYMENT OF POLICY CLAIMS OBLIGATIONS
13 IN THE NORMAL COURSE OF EVENTS, NOTWITHSTANDING THE GROUNDS
14 ALLEGED IN SUPPORT OF THE ORDER OF LIQUIDATION INCLUDING THE
15 GROUND OF INSOLVENCY. IN THE EVENT THE DEFENDANT COMPANY'S
16 FINANCIAL CONDITION WILL NOT, IN THE JUDGMENT OF THE
17 COMMISSIONER, SUPPORT THE FULL PERFORMANCE OF ALL POLICY
18 CLAIMS OBLIGATIONS DURING THE PENDENCY OF THE APPEAL, THE PLAN
19 MAY PREFER THE CLAIMS OF CERTAIN POLICYHOLDERS AND CLAIMANTS
20 OVER CREDITORS AND INTERESTED PARTIES AS WELL AS OTHER
21 POLICYHOLDERS AND CLAIMANTS, AS THE COMMISSIONER FINDS TO BE
22 FAIR AND EQUITABLE CONSIDERING THE RELATIVE CIRCUMSTANCES OF
23 SUCH POLICYHOLDERS AND CLAIMANTS. THE COURT SHALL EXAMINE THE
24 PLAN SUBMITTED BY THE COMMISSIONER AND, IF IT FINDS THE PLAN
25 TO BE IN THE BEST INTERESTS OF THE PARTIES, THE COURT SHALL
26 APPROVE THE PLAN. NO ACTION SHALL LIE AGAINST THE COMMISSIONER

1 OR ANY OF THE COMMISSIONER'S DEPUTIES, AGENTS, CLERKS,
2 ASSISTANTS, OR ATTORNEYS BY ANY PARTY BASED ON PREFERENCE IN
3 AN APPEAL PENDENCY PLAN APPROVED BY THE COURT.

4 (7) THE APPEAL PENDENCY PLAN EFFECTED PURSUANT TO
5 SUBSECTION (6) OF THIS SECTION SHALL NOT SUPERSEDE OR AFFECT
6 THE OBLIGATIONS OF ANY INSURANCE GUARANTY ASSOCIATION.

7 (8) ANY APPEAL PENDENCY PLAN EFFECTED PURSUANT TO
8 SUBSECTION (6) OF THIS SECTION SHALL PROVIDE FOR EQUITABLE
9 ADJUSTMENTS TO BE MADE BY THE LIQUIDATOR TO ANY DISTRIBUTIONS
10 OF ASSETS TO GUARANTY ASSOCIATIONS, IN THE EVENT THAT THE
11 LIQUIDATOR PAYS CLAIMS FROM ASSETS OF THE ESTATE WHICH WOULD
12 OTHERWISE BE THE OBLIGATIONS OF ANY PARTICULAR GUARANTY
13 ASSOCIATION BUT FOR THE APPEAL OF THE ORDER OF LIQUIDATION,
14 SUCH THAT ALL GUARANTY ASSOCIATIONS EQUALLY BENEFIT ON A PRO
15 RATA BASIS FROM THE ASSETS OF THE ESTATE. FURTHER, IN THE
16 EVENT AN ORDER OF LIQUIDATION IS SET ASIDE UPON ANY APPEAL,
17 THE COMPANY SHALL NOT BE RELEASED FROM DELINQUENCY PROCEEDINGS
18 UNLESS AND UNTIL ALL FUNDS ADVANCED BY ANY GUARANTY
19 ASSOCIATION, INCLUDING REASONABLE ADMINISTRATIVE EXPENSES IN
20 CONNECTION THEREWITH, RELATING TO OBLIGATIONS OF THE COMPANY
21 HAVE BEEN REPAYED IN FULL TOGETHER WITH INTEREST AT THE
22 JUDGMENT RATE OF INTEREST, OR UNLESS AN ARRANGEMENT FOR
23 REPAYMENT THEREOF HAS BEEN MADE WITH THE CONSENT OF ALL
24 APPLICABLE GUARANTY ASSOCIATIONS.

25 10-3-518. Continuation of coverage. (1) ALL POLICIES,
26 INCLUDING BONDS AND OTHER NONCANCELLABLE BUSINESS BUT NOT

1 INCLUDING LIFE OR HEALTH INSURANCE OR ANNUITIES, IN EFFECT AT
2 THE TIME OF ISSUANCE OF AN ORDER OF LIQUIDATION SHALL CONTINUE
3 IN FORCE ONLY FOR THE LESSER OF:

4 (a) A PERIOD OF THIRTY DAYS FROM THE DATE OF ENTRY OF
5 THE LIQUIDATION ORDER;

6 (b) THE EXPIRATION OF THE POLICY COVERAGE;

7 (c) THE DATE WHEN THE INSURED HAS REPLACED THE INSURANCE
8 COVERAGE WITH EQUIVALENT INSURANCE IN ANOTHER INSURER OR
9 OTHERWISE TERMINATED THE POLICY;

10 (d) THE EFFECTIVE DATE OF A TRANSFER OF THE POLICY
11 OBLIGATION BY THE LIQUIDATOR PURSUANT TO SECTION 10-3-520
12 (1) (i); OR

13 (e) THE DATE PROPOSED BY THE LIQUIDATOR AND APPROVED BY
14 THE COURT TO CANCEL COVERAGE.

15 (2) AN ORDER OF LIQUIDATION UNDER SECTION 10-3-517 SHALL
16 TERMINATE COVERAGES AT THE TIME SPECIFIED IN SUBSECTION
17 (1) OF THIS SECTION FOR PURPOSES OF ANY OTHER STATUTE.

18 (3) POLICIES OF LIFE OR HEALTH INSURANCE OR ANNUITIES
19 SHALL CONTINUE IN FORCE FOR SUCH PERIOD AND UNDER SUCH TERMS
20 AS IS PROVIDED FOR BY ANY APPLICABLE GUARANTY ASSOCIATION OR
21 FOREIGN GUARANTY ASSOCIATION.

22 (4) POLICIES OF LIFE OR HEALTH INSURANCE OR ANNUITIES OR
23 ANY PERIOD OR COVERAGE OF SUCH POLICIES NOT COVERED BY A
24 GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION SHALL
25 TERMINATE UNDER SUBSECTIONS (1) AND (2) OF THIS SECTION.

26 10-3-519. Dissolution of insurer. THE COMMISSIONER MAY

1 PETITION FOR AN ORDER DISSOLVING THE CORPORATE EXISTENCE OF A
2 DOMESTIC INSURER OR THE UNITED STATES BRANCH OF AN ALIEN
3 INSURER DOMICILED IN THIS STATE AT THE TIME THE COMMISSIONER
4 APPLIES FOR A LIQUIDATION ORDER. THE COURT SHALL ORDER
5 DISSOLUTION OF THE CORPORATION UPON PETITION BY THE
6 COMMISSIONER UPON OR AFTER THE GRANTING OF A LIQUIDATION
7 ORDER. IF THE DISSOLUTION HAS NOT PREVIOUSLY BEEN ORDERED, IT
8 SHALL BE EFFECTED BY OPERATION OF LAW UPON THE DISCHARGE OF
9 THE LIQUIDATOR IF THE INSURER IS INSOLVENT BUT MAY BE ORDERED
10 BY THE COURT UPON THE DISCHARGE OF THE LIQUIDATOR IF THE
11 INSURER IS UNDER A LIQUIDATION ORDER FOR SOME OTHER REASON.

12 10-3-520. Powers of liquidator. (1) THE LIQUIDATOR
13 SHALL HAVE THE POWER:

14 (a) TO APPOINT A SPECIAL DEPUTY OR DEPUTIES TO ACT FOR
15 THE LIQUIDATOR UNDER THIS PART 5, AND TO DETERMINE THE
16 REASONABLE COMPENSATION OF SUCH SPECIAL DEPUTY. THE SPECIAL
17 DEPUTY SHALL HAVE ALL POWERS OF THE LIQUIDATOR GRANTED BY THIS
18 SECTION. THE SPECIAL DEPUTY SHALL SERVE AT THE PLEASURE OF THE
19 LIQUIDATOR.

20 (b) TO EMPLOY EMPLOYEES, AGENTS, LEGAL COUNSEL,
21 ACTUARIES, ACCOUNTANTS, APPRAISERS, CONSULTANTS, AND SUCH
22 OTHER PERSONNEL AS THE LIQUIDATOR MAY DEEM NECESSARY TO ASSIST
23 IN THE LIQUIDATION;

24 (c) TO APPOINT, SUBJECT TO THE APPROVAL OF THE COURT, AN
25 ADVISORY COMMITTEE OF POLICYHOLDERS, CLAIMANTS, OR OTHER
26 CREDITORS INCLUDING GUARANTY ASSOCIATIONS SHOULD SUCH A

1 COMMITTEE BE DEEMED NECESSARY. SUCH COMMITTEE SHALL SERVE AT
2 THE PLEASURE OF THE COMMISSIONER AND SHALL SERVE WITHOUT
3 COMPENSATION OTHER THAN REIMBURSEMENT FOR REASONABLE TRAVEL
4 AND PER DIEM LIVING EXPENSES. NO OTHER COMMITTEE OF ANY NATURE
5 SHALL BE APPOINTED BY THE COMMISSIONER OR BY THE COURT IN
6 LIQUIDATION PROCEEDINGS CONDUCTED UNDER THIS PART 5.

7 (d) TO FIX THE REASONABLE COMPENSATION OF EMPLOYEES,
8 AGENTS, LEGAL COUNSEL, ACTUARIES, ACCOUNTANTS, APPRAISERS, AND
9 CONSULTANTS SUBJECT TO THE APPROVAL OF THE COURT;

10 (e) TO PAY REASONABLE COMPENSATION TO PERSONS APPOINTED
11 AND TO DEFRAY FROM THE FUNDS OR ASSETS OF THE INSURER ALL
12 EXPENSES OF TAKING POSSESSION OF, CONSERVING, CONDUCTING,
13 LIQUIDATING, DISPOSING OF, OR OTHERWISE DEALING WITH THE
14 BUSINESS AND PROPERTY OF THE INSURER. IN THE EVENT THAT THE
15 PROPERTY OF THE INSURER DOES NOT CONTAIN SUFFICIENT CASH OR
16 LIQUID ASSETS TO DEFRAY THE COSTS INCURRED, THE COMMISSIONER
17 MAY ADVANCE THE COSTS SO INCURRED OUT OF ANY APPROPRIATION FOR
18 THE MAINTENANCE OF THE DIVISION OF INSURANCE. ANY AMOUNTS SO
19 ADVANCED FOR EXPENSES OF ADMINISTRATION SHALL BE REPAID TO THE
20 COMMISSIONER FOR THE USE OF THE DIVISION OUT OF THE FIRST
21 AVAILABLE MONEYS OF THE INSURER.

22 (f) TO HOLD HEARINGS, SUBPOENA WITNESSES AND COMPEL
23 THEIR ATTENDANCE, ADMINISTER OATHS, EXAMINE ANY PERSON UNDER
24 OATH, AND COMPEL ANY PERSON TO SUBSCRIBE TO THE PERSON'S
25 TESTIMONY AFTER IT HAS BEEN CORRECTLY REDUCED TO WRITING; AND,
26 IN CONNECTION THEREWITH, TO REQUIRE THE PRODUCTION OF ANY

1 BOOKS, PAPERS, RECORDS, OR OTHER DOCUMENTS WHICH THE
2 LIQUIDATOR DEEMS RELEVANT TO THE INQUIRY;

3 (g) TO AUDIT THE BOOKS AND RECORDS OF ALL AGENTS OF THE
4 INSURER INSOFAR AS THOSE RECORDS RELATE TO THE BUSINESS
5 ACTIVITIES OF THE INSURER;

6 (h) TO COLLECT ALL DEBTS AND MONEYS DUE AND CLAIMS
7 BELONGING TO THE INSURER, WHEREVER LOCATED, AND FOR THIS
8 PURPOSE:

9 (I) TO INSTITUTE TIMELY ACTION IN OTHER JURISDICTIONS,
10 IN ORDER TO FORESTALL GARNISHMENT OR ATTACHMENT PROCEEDINGS
11 AGAINST SUCH DEBTS;

12 (II) TO DO SUCH OTHER ACTS AS ARE NECESSARY OR EXPEDIENT
13 TO COLLECT, CONSERVE, OR PROTECT ITS ASSETS OR PROPERTY,
14 INCLUDING THE POWER TO SELL, COMPOUND, COMPROMISE, OR ASSIGN
15 DEBTS FOR PURPOSES OF COLLECTION UPON SUCH TERMS AND
16 CONDITIONS AS THE LIQUIDATOR DEEMS BEST; AND

17 (III) TO PURSUE ANY CREDITORS' REMEDIES AVAILABLE TO
18 ENFORCE THE LIQUIDATOR'S CLAIMS;

19 (i) TO CONDUCT PUBLIC AND PRIVATE SALES OF THE PROPERTY
20 OF THE INSURER;

21 (j) TO USE ASSETS OF THE ESTATE OF AN INSURER UNDER A
22 LIQUIDATION ORDER TO TRANSFER POLICY OBLIGATIONS TO A SOLVENT
23 ASSUMING INSURER, IF THE TRANSFER CAN BE ARRANGED WITHOUT
24 PREJUDICE TO APPLICABLE PRIORITIES UNDER SECTION 10-3-541;

25 (k) TO ACQUIRE, HYPOTHECATE, ENCUMBER, LEASE, IMPROVE,
26 SELL, TRANSFER, ABANDON, OR OTHERWISE DISPOSE OF OR DEAL WITH

1 ANY PROPERTY OF THE INSURER AT ITS MARKET VALUE OR UPON SUCH
2 TERMS AND CONDITIONS AS ARE FAIR AND REASONABLE. THE
3 LIQUIDATOR SHALL ALSO HAVE POWER TO EXECUTE, ACKNOWLEDGE, AND
4 DELIVER ANY AND ALL DEEDS, ASSIGNMENTS, RELEASES, AND OTHER
5 INSTRUMENTS NECESSARY OR PROPER TO EFFECTUATE ANY SALE OF
6 PROPERTY OR OTHER TRANSACTION IN CONNECTION WITH THE
7 LIQUIDATION.

8 (l) TO BORROW MONEY ON THE SECURITY OF THE INSURER'S
9 ASSETS OR WITHOUT SECURITY AND TO EXECUTE AND DELIVER ALL
10 DOCUMENTS NECESSARY TO SUCH TRANSACTION FOR THE PURPOSE OF
11 FACILITATING THE LIQUIDATION. ANY FUNDS SO BORROWED MAY BE
12 REPAID AS AN ADMINISTRATIVE EXPENSE AND MAY BE GIVEN PRIORITY
13 OVER ANY OTHER CLAIMS IN CLASS 1 UNDER THE PRIORITY OF
14 DISTRIBUTION PURSUANT TO SECTION 10-3-541.

15 (m) TO ENTER INTO SUCH CONTRACTS AS ARE NECESSARY TO
16 CARRY OUT THE ORDER TO LIQUIDATE, AND TO AFFIRM OR DISAVOW ANY
17 CONTRACTS TO WHICH THE INSURER IS A PARTY;

18 (n) TO CONTINUE TO PROSECUTE AND TO INSTITUTE IN THE
19 NAME OF THE INSURER OR IN THE LIQUIDATOR'S OWN NAME ANY AND
20 ALL SUITS AND OTHER LEGAL PROCEEDINGS, IN THIS STATE OR
21 ELSEWHERE, AND TO ABANDON THE PROSECUTION OF CLAIMS DEEMED
22 UNPROFITABLE TO PURSUE FURTHER. IF THE INSURER IS DISSOLVED
23 UNDER SECTION 10-3-519, THE LIQUIDATOR SHALL HAVE THE POWER TO
24 APPLY TO ANY COURT IN THIS STATE OR ELSEWHERE FOR LEAVE TO BE
25 SUBSTITUTED FOR THE INSURER AS PLAINTIFF.

26 (o) TO PROSECUTE ANY ACTION WHICH MAY EXIST ON BEHALF OF

1 THE CREDITORS, MEMBERS, POLICYHOLDERS, OR SHAREHOLDERS OF THE
2 INSURER AGAINST ANY OFFICER OF THE INSURER OR ANY OTHER
3 PERSON;

4 (p) TO REMOVE ANY RECORDS AND PROPERTY OF THE INSURER TO
5 THE OFFICES OF THE COMMISSIONER OR TO SUCH OTHER PLACE AS MAY
6 BE CONVENIENT FOR THE PURPOSES OF EFFICIENT AND ORDERLY
7 EXECUTION OF THE LIQUIDATION. GUARANTY ASSOCIATIONS AND
8 FOREIGN GUARANTY ASSOCIATIONS SHALL HAVE SUCH REASONABLE
9 ACCESS TO THE RECORDS OF THE INSURER AS IS NECESSARY FOR THEM
10 TO CARRY OUT THEIR STATUTORY OBLIGATIONS.

11 (q) TO DEPOSIT IN ONE OR MORE BANKS IN THIS STATE SUCH
12 SUMS AS ARE REQUIRED TO MEET CURRENT ADMINISTRATION EXPENSES
13 AND DIVIDEND DISTRIBUTIONS;

14 (r) TO INVEST ALL SUMS NOT CURRENTLY NEEDED, UNLESS THE
15 COURT ORDERS OTHERWISE;

16 (s) TO FILE ANY NECESSARY DOCUMENTS FOR RECORD IN THE
17 OFFICE OF ANY RECORDER OF DEEDS OR RECORD OFFICE WHERE
18 PROPERTY OF THE INSURER IS LOCATED, IN THIS STATE OR
19 ELSEWHERE;

20 (t) TO ASSERT ALL DEFENSES AVAILABLE TO THE INSURER AS
21 AGAINST THIRD PERSONS, WHICH DEFENSES SHALL INCLUDE BUT NOT BE
22 LIMITED TO STATUTES OF LIMITATION, STATUTES OF FRAUDS, AND THE
23 DEFENSE OF USURY. A WAIVER OF ANY DEFENSE BY THE INSURER AFTER
24 A PETITION IN LIQUIDATION HAS BEEN FILED SHALL NOT BIND THE
25 LIQUIDATOR. WHENEVER A GUARANTY ASSOCIATION OR FOREIGN
26 GUARANTY ASSOCIATION HAS AN OBLIGATION TO DEFEND ANY SUIT, THE

1 LIQUIDATOR SHALL GIVE PRECEDENCE TO SUCH OBLIGATION AND MAY
2 DEFEND ONLY IN THE ABSENCE OF A DEFENSE BY SUCH GUARANTY
3 ASSOCIATIONS.

4 (u) TO EXERCISE AND ENFORCE ALL THE RIGHTS, REMEDIES,
5 AND POWERS OF ANY CREDITOR, SHAREHOLDER, POLICYHOLDER, OR
6 MEMBER, INCLUDING ANY POWER TO AVOID ANY TRANSFER OR LIEN THAT
7 MAY BE CONFERRED BY LAW WHETHER OR NOT SUCH POWER IS CONFERRED
8 BY SECTIONS 10-3-525 TO 10-3-527;

9 (v) TO INTERVENE IN ANY PROCEEDING, WHEREVER INSTITUTED,
10 WHICH COULD RESULT IN THE APPOINTMENT OF A RECEIVER OR
11 TRUSTEE, AND TO ACT AS THE RECEIVER OR TRUSTEE WHENEVER SUCH
12 APPOINTMENT IS OFFERED;

13 (w) TO ENTER INTO AGREEMENTS WITH ANY RECEIVER,
14 COMMISSIONER, OR INSURANCE DEPARTMENT OF ANY OTHER STATE
15 RELATING TO THE REHABILITATION, LIQUIDATION, CONSERVATION, OR
16 DISSOLUTION OF AN INSURER DOING BUSINESS IN BOTH STATES;

17 (x) TO EXERCISE, IN A MANNER CONSISTENT WITH THE
18 PROVISIONS OF THIS PART 5, ALL POWERS NOW HELD OR HEREAFTER
19 CONFERRED UPON RECEIVERS BY THE LAWS OF THIS STATE.

20 (2) (a) IF A COMPANY PLACED IN LIQUIDATION ISSUED
21 LIABILITY POLICIES ON A CLAIMS-MADE BASIS, AND IF SUCH
22 POLICIES PROVIDED AN OPTION TO PURCHASE AN EXTENDED PERIOD TO
23 REPORT CLAIMS, THEN THE LIQUIDATOR MAY MAKE AVAILABLE TO
24 HOLDERS OF SUCH POLICIES, FOR A CHARGE, AN EXTENDED PERIOD TO
25 REPORT CLAIMS SUBJECT TO THE CONDITIONS STATED IN THIS
26 SUBSECTION (2). THE EXTENDED REPORTING PERIOD SHALL BE MADE

1 AVAILABLE ONLY TO THOSE INSUREDS WHO HAVE NOT SECURED
2 SUBSTITUTE COVERAGE. THE EXTENDED PERIOD MADE AVAILABLE BY THE
3 LIQUIDATOR SHALL BEGIN UPON TERMINATION OF ANY EXTENDED PERIOD
4 TO REPORT CLAIMS IN THE BASIC POLICY AND SHALL END AT THE
5 EARLIER OF THE FINAL DATE FOR FILING OF CLAIMS IN THE
6 LIQUIDATION PROCEEDING OR EIGHTEEN MONTHS AFTER THE ORDER OF
7 LIQUIDATION.

8 (b) THE EXTENDED PERIOD TO REPORT CLAIMS MADE AVAILABLE
9 BY THE LIQUIDATOR SHALL BE SUBJECT TO THE TERMS OF THE POLICY
10 TO WHICH IT RELATES. THE LIQUIDATOR SHALL MAKE AVAILABLE SUCH
11 EXTENDED PERIOD WITHIN SIXTY DAYS AFTER THE ORDER OF
12 LIQUIDATION AT A CHARGE TO BE DETERMINED BY THE LIQUIDATOR
13 SUBJECT TO APPROVAL OF THE COURT. SUCH OFFER SHALL BE DEEMED
14 REJECTED UNLESS THE OFFER IS ACCEPTED IN WRITING AND THE
15 CHARGE IS PAID WITHIN NINETY DAYS AFTER THE ORDER OF
16 LIQUIDATION. NO COMMISSIONS, PREMIUM TAXES, ASSESSMENTS, OR
17 OTHER FEES SHALL BE DUE ON THE CHARGE PERTAINING TO THE
18 EXTENDED PERIOD TO REPORT CLAIMS.

19 (3) THE ENUMERATION, IN THIS SECTION, OF THE POWERS AND
20 AUTHORITY OF THE LIQUIDATOR SHALL NOT BE CONSTRUED AS A
21 LIMITATION UPON THE LIQUIDATOR, NOR SHALL IT EXCLUDE IN ANY
22 MANNER THE LIQUIDATOR'S RIGHT TO DO SUCH OTHER ACTS NOT
23 SPECIFICALLY ENUMERATED OR OTHERWISE PROVIDED FOR IN THIS
24 SECTION AS MAY BE NECESSARY OR APPROPRIATE FOR THE
25 ACCOMPLISHMENT OF, OR IN AID OF THE PURPOSE OF, LIQUIDATION.

26 (4) NOTWITHSTANDING THE POWERS OF THE LIQUIDATOR AS

1 STATED IN SUBSECTIONS (1) AND (2) OF THIS SECTION, THE
2 LIQUIDATOR SHALL HAVE NO OBLIGATION TO DEFEND CLAIMS OR TO
3 CONTINUE TO DEFEND CLAIMS SUBSEQUENT TO THE ENTRY OF A
4 LIQUIDATION ORDER.

5 10-3-521. Notice to creditors and others. (1) UNLESS
6 THE COURT OTHERWISE DIRECTS, THE LIQUIDATOR SHALL GIVE OR
7 CAUSE TO BE GIVEN NOTICE OF THE LIQUIDATION ORDER AS SOON AS
8 POSSIBLE:

9 (a) BY FIRST CLASS MAIL AND EITHER BY TELEGRAM OR
10 TELEPHONE TO THE INSURANCE DEPARTMENT OF EACH JURISDICTION IN
11 WHICH THE INSURER IS DOING BUSINESS;

12 (b) BY FIRST CLASS MAIL TO ANY GUARANTY ASSOCIATION OR
13 FOREIGN GUARANTY ASSOCIATION WHICH IS OR MAY BECOME OBLIGATED
14 AS A RESULT OF THE LIQUIDATION;

15 (c) BY FIRST CLASS MAIL TO ALL INSURANCE AGENTS OF THE
16 INSURER;

17 (d) BY FIRST CLASS MAIL TO ALL PERSONS KNOWN OR
18 REASONABLY EXPECTED TO HAVE CLAIMS AGAINST THE INSURER,
19 INCLUDING ALL POLICYHOLDERS AT THEIR LAST KNOWN ADDRESS AS
20 INDICATED BY THE RECORDS OF THE INSURER; AND

21 (e) BY PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION
22 IN THE COUNTY IN WHICH THE INSURER HAS ITS PRINCIPAL PLACE OF
23 BUSINESS AND IN SUCH OTHER LOCATIONS AS THE LIQUIDATOR DEEMS
24 APPROPRIATE.

25 (2) NOTICE TO POTENTIAL CLAIMANTS UNDER SUBSECTION
26 (1) OF THIS SECTION SHALL REQUIRE CLAIMANTS TO FILE WITH THE

1 LIQUIDATOR THEIR CLAIMS TOGETHER WITH PROPER PROOFS THEREOF
2 UNDER SECTION 10-3-535, ON OR BEFORE A DATE THE LIQUIDATOR
3 SHALL SPECIFY IN THE NOTICE. ALTHOUGH AN EARLIER DATE MAY BE
4 SET BY THE LIQUIDATOR, THE LAST DAY TO FILE CLAIMS SHALL BE NO
5 LATER THAN EIGHTEEN MONTHS AFTER THE ORDER OF LIQUIDATION. THE
6 LIQUIDATOR NEED NOT REQUIRE PERSONS CLAIMING CASH SURRENDER
7 VALUES OR OTHER INVESTMENT VALUES IN LIFE INSURANCE AND
8 ANNUITIES TO FILE A CLAIM. ALL CLAIMANTS SHALL HAVE A DUTY TO
9 KEEP THE LIQUIDATOR INFORMED OF ANY CHANGES OF ADDRESS.

10 (3) NOTICE UNDER SUBSECTION (1) OF THIS SECTION TO
11 AGENTS OF THE INSURER AND TO POTENTIAL CLAIMANTS WHO ARE
12 POLICYHOLDERS SHALL INCLUDE, WHERE APPLICABLE, NOTICE THAT
13 COVERAGE BY STATE GUARANTY ASSOCIATIONS MAY BE AVAILABLE FOR
14 ALL OR PART OF POLICY BENEFITS IN ACCORDANCE WITH APPLICABLE
15 STATE GUARANTY LAWS.

16 (4) THE LIQUIDATOR SHALL PROMPTLY PROVIDE TO THE
17 GUARANTY ASSOCIATIONS SUCH INFORMATION CONCERNING THE
18 IDENTITIES AND ADDRESSES OF SUCH POLICYHOLDERS AND THEIR
19 POLICY COVERAGES AS MAY BE WITHIN THE LIQUIDATOR'S POSSESSION
20 OR CONTROL AND SHALL OTHERWISE COOPERATE WITH GUARANTY
21 ASSOCIATIONS TO ASSIST THEM IN PROVIDING TO SUCH POLICYHOLDERS
22 TIMELY NOTICE OF THE GUARANTY ASSOCIATIONS' COVERAGE OF POLICY
23 BENEFITS, INCLUDING, AS APPLICABLE, COVERAGE OF CLAIMS AND
24 CONTINUATION OR TERMINATION OF COVERAGES.

25 (5) IF NOTICE IS GIVEN IN ACCORDANCE WITH THIS SECTION,
26 THE DISTRIBUTION OF ASSETS OF THE INSURER UNDER THIS PART 5

1 SHALL BE CONCLUSIVE WITH RESPECT TO ALL CLAIMANTS REGARDLESS
2 OF WHETHER OR NOT THEY RECEIVED NOTICE.

3 10-3-522. Duties of agents. (1) EVERY PERSON WHO
4 RECEIVES NOTICE IN THE FORM PRESCRIBED IN SECTION 10-3-521
5 THAT AN INSURER WHICH THE PERSON REPRESENTS AS AN AGENT IS THE
6 SUBJECT OF A LIQUIDATION ORDER SHALL, WITHIN THIRTY DAYS OF
7 SUCH NOTICE, PROVIDE TO THE LIQUIDATOR, IN ADDITION TO THE
8 INFORMATION SUCH PERSON MAY BE REQUIRED TO PROVIDE PURSUANT TO
9 SECTION 10-3-506, ALL INFORMATION IN THE AGENT'S RECORDS
10 RELATED TO ANY POLICY ISSUED BY THE INSURER THROUGH THE AGENT,
11 AND, IF THE AGENT IS A GENERAL AGENT, THE INFORMATION IN THE
12 GENERAL AGENT'S RECORDS RELATED TO ANY POLICY ISSUED BY THE
13 INSURER THROUGH AN AGENT UNDER CONTRACT TO THE GENERAL AGENT,
14 INCLUDING THE NAME AND ADDRESS OF SUCH SUBAGENT. A POLICY
15 SHALL BE DEEMED ISSUED THROUGH AN AGENT IF THE AGENT HAS A
16 PROPERTY INTEREST IN THE EXPIRATION OF THE POLICY, OR IF THE
17 AGENT HAS HAD IN THE AGENT'S POSSESSION A COPY OF THE
18 DECLARATIONS OF THE POLICY AT ANY TIME DURING THE LIFE OF THE
19 POLICY, EXCEPT WHERE THE OWNERSHIP OF THE EXPIRATION OF THE
20 POLICY HAS BEEN TRANSFERRED TO ANOTHER.

21 (2) ANY AGENT FAILING TO PROVIDE INFORMATION TO THE
22 LIQUIDATOR AS REQUIRED IN SUBSECTION (1) OF THIS SECTION MAY
23 BE SUBJECT TO A PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS
24 AND, IN ADDITION, ANY LICENSES OF ANY SUCH AGENT MAY BE
25 SUSPENDED. SUCH PENALTY OR SUSPENSION, OR BOTH, SHALL BE
26 IMPOSED ONLY AFTER A HEARING HELD BY THE COMMISSIONER.

1 10-3-524. Collection and listing of assets. (1) AS SOON
2 AS PRACTICABLE AFTER THE LIQUIDATION ORDER BUT NOT LATER THAN
3 ONE HUNDRED TWENTY DAYS THEREAFTER, THE LIQUIDATOR SHALL
4 PREPARE IN DUPLICATE A LIST OF THE INSURER'S ASSETS. THE LIST
5 SHALL BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME AS THE
6 LIQUIDATOR MAY DETERMINE. ONE COPY SHALL BE FILED IN THE
7 OFFICE OF THE CLERK OF THE DISTRICT COURT IN AND FOR THE CITY
8 AND COUNTY OF DENVER AND ONE COPY SHALL BE RETAINED FOR THE
9 LIQUIDATOR'S FILES. ALL AMENDMENTS AND SUPPLEMENTS SHALL BE
10 SIMILARLY FILED.

11 (2) THE LIQUIDATOR SHALL REDUCE THE ASSETS TO A DEGREE
12 OF LIQUIDITY THAT IS CONSISTENT WITH THE EFFECTIVE EXECUTION
13 OF THE LIQUIDATION.

14 (3) A SUBMISSION TO THE COURT FOR DISBURSEMENT OF ASSETS
15 IN ACCORDANCE WITH SECTION 10-3-533 FULFILLS THE REQUIREMENTS
16 OF SUBSECTION (1) OF THIS SECTION.

17 10-3-525. Fraudulent transfers prior to petition.
18 (1) EVERY TRANSFER MADE OR SUFFERED AND EVERY OBLIGATION
19 INCURRED BY AN INSURER WITHIN ONE YEAR PRIOR TO THE FILING OF
20 A SUCCESSFUL PETITION FOR REHABILITATION OR LIQUIDATION UNDER
21 THIS PART 5 IS FRAUDULENT AS TO THEN EXISTING AND FUTURE
22 CREDITORS IF MADE OR INCURRED WITHOUT FAIR CONSIDERATION OR IF
23 MADE WITH ACTUAL INTENT TO HINDER, DELAY, OR DEFRAUD EITHER
24 EXISTING OR FUTURE CREDITORS. A TRANSFER MADE OR AN OBLIGATION
25 INCURRED BY AN INSURER ORDERED TO BE REHABILITATED OR
26 LIQUIDATED UNDER THIS PART 5, WHICH IS FRAUDULENT UNDER THIS

1 SECTION, MAY BE AVOIDED BY THE RECEIVER, EXCEPT AS TO A PERSON
2 WHO IN GOOD FAITH IS A PURCHASER, LIENOR, OR OBLIGEE FOR A
3 PRESENT FAIR EQUIVALENT VALUE; EXCEPT THAT ANY PURCHASER,
4 LIENOR, OR OBLIGEE, WHO IN GOOD FAITH HAS GIVEN A
5 CONSIDERATION LESS THAN FAIR FOR SUCH TRANSFER, LIEN, OR
6 OBLIGATION, MAY RETAIN THE PROPERTY, LIEN, OR OBLIGATION AS
7 SECURITY FOR REPAYMENT. THE COURT MAY, ON DUE NOTICE, ORDER
8 ANY SUCH TRANSFER OR OBLIGATION TO BE PRESERVED FOR THE
9 BENEFIT OF THE ESTATE, AND IN THAT EVENT, THE RECEIVER SHALL
10 SUCCEED TO AND MAY ENFORCE THE RIGHTS OF THE PURCHASER,
11 LIENOR, OR OBLIGEE.

12 (2) (a) A TRANSFER OF PROPERTY OTHER THAN REAL PROPERTY
13 SHALL BE DEEMED TO BE MADE OR SUFFERED WHEN IT BECOMES SO FAR
14 PERFECTED THAT NO SUBSEQUENT LIEN OBTAINABLE BY LEGAL OR
15 EQUITABLE PROCEEDINGS ON A SIMPLE CONTRACT COULD BECOME
16 SUPERIOR TO THE RIGHTS OF THE TRANSFEREE UNDER SECTION
17 10-3-527 (3).

18 (b) A TRANSFER OF REAL PROPERTY SHALL BE DEEMED TO BE
19 MADE OR SUFFERED WHEN IT BECOMES SO FAR PERFECTED THAT NO
20 SUBSEQUENT BONA FIDE PURCHASER FROM THE INSURER COULD OBTAIN
21 RIGHTS SUPERIOR TO THE RIGHTS OF THE TRANSFEREE.

22 (c) A TRANSFER WHICH CREATES AN EQUITABLE LIEN SHALL NOT
23 BE DEEMED TO BE PERFECTED IF THERE ARE AVAILABLE MEANS BY
24 WHICH A LEGAL LIEN COULD BE CREATED.

25 (d) ANY TRANSFER NOT PERFECTED PRIOR TO THE FILING OF A
26 PETITION FOR LIQUIDATION SHALL BE DEEMED TO BE MADE

1 IMMEDIATELY BEFORE THE FILING OF THE SUCCESSFUL PETITION.

2 (e) THE PROVISIONS OF THIS SUBSECTION (2) SHALL APPLY
3 WHETHER OR NOT THERE ARE OR WERE CREDITORS WHO MIGHT HAVE
4 OBTAINED ANY LIENS OR PERSONS WHO MIGHT HAVE BECOME BONA FIDE
5 PURCHASERS.

6 (3) ANY TRANSACTION OF THE INSURER WITH A REINSURER
7 SHALL BE DEEMED FRAUDULENT AND MAY BE AVOIDED BY THE RECEIVER
8 UNDER SUBSECTION (1) OF THIS SECTION IF:

9 (a) THE TRANSACTION CONSISTS OF THE TERMINATION,
10 ADJUSTMENT, OR SETTLEMENT OF A REINSURANCE CONTRACT IN WHICH
11 THE REINSURER IS RELEASED FROM ANY PART OF ITS DUTY TO PAY THE
12 ORIGINALLY SPECIFIED SHARE OF LOSSES THAT HAD OCCURRED PRIOR
13 TO THE TIME OF THE TRANSACTIONS, UNLESS THE REINSURER GIVES A
14 PRESENT FAIR EQUIVALENT VALUE FOR THE RELEASE; AND

15 (b) ANY PART OF THE TRANSACTION TOOK PLACE WITHIN ONE
16 YEAR PRIOR TO THE DATE OF FILING OF THE PETITION THROUGH WHICH
17 THE RECEIVERSHIP WAS COMMENCED.

18 (4) EVERY PERSON RECEIVING ANY PROPERTY FROM THE INSURER
19 OR ANY BENEFIT THEREOF WHICH IS A FRAUDULENT TRANSFER UNDER
20 SUBSECTION (1) OF THIS SECTION SHALL BE PERSONALLY LIABLE
21 THEREFORE AND SHALL BE BOUND TO ACCOUNT TO THE LIQUIDATOR.

22 10-3-526. Fraudulent transfer after petition. (1) AFTER
23 A PETITION FOR REHABILITATION OR LIQUIDATION HAS BEEN FILED, A
24 TRANSFER OF ANY OF THE REAL PROPERTY OF THE INSURER MADE TO A
25 PERSON ACTING IN GOOD FAITH SHALL BE VALID AGAINST THE
26 RECEIVER IF MADE FOR A PRESENT FAIR EQUIVALENT VALUE; OR, IF

1 NOT MADE FOR A PRESENT FAIR EQUIVALENT VALUE, THEN TO THE
2 EXTENT OF THE PRESENT CONSIDERATION ACTUALLY PAID THEREFORE,
3 FOR WHICH AMOUNT THE TRANSFEREE SHALL HAVE A LIEN ON THE
4 PROPERTY SO TRANSFERRED. THE COMMENCEMENT OF A PROCEEDING IN
5 REHABILITATION OR LIQUIDATION SHALL BE CONSTRUCTIVE NOTICE
6 UPON THE RECORDING OF A COPY OF THE PETITION FOR OR ORDER OF
7 REHABILITATION OR LIQUIDATION WITH THE RECORDER OF DEEDS IN
8 THE COUNTY WHERE ANY REAL PROPERTY IN QUESTION IS LOCATED. THE
9 EXERCISE BY A COURT OF THE UNITED STATES OR ANY STATE OR
10 JURISDICTION TO AUTHORIZE OR EFFECT A JUDICIAL SALE OF REAL
11 PROPERTY OF THE INSURER WITHIN ANY COUNTY IN ANY STATE SHALL
12 NOT BE IMPAIRED BY THE PENDENCY OF SUCH A PROCEEDING UNLESS
13 THE COPY IS RECORDED IN THE COUNTY PRIOR TO THE CONSUMMATION
14 OF THE JUDICIAL SALE.

15 (2) AFTER A PETITION FOR REHABILITATION OR LIQUIDATION
16 HAS BEEN FILED AND BEFORE EITHER THE RECEIVER TAKES POSSESSION
17 OF THE PROPERTY OF THE INSURER OR AN ORDER OF REHABILITATION
18 OR LIQUIDATION IS GRANTED:

19 (a) A TRANSFER OF ANY OF THE PROPERTY OF THE INSURER,
20 OTHER THAN REAL PROPERTY, MADE TO A PERSON ACTING IN GOOD
21 FAITH SHALL BE VALID AGAINST THE RECEIVER IF MADE FOR A
22 PRESENT FAIR EQUIVALENT VALUE; OR, IF NOT MADE FOR A PRESENT
23 FAIR EQUIVALENT VALUE, THEN TO THE EXTENT OF THE PRESENT
24 CONSIDERATION ACTUALLY PAID THEREFORE, FOR WHICH AMOUNT THE
25 TRANSFEREE SHALL HAVE A LIEN ON THE PROPERTY SO TRANSFERRED.

26 (b) A PERSON INDEBTED TO THE INSURER OR HOLDING PROPERTY

1 OF THE INSURER MAY, IF ACTING IN GOOD FAITH, PAY THE
2 INDEBTEDNESS OR DELIVER THE PROPERTY, OR ANY PART THEREOF, TO
3 THE INSURER OR UPON THE INSURER'S ORDER, WITH THE SAME EFFECT
4 AS IF THE PETITION WERE NOT PENDING.

5 (c) A PERSON HAVING ACTUAL KNOWLEDGE OF THE PENDING
6 REHABILITATION OR LIQUIDATION SHALL BE DEEMED NOT TO ACT IN
7 GOOD FAITH.

8 (d) A PERSON ASSERTING THE VALIDITY OF A TRANSFER UNDER
9 THIS SECTION SHALL HAVE THE BURDEN OF PROOF. EXCEPT AS
10 ELSEWHERE PROVIDED IN THIS SECTION, NO TRANSFER BY OR ON
11 BEHALF OF THE INSURER AFTER THE DATE OF THE PETITION FOR
12 LIQUIDATION BY ANY PERSON OTHER THAN THE LIQUIDATOR SHALL BE
13 VALID AGAINST THE LIQUIDATOR.

14 (3) EVERY PERSON RECEIVING ANY PROPERTY FROM THE INSURER
15 OR ANY BENEFIT THEREOF WHICH IS A FRAUDULENT TRANSFER UNDER
16 SUBSECTION (1) OF THIS SECTION SHALL BE PERSONALLY LIABLE
17 THEREFORE AND SHALL BE BOUND TO ACCOUNT TO THE LIQUIDATOR.

18 (4) NOTHING IN THIS PART 5 SHALL IMPAIR THE
19 NEGOTIABILITY OF CURRENCY OR NEGOTIABLE INSTRUMENTS.

20 10-3-527. Voidable preferences and liens. (1) (a) A
21 PREFERENCE IS A TRANSFER OF ANY OF THE PROPERTY OF AN INSURER
22 TO OR FOR THE BENEFIT OF A CREDITOR, FOR OR ON ACCOUNT OF AN
23 ANTECEDENT DEBT, MADE OR SUFFERED BY THE INSURER WITHIN ONE
24 YEAR BEFORE THE FILING OF A SUCCESSFUL PETITION FOR
25 LIQUIDATION UNDER THIS PART 5, THE EFFECT OF WHICH TRANSFER
26 MAY BE TO ENABLE THE CREDITOR TO OBTAIN A GREATER PERCENTAGE

1 OF THIS DEBT THAN ANOTHER CREDITOR OF THE SAME CLASS WOULD
2 RECEIVE. IF A LIQUIDATION ORDER IS ENTERED WHILE THE INSURER
3 IS ALREADY SUBJECT TO A REHABILITATION ORDER, THEN SUCH
4 TRANSFERS SHALL BE DEEMED PREFERENCES IF MADE OR SUFFERED
5 WITHIN ONE YEAR BEFORE THE FILING OF THE SUCCESSFUL PETITION
6 FOR REHABILITATION, OR WITHIN TWO YEARS BEFORE THE FILING OF
7 THE SUCCESSFUL PETITION FOR LIQUIDATION, WHICHEVER TIME IS
8 SHORTER.

9 (b) ANY PREFERENCE MAY BE AVOIDED BY THE LIQUIDATOR IF:

10 (I) THE INSURER WAS INSOLVENT AT THE TIME OF THE
11 TRANSFER; OR

12 (II) THE TRANSFER WAS MADE WITHIN FOUR MONTHS BEFORE THE
13 FILING OF THE PETITION; OR

14 (III) THE CREDITOR RECEIVING IT OR TO BE BENEFITED
15 THEREBY OR THE AGENT OF ANY SUCH CREDITOR ACTING WITH
16 REFERENCE THERETO HAD, AT THE TIME WHEN THE TRANSFER WAS MADE,
17 REASONABLE CAUSE TO BELIEVE THAT THE INSURER WAS INSOLVENT OR
18 WAS ABOUT TO BECOME INSOLVENT; OR

19 (IV) THE CREDITOR RECEIVING IT WAS AN OFFICER, OR ANY
20 EMPLOYEE OR ATTORNEY OR OTHER PERSON WHO WAS IN FACT IN A
21 POSITION OF COMPARABLE INFLUENCE IN THE INSURER TO AN OFFICER
22 WHETHER OR NOT SUCH PERSON HELD SUCH POSITION, OR ANY
23 SHAREHOLDER HOLDING DIRECTLY OR INDIRECTLY MORE THAN FIVE
24 PERCENT OF ANY CLASS OF ANY EQUITY SECURITY ISSUED BY THE
25 INSURER, OR ANY OTHER PERSON, FIRM, CORPORATION, ASSOCIATION,
26 OR AGGREGATION OF PERSONS WITH WHOM THE INSURER DID NOT DEAL

1 AT ARM'S LENGTH.

2 (c) WHERE THE PREFERENCE IS VOIDABLE, THE LIQUIDATOR MAY
3 RECOVER THE PROPERTY OR, IF IT HAS BEEN CONVERTED, ITS VALUE
4 FROM ANY PERSON WHO HAS RECEIVED OR CONVERTED THE PROPERTY;
5 EXCEPT WHERE A BONA FIDE PURCHASER OR LIENOR HAS GIVEN LESS
6 THAN FAIR EQUIVALENT VALUE, SUCH PURCHASER OR LIENOR SHALL
7 HAVE A LIEN UPON THE PROPERTY TO THE EXTENT OF THE
8 CONSIDERATION ACTUALLY GIVEN BY THE PURCHASER. WHERE A
9 PREFERENCE BY WAY OF LIEN OR SECURITY TITLE IS VOIDABLE, THE
10 COURT MAY ON DUE NOTICE ORDER THE LIEN OR TITLE TO BE
11 PRESERVED FOR THE BENEFIT OF THE ESTATE, IN WHICH EVENT THE
12 LIEN OR TITLE SHALL PASS TO THE LIQUIDATOR.

13 (2) (a) (I) A TRANSFER OF PROPERTY OTHER THAN REAL
14 PROPERTY SHALL BE DEEMED TO BE MADE OR SUFFERED WHEN IT
15 BECOMES SO FAR PERFECTED THAT NO SUBSEQUENT LIEN OBTAINABLE BY
16 LEGAL OR EQUITABLE PROCEEDINGS ON A SIMPLE CONTRACT COULD
17 BECOME SUPERIOR TO THE RIGHTS OF THE TRANSFEREE.

18 (II) A TRANSFER OF REAL PROPERTY SHALL BE DEEMED TO BE
19 MADE OR SUFFERED WHEN IT BECOMES SO FAR PERFECTED THAT NO
20 SUBSEQUENT BONA FIDE PURCHASER FROM THE INSURER COULD OBTAIN
21 RIGHTS SUPERIOR TO THE RIGHTS OF THE TRANSFEREE.

22 (b) (I) A TRANSFER WHICH CREATES AN EQUITABLE LIEN SHALL
23 NOT BE DEEMED TO BE PERFECTED IF THERE ARE AVAILABLE MEANS BY
24 WHICH A LEGAL LIEN COULD BE CREATED.

25 (II) A TRANSFER NOT PERFECTED PRIOR TO THE FILING OF A
26 PETITION FOR LIQUIDATION SHALL BE DEEMED TO BE MADE

1 IMMEDIATELY BEFORE THE FILING OF THE SUCCESSFUL PETITION.

2 (c) THE PROVISIONS OF THIS SUBSECTION (2) SHALL APPLY
3 WHETHER OR NOT THERE ARE OR WERE CREDITORS WHO MIGHT HAVE
4 OBTAINED LIENS OR PERSONS WHO MIGHT HAVE BECOME BONA FIDE
5 PURCHASERS.

6 (3) (a) A LIEN OBTAINABLE BY LEGAL OR EQUITABLE
7 PROCEEDINGS UPON A SIMPLE CONTRACT IS ONE ARISING IN THE
8 ORDINARY COURSE OF SUCH PROCEEDINGS UPON THE ENTRY OR
9 DOCKETING OF A JUDGMENT OR DECREE, OR UPON ATTACHMENT,
10 GARNISHMENT, EXECUTION, OR LIKE PROCESS, WHETHER BEFORE, UPON,
11 OR AFTER JUDGMENT OR DECREE AND WHETHER BEFORE OR UPON LEVY.
12 IT DOES NOT INCLUDE LIENS WHICH UNDER APPLICABLE LAW ARE GIVEN
13 A SPECIAL PRIORITY OVER OTHER LIENS WHICH ARE PRIOR IN TIME.

14 (b) A LIEN OBTAINABLE BY LEGAL OR EQUITABLE PROCEEDINGS
15 COULD BECOME SUPERIOR TO THE RIGHTS OF A TRANSFEREE, OR A
16 PURCHASER COULD OBTAIN RIGHTS SUPERIOR TO THE RIGHTS OF A
17 TRANSFEREE WITHIN THE MEANING OF SUBSECTION (2) OF THIS
18 SECTION, IF SUCH CONSEQUENCES WOULD FOLLOW ONLY FROM THE LIEN
19 OR PURCHASE ITSELF, OR FROM THE LIEN OR PURCHASE FOLLOWED BY
20 ANY STEP WHOLLY WITHIN THE CONTROL OF THE RESPECTIVE
21 LIENHOLDER OR PURCHASER, WITH OR WITHOUT THE AID OF
22 MINISTERIAL ACTION BY PUBLIC OFFICIALS. SUCH A LIEN COULD NOT,
23 HOWEVER, BECOME SUPERIOR AND SUCH A PURCHASE COULD NOT CREATE
24 SUPERIOR RIGHTS FOR THE PURPOSE OF SUBSECTION (2) OF THIS
25 SECTION THROUGH ANY ACTS SUBSEQUENT TO THE OBTAINING OF SUCH A
26 LIEN OR SUBSEQUENT TO SUCH A PURCHASE WHICH REQUIRE THE

1 AGREEMENT OR CONCURRENCE OF ANY THIRD PARTY OR WHICH REQUIRE
2 ANY FURTHER JUDICIAL ACTION OR RULING.

3 (4) A TRANSFER OF PROPERTY FOR OR ON ACCOUNT OF A NEW
4 AND CONTEMPORANEOUS CONSIDERATION WHICH IS DEEMED UNDER
5 SUBSECTION (2) OF THIS SECTION TO BE MADE OR SUFFERED AFTER
6 THE TRANSFER BECAUSE OF DELAY IN PERFECTING IT DOES NOT
7 THEREBY BECOME A TRANSFER FOR OR ON ACCOUNT OF AN ANTECEDENT
8 DEBT IF ANY ACTS REQUIRED BY THE APPLICABLE LAW TO BE
9 PERFORMED IN ORDER TO PERFECT THE TRANSFER AS AGAINST LIENS OR
10 BONA FIDE PURCHASERS' RIGHTS ARE PERFORMED WITHIN TWENTY-ONE
11 DAYS OR ANY PERIOD EXPRESSLY ALLOWED BY THE LAW, WHICHEVER IS
12 LESS. A TRANSFER TO SECURE A FUTURE LOAN, IF SUCH A LOAN IS
13 ACTUALLY MADE, OR A TRANSFER WHICH BECOMES SECURITY FOR A
14 FUTURE LOAN, SHALL HAVE THE SAME EFFECT AS A TRANSFER FOR OR
15 ON ACCOUNT OF A NEW AND CONTEMPORANEOUS CONSIDERATION.

16 (5) IF ANY LIEN DEEMED VOIDABLE UNDER PARAGRAPH (b) OF
17 SUBSECTION (1) OF THIS SECTION HAS BEEN DISSOLVED BY THE
18 FURNISHING OF A BOND OR OTHER OBLIGATION AND THE SURETY WHICH
19 HAS BEEN INDEMNIFIED DIRECTLY OR INDIRECTLY BY THE TRANSFER OF
20 OR THE CREATION OF A LIEN UPON ANY PROPERTY OF AN INSURER
21 BEFORE THE FILING OF A PETITION UNDER THIS PART 5 WHICH
22 RESULTS IN A LIQUIDATION ORDER, THE INDEMNIFYING TRANSFER OR
23 LIEN SHALL ALSO BE DEEMED VOIDABLE.

24 (6) THE PROPERTY AFFECTED BY ANY LIEN DEEMED VOIDABLE
25 UNDER SUBSECTIONS (1) AND (5) OF THIS SECTION SHALL BE
26 DISCHARGED FROM SUCH LIEN, AND THAT PROPERTY AND ANY OF THE

1 INDEMNIFYING PROPERTY TRANSFERRED TO OR FOR THE BENEFIT OF A
2 SURETY SHALL PASS TO THE LIQUIDATOR; EXCEPT THAT THE COURT MAY
3 ON DUE NOTICE ORDER ANY SUCH LIEN TO BE PRESERVED FOR THE
4 BENEFIT OF THE ESTATE AND THE COURT MAY DIRECT THAT SUCH
5 CONVEYANCE BE EXECUTED AS MAY BE PROPER OR ADEQUATE TO
6 EVIDENCE THE TITLE OF THE LIQUIDATOR.

7 (7) THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF
8 DENVER SHALL HAVE SUMMARY JURISDICTION OF ANY PROCEEDING BY
9 THE LIQUIDATOR TO HEAR AND DETERMINE THE RIGHTS OF ANY PARTIES
10 UNDER THIS SECTION. REASONABLE NOTICE OF ANY HEARING IN THE
11 PROCEEDING SHALL BE GIVEN TO ALL PARTIES IN INTEREST,
12 INCLUDING THE OBLIGEE OF A RELEASING BOND OR OTHER LIKE
13 OBLIGATION. WHERE AN ORDER IS ENTERED FOR THE RECOVERY OF
14 INDEMNIFYING PROPERTY IN KIND OR FOR THE AVOIDANCE OF AN
15 INDEMNIFYING LIEN, THE COURT, UPON APPLICATION OF ANY PARTY IN
16 INTEREST, SHALL IN THE SAME PROCEEDING ASCERTAIN THE VALUE OF
17 THE PROPERTY OR LIEN, AND IF THE VALUE IS LESS THAN THE AMOUNT
18 FOR WHICH THE PROPERTY IS INDEMNITY OR THAN THE AMOUNT OF THE
19 LIEN, THE TRANSFEREE OR LIENHOLDER MAY ELECT TO RETAIN THE
20 PROPERTY OR LIEN UPON PAYMENT OF ITS VALUE, AS ASCERTAINED BY
21 THE COURT, TO THE LIQUIDATOR, WITHIN SUCH REASONABLE TIMES AS
22 THE COURT SHALL FIX.

23 (8) THE LIABILITY OF THE SURETY UNDER A RELEASING BOND
24 OR OTHER LIKE OBLIGATION SHALL BE DISCHARGED TO THE EXTENT OF
25 THE VALUE OF THE INDEMNIFYING PROPERTY RECOVERED OR THE
26 INDEMNIFYING LIEN NULLIFIED AND AVOIDED BY THE LIQUIDATOR, OR

1 WHERE THE PROPERTY IS RETAINED UNDER SUBSECTION (7) OF THIS
2 SECTION TO THE EXTENT OF THE AMOUNT PAID TO THE LIQUIDATOR.

3 (9) IF A CREDITOR HAS BEEN PREFERRED, AND AFTERWARD IN
4 GOOD FAITH GIVES THE INSURER FURTHER CREDIT WITHOUT SECURITY
5 OF ANY KIND, FOR PROPERTY WHICH BECOMES A PART OF THE
6 INSURER'S ESTATE, THE AMOUNT OF THE NEW CREDIT REMAINING
7 UNPAID AT THE TIME OF THE PETITION MAY BE SET OFF AGAINST THE
8 PREFERENCE WHICH WOULD OTHERWISE BE RECOVERABLE FROM SUCH
9 INSURER.

10 (10) IF AN INSURER SHALL, DIRECTLY OR INDIRECTLY, WITHIN
11 FOUR MONTHS BEFORE THE FILING OF A SUCCESSFUL PETITION FOR
12 LIQUIDATION UNDER THIS PART 5, OR AT ANY TIME IN CONTEMPLATION
13 OF A PROCEEDING TO LIQUIDATE IT, PAY MONEY OR TRANSFER
14 PROPERTY TO AN ATTORNEY-AT-LAW FOR SERVICES RENDERED OR TO BE
15 RENDERED, THE TRANSACTIONS MAY BE EXAMINED BY THE COURT ON ITS
16 OWN MOTION OR SHALL BE EXAMINED BY THE COURT ON PETITION OF
17 THE LIQUIDATOR AND SHALL BE HELD VALID ONLY TO THE EXTENT OF A
18 REASONABLE AMOUNT TO BE DETERMINED BY THE COURT, AND THE
19 EXCESS MAY BE RECOVERED BY THE LIQUIDATOR FOR THE BENEFITS OF
20 THE ESTATE; EXCEPT THAT, WHERE THE ATTORNEY IS IN A POSITION
21 OF INFLUENCE IN THE INSURER OR AN AFFILIATE THEREOF, PAYMENT
22 OF ANY MONEY OR THE TRANSFER OF ANY PROPERTY TO THE
23 ATTORNEY-AT-LAW FOR SERVICES RENDERED OR TO BE RENDERED SHALL
24 BE GOVERNED BY THE PROVISION OF SUBPARAGRAPH (IV) OF
25 PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION.

26 (11) (a) EVERY OFFICER, MANAGER, EMPLOYEE, SHAREHOLDER,

1 MEMBER, SUBSCRIBER, ATTORNEY, OR ANY OTHER PERSON ACTING ON
2 BEHALF OF THE INSURER WHO KNOWINGLY PARTICIPATES IN GIVING ANY
3 PREFERENCE WHEN ANY SUCH PERSON HAS REASONABLE CAUSE TO
4 BELIEVE THE INSURER IS OR IS ABOUT TO BECOME INSOLVENT AT THE
5 TIME OF THE PREFERENCE SHALL BE PERSONALLY LIABLE TO THE
6 LIQUIDATOR FOR THE AMOUNT OF THE PREFERENCE. IT IS PERMISSIBLE
7 TO INFER THAT THERE IS A REASONABLE CAUSE TO SO BELIEVE IF THE
8 TRANSFER WAS MADE WITHIN FOUR MONTHS BEFORE THE DATE OF FILING
9 OF A SUCCESSFUL PETITION FOR LIQUIDATION.

10 (b) EVERY PERSON RECEIVING ANY PROPERTY FROM THE INSURER
11 OR THE BENEFIT THEREOF AS A PREFERENCE VOIDABLE UNDER
12 SUBSECTION (1) OF THIS SECTION SHALL BE PERSONALLY LIABLE
13 THEREFOR AND SHALL BE BOUND TO ACCOUNT TO THE LIQUIDATOR.

14 (c) NOTHING IN THIS SUBSECTION (11) SHALL PREJUDICE ANY
15 OTHER CLAIM BY THE LIQUIDATOR AGAINST ANY PERSON.

16 10-3-528. Claims of holders of void or voidable rights.

17 (1) NO CLAIMS OF A CREDITOR WHO HAS RECEIVED OR ACQUIRED A
18 PREFERENCE, LIEN, CONVEYANCE, TRANSFER, ASSIGNMENT, OR
19 ENCUMBRANCE VOIDABLE UNDER THIS PART 5 SHALL BE ALLOWED UNLESS
20 SUCH CREDITOR SURRENDERS THE PREFERENCE, LIEN, CONVEYANCE,
21 TRANSFER, ASSIGNMENT, OR ENCUMBRANCE. IF THE AVOIDANCE IS
22 EFFECTED BY A PROCEEDING IN WHICH A FINAL JUDGMENT HAS BEEN
23 ENTERED, THE CLAIM SHALL NOT BE ALLOWED UNLESS THE MONEY IS
24 PAID OR THE PROPERTY IS DELIVERED TO THE LIQUIDATOR WITHIN
25 THIRTY DAYS FROM THE DATE OF THE ENTERING OF THE FINAL
26 JUDGMENT; EXCEPT THAT THE COURT HAVING JURISDICTION OVER THE

1 LIQUIDATION MAY ALLOW FURTHER TIME IF THERE IS AN APPEAL OR
2 OTHER CONTINUATION OF THE PROCEEDING.

3 (2) A CLAIM ALLOWABLE UNDER SUBSECTION (1) OF THIS
4 SECTION BY REASON OF THE AVOIDANCE, WHETHER VOLUNTARY OR
5 INVOLUNTARY, OR A PREFERENCE, LIEN, CONVEYANCE, TRANSFER,
6 ASSIGNMENT, OR ENCUMBRANCE, MAY BE FILED AS AN EXCUSED LAST
7 FILING UNDER SECTION 10-3-534 IF FILED WITHIN THIRTY DAYS FROM
8 THE DATE OF THE AVOIDANCE, OR WITHIN THE FURTHER TIME ALLOWED
9 BY THE COURT PURSUANT TO SUBSECTION (1) OF THIS SECTION.

10 10-3-529. Setoffs - effective date - applicability.

11 (1) MUTUAL DEBTS OR MUTUAL CREDITS, WHETHER ARISING OUT OF
12 ONE OR MORE CONTRACTS BETWEEN THE INSURER AND ANOTHER PERSON
13 IN CONNECTION WITH ANY ACTION OR PROCEEDING UNDER THIS PART 5,
14 SHALL BE SET OFF AND THE BALANCE ONLY SHALL BE ALLOWED OR
15 PAID, EXCEPT AS PROVIDED IN SUBSECTIONS (2), (3), AND (4) OF
16 THIS SECTION AND SECTION 10-3-532.

17 (2) NO SETOFF SHALL BE ALLOWED IN FAVOR OF ANY PERSON
18 WHERE:

19 (a) THE OBLIGATION OF THE INSURER TO THE PERSON WOULD
20 NOT AT THE DATE OF THE FILING OF A PETITION FOR LIQUIDATION
21 ENTITLE THE PERSON TO SHARE AS A CLAIMANT IN THE ASSETS OF THE
22 INSURER; OR

23 (b) THE OBLIGATION OF THE INSURER TO THE PERSON WAS
24 PURCHASED BY OR TRANSFERRED TO THE PERSON WITH A VIEW TO ITS
25 BEING USED AS A SETOFF; OR

26 (c) THE OBLIGATION OF THE INSURER IS OWED TO AN

1 AFFILIATE OF SUCH PERSON, OR ANY OTHER ENTITY OR ASSOCIATION
2 OTHER THAN THE PERSON; OR

3 (d) THE OBLIGATION OF THE PERSON IS OWED TO AN AFFILIATE
4 OF THE INSURER OR TO ANY OTHER ENTITY OR ASSOCIATION OTHER
5 THAN THE INSURER; OR

6 (e) THE OBLIGATION OF THE PERSON IS TO PAY AN ASSESSMENT
7 LEVIED AGAINST THE MEMBERS OR SUBSCRIBERS OF THE INSURER, OR
8 IS TO PAY A BALANCE UPON A SUBSCRIPTION TO THE CAPITAL STOCK
9 OF THE INSURER, OR IS IN ANY OTHER WAY IN THE NATURE OF A
10 CAPITAL CONTRIBUTION; OR

11 (f) THE OBLIGATIONS BETWEEN THE PERSON AND THE INSURER
12 ARISE FROM BUSINESS WHICH IS BOTH CEDED TO AND ASSUMED FROM
13 THE INSURER; EXCEPT THAT THE REHABILITATOR MAY, WITH REGARD TO
14 SUCH BUSINESS, ALLOW CERTAIN SETOFFS IN REHABILITATION IF THE
15 REHABILITATOR FINDS THE ALLOWANCE OF SAID SETOFFS TO BE
16 APPROPRIATE.

17 (3) THE LIQUIDATOR SHALL PROVIDE ALL PERSONS THAT
18 ASSUMED BUSINESS FROM THE INSURER WITH ACCOUNTING STATEMENTS
19 IDENTIFYING DEBTS WHICH ARE CURRENTLY DUE AND PAYABLE. SUCH
20 PERSONS MAY SET OFF AGAINST SUCH DEBTS ONLY MUTUAL CREDITS
21 WHICH ARE CURRENTLY DUE AND PAYABLE BY THE INSURER TO SUCH
22 PERSONS FOR AN ACCOUNTING PERIOD AS DETERMINED BY THE
23 COMMISSIONER THROUGH REGULATION.

24 (4) A PERSON THAT CEDED BUSINESS TO THE INSURER MAY SET
25 OFF DEBTS DUE THE INSURER AGAINST ONLY THOSE MUTUAL CREDITS
26 WHICH THE PERSON HAS PAID OR WHICH HAVE BEEN ALLOWED IN THE

1 INSURER'S DELINQUENCY PROCEEDING.

2 (5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION
3 TO THE CONTRARY A SETOFF OF SUMS DUE ON OBLIGATIONS IN THE
4 NATURE OF THOSE SET FORTH IN PARAGRAPH (f) OF SUBSECTION
5 (2) OF THIS SECTION SHALL BE ALLOWED FOR THOSE SUMS ACCRUING
6 FROM BUSINESS WRITTEN WHERE THE CONTRACTS WERE ENTERED INTO,
7 RENEWED, OR EXTENDED WITH THE EXPRESS WRITTEN APPROVAL OF THE
8 INSURANCE DEPARTMENT OF THE STATE OF DOMICILE OF THE NOW
9 INSOLVENT INSURER AND, IN THE JUDGMENT OF SUCH INSURANCE
10 DEPARTMENT, IT WAS NECESSARY TO PROVIDE REINSURANCE IN ORDER
11 TO PREVENT OR MITIGATE A THREATENED IMPAIRMENT OR INSOLVENCY
12 OF A DOMICILIARY INSURER IN CONNECTION WITH THE EXERCISE OF
13 THE SAID INSURANCE DEPARTMENT'S REGULATORY RESPONSIBILITIES.

14 (6) THIS SECTION SHALL BE EFFECTIVE JANUARY 1, 1993, AND
15 SHALL APPLY TO ALL CONTRACTS ENTERED INTO, RENEWED, EXTENDED,
16 OR AMENDED ON OR AFTER SAID DATE AND TO DEBTS OR CREDITS
17 ARISING FROM ANY BUSINESS WRITTEN OR TRANSACTIONS OCCURRING
18 AFTER JANUARY 1, 1993, PURSUANT TO ANY CONTRACT INCLUDING
19 THOSE IN EXISTENCE PRIOR TO JANUARY 1, 1993, AND SHALL
20 SUPERSEDE ANY AGREEMENTS OR CONTRACTUAL PROVISIONS WHICH MIGHT
21 BE CONSTRUED TO ENLARGE THE SETOFF RIGHTS OF ANY PERSON UNDER
22 ANY CONTRACT WITH THE INSURER. FOR PURPOSES OF THIS SECTION,
23 ANY CHANGE IN THE TERMS OF, OR CONSIDERATION FOR, ANY SUCH
24 CONTRACT SHALL BE DEEMED AN AMENDMENT.

25 10-3-530. Assessments. (1) AS SOON AS PRACTICABLE BUT
26 NOT MORE THAN TWO YEARS AFTER THE DATE OF AN ORDER OF

1 LIQUIDATION UNDER SECTION 10-3-517 OF AN INSURER ISSUING
2 ASSESSABLE POLICIES, THE LIQUIDATOR SHALL MAKE A REPORT TO THE
3 COURT SETTING FORTH:

- 4 (a) THE REASONABLE VALUE OF THE ASSETS OF THE INSURER;
- 5 (b) THE INSURER'S PROBABLE TOTAL LIABILITIES;
- 6 (c) THE PROBABLE AGGREGATE AMOUNT OF THE ASSESSMENT
7 NECESSARY TO PAY ALL CLAIMS OF CREDITORS AND EXPENSES IN FULL,
8 INCLUDING EXPENSES OF ADMINISTRATION AND COSTS OF COLLECTING
9 THE ASSESSMENT; AND
- 10 (d) A RECOMMENDATION AS TO WHETHER OR NOT AN ASSESSMENT
11 SHOULD BE MADE AND IN WHAT AMOUNT.

12 (2) (a) UPON THE BASIS OF THE REPORT PROVIDED PURSUANT
13 TO SUBSECTION (1) OF THIS SECTION AND INCLUDING ANY
14 SUPPLEMENTS AND AMENDMENTS THERETO, THE DISTRICT COURT IN AND
15 FOR THE CITY AND COUNTY OF DENVER MAY LEVY ONE OR MORE
16 ASSESSMENTS AGAINST ALL MEMBERS OF THE INSURER WHO ARE SUBJECT
17 TO ASSESSMENT.

18 (b) SUBJECT TO ANY APPLICABLE LEGAL LIMITS ON
19 ASSESSABILITY, THE AGGREGATE ASSESSMENT SHALL BE FOR THE
20 AMOUNT BY WHICH THE SUM OF THE PROBABLE LIABILITIES, THE
21 EXPENSES OF ADMINISTRATION, AND THE ESTIMATED COST OF
22 COLLECTION OF THE ASSESSMENT EXCEEDS THE VALUE OF EXISTING
23 ASSETS, WITH DUE REGARD BEING GIVEN TO ASSESSMENTS THAT CANNOT
24 BE COLLECTED ECONOMICALLY.

25 (3) AFTER LEVY OF ASSESSMENT UNDER SUBSECTION (2) OF
26 THIS SECTION, THE LIQUIDATOR SHALL ISSUE AN ORDER DIRECTING

1 EACH MEMBER WHO HAS NOT PAID THE ASSESSMENT PURSUANT TO THE
2 ORDER TO SHOW CAUSE WHY THE LIQUIDATOR SHOULD NOT PURSUE A
3 JUDGMENT THEREFOR.

4 (4) THE LIQUIDATOR SHALL GIVE NOTICE OF THE ORDER TO
5 SHOW CAUSE BY PUBLICATION AND BY FIRST CLASS MAIL TO EACH
6 MEMBER LIABLE UNDER SUCH ORDER MAILED TO THE MEMBER'S LAST
7 KNOWN ADDRESS AS IT APPEARS ON THE INSURER'S RECORDS, AT LEAST
8 TWENTY DAYS BEFORE THE RETURN DAY OF THE ORDER TO SHOW CAUSE.

9 (5) (a) IF A MEMBER DOES NOT APPEAR AND SERVE DULY
10 VERIFIED OBJECTIONS UPON THE LIQUIDATOR ON OR BEFORE THE
11 RETURN DAY OF THE ORDER TO SHOW CAUSE UNDER SUBSECTION (3) OF
12 THIS SECTION, THE COURT SHALL MAKE AN ORDER ADJUDGING THE
13 MEMBER LIABLE FOR THE AMOUNT OF THE ASSESSMENT TOGETHER WITH
14 COSTS, AND THE LIQUIDATOR SHALL HAVE A JUDGMENT AGAINST THE
15 MEMBER THEREFOR.

16 (b) IF, ON OR BEFORE SUCH RETURN DAY, THE MEMBER APPEARS
17 AND SERVES DULY VERIFIED OBJECTIONS UPON THE LIQUIDATOR, THE
18 COMMISSIONER MAY HEAR AND DETERMINE THE MATTER OR MAY APPOINT
19 A REFEREE TO HEAR IT AND MAKE SUCH ORDER AS THE FACTS WARRANT.
20 IN THE EVENT THAT THE COMMISSIONER DETERMINES THAT SUCH
21 OBJECTIONS DO NOT WARRANT RELIEF FROM ASSESSMENT, THE MEMBER
22 MAY REQUEST THE COURT TO REVIEW THE MATTER AND VACATE THE
23 ORDER TO SHOW CAUSE.

24 (6) THE LIQUIDATOR MAY ENFORCE ANY ORDER OR COLLECT ANY
25 JUDGMENT UNDER SUBSECTION (5) OF THIS SECTION BY ANY LAWFUL
26 MEANS.

1 10-3-531. Reinsurers' liability. THE AMOUNT RECOVERABLE
2 BY THE LIQUIDATOR FROM REINSURERS SHALL NOT BE REDUCED AS A
3 RESULT OF THE DELINQUENCY PROCEEDINGS REGARDLESS OF ANY
4 CONTRARY PROVISION IN THE REINSURANCE CONTRACT OR OTHER
5 AGREEMENT. PAYMENT MADE DIRECTLY TO AN INSURED OR OTHER
6 CREDITOR SHALL NOT DIMINISH THE REINSURER'S OBLIGATION TO THE
7 INSURER'S ESTATE EXCEPT WHEN THE REINSURANCE CONTRACT PROVIDED
8 FOR DIRECT COVERAGE OF A NAMED INSURED AND THE PAYMENT WAS
9 MADE IN DISCHARGE OF THAT OBLIGATION.

10 10-3-532. Recovery of premiums owed. (1) (a) AN AGENT,
11 BROKER, PREMIUM FINANCE COMPANY, OR ANY OTHER PERSON OTHER
12 THAN THE INSURED THAT IS RESPONSIBLE FOR THE PAYMENT OF A
13 PREMIUM SHALL BE OBLIGATED TO PAY ANY UNPAID PREMIUM FOR THE
14 FULL POLICY TERM DUE THE INSURER AT THE TIME OF THE
15 DECLARATION OF INSOLVENCY, WHETHER EARNED OR UNEARNED, AS
16 SHOWN ON THE RECORDS OF THE INSURER. THE LIQUIDATOR SHALL ALSO
17 HAVE THE RIGHT TO RECOVER FROM SUCH PERSON ANY PART OF AN
18 UNEARNED PREMIUM THAT REPRESENTS COMMISSION OF SUCH PERSON.
19 CREDITS OR SETOFFS OR BOTH SHALL NOT BE ALLOWED TO AN AGENT,
20 BROKER, OR PREMIUM FINANCE COMPANY FOR ANY AMOUNTS ADVANCED TO
21 THE INSURER BY THE AGENT, BROKER, OR PREMIUM FINANCE COMPANY
22 ON BEHALF OF, BUT IN THE ABSENCE OF A PAYMENT BY, THE INSURED.

23 (b) AN INSURED SHALL BE OBLIGATED TO PAY ANY UNPAID
24 EARNED PREMIUM DUE THE INSURER AT THE TIME OF THE DECLARATION
25 OF INSOLVENCY, AS SHOWN ON THE RECORDS OF THE INSURER.

26 (2) UPON SATISFACTORY EVIDENCE OF A VIOLATION OF THIS

1 MAKE APPLICATION TO THE COURT FOR APPROVAL OF A PROPOSAL TO
2 DISBURSE ASSETS OUT OF MARSHALLED ASSETS, FROM TIME TO TIME
3 AND AS SUCH ASSETS BECOME AVAILABLE, TO A GUARANTY ASSOCIATION
4 OR FOREIGN GUARANTY ASSOCIATION HAVING OBLIGATIONS BECAUSE OF
5 SUCH INSOLVENCY. IF THE LIQUIDATOR DETERMINES THAT THERE ARE
6 INSUFFICIENT ASSETS TO DISBURSE, THE APPLICATION REQUIRED BY
7 THIS SECTION SHALL BE CONSIDERED SATISFIED BY A FILING BY THE
8 LIQUIDATOR STATING THE REASONS FOR SUCH DETERMINATION.

9 (2) THE PROPOSAL REFERENCED IN SUBSECTION (1) OF THIS
10 SECTION SHALL AT LEAST INCLUDE PROVISIONS FOR:

11 (a) RESERVING AMOUNTS FOR THE PAYMENT OF EXPENSES OF
12 ADMINISTRATION AND THE PAYMENT OF CLAIMS OF SECURED CREDITORS,
13 TO THE EXTENT OF THE VALUE OF THE SECURITY HELD, AND CLAIMS
14 FALLING WITHIN THE PRIORITIES ESTABLISHED IN SECTION 10-3-541
15 (1) AND (2);

16 (b) DISBURSEMENT OF THE ASSETS MARSHALLED TO DATE AND
17 SUBSEQUENT DISBURSEMENT OF ASSETS AS THEY BECOME AVAILABLE;

18 (c) EQUITABLE ALLOCATION OF DISBURSEMENTS TO EACH OF THE
19 GUARANTY ASSOCIATIONS AND FOREIGN GUARANTY ASSOCIATIONS
20 ENTITLED THERETO;

21 (d) THE SECURING, BY THE LIQUIDATOR, FROM EACH OF THE
22 ASSOCIATIONS ENTITLED TO DISBURSEMENTS PURSUANT TO THIS
23 SECTION, OF AN AGREEMENT TO RETURN TO THE LIQUIDATOR SUCH
24 ASSETS TOGETHER WITH INCOME EARNED ON ASSETS PREVIOUSLY
25 DISBURSED AS MAY BE REQUIRED TO PAY CLAIMS OF SECURED
26 CREDITORS AND CLAIMS FALLING WITHIN THE PRIORITIES ESTABLISHED

1 SECTION, THE COMMISSIONER MAY PURSUE EITHER ONE OR BOTH OF THE
2 FOLLOWING COURSES OF ACTION:

3 (a) SUSPEND, REVOKE, OR REFUSE TO RENEW THE LICENSES OF
4 SUCH OFFENDING PARTY OR PARTIES;

5 (b) IMPOSE A PENALTY OF NOT MORE THAN ONE THOUSAND
6 DOLLARS FOR EACH AND EVERY ACT IN VIOLATION OF THIS SECTION BY
7 SAID PARTY OR PARTIES.

8 (3) BEFORE THE COMMISSIONER TAKES ANY ACTION SET FORTH
9 IN SUBSECTION (2) OF THIS SECTION, THE COMMISSIONER SHALL
10 GIVE WRITTEN NOTICE TO THE PERSON, COMPANY, ASSOCIATION, OR
11 EXCHANGE ACCUSED OF VIOLATING THE LAW, STATING SPECIFICALLY
12 THE NATURE OF THE ALLEGED VIOLATION AND FIXING A TIME AND
13 PLACE, AT LEAST TEN DAYS THEREAFTER, WHEN A HEARING ON THE
14 MATTER SHALL BE HELD. AFTER SUCH HEARING, OR UPON FAILURE OF
15 THE ACCUSED TO APPEAR AT SUCH HEARING THE COMMISSIONER, IF THE
16 COMMISSIONER FINDS THE ACCUSED COMMITTED ANY SUCH VIOLATION,
17 SHALL IMPOSE SUCH PENALTIES UNDER SUBSECTION (2) OF THIS
18 SECTION AS ARE DEEMED ADVISABLE.

19 (4) WHEN THE COMMISSIONER TAKES ACTION IN ANY OR ALL OF
20 THE WAYS SET OUT IN SUBSECTION (2) OF THIS SECTION, THE PARTY
21 AGGRIEVED MAY APPEAL FROM SAID ACTION TO THE DISTRICT COURT IN
22 AND FOR THE CITY AND COUNTY OF DENVER.

23 10-3-533. Domiciliary liquidator's proposal to
24 distribute assets. (1) WITHIN ONE HUNDRED TWENTY DAYS AFTER A
25 FINAL DETERMINATION OF INSOLVENCY OF AN INSURER BY A COURT OF
26 COMPETENT JURISDICTION OF THIS STATE, THE LIQUIDATOR SHALL

1 IN SECTION 10-3-541 IN ACCORDANCE WITH SUCH PRIORITIES; AND IN
2 SUCH CASE, NO BOND SHALL BE REQUIRED OF ANY SUCH ASSOCIATION;
3 AND

4 (e) A FULL REPORT TO BE MADE BY EACH ASSOCIATION TO THE
5 LIQUIDATOR ACCOUNTING FOR ALL ASSETS SO DISBURSED TO THE
6 ASSOCIATION, ALL DISBURSEMENTS MADE THEREFROM, ANY INTEREST
7 EARNED BY THE ASSOCIATION ON SUCH ASSETS, AND ANY OTHER MATTER
8 AS THE COURT MAY DIRECT.

9 (3) THE LIQUIDATOR'S PROPOSAL SHALL PROVIDE FOR
10 DISBURSEMENTS TO THE ASSOCIATIONS IN AMOUNTS ESTIMATED AT
11 LEAST EQUAL TO THE CLAIM PAYMENTS MADE OR TO BE MADE THEREBY
12 FOR WHICH SUCH ASSOCIATIONS COULD ASSERT A CLAIM AGAINST THE
13 LIQUIDATOR, AND SHALL FURTHER PROVIDE THAT, IF THE ASSETS
14 AVAILABLE FOR DISBURSEMENT FROM TIME TO TIME DO NOT EQUAL OR
15 EXCEED THE AMOUNT OF SUCH CLAIM PAYMENTS MADE OR TO BE MADE BY
16 THE ASSOCIATION, THEN DISBURSEMENTS SHALL BE IN THE AMOUNT OF
17 AVAILABLE ASSETS.

18 (4) THE LIQUIDATOR'S PROPOSAL SHALL, WITH RESPECT TO AN
19 INSOLVENT INSURER WRITING LIFE OR HEALTH INSURANCE OR
20 ANNUITIES, PROVIDE FOR DISBURSEMENTS OF ASSETS TO ANY GUARANTY
21 ASSOCIATION OR ANY FOREIGN GUARANTY ASSOCIATION COVERING LIFE
22 OR HEALTH INSURANCE OR ANNUITIES OR TO ANY OTHER ENTITY OR
23 ORGANIZATION REINSURING, ASSUMING, OR GUARANTEEING POLICIES OR
24 CONTRACTS OF INSURANCE UNDER THE STATUTES CREATING SUCH
25 ASSOCIATIONS.

26 (5) NOTICE OF THE APPLICATION REFERENCED IN SUBSECTION

1 (1) OF THIS SECTION SHALL BE GIVEN TO THE ASSOCIATION IN, AND
2 TO THE INSURANCE DEPARTMENTS OF, EACH OF THE STATES HAVING
3 JURISDICTION OVER ANY INSURER AFFECTED BY THE LIQUIDATOR'S
4 PROPOSAL. ANY SUCH NOTICE SHALL BE DEEMED TO HAVE BEEN GIVEN
5 WHEN DEPOSITED IN THE UNITED STATES CERTIFIED MAIL, FIRST
6 CLASS POSTAGE PREPAID, AT LEAST THIRTY DAYS PRIOR TO
7 SUBMISSION OF SUCH APPLICATION TO THE COURT. ACTION ON THE
8 APPLICATION MAY BE TAKEN BY THE COURT IF SUCH NOTICE HAS BEEN
9 GIVEN AND IF THE LIQUIDATOR'S PROPOSAL COMPLIES WITH THE
10 REQUIREMENTS OF PARAGRAPHS (a) AND (b) OF SUBSECTION (2) OF
11 THIS SECTION.

12 10-3-533.5. Sale of insolvent insurer as a going
13 concern. (1) (a) THE DOMICILIARY RECEIVER MAY APPLY TO THE
14 COURT FOR PERMISSION TO SELL AN INSOLVENT DOMESTIC INSURER AS
15 A GOING CONCERN. IF THE COURT DETERMINES THAT THE SALE OF THE
16 INSURER AS A GOING CONCERN IS IN THE BEST INTEREST OF THE
17 ESTATE AND THAT THE SALE WILL NOT DIMINISH THE VALUE OF THE
18 CLAIMS OF SHAREHOLDERS AND CREDITORS, THE COURT SHALL ORDER
19 THAT THE INSURER BE DISCHARGED FROM ALL OF ITS LIABILITIES,
20 THAT THE OUTSTANDING SHARES OF THE INSURER BE CANCELLED, THAT
21 FOR NO ADDITIONAL CONSIDERATION NEW SHARES OF THE INSURER BE
22 ISSUED IN THE NAME OF THE RECEIVER, THAT THE RECEIVER BE
23 VESTED WITH TITLE TO THE NEW SHARES, WHICH SHARES SHALL BE
24 DEEMED VALIDLY ISSUED, FULLY PAID, AND NONASSESSABLE PURSUANT
25 TO APPLICABLE LAW, AND THAT THE RECEIVER BE AUTHORIZED TO SELL
26 THE SHARES, TOGETHER WITH SUCH STATE OR FEDERAL INCOME OR

1 OTHER TAX CREDITS OR DEDUCTIONS OF THE INSURER AS THE RECEIVER
2 DETERMINES TO BE IN THE BEST INTEREST OF THE ESTATE. UPON
3 CONFIRMATION OF THE SALE BY THE COURT, THE PURCHASERS OF THE
4 SHARES SHALL BE VESTED WITH TITLE TO THOSE SHARES, INCLUDING
5 ANY SUCH TAX CREDITS OF THE INSURER, FREE AND CLEAR OF ALL
6 CLAIMS AND DEFENSES. THE PROCEEDS FROM THE SALE OF THE SHARES
7 SHALL BECOME A PART OF THE GENERAL ASSETS OF THE ESTATE IN
8 LIQUIDATION.

9 (b) A SALE UNDER THIS SECTION DOES NOT AFFECT THE RIGHTS
10 AND LIABILITIES OF THE ESTATE OF THE INSURER AND OF ITS
11 CREDITORS, POLICYHOLDERS, SHAREHOLDERS, MEMBERS, AND ALL OTHER
12 PERSONS INTERESTED IN THE ESTATE AS FIXED UNDER SECTION
13 10-3-541. NO PERSON IS ENTITLED TO ANY PRIORITY OR PREFERENCE
14 RIGHTS IN THE PROCEEDS OF THE SALE EXCEPT AS FIXED UNDER SAID
15 SECTION 10-3-541.

16 (c) AS USED IN THIS SECTION, "SHARES" HAS THE SAME
17 MEANING AS SET FORTH IN SECTION 7-1-102 (12), C.R.S., AND
18 INCLUDES ANY SECURED PARTY OR OTHER PERSON OR HOLDER WHO HAS
19 OR CLAIMS TO HAVE ANY INTEREST OF ANY KIND IN ANY SHARES OF
20 THE INSURER.

21 (2) THE ENUMERATION OF THE POWERS AND AUTHORITY OF THE
22 DOMICILIARY RECEIVER IN THIS SECTION SHALL NOT BE CONSTRUED AS
23 A LIMITATION UPON THE RECEIVER, NOR SHALL IT EXCLUDE IN ANY
24 MANNER THE RIGHT TO DO SUCH OTHER ACTS NOT SPECIFICALLY
25 ENUMERATED IN THIS SECTION OR OTHERWISE PROVIDED FOR AS MAY BE
26 NECESSARY OR APPROPRIATE FOR THE ACCOMPLISHMENT OF OR IN AID

1 OF THE PURPOSE OF LIQUIDATION.

2 (3) NOTHING IN THIS SECTION SHALL BE DEEMED A WAIVER OF
3 CAPITALIZATION, SURPLUS REQUIREMENTS, OR ANY OTHER CONDITION
4 OF LICENSURE IMPOSED BY THIS TITLE FOR THE ISSUANCE OF A
5 CERTIFICATE OF AUTHORITY TO DO INSURANCE BUSINESS OR FOR THE
6 CHANGE IN CONTROL OF A FOREIGN OR DOMESTIC INSURER.

7 (4) THIS SECTION SHALL BE LIBERALLY CONSTRUED TO
8 ACCOMPLISH ITS PURPOSE TO PROVIDE A MORE EXPEDITIOUS AND
9 EFFECTIVE PROCEDURE FOR MARSHALLING THE ASSETS OF THE ESTATE
10 IN ORDER TO REALIZE THE MAXIMUM AMOUNT POSSIBLE FROM THE SALE
11 OF THOSE ASSETS AND ENSURE THAT THE PURCHASERS RECEIVE CLEAR
12 AND MARKETABLE TITLES.

13 10-3-534. Filing of claims. (1) PROOF OF ALL CLAIMS
14 SHALL BE FILED WITH THE LIQUIDATOR IN THE FORM REQUIRED BY
15 SECTION 10-3-535 ON OR BEFORE THE LAST DAY FOR FILING
16 SPECIFIED IN THE NOTICE REQUIRED UNDER SECTION 10-3-521;
17 EXCEPT THAT PROOF OF CLAIMS FOR CASH SURRENDER VALUES OR OTHER
18 INVESTMENT VALUES IN LIFE INSURANCE AND ANNUITIES NEED NOT BE
19 FILED UNLESS THE LIQUIDATOR EXPRESSLY SO REQUIRES.

20 (2) THE LIQUIDATOR MAY PERMIT A CLAIMANT MAKING A LATE
21 FILING TO SHARE IN DISTRIBUTIONS, WHETHER PAST OR FUTURE, AS
22 IF THE CLAIMANT'S FILING WERE NOT LATE, TO THE EXTENT THAT ANY
23 SUCH PAYMENT WILL NOT PREJUDICE THE ORDERLY ADMINISTRATION OF
24 THE LIQUIDATION, UNDER THE FOLLOWING CIRCUMSTANCES:

25 (a) A TRANSFER TO A CREDITOR WAS AVOIDED UNDER SECTIONS
26 10-3-525 TO 10-3-527, OR WAS VOLUNTARILY SURRENDERED UNDER

1 SECTION 10-3-528, AND THE FILING SATISFIES THE CONDITIONS SET
2 FORTH IN SECTION 10-3-528; OR

3 (b) THE VALUATION, UNDER SECTION 10-3-540, OF SECURITY
4 HELD BY A SECURED CREDITOR SHOWS A DEFICIENCY WHICH IS FILED
5 WITHIN THIRTY DAYS AFTER THE VALUATION.

6 (3) THE LIQUIDATOR SHALL PERMIT LATE-FILED CLAIMS TO
7 SHARE IN DISTRIBUTIONS, WHETHER PAST OR FUTURE, AS IF THEY
8 WERE NOT LATE, IF SUCH CLAIMS ARE CLAIMS OF A GUARANTY
9 ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION FOR REIMBURSEMENT
10 OF COVERED CLAIMS PAID OR EXPENSES INCURRED, OR BOTH,
11 SUBSEQUENT TO THE LAST DAY FOR FILING WHERE SUCH PAYMENTS WERE
12 MADE AND EXPENSES INCURRED AS PROVIDED BY LAW.

13 10-3-535. Proof of claim. (1) PROOF OF CLAIM SHALL
14 CONSIST OF A STATEMENT SIGNED BY THE CLAIMANT THAT INCLUDES
15 ALL OF THE FOLLOWING THAT ARE APPLICABLE:

16 (a) THE PARTICULARS OF THE CLAIM, INCLUDING THE
17 CONSIDERATION GIVEN FOR IT;

18 (b) THE IDENTITY AND AMOUNT OF THE SECURITY ON THE
19 CLAIM;

20 (c) THE PAYMENTS MADE ON THE DEBT, IF ANY;

21 (d) THAT THE SUM CLAIMED IS JUSTLY OWING AND THAT THERE
22 IS NO SETOFF, COUNTERCLAIM, OR DEFENSE TO THE CLAIM;

23 (e) ANY RIGHT OF PRIORITY OF PAYMENT OR OTHER SPECIFIC
24 RIGHT ASSERTED BY THE CLAIMANT;

25 (f) A COPY OF THE WRITTEN INSTRUMENT WHICH IS THE
26 FOUNDATION OF THE CLAIM; AND

1 (g) THE NAME AND ADDRESS OF THE CLAIMANT AND OF THE
2 ATTORNEY, IF ANY, WHO REPRESENTS THE CLAIMANT.

3 (2) NO CLAIM NEEDS TO BE CONSIDERED OR ALLOWED IF IT
4 DOES NOT CONTAIN ALL THE INFORMATION SPECIFIED IN SUBSECTION
5 (1) OF THIS SECTION WHICH MAY BE APPLICABLE. THE LIQUIDATOR
6 MAY REQUIRE THAT A PRESCRIBED FORM BE USED, AND MAY REQUIRE
7 THAT OTHER INFORMATION AND DOCUMENTS BE INCLUDED.

8 (3) THE LIQUIDATOR MAY, AT ANY TIME, REQUEST THE
9 CLAIMANT TO PRESENT INFORMATION OR EVIDENCE SUPPLEMENTARY TO
10 THAT REQUIRED UNDER SUBSECTION (1) OF THIS SECTION AND MAY
11 TAKE TESTIMONY UNDER OATH, REQUIRE PRODUCTION OF AFFIDAVITS OR
12 DEPOSITIONS, OR OTHERWISE OBTAIN ADDITIONAL INFORMATION OR
13 EVIDENCE.

14 (4) NO JUDGMENT OR ORDER AGAINST AN INSURED OR THE
15 INSURER ENTERED AFTER THE DATE OF FILING OF A SUCCESSFUL
16 PETITION FOR LIQUIDATION, AND NO JUDGMENT OR ORDER AGAINST AN
17 INSURED OR THE INSURER ENTERED AT ANY TIME BY DEFAULT OR BY
18 COLLUSION, NEEDS TO BE CONSIDERED AS EVIDENCE OF LIABILITY OR
19 OF QUANTUM OF DAMAGES. NO JUDGMENT OR ORDER AGAINST AN INSURED
20 OR THE INSURER ENTERED WITHIN THE FOUR-MONTH PERIOD
21 IMMEDIATELY PRECEDING THE FILING OF THE PETITION NEEDS BE
22 CONSIDERED AS EVIDENCE OF LIABILITY OR OF THE QUANTUM OF
23 DAMAGES.

24 (5) ALL CLAIMS OF A GUARANTY ASSOCIATION OR FOREIGN
25 GUARANTY ASSOCIATION SHALL BE IN SUCH FORM AND SHALL CONTAIN
26 SUCH SUBSTANTIATION AS MAY BE AGREED TO BY THE ASSOCIATION AND

1 THE LIQUIDATOR.

2 10-3-536. Special claims. (1) THE CLAIM OF A THIRD
3 PARTY WHICH IS CONTINGENT ONLY ON SUCH PARTY'S FIRST OBTAINING
4 A JUDGMENT AGAINST THE INSURED SHALL BE CONSIDERED AND ALLOWED
5 AS THOUGH THERE WERE NO SUCH CONTINGENCY.

6 (2) A CLAIM MAY BE ALLOWED, EVEN IF CONTINGENT, IF IT IS
7 FILED IN ACCORDANCE WITH SECTION 10-3-534; AND SUCH CLAIM MAY
8 BE ALLOWED AND MAY PARTICIPATE IN ALL DISTRIBUTIONS DECLARED
9 AFTER IT IS FILED TO THE EXTENT THAT IT DOES NOT PREJUDICE THE
10 ORDERLY ADMINISTRATION OF THE LIQUIDATION.

11 (3) CLAIMS THAT ARE DUE EXCEPT FOR THE PASSAGE OF TIME
12 SHALL BE TREATED IN THE SAME MANNER AS ARE ABSOLUTE CLAIMS;
13 EXCEPT THAT SUCH CLAIMS MAY BE DISCOUNTED AT THE LEGAL RATE OF
14 INTEREST.

15 (4) CLAIMS MADE UNDER EMPLOYMENT CONTRACTS BY DIRECTORS,
16 PRINCIPAL OFFICERS, OR PERSONS IN FACT PERFORMING SIMILAR
17 FUNCTIONS OR HAVING SIMILAR POWERS ARE LIMITED TO PAYMENT FOR
18 SERVICES RENDERED PRIOR TO THE ISSUANCE OF ANY ORDER OF
19 REHABILITATION OR LIQUIDATION UNDER SECTION 10-3-512 OR
20 10-3-517.

21 10-3-537. Special provisions for third-party claims.

22 (1) WHENEVER ANY THIRD PARTY ASSERTS A CAUSE OF ACTION
23 AGAINST AN INSURED OF AN INSURER IN LIQUIDATION, THE THIRD
24 PARTY MAY FILE A CLAIM WITH THE LIQUIDATOR.

25 (2) WHETHER OR NOT THE THIRD PARTY FILES A CLAIM, THE
26 INSURED MAY FILE A CLAIM ON THE INSURED'S OWN BEHALF IN THE

1 LIQUIDATION. IF THE INSURED FAILS TO FILE A CLAIM BY THE DATE
2 FOR FILING CLAIMS SPECIFIED IN THE ORDER OF LIQUIDATION OR
3 WITHIN SIXTY DAYS AFTER MAILING OF THE NOTICE REQUIRED BY
4 SECTION 10-3-521, WHICHEVER IS LATER, THE INSURED IS AN
5 UNEXCUSED LATE FILER.

6 (3) THE LIQUIDATOR SHALL MAKE RECOMMENDATIONS TO THE
7 COURT UNDER SECTION 10-3-541 FOR THE ALLOWANCE OF AN INSURED'S
8 CLAIM UNDER SUBSECTION (2) OF THIS SECTION AFTER
9 CONSIDERATION OF THE PROBABLE OUTCOME OF ANY PENDING ACTION
10 AGAINST THE INSURED ON WHICH THE CLAIM IS BASED, THE PROBABLE
11 DAMAGES RECOVERABLE IN THE ACTION, AND THE PROBABLE COSTS AND
12 EXPENSES OF DEFENSE. AFTER ALLOWANCE BY THE COURT, THE
13 LIQUIDATOR SHALL WITHHOLD ANY DIVIDENDS PAYABLE ON THE CLAIM
14 PENDING THE OUTCOME OF LITIGATION AND NEGOTIATION WITH THE
15 INSURED. WHEN APPROPRIATE, THE LIQUIDATOR SHALL RECONSIDER
16 THE CLAIM ON THE BASIS OF ADDITIONAL INFORMATION AND AMEND THE
17 SAID RECOMMENDATIONS TO THE COURT. THE INSURED SHALL BE
18 AFFORDED THE SAME NOTICE AND OPPORTUNITY TO BE HEARD ON ALL
19 CHANGES IN ANY RECOMMENDATION AS IN ITS INITIAL DETERMINATION.
20 THE COURT MAY AMEND ITS ALLOWANCE AS IT FINDS APPROPRIATE. AS
21 CLAIMS AGAINST THE INSURED ARE SETTLED OR BARRED, THE INSURED
22 SHALL BE PAID FROM THE AMOUNT WITHHELD THE SAME PERCENTAGE
23 DIVIDEND AS WAS PAID ON OTHER CLAIMS OF LIKE PROPERTY, BASED
24 ON THE LESSER OF THE AMOUNT ACTUALLY RECOVERED FROM THE
25 INSURED BY ACTION OR PAID BY AGREEMENT PLUS THE REASONABLE
26 COSTS AND EXPENSE OF DEFENSE, OR THE AMOUNT ALLOWED ON THE

1 CLAIMS BY THE COURT. AFTER ALL CLAIMS ARE SETTLED OR BARRED,
2 ANY SUM REMAINING FROM THE AMOUNT WITHHELD SHALL REVERT TO THE
3 UNDISTRIBUTED ASSETS OF THE INSURER. DELAY IN FINAL PAYMENT
4 UNDER THIS SUBSECTION (3) SHALL NOT BE A REASON FOR
5 UNREASONABLE DELAY OF FINAL DISTRIBUTION AND DISCHARGE OF THE
6 LIQUIDATOR.

7 (4) IF SEVERAL CLAIMS FOUNDED UPON ONE POLICY ARE FILED,
8 WHETHER BY THIRD PARTIES OR AS CLAIMS BY THE INSURED UNDER
9 THIS SECTION, AND THE AGGREGATE ALLOWED AMOUNT OF THE CLAIMS
10 TO WHICH THE SAME LIMIT OF LIABILITY IN THE POLICY IS
11 APPLICABLE EXCEEDS THAT LIMIT, EACH CLAIM AS ALLOWED SHALL BE
12 REDUCED IN THE SAME PROPORTION SO THAT THE TOTAL EQUALS THE
13 POLICY LIMIT. CLAIMS BY THE INSURED SHALL BE EVALUATED AS IN
14 SUBSECTION (3) OF THIS SECTION. IF ANY INSURED'S CLAIM IS
15 SUBSEQUENTLY REDUCED UNDER SUBSECTION (3) OF THIS SECTION,
16 THE AMOUNT THUS FREED SHALL BE APPORTIONED RATABLY AMONG THE
17 CLAIMS WHICH HAVE BEEN REDUCED UNDER THIS SUBSECTION (4).

18 (5) NO CLAIM MAY BE PRESENTED UNDER THIS SECTION IF IT
19 IS OR MAY BE COVERED BY ANY GUARANTY ASSOCIATION OR FOREIGN
20 GUARANTY ASSOCIATION.

21 10-3-53B. Disputed claims. (1) WHEN A CLAIM IS DENIED
22 IN WHOLE OR IN PART BY THE LIQUIDATOR, WRITTEN NOTICE OF THE
23 DETERMINATION SHALL BE GIVEN TO THE CLAIMANT OR THE CLAIMANT'S
24 ATTORNEY BY FIRST CLASS MAIL AT THE ADDRESS SHOWN IN THE PROOF
25 OF CLAIM. WITHIN SIXTY DAYS AFTER THE MAILING OF THE NOTICE,
26 THE CLAIMANT MAY FILE OBJECTIONS WITH THE LIQUIDATOR. IF NO

1 SUCH FILING IS MADE, THE CLAIMANT MAY NOT FURTHER OBJECT TO
2 THE DETERMINATION.

3 (2) WHENEVER OBJECTIONS ARE FILED WITH THE LIQUIDATOR
4 AND THE LIQUIDATOR DOES NOT ALTER THE DENIAL OF THE CLAIM AS A
5 RESULT OF THE OBJECTIONS, THE LIQUIDATOR SHALL ASK THE COURT
6 FOR A HEARING AS SOON AS PRACTICABLE AND GIVE NOTICE OF THE
7 HEARING BY FIRST CLASS MAIL TO THE CLAIMANT OR THE CLAIMANT'S
8 ATTORNEY AND TO ANY OTHER PERSONS DIRECTLY AFFECTED, NOT LESS
9 THAN TEN DAYS NOR MORE THAN THIRTY DAYS BEFORE THE DATE OF THE
10 HEARING. THE MATTER MAY BE HEARD BY THE COURT OR BY A
11 COURT-APPOINTED REFEREE, WHO SHALL SUBMIT FINDINGS OF FACT
12 ALONG WITH A RECOMMENDATION.

13 10-3-539. Claims of surety. WHENEVER A CREDITOR WHOSE
14 CLAIM AGAINST AN INSURER IS SECURED, IN WHOLE OR IN PART, BY
15 THE UNDERTAKING OF ANOTHER PERSON FAILS TO PROVE AND FILE THAT
16 CLAIM, SUCH OTHER PERSON MAY DO SO IN THE CREDITOR'S NAME AND
17 SHALL BE SUBROGATED TO THE RIGHTS OF THE CREDITOR, WHETHER THE
18 CLAIM HAS BEEN FILED BY THE CREDITOR OR BY THE OTHER PERSON IN
19 THE CREDITOR'S NAME, TO THE EXTENT THAT THE OTHER PERSON
20 DISCHARGES THE UNDERTAKING; EXCEPT THAT, IN THE ABSENCE OF AN
21 AGREEMENT WITH THE CREDITOR TO THE CONTRARY, THE OTHER PERSON
22 SHALL NOT BE ENTITLED TO ANY DISTRIBUTION UNTIL THE AMOUNT
23 PAID TO THE CREDITOR ON THE UNDERTAKING PLUS THE DISTRIBUTIONS
24 PAID ON THE CLAIM FROM THE INSURER'S ESTATE TO THE CREDITOR
25 EQUALS THE AMOUNT OF THE ENTIRE CLAIM OF THE CREDITOR. ANY
26 EXCESS RECEIVED BY THE CREDITOR SHALL BE HELD BY THE CREDITOR

1 IN TRUST FOR SUCH OTHER PERSON. THE TERM "OTHER PERSON", AS
2 USED IN THIS SECTION, DOES NOT APPLY TO A GUARANTY ASSOCIATION
3 OR FOREIGN GUARANTY ASSOCIATION.

4 10-3-540. Secured creditors' claims. (1) THE VALUE OF
5 ANY SECURITY HELD BY A SECURED CREDITOR SHALL BE DETERMINED IN
6 ONE OF THE FOLLOWING WAYS, AS THE COURT MAY DIRECT:

7 (a) BY CONVERTING THE SAME INTO MONEY ACCORDING TO THE
8 TERMS OF THE AGREEMENT PURSUANT TO WHICH THE SECURITY WAS
9 DELIVERED TO SUCH CREDITOR; OR

10 (b) BY AGREEMENT, ARBITRATION, COMPROMISE, OR LITIGATION
11 BETWEEN THE CREDITOR AND THE LIQUIDATOR.

12 (2) THE DETERMINATION SHALL BE UNDER THE SUPERVISION AND
13 CONTROL OF THE COURT WITH DUE REGARD FOR THE RECOMMENDATION OF
14 THE LIQUIDATOR. THE AMOUNT SO DETERMINED SHALL BE CREDITED
15 UPON THE SECURED CLAIM, AND ANY DEFICIENCY SHALL BE TREATED AS
16 AN UNSECURED CLAIM. IF THE CLAIMANT SURRENDERS THE SECURITY TO
17 THE LIQUIDATOR, THE ENTIRE CLAIM SHALL BE ALLOWED AS IF
18 UNSECURED.

19 10-3-541. Priority of distribution. (1) THE PRIORITY OF
20 DISTRIBUTION OF CLAIMS FROM THE INSURER'S ESTATE SHALL BE IN
21 ACCORDANCE WITH THE ORDER IN WHICH EACH CLASS OF CLAIMS IS SET
22 FORTH IN THIS SECTION. EVERY CLAIM IN EACH CLASS SHALL BE PAID
23 IN FULL, OR ADEQUATE FUNDS SHALL BE RETAINED FOR SUCH PAYMENT,
24 BEFORE THE MEMBERS OF THE NEXT CLASS RECEIVE ANY PAYMENT. NO
25 SUBCLASSES SHALL BE ESTABLISHED WITHIN ANY CLASS. THE ORDER OF
26 DISTRIBUTION OF CLAIMS SHALL BE:

1 (a) Class 1. THE COSTS AND EXPENSES OF ADMINISTRATION
2 DURING REHABILITATION AND LIQUIDATION, INCLUDING BUT NOT
3 LIMITED TO THE FOLLOWING:

4 (I) THE ACTUAL AND NECESSARY COSTS OF PRESERVING OR
5 RECOVERING THE ASSETS OF THE INSURER;

6 (II) COMPENSATION FOR ALL AUTHORIZED SERVICES RENDERED
7 IN THE REHABILITATION AND LIQUIDATION;

8 (III) ANY NECESSARY FILING FEES;

9 (IV) THE FEES AND MILEAGE PAYABLE TO WITNESSES;

10 (V) AUTHORIZED REASONABLE ATTORNEYS' FEES AND FEES FOR
11 OTHER PROFESSIONAL SERVICES RENDERED IN THE REHABILITATION AND
12 LIQUIDATION; AND

13 (VI) THE REASONABLE EXPENSES OF A GUARANTY ASSOCIATION
14 OR FOREIGN GUARANTY ASSOCIATION FOR UNALLOCATED LOSS
15 ADJUSTMENT EXPENSES.

16 (b) Class 2. REASONABLE COMPENSATION TO EMPLOYEES FOR
17 SERVICES PERFORMED TO THE EXTENT THAT THEY DO NOT EXCEED TWO
18 MONTHS OF MONETARY COMPENSATION AND REPRESENT PAYMENT FOR
19 SERVICES PERFORMED WITHIN THE ONE-YEAR PERIOD IMMEDIATELY
20 PRECEDING THE FILING OF THE PETITION FOR LIQUIDATION OR, IF
21 REHABILITATION PRECEDED LIQUIDATION, WITHIN THE ONE-YEAR
22 PERIOD IMMEDIATELY PRECEDING THE FILING OF THE PETITION FOR
23 REHABILITATION. PRINCIPAL OFFICERS AND DIRECTORS SHALL NOT BE
24 ENTITLED TO THE BENEFIT OF THIS PRIORITY EXCEPT AS OTHERWISE
25 APPROVED BY THE LIQUIDATOR AND THE COURT. SUCH PRIORITY SHALL
26 BE IN LIEU OF ANY OTHER SIMILAR PRIORITY WHICH MAY BE

1 AUTHORIZED BY LAW AS TO WAGES OR COMPENSATION OF EMPLOYEES.

2 (c) Class 3. ALL CLAIMS UNDER POLICIES INCLUDING SUCH
3 CLAIMS OF THE FEDERAL OR ANY STATE OR LOCAL GOVERNMENT
4 INCLUDING UNEARNED PREMIUM CLAIMS, THIRD-PARTY CLAIMS, AND ALL
5 CLAIMS OF A GUARANTY ASSOCIATION OR FOREIGN GUARANTY
6 ASSOCIATION. CLAIMS UNDER LIFE INSURANCE AND ANNUITY POLICIES
7 SHALL INCLUDE CLAIMS FOR DEATH PROCEEDS, ANNUITY PROCEEDS, AND
8 OTHER CLAIMS AS COVERED BY SECTION 10-20-104 (2). THAT PORTION
9 OF ANY LOSS FOR WHICH INDEMNIFICATION IS PROVIDED BY OTHER
10 BENEFITS OR ADVANTAGES RECOVERED BY THE CLAIMANT, OTHER THAN
11 BENEFITS OR ADVANTAGES RECOVERED OR RECOVERABLE IN DISCHARGE
12 OF FAMILIAL OBLIGATION OF SUPPORT OR BY WAY OF SUCCESSION AT
13 DEATH OR AS PROCEEDS OF LIFE INSURANCE, OR AS GRATUITIES,
14 SHALL NOT BE INCLUDED IN THIS CLASS. NO PAYMENT BY AN EMPLOYER
15 TO THE EMPLOYER'S EMPLOYEE SHALL BE TREATED AS A GRATUITY.

16 (d) Class 4. CLAIMS OF THE FEDERAL OR ANY STATE OR LOCAL
17 GOVERNMENT EXCEPT THOSE UNDER PARAGRAPH (c) OF THIS SUBSECTION
18 (1). CLAIMS IN THIS PARAGRAPH (d), INCLUDING THOSE OF ANY
19 GOVERNMENTAL BODY FOR A PENALTY OR FORFEITURE, SHALL BE
20 ALLOWED ONLY TO THE EXTENT OF THE PECUNIARY LOSS SUSTAINED
21 FROM THE ACT, TRANSACTION, OR PROCEEDING OUT OF WHICH THE
22 PENALTY OR FORFEITURE AROSE AND FOR THE REASONABLE AND ACTUAL
23 COSTS OCCASIONED THEREBY. THE REMAINDER OF SUCH CLAIMS SHALL
24 BE POSTPONED TO CLASS 7.

25 (e) Class 5. CLAIMS FILED LATE AND ANY OTHER CLAIMS
26 OTHER THAN CLAIMS DESCRIBED IN PARAGRAPH (g) OF THIS

1 SUBSECTION (1).

2 (f) Class 6. SURPLUS OR CONTRIBUTION NOTES, OR SIMILAR
3 OBLIGATIONS, AND PREMIUM REFUNDS ON ASSESSABLE POLICIES.
4 PAYMENTS TO MEMBERS OF DOMESTIC MUTUAL INSURANCE COMPANIES
5 SHALL BE LIMITED IN ACCORDANCE WITH LAW.

6 (g) Class 7. CLAIMS OF SHAREHOLDERS OR OTHER OWNERS IN
7 THEIR CAPACITY AS SHAREHOLDERS.

8 10-3-542. Liquidator's recommendations to the court.

9 (1) THE LIQUIDATOR SHALL REVIEW ALL CLAIMS DULY FILED IN THE
10 LIQUIDATION AND SHALL MAKE SUCH FURTHER INVESTIGATION AS
11 DEEMED NECESSARY. THE LIQUIDATOR MAY COMPOUND, COMPROMISE, OR
12 IN ANY OTHER MANNER NEGOTIATE THE AMOUNT FOR WHICH CLAIMS WILL
13 BE RECOMMENDED TO THE COURT EXCEPT WHERE THE LIQUIDATOR IS
14 REQUIRED BY LAW TO ACCEPT CLAIMS AS SETTLED BY ANY PERSON OR
15 ORGANIZATION, INCLUDING ANY GUARANTY ASSOCIATION OR FOREIGN
16 GUARANTY ASSOCIATION. UNRESOLVED DISPUTES SHALL BE DETERMINED
17 UNDER SECTION 10-3-538. AS SOON AS PRACTICABLE, THE LIQUIDATOR
18 SHALL PRESENT TO THE COURT A REPORT OF THE CLAIMS AGAINST THE
19 INSURER WITH THE LIQUIDATOR'S RECOMMENDATIONS. THE REPORT
20 SHALL INCLUDE THE NAME AND ADDRESS OF EACH CLAIMANT AND THE
21 AMOUNT OF THE CLAIM FINALLY RECOMMENDED, IF ANY. IF THE
22 INSURER HAS ISSUED ANNUITIES OR LIFE INSURANCE POLICIES, THE
23 LIQUIDATOR SHALL REPORT THE PERSONS TO WHOM, ACCORDING TO THE
24 RECORDS OF THE INSURER, AMOUNTS ARE OWED AS CASH SURRENDER
25 VALUES OR OTHER INVESTMENT VALUE AND THE AMOUNTS OWED.

26 (2) THE COURT MAY APPROVE, DISAPPROVE, OR MODIFY THE

1 LIQUIDATOR'S REPORT ON CLAIMS. CLAIMS ALLOWED IN ANY REPORT
 2 NOT MODIFIED BY THE COURT WITHIN A PERIOD OF SIXTY DAYS AFTER
 3 SUBMISSION BY THE LIQUIDATOR SHALL BE TREATED BY THE
 4 LIQUIDATOR AS ALLOWED CLAIMS, SUBJECT THEREAFTER TO LATER
 5 MODIFICATION OR TO RULINGS MADE BY THE COURT PURSUANT TO
 6 SECTION 10-3-538. NO CLAIM UNDER A POLICY OF INSURANCE SHALL
 7 BE ALLOWED FOR AN AMOUNT IN EXCESS OF THE APPLICABLE POLICY
 8 LIMITS.

9 10-3-543. Distribution of assets. UNDER THE DIRECTION OF
 10 THE COURT, THE LIQUIDATOR SHALL PAY DISTRIBUTIONS IN A MANNER
 11 THAT WILL ASSURE THE PROPER RECOGNITION OF PRIORITIES AND A
 12 REASONABLE BALANCE BETWEEN THE EXPEDITIOUS COMPLETION OF THE
 13 LIQUIDATION AND THE PROTECTION OF UNLIQUIDATED AND
 14 UNDETERMINED CLAIMS, INCLUDING THIRD PARTY CLAIMS.
 15 DISTRIBUTION OF ASSETS IN KIND MAY BE MADE AT VALUATIONS SET
 16 BY AGREEMENT BETWEEN THE LIQUIDATOR AND THE CREDITOR AND
 17 APPROVED BY THE COURT.

18 10-3-544. Unclaimed and withheld funds. (1) ALL
 19 UNCLAIMED FUNDS SUBJECT TO DISTRIBUTION REMAINING IN THE
 20 LIQUIDATOR'S HANDS WHEN THE LIQUIDATOR IS READY TO APPLY TO
 21 THE COURT FOR DISCHARGE, INCLUDING THE AMOUNT DISTRIBUTABLE TO
 22 ANY CREDITOR, SHAREHOLDER, MEMBER, OR OTHER PERSON WHO IS
 23 UNKNOWN OR CANNOT BE FOUND, SHALL BE DEPOSITED WITH THE STATE
 24 TREASURER AND SHALL BE PAID, WITHOUT INTEREST, EXCEPT IN
 25 ACCORDANCE WITH SECTION 10-3-541, TO THE PERSON ENTITLED
 26 THERETO OR SUCH PERSON'S LEGAL REPRESENTATIVE UPON PROOF

1 SATISFACTORY TO THE STATE TREASURER OF THE PERSON'S RIGHT
 2 THERETO. ANY AMOUNT ON DEPOSIT NOT CLAIMED WITHIN SIX YEARS
 3 AFTER THE DATE OF DISCHARGE OF THE LIQUIDATOR SHALL BE DEEMED
 4 TO HAVE BEEN ABANDONED AND SHALL ESCHEAT, WITHOUT FORMAL
 5 ESCHEAT PROCEEDINGS, TO THE STATE AND SHALL BE DEPOSITED IN
 6 THE GENERAL FUND.

7 (2) ALL FUNDS WITHHELD UNDER SECTION 10-3-537 AND NOT
 8 DISTRIBUTED SHALL, UPON DISCHARGE OF THE LIQUIDATOR, BE
 9 DEPOSITED WITH THE STATE TREASURER AND PAID IN ACCORDANCE WITH
 10 SECTION 10-3-541. ANY SUMS REMAINING WHICH, UNDER SECTION
 11 10-3-541, WOULD REVERT TO THE UNDISTRIBUTED ASSETS OF THE
 12 INSURER SHALL BE TRANSFERRED TO THE STATE TREASURER AND BECOME
 13 THE PROPERTY OF THE STATE UNDER SUBSECTION (1) OF THIS
 14 SECTION UNLESS THE COMMISSIONER IN THE COMMISSIONER'S
 15 DISCRETION PETITIONS THE COURT TO REOPEN THE LIQUIDATION UNDER
 16 SECTION 10-3-546.

17 10-3-545. Termination of proceedings. (1) WHEN ALL
 18 ASSETS JUSTIFYING THE EXPENSE OF COLLECTION AND DISTRIBUTION
 19 HAVE BEEN COLLECTED AND DISTRIBUTED UNDER THIS PART 5, THE
 20 LIQUIDATOR SHALL APPLY TO THE COURT FOR DISCHARGE. THE COURT
 21 MAY GRANT THE DISCHARGE AND MAKE ANY OTHER ORDERS, INCLUDING
 22 AN ORDER TO TRANSFER ANY REMAINING FUNDS THAT ARE UNECONOMIC
 23 TO DISTRIBUTE, AS MAY BE DEEMED APPROPRIATE.

24 (2) ANY OTHER PERSON MAY APPLY TO THE COURT AT ANY TIME
 25 FOR AN ORDER UNDER SUBSECTION (1) OF THIS SECTION. IF THE
 26 APPLICATION IS DENIED, THE APPLICANT SHALL PAY THE COSTS AND

1 EXPENSES OF THE LIQUIDATOR IN RESISTING THE APPLICATION,
2 INCLUDING A REASONABLE ATTORNEY'S FEE.

3 10-3-546. Reopening liquidation. AFTER THE LIQUIDATION
4 PROCEEDING HAS BEEN TERMINATED AND THE LIQUIDATOR DISCHARGED,
5 THE COMMISSIONER OR OTHER INTERESTED PARTY MAY AT ANY TIME
6 PETITION THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF
7 DENVER TO REOPEN THE PROCEEDINGS FOR GOOD CAUSE, INCLUDING THE
8 DISCOVERY OF ADDITIONAL ASSETS. IF THE COURT IS SATISFIED THAT
9 THERE IS JUSTIFICATION FOR REOPENING, IT SHALL SO ORDER.

10 10-3-547. Disposition of records during and after
11 termination of liquidation. WHENEVER IT APPEARS TO THE
12 COMMISSIONER THAT THE RECORDS OF ANY INSURER IN PROCESS OF
13 LIQUIDATION OR COMPLETELY LIQUIDATED ARE NO LONGER USEFUL, THE
14 COMMISSIONER MAY RECOMMEND TO THE COURT AND THE COURT SHALL
15 DIRECT WHAT RECORDS SHOULD BE RETAINED FOR FUTURE REFERENCE
16 AND WHAT SHOULD BE DESTROYED.

17 10-3-548. External audit of the receiver's books. THE
18 DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER MAY,
19 AS IT DEEMS DESIRABLE, CAUSE AUDITS TO BE MADE OF THE BOOKS OF
20 THE COMMISSIONER RELATING TO ANY RECEIVERSHIP ESTABLISHED
21 UNDER THIS PART 5, AND A REPORT OF EACH SUCH AUDIT SHALL BE
22 FILED WITH THE COMMISSIONER AND WITH THE COURT. THE BOOKS,
23 RECORDS, AND OTHER DOCUMENTS OF THE RECEIVERSHIP SHALL BE MADE
24 AVAILABLE TO THE AUDITOR AT ANY TIME WITHOUT NOTICE. THE
25 EXPENSE OF EACH AUDIT SHALL BE CONSIDERED A COST OF
26 ADMINISTRATION OF THE RECEIVERSHIP.

1 10-3-549. Conservation of property of foreign or alien
2 insurers found in this state. (1) IF A DOMICILIARY LIQUIDATOR
3 HAS NOT BEEN APPOINTED, THE COMMISSIONER MAY APPLY TO THE
4 DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER BY
5 VERIFIED PETITION FOR AN ORDER DIRECTING THE COMMISSIONER TO
6 ACT AS CONSERVATOR TO CONSERVE THE PROPERTY OF AN ALIEN
7 INSURER NOT DOMICILED IN THIS STATE OR A FOREIGN INSURER ON
8 ANY ONE OR MORE OF THE FOLLOWING GROUNDS:

9 (a) ANY OF THE GROUNDS SET FORTH IN SECTION 10-3-511;

10 (b) THAT ANY OF THE INSURER'S PROPERTY HAS BEEN
11 SEQUESTERED BY OFFICIAL ACTION IN ITS DOMICILIARY STATE OR IN
12 ANY OTHER STATE;

13 (c) THAT ENOUGH OF ITS PROPERTY HAS BEEN SEQUESTERED IN
14 A FOREIGN COUNTRY TO GIVE REASONABLE CAUSE TO FEAR THAT THE
15 INSURER IS OR MAY BECOME INSOLVENT;

16 (d) THAT ITS CERTIFICATE OF AUTHORITY TO DO BUSINESS IN
17 THIS STATE HAS BEEN REVOKED OR THAT NONE WAS EVER ISSUED AND
18 THAT THERE ARE RESIDENTS OF THIS STATE WITH OUTSTANDING CLAIMS
19 OR OUTSTANDING POLICIES.

20 (2) WHEN AN ORDER IS SOUGHT UNDER SUBSECTION (1) OF
21 THIS SECTION, THE COURT SHALL CAUSE THE INSURER TO BE GIVEN
22 SUCH NOTICE AND TIME TO RESPOND THERETO AS IS REASONABLE UNDER
23 THE CIRCUMSTANCES.

24 (3) THE COURT MAY ISSUE THE ORDER IN WHATEVER TERMS IT
25 DEEMS APPROPRIATE. THE FILING OR RECORDING OF THE ORDER WITH
26 THE CLERK OF THE SAID COURT OR WITH THE RECORDER OF DEEDS OF

1 THE COUNTY IN WHICH THE PRINCIPAL BUSINESS OF THE COMPANY IS
2 LOCATED SHALL IMPART THE SAME NOTICE AS WOULD BE IMPARTED BY A
3 DEED, BILL OF SALE, OR OTHER EVIDENCE OF TITLE DULY FILED OR
4 RECORDED WITH THAT RECORDER OF DEEDS.

5 (4) THE CONSERVATOR MAY AT ANY TIME PETITION FOR, AND
6 THE COURT MAY GRANT, AN ORDER UNDER SECTION 10-3-550 TO
7 LIQUIDATE ASSETS OF A FOREIGN OR ALIEN INSURER UNDER
8 CONSERVATION, OR, IF APPROPRIATE, FOR APPOINTMENT AS ANCILLARY
9 RECEIVER UNDER SECTION 10-3-552.

10 (5) THE CONSERVATOR MAY AT ANY TIME PETITION THE COURT
11 FOR AN ORDER TERMINATING CONSERVATION OF AN INSURER. IF THE
12 COURT FINDS THAT THE CONSERVATION IS NO LONGER NECESSARY, IT
13 SHALL ORDER THAT THE INSURER BE RESTORED TO POSSESSION OF ITS
14 PROPERTY AND THE CONTROL OF ITS BUSINESS. THE COURT MAY ALSO
15 MAKE SUCH FINDING AND ISSUE SUCH ORDER AT ANY TIME UPON MOTION
16 OF ANY INTERESTED PARTY. IF SUCH MOTION BY ANY PERSON OTHER
17 THAN THE CONSERVATOR IS DENIED, ALL COSTS OF SUCH MOTION SHALL
18 BE ASSESSED AGAINST THE MOVANT.

19 10-3-550. Liquidation of property of foreign or alien
20 insurers found in this state. (1) IF NO DOMICILIARY RECEIVER
21 HAS BEEN APPOINTED, THE COMMISSIONER MAY APPLY TO THE DISTRICT
22 COURT IN AND FOR THE CITY AND COUNTY OF DENVER BY VERIFIED
23 PETITION FOR AN ORDER DIRECTING THE COMMISSIONER TO LIQUIDATE
24 THE ASSETS FOUND IN THIS STATE OF A FOREIGN INSURER OR AN
25 ALIEN INSURER NOT DOMICILED IN THIS STATE, ON ANY OF THE
26 GROUNDS SPECIFIED IN SECTION 10-3-511 OR 10-3-516 OR ANY OF

1 THE GROUNDS SPECIFIED IN SECTION 10-3-549 (1) (b) TO (1) (d).

2 (2) WHEN AN ORDER IS SOUGHT UNDER SUBSECTION (1) OF
3 THIS SECTION, THE COURT SHALL CAUSE THE INSURER TO BE GIVEN
4 SUCH NOTICE AND TIME TO RESPOND THERETO AS IS REASONABLE UNDER
5 THE CIRCUMSTANCES.

6 (3) IF IT APPEARS TO THE COURT THAT THE BEST INTERESTS
7 OF CREDITORS, POLICYHOLDERS, AND THE PUBLIC SO REQUIRE, THE
8 COURT MAY ISSUE AN ORDER TO LIQUIDATE IN WHATEVER TERMS IT
9 DEEMS APPROPRIATE. THE FILING OR RECORDING OF THE ORDER WITH
10 THE CLERK OF THE SAID COURT OR WITH THE RECORDER OF DEEDS OF
11 THE COUNTY IN WHICH THE PRINCIPAL BUSINESS OF THE COMPANY IS
12 LOCATED OR THE COUNTY IN WHICH ITS PRINCIPAL OFFICE OR PLACE
13 OF BUSINESS IS LOCATED SHALL IMPART THE SAME NOTICE AS WOULD
14 BE IMPARTED BY A DEED, BILL OF SALE, OR OTHER EVIDENCE OF
15 TITLE DULY FILED OR RECORDED WITH SUCH RECORDER OF DEEDS.

16 (4) IF A DOMICILIARY LIQUIDATOR IS APPOINTED IN A
17 RECIPROCAL STATE WHILE A LIQUIDATION IS PROCEEDING UNDER THIS
18 SECTION, THE LIQUIDATOR UNDER THIS SECTION SHALL THEREAFTER
19 ACT AS ANCILLARY RECEIVER UNDER SECTION 10-3-552. IF A
20 DOMICILIARY LIQUIDATOR IS APPOINTED IN A NONRECIPROCAL STATE
21 WHILE A LIQUIDATION IS PROCEEDING UNDER THIS SECTION, THE
22 LIQUIDATOR UNDER THIS SECTION MAY PETITION THE COURT FOR
23 PERMISSION TO ACT AS ANCILLARY RECEIVER UNDER SECTION
24 10-3-552.

25 (5) ON THE SAME GROUNDS AS ARE SPECIFIED IN SUBSECTION
26 (1) OF THIS SECTION, THE COMMISSIONER MAY PETITION ANY

1 APPROPRIATE FEDERAL DISTRICT COURT TO BE APPOINTED RECEIVER TO
2 LIQUIDATE THAT PORTION OF THE INSURER'S ASSETS AND BUSINESS
3 OVER WHICH THE COURT WILL EXERCISE JURISDICTION, OR OVER ANY
4 LESSER PART THEREOF THAT THE COMMISSIONER DEEMS DESIRABLE FOR
5 THE PROTECTION OF THE POLICYHOLDERS AND CREDITORS IN THIS
6 STATE.

7 (6) THE COURT MAY ORDER THE COMMISSIONER, WHEN THE
8 COMMISSIONER HAS LIQUIDATED THE ASSETS OF A FOREIGN OR ALIEN
9 INSURER UNDER THIS SECTION, TO PAY CLAIMS OF RESIDENTS OF THIS
10 STATE AGAINST THE INSURER UNDER SUCH RULES GOVERNING THE
11 LIQUIDATION OF INSURERS UNDER THIS PART 5 AS ARE OTHERWISE
12 COMPATIBLE WITH THE PROVISIONS OF THIS SECTION.

13 10-3-551. Domiciliary liquidators in other states.

14 (1) THE DOMICILIARY LIQUIDATOR OF AN INSURER DOMICILED IN A
15 RECIPROCAL STATE SHALL BE VESTED, EXCEPT AS TO SPECIAL
16 DEPOSITS AND SECURITY ON SECURED CLAIMS UNDER SECTION 10-3-552

17 (3), BY OPERATION OF LAW WITH THE TITLE TO ALL OF THE ASSETS,
18 PROPERTY, CONTRACTS, RIGHTS OF ACTION, AND AGENTS' BALANCES
19 AND ALL OF THE BOOKS, ACCOUNTS, AND OTHER RECORDS OF THE
20 INSURER LOCATED IN THIS STATE. THE DATE OF VESTING SHALL BE
21 THE DATE OF THE FILING OF THE PETITION, IF THAT DATE IS
22 SPECIFIED BY THE DOMICILIARY LAW FOR THE VESTING OF PROPERTY
23 IN THE DOMICILIARY STATE; OTHERWISE, THE DATE OF VESTING SHALL
24 BE THE DATE OF ENTRY OF THE ORDER DIRECTING POSSESSION TO BE
25 TAKEN. THE DOMICILIARY LIQUIDATOR SHALL HAVE THE IMMEDIATE
26 RIGHT TO RECOVER BALANCES DUE FROM AGENTS AND TO OBTAIN

1 POSSESSION OF THE BOOKS, ACCOUNTS, AND OTHER RECORDS OF THE
2 INSURER LOCATED IN THIS STATE, AND SHALL ALSO, SUBJECT TO THE
3 PROVISIONS OF SECTION 10-3-552, HAVE THE RIGHT TO RECOVER ALL
4 OTHER ASSETS OF THE INSURER LOCATED IN THIS STATE.

5 (2) IF A DOMICILIARY LIQUIDATOR IS APPOINTED FOR AN
6 INSURER NOT DOMICILED IN A RECIPROCAL STATE, THE COMMISSIONER
7 OF THIS STATE SHALL BE VESTED BY OPERATION OF LAW WITH THE
8 TITLE TO ALL OF THE PROPERTY, CONTRACTS, AND RIGHTS OF ACTION
9 AND ALL OF THE BOOKS, ACCOUNTS, AND OTHER RECORDS OF THE
10 INSURER LOCATED IN THIS STATE, AT THE SAME TIME THAT THE
11 DOMICILIARY LIQUIDATOR IS VESTED WITH TITLE IN THE DOMICILE.
12 THE COMMISSIONER OF THIS STATE MAY PETITION FOR A CONSERVATION
13 OR LIQUIDATION ORDER UNDER SECTION 10-3-549 OR 10-3-550 OR FOR
14 AN ANCILLARY RECEIVERSHIP UNDER SECTION 10-3-552, OR, AFTER
15 APPROVAL BY THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY
16 OF DENVER, MAY TRANSFER TITLE TO THE DOMICILIARY LIQUIDATOR AS
17 THE INTERESTS OF JUSTICE AND THE EQUITABLE DISTRIBUTION OF THE
18 ASSETS REQUIRE.

19 (3) CLAIMANTS RESIDING IN THIS STATE MAY FILE CLAIMS
20 WITH THE LIQUIDATOR OR ANCILLARY RECEIVER, IF ANY, IN THIS
21 STATE OR WITH THE DOMICILIARY LIQUIDATOR, IF THE DOMICILIARY
22 LAW PERMITS. SUCH CLAIMS SHALL BE FILED ON OR BEFORE THE LAST
23 DATE FIXED FOR THE FILING OF CLAIMS IN THE DOMICILIARY
24 LIQUIDATION PROCEEDINGS.

25 10-3-552. Ancillary formal proceedings. (1) IF A
26 DOMICILIARY LIQUIDATOR HAS BEEN APPOINTED FOR AN INSURER NOT

1 DOMICILED IN THIS STATE, THE COMMISSIONER MAY FILE A PETITION
2 WITH THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF
3 DENVER REQUESTING APPOINTMENT AS ANCILLARY RECEIVER IN THIS
4 STATE:

5 (a) IF THE COMMISSIONER FINDS THAT THERE ARE SUFFICIENT
6 ASSETS OF THE INSURER LOCATED IN THIS STATE TO JUSTIFY THE
7 APPOINTMENT OF AN ANCILLARY RECEIVER; OR

8 (b) IF THE PROTECTION OF CREDITORS OR POLICYHOLDERS IN
9 THIS STATE SO REQUIRES.

10 (2) THE COURT MAY ISSUE AN ORDER APPOINTING AN ANCILLARY
11 RECEIVER IN WHATEVER TERMS IT DEEMS APPROPRIATE. THE FILING
12 OR RECORDING OF THE ORDER WITH A RECORDER OF DEEDS IN THIS
13 STATE IMPARTS THE SAME NOTICE AS WOULD BE IMPARTED BY A DEED,
14 BILL OF SALE, OR OTHER EVIDENCE OF TITLE DULY FILED OR
15 RECORDED WITH SUCH RECORDER OF DEEDS.

16 (3) WHEN A DOMICILIARY LIQUIDATOR HAS BEEN APPOINTED IN
17 A RECIPROCAL STATE, THEN THE ANCILLARY RECEIVER APPOINTED IN
18 THIS STATE MAY, WHENEVER NECESSARY, AID AND ASSIST THE
19 DOMICILIARY LIQUIDATOR IN RECOVERING ASSETS OF THE INSURER
20 LOCATED IN THIS STATE. THE ANCILLARY RECEIVER SHALL, AS SOON
21 AS IS PRACTICABLE, LIQUIDATE FROM THEIR RESPECTIVE SECURITIES
22 THOSE SPECIAL DEPOSIT CLAIMS AND SECURED CLAIMS WHICH ARE
23 PROVED AND ALLOWED IN THE ANCILLARY PROCEEDINGS IN THIS STATE,
24 AND SHALL PAY THE NECESSARY EXPENSES OF THE PROCEEDINGS. THE
25 ANCILLARY RECEIVER SHALL ALSO PROMPTLY TRANSFER ALL REMAINING
26 ASSETS, BOOKS, ACCOUNTS, AND RECORDS TO THE DOMICILIARY

1 LIQUIDATOR. SUBJECT TO THIS SECTION, THE ANCILLARY RECEIVER
2 AND SUCH ANCILLARY RECEIVER'S DEPUTIES SHALL HAVE THE SAME
3 POWERS AND BE SUBJECT TO THE SAME DUTIES WITH RESPECT TO THE
4 ADMINISTRATION OF ASSETS AS A LIQUIDATOR OF AN INSURER
5 DOMICILED IN THIS STATE.

6 (4) WHEN A DOMICILIARY LIQUIDATOR HAS BEEN APPOINTED IN
7 THIS STATE, ANCILLARY RECEIVERS APPOINTED IN RECIPROCAL STATES
8 SHALL HAVE, AS TO ASSETS AND BOOKS, ACCOUNTS, AND OTHER
9 RECORDS IN THEIR RESPECTIVE STATES, RIGHTS, DUTIES, AND POWERS
10 CORRESPONDING TO THOSE PROVIDED IN SUBSECTION (3) OF THIS
11 SECTION FOR ANCILLARY RECEIVERS APPOINTED IN THIS STATE.

12 10-3-553. Ancillary summary proceedings. THE
13 COMMISSIONER, IN THE COMMISSIONER'S SOLE DISCRETION, MAY
14 INSTITUTE PROCEEDINGS UNDER SECTIONS 10-3-509 AND 10-3-510 AT
15 THE REQUEST OF THE INSURANCE DEPARTMENT OF THE DOMICILIARY
16 STATE OF ANY FOREIGN OR ALIEN INSURER HAVING PROPERTY LOCATED
17 IN THIS STATE.

18 10-3-554. Claims of nonresidents against insurers
19 domiciled in this state. (1) IN A LIQUIDATION PROCEEDING
20 COMMENCED IN THIS STATE AGAINST AN INSURER DOMICILED IN THIS
21 STATE, CLAIMANTS RESIDING IN FOREIGN COUNTRIES OR IN STATES
22 THAT ARE NOT RECIPROCAL STATES MUST FILE CLAIMS IN THIS STATE,
23 AND CLAIMANTS RESIDING IN RECIPROCAL STATES MAY FILE CLAIMS
24 EITHER WITH THE ANCILLARY RECEIVERS, IF ANY, IN THEIR
25 RESPECTIVE STATES, IF A CLAIM FILING PROCEDURE IS ESTABLISHED
26 IN THE ANCILLARY PROCEEDING, OR WITH THE DOMICILIARY

1 APPROPRIATE FEDERAL DISTRICT COURT TO BE APPOINTED RECEIVER TO
2 LIQUIDATE THAT PORTION OF THE INSURER'S ASSETS AND BUSINESS
3 OVER WHICH THE COURT WILL EXERCISE JURISDICTION, OR OVER ANY
4 LESSER PART THEREOF THAT THE COMMISSIONER DEEMS DESIRABLE FOR
5 THE PROTECTION OF THE POLICYHOLDERS AND CREDITORS IN THIS
6 STATE.

7 (6) THE COURT MAY ORDER THE COMMISSIONER, WHEN THE
8 COMMISSIONER HAS LIQUIDATED THE ASSETS OF A FOREIGN OR ALIEN
9 INSURER UNDER THIS SECTION, TO PAY CLAIMS OF RESIDENTS OF THIS
10 STATE AGAINST THE INSURER UNDER SUCH RULES GOVERNING THE
11 LIQUIDATION OF INSURERS UNDER THIS PART 5 AS ARE OTHERWISE
12 COMPATIBLE WITH THE PROVISIONS OF THIS SECTION.

13 10-3-551. Domiciliary liquidators in other states.

14 (1) THE DOMICILIARY LIQUIDATOR OF AN INSURER DOMICILED IN A
15 RECIPROCAL STATE SHALL BE VESTED, EXCEPT AS TO SPECIAL
16 DEPOSITS AND SECURITY ON SECURED CLAIMS UNDER SECTION 10-3-552

17 (3), BY OPERATION OF LAW WITH THE TITLE TO ALL OF THE ASSETS,
18 PROPERTY, CONTRACTS, RIGHTS OF ACTION, AND AGENTS' BALANCES
19 AND ALL OF THE BOOKS, ACCOUNTS, AND OTHER RECORDS OF THE
20 INSURER LOCATED IN THIS STATE. THE DATE OF VESTING SHALL BE
21 THE DATE OF THE FILING OF THE PETITION, IF THAT DATE IS
22 SPECIFIED BY THE DOMICILIARY LAW FOR THE VESTING OF PROPERTY
23 IN THE DOMICILIARY STATE; OTHERWISE, THE DATE OF VESTING SHALL
24 BE THE DATE OF ENTRY OF THE ORDER DIRECTING POSSESSION TO BE
25 TAKEN. THE DOMICILIARY LIQUIDATOR SHALL HAVE THE IMMEDIATE
26 RIGHT TO RECOVER BALANCES DUE FROM AGENTS AND TO OBTAIN

1 POSSESSION OF THE BOOKS, ACCOUNTS, AND OTHER RECORDS OF THE
2 INSURER LOCATED IN THIS STATE, AND SHALL ALSO, SUBJECT TO THE
3 PROVISIONS OF SECTION 10-3-552, HAVE THE RIGHT TO RECOVER ALL
4 OTHER ASSETS OF THE INSURER LOCATED IN THIS STATE.

5 (2) IF A DOMICILIARY LIQUIDATOR IS APPOINTED FOR AN
6 INSURER NOT DOMICILED IN A RECIPROCAL STATE, THE COMMISSIONER
7 OF THIS STATE SHALL BE VESTED BY OPERATION OF LAW WITH THE
8 TITLE TO ALL OF THE PROPERTY, CONTRACTS, AND RIGHTS OF ACTION
9 AND ALL OF THE BOOKS, ACCOUNTS, AND OTHER RECORDS OF THE
10 INSURER LOCATED IN THIS STATE, AT THE SAME TIME THAT THE
11 DOMICILIARY LIQUIDATOR IS VESTED WITH TITLE IN THE DOMICILE.
12 THE COMMISSIONER OF THIS STATE MAY PETITION FOR A CONSERVATION
13 OR LIQUIDATION ORDER UNDER SECTION 10-3-549 OR 10-3-550 OR FOR
14 AN ANCILLARY RECEIVERSHIP UNDER SECTION 10-3-552, OR, AFTER
15 APPROVAL BY THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY
16 OF DENVER, MAY TRANSFER TITLE TO THE DOMICILIARY LIQUIDATOR AS
17 THE INTERESTS OF JUSTICE AND THE EQUITABLE DISTRIBUTION OF THE
18 ASSETS REQUIRE.

19 (3) CLAIMANTS RESIDING IN THIS STATE MAY FILE CLAIMS
20 WITH THE LIQUIDATOR OR ANCILLARY RECEIVER, IF ANY, IN THIS
21 STATE OR WITH THE DOMICILIARY LIQUIDATOR, IF THE DOMICILIARY
22 LAW PERMITS. SUCH CLAIMS SHALL BE FILED ON OR BEFORE THE LAST
23 DATE FIXED FOR THE FILING OF CLAIMS IN THE DOMICILIARY
24 LIQUIDATION PROCEEDINGS.

25 10-3-552. Ancillary formal proceedings. (1) IF A
26 DOMICILIARY LIQUIDATOR HAS BEEN APPOINTED FOR AN INSURER NOT

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1 DOMICILED IN THIS STATE, THE COMMISSIONER MAY FILE A PETITION
2 WITH THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF
3 DENVER REQUESTING APPOINTMENT AS ANCILLARY RECEIVER IN THIS
4 STATE:

5 (a) IF THE COMMISSIONER FINDS THAT THERE ARE SUFFICIENT
6 ASSETS OF THE INSURER LOCATED IN THIS STATE TO JUSTIFY THE
7 APPOINTMENT OF AN ANCILLARY RECEIVER; OR

8 (b) IF THE PROTECTION OF CREDITORS OR POLICYHOLDERS IN
9 THIS STATE SO REQUIRES.

10 (2) THE COURT MAY ISSUE AN ORDER APPOINTING AN ANCILLARY
11 RECEIVER IN WHATEVER TERMS IT DEEMS APPROPRIATE. THE FILING
12 OR RECORDING OF THE ORDER WITH A RECORDER OF DEEDS IN THIS
13 STATE IMPARTS THE SAME NOTICE AS WOULD BE IMPARTED BY A DEED,
14 BILL OF SALE, OR OTHER EVIDENCE OF TITLE DULY FILED OR
15 RECORDED WITH SUCH RECORDER OF DEEDS.

16 (3) WHEN A DOMICILIARY LIQUIDATOR HAS BEEN APPOINTED IN
17 A RECIPROCAL STATE, THEN THE ANCILLARY RECEIVER APPOINTED IN
18 THIS STATE MAY, WHENEVER NECESSARY, AID AND ASSIST THE
19 DOMICILIARY LIQUIDATOR IN RECOVERING ASSETS OF THE INSURER
20 LOCATED IN THIS STATE. THE ANCILLARY RECEIVER SHALL, AS SOON
21 AS IS PRACTICABLE, LIQUIDATE FROM THEIR RESPECTIVE SECURITIES
22 THOSE SPECIAL DEPOSIT CLAIMS AND SECURED CLAIMS WHICH ARE
23 PROVED AND ALLOWED IN THE ANCILLARY PROCEEDINGS IN THIS STATE,
24 AND SHALL PAY THE NECESSARY EXPENSES OF THE PROCEEDINGS. THE
25 ANCILLARY RECEIVER SHALL ALSO PROMPTLY TRANSFER ALL REMAINING
26 ASSETS, BOOKS, ACCOUNTS, AND RECORDS TO THE DOMICILIARY

1 LIQUIDATOR. SUBJECT TO THIS SECTION, THE ANCILLARY RECEIVER
2 AND SUCH ANCILLARY RECEIVER'S DEPUTIES SHALL HAVE THE SAME
3 POWERS AND BE SUBJECT TO THE SAME DUTIES WITH RESPECT TO THE
4 ADMINISTRATION OF ASSETS AS A LIQUIDATOR OF AN INSURER
5 DOMICILED IN THIS STATE.

6 (4) WHEN A DOMICILIARY LIQUIDATOR HAS BEEN APPOINTED IN
7 THIS STATE, ANCILLARY RECEIVERS APPOINTED IN RECIPROCAL STATES
8 SHALL HAVE, AS TO ASSETS AND BOOKS, ACCOUNTS, AND OTHER
9 RECORDS IN THEIR RESPECTIVE STATES, RIGHTS, DUTIES, AND POWERS
10 CORRESPONDING TO THOSE PROVIDED IN SUBSECTION (3) OF THIS
11 SECTION FOR ANCILLARY RECEIVERS APPOINTED IN THIS STATE.

12 10-3-553. Ancillary summary proceedings. THE
13 COMMISSIONER, IN THE COMMISSIONER'S SOLE DISCRETION, MAY
14 INSTITUTE PROCEEDINGS UNDER SECTIONS 10-3-509 AND 10-3-510 AT
15 THE REQUEST OF THE INSURANCE DEPARTMENT OF THE DOMICILIARY
16 STATE OF ANY FOREIGN OR ALIEN INSURER HAVING PROPERTY LOCATED
17 IN THIS STATE.

18 10-3-554. Claims of nonresidents against insurers
19 domiciled in this state. (1) IN A LIQUIDATION PROCEEDING
20 COMMENCED IN THIS STATE AGAINST AN INSURER DOMICILED IN THIS
21 STATE, CLAIMANTS RESIDING IN FOREIGN COUNTRIES OR IN STATES
22 THAT ARE NOT RECIPROCAL STATES MUST FILE CLAIMS IN THIS STATE,
23 AND CLAIMANTS RESIDING IN RECIPROCAL STATES MAY FILE CLAIMS
24 EITHER WITH THE ANCILLARY RECEIVERS, IF ANY, IN THEIR
25 RESPECTIVE STATES, IF A CLAIM FILING PROCEDURE IS ESTABLISHED
26 IN THE ANCILLARY PROCEEDING, OR WITH THE DOMICILIARY

1 LIQUIDATOR. SUCH CLAIMS SHALL BE FILED ON OR BEFORE THE LAST
2 DATE FIXED FOR THE FILING OF CLAIMS IN THE DOMICILIARY
3 LIQUIDATION PROCEEDING.

4 (2) CLAIMS BELONGING TO CLAIMANTS RESIDING IN RECIPROCAL
5 STATES MAY BE PROVED EITHER IN THE LIQUIDATION PROCEEDING IN
6 THIS STATE AS PROVIDED IN THIS PART 5, OR IN ANCILLARY
7 PROCEEDINGS, IF ANY, IN THE RECIPROCAL STATES IF A CLAIM
8 FILING PROCEDURE IS ESTABLISHED IN THE ANCILLARY PROCEEDING.
9 IF NOTICE OF THE CLAIMS AND OPPORTUNITY TO APPEAR AND BE HEARD
10 IS AFFORDED THE DOMICILIARY LIQUIDATOR OF THIS STATE AS
11 PROVIDED IN SECTION 10-3-555 (2) WITH RESPECT TO ANCILLARY
12 PROCEEDINGS, THE FINAL ALLOWANCE OF CLAIMS BY THE COURTS IN
13 ANCILLARY PROCEEDINGS IN RECIPROCAL STATES SHALL BE CONCLUSIVE
14 AS TO AMOUNT AND AS TO PRIORITY AGAINST SPECIAL DEPOSITS OR
15 OTHER SECURITY LOCATED IN SUCH ANCILLARY STATES, BUT SHALL NOT
16 BE CONCLUSIVE WITH RESPECT TO PRIORITIES AGAINST GENERAL
17 ASSETS UNDER SECTION 10-3-541.

18 10-3-555. Claims of residents against insurers domiciled
19 in reciprocal states. (1) PROMPTLY AFTER THE APPOINTMENT OF
20 THE COMMISSIONER AS ANCILLARY RECEIVER FOR AN INSURER NOT
21 DOMICILED IN THIS STATE, THE COMMISSIONER SHALL DETERMINE
22 WHETHER THERE ARE CLAIMANTS RESIDING IN THIS STATE WHO ARE NOT
23 PROTECTED BY GUARANTY FUNDS AND, IF SO, WHETHER THE PROTECTION
24 OF SUCH CLAIMANTS REQUIRES THE ESTABLISHING OF A CLAIM FILING
25 PROCEDURE IN THE ANCILLARY PROCEEDING. IF A CLAIM FILING
26 PROCEDURE IS ESTABLISHED, CLAIMANTS AGAINST THE INSURER WHO

1 RESIDE WITHIN THIS STATE MAY FILE CLAIMS EITHER WITH THE
2 ANCILLARY RECEIVER, IF ANY, IN THIS STATE, OR WITH THE
3 DOMICILIARY LIQUIDATOR. SUCH CLAIMS SHALL BE FILED ON OR
4 BEFORE THE LAST DATES FIXED FOR THE FILING OF CLAIMS IN THE
5 DOMICILIARY LIQUIDATION PROCEEDING.

6 (2) CLAIMS BELONGING TO CLAIMANTS RESIDING IN THIS STATE
7 MAY BE PROVED EITHER IN THE DOMICILIARY STATE UNDER THE LAW OF
8 THAT STATE, OR IN ANCILLARY PROCEEDINGS, IF ANY, IN THIS STATE
9 IF A CLAIM FILING PROCEDURE IS ESTABLISHED IN SUCH ANCILLARY
10 PROCEEDING. IF A CLAIMANT ELECTS TO PROVE SUCH A CLAIM IN THIS
11 STATE, THE CLAIMANT SHALL FILE THE CLAIM WITH THE LIQUIDATOR
12 IN THE MANNER PROVIDED IN SECTIONS 10-3-534 AND 10-3-535. THE
13 ANCILLARY RECEIVER SHALL MAKE A RECOMMENDATION TO THE COURT AS
14 UNDER SECTION 10-3-542 AND SHALL ALSO ARRANGE A DATE FOR
15 HEARING IF NECESSARY UNDER SECTION 10-3-538 AND SHALL GIVE
16 NOTICE TO THE LIQUIDATOR IN THE DOMICILIARY STATE, EITHER BY
17 CERTIFIED MAIL OR BY PERSONAL SERVICE, AT LEAST FORTY DAYS
18 PRIOR TO THE DATE SET FOR HEARING. IF THE DOMICILIARY
19 LIQUIDATOR, WITHIN THIRTY DAYS AFTER THE GIVING OF SUCH
20 NOTICE, GIVES NOTICE IN WRITING TO THE ANCILLARY RECEIVER AND
21 TO THE CLAIMANT, EITHER BY CERTIFIED MAIL OR BY PERSONAL
22 SERVICE, OF THE DOMICILIARY LIQUIDATOR'S INTENTION TO CONTEST
23 THE CLAIM, THE DOMICILIARY LIQUIDATOR SHALL BE ENTITLED TO
24 APPEAR OR TO BE REPRESENTED IN ANY PROCEEDING IN THIS STATE
25 INVOLVING THE ADJUDICATION OF THE CLAIM.

26 (3) THE FINAL ALLOWANCE OF THE CLAIM BY THE COURTS OF

1 THIS STATE SHALL BE ACCEPTED AS CONCLUSIVE AS TO AMOUNT AND AS
2 TO PRIORITY AGAINST SPECIAL DEPOSITS OR OTHER SECURITY LOCATED
3 IN THIS STATE.

4 10-3-556. Attachment, garnishment, and levy of
5 execution. DURING THE PENDENCY IN THIS OR ANY OTHER STATE OF A
6 LIQUIDATION PROCEEDING, WHETHER CALLED BY THAT NAME OR NOT, NO
7 ACTION OR PROCEEDING IN THE NATURE OF AN ATTACHMENT,
8 GARNISHMENT, OR LEVY OF EXECUTION SHALL BE COMMENCED OR
9 MAINTAINED IN THIS STATE AGAINST THE DELINQUENT INSURER OR ITS
10 ASSETS.

11 10-3-557. Interstate priorities. (1) IN A LIQUIDATION
12 PROCEEDING IN THIS STATE INVOLVING ONE OR MORE RECIPROCAL
13 STATES, THE ORDER OF DISTRIBUTION OF THE DOMICILIARY STATE
14 SHALL CONTROL AS TO ALL CLAIMS OF RESIDENTS OF THIS AND
15 RECIPROCAL STATES. ALL CLAIMS OF RESIDENTS OF RECIPROCAL
16 STATES SHALL BE GIVEN EQUAL PRIORITY OF PAYMENT FROM GENERAL
17 ASSETS REGARDLESS OF WHERE SUCH ASSETS ARE LOCATED.

18 (2) THE OWNERS OF SPECIAL DEPOSIT CLAIMS AGAINST AN
19 INSURER FOR WHICH A LIQUIDATOR IS APPOINTED IN THIS OR ANY
20 OTHER STATE SHALL BE GIVEN PRIORITY AGAINST THE SPECIAL
21 DEPOSITS IN ACCORDANCE WITH THE STATUTES GOVERNING THE
22 CREATION AND MAINTENANCE OF THE DEPOSITS. IF THERE IS A
23 DEFICIENCY IN ANY DEPOSIT, SO THAT THE CLAIMS SECURED BY IT
24 ARE NOT FULLY DISCHARGED FROM IT, THE CLAIMANTS MAY SHARE IN
25 THE GENERAL ASSETS, BUT THE SHARING SHALL BE DEFERRED UNTIL
26 GENERAL CREDITORS, AS WELL AS ALL CLAIMANTS AGAINST OTHER

1 SPECIAL DEPOSITS WHO HAVE RECEIVED SMALLER PERCENTAGES FROM
2 THEIR RESPECTIVE SPECIAL DEPOSITS, HAVE BEEN PAID PERCENTAGES
3 OF THEIR CLAIMS EQUAL TO THE PERCENTAGE PAID FROM THE SPECIAL
4 DEPOSIT.

5 (3) THE OWNER OF A SECURED CLAIM AGAINST AN INSURER FOR
6 WHICH A LIQUIDATOR HAS BEEN APPOINTED IN THIS OR ANY OTHER
7 STATE MAY SURRENDER THE SECURITY AND FILE THE CLAIM AS A
8 GENERAL CREDITOR. ALTERNATIVELY, THE CLAIM MAY BE DISCHARGED
9 BY RESORT TO THE SECURITY IN ACCORDANCE WITH SECTION 10-3-540,
10 IN WHICH CASE THE DEFICIENCY, IF ANY, SHALL BE TREATED AS A
11 CLAIM AGAINST THE GENERAL ASSETS OF THE INSURER ON THE SAME
12 BASIS AS CLAIMS OF UNSECURED CREDITORS.

13 10-3-558. Subordination of claims for noncooperation. IF
14 AN ANCILLARY RECEIVER IN ANOTHER STATE OR FOREIGN COUNTRY,
15 WHETHER CALLED BY THAT NAME OR NOT, FAILS TO TRANSFER TO THE
16 DOMICILIARY LIQUIDATOR IN THIS STATE ANY ASSETS WITHIN SUCH
17 RECEIVER'S CONTROL OTHER THAN SPECIAL DEPOSITS, DIMINISHED
18 ONLY BY THE EXPENSES OF THE ANCILLARY RECEIVERSHIP, IF ANY,
19 THE CLAIMS FILED IN THE ANCILLARY RECEIVERSHIP, OTHER THAN
20 SPECIAL DEPOSIT CLAIMS OR SECURED CLAIMS, SHALL BE PLACED IN
21 THE CLASS 7 AS DEFINED IN SECTION 10-3-541 (1) (g).

22 10-3-559. Severability. IF ANY PROVISION OF THIS PART 5
23 OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE IS
24 FOR ANY REASON HELD TO BE INVALID, THE REMAINDER OF THIS PART
25 5 AND THE APPLICATION OF SUCH PROVISION TO OTHER PERSONS OR
26 CIRCUMSTANCES SHALL NOT BE AFFECTED THEREBY.

1 SECTION 15. 10-3-801 (5), Colorado Revised Statutes,
2 1987 Repl. Vol., is amended to read:

3 10-3-801. Definitions. (5) "Insurer" has the same
4 meaning as set forth in section ~~10-3-502-(6)~~ 10-3-502 (12);
5 except that it shall include fraternal benefit societies and
6 shall not include agencies, authorities, or instrumentalities
7 of the United States, its possessions and territories, the
8 Commonwealth of Puerto Rico, the District of Columbia, or a
9 state or political subdivision of a state.

10 SECTION 16. 10-3-805 (3), Colorado Revised Statutes,
11 1987 Repl. Vol., is amended to read:

12 10-3-805. Standards. (3) No insurer subject to
13 registration under section 10-3-804 shall pay any
14 extraordinary dividend or make any other extraordinary
15 distribution to its shareholders until thirty days after the
16 commissioner has received notice of the declaration thereof
17 and has not within such period disapproved such payment or the
18 commissioner has approved such payment within such thirty-day
19 period. For purposes of this section, an extraordinary
20 dividend or distribution includes any dividend or distribution
21 of cash or other property, whose fair market value together
22 with that of other dividends or distributions made within the
23 preceding twelve months exceeds the ~~greater~~ LESSER of ten
24 percent of such insurer's surplus as regards policyholders as
25 of December 31 next preceding, or the net gain from operations
26 of such insurer, if such insurer is a life insurer, or the net

1 investment income, if such insurer is not a life insurer, NOT
2 INCLUDING REALIZED CAPITAL GAINS, for the twelve-month period
3 ending December 31 next preceding but shall not include pro
4 rata distributions of any class of the insurer's own
5 securities. In determining whether a dividend or distribution
6 is extraordinary, an insurer may carry forward income from the
7 previous two calendar years that has not already been paid out
8 as dividends. THIS CARRY-FORWARD SHALL BE COMPUTED BY TAKING
9 THE NET INCOME FROM THE SECOND AND THIRD PRECEDING CALENDAR
10 YEARS, NOT INCLUDING REALIZED CAPITAL GAINS, LESS DIVIDENDS
11 PAID IN THE SECOND AND IMMEDIATE PRECEDING CALENDAR YEARS. Any
12 other provision of law to the contrary notwithstanding, an
13 insurer may declare an extraordinary dividend or distribution
14 which is conditional upon the commissioner's approval thereof,
15 and such a declaration confers no rights upon shareholders
16 until the commissioner has approved the payment of such
17 dividend or distribution or the commissioner has not
18 disapproved such payment within the thirty-day period referred
19 to in this subsection (3).

20 SECTION 17. Article 4 of title 10, Colorado Revised
21 Statutes, 1987 Repl. Vol., as amended, is amended BY THE
22 ADDITION OF A NEW PART to read:

23 PART 12

24 TRANSACTION OF BUSINESS WITH

25 PRODUCER-CONTROLLED PROPERTY AND CASUALTY INSURERS

26 10-4-1201. Definitions. AS USED IN THIS PART 12, UNLESS

1 THE CONTEXT OTHERWISE REQUIRES:

2 (1) "ACCREDITED STATE" MEANS A STATE IN WHICH THE
3 INSURANCE DEPARTMENT HAS QUALIFIED AS MEETING THE MINIMUM
4 FINANCIAL REGULATORY STANDARDS PROMULGATED AND ESTABLISHED
5 FROM TIME TO TIME BY THE NATIONAL ASSOCIATION OF INSURANCE
6 COMMISSIONERS ("NAIC").

7 (2) "CONTROL" OR "CONTROLLED" HAS THE MEANING SET FORTH
8 IN SECTION 10-3-801 (3).

9 (3) "CONTROLLED INSURER" MEANS A LICENSED INSURER WHICH
10 IS CONTROLLED, DIRECTLY OR INDIRECTLY, BY A PRODUCER.

11 (4) "CONTROLLING PRODUCER" MEANS A PRODUCER WHO,
12 DIRECTLY OR INDIRECTLY, CONTROLS AN INSURER.

13 (5) "INSURANCE DEPARTMENT" MEANS THE COMMISSIONER OR
14 OTHER GOVERNMENT OFFICIAL OR AGENCY OF A STATE OTHER THAN
15 COLORADO EXERCISING POWERS AND DUTIES SUBSTANTIALLY EQUIVALENT
16 TO THOSE OF THE COMMISSIONER OR THE DIVISION.

17 (6) "INSURER" OR "LICENSED INSURER" MEANS ANY PERSON,
18 FIRM, ASSOCIATION, OR CORPORATION DULY LICENSED TO TRANSACT A
19 PROPERTY AND CASUALTY INSURANCE BUSINESS IN THIS STATE. THE
20 FOLLOWING ARE NOT LICENSED INSURERS FOR THE PURPOSES OF THIS
21 PART 12, AND THIS LIST IS NOT EXCLUSIVE:

22 (a) ALL RISK RETENTION GROUPS AS DEFINED IN THE
23 "SUPERFUND AMENDMENTS REAUTHORIZATION ACT OF 1986", P.L. NO.
24 99-499, 100 STAT. 1613 (1986), THE "RISK RETENTION ACT", 15
25 U.S.C. SECS. 3901 ET SEQ., AND THE "MODEL RISK RETENTION ACT",
26 PART 14 OF ARTICLE 3 OF THIS TITLE 10;

1 (b) ALL RESIDUAL MARKET POOLS AND JOINT UNDERWRITING
2 AUTHORITIES OR ASSOCIATIONS; AND

3 (c) ALL CAPTIVE INSURERS. FOR THE PURPOSES OF THIS PART
4 12, "CAPTIVE INSURERS" ARE INSURANCE COMPANIES OWNED BY
5 ANOTHER ORGANIZATION AND WHOSE EXCLUSIVE PURPOSE IS TO INSURE
6 RISKS OF THE PARENT ORGANIZATION AND AFFILIATED COMPANIES, OR,
7 IN THE CASE OF GROUPS AND ASSOCIATIONS, CAPTIVE INSURERS ARE
8 INSURANCE ORGANIZATIONS OWNED BY THE INSURED WHOSE EXCLUSIVE
9 PURPOSE IS TO INSURE RISKS TO MEMBER ORGANIZATIONS, OR TO
10 GROUP MEMBERS AND THEIR AFFILIATES, OR TO BOTH.

11 (7) "PRODUCER" MEANS AN INSURANCE BROKER OR BROKERS OR
12 ANY OTHER PERSON, FIRM, ASSOCIATION, OR CORPORATION WHEN, FOR
13 ANY COMPENSATION, COMMISSION, OR OTHER THING OF VALUE, SUCH
14 PERSON, FIRM, ASSOCIATION, OR CORPORATION ACTS OR AIDS IN ANY
15 MANNER IN SOLICITING, NEGOTIATING, OR PROCURING THE MAKING OF
16 ANY INSURANCE CONTRACT ON BEHALF OF AN INSURED OTHER THAN THE
17 SAID PERSON, FIRM, ASSOCIATION, OR CORPORATION.

18 10-4-1202. Minimum standards. (1) Applicability of
19 section. (a) THE PROVISIONS OF THIS SECTION SHALL APPLY IF,
20 IN ANY CALENDAR YEAR, THE AGGREGATE AMOUNT OF GROSS WRITTEN
21 PREMIUM ON BUSINESS PLACED WITH A CONTROLLED INSURER BY A
22 CONTROLLING PRODUCER IS EQUAL TO OR GREATER THAN FIVE PERCENT
23 OF THE ADMITTED ASSETS OF THE CONTROLLED INSURER, AS REPORTED
24 IN THE CONTROLLED INSURER'S ANNUAL STATEMENT FILED AS OF
25 DECEMBER 31 OF THE PRIOR YEAR.

26 (b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION

1 (1), THE PROVISIONS OF THIS SECTION SHALL NOT APPLY IF:

2 (I) THE CONTROLLING PRODUCER:

3 (A) PLACES INSURANCE ONLY WITH THE CONTROLLED INSURER OR
4 ONLY WITH THE CONTROLLED INSURER AND A MEMBER OR MEMBERS OF
5 THE CONTROLLED INSURER'S HOLDING COMPANY SYSTEM OR WITH THE
6 CONTROLLED INSURER'S PARENT, AFFILIATE, OR SUBSIDIARY AND
7 RECEIVES NO COMPENSATION IN CONNECTION WITH SUCH INSURANCE;
8 AND

9 (B) ACCEPTS INSURANCE PLACEMENTS ONLY FROM NONAFFILIATED
10 SUBPRODUCERS, AND NOT DIRECTLY FROM INSUREDS;

11 (II) THE CONTROLLED INSURER, EXCEPT FOR INSURANCE
12 BUSINESS WRITTEN THROUGH A RESIDUAL MARKET FACILITY, ACCEPTS
13 INSURANCE BUSINESS ONLY FROM A CONTROLLING PRODUCER, A
14 PRODUCER CONTROLLED BY THE CONTROLLED INSURER, OR A PRODUCER
15 THAT IS A SUBSIDIARY OF THE CONTROLLED INSURER.

16 (2) A CONTROLLED INSURER SHALL NOT ACCEPT BUSINESS FROM
17 A CONTROLLING PRODUCER, AND A CONTROLLING PRODUCER SHALL NOT
18 PLACE BUSINESS WITH A CONTROLLED INSURER, UNLESS THERE IS A
19 WRITTEN CONTRACT BETWEEN THE CONTROLLING PRODUCER AND THE
20 CONTROLLED INSURER SPECIFYING THE RESPONSIBILITIES OF EACH
21 PARTY, WHICH CONTRACT HAS BEEN APPROVED BY THE BOARD OF
22 DIRECTORS OF THE CONTROLLED INSURER AND CONTAINS THE FOLLOWING
23 MINIMUM PROVISIONS:

24 (a) THE CONTROLLED INSURER MAY TERMINATE THE CONTRACT
25 FOR CAUSE, UPON WRITTEN NOTICE TO THE CONTROLLING PRODUCER;
26 AND THE CONTROLLED INSURER SHALL SUSPEND THE AUTHORITY OF THE

1 CONTROLLING PRODUCER TO WRITE BUSINESS DURING THE PENDENCY OF
2 ANY DISPUTE REGARDING THE CAUSE FOR THE TERMINATION;

3 (b) THE CONTROLLING PRODUCER SHALL RENDER ACCOUNTS TO
4 THE CONTROLLED INSURER DETAILING ALL MATERIAL TRANSACTIONS,
5 INCLUDING INFORMATION NECESSARY TO SUPPORT ALL COMMISSIONS,
6 CHARGES, AND OTHER FEES RECEIVED BY OR OWING TO THE
7 CONTROLLING PRODUCER;

8 (c) THE CONTROLLING PRODUCER SHALL REMIT ALL FUNDS DUE
9 UNDER THE TERMS OF THE CONTRACT TO THE CONTROLLED INSURER ON
10 AT LEAST A MONTHLY BASIS; AND THE DUE DATE SHALL BE FIXED SO
11 THAT PREMIUMS OR INSTALLMENTS THEREOF COLLECTED SHALL BE
12 REMITTED NO LATER THAN NINETY DAYS AFTER THE EFFECTIVE DATE OF
13 ANY POLICY PLACED WITH THE CONTROLLED INSURER UNDER THIS
14 CONTRACT;

15 (d) ALL FUNDS COLLECTED FOR THE CONTROLLED INSURER'S
16 ACCOUNT SHALL BE HELD BY THE CONTROLLING PRODUCER IN A
17 FIDUCIARY CAPACITY, IN ONE OR MORE APPROPRIATELY IDENTIFIED
18 BANK ACCOUNTS IN BANKS THAT ARE MEMBERS OF THE FEDERAL RESERVE
19 SYSTEM, IN ACCORDANCE WITH THE PROVISIONS OF THE INSURANCE LAW
20 AS APPLICABLE; AND FUNDS OF A CONTROLLING PRODUCER NOT
21 REQUIRED TO BE LICENSED IN THIS STATE SHALL BE MAINTAINED IN
22 COMPLIANCE WITH THE REQUIREMENTS OF THE CONTROLLING PRODUCER'S
23 DOMICILIARY STATE;

24 (e) THE CONTROLLING PRODUCER SHALL MAINTAIN SEPARATELY
25 IDENTIFIABLE RECORDS OF BUSINESS WRITTEN FOR THE CONTROLLED
26 INSURER; AND SUCH RECORDS SHALL BE RETAINED FOR A PERIOD OF

1 _____ COMMENCING NO LATER THAN THE EFFECTIVE DATE
2 OF THE LAST FINANCIAL EXAMINATION OF THE INSURER;

3 (f) THE CONTRACT SHALL NOT BE ASSIGNED IN WHOLE OR IN
4 PART BY THE CONTROLLING PRODUCER;

5 (g) THE CONTROLLED INSURER SHALL PROVIDE THE CONTROLLING
6 PRODUCER WITH ITS UNDERWRITING STANDARDS, RULES AND
7 PROCEDURES, MANUALS SETTING FORTH THE RATES TO BE CHARGED, AND
8 THE CONDITIONS FOR THE ACCEPTANCE OR REJECTION OF RISKS, WHICH
9 STANDARDS, RULES, PROCEDURES, RATES, AND CONDITIONS SHALL BE
10 THE SAME AS THOSE APPLICABLE TO COMPARABLE BUSINESS PLACED
11 WITH THE CONTROLLED INSURER BY A PRODUCER OTHER THAN THE
12 CONTROLLING PRODUCER AND TO WHICH STANDARDS, RULES,
13 PROCEDURES, RATES, AND CONDITIONS THE CONTROLLING PRODUCER
14 SHALL ADHERE;

15 (h) THE RATES AND TERMS OF THE CONTROLLING PRODUCER'S
16 COMMISSIONS, CHARGES, OR OTHER FEES AND A DEFINITION OF THE
17 PURPOSES FOR THOSE CHARGES; AND THE RATES OF THE COMMISSIONS,
18 CHARGES, AND OTHER FEES SHALL BE NO GREATER THAN THOSE
19 APPLICABLE TO COMPARABLE BUSINESS PLACED WITH THE CONTROLLED
20 INSURER BY PRODUCERS OTHER THAN CONTROLLING PRODUCERS. FOR
21 PURPOSES OF THIS PARAGRAPH (h) AND PARAGRAPH (g) OF THIS
22 SUBSECTION (2), EXAMPLES OF "COMPARABLE BUSINESS" INCLUDE,
23 WITHOUT LIMITATION, THE SAME LINES OF INSURANCE, SAME KINDS OF
24 INSURANCE, SAME KINDS OF RISKS, SIMILAR POLICY LIMITS, AND
25 SIMILAR QUALITY OF BUSINESS;

26 (i) IF THE CONTRACT PROVIDES THAT THE CONTROLLING

1 PRODUCER, ON INSURANCE BUSINESS PLACED WITH THE INSURER, IS TO
2 BE COMPENSATED CONTINGENT UPON THE INSURER'S PROFITS ON THAT
3 BUSINESS, THEN SUCH COMPENSATION SHALL NOT BE DETERMINED AND
4 PAID UNTIL AT LEAST FIVE YEARS AFTER THE PREMIUMS ON LIABILITY
5 INSURANCE ARE EARNED AND AT LEAST ONE YEAR AFTER THE PREMIUMS
6 ARE EARNED ON ANY OTHER INSURANCE. IN NO EVENT SHALL THE
7 COMMISSIONS BE PAID UNTIL THE ADEQUACY OF THE CONTROLLED
8 INSURER'S RESERVES ON REMAINING CLAIMS HAS BEEN INDEPENDENTLY
9 VERIFIED PURSUANT TO PARAGRAPH (a) OF SUBSECTION (3) OF THIS
10 SECTION.

11 (j) A LIMIT ON THE CONTROLLING PRODUCER'S WRITINGS IN
12 RELATION TO THE CONTROLLED INSURER'S SURPLUS AND TOTAL
13 WRITINGS, WHICH LIMIT MAY BE DIFFERENT FOR EACH LINE OR
14 SUB-LINE OF BUSINESS. THE CONTROLLED INSURER SHALL NOTIFY THE
15 CONTROLLING PRODUCER WHEN THE APPLICABLE LIMIT IS APPROACHED
16 AND SHALL NOT ACCEPT BUSINESS FROM THE CONTROLLING PRODUCER IF
17 THE LIMIT IS REACHED. THE CONTROLLING PRODUCER SHALL NOT
18 PLACE BUSINESS WITH THE CONTROLLED INSURER IF IT HAS BEEN
19 NOTIFIED BY THE CONTROLLED INSURER THAT THE LIMIT HAS BEEN
20 REACHED.

21 (k) THE CONTROLLING PRODUCER MAY NEGOTIATE BUT SHALL NOT
22 BIND REINSURANCE ON BEHALF OF THE CONTROLLED INSURER ON
23 BUSINESS THE CONTROLLING PRODUCER PLACES WITH THE CONTROLLED
24 INSURER; EXCEPT THAT THE CONTROLLING PRODUCER MAY BIND
25 FACULTATIVE REINSURANCE CONTRACTS PURSUANT TO OBLIGATORY
26 FACULTATIVE AGREEMENTS IF THE CONTRACT WITH THE CONTROLLED

1 INSURER CONTAINS UNDERWRITING GUIDELINES INCLUDING, FOR BOTH
2 REINSURANCE ASSUMED AND CEDED, A LIST OF REINSURERS WITH WHICH
3 SUCH AUTOMATIC AGREEMENTS ARE IN EFFECT, THE COVERAGES AND
4 AMOUNTS OR PERCENTAGES THAT MAY BE REINSURED, AND COMMISSION
5 SCHEDULES.

6 (3) Audit committee. EVERY CONTROLLED INSURER SHALL HAVE
7 AN AUDIT COMMITTEE OF THE BOARD OF DIRECTORS, WHICH COMMITTEE
8 SHALL BE COMPOSED OF INDEPENDENT DIRECTORS. THE AUDIT
9 COMMITTEE SHALL ANNUALLY MEET WITH MANAGEMENT, THE INSURER'S
10 INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS, AND AN INDEPENDENT
11 CASUALTY ACTUARY OR OTHER INDEPENDENT LOSS RESERVE SPECIALIST
12 ACCEPTABLE TO THE COMMISSIONER TO REVIEW THE ADEQUACY OF THE
13 INSURER'S LOSS RESERVES.

14 (4) Reporting requirements. (a) IN ADDITION TO ANY
15 OTHER REQUIRED LOSS RESERVE CERTIFICATION, THE CONTROLLED
16 INSURER SHALL ANNUALLY, ON APRIL 1 OF EACH YEAR, FILE WITH THE
17 COMMISSIONER AN OPINION OF AN INDEPENDENT CASUALTY ACTUARY OR
18 SUCH OTHER INDEPENDENT LOSS RESERVE SPECIALIST ACCEPTABLE TO
19 THE COMMISSIONER REPORTING LOSS RATIOS FOR EACH LINE OF
20 BUSINESS WRITTEN AND CERTIFYING TO THE ADEQUACY OF LOSS
21 RESERVES ESTABLISHED FOR LOSSES INCURRED AND OUTSTANDING AS OF
22 YEAR-END INCLUDING INCURRED BUT NOT REPORTED RESERVES ON
23 BUSINESS PLACED BY THE PRODUCER.

24 (b) THE CONTROLLED INSURER SHALL ANNUALLY REPORT TO THE
25 COMMISSIONER THE AMOUNT OF COMMISSIONS PAID TO THE PRODUCER,
26 THE PERCENTAGE SUCH AMOUNT REPRESENTS OF THE NET PREMIUMS

1 WRITTEN, AND COMPARABLE AMOUNTS AND PERCENTAGE PAID TO
2 NONCONTROLLING PRODUCERS FOR PLACEMENTS OF THE SAME KINDS OF
3 INSURANCE.

4 10-4-1203. Disclosure. THE PRODUCER, PRIOR TO THE
5 EFFECTIVE DATE OF THE POLICY, SHALL DELIVER WRITTEN NOTICE TO
6 THE PROSPECTIVE INSURED DISCLOSING THE RELATIONSHIP BETWEEN
7 THE PRODUCER AND THE CONTROLLED INSURER; EXCEPT THAT, IF THE
8 BUSINESS IS PLACED THROUGH A SUBPRODUCER WHO IS NOT A
9 CONTROLLING PRODUCER, THE CONTROLLING PRODUCER SHALL RETAIN,
10 AS PART OF THE CONTROLLING PRODUCER'S RECORDS, A SIGNED
11 COMMITMENT FROM THE SUBPRODUCER THAT THE SUBPRODUCER IS AWARE
12 OF THE RELATIONSHIP BETWEEN THE INSURER AND THE PRODUCER AND
13 THAT THE SUBPRODUCER HAS NOTIFIED OR WILL NOTIFY THE INSURED.

14 10-4-1204. Penalties. (1) (a) IF THE COMMISSIONER
15 BELIEVES THAT THE CONTROLLING PRODUCER OR ANY OTHER PERSON HAS
16 NOT MATERIALLY COMPLIED WITH THIS PART 12 OR WITH ANY
17 REGULATION OR ORDER PROMULGATED PURSUANT THERETO, AFTER NOTICE
18 AND OPPORTUNITY TO BE HEARD, THE COMMISSIONER MAY ORDER THE
19 CONTROLLING PRODUCER TO CEASE PLACING BUSINESS WITH THE
20 CONTROLLED INSURER.

21 (b) IF IT WAS FOUND THAT, BECAUSE OF SUCH MATERIAL
22 NONCOMPLIANCE, THE CONTROLLED INSURER OR ANY POLICYHOLDER
23 THEREOF HAS SUFFERED ANY LOSS OR DAMAGE, THE COMMISSIONER MAY
24 MAINTAIN A CIVIL ACTION OR INTERVENE IN AN ACTION BROUGHT BY
25 OR ON BEHALF OF THE INSURER OR POLICYHOLDER FOR RECOVERY OF
26 COMPENSATORY DAMAGES FOR THE BENEFIT OF THE INSURER OR

1 POLICYHOLDER OR FOR OTHER APPROPRIATE RELIEF.

2 (2) IF AN ORDER FOR LIQUIDATION OR REHABILITATION OF THE
3 CONTROLLED INSURER HAS BEEN ENTERED PURSUANT TO PART 4 OR 5 OF
4 ARTICLE 3 OF THIS TITLE, AND THE RECEIVER APPOINTED UNDER SUCH
5 ORDER BELIEVES THAT THE CONTROLLING PRODUCER OR ANY OTHER
6 PERSON HAS NOT MATERIALLY COMPLIED WITH THIS PART 12 OR WITH
7 ANY REGULATION OR ORDER PROMULGATED PURSUANT THERETO AND THAT,
8 AS A RESULT, THE INSURER SUFFERED ANY LOSS OR DAMAGE, THE
9 RECEIVER MAY MAINTAIN A CIVIL ACTION FOR RECOVERY OF DAMAGES
10 OR OTHER APPROPRIATE SANCTIONS FOR THE BENEFIT OF THE INSURER.

11 (3) NOTHING CONTAINED IN THIS SECTION SHALL AFFECT THE
12 RIGHT OF THE COMMISSIONER TO IMPOSE ANY OTHER PENALTIES
13 PROVIDED FOR IN THE LAWS OF THIS STATE GOVERNING INSURANCE.

14 (4) NOTHING CONTAINED IN THIS SECTION IS INTENDED TO OR
15 SHALL IN ANY MANNER ALTER OR AFFECT THE RIGHTS OF
16 POLICYHOLDERS, CLAIMANTS, CREDITORS, OR OTHER THIRD PARTIES.

17 10-4-1205. Applicability. THIS PART 12 SHALL APPLY TO
18 LICENSED INSURERS AS DEFINED IN SECTION 10-4-1201 (6), WHETHER
19 DOMICILED IN THIS STATE OR DOMICILED IN A STATE THAT IS NOT AN
20 ACCREDITED STATE HAVING IN EFFECT A SUBSTANTIALLY SIMILAR LAW.
21 ALL PROVISIONS OF PART 8 OF ARTICLE 3 OF THIS TITLE, TO THE
22 EXTENT THEY ARE CONSISTENT WITH THE PROVISIONS OF THIS PART
23 12, SHALL CONTINUE TO APPLY TO ALL PARTIES WITHIN HOLDING
24 COMPANY SYSTEMS SUBJECT TO THIS TITLE.

25 10-4-1206. Effective Date. THIS PART 12 SHALL TAKE
26 EFFECT JULY 1, 1992. CONTROLLED INSURERS AND CONTROLLING

1 PRODUCERS WHO ARE NOT IN COMPLIANCE WITH SECTION 10-4-1202 AS
2 OF SUCH DATE SHALL HAVE SIXTY DAYS THEREAFTER TO COME INTO
3 COMPLIANCE WITH SAID SECTION AND SHALL, IN ADDITION, COMPLY
4 WITH SECTION 10-4-1203 BEGINNING WITH ALL POLICIES WRITTEN OR
5 RENEWED ON OR AFTER THE SIXTY-FIRST DAY AFTER THE SAID DATE.

6 SECTION 18. 10-5-106, Colorado Revised Statutes, 1987
7 Repl. Vol., is amended to read:

8 10-5-106. When export declared eligible. The
9 commissioner shall MAY, by rule and regulation, declare
10 eligible for export generally, notwithstanding the provisions
11 of section 10-5-103 (1) (b) and (1) (c), any class of
12 insurance coverage or risk for which he THE COMMISSIONER finds
13 that there is no reasonable or adequate market among
14 authorized insurers LICENSED in this state.

15 SECTION 19. 10-5-108 (1), Colorado Revised Statutes,
16 1987 Repl. Vol., as amended, is amended to read:

17 10-5-108. Placement of surplus line insurance.

18 ~~(1) A broker shall place surplus line insurance only with~~
19 ~~insurers which have capital and surplus of at least one~~
20 ~~million five hundred thousand dollars, or which meet the~~
21 ~~Colorado minimum capital and surplus requirement for all lines~~
22 ~~of insurance which an admitted insurance company writing the~~
23 ~~same lines of insurance is eligible to write under its~~
24 ~~license, whichever is greater, and have been approved by the~~
25 ~~commissioner. The commissioner shall maintain a list of all~~
26 ~~approved foreign and alien surplus line insurers. To be placed~~

1 on-said-list, foreign insurers must maintain a deposit in cash
2 or securities having a fair market value of at least one
3 million two hundred fifty thousand dollars with the
4 commissioner or the duly authorized officer of some other
5 state of the United States, to be held for the benefit of all
6 policyholders wherever located, and pay a fee prescribed
7 pursuant to section 10-3-207 to the commissioner; and alien
8 insurers must maintain status on the current national
9 association of insurance commissioners' nonadmitted insurers'
10 quarterly listing, establish an individual trust fund in the
11 United States or participate in other such trust funds
12 established for United States insurance business, and pay a
13 fee prescribed pursuant to section 10-3-207 to the
14 commissioner. Notwithstanding the other provisions of this
15 section, the commissioner may approve the placement of surplus
16 line insurance in insurance pools or underwriting associations
17 or under other specific programs on an individual case basis.
18 NO BROKER SHALL PLACE ANY COVERAGE WITH A NONADMITTED INSURER,
19 UNLESS, AT THE TIME OF PLACEMENT, SUCH NONADMITTED INSURER IS
20 INCLUDED ON THE APPROVED LIST OF NONADMITTED INSURERS PREPARED
21 BY THE COMMISSIONER AT LEAST ANNUALLY. NOTHING IN THIS SECTION
22 SHALL REQUIRE THE COMMISSIONER TO PLACE OR MAINTAIN THE NAME
23 OF ANY NONADMITTED INSURER ON THE LIST. TO BE PLACED ON SAID
24 LIST, SUCH NONADMITTED INSURER SHALL:

25 (a) ESTABLISH SATISFACTORY EVIDENCE OF GOOD REPUTE AND
26 FINANCIAL INTEGRITY; AND

1 (b) MAINTAIN A DEPOSIT IN CASH OR SECURITIES HAVING A
2 FAIR MARKET VALUE OF AT LEAST TWO MILLION FIVE HUNDRED
3 THOUSAND DOLLARS AND QUALIFY UNDER ONE OF THE FOLLOWING:

4 (I) HAVE CAPITAL AND SURPLUS OR ITS EQUIVALENT AT LEAST
5 EQUAL TO FIFTEEN MILLION DOLLARS, BUT NOT LESS THAN THE AMOUNT
6 WHICH WOULD BE REQUIRED BY SECTION 10-3-201 FOR A LICENSED
7 COMPANY WRITING THE SAME LINES OF INSURANCE; EXCEPT THAT
8 NONADMITTED INSURERS CURRENTLY QUALIFIED AND WHO WOULD HAVE
9 QUALIFIED PRIOR TO JULY 1, 1992, SHALL HAVE AT LEAST TEN
10 MILLION DOLLARS ON DECEMBER 31, 1992, TWELVE MILLION FIVE
11 HUNDRED THOUSAND DOLLARS ON DECEMBER 31, 1993, AND FIFTEEN
12 MILLION DOLLARS ON DECEMBER 31, 1994. NOTWITHSTANDING THE
13 PROVISIONS OF THIS SUBSECTION (1), THE COMMISSIONER MAY
14 APPROVE AN INSURER WITH LESS THAN THE REQUIRED MINIMUM UPON AN
15 AFFIRMATIVE FINDING OF ACCEPTABILITY BY THE COMMISSIONER. THE
16 FINDING SHALL BE BASED UPON SUCH FACTORS AS, BUT NOT LIMITED
17 TO, QUALITY OF MANAGEMENT, CAPITAL AND SURPLUS OF ANY PARENT
18 COMPANY, COMPANY UNDERWRITING PROFIT AND INVESTMENT INCOME
19 TRENDS, AND COMPANY RECORD AND REPUTATION WITHIN THE INDUSTRY.
20 IN NO EVENT SHALL THE COMMISSIONER MAKE AN AFFIRMATIVE FINDING
21 OF ACCEPTABILITY WHEN THE INSURER'S CAPITAL AND SURPLUS IS
22 LESS THAN FOUR MILLION FIVE HUNDRED THOUSAND DOLLARS.

23 (II) IN THE CASE OF AN "INSURANCE EXCHANGE" CREATED BY
24 THE LAWS OF INDIVIDUAL STATES, MAINTAIN CAPITAL AND SURPLUS,
25 OR THE SUBSTANTIAL EQUIVALENT THEREOF, OF NOT LESS THAN FIFTY
26 MILLION DOLLARS IN THE AGGREGATE, OR LESS UPON AFFIRMATIVE

1 FINDING OF ACCEPTABILITY BY THE COMMISSIONER. INSURANCE
2 EXCHANGES MUST MAINTAIN FUNDS FOR THE PROTECTION OF ALL
3 INSURANCE EXCHANGE POLICYHOLDERS WITH EACH INDIVIDUAL
4 SYNDICATE MAINTAINING A CAPITAL AND SURPLUS, OR THE
5 SUBSTANTIAL EQUIVALENT THEREOF, OF NOT LESS THAN THREE MILLION
6 FIVE HUNDRED THOUSAND DOLLARS.

7 (c) IN ADDITION, AN ALIEN INSURER, AS DEFINED IN SECTION
8 10-3-301 (1), MUST HAVE IN FORCE IN THE UNITED STATES AN
9 IRREVOCABLE TRUST ACCOUNT IN A QUALIFIED UNITED STATES
10 FINANCIAL INSTITUTION, FOR THE BENEFIT OF UNITED STATES
11 POLICYHOLDERS AN AMOUNT NOT LESS THAN TWO MILLION FIVE HUNDRED
12 THOUSAND DOLLARS AND CONSISTING OF ELIGIBLE INVESTMENTS FOR
13 THE CAPITAL AND STATUTORY RESERVES OF LICENSED INSURERS AND
14 MUST MAINTAIN STATUS ON THE QUARTERLY LISTING. IN THE CASE OF
15 A LLOYD'S PLAN OR OTHER SIMILAR UNINCORPORATED GROUP OF
16 INDIVIDUAL INSURERS, SUCH ALIEN INSURER SHALL MAINTAIN A TRUST
17 FUND OF NOT LESS THAN FIFTY MILLION DOLLARS AS SECURITY TO THE
18 FULL AMOUNT THEREOF FOR ALL POLICYHOLDERS AND CREDITORS IN THE
19 UNITED STATES OF EACH MEMBER OF THE GROUP.

20 (d) SUBMIT A CURRENT YEARS' APPLICATION, A FEE AS
21 PRESCRIBED PURSUANT TO SECTION 10-3-207, A COPY OF ITS CURRENT
22 ANNUAL STATEMENT AND OTHER INFORMATION REQUIRED BY THE
23 COMMISSIONER. IN THE CASE OF AN INSURANCE EXCHANGE, THE
24 STATEMENT SHALL BE AN AGGREGATE COMBINED STATEMENT OF ALL
25 UNDERWRITING SYNDICATES OPERATING DURING THE PERIOD REPORTED
26 IN ADDITION TO INDIVIDUAL STATEMENTS FOR EACH SYNDICATE.

1 SECTION 20. 10-5-119, Colorado Revised Statutes, 1987
2 Repl. Vol., is amended to read:

3 10-5-119. Disclosures regarding claims-made policies by
4 surplus line brokers or insurers. (1) In the event that a
5 contract procured or placed by a Colorado surplus line broker
6 is on a claims-made OR OTHER NONOCCURRENCE policy form, the
7 broker or the surplus line insurer shall ~~present-to-the~~
8 ~~insured-a-disclosure-form-which-in-clear-and-concise-language~~
9 ~~does-the-following:~~ STAMP ON THE FACE OF THE POLICY A CLEAR
10 DISCLOSURE, AS PRESCRIBED BY THE COMMISSIONER, WHICH SHALL BE
11 IN PREDOMINATE TYPE.

12 (a) ~~Discloses-that-the-policy-is-a-claims-made-policy;~~

13 (b) ~~Summarizes---the---coverage---and---any---exceptions---or~~
14 ~~limitations-contained-in-the-policy;~~

15 (c) ~~Defines-the-events-and-conditions-which-trigger~~
16 ~~coverage,---and---defines-how-and-when-a-claim-is-made-or-deemed~~
17 ~~to-be-made;~~

18 (d) ~~Explains-the-price,terms,and-conditions-of-renewal~~
19 ~~of-the-policy-or-for-the-purchase-of--an--extended--reporting~~
20 ~~period,---or---states---that---no---extended---reporting---period---is~~
21 ~~available;---and~~

22 (e) ~~States---whether---legal-defense-costs-are-included-in~~
23 ~~or-excluded-from-the-claims-made-policy-aggregate.~~

24 SECTION 21. Part 1 of article 7 of title 10, Colorado
25 Revised Statutes, 1987 Repl. Vol., as amended, is amended BY
26 THE ADDITION OF A NEW SECTION to read:

1 10-7-114. Actuarial opinion of reserves. (1) EVERY LIFE
2 INSURANCE COMPANY DOING BUSINESS IN THIS STATE SHALL ANNUALLY
3 SUBMIT THE OPINION OF A QUALIFIED ACTUARY AS TO WHETHER THE
4 RESERVES AND RELATED ACTUARIAL ITEMS HELD IN SUPPORT OF THE
5 POLICIES AND CONTRACTS ARE COMPUTED APPROPRIATELY, ARE BASED
6 ON ASSUMPTIONS WHICH SATISFY CONTRACTUAL PROVISIONS, ARE
7 CONSISTENT WITH PRIOR REPORTED AMOUNTS AND COMPLY WITH
8 APPLICABLE LAWS OF THIS STATE. THE COMMISSIONER BY REGULATION
9 SHALL DEFINE THE SPECIFICS OF THE OPINION REQUIRED BY THIS
10 SECTION AND ADD ANY OTHER ITEMS DEEMED TO BE NECESSARY TO ITS
11 SCOPE.

12 (2) EVERY LIFE INSURANCE COMPANY, EXCEPT AS EXEMPTED BY
13 OR PURSUANT TO REGULATION, SHALL ALSO ANNUALLY INCLUDE IN THE
14 OPINION REQUIRED BY SUBSECTION (1) OF THIS SECTION, AN
15 OPINION OF THE SAME QUALIFIED ACTUARY AS TO WHETHER THE
16 RESERVES AND RELATED ACTUARIAL ITEMS HELD IN SUPPORT OF THE
17 POLICIES AND CONTRACTS SPECIFIED BY THE COMMISSIONER BY
18 REGULATION, WHEN CONSIDERED IN LIGHT OF THE ASSETS HELD BY THE
19 COMPANY WITH RESPECT TO THE RESERVES AND RELATED ACTUARIAL
20 ITEMS, INCLUDING BUT NOT LIMITED TO THE INVESTMENT EARNINGS ON
21 THE ASSETS AND THE CONSIDERATIONS ANTICIPATED TO BE RECEIVED
22 AND RETAINED UNDER THE POLICIES AND CONTRACTS, MAKE ADEQUATE
23 PROVISION FOR THE COMPANY'S OBLIGATIONS UNDER THE POLICIES AND
24 CONTRACTS, INCLUDING BUT NOT LIMITED TO THE BENEFITS UNDER AND
25 EXPENSES ASSOCIATED WITH THE POLICIES AND CONTRACTS. THE
26 COMMISSIONER MAY PROVIDE BY REGULATION FOR A TRANSITION PERIOD

1 FOR ESTABLISHING ANY HIGHER RESERVES WHICH THE QUALIFIED
2 ACTUARY MAY DEEM NECESSARY IN ORDER TO RENDER THE OPINION
3 REQUIRED BY THIS SECTION.

4 (3) EACH OPINION REQUIRED BY SUBSECTION (2) OF THIS
5 SECTION SHALL BE SUBJECT TO THE FOLLOWING REQUIREMENTS:

6 (a) (I) A MEMORANDUM, IN FORM AND SUBSTANCE ACCEPTABLE
7 TO THE COMMISSIONER AS SPECIFIED BY REGULATION, SHALL BE
8 PREPARED TO SUPPORT EACH ACTUARIAL OPINION FOR EACH YEAR ON OR
9 AFTER DECEMBER 31, 1992.

10 (II) IF THE INSURANCE COMPANY FAILS TO PROVIDE A
11 SUPPORTING MEMORANDUM AT THE REQUEST OF THE COMMISSIONER
12 WITHIN A PERIOD SPECIFIED BY REGULATION OR THE COMMISSIONER
13 DETERMINES THAT THE SUPPORTING MEMORANDUM PROVIDED BY THE
14 INSURANCE COMPANY FAILS TO MEET THE STANDARDS PRESCRIBED BY
15 THE REGULATION OR IS OTHERWISE UNACCEPTABLE TO THE
16 COMMISSIONER, THE COMMISSIONER MAY ENGAGE A QUALIFIED ACTUARY
17 AT THE EXPENSE OF THE COMPANY TO REVIEW THE OPINION AND THE
18 BASIS FOR THE OPINION AND PREPARE SUCH SUPPORTING MEMORANDUM
19 AS IS REQUIRED BY THE COMMISSIONER.

20 (b) THE OPINION SHALL APPLY TO ALL BUSINESS IN FORCE
21 INCLUDING INDIVIDUAL AND GROUP HEALTH INSURANCE PLANS, IN FORM
22 AND SUBSTANCE ACCEPTABLE TO THE COMMISSIONER AS SPECIFIED BY
23 REGULATION.

24 (c) THE OPINION SHALL BE BASED ON STANDARDS ADOPTED FROM
25 TIME TO TIME BY THE ACTUARIAL STANDARDS BOARD AND ON SUCH
26 ADDITIONAL STANDARDS AS THE COMMISSIONER MAY BY REGULATION

1 PRESCRIBE.

2 (d) IN THE CASE OF AN OPINION REQUIRED TO BE SUBMITTED
3 BY A FOREIGN OR ALIEN COMPANY, THE COMMISSIONER MAY ACCEPT THE
4 OPINION FILED BY THAT COMPANY WITH THE INSURANCE SUPERVISORY
5 OFFICIAL OF ANOTHER STATE IF THE COMMISSIONER DETERMINES THAT
6 THE OPINION REASONABLY MEETS THE REQUIREMENTS APPLICABLE TO A
7 COMPANY DOMICILED IN THIS STATE.

8 (e) FOR PURPOSES OF THIS SECTION, "QUALIFIED ACTUARY"
9 MEANS A PERSON WHO MEETS THE REQUIREMENTS SET FORTH BY
10 REGULATION OF THE COMMISSIONER.

11 (f) EXCEPT IN CASES OF FRAUD OR WILLFUL MISCONDUCT, THE
12 QUALIFIED ACTUARY SHALL NOT BE LIABLE FOR DAMAGES TO ANY
13 PERSON (OTHER THAN THE INSURANCE COMPANY AND THE
14 COMMISSIONER) FOR ANY ACT, ERROR, OMISSION, DECISION, OR
15 CONDUCT WITH RESPECT TO THE ACTUARY'S OPINION.

16 (g) DISCIPLINARY ACTION BY THE COMMISSIONER AGAINST THE
17 COMPANY OR THE QUALIFIED ACTUARY SHALL BE DEFINED IN
18 REGULATIONS BY THE COMMISSIONER.

19 (h) ANY MEMORANDUM IN SUPPORT OF THE OPINION, AND ANY
20 OTHER MATERIAL PROVIDED BY THE COMPANY TO THE COMMISSIONER IN
21 CONNECTION THEREWITH, SHALL BE KEPT CONFIDENTIAL BY THE
22 COMMISSIONER AND SHALL NOT BE MADE PUBLIC AND SHALL NOT BE
23 SUBJECT TO SUBPOENA, OTHER THAN FOR THE PURPOSE OF DEFENDING
24 AN ACTION SEEKING DAMAGES FROM ANY PERSON BY REASON OF ANY
25 ACTION REQUIRED BY THIS SECTION OR BY REGULATIONS PROMULGATED
26 PURSUANT TO THIS SECTION; EXCEPT THAT THE MEMORANDUM OR OTHER

1 MATERIAL MAY OTHERWISE BE RELEASED BY THE COMMISSIONER WITH
2 THE WRITTEN CONSENT OF THE COMPANY OR, UPON REQUEST STATING
3 THAT THE MEMORANDUM OR OTHER MATERIAL IS REQUIRED FOR THE
4 PURPOSE OF PROFESSIONAL DISCIPLINARY PROCEEDINGS, TO THE
5 AMERICAN ACADEMY OF ACTUARIES. THE COMMISSIONER SHALL REQUIRE
6 THAT ANY SUCH REQUEST FROM THE AMERICAN ACADEMY OF ACTUARIES
7 SET FORTH PROCEDURES SATISFACTORY TO THE COMMISSIONER FOR
8 PRESERVING THE CONFIDENTIALITY OF THE MEMORANDUM OR OTHER
9 MATERIAL. ONCE ANY PORTION OF A CONFIDENTIAL MEMORANDUM
10 PREPARED FOR PURPOSES OF THIS SECTION IS CITED BY AN INSURER
11 IN ITS MARKETING OR IS CITED BEFORE ANY GOVERNMENTAL AGENCY
12 OTHER THAN A STATE INSURANCE REGULATORY AUTHORITY OR IS
13 RELEASED BY THE INSURER TO ANY NEWS MEDIA, THE CONFIDENTIALITY
14 OF ALL SUCH PORTIONS OF ANY SUCH CONFIDENTIAL MEMORANDUM SHALL
15 BE DEEMED TO BE WAIVED.

16 SECTION 22. 10-7-311, Colorado Revised Statutes, 1987
17 Repl. Vol., is amended to read:

18 10-7-311. Minimum reserves. (1) In no event shall a
19 company's aggregate reserves for all life insurance policies,
20 excluding disability and accidental death benefits, issued on
21 or after the ~~operative-date~~ EFFECTIVE DATE OF THIS SECTION, be
22 less than the aggregate reserves calculated in accordance with
23 the methods set forth in sections 10-7-310, 10-7-310.5,
24 10-7-313 and 10-7-313.5 and the mortality table or tables and
25 rate or rates of interest used in calculating nonforfeiture
26 benefits for such policies.

1 (2) IN NO EVENT SHALL THE AGGREGATE RESERVES FOR ALL
 2 POLICIES, CONTRACTS, AND BENEFITS BE LESS THAN THE AGGREGATE
 3 RESERVES DETERMINED BY THE QUALIFIED ACTUARY TO BE NECESSARY
 4 TO RENDER THE OPINION REQUIRED BY SECTION 10-7-114.

5 SECTION 23. 10-7-312 (2), Colorado Revised Statutes,
 6 1987 Repl. Vol., is amended to read:

7 10-7-312. Optional standards. (2) Any such company
 8 which at any time has adopted any standard of valuation
 9 producing greater aggregate reserves than those calculated
 10 according to the minimum standard provided in this section
 11 may, with the approval of the commissioner, adopt any lower
 12 standard of valuation, but not lower than the minimum provided
 13 in this section; EXCEPT THAT, FOR THE PURPOSES OF THIS
 14 SECTION, THE HOLDING OF ADDITIONAL RESERVES PREVIOUSLY
 15 DETERMINED BY A QUALIFIED ACTUARY TO BE NECESSARY TO RENDER
 16 THE OPINION REQUIRED BY SECTION 10-7-114 SHALL NOT BE DEEMED
 17 TO BE THE ADOPTION OF A HIGHER STANDARD OF VALUATION.

18 SECTION 24. Part 3 of article 7 of title 10, Colorado
 19 Revised Statutes, 1987 Repl. Vol., as amended, is amended BY
 20 THE ADDITION OF A NEW SECTION to read:

21 10-7-313.7. Minimum standards for other coverages. THE
 22 COMMISSIONER MAY PROMULGATE RULES AND REGULATIONS PRESCRIBING
 23 MINIMUM STANDARDS APPLICABLE TO THE VALUATION OF PLANS OR
 24 PRODUCTS NOT OTHERWISE INCLUDED WITHIN THIS ARTICLE.

25 SECTION 25. Part 1 of article 8 of title 10, Colorado
 26 Revised Statutes, 1987 Repl. Vol., as amended, is amended BY

1 THE ADDITION OF A NEW SECTION to read:

2 10-8-127. Minimum standards for sickness and accident
 3 plans. THE COMMISSIONER MAY PROMULGATE REGULATIONS PRESCRIBING
 4 MINIMUM STANDARDS APPLICABLE TO THE VALUATION OF SICKNESS AND
 5 ACCIDENT PLANS OR PRODUCTS.

6 SECTION 26. 10-16-121 (5) (a), Colorado Revised
 7 Statutes, 1987 Repl. Vol., is amended to read:

8 10-16-121. Revocation of certificate - appeal.
 9 (5) (a) In the event of such a finding of insolvency, the
 10 commissioner shall have and exercise all of the powers and
 11 authority set forth in part 5 of article 3 of this title.
 12 ~~known-as-the-"Uniform-Insurers-Liquidation-Act".~~

13 SECTION 27. 10-16.5-115, Colorado Revised Statutes, 1987
 14 Repl. Vol., is amended to read:

15 10-16.5-115. Rehabilitation, liquidation, or
 16 conservation of prepaid dental care plan organization. Any
 17 rehabilitation, liquidation, or conservation of a prepaid
 18 dental care plan organization shall be deemed to be the
 19 rehabilitation, liquidation, or conservation of an insurer and
 20 shall be conducted pursuant to ~~the--"Uniform--Insurers~~
 21 ~~Liquidation-Act"~~, part 5 of article 3 of this title.

22 SECTION 28. 10-17-120, Colorado Revised Statutes, 1987
 23 Repl. Vol., is amended to read:

24 10-17-120. Rehabilitation, liquidation, or conservation
 25 of health maintenance organization. (2) A provider which has
 26 not expressly agreed to hold enrollees harmless if the

1 provider is not paid by the health maintenance organization
2 may elect to take the priority of a person stated in section
3 ~~10-3-607--(3)--(b)--provided that 10-3-541 if such election is~~
4 made, the claim by such provider shall only be paid upon
5 condition that the provider shall not assert such claim
6 against any enrollee of the health maintenance organization.

7 SECTION 29. 8-44-205 (3), Colorado Revised Statutes,
8 1986 Repl. Vol., as amended, is amended to read:

9 8-44-205. Employers - self-insurance pools authorized
10 for workers' compensation. (3) Any self-insurance pool
11 authorized by subsection (2) of this section shall not be
12 construed to be an insurance company nor otherwise subject to
13 the provisions of the laws of this state regulating insurance
14 or insurance companies; except that the pool shall comply with
15 the applicable provisions of section 10-1-110 (1) to (4) and
16 (6), C.R.S., AND SHALL BE SUBJECT TO PROCEEDINGS AUTHORIZED BY
17 PART 5 OF ARTICLE 3 OF TITLE 10, C.R.S.

18 SECTION 30. Effective date. This act shall take effect
19 July 1, 1992.

20 SECTION 31. 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.

CAPITAL DEVELOPMENT COMMITTEE

Members of the Committee

Senator Dottie Wham,
Chairman
Senator Joan Johnson
Senator Tom Norton

Representative Shirleen Tucker,
Vice Chairman
Representative Ken Chlouber
Representative Peggy Reeves

Legislative Council Staff

Kirk Mlinek
Senior Analyst

Geff Johnson
Senior Research Assistant

Legislative Legal Services Staff

Kent Singer
Senior Attorney

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CAPITAL DEVELOPMENT COMMITTEE

Interim Report Recommendations for Legislation

The Capital Development Committee, created pursuant to House Bill 1070 (1985), is authorized to "study the capital construction and controlled maintenance requests and proposals for the acquisition of capital assets of each state department, institution, and agency." To meet its statutory charge, the committee annually develops and forwards to the Joint Budget Committee a prioritized list of capital construction and controlled maintenance projects. The committee will transmit recommendations for capital construction projects for fiscal year 1992-93 during the first few weeks of the 1992 legislative session.

The committee meets year round in order to fulfill its statutory obligations. The committee has conducted meetings at the State Capitol and toured state facilities throughout Colorado. The tours provide important background and a context in which to prioritize FY 1992-93 capital construction budget requests. Topics of discussion have included:

- reductions to FY 1991-92 capital construction budget items which translate to General Fund savings;
- periodic updates on the state's general fund revenue projections and state lottery fund projections;
- ongoing review of prison population projections and associated bed space requirements in the Department of Corrections;
- ongoing review of the Department of Health's proposal to consolidate its operations into a single location;
- an extensive review of capital construction project requests as submitted from all state departments, including higher education; and
- development of legislation to be introduced during the 1992 legislative session.

In addition to meeting at the Capitol, the committee conducted 35 site tours in different parts of the state. The purpose of the tours was to provide a basic informational framework for review of departmental and agency budget requests.

Primarily, plans for new, expanded, or rehabilitated facilities were reviewed. The committee's itinerary included:

June 20	Limon Correctional Facility Division of Wildlife, Proposed Wildlife Area in Otero County
June 21	Colorado Boy's Ranch Otero Junior College Arkansas Valley Correctional Facility
July 19	Department of Corrections, Denver Reception and Diagnostic Center, Site of New Women's Correctional Facility
July 26	Colorado School of Mines University of Colorado—Boulder
August 1	Hi-Plains Youth Center Morgan Community College Jackson Lake State Park University of Northern Colorado
August 2	Colorado State University
August 21-24	Buena Vista Correctional Facility Arkansas Headwaters Recreation Area Department of Corrections, East Canon City Complex Correctional Facilities Colorado Mental Health Institute Pueblo Community College Division of Lottery University of Southern Colorado Colorado State Fair Historical Society, Old El Pueblo Museum
September 4-6	Fort Lewis College Delta Correctional Center Rifle Correctional Facility Rifle State Park Mesa State College Uranium Mill Tailings Site, Grand Junction Colorado River State Park

In addition to developing annual recommendations concerning capital construction and controlled maintenance projects, during the summer and fall the committee also develops legislative recommendations concerning management of the state's capital assets. Legislative recommendations for 1992 are summarized below.

Committee Recommendations

Funding of Capital Improvements by the State Fair Authority — CDC Bill A

The purpose of Bill A is to clarify the relationship between the Colorado State Fair Authority (the Authority) and the State of Colorado with regard to funding of the Authority's controlled maintenance and capital construction projects. The bill provides that the Authority will not receive state funding for controlled maintenance projects beginning July 1, 1995, and that the Authority will fund such projects out of its operating revenues as of that date.

The bill permits the Authority to continue to seek funding for capital construction projects from the state so long as the Authority provides a significant portion of the funding for such projects out of its operating revenues.

Long-Range Planning for the State's Capital Construction Needs, Including Creation of A Controlled Maintenance Trust Fund — CDC Bill B

The purpose of Bill B is twofold. First, the bill requires the capital impact of program expansions resulting in additional FTE to be identified and funded. Secondly, in light of the fluctuating amounts of state funds which have been available for controlled maintenance purposes in the past, the bill identifies a revenue stream to provide a stable, predictable, and consistent source of revenues for such projects.

With regard to the committee's first objective, Bill B requires any state agency requesting funds for a new or expanded state government program which requires additional FTE to include, as a part of its request, an estimation of the funds required for any capital improvements related to the new FTE. No later than June 1 of each year, the Joint Budget Committee will certify to the State Treasurer and State Controller the number of FTE which were appropriated in the prior fiscal year. The State Treasurer and State Controller are required to transfer from the General Fund to the Capital Construction Fund on July 1, 1991, and on July 1 of each fiscal year thereafter, an amount sufficient to fund the additional capital needs of state government which are related to the increase in FTE from the previous year. The amount to be transferred

is to be determined by multiplying the total number of new FTE in the prior fiscal year, as certified by the Joint Budget Committee, times 200 square feet per FTE times \$100 per square foot. Transferred funds will be available for appropriation during the next capital construction budget cycle.

The committee's second objective in Bill B is accomplished through the creation of the "Controlled Maintenance Trust Fund," to be funded with General Fund revenues in excess of appropriations. The purpose of the fund is to provide a consistent source of revenues which will generate an annual amount of interest to be dedicated to controlled maintenance. A stable, predictable, and consistent source of revenues for controlled maintenance projects will allow the state to fund such projects on a timely basis and avoid higher replacement costs.

No appropriations from the fund may be made until the balance of the fund is \$300 million. To determine the appropriate balance for the proposed fund, the annual cost to maintain the total number of square feet of state-owned facilities was calculated by applying a private sector formula. Once the threshold amount is reached, the interest earned on the balance may be appropriated for controlled maintenance purposes.

Colorado State University Research Building Revolving Fund — CDC Bill C

Bill C modifies existing statutory language concerning the Research Building Revolving Fund ("the fund") at Colorado State University. The bill provides that no payments from student fees, tuition receipts, or general funds may be deposited in the fund. Interest earned on the fund is to be retained in the fund. Buildings financed by the fund must be related to the research mission of the university. The bill directs the university to submit an annual report of activities and condition of the fund to the Joint Budget Committee and to the Capital Development Committee, in addition to the Governor.

The State Board of Agriculture is authorized to issue bonds for the planning, constructing, acquiring, renovating, and equipping of research buildings and facilities for Colorado State University. Such bonds shall be payable exclusively from, and shall be secured by a pledge of, the Colorado State University Research Building Revolving Fund.

The final significant feature of Bill C is the modification to the ceiling for the amount of bonds which may be issued. The total amount of bonds that may be issued and outstanding shall be limited to the extent that no additional bonds may be issued if the maximum future annual debt service for all bonds would exceed six percent of the total current restricted fund revenues of the university from research gifts, contracts, and grants as stated in the university's annual financial report.

Authorization for the Sale of Real Property in Mesa County by the Department of Agriculture — CDC Bill D

Bill D authorizes the executive director of the Department of Agriculture to sell real property associated with the old insectary facility in Palisade. The Department of Agriculture is scheduled to move into their new insectary facility in Palisade before year's end. As a result, the old insectary buildings and associated land is no longer needed by the department. The property is to be sold to the highest bidder after a sealed bid procedure at not less than the property's appraised value.

The bill directs proceeds from the sale, less administrative expenses associated with the sale, to be credited to the Capital Construction Fund.

CDC Bill A

A BILL FOR AN ACT

1 CONCERNING THE FUNDING OF CAPITAL IMPROVEMENTS BY THE STATE
2 FAIR AUTHORITY.

Bill Summary

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

Provides that the state fair authority will not receive state funding for controlled maintenance projects beginning July 1, 1995. Requires the state fair authority to fund controlled maintenance projects out of its operating revenues beginning July 1, 1995. Authorizes the authority to seek funding for capital construction projects from the state so long as the authority provides a significant portion of the funding for such projects out of its operating revenues.

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

4 SECTION 1. Part 1 of article 65 of title 35, Colorado
5 Revised Statutes, 1984 Repl. Vol., as amended, is amended BY
6 THE ADDITION OF A NEW SECTION to read:

7 35-65-107.5. Capital construction and controlled
8 maintenance. (1) FOR THE FISCAL YEARS 1992-93, 1993-94, AND

1 1994-95, THE BOARD MAY REQUEST THE GENERAL ASSEMBLY TO MAKE
2 APPROPRIATIONS TO THE AUTHORITY FOR CONTROLLED MAINTENANCE
3 PROJECTS. BEGINNING JULY 1, 1995, THE AUTHORITY SHALL PAY FOR
4 CONTROLLED MAINTENANCE PROJECTS OUT OF ANY REVENUES IN THE
5 STATE FAIR FUND.

6 (2) THE BOARD MAY REQUEST THE GENERAL ASSEMBLY TO MAKE
7 APPROPRIATIONS TO THE AUTHORITY FOR CAPITAL CONSTRUCTION
8 PROJECTS SO LONG AS THE BOARD AGREES TO FUND A SIGNIFICANT
9 PORTION OF THE PROPOSED CAPITAL CONSTRUCTION PROJECTS OUT OF
10 ITS OPERATING REVENUES. ALL CAPITAL IMPROVEMENTS MADE IN
11 ACCORDANCE WITH THIS SUBSECTION (2) SHALL REMAIN THE PROPERTY
12 OF THE STATE AND SHALL BE LEASED TO THE AUTHORITY AS PROVIDED
13 IN SECTION 35-65-107.

14 SECTION 2. Safety clause. The general assembly hereby
15 finds, determines, and declares that this act is necessary
16 for the immediate preservation of the public peace, health,
17 and safety.

CDC Bill B

A BILL FOR AN ACT

1 CONCERNING LONG-RANGE PLANNING FOR THE STATE'S CAPITAL
2 CONSTRUCTION NEEDS AND, IN CONNECTION THEREWITH, CREATING
3 A CONTROLLED MAINTENANCE TRUST FUND.

Bill Summary

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

Requires that whenever a state agency requests funding for a new or expanded state government program which requires additional FTE, the state agency shall include in such request an estimation of the funds which will be required for capital improvements which are related to the new FTE. Requires that a certain amount of moneys be transferred annually from the general fund to the capital construction fund based on the cost of the square footage required for the FTE appropriated in the prior fiscal year. Requires that at the end of each fiscal year general fund revenues in excess of appropriations shall be credited to the controlled maintenance trust fund until such time as the fund reaches a certain balance. Provides that the trust fund is created for the purpose of funding controlled maintenance projects and that such projects shall be funded from the interest earned on the fund.

4 Be it enacted by the General Assembly of the State of Colorado:
5 SECTION 1. 2-3-203 (1) (b) (1), Colorado Revised

1 Statutes, 1980 Repl. Vol., as amended, is amended to read:
2 2-3-203. Powers and duties. (1) (b) (1) To hold
3 hearings as required and to review the executive budget and
4 the budget requests of each state agency and institution,
5 except for proposals for construction of capital improvements
6 pursuant to the provisions of part 13 of this article, and to
7 make appropriation recommendations to the appropriation
8 committees of each house. THE BUDGET REQUESTS OF EACH STATE
9 AGENCY AND INSTITUTION SHALL INCLUDE AN ESTIMATE OF THE
10 CAPITAL COSTS RELATED TO ANY REQUEST FOR ADDITIONAL FTE;
11 SECTION 2. 24-75-302, Colorado Revised Statutes, 1988
12 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW
13 SUBSECTION to read:
14 24-75-302. Capital construction fund. (3) IN ADDITION
15 TO ANY OTHER TRANSFER OF MONEYS FROM THE GENERAL FUND TO THE
16 CAPITAL CONSTRUCTION FUND PROVIDED FOR IN THIS SECTION, ON
17 JULY 1, 1992, AND ON JULY 1 OF EACH FISCAL YEAR THEREAFTER,
18 THE STATE TREASURER AND CONTROLLER SHALL TRANSFER OUT OF THE
19 GENERAL FUND AND INTO THE CAPITAL CONSTRUCTION FUND AN AMOUNT
20 SUFFICIENT TO FUND THE ADDITIONAL CAPITAL NEEDS OF STATE
21 GOVERNMENT WHICH ARE RELATED TO THE INCREASE IN FTE
22 APPROPRIATIONS DURING THE PRIOR FISCAL YEAR. SUCH AMOUNT
23 SHALL BE DETERMINED BY MULTIPLYING THE TOTAL NUMBER OF FTE
24 WHICH WERE APPROPRIATED IN THE PRIOR FISCAL YEAR TIMES TWO
25 HUNDRED SQUARE FEET PER FTE TIMES ONE HUNDRED DOLLARS PER
26 SQUARE FOOT. THE JOINT BUDGET COMMITTEE SHALL CERTIFY TO THE

1 STATE TREASURER AND CONTROLLER THE TOTAL NUMBER OF FTE WHICH
2 WERE APPROPRIATED IN THE PRIOR FISCAL YEAR NO LATER THAN JUNE
3 1 OF EACH YEAR.

4 SECTION 3. Part 13 of article 3 of title 2, Colorado
5 Revised Statutes, 1980 Repl. Vol., as amended, is amended BY
6 THE ADDITION OF A NEW SECTION to read:

7 2-3-1304.3. Review of capital requests related to new or
8 expanded programs. IN ADDITION TO THE REVIEW OF CAPITAL
9 CONSTRUCTION AND CONTROLLED MAINTENANCE REQUESTS AS PROVIDED
10 IN SECTION 2-3-1304, THE CAPITAL DEVELOPMENT COMMITTEE SHALL
11 ALSO REVIEW THE CAPITAL CONSTRUCTION AND CONTROLLED
12 MAINTENANCE REQUESTS RELATED TO THE IMPLEMENTATION OF NEW OR
13 EXPANDED PROGRAMS. THE JOINT BUDGET COMMITTEE SHALL IDENTIFY
14 THOSE BUDGET REQUESTS WHICH INCLUDE ESTIMATES OF CAPITAL COSTS
15 AND SUBMIT THEM TO THE CAPITAL DEVELOPMENT COMMITTEE.

16 SECTION 4. Part 3 of article 75 of title 24, Colorado
17 Revised Statutes, 1988 Repl. Vol., as amended, is amended BY
18 THE ADDITION OF A NEW SECTION to read:

19 24-75-302.5. Controlled maintenance - trust fund. (1) IN
20 LIGHT OF THE FLUCTUATING AMOUNTS OF STATE FUNDS WHICH HAVE
21 BEEN AVAILABLE FOR CONTROLLED MAINTENANCE PURPOSES IN THE
22 PAST, THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT A
23 STABLE, PREDICTABLE, AND CONSISTENT SOURCE OF REVENUES FOR
24 CONTROLLED MAINTENANCE PROJECTS WILL BETTER ALLOW THE STATE TO
25 FUND SUCH PROJECTS ON A TIMELY BASIS AND AVOID HIGHER
26 REPLACEMENT COSTS. IN ORDER TO PROVIDE A CONSISTENT SOURCE OF

1 REVENUES, THE GENERAL ASSEMBLY HEREBY FURTHER FINDS AND
2 DECLARES THAT IT IS APPROPRIATE TO CREATE A TRUST FUND WHICH
3 WILL GENERATE AN ANNUAL AMOUNT OF INTEREST WHICH WILL BE
4 DEDICATED TO CONTROLLED MAINTENANCE.

5 (2) THERE IS HEREBY CREATED THE CONTROLLED MAINTENANCE
6 TRUST FUND TO WHICH SHALL BE ALLOCATED GENERAL FUND REVENUES
7 IN EXCESS OF STATE GENERAL FUND APPROPRIATIONS AS PROVIDED IN
8 SECTION 24-75-201.1 (1) (c.7). NO APPROPRIATIONS FROM THE
9 FUND MAY BE MADE UNTIL THE BALANCE OF THE FUND IS THREE
10 HUNDRED MILLION DOLLARS. IN DETERMINING THE APPROPRIATE
11 BALANCE OF THE FUND, THE GENERAL ASSEMBLY HAS CALCULATED THE
12 TOTAL NUMBER OF SQUARE FEET OF STATE-OWNED FACILITIES AND
13 COMPUTED AN ANNUAL COST TO MAINTAIN SUCH FACILITIES, BASED ON
14 ANALYSES CONDUCTED BY THE PRIVATE SECTOR. ONCE SUCH BALANCE
15 IS ACHIEVED, THE INTEREST EARNED ON SUCH BALANCE MAY BE
16 APPROPRIATED FOR CONTROLLED MAINTENANCE, AS DEFINED IN SECTION
17 24-30-1301 (2); HOWEVER, IN NO CIRCUMSTANCE SHALL ANY
18 PRINCIPAL AMOUNT OF THE FUND BE APPROPRIATED. ALL
19 UNAPPROPRIATED BALANCES IN SAID FUND AT THE CLOSE OF ANY
20 FISCAL YEAR SHALL REMAIN THEREIN AND SHALL NOT REVERT TO THE
21 GENERAL FUND. ALL INTEREST EARNED FROM THE INVESTMENT OF
22 MONEYS IN SAID FUND SHALL REMAIN IN SAID FUND AND BECOME A
23 PART THEREOF.

24 SECTION 4. 24-75-201.1 (1) (c.5), Colorado Revised
25 Statutes, 1988 Repl. Vol., as amended, is amended to read:

26 24-75-201.1. Restriction on state appropriations.

1 (1) (c.5) (I) For the fiscal year 1991-92 and each fiscal
2 year thereafter, general fund revenues in excess of state
3 general fund appropriations, after retention of the reserve as
4 required by paragraph (d) of this subsection (1), shall be
5 retained in the general fund and shall be available for
6 appropriation for the fiscal year in which the excess is
7 realized or for any future fiscal year, subject to the
8 limitation on the level of state general fund appropriations
9 set forth in subparagraph (II) of paragraph (a) of this
10 subsection (1).

11 (II) FOR THE FISCAL YEAR 1992-93 AND EACH FISCAL YEAR
12 THEREAFTER, GENERAL FUND REVENUES IN EXCESS OF STATE GENERAL
13 FUND APPROPRIATIONS, AFTER RETENTION OF THE RESERVE AS
14 REQUIRED BY PARAGRAPH (d) OF THIS SUBSECTION (1), SHALL BE
15 CREDITED TO THE CONTROLLED MAINTENANCE FUND, WHICH FUND IS
16 CREATED IN SECTION 24-75-302.5.

17 SECTION 5. Effective date. This act shall take effect
18 July 1, 1992.

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

CDC Bill C

A BILL FOR AN ACT

1 CONCERNING THE COLORADO STATE UNIVERSITY RESEARCH BUILDING
2 REVOLVING FUND.

Bill Summary

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

Prohibits the deposit of student fees, tuition receipts, or general funds of Colorado state university into the university's research building revolving fund. Requires that interest earned on the fund be credited to the fund. Requires that buildings financed by revenues in the fund be related to the research mission of the university. Requires that the annual report regarding the condition of the fund be made to the joint budget and capital development committees and that such report include certain information relating to any bonds issued by the state board of agriculture.

Authorizes the state board of agriculture to issue bonds, which authority is in addition to the board's authority to issue anticipation warrants, and requires that such bonds be secured by the research building revolving fund. Provides that such bonds are tax-exempt and establishes a ceiling on the total amount of bonds which may be issued.

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

4 SECTION 1. 23-31-129, Colorado Revised Statutes, 1988

1 Repl. Vol., is amended to read:
2 23-31-129. Research building revolving fund
3 appropriation of fund - report. There is established in t
4 office of the state treasurer A FUND TO BE KNOWN AS t
5 Colorado state university research building revolving fun
6 and there shall be credited to said fund the user charges
7 rents authorized by section 23-31-128 and imposed by the sta
8 board of agriculture, specific appropriations or grants
9 gifts made to said fund, and the proceeds of the sale
10 anticipation warrants authorized by sections 23-31-128
11 23-31-130 AND THE PROCEEDS FROM THE ISSUANCE AND SALE OF BON
12 PURSUANT TO SECTION 23-31-134. NO PAYMENTS FROM STUDENT FEE
13 TUITION RECEIPTS, OR GENERAL FUNDS SHALL BE DEPOSITED IN T
14 RESEARCH BUILDING REVOLVING FUND. ALL INTEREST EARNED ON T
15 INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FU
16 AND SHALL BE A PART OF THE FUND, AND SUCH MONEYS SHALL NOT
17 TRANSFERRED OR CREDITED TO THE GENERAL FUND OR TO ANY OTH
18 FUND. All such moneys so credited to said fund a
19 appropriated to Colorado state university for the PAYMENT
20 MAINTENANCE AND OPERATING COSTS FOR ITS RESEARCH BUILDINGS A
21 FACILITIES AND FOR planning, constructing, ACQUIRING
22 RENOVATING, and equipping of ~~additional~~ research buildings a
23 facilities, WHEREVER LOCATED IN THE STATE OF COLORADO, fr
24 Colorado state university. ANY SUCH BUILDINGS AND FACILITIES
25 SHALL BE RELATED TO THE RESEARCH MISSION OF THE UNIVERSITY
26 An annual report of activities and condition of the fund sha

1 be made to the governor and TO the JOINT BUDGET AND CAPITAL
2 DEVELOPMENT COMMITTEES OF THE general assembly as a part of
3 Colorado state university's annual budget submission. SUCH
4 REPORT SHALL SPECIFY THE AMOUNT OF ANY BONDS ISSUED PURSUANT
5 TO SECTION 23-31-134, THE AMOUNT OF THE DEBT SERVICE ON SUCH
6 BONDS, AND THE PURPOSE OF SUCH BONDS.

7 SECTION 2. 23-31-134, Colorado Revised Statutes, 1988
8 Repl. Vol., is amended to read:

9 23-31-134. Borrowing funds. (1) For the purpose--of
10 ~~obtaining--funds--for--the--planning--construction--and--equipping~~
11 ~~of--research--buildings--and--facilities--for--Colorado--state~~
12 ~~university,~~ PURPOSES DESCRIBED IN SECTION 23-31-129, the state
13 board of agriculture is authorized to:

14 (a) Enter into contracts with any person, corporation,
15 or state or federal government agency for the advancement of
16 money for such purposes and providing for the repayment of
17 such advances with interest from the Colorado state university
18 research building revolving fund; AND

19 (b) ISSUE BONDS AS PROVIDED IN THIS SECTION.

20 (2) (a) ANY BONDS ISSUED PURSUANT TO THIS SECTION SHALL
21 MATURE AT SUCH TIME OR TIMES, SHALL BEAR OR ACCRUE INTEREST AT
22 SUCH RATE OR RATES, AND SHALL OTHERWISE BE SOLD AND ISSUED IN
23 SUCH MANNER AND ON SUCH TERMS AS PROVIDED BY THE STATE BOARD
24 OF AGRICULTURE.

25 (b) SUCH BONDS SHALL BE PAYABLE EXCLUSIVELY FROM, AND
26 SHALL BE SECURED BY A PLEDGE OF, THE COLORADO STATE UNIVERSITY

1 RESEARCH BUILDING REVOLVING FUND CREATED IN SECTION 23-31-129.

2 (c) THE AUTHORITY CONTAINED IN THIS SECTION TO ISSUE
3 BONDS SHALL BE IN ADDITION TO THE AUTHORITY GRANTED TO THE
4 STATE BOARD OF AGRICULTURE TO ISSUE ANTICIPATION WARRANTS
5 PURSUANT TO SECTION 23-31-130; EXCEPT THAT NOTHING IN THIS
6 SECTION SHALL BE CONSTRUED TO AUTHORIZE THE ISSUANCE OF BONDS
7 IF BY SUCH ISSUANCE THE OBLIGATION OF ANY CONTRACT ENTERED
8 INTO WITH RESPECT TO ANY OUTSTANDING ANTICIPATION WARRANTS
9 WOULD THEREBY BE IMPAIRED.

10 (d) ANY BONDS ISSUED PURSUANT TO THIS SECTION SHALL BE
11 EXEMPT FROM TAXATION FOR STATE, COUNTY, SCHOOL DISTRICT,
12 SPECIAL DISTRICT, MUNICIPAL, OR OTHER PURPOSES IN THE STATE OF
13 COLORADO.

14 (e) THE TOTAL AMOUNT OF BONDS THAT MAY BE ISSUED AND
15 OUTSTANDING PURSUANT TO THIS SECTION SHALL BE LIMITED TO THE
16 EXTENT THAT NO ADDITIONAL BONDS MAY BE ISSUED IF THE MAXIMUM
17 FUTURE ANNUAL DEBT SERVICE FOR ALL BONDS, INCLUDING THE
18 ADDITIONAL BONDS, WOULD EXCEED SIX PERCENT OF THE TOTAL
19 CURRENT RESTRICTED FUND REVENUES OF THE UNIVERSITY FROM
20 RESEARCH GIFTS, CONTRACTS, AND GRANTS AS STATED IN THE ANNUAL
21 FINANCIAL REPORT OF THE UNIVERSITY FOR THE FISCAL YEAR ENDING
22 IMMEDIATELY PRIOR TO THE DATE FOR THE PROPOSED ISSUANCE OF THE
23 BONDS. IF THE TOTAL CURRENT RESTRICTED FUND REVENUES OF THE
24 UNIVERSITY FROM RESEARCH GIFTS, CONTRACTS, AND GRANTS DECLINES
25 SO THAT THE TOTAL AMOUNT OF MAXIMUM FUTURE ANNUAL DEBT SERVICE
26 FOR BONDS ISSUED AND OUTSTANDING EXCEEDS THE SIX PERCENT

1 LIMITATION, SUCH OCCURRENCE SHALL NOT IMPAIR OR ADVERSELY
2 AFFECT ANY OF SAID BONDS OUTSTANDING AT THE TIME OF ANY SUCH
3 DECLINE. BONDS ISSUED PURSUANT TO THE PROVISIONS OF THIS
4 SECTION SHALL NOT CONSTITUTE A DEBT OR AN INDEBTEDNESS OF THE
5 STATE WITHIN THE MEANING OF ANY APPLICABLE PROVISION OF THE
6 STATE CONSTITUTION OR STATE STATUTES.

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

9 SECTION 4. Safety clause. The general assembly hereby
10 finds, determines, and declares that this act is necessary
11 for the immediate preservation of the public peace, health,
12 and safety.

1 such other terms and conditions as are deemed appropriate by
2 the executive director of the department of agriculture, and
3 to execute deeds of conveyance of the following described real
4 property no longer needed for state purposes and situated in
5 Mesa county, Colorado:
6 (a) Parcel 1: Lots 1 and 2 and the northern ten feet of lot
7 3 in block 1 of section 9, township 11 south,
8 range 98 west of the 6th principal meridian,
9 which lots comprise 8,750 square feet.
10 (b) Parcel 2: The eastern fifty feet of lots 15, 16, 17, and
11 18 in block 1 of section 9, township 11 south,
12 range 98 west of the 6th principal meridian,
13 which lots comprise 6,000 square feet.

14 SECTION 2. Proceeds of sale. Proceeds from the sale of
15 the property described in section 1 of this act, less
16 administrative expenses incurred in complying with this act,
17 shall be credited to the capital construction fund.

18 SECTION 3. Safety clause. The general assembly hereby
19 finds, determines, and declares that this act is necessary
20 for the immediate preservation of the public peace, health,
21 and safety.

CDC Bill D

A BILL FOR AN ACT

1 CONCERNING AUTHORIZATION FOR THE SALE OF REAL PROPERTY IN MESA
2 COUNTY BY THE DEPARTMENT OF AGRICULTURE.

Bill Summary

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

Authorizes the executive director of the department of
agriculture to sell real property no longer needed for state
purposes, which real property is situated in Mesa county.
Requires that such property be sold to the highest bidder on
such terms as deemed appropriate by the executive director.
Requires that the proceeds from the sale be credited to the
capital construction fund.

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

4 SECTION 1. Authority to sell real property. The
5 executive director of the department of agriculture, on behalf
6 of the state of Colorado, is hereby authorized to sell to the
7 highest bidder after a sealed bid procedure, at not less than
8 the appraised value thereof as determined by an appraiser who
9 is a member of the Members Appraisal Institute (MAI), and on

POLICEMEN'S AND FIREMEN'S PENSION REFORM COMMISSION

Members of the Commission

Senator Tom Norton,
Chairman

Representative Tom Ratterree,
Vice Chairman

Senator Bob Pastore

Senator Ray Powers

Senator Mary Anne Tebedo

Senator Ray Peterson

Representative Vickie Agler

Representative Mike Coffman

Representative Jim Dyer

Representative Lewis Entz

Representative Daphne Greenwood

Representative Tony Hernandez

Representative Carol Snyder

Representative Bill Thiebaut

Representative Dan Williams

Legislative Council Staff

Larry Thompson
Principal Analyst I

Legislative Legal Services Staff

Dan Cartin
Staff Attorney

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Bill B	Concerning Additions to the Statutory Provisions Governing Local Fire and Police Pension Plans for Purposes of Compliance with the Qualified Plan Requirements of the Internal Revenue Code 9
Bill C	Concerning an Amendment to the Normal Retirement Provision of the Statewide Fire and Police Pension Statutes for Purposes of Compliance with the Federal "Older Workers Benefit Protection Act", Sections 621 through 634 of Title 29, United States Code Annotated 15
Bill D	Concerning the Elimination of the Provision Requiring Suspension of Payments from Certain Firemen's Pension Funds to a Retired Member, Officer, or Employee Accepting a Position with Another Fire Department 17

POLICEMEN'S AND FIREMEN'S PENSION REFORM COMMISSION

Commission Charge

In 1978, Senate Bill 46 (Parts 8 and 9 of Article 30 of Title 31, C.R.S.) created a statutory policemen's and firemen's pension reform commission to study and develop legislation relating to the funding of police and fire pensions and the benefit designs of such plans.

Commission Activities and Recommendations

At its meeting on November 6, 1991, the commission heard the annual financial report from the executive director of the Fire and Police Pension Association (FPPA). Discussion of proposed legislation followed. As a result of commission deliberations, the following bills are recommended for consideration in the 1992 legislative session.

Concerning the Voting Requirements of Exempt Alternative Police and Fire Pension Plans — Bill A

Pursuant to section 31-30-325, C.R.S., exempt alternative pension plans are authorized. Exempt alternative pension plans, which first must be found by an actuarial study to be actuarially sound, are plans which are not subject to the statutory requirements set forth in Part 3 of Article 30. There are seven police departments (Arvada, Craig, Gunnison, Lakewood, Loveland, Mount Crested Butte, and Westminster) and one fire department (Westminster) in the state which have established pension plans pursuant to that section. Section 31-30-325, C.R.S., also provides that amendments to the pension plans must be approved by 65 percent of those actively employed by the department and by 65 percent of those members who have retired under the plan or who have left their money in the plan.

Testimony indicated that the existing voting requirements could allow a small number of non-active members to effectively override the vote of a much larger majority of the active members. There are instances where amendments to pension plans have no impact on non-active members and, as a result, a majority of such members choose not to participate in the election. A failure to participate counts as a

"no" vote. In response to these concerns, the commission recommends Bill A to allow a plan to be amended upon 65 percent approval of all persons (i.e., active members combined with former employees) eligible to vote.

Concerning the Requirement that Fire and Police Pension Plans Comply with Provisions of the Federal Internal Revenue Code Related to Governmental Pension Plans — Bill B

Bill B is recommended to ensure compliance of governmental pension plans with requirements of the federal "Internal Revenue Code of 1986."

The bill has the following major components:

- Local policemen's and firemen's pension funds must be held in trust for fund members and other persons entitled to benefits.
- Increasing benefits to members due to forfeitures of benefits by other members is prohibited.
- A member's pension must begin by April 1 of the year following the year the member attains seventy and one half years of age, or retires, whichever is later.
- The maximum annual pension available to a member is made subject to the limitations of Section 415 of the Internal Revenue Code and any regulations issued thereunder. The maximum annual benefit is equal to the lesser of \$108,963 and actuarially reduced for payments made before Social Security retirement age, or 100 percent of the member's average annual compensation in the highest three consecutive years of employment.

Concerning the Requirement that the Fire and Police Members' Statewide Plan Comply with Provisions of the Federal Age Discrimination in Employment Act — Bill C

Bill C is recommended to clarify that there is no mandatory retirement age set forth in that part of the Fire and Police Pension Association's statewide plan which is applicable to employees of municipalities, fire protection districts, and county improvement districts. Existing statutes provide that any person who has completed at least 25 years of active service and has attained the age of 60 years may be retired from further service and be eligible for a normal retirement pension. The bill will help to ensure compliance of the state plan with the requirements of the federal "Older Workers Benefit Protection Act" which was enacted in 1990.

Concerning the Elimination of the Provision Requiring Suspension of Payments from Certain Firemen's Pension Funds to a Retired Member, Officer, or Employee Accepting a Position with Another Fire Department — Bill D

This bill eliminates the requirement that the monthly pension payment of a retired member, officer, or employee of any paid fire department of a municipality or fire protection district be suspended if the retiree accepts a job with another fire department. Provisions of this bill are applicable to cities or special districts with a population of less than 100,000.

Testimony indicated that this provision was no longer necessary since all fire and police pension plans are now funded, substantially, through mandatory member assessments. In earlier years, when pensions were funded primarily through the state and there was no mandatory member assessment, the General Assembly had determined that a suspension provision, in the case of member reemployment, was appropriate.

Materials Available

The following materials relevant to the Policemen's and Firemen's Pension Reform Commission meeting are available from the Legislative Council.

- 1) Summary of meeting, November 6, 1991: review of financial report of the Fire and Police Pension Association and consideration of interim bills.
- 2) An Overview of Colorado Fire and Police Pensions, Fire and Police Pension Association, November, 1991.

PENSION REFORM BILL A

A BILL FOR AN ACT

1 CONCERNING THE VOTING REQUIREMENTS FOR THE AMENDMENT OF
2 CERTAIN EXEMPT ALTERNATIVE POLICEMEN'S AND FIREMEN'S
3 PENSION BENEFIT PLANS.

Bill Summary

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

Changes the voting requirements for the amendment of exempt alternative policemen's and firemen's pension benefit programs in municipalities, fire protection districts, and county improvement districts with a population under 100,000 and in cities and counties with a population over 100,000.

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

5 SECTION 1. 31-30-325, Colorado Revised Statutes, 1986
6 Repl. Vol., is amended to read:

7 31-30-325. Exempt alternative programs authorized.

8 Notwithstanding any other provision of this article, any
9 municipality may establish an alternative policemen's pension

1 benefit program or combination pension and insurance benefit
2 program which, if found by an actuarial study to be
3 actuarially sound, shall be exempt from all provisions of this
4 part 3. Such program and any amendments thereto must be
5 approved IN AN ELECTION HELD OR VOTE CALLED FOR THAT PURPOSE,
6 by at least sixty-five percent of THE TOTAL VOTES CAST BY all
7 policemen ACTIVELY employed by the municipality AND ALL FORMER
8 EMPLOYEES WHO HAVE EARNED PENSION RIGHTS OR BENEFITS UNDER
9 THIS PART 3 at the time the program is adopted or amended.
10 ~~and--by-at-least-sixty-five-percent-of-all-former-employees-at~~
11 ~~the-time-the-program-is-adopted-or--amended--who--have--earned~~
12 ~~pension---rights---or---benefits--under--this--part--3.~~ Any
13 municipality having established an exempt alternative program
14 pursuant to this section shall be entitled to receive its
15 appropriate share of state contributions to local policemen's
16 pension funds and shall file any reports required to receive
17 such state contributions.
18 SECTION 2. 31-30-417, Colorado Revised Statutes, 1986
19 Repl. Vol., as amended, is amended to read:
20 31-30-417. Exempt alternative programs authorized.
21 Notwithstanding any other provision of this article, any
22 municipality, fire protection district, or county improvement
23 district may establish an alternative firemen's pension
24 benefit program or combination pension and insurance benefit
25 program for nonvolunteer firemen which, if found by an
26 actuarial study to be actuarially sound, shall be exempt from

1 all provisions of this part 4. Such program and any
 2 amendments thereto must be approved IN AN ELECTION HELD OR
 3 VOTE CALLED FOR THAT PURPOSE, by at least sixty-five percent
 4 of THE TOTAL VOTES CAST BY all firemen ACTIVELY employed by
 5 the municipality, fire protection district, or county
 6 improvement district AND ALL FORMER EMPLOYEES WHO HAVE EARNED
 7 PENSION RIGHTS OR BENEFITS UNDER THIS PART 4 at the time the
 8 program is adopted or amended. ~~and-by-at-least-sixty-five~~
 9 ~~percent-of-all-former-employees-at-the--time--the--program--is~~
 10 ~~adopted--or-amended-who-have-earned-pension-rights-or-benefits~~
 11 ~~under--this--part--4.~~ Any municipality, fire protection
 12 district, or county improvement district having established an
 13 exempt alternative program pursuant to this section shall be
 14 entitled to receive a share of the state contributions to
 15 local firemen's pension funds to the same extent as local
 16 funds otherwise established pursuant to this part 4, and such
 17 municipality, fire protection district, or county improvement
 18 district shall file any reports required to receive such state
 19 contributions.

20 SECTION 3. 31-30-522, Colorado Revised Statutes, 1986
 21 Repl. Vol., is amended to read:

22 31-30-522. Exempt alternative programs authorized.
 23 Notwithstanding any other provision of this article, any city
 24 or city and county may establish an alternative firemen's
 25 pension benefit program or combination pension and insurance
 26 benefit program for nonvolunteer firemen which, if found by an

1 actuarial study to be actuarially sound, shall be exempt from
 2 all provisions of this part 5. Such program and any
 3 amendments thereto must be approved IN AN ELECTION HELD OR
 4 VOTE CALLED FOR THAT PURPOSE, by at least sixty-five percent
 5 of THE TOTAL VOTES CAST BY all firemen ACTIVELY employed by
 6 the municipality AND ALL FORMER EMPLOYEES WHO HAVE EARNED
 7 PENSION RIGHTS OR BENEFITS UNDER THIS PART 5 at the time the
 8 program is adopted or amended. ~~and-by-at-least-sixty-five~~
 9 ~~percent-of-all-former-employees-at-the--time--the--program--is~~
 10 ~~adopted--or-amended-who-have-earned-pension-rights-or-benefits~~
 11 ~~under--this--part--5.~~ Any city or city and county having
 12 established an exempt alternative program pursuant to this
 13 section shall be entitled to receive a share of the state
 14 contributions to local firemen's pension funds to the same
 15 extent as local funds otherwise established pursuant to this
 16 part 5, and such city or city and county shall file any
 17 reports required to receive such state contributions.

18 SECTION 4. 31-30-621, Colorado Revised Statutes, 1986
 19 Repl. Vol., is amended to read:

20 31-30-621. Exempt alternative programs authorized.
 21 Notwithstanding any other provision of this article, any city
 22 or city and county subject to this part 6 may establish an
 23 alternative policemen's pension benefit program or combination
 24 pension and insurance benefit program which, if found by an
 25 actuarial study to be actuarially sound, shall be exempt from
 26 all provisions of this part 6. Such program and any

1 amendments thereto must be approved IN AN ELECTION HELD OR
2 VOTE CALLED FOR THAT PURPOSE, by at least sixty-five percent
3 of THE TOTAL VOTES CAST BY all policemen ACTIVELY employed by
4 the municipality AND ALL FORMER EMPLOYEES WHO HAVE EARNED
5 PENSION RIGHTS OR BENEFITS UNDER THIS PART 6 at the time the
6 program is adopted or amended. ~~and-by-at-least-sixty-five~~
7 ~~percent-of-all-former-employees-at-the-time-the-program-is~~
8 ~~adopted-or-amended-who-have-earned-pension-rights-or-benefits~~
9 ~~under-this-part-6.~~ Any city or county having
10 established an exempt alternative program pursuant to this
11 section shall be entitled to receive its appropriate share of
12 state contributions to local policemen's pension funds and
13 shall file any reports required to receive such state
14 contributions.

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

PENSION REFORM BILL B

A BILL FOR AN ACT

1 CONCERNING ADDITIONS TO THE STATUTORY PROVISIONS GOVERNING
2 LOCAL FIRE AND POLICE PENSION PLANS FOR PURPOSES OF
3 COMPLIANCE WITH THE QUALIFIED PLAN REQUIREMENTS OF THE
4 INTERNAL REVENUE CODE.

Bill Summary

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

Defines "Internal Revenue Code". Requires that local policemen's and firemen's pension funds be held in trust for fund members and other persons entitled to benefits. Provides for vesting of benefits accrued in the event of a discontinuance or termination of the pension fund and upon attaining eligibility requirements. Prohibits increasing benefits to members due to forfeitures of benefits by other members. Requires a member's pension to begin by April 1 of the year following the year the member attains seventy and one-half years of age, or retires, whichever is later. Makes the maximum annual pension payable to a member subject to the limitations of section 415 of the internal revenue code and requires that the compensation amount for pension fund purposes not exceed the applicable amount under section 401 (a) (17) of such code.

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

1 SECTION 1. Part 3 of article 30 of title 31, Colorado
2 Revised Statutes, 1986 Repl. Vol., as amended, is amended BY
3 THE ADDITION OF A NEW SECTION to read:

4 31-30-324.5. Qualification requirements - internal
5 revenue code. (1) AS USED IN THIS SECTION, "INTERNAL REVENUE
6 CODE" MEANS THE FEDERAL "INTERNAL REVENUE CODE OF 1954", AS IN
7 EFFECT ON SEPTEMBER 1, 1974, IF PERMITTED WITH RESPECT TO
8 GOVERNMENTAL PLANS, OR, TO THE EXTENT NOT INCONSISTENT WITH
9 THE FEDERAL "INTERNAL REVENUE CODE OF 1954", AS IN EFFECT ON
10 SEPTEMBER 1, 1974, "INTERNAL REVENUE CODE" MEANS THE FEDERAL
11 "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

12 (2) THE POLICEMEN'S PENSION FUND ESTABLISHED BY THIS
13 PART 3 SHALL BE HELD IN TRUST FOR THE BENEFIT OF MEMBERS AND
14 OTHER PERSONS ENTITLED TO BENEFITS. NO PART OF THE CORPUS OR
15 INCOME OF THE PENSION FUND SHALL BE USED FOR OR DIVERTED TO
16 PURPOSES OTHER THAN FOR THE EXCLUSIVE BENEFIT OF MEMBERS OR
17 OTHER PERSONS ENTITLED TO BENEFITS FROM THE PENSION FUND AND
18 FOR EXPENSES INCIDENT TO OPERATION OF THE PENSION FUND. NO
19 PERSON SHALL HAVE ANY INTEREST IN OR RIGHT TO ANY PART OF THE
20 CORPUS OR EARNINGS OF THE PENSION TRUST EXCEPT AS EXPRESSLY
21 PROVIDED.

22 (3) TO THE EXTENT OF AVAILABLE FUNDS IN THE PENSION
23 FUND, IN THE EVENT OF A COMPLETE DISCONTINUANCE OF
24 CONTRIBUTIONS, OTHER THAN TO A FUND WHICH IS FULLY FUNDED ON
25 AN ACTUARIALLY SOUND BASIS, OR UPON TERMINATION OF THE PENSION
26 FUND, A MEMBER WILL BE FULLY VESTED IN THE BENEFITS SUCH

1 MEMBER HAS ACCRUED AT THE DATE OF THE DISCONTINUANCE OR
2 TERMINATION. IN ADDITION, UPON ATTAINING THE ELIGIBILITY
3 REQUIREMENTS FOR A BENEFIT, A MEMBER WILL BE FULLY VESTED IN
4 THE BENEFITS SUCH MEMBER HAS ACCRUED.

5 (4) BENEFITS PAYABLE FROM THE PENSION FUND TO MEMBERS OR
6 ANY OTHER PERSONS ENTITLED TO BENEFITS WILL NOT BE INCREASED
7 DUE TO FORFEITURES FROM OTHER MEMBERS, BUT THESE FORFEITURES
8 WILL BE USED TO REDUCE THE ACTUARIAL FUNDING REQUIREMENTS OF
9 THE PENSION FUND.

10 (5) NOTWITHSTANDING ANY PROVISION IN THIS PART 3 TO THE
11 CONTRARY, A MEMBER'S PENSION SHALL BEGIN BY APRIL 1 OF THE
12 CALENDAR YEAR FOLLOWING THE CALENDAR YEAR IN WHICH THE MEMBER
13 ATTAINS SEVENTY AND ONE-HALF YEARS OF AGE, OR RETIRES,
14 WHICHEVER IS LATER.

15 (6) THE MAXIMUM ANNUAL PENSION PAYABLE TO A MEMBER BY
16 THE PENSION FUND SHALL BE SUBJECT TO THE LIMITATIONS SET FORTH
17 IN SECTION 415 OF THE INTERNAL REVENUE CODE AND ANY
18 REGULATIONS ISSUED THEREUNDER.

19 (7) THE COMPENSATION TAKEN INTO ACCOUNT FOR ANY PURPOSE
20 UNDER THE PENSION FUND SHALL NOT EXCEED THE APPLICABLE AMOUNT
21 UNDER SECTION 401 (a) (17) OF THE INTERNAL REVENUE CODE AND
22 ANY REGULATIONS ISSUED THEREUNDER.

23 SECTION 2. Part 4 of article 30 of title 31, Colorado
24 Revised Statutes, 1986 Repl. Vol., as amended, is amended BY
25 THE ADDITION OF A NEW SECTION to read:

26 31-30-416.5. Qualification requirements - internal

1 revenue code. (1) AS USED IN THIS SECTION, "INTERNAL REVENUE
2 CODE" MEANS THE FEDERAL "INTERNAL REVENUE CODE OF 1954", AS IN
3 EFFECT ON SEPTEMBER 1, 1974, IF PERMITTED WITH RESPECT TO
4 GOVERNMENTAL PLANS, OR, TO THE EXTENT NOT INCONSISTENT WITH
5 THE FEDERAL "INTERNAL REVENUE CODE OF 1954", AS IN EFFECT ON
6 SEPTEMBER 1, 1974, "INTERNAL REVENUE CODE" MEANS THE FEDERAL
7 "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

8 (2) THE FIREMEN'S PENSION FUND ESTABLISHED BY THIS PART
9 4 SHALL BE HELD IN TRUST FOR THE BENEFIT OF MEMBERS AND OTHER
10 PERSONS ENTITLED TO BENEFITS. NO PART OF THE CORPUS OR INCOME
11 OF THE PENSION FUND SHALL BE USED FOR OR DIVERTED TO PURPOSES
12 OTHER THAN FOR THE EXCLUSIVE BENEFIT OF MEMBERS OR OTHER
13 PERSONS ENTITLED TO BENEFITS FROM THE PENSION FUND AND FOR
14 EXPENSES INCIDENT TO OPERATIONS OF THE PENSION FUND. NO
15 PERSON SHALL HAVE ANY INTEREST IN OR RIGHT TO ANY PART OF THE
16 CORPUS OR EARNINGS OF THE PENSION TRUST EXCEPT AS EXPRESSLY
17 PROVIDED.

18 (3) TO THE EXTENT OF AVAILABLE FUNDS IN THE PENSION
19 FUND, IN THE EVENT OF A COMPLETE DISCONTINUANCE OF
20 CONTRIBUTIONS, OTHER THAN TO A FUND WHICH IS FULLY FUNDED ON
21 AN ACTUARIALLY SOUND BASIS, OR UPON TERMINATION OF THE PENSION
22 FUND, A MEMBER WILL BE FULLY VESTED IN THE BENEFITS SUCH
23 MEMBER HAS ACCRUED AT THE DATE OF THE DISCONTINUANCE OR
24 TERMINATION. IN ADDITION, UPON ATTAINING THE ELIGIBILITY
25 REQUIREMENTS FOR A BENEFIT, A MEMBER WILL BE FULLY VESTED IN
26 THE BENEFITS SUCH MEMBER HAS ACCRUED.

1 (4) BENEFITS PAYABLE FROM THE PENSION FUND TO MEMBERS OR
 2 ANY OTHER PERSONS ENTITLED TO BENEFITS WILL NOT BE INCREASED
 3 DUE TO FORFEITURES FROM OTHER MEMBERS, BUT THESE FORFEITURES
 4 WILL BE USED TO REDUCE THE ACTUARIAL FUNDING REQUIREMENTS OF
 5 THE PENSION FUND.

6 (5) NOTWITHSTANDING ANY PROVISION IN THIS PART 4 TO THE
 7 CONTRARY, A MEMBER'S PENSION SHALL BEGIN BY APRIL 1 OF THE
 8 CALENDAR YEAR FOLLOWING THE CALENDAR YEAR IN WHICH THE MEMBER
 9 ATTAINS SEVENTY AND ONE-HALF YEARS OF AGE, OR RETIRES,
 10 WHICHEVER IS LATER.

11 (6) THE MAXIMUM ANNUAL PENSION PAYABLE TO A MEMBER BY
 12 THE PENSION FUND SHALL BE SUBJECT TO THE LIMITATIONS SET FORTH
 13 IN SECTION 415 OF THE INTERNAL REVENUE CODE AND ANY
 14 REGULATIONS ISSUED THEREUNDER.

15 (7) THE COMPENSATION TAKEN INTO ACCOUNT FOR ANY PURPOSES
 16 UNDER THE PENSION FUND SHALL NOT EXCEED THE APPLICABLE AMOUNT
 17 UNDER SECTION 401 (a) (17) OF THE INTERNAL REVENUE CODE AND
 18 ANY REGULATIONS ISSUED THEREUNDER.

19 SECTION 3. Part 5 of article 30 of title 31, Colorado
 20 Revised Statutes, 1986 Repl. Vol., as amended, is amended BY
 21 THE ADDITION OF A NEW SECTION to read:

22 31-30-521.5. Qualification requirements - internal
 23 revenue code. (1) AS USED IN THIS SECTION, "INTERNAL REVENUE
 24 CODE" MEANS THE FEDERAL "INTERNAL REVENUE CODE OF 1954", AS IN
 25 EFFECT ON SEPTEMBER 1, 1974, IF PERMITTED WITH RESPECT TO
 26 GOVERNMENTAL PLANS, OR, TO THE EXTENT NOT INCONSISTENT WITH

1 THE FEDERAL "INTERNAL REVENUE CODE OF 1954", AS IN EFFECT ON
 2 SEPTEMBER 1, 1974, "INTERNAL REVENUE CODE" MEANS THE FEDERAL
 3 "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

4 (2) THE FIREMEN'S PENSION FUND ESTABLISHED BY THIS PART
 5 SHALL BE HELD IN TRUST FOR THE BENEFIT OF MEMBERS AND OTHER
 6 PERSONS ENTITLED TO BENEFITS. NO PART OF THE CORPUS OR INCOME
 7 OF THE PENSION FUND SHALL BE USED FOR OR DIVERTED TO PURPOSES
 8 OTHER THAN FOR THE EXCLUSIVE BENEFIT OF MEMBERS OR OTHER
 9 PERSONS ENTITLED TO BENEFITS FROM THE PENSION FUND AND FOR
 10 EXPENSES INCIDENT TO OPERATION OF THE PENSION FUND. NO PERSON
 11 SHALL HAVE ANY INTEREST IN OR RIGHT TO ANY PART OF THE CORPUS
 12 OR EARNINGS OF THE PENSION TRUST EXCEPT AS EXPRESSLY PROVIDED.

13 (3) TO THE EXTENT OF AVAILABLE FUNDS IN THE PENSION
 14 FUND, IN THE EVENT OF A COMPLETE DISCONTINUANCE OF
 15 CONTRIBUTIONS, OTHER THAN TO A FUND WHICH IS FULLY FUNDED ON
 16 AN ACTUARIALLY SOUND BASIS, OR UPON TERMINATION OF THE PENSION
 17 FUND, A MEMBER WILL BE FULLY VESTED IN THE BENEFITS SUCH
 18 MEMBER HAS ACCRUED AT THE DATE OF THE DISCONTINUANCE OR
 19 TERMINATION. IN ADDITION, UPON ATTAINING THE ELIGIBILITY
 20 REQUIREMENTS FOR A BENEFIT, A MEMBER WILL BE FULLY VESTED IN
 21 THE BENEFITS SUCH MEMBER HAS ACCRUED.

22 (4) BENEFITS PAYABLE FROM THE PENSION FUND TO MEMBERS OR
 23 ANY OTHER PERSONS ENTITLED TO BENEFITS WILL NOT BE INCREASED
 24 DUE TO FORFEITURES FROM OTHER MEMBERS, BUT THESE FORFEITURES
 25 WILL BE USED TO REDUCE THE ACTUARIAL FUNDING REQUIREMENTS OF
 26 THE PENSION FUND.

1 (5) NOTWITHSTANDING ANY PROVISION IN THIS PART 5 TO THE
2 CONTRARY, A MEMBER'S PENSION SHALL BEGIN BY APRIL OF THE
3 CALENDAR YEAR FOLLOWING THE CALENDAR YEAR IN WHICH THE MEMBER
4 ATTAINS SEVENTY AND ONE-HALF YEARS OF AGE, OR RETIRES,
5 WHICHEVER IS LATER.

6 (6) THE MAXIMUM ANNUAL PENSION PAYABLE TO A MEMBER BY
7 THE PENSION FUND SHALL BE SUBJECT TO THE LIMITATIONS SET FORTH
8 IN SECTION 415 OF THE INTERNAL REVENUE CODE AND ANY
9 REGULATIONS ISSUED THEREUNDER.

10 (7) THE COMPENSATION TAKEN INTO ACCOUNT FOR ANY PURPOSE
11 UNDER THE PENSION FUND SHALL NOT EXCEED THE APPLICABLE AMOUNT
12 UNDER SECTION 401 (a) (17) OF THE INTERNAL REVENUE CODE AND
13 ANY REGULATIONS ISSUED THEREUNDER.

14 SECTION 4. Part 6 of article 30 of title 31, Colorado
15 Revised Statutes, 1986 Repl. Vol., as amended, is amended BY
16 THE ADDITION OF A NEW SECTION to read:

17 31-30-620.5. Qualification requirements - internal
18 revenue code. (1) AS USED IN THIS SECTION, "INTERNAL REVENUE
19 CODE" MEANS THE FEDERAL "INTERNAL REVENUE CODE OF 1954", AS IN
20 EFFECT ON SEPTEMBER 1, 1974, IF PERMITTED WITH RESPECT TO
21 GOVERNMENTAL PLANS, OR, TO THE EXTENT NOT INCONSISTENT WITH
22 THE FEDERAL "INTERNAL REVENUE CODE OF 1954", AS IN EFFECT ON
23 SEPTEMBER 1, 1974, "INTERNAL REVENUE CODE" MEANS THE FEDERAL
24 "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

25 (2) THE POLICEMEN'S PENSION FUND ESTABLISHED BY THIS
26 PART 6 SHALL BE HELD IN TRUST FOR THE BENEFIT OF MEMBERS AND

1 OTHER PERSONS ENTITLED TO BENEFITS. NO PART OF THE CORPUS OR
2 INCOME OF THE PENSION FUND SHALL BE USED FOR OR DIVERTED TO
3 PURPOSES OTHER THAN FOR THE EXCLUSIVE BENEFIT OF MEMBERS OR
4 OTHER PERSONS ENTITLED TO BENEFITS FROM THE PENSION FUND AND
5 FOR EXPENSES INCIDENT TO OPERATION OF THE PENSION FUND. NO
6 PERSON SHALL HAVE ANY INTEREST IN OR RIGHT TO ANY PART OF THE
7 CORPUS OR EARNINGS OF THE PENSION TRUST EXCEPT AS EXPRESSLY
8 PROVIDED.

9 (3) TO THE EXTENT OF AVAILABLE FUNDS IN THE PENSION
10 FUND, IN THE EVENT OF A COMPLETE DISCONTINUANCE OF
11 CONTRIBUTIONS, OTHER THAN TO A FUND WHICH IS FULLY FUNDED ON
12 AN ACTUARIALLY SOUND BASIS, OR UPON TERMINATION OF THE PENSION
13 FUND, A MEMBER WILL BE FULLY VESTED IN THE BENEFITS SUCH
14 MEMBER HAS ACCRUED AT THE DATE OF THE DISCONTINUANCE OR
15 TERMINATION. IN ADDITION, UPON ATTAINING THE ELIGIBILITY
16 REQUIREMENTS FOR A BENEFIT, A MEMBER WILL BE FULLY VESTED IN
17 THE BENEFITS SUCH MEMBER HAS ACCRUED.

18 (4) BENEFITS PAYABLE FROM THE PENSION FUND TO MEMBERS OR
19 ANY OTHER PERSONS ENTITLED TO BENEFITS WILL NOT BE INCREASED
20 DUE TO FORFEITURES FROM OTHER MEMBERS, BUT THESE FORFEITURES
21 WILL BE USED TO REDUCE THE ACTUARIAL FUNDING REQUIREMENTS OF
22 THE PENSION FUND.

23 (5) NOTWITHSTANDING ANY PROVISION IN THIS PART 6 TO THE
24 CONTRARY, A MEMBER'S PENSION SHALL BEGIN BY APRIL 1 OF THE
25 CALENDAR YEAR FOLLOWING THE CALENDAR YEAR IN WHICH THE MEMBER
26 ATTAINS SEVENTY AND ONE-HALF YEARS OF AGE, OR RETIRES,

1 WHICHEVER IS LATER.

2 (6) THE MAXIMUM ANNUAL PENSION PAYABLE TO A MEMBER BY
3 THE PENSION FUND SHALL BE SUBJECT TO THE LIMITATIONS SET FORTH
4 IN SECTION 415 OF THE INTERNAL REVENUE CODE AND ANY
5 REGULATIONS ISSUED THEREUNDER.

6 (7) THE COMPENSATION TAKEN INTO ACCOUNT FOR ANY PURPOSE
7 UNDER THE PENSION FUND SHALL NOT EXCEED THE APPLICABLE AMOUNT
8 UNDER SECTION 401 (a) (17) OF THE INTERNAL REVENUE CODE AND
9 ANY REGULATIONS ISSUED THEREUNDER.

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

PENSION REFORM BILL C

A BILL FOR AN ACT

1 CONCERNING AN AMENDMENT TO THE NORMAL RETIREMENT PROVISION OF
2 THE STATEWIDE FIRE AND POLICE PENSION STATUTES FOR
3 PURPOSES OF COMPLIANCE WITH THE FEDERAL "OLDER WORKERS
4 BENEFIT PROTECTION ACT", SECTIONS 621 THROUGH 634 OF
5 TITLE 29, UNITED STATES CODE ANNOTATED.

Bill Summary

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

Eliminates imposed retirement, in connection with eligibility for the fire and police pension association's normal retirement pension, of certain pension members who are employees of municipalities, fire protection districts, and county improvement districts. Eliminates the 65-year-old age limit in calculating such an employee's years of service for the annual normal retirement pension eligibility.

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

7 SECTION 1. 31-30-1006 (1) (a), Colorado Revised
8 Statutes, 1986 Repl. Vol., is amended to read:

9 31-30-1006. Normal retirement. (1) (a) Any member who

1 has completed at least twenty-five years of active service and
2 has attained the age of sixty years ~~may be retired from~~
3 ~~further service and~~ shall be eligible for a normal retirement
4 pension, but any member ~~may~~ SHALL be ~~retired from further~~
5 ~~service and~~ be eligible for a normal retirement pension at any
6 time after attaining the age of fifty-five years if his
7 employer has certified to the board that there is no available
8 position for which such member is qualified. The annual normal
9 retirement pension shall be two percent of the average of the
10 member's highest three years' base salary multiplied by the
11 member's years of service, not to exceed twenty-five. ~~prior to~~
12 ~~age sixty-five.~~

13 SECTION 2. Safety clause. The general assembly hereby
14 finds, determines, and declares that this act is necessary
15 for the immediate preservation of the public peace, health,
16 and safety.

PENSION REFORM BILL D

A BILL FOR AN ACT

1 CONCERNING THE ELIMINATION OF THE PROVISION REQUIRING
2 SUSPENSION OF PAYMENTS FROM CERTAIN FIREMEN'S PENSION
3 FUNDS TO A RETIRED MEMBER, OFFICER, OR EMPLOYEE ACCEPTING
4 A POSITION WITH ANOTHER FIRE DEPARTMENT.

Bill Summary

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

Eliminates the requirement that the monthly pension payment of a retired member, officer, or employee of any paid fire department of a municipality or fire protection district with a population of less than 100,000 be suspended if such a retiree takes a job with another fire department.

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

6 SECTION 1. 31-30-408, Colorado Revised Statutes, 1986
7 Repl. Vol., as amended, is amended to read:

8 31-30-408. Age retirement pension. Except as provided in
9 section 31-30-511, any member, officer, or employee of any
10 paid fire department of a municipality, fire protection

1 district, or county improvement district who has reached the
2 age of fifty years and who has served for a period of twenty
3 years of active service in any such department in this state
4 is entitled to a monthly pension equal to one-half the amount
5 of his monthly salary as of the date of his retirement plus,
6 if the governing body of the municipality, the board of
7 directors of the fire protection district, or the board of the
8 county improvement district authorizes such additional
9 benefits, one-half of any increase in salary and longevity or
10 additional pay based on length of service granted during the
11 period of his retirement to the rank occupied by him in said
12 department. ~~If--thereafter--such-member,-officer,-or-employee~~
13 ~~accepts--a--salaried--position--in--any--capacity--in--a--fire~~
14 ~~department--in--any-municipality,-fire-protection--district,-or~~
15 ~~county--improvement-district,-the-payment-of-his-pension-shall~~
16 ~~be-suspended-during-the-period-he-holds--such--position.~~ Any
17 member, officer, or employee of a paid fire department of a
18 municipality, fire protection district, or county improvement
19 district, who has served prior time in a volunteer fire
20 department in any municipality, fire protection district, or
21 county improvement district in this state, in the event he
22 becomes a paid member, shall be credited service time at the
23 rate of one year of paid service for each four complete years
24 of volunteer time.

25 SECTION 2. Safety clause. The general assembly hereby
26 finds, determines, and declares that this act is necessary

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