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0367 Committees on: Joint Education Committee, Joint Health, Environment, Welfare, and Institutions Committee, Joint Judiciary Committee

Colorado Legislative Council

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COLORADO

GENERAL ASSEMBLY

Joint Education Committee

Joint Health, Environment, Welfare, and Institutions Committee

Joint Judiciary Committee

Legislative Council
Research Publication No. 367
November 1991

COLORADO LEGISLATIVE COUNCIL

REPORT TO THE

COLORADO GENERAL ASSEMBLY

JOINT EDUCATION COMMITTEE

JOINT HEALTH, ENVIRONMENT, WELFARE AND INSTITUTIONS COMMITTEE

JOINT JUDICIARY COMMITTEE

Research Publication No. 367
December 1991

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November 20, 1991

To Members of the Fifty-Eighth General Assembly:

Submitted herewith are the final reports of the following interim committees: Joint Education Committee, Joint Judiciary Committee, and Joint Health, Environment, Welfare, and Institutions Committee. All of these committees were created pursuant to Senate Joint Resolution 91-32.

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

Respectfully submitted,

/s/ Senator Ted L. Strickland
Chairman
Legislative Council

TLS/pn

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JOINT EDUCATION COMMITTEE

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List of Bills

JOINT EDUCATION COMMITTEE

Committee Charge

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

Committee Activities

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

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

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

Committee Recommendations

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

- Bill A - Concerning the Adoption of Policies by the Colorado Commission on Higher Education to Achieve a Better Transition From the Colorado System of Public Elementary and Secondary Education to the Colorado System of Public Postsecondary Education; and

- Bill B - Concerning Changes Relating to the Organization of School Districts .

Linking Higher Education and K-12 Education - Bill A

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

- The skills, abilities, and proficiencies needed by first-year students to succeed at the state's postsecondary institutions;

- The skills, abilities, and proficiencies demonstrated by current first-year students at postsecondary institutions;

- The level of achievement exhibited by first-year students; and

- Other information that will provide a better transition between the two systems of education.

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

School District Reorganization - Bill B

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

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

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

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

- To provide an updated process that addresses the needs of school districts today;

- To simplify and clarify the process for consolidation or reorganization of school districts; and

- To make statute more readable so that districts and citizens might have a clear sense of the process.

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

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

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

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

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

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

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

- One or more local school district boards of education, by resolution, request the appointment of a committee;

- A "petition committee," consisting of three to five people who are not members of the same family, presents a petition signed by 25 percent of a school district's registered electors to the Commissioner of Education and the county clerk requesting the appointment of a committee; or

- When the Commissioner of Education is notified that a district is no longer accredited.

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

If multiple school districts are involved in the study:

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

- two members are appointed by the local school board in each of the affected school districts; and

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

If a single school district is involved in the study:

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

- two members are appointed by the local school board in the school district affected by the study; and

- two members who are parents of children attending a public school in the affected area are appointed by the school district advisory accountability committee in the school district affected by the study.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Materials Available

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

1) Summary of meetings:

   – August 19, 1991: consolidation of school districts

   – August 20, 1991: consolidation of school districts

   – October 16, 1991: issues relating to the Colorado Commission on Higher Education

   – October 17, 1991: issues relating to the Colorado Commission on Higher Education

   – November 12, 1991: further discussion of higher education issues, presentation by Colorado Advanced Technology Institute, consideration of interim bills

2) A Report on School District Organization, by Morris Danielson and Arthur Ellis, Colorado Department of Education, August 16, 1991

3) Responses to the charges set forth in House Bill 1187, 1985 Session, Colorado Commission on Higher Education (Notebook prepared for committee members)

EDUCATION BILL A

A BILL FOR AN ACT

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

Bill Summary

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

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

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

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

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

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

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

(b) THE LEVEL OF PROFICIENCY IN SUCH SKILLS AND

ABILITIES CURRENTLY EXHIBITED BY FIRST-YEAR STUDENTS;

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

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

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

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

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.

EDUCATION BILL B

A BILL FOR AN ACT

CONCERNING CHANGES RELATING TO THE ORGANIZATION OF SCHOOL DISTRICTS.

Bill Summary

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

Repeals and reenacts article 30 of title 22, C.R.S., and makes the following changes: Changes the short title of the act to the "School District Organization Act of 1992"; specifies that one process shall apply in all circumstances of organization, including creation of a new district, consolidation of two or more districts, dissolution and annexation of a district, and detachment and annexation of a district; clarifies means for initiating the process, including a request from a board of education, a petition signed by twenty-five percent of the school district's electors, and loss of state accreditation by a district; allows the commissioner of education to set the parameters of the study to be completed by the committee; provides for appointment of committee members by the commissioner, the boards of education of affected school districts, advisory accountability committees of affected school districts, and petition committees if the process was initiated by a petition; states the duties of the committee, including studying the public school system affected by the organization, developing a plan of organization, cooperating with the local boards of education, the state board, and the commissioner, calling and arranging elections on the school organization plan, and assisting in promoting the proposed plan; provides for termination of the committee in accordance with the parameters set by the commissioner; states requirements for a school organization plan, including boundaries for the new and existing school districts affected by the plan, and a plan of representation for new districts which divides the districts into five or seven director districts or allows election of at-large directors; provides for public hearings after the proposed plan is filed with the commissioner; requires the committee to accept any changes proposed by the commissioner; allows the committee to appeal any of the commissioner's proposed changes to the state board of education; provides for a special school organization election to be conducted by the county clerk and recorder of each county affected by the plan; provides for a public meeting prior to the special election which shall be attended by both the commissioner and the committee to explain the proposed plan; requires the committee to file a certificate of canvass with the county clerk and recorder in each county affected following the election; requires such county clerk and recorder to certify the election results to the commissioner; and provides that, if the proposed plan is not approved by majority vote, the committee shall be dissolved, but allows the commissioner to seek no further action, to reappoint the previous committee, or to appoint a new committee.

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

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

ARTICLE 30

School District Organization Act of 1992

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ACCREDITED.

22-30-105. School organization planning committee. (1) UPON DETERMINATION THAT ONE OR MORE OF THE CONDITIONS DESCRIBED IN SECTION 22-30-104 EXIST, THE COMMISSIONER SHALL CALL FOR THE APPOINTMENT OF A SCHOOL ORGANIZATION PLANNING COMMITTEE AND DEFINE THE PARAMETERS OF THE STUDY. SUCH A COMMITTEE SHALL BE APPOINTED AND HOLD ITS FIRST MEETING WITHIN THIRTY DAYS OF NOTIFICATION BY THE COMMISSIONER.

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

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

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

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

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

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

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

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

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

(I) THE EDUCATIONAL NEEDS OF THE AFFECTED POPULATION;

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

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

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

(V) FACILITY UTILIZATION;

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

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

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

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

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

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

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

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

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

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

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

PERFORMANCE OF THEIR DUTIES UNDER THIS ARTICLE.

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

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

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

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

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

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

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

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

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

DISSOLUTION OF A DISTRICT OR DISTRICTS.

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

(6) IF THE PLAN OF ORGANIZATION RESULTS IN THE DISSOLUTION OF A SCHOOL DISTRICT WHICH HAS OUTSTANDING BONDED INDEBTEDNESS OBLIGATIONS OR LIABILITIES, THE PLAN OF ORGANIZATION SHALL DESIGNATE A NEW DISTRICT, WHICH INCLUDES AT LEAST A PORTION OF THE DISSOLVED DISTRICT, AS A SUCCESSOR FOR THE PURPOSE OF ADMINISTERING PAYMENT OF THE BONDED INDEBTEDNESS OBLIGATIONS OF THE DISSOLVED DISTRICT, AND THE BOARD OF EDUCATION OF THE NEW DISTRICT SO DESIGNATED SHALL HAVE ALL THE POWERS, RIGHTS, DUTIES, AND RESPONSIBILITIES OF THE BOARD OF EDUCATION OF THE DISSOLVED DISTRICT FOR ADMINISTERING PAYMENT OF THE OUTSTANDING BONDED INDEBTEDNESS OBLIGATIONS AND LIABILITIES OF THE DISSOLVED DISTRICT. ALL REVENUES WHICH ACCRUE FROM THE TAX LEVIES TO SATISFY SAID OBLIGATIONS AND LIABILITIES, AND ALL INTEREST WHICH MAY ACCRUE THERETO AS A RESULT OF INVESTMENTS AUTHORIZED BY LAW, SHALL BE HELD IN TRUST BY THE BOARD OF EDUCATION OF THE NEW DISTRICT SO DESIGNATED FOR THE PURPOSE ONLY OF SATISFYING SAID BONDED INDEBTEDNESS OBLIGATIONS AND LIABILITIES OF THE DISSOLVED DISTRICT.

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

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

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

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

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

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

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

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

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

22-30-122. Canvass of votes - certificate - contests. (1) THE COUNTY CLERK AND RECORDER IN EACH COUNTY IN WHICH THE SPECIAL SCHOOL ORGANIZATION ELECTION IS HELD SHALL CANVASS THE RETURNS AND CERTIFY THE RESULTS THEREOF TO THE COMMITTEE AND TO THE COMMISSIONER WITHIN TEN DAYS AFTER THE CLOSING OF THE POLLS. A CERTIFICATE OF THE CANVASS AND RESULTS THEREOF SHALL BE RETAINED ON FILE IN EACH OFFICE OF THE COUNTY CLERK AND RECORDER.

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

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

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

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

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

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

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

ELECTION IN NEW DISTRICTS HAVING FOUR-YEAR TERMS OF OFFICE, TWO SHALL BE ELECTED TO SERVE UNTIL THE NEXT REGULAR BIENNIAL SCHOOL ELECTION AND THREE SHALL BE ELECTED TO SERVE UNTIL THE SECOND REGULAR BIENNIAL SCHOOL ELECTION. AS THE TERM OF OFFICE OF EACH SUCH SCHOOL DIRECTOR EXPIRES, A SUCCESSOR SHALL BE ELECTED FOR A FOUR-YEAR TERM OF OFFICE. IN NEW DISTRICTS HAVING SIX-YEAR TERMS OF OFFICE, TWO DIRECTORS SHALL BE ELECTED TO SERVE UNTIL THE NEXT REGULAR BIENNIAL SCHOOL ELECTION, TWO SHALL BE ELECTED TO SERVE UNTIL THE SECOND REGULAR BIENNIAL SCHOOL ELECTION, AND ONE SHALL BE ELECTED TO SERVE UNTIL THE THIRD REGULAR BIENNIAL SCHOOL ELECTION. AS THE TERM OF OFFICE OF EACH SUCH SCHOOL DIRECTOR EXPIRES, A SUCCESSOR SHALL BE ELECTED FOR A SIX-YEAR TERM OF OFFICE.

(b) WHEN SEVEN DIRECTORS ARE TO BE ELECTED AT SUCH ELECTION, IN NEW DISTRICTS HAVING FOUR-YEAR TERMS OF OFFICE, THREE SHALL BE ELECTED TO SERVE UNTIL THE NEXT REGULAR BIENNIAL SCHOOL ELECTION AND FOUR SHALL BE ELECTED TO SERVE UNTIL THE SECOND REGULAR BIENNIAL SCHOOL ELECTION. AS THE TERM OF OFFICE OF EACH SUCH SCHOOL DIRECTOR EXPIRES, A SUCCESSOR SHALL BE ELECTED FOR A FOUR-YEAR TERM OF OFFICE. IN NEW DISTRICTS HAVING SIX-YEAR TERMS OF OFFICE, TWO DIRECTORS SHALL BE ELECTED TO SERVE UNTIL THE NEXT REGULAR BIENNIAL SCHOOL ELECTION, TWO SHALL BE ELECTED TO SERVE UNTIL THE SECOND REGULAR BIENNIAL SCHOOL ELECTION, AND THREE SHALL BE ELECTED TO SERVE UNTIL THE THIRD REGULAR BIENNIAL SCHOOL ELECTION. AS THE TERM OF OFFICE OF EACH SUCH SCHOOL DIRECTOR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

LEGISLATIVE COUNCIL

JOINT HEALTH, ENVIRONMENT, WELFARE, AND INSTITUTIONS COMMITTEE

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Co-Chairman
Senator Bonnie Allison
Senator Joan Johnson
Senator Don Mares *
Senator Dick Mutzebaugh
Senator Pat Pascoe
Senator Jim Roberts
Senator Dottie Wham

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Dorothy Dodick
Staff Attorney

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Staff Attorney

* Resigned from the House of Representatives and sworn in as a Senator on October 16, 1991.
** Replaced Don Mares in the House of Representatives on November 6, 1991.

List of Bills

JOINT HEALTH, ENVIRONMENT, WELFARE, AND INSTITUTIONS COMMITTEE

Summary of Recommendations

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

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

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

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

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

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

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

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

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

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

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

Provision of Prosthetic Devices to Medicaid Recipients - HEWI Bill B

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

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

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

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

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

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

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

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

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

Materials Available

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

1) Joint Health, Environment, Welfare, and Institutions Committee meeting summaries for the 1991 interim (July 22, August 19, October 7, and November 8).

2) Insurance paper from the Colorado Department of Regulatory Agencies, Division of Insurance, entitled "Health Insurance Availability and Affordability in Colorado: A Report on Underwriting and Pricing Practices."

3) Colorado Uninsurable Health Insurance Plan (CUHIP) brochure.

4) Colorado Department of Health materials concerning environmental management and the federal Clean Air Act Amendments of 1990.

HEWI BILL A

A BILL FOR AN ACT

CONCERNING THE REGULATION OF PROVIDERS OF HOME CARE SERVICES.

Bill Summary

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

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

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

SECTION 1. Title 25, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 27.5

Licensing of Home Health Care Agencies

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

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

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

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

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

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

THE STATE BOARD OF HEALTH;

(c) DURABLE MEDICAL EQUIPMENT AND SERVICES;

(d) OXYGEN EQUIPMENT AND OXYGEN.

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

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

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

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

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

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

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

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

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

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

(c) A HOSPICE LICENSED BY THE DEPARTMENT IN ACCORDANCE

WITH SECTION 25-1-107 (1) (l) (I).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25-27.5-107. License denial, suspension, or revocation. (1) WHEN AN APPLICATION FOR AN ORIGINAL LICENSE TO OPERATE AS A HOME CARE PROVIDER HAS BEEN DENIED BY THE DEPARTMENT, THE DEPARTMENT SHALL NOTIFY THE APPLICANT IN WRITING OF SUCH DENIAL BY MAILING A NOTICE TO THE APPLICANT AT THE ADDRESS SHOWN ON THE APPLICATION. ANY APPLICANT AGGRIEVED BY SUCH DENIAL MAY SEEK REVIEW AS PROVIDED IN ARTICLE 4 OF TITLE 24, C.R.S. ALL HEARINGS ON THE DENIAL OF ORIGINAL LICENSES SHALL BE CONDUCTED IN CONFORMITY WITH THE PROVISIONS AND PROCEDURES SPECIFIED IN ARTICLE 4 OF TITLE 24, C.R.S.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) PRIOR TO SAID REPEAL, THE HOME CARE ADVISORY COMMITTEE SHALL BE REVIEWED AS PROVIDED IN SECTION 2-3-1203 (3) (k), C.R.S.

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

(a) ANY INDIVIDUAL WHO IS:

(I) ACTING ALONE, PROVIDING HOME CARE SERVICES TO A

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Nursing services;

(b) Home health aide services;

(c) Provision of medical supplies, equipment, and appliances suitable for use in the home;

(d) Physical therapy, occupational therapy, or speech and hearing therapy.

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

SECTION 8. 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.

HEWI BILL B

A BILL FOR AN ACT

CONCERNING THE PROVISION OF PROSTHETIC DEVICES TO MEDICAID RECIPIENTS.

Bill Summary

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

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

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

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

ARTICLE 8.6

Prosthetic Devices

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

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

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

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

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

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

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

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

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

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

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

(b) PRIOR TO SAID REPEAL, THE PROSTHETIC DEVICE ADVISORY BOARD SHALL BE REVIEWED AS PROVIDED FOR IN SECTION 2-3-1203, C.R.S.

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

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

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

SECTION 3. 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.

HEWI BILL C

A BILL FOR AN ACT

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

Bill Summary

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

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

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

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

ARTICLE 21

The Colorado Care Health Insurance Program

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

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

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

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

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

(b) COLORADO CARE SHALL INCLUDE THE FOLLOWING FEATURES:

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

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

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

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

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

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

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

(I) THE COST TO ADMINISTER COLORADO CARE;

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

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

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

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

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

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

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

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

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

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

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

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

ORGANIZATION IN CARRYING OUT THE DUTIES REQUIRED BY THIS ARTICLE.

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

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

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

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

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

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.

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LEGISLATIVE COUNCIL

JOINT JUDICIARY COMMITTEE

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Senator Terry Considine
Senator Dennis Gallagher
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Senator David Leeds
Senator Donald Mares
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Mark T. Hamby
Staff Attorney

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

List of Bills

JOINT JUDICIARY COMMITTEE

Committee Activities and Recommendations

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

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

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

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

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

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

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

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

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

Medical Durable Power of Attorney

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

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

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

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

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

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

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

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

The only reasons for challenging are as follows:

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

Health Care Proxies Designated by Statute

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

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

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

Cardiopulmonary Resuscitation (CPR) Declarations as Advance Medical Directives

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

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

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

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

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

Additional Comments on the Present Colorado Law

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

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

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

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

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

Regulations Relating to Bailbonds – Judiciary Bill B

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

- Prohibits bondsmen from badgering, harassing, hounding, importuning, pestering, plaguing, tormenting, or vexing any person in or on the grounds of any jail or court.

- Expedites the return of collateral to the defendant upon release of the bond by reducing the time of its return from 20 calendar days to 10 working days and requires that a certified copy of the bond release be presented to the bondsman by the person for whom the bond was written. This provision was changed in order to assure the bondsman that the bond has been released.

- Prohibits a defendant who fails to appear in court while free on bond from being eligible for a personal recognizance bond. The purpose of this change is to protect the liability of the bondsman from a defendant who may possibly not appear for a court date.

- Changes the number of days from 30 calendar to 10 working days after the posting of bond for a refund of a portion of the premium paid by the defendant if the terms and conditions of the bond are changed or altered. This provision was amended because a county needs no longer than 10 working days to change or alter the terms and conditions of a bond.

- Reconciles the method of using real property as security for a bond with other Colorado security law and provides protection for the court by substituting a deed

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

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

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

Death Penalty Recommendations

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

Materials Available

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

1) Summary of Meetings:
   - July 8, 1991 – Hearing on Patient Autonomy
   - July 29, 1991 – Hearings on Patient Autonomy and Death Penalty
   - August 29, 1991 – Hearing and Action on Death Penalty
   - October 14, 1991 – Hearing on Bailbonds and Patient Autonomy
   - November 4, 1991 – Action on Bailbonds and Patient Autonomy

2) "Comparison of Relevant Pre-1988 and 1988 Statutory Provisions Regarding Jury Sentencing in Capital Cases," Prepared by Office of Legislative Legal Services.

3) "Comparison of Bills Amending the 'Colorado Medical Treatment Decision Act'," Prepared by Legislative Council Staff, July 8, 1991.

JUDICIARY BILL A

A BILL FOR AN ACT

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

Bill Summary

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

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

Specifies the powers and duties of appointed and designated health care agents and proxies. Describes the responsibility and rights of health care providers and facilities in regard to medical durable powers of attorney and to directions by health care agents and proxies. Specifies the extent of decision-making authority of health care agents and proxies in regard to life-sustaining procedures for patients who are terminally ill or for whom such treatment would be futile. Sets forth penalties and regulatory sanctions for certain actions of health care agents and proxies, health care providers, health care facilities, and other persons.

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

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

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

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

ARTICLE 18.5

Patient Autonomy Act

PART 1

MEDICAL DURABLE POWER OF ATTORNEY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15-18.5-105. Medical durable power of attorney - appointment health care agent - execution. (1) (a) ANY ADULT MAY EXECUTE, AS AN ADVANCE MEDICAL DIRECTIVE, A MEDICAL DURABLE POWER OF ATTORNEY WHICH SETS FORTH THAT PERSON'S WISHES WITH RESPECT TO MEDICAL TREATMENT FOR THAT PERSON IN THE EVENT SUCH PERSON BECOMES INCAPACITATED.

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

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

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

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

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

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

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

POWER OF ATTORNEY; AND

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

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

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

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

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

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

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

PRINCIPAL IS RECEIVING CARE; OR

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

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

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

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

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

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

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

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

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

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

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

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

(I) A HEALTH CARE AGENT;

(II) THE PRINCIPAL'S LEGALLY APPOINTED GUARDIAN;

(III) THE PRINCIPAL'S SPOUSE;

(IV) THE PRINCIPAL'S ADULT CHILDREN;

(V) THE PRINCIPAL'S PARENTS; AND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) THE PRINCIPAL;

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

SECTION;

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

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

(E) TO THE HEALTH CARE AGENT.

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

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

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

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

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

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

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

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

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

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

15-18.5-108. Liability. (1) WITH RESPECT TO ANY MEDICAL DURABLE POWER OF ATTORNEY WHICH, ON ITS FACE, APPEARS TO HAVE BEEN EXECUTED IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE, ACTIONS OF THE HEALTH CARE AGENT AND HEALTH CARE PROVIDERS AND FACILITIES SHALL BE TREATED AS FOLLOWS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 2

HEALTH CARE PROXIES DESIGNATED BY STATUTE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 3

CARDIOPULMONARY RESUSCITATION

DECLARATIONS AS ADVANCE MEDICAL DIRECTIVES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) PERSONALLY EXAMINED THE DECLARANT;

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

CONSEQUENCES OF ENFORCING A CPR DECLARATION;

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

(d) DETERMINED THAT:

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

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

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

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

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

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

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

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

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

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

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

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

CARDIOPULMONARY DECLARATION

I _____, THE DECLARANT, HAVE BEEN ADVISED BY
(PRINT FULL NAME)
THE UNDER-SIGNED PHYSICIAN OF MY MEDICAL CONDITION, THE MEANING OF CARDIOPULMONARY RESUSCITATION, HEREINAFTER "CPR", THE APPROPRIATENESS OF EXECUTING THIS CPR DECLARATION GIVEN MY MEDICAL CONDITION, AND THE RISKS AND CONSEQUENCES OF ENFORCING THIS CPR DECLARATION. I UNDERSTAND MY OPTION TO WITHHOLD CONSENT FOR SUCH RESUSCITATION AND I HEREBY DO SO VOLUNTARILY AND WITH FULL UNDERSTANDING THAT MY DEATH MAY RESULT AS A CONSEQUENCE. THEREFORE, IF I STOP BREATHING OR MY HEART STOPS, I DO NOT WISH TO BE RESUSCITATED. NO MEDICAL INTERVENTION SHALL BE TAKEN TO INTERFERE WITH THE PROCESS OF DYING NATURALLY.

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

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

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

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

_____ _____
Signature of Declarant Date

_____
Address City County State Zip

WITNESSES' CERTIFICATION

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

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

FIRST WITNESS	SECOND WITNESS
Signature:	Signature:_____
Home Address:_____	Home Address:_____
Print Name:_____	Print Name:_____
Date:_____	Date:_____

PHYSICIAN'S CERTIFICATION

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

_____	_____
Physician's Signature	Date

(2) AN ADVANCE MEDICAL DIRECTIVE REGARDING CPR THAT HAS BEEN EXECUTED IN ANOTHER STATE, WHICH APPEARS TO BE DULY EXECUTED, AND WHICH SUBSTANTIALLY COMPLIES WITH THIS PART (3), SHALL BE PRESUMED TO BE VALID AND TO CONFORM WITH SUBSECTION (1) OF THIS SECTION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25-1-108. <u>Powers and duties of the state board of health</u>. (1) In addition to all other powers and duties conferred and imposed upon the state board of health by the provisions of this part 1, the board has the following specific powers and duties:

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

CARDIOPULMONARY RESUSCITATION DECLARATIONS.

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

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

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.

JUDICIARY BILL B

A BILL FOR AN ACT

CONCERNING THE ENFORCEMENT OF REGULATIONS RELATING TO BAILBONDS.

Bill Summary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(c)--A--signed--and--executed-quitclaim-deed-transferring the-real-estate-to-the-court-approving-the-bond,-to--be--filed with--the--county--clerk--and--recorder--upon,--and-only-upon, forfeiture-of-the-bond;-and~~

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

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

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

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

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

MAY BE FORECLOSED AS PROVIDED BY LAW.

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

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

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

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

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

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

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

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

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

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

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

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

(4) WITHIN ONE HUNDRED EIGHTY DAYS AFTER SENDING THE

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

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

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

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

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

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

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

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

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

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

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

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.