0366 Committees on: Joint State Affairs Committee, Joint Transportation Committee, Joint Legislative Sunrise and Sunset Review Committee, Highway Legislation Review Committee

Colorado Legislative Council

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To Members of the Fifty-Eighth General Assembly:

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

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

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

Respectfully submitted,

/s/ Senator Ted L. Strickland
Chairman
Legislative Council

TLS/pn
LEGISLATIVE COUNCIL

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

**Absentee Voting**

**Committee Objectives**

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

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

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

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

The interim committee called upon the Secretary of State for assistance in updating relevant sections of the state statutes. The recommendations made by that office and adopted by the committee extend beyond the issue of absentee voting procedures for registered electors residing outside the United States by including authorization of early voting by any registered elector and by easing conditions under which electors
qualify for absentee status. The results of that effort are contained in State Affairs Bill A. The main provisions of the measure can be summarized as follows:

- establishes a "special write-in blank absent voter ballot" for Colorado registered electors residing outside the United States to enable voting at any primary, general, or congressional vacancy election. The elector's application for such a ballot is to specify the conditions that preclude normal mail delivery of an absent voter ballot. If the request is granted, the special ballot is sent to the voter no sooner than 60 days prior to the election;

- states Colorado's compliance with the federal overseas voting act;

- provides that each county designate an "early voters' polling place." Early voters' polling places using voting machines are to be opened as soon as possible but not later than 15 days prior to the election day. Any registered elector who wishes to vote early may do so;

- changes the earliest date that an application for an absent voter's ballot can be filed with a county clerk from 90 days before the election to January 1 immediately preceding the election; and

- eliminates very specific conditions (such as serious illness, adverse working conditions, residence more than ten miles from the polling place) that a voter presently needs to meet to be classified as an absentee voter.

State Personnel System

Committee Objectives

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

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

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

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

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

Recommendation for statutory change. In addition to the constitutional change, the joint committee recommends State Affairs Bill B. The bill requires that state agencies desiring to privatize a service conduct an analysis. That analysis calls for the following:
- measurement of the private sector's interest by requiring that a minimum of three competitive proposals to perform the work be received;

- establishing that the private sector provider can perform the service at a cost savings of at least ten percent;

- determining whether the provider has sufficient technical ability and financial capacity; and

- measuring the impact of the privatization proposal on the state personnel system.

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

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

**Organization of State Government**

**Committee Objectives**

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

During the 1991 interim, the joint committee's desire to focus on functional realignments within the executive branch was driven by the need to examine means of increasing the efficient delivery of services to the citizenry during a period of severe state budget constraints. As a result, the committee asked for reorganization
recommendations from the director of the Office of State Planning and Budgeting and the staff director of the Joint Budget Committee.

Committee Findings and Recommendations — State Affairs Resolution B

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

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

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

- locating education programs (K-12 and post secondary education) in one department;
- locating economic development programs in one department;
- locating programs dealing with the environment in one department;
- locating programs designed for youth and families in need of assistance in one department;
- locating criminal justice programs in one department;
- examining state programs that could be eliminated or privatized;
- combining entire departments, for example, Administration and Personnel, and Agriculture and Natural Resources; and

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

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

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

**Materials Available**

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

Committee Meeting Summaries:

1) July 30, 1991. The committee focused on approaches to a functional reorganization of the executive branch of state government. The director of the Governor’s budget office and the staff director of the Joint Budget Committee presented their ideas on reorganization. The committee also received a briefing on congressional redistricting.

2) August 28, 1991. The Secretary of State’s office provided a bill draft to change absentee voting for military personnel as well as other electors. The Department of Personnel highlighted plans to streamline operations and facilitate improved performance among state workers. The Departments of Law, Personnel, and Highways provided background information on the privatization of state services.

3) October 9, 1991. Four items were covered during the meeting: fire and police pension disability benefits; the bill draft concerning procedures for
voting prior to election day; three approaches to clarifying the state's position on privatization of state services; and ideas about functional reorganization of state government.

4) October 24, 1991. The committee discussed the need to continue the reorganization effort beyond the 1991 interim. In addition, amendments to the privatization of state services bill were considered.

5) November 7, 1991. A draft bill and constitutional amendment were adopted regarding the privatization of state services.

Memoranda:


A BILL FOR AN ACT

CONCERNING PROCEDURES FOR VOTING PRIOR TO ELECTION DAY.

BILL SUMMARY

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

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

Be it enacted by the General Assembly of the State of Colorado:
Said Federal Act.

(3) if a national or local emergency arises which makes strict compliance with the provisions of this Part 1 impossible or unreasonable, such as when Congress has declared a national emergency or the President has ordered into the active military service of the United States any units and members of the National Guard of this State, the Secretary of State may prescribe, by emergency orders or rules and regulations, such special procedures or requirements as may be necessary to facilitate absentee or early voting by those affected by such emergency.

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

1-8-103. Application for absent voter's ballot.
(1) Requests for an application for an absent voter's ballot may be made orally or in writing. The application for an absent voter's ballot shall be either the application form furnished by the county clerk and recorder, as prescribed by the secretary of state pursuant to section 1-1-108, or in the form of a letter, stating the applicant's residence address. The application form or letter requesting an absentee absent voter's ballot may be faxed to the county clerk and recorder; except that, the vote cast by an absentee absent voter's ballot requested via fax shall count only if an originally signed request is filed with the county clerk and recorder before or at the same time the ballot is received by said county clerk and recorder. If the application is made for a primary election ballot, such application shall designate the name of the political party with which the applicant is affiliated or wishes to affiliate.

(4) The application for an absent voter's ballot shall be filed with the county clerk and recorder of the applicant's county of residence not earlier than ninety--days--before January 1 immediately preceding the election nor later than the close of business on the Friday immediately preceding the election.

Section 3. 1-8-105 (1.5), Colorado Revised Statutes,
1980 Repl. Vol., as amended, is repealed as follows:

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

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

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

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

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

1-8-107. Record of absent voters' ballots. (2) If, in the application for an absent voter's ballot, the reason given for requesting such ballot was that the registered elector is handicapped or will be out of the United States of America when the absentee ballot is received and voted, such information shall be noted on the county clerk and recorder's record for purposes of section 1-8-114-(1.5).

SECTION 6. 1-8-108, Colorado Revised Statutes, 1980 Repl. Vol., as amended, is amended to read:

1-8-108. Watchers at early voters' polling places. Any political party shall have the right to maintain watchers at the absent early voters' polling place during the casting of absent voter's ballots and counting of absent and early voters' ballots and also in the office of the county clerk and recorder during the period within which absent voters' ballots may be applied for or received in the office of the county clerk and recorder.

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

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

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

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

SECTION 9. 1-8-113 (1), Colorado Revised Statutes, 1980 Repl. Vol., as amended, is amended to read:
1-8-113. Procedures and personnel for early voters' polling place. (1) In every county, the absent EARLY voters' polling place shall be opened as soon as absent voter ballots or ballot stubs are printed and delivered to the county clerk and recorder. Such delivery shall take place no later than the thirtieth day preceding any primary, general, or congressional vacancy election.

SECTION 10. 1-8-114 (3), Colorado Revised Statutes, 1980 Repl. Vol., is amended, and the said 1-8-114, as amended, is further amended by the addition of a new subsection, to read:

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

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

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

1-8-115. Self-affirmation or statement on return envelope. (1) The return envelope for the absent voter's ballot shall have printed on its face a self-affirmation or statement substantially in the following form:

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

[ ] APPLIED
[ ] DID NOT APPLY

for--an--absentee--ballot--as--a--[ ]--handicapped--voter--or--as--a [ ] voter--who--will--be--out--of--the--United--States--of--America when--the--absentee--ballot--is--received--and--voted--[ ]--my--status
as-an-elderly-elector, and that I herein enclose said ballot in accordance with the provisions of the "Colorado Election Code of 1980".

............................. ..............................

Date Signature of voter

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

1-8-116. Casting absent or early voter's ballot on voting machine or electronic voting equipment. In all counties in which voting machines or electronic voting equipment is used, the absent early voters' polling place shall be opened as soon as possible but not later than fifteen days prior to the primary, general, or congressional vacancy election day and shall remain open during the time the offices of the county clerk and recorder are open until the closing of business on the Friday immediately preceding the election. Qualified applicants for absent voters' ballots appearing and other registered electors wishing to vote early, who appear in person at the absent early voters' polling place during this time, may cast their absent or early voters' ballots on voting machines or electronic voting equipment expressly provided for that purpose in the same manner as any ballot would be cast on a voting machine or electronic voting equipment in a precinct polling place on election day. The registration record of each such person voting by absent voter's ballot shall be placed in the absent voters' registration book. The voting machines or electronic voting equipment used for the casting of such absent and early voters' ballots shall remain locked, sealed, or both locked and sealed, and the tabulation of the votes cast shall remain unknown until the time prescribed in section 1-8-117 for counting absent and early voters' ballots. During the time the absent early voters' polling place is not open, the county clerk and recorder shall have the custody and keys of any voting machine or electronic voting equipment being used for the casting of absent and early voters' ballots. The voting machines or electronic voting equipment used for the casting of absent and early voters' ballots shall not be used for the further counting of absent or early voters' ballots, as provided in section 1-8-121 (3) (b).

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

1-8-117. Hours early voters' polling place open for receiving and counting absent and early voters' ballots. (1) In every county, the absent early voters' polling place shall be open on general, primary, and congressional vacancy election days from 8:30 a.m. until 7 p.m. for the purpose of receiving absent voters' ballots and counting absent and early voters' ballots. The absent early voters' polling place may also be open from 8:30 a.m. until 5:30 p.m. on the day preceding such election for the purpose of receiving absent voters' ballots and counting absent and early voters' ballots. No information concerning the count shall be released by the
election officials or watchers until after 7 p.m. on election
day, and the election officials in charge of the absent EARLY
voters' polling place shall take all precautions necessary to
insure the secrecy of the counting proceedings.

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

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

1-8-118. Emergency absent voting. (2) Any registered
elector, including any judge of election unable to go to the
polls because of conditions arising after the closing date for
absent voters' ballot applications, which will result in his
absence from the precinct on election day, may apply at the
office of the county clerk and recorder for an emergency
absent voter's ballot. Upon receipt of an affidavit
APPLICATION signed by the registered elector, on a form
provided by the county clerk and recorder and attesting to the
fact that the registered elector will be compelled to be
absent from his precinct on election day because of conditions
arising after the closing date for absent voters' ballot
applications, the county clerk and recorder shall provide the
registered elector with an absent voter's ballot, with the word
"EMERGENCY" stamped on the stubs thereof. The request for the
ballot shall be made by 5 p.m. the day of the election, and
the ballot shall be voted at the county clerk and recorder's
office or outside of the office and returned by 7 p.m. on the
day of the election.

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

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

1-8-118.7. Special write-in blank absent voter ballots.

(1) Any citizen who resides outside the United States, who is
a registered elector in this state prior to his or her
departure, and who qualifies pursuant to this section may
apply to the county clerk and recorder for a special write-in
BLANK ABSENTEE BALLOT TO VOTE AT ANY PRIMARY, GENERAL, OR CONGRESSIONAL VACANCY ELECTION. AN APPLICATION FOR A SPECIAL WRITE-IN BLANK ABSENTEE BALLOT SHALL CONTAIN A STATEMENT BY THE REGISTERED ELECTOR THAT DUE TO MILITARY OR OTHER CONTINGENCIES THAT PRECLUDE NORMAL MAIL DELIVERY, AS SPECIFIED BY THE ELECTOR, THE ELECTOR CANNOT VOTE AN ABSENTEE BALLOT DURING THE NORMAL PERIOD PROVIDED BY THIS PART 1. ANY APPLICATION MADE PURSUANT TO THIS SECTION WHICH IS RECEIVED BY THE COUNTY CLERK AND RECORDER PRIOR TO THE SIXTIETH DAY BEFORE THE ELECTION SHALL BE KEPT AND PROCESSED ON OR AFTER THE SIXTIETH DAY BEFORE THE ELECTION.

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

(3) ON THE SPECIAL WRITE-IN BLANK ABSENTEE BALLOT, THE REGISTERED ELECTOR MAY DESIGNATE HIS OR HER CANDIDATE BY WRITING IN THE NAME OF THE CANDIDATE OR BY WRITING IN THE NAME OF A POLITICAL PARTY OR POLITICAL ORGANIZATION, IN WHICH CASE THE BALLOT SHALL BE COUNTED FOR THE CANDIDATE OF THAT POLITICAL PARTY OR POLITICAL ORGANIZATION. ANY ABBREVIATION, MISSPELLING, OR OTHER MINOR VARIATION IN THE FORM OF THE NAME OF THE CANDIDATE, POLITICAL PARTY, OR POLITICAL ORGANIZATION SHALL BE DISREGARDED IN DETERMINING THE VALIDITY OF THE BALLOT AS LONG AS THE INTENTION OF THE REGISTERED ELECTOR CAN BE ASCERTAINED.

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

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

(5) SPECIAL WRITE-IN BLANK ABSENTEE BALLOTS SHALL BE COUNTED IN ACCORDANCE WITH SECTION 1-8-117.

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

1-8-120. Delivery to supply judge. No later than 8:30 a.m. on the day of any general, primary, or congressional vacancy election, the county clerk and recorder shall deliver to the supply judge of the absent voters' polling place all the absent voters' envelopes received up to that time, in sealed packages or in locked and sealed ballot boxes, taking a receipt therefor, together with the absent voters' registration book, and signed applications for such absent voters' ballots, the list of absent voters, and the record of
absent voters' ballots as provided for in section 1-8-107. In counties which commence counting absent AND EARLY voters' ballots on the day preceding such election pursuant to section 1-8-117, the county clerk and recorder shall make such delivery not later than 8:30 a.m. on the day preceding any general, primary, or congressional vacancy election. The county clerk and recorder shall continue to so deliver any envelopes containing absent voters' ballots which may be received thereafter up to and including 7 p.m. on election day. On the sealed packages and boxes of absent voters' envelopes shall be printed or written "This package (or box) contains ...... (number) absent voters' ballots." With such envelopes, the county clerk and recorder shall deliver to the supply judge written instructions, which shall be followed by the judges of election in casting and counting the ballots, and all such books, records, and supplies as shall be needed for tabulating, recording, and certifying the absent AND EARLY voters' ballots.

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

1-8-121. Casting and counting absent AND EARLY voters' ballots - rejections. (1) (a) One of the receiving judges shall open each absent voter's identification envelope in the presence of a majority of the receiving judges, and, after announcing in an audible voice the name of such absent voter, he shall tear open such envelope without defacing the self-affirmation or certificate printed thereon or mutilating the enclosed ballot. One of the election judges shall enter the name of the registered elector in the pollbook, and another election judge shall deposit the unfolded ballot in the ballot box.

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

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

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

(b) In counties which use voting machines, the absent AND EARLY voters' ballots may be counted in the following manner: One judge of election shall call aloud the name of the candidate voted for. A second judge of election shall observe that the first said judge reads the ballot correctly. Two other election judges, one of each major political party, shall attend the voting machine so that one of the election
judges may depress the lever for the candidate whose name is being read, and the other election judge shall observe closely that the proper levers are being depressed as the votes are read aloud. The fifth election judge shall prepare the machine to receive each ballot. Votes for or against any measure appearing on the ballot shall be cast in the same manner as provided in section 1-8-116.

(c) Any county may use adding machines or other mechanical calculating devices which print a record of numbers to count the absent AND EARLY voters' ballots. In counties using this method of counting, one election judge shall call aloud the name of the candidate voted for, and a second election judge shall observe that the first said judge reads the ballot correctly. Two other election judges, one of each major political party, shall attend the adding machine or other mechanical calculating device. The election judge who operates such machine or device shall be of the political party opposite that of the election judge who calls the name of the candidate voted for. The other election judge attending said machine or device shall observe closely that the proper totals are entered on the record. When the votes have been so tallied, an election judge of the political party opposite that of the election judge who operated said machine or device shall read from the record to an election judge of the opposite political party, who shall check the record, reading back against the ballots counted. The election judge reading and the election judge checking said readings shall be observed respectively by election judges of the opposite political party. The fifth election judge shall act in a general supervisory capacity. Votes for or against any measure appearing on the ballot shall be cast in the same manner as provided in section 1-8-116.

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

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

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

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

1-8-123. Certificate of absent and early voters' ballots cast - canvass. (1) Upon the completion of the count of absent AND EARLY voters' ballots, the election judges shall make the certificate and perform all the official acts
required by sections 1-7-310 and 1-7-311.

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

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

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


SECTION 22. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.
State Affairs Resolution A

SENATE CONCURRENT RESOLUTION 92-

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

Resolution Summary

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

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

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

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

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

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

Section 13 of article XII of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SUBSECTION to read:
Section 13. Personnel system of state - merit system.

(12) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE GENERAL ASSEMBLY MAY ENACT SUCH LAWS AND DEVELOP SUCH STANDARDS AS IT DEEMS NECESSARY TO AUTHORIZE STATE AGENCIES TO CONTRACT WITH PRIVATE SECTOR PROVIDERS TO PERFORM SERVICES OTHERWISE PERFORMED BY EMPLOYEES IN THE STATE PERSONNEL SYSTEM.

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

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

A BILL FOR AN ACT

CONCERNING THE PRIVATIZATION OF STATE SERVICES.

Bill Summary

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

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

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

SECTION 1. 24-50-128. Certification required before salary paid - contracts for personal services. (4) THE RESTRICTIONS ON CONTRACTS FOR PERSONAL SERVICES ESTABLISHED IN THIS SECTION SHALL NOT APPLY TO CONTRACTS ENTERED INTO PURSUANT TO ARTICLE 50.7 OF THIS TITLE.

SECTION 2. Title 24, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended by the addition of a new article to read:

ARTICLE 50.7
Privatization of State Services
24-50.7-101. Legislative declaration. The General Assembly hereby finds and declares that because of the increasing costs of providing government services, alternative means of providing such services which may be more cost effective should be considered. Recognizing that the private sector may be able to provide certain services which have traditionally been provided by state government, the General Assembly further finds that privatization of such services may be appropriate. The General Assembly further recognizes that the privatization of state services may impact employees in the state personnel system and it is the intent of the General Assembly that no privatization occur until such impact can be evaluated by the office of state planning and budgeting.

24-50.7-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "STATE AGENCY" MEANS EVERY DEPARTMENT, COMMISSION, COUNCIL, BOARD, BUREAU, COMMITTEE, INSTITUTION OF HIGHER EDUCATION, OR ANY OTHER INSTRUMENTALITY OF THE STATE OR ITS POLITICAL SUBDIVISIONS.
Privatization analysis - department of personnel. (1) Except as otherwise provided by law, no state agency may privatize any state service until such state agency first obtains approval from the Office of State Planning and Budgeting in accordance with the provisions of this section. 

(2) Each state agency desiring to privatize a state service shall use the privatization analysis established in this section to determine whether the service can be performed by the private sector. Such analysis shall include the following considerations:

(a) The state agency shall determine whether sufficient market strength exists to privatize the service. To make such a determination, the state agency shall publish notice of the service or services which it proposes to privatize, and it shall issue requests for proposals. The notice shall describe the service, and it shall request private sector providers to submit proposals for the performance of the service. If three or more private sector providers submit competitive proposals, the state agency shall conclude that there is sufficient market strength to privatize the service.

(b) If sufficient market strength exists, the state agency shall determine whether the private sector provider can provide the same service for a lower cost than the state agency. A cost savings of at least ten percent must be demonstrated before any state service may be privatized. In determining the cost to the state agency of providing the service, the state agency shall consider all operating and capital costs including, but not limited to, salaries and benefits, rent, utilities, and equipment.

(c) The state agency shall consider whether the private sector provider has the technical ability to provide the service which is proposed to be privatized at the same or a higher level of quality than that produced by employees in the state personnel system.

(d) The state agency shall evaluate the impact of the privatization of the service on employees in the state personnel system. If privatization will have a negative impact on such employees, the state agency shall develop a plan for mitigating such impact.

(e) The state agency shall determine whether the private sector provider has the financial capacity to provide the service. Such determination shall include an examination of whether the private sector provider is in compliance with all requirements of the law pertaining to private employers including, but not limited to, the provision of worker's compensation and unemployment insurance benefits, and any other information which the state agency deems relevant to determine the financial capacity of the provider.

(3) If a state agency conducts the evaluation described in subsection (2) of this section and determines that the state would benefit from the privatization of a service, the agency shall then submit such evaluation to the Office of
STATE PLANNING AND BUDGETING FOR REVIEW. THE OFFICE OF STATE
PLANNING AND BUDGETING SHALL PREPARE A DETAILED COST ANALYSIS
COMPARING THE COST OF PROVIDING THE SERVICE BY THE STATE AND
THE COST IF THE SERVICE IS PROVIDED BY CONTRACTING WITH A
PRIVATE SECTOR PROVIDER. IF SUCH COST ANALYSIS SHOWS THAT THE
STATE CAN SAVE AT LEAST TEN PERCENT BY PRIVATIZING THE
SERVICE, THE OFFICE OF STATE PLANNING AND BUDGETING SHALL
APPROVE THE REQUEST BY THE STATE AGENCY TO PRIVATIZE SUCH
SERVICE.

(4) THE FOLLOWING SERVICES SHALL NOT BE PRIVATIZED:

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

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

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

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

SECTION 4. Safety clause. The general assembly hereby
finds, determines, and declares that this act is necessary
SENATE JOINT RESOLUTION 92-

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

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

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

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

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

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

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

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

(1) That the Legislative Council is hereby directed to
appoint a subcommittee comprised of members of the Senate
State, Veterans, and Military Affairs Committee and the House
State Affairs Committee for the purpose of making
recommendations for a comprehensive functional reorganization
of the executive branch of state government;

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

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

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

Members of the Committee

Senator Bonnie Allison,  Representative Norma Anderson,
Co-Chairman  Co-Chairman
Senator Pat Pascoe  Representative Vickie Agler
Senator Ray Powers  Representative Guillermo DeHerrera
Senator Don Sandoval  Representative Charles Duke
Senator Bill Schroeder  Representative Lewis Entz
Senator MaryAnne Tebedo  Representative Jeanne Faatz
Senator Dave Wattenberg  Representative Stan Johnson
Representative Vi June  Representative Steve Ruddick
Representative Carol Snyder  Representative Pat Sullivan
Representative Sam Williams

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Joint Legislative Transportation Committee

Summary of Recommendations

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

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

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

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

- New revenue sources besides gas taxes are needed for metropolitan transportation improvements;
- The Regional Transportation District (RTD) will have a light rail system in Denver and high occupancy vehicle lanes on I-25 open by 1993;
- The Department of Transportation (DOT) expressed concerns about a possible referendum on metropolitan transportation needs and the need for new revenue sources in addition to fuel taxes;
- DOT also reported that the construction and improvement of metropolitan area highways involves the issue of land use planning within the six county area;
- The disposition of off-the-top Highway Users Tax Fund (HUTF) monies needs to be examined (Off-the-top monies are appropriated to various state agencies before HUTF money is distributed to counties);
- E-470 Public Highway Authority is completing Segment I of the highway and has contracted with Morrison-Knudsen to locate financing for Segment II;
- E-470 is concerned about how any metropolitan area transportation plans will affect the authority;
- E-470 does not expect state money to complete its construction;
- W-470 Public Highway Authority is continuing to work on agreements for a roadway among the concerned entities; and
- The Regional Air Quality Council (RAQC) reported that suburb-to-suburb traffic is a major issue, especially for the daily two and one-half hour, morning and evening rush periods.

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

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

Committee Recommendations

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

Standing to Protest an Application — Transportation Bill A

- Transportation Bill A requires that a motor vehicle carrier seeking to protest the issuance of a certificate of public convenience and necessity shall establish standing to file such a protest. Establishing standing means that any carrier filing a protest is required to provide proof that it is authorized to provide, and
is actively engaged in providing, service over a route or for a territory which is the subject of the application at issue.

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

**Limited Rate Adjustments - Transportation Bill B**

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

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

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

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

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

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

1. Summary of Meetings:
   - July 16, 1991 -- metropolitan transportation needs;
   - August 6, 1991 -- deregulation of motor freight carriers;
   - September 6, 1991 -- metropolitan transportation planning issues and economic deregulation of motor freight carriers; and
   - September 21, 1991 -- discussion and approval of bills.


6. Letter from Suzanne Fasing, Executive Director, PUC, to Representative Norma Anderson and Senator Bonnie Allison, dated September 18, 1991. The letter responds to the committee's request for information from PUC regarding several areas of motor vehicle carriage regulation by PUC.
TRANSPORTATION BILL A

A BILL FOR AN ACT

CONCERNING THE APPLICATION PROCESS FOR THE ISSUANCE OF CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR CARRIAGE OF PROPERTY BY MOTOR VEHICLE.

Bill Summary

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

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

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

SECTION 1. 40-10-105, Colorado Revised Statutes, 1984 Repl. Vol., is amended by the addition of the following new subsection to read:

40-10-105. Rules for issuance of applications - standing to protest - judicial review. (3) A motor vehicle carrier seeking to file a protest in opposition to the issuance of a certificate of public convenience and necessity for carriage of property by motor vehicle shall establish standing to file such protest. Standing to protest shall be established by submitting proof of the following with the initial pleading:

(a) That the motor vehicle carrier is duly authorized pursuant to a certificate of public convenience and necessity to operate a motor vehicle for the carriage of property over a route or for a territory which is also the subject of the application at issue; and

(b) That the motor vehicle carrier is currently engaged in providing the specific service it is seeking to protest.

(4) When an appeal of a commission decision under this section has been made by filing exceptions pursuant to section 40-6-109, and the commission has rendered a final decision on such exceptions as provided in article 6 of this title, any party thereto may, within thirty days after the final decision, apply directly to a district court of the state of Colorado for judicial review pursuant to the provisions of section 40-16-115.

SECTION 2. 40-6-114, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended by the addition of a new subsection to read:
NOTHING IN THIS SECTION SHALL BE CONSTRUED AS REQUIRING A PARTY SUBJECT TO A FINAL DECISION BY THE COMMISSION ON EXCEPTIONS FILED PURSUANT TO SECTION 40-10-105 TO FILE AN APPLICATION FOR RECONSIDERATION, REARGUMENT, OR REHEARING AS A CONDITION PRECEDENT TO COMMENCING AN ACTION FOR JUDICIAL REVIEW IN A DISTRICT COURT OF THE STATE OF COLORADO PURSUANT TO THE PROVISIONS OF SECTION 40-6-115.

SECTION 3. 40-6-115 (1), Colorado Revised Statutes, 1984 Repl. Vol., as amended to read:

40-6-115. Review by district court — mandamus.

(1) Within thirty days after the application for a rehearing, reargument, or reconsideration is denied by the commission, OR WITHIN THIRTY DAYS AFTER THE COMMISSION'S FINAL DECISION ON AN APPLICATION FOR EXCEPTIONS FILED PURSUANT TO SECTION 40-10-105 (4), the applicant may apply to the district court for a writ of certiorari or review for the purpose of having the lawfulness of the final decision inquired into and determined. Such writ shall be made returnable not later than thirty days after the date of issuance and shall direct the commission to certify its record in the proceeding to the court. On the return day, the cause shall be heard by the district court, unless, for a good reason shown, the same be continued. No new or additional evidence may be introduced in the district court, but the cause shall be heard on the record of the commission as certified by it. The commission and each party

to the action or proceeding before the commission shall have the right to appear in the review proceedings.
TRANSPORTATION BILL B

A BILL FOR AN ACT

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

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

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

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

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

40-3-104. Changes in rates - notice. (1) (a) In the
case of a public utility other than a rail carrier, subject to
the provisions of paragraph (c) of this subsection (1) AND THE
PROVISIONS OF SECTION 40-3-104.6, no change shall be made by
any public utility in any rate, fare, toll, rental, charge, or
classification or in any rule, regulation, or contract
relating to or affecting any rate, fare, toll, rental, charge,
classification, or service or in any privilege or facility,
except after thirty days' notice to the commission and the
public. Notwithstanding the provisions of this paragraph (a),
changes in intrastate telecommunications services which have
been determined by the commission to be competitive in nature,
pursuant to the provisions of article 15 of this title, shall
not be subject to any notice requirement, including, but not
limited to, any requirement in this section whether or not
denoted as a notice requirement.

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

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

-2-
NOT APPLY TO THE MOTOR VEHICLE CARRIER'S RATES FOR CARRYING
PERSONS.
(2) A MOTOR VEHICLE CARRIER MAY VARY ITS RATES AS
PROVIDED IN SUBSECTION (1) OF THIS SECTION AS OFTEN AS IT
DEEMS NECESSARY.
(3) A MOTOR VEHICLE CARRIER WHO MAKES A RATE CHANGE
UNDER THIS SECTION SHALL NOTIFY THE PUBLIC UTILITIES
COMMISSION OF EACH SUCH RATE CHANGE WITHIN TEN DAYS OF THE
EFFECTIVE DATE OF SUCH CHANGE ON A FORM APPROVED BY THE PUBLIC
UTILITIES COMMISSION.
(4) NOTHING IN THIS SECTION SHALL BE INTERPRETED TO
PERMIT A MOTOR VEHICLE CARRIER TO DISCRIMINATE AMONG CUSTOMERS
IN ITS RATES OR CHARGES, OR OTHERWISE TO VIOLATE THE
PROVISIONS OF SECTION 40-3-102.
SECTION 3. Effective date. This act shall take effect
July 1, 1992.
SECTION 4. Safety clause. The general assembly hereby
finds, determines, and declares that this act is necessary
for the immediate preservation of the public peace, health,
and safety.
A BILL FOR AN ACT

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

Bill Summary

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

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

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

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

DEFINITIONS. As used in this article, unless the context otherwise requires:

(1) "AGRICULTURAL MOTOR CARRIER" MEANS A PERSON WHO TRANSPORTS AGRICULTURAL COMMODITIES BY MOTOR VEHICLE FOR HIRE.

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

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

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

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

passengers-which-is-hired-to-provide-services-for-a-person--or group-of-persons-travelling-from-one-location-to-another-for-a common--purpose--A--charter--or--scenic--bus--does-not-provide regular--route--service--from--one--location--to--another.

"AGRICULTURAL MOTOR CARRIER" MEANS A PERSON WHO TRANSPORTS AGRICULTURAL COMMODITIES BY MOTOR VEHICLE FOR HIRE.

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

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

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

SECTION 2. The introductory portion to 40-16-104 (1), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended, and the said 40-16-104 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:
40-16-104. Insurance requirements. (1) Each motor vehicle carrier exempt from regulation as a public utility shall maintain a general liability insurance policy. Such an insurance policy shall be issued by some insurance carrier or insurer authorized to do business in Colorado for each motor vehicle of such carrier. For those motor vehicle carriers exempt from regulation as public utilities specified in paragraphs (a) to (e) of this subsection (1), such liability insurance shall be in the following minimum amounts:

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

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

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

(f) Any person who operates a charter or scenic bus as defined in section 40-16-101 (4) (1.5), a courier as defined in section 40-16-101 (2), a luxury limousine as defined in section 40-16-101 (3), or an off-road scenic charter as defined in section 40-16-101 (5) OR WHO OPERATES AS A MOTOR CARRIER AS DEFINED IN SECTION 40-16-101 (1), without having first registered with the commission as required by section 40-16-103, may be assessed a civil penalty of not more than one hundred dollars.

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

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.
JOINT LEGISLATIVE SUNRISE AND SUNSET REVIEW COMMITTEE

Members of the Committee

Senator Bob Schaffer,
   Chairman
Senator MaryAnne Tebedo
Senator Bob Martinez

Representative David Owen
Representative Faye Fleming
Representative Jerry Kopel

Legislative Council Staff

Dean Winstanley
   Senior Research Assistant

Office of Legislative Legal Services

Bart Miller
   Senior Staff Attorney
Duane Gall
   Staff Attorney
Mark Hamby
   Staff Attorney
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Bill Q Concerning Advisory Committees Scheduled for Sunset Review and Repeal July 1, 1992 (Not printed in this report)
The Joint Legislative Sunrise and Sunset Review Committee was established in 1985 as an ongoing interim committee. It is charged with performing the functions and duties relating to the termination of specific divisions, boards and agencies, and with considering proposals for the new regulation of occupations and professions not presently regulated (section 2-3-1201, et seq., C.R.S., and Rule 35 of the Joint Rules of the Senate and House of Representatives).

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

A. Sunset Reviews of Existing Regulatory Programs

Psychotherapy Boards

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

State Board of Optometric Examiners

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

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

Medication Administration

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

Division of Insurance

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

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

Colorado Motor Vehicle Dealer Licensing Board

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

Colorado Manufactured Housing Licensing Board

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

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

Massage Parlor Code

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

Fireworks Licensing

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

B. Sunrise Review of Occupations Requesting State Regulation

Lay Midwives

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

Financial Planners

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

Speech-Language Pathologists, Audiologists, and Hearing Aid Dealers

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

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

Plumbing Contractors


C. Sunset Review of Advisory Committees

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

A. Sunset Reviews of Existing State Agency Regulatory Functions

Statutory Authority and Responsibility

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

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

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

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

Psychotherapy Boards

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

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

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

Testimony also focused on the need to adjust the current definition of "psychotherapy" to make the Grievance Board’s jurisdiction clearer and to help clarify those groups that are not intended to be included in the definition and regulation.
Groups specifically exempted from the definition/regulation include religious ministers, employment or rehabilitation counselors, employees of the Department of Social Services or county social service providers, and certified school psychologists.

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

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

**State Board of Optometric Examiners**

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

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

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

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

• Addition of a licensed ophthalmologist to the board as a nonvoting, ex-officio member.
• Provision that an optometrist’s authority to use prescription drugs to treat abnormal eye conditions is coextensive with an optometrist’s authority to treat abnormal eye conditions in general.
• Clarification and expansion of grounds for disciplinary action.
• Amendment of penalties for violation of the act.
Powers granted to the board including cease and desist power, as well as the ability to reconsider and reverse its own decisions.

Testing for licensure.

Exemptions from licensure requirements.

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

**Acupuncturist Registration**

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

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

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

**Medication Administration**

The program in the Health Facilities Division, Department of Health, for administration of medications by unlicensed persons in residential care facilities was also reviewed by the committee during the 1991 interim. Initially enacted into law in 1988 (section 25-1-107 (1) (ee), C.R.S.) this program enables authorized individuals
who are exempted from the Medical Practice Act to administer medications in residential care facilities. The establishment of the program alleviated problems facing residential care facilities and their patients at that time. The problems included:

- Many residential care facilities were violating the Medical Practice Act, the Nurse Practice Act, and the Colorado controlled substance act by helping patients take medication. This problem stemmed from the inability of these facilities to afford full-time nurses.

- Elderly and developmentally disabled patients at residential care facilities, who were unable to self-medicate, were facing institutionalization if the facilities were not able to have appropriate individuals administer medications.

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

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

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

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

Bill D also defines "delegation" and "nursing function" and provides the parameters within which a licensed nurse can delegate nursing functions to individuals
not licensed as nurses. Provisions also allow medication aids to use "med minders" if the med minders have been filled and properly labeled. Med minders are devices that have compartments containing daily doses of a patient's medication.

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

**Division of Insurance**

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

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

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

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

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

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

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

- Include parts of model acts provided by the National Association of Insurance Commissioners (NAIC) regarding managing general agents, reinsurance intermediaries, and credit for insurance.
- Include specific provisions for increased consumer protection, such as faster complaint processing and stricter disclosure requirements for insurers.
- Strengthen the examination of health insurers as well as hearing authority for complaints brought on by insurance rate hikes.
- Abolish of motor club licensure.
• Add mandatory provisions in life insurance policies allowing policy holders to have 15 days to opt for and obtain a refund.
• Require the division to establish minimum acceptable level of competency standards for examinations it requires of individuals in the insurance industry.
• Require an increase in credit insurance regulation by the division.
• Eliminate claims adjuster regulation by the division.

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

Health Insurance Statutes Recodification

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

Motor Vehicle Dealer Licensing Board

The committee conducted a hearing to review the Motor Vehicle Dealer Licensing Board and the motor vehicle industry-related licensing functions of the Executive Director of the Department of Revenue. The Motor Vehicle Dealer Licensing Board was created within the Division of Motor Vehicles in 1971 to effectively oversee the industry. Currently, the board is responsible for licensing motor vehicle dealers, wholesalers, auctioneers, and motor vehicle salespeople; processing complaints; and disciplining licensees. Board duties also extend to developing tests to measure licensee competence, ruling on complaints passed on from the Division of Motor Vehicle’s Investigative Unit, and promulgating appropriate rules and regulations. Nine members sit on the board, including four new car dealers, three used car dealers, and two consumers. The Executive Director of the Department of Revenue, on the other hand, handles similar responsibilities for overseeing distributors, manufacturers, distributor representatives, factory representatives, distributor branches, and factory branches.
Throughout the report submitted by DORA and the testimony at the interim hearing, concerns were raised about the board’s effectiveness as a regulator of the industry. Although DORA recommended the continuation of the board, it suggested that the board’s effectiveness could be improved through increasing its disciplinary options and correcting an unbalanced board membership that had resulted in a visible willingness to impose harsher sanctions against used car dealers than to new car dealers. The issue of board composition was discussed at length with many testifying that the consumer was not adequately represented on the board. Board members and employees of the Division of Motor Vehicles discussed the steps involved in the processing of complaints against licensees.

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

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

Colorado Manufactured Housing Licensing Board

Since 1961, the state of Colorado has regulated manufactured housing dealers and salespersons as a separate occupational group. Initial regulation began as a response to a large number of consumer complaints related to manufactured housing sales. This regulatory program is administered by the Colorado Manufactured Housing Licensing Board within DORA. The seven-member board consists of two public members, four licensed manufactured housing dealers with at least four years experience in the industry, and one representative of a financial institution engaged in manufactured housing financing. One of the at-large members must have been a resident of a manufactured home at the time of appointment to the board.
Although DORA concluded that continued regulation of the manufactured housing industry is necessary due to the significant and persistent number of consumer complaints, a number of concerns about the program were raised. Licensing fees have risen significantly due to a dramatic drop in the number of licensees over the years; in 1982 there were 151 licensed dealers and 700 licensed salesmen, but these totals have dropped to 85 licensed dealers and 158 licensed salesmen in 1991. DORA and industry representatives raised concerns that the cost of the regulation may be too much for members of the small industry to bear. DORA also raised questions about the industry-dominated board’s willingness to aggressively enforce the law; the rate of dismissed consumer complaints has risen in recent years to 70 percent. It was noted, however, that shortcomings in statutory language, increased budgetary constraints, and a changing industry have made the board’s task of administering the program and enforcing the act very difficult.

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

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

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

Notaries Public

The power of the Secretary of State to appoint and commission notaries public, as set forth in the Notaries Public Act, was reviewed during the interim. In general, notaries are empowered or authorized to attest to the genuineness of deeds or written instruments so that they may be used as evidence. Citizens of Colorado benefit from the notary public system which offers a relatively convenient measure of protection in certain transactions within Colorado as well as for interstate transactions. There are thousands of notaries public in Colorado.
When an individual meets a list of requirements, including the submission of an executed surety bond of $5,000, the Secretary of State may then grant a commission. After four years, the commissioned individual must renew the commission, which also includes securing another $5,000 bond.

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

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

**Massage Parlor Code**

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

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

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

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

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

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

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

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

**Lay Midwives**

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

Through licensure, the applicants argued, they could help address Colorado’s shortage of maternity care providers, offer lower cost maternity care, and guarantee a
standard of care for home birth consumers. The primary groups who seek midwifery care include well educated, middle-class people who choose midwifery care for philosophical reasons; low-income families who cannot afford standard hospital care; and women in rural areas who live many miles from hospitals that provide maternity care.

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

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

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

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

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

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

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

The bill requires that such exempt individuals shall not take possession of customer funds or securities, cannot receive either direct or indirect compensation for a securities transaction, and cannot offer or sell securities to someone to whom they are providing financial planning services. However, financial planners and financial planner representatives filing under the registration program can handle funds and securities of clients under certain conditions. These conditions include segregation of client accounts, detailed record keeping, periodic reports and specific disclosure to clients, periodic unannounced audits, and examination of records by the Securities Commissioner.
The Securities Commissioner may adopt rules and regulations regarding requirements for those applying for registration and may determine initial and annual registration fees. Penalties for not paying the fees are also detailed. References to financial planners and financial planner representatives are included within current provisions relating to securities broker-dealers and sales representatives. Bill M also sets forth civil penalties for violation of these provisions.

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

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

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

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

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

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

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

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

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

**Property Managers**

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

Although the committee decided not to amend the Real Estate Act to address concerns with licensure, Bill O is recommended with provisions which include:
A requirement that property managers of common interest communities be bonded.

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

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

Plumbing Contractors

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

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

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

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

Although the committee did not see a need to regulate plumbing contractors, Bill P is recommended to prevent unqualified individuals or businesses from using the term
"plumbing contractor." It requires individuals using the term "plumbing contractor" to be qualified under the current definition of "plumbing contractor" as set forth in 12-58-102 (7), C.R.S. A copy of the bill is available from the Legislative Council office.

Tanning Facilities

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

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

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

After hearing testimony on the dangers of tanning facilities, the committee chairman stated that the applicants were requesting the regulation of machinery rather than regulation of a specific occupation or profession. Also questioned was whether consideration of such regulation fell within the purview of the Sunrise Sunset Committee. The committee voted to reject recommendations to regulate tanning
facilities and suggested that the Department of Health pursue legislation for introduction during the 1992 session.

**Professional Boxing**

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

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

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

**Domestic Violence Counselors**

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

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

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

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

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

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

Sign Language Interpreters

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

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

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

C. Sunset Review of Advisory Committees

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

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

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

The committee conducted reviews of six advisory committees and advisory boards. The committee voted to discontinue an advisory committee relating to weather modification and recommends, Bill Q which continues the following committees:
- The Psychiatric Technicians Advisory Committee.
- The Advisory Committee to the Colorado Racing Commission Concerning Breeders, Owners, and Stallion Awards and Supplemental Purses (Breeder's Board).
- The Advisory Committee to Assist in the Planning, Implementation, and Evaluation of the Extension Programs of the Colorado Cooperative Extension Service.
- The Advisory Board to the Department of Institutions Responsible for Advising the Department on Mental Health Service Standards for Health Care Facilities.
- The Authorized Agents' Advisory Committee.

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

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

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

Additional Committee Reviews

Report from the Civil Rights Commission

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

In addition to requiring a review of the report, the statute directed that the committee make a recommendation to the General Assembly for consideration during the 1992 session as to what legal revisions would be necessary to provide the CCRC
with enforcement power over those who discriminate against mentally handicapped individuals.

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

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

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

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

1. Summary of Meetings:

   - June 11, 1991 -- Advisory Committees, and Manufactured Housing Licensing Board Sunset Review.
   - June 12, 1991 -- Fireworks Sunset, and Board of Optometric Examiners Sunset.
   - July 9, 1991 -- Psychotherapy Boards Sunset.
   - July 23, 1991 -- Division of Insurance Sunset.

2. DORA Reports:

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

3. Advisory Committee Reports.
SUNRISE/SUNSET BILL A

A BILL FOR AN ACT


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

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

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

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

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

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

Requires the grievance board to maintain a directory of licensed and unlicensed psychotherapists. Authorizes the grievance board to charge a uniform fee for information recorded in the directory. Specifies the information to be recorded by psychotherapists and requires that such information be updated periodically. Requires psychotherapists to record the required information for the directory by a certain date and provides that after such date no person may practice psychotherapy unless they are listed in the directory. Makes it a criminal offense to practice psychotherapy if the person is not included in the directory.

Requires the department of regulatory agencies to gather statistics about the numbers, types, and outcomes of complaints about psychotherapists and to report such information to the joint sunrise and sunset review committee so that a determination as to a higher level of protection for the public can be made by the general assembly.

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

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

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

Specifies that for violations of the psychotherapy
Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 12-43-201 (9), Colorado Revised Statutes, 1991 Repl. Vol., is amended, and the said 12-43-201 is further amended by the addition of a new subsection, to read:

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

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

(9) "Psychotherapy" means the treatment, diagnosis, testing, assessment, or counseling in a professional relationship to assist individuals or groups to alleviate mental disorders, understand unconscious or conscious motivation, resolve emotional, relationship, or attitudinal conflicts, or modify behaviors which interfere with effective emotional, social, or intellectual functioning. PSYCHOTHERAPY follows a planned procedure of intervention which takes place on a regular basis, over a period of time. It is the intent of the General Assembly that the definition of psychotherapy as used in this part 2 be interpreted in its narrowest sense to regulate only those persons who clearly fall within the definition set forth in this subsection (9).

SECTION 2. 12-43-203 (2) (a), Colorado Revised Statutes, 1991 Repl. Vol., is amended, and the said 12-43-203 is further amended by the addition of a new subsection, to read:

12-43-203. Boards - meetings - duties - powers - removal of members. (2) (a) Each board shall annually hold a meeting and elect from its membership a chairperson and vice-chairperson. The state board of marriage and family therapist-examiners and the state board of licensed professional counselor-examiners shall hold their first meetings within sixty days after July 1, 1989. Each board shall meet at such other times as it deems necessary or advisable or as deemed necessary and advisable by the chairperson, a majority of its members, or the governor. In order to promote the sharing of information, problems, ideas, research, and potential solutions or policy directions with regard to regulating the practice of psychotherapy in Colorado, the chairpersons of the boards shall coordinate periodic meetings of the boards in joint session for the discussion of policies related to the regulation of the practice of psychotherapy. Such joint meetings shall be held in conjunction with regular meetings of the boards. Reasonable notice of all meetings shall be given in the manner...
prescribed by each board. A majority of each board shall constitute a quorum at any meeting or hearing.

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

SECTION 3. 12-43-204, Colorado Revised Statutes, 1991 Repl. Vol., is amended by the addition of a new subsection to read:

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

SECTION 4. 12-43-214, Colorado Revised Statutes, 1991 Repl. Vol., is amended by the addition of a new subsection to read:

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

SECTION 5. 12-43-215, Colorado Revised Statutes, 1991 Repl. Vol., is amended by the addition of the following new subsections to read:

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

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

SECTION 6. Part 2 of article 43 of title 12, Colorado Revised Statutes, 1991 Repl. Vol., is amended by the addition of
OF A NEW SECTION to read:

12-43-220. Directory of licensed and unlicensed psychotherapists - violation - penalty - data collection - report to sunrise and sunset review committee. (1) The grievance board shall maintain a directory of all persons practicing psychotherapy in this state, whether as licensed practitioners pursuant to this article or as unlicensed psychotherapists. The grievance board shall charge a fee in the same manner as authorized in section 24-34-105, C.R.S., for recording information in the directory as required by this section. Information in the directory maintained pursuant to this section shall be open to public inspection at all times.

(2) No later than January 1, 1993, any psychotherapist licensed pursuant to the provisions of this article and any unlicensed psychotherapist shall record such therapist's name, current address, educational qualifications, disclosure statements, therapeutic orientation or methodology, or both, and years of experience in each specialty area with the grievance board for inclusion in the directory required by subsection (1) of this section. Psychotherapists shall be required to update such information at least annually and at such other times and under such conditions as the grievance board shall prescribe by rule and regulation. At the time of recording the information required by this section, the psychotherapist shall indicate whether or not the psychotherapist has been convicted of or entered a plea of guilty or a plea of nolo contendere to any felony or misdemeanor. Psychotherapists recording the information required by this section shall be given a copy of the prohibited activities specified in section 12-43-701 applicable to them at the time of compliance with this section.

(3) On and after January 1, 1993, no person may practice psychotherapy if such person is not included in the directory required by this section. Any person who violates the provisions of this subsection (3) commits a class 3 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S.

(4) (a) The department of regulatory agencies shall gather statistics about the numbers, types, and outcomes of complaints about licensed and unlicensed psychotherapists so that a determination can be made from that data concerning the need for a higher level of protection for the public. Such information shall be reported to the joint sunrise and sunset review committee no later than June 1, 1998.

(b) This subsection (4) is repealed, effective July 1, 1999.

SECTION 7. 12-43-701 (9). Colorado Revised Statutes, 1991 Repl. Vol., is amended, and the said 12-43-701 is further amended by the addition of a new subsection, to read:

12-43-701. Definitions. As used in this part 7, unless the context otherwise requires:
"PROFESSIONAL RELATIONSHIP" MEANS AN INTERACTION THAT IS DELIBERATELY PLANNED OR DIRECTED, OR BOTH, BY THE PSYCHOTHERAPIST TOWARD OBTAINING SPECIFIC PSYCHOTHERAPEUTIC OBJECTIVES, SUCH AS THOSE SET FORTH IN SUBSECTION (9) OF THIS SECTION.

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

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

12-43-702. State grievance board - creation - subject to termination. (1) There is hereby created the state grievance board, which shall be under the supervision and control of the division of registrations as provided in section 24-34-102, C.R.S. The grievance board shall consist of eight nine members or eleven twelve members, as determined pursuant to this section, who are residents of the state of Colorado.

(2) Four members of the grievance board shall be appointed by the governor from the general public with a good faith effort to achieve broad-based geographical representation, one to serve a term of one year, one to serve a term of two years, and two to serve a term of three years.

(2.5) One member of the grievance board shall be an unlicensed psychotherapist who practices a nontraditional methodology of psychotherapy and who shall be appointed by the governor for a term of three years.

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

(a) A licensed marriage and family therapist to serve a term of one year two years;

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

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

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

(4) The grievance board shall attempt to schedule disciplinary matters to be heard by the grievance board in a
manner so as to reduce the number of additional members needed for any meeting. For disciplinary proceedings of the grievance board, in addition to the eight nine members appointed to the grievance board under subsections (2), (2.5), and (3) of this section, three additional members shall be appointed by the governor to the grievance board as follows:

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

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

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

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

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

(f) If the disciplinary action relates to an unlicensed psychot herapist, the three additional members shall be unlicensed psychotherapists.

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

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

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

(d) Of the three persons eligible to serve on the grievance board under subsection (4) of this section as unlicensed psychotherapists, one shall be appointed by the governor to serve a term of one year, one shall be appointed to serve a term of two years, and one shall be appointed to serve a term of three years.

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

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

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

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

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

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

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

12-43-703. Powers and duties of the grievance board.
(1) In addition to all other powers and duties conferred and
imposed upon the grievance board by this article, the
grievance board has the following powers and duties:

(b) To make investigations, hold hearings, and take evidence in accordance with the provisions of article 4 of title 24, C.R.S., and this article in all matters relating to the exercise and performance of the powers and duties vested in the grievance board and, in connection with any investigation or hearing and through any member or an administrative law judge, to subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers, and records relevant to any inquiry or hearing. Any subpoena issued pursuant to this article shall be enforceable by the DENVER district court.

Subpoenas issued on behalf of the board may be signed by the program administrator.

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

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

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

(e) Has - habitual-intemperance - with - regard - to - or excessive-use-of-any IS ADDICTED TO OR DEPENDENT ON ALCOHOL OR ANY habit-forming drug, as defined in section 12-22-102 (13), OR IS A HABITUAL USER OF any controlled substance, as defined in section 12-22-303 (7), or any alcoholic beverage;
DESIST UNLAWFUL ACTS AS AUTHORIZED IN THIS SUBSECTION (4)
SHALL BE ENTITLED TO A HEARING AND AN ORAL OR WRITTEN DECISION
FROM THE ADMINISTRATIVE LAW JUDGE ON ANY SUCH ORDER WITHIN
SEVEN WORKING DAYS AFTER THE ISSUANCE THEREOF. THE HEARING
SHALL BE CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF
ARTICLE 4 OF TITLE 24, C.R.S.
(b) IN THE EVENT THAT ANY PERSON FAILS TO COMPLY WITH A
CEASE AND DESIST ORDER, THE GRIEVANCE BOARD MAY REQUEST THE
ATTORNEY GENERAL OR THE DISTRICT ATTORNEY FOR THE JUDICIAL
DISTRICT IN WHICH THE ALLEGED VIOLATION EXISTS TO BRING, AND
IF SO REQUESTED THE ATTORNEY GENERAL OR DISTRICT ATTORNEY
SHALL BRING, A SUIT FOR A TEMPORARY RESTRAINING ORDER AND FOR
INJUNCTIVE RELIEF TO PREVENT ANY FURTHER OR CONTINUED
VIOLATION OF THE ORDER.
(c) NO STAY OF A CEASE AND DESIST ORDER SHALL BE ISSUED
BEFORE A HEARING THEREON INVOLVING BOTH PARTIES.
(d) MATTERS BROUGHT BEFORE A COURT PURSUANT TO THIS
SECTION SHALL HAVE PREFERENCE OVER OTHER MATTERS ON THE
COURT'S CALENDAR.
SECTION 12. 12-43-705 (2) (f), Colorado Revised Statutes, 1991
Repl. Vol., is amended to read:
12-43-705. Disciplinary proceedings - judicial review -
mental and physical examinations. (2) (f) The results of any
mental or physical examination ordered by the board shall not
MAY be used as evidence in any proceeding other than
proceedings before the board initiated by the board or within
THE BOARD'S JURISDICTION IN ANY FORUM.
Repl. Vol., is amended to read:
12-43-712. Repeal of article. This article is repealed,
effective July 1, 1992 JULY 1, 2002. Prior to such repeal,
all of the boards relating to the licensing of and grievances
against any person licensed pursuant to the provisions of this
article shall be reviewed as provided for in section
24-34-104, C.R.S.
SECTION 14. 24-34-104 (21) (a) (II), Colorado Revised
Statutes, 1988 Repl. Vol., is repealed as follows:
24-34-104. General assembly review of regulatory
agencies and functions for termination, continuation, or
reestablishment. (21) (a) The following boards: in the
division of registrations shall terminate on July 1, 1992:
(II) Boards--relating to the licensing of and grievances
against any person licensed pursuant to the provisions of
article 42 of title 12, C.R.S. and created pursuant to
article 42 of title 12, C.R.S.
SECTION 15. 24-34-104, Colorado Revised Statutes, 1988
Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW
SUBSECTION to read:
24-34-104. General assembly review of regulatory
agencies and functions for termination, continuation, or
reestablishment. (31) THE FOLLOWING BOARDS IN THE DIVISION OF
REGISTRATIONS SHALL TERMINATE ON JULY 1, 2002: BOARDS
RELATING TO THE LICENSING OF AND GRIEVANCES AGAINST ANY PERSON
REGULATED OR LICENSED PURSUANT TO THE PROVISIONS OF ARTICLE 43
OF TITLE 12, C.R.S., AND CREATED PURSUANT TO ARTICLE 43 OF
TITLE 12, C.R.S.

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

24-34-105. Fee adjustments—division of registrations
cash fund—created.

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

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

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

SECTION 18. Safety clause. The general assembly hereby
finds, determines, and declares that this act is necessary
for the immediate preservation of the public peace, health,
and safety.
A BILL FOR AN ACT

CONCERNING THE REGULATION OF THE PRACTICE OF OPTOMETRY, AND,

IN CONNECTION THEREWITH, CONTINUING THE STATE BOARD OF

OPTOMETRIC EXAMINERS.

Bill Summary

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

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

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

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

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

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

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

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

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

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

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

Makes the following changes and additions to the grounds for disciplinary action against optometrists for unprofessional conduct: Obtaining or attempting to obtain, renew, or reinstate a license or certificate by use of fraud, misrepresentation, or deception; failing to refer a patient to the appropriate licensed health care practitioner when the services required by the patient are beyond the scope of
competency of the optometrist or the scope of practice of optometry and repealing a provision inconsistent with such standard; administering, dispensing, or prescribing any prescription drug other than in the course of legitimate professional practice; dispensing for a fee any prescription drug; failing to report to the board any optometrist known or believed to have violated any provision regulating the practice of optometry; failing to report to the board any surrender of a license to, or any adverse action taken against the licensee by, an optometry regulatory authority in another jurisdiction; any act or omission which fails to meet generally accepted standards of care, whether or not actual injury to a patient is established; having a physical or mental disability which renders a licensee unable to treat with reasonable skill and safety or which may endanger the health and safety of persons under the care of a licensee; any disciplinary action taken by another jurisdiction; failing to make essential entries in patient records; and engaging in a sexual act with a patient while a patient-optometrist relationship exists.

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

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

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

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

Repeals a rule of the state board of optometric examiners related to the length of time an optometrist may use certain terms after taking over the practice of another optometrist.
antimicrobials (except oral antiviral and oral antifungal agents), topical and oral antihistamines, topical anti-inflammatory agents, and no more than .6 grams of codeine per one hundred milliliters or not more than thirty milligrams per dosage unit, with one or more active, nonnarcotic analgesic ingredients in recognized therapeutic amounts; and the removal of superficial foreign bodies from the human eye or its appendages.

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

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

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

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

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

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

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

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

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

12-40-106. State board of optometric examiners - subject to termination - repeal of article. (1) The state board of optometric examiners, referred to in this article as the "board", shall be under the supervision and control of the
division of registrations as provided by section 24-34-102, C.R.S. The members of the board--on July 1, 1973, shall continue as members of the board under this article until the expiration of the terms for which they were appointed. Thereafter, the terms of all newly appointed members of the board shall begin on April 20, and such board shall constitute the agency of the state of Colorado to carry out the provisions of this article. The board shall consist of five optometrists and two members at-large, to be appointed by the governor to serve for terms of four years; except that no person shall be appointed to serve more than two consecutive terms. In addition, an ophthalmologist licensed to practice medicine in this state shall be appointed to the board as a nonvoting ex-officio member. Such ex-officio member shall be appointed to serve for a term of four years and shall not serve more than two consecutive terms. Persons holding office on June 15, 1987, are subject to the provisions of section 24-1-137, C.R.S. Each member of the board, except for the members at-large and the ex-officio ophthalmologist member, shall have been actually engaged and licensed in the practice of optometry as defined in section 12-40-102 in Colorado for the five years next preceding his member's appointment. At least one of the two members at-large shall not be a member or representative of, nor have any direct interest in, any profession, agency, or institution providing health services. Any four members of said board shall constitute a quorum for the purpose of holding examinations, granting licenses, or transacting any business connected with the board. A vacancy in the membership of said board shall be filled by the governor for the remainder of the unexpired term. Any member of the board may be removed by the governor for misconduct, incompetency, or neglect of duty. Any board member having a personal or private interest in any matter before the board shall disclose such fact to the board and shall not participate in discussions related thereto or vote thereon.

(3) (b) (i) This article is repealed, effective July 1, 1995.

(II) Prior to such repeal, the board shall report to the joint legislative sunrise and sunset review committee on the operation of its disciplinary activities and such committee shall review such activities.

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

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

(a) To conduct PROVIDE FOR examinations at least once each year to ascertain the qualifications and fitness of applicants for licenses to practice optometry. THE BOARD MAY ACCEPT SCORES FROM TESTS ADMINISTERED BY ANY APPROVED OR ACCREDITED NATIONAL TESTING ORGANIZATION.
To prescribe rules and regulations for conducting and administering examinations of applicants for licensing as optometrists and to carry out effectively the provisions of this article. IN PRESCRIBING SUCH RULES AND REGULATIONS THE BOARD SHALL SET THE PASSING SCORE OF ANY SUCH EXAMINATION AT A MINIMUM ACCEPTABLE LEVEL OF COMPETENCE FOR THE PRACTICE OF OPTOMETRY.

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

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

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

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

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

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

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

(k) To establish programs of education and certification for optometrists wishing to enter new, proven and generally accepted areas of lawful practice involving techniques for which they have not received appropriate education;

(l) To prepare and transmit annually, in the form and manner prescribed by the heads of the principal departments pursuant to the provisions of section 24-1-126, C.R.S., a report accounting to the governor and the general assembly for the efficient discharge of all responsibilities assigned by law or directive to the board to prepare and distribute to consumers written communication providing information concerning the board and optometric regulation in Colorado;

(m) Make investigations, hold hearings, and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the board and, in connection with any investigation (whether before or after a formal complaint is filed pursuant to section 12-40-119) subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers, and records relevant to any inquiry or hearing. Any subpoena issued pursuant to this article shall be enforceable by the district court.

(2) IF THE BOARD DOES NOT ACCEPT THESCORES OF A NATIONAL CLINICAL EXAMINATION FOR OPTOMETRISTS BY THE FISCAL YEAR BEGINNING JULY 1, 1994, THE BOARD SHALL CONDUCT A JOINT STUDY TO BE COMPLETED BY THE END OF THE FISCAL YEAR BEGINNING JULY 1, 1994, WITH THE PSYCHOMETRICIAN IN THE DIVISION OF REGISTRATIONS TO UPDATE THE STATE CLINICAL EXAMINATION SO THAT
THE TEST IS PSYCHOMETRICALLY SOUND. THE RESULTS OF SUCH JOINT
STUDY AND CHANGES TO THE CLINICAL EXAMINATION FOR OPTOMETRISTS
SHALL BE REPORTED TO THE JOINT SUNRISE AND SUNSET REVIEW
COMMITTEE OF THE GENERAL ASSEMBLY BY JULY 1, 1995.

SECTION 7. Article 40 of title 12, Colorado Revised
Statutes, 1991 Repl. Vol., is amended by the addition of a new
section to read:

12-40-107.4. Cease and desist orders. (1) If, as the
result of an investigation of a written complaint by any
person or on the board's own motion, the board initiates and
conducts a hearing and, on the basis of evidence presented at
the hearing, a majority of the board determines that any
person who is acting or has acted without the required
license, or is otherwise in violation of this article, or is
acting in a manner that is a threat to the health and safety
of the public, the board may issue an order to cease and
desist such activity. The order shall set forth the statutes
and rules and regulations alleged to have been violated, the
facts alleged to have constituted the violation, and the
requirement that all unlawful acts cease forthwith. The
hearing shall be conducted in accordance with the provisions
of article 4 of title 24, C.R.S.

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

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

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

Repl. Vol., is amended by the addition of a new subsection to
read:

12-40-108. Application for license - licensure by
endorsement. (3) The board may issue a license by endorsement
to engage in the practice of optometry to an applicant who is
licensed to practice optometry in another state or a territory
of the United States or in a foreign country if the applicant
presents proof satisfactory to the board that, at the time of
application for a Colorado license by endorsement, the
applicant possesses credentials and qualifications which are
substantially equivalent to requirements in Colorado for
licensure by examination. The board shall specify by rule and
regulation what shall constitute substantially equivalent
credentials and qualifications.

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

12-40-109. Examination - licenses. (1) Each application
shall be verified under oath by the applicant, and a material false statement thereon shall constitute grounds for the withholding or revocation of a license. When such application and accompanying proofs as are required by section 12-40-108 are submitted to the board and approved, it shall notify the applicant to appear for examination at a time and place to be fixed by the board. THE BOARD SHALL ALSO NOTIFY SUCH APPLICANTS OF THE TIME AND PLACE OF ANY COLORADO CLINICAL EXAMINATION ADMINISTERED BY THE BOARD AND REQUIRED FOR LICENSURE IN THIS STATE. The examination shall be practical and clinical and of such a character as to test the qualifications of the applicant to practice optometry.

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

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

(b) THE BOARD SHALL ESTABLISH A QUESTIONNAIRE TO ACCOMPANY THE RENEWAL FORM. SAID QUESTIONNAIRE SHALL BE DESIGNED TO DETERMINE IF THE LICENSEE HAS ACTED IN VIOLATION OF OR HAS BEEN DISCIPLINED FOR ACTIONS THAT MIGHT BE CONSIDERED AS VIOLATIONS OF THIS ARTICLE OR THAT MIGHT MAKE THE LICENSEE UNFIT TO PRACTICE OPTOMETRY WITH REASONABLE CARE AND SAFETY. FAILURE OF THE APPLICANT TO ANSWER THE QUESTIONNAIRE ACCURATELY SHALL BE CONSIDERED UNPROFESSIONAL CONDUCT AS SPECIFIED IN SECTION 12-40-118.

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

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

(e) EXCEPT AS PROVIDED IN PARAGRAPH (d) OF THIS SUBSECTION (1), any optometrist whose application for renewal indicates that he THE OPTOMETRIST has not actively practiced optometry or that he THE OPTOMETRIST has not been engaged in teaching optometry for the preceding five years shall be issued a renewal certificate by the board only after hearing and upon notice to said applicant, wherein such applicant has demonstrated to the board that he THE APPLICANT has maintained
the qualifications set out in section 12-40-109, but no reexamination shall be required unless the board finds good cause to believe that the person has not maintained the professional ability and knowledge required of an original licensee under this article.


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

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

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

12-40-117. Patient's exercise of free choice - release of patient records. (1) No person shall interfere with any patient's exercise of free choice in the selection of practitioners licensed to perform examinations for refractions and visual training or corrections within the field for which their respective licenses entitle them to practice.

(2) An optometrist shall release to a patient all medical records pursuant to section 25-1-802, C.R.S.

(3) The optometrist shall release to the patient, upon written request, a valid, written contact lens prescription at the time the optometrist would otherwise replace a contact lens without any additional preliminary examination or fitting. The board shall promulgate rules and regulations defining the components of a valid written contact lens prescription.

SECTION 13. 12-40-118 (1)(d), (1)(m), (1)(n), (1)(q), (1)(s), (1)(v), (1)(z), (1)(bb), and (1)(cc), Colorado Revised Statutes, 1991 Repl. Vol., are amended, and the said 12-40-118 (1) is further amended by the addition of the following new paragraphs, to read:

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

(d) Obtaining the license or any renewal thereof by use of fraud or deceit, resorting to fraud, misrepresentation, or deception in applying for, securing, renewing, or seeking reinstatement of a license or in taking any examination provided for in this article;

(m) Continuing in the practice of optometry during any period of mental disability or while afflicted with a communicable, infectious, or contagious disease of such a serious nature as to render him a menace to his patients.
HAVING A PHYSICAL OR MENTAL DISABILITY WHICH RENDERS AN
OPTOMETRIST UNABLE TO TREAT WITH REASONABLE SKILL AND SAFETY
OR WHICH MAY ENDANGER THE HEALTH AND SAFETY OF PERSONS UNDER
THE CARE OF ANY OPTOMETRIST;

(n) Failing to refer or direct a patient to a physician
whenever it comes to the attention of the licensee that a
patient exhibits signs or symptoms of a disease requiring
referral when failing to do so is not consistent with the
standard of care for the profession the appropriate health
care practitioner when the services required by the patient
are beyond the scope of competency of the optometrist or the
scope of practice of optometry;

(q) A revocation or suspension of a license any
disciplinary action against a licensee to practice optometry
in another state or country for disciplinary reasons and
such revocation or suspension which action shall be deemed to
be prima facie evidence of unprofessional conduct if the
grounds for the disciplinary action would be unprofessional
code or otherwise constitute a violation of any provision
of this article;

(s) A pattern of conduct any act or omission which fails
to meet generally accepted standards of care whether or not
actual injury to a patient is established;

(v) Knowingly making any false or fraudulent statement,
written or oral, in connection with the practice of optometry,
including falsifying or repeatedly making incorrect essential
entries or repeatedly failing to make essential entries on
patient records;

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

(bb) Administering, dispensing, or prescribing any
habit-forming drug as defined in section 12-22-102 (12),
prescription drug, as defined in section 12-22-102 (30), or
any controlled substance, as defined in section 12-22-303 (7),
other than in the course of legitimate professional practice;

(cc) Dispensing for a fee any prescription drug as
defined in section 12-22-102 (11) 12-22-102 (30) or any
controlled substance as defined in section 12-22-303 (7).

(ff) Failing to report to the board any optometrist
known to have violated or upon information or belief,
believed to have violated any of the provisions of this
article;

(gg) Failing to report to the board any surrender of a
license to, or any adverse action taken against a licensee by
another licensing agency in another state, territory, or
country, any governmental agency, any law enforcement agency,
OR ANY COURT FOR ACTS OF CONDUCT THAT WOULD CONSTITUTE GROUNDS
FOR DISCIPLINE UNDER THE PROVISIONS OF THIS ARTICLE;
(hh) ENGAGING IN A SEXUAL ACT WITH A PATIENT WHILE A
PATIENT-OPTOMETRIST RELATIONSHIP EXISTS. FOR THE PURPOSES OF
THIS PARAGRAPH (hh), "PATIENT-OPTOMETRIST RELATIONSHIP" MEANS
THAT PERIOD OF TIME BEGINNING WITH THE INITIAL EVALUATION
THROUGH THE TERMINATION OF TREATMENT. FOR THE PURPOSES OF
THIS PARAGRAPH (hh), "SEXUAL ACT" MEANS SEXUAL CONTACT, SEXUAL
INFRINGEMENT, OR SEXUAL PENETRATION AS DEFINED IN SECTION
18-3-401, C.R.S.
(ii) FAILING TO PROVIDE A PATIENT WITH COPIES OF PATIENT
MEDICAL RECORDS AS REQUIRED BY SECTION 25-1-802, C.R.S.;
(jj) FAILING TO PROVIDE A PATIENT WITH A VALID WRITTEN
CONTACT LENS PRESCRIPTION AS REQUIRED BY SECTION 12-40-117
(3).
SECTION 14. Article 40 of title 12, Colorado Revised
Statutes, 1991 Repl. Vol., 1s amended BY THE ADDITION OF A NEW
SECTION to read:
12-40-118.5. Mental and physical examination of
licensees. (1) IF THE BOARD HAS REASONABLE CAUSE TO BELIEVE
THAT A LICENSEE IS UNABLE TO PRACTICE WITH REASONABLE SKILL
AND SAFETY, THE BOARD MAY REQUIRE SUCH PERSON TO TAKE A MENTAL
OR PHYSICAL EXAMINATION BY A PHYSICIAN DESIGNATED BY SAID
BOARD. IF SUCH LICENSEE REFUSES TO UNDERGO SUCH A MENTAL OR
PHYSICAL EXAMINATION, UNLESS DUE TO CIRCUMSTANCES BEYOND THE
LICENSEE'S CONTROL, THE BOARD MAY SUSPEND SUCH LICENSEE'S
LICENSE UNTIL THE RESULTS OF ANY SUCH EXAMINATION ARE KNOWN,
AND THE BOARD HAS MADE A DETERMINATION OF THE LICENSEE'S
FITNESS TO PRACTICE. THE BOARD SHALL PROCEED WITH ANY SUCH
ORDER FOR EXAMINATION AND SUCH DETERMINATION IN A TIMELY
MANNER.
(2) AN ORDER TO A LICENSEE PURSUANT TO SUBSECTION (1) OF
THIS SECTION TO UNDERGO A MENTAL OR PHYSICAL EXAMINATION SHALL
CONTAIN THE BASIS OF THE BOARD'S REASONABLE CAUSE TO BELIEVE
THAT THE LICENSEE IS UNABLE TO PRACTICE WITH REASONABLE SKILL
AND SAFETY. FOR THE PURPOSES OF ANY DISCIPLINARY PROCEEDING
AUTHORIZED UNDER THIS ARTICLE, THE LICENSEE SHALL BE DEEMED TO
HAVE WAIVED ALL OBJECTIONS TO THE ADMISSIONIBILITY OF THE
EXAMINING PHYSICIAN'S TESTIMONY OR EXAMINATION REPORTS ON THE
GROUND THAT THEY ARE PRIVILEGED COMMUNICATIONS.
(3) THE LICENSEE MAY SUBMIT TO THE BOARD TESTIMONY OR
EXAMINATION REPORTS FROM A PHYSICIAN CHOSEN BY SUCH LICENSEE
AND PERTAINING TO ANY CONDITION WHICH THE BOARD HAS ALLEGED
MAY PRECLUDE THE LICENSEE FROM PRACTICING WITH REASONABLE
SKILL AND SAFETY. THESE MAY BE CONSIDERED BY THE BOARD IN
CONJUNCTION WITH, BUT NOT IN LIEU OF, TESTIMONY AND
EXAMINATION REPORTS OF THE PHYSICIAN DESIGNATED BY THE BOARD.
(4) THE RESULTS OF ANY MENTAL OR PHYSICAL EXAMINATION
ORDERED BY THE BOARD SHALL NOT BE USED AS EVIDENCE IN ANY
PROCEEDING OTHER THAN ONE BEFORE THE BOARD AND SHALL NOT BE
DEEMED PUBLIC RECORDS NOR MADE AVAILABLE TO THE PUBLIC.
SECTION 15. 12-40-119, Colorado Revised Statutes, 1991
Rep. Vol., is amended to read:

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

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

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

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

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

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

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

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

(f) When a complaint or an investigation discloses an instance of misconduct which, in the opinion of the board, does not warrant formal action by the board but which should not be dismissed as being without merit, the board may send a letter of admonition by certified mail to the optometrist against whom a complaint was made and a copy thereof to the person making the complaint, but, when the board sends a letter of admonition by certified mail to an optometrist complained against, the board shall advise such optometrist that he THE OPTOMETRIST has the right to request in writing, within twenty days after proven receipt of the letter, that formal disciplinary proceedings be initiated against him THE
OPTOMETRIST to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.

(2.3) No person whose license or certification, or both, is revoked by the board may reapply for a new license under the provisions of this article for at least two years after any such revocation.

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

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

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

(4) The complainant and the respondent shall be notified of the time and place of any meeting at which a complaint will be considered by the board for dismissal or further action by the board.

(5) Upon dismissal of a complaint, the complainant shall be sent a copy of the investigation report and the response of the optometrist or other person alleged to have violated the act.

(6) (a) The board, on its own motion or upon application, at any time after the refusal to grant a license or certificate, the imposition of any discipline, or the ordering of probation, as provided in this section, may reconsider its prior action and grant, reinstate, or restore such license or certificate or terminate probation, or reduce the severity of its prior disciplinary action. The taking of any such further action, or the holding of a hearing with respect thereto, shall rest in the sole discretion of the board.

(b) Upon the receipt of such application, it may be forwarded to the attorney general for such investigation as may be deemed necessary. The proceedings shall be governed by the applicable provisions governing formal hearings in disciplinary proceedings. The attorney general may present evidence bearing upon the matters in issue, and the burden shall be upon the applicant seeking reinstatement to establish the averments of the application as specified in section 24-4-105 (7), C.R.S. No application for reinstatement or for
MODIFICATION OF A PRIOR ORDER SHALL BE ACCEPTED UNLESS THE 
APPLICANT DEPOSITS WITH THE BOARD ALL AMOUNTS UNPAID UNDER ANY 
PRIOR ORDER OF THE BOARD.

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

Repl. Vol., is amended to read:

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

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

12-40-128. Repeal of article - subject to sunset law. 
(1) EXCEPT AS OTHERWISE PROVIDED IN SECTION 12-40-106 (3) (b) 
(1), THIS ARTICLE IS REPEALED, EFFECTIVE JULY 1, 2002.

(2) THE PROVISIONS OF SECTION 24-34-204, C.R.S., 
CONCERNING THE TERMINATION SCHEDULE FOR REGULATORY BODIES OF 
THE STATE UNLESS EXTENDED AS PROVIDED IN THAT SECTION, ARE 
APPLICABLE TO THE FUNCTIONS PERFORMED PURSUANT TO THIS 
ARTICLE.

SECTION 18. 24-34-104 (21)(a)(1) and (24), Colorado 
Revised Statutes, 1988 Repl. Vol., as amended, are amended, 
and the said 24-34-104 is further amended BY THE ADDITION OF A 
NEW SUBSECTION, to read:

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

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

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

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

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

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

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

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

(f) THE STATE BOARD OF OPTOMETRIC EXAMINERS, CREATED BY
SECTION 12-40-106, C.R.S.

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

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

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

SECTION 21. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.
CONCERNING THE REGULATION OF ACUPUNCTURISTS, AND, IN
CONNECTION THERewith, CONTINUING THE REGISTRATION OF
ACUPUNCTURISTS WITH THE DIRECTOR OF THE DIVISION OF
REGISTRATIONS AND AMENDING CERTAIN PROVISIONS RELATING TO
THE PRACTICE OF ACUPUNCTURE.

Bill Summary
(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)
Continues the registration of acupuncturists with the division of registrations. Requires an acupuncturist to provide new patients with specified written information about the practice of acupuncture and about the acupuncturist's professional status in other jurisdictions, and to keep a copy of such information, signed by the patient, for a specified period of time. Allows reinstatement of registrations which have lapsed due to nonpayment of annual registration fees. Imposes reporting requirements relating to judgments and administrative actions arising in Colorado and other jurisdictions. Adds insurance fraud, practicing while subject to disability or substance abuse, substandard care, false advertising, and criminal convictions to the list of acts and practices for which disciplinary action may be taken. Exempts persons in bona fide, supervised training programs from registration requirements.
Allowss the director of the division of registrations to order physical and mental examinations of practitioners suspected of having significant disabilities, and to accept evidence of disciplinary actions in other jurisdictions as prima facie evidence of prohibited acts and practices. Grants qualified immunity to persons making or participating in complaints or investigations of acupuncturists. Makes conforming amendments.
further amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-29.5-103. Mandatory disclosure of information to patients - retention of records of disclosure. (1) Every acupuncturist shall provide the following information in writing to each patient during the initial patient contact:

(a) The name, business address, and business phone number of the acupuncturist;

(b) A fee schedule;

(c) A STATEMENT INDICATING THAT:

(I) THE PATIENT IS ENTITLED TO RECEIVE INFORMATION ABOUT THE METHODS OF THERAPY, THE TECHNIQUES USED, AND THE DURATION OF THERAPY, IF KNOWN;

(II) THE PATIENT MAY SEEK A SECOND OPINION FROM ANOTHER HEALTH CARE PROFESSIONAL OR MAY TERMINATE THERAPY AT ANY TIME;

(III) IN A PROFESSIONAL RELATIONSHIP, SEXUAL INTIMACY IS NEVER APPROPRIATE AND SHOULD BE REPORTED TO THE DIRECTOR OF THE DIVISION OF REGISTRATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES;

(d) A listing of the acupuncturist's education, experience, degrees, membership in a professional organization whose membership includes not less than one-third of the persons registered pursuant to this article, certificates or credentials related to acupuncture awarded by such organizations, the length of time required to obtain said degrees or credentials, and experience;

(e) A statement indicating any license, certificate, or registration in the health-care-field ACUPUNCTURE OR ANY OTHER HEALTH CARE PROFESSION which was revoked ISSUED TO THE ACUPUNCTURIST by any local, state, or national health care agency, AND INDICATING WHETHER ANY SUCH LICENSE, CERTIFICATE, OR REGISTRATION WAS REVOKED;

(f) A statement that the acupuncturist is complying with any rules and regulations promulgated by the department of health with respect to this article, including those related to the proper cleaning and sterilization of needles used in the practice of acupuncture and the sanitation of acupuncture offices; and

(g) A statement indicating that the practice of acupuncture is regulated by the department of regulatory agencies and the address and phone number of the complaints and---investigation---section DIRECTOR of the division of registrations in the department of regulatory agencies.

(3) THE ACUPUNCTURIST SHALL RETAIN A COPY OF THE WRITTEN INFORMATION SPECIFIED IN SUBSECTION (1) OF THIS SECTION, DATED AND SIGNED BY THE PATIENT, FROM THE TIME OF THE INITIAL EVALUATION UNTIL AT LEAST THREE YEARS AFTER THE TERMINATION OF TREATMENT.

SECTION 4. 12-29.5-104 (1) and (4), Colorado Revised Statutes, 1991 Repl. Vol., are amended, and the said 12-29.5-104 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

12-29.5-104. Requirement for registration with the
division of registrations - annual fee - required disclosures.

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

(4) Every applicant for registration shall pay an annual registration fee to be established by the director in the same manner as is authorized by section 24-34-105, C.R.S. The director shall promulgate rules and regulations for the reinstatement of registrations which have lapsed due to nonpayment of such annual fee; except that, if a registrant has not applied for reinstatement within two years after the date of lapse, reinstatement is not available and the registrant must reapply as a new applicant.

(5) Every acupuncturist shall report to the director every judgment or administrative action, as well as the terms of any settlement or other disposition of any such judgment or action, against the acupuncturist involving malpractice or improper practice of acupuncture, whether occurring in Colorado or in any other jurisdiction. The acupuncturist shall make such report either within thirty days of the judgment or action or upon application for registration or reinstatement, whichever occurs earlier.

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

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

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

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

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

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

12-29.5-106. Grounds for disciplinary action. (1) The director may DENY REGISTRATION TO OR take disciplinary action against an acupuncturist pursuant to section 24-4-105, C.R.S.,
if he finds that the acupuncturist has committed any of the
following acts:

(a) Violated the provisions of section 12-29.5-105;
(b) Failed to provide the mandatory disclosure required
by section 12-29.5-103 or provided false, deceptive, or
misleading information to patients in the said disclosure;
(c) Failed to provide the information required by
section 12-29.5-104 (1) or provided false, deceptive, or
misleading information to the division of registrations;
(d) Committed, or advertised in any manner that he will
commit, any act constituting an abuse of health insurance as
prohibited by section 18-13-119, C.R.S., OR A FRAUDULENT
INSURANCE ACT AS DEFINED IN SECTION 10-1-127, C.R.S.;
(e) Failed to refer a patient to an appropriate
practitioner when the problem of the patient is beyond the
training, experience, or competence of the acupuncturist;
(f) Accepted commissions or rebates or other forms of
remuneration for referring clients to other professional
persons;
(g) Offered or gave commissions, rebates, or other forms
of remuneration for the referral of clients; except that,
notwithstanding the provisions of this paragraph (g), an
acupuncturist may pay an independent advertising or marketing
agent compensation for advertising or marketing services
rendered on his behalf by such agent, including compensation
which is paid for the results of performance of such services,
(h) Failed to comply with, OR AIDED OR ABETTED A FAILURE
TO COMPLY WITH, THE REQUIREMENTS OF THIS ARTICLE OR any lawful
rules or regulations adopted by the executive director of the
department of health, including those regulations governing
the proper cleaning and sterilization of acupuncture needles
or the sanitary conditions of acupuncture offices, OR ANY
LAWFUL ORDERS OF THE DEPARTMENT OF HEALTH OR OF COURT;
(i) Failed to comply with, OR AIDED OR ABETTED A FAILURE
TO COMPLY WITH, THE REQUIREMENTS OF THIS ARTICLE OR any lawful
rules or regulations governing the practice of acupuncture
adopted by the director, OR ANY LAWFUL ORDERS OF THE DIRECTOR
OR OF COURT; and
(j) Engaged in sexual contact, sexual intrusion, or
sexual penetration, as defined in section 18-3-401. C.R.S.,
with a patient during the course-of-patient-care PERIOD OF
TIME BEGINNING WITH THE INITIAL PATIENT EVALUATION AND ENDING
WITH THE TERMINATION OF TREATMENT;
(k) FOLLOWED A PATTERN OF CONDUCT WHICH FAILS TO MEET
GENERALLY ACCEPTED STANDARDS OF CARE, WHETHER OR NOT ACTUAL
INJURY TO A PATIENT IS ESTABLISHED;
(l) CONTINUED IN THE PRACTICE OF ACUPUNCTURE WHILE
SUBJECT TO ANY PHYSICAL OR MENTAL DISABILITY WHICH RENDERS THE
ACUPUNCTURIST UNABLE TO TREAT PATIENTS WITH REASONABLE SKILL
AND SAFETY OR WHICH MAY ENDANGER A PATIENT'S HEALTH OR SAFETY,
OR WHILE AFFLICTED WITH A COMMUNICABLE, INFECTION, OR
CONTAGIOUS DISEASE OF SUCH A SERIOUS NATURE AS TO RENDER THE
ACUPUNCTURIST A MENACE TO PATIENTS;
(m) CONTINUED IN THE PRACTICE OF ACUPUNCTURE WHILE
ADDICTED TO OR DEPENDENT UPON ALCOHOL OR UPON ANY
HABIT-FORMING DRUG, AS DEFINED IN SECTION 12-22-102 (13), OR
WHILE ABUSING OR HABITUALLY OR EXCESSIVELY USING ANY SUCH
HABIT-FORMING DRUG OR ANY CONTROLLED SUBSTANCE, AS DEFINED IN
SECTION 12-22-303 (7);
(n) COMMITTED AND BEEN CONVICTED OF A FELONY OR ENTERED
A PLEA OF GUILTY OR NOLO CONTENDERE TO A FELONY; AND
(o) PUBLISHED OR CIRCULATED, DIRECTLY OR INDIRECTLY, ANY
FRAUDULENT, FALSE, DECEITFUL, OR MISLEADING CLAIMS OR
STATEMENTS RELATING TO ACUPUNCTURE OR TO THE ACUPUNCTURIST'S
PRACTICE, CAPABILITIES, SERVICES, METHODS, OR QUALIFICATIONS.
(2) THE DIRECTOR MAY ACCEPT, AS PRIMA FACIE EVIDENCE OF
THE COMMISSION OF ANY ACT ENUMERATED IN SUBSECTION (1) OF THIS
SECTION, EVIDENCE OF DISCIPLINARY ACTION TAKEN BY ANOTHER
JURISDICTION AGAINST AN ACUPUNCTURIST'S LICENSE OR OTHER
AUTHORIZATION TO PRACTICE IF SUCH DISCIPLINARY ACTION WAS
BASED UPON ACTS OR PRACTICES SUBSTANTIALLY SIMILAR TO THOSE
ENUMERATED IN SUBSECTION (1) OF THIS SECTION.
SECTION 7. Article 29.5 of title 12, Colorado Revised
Statutes, 1991 Repl. Vol., is amended by the addition of a new
paragraph to read:
12-29.5-109.5. Immunity of complainants or witnesses
acting in good faith. ANY PERSON MAKING A COMPLAINT OR REPORT,
ACTING AS A CONSULTANT OR EXPERT WITNESS ON BEHALF OF THE
DIRECTOR, OR PARTICIPATING IN ANY INVESTIGATION OR
ADMINISTRATIVE PROCEEDING AUTHORIZED UNDER THIS ARTICLE SHALL
BE IMMUNE FROM SUIT IN ANY CIVIL ACTION BASED UPON SUCH
PERSON'S CONDUCT WITHIN THE SCOPE OF SUCH ACTIVITY OR
PARTICIPATION IF THE PERSON ACTED IN GOOD FAITH, MADE A
REASONABLE EFFORT TO OBTAIN THE RELEVANT FACTS, AND ACTED IN
THE REASONABLE BELIEF THAT THE ACTIONS TAKEN BY SAID PERSON
WERE WARRANTED BY THE FACTS.
SECTION 8. 12-29.5-110 (1) (d), Colorado Revised
Statutes, 1991 Repl. Vol., is amended to read:
12-29.5-110. Director - powers and duties. (1) In
addition to any other powers and duties conferred by this
article, the director shall have the following powers and
duties:
(d) To inspect on a routine-and-mandatory complaint
basis any premises where acupuncture services are provided to
ensure compliance with this article and the rules and
regulations adopted pursuant thereto;
SECTION 9. 12-29.5-110, Colorado Revised Statutes, 1991
Repl. Vol., is amended by the addition of the following new
paragraphs to read:
12-29.5-110. Director - powers and duties. (1) (j) TO
ORDER THE PHYSICAL OR MENTAL EXAMINATION OF AN ACUPUNCTURIST
IF THE DIRECTOR HAS REASONABLE CAUSE TO BELIEVE THAT THE
ACUPUNCTURIST IS SUBJECT TO A PHYSICAL OR MENTAL DISABILITY
WHICH RENDERS THE ACUPUNCTURIST UNABLE TO TREAT PATIENTS WITH REASONABLE SKILL AND SAFETY OR WHICH MAY ENDANGER A PATIENT'S HEALTH OR SAFETY; AND THE DIRECTOR MAY ORDER SUCH AN EXAMINATION WHETHER OR NOT ACTUAL INJURY TO A PATIENT IS ESTABLISHED.

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

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

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

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

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

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

SECTION 12. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.
SUNRISE/SUNSET BILL D

A BILL FOR AN ACT

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

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

Continues until a certain date the medication administration and monitoring program for persons to administer and monitor medications in certain facilities. Defines those facilities which are included in the program. Continues until a certain date the program for persons who administer nutrition or fluids through gastrostomy tubes. Continues exemptions from the licensing requirements of the “Colorado Medical Practice Act”, the “Nurse Practice Act”, and the “Colorado Controlled Substances Act” for certain acts for persons who utilize and comply with the provisions of the medication administration and monitoring program and exemptions from the “Colorado Medical Practice Act” and the “Nurse Practice Act” for the administration of nutrition or fluids through gastrostomy tubes. Defines and sets parameters for the delegation of nursing functions by licensed nurses to persons not licensed as nurses.

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

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

12-22-304. License required - controlled substances -
drug precursors - fund created - repeal of certain provisions.
(5) The following persons need not be licensed by the department or by the board to lawfully possess controlled substances under this part 3:

(e) (I) Employees of residential-care facilities who are administering and monitoring medications to residents persons under the care or jurisdiction thereof pursuant to the provisions of section 25-1-107 (1) (ee), C.R.S.

(II) This paragraph (e) is repealed, effective July 1, 1992.

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

12-36-106. Practice of medicine defined - exemptions from licensing requirements. (3) Nothing in this section shall be construed to prohibit, or to require a license under this article with respect to any of the following acts:

(o) (I) The administration AND MONITORING of
medications in residential-care facilities as provided in section 25-1-107 (1) (ee), C.R.S.

(II) This paragraph (o) is repealed, effective July 1, 1998. Prior to such repeal, the exemption to licensure requirement set forth in this paragraph (o) shall be subject to review pursuant to the provisions of section 2-3-1201, C.R.S., by the sunrise and sunset review committee, as set forth in section 2-3-1201, C.R.S., and the provisions of section 24-34-104 (5) to (12), C.R.S., concerning a windup period, an analysis and evaluation, public hearings, and claims by or against an agency shall apply to the operation of the program specified in this paragraph (o).

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

(II) This paragraph (q) is repealed, effective July 1, 1998. Prior to such repeal, the exception to licensure requirements set forth in this paragraph (q) shall be subject to review pursuant to the provisions of section 2-3-1201, C.R.S., by the sunrise and sunset review committee, and the provisions of section 24-34-104 (5) to (12), C.R.S., concerning a windup period, an analysis and evaluation, public hearings, and claims by or against an agency shall apply to the operation of the program specified in this paragraph (q).

SECTION 3. 12-38-103, Colorado Revised Statutes, 1991 Repl. Vol., is amended by the addition of the following new subsections to read:

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

(4.5) "DELEGATION" MEANS:

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

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

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

SECTION 4. 12-38-125 (1) (h) and (1) (i), Colorado Revised Statutes, 1991 Repl. Vol., are amended, and the said 12-38-125 is further amended by the addition of the following new paragraphs, to read:

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

(h) (I) The administration and monitoring of medications in residential-care facilities as provided in pursuant to section 25-1-107 (1) (ee), C.R.S.

(II) This paragraph (h) is repealed, effective July 1, 1992. Prior to such repeal, the exclusion set
NOTHING IN THIS SECTION SHALL IMPAIR THE USE OF SECTION 25-1-107 (1) (ee), C.R.S., BY THE DEPARTMENT OF HEALTH.

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

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

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

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

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

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (21.5) (a) The program for the administration of medications in residential care facilities authorized under section 25-1-107 (1) (ee), C.R.S., shall terminate on July 1, 1992.

(b) The exemption from licensure under the Controlled Substances Act provided in section 24-34-104.5 C.R.S., shall terminate on July 1, 1992.

(c) The exemption from licensure under the Colorado Medical Practice Act provided in section 12-22-304 (5) C.R.S., shall terminate on July 1, 1992.

(d) The exemption from licensure under the Nurse Practice Act provided in section 12-28-128 (1) (5) C.R.S., shall terminate on July 1, 1992.

SECTION 9. 24-34-104, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:
24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (27.5) (a) The program for the administration and monitoring of medications in facilities authorized pursuant to section 25-1-107 (1) (ee), C.R.S., shall terminate on July 1, 1998.

(b) The exemption from licensure under the “Colorado Controlled Substance Act” pursuant to section 12-22-304 (5) (e) (I), C.R.S., for persons who administer or monitor medications in facilities in compliance with the program authorized in section 25-1-107 (1) (ee), C.R.S., shall terminate on July 1, 1998.

(c) The exemption from licensure under the “Colorado Medical Practice Act” pursuant to:

(I) Section 12-36-106 (3) (a) (I), C.R.S., for persons who administer and monitor medications in facilities in compliance with the program authorized in section 25-1-107 (1) (ee), C.R.S., shall terminate on July 1, 1998.

(II) Section 12-36-106 (3) (q) (I), C.R.S., for persons who administer nutrition or fluids through gastrostomy tubes in compliance with the guidelines established pursuant to section 27-10.5-103 (2) (k), C.R.S., shall terminate on July 1, 1998.

(d) The exemption from licensure under the “Nurse Practice Act” pursuant to section 12-38-125 (1) (h) (1), C.R.S., for persons who administer medications in facilities in compliance with the program authorized in section 25-1-107 (1) (ee), C.R.S., shall terminate on July 1, 1998.

(e) The functions of the executive director of the department of institutions to establish guidelines and procedures for authorization of individuals for administration of nutrition and fluids through gastrostomy tubes authorized pursuant to section 27-10.5-103 (2) (k), C.R.S., shall terminate on July 1, 1998.

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


(1) (ee) (I) To establish and maintain by rule and regulation a program for the administration and monitoring of medications in residential-care facilities, which program shall be developed and conducted in cooperation with the department of social services, and the department of institutions, and the department of corrections within the following guidelines:

(A) Beginning January 1, 1990, as a condition to authorizing or renewing the authorization to operate of any residential-care facility that administers or monitors
medications to its--residents PERSONS UNDER ITS CARE, the
authorizing agency shall require that the facility have a
staff member qualified pursuant to sub-subparagraph (B) of
this subparagraph (I) on duty at any time that the facility
administers OR MONITORS such medications and that the facility
maintain a written record of each medication administered to
OR MONITORED FOR each resident, including the time and the
amount of the medication. Such record will be subject to
review by the authorizing agency as a part of its procedure in
authorizing the continued operation of the facility.

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

(C) By December 31, 1989, the department, in cooperation
with appropriate agencies or advisory bodies, shall develop or
approve training curricula and competency evaluation
procedures for those who administer OR MONITOR medications in
residential-care facilities. If either-the-department-of
institutions-or-the-department-of-social-services ANY PROVIDER
OF TRAINING AND COMPETENCY EVALUATIONS wishes to use a
different training curriculum and competency evaluation
procedure for those who administer OR MONITOR medications in
the residential-care facilities whose operation is authorized
by those departments SUCH PROVIDERS, such department PROVIDER
shall ensure that such training curriculum and competency
evaluation procedure are first submitted to the department for
its review. If after such review the department has no
objection, the submitting department PROVIDER shall assume
responsibility for the cost and implementation of such
curriculum and evaluation in keeping with the other provisions
of this act MEDICATIONS ADMINISTRATION AND MONITORING PROGRAM
for those residential--care facilities whose operation is
authorized by such department PROVIDER. Any department
PROVIDER that administers competency evaluations shall
maintain a list of those who have successfully completed such
competency evaluation AND SHALL FORWARD A COPY OF SUCH LIST TO
THE DEPARTMENT WITHIN FORTY--FIVE DAYS OF ADMINISTRATION OF
SUCH EVALUATION. FOR PURPOSES OF THIS SUB-SUBPARAGRAPH (C)
"PROVIDER" SHALL INCLUDE NONGOVERNMENTAL ENTITIES AUTHORIZED
BY THE DEPARTMENT TO TRAIN AND ADMINISTER EVALUATIONS.

(D) The department shall assure that at--least--six
training sessions, each followed by a competency evaluation
set to measure basic competency only, are offered during
calendar--year--1989,--with--such--training--to--be-offered at
various geographic locations in the state. An individual who does not pass the competency evaluation may apply to retake it. An appropriate fee must be paid each time the competency evaluation is taken. An individual may apply for and take the competency evaluation only once without having first attended a training session approved by the department. If such individual fails to meet a minimum competency level on such first evaluation, the applicant must attend an approved training session before again taking the competency evaluation.

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

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

(1.5) MEDICATION REMINDER BOXES OR SYSTEMS MAY BE USED IF SUCH CONTAINERS HAVE BEEN FILLED AND PROPERLY LABELLED BY A PHARMACIST LICENSED PURSUANT TO ARTICLE 22 OF TITLE 12, C.R.S., A NURSE LICENSED PURSUANT TO ARTICLE 38 OF TITLE 12, C.R.S., AN UNLICENSED PERSON TRAINED PURSUANT TO THIS PARAGRAPH (ee), OR FILLED AND PROPERLY LABELLED THROUGH THE GRATUITOUS CARE BY MEMBERS OF ONE'S FAMILY OR FRIENDS. UNLICENSED PERSONS MAY PHYSICALLY ASSIST A PERSON WHO IS PHYSICALLY IMPAIRED IF SUCH IMPAIRMENT AFFECTS THE ABILITY OF THE PERSON TO USE THE MEDICATION REMINDER, IF SUCH UNLICENSED PERSON IS TRAINED PURSUANT TO THE PROVISIONS OF THIS PARAGRAPH (ee).

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

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

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

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

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

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

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

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

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

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

(I) RESIDENTIAL AND DAY CARE PROGRAMS PROVIDING SERVICES
IN SUPPORT OF PERSONS WITH DEVELOPMENTAL DISABILITIES PURSUANT
TO ARTICLE 10.5 OF TITLE 27, C.R.S.

(III) (A) For the purposes of this paragraph (ee),
"monitoring" means: Reminding the resident to take medication
or medications at the time ordered by the physician or other
authorized practitioner; visual observation of the resident to
ensure compliance; making a written record of the resident's
compliance with regard to each medication, including the time
and the amount taken; notification to the physician or other
authorized practitioner if the resident refuses to or is not
able to comply with the physician's or other practitioner's
instructions with regard to the medication. REMINDING A PERSON
TO TAKE MEDICATION OR MEDICATIONS AT THE TIME PRESCRIBED BY A
PHYSICIAN OR OTHER AUTHORIZED PRACTITIONER; PHYSICALLY
ASSISTING A PERSON WHO IS PHYSICALLY IMPAIRED TO OPEN
MEDICATION REMINDER BOXES AND ASSISTING THE PERSON IN PLACING
THE MEDICATION IN THE PERSON'S HANDS IN ORDER THAT THE PERSON
MAY PERSONALLY MEDICATE; VISUALLY OBSERVING THE PERSON TO
ENSURE THAT MEDICATION IS TAKEN; MAKING A WRITTEN RECORD WITH
REGARD TO THE TIME THE MEDICATION IS TAKEN; AND NOTIFYING THE
PERSON'S PHYSICIAN OR OTHER AUTHORIZED PRACTITIONER IF THE
PERSON IS NOT WILLING OR ABLE TO COMPLY WITH THE INSTRUCTIONS
WITH REGARD TO THE MEDICATION.
(B) MONITORING BY UNLICENSED PERSONS REQUIRES TRAINING
Pursuant to the provisions of this paragraph (ee), for purposes of this section, "monitoring" shall take place only in a "facility" as defined in subparagraph (ii) of this paragraph (ee).

(IV) For purposes of this paragraph (ee), "residential-care facility" means Alternative-care facilities pursuant to section 26-4-602(3), C.R.S.; and adult foster care facilities pursuant to section 26-1-111(2)-(j), C.R.S.; residential-care facilities for children pursuant to sections 26-6-102 and 26-6-104, C.R.S.; personal care boarding homes pursuant to sections 26-27-102-(8) and section 26-27-102; community-based residential facilities for the developmentally disabled pursuant to section 27-10-6-101, C.R.S.; and residential programs for the developmentally disabled pursuant to section 27-10-6-104, C.R.S., and facilities as defined in section 27-10-102-(4)(h), C.R.S., that provide treatment for mentally ill persons.

(IV.5) For purposes of this paragraph (ee), "self administration" means the ability of a person to take medication independently without any assistance from another person. Such a person is personally responsible for medication administration. No facility shall be responsible for observing or documenting the self administration of medication. Compliance with the requirements for the training of unlicensed persons in medication administration pursuant to section 2-3-1201, C.R.S., and the provisions of section 24-34-104(5) to (12), C.R.S., concerning a windup period, an analysis and evaluation, public hearings, and claims by or against an agency shall apply to the operation of the program specified in this paragraph (ee).

(V) (A) All fees collected pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the medication administration and monitoring cash fund, which fund is hereby created.

(B) The general assembly shall make annual appropriations from the medication administration and monitoring cash fund for expenditures of the department incurred in the performance of its duties under this paragraph (ee).

(VI) This paragraph (ee) is repealed, effective July 1, 1992 JULY 1, 1998. Prior to such repeal, the program established by this paragraph (ee) shall be subject to review by the sunrise and sunset review committee, as set forth in section 2-3-1201, C.R.S., and the provisions of section 24-34-104(5) to (12), C.R.S., concerning a windup period, an analysis and evaluation, public hearings, and claims by or against an agency shall apply to the operation of the program specified in this paragraph (ee).

(VII) THE DEPARTMENT SHALL REPORT TO THE SUNRISE AND SUNSET REVIEW COMMITTEE ON ITS PROGRESS IN IMPLEMENTING THE MEDICATION ADMINISTRATION AND MONITORING PROGRAM BY JULY 1, 1993.

SECTION 11. 26-1-111 (2)(j), Colorado Revised Statutes, 1989 Repl. Vol., is amended to read:
activities of the state department. (2) The state department shall:
(j) Promulgate rules and regulations concerning adult foster care and the certification of adult foster care facilities by the county departments. Adult foster care is that care and service which in addition to room and board may include, but is not limited to, personal services, recreational opportunities, transportation, utilization of volunteer services, and special diets. Such care may include the administration or monitoring of medications to persons receiving care if done in conformity with section 25-1-107 (1) (ee), C.R.S. Such care is provided to recipients of federal supplemental security income benefits who are also eligible for the Colorado supplement program for aid to the needy disabled and aid to the blind assistance—and who do not require skilled nursing care or intermediate health care and cannot remain in or return to their residences but who need to reside in a supervised nonmedical setting on a twenty-four-hour basis. Those persons with developmental disabilities as defined in section 27-10.5-102, C.R.S., or who are receiving or are eligible to receive services in programs administered by the department of institutions do not qualify for adult foster care under this paragraph (j).

SECTION 12. 26-4-603. Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-4-603. Definitions. As used in this subpart 1 and subpart 3 of this part 6, unless the context otherwise requires:

(13.5) "Medications Administration" means the administration or monitoring of medications provided in a manner consistent with section 25-1-107 (1) (ee), C.R.S., under the authority and direction of the state department, as part of the "Alternative Care Services", as defined in subsection (4) of this section, as provided in an "Alternative Care Facility", as defined in subsection (3) of this section.

SECTION 13. Article 6 of title 26, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended by the addition of a new section to read:

26-6-106.1. Administration or monitoring of medications to persons - residential child care facilities - secure residential treatment centers. The executive director has the power to direct the administration or monitoring of medications to persons in residential care facilities or in secure residential treatment centers created pursuant to this article in a manner consistent with section 25-1-107 (1) (ee), C.R.S.

SECTION 14. Article 10 of title 27, Colorado Revised Statutes, 1989 Repl. Vol. is amended by the addition of a new section to read:

27-10-117.5. Administration or monitoring of medications to persons receiving care. The executive director has the power to direct the administration or monitoring of
MEDICATIONS IN CONFORMITY WITH SECTION 25-1-107 (1) (ee), C.R.S., TO PERSONS RECEIVING TREATMENT IN FACILITIES CREATED PURSUANT TO THIS ARTICLE.

SECTION 15. 27-10.5-103 (2) (k) (V), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

27-10.5-103. Duties of the executive director - rules and regulations. (2) The executive director shall adopt such rules and regulations, in accordance with section 24-4-103, C.R.S., as are necessary to carry out the provisions and purposes of this article including but not limited to the following subjects:

(k) (V) This paragraph (k) is repealed, effective July 1, 1998. Prior to such repeal, the provisions of this paragraph (k) shall be subject to review pursuant to the provisions of section 2-3-1201, C.R.S., AND THE PROVISIONS OF SECTION 24-34-104 (5) TO (12), C.R.S., CONCERNING A WINDUP PERIOD, AN ANALYSIS AND EVALUATION, PUBLIC HEARINGS, AND CLAIMS BY OR AGAINST AN AGENCY SHALL APPLY TO THE FUNCTIONS SPECIFIED IN THIS PARAGRAPH (k).

SECTION 16. 27-10.5-114, Colorado Revised Statutes, 1989 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to read:

27-10.5-114. Right to medical care and treatment. (6.5) THE EXECUTIVE DIRECTOR HAS THE POWER TO DIRECT THE ADMINISTRATION OR MONITORING OF MEDICATIONS TO PERSONS BEING CARED FOR AND TREATED IN CENTERS FOR THE DEVELOPMENTALLY

DISABLED CREATED PURSUANT TO THIS ARTICLE IN A MANNER CONSISTENT WITH SECTION 25-1-107 (1) (ee), C.R.S.

SECTION 17. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of the moneys in the medication administration and monitoring cash fund created pursuant to section 25-1-107 (1) (ee) (V) (A), Colorado Revised Statutes, not otherwise appropriated, to the department of health, for the fiscal year beginning July 1, 1992, the sum of seven thousand five hundred dollars ($7,500), or so much thereof as may be necessary, for the implementation of this act.

SECTION 18. Effective date - applicability. This act shall take effect July 1, 1992, and shall apply on or after said date to the administration and monitoring of medications by nonmedical persons in facilities in which the provision of health care is not the primary statutory purpose and to the administration of nutrition or fluids through gastrostomy tubes.

SECTION 19. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.
SUNRISE/SUNSET BILL G

A BILL FOR AN ACT
CONCERNING THE REGULATION OF OCCUPATIONS RELATING TO THE SALE
OF MOTOR VEHICLES, AND, IN CONNECTION THERewith,
CONTINUING THE MOTOR VEHICLE DEALER LICENSING BOARD,
CHANGING THE NAME OF THE BOARD, AND MOVING CERTAIN
FUNCTIONS OF THE BOARD TO THE EXECUTIVE DIRECTOR OF THE
DEPARTMENT OF REVENUE.

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

Continues the motor vehicle dealer licensing board. Changes the name of the board. Changes the composition of the board. Transfers the licensing functions of the board to the executive director of the department of revenue. Changes the licensing requirements for motor vehicle salespersons to registration requirements without testing. Provides the executive director with necessary powers to carry out the licensing and registration functions. Mandates the licensing of buyer representatives. Vests rule-making power for issues relating to license issuance in the executive director. Provides that the board review any grievance from a person who is denied a license or whose license is revoked and review complaints from consumers. Vests rule-making power for issues relating to disciplinary hearings in the board. Provides that any grievance or complaint which requires a hearing may be heard by an administrative law judge pursuant to the administrative procedure act. Vests review and modification power in the board for all hearings and punishments handed down by an administrative law judge. Requires the board to continue to develop policy for licensing pursuant to this article. Makes the article gender neutral.

Provides that persons acting as investigators are defined as, and given commensurate powers of, peace officers of a certain level.

Sunsets the licensing and registration functions of the executive director and the functions of the board unless, pursuant to review, such functions are continued.

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

SECTION 1. 12-6-101 (1)(a) and (1)(c), Colorado Revised Statutes, 1991 Repl. Vol., are amended, and the said 12-6-101 (1) is further amended by the addition of a new paragraph, to read:

12-6-101. Legislative declaration. (1) The general assembly hereby declares that:

(a) The sale and distribution of motor vehicles is affected with a public interest and it is recognized that a significant factor of inducement in making a sale of a motor vehicle is the trust and confidence of the purchaser in the retail dealer from whom the purchase is made and the expectancy that such dealer will remain in business to provide service for the motor vehicle purchased;

(c) The licensing and supervision of motor vehicle dealers by the motor vehicle dealer licensing board are necessary for the protection of consumers and therefore the sale of motor vehicles by unlicensed dealers should be curtailed;

(d) Consumer education concerning the rules and regulations of the motor vehicle industry and what one should
CONSIDER WHEN PURCHASING A MOTOR VEHICLE IS NECESSARY FOR THE PROTECTION OF CONSUMERS DUE TO THE VALUE OF THE COMPLICATED NATURE OF THE PURCHASE OF A MOTOR VEHICLE.

SECTION 2. 12-6-102 (1), (2), (12.5), (12.5), and (14), Colorado Revised Statutes, 391 Repl. Vol., are amended, and the said 12-6-102 is further amended by the addition of the following new subsections, to read:

12-6-102. Definitions. As used in this part 1, unless the context otherwise requires:

1 (1) "Administrator" means the executive director of the department of revenue and is charged with the administration, enforcement, and issuance or denial of the licensing of manufacturers, distributors, factory branches, distributor branches, factory representatives, and distributor representatives.

2 (2) "Board" means the motor vehicle dealer licensing board.

3 (2.5) (a) (I) "Buyer representative" means any person required to be licensed pursuant to this part 1 who is retained or hired by a consumer for a fee or other thing of value to assist, represent, or act on behalf of such consumer in connection with the purchase or lease of a motor vehicle.

4 (II) "Consumer", as used in this subsection (2.5), means a purchaser or lessee of a motor vehicle, which vehicle is primarily used for business, personal, family, or household purposes. "Consumer" does not include a purchaser of motor vehicles who purchases said motor vehicles primarily for resale.

5 (b) "Buyer representative" does not include a person whose business includes the purchase of motor vehicles primarily for resale or lease and a "buyer representative" licensed pursuant to this part 1 shall not be employed by or receive a fee from such a person, a motor vehicle manufacturer, motor vehicle dealer, or used motor vehicle dealer.

6 (7.5) "Executive director" means the executive director of the department of revenue charged with the administration, enforcement, and issuance or denial of the licensing of buyer representatives, distributors, distributor branches, distributor representatives, factory branches, factory representatives, motor vehicle dealers, motor vehicle manufacturers, used motor vehicle dealers, and wholesalers.

7 (12.5) "Motor vehicle agent" means any person, not otherwise required to be licensed by this part 1, who is retained or hired by a consumer for a fee or other thing of value to assist, represent, or act on behalf of the consumer in connection with the purchase or lease of a motor vehicle. "Consumer", as used in this subsection (12.5), means a purchaser or lessee of a motor vehicle normally used for business, personal, family, or household purposes and does not include a purchaser of motor vehicles who purchases said motor vehicles for the primary purpose of resale. "Motor vehicle
(12.6) "Motor vehicle auctioneer" means any person, NOT OTHERWISE REQUIRED TO BE LICENSED PURSUANT TO THIS PART 1, who is engaged in the business of offering to sell, or selling, used motor vehicles owned by persons other than the auctioneer at public auction only.

(14) "Motor vehicle salesman SALESPERSON" means any natural person who, for a salary, commission, or compensation of any kind, is employed either directly or indirectly, regularly or occasionally, by any motor vehicle dealer or used motor vehicle dealer to sell, purchase, or exchange or to negotiate for the sale, purchase, or exchange of motor vehicles.

SECTION 3. 12-6-103 (1), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

1 12-6-103. Motor vehicle dealer board. (1) There is hereby created and established a THE motor vehicle dealer licensing board, consisting of nine members who have been residents of this state for at least five years, four TWO of whom shall be licensed motor vehicle dealers, three TWO of whom shall be licensed used motor vehicle dealers, and two FIVE of whom shall be members from the public at large. "E

MEMBERS REPRESENTING THE PUBLIC AT LARGE SHALL NOT HAVE A PRESENT OR PAST FINANCIAL INTEREST IN THE AUTOMOBILE INDUSTRY AND SHALL BE VICE-PRESIDENT OF CONSUMER AFFAIRS. The board shall assume its duties as July 1, 1992, and all terms of the board members shall commence on that date. The terms of office of the board members shall be three years; except that of the member appointed to take office on July 1, 1992, three shall be appointed for a one-year term, three shall be appointed for a two-year term, and three shall be appointed for a three-year term. Any vacancies shall be filled by appointment for the unexpired term.

SECTION 3. 12-6-103, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-6-104. Board - oath - meeting - powers and duties.

(1) Each member of the board, before entering on the discharge of his SUCH MEMBER'S duties and within thirty days after the effective date of his SUCH MEMBER'S appointment, shall subscribe an oath for the faithful performance of his SUCH MEMBER'S duties before any officer authorized in this state and shall file the same with the secretary of state.

(2) The board shall, within thirty days on or after July 1, 1992, and annually thereafter in the month of July, elect from the membership thereof a president, a vice-president, and a secretary who shall also serve as
treasurer. The board shall meet at such times as it deems necessary. A majority of the board shall constitute a quorum at any meeting or hearing.

(3) The board is authorized and empowered:

(a) To promulgate, amend, and repeal such reasonable rules and regulations provisions—licensing—and registration, establishing, and the rendering of findings, orders, and adjudications not inconsistent with this part 1 relating to those functions the board is mandated to carry out pursuant to this part 1 and the laws of the state of Colorado as it deems necessary, to carry out the purposes of this part 1;

(b) To employ an executive secretary to coordinate with the administrator, the enforcement of such rules and regulations, findings, determinations, standards, and orders as may be promulgated or made under paragraph (a) of this subsection (3);

(c) To—issue through the department of revenue—a temporary permit to any person applying for a motor vehicle salesperson's license pending the satisfaction of the board that the applicant has met the requirements of this part 1, the temporary permit shall permit the operation by the salesperson for a period not to exceed one hundred twenty days while the board is completing its investigation and determination of all facts relative to the qualifications of the applicant for such license. This temporary permit shall be invalid when the applicant's license has been issued or refused.

(d) To—issue through the department of revenue and, for reasonable cause shown—or upon satisfaction thereof—of the unfitness of the applicant—licensing—and registration, establishing, and the rendering of findings, orders, and adjudications not inconsistent with this part 1, to refuse to issue to any applicant for a motor vehicle dealer's, wholesale dealer's, motor vehicle salesperson's, motor vehicle auctioneer's, or used motor vehicle dealer's license any license authorized by this part 1;

(e) (I) After due notice and a hearing, to review the findings of the judge if the hearing was conducted by an administrative law judge pursuant to section 24-4-105, C.R.S., or upon its own findings if the hearing was conducted by the board, to revoke and suspend or to reinstate, on such terms and conditions and for such period of time as the board shall appear fair and just, any motor vehicle dealer's, wholesale dealer's, motor vehicle salesperson's, motor vehicle auctioneer's, or used motor vehicle dealer's license or registration issued by the executive director under and pursuant to the terms and provisions of this part 1;

(II) THE FINDINGS OF THE BOARD PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (e) SHALL BE FINAL.

(f) (I) To investigate through the department of revenue the executive director, on its own motion or upon the sworn complaint of any person, any suspected or alleged violation by any motor vehicle dealer, wholesale dealer, motor vehicle salesperson, motor vehicle auctioneer, or used motor vehicle dealer...
location and address of such dealer's principal place of business, the type of license held by the dealer, and the number thereof, as the board shall consider necessary to enable any person doing business with such dealer to identify him S.U.P. properly, and for this purpose to determine the size and shape of such signs or devices, the lettering thereon, and other details thereof and to prescribe rules and regulations for the location thereof;

(j) To conduct or cause to be conducted written examinations as prescribed by the board testing the competency of all first-time applicants for a motor vehicle dealer's license, used motor vehicle dealer's license, or wholesaler's license; motor-vehicle-auctioneer's-license, or motor-vehicle salesman's-license;

(k) The examination required in paragraph (j) of this subsection (3) shall be conducted by the department of revenue;

(iii) THE BOARD AND THE EXECUTIVE DIRECTOR SHALL REPORT TO THE SUNRISE AND SUNSET REVIEW COMMITTEE ON THEIR PROGRESS IN DEVELOPING AN UPDATED EXAMINATION AND PROCEDURE FOR CONDUCTING SUCH EXAMINATION BY JULY 1, 1992.

(l) (1) To prescribe a form or forms to be used as a part of a contract for the sale of a motor vehicle by any motor vehicle dealer or motor vehicle salesman SALESPERSON, other than a retail installment sales contract subject to the provisions of the "Uniform Consumer Credit Code", articles 1 to 9 of title 5, C.R.S., which shall include the following information in addition to any other disclosures or information required by state or federal law:

(A) In twelve-point bold-face BOLD-FACED type or a size at least three points larger than the smallest type appearing in the contract, an instruction that the form is a legal instrument and that, if the purchaser of the motor vehicle does not understand what he is signing, he should seek legal assistance;

(B) In bold-face BOLD-FACED type, of the size specified in sub-subparagraph (A) of this subparagraph (l), an instruction that only those terms in written form embody the contract for sale of a motor vehicle and that any conflicting oral representations made to the purchaser are void;

(C) In bold-face BOLD-FACED type, of the size specified in sub-subparagraph (A) of this subparagraph (l), a notice that fraud or misrepresentation in the sale of a motor vehicle is punishable under the laws of this state;

(D) In bold-face BOLD-FACED type, of the size specified in sub-subparagraph (A) of this subparagraph (l), if the contract for the sale of a motor vehicle requires a single lump sum payment of the purchase price, a clear disclosure to the purchaser of that fact or, if the contract is contingent upon the approval of credit financing for the purchaser arranged by or through the motor vehicle dealer, in bold-face BOLD-FACED type, a statement that the purchaser shall agree to
(I) Where the purchase price of the motor vehicle is not paid to the motor vehicle dealer in full at the time of consummation of the sale and the purchaser and motor vehicle dealer elect that the motor vehicle dealer shall deliver and the purchaser shall take possession of such motor vehicle at such time, in bold-face BOLD-FACED type, a statement that in the event financing cannot be arranged in accordance with the provisions stated in the contract, and the sale is not consummated, the purchaser shall agree to pay a daily rate and a mileage rate for use of the motor vehicle until such time as financing of the purchase price of such motor vehicle is arranged for the obligor by or through the authorized motor vehicle dealer or until the purchase price is paid to the authorized motor vehicle dealer in full by or through the obligor, which daily rate and mileage rate shall be specified and agreed upon by the parties and entered in writing on the contract.

(II) The information required by subparagraph (I) of this paragraph (I) shall be read and initialed by both parties at the time of the consummation of the sale of a motor vehicle.
value shall be agreed upon by the parties and entered in
writing on the contract.

(ii) The information required by subparagraph (i) of
this paragraph (m) shall be read and initialed by both parties
at the time of the consummation of the lease of a motor
vehicle.

(iii) The use of the contract form required by
subparagraph (i) of this paragraph (m) shall be mandatory for
the lease of any motor vehicle, on or after January 1, 1989.

(n) (I) IF A HEARING IS HELD BEFORE AN ADMINISTRATIVE
LAW JUDGE, AFTER DUE NOTICE AND A HEARING BY SUCH JUDGE
PURSUANT TO SECTION 24-4-105, C.R.S., TO REVIEW THE FINDINGS
OF LAW AND FACT AND THE FAIRNESS OF ANY FINE IMPOSED BY SUCH
JUDGE AND TO Uphold SUCH FINE WHICH SHALL NOT EXCEED TEN
THOUSAND DOLLARS FOR EACH SEPARATE OFFENSE BY ANY LICENSEE OR
REGISTRANT, TO IMPOSE AN ADMINISTRATIVE FINE UPON ITS OWN
INITIATIVE WHICH SHALL NOT EXCEED TEN THOUSAND DOLLARS FOR
EACH SEPARATE OFFENSE BY ANY LICENSEE OR REGISTRANT, OR TO
VACATE THE FINE IMPOSED BY THE JUDGE.

(ii) THE FINDINGS OF THE BOARD PURSUANT TO SUBPARAGRAPH
(i) OF THIS PARAGRAPH (n) OF THIS SUBSECTION (3) SHALL BE
FINAL.

(a) THE BOARD SHALL PROMULGATE GUIDELINES IN THE FORM OF
RULES AND REGULATIONS TO ENSURE THAT ADMINISTRATIVE PENALTIES
ARE EQUITABLY ASSESSED AND COMMENSURATE WITH THE SERIOUSNESS
OF THE VIOLATION.

SECTION 5. 12-6-105, Colorado Revised Statutes, 1991

Rep. Vol., is amended to read:

12-6-105. Powers and duties of executive director.

(1) The administrator EXECUTIVE DIRECTOR is hereby charged
with the administration, ENFORCEMENT, AND ISSUANCE OR DENIAL
of the licensing of motor-vehicle-manufacturers, distributors,
factory-branches, distributor-branches, factory
representatives, and distributor-representatives BUYER
representatives, DISTRIBUTORS, DISTRIBUTOR BRANCHES,
DISTRIBUTOR REPRESENTATIVES, FACTORY BRANCHES, FACTORY
REPRESENTATIVES, MOTOR VEHICLE DEALERS, MOTOR VEHICLE
MANUFACTURERS, USED MOTOR VEHICLE DEALERS, AND WHOLESALERS AND
THE REGISTRATION OF MOTOR VEHICLE SALESPERSONS and shall have
the following powers and duties:

(a) To promulgate, amend, and repeal such reasonable
rules and regulations not inconsistent with this part 1
relating to those functions the executive director is mandated
to carry out pursuant to this part 1 and the laws of the state
of Colorado as he deems necessary;

(b) To employ, subject to the laws of the state of
Colorado and after consultation with the board, an executive
secretary for the board and, such clerks, deputies, and
assistants as he the executive director considers necessary to
discharge the duties imposed upon him the executive director
by this part 1 and to designate the duties of such clerks,
(c) To issue and, for reasonable cause shown or upon satisfactory proof of the unfitness of the applicant under standards established and set forth in this part 1, to refuse to issue to any applicant for a motor vehicle--manufacturer, distributor, factory branch, distributor--branch, factory representative, or distributor--representative a license or registration authorized by this part 1;

(d) (i) To investigate on his own motion upon the executive director's own initiative, or upon the sworn complaint of any person, or upon request by the board pursuant to section 12-6-104 (3) (f) (1), any suspected or alleged violation by any motor vehicle manufacturer, distributor, factory branch, distributor--branch, factory representative, or distributor representative, licensee or registrant of any of the terms and provisions of this part 1 or of any rule or regulation promulgated by the administrator executive director under the authority conferred upon him the executive director in this section;

(II) The investigators and their supervisors utilized by the executive director pursuant to subparagraph (i) of this paragraph, while actually engaged in performing their duties, shall have all the powers vested in peace officers, level III, pursuant to section 18-1-901 (3) (1) (IV), C.R.S. Such investigators or their supervisors shall also have the authority to issue summonses for violations of section 12-6-120 OR 42-6-140, C.R.S., and to procure criminal records during an investigation.

(e) To prescribe the forms to be used for applications for licenses or registrations to be issued under the provisions of this part 1 and to require of such applicants, as a condition precedent to the issuance of such licenses or registrations, such information concerning the applicant's fitness to be licensed under this part 1 as the executive director considers necessary;

(f) After due notice and hearing, to summarily issue cease and desist orders on such terms and conditions and for such period of time as to the administrator executive director appears fair and just to any licensed manufacturer, distributor, factory branch, or distributor--branch person who is licensed or registered pursuant to this part 1 if such orders are followed by notice and a hearing pursuant to section 12-6-104 (3) (e) (I).

(g) After due notice and hearing, to issue cease and desist orders on such terms and conditions and for such period of time as to the administrator appears fair and just--to any factory representative or distributor representative licensed pursuant to this part 1.

(2) In the event any person fails to comply with a cease and desist order issued pursuant to this section, the administrator executive director may bring a suit for injunction to prevent any further and continued violation of
such order. In any such suit the final proceedings of the
administrator EXECUTIVE DIRECTOR, based upon evidence in
records, shall be prima facie evidence of the facts found
therein.

SECTION 6. 12-6-106, Colorado Revised Statutes, 1991
Repl. Vol., is amended to read:
12-6-106. Records as evidence. Copies of all records and
papers in the office of the board or administrator EXECUTIVE
DIRECTOR, duly authenticated under the hand and seal of the
board or administrator EXECUTIVE DIRECTOR, shall be received
in evidence in all cases equally and with like effect as the
original thereof.

SECTION 7. 12-6-107, Colorado Revised Statutes, 1991
Repl. Vol., is amended to read:
12-6-107. Attorney general to advise and represent. The
attorney general of this state shall represent the board and
administrator EXECUTIVE DIRECTOR and shall give opinions on
all questions of law relating to the interpretation of this
part I or arising out of the administration thereof and shall
appear for and in behalf of the board and administrator
EXECUTIVE DIRECTOR in all actions brought by or against them,
whether under the provisions of this part I or otherwise.

SECTION 8. 12-6-108 (1)(a), (1)(b), (1)(c), (1)(c.1),
and (2), Colorado Revised Statutes, 1991 Repl. Vol., are
amended, and the said 12-6-108 (1) is further amended BY THE
ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

12-6-108. Classes of licenses. (1) Licenses issued
under the provisions of this part I shall be of the following
classes:
(a) Motor vehicle dealer's license shall permit the
licensee to engage in the business of selling or exchanging
new and used motor vehicles, or both, and this form of license
shall permit not more than two persons named therein who shall
be owners or part owners of the business of the licensee to
act as motor vehicle salesmen SALESPERSONS.
(b) Used motor vehicle dealer's license shall permit the
licensee to engage in the business of selling or exchanging
used motor vehicles only, and this form of license shall
permit not more than two persons named therein who shall be
owners or part owners of the business of the licensee to act
as motor vehicle salesmen SALESPERSONS.
(c) Motor-vehicle-salesman's-license--shall--permit-the
licensee--to--engage--in--the--activities--of--a--motor-vehicle
salesman.
(c.1) Motor-vehicle-auctioneer's-license--shall--permit
the--licensee--to--engage--in--the--activities--of--a--motor-vehicle
auctioneer and shall not permit the licensee to engage in--the
activities--of--a--motor-vehicle-dealer--or--used-motor-vehicle
dealer--or--other-licensee--under--this--part--1.
(g) BUYER REPRESENTATIVE'S LICENSE SHALL PERMIT THE
LICENSEE TO ENGAGE IN THE ACTIVITIES OF A BUYER
REPRESENTATIVE.
(h) SALESPERSON'S REGISTRATION SHALL PERMIT THE
REGISTRANT TO ENGAGE IN THE ACTIVITIES OF A SALESPERSON.

(2) Any license issued by the administrator EXECUTIVE
DIRECTOR pursuant to law in effect prior to July 1, 1976 JULY
1, 1992, shall be valid for the period for which issued.

SECTION 9. Article 6 of title 12, Colorado Revised
Statutes, 1991 Repl. Vol., is amended by the addition of a new
SECTION to read:

12-6-108.5 Temporary Motor Vehicle Dealer License.

(1) IF A LICENSED VEHICLE DEALER -IS ENTERED INTO A WRITTEN
AGREEMENT TO SELL A DEALERSHIP TO A PURCHASER AND THE
PURCHASER HAS BEEN AWARDED A NEW DEALERSHIP FRANCHISE, THE
EXECUTIVE DIRECTOR MAY ISSUE A TEMPORARY MOTOR VEHICLE
DEALER'S LICENSE TO SUCH PURCHASER OR PROSPECTIVE PURCHASER.
THE EXECUTIVE DIRECTOR SHALL ISSUE THE TEMPORARY LICENSE ONLY
AFTER RECEIVING THE APPLICATIONS FOR BOTH A TEMPORARY MOTOR
VEHICLE DEALER'S LICENSE AND A MOTOR VEHICLE DEALER'S LICENSE,
THE APPROPRIATE APPLICATION FEE FOR THE MOTOR VEHICLE DEALER'S
APPLICATION, EVIDENCE OF A PASSING TEST SCORE, AND EVIDENCE
THAT THE FRANCHISE HAS BEEN AWARDED TO THE APPLICANT BY THE
MANUFACTURER. SUCH TEMPORARY MOTOR VEHICLE DEALER'S LICENSE
SHALL AUTHORIZE THE LICENSEE TO ACT AS A MOTOR VEHICLE DEALER.
SUCH TEMPORARY LICENSEES SHALL BE SUBJECT TO ALL THE
PROVISIONS OF THIS ARTICLE AND TO ALL APPLICABLE RULES AND
REGULATIONS ADOPTED BY THE EXECUTIVE DIRECTOR OR THE BOARD.
SUCH TEMPORARY MOTOR VEHICLE DEALER'S LICENSE SHALL BE
EFFECTIVE FOR UP TO SIXTY DAYS OR UNTIL THE EXECUTIVE DIRECTOR
ACTS ON SUCH LICENSEE'S APPLICATION FOR A MOTOR VEHICLE
DEALER'S LICENSE, WHICHEVER IS SOONER.

(2) FOR THE PURPOSE OF ENABLING AN OUT-OF-STATE DEALER
TO SELL VEHICLES ON A TEMPORARY BASIS DURING SPECIFICALLY
IDENTIFIED EVENTS, THE EXECUTIVE DIRECTOR MAY ISSUE A
TEMPORARY DEALER'S LICENSE WHICH SHALL BE EFFECTIVE FOR THIRTY
DAYS. SUCH TEMPORARY LICENSE SHALL SUBJECT THE LICENSEE TO
COMPLIANCE WITH RULES AND REGULATIONS ADOPTED BY THE EXECUTIVE
DIRECTOR OR THE BOARD.

SECTION 10. 12-6-109, Colorado Revised Statutes, 1991
Repl. Vol., is amended to read:

12-6-109. Display, form, custody, and use of licenses or
registrations. The board and the administrator EXECUTIVE
DIRECTOR shall prescribe the form of the license OR
REGISTRATION TO BE ISSUED BY THE EXECUTIVE DIRECTOR, and each
license OR REGISTRATION shall have imprinted thereon the seal
of their offices. The license OR REGISTRATION of each motor
vehicle salesman SALESPERSON shall be delivered or mailed to
the motor-vehicle-dealer-or-used-motor-vehicle-dealer-by-whom
the-motor-vehicle-salesman-is-employed-and-shall--be--kept--in
the--custody--and-control-of-such-motor-vehicle-dealer-or-used
motor-vehicle-dealer SALESPERSON'S HOME ADDRESS AND SHALL BE
KEPT BY THE SALESPERSON AT SUCH SALESPERSON'S PLACE OF
EMPLOYMENT FOR INSPECTION BY EMPLOYERS, CONSUMERS, THE
EXECUTIVE DIRECTOR, OR THE BOARD. It is the duty of each
BUYER REPRESENTATIVE'S LICENSE.

(2.5) If an application for a BUYER REPRESENTATIVE'S, motor vehicle dealer's, used motor vehicle dealer's, or wholesaler's or salesman's license or a registration by a salesperson is denied by the board executive director or withdrawn by the applicant prior to issuance of the license, one-half of the license or registration fee shall be refunded.

(3) (a) Such licenses or registrations, if the same have not been suspended or revoked as provided in this part I, shall be valid until July 1, next for one year following the date of issuance thereof and shall then expire.

(b) Thirty days prior to the expiration of such licenses or registrations, the executive director shall mail to any such licensee or registrant to knowingly allow such an exercise of privileges.

SECTION 11. The introductory portion to 12-6-110 (1), 12-6-110 (1)(g), (1)(i), (2.5), (3), (4), (5)(b), and (5)(c), Colorado Revised Statutes, 1991 Repl. Vol., are amended, and the said 12-6-110 (1) is further amended by the addition of a new paragraph, to read:

12-6-110. Fees or disposition - expenses - expiration of licenses. (1) There shall be collected with each application for each of the following licenses or registration:

(g) Motor vehicle salesman's or salesperson's registration;

(h) Motor vehicle auctioneer's license.
SECTION 12. 12-6-111, Colorado Revised Statutes, 1991 Repl. Vol. is amended to read:

12-6-111. Bond of licensee. (1) Before any motor vehicle dealer's, wholesaler's, or used motor vehicle dealer's license shall be issued by the board EXECUTIVE DIRECTOR to any applicant therefor, the said applicant shall procure and file with the board EXECUTIVE DIRECTOR evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or a good and sufficient bond with corporate surety thereon duly licensed to do business within the state, approved as to form by the attorney general of the state, and conditioned that said applicant shall not practice fraud, make any fraudulent representation, or violate any of the provisions of this part in the conduct of the business for which he SUCH APPLICANT is licensed. One-of-the-purposes-of-said-bond-is-to-provide the-reimbursement-for-any-loss-or-damage-suffered-by-any person-by-reason-of-the-transfer-of-a-certificate-of-title-by a-motor-vehicle-dealer,-wholesaler,-or-used-motor-vehicle dealer.

(2) THE PURPOSE OF THE BOND PROCURED BY THE APPLICANT PURSUANT TO SUBSECTION (1) OF THIS SECTION AND SECTIONS 12-6-112 (1) AND 12-6-112.2 (1) IS TO PROVIDE FOR THE REIMBURSEMENT FOR ANY LOSS OR DAMAGE SUFFERED BY ANY RETAIL CONSUMER CAUSED BY VIOLATION OF THIS PART I BY A MOTOR VEHICLE DEALER, USED MOTOR VEHICLE DEALER, OR WHOLESALER. FOR A
WHOLESALE TRANSACTION. THE BOND IS AVAILABLE TO EACH PARTY TO
THE TRANSACTION: EXCEPT THAT, IF A RETAIL CONSUMER IS
INVOLVED, SUCH CONSUMER SHALL HAVE PRIORITY TO RECOVER FROM
THE BOND. THE AMOUNT OF THE BOND SHALL BE TWENTY THIRTY
THOUSAND DOLLARS FOR AUTOMOBILE DEALER APPLICANT, USED
MOTOR VEHICLE DEALER APPLICANT, OR WHOLESALE RETAILER APPLICANT.
USE: MOTOR-VEHICLE-DEALER-APPLICANT-UNTIL-JULY-I,-1991,-AN-AND
AFTER-WHICH-THE-AMOUNT-OF-THE-BOND-SHALL-BE-THIRTY
THOUSAND-DOLLARS.

(3) ALL BONDS REQUIRED PURSUANT TO THIS SECTION SHALL BE
RENEWED ANNUALLY AT SUCH TIME AS THE BONDHOLDER'S LICENSE IS
RENEWED.

(4) NOTHING IN THIS PART I SHALL INTERFERE WITH THE
AUTHORITY OF THE COURTS TO ADMINISTER AND CONDUCT AN
INTERROGATORY ACTION FOR CLAIMS AGAINST A LICENSEE'S BOND.

SECTION 13. 12-6-112, Colorado Revised Statutes, 1991
Repl. Vol., is amended to read:
12-6-112. Motor vehicle salesperson's bond. (1) Before
any motor vehicle salesperson license is issued by the board
EXECUTIVE DIRECTOR to any applicant therefor, the said
applicant shall procure and file with the board EXECUTIVE
DIRECTOR evidence of a savings account, deposit, or
certificate of deposit meeting the requirements of section
11-35-101, C.R.S., or a good and sufficient bond in the amount
of TWO FIVE THOUSAND DOLLARS WITH CORPORATE SURETY THEREON
Duly licensed to do business within the state, approved as to
form by the attorney general of the state and conditioned that
said applicant shall perform his duties in GOOD FAITH as a
motor vehicle salesperson or motor vehicle auctioneer
without fraud or fraudulent representation and
without the violation of any of the provisions of this part 1.

(2) No corporate surety shall be required to make any
payment to any person claiming under such bond until a final
determination of fraud or fraudulent representation or the
violation of any of the provisions of this part 1 has been
made by the board or by a court of competent jurisdiction. On
and after July 1, 1991, the bond required by this section
shall be in the amount of FIVE THOUSAND DOLLARS.

(3) ALL BONDS REQUIRED PURSUANT TO THIS SECTION SHALL BE
RENEWED ANNUALLY AT SUCH TIME AS THE BONDHOLDER'S LICENSE IS
RENEWED.

SECTION 14. Article 6 of title 12, Colorado Revised
Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF A NEW
SECTION to read:
12-6-112.2 Buyer representative bonds. (1) A BUYER
REPRESENTATIVE'S LICENSE SHALL NOT BE ISSUED BY THE EXECUTIVE
DIRECTOR TO ANY APPLICANT THEREFOR, UNTIL SAID APPLICANT
PROCURS AND FILES WITH THE EXECUTIVE DIRECTOR EVIDENCE OF A
SAVINGS ACCOUNT, DEPOSIT, OR CERTIFICATE OF DEPOSIT MEETING
THE REQUIREMENTS OF SECTION 11-35-101, C.R.S., OR A GOOD AND
SUFFICIENT BOND IN THE AMOUNT OF FIVE THOUSAND DOLLARS WITH A
SECTION 16. 12-6-113, Colorado Revised Statutes, 1991
Repl. Vol., is amended to read:
12-6-113. Testing licensees. All persons applying for a motor vehicle dealer's, used motor vehicle dealer's, OR wholesaler's motor vehicle auctioneer's, OR motor vehicle salesman's license under this part I shall be examined for their knowledge of the motor vehicle laws of the state of Colorado and the rules and regulations promulgated pursuant to this part I. If the applicant is a corporation, the managing officer shall take such examination, and, if the applicant is a partnership, all the general partners shall take such examination.

SECTION 17. 12-6-114, Colorado Revised Statutes, 1991
Repl. Vol., is amended to read:
12-6-114. Filing of written warranties. All licensed manufacturers shall file with the administrator EXECUTIVE DIRECTOR all written warranties and changes in written warranties that such manufacturer makes on any motor vehicle or parts thereof. All licensed manufacturers shall file with the administrator EXECUTIVE DIRECTOR a copy of the delivery and preparation obligations of a manufacturer's dealer, and these warranties and obligations shall constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from any express or implied warranties of the manufacturer shall constitute the manufacturer's product or
warranty liability, and the manufacturer shall reasonably compensate any authorized dealer who performs work to rectify said manufacturer's product or warranty defects.

SECTION 13. 12-6-115 (1), (2), and (5), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

12-6-115. Application. (1) Application for a motor vehicle-dealer's-wholesaler's-used-motor-vehicle-dealer's, motor-vehicle-auctioneer's- or -salesman's-license shall be made to the board.

(2) Application for manufacturer's-distributor's, factory-wholesaler's-branch's-distributor-branch's-factory representative's, and distributor-representative's-licenses, any license issued pursuant to this part 1 shall be made to the administrator.

(5) All persons applying for a manufacturer's or distributor's license shall file with the administrator a certified copy of their typical written agreement with all motor vehicle dealers, and also evidence of the appointment of an agent for process in the state of Colorado shall be included with the application.

SECTION 19. 12-6-116, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-6-116. Notice of change of address or status.

(1) The board executive director shall not issue a motor vehicle-dealer's license or used motor vehicle-dealer's license to any applicant therefor who has no principal place of business as is defined in this part 1. Should the motor vehicle dealer or used motor vehicle dealer change the site or location of his such dealer's principal place of business, he shall immediately upon making such change so notify the board executive director in writing, and thereupon a new license shall be granted for the unexpired portion of the term of such license at a fee established pursuant to section 12-6-110. Should a motor vehicle dealer or used motor vehicle dealer, for any reason whatsoever, cease to possess a principal place of business, as defined in this part 1, from and on which he such dealer conducts the business for which he such dealer is licensed, he such dealer shall immediately so notify in writing the board executive director and, upon demand therefor by the board executive director, shall deliver to it such dealer's license, which shall be held and retained until it appears to the board executive director that such licensee again possesses a principal place of business; whereupon, such dealer's license shall be reissued to him.

Nothing in this part 1 shall be construed to prevent a motor vehicle dealer or used motor vehicle dealer from conducting the business for which such dealer is licensed at one or more sites or locations not contiguous to such dealer's principal place of business but operated and maintained in conjunction therewith.

(2) Should the motor vehicle dealer change to a new line of motor vehicles, add another franchise for the sale of new
motor vehicles, or cancel or, for any cause whatever, otherwise lose a franchise for the sale of new motor vehicles, me SUCH DEALER shall immediately so notify the board EXECUTIVE DIRECTOR. In the case of a cancellation or loss of franchise, the board EXECUTIVE DIRECTOR shall determine whether or not by reason thereof such dealer should be licensed as a used motor vehicle dealer, in which case the board EXECUTIVE DIRECTOR shall take up the motor vehicle dealer shall deliver to it such dealer's license, and the board EXECUTIVE DIRECTOR shall thereupon issue to such dealer a used motor vehicle dealer's license. Upon the cancellation or loss of a franchise to sell new motor vehicles or the relicensing of such dealer as a used motor vehicle dealer, such dealer may continue in the business for which a motor vehicle dealer is licensed for a time, not exceeding six months from the date of the relicensing of such dealer, to enable such dealer to dispose of the stock of new motor vehicles which he had on hand at the time of such relicensing, but not otherwise.

(3) Should any motor vehicle salesman be discharged or leave his employer or change his place of employment, the motor vehicle dealer or used motor vehicle dealer who last employed said salesman shall forthwith return his license to the board. The salesman shall be notified by the board at his last-known place of residence that his license has been returned to the board and that, upon obtaining employment again as a motor vehicle salesman, the motor vehicle salesman may notify the board, and thereupon a new license shall be issued for the unexpired portion of the term of the returned license at a fee established pursuant to section 12-6-110(5). It shall be unlawful for him to act as a motor vehicle salesman until a new license is procured.

(4) Should a wholesaler, for any reason whatsoever, change his SUCH WHOLESALER'S place of business or business address during any license year, he SUCH WHOLESALER shall immediately so notify the board EXECUTIVE DIRECTOR.

SECTION 20. 12-6-118, Colorado Revised Statutes, 1991
Repl. Vol., is amended to read:

12-6-118. Licenses - grounds for denial, suspension, or revocation. (1) A manufacturer's, distributor's, factory branch's, or distributor branch's license may be denied, suspended, or revoked on the following grounds:

(a) Proof of unfitness

(b) Material misstatement in an application for a license

(c) Willful failure to comply with any provisions of this part I or any rule or regulation promulgated by the executive director or the board;

(d) Engaging, in the past or present, in any illegal business practice;

(2) A factory representative's or distributor representative's license may be denied, suspended, or revoked on the following grounds:
(1) Proof-of-undiness

(a) Material misstatement in an application for a license;

(b) Violation of any of the terms and provisions of this part 1 or any rule or regulation promulgated by the board under this part 1;

(c) Having indulged in any unconscionable business practice pursuant to section 6-1-105, C.R.S.;

(d) Having coerced or attempted to coerce any motor vehicle dealer to accept delivery of any motor vehicle, parts or accessories therefor, or any other commodities or services which have not been ordered by said dealer;

(e) Having withheld, threatened to withhold, reduced, or delayed without just cause an order for motor vehicles, parts or accessories therefor, or any other commodities or services which have been ordered by a motor vehicle dealer;

(f) Engaging in the past or present, in any illegal business practice.

(2) A motor vehicle dealer's, wholesaler's, motor vehicle auctioneer's, buyer representative's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds:

(a) Material misstatement in an application for a license;

(b) Willful failure to comply with any provision of this part 1 or any rule or regulation promulgated by the administrator; executive director under this part 1;

(c) Violation of any of the terms and provisions of this part 1 or any rule or regulation promulgated by the board under this part 1;

(d) Having been convicted of any felony, or any crime pursuant to article 3, 4, or 5 of title 18, C.R.S., or any like crime pursuant to federal law or the law of any other state. A certified copy of the judgment of conviction by a court of competent jurisdiction shall be conclusive evidence of such conviction in any hearing held pursuant to this article.

(e) Defrauding any buyer, seller, motor vehicle salesperson, or financial institution to such person's damage;

(f) Intentional or negligent failure to perform any written agreement with any buyer or seller;

(g) Failure or refusal to furnish and keep in force any bond required under this part 1;

(h) Having made a fraudulent or illegal sale, transaction, or repossession;

(i) Willful misrepresentation, circumvention, or concealment of or failure to disclose, through whatsoever subterfuge or device, any of the material particulars or the nature thereof required to be stated or furnished to the buyer;
(k) To intentionally publish or circulate any advertising which is misleading or inaccurate in any material particular or which misrepresents any of the products sold or furnished by a licensed dealer;

(1) To knowingly purchase, sell, or otherwise acquire or dispose of a stolen motor vehicle;

(o) For any licensed motor vehicle dealer or used motor vehicle dealer to engage in the business for which such dealer is licensed without at all times maintaining a principal place of business as required by this part during reasonable business hours;

(q) Engaging in such business through employment of an unlicensed, unregistered motor vehicle salesman SALESPERSON;

(o) To willfully violate any state or federal law respecting commerce or motor vehicles or any lawful rule or regulation respecting commerce or motor vehicles promulgated by any licensing or regulating authority pertaining to motor vehicles;

(p) Failure to pass the licensing test required by this part;

(q) Engaging in such business without having adequate service facilities for the reconditioning and servicing of motor vehicles or having a valid and existing contract with a duly licensed and reputable garage with such facilities;

(r) Representing or selling as a new and unused motor vehicle any motor vehicle which the dealer or salesman SALESPERSON knows has been used and operated for demonstration purposes or which the dealer or salesman SALESPERSON knows is otherwise a used motor vehicle;

(s) Violating any state or federal statute or regulation issued thereunder dealing with odometers;

(t) Selling to a retail customer a motor vehicle which is not equipped or in proper condition and adjustment as required by part 2 or article 4 of title 42, C.R.S., unless such vehicle is sold as a towaway, not to be driven.

(1) Repealed, L. 84, p. 1080, 1, effective July 1, 1984.

(t.1) Repealed, L. 84, p. 1080, 1, effective July 1, 1984.

(u) COMMITTING A FRAUDULENT INSURANCE ACT PURSUANT TO SECTION 10-1-127, C.R.S.

(v) A wholesaler's license may be denied, suspended, or revoked for the selling or offering or attempting to negotiate the sale or exchange of an interest in motor vehicles by the wholesaler to persons other than motor vehicle dealers, used motor vehicle dealers, or other wholesalers.

(w) The license REGISTRATION of a motor vehicle salesman SALESPERSON may be denied, revoked, or suspended on the following grounds:

(x) Fraud of application;

(y) Material misstatements in an application—For—A
Licensee a registration statement;

(c) Failure to comply with any provision of this part 1
or any rule or regulation promulgated by the board of
executive director under this part 1;

d) To engage in the business for which such licensee is
licensee registrant is registered without having in force and
advising a good and sufficient bond with corporate surety as
provided in this part 1;

e) To intentionally publish or circulate any
advertising which is misleading or inaccurate in any material
particular or which misrepresents any motor vehicle product
sold or attempted to be sold by such salesman salesperson;

(f) Having indulged in any fraudulent business practice;

(g) Selling, offering, or attempting to negotiate the
sale or exchange of motor vehicles for any motor vehicle
dealer or used motor vehicle dealer for which he such
salesman salesperson is not licensed;

(h) Having represented himself representing oneself as a
salesman salesperson for any motor vehicle dealer or used
motor vehicle dealer when he such salesman salesperson is not so
employed and licensed registered;

(i) Having failed to pass the licensing test as required
by this part 1;

(j) Having been convicted of any felony, or any crime
pursuant to article 3, 4, or 5 of title 18, C.R.S., or any
like crime pursuant to federal law or the law of any other
state. A certified copy of the judgment of conviction by a
court of competent jurisdiction shall be conclusive evidence
of such conviction in any hearing held pursuant to this
article.

(k) Having knowingly purchased, sold, or otherwise
acquired or disposed of a stolen motor vehicle;

(l) Employing an unlicensed unregistered motor vehicle
salesman salesperson;

(m) Violating any state or federal statute or regulation
issued thereunder dealing with odometers;

(n) Defrauding any retail buyer to such person's damage;

(o) Representing or selling as a new and unused motor
vehicle any motor vehicle which the salesman salesperson knows
has been used and operated for demonstration purposes or which
the salesman salesperson knows is otherwise a used motor
vehicle;

(p) (I) Selling to a retail customer a motor vehicle
which is not equipped or in proper condition and adjustment as
required by part 2 of article 4 of title 42, C.R.S., unless
such vehicle is sold as a towaway, not to be driven.

(II) Repealed, L. 84, p. 1080, 1, effective July 1,
1984.

(p.1) Repealed, L. 84, p. 1080, 1, effective July 1,
1984.

(q) Willfully violating any state or federal law
respecting commerce or motor vehicles or any lawful rule or
regulation respecting commerce or motor vehicles promulgated
by any licensing or regulating authority pertaining to motor
vehicles;

(6) Improperly withdrawing, misappropriating, or
converting to his own use any money
belonging to customers or other persons, received in the
course of his employment as a motor vehicle salesman

SALESPERSON.

(6) ANY LICENSE OR REGISTRATION ISSUED PURSUANT TO THIS
PART 1 MAY BE DENIED, REVOKED, OR SUSPENDED IF UNFITNESS OF
SUCH LICENSEE OR REGISTRANT IS SHOWN IN THE FOLLOWING:

(a) THE LICENSING CHARACTER OR RECORD OF THE LICENSEE OR
REGISTRANT;

(b) THE CRIMINAL CHARACTER OR RECORD OF THE LICENSEE OR
REGISTRANT;

(c) THE FINANCIAL CHARACTER OR RECORD OF THE LICENSEE OR
REGISTRANT.

SECTION 21. 12-6-120 (2), Colorado Revised Statutes,
1991 Repl. Vol., is amended, and the said 12-6-120 is further
amended by the addition of a new subsection, to read:
12-6-120. Unlawful acts. (2) It is unlawful for any
person to act as a motor vehicle dealer, manufacturer,
distributor, wholesaler, factory branch, distributor branch,
factory representative, distributor representative, used motor
vehicle dealer, motor-vehicle-sweat equity--or--motor-vehicle
salesman OR BUYER REPRESENTATIVE unless such person has been
duly licensed under the provisions of this Part 1, except for
persons exempt from licensure as a manufacturer pursuant to
section 12-6-102 (11); however, such persons shall be required
to comply with all other applicable requirements for
manufacturers, including, but not limited to, those pertaining
to vehicle identification numbers and manufacturers' statements of origin.

(3) IT IS UNLAWFUL AND A VIOLATION OF THIS PART 1 FOR A
BUYER REPRESENTATIVE TO ENGAGE IN THE FOLLOWING:

(a) TO MAKE A MATERIAL MISSTATEMENT IN AN APPLICATION
FOR A LICENSE;

(b) TO WILLFULLY FAIL TO PERFORM OR CAUSE TO BE
PERFORMED ANY WRITTEN AGREEMENT WITH RESPECT TO ANY MOTOR
VEHICLE OR PARTS THEROF;

(c) TO DECONCiliate ANY BUYER, SELLER, MOTOR VEHICLE
SALESPERSON, OR FINANCIAL INSTITUTION;

(d) TO INTENTIONALLY ENTER INTO A FINANCIAL AGREEMENT
WITH A SELLER OF A MOTOR VEHICLE FOR THE BUYER
REPRESENTATIVE'S OWN BENEFIT;

(e) TO COERCE ANY MOTOR VEHICLE DEALER INTO PROVIDING
INSTALLMENT FINANCING WITH A SPECIFIED FINANCIAL INSTITUTION.

SECTION 22. 12-6-121. Colorado Revised Statutes, 1991
Repl. Vol., is amended to read:
12-6-121. Penalty. Any person who willfully violates any
of the provisions of this part 1 or who willfully commits an offense in this part 1 declared to be unlawful commits a class
I unless it is demonstrated to the board that the unpaid draft
or check has been paid in full and that any fine imposed on
the licensee pursuant to subsection (2) of this section has
been paid in full.

SECTION 24. 12-6-122 (1), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-6-122. Right of action for loss. (1) If any person
suffers loss or damage by reason of any fraud practiced on him
such person

SUCH PERSON or fraudulent representation made to him SUCH
PERSON by a--licensed--motor--vehicle--auctioneer--or--a--licensed
dealer or one of the dealer's salesmen SALESPERSONS acting for
the dealer in his ON SUCH DEALER'S behalf or within the scope
of the employment of the salesmen SALESPERSON OR suffers any
loss or damage by reason of the violation by such auctioneer
or dealer or salesman SALESPERSON of any of the provisions of
this part 1, whether or not such violation is the basis for
denial, suspension, or revocation of a license, such person
shall have a right of action against the auctioneer, the
dealer, his--automobile--salesman--SUCH--DEALER'S--MOTOR--VEHICLE
SALESPERSONS, and the sureties upon their respective bonds.
The right of a person to recover for loss or damage as
provided in this subsection (1) against the auctioneer--or
dealer or salesman SALESPERSON shall not be limited to the
amount of their respective bonds.

SECTION 25. 12-6-124, Colorado Revised Statutes, 1991
Repl. Vol., is amended to read:

12-6-124. Right of action for loss. (1) If any person
12-6-124. Repeal of article. This article is repealed, effective July 1, 1998. Prior to such repeal, the motor vehicle dealer licensing board and the licensing functions of the executive director of the department of revenue shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 26. 10-1-127 (1), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

10-1-127. Fraudulent insurance acts - Immunity for furnishing information relating to suspected insurance fraud. (1) For purposes of this title, articles 40 to 47 of title 8, and articles 6, 7, 32, 33, 35, 36, 38, 40, 41, 43, and 53 of title 12, C.R.S., a fraudulent insurance act is committed if a person knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, a purported insurer, a broker, or any agent thereof any written statement as part or in support of an application for the issuance or the rating of an insurance policy for commercial insurance or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which he knows to contain false information concerning any fact material thereto or if he knowingly and with intent to defraud or mislead conceals information concerning any fact material thereto. For purposes of this section, "written statement" includes a patient medical record as such term is defined in section 18-4-412 (2) (a), C.R.S., and any bill for medical services.

SECTION 27. 11-35-101 (1), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

11-35-101. Alternatives to surety bonds permitted - requirements. (1) The requirement of a surety bond as a condition to licensure or authority to conduct business or perform duties in this state provided in sections 10-2-111 (1), 12-6-111, 12-6-112, 12-6-112.2, 12-11-101 (1) (d), 12-14-124 (1), 12-53-103 (2) (e), 12-59-115 (1), 12-60-112 (2), 33-4-101 (1), 33-12-104 (1), 35-33-403 (3), 35-55-104 (1), 37-91-107 (2) and (3), 38-38-101 (1) (b), 38-38-404 (1) (c), 38-39-102 (3) (b), 39-21-105 (4), 39-27-104 (2) (a), 39-27-204 (6), 39-28-105 (1), 42-6-113 (2), and 42-7-301 (6), C.R.S., may be satisfied by a savings account or deposit in or a certificate of deposit issued by a state or national bank doing business in this state or by a savings account or deposit in or a certificate of deposit issued by a state or federal savings and loan association doing business in this state. Such savings account, deposit, or certificate of deposit shall be in the amount specified by statute, if any, and shall be assigned to the appropriate state agency for the use of the people of the state of Colorado. The aggregate liability of the bank or savings and loan association shall in no event exceed the amount of the deposit. For the purposes of the sections referred to in this section, "bond" includes the savings account, deposit, or certificate of deposit
authorized by this section.

SECTION 28. 18-1-901 (3)(i)(v), Colorado Revised
Statutes, 1988 Repl. Vol., as amended, is amended to read:

18-1-901. Definitions. (3) (i) (v) "Peace officer,
level III," means a chief security officer for the general
assembly pursuant to section 2-2-402, C.R.S., a coroner,
investigator or such investigator's supervisor pursuant to
SECTION 12-6-101, C.R.S., the commissioner of agriculture or
his designate acting under the "Farm Products Act" or the
"Commodity Warehouse Act" pursuant to sections 12-16-114 and
12-16-210, C.R.S., or under the "Animal Protection Act"
pursuant to section 35-42-107 (4), C.R.S., a probation
officer, a juvenile probation officer pursuant to section
19-2-1002, C.R.S., a brand inspector pursuant to section
35-53-128, C.R.S., an employee of a district attorney's office
assigned to administer an offender diversion program, a
student loan investigator, an officer or member of the
Colorado national guard while acting under call of the
governor in cases of emergency or civil disorder, a member of
the public utilities commission, port of entry personnel
acting as peace officers pursuant to section 42-6-104, C.R.S.,
toll road owners acting as peace officers under section
43-3-104, C.R.S., or any other person designated as a peace
officer unless otherwise specified in this section as a level
I, level II, level III, or level IIIa peace officer. "Peace
officer, level III," has the authority to enforce all the laws
of the state of Colorado while acting within the scope of his
authority and in the performance of his duties.

SECTION 29. 24-34-104 (22) (i) (1), Colorado Revised
Statutes, 1988 Repl. Vol., is repealed as follows:
24-34-104. General assembly review of regulatory
agencies and functions for termination, continuation, or
reestablishment. (22) (i) The following functions of the
specified agencies shall terminate on July 1, 1992:
1. The motor-vehicle-dealer-licensing board and the
licensing of motor-vehicle-manufacturers, distributors,
factory—branches—distributor—branches—factory
representatives, and distributor representatives, through the
effective director of the department of revenue in accordance
with part 1 of article 6 of title 24, C.R.S.
SECTION 30. 24-34-104 (27), Colorado Revised Statutes,
1988 Repl. Vol., is amended to read:
24-34-104. General assembly review of regulatory
agencies and functions for termination, continuation, or
reestablishment. (27) (a) The following boards in the
division of registrations shall terminate on July 1, 1998:
(4) (i) The Colorado state board of examiners of
architects, created by article 4 of title 12, C.R.S.;
(4) (ii) The state electrical board, created by article
23 of title 12, C.R.S.;
(4) (iii) The examining board of plumbers, created by
article 58 of title 12, C.R.S.;
(b) The following board and functions of the specified agencies shall terminate on July 1, 1992:

(i) The motor vehicle dealer board;

(ii) The licensing functions of the executive director of the department of revenue for the licensing of buyer representatives, distributors, distributor branches, distributor representatives, factory branches, factory representatives, manufacturers, motor vehicle dealers, used motor vehicle dealers, and wholesalers and the registration function of the executive director for the registering of motor vehicle salespersons, in accordance with part 1 of article 6 of title 12, C.R.S.

Section 31. Effective date. This act shall take effect July 1, 1992.

Section 32. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.
SUNRISE/SUNSET BILL I

A BILL FOR AN ACT
CONCERNING NOTARIES PUBLIC, AND, IN CONNECTION THERewith,
CONTINUING THE REGULATORY AUTHORITY OF THE SECRETARY OF
STATE WITH RESPECT THERETO.

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

Prohibits notaries public from notarizing blank documents. Abolishes the requirement that applicants for commissions as notaries public acquire surety bonds as a condition for appointment and replaces such requirement with a notary public recovery fund. Sets forth the procedures to receive payment from such recovery fund.

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

SECTION 1. 12-55-106, Colorado Revised Statutes, 1991, is amended to read:
12-55-106. Notary public recovery fund - creation - procedures for payment. Every applicant for appointment and commission as a notary public shall submit to the secretary of state, together with his application an executed bond covering his term of commission in the sum of five thousand dollars, with as surety thereon, a company qualified to write surety bonds in this state. The bond shall be conditioned upon the faithful performance of all notarial acts in accordance with this article. (1) THERE IS HEREBY CREATED IN THE OFFICE OF THE STATE TREASURER A NOTARY PUBLIC RECOVERY FUND, REFERRED TO IN THIS SECTION AS THE "FUND", WHICH SHALL BE DEPOSITED IN AN INTEREST-BEARING ACCOUNT AND WHICH SHALL BE USED UNDER THE DIRECTION OF THE SECRETARY OF STATE IN THE MANNER PRESCRIBED IN THIS SECTION. INTEREST ACCRUED TO THE FUND SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED TO THE GENERAL FUND.
(2) BEFORE A NOTARY PUBLIC IS APPOINTED AND COMMISSIONED PURSUANT TO THIS PART 1 OR ANY SUCH NOTARIAL COMMISSION IS RENEWED, EACH APPLICANT SHALL AT THE TIME OF ANY SUCH APPLICATION PAY A FEE OF FIVE DOLLARS IN ADDITION TO THE FEE COLLECTED PURSUANT TO SECTION 24-21-104, C.R.S., FOR DEPOSIT IN THE FUND CREATED BY SUBSECTION (1) OF THIS SECTION.
(3) WHENEVER THE BALANCE IN THE FUND ON JANUARY 1 IS LESS THAN FIFTY THOUSAND DOLLARS, AN ASSESSMENT SHALL BE MADE BY THE SECRETARY OF STATE AND COLLECTED FROM EACH NOTARY PUBLIC IN THE AMOUNT NECESSARY TO INCREASE THE FUND TO FIFTY THOUSAND DOLLARS. THE SECRETARY OF STATE SHALL SUMMARILY REVOKE THE COMMISSION OF ANY NOTARY PUBLIC FAILING TO PAY ANY SUCH ASSESSMENT WITHIN THIRTY DAYS AFTER BEING BILLED BY THE SECRETARY OF STATE THEREFOR. ANY NOTARY PUBLIC COMMISSION
REVOKED PURSUANT TO THIS SUBSECTION (3) MAY BE REINSTATED BY
PAYING THE ASSESSMENT REQUIRED BY THIS SUBSECTION (3) WITHIN
SIXTY DAYS OF NOTIFICATION OF REVOCATION.

(4) WHEN ANY PERSON WHO HAS USED THE SERVICES OF A
NOTARY PUBLIC OBTAINS A FINAL JUDGMENT IN ANY COURT OF
COMPETENT JURISDICTION, INCLUDING THE SMALL CLAIMS COURT,
AGAINST ANY SUCH NOTARY PUBLIC ON THE GROUNDS OF THE FAILURE
OF SUCH NOTARY PUBLIC TO FAITHFULLY PERFORM NOTARIAL ACTS AS
REQUIRED BY THIS PART 1 OR AS OTHERWISE REQUIRED BY LAW, ANY
SUCH PERSON, UPON TERMINATION OF ALL PROCEEDINGS INCLUDING
APPEALS, MAY FILE A VERIFIED APPLICATION IN THE COURT IN WHICH
THE JUDGMENT WAS ENTERED FOR AN ORDER DIRECTING PAYMENT OUT OF
THE FUND OF THE AMOUNT OF ACTUAL AND DIRECT LOSS, EXCLUDING
LOSS FOR PAIN AND SUFFERING OR MENTAL ANGUISH, IN SUCH
TRANSACTION, INCLUDING COURT COSTS AND REASONABLE ATTORNEY
FEES NOT TO EXCEED FIVE THOUSAND DOLLARS. NO PERSON MAY APPLY
FOR RECOVERY FROM THE FUND FOR A CLAIM COVERED BY ANY BOND IN
EFFECT FOR ACTS PRIOR TO JULY 1, 1992.

(5) IF THE MAXIMUM LIABILITY OF THE FUND IS INSUFFICIENT
TO PAY IN FULL THE VALID CLAIMS OF ALL AGGRIEVED PERSONS BY
WHOM CLAIMS HAVE BEEN FILED AGAINST ANY ONE NOTARY PUBLIC,
SUCH MAXIMUM LIABILITY SHALL BE DISTRIBUTED AMONG SUCH
AGGRIEVED PERSONS IN A RATIO THAT THEIR RESPECTIVE CLAIMS BEAR
TO THE AGGREGATE OF SUCH VALID CLAIMS OR IN SUCH OTHER MANNER
AS A COURT OF COMPETENT JURISDICTION MAY DEEM EQUITABLE.
DISTRIBUTION OF SUCH MONEYS SHALL BE AMONG THE PERSONS
ENTITLED TO SHARE THEREIN WITHOUT REGARD TO THE ORDER OF
PRIORITY IN WHICH THEIR RESPECTIVE JUDGMENTS MAY HAVE BEEN
OBTAINED OR THEIR CLAIMS MAY HAVE BEEN FILED. UPON PETITION
OF THE SECRETARY OF STATE, THE COURT MAY REQUIRE ALL CLAIMANTS
AND PROSPECTIVE CLAIMANTS AGAINST ONE NOTARY PUBLIC TO BE
JOINED IN ONE ACTION SO THAT ALL CLAIMS MAY BE DETERMINED
EQUITABLY AND SETTLED.

(6) NO ORDER FOR PAYMENT FROM THE FUND SHALL BE ISSUED
UNLESS THE SUIT FROM WHICH SUCH ORDER SUBSEQUENTLY RESULTS WAS
COMMENCED WITHIN ONE YEAR AFTER THE ACT OCCURRED WHICH IS THE
BASIS OF THE LAWSUIT. WHEN ANY PERSON COMMENCES AN ACTION FOR
A JUDGMENT WHICH MAY RESULT IN AN ORDER FOR PAYMENT FROM THE
FUND, THE PERSON SHALL NOTIFY THE SECRETARY OF STATE IN
WRITING AT THE COMMENCEMENT OF THE ACTION. THE SECRETARY OF
STATE, IN SUCH SECRETARY'S DISCRETION, MAY BE DECLARED A PARTY
IN ANY SUCH ACTION, BUT SHALL NOT BE DECLARED A JUDGMENT
DEBTOR WHEN MADE A PARTY TO OR A DEFENDANT IN ANY SUCH ACTION.

(7) (a) ANY NOTARY PUBLIC WHO IS COMMISSIONED OR RENEWS
SUCH COMMISSION UNDER THIS PART 1 ON OR AFTER JULY 1, 1992,
AND UPON WHOM PERSONAL SERVICE CANNOT BE MADE WITH REASONABLE
DILIGENCE SHALL BE DEEMED TO HAVE APPOINTED THE SECRETARY OF
STATE AS AGENT FOR SERVICE OF PROCESS FOR PURPOSES OF ACTIONS
FILED AGAINST THE NOTARY PUBLIC PURSUANT TO THIS PART 1.
SERVICE OF PROCESS PURSUANT TO THIS SECTION SHALL BE MADE AS
NEARLY AS PRACTICABLE IN THE MANNER PRESCRIBED FOR SERVICE ON
CORPORATIONS.
(b) Any notary public who is commissioned or renews such commission under this Part 1 on and after July 1, 1992, shall sign and file an irrevocable consent that suits and actions may be commenced against such notary public in the proper courts of any county in this state in which a cause of action may arise by the service of any process or pleading authorized by the laws of this state on the secretary of state. Such consent shall provide that such service of process or pleading on the secretary of state shall be held in all courts to be as valid and binding as if due service had been made upon the licensee in this state.

(8) The court shall conduct a hearing on any application for payment from the fund, and it may issue an order directing payment out of the fund as provided in subsection (4) of this section, subject to the limitations of said subsection (4), if the judgment creditor shows:

(a) That such judgment creditor is not a spouse of the judgment debtor or a person representing such spouse;

(b) That such judgment creditor is applying not more than one year after the termination of all proceedings, including appeals, in connection with the judgment;

(c) That the judgment debtor refuses for any reason to pay all or part of the judgment against such judgment debtor.

(9) Upon a final order of the court directing that payment be made out of the fund, the controller is authorized to draw a warrant for the payment of the same upon a voucher approved by the secretary of state, and the state treasurer is authorized to pay the same out of the fund.

(10) No application for payment out of the recovery fund shall be granted by the court unless the secretary of state has been notified pursuant to subsection (6) of this section.

(11) If any payment from the fund is made in settlement of a claim or toward the satisfaction of a judgment pursuant to the provisions of this section, the notary public commission of the judgment debtor shall be automatically revoked upon the date of a final order by the court, as described in subsection (3) of this section. When a notary public commission is revoked pursuant to this subsection (11), the judgment debtor shall not be eligible to be commissioned again as a notary public until such person has repaid in full the amount paid from the fund with interest thereon of twelve percent per annum.

(12) When, upon order of any court of competent jurisdiction, the secretary of state has caused payment to be made from the fund to a judgment creditor, the secretary of state shall be subrogated to the rights of the judgment creditor with respect to the amount so paid.

(13) Up to an amount equal to ten percent of the payment to a judgment creditor may be drawn from the fund and expended by the secretary of state for the purpose of enforcing the rights of a particular judgment creditor to which the secretary of state is subrogated pursuant to this section.
(b) Any notary public who is commissioned or renews such commission under this Part 1 on and after July 1, 1992, shall sign and file an irrevocable consent that suits and actions may be commenced against such notary public in the proper courts of any county in this state in which a cause of action may arise by the service of any process or pleading authorized by the laws of this state on the secretary of state. Such consent shall provide that such service of process or pleading on the secretary of state shall be held in all courts to be as valid and binding as if due service had been made upon the licensee in this state.

(8) The court shall conduct a hearing on any application for payment from the fund, and it may issue an order directing payment out of the fund as provided in subsection (4) of this section, subject to the limitations of said subsection (4), if the judgment creditor shows:

(a) That such judgment creditor is not a spouse of the judgment debtor or a person representing such spouse;

(b) That such judgment creditor is applying not more than one year after the termination of all proceedings, including appeals, in connection with the judgment;

(c) That the judgment debtor refuses for any reason to pay all or part of the judgment against such judgment debtor.

(9) Upon a final order of the court directing that payment be made out of the fund, the controller is authorized to draw a warrant for the payment of the same upon a voucher approved by the secretary of state, and the state treasurer is authorized to pay the same out of the fund.

(10) No application for payment out of the recovery fund shall be granted by the court unless the secretary of state has been notified pursuant to subsection (6) of this section.

(11) If any payment from the fund is made in settlement of a claim or toward the satisfaction of a judgment pursuant to the provisions of this section, the notary public commission of the judgment debtor shall be automatically revoked upon the date of a final order by the court, as described in subsection (3) of this section. When a notary public commission is revoked pursuant to this subsection (11), the judgment debtor shall not be eligible to be commissioned again as a notary public until such person has repaid in full the amount paid from the fund with interest thereon of twelve percent per annum.

(12) When, upon order of any court of competent jurisdiction, the secretary of state has caused payment to be made from the fund to a judgment creditor, the secretary of state shall be subrogated to the rights of the judgment creditor with respect to the amount so paid.

(13) Up to an amount equal to ten percent of the payment to a judgment creditor may be drawn from the fund and expended by the secretary of state for the purpose of enforcing the rights of a particular judgment creditor to which the secretary of state is subrogated pursuant to this section.
SECTION 3. Effective date - applicability. This act shall take effect July 1, 1992, and shall apply to acts occurring on or after said date.

SECTION 9. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.
SUNRISE/SUNSET BILL L

A BILL FOR AN ACT
CONCERNING THE PRACTICE OF MIDWIFERY, AND, IN CONNECTION THERewith, PROVIDING FOR THE REGISTRATION OF MIDIVES WITHIN THE DIVISION OF REGISTRATIONS.

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

Decriminalizes the unlicensed practice of midwifery, by excluding it from the definition of the practice of medicine, while expressly not immunizing midwives from other civil or criminal liability. Requires registration of direct-entry ("lay") midwives with the division of registrations in the department of regulatory agencies, requires a midwife to disclose to patients the midwife's education, experience, and other qualifications. Establishes criminal penalties for violation of registration and disclosure requirements. Allows the director of the division of registrations to seek injunctions against persons violating the act's substantive provisions. Authorizes the charging of an annual fee to cover the cost of registration, contains "sunset" provisions.

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

SECTION 1. 12-36-106 (3) (a), (1) (e), (1) (r), and (3)
(n), Colorado Revised Statutes, 1991 suppl. Vol., are amended

1 to read:
2 12-36-106. Practice of medicine defined - exemptions from licensing requirements. (1) For the purpose of this article "practice of medicine" means:
3 (d) Using the title M.D., D.O., physician, surgeon, or any word or abbreviation to indicate or induce others to believe that one is licensed to practice medicine in this state and engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind, except as otherwise expressly permitted by the laws of this state enacted relating to the practice of any limited field of the healing arts; or
4 (e) Performing any kind of surgical operation upon a human being, or
5 (f) The practice of midwifery except services rendered by nurse-midwives licensed pursuant to article 28-224 of this title and certified by the American college of nurse-midwives.
6 (g) Nothing in this section shall be construed to prohibit or to require a license under this article with respect to any of the following acts:
7 (n) The rendering of services by a nurse-midwife certified by the American college of nurse-midwives, whose services are performed pursuant to the directions, supervision, and protocol of an identified and personally responsible physician and who is licensed pursuant to article 28-224 of this title and in accordance with the board.

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medical services of certified nurse-midwives shall be limited to those normally and routinely delivered by the supervisory physician or physicians. the practice of midwifery, subject to the conditions and limitations provided in article 37 of this title, which practice is hereby expressly declared not to constitute the practice of medicine; except that this paragraph (n) shall not be construed to immunize any person who practices midwifery from any civil or criminal liability;

section 2. article 37 of title 12, colorado revised statutes, 1991 repl. vol., is recreated and reenacted, with amendments, to read:

article 37

midwives

12-37-101. scope of article. the provisions of this article shall apply only to direct-entry midwives, also known as "lay" midwives, and shall not apply to those persons who are otherwise licensed by the state of colorado under this title if the practice of midwifery is within the scope of such licensure.

12-37-102. definitions. as used in this article, unless the context otherwise requires:

(1) "director" means the director of the division of registrations in the department of regulatory agencies.

(2) "midwife" means any person who practices or offers to practice midwifery within the scope of this article as set forth in section 12-37-101, whether or not for compensation.
REQUIRED TO OBTAIN SAID DEGREES, CERTIFICATES, OR CREDENTIALS;
(c) A LISTING OF ANY LICENSE, CERTIFICATE, OR REGISTRATION IN THE HEALTH CARE FIELD PREVIOUSLY HELD BY THE MIDWIFE AND REVOKED BY ANY LOCAL, STATE, OR NATIONAL HEALTH CARE AGENCY; AND
2. ANY CHANGES IN THE INFORMATION REQUIRED BY SUBSECTION (1) OF THIS SECTION SHALL BE REFLECTED IN THE MANDATORY DISCLOSURE WITHIN FIVE DAYS OF THE SAID CHANGE.


12-37-106. Director - powers and duties. (1) IN ADDITION TO ANY OTHER POWERS AND DUTIES CONFERRED ON THE DIRECTOR BY LAW, THE DIRECTOR HAS THE FOLLOWING POWERS AND DUTIES:
(a) TO ADOPT SUCH RULES AND REGULATIONS AS MAY BE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS ARTICLE;
(b) TO ESTABLISH THE FEES FOR REGISTRATION AND RENEWAL OF REGISTRATION IN THE MANNER AUTHORIZED BY SECTION 24-34-105, C.R.S.;
(c) TO ACCEPT APPLICATIONS FOR REGISTRATION WHICH MEET THE REQUIREMENTS SET FORTH IN THIS ARTICLE, AND TO COLLECT THE ANNUAL REGISTRATION FEES AUTHORIZED BY THIS ARTICLE;
(d) TO SEEK, THROUGH THE OFFICE OF THE ATTORNEY GENERAL, AN INJUNCTION IN ANY COURT OF COMPETENT JURISDICTION TO ENJOIN ANY PERSON FROM COMMITTING ANY ACT PROHIBITED BY THIS ARTICLE. WHEN SEEKING AN INJUNCTION UNDER THIS PARAGRAPH (d), THE DIRECTOR SHALL NOT BE REQUIRED TO ALLEGE OR PROVE THE INADEQUACY OF ANY REMEDY AT LAW OR THAT SUBSTANTIAL OR IRREPARABLE DAMAGE IS LIKELY TO RESULT FROM A CONTINUED VIOLATION OF THIS ARTICLE.

SECTION 3. 24-34-104 (27), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended to read: 24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (27) (a) The following boards in the division of registrations shall terminate on July 1, 1998:
(a) (I) The Colorado state board of examiners of architects, created by article 4 of title 12, C.R.S.;
(b) (II) The state electrical board, created by article 23 of title 12, C.R.S.;
(c) (III) The examining board of plumbers, created by article 58 of title 12, C.R.S.;
(b) THE FOLLOWING FUNCTION OF THE DIVISION OF
REGISTRATIONS SHALL TERMINATE ON JULY 1, 1998: THE REGISTERING
OF MIDWIVES IN ACCORDANCE WITH ARTICLE 37 OF TITLE 12, C.R.S.

SECTION 4. Effective date - applicability. This act shall take effect July 1, 1992, and shall apply to acts committed on or after said date.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.
A BILL FOR AN ACT
1 CONCERNING FINANCIAL PLANNERS, AND, IN CONNECTION THEREWITH,
2 REQUIRING THE REGISTRATION OF FINANCIAL PLANNERS WITH THE
3 SECURITIES COMMISSIONER.

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

Requires registration of financial planners with the securities commissioner. Defines “financial planner” as any person who advises others as to the value of securities or as to the advisability of investing, purchasing, or selling securities, or who professes to be a financial or investment planner, counselor, or consultant, subject to specific exceptions and qualifications. Requires registration of financial planner representatives, defined as employees or associates of a financial planner who provide investment advisory services on behalf of the planner. Exempts from the registration requirements any investment adviser who complies with the federal “Investment Advisers Act of 1940,” 15 U.S.C. 80b-3, and furnishes the securities commissioner with copies of all disclosures required under the federal act. Authorizes the securities commissioner to adopt rules and set fees relating to registration.

Prescribes conditions under which a financial planner or financial planner representative may handle funds or securities on behalf of clients. Requires segregation of client accounts, detailed recordkeeping, periodic reports and specific disclosures to clients, and periodic audits without prior notice. Authorizes the securities commissioner to examine records without prior notice. Inserts references to financial planners, financial planner representatives, and their respective registrations within existing substantive provisions relating to securities broker-dealers and sales representatives. Establishes civil penalties, including liability for costs and attorney fees, for violations of substantive provisions.

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

SECTION 1. 11-51-201, Colorado Revised Statutes, 1987

Repl. Vol., as amended, is amended by the addition of the following new subsections to read:

11-51-201. Definitions. As used in this article, unless the context otherwise requires:

(5.5) “Exempt Investment Adviser” means any person:

(a) registered, or exempt from registration other than by reason of section 203 (b) (1) of the federal “Investment Advisers Act of 1940,” 15 U.S.C. 80b-3 (b) (1), as an investment adviser, including any person employed by or otherwise directly associated with such a person; and

(b) who does not take possession of customer funds or securities; and

(c) who does not receive compensation, either directly or indirectly, from the purchase or sale of securities; and

(d) who does not offer or sell securities to any person to whom such person provides financial planning services.

(6.3) (a) “Financial planner” means, except as provided in paragraph (b) of this subsection (6.3), any person who:

(1) for compensation, engages in the business of
ADVISING OTHERS, EITHER DIRECTLY OR THROUGH PUBLICATIONS OR WRITINGS, AS TO THE VALUE OF SECURITIES OR AS TO THE ADVISABILITY OF INVESTING IN, PURCHASING, OR SELLING SECURITIES, OR WHO, AS PART OF A REGULAR BUSINESS, ISSUES OR PROMULGATES ANALYSES OR REPORTS CONCERNING SECURITIES; OR

(II) FOR COMPENSATION, ENGAGES IN THE BUSINESS OF PROVIDING OR OFFERING TO PROVIDE, DIRECTLY OR INDIRECTLY, FINANCIAL AND INVESTMENT COUNSELING OR ADVICE ON A GROUP OR INDIVIDUAL BASIS; OR

(III) FOR COMPENSATION, ENGAGES IN THE BUSINESS OF GATHERING INFORMATION RELATING TO INVESTMENTS, PROCESSING AND ANALYZING SUCH INFORMATION, AND, BASED THEREON, ESTABLISHING FINANCIAL GOALS AND OBJECTIVES AND RECOMMENDING A FINANCIAL PLAN; OR

(IV) HOLDS HIMSELF OR HERSELF OUT OR, IN THE CASE OF AN ENTITY, HOLDS ITSELF OUT AS AN INVESTMENT ADVISER OR FINANCIAL PLANNER IN ANY WAY, INCLUDING BY ADVERTISEMENT, CARD, OR LETTERHEAD, OR IN ANY OTHER MANNER INDICATES THAT SUCH PERSON IS A FINANCIAL OR INVESTMENT "PLANNER", "COUNSELOR", "CONSULTANT", OR ANY OTHER SIMILAR TYPE OF ADVISER OR CONSULTANT.

(b) THE TERM "FINANCIAL PLANNER" DOES NOT INCLUDE:

(I) A PUBLISHER OF ANY BONA FIDE NEWSPAPER, MAGAZINE, OR BUSINESS OR FINANCIAL PUBLICATION WITH A REGULAR AND PAID CIRCULATION; A PUBLISHER OF ANY SECURITIES ADVISORY NEWSLETTER WITH A REGULAR AND PAID CIRCULATION WHICH DOES NOT PROVIDE ADVICE TO SUBSCRIBERS ON THEIR SPECIFIC INVESTMENT SITUATIONS; OR ANY AUTHOR OF MATERIAL INCLUDED IN ANY SUCH NEWSPAPER, MAGAZINE, PUBLICATION, OR NEWSLETTER WHO DOES NOT OTHERWISE COME WITHIN THE DEFINITION OF A FINANCIAL PLANNER OR FINANCIAL PLANNER REPRESENTATIVE;

(II) A FINANCIAL PLANNER REPRESENTATIVE;

(III) A LICENSED BROKER-DEALER OR SALES REPRESENTATIVE, IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

(A) THE PERFORMANCE OF FINANCIAL PLANNING SERVICES BY SUCH PERSON IS SOLELY INCIDENTAL TO THE CONDUCT OF SUCH PERSON'S BUSINESS AS A BROKER-DEALER OR SALES REPRESENTATIVE; AND

(B) SUCH PERSON RECEIVES NO SPECIAL COMPENSATION FOR SUCH SERVICES; AND

(C) SUCH PERSON DOES NOT HOLD HIMSELF OR HERSELF OUT OR, IN THE CASE OF AN ENTITY, HOLD ITSELF OUT AS A FINANCIAL PLANNER WITHOUT, AT THE SAME TIME, DISCLOSING THAT SUCH PERSON IS ENGAGED IN THE BUSINESS OF EFFECTING TRANSACTIONS FOR THE PURCHASE OR SALE OF SECURITIES;

(IV) A DEPOSITORY INSTITUTION OR ANY PERSON EMPLOYED BY OR DIRECTLY ASSOCIATED WITH A DEPOSITORY INSTITUTION;

(V) A LAWYER, ACCOUNTANT, ENGINEER, OR TEACHER, IF SUCH PERSON:

(A) DOES NOT TAKE POSSESSION OF CLIENT FUNDS OR SECURITIES INCIDENTALLY TO PROVIDING FINANCIAL PLANNING SERVICES; AND
(B) does not receive commissions or other compensation, directly or indirectly, from the sale of any security to any client to whom such person provides advice about the value or advisability of investing in such security; and

(C) does not engage in the business of advising clients as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, and provides such advice, if at all, in a manner solely incidental to the practice of the person's profession;

(VI) any official, employee, or representative of the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality thereof, acting in such person's official capacity on behalf of such entity.

(6.5) "financial planner representative" means any individual who is a partner, officer, or director of a financial planner, who occupies a similar status with or performs similar functions for a financial planner, or who is employed or otherwise associated with a financial planner, and who provides financial planning services directly to clients on behalf of the financial planner.

(6.7) "financial planning services" means those activities performed by a person in connection with such person's engaging in any of the activities enumerated in subparagraphs (I) to (III) of paragraph (a) of subsection (6.3) of this section and those activities performed by a person who holds himself or herself or, in the case of an entity, holds itself out as an investment adviser, financial planner, or similar type of adviser or consultant as enumerated in subparagraph (IV) of the said paragraph (a).

SECTION 2. 11-51-401, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

11-51-401. Licensing and financial planner registration requirements. (1) A person shall not transact business in this state as a broker-dealer or sales representative unless licensed or exempt from licensing under section 11-51-402. (1.5) A person shall not transact business in this state as a financial planner or financial planner representative unless registered or exempt from registration under section 11-51-402.5. For the purpose of this subsection (1.5), transacting business in this state includes engaging in any of the activities enumerated in section 11-51-201 (6.3) (a) - (I) to (6.3) (a) (III) or holding oneself out as an investment adviser, financial planner, or similar type of adviser or consultant as enumerated in section 11-51-201 (6.3) (a) (IV) whenever the said activities are engaged in, or the holding out occurs, within the state regardless of whether any person to whom services are provided or to whom such holding out is made is physically present within the state, and includes engaging in the said activities or so holding oneself out whenever any person to whom services are provided or to whom such holding out is made is physically present within the state, and includes
STATE.

(2) Neither a broker-dealer nor an issuer shall employ or otherwise engage an individual to act as a sales representative in this state unless the sales representative is licensed or exempt from licensing under section 11-51-402.

(2.5) A FINANCIAL PLANNER SHALL NOT EMPLOY OR OTHERWISE ENGAGE ANY PERSON TO ACT AS A FINANCIAL PLANNER REPRESENTATIVE IN THIS STATE UNLESS SUCH PERSON IS REGISTERED IN ACCORDANCE WITH SECTION 11-51-403.5.

(3) Neither a broker-dealer, FINANCIAL PLANNER, EXEMPT INVESTMENT ADVISER, nor an issuer shall employ or otherwise engage a person to participate in any activity in this state contrary to an order by the securities commissioner applicable to that person under section 11-51-410. A broker-dealer, FINANCIAL PLANNER, EXEMPT INVESTMENT ADVISER, or issuer does not violate this subsection (3) if the broker-dealer, FINANCIAL PLANNER, EXEMPT INVESTMENT ADVISER, or issuer sustains the burden of proof that it did not know and in the exercise of reasonable care could not have known of the order. Upon request from a broker-dealer, FINANCIAL PLANNER, INVESTMENT ADVISER, or issuer and for good cause shown, the securities commissioner may waive the prohibition of this subsection (3) with respect to a person subject to an order under section 11-51-410.

SECTION 3. Part 4 of article 51 of title 11, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended by the addition of the following new sections to read:

11-51-402.5. Persons exempt from registration requirements. (1) THE FOLLOWING PERSONS ARE EXEMPT FROM THE FINANCIAL PLANNER AND FINANCIAL PLANNER REPRESENTATIVE REGISTRATION REQUIREMENTS OF SECTION 11-51-401:

(a) AN EXEMPT INVESTMENT ADVISER, OR ANY PERSON EMPLOYED BY OR OTHERWISE DIRECTLY ASSOCIATED WITH AN EXEMPT INVESTMENT ADVISER, IF:

(1) THE EXEMPT INVESTMENT ADVISER AND ANY SUCH PERSON COMPLY WITH THE REQUIREMENTS OF THE FEDERAL "INVESTMENT ADVISERS ACT OF 1940" FOR DISCLOSURE OF INFORMATION TO CLIENTS; AND

(II) THE EXEMPT INVESTMENT ADVISER AND ANY SUCH PERSON PROMPTLY FILE WITH THE SECURITIES COMMISSIONER TRUE COPIES OF ALL DOCUMENTS REQUIRED TO BE FILED AND IN FACT FILED BY THEM WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO THE FEDERAL "INVESTMENT ADVISERS ACT OF 1940";

(b) ANY OTHER PERSON DESIGNATED BY THE SECURITIES COMMISSIONER, PURSUANT TO RULE OR ORDER, AS NOT BEING WITHIN THE INTENT OF THIS ARTICLE.

11-51-403.5. Registration of financial planners and financial planner representatives. (1) AN APPLICANT FOR REGISTRATION AS A FINANCIAL PLANNER OR FINANCIAL PLANNER REPRESENTATIVE SHALL FILE WITH THE SECURITIES COMMISSIONER AN APPLICATION FOR REGISTRATION AND THE CONSENT TO SERVICE OF PROCESS REQUIRED BY SECTION 11-51-706.
THE APPLICATION SHALL CONTAIN SUCH INFORMATION AND SHALL BE IN SUCH FORM AS IS PRESCRIBED BY THE SECURITIES COMMISSIONER BY RULE.

IF THE INFORMATION CONTAINED IN THE APPLICATION IS INACCURATE OR INCOMPLETE IN ANY MATERIAL RESPECT WHEN FILED, OR BECOMES INACCURATE OR INCOMPLETE IN ANY MATERIAL RESPECT AS A RESULT OF ANY SUBSEQUENT EVENT, THE APPLICANT SHALL PROMPTLY FILE AN AMENDMENT TO THE APPLICATION TO CURE THE INACCURACY OR OMISSION. THE SECURITIES COMMISSIONER MAY REQUIRE AN APPLICANT TO SUBMIT ADDITIONAL RELEVANT INFORMATION, AND THE APPLICATION SHALL BE DEEMED INCOMPLETE UNTIL ALL SUCH ADDITIONAL INFORMATION HAS BEEN SUBMITTED.

SECTION 4. 11-51-404, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

11-51-404. License and registration fees. (1) An applicant for a license as a broker-dealer or sales representative shall pay an initial license fee and a licensed person shall pay an annual license fee which shall be determined and collected pursuant to section 11-51-707; except that no such license fee for a sales representative shall be more than twenty-five dollars.

(1.5) AN APPLICANT FOR REGISTRATION AS A FINANCIAL PLANNER OR FINANCIAL PLANNER REPRESENTATIVE SHALL PAY AN INITIAL REGISTRATION FEE, AND A REGISTERED FINANCIAL PLANNER OR FINANCIAL PLANNER REPRESENTATIVE SHALL PAY AN ANNUAL FEE, WHICH SHALL BE DETERMINED AND COLLECTED IN ACCORDANCE WITH

SECTION 11-51-707.

(2) If an initial license OR REGISTRATION fee is not paid within ninety days after the application is filed, the securities commissioner may deem the application to be withdrawn.

(3) (a) If an annual license OR REGISTRATION fee is not paid within thirty days after the securities commissioner sends a written notice that the fee was not paid when due, the amount of the annual license OR REGISTRATION fee shall be double the amount originally payable. In the case of a sales representative, written notice will be deemed sent to the sales representative when the notice is sent to a broker-dealer or an issuer for whom the sales representative is licensed to act. IN THE CASE OF A FINANCIAL PLANNER REPRESENTATIVE, NOTICE WILL BE DEEMED SENT TO THE FINANCIAL PLANNER REPRESENTATIVE WHEN THE NOTICE IS SENT TO A FINANCIAL PLANNER WITH WHOM THE REPRESENTATIVE IS EMPLOYED OR OTHERWISE ASSOCIATED.

(b) If an annual license OR REGISTRATION fee is not paid within sixty days after the securities commissioner sends the written notice described in paragraph (a) of this subsection (3), the securities commissioner may by order summarily suspend the license OR REGISTRATION. The securities commissioner shall send a copy of the order to the broker-dealer whose license has been summarily suspended, or TO THE FINANCIAL PLANNER WHOSE REGISTRATION HAS BEEN SUMMARILY
SUSPENDED, in the case of a sales representative who has been licensed to act for a broker-dealer or an issuer and whose license has been summarily suspended, to a broker-dealer or an issuer for whom the sales representative has been licensed to act, OR, IN THE CASE OF A FINANCIAL PLANNER REPRESENTATIVE WHOSE REGISTRATION HAS BEEN SUMMARILY SUSPENDED AND WHO IS EMPLOYED BY OR OTHERWISE ASSOCIATED WITH A FINANCIAL PLANNER, TO THE SAID FINANCIAL PLANNER. IF the annual license OR REGISTRATION fee is not paid within thirty days after the effective date of the summary suspension, the securities commissioner may by order summarily revoke the license OR REGISTRATION on the grounds that the license OR REGISTRATION has been abandoned.

(4) If an application is denied or withdrawn, or a license OR REGISTRATION is abandoned, revoked, suspended, or withdrawn, the securities commissioner shall retain all fees paid.

SECTION 5. 11-51-406, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

11-51-406. General provisions. (1) (a) Unless a proceeding under section 11-51-410 is instituted, the license of a broker-dealer or sales representative OR THE REGISTRATION OF A FINANCIAL PLANNER REPRESENTATIVE becomes effective upon the last to occur of the following:

(I) The passage of thirty days after the filing of the application or, in the event any amendment is filed before the

license OR REGISTRATION becomes effective, the passage of thirty days after the filing of the latest amendment, if the application, including all amendments, if any, was complete at the commencement of the thirty-day period;

(II) IN THE CASE OF A SALES REPRESENTATIVE, the examination requirement under section 11-51-405 is satisfied;

(III) IN THE CASE OF A BROKER-DEALER, the requirements of section 11-51-407 are satisfied; and

(IV) The required fee has been paid.

(b) The securities commissioner may authorize an earlier effective date of licensing OR REGISTRATION.

(2) The securities commissioner may by rule or order, waive or reduce any of the requirements of this section and sections 11-51-405 and 11-51-407 with respect to any person or class of persons and, in connection with the waiver or reduction of any requirement, may limit or impose conditions on the securities activities that such person or class of persons may conduct in this state.

(3) The license of a sales representative is effective only with respect to actions taken for a broker-dealer or issuer for whom the sales representative is licensed. THE REGISTRATION OF A FINANCIAL PLANNER REPRESENTATIVE IS EFFECTIVE ONLY WITH RESPECT TO ACTIONS TAKEN FOR A FINANCIAL PLANNER WITH WHOM SUCH FINANCIAL PLANNER REPRESENTATIVE IS EMPLOYED OR OTHERWISE ASSOCIATED.

(4) A person may act as a sales representative for more
than one broker-dealer or issuer. A FINANCIAL PLANNER REPRESENTATIVE MAY ACT ON BEHALF OF MORE THAN ONE FINANCIAL PLANNER.

(5) If a licensed sales representative ceases to be employed or otherwise engaged by a broker-dealer or issuer or ceases to act as a sales representative, the broker-dealer or, in the case of a sales representative licensed to act for an issuer, the sales representative shall promptly notify the securities commissioner. A notification required by this subsection (5) may be given by a broker-dealer who is registered as a broker-dealer under the federal "Securities Exchange Act of 1934" by filing the information through the central registration depository.

(5.5) IF A REGISTERED FINANCIAL PLANNER REPRESENTATIVE CEASES TO BE EMPLOYED OR OTHERWISE ASSOCIATED WITH A FINANCIAL PLANNER OR BROKER-DEALER, SAID FINANCIAL PLANNER OR BROKER-DEALER SHALL PROMPTLY NOTIFY THE SECURITIES COMMISSIONER.

(6) The license of a broker-dealer or sales representative AND THE REGISTRATION OF A FINANCIAL PLANNER OR FINANCIAL PLANNER REPRESENTATIVE is effective until terminated by revocation or withdrawal.

SECTION 6. 11-51-407 (3), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended, and the said 11-51-407 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

11-51-407. Operating requirements. (3) Every licensed broker-dealer, and every licensed sales representative, EVERY REGISTERED FINANCIAL PLANNER, AND EVERY REGISTERED FINANCIAL PLANNER REPRESENTATIVE shall file with the securities commissioner such information as may be necessary to correct any information in that person's application for license OR REGISTRATION which is or has become inaccurate in any material respect. The requirements of this subsection (3) may be satisfied by a broker-dealer who is registered as a broker-dealer under the federal "Securities Exchange Act of 1934" or by a sales representative licensed to act for such a broker-dealer by filing the correcting information through the central registration depository.

(5) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (5), NO PERSON WHO IS A FINANCIAL PLANNER OR FINANCIAL PLANNER REPRESENTATIVE SHALL TAKE OR MAINTAIN CUSTODY OR POSSESSION OF ANY FUNDS OR SECURITIES IN WHICH ANY CLIENT OF SUCH PERSON HAS ANY BENEFICIAL INTEREST UNLESS SUCH PERSON AT ALL TIMES MAINTAINS SUCH FUNDS OR SECURITIES AND

(1) ALL SUCH SECURITIES OF EACH CLIENT SHALL BE SEGREGATED, MARKED TO IDENTIFY THE PARTICULAR CLIENT WITH ANY

BENEFICIAL INTEREST THEREIN, AND HELD IN SAFEKEEPING IN SOME PLACE REASONABLY FREE FROM RISK OF LOSS, DAMAGE, OR DESTRUCTION.

(II) (A) ALL SUCH FUNDS SHALL BE DEPOSITED IN ONE OR
MORE ACCOUNTS, CONTAINING ONLY CLIENTS' FUNDS, AT A DEPOSITORY
INSTITUTION; AND

(B) EACH SUCH ACCOUNT SHALL BE MAINTAINED IN THE NAME OF
THE FINANCIAL PLANNER AS AGENT OR TRUSTEE FOR SUCH CLIENTS;

AND

(C) THE FINANCIAL PLANNER SHALL MAINTAIN A SEPARATE
RECORD FOR EACH SUCH ACCOUNT WHICH SHOWS THE NAME AND ADDRESS
OF THE DEPOSITORY INSTITUTION WHERE THE ACCOUNT IS MAINTAINED,
THE DATES AND AMOUNTS OF DEPOSITS TO AND WITHDRAWALS FROM THE
ACCOUNT, AND THE EXACT AMOUNT OF THE CLIENT'S BENEFICIAL
INTEREST IN THE ACCOUNT.

(III) THE FINANCIAL PLANNER OR FINANCIAL PLANNER
REPRESENTATIVE, IMMEDIATELY AFTER ACCEPTING CUSTODY OR
POSSESSION OF SUCH FUNDS OR SECURITIES FROM ANY CLIENT, SHALL
NOTIFY THE CLIENT IN WRITING OF THE PLACE AND MANNER IN WHICH
SUCH FUNDS OR SECURITIES WILL BE MAINTAINED, AND THEREAFTER,
IF AND WHEN THERE IS ANY CHANGE IN THE SAID PLACE OR MANNER,
SHALL GIVE THE CLIENT WRITTEN NOTICE OF SUCH CHANGE.

(IV) THE FINANCIAL PLANNER SHALL SEND TO EACH CLIENT,
NOT LESS FREQUENTLY THAN ONCE EVERY THREE MONTHS, AN ITEMIZED
STATEMENT SHOWING THE FUNDS AND SECURITIES IN THE CUSTODY OR
POSSESSION OF THE FINANCIAL PLANNER OR FINANCIAL PLANNER
REPRESENTATIVE AT THE END OF SUCH PERIOD, AND ALL DEBITS,
CREDITS, AND TRANSACTIONS AFFECTING SUCH FUNDS AND SECURITIES
DURING SUCH PERIOD.

(V) ALL SUCH FUNDS AND SECURITIES OF CLIENTS MUST BE

VERIFIED BY ACTUAL EXAMINATION AT LEAST ONCE DURING EACH
CALENDAR YEAR BY A CERTIFIED PUBLIC ACCOUNTANT AT A TIME
CHosen BY SUCH ACCOUNTANT WITHOUT PRIOR NOTICE TO THE
FINANCIAL PLANNER OR FINANCIAL PLANNER REPRESENTATIVE, A
CERTIFICATE OF SUCH ACCOUNTANT STATING THAT AN EXAMINATION OF
SUCH FUNDS AND SECURITIES HAS BEEN MADE, AND DESCRIBING THE
NATURE AND EXTENT OF THE EXAMINATION, SHALL BE FILED BY THE
FINANCIAL PLANNER WITH THE SECURITIES COMMISSIONER PROMPTLY
AFTER EACH EXAMINATION.

(b) PARAGRAPH (a) OF THIS SUBSECTION (5) DOES NOT APPLY
TO:

(I) A PERSON REGISTERED AS AN INVESTMENT ADVISER UNDER
THE FEDERAL "INVESTMENT ADVISERS ACT OF 1940" AND IN
COMPLIANCE WITH THE REQUIREMENTS OF SAID ACT AND ALL RULES AND
REGULATIONS PROMULGATED PURSUANT TO SAID ACT WITH REGARD TO
CUSTODY OR POSSESSION OF CUSTOMER FUNDS OR SECURITIES; OR

(II) A LICENSED BROKER-DEALER WHO COMPLIES WITH ALL
REQUIREMENTS OF THIS ARTICLE APPLICABLE TO BROKER-DEALERS,
INCLUDING ALL RULES AND REGULATIONS OF THE SECURITIES
COMMISSIONER RELATING TO THE SAFEKEEPING OF FUNDS AND
SECURITIES OF CLIENTS.

SECTION 7. 11-51-408, Colorado Revised Statutes, 1987
Repl. Vol., as amended, is amended BY THE ADDITION OF THE
FOLLOWING NEW SUBSECTIONS to read:

11-51-408. Licensing and registration of successor
firms. (3) A REGISTERED FINANCIAL PLANNER MAY FILE AN

(4) IF A SUCCESSOR IS REGISTERED PURSUANT TO SUBSECTION (3) OF THIS SECTION, THE REGISTRATION OF EACH FINANCIAL PLANNER REPRESENTATIVE REGISTERED TO ACT FOR THE PREDECESSOR SHALL REMAIN EFFECTIVE AS A REGISTRATION TO ACT FOR THE SUCCESSOR WITHOUT A SEPARATE FILING OR PAYMENT OF A SEPARATE FEE.

SECTION 8. 11-51-409, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

11-51-409. Access to records. (5) THE SECURITIES COMMISSIONER, IN A MANNER REASONABLE UNDER THE CIRCUMSTANCES, MAY EXAMINE, WITHOUT NOTICE, THE RECORDS, WITHIN OR WITHOUT THIS STATE, OF A REGISTERED FINANCIAL PLANNER, EXEMPT INVESTMENT ADVISER DOING BUSINESS IN THIS STATE, OR FINANCIAL PLANNER REPRESENTATIVE WHICH ARE MADE AND MAINTAINED BY SUCH PERSON IN THE NORMAL COURSE OF PROVIDING FINANCIAL PLANNING SERVICES IN ORDER TO DETERMINE COMPLIANCE WITH THIS ARTICLE.

RECORDS MAY BE MADE AND MAINTAINED IN ANY FORM OF DATA STORAGE IF THEY ARE READILY ACCESSIBLE TO THE SECURITIES COMMISSIONER IN LEGIBLE FORM.

(6) THE SECURITIES COMMISSIONER, IN A MANNER REASONABLE UNDER THE CIRCUMSTANCES, MAY COPY RECORDS MADE AND MAINTAINED BY A REGISTERED FINANCIAL PLANNER, EXEMPT INVESTMENT ADVISER DOING BUSINESS IN THIS STATE, OR FINANCIAL PLANNER REPRESENTATIVE IN THE NORMAL COURSE OF PROVIDING FINANCIAL PLANNING SERVICES OR MAY REQUIRE SUCH PERSON AT SUCH PERSON'S EXPENSE, TO PROVIDE TRUE COPIES OF SUCH RECORDS TO THE SECURITIES COMMISSIONER.

SECTION 9. Part 4 of article 51 of title 11, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

11-51-409.5. Mandatory disclosure by financial planners and financial planner representatives. (1) EVERY FINANCIAL PLANNER AND FINANCIAL PLANNER REPRESENTATIVE REQUIRED TO BE REGISTERED UNDER THIS ARTICLE SHALL FURNISH TO EACH PROSPECTIVE CLIENT AND TO EACH CLIENT WHO IS TO RECEIVE FINANCIAL PLANNING SERVICES FROM SUCH PLANNER OR REPRESENTATIVE A WRITTEN DISCLOSURE STATEMENT CONTAINING THE INFORMATION REQUIRED TO BE FILED PURSUANT TO SECTION 11-51-403.

(2) THE DISCLOSURE STATEMENT DESCRIBED IN SUBSECTION (1) OF THIS SECTION SHALL BE DELIVERED TO THE CLIENT OR PROSPECTIVE CLIENT PRIOR TO THEIR INCURRING ANY OBLIGATION FOR
OR IN CONNECTION WITH THE FINANCIAL PLANNING SERVICES. IN
ADDITION, THE FINANCIAL PLANNER OR FINANCIAL PLANNER
REPRESENTATIVE SHALL ANNUALLY, WITHOUT CHARGE, DELIVER OR
OFFER IN WRITING TO DELIVER UPON WRITTEN REQUEST TO EACH
CLIENT A TRUE COPY OF THE MOST RECENT AVAILABLE DISCLOSURE
STATEMENT.

SECTION 10. The introductory portion to 11-51-410 (1)
and 11-51-410 (1)(a), (1)(d), (1)(e), (1)(f), (1)(i), (1)(j),
and (2), Colorado Revised Statutes, 1987 Repl. Vol., as
amended, are amended, and the said 11-51-410 (1) is further
amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

11-51-410. Denial, suspension, or revocation. (1) The
securities commissioner may by order deny an application for a
license OR REGISTRATION, suspend or revoke a license OR
REGISTRATION, censure a licensed OR REGISTERED person, limit
or impose conditions on the securities activities that a
licensed person may conduct OR THE FINANCIAL PLANNING SERVICES
THAT A REGISTERED PERSON MAY PERFORM in this state, and bar a
person from association with any licensed broker-dealer OR
FINANCIAL PLANNER in the conduct of its business in this state
in such capacities and for such period as the order specifies.
These sanctions may be imposed only if the securities
commissioner makes a finding, in addition to the findings
required by section 11-51-704 (2), that the applicant or
licensed OR REGISTERED person or, in the case of a
broker-dealer OR FINANCIAL PLANNER, a partner, officer,
director, person occupying a similar status or performing
similar functions, or person directly or indirectly
controlling the broker-dealer OR FINANCIAL PLANNER:

(a) Has filed an application for a license OR
REGISTRATION with the securities commissioner which, as of the
effective date of the license OR REGISTRATION or as of any
date after filing in the case of an order denying
effectiveness, was false or misleading as a result of an
untrue statement of a material fact or an omission to state a
material fact, unless the applicant sustains the burden of
proof that the applicant did not know and in the exercise of
reasonable care could not have known of the untruth or
omission;

(b) Has been found in a final degree IS CURRENTLY A
SUBJECT OF A TEMPORARY OR PERMANENT INJUNCTION issued by a
court of competent jurisdiction within the past five years, in
an action instituted by the securities commissioner, the
securities agency or administrator of another state or a
Canadian province or territory, the securities and exchange
commission, or the commodity futures trading commission, to
have BASED ON ALLEGATIONS THAT THE PERSON violated any
securities registration, OR broker-dealer, FINANCIAL PLANNER,
or similar license OR REGISTRATION requirement in any federal,
state, or provincial law or to have THAT THE PERSON engaged in
fraudulent conduct;

(e) Is currently the subject of an order of the
securities commissioner denying, suspending, or revoking the person's license as a broker-dealer or sales representative OR REGISTRATION AS A FINANCIAL PLANNER OR FINANCIAL PLANNER REPRESENTATIVE or barring the person from association with any licensed broker-dealer OR FINANCIAL PLANNER;

(f) Is currently the subject of any of the following orders issued within the past five years:

(I) An order by the securities agency or administrator of another state or a Canadian province or territory, entered after notice and opportunity for hearing and based upon fraudulent conduct, denying or revoking the person's license as a BROKER, DEALER, broker-dealer, sales representative, or investment adviser, FINANCIAL PLANNER, or FINANCIAL PLANNER REPRESENTATIVE, or the substantial equivalent of those terms, or suspending or barring the right of the person to be associated with a BROKER, DEALER, broker-dealer, INVESTMENT ADVISER, or FINANCIAL PLANNER;

(II) An order by the securities and exchange commission, entered after notice and opportunity for hearing, denying, suspending, or revoking the person's registration as a broker-dealer BROKER or DEALER under the federal "Securities Exchange Act of 1934" OR AS AN INVESTMENT ADVISER UNDER THE FEDERAL "INVESTMENT ADVISERS ACT OF 1940" or suspending or barring the right of the person to be associated with a broker-dealer BROKER, DEALER, or INVESTMENT ADVISER;

(III) An order by the commodity futures trading commission, entered after notice and opportunity for hearing, denying, suspending, or revoking registration under the federal "Commodity Exchange Act"; or

(IV) A suspension or expulsion from membership in or association with a member of a self-regulatory organization;

(I) Has failed reasonably to supervise, with a view to preventing violations of this article, another person who is subject to the person's supervision and who commits such a violation, but for the purpose of this paragraph (i) no person shall be deemed to have failed to supervise another person if there existed established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person and such person reasonably discharged the duties and obligations incumbent upon such person by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with; or

(j) Has ceased to do business as a broker-dealer, or sales representative, FINANCIAL PLANNER, or FINANCIAL PLANNER REPRESENTATIVE; OR

(k) IN THE CASE OF A FINANCIAL PLANNER OR FINANCIAL PLANNER REPRESENTATIVE, HAS WILLFULLY FAILED TO PROVIDE A CLIENT WITH THE WRITTEN DISCLOSURE STATEMENT REQUIRED UNDER SECTION 11-51-409.5.

(2) The securities commissioner may not begin a
proceeding under this section against any person more than
ninety days after a license has been issued to that person, OR
MORE THAN NINETY DAYS AFTER THE EFFECTIVE DATE OF A
REGISTRATION, on the basis of a fact or transaction which the
person shows was known to the securities commissioner when the
license was issued or when any prior license of the same class
was issued to that person OR WHEN THAT PERSON'S REGISTRATION
BECAUSE EFFECTIVE if such prior license or REGISTRATION was not
revoked on the basis, in whole or in part, of such fact or
transaction.

SECTION 11. 11-51-411, Colorado Revised Statutes, 1987
Repl. Vol., as amended, is amended to read:

11-51-411. Abandonment of license or registration. If a
licensed OR REGISTERED person has died or ceased to exist as a
legal entity, has been adjudicated incompetent, or cannot be
located by the securities commissioner after a reasonable
search, the securities commissioner may by order summarily
revoke the license OR REGISTRATION on the grounds that the
license OR REGISTRATION has been abandoned.

SECTION 12. 11-51-412, Colorado Revised Statutes, 1987
Repl. Vol., as amended, is amended to read:

11-51-412. Withdrawal. (1) An application for a license
OR REGISTRATION may be withdrawn without prejudice by the
applicant upon written notice to the securities commissioner
before the license OR REGISTRATION becomes effective unless a
proceeding under section 11-51-410 to deny the license OR
REGISTRATION is pending.

(2) Withdrawal from licensing as a broker-dealer or
sales representative OR FROM REGISTRATION AS A FINANCIAL
PLANNER OR FINANCIAL PLANNER REPRESENTATIVE becomes effective
thirty days after receipt by the securities commissioner of an
application to withdraw, or at such earlier time as the
securities commissioner may allow, unless:

(a) A proceeding under section 11-51-410 against the
licensed OR REGISTERED person is pending when the application
is filed or is instituted within thirty days thereafter; or

(b) Additional information regarding the application is
requested by the securities commissioner within thirty days
after the application is filed.

(3) If a proceeding is pending or instituted under
subsection (2) of this section, withdrawal becomes effective
at the time and upon the conditions the securities
commissioner by order determines. If additional information
is requested, withdrawal is effective thirty days after the
additional information is received by the securities
commissioner. If no proceeding is pending or instituted under
subsection (2) of this section and withdrawal becomes
effective, the securities commissioner may institute a
proceeding under section 11-51-410 within one year after
withdrawal became effective and enter an order as of the last
date on which licensing OR REGISTRATION was effective.

SECTION 13. 11-51-501, Colorado Revised Statutes, 1987
1 Repl. Vol., as amended, is amended to read:
2 11-51-501. Fraud and other prohibited conduct. (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:
3 (a) To employ any device, scheme, or artifice to defraud;
4 (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
5 (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.
6 (2) It is unlawful for any financial planner, financial planner representative, or exempt investment adviser, directly or indirectly:
7 (a) To employ any device, scheme, or artifice to defraud any client or prospective client;
8 (b) In any disclosure statement delivered to any client or prospective client pursuant to section 11-51-409.5, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
9 (c) To engage in any transaction, act, practice, or course of business which operates or would operate as a fraud
10 OR DECEIT UPON ANY CLIENT OR PROSPECTIVE CLIENT OR WHICH IS FRAUDULENT, DECEPTIVE, OR MANIPULATIVE.
11 (3) It is unlawful for any financial planner or financial planner representative acting as principal for such person's own account or on behalf of a third party to sell any investment, including but not limited to a security, to a client without disclosing in writing, before the completion of the transaction, the capacity in which the financial planner or financial planner representative is acting and without first obtaining the written consent of the client to such transaction.
12 (4) Subsections (2) and (3) of this section shall apply in all cases in which the proscribed conduct occurs within this state regardless of whether any client or prospective client is present within the state, and shall apply in all cases in which any client or prospective client is physically present within the state regardless of where the proscribed conduct occurs.
13 (5) Nothing in subsection (2) or (3) of this section shall relieve any financial planner, financial planner representative, or exempt investment adviser of any liability under subsection (1) of this section or under any other law.
14 Section 14. 11-51-503, Colorado Revised Statutes, 1987
15 Repl. Vol., as amended, is amended to read:
16 11-51-503. Unlawful representation concerning a license, registration as a financial planner, securities registration,
or exemption. (1) Neither the fact that an application for a license, REGISTRATION AS A FINANCIAL PLANNER OR FINANCIAL PLANNER REPRESENTATIVE, or a SECURITIES registration statement has been filed, nor the fact that a person is licensed OR REGISTERED or THAT a security is registered, constitutes a finding by the securities commissioner that any document filed under this article is true, complete, and not misleading. No such fact, nor the fact that an exemption or exception is available for a person, security, or transaction, means that the securities commissioner has passed in any way upon the merits or qualifications of, or has recommended or given approval to, any person, security, or transaction.

(2) It is unlawful to make, or cause to be made, to any prospective purchaser or to any existing or prospective customer or client any representation inconsistent with subsection (1) of this section.

SECTION 15. 11-51-602, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

11-51-602. Enforcement by injunction. (1) Whenever it appears to the securities commissioner upon sufficient evidence satisfactory to the securities commissioner that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule or order under this article, the securities commissioner may apply to the district court of the city and county of Denver to temporarily restrain or preliminarily or permanently enjoin the act or practice in question and to enforce compliance with this article or any rule or order under this article. If the action is against a broker-dealer, or sales representative, FINANCIAL PLANNER, FINANCIAL PLANNER REPRESENTATIVE, or EXEMPT INVESTMENT ADVISER and the court finds that the broker-dealer, or sales representative such person has committed a violation of section 11-51-501, in addition to any other relief the court may enter an order imposing such conditions on the broker-dealer or sales representative PERSON as the court deems appropriate. In any such action, the securities commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the securities commissioner to post a bond.

(2) The securities commissioner may include in any action authorized by subsection (1) of this section, relating to any violation of section 11-51-301, 11-51-401, 11-51-407 (5), 11-51-409.5, or 11-51-501, a claim for damages under section 11-51-604 or restitution, disgorgement, or other equitable relief on behalf of some or all of the persons injured by the act or practice constituting the subject matter of the action, if the applicable scienter standard of section 11-51-604 is met. No person shall be liable for damages or for restitution, disgorgement, or other equitable relief in any action authorized by subsection (1) of this section for a
violation of section 11-51-301 due solely to a failure to file
the prescribed notification of exemption or to pay the
required exemption fee for an exemption under section
11-51-308 (1) (p).

SECTION 16. 11-51-604 (3), (5), and (8), Colorado
Revised Statutes, 1987 Repl. Vol., as amended, are amended,
and the said 11-51-604 is further amended BY THE ADDITION OF
THE FOLLOWING NEW SUBSECTIONS, to read:

11-51-604. Civil liabilities. (2.5) ANY FINANCIAL
PLANNER OR FINANCIAL PLANNER REPRESENTATIVE WHO VIOLATES
SECTION 11-51-403.5 IS LIABLE TO EACH PERSON TO WHOM FINANCIAL
PLANNING SERVICES ARE PROVIDED IN VIOLATION OF SAID SECTION IN
AN AMOUNT EQUAL TO THE GREATER OF ONE THOUSAND DOLLARS OR THE
VALUE OF ALL BENEFITS DERIVED, DIRECTLY OR INDIRECTLY, FROM
THE RELATIONSHIP OR DEALINGS PRIOR TO SUCH TIME AS THE
VIOLATION MAY BE CURED, TOGETHER WITH INTEREST AT THE
STATUTORY RATE FROM THE DATE OF RECEIPT OF SUCH BENEFITS,
COSTS, AND REASONABLE ATTORNEY FEES.

(2.6) ANY FINANCIAL PLANNER OR FINANCIAL PLANNER
REPRESENTATIVE WHO PROVIDES FINANCIAL PLANNING SERVICES TO
ANOTHER PERSON BUT WHO FAILS TO FURNISH TO THAT PERSON A
WRITTEN DISCLOSURE STATEMENT AS REQUIRED BY SECTION
11-51-409.5 IS LIABLE TO SUCH OTHER PERSON IN AN AMOUNT EQUAL
TO THE GREATER OF ONE THOUSAND DOLLARS OR THE VALUE OF ALL
BENEFITS DERIVED, DIRECTLY OR INDIRECTLY, FROM THE
RELATIONSHIP OR DEALINGS AND FOR ACTUAL DAMAGES, INTEREST AT
THE STATUTORY RATE, COSTS, REASONABLE ATTORNEY FEES, OR SUCH
LEGAL OR EQUITABLE RELIEF THAT THE COURT DEEMS APPROPRIATE.

(3) Any person who recklessly, knowingly, or with an
intent to defraud sells or buys a security in violation of
section 11-51-501 (1) OR PROVIDES FINANCIAL PLANNING SERVICES
TO ANOTHER PERSON IN VIOLATION OF SECTION 11-51-501 (2) IS
LIABLE TO THE PERSON BUYING OR SELLING SUCH SECURITY OR
RECEIVING SUCH SERVICES IN CONNECTION WITH THE VIOLATION FOR
SUCH LEGAL OR EQUITABLE RELIEF WHICH THE COURT DEEMS
APPROPRIATE, INCLUDING RESCISSION, ACTUAL DAMAGES, INTEREST AT
THE STATUTORY RATE, COSTS, AND REASONABLE ATTORNEY FEES.

(4.5) ANY FINANCIAL PLANNER OR FINANCIAL PLANNER
REPRESENTATIVE WHO FAILS TO COMPLY WITH THE REQUIREMENTS OF
PARAGRAPH (a) OF SUBSECTION (5) OF SECTION 11-51-407, OR WHO
VIOLATES SUBSECTION (3) OF SECTION 11-51-501, IS LIABLE TO
EACH CLIENT WITH RESPECT TO WHOM SUCH VIOLATION WAS COMMITTED
IN AN AMOUNT EQUAL TO THE GREATER OF ONE THOUSAND DOLLARS OR
THE VALUE OF ALL BENEFITS DERIVED, DIRECTLY OR INDIRECTLY, BY
THE VIOLATOR FROM THE RELATIONSHIP OR DEALINGS WITH THE
CLIENT, TOGETHER WITH INTEREST AT THE STATUTORY RATE FROM THE
DATE OF RECEIPT, COSTS, AND REASONABLE ATTORNEY FEES.

(5) (a) Every person who, directly or indirectly,
controls a person liable under subsection (1), (2), (2.5),
OR (2.6) of this section is liable jointly and severally with
and to the same extent as such controlled person, unless the
controlling person sustains the burden of proof that such
person did not know, and in the exercise of reasonable care
could not have known, of the existence of the facts by reason
of which the liability is alleged to exist.

(b) Every person who, directly or indirectly, controls a
person liable under subsection (3), or (4), or (4.5) of this
section is liable jointly and severally with and to the same
extent as such controlled person, unless such controlling
person sustains the burden of proof that such person acted in
good faith and did not, directly or indirectly, induce the act
or acts constituting the violation or cause of action.

(c) Any person who knows that another person liable
under subsection (3), or (4), or (4.5) of this section is
engaged in conduct which constitutes a violation of section
11-51-501 and who gives substantial assistance to such conduct
is jointly and severally liable to the same extent as such
other person.

(d) No person may sue under subsection (1), or (2),
(2.5), or (2.6) or paragraph (a) of subsection (5) of this
section more than two years after the contract of sale, OR, AS
THOSE PROVISIONS PERTAIN TO FINANCIAL PLANNERS, FINANCIAL
PLANNER REPRESENTATIVES, AND FINANCIAL PLANNING SERVICES, MORE
THAN TWO YEARS AFTER THE DATE OF THE VIOLATION. No person may
sue under subsection (3), or (4), or (4.5) or paragraph (b) or
(c) of subsection (5) of this section more than three years
after the discovery of the facts giving rise to a cause of
action under subsection (3) or (4) of this section or after

such discovery should have been made by the exercise of
reasonable diligence and in no event more than five years
after the purchase or sale, OR, AS THOSE PROVISIONS PERTAIN TO
FINANCIAL PLANNERS, FINANCIAL PLANNER REPRESENTATIVES, AND
FINANCIAL PLANNING SERVICES, MORE THAN FIVE YEARS AFTER THE
DATE OF THE VIOLATION.

SECTION 17. Effective date - applicability. This act
shall take effect January 1, 1993, and shall apply to acts
committed on or after said date.

SECTION 18. Safety clause. The general assembly hereby
finds, determines, and declares that this act is necessary
for the immediate preservation of the public peace, health,
and safety.
SUNRISE/SUNSET BILL N

A BILL FOR AN ACT
CONCERNING THE VIOLATION OF THE "COLORADO CONSUMER PROTECTION
ACT" IN CONJUNCTION WITH THE SALE OF HEARING AIDS.

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Bill Summary

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

Excludes certain terms from the definition of "hearing aid" within the "Colorado Consumer Protection Act". Defines certain terms for purposes of specifying what a deceptive trade practice is with regard to the sale of hearing aids within the "Colorado Consumer Protection Act". Mandates that the receipt provided with the sale of a hearing aid contain certain specified information. Specifies what information the consumer must provide to a merchant when returning a hearing aid to adequately constitute a refund request. Provides that certain conduct on the part of the merchant in response to a complaint by a purchaser of a hearing aid shall automatically extend the period of time the consumer has to request a refund. Makes not responding to a consumer complaint in conjunction with the sale of a hearing aid a deceptive trade practice. Provides for criminal penalties for the violation of the "Colorado Consumer Protection Act" provisions on hearing aid sales.

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

SECTION 1. 6-1-105.5 (1) (b), (2) (a), (2) (e) (III), and (2) (f), Colorado Revised Statutes, as amended, are amended, and the said 6-1-105.5 (2) (e) is further amended by the addition of the following new subparagraphs, to read:

6-1-105.5. Hearing aid dealers - deceptive trade practices. (1) As used in this section, unless the context otherwise requires:

(b) (1) "Hearing aid" means any wearable instrument or device designed or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories thereto, including ear molds but excluding batteries and cords; EXCEPT THAT "HEARING AID" DOES NOT INCLUDE A "COCHLEAR IMPLANT" OR "COCHLEAR PROSTHESIS".

(II) "COCHLEAR IMPLANT" OR "COCHLEAR PROSTHESIS" MEANS AN ELECTRODE OR ELECTRODES SURGICALLY IMPLANTED IN THE COCHLEA WHICH ARE ATTACHED TO AN INDUCTION COIL BURIED UNDER THE SKIN NEAR THE EAR, AND THE ASSOCIATED UNIT WHICH IS WORN ON THE BODY.

(2) In addition to any other deceptive trade practices under section 6-1-105, a hearing aid dealer engages in a deceptive trade practice when he:

(a) Fails to deliver to each person supplied with a hearing aid a receipt which:

(1) Bears the business address of the hearing aid dealer together with specifications as to the make and serial number of the hearing aid furnished and the full terms of the sale clearly stated. If a hearing aid which is not new is sold, the container thereof and the receipt shall be clearly marked
as "used" or "reconditioned", whichever is applicable, within the terms of the guarantee, if any.

(II) Bears, in no smaller type than the largest used in the body portion of the receipt, in substance, a provision that the purchaser has been advised at the outset of his relationship with the hearing aid dealer that any examination or representation made by a hearing aid dealer in connection with the practice of dispensing, fitting, or dealing in hearing aids is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and, therefore, must not be regarded as medical opinion or advice.

(III) Bears, in no smaller type than the largest used in the body of the receipt, a provision indicating that consumer complaints may be filed with the attorney general's office or the office of the district attorney for the jurisdiction where the device was sold and the address and telephone number of the attorney general's office division where such complaints may be filed.

(IV) Bears a provision labeled "warranty" in which the exact warranty terms and periods available from the manufacturer are documented, or includes an original or photocopy of the original manufacturer's warranty with the receipt.

(V) Bears a provision stating which items are refundable and which are nonrefundable.

(e) Fails to provide a thirty-day rescission period with following terms:

(III) The seller shall provide a written receipt or contract to the buyer which includes, in immediate proximity to the space reserved for the signature of the buyer, or--on the first page if there is no space reserved for the signature of the buyer, the following specific statement in all capital letters of no less than ten-point bold-faced type: "THE BUYER HAS THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON AT ANY TIME PRIOR TO 12 MIDNIGHT OF THE 30TH CALENDAR DAY AFTER RECEIPT OF THE HEARING AID BY GIVING OR MAILING THE SELLER WRITTEN NOTICE OF CANCELLATION OR BY RETURNING THE HEARING AID."

(IV) The refund request form shall contain the information in subparagraph (I) of paragraph (a) of this subsection (2) and the statement, in all capital letters of no less than ten-point bold-faced type: "REFUND REQUEST - THIS FORM MUST BE POSTMARKED BY ________ (DATE TO BE FILLED IN). ARRANGEMENTS FOR RETURN OF DEVICE, IF NECESSARY, WILL BE MADE AT A LATER DATE BY THE SELLER." A space for the buyer's address, telephone number, and signature must be provided. The buyer will be required only to sign, list his current address and telephone number and mail the refund request form to the seller.

(V) Any conduct in response to a buyer's report of a problem with a hearing aid already delivered which would lend a reasonable person to believe that the problem with the
HEARING AID MIGHT OR WOULD BE RESOLVED TO THE BUYER'S SATISFACTION, OR ANY CONDUCT WHICH FAILS TO PROVIDE A MEANINGFUL CONTENT BASED RESPONSE TO THE BUYER'S REPORT OF A PROBLEM, SHALL HAVE THE EFFECT OF EXTENDING THE REFUND PERIOD BY AN ADDITIONAL THIRTY DAYS FROM THE DAY OF THE REPORT OF THE PROBLEM; OR FROM THE TIME PROPOSED FOR ANY ACTION TO BE TAKEN TO RESOLVE THE PROBLEM; OR FROM THE COMPLETION OF ANY ACTION TAKEN TO RESOLVE THE PROBLEM, WHICHERVER IS LATER.

(f) Represents that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true or using the terms "doctor", "clinic", "state-licensed clinic", "state-registered", "state-certified", or "state-approved" or any other term, abbreviation, or symbol when it would falsely give the impression that service is being provided by persons trained in medicine or that the hearing aid dealer's service has been recommended by the state when such is not the case; OR WHEN THAT WOULD BE FALSE OR MISLEADING.

SECTION 2. 6-1-105.5 (2), Colorado Revised Statutes, as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

6-1-105.5. Hearing aid dealers - deceptive trade practices. (2) (1) DOES NOT RESPOND IN A TIMELY MANNER OR EMPLOYS DELAYING TACTICS IN RESPONSE TO A BUYER'S REQUEST FOR A REFUND SO THAT THE BUYER'S RIGHT OF RESCISSION EXPIRES AND THE BUYER IS THEREBY EFFECTIVELY DENIED SUCH BUYER'S RIGHT TO A REFUND.

SECTION 3. 6-1-114, Colorado Revised Statutes, as amended, is amended to read:

6-1-114. Criminal penalties. (1) Any person who promotes a pyramid promotional scheme in this state, OR WHO VIOLATES ANY PROVISION OF 6-1-105.5 upon a first conviction, is guilty of a class 1 misdemeanor, as defined in section 18-1-106, C.R.S., and upon a second or subsequent conviction, is guilty of a class 6 felony, as defined in section 18-1-105, C.R.S.

(2) SUCH VIOLATIONS SHALL ALSO BE DEEMED A CLASS 1 PUBLIC NUISANCE SUBJECT TO THE PROVISIONS OF PART 3 OF ARTICLE 13 OF TITLE 16, C.R.S.

SECTION 4. Effective date - applicability. This act shall take effect July 1, 1992, and shall apply to acts occurring on and after said date.

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

Members of the Committee

Representative Jeanne Faatz,
Chairman
Senator Bonnie Allison,
Vice Chairman
Senator Al Meiklejohn
Senator Sam Cassidy
Representative Guillermo DeHerrera

Representative Lewis Entz
Mr. Peter Kenney
Mr. B. Douglas Quimby
Mr. William Ward
Ms. Jumetta Posey
Ms. Peggy Rector

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Dan Chapman
Principal Analyst II
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Kent Singer
Senior Staff Attorney
Mark Van Ness
Staff Attorney

Joan Uda
Staff Attorney
Helen Baldwin
Staff Attorney
## List of Bills

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The Highway Legislation Review Committee (HLRC) was created in 1953 (section 43-2-101, et seq., Colorado Revised Statutes). The legislation which created the HLRC also occurred in conjunction with the reorganization of the state highway system and its relationships to county and city road systems. The committee’s original charge was to review the implementation and impact of these new relationships. Committee members are appointed by the governor every five years and include six members of the General Assembly and five non-legislative members "from such highway advisory groups as the governor shall select" (section 43-2-145, C.R.S.).

The HLRC was reconstituted in 1986 to give guidance and direction to the state Department of Transportation "in the development of the state system of highways and to provide legislative overview of and input into such developments." This mandate included consultation with experts in highway construction and planning, review of the Department of Transportation operations and projects, review of department performance audits, and recommendations concerning the financing of roads and mass transit in the state.

The committee’s oversight responsibilities were expanded to include 1) statutory authority to review the activities of public highway authorities (section 43-4-501, C.R.S) in 1987; 2) statutory authority to review the Regional Transportation District’s (RTD) implementation of state mandated privatization (section 32-9-119.5 (8) (a), C.R.S.) in 1988; and 3) statutory authority to review the Colorado traffic laws and make recommendations to the General Assembly concerning the recodification of such laws as directed by House Bill 91-1106 (section 43-2-145.5, C.R.S.) in 1991.

In 1990, the General Assembly extended the HLRC indefinitely and required that the committee meet at least once each year. In 1991 the committee held six meetings and reviewed the following issues:

- Surface access to the new Denver International Airport;
- Sunset of state Special Bridge Fund statutes;
- The creation and study plans of an Advisory Committee on Traffic Law Recodification, pursuant to HB 91-1106;
- Statutorily required annual reports of the E-470 and W-470 Public Highway Authorities;
• The role of metropolitan planning organizations in regional transportation development;

• Highway access to Colorado towns with limited gaming facilities;

• Recommendations for legislation from the Department of Transportation, Department of Revenue (Division of Motor Vehicles), and the Colorado State Patrol;

• Status reports on the Federal Highway Reauthorization Act and its implications for highway funding in Colorado; and

• Incident management project updates from the Colorado Department of Transportation.

Concerning matters relating to RTD, the committee heard testimony regarding the following issues:

• A review of the most recent independent audit report concerning the privatization of RTD;

• An update on the discount token program;

• A proposal to upgrade the Radio and Automatic Vehicle Location System; and

• An update on RTD's planned Metro Area Connection (MAC) light rail line through downtown Denver.

Committee Recommendations

The following seven bills are recommended for consideration during the 1992 legislative session:

Special Bridge Fund — HLRC Bill A

• Bill A recommends the continuation of the Special Bridge Fund account, section 43-4-205 (6) (a), C.R.S., in the Highway Users Tax Fund for highway bridges. Revenues for the fund are raised by the excise tax imposed on gasoline and special fuels in excess of seven cents per gallon of tax. Of this amount, 16 percent is placed in the Special Bridge Fund account. The bill extends the sunset date for the depositing of revenue in the account set aside for highway bridge repair, replacement, or posting from June 30, 1992 to July 1, 1997. The committee received testimony from the state Department of Transportation, Colorado Counties Inc., and the Colorado Municipal League indicating that the
program had been successful in reducing the number of deficient bridges in the state. Extending the sunset date represents the committee's support for ongoing efforts under this program.

Transportation of Hazardous Materials — HLRC Bill B

- Bill B amends several sections of current law dealing with the transportation of hazardous materials:

  A) Amends sections 40-2.2-208 (1) and (2), C.R.S., to authorize the Chief of the Colorado State Patrol to adopt rules designating routes for the transportation of nuclear materials. This statute now authorizes the Executive Director of the Department of Transportation to adopt such rules. The State Patrol maintains it could easily incorporate this function into its operations because it now designates routes for hazardous materials. This portion of the bill has the approval of the Department of Transportation;

  B) Amends the definition of "hazardous substance incident," inserting new language to include incidents involving the potential for a spill prior to or during the cleanup period. This bill would grant a Designated Emergency Response Agency (DERA) the authority to respond to a motor vehicle accident prior to the discharge of a hazardous material. Under current law, a DERA has no authority at an accident scene unless a discharge has occurred. It is hoped that this proposal would increase the level of expertise at an accident scene and reduce the risk of a hazardous materials spill; and

  C) In addition, the bill makes other technical changes such as 1) repealing an obsolete section concerning the transportation of explosives and hazardous materials; 2) repealing the hazardous materials safety fund which was created for distribution during fiscal year 1990; 3) amending the penalty for violations section as to be more consistent with similar violations as found in section 18-1-106, C.R.S.; and 4) granting the Chief of the State Patrol the authority to promulgate the rules and regulations governing vehicles that transport hazardous materials.

Maximum Allowable Length for Vehicles — HLRC Bill C

- Bill C is designed to foster greater efficiency of truck travel in the state and to promote uniformity with regional and federal standards. Two of the changes increasing the allowable length of certain vehicles are supported by the Western Association of State Highway Transportation Officials (WASHTO). The bill will 1) increase the allowable length of single motor vehicles to 45 feet from 40 feet in order to gain uniformity with WASHTO member states; 2) increase the allowable length for saddlemount combinations to 75 feet from 70 feet to match that allowed by the Federal Highway Administration on federally designated
truck systems; and 3) include state highway C-470 in the designated system for Longer Combination Vehicles (LCV) in order to promote safer LCV traffic flows by diverting this traffic away from the core city.

**Prenegotiation Audits — HLRC Bill D**

- Bill D encourages cost and time savings on department projects by streamlining the prenegotiation audit process. The bill requires the Department of Transportation’s internal auditor to conduct external audits on persons entering into contracts with the department whenever such audits are deemed necessary and advisable by the department. The department will accomplish this by 1) establishing a $250,000 cost threshold at which point a prenegotiation audit would be performed and 2) conducting prenegotiation audits under this amount only after certain departmental conditions have been met.

**Authorization to Accept Late Payments — HLRC Bill E**

- Bill E authorizes the Motor Vehicle Division of the Department of Revenue to accept late payments for penalty assessments during a specified period (20 days) after such payments come due. Under current law, the department lacks the authority to make such collections which, according to a recent state audit report, have resulted in lost revenues, duplicative administrative tasks, and unnecessary court appearances.

**Licensing of Branch Offices - Commercial Driving Schools — HLRC Bill F**

- Bill F grants the Motor Vehicle Division of the Department of Revenue the statutory authority to require a separate application and an assessment of certification fees to individual branch offices of a commercial driving school prior to commencing operations. This bill responds to a recent state auditor’s report which determined that driving schools with multiple branch offices now pay the same certification fee as a school with a single office. The report concluded that non-certification of branch offices has resulted in the inequitable assessment of fees and lost revenues to the state.

**Classification of Commercial Vehicles — HLRC Bill G**

- Bill G grants Colorado interstate operators of heavy vehicles, now restricted as Class A vehicles, the option of registering as intrastate and obtaining trip permits for occasional interstate travel. Under current law (section 42-3-105, C.R.S.), all heavy vehicles based in Colorado which travel outside the state must register as Class A vehicles. This bill allows operators to chose between apportioning their vehicles as either Class A or Class B. The bill also defines "apportioned registration," "base jurisdiction," "commercial carrier," and "reciprocal agreement."
Materials Available

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

1) Highway Legislation Review Committee meeting summaries for the 1991 interim (June 6, July 2, July 23, August 20, October 8, and November 5).

2) Annual reports of the E-470 and W-470 Public Highway Authorities.


4) Department of Transportation report on the Federal Highway Reauthorization Act.

5) Audit report from KPMG Peat Marwick, Inc., concerning state mandated privatization of the Regional Transportation District.
CONCERNING THE CONTINUATION OF THE SPECIAL ACCOUNT IN THE HIGHWAY USERS TAX FUND FOR HIGHWAY BRIDGES.

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

Changes the sunset date for the depositing of revenue in the account set aside for highway bridge repair, replacement, or posting, from June 30, 1992, to July 1, 1997.

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

SECTION 1. 43-4-205 (6) (a) and (7) (b), Colorado Revised Statutes, 1984 Repl. Vol., as amended, are amended to read:

43-4-205. Allocation of fund. (6) (a) Sixteen percent of such revenue shall be deposited in a special account within the highway users tax fund until June 30, 1992, JULY 1, 1997, and shall be expended only for highway bridge repair, replacement, or posting, pursuant to provisions of paragraph (a) of subsection (7) of this section.

(7) (b) Not later than June 30, 1992, JULY 1, 1997, the general assembly shall review the needs of this state for highway bridge repair, replacement, or posting, and shall determine if the fund, as provided in paragraph (a) of subsection (6) of this section, should be continued. If said fund is not continued, the balance of revenues in said fund shall be allocated in accordance with the provisions of paragraph (b) of subsection (6) of this section.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.
A BILL FOR AN ACT

CONCERNING THE TRANSPORTATION OF HAZARDOUS MATERIALS.

Bill Summary

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

Expands the statutory provisions that govern emergency spills of hazardous substances to include all incidents during transportation in which hazardous substances were not spilled during the initial incident, but in which such spill is threatened prior to or during the cleanup period. Transfers the authority to promulgate rules governing inspections of vehicles carrying nuclear materials from the public utilities commission to the Colorado state patrol. Transfers the authority to designate routes for moving nuclear materials on state highways from the executive director of the department of transportation to the chief of the state patrol. Repeals an obsolete section concerning the transportation of explosives or hazardous materials and an obsolete provision governing the disposition of unspent moneys in the hazardous materials safety fund at the end of the 1989-90 fiscal year. Corrects a subsection number designating rule-making authority for transportation of hazardous materials. Changes misdemeanor penalties for violations of rules governing transportation of hazardous materials to conform to the classification system for misdemeanors contained in the criminal code. Provides that only local governments and not the state can limit transportation of certain hazardous materials through the territory of the affected local government.

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

SECTION 1. 29-22-101 (2) (a), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

29-22-101. Definitions. (2) (a) "Hazardous substance incident" means any emergency circumstance involving the sudden discharge of a hazardous substance which, in the judgment of an emergency response authority, threatens immediate and irreparable harm to the environment or the health and safety of any individual other than individuals exposed to the risks associated with hazardous substances in the normal course of their employment. "Hazardous substance incident" includes those incidents of spilling, dumping, or abandonment of a hazardous substance, whether or not such spilling, dumping, or abandonment is found to threaten immediate and irreparable harm, but such term does not include any discharge of a hazardous substance authorized pursuant to any federal, state, or local law or regulation. "HAZARDOUS SUBSTANCE INCIDENT" INCLUDES THOSE INCIDENTS WHICH OCCUR DURING TRANSPORTATION OF A HAZARDOUS SUBSTANCE, IN WHICH A SPILL DOES NOT OCCUR DURING THE INCIDENT BUT IS THREATENED PRIOR TO OR DURING THE CLEANUP PERIOD.

SECTION 2. 40-2.2-106, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

40-2.2-106. Inspections. All vehicles carrying nuclear materials entering the state on the public highways shall be inspected by port of entry personnel or Colorado state patrol...
officers at the port of entry weigh station nearest the point
at which the shipment enters the state or at a location
specified by the Colorado state patrol. For all shipments
originating within the state, inspection shall be made at the
point of origination by Colorado state patrol officers. All
such inspections conducted by port of entry weigh station
personnel and Colorado state patrol officers shall be in
accordance with the rules promulgated pursuant to section
40-2.2-105 and sections 42-4-228 and 42-4-234 AND 43-6-108
(1), C.R.S.

SECTION 3. 40-2.2-208, Colorado Revised Statutes, 1984
Repl. Vol., as amended, are amended to read:

40-2.2-208. Route designation - motor vehicles. (1) The
executive-director CHIEF of the department-of-transportation
COLORADO STATE PATROL shall have the authority to adopt rules
to designate which state highways shall be used and which
shall not be used by motor vehicles transporting nuclear
materials in this state.

(2) The carrier shall not deviate from the routes
designated pursuant to subsection (1) of this section except
in order to make local pickups and deliveries and in cases of
emergency conditions which would make continued use of the
designated route unsafe, or to refuel, or when the designated
route is closed due to road conditions, road construction, or
maintenance operations. When making local pickups and
deliveries or when refueling, the carrier shall remain on the

routes designated by the department-of-transportation COLORADO
STATE PATROL and shall minimize the distance traveled on
nondesignated routes.

SECTION 4. 43-6-107 (3) (b), Colorado Revised Statutes,
1984 Repl. Vol., as amended, is repealed as follows:

43-6-107. Hazardous materials safety fund. (3) (b) At
the-end-of-fiscal-year-1989-90, the-first-forty-two-thousand
two-hundred-dollars-of-any-moneys-remaining-in-the-fund
shall, notwithstanding the provisions of paragraph (a) of this
subsection (3), be available for appropriation by the general
assembly-to-the-department-of-public-safety-for-allocation-to
the-Colorado-emergency-planning-commission-created-in-section
24-22.5-1603, C.R.S., for the purpose of conducting an
assessment-of-available-resources-described-in-section
24-22.5-1603, C.R.S., and for personnel to staff the Colorado
emergency-planning-commission and assist the local-emergency
planning-committees-on-the-implementation-of-Title-III-of-the
moneys-remaining-after-such-appropriation-shall-be-available
for-distribution-in-accordance-with-paragraph (a) of this
subsection (3).

SECTION 5. 43-6-108 (4), Colorado Revised Statutes, 1984
Repl. Vol., as amended, is amended to read:

43-6-108. Rules and regulations for transportation of
hazardous materials. (4) The rules and regulations adopted by
the chief pursuant to subsection (3)(2) of this section shall
not apply to farm machinery which is exempted from registration requirements pursuant to section 42-3-102, C.R.S., agricultural distribution equipment attached to or conveyed by such farm machinery, or vehicles used to transport to or from the farm or ranch site products necessary for agricultural production, except when such vehicles are used in the furtherance of any commercial business other than agriculture.

SECTION 6. 43-6-109 (2), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

43-6-109. Penalty for violations. (2) Any person who violates a rule or regulation promulgated by the chief pursuant to section 43-6-108 is guilty of a class 3 misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment commits a class 3 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S.

SECTION 7. 43-6-301 (1), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

43-6-301. Route designation. (1) The patrol, after consultation with local governmental authorities, shall have the sole authority to designate which public roads shall be used and which shall not be used by motor vehicles transporting hazardous materials. The exercise of such authority shall be made pursuant to section 43-6-302. Such designation shall exempt gasoline, diesel fuel, and liquefied petroleum gas unless the petitioning authority specified in section 43-6-302 requests their inclusion. Such designation may include route restrictions, closing of streets and highways, and whatever other conditions or restrictions the patrol deems advisable, except for hours of operation and curfews. Any such designation in this part 3 shall be referred to as a route designation. Routes designated by the patrol pursuant to this part 3 shall not apply to motor vehicles when used to transport to or from the farm or ranch site products necessary for agricultural production. No city, county, or city and county may impose restrictions on hours of operation on designated routes; except that this provision shall not apply to any city, county, or city and county which, by resolution or ordinance, had routes or hours of operation restrictions in effect on July 1, 1985.


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

SECTION 10. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.
A BILL FOR AN ACT

CONCERNING THE MAXIMUM ALLOWABLE LENGTH FOR VEHICLES OPERATED
ON HIGHWAYS WITHIN THE STATE.

Bill Summary

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

Increases the maximum allowable length for single motor vehicles. Increases the maximum allowable length for saddlemount combinations. Establishes state highway C-470 as a designated highway upon which longer vehicle combinations may be operated.

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

SECTION 1. 42-1-102, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended by the addition of the following new subsections to read:

42-1-102. Definitions. As used in articles 1 to 4 of this title, unless the context otherwise requires:

(29.5) "FULLMOUNT" MEANS A VEHICLE WHICH IS MOUNTED COMPLETELY ON THE FRAME OF THE FIRST VEHICLE OR LAST VEHICLE

IN A SADDLEMOUNT COMBINATION.

(67.5) "SADDLEMOUNT COMBINATION" MEANS A COMBINATION OF VEHICLES IN WHICH A TRUCK OR TRUCK TRACTOR TOWS ONE OR MORE ADDITIONAL TRUCKS OR TRUCK TRACTORS AND IN WHICH EACH SUCH TOWED TRUCK OR TRUCK TRACTOR IS CONNECTED BY A SADDLE TO THE FRAME OR FIFTH WHEEL OF THE VEHICLE IMMEDIATELY IN FRONT OF SUCH TRUCK OR TRUCK TRACTOR. FOR THE PURPOSES OF THIS SUBSECTION (67.5), "SADDLE" MEANS A MECHANISM WHICH CONNECTS THE FRONT AXLE OF A TOWED VEHICLE TO THE FRAME OR FIFTH WHEEL OF A VEHICLE IMMEDIATELY IN FRONT OF SUCH TOWED VEHICLE AND WHICH FUNCTIONS LIKE A FIFTH WHEEL KINGPIN CONNECTION. A SADDLEMOUNT COMBINATION MAY INCLUDE ONE FULLMOUNT.

SECTION 2. 42-4-404 (2) and (4), Colorado Revised Statutes, 1984 Repl. Vol., as amended, are amended to read:

42-4-404. Height and length of vehicles. (2) No single motor vehicle shall exceed a length of forty-five feet extreme overall dimension, inclusive of front and rear bumpers. The length of vehicles used for the mass transportation of passengers wholly within the limits of a town, city, or municipality or within a radius of fifteen miles thereof may extend to sixty feet. The length of school buses may also extend to forty feet.

(4) No combination of vehicles coupled together shall consist of more than four units, and no such combination of vehicles shall exceed a total overall length of seventy feet. Said length limitation shall not apply to truck
tractor-semitrailer combinations when the semitrailer is fifty-seven feet four inches or less in length or to truck tractor-semitrailer-trailer combinations when both the semitrailer and the trailer are twenty-eight feet six inches or less in length. Said length limitation shall also not apply to saddlemount combinations, which shall not exceed seventy-five feet in total overall length. Said length limitations shall also not apply to vehicles operated by a public utility when required for emergency repair of public service facilities or properties or when operated under special permit as provided in section 42-4-409, but, in respect to night transportation, every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of any projecting load to clearly mark the dimensions of such load. Said length limitations shall also not apply to specialized equipment used in combination for transporting automobiles or boats when such specialized equipment is stinger-steered, as defined in section 42-1-102 (76.3), and the combination does not exceed seventy-five feet in length exclusive of safety devices, which safety devices shall not be designed or used for carrying cargo. The limitations provided in this section shall be strictly construed and enforced. Extensions of not more than eighteen inches in length on each end of a vehicle or combination of vehicles used to transport manufactured vehicles shall not be included in measuring the length of such vehicle or combination of vehicles when loaded.

SECTION 3. 42-4-404.5 (3), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

42-4-404.5. Longer vehicle combinations. (3) The long combinations shall be limited to interstate highway 25, interstate highway 76, interstate highway 70 west of its intersection with state highway 13 in Garfield county, interstate highway 70 east of its intersection with U.S. 40 and state highway 26, the circumferential highways designated I-225 and I-270, and state highway 133 in Delta county from mile marker 8.9 to mile marker 9.7, AND STATE HIGHWAY C-470. The department of transportation shall promulgate rules and regulations to provide carriers with reasonable ingress to and egress from such designated highway segments.

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

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.
1 DEPARTMENT;
2 SECTION 2. Safety clause. The general assembly hereby
3 finds, determines, and declares that this act is necessary
4 for the immediate preservation of the public peace, health,
5 and safety.

HLRC BILL D
A BILL FOR AN ACT
CONCERNING EXTERNAL AUDITS CONDUCTED BY THE DEPARTMENT OF
TRANSPORTATION ON PERSONS WHO CONTRACT WITH THE
DEPARTMENT.

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

Requires the department of transportation's internal
auditor to conduct external audits on persons entering into
contracts with the department whenever such audits are deemed
advisable by the department.

Be it enacted by the General Assembly of the State of Colorado:
SECTION 1. 43-1-106 (12) (b) (II), Colorado Revised
Statutes, 1984 Repl. Vol., as amended, is amended to read:
43-1-106. Transportation commission - powers and duties.
(12) (b) The internal auditor shall conduct and supervise:
(II) External audits on persons entering into contracts
with the department, AS DEEMED NECESSARY OR ADVISABLE BY THE
A BILL FOR AN ACT

CONCERNING THE ACCEPTANCE OF LATE PENALTY ASSESSMENT PAYMENTS RECEIVED BY THE MOTOR VEHICLE DIVISION OF THE DEPARTMENT OF REVENUE.

Bill Summary

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

Authorizes the motor vehicle division of the department of revenue to accept late payments for penalty assessments during a specified period after such payments become due.

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

SECTION 1. 40-2.2-108 (2), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

40-2.2-108. Violations - civil penalties - motor vehicles. (2) Any person who commits any of the acts enumerated in subsection (3) of this section shall be subject to the civil penalty listed in said subsection (3). Ports of entry personnel, investigative personnel of the commission, and officers of the Colorado state patrol shall have the authority to issue civil penalty assessments for the enumerated violations. At any time that a person is cited for a violation enumerated in subsection (3) of this section, the person in charge of or operating the motor vehicle involved shall be given a notice in the form of a civil penalty assessment notice. Such notice shall be tendered by the enforcement official and shall contain the name and address of such person, the license number of the motor vehicle involved, if any, the number of such person's driver's license, the nature of the violation, the amount of the penalty prescribed for such violation, the date of the notice, a place for such person to execute a signed acknowledgment of his receipt of the civil penalty assessment notice, a place for such person to execute a signed acknowledgment of liability for the cited violation, and such other information as may be required by law to constitute such notice as a complaint to appear in court should the prescribed penalty not be paid within ten days. Every cited person shall execute the signed acknowledgment of his receipt of the civil penalty assessment notice. The acknowledgment of liability shall be executed at the time the cited person pays the prescribed penalty. The person cited shall pay the civil penalty specified in subsection (3) of this section for the violation involved at the office of the department of revenue, motor vehicle division, Denver, Colorado, either in person or by postmarking
such payment within ten days of the citation. The Motor Vehicle Division of the Department of Revenue may accept late payment of any penalty assessment up to twenty days after such payment becomes due. If the person cited does not pay the prescribed penalty within ten days of the notice, the civil penalty assessment notice shall constitute a complaint to appear in court unless payment for such penalty assessment has been accepted by the Motor Vehicle Division of the Department of Revenue as evidenced by receipt, and the person cited shall, within the time specified in the civil penalty assessment notice, file an answer to this complaint with the county court for the county in which the penalty assessment was issued. The attorney general shall represent the state agency which issued the civil penalty assessment notice if so requested by the agency.

SECTION 2. 42-4-1501 (4) (a) and (b), Colorado Revised Statutes, 1984 Repl. Vol., as amended, are amended to read:

42-4-1501. Traffic offenses and infractions classified - penalties - penalty and surcharge schedule. (4) (a) At the time that any person is arrested for the commission of any misdemeanors, petty offenses, or misdemeanor traffic offenses set forth in subsection (3) of this section, the arresting officer may, except when the provisions of paragraph (c) of this subsection (4) prohibit it, offer to give a penalty assessment notice to the defendant. At any time that a person is charged with the commission of any traffic infraction, the peace officer shall, except when the provisions of paragraph (c) of this subsection (4) prohibit it, give a penalty assessment notice to the defendant. Such penalty assessment notice shall contain all the information required by section 42-4-1505 (2) or by section 42-4-1505.5, whichever is applicable. The fine or penalty specified in subsection (3) of this section for the violation charged and the surcharge thereon may be paid at the office of the department of revenue, motor vehicle division, Denver, Colorado, either in person or by postmarking such payment within twenty days from the date the penalty assessment notice is served upon the defendant. The Motor Vehicle Division of the Department of Revenue may accept late payment of any penalty assessment up to twenty days after such payment becomes due. In the case of an offense other than a traffic infraction, a defendant who otherwise would be eligible to be issued a penalty assessment notice but who does not furnish satisfactory evidence of identity or who the officer has reasonable and probable grounds to believe will disregard the summons portion of such notice may be issued a penalty assessment notice if the defendant consents to be taken by the officer to the nearest mailbox and to mail the amount of the fine or penalty and surcharge thereon to the department. The peace officer shall advise the person arrested or cited of the points to be assessed in accordance with section 42-2-123. Acceptance of a penalty assessment notice and payment of the prescribed fine
or penalty and surcharge thereon to the department shall be deemed a complete satisfaction for the violation, and the defendant shall be given a receipt which so states when such fine or penalty and surcharge thereon is paid in currency or other form of legal tender. Checks tendered by the defendant to and accepted by the department and on which payment is received by the department shall be deemed sufficient receipt.

(b) In the case of an offense other than a traffic infraction, should the defendant refuse to accept service of the penalty assessment notice when such notice is tendered, the peace officer shall proceed in accordance with section 42-4-1504 or section 42-4-1505. Should the defendant charged with an offense other than a traffic infraction accept service of the penalty assessment notice but fail to post the prescribed penalty and surcharge thereon within twenty days thereafter, the notice shall be construed to be a summons and complaint UNLESS PAYMENT FOR SUCH PENALTY ASSESSMENT HAS BEEN ACCEPTED BY THE MOTOR VEHICLE DIVISION OF THE DEPARTMENT OF REVENUE AS EVIDENCED BY RECEIPT. Should the defendant charged with a traffic infraction accept the notice but fail to post the prescribed penalty and surcharge thereon and the docket fee in the amount set forth in section 42-4-1505.7 (4) to the clerk of the court referred to in the summons portion of the penalty assessment notice during the two business days prior to the time for appearance as specified in the notice. If the penalty for a misdemeanor, misdemeanor traffic offense, or a petty offense and surcharge thereon is not timely paid, the case shall thereafter be heard in the court of competent jurisdiction prescribed on the penalty assessment notice in the same manner as is provided by law for prosecutions of the misdemeanors not specified in subsection (3) of this section. If the penalty for a traffic infraction and surcharge thereon is not timely paid, the case shall thereafter be heard in the court of competent jurisdiction prescribed on the penalty assessment notice in the manner provided for in this article for the prosecution of traffic infractions. In either case, the maximum penalty which may be imposed shall not exceed the penalty set forth in the applicable penalty and surcharge schedule in subsection (3) of this section.

SECTION 3. 43-6-105 (2). Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

43-6-105. Enforcement. (2) Any enforcement official shall have the authority to issue penalty assessments for the misdemeanor traffic offenses specified in section 43-6-204 (1) and (2) and section 43-6-305 (2). At any time that a person is cited for a violation of any of the offenses specified, the person in charge of or operating the motor vehicle involved shall be given a notice in the form of a penalty assessment...
notice. Such notice shall be tendered by the enforcement
official and shall contain the name and address of such
person, the license number of the motor vehicle involved, if
any, the number of such person's driver's license, the nature
of the violation, the amount of the penalty prescribed for
such violation, the date of the notice, a place for such
person to execute a signed acknowledgment of his receipt of
the penalty assessment notice, a place for such person to
execute a signed acknowledgment of guilt for the cited
violation, and such other information as may be required by
law to constitute such notice as a summons and complaint to
appear in court should the prescribed penalty not be paid
within twenty days. Every cited person shall execute the
signed acknowledgment of his receipt of the penalty assessment
notice. The acknowledgment of guilt shall be executed at the
time the cited person pays the prescribed penalty. The person
cited shall pay the specified penalty at the office of the
department of revenue, either in person or by postmarking such
payment within twenty days after the citation. THE MOTOR
VEHICLE DIVISION OF THE DEPARTMENT OF REVENUE MAY ACCEPT LATE
PAYMENT OF ANY PENALTY ASSESSMENT UP TO TWENTY DAYS AFTER SUCH
PAYMENT BECOMES DUE. If the person cited does not pay the
prescribed penalty within twenty days of the notice, the
penalty assessment notice shall constitute a summons and
complaint to appear in the county court of the county in which
the penalty assessment was issued at a time and place

1 specified by the notice, UNLESS PAYMENT FOR SUCH PENALTY
2 ASSESSMENT HAS BEEN ACCEPTED BY THE MOTOR VEHICLE DIVISION OF
3 THE DEPARTMENT OF REVENUE AS EVIDENCED BY RECEIPT.
4 SECTION 4. Effective date. This act shall take effect
5 July 1, 1992.
6 SECTION 5. Safety clause. The general assembly hereby
7 finds, determines, and declares that this act is necessary
8 for the immediate preservation of the public peace, health,
9 and safety.
SECTION 2. 12-15-103, Colorado Revised Statutes, 1991 Repl. Vol., is amended by the addition of a new subsection to read:

12-15-103. Application - fee. (3) A separate license application and license application fee shall be required for each branch office of a commercial driving school.

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

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.
A BILL FOR AN ACT

CONCERNING THE CLASSIFICATION OF COMMERCIAL VEHICLES USED IN
INTERSTATE COMMERCE FOR PURPOSES OF THE DETERMINATION OF
APPROPRIATE FEES AND TAXES.

Bill Summary

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

Limits the application of the Class A personal property classification, as it pertains to vehicles, to those vehicles which are used in interstate commercial carrier operations and for which an application for apportioned registration has been made. Defines "apportioned registration", "base jurisdiction", "commercial carrier", and "reciprocal agreement".

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

SECTION 1. 42-1-102, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended by the addition of the following new subsections to read:

(3.7) "APPORTIONED REGISTRATION" MEANS REGISTRATION OF A VEHICLE PURSUANT TO A RECIPROCAL AGREEMENT UNDER WHICH THE FEES PAID FOR REGISTRATION OF SUCH VEHICLE ARE ULTIMATELY DIVIDED AMONG THE SEVERAL JURISDICTIONS IN WHICH THE VEHICLE TRAVELS, BASED UPON THE NUMBER OF MILES TRAVELED BY THE VEHICLE IN EACH JURISDICTION OR UPON SOME OTHER AGREED CRITERION.

(5.7) "BASE JURISDICTION" MEANS THE STATE, PROVINCE, OR OTHER JURISDICTION WHICH RECEIVES, APPORTIONS, AND REMITS TO OTHER JURISDICTIONS MONEYS PAID FOR REGISTRATION OF A VEHICLE PURSUANT TO A RECIPROCAL AGREEMENT GOVERNING REGISTRATION OF VEHICLES.

(12.5) "COMMERCIAL CARRIER" MEANS ANY OWNER OF A MOTOR VEHICLE, TRUCK, TRUCK TRACTOR, TRAILER, OR SEMITRAILER USED IN THE BUSINESS OF TRANSPORTING PERSONS OR PROPERTY OVER THE PUBLIC HIGHWAYS FOR PROFIT, HIRE, OR OTHERWISE IN ANY BUSINESS OR COMMERCIAL ENTERPRISE.

(61.5) "RECIPROCAL AGREEMENT" OR "RECIPROCITY" MEANS AN AGREEMENT AMONG TWO OR MORE STATES, PROVINCES, OR OTHER JURISDICTIONS FOR COORDINATED, SHARED, OR MUTUAL ENFORCEMENT OR ADMINISTRATION OF LAWS RELATING TO THE REGISTRATION, OPERATION, OR TAXATION OF VEHICLES AND OTHER PERSONAL PROPERTY IN INTERSTATE COMMERCE. THE TERM INCLUDES WITHOUT LIMITATION THE "INTERNATIONAL REGISTRATION PLAN" AND ANY SUCCESSOR AGREEMENT PROVIDING FOR THE APPORTIONMENT, AMONG PARTICIPATING JURISDICTIONS, OF VEHICLE REGISTRATION FEES OR TAXES.

SECTION 2. 42-3-105 (1) (a), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:
42-3-105. Classification - taxable value - imposition of tax. (1) (a) Every motor vehicle, truck, truck tractor, trailer, and semitrailer used in the business of transporting persons or property over any public highway in this state as an interstate COMMERCIAL carrier, whether or not such business is engaged in by contract, FOR WHICH AN APPLICATION IS MADE FOR APPORTIONED REGISTRATION, REGARDLESS OF BASE JURISDICTION, shall be Class A personal property.

SECTION 3. 42-3-123 (13) (b.3). Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

42-3-123. Registration fees - passenger and passenger-mile taxes. (13) The annual registration fee for those trucks and truck tractors operated over the public highways of this state, except trucks which are registered under the provisions of subsections (11) and (22) of this section, shall be as follows:

(b.3) For each such vehicle registered under this subsection (13) having an empty weight exceeding sixteen thousand pounds which is used in interstate commerce AND FOR WHICH AN APPLICATION IS MADE FOR APPORTIONED REGISTRATION, REGARDLESS OF BASE JURISDICTION, such registration fee shall be determined according to the following schedule:

<table>
<thead>
<tr>
<th>Declared Gross Vehicle Weight (Pounds)</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>16,001 but not more than 20,000</td>
<td>$1,050</td>
</tr>
<tr>
<td>20,001 but not more than 24,000</td>
<td>1,100</td>
</tr>
<tr>
<td>24,001 but not more than 30,000</td>
<td>1,200</td>
</tr>
<tr>
<td>30,001 but not more than 36,000</td>
<td>1,250</td>
</tr>
<tr>
<td>36,001 but not more than 42,000</td>
<td>1,350</td>
</tr>
<tr>
<td>42,001 but not more than 48,000</td>
<td>1,400</td>
</tr>
<tr>
<td>48,001 but not more than 54,000</td>
<td>1,500</td>
</tr>
<tr>
<td>54,001 but not more than 60,000</td>
<td>1,525</td>
</tr>
<tr>
<td>60,001 but not more than 66,000</td>
<td>1,650</td>
</tr>
<tr>
<td>66,001 but not more than 74,000</td>
<td>1,700</td>
</tr>
<tr>
<td>Over 74,000</td>
<td>1,800</td>
</tr>
</tbody>
</table>

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