0394 Joint Legislative Sunrise and Sunset Review Committee

Colorado Legislative Council

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RECOMMENDATIONS FOR 1995

JOINT LEGISLATIVE SUNRISE AND
SUNSET REVIEW COMMITTEE

Report to the
Colorado General Assembly

Research Publication No. 394
November 1994
November 15, 1994

To Members of the Fifty-Ninth Colorado General Assembly:

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

At its meeting on October 11, the Legislative Council reviewed this report. A motion to forward the report and recommendations of the Joint Legislative Sunrise Sunset Committee to the Fifty-Ninth General Assembly was approved.

Respectfully Submitted,

/s/ Representative Paul Schauer
Chairman
Legislative Council

PDS/eg
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JOINT LEGISLATIVE SUNRISE AND SUNSET REVIEW COMMITTEE

Members of the Committee
Representative Vickie Agler, Chairman
Representative Russell George
Representative Wayne Knox
Senator Bill Schroeder, Vice Chairman
Senator Richard Mutzebaugh
Senator Bob Martinez

Legislative Council Staff
Elizabeth Haskell
Research Associate
Geoffrey Johnson
Research Associate

Office of Legislative Legal Services
Jane Brown
Staff Attorney
Mark Hamby
Staff Attorney
Joint Legislative Sunrise and Sunset Review Committee

Statutory Authority and Responsibility

The Joint Legislative Sunrise and Sunset Review Committee was established in 1985 to perform the functions and duties relating to the termination of specified commissions, divisions, agencies, and citizens' advisory committees (sunset) and to consider proposals for the regulation of occupations and professions not presently regulated (sunrise) (Section 2-3-1201, et seq., C.R.S. and Rule 35 of the Joint Rules of the Senate and House of Representatives). In addition, the Department of Regulatory Agencies (DORA) is required to analyze and evaluate those professions seeking state regulation, and the performance of each division, board, agency or function of an agency that is scheduled for termination (Section 24-34-104, et seq., C.R.S.).

During the 1994 interim, the committee held seven days of meetings. The committee reviewed findings and recommendations prepared by the Office of Policy and Research in DORA. Concerned citizens, interest groups, and representatives of regulatory entities and advisory committees testified before the committee. The committee conducted eleven sunset reviews of existing state agency regulatory functions, six sunrise reviews of applications for state occupational regulation, and five advisory committee reviews. Thirteen bills are recommended for action during the 1995 session.

A. Sunset Reviews of Existing Regulatory Programs - Regulatory Functions

During their sunset analysis of each agency, the committee and DORA are required by statute to consider several factors regarding the need for reviewing the entity. The factors to be considered follow:

1. whether regulation by the agency is necessary to protect the public health, safety, and welfare;

2. whether the conditions which led to the initial regulation have changed;

3. whether other conditions have arisen which would warrant more, less, or the same degree of regulation;

4. if regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms;
5. whether agency rules enhance the public interest and are within the scope of legislative intent;

6. whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters;

7. whether an analysis of agency operations indicates that the agency is performing its statutory duties efficiently and effectively;

8. whether the composition of the agency’s board or commission adequately represents the public interest;

9. whether the agency encourages public participation in its decision rather than participation only by the people it regulates;

10. whether the agency stimulates or restricts economic competition through regulatory powers;

11. whether complaint, investigation, and disciplinary procedures adequately protect the public and whether disposition of complaints are in the public interest or self-serving to the profession;

12. whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action; and

13. whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest (Section 24-34-104(9)(b), C.R.S.)

DORA prepares a report of its findings and distributes the report to the Joint Legislative Sunrise and Sunset Review Committee no later than July 1 of the year prior to the entity’s termination date. The report provides the basis for discussion in public hearings which the Joint Legislative Sunrise and Sunset Review Committee conducts during the legislative interim.

The committee conducted sunset reviews of four state boards, and seven other regulatory programs during the 1994 interim. These were:

Board of Chiropractic Examiners
Board of Medical Examiners
Board of Nursing
Podiatry Board
Bill 1 — Board of Medical Examiners

**Summary.** Bill 1 extends the authority of the Colorado State Board of Medical Examiners to regulate the practice of medicine until July 1, 2010.

The bill:

- allows athletic trainers to screen athletes for physical limitations that may pose a risk of injury under the athletic trainers' exemption from the medical practice act;
- eliminates the procedure for licensing applicants who have completed their academic curriculum at a foreign medical school, known as a degree equivalence program;
- requires applicants for licensure to file their applications a longer period in advance of the required examination;
- empowers the board to grant a probationary license if it determines that the applicant has engaged in unprofessional conduct, is not qualified, or has a license suspended or revoked for disciplinary reasons in another jurisdiction;
- defines actions that constitute unprofessional conduct;
- addresses procedures regarding complaints against physicians;
- provides that review of board actions shall be governed by the state Administrative Procedures Act; and
- eliminates obsolete continuing education provisions.

**Background.** In its sunset review of the Board of Medical Examiners, DORA recommended that the board continue its regulation of the practice of medicine due to
the inability of the public to independently identify qualified physicians. The DORA report also made recommendations to improve the Medical Practice Act, administration of the article, and the board’s effectiveness in protecting the public.

DORA recommendations included:

1. continuation of the State Board of Medical Examiners;

2. establishment of a uniform requirement that all applicants must complete two years of postgraduate training;

3. modification of licensing options for international medical graduates;

4. extension of the time limit by which applications for examination must be filed;

5. deletion of statutory language regarding the frequency with which applicants may take national licensing exams;

6. deletion of the post-graduate registration requirement;

7. inclusion in statute of a comprehensive list of circumstances in which the board may refuse to grant an applicant a license;

8. specification of deceitful conduct when applying for, securing, or seeking reinstatement of hospital privileges as actionable;

9. inclusion in statute of a deferred sentence as grounds for discipline;

10. inclusion in statute of a requirement that a physician refrain from sexual relations with a patient for a period of six months following the termination of their professional relationship;

11. amending the prescriptive power of physicians to prohibit their ability to self-prescribe certain drugs except on an emergency basis;

12. inclusion in statute of the failure to comply with required insurance, financial responsibility, and reporting requirements as unprofessional conduct;

13. imposition of a mandatory obligation upon licensees to respond in writing to a complaint issued by an individual or by the board;

14. defining in Colorado statute the disciplining of a physician’s license in another jurisdiction as unprofessional conduct;

15. defining in statute acceptable public communications and advertisements;
16. defining unprofessional conduct in statute as "any act or omission which fails to meet generally accepted standards of medical practice";

17. reclassification and revision of statutory provisions which define substance abuse and other health impairment problems as unprofessional conduct to encourage diversion and rehabilitation;

18. addressing unprofessional conduct and health impairment;

19. elimination of the option of permitting an adviser from the hearings panel to assist an administrative law judge;

20. streamlining the complaint and investigation procedure;

21. requiring peer review committees to report all disciplinary action, findings, and conclusions to the board;

22. granting the board more flexibility in the manner in which the board may impose disciplinary actions;

23. amending the procedural safeguards relative to formal complaints to conform to the requirements of the Administrative Procedures Act;

24. amending the statutes to include the licensee's consent to produce medical records from other treaters for purposes of board ordered mental or physical exams;

25. repealing certain sections of statute;

26. updating procedures for the maintenance of licensee lists and the establishment of renewal fees;

27. relocating statutory language addressing the peer assistance program financing mechanism;

28. requiring the board to publish lists of disciplinary actions;

29. narrowing the scope of practice that addresses the diagnosis of preexisting conditions by qualified athletic trainers;

30. making physician assistants subject to health impairment requirements and able to participate in the peer assistance program; and

31. requiring physicians to disclose their interest in clinics, laboratories, or other health care facilities to which they refer their patients.
Committee discussion centered on intimate relations between physicians and patients, unprofessional conduct of physicians, substance abuse by physicians, and the physician's peer assistance program. The committee also discussed removing athletic trainer exemptions from the Medical Practice Act.

The DORA report made numerous recommendations of which the committee adopted all or portions of 25 recommendations. Specifically, the committee adopted all or portions of recommendations 1, 3-9, 10, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 29, 30. (See DORA sunset review of the Board of Medical Examiners for a further explanation of the list of recommendations above.) The committee also adopted, at a subsequent meeting, additional language concerning athletic trainers.

Bill 2 — Board of Chiropractic Examiners

Summary. Bill 2 continues the Board of Chiropractic Examiners and their authority to regulate and license chiropractors through July 1, 2010.

The bill also:

- permits license applicants to complete their required course work by attending a course given by a board-approved provider;

- authorizes the board to issue a letter of admonition or impose conditions on a person's license, in addition to the other disciplinary actions already authorized;

- sets forth grounds for discipline;

- provides that disciplinary action taken against a practitioner's license to practice in another state shall constitute prima facie evidence of a violation in this state and grounds for discipline;

- authorizes the board, in its discretion, to require a chiropractor to take an examination when the chiropractor has been proven incompetent or negligent;

- authorizes the board to require a licensee to take a mental or physical examination if reasonable cause exists to believe he or she is unable to practice with reasonable skill and safety;

- authorizes the board to issue cease and desist orders and establishes requirements for their issuance;

- requires the recipients of letters of admonition to be advised that they have a specified time from the date of mailing of the letter to request that formal
disciplinary proceedings be initiated, (this procedure gives the recipient of the letter the option of adjudicating the propriety of the conduct upon which the letter of admonition is based); and

- requires licensed chiropractors to report to the board any chiropractor known or believed to have violated statutory provisions.

**Background.** In its sunset review of the Board of Chiropractic Examiners, DORA noted that chiropractic procedures may potentially expose patients to significant risk if performed incompetently, and that patients are generally unable to differentiate between competent and less than competent practitioners. Thus, in order to protect the public, DORA recommended that the regulation and licensing of chiropractors should continue. DORA suggested that the size of the board be increased from five to seven members, with four professional members and three consumer members. DORA's recommendations also addressed the disciplinary scope of the board, including recommendations for a statutory prohibition against sexual contact between chiropractors and patients.

A representative of the Board of Chiropractic Examiners was present to note the board's position on each of the 33 DORA recommendations. The board recommended changes to the DORA recommendations concerning sexual misconduct of chiropractors, strengthening the cease and desist authority of the board, that the board retain its present size of five members, and that closed meetings of the board be permitted for handling complaints and investigations of chiropractors.

A representative of the Colorado Chiropractic Association distributed a letter from the association noting the association's support of recommendations made by the Board of Chiropractic Examiners with some refinements, including the addition of the term "Chiropractic Physician" as an acceptable title, maintenance of continuing education requirements, and the authorization of "thank you" gifts to patients.

A representative of the Colorado Physical Therapy Association discussed the issue of chiropractors' advertising as physical therapists. Further testimony was given to the committee concerning the problem of allowing chiropractors to perform physical therapy for patients and then having these claims unrecognized by insurance companies as compensable. A total of 26 of the 33 DORA recommendations were adopted by the committee. Specifically, the committee adopted recommendations 1, 2, 3, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 23, 24, 25, 26-31, 32 and 33. (See DORA sunset review of the Board of Chiropractic Examiners.)
Summary. Bill 3 extends the regulatory and licensing authority of the State Board of Nursing over psychiatric technicians until July 1, 2010.

The bill also:

- empowers the board to limit the scope of a licensee’s practice within specified limitations;
- removes the limitation that a psychiatric technician must practice in a state-run institution if the technician performs certain duties;
- clarifies the grounds for which disciplinary action may be taken against a licensee;
- removes the specific subject areas which must be covered by a licensing examination;
- changes certain educational requirements for accreditation of a psychiatric technician educational program;
- changes the procedure for license renewal; and
- allows mental or physical examinations of licensees to be conducted by a qualified professional, who may or may not be a physician.

Background. In its sunset review of the Psychiatric Technician Licensing Program, DORA noted that the mentally ill and developmentally disabled are at great risk of inadequate care due to the extreme nature of their illnesses and that these patients require specialized care not always available in traditional medical settings. Therefore, DORA found that continuation of the licensing and regulation of psychiatric technicians is warranted. The second most significant recommendation made by DORA was that the practice restriction on licensed psychiatric technicians (LPT) be removed. This change would permit LPTs to practice outside of the state-run institutions, allow them to administer medications outside of a hospital setting, and enhance their employment opportunities. DORA also made recommendations to clarify portions of the statutes.

A representative of the Colorado Board of Nursing was present and stated that the board agreed with the DORA recommendation to remove practice restrictions placed on LPTs. The committee adopted the entirety of the DORA recommendations. (See DORA sunset review of the Psychiatric Technician Licensing Program.) The committee also adopted a motion permitting the Board of Nursing to issue temporary permits to psychiatric technicians.
Summary. Bill 4 continues the authority of the State Board of Nursing to regulate professional nurses until July 1, 2010.

The bill also:

- requires licensees to carry out nursing functions in accordance with accepted practice standards;
- allows the board to adopt rules authorizing advanced practice nurses to prescribe certain medications;
- changes the professional experience required of certain members of the board;
- creates a new mode of discipline that allows the board to limit the scope of a license held by a licensee;
- changes certain existing grounds for disciplinary action against a licensee and adds new grounds, including improper dispensing of steroids;
- allows physical or mental examinations of licensees to be conducted by a qualified professional, who may or may not be a physician; and
- repeals the nursing peer health assistance diversion program.

Background. In its sunset review of the Board of Nursing, DORA noted that the provision of nursing care involves life endangering situations that require significant knowledge and skill and that incompetence in this area can have serious consequences for patients. Thus, DORA noted that public regulation of the field is justified and recommended continuation of the board and the regulation and licensing of nursing.

One of the more significant departures from current practice recommended by DORA was expansion of the prescriptive authority of nurses in Colorado. Current statute permits some prescriptive authority. DORA recommended greater latitude for advanced nursing practitioners. DORA also recommended that the board composition be altered and that the diversion program for individuals with substance abuse and mental health problems be modified and continued.

A representative of the Board of Nursing was present at the hearing and noted that the board is in agreement with the DORA recommendations concerning the continuation of the diversion program, monthly meetings of the board, technical changes in the Nursing Practice Act and other administrative recommendations. The board is not in agreement with the proposed alteration of the membership of the board and the DORA recommendation concerning prescriptive authority for Advanced
Practice Nurses. A representative of the Advanced Practice Nurses of Colorado Nurses Association testified in favor of expanded prescriptive authority. A representative of the Colorado Medical Society testified that procedures for prescribing medications should be evaluated prior to allowing advanced practice nurses to prescribe medications.

The committee adopted DORA recommendations 1, 1A, 1B, 1C, 1D, 1E, 1H, 1I, and 1J. (See DORA sunset review of the Colorado Board of Nursing). The committee also adopted a motion to change the membership of the nursing board, and a motion to eliminate the peer assistance program. At a later meeting the committee adopted language addressing the prescriptive authority of advanced practice nurses.

Bill 5 — Department of Agriculture, Regulatory Authority Under the "Measurement Standards Act of 1983"

Summary. Bill 5 continues, through July 1, 2010, the licensing functions of the Department of Agriculture under the Measurement Standards Act of 1983.

The bill also:

- adopts standards for evaluation and inspection of weighing and measuring devices, and eliminates the statutory provisions that apply to moisture-testing devices;
- requires that all commercial devices have a certificate of conformance issued by the National Institute of Standards and Technology;
- eliminates, as conditions for qualification as a certified weigher, the requirements that a person be a U.S. citizen and have good moral character;
- grants the commissioner of agriculture authority to deny applications for licensure and certification and to discipline holders of licenses and certificates;
- replaces provisions for licensure of weighing and measuring device salesmen with certification provisions; and
- requires the Commissioner of the Department of Agriculture to establish metrology service fees based on the cost of providing such services.

Background. In its sunset review of the licensing function of the Commissioner of the Department of Agriculture with regard to the Measurement Standards Act, DORA recommended that the licensing of measuring and moisture testing devices and the certification of weighmasters be continued. DORA found that the licensing and certification programs protect consumers and promote fairness in commercial transactions.
DORA also made recommendations for improving the Measurement Standards Act, including the elimination of certain sections of the Act, and recommended that licensing and testing fees that are set in statute be removed from statute and be set by the Agricultural Commission.

The committee adopted DORA recommendations 1, 2, 3, 5, 6, 7A, 7B, and 8 (portions). (See DORA sunset review of the Measurement Standards Act.) Finally, the committee adopted a recommendation to correct statutory references to the National Bureau of Standards to read "National Institute of Standards and Technology."

**Bill 6 — Department of Agriculture, Regulation of Eggs**

**Summary.** Bill 6 continues the licensing functions of the Department of Agriculture with respect to egg production, handling, and sale.

The bill:

- amends the definition of "edible egg" to conform to U.S. Department of Agriculture requirements;
- eliminates the licensing of egg breakers;
- excludes the sale of gasoline from the definition of "total annual gross sales," which must be reported to determine the license fee paid by a retailer;
- allows the agricultural commission to specify the temperature at which eggs must be refrigerated;
- deletes certain provisions dealing with invoices, advertisements, sale of eggs, and placement of certificates on cases;
- deletes license requirements for egg candlers, out-of-state wholesalers, and other sellers of eggs in Colorado;
- gives enforcement authority and access to business places and records to the Commissioner of Agriculture; and
- gives the commissioner the authority to impose civil penalties and to deny licensure, place a licensee on probation, or restrict or refuse to renew the license of a person found to be in violation of the article.

**Background.** In its sunset review of the egg licensing functions of the Department of Agriculture, DORA recommended that the candler's (those who test eggs for quality) license be discontinued but that the wholesaler's and retailer's license be
continued. The DORA study found that government regulation and oversight of egg wholesalers is necessary to protect the public health. DORA also recommended that the licensing fees section of the law be repealed, that the authority to set license fees through regulation be given to the state Agriculture Commission, and that certain other sections of the egg law be repealed and put into regulation. A final recommendation from DORA addressed determination of the classes of retail egg license which must be purchased by an establishment.

The committee adopted DORA recommendations 1, 2, 3A through D, 4, 5, 6, 7, 8, 10, and 11. (See DORA sunset review of the Egg Law.)

Bill 7 — Department of Agriculture, Regulation of Persons Dealing in Agricultural Products

Summary. Bill 7 continues the regulatory and licensing authority of the Department of Agriculture over certain handlers of farm products through July 1, 2010. The bill also:

• deregulates transporters of farm products;
• amends the grounds for which a licensee or an applicant may be disciplined;
• adds new definitions to the Farm Products Act and the Commodity Warehouse Act;
• requires persons who act as agents for commodity handlers to be licensed;
• addresses bonding requirements under the Farm Products Act and the Commodity Warehouse Act;
• eliminates the licensing requirements for apple storage; and
• allows the Commissioner of Agriculture to adopt rules for the voluntary inspection of apples.

Background. In its sunset review of the licensing function of the Commissioner of the Department of Agriculture in regard to the Farm Products Act and Commodity Handler Act, DORA noted that farm product dealers and commodity handlers are in a position to cause tremendous financial hardship to farm producers and owners of agricultural products. The DORA report also noted that an unregulated free market does not ensure security for producers and owners of agricultural products.
DORA recommended that the Department of Agriculture educate licensees and producers as to the goals of these regulatory programs. DORA also recommended changes in statutory definitions as well as technical amendments to the acts for clarification and conformity. A representative of the Colorado Grain and Feed Association was present at the hearing to discuss an exemption for small feed lots and to express the association's concern regarding discontinuance of the licensing program for transporters. The committee adopted DORA recommendations 1, 2, 4A, 4B, 4C, 4D, 4E, 4G, 5, and 7. (See DORA sunset review of the Farm Products Act and the Commodity Handler Act.)

DORA also presented to the committee the results of its sunset review of the controlled atmosphere storage of apples and recommended that the licensure of persons operating a controlled atmosphere storage facility be discontinued. Other portions of the statute permitting the department to develop rules concerning the controlled atmosphere storage of apples are unaffected by the abolition of licensure. The committee adopted a motion to include provisions regarding apple storage in Bill 7. (See DORA sunset review of the Controlled Atmosphere Storage of Apples.)

Bill 8 — Department of Agriculture, Licensing of the Slaughter, Processing, and Sale of Meat Animals

Summary. Bill 8 continues the licensing function of the Department of Agriculture with respect to the slaughter, processing and sale of meat animals through July 1, 2010.

The bill also:

- removes from statute certain temperature requirements for storage of meat and allows the department to specify temperature requirements by rule;

- authorizes the department to adopt rules concerning the sale of meat, and rules concerning food plan operators; and

- prohibits the sale of adulterated meat and sets out the penalties for such sale.

Background. In its sunset review of the licensing functions of the Colorado Department of Agriculture pursuant to the Slaughter, Processing and Sale of Meat Animals Act, DORA recommended that licensing continue for food plan operators, meat processors, and locker plants. DORA found that the licensing programs are necessary to protect consumers from fraudulent business practices and to ensure that businesses that serve the public use sanitary procedures. Licensing permits the department to investigate applicants and to exclude those who have a history of defrauding consumers, to take action on current instances of fraud, and to regulate businesses that can endanger the public health. DORA recommended that the Agricultural Commission be given the authority to promulgate regulations governing
the sale of meat and other regulated products as well as the authority to set license fees in regulation rather than having these fees set in statute. DORA also recommended the repeal of certain sections of statute and the addition of a definition of adulterated meat.

The committee adopted DORA recommendations 1, 2, 3, and 4. (See DORA sunset review of the Slaughter, Processing and Sale of Meat Animals Act.)

Bill 9 — Colorado Podiatry Board, Regulation of Podiatrists

Summary. Bill 9 extends the regulatory authority of the Colorado Podiatry Board over the practice and licensure of podiatrists to July 1, 2010.

The bill also:

• requires persons to purchase professional liability insurance in specified amounts to lawfully practice podiatry, with some exceptions;

• expands the definition of unprofessional conduct;

• provides that letters of concern shall be confidential;

• eliminates the provisions that empower the Director of the Department of Regulatory Agencies to order the Podiatry Board to investigate a complaint whenever one is received by the Department;

• eliminates current continuing education requirements; and

• empowers the board to establish by rule the requirements for license reinstatement when the applicant has been unlicensed for more than two years.

Background. In its sunset review of the Colorado Podiatry Board, DORA found that the regulation of podiatrists is necessary due to the invasive and potentially injurious techniques which are part of their practice and because consumers will probably not have access to information regarding the competency of the various practitioners. DORA recommended that the regulation of podiatry practice and the licensure of podiatrists continue.

A representative of the Colorado Podiatry Association was present at the hearing on this sunset review and noted the Association’s objections to DORA recommendation 2, concerning the addition of language to the statute updating the prohibition against alcohol and drug abuse by podiatrists. He stated the association’s support of continuing education requirements. He also requested that if the committee adopted the DORA recommendation concerning a requirement to purchase professional liability insurance, that this requirement be waived for podiatrists who do not perform surgery.
The committee adopted DORA recommendations 1, 3, 4, 5 with amendments, 6, 7, 8 with amendments, 9, and 10. (See DORA sunset review of the Colorado Podiatry Board.)

**Bill 10 — Air Quality Control Commission, Asbestos Certification Program**

**Summary.** Bill 10 continues the authority of the Air Quality Control Commission created in the Department of Public Health and Environment to regulate asbestos abatement certification through July 1, 2010.

The bill also:

- allows the commission to adopt rules requiring certain training for persons seeking certification, recertification, or renewal of a certificate;
- requires annual refresher courses;
- reduces the time within which a certificate holder may reinstate a certificate after it expires;
- sets requirements for the renewal of certificates;
- adds the plea of nolo contendere to a violation of asbestos abatement law or regulation in another jurisdiction as a basis for taking disciplinary action against a certificate holder;
- changes the basis for issuance of a letter of admonition from conduct that does not warrant formal action to conduct that does not warrant suspension or revocation; and
- lengthens the waiting period for reapplication after a certificate is revoked.

**Background.** In its sunset review of the asbestos certification program of the Colorado Department of Public Health and Environment, DORA noted that harm to the public health and to the environment can result from the improper removal of asbestos. DORA recommended that the regulatory program continue and made several recommendations to strengthen the enforcement of the program. These recommendations included a recommendation to increase the authority of the Department of Public Health and Environment "to discipline certificants who have been disciplined in other states if the action would have been actionable under Colorado law." Another recommendation would establish letters of admonition as a formal disciplinary action.

At this sunset hearing, a representative of the Air Pollution Control Division of the Colorado Department of Public Health and Environment was present and stated that
the program is necessary to protect the health of residents of the state. Representatives of the American Lung Association of Colorado, the American Industrial Hygienist Association, and the Colorado Association of Commerce and Industry testified in support of the program. A representative of the Environmental Protection Agency informed the committee that if the state repealed the certification program, the training programs for those removing asbestos in the state would no longer be accredited.

The committee adopted DORA recommendations 1, 2, 3, 4, 5 with amendments, and 6. (See DORA sunset review of the Air Quality Control Commission Asbestos Certification Program.) Motions permitting the department flexibility to require recertification training programs as necessary were adopted. The committee also adopted a motion requiring that an asbestos removal certificate be renewed every three years, and that the person being certified notify the department every year of the completion of an asbestos recertification class. A motion was adopted to permit the department to test persons being recertified only if new regulations have been promulgated or if new information concerning asbestos becomes available.

B. Sunrise Review of Occupations Requesting State Regulation

During the 1994 interim, the committee reviewed six applications for licensure, registration, or other forms of state regulation submitted pursuant to Section 24-34-104.1(2), C.R.S. When considering whether or not to regulate a profession or occupation, the committee must consider the following criteria:

1. whether the practice of the unregulated profession or occupation clearly harms or endangers the health, welfare, or safety of the public;

2. whether the potential for harm is easily recognizable, rather than remote or dependent on tenuous argument;

3. whether the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional or occupational competence; and

4. whether the public can be adequately protected by other means in a more cost-effective manner.

The committee conducted six sunrise reviews. Two sunrise applications were withdrawn prior to a public hearing.
Summary of Committee Activities and Recommendations

Bill 11 — Audiologists and Hearing Aid Dealers

**Summary.** Bill 11 requires the registration of audiologists and hearing aid dealers by the director of the Division of Registrations in the Department of Regulatory Agencies.

The bill:

- sets forth the filing requirements for applicants for registration;
- states that a person who registers as an audiologist may also practice as a hearing aid dealer without registering as a hearing aid dealer;
- requires applicants to submit to the director proof that they have obtained a surety bond;
- allocates registration fees to the Division of Registrations Cash Fund;
- provides for future repeal of the registration provisions;
- empowers the director to discipline registered hearing aid dealers and audiologists after giving notice and holding a hearing;
- increases the period during which a hearing aid dealer must refund the purchase price of a hearing aid;
- tolls such rescission period for any period during which a hearing aid dealer takes possession of a hearing aid after its original delivery;
- requires dealers to include in contracts of sale a statement that if a hearing aid is not delivered within a specified period of time after the sale, the purchase price shall be fully refunded; and
- directs that fines collected pursuant to Consumer Protection Act provisions be distributed to state and local law enforcement agencies and to the General Fund.

**Background.** In their application for regulation of audiologists and hearing aid dispensers, the applicants sought licensure to protect consumers from unqualified practitioners, and to prevent unethical practitioners from operating in Colorado. Clients of such practitioners are at risk of physical, mental, and financial harm.
DORA conducted a sunrise review of this application for regulation and found that some relief to the potential risk of unqualified practitioners is provided by the Colorado Consumer Protection Act but that this protection is generally believed to be insufficient. DORA reported that in other states with licensing programs these programs have not provided sufficient benefit to justify state regulation. DORA recommended an increase in funding to the Office of the Attorney General earmarked for enforcement of the Consumer Protection Act. DORA recommended that the thirty day trial period after a hearing aid purchase should be tolled for any period in which a hearing aid dealer has taken possession of a hearing aid after its original delivery, for example, to have repairs made to the device. DORA also recommended that the Consumer Protection Act be amended to provide that refunds be made for hearing aids that are not delivered in a timely manner, that fines collected in enforcement of the law be divided between the General Fund and local, state and federal law enforcement agencies, and that a registration program for hearing aid dealers be created. Finally, DORA recommended that a bonding requirement or a recovery fund be established for hearing aid dealers.

A representative of the Colorado Academy of Audiology testified that the Consumer Protection Act is not sufficiently protecting the public and that a registration process would be an insufficient response to the problem. He expressed concern with medical misdiagnosis and financial harm. He said that he supports licensure and a minimum standard of practice. Many other persons testified in support of licensure of audiologists and hearing aid dealers.

A representative of the Attorney General's Office of Consumer Protection testified that most of the complaints that are received by the Attorney General are against dispensers of hearing aids who are not audiologists and noted that there are no dedicated funds at the Attorney General's office for fighting this kind of fraud. She noted her support for a bonding requirement. She also stated that many contracts for hearing aid purchases routinely include a waiver of the purchaser's right to have a medical exam prior to the purchase and commented that the federal government is reviewing this waiver.

The committee adopted motions to strengthen the Colorado Consumer Protection Act, to permit a 60 day trial period, and to toll this trial period for any time during which the device is in the possession of the hearing aid dealer. Motions were also adopted to require that revenues from fines collected for violations be divided between the General Fund and local and state law enforcement officials. A final motion passed which adds language to require a registration program and a $25,000 surety bond for both audiologists and hearing aid dealers.
Additional Sunrise Reviews Conducted

**Hemodialysis Technicians**

In its sunrise review of hemodialysis technicians DORA found that "there is no evidence to indicate that the training technicians receive is inadequate and thereby places the patient's care at risk." In 1992, DORA recommended that the Colorado Department of Health establish standardized training requirements for hemodialysis technicians and that the General Assembly provide authority to the department to promulgate regulations in this regard. A motion to adopt this 1992 recommendation failed at the August 18, 1994 meeting of the Joint Legislative Sunrise and Sunset Review Committee. Public testimony was provided indicating that federal regulations in this area are being developed.

**Regulation of Bed and Breakfasts**

In its sunrise review of the bed and breakfast industry DORA recommended against regulation of the industry. The committee adopted a motion against recommending a bill to regulate the industry. There was no public testimony.

**Veterinary Technicians**

In its sunrise review of veterinary technicians DORA recommended that no licensing or other regulation of veterinary technicians be promulgated. The committee took no action in regard to the regulation of veterinary technicians. There was no public testimony on the DORA sunrise report or recommendation.

**Electrologists**

In its sunrise review of electrologists, DORA recommended that the General Assembly should not regulate the practice of electrology due to a small danger of harm to the consumer. The committee opted against recommending legislation to regulate electrologists. The committee received testimony both in favor of and against regulation of the industry.

**Mortgage Brokers and Bankers**

In its sunrise review of mortgage brokers and bankers DORA recommended that a registration requirement be created for the industry. A motion to recommend legislation which would regulate the industry failed at the committee hearing of October 6, 1994. The committee heard significant testimony in favor of regulation.
Code Enforcement Officials and Lead Abatement Industry

The code enforcement officials sunrise application and the lead abatement industry sunrise application were submitted to the committee and were later withdrawn by the applicants prior to a public hearing.

C. Sunset Review of Advisory Committees

Section 2-3-1203, C.R.S., requires the Sunrise Sunset Committee to review advisory committees for their effectiveness. Advisory committees involve private citizens in the daily operations of government, thereby allowing government to utilize the expertise of its citizens. When reviewing information submitted by the advisory committees, the Sunrise Sunset Committee ascertains whether the advisory committees remain useful to government.

The following information submitted by the advisory committee helps the committee determine whether or not to continue the functions of the advisory committee:

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

If an advisory committee remains useful, the Sunrise Sunset Committee recommends its continued existence no longer be subject to sunset review. If an advisory committee no longer benefits government operations, it is allowed to terminate.

Summary of Committee Activities and Recommendations

Bill 12 — Continuation of Advisory Bodies

Summary. Bill 12 continues the following advisory bodies scheduled for repeal July 1, 1995:

Private Occupational School Policy Advisory Committee;
Pollution Prevention Advisory Board;
Underground Storage Tank Advisory Committee; and Homeless Prevention Advisory Committee.

Background. During the 1994 interim, the committee conducted sunset reviews of seven advisory committees and advisory boards. These were the:

Underground Storage Tank Advisory Committee;
Private Occupational School Policy Advisory Committee;
Homeless Prevention Advisory Committee;
Health Data Commission's Publications Advisory Committee;
Pollution Prevention Advisory Board;
Telecommunications Advisory Commission; and
Travel Reduction Program Advisory Board.

In the case of the Health Data Commission's Publications Advisory Committee, the Sunrise Sunset Committee recommended that if a bill to continue the Health Data Commission is introduced at the 1995 session of the General Assembly, that this bill also continue the Publications Advisory Committee.

D. Additional Committee Reviews

Bill 13 — Concerning the One-Year Extension of Certain Functions Subject to Review by the Joint Legislative Sunrise and Sunset Review Committee

Summary. Bill 13 continues the licensing authority of the Department of Public Health and Environment for persons who manufacture or distribute drug precursors, and continues the regulatory authority of the Coal Mine Board of Examiners for persons required to be certified to work in coal mines. Bill 13 was brought to the committee by DORA and provides additional time for the Sunrise Sunset Committee to consider this licensing and regulatory authority.

DORA Report Concerning Discrimination in Mortgage Lending

DORA was asked to investigate allegations of discrimination in mortgage lending by the Sunrise Sunset Committee in the summer of 1993. DORA presented the results of this study at the Sunrise Sunset committee meeting of October 6, 1994. (The report is on file at the offices of the Legislative Council.) DORA recommended an array of voluntary efforts and actions involving government intervention to address discrimination in mortgage lending. Recommendations involving government intervention include:

- putting commercial banks, savings and loan institutions, credit unions, and non-depository institutions on an equal regulatory basis;
• requiring in statute that depository and non-depository institutions adhere to anti-discrimination and community reinvestment provisions;

• taking advantage of federal disclosure requirements to publicize data showing lending rates to minority and non-minority borrowers;

• enacting community reinvestment provisions as part of the state's interstate banking law;

• giving the Colorado Division of Civil Rights the authority to bring a class action suit against lenders who engage in discriminatory mortgage practices;

• creating a linked deposit program for state funds;

• imposing fair lending practice educational requirements as part of state licensing laws for all regulated professions involved in mortgage lending; and

• requiring that Home Mortgage Disclosure Act reports be filed with the state to close reporting gaps that hinder the efforts of consumers and government agencies to ensure that discrimination is not occurring by lending institutions.

Rather than choosing to recommend legislation from the Sunrise Sunset Committee on this topic, the committee accepted a suggestion from Senator Bob Martinez that this matter be addressed in a non-committee bill.
MATERIALS AVAILABLE

Summary of Meetings

Summaries of the following meetings are available from the Legislative Council staff.

July 13 - Advisory Committees - Travel Reduction Program Advisory Board, Advisory Committee for Underground Storage Tanks, Private Occupation School Policy Advisory Committee, Homeless Prevention Advisory Committee, Publications Advisory Committee to the Health Data Commission, Pollution Prevention Advisory Board, Telecommunications Advisory Commission
Sunset Review - Psychiatric Technician Licensing Program, Sunset Review Colorado Board of Nursing

July 14 - Sunset Review of the Board of Medical Examiners, Sunset Review of the Board of Chiropractic Examiners


August 18 - Sunset Review of the Colorado Podiatry Board, Sunrise Review of Hemodialysis Technicians, Sunrise Review of the Regulation of Bed and Breakfasts

September 14 - Sunrise Review - Veterinary Technicians, Sunset Review - Colorado Board of Nursing, Prescriptive Authority, Sunset Review - Board of Medical Examiners, Sunrise Review Audiologists and Hearing Aid Dealers

September 15 - Sunset Review - Asbestos Certification Program, Sunrise Review - Electrologists

October 6 - Sunrise Review - Electrologists, Discussion of Regulation #9, Report from the Discrimination in Mortgage Lending Task Force, Sunrise Review - Mortgage Brokers/Bankers, Review of Proposed Legislation

DORA Reports

Detailed reports on all sunrise and sunset issues, prepared and submitted by the Office of Policy and Research, DORA, are available at the LCS Library.

Advisory Committee Reports

Information submitted by all advisory committees is available from the Legislative Council staff.
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SUNSET TERMINATION SCHEDULE
(Sunset reviews are conducted one year prior to termination)

JULY 1, 1994

The Division of Banking
The Division of Financial Services
The Division of Securities
Board of Registration for Professional Engineers and Professional Land Surveyors
Licensing of Commercial Driving Schools
Licensing of Debt Management Companies
Licensing of Persons to Sell or Issue Money Orders
Licensing of Pet Animal or Psittacine Bird Dealerships
Licensing of Kennels
Licensing of River Outfitters

JULY 1, 1995

Board of Chiropractic Examiners
Board of Medical Examiners
Board of Nursing
Podiatry Board
Licensing of Slaughter, Processing, and Sale of Meat
Licenses Related to Measurement Standards
Licensing Relating to Poultry Eggs
Apple Storage Facilities
Commodity Warehouses
Frozen Food Provisioners
Psychiatric Technicians
Asbestos Control Functions of the Department of Health

JULY 1, 1996

The Functions of the Workers’ Compensation Medical Care
Accreditation Commission and the Accreditation of Health Care Providers Under the Workers’ Compensation System
Licensing of Functions Relating to Fireworks
Permitting for Specific Weather Modifications Operations
Underground Storage Tank Installers
Board of Dental Examiners
Board of Pharmacy
Colorado Joint Review Process
Motor Clubs
Plant Operators’ Certification Board
Vessel Registration
Snowmobile Registration
Commercial Pesticide Applicators
Qualified Supervisors and Certified Operators
Board of Real Estate Appraisers

JULY 1, 1997

The Office of Regulatory Reform
The Division of Insurance
The Functions of The Department of Social Services Relating to the Expenditure of Moneys from the Central Fund for State and Veterans Nursing Homes created by section 26-12-106, C.R.S.
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<tr>
<th>JULY 1, 1998</th>
<th>JULY 1, 1999</th>
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<tr>
<td>Board of Examiners of Architects</td>
<td>Division of Civil Rights</td>
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<td>State Electrical Board</td>
<td>Real Estate Division/</td>
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<td>Examining Board of Plumbers</td>
<td>Real Estate Commission</td>
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<td>Public Utilities Commission</td>
<td>Division of Racing Events</td>
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<td>Utility Consumers' Board</td>
<td>Board of Examiners of Nursing</td>
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<td>State Board of Marriage and Family</td>
<td>Colorado Seed Act</td>
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<td>Therapists Examiners</td>
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<td>State Board of Licensed Professional</td>
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<td>State Board of Psychologist Examiners</td>
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<td>The Motor Vehicle Dealer Board and</td>
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<td>Executive Director of the</td>
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<td>Division of Fire Safety</td>
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<td>Licensing of Bingo and Games of</td>
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<td>Chance</td>
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<td>Program for the Administration and</td>
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<td>Monitoring of Medications in</td>
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<td>Exemption from Licensure under the</td>
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<td>Act&quot; pursuant to section 12-22-</td>
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<td>State Board of Accountancy</td>
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<td>State Board of Barbers and</td>
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<td>Cosmetologists</td>
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<td>Collection Agency Board</td>
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<td>Licensing of Debt Management</td>
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<td>Companies</td>
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JULY 1, 2004

Division of Banking
Division of Financial Services
State Board of Registration for
  Professional Engineers and
  Professional Land Surveyors
Division of Securities
Licensing of Persons to Sell or Issue
  Money Orders
Licensing of River Outfitters
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<td>Collection Agency Board</td>
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</tr>
<tr>
<td>AGENCY (alphabetical)</td>
<td>YEAR REVIEWED</td>
<td>STATUS AFTER SUNSET REVIEW</td>
<td>NEXT SUNSET DATE IS JULY 1 OF</td>
</tr>
<tr>
<td>--------------------------------------------------</td>
<td>---------------</td>
<td>-------------------------------------------------------------------------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>State Board of Licensed Professional Counselor Examiners (created 1988)</td>
<td>1991</td>
<td>modified and continued; board re-established as part of mental health practice law; modified and continued;</td>
<td>1998</td>
</tr>
<tr>
<td>State Board of Registration for Professional Engineers and Professional Land Surveyors</td>
<td>1980, 1987, 1993</td>
<td>modified and continued; modified and continued; modified and continued;</td>
<td>2004</td>
</tr>
<tr>
<td>State Board of Psychologist Examiners</td>
<td>1980, 1986, 1991</td>
<td>modified and continued; board re-established as part of mental health practice law; modified and continued;</td>
<td>1998</td>
</tr>
<tr>
<td>Public Utilities Commission</td>
<td>1977, 1982, 1992</td>
<td>modified and continued; modified and continued; modified and continued;</td>
<td>1998</td>
</tr>
<tr>
<td>Division of Racing Events (Dept. of Revenue)</td>
<td>1977, 1982, 1992</td>
<td>modified and continued; modified and continued; modified and continued;</td>
<td>1999</td>
</tr>
<tr>
<td>Board of Real Estate Appraisers (created 1990)</td>
<td></td>
<td></td>
<td>1996</td>
</tr>
<tr>
<td>Real Estate Commission</td>
<td>1978, 1988</td>
<td>modified and continued; modified and continued; modified and continued;</td>
<td>1999</td>
</tr>
<tr>
<td>Office of Regulatory Reform</td>
<td>1982, 1986, 1990</td>
<td>modified and continued; modified and continued; modified and continued;</td>
<td>1997</td>
</tr>
<tr>
<td>Division of Securities</td>
<td>1980, 1983, 1993</td>
<td>modified and continued; modified and continued; modified and continued;</td>
<td>2004</td>
</tr>
<tr>
<td>State Board of Social Work Examiners</td>
<td>1980, 1986, 1991</td>
<td>modified and continued; board re-established as part of mental health practice law; modified and continued;</td>
<td>1998</td>
</tr>
<tr>
<td>State Board of Veterinary Medicine</td>
<td>1978, 1990</td>
<td>modified and continued; modified and continued;</td>
<td>2001</td>
</tr>
</tbody>
</table>
### APPENDIX C
#### BOARDS AND COMMISSIONS ALLOWED TO SUNSET

<table>
<thead>
<tr>
<th>AGENCY</th>
<th>YEAR REVIEWED</th>
<th>STATUS AFTER SUNSET REVIEW</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board of Abstractor Examiners</td>
<td>1980</td>
<td>terminated, effective 7/1/82</td>
</tr>
<tr>
<td>Colorado Hospital Commission</td>
<td>1979</td>
<td>terminated, effective 3/1/80</td>
</tr>
<tr>
<td>Colorado Outfitter's Licensing Board</td>
<td>1987</td>
<td>terminated, licensing functions transferred to the Director of the Division of Registrations</td>
</tr>
<tr>
<td>State Athletic Commission of Colorado</td>
<td>1977</td>
<td>terminated, effective 7/1/77</td>
</tr>
<tr>
<td>State Board of Examiners of Barbers</td>
<td>1977</td>
<td>consolidated with cosmetology and continued, effective 7/1/77.</td>
</tr>
<tr>
<td>State Board of Cosmetology</td>
<td>1977</td>
<td>consolidated with barber board, effective 7/1/77.</td>
</tr>
<tr>
<td>State Board of Hearing Aid Dealers</td>
<td>1980, 1985</td>
<td>modified and continued; terminated, effective 4/17/86; a thirty-day rescission period for purchases of hearing aids enacted</td>
</tr>
<tr>
<td>Life Care Institutions Board of Examiners of Institutions for Aged Persons</td>
<td>1977, 1980</td>
<td>name changed to Board of Examiners of Life Care Institutions and continued; terminated; modified statutory functions transferred to Division of Insurance, effective 5/22/81</td>
</tr>
<tr>
<td>CO Manufactured Housing Board (Pre-1988 Mobile Home Licensing Board)</td>
<td>1980, 1987, 1991</td>
<td>modified and continued; modified and continued, name change; terminated by General Assembly;</td>
</tr>
<tr>
<td>Board of Mortuary Science</td>
<td>1977, 1980</td>
<td>modified and continued; terminated, effective 7/1/82;</td>
</tr>
<tr>
<td>State Board of Physical Therapy</td>
<td>1978, 1985</td>
<td>modified and continued; terminated, effective 7/1/86; licensing functions transferred to the Director of the Division of Registrations</td>
</tr>
<tr>
<td>State Board of Practical Nursing</td>
<td>1978</td>
<td>terminated and consolidated with nursing board, effective 7/1/80</td>
</tr>
<tr>
<td>Board of Registration for Professional Sanitarians</td>
<td>1977</td>
<td>terminated, effective 7/1/78</td>
</tr>
<tr>
<td>State Board of Shorthand Reporters</td>
<td>1977</td>
<td>terminated, effective 7/1/77; standards administered by state court administrator</td>
</tr>
<tr>
<td>Commission on the Status of Women</td>
<td>1978</td>
<td>terminated, effective 7/1/80</td>
</tr>
</tbody>
</table>
APPENDIX D
Licensing Functions Eliminated

1. Licensing and regulation of landscape architects (1977);
2. State licensing of beekeepers (1990)
3. Licensing and examination requirements for artificial inseminators (1991)
4. Regulation of motor clubs (1992)
5. State regulation of cemeteries (1992)
7. Licensing of Commercial Driving Schools (1994)
APPENDIX E
STATE DEPARTMENT FUNCTIONS REVIEWED

The following list shows those licensing functions of state departments, not listed in Appendix B, reviewed by the Joint Legislative Sunrise Sunset Review Committee.

Department of Agriculture

1. Licensing of slaughter, processing, and sale of meat
2. Licenses related to measurement standards
3. Licensing relating to poultry eggs
4. Licensing of operators of apple storage facilities
5. Licensing of dealers, agents and transporters of farm products and commodity warehouses
6. Licensing of butchers and slaughters of livestock, State Board of Stock Inspection Commissioners
7. Registration relating to nurseries
8. Licensing of public livestock markets, State Board of Stock Inspection Commissioners
9. Licensing of commercial pesticide applicators, qualified supervisors and certified operators
10. Colorado Seed Act

Department of Labor and Employment

1. Underground storage tank installers (State Inspector of Oils)
2. The functions of the workers' compensation medical care accreditation commission

Department of Natural Resources

1. Joint Review Process

Division of Parks and Outdoor Recreation

1. Vessel registration
2. Snowmobile registration
3. Licensing of River Outfitters
4. Permitting for specific weather modifications operations

Department of Public Health & Environment

1. Licensing of pet animal or psittacine bird dealerships
2. Licensing of kennels
3. Asbestos control functions
4. Specific regulations promulgated by the Air Quality Control Commission
5. Medication Aide Program
6. Water and waste-water treatment plant operators certification board
7. Administration and monitoring of medications in facilities
8. Exemption from Licensure under the "Colorado Controlled Substance Act" pursuant to section 12-22-304 (5)(e)(I), C.R.S., for Persons who Administer or Monitor Medications in Facilities.
Department of Public Safety

1. Licensing of functions relating to fireworks
2. Fire Suppression Program

Department of Regulatory Agencies

Division of Banking

1. Licensing of debt management companies
2. Licensing of persons to sell or issue money orders

Division of Civil Rights

1. Subpoena powers granted to the Director of the Division of Civil Rights

Division of Insurance

1. Licensing of professional bondsmen

Division of Registrations

1. Outfitter registration
2. Registration of acupuncturist
3. Licensing of physical therapists

State Board of Nursing

1. Psychiatric technicians
2. Certification of nurse aides

Secretary of State

1. Licensing of bingo and games of chance
2. Notaries Public

Department of Social Services

1. The functions of the department of social services relating to the expenditure of moneys from the central fund for state and veterans nursing homes

Local Licensing Authorities

1. Licensing of massage parlors
### APPENDIX E
STATE DEPARTMENT FUNCTIONS REVIEWED

The following list shows those licensing functions of state departments, not listed in Appendix B, reviewed by the Joint Legislative Sunrise Sunset Review Committee.

#### Department of Agriculture

1. Licensing of slaughter, processing, and sale of meat
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6. Licensing of butchers and slaughters of livestock, State Board of Stock Inspection Commissioners
7. Registration relating to nurseries
8. Licensing of public livestock markets, State Board of Stock Inspection Commissioners
9. Licensing of commercial pesticide applicators, qualified supervisors and certified operators
10. Colorado Seed Act

#### Department of Labor and Employment

1. Underground storage tank installers (State Inspector of Oils)
2. The functions of the workers' compensation medical care accreditation commission

#### Department of Natural Resources

1. Joint Review Process

#### Division of Parks and Outdoor Recreation

1. Vessel registration
2. Snowmobile registration
3. Licensing of River Outfitters
4. Permitting for specific weather modifications operations

#### Department of Public Health & Environment

1. Licensing of pet animal or psittacine bird dealerships
2. Licensing of kennels
3. Asbestos control functions
4. Specific regulations promulgated by the Air Quality Control Commission
5. Medication Aide Program
6. Water and waste-water treatment plant operators certification board
7. Administration and monitoring of medications in facilities
8. Exemption from Licensure under the "Colorado Controlled Substance Act" pursuant to section 12-22-304 (5)(e)(f), C.R.S., for Persons who Administer or Monitor Medications in Facilities.
9. Exemption from Licensure under the "Colorado Medical Practice Act" pursuant to section 12-36-106 (3)(c)(II), C.R.S., for Persons who Administer and Monitor Medications in Facilities.

10. Exemption from Licensure under the "Nurse Practice Act" pursuant to section 12-38-125 (1)(h)(I), C.R.S., for Persons who Administer and Monitor Medications in Facilities.

Department of Public Safety

1. Licensing of functions relating to fireworks
2. Fire Suppression Program

Department of Regulatory Agencies

Division of Banking

1. Licensing of debt management companies
2. Licensing of persons to sell or issue money orders

Division of Civil Rights

1. Subpoena powers granted to the Director of the Division of Civil Rights

Division of Insurance

1. Licensing of professional bondsmen

Division of Registrations

1. Outfitter registration
2. Registration of acupuncturist
3. Licensing of physical therapists

State Board of Nursing

1. Psychiatric technicians
2. Certification of nurse aides

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1. Licensing of bingo and games of chance
2. Notaries Public

Department of Social Services

1. The functions of the department of social services relating to the expenditure of moneys from the central fund for state and veterans nursing homes

Local Licensing Authorities

1. Licensing of massage parlors
APPENDIX F
SUNRISE APPLICATION HISTORY

The following chronological table summarizes the sunrise actions of the Sunrise Sunset Committee from 1985 to November 1994.

<table>
<thead>
<tr>
<th>Year Reviewed</th>
<th>Introduced</th>
<th>Outcome/ Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1985</td>
<td>1. Dietitians</td>
<td>No licensure recommended</td>
</tr>
<tr>
<td></td>
<td>2. Lay Midwives</td>
<td>No licensure recommended</td>
</tr>
<tr>
<td></td>
<td>3. Marriage and Family Therapists</td>
<td>No licensure recommended</td>
</tr>
<tr>
<td></td>
<td>4. Modeling Agencies</td>
<td>No licensure recommended</td>
</tr>
<tr>
<td></td>
<td>5. Private Investigators</td>
<td>No licensure recommended</td>
</tr>
<tr>
<td></td>
<td>6. Professional Counselors</td>
<td>No licensure recommended</td>
</tr>
<tr>
<td></td>
<td>7. Commercial Health and Fitness Club Managers</td>
<td>No licensure recommended</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year Reviewed</th>
<th>Introduced</th>
<th>Outcome/ Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1986</td>
<td>1. Acupuncturists</td>
<td>Committee recommended additional study</td>
</tr>
<tr>
<td></td>
<td>2. Respiratory Therapists</td>
<td>No licensure recommended</td>
</tr>
<tr>
<td></td>
<td>3. Professional Counselors</td>
<td>Legislation recommended but not approved by the Legislative Council</td>
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<tr>
<th>Year Reviewed</th>
<th>Introduced</th>
<th>Outcome/ Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987</td>
<td>1. Athletic Trainers</td>
<td>No licensure recommended</td>
</tr>
<tr>
<td></td>
<td>2. Community Living Specialists</td>
<td>No licensure recommended (HB 1065, Persons Who Administer Medications, adopted)</td>
</tr>
<tr>
<td></td>
<td>3. Hearing Aid Dealers</td>
<td>Application withdrawn</td>
</tr>
<tr>
<td></td>
<td>4. Occupational Therapists</td>
<td>No licensure recommended</td>
</tr>
<tr>
<td></td>
<td>5. Private Investigators</td>
<td>No licensure recommended</td>
</tr>
<tr>
<td></td>
<td>6. Respiratory Therapists</td>
<td>Application withdrawn</td>
</tr>
<tr>
<td>Year Reviewed</td>
<td>Outcome/Legislation</td>
<td></td>
</tr>
<tr>
<td>---------------</td>
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<td></td>
</tr>
<tr>
<td>1988</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Acupuncturists</td>
<td>Licensure legislation enacted (SB 9)</td>
<td></td>
</tr>
<tr>
<td>2. Creative Arts Therapists</td>
<td>No licensure recommended</td>
<td></td>
</tr>
<tr>
<td>3. Repossessor</td>
<td>No licensure recommended (SB 14, Repossession of Collateral, adopted)</td>
<td></td>
</tr>
<tr>
<td>4. Underground Storage Tank Installers</td>
<td>Licensure legislation enacted (HB 1299)</td>
<td></td>
</tr>
</tbody>
</table>

1989

<p>| 1. Asbestos Air Samplers | No licensure recommended |
| 2. Creative Arts Therapists | No licensure recommended |
| 3. Dietitians | No licensure recommended |
| 4. Fire Suppression System Installers | No licensure recommended (SB 90-4, Fire Suppression Program, adopted) |
| 5. Interior Designers | No licensure recommended |
| 6. Landscape Architects | No licensure recommended |
| 7. Locksmiths | No licensure recommended |
| 8. Massage Therapists | No licensure recommended (SB 90-37, Define Massage Therapists, adopted) |
| 9. Pesticide Dealer/Managers | No licensure recommended |
| 10. Real Estate Appraisers | Licensure enacted (SB 90-34) |
| 11. Security Guards | No licensure recommended |
| 12. X-Ray Assistants | No licensure recommended (HB 90-1006, X-ray Assistants Qualifications, Postponed Indefinitely) |</p>
<table>
<thead>
<tr>
<th>Year Reviewed</th>
<th>Outcome/ Legislation</th>
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<tr>
<td>Introduced</td>
<td></td>
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<tr>
<td>1990</td>
<td></td>
</tr>
<tr>
<td>1. Athletic Trainers</td>
<td>No licensure recommended (HB 91-1127, Athletic Trainers Exception, adopted)</td>
</tr>
<tr>
<td>2. Dietitians</td>
<td>No licensure recommended</td>
</tr>
<tr>
<td>3. Locksmiths</td>
<td>No licensure recommended</td>
</tr>
<tr>
<td>4. Massage Therapists</td>
<td>No licensure recommended</td>
</tr>
<tr>
<td>5. Mortuary Science Practitioners</td>
<td>No licensure recommended</td>
</tr>
<tr>
<td>6. Occupational Therapists</td>
<td>No licensure recommended</td>
</tr>
<tr>
<td>7. Private Security Officers</td>
<td>No licensure recommended (HB 91-1014, Security Guard Criminal Data by CBI, adopted)</td>
</tr>
<tr>
<td>1991</td>
<td></td>
</tr>
<tr>
<td>1. Lay Midwives</td>
<td>Recommendation for licensure failed (HB 92-1010)</td>
</tr>
<tr>
<td>2. Financial Planners</td>
<td>Recommendation for licensure failed (HB 92-1005)</td>
</tr>
<tr>
<td>3. Hearing Aid Dealers, Speech-Language Pathologists, Audiologists</td>
<td>No licensure recommended (SB 92-83, Code Violation on Sale of Hearing Aids, adopted)</td>
</tr>
<tr>
<td>4. Property Managers</td>
<td>No licensure recommended (SB 92-100, Manage Common Interest Communities, adopted)</td>
</tr>
<tr>
<td>5. Plumbing Contractors</td>
<td>No licensure recommended (SB 92-98, Term Plumbing Contractor, adopted)</td>
</tr>
<tr>
<td>6. Tanning Facilities</td>
<td>No licensure recommended</td>
</tr>
<tr>
<td>7. Professional Boxing</td>
<td>No licensure recommended</td>
</tr>
<tr>
<td>8. Domestic Violence Counselors</td>
<td>No licensure recommended</td>
</tr>
<tr>
<td>9. Sign Language Interpreters</td>
<td>No licensure recommended</td>
</tr>
<tr>
<td>Year Reviewed</td>
<td>Introduced</td>
</tr>
<tr>
<td>---------------</td>
<td>------------</td>
</tr>
<tr>
<td>1992</td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>Private Utilization Review</td>
</tr>
<tr>
<td>2.</td>
<td>Colorado Seed Sellers</td>
</tr>
<tr>
<td>3.</td>
<td>Direct-Entry Midwives</td>
</tr>
<tr>
<td>4.</td>
<td>Interpreters for the Deaf</td>
</tr>
<tr>
<td>5.</td>
<td>Radon Service Providers</td>
</tr>
<tr>
<td>6.</td>
<td>Hemodialysis Technicians</td>
</tr>
<tr>
<td>7.</td>
<td>Consumer Electronics Service Technicians</td>
</tr>
<tr>
<td>1993</td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>Third Party Administrators</td>
</tr>
<tr>
<td>2.</td>
<td>Naturopathic Physicians</td>
</tr>
<tr>
<td>3.</td>
<td>Dieticians</td>
</tr>
<tr>
<td>4.</td>
<td>Respiratory Care Practitioners</td>
</tr>
<tr>
<td>1994</td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>Audiologists and Hearing Aid Dealers</td>
</tr>
<tr>
<td>2.</td>
<td>Hemodialysis Technicians</td>
</tr>
<tr>
<td>3.</td>
<td>Bed and Breakfasts</td>
</tr>
<tr>
<td>4.</td>
<td>Veterinary Technicians</td>
</tr>
<tr>
<td>5.</td>
<td>Electrologists</td>
</tr>
<tr>
<td>6.</td>
<td>Mortgage Brokers and Bankers</td>
</tr>
</tbody>
</table>
7. Code Enforcement Officials
   Application withdrawn

8. Lead Abatement Industry
   Application withdrawn
A BILL FOR AN ACT

101 CONCERNING THE REGULATORY AUTHORITY OF THE BOARD OF
102 MEDICAL EXAMINERS.

Joint Legislative Sunset and Sunset Review Committee
November 17, 1994

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

Joint Legislative Sunset and Sunset Review Committee
Extends the authority of the Colorado state board of medical examiners ("board").
Eliminates board members' immunity from criminal actions based on a disciplinary proceeding or other official act performed in good faith, while retaining members' civil immunity in such cases.
Allows athletic trainers to screen athletes for physical limitations that may pose a risk of injury under the athletic trainers' exemption from the medical practice act.
Eliminates the procedure for licensing applicants who have completed their academic curriculum at a foreign medical school, known as a degree equivalence program. Requires applicants for licensure to file their applications a longer period in advance of the required examination. Eliminates the special procedure for applicants who fail their second and subsequent examinations.
Empowers the board to grant a probationary license if it determines that the applicant has engaged in unprofessional conduct, is not qualified, or has had a license suspended or revoked for disciplinary reasons in another jurisdiction. Defines "disciplinary reasons" for this purpose. States that if an application is denied or granted subject to probation, the applicant may seek review pursuant to the state administrative procedure act unless the applicant elects to accept the license subject to probation.
Defines the following actions as unprofessional conduct: using fraud in applying for hospital privileges, a license to practice in any state, or professional liability insurance coverage; being convicted of an offense of moral turpitude or a crime that would constitute a violation of the medical practice act: engaging in a sexual act with a patient during a physician's professional relationship with the patient or for a specified period thereafter, failing to establish financial responsibility or respond to a written complaint, and using deceptive advertising.
Eliminates the provision allowing a hearings panel to appoint an advisor to assist an administrative law judge. Increases the period during which a physician must respond to a written complaint. Empowers an inquiry panel to conduct a further investigation upon receiving a physician's answer to such a complaint. Requires that disciplinary actions taken as a result of a professional review proceeding be reported to the board. Eliminates the requirement that the board send a letter of admonition to any physician who commits subsequent actions of a similar nature. Eliminates the formal complaint procedure and replaces it with a requirement that the handling of complaints conform to the state administrative procedure act. Eliminates the procedure by which a complainant may seek review of an order dismissing a complaint.
Eliminates private or public censure as a means of discipline. Requires hearings panels to consider sanctions needed to protect the public before they consider measures to rehabilitate the licensee. Subjects physician assistants to mental and physical examination provisions. Eliminates the authority of the department of regulatory agencies to direct the board to investigate a licensee about whom the department has received a complaint.
Provides that review of board actions shall be governed by the state administrative procedure act. Eliminates obsolete continuing education provisions. Directs the board to determine whether applicants for renewal or reinstatement of medical licenses have complied with statutory and professional requirements, including continued competence. Makes the physicians' peer health assistance program accessible to physician assistants. Eliminates provisions concerning advertisements by physicians and instead makes advertising in a misleading, deceptive, or false manner an act of unprofessional conduct.
Requires that professional review committees forward a copy of their recommendations to the board.

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

SECTION 1. 12-36-103 (4), (5), and (6) (b), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

12-36-103. State board of medical examiners - immunity - subject to termination - repeal of article. (4) The board shall elect biennially from its members a president, a
vice-president, and a secretary. Regular meetings of the board or either panel, established pursuant to section 12-36-118, shall be held as scheduled by the board in the state of Colorado. Special meetings of the board may be called by the president or by three members of the board at any time on three days' prior notice by mail or, in case of emergency, on twenty-four hours' notice by telephone or telegraph ELECTRONIC ACCESS, any such meetings to be held at the place designated in the call therefor. Except as provided in section 12-36-118 (6), a majority of the board shall constitute a quorum for the transaction of all business. All meetings of the board shall be deemed to have been duly called and regularly held, and all decisions, resolutions, and proceedings of the board shall be deemed to have been duly authorized, unless the contrary be proved.

(5) Members of the board A BOARD MEMBER shall be immune from suit in any CIVIL action civil or criminal, based upon any a disciplinary proceeding or other official act performed proceeding or other official act that such board member performs in good faith as members of such board.

(6) (b) This article is repealed, effective July 1, 1995

JULY 1, 2010.

SECTION 2. 12-36-106 (3.5) (d) (IV), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-36-106. Practice of medicine defined - exemptions from licensing requirements. (3.5) (d) For purposes of this subsection (3.5), "athletic trainer scope of practice" means the performance of all or some of the following functions by a qualified athletic trainer:

(IV) The supervision of maintenance of athletic equipment to assure safety THE ASSESSMENT, DURING A SCREENING PROCESS, OF PHYSICAL LIMITATIONS, INCLUDING THOSE PREVIOUSLY DIAGNOSED BY A PHYSICIAN, WHICH MAY POSE A RISK OF INJURY TO AN ATHLETE;

SECTION 3. 12-36-107 (2), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-36-107. Qualifications for licensure. (2) No person shall be granted a license to practice medicine as provided by subsection (1) of this section unless such person:

(a) Is at least twenty-one years of age;

(b) Is a graduate of an approved medical college, as defined in section 12-36-108; and

(c) Has completed either an approved internship of at least one year, as defined in section 12-36-109, or has completed at least one year of postgraduate training approved by the board. The board may grant a license subject to terms and conditions, including, but not limited to, any such person if it has reasonable grounds to believe he has committed any of the acts or offenses defined in this article as unprofessional conduct.

SECTION 4. 12-36-107.6 (2). Colorado Revised Statutes, 1991 Repl. Vol., is repealed as follows:

12-36-107.6. Foreign medical school graduates.

(2) An applicant who has completed the academic curriculum in residence at a foreign medical school, but who did not complete
an internship or social service, and who thereafter has completed
a year of supervised clinical training at a hospital in the United
States, which training was affiliated with a medical school
offering a fifth-pathway program, shall be deemed to have
attained the equivalent of the degree of doctor of medicine at a
United States medical school approved by the liaison committee
for medical education and, for purposes of the application for
licensure, such applicant shall not be considered a graduate of a
foreign medical school. "Fifth-pathway program" means the
program which was in effect in Colorado pursuant to the
provisions of section 12-36-107.5(1), as such section existed
prior to its repeal effective July 1, 1988, or a similar
statutorily based program of another state.

SECTION 5. 12-36-108, Colorado Revised Statutes,
1991 Repl. Vol., is amended to read:

12-36-108. Approved medical college. An approved
medical college is a college which conforms to the minimum
educational standards for medical colleges or for osteopathic
colleges as established respectively by the American medical
association LIAISON COMMITTEE ON MEDICAL EDUCATION OR ANY
SUCCESSOR ORGANIZATION THAT IS THE OFFICIAL ACCREDITING
BODY OF EDUCATIONAL PROGRAMS LEADING TO THE DEGREE OF
DOCTOR OF MEDICINE AND RECOGNIZED FOR SUCH PURPOSE BY
THE FEDERAL DEPARTMENT OF EDUCATION AND THE COUNCIL ON
POSTSECONDARY ACCREDITATION, OR FOR OSTEOPATHIC COLLEGES
AS ESTABLISHED AND BY THE AMERICAN OSTEOPATHIC ASSOCIATION, OR
A COLLEGE WHICH IS APPROVED BY EITHER OF SAID ASSOCIATIONS SUCH
ORGANIZATIONS. The board shall have the authority, upon its
own investigation of the educational standards and facilities
thereof, to approve any other medical college.

SECTION 6. 12-36-109, Colorado Revised Statutes,
1991 Repl. Vol., is amended to read:

12-36-109. Approved internship. (1) An approved
internship is an internship:

(a) Of at least one year in a hospital conforming to the
minimum standards for intern training established by the
American medical association ACCREDITATION COUNCIL FOR
GRADUATE MEDICAL EDUCATION OR ANY SUCCESSOR
ORGANIZATION, or by the American osteopathic association; or

(b) AN INTERNISTH Approved by either of said associations
SUCH ORGANIZATIONS.

(2) The board has the authority, upon its own
investigation, to approve any other internship.

SECTION 7. 12-36-110, Colorado Revised Statutes,
1991 Repl. Vol., is amended to read:

12-36-110. Approved residency. (1) An approved
residency is a residency:

(a) PERFORMED in a hospital conforming to the
minimum standards for residency training established by the
American medical association ACCREDITATION COUNCIL FOR
GRADUATE MEDICAL EDUCATION OR ANY SUCCESSOR
ORGANIZATION, or by the American osteopathic association; or

(b) A RESIDENCY Approved by either of said associations
SUCH ORGANIZATIONS.
The board has the authority, upon its own investigation, to approve any other residency.

SECTION 8. 12-36-111 (2), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-36-111. Applications for license. (2) (a) An applicant for a license on the basis of an examination by the board shall file his application at least thirty NINETY days prior to the announced date of the examination.

(b) If such an applicant is not a GRADUATE OF AN APPROVED MEDICAL COLLEGE at the time of filing his application, he shall submit to the board, in lieu of a diploma or other required evidence of graduation, a written statement from the dean or other authorized representative of the approved medical college IN WHICH SUCH APPLICANT is IN ATTENDANCE STATING that the applicant will receive his diploma at the end of the then current school term; but in any such case, the applicant shall not be permitted to take the examination until he has filed with the board his diploma or other acceptable evidence of graduation from such approved medical college HAS BEEN FILED WITH THE BOARD and THE APPLICANT has complied with the requirements of subsection (1) of this section. And no license shall be issued to him until he has satisfied the board that he has completed at least one year of approved internship or approved postgraduate training and has otherwise met the requirements for the issuance of a license under this article.

SECTION 9. 12-36-112, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is repealed as follows:

12-36-112. License fee. An applicant for a license to practice medicine shall pay a fee to be determined and collected pursuant to section 12-36-123.5 (2) or established pursuant to section 24-34-105, C.R.S.

SECTION 10. 12-36-113 (2), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-36-113. Examinations. (2) The board shall be responsible for determining the passing score to reflect a standard of minimum competency for the practice of medicine. If an applicant fails to meet such minimum passing score, he may be reexamined at any subsequent scheduled examination upon paying a fee to be determined and collected pursuant to section 24-34-105, C.R.S. If he fails in a second examination, a further examination may be taken, but not less than one year after the date of the preceding examination, and he shall be required to file a new application and pay a fee to be determined and collected pursuant to section 24-34-105, C.R.S. The board may, in its discretion, determine whether any second or further examination shall be on all subjects included in the scheduled examination. No fee remitted with an application shall be refunded, but, in case an applicant is prevented through no fault of his own from taking the examination applied for, he may take a subsequently scheduled examination within one year without payment of another fee or submission of a new
SECTION 11. 12-36-116, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-36-116. Refusal of license - issuance subject to probation. (1) The board may refrain from issuing a license or may grant a license subject to terms of probation if the board determines that an applicant for a license to practice medicine:

(a) Does not possess the qualifications required by this article; or that he;

(b) Has done any of the acts engaged in unprofessional conduct, as defined in section 12-36-117; or as unprofessional conduct, it may refrain from issuing a license and the applicant may proceed as provided in section 24-4-104 (9), C.R.S.; or

(c) Has been disciplined in another state or foreign jurisdiction with respect to his or her license to practice medicine.

(2) For purposes of this section, "discipline" means any matter which must be reported pursuant to 45 CFR sec. 60.8 and is substantially similar to unprofessional conduct as defined in section 12-36-117.

(3) An applicant whose application is denied or whose license is granted subject to terms of probation may seek review pursuant to section 24-4-104 (9), C.R.S.; except that, if an applicant accepts a license that is subject to terms of probation, such acceptance shall be in lieu of and not in addition to the remedies set forth in section 24-4-104 (9), C.R.S.

SECTION 12. 12-36-117 (1) (a), (1) (f), (1) (h), (1) (p), (1) (r), (1) (aa), (1) (ee), and (2). Colorado Revised Statutes, 1991 Repl. Vol., are amended. and the said 12-36-117 (1), as amended, is further amended by the addition of the following new paragraphs. to read:

12-36-117. Unprofessional conduct.

(1) "Unprofessional conduct" as used in this article means:

(a) Resorting to fraud, misrepresentation, or deception in applying for, securing, renewing, or seeking reinstatement of a license to practice medicine in this state or any other state, in applying for professional liability coverage, required pursuant to section 13-64-301, C.R.S., or privileges at a hospital, or in taking the examination provided for in this article;

(f) Any conviction of an offense of moral turpitude, a felony, or pleading guilty or nolo contendere to a felony or a crime that would constitute a violation of this article. For purposes of this paragraph (f), "conviction" includes the entry of a plea of guilty or nolo contendere or the imposition of a deferred sentence.

(h) Any conviction of violation of any federal or state law regulating the possession, distribution, or use of any controlled substance, as defined in section 12-22-303 (7), and, in determining if a license should be denied, revoked, or suspended, or if the licensee should be placed on probation, the board shall
be governed by the provisions of section 24-5-101, C.R.S. For purposes of this paragraph (h), "conviction" includes the entry of a plea of guilty or no contest or the issuance of a deferred sentence.

(p) An act or omission constituting grossly negligent medical practice or two or more acts or omissions which fail any act or omission which fails to meet generally accepted standards of medical practice; whether the two or more acts or omissions occur during a single treatment of one patient, during the course of treatment of one patient, or during the treatment of more than one patient;

(r) Engaging in a sexual act with a patient during the course of patient care OR WITHIN SIX MONTHS IMMEDIATELY FOLLOWING THE TERMINATION OF THE PHYSICIAN'S PROFESSIONAL RELATIONSHIP WITH THE PATIENT. "Sexual act", as used in this paragraph (r), means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S.

(aa) Failing to accurately answer the questionnaire accompanying the renewal form as required pursuant to section 12-36-123 (2)-(b) 12-36-123 (1) (b);

(cc) Violating the provisions of section 8-42-101 (3.6), C.R.S.; Failing to establish and continuously maintain financial responsibility, as required in section 13-64-301, C.R.S.;

(gg) Failing to respond in a timely manner to a complaint issued pursuant to section 12-36-118 (4);

(hh) Advertising in a manner that is misleading, deceptive, or false.

(2) A revocation or suspension of a license to practice medicine in any other state, territory, or country, for disciplinary reasons shall be deemed to be prima facie evidence of unprofessional conduct. For purposes of this subsection (2), the term "disciplinary reasons" includes the imposition of any sanction required to be reported pursuant to 45 CFR sec. 60.8; except that this subsection (2) shall apply only to revocations or suspensions when such sanctions are based upon acts or omissions in such other state, territory, or country, that are substantially the same as those defined as unprofessional conduct pursuant to in subsection (1) of this section.

SECTION 13. 12-36-118 (1), (4) (a), (4) (b) (II), (4) (c) (II.5), (5) (a), (5) (b), (5) (c), (5) (d), (5) (e), (5) (g) (II), the introductory portion to 12-36-118 (5) (g) (III), and 12-36-118 (9) (a), (9) (b), and (12), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

12-36-118. Disciplinary action by board - immunity.

(1) (a) The president of the board shall divide those members of the board other than himself the president into two panels of five members each, four of whom shall be physician members.

(b) Each panel shall act as both an inquiry and a hearings panel. Members of the board may be assigned from one panel to the other by the president. The president may be a member of both panels, but in no event shall the president or any other member who has considered a complaint as a member of
A panel acting as an inquiry panel take any part whatever in
the consideration of a formal complaint involving the same matter.
other than with regard to the appointment of an advisor to an
administrative-law judge.

(c) All matters referred to one panel for investigation
shall be heard, if referred for formal hearing, by the other panel
or a committee thereof of such panel. However, in its
discretion, either inquiry panel of the board may elect to refer a
case for formal hearing to a qualified administrative law judge
with or without an assigned advisor from the hearings panel, in
lieu of a hearings panel of the board, for his an initial decision
pursuant to the provisions of section 24-4-105, C.R.S. Should the
inquiry panel elect to have an advisor assist with the
administrative law judge, the advisor would be assigned to the
hearing by the president of the board. The advisor would assist
the administrative law judge in obtaining and interpreting medical
data pertinent to the hearing. The advisor would be excluded
from the hearings panel review of the decision of the
administrative-law judge.

(d) The initial decision of the an administrative law
judge may be reviewed pursuant to section 24-4-105 (14) and
(15), C.R.S., by the filing of exceptions to the initial decision by
the respondent or the board's counsel with the hearings panel
which would have heard the case if it had not been referred to an
administrative law judge or by review upon the motion of such
hearings panel. The respondent or the board's counsel
shall file such exceptions.

(4) (a) (I) Written complaints in writing relating to the
conduct of any a physician licensed or authorized to practice
medicine in this state may be made by any person or may be
initiated by an inquiry panel of the board on its own motion.
The physician complained of shall be given notice by certified
mail of the nature of all matters complained of the complaint
and shall be given twenty thirty days to make explanation or
explain answer thereto answer or explain in writing the
matters described in such complaint. Upon receipt of the
physician's answer or at the conclusion of twenty thirty days,
whichever occurs first, if no answer has been received, the
matter shall be referred to one panel acting as an inquiry panel for
that particular case, referred to in this subsection (4) as the
"inquiry panel", for investigation. The investigation the inquiry
panel may take further action as set forth in
subparagraph (II) of this paragraph (a).

(II) The inquiry panel may then conduct a further
investigation, which may be made by one or more members of
the inquiry panel, by one or more physicians who are not
members of the board, by a member of the staff of the board, or
by a professional investigator, or any other person or
organization as the inquiry panel directs. And it any such
investigation shall be entirely informal.

(b) The board shall cause an investigation to be made
when the board is informed of:

(II) Disciplinary actions taken as a result of a
professional review proceeding pursuant to part 1 of article 36.5
of this title against a physician. SUCH DISCIPLINARY ACTIONS
SHALL BE PROMPTLY REPORTED TO THE BOARD.

(c) On completion of an investigation the inquiry panel
shall make a finding that:

(II.5) The investigation discloses an instance of conduct
which in the opinion of the inquiry panel, does not warrant formal
action by the board and should be dismissed but in which the
inquiry panel has noticed indications of possible errant conduct by
the licensee that could lead to serious consequences if not
corrected. In which SUCH A case, a confidential letter of concern
shall be sent to the physician against whom the complaint was
made. If the board learns of second or subsequent actions of the
same or similar nature by the licensee, the board shall send a
letter of admonition to the physician, and such letter need not
remain confidential.

(5) (a) All formal complaints seeking disciplinary action
against a physician shall be filed with the board. A formal
complaint shall set forth the charges with sufficient particularity
as to inform the physician clearly and specifically of the acts of
unprofessional conduct with which he is charged.

(b) Upon the filing of a formal complaint, the board
shall issue a citation, together with a copy of the complaint
attached thereto. The citation shall require said physician to file
with the board, within twenty days after service thereof, a written
answer to the complaint. Such citation and complaint may be
served by certified mail, return receipt requested, addressed to the
physician at his last registered or known post-office address. The
return receipt signed by the physician complained of shall be
proof of service thereof. In the event that the physician refuses
to accept such certified mail and sign the receipt thereof, the
citation and a copy of the complaint may be served upon him as
other process and proof thereof are made, all as provided in rule
4 of the Colorado rules of civil procedure. The time to answer
shall commence from the date of service.

(c) It is the duty of the physician so served with such
citation to file with the board his answer to the complaint in which
he shall admit or deny the material allegations thereof and shall
set forth any affirmative defense he may have. He may include
in his answer any request for a more particular statement of the
alleged acts of unprofessional conduct or may raise any other
objections, including a plea that the complaint does not charge
unprofessional conduct warranting the imposition of discipline.

(d) If the physician so charged fails to answer the
complaint as provided in paragraph (c) of this subsection (5) or
fails to appear at the hearing after receiving due notice of the time
and place thereof, the panel to which the hearings function has
been assigned in that particular case, referred to in this subsection
(5) as the "hearing panel," may proceed to hear the complaint
and make its findings and recommendations as provided in this
subsection (5).

(e) ALL FORMAL COMPLAINTS SHALL BE HEARD AND
DETERMINED IN ACCORDANCE WITH PARAGRAPH (f) OF THIS
SUBSECTION (5) AND SECTION 24-4-105, C.R.S. EXCEPT AS
PROVIDED IN SUBSECTION (1) OF THIS SECTION, ALL FORMAL HEARINGS
shall be conducted by the hearings panel. The physician may be present in person and by counsel, if he so desires, to offer evidence and be heard in his or her own defense. At formal hearings, the witnesses shall be sworn and a complete record shall be made of all proceedings had and testimony. 

Hearings on formal complaints shall be conducted in accordance with paragraph (f) of this subsection (5) and the applicable provisions of section 24-4-105, C.R.S.

(g) (II) If it is found that the charges are unfounded and unproven, the hearings panel, or an administrative law judge sitting in lieu of the hearings panel pursuant to subsection (1) of this section, shall enter an order dismissing the complaint. Whereupon, the matter shall be terminated, but any person who has filed a complaint in the proceedings who desires to have the matter of dismissal of the complaint reviewed may seek such review pursuant to the provisions of section 12-36-119.

(III) If the hearings panel finds the charges proven and orders that discipline be imposed it shall also determine the extent of such discipline, which shall be in the form of a letter of admonition, private censure, public censure, suspension for a definite or indefinite period, or revocation of license to practice. In any determining appropriate disciplinary action, the hearings panel shall first consider sanctions that are necessary to protect the public. Only after the panel has considered such sanctions may it consider and order requirements designed to rehabilitate the licensee or applicant. If discipline other than revocation of a license to practice is imposed, the hearings panel may also order that the physician be granted probation and allowed to continue to practice during the period of such probation. The hearings panel may also include in any disciplinary order which allows the physician to continue to practice such conditions as the panel may deem appropriate to assure that the physician is physically, mentally morally, and otherwise qualified to practice medicine in accordance with generally accepted professional standards of practice, including any or all of the following:

(9) (a) If the board has reasonable cause to believe that a person licensed to practice medicine in this state is unable to practice medicine or that a person certified to practice as a physician assistant in this state is unable to practice with reasonable skill and safety to patients because of a condition described in section 12-36-117 (1) (i) or (1) (o) it may require such licensee or physician assistant to submit to mental or physical examinations by physicians designated by the board. Upon the failure of such a licensee or physician assistant to submit to such mental or physical examinations, unless due to circumstances beyond his control, the board may suspend such licensee’s or physician assistant’s license to practice medicine in this state the license or certificate until such time as he submits to the required examinations are conducted.

(b) Every person licensed to practice medicine or certified to practice as a physician assistant in this state shall be deemed, by so practicing or by applying for annual registration of his such person’s license to practice medicine in
this state, or certificate, to have given his consent consented
to submit to mental or physical examinations when directed in
writing by the board. Further, such person shall be
deemed to have waived all objections to the admissibility of the
examining physician's testimony or examination reports on the
ground of privileged communication. Subject to applicable
federal law, such physician or physician assistant shall
be deemed to have waived all objections to the
production of medical records to the board from health
care providers which may be necessary for the
evaluations described in paragraph (a) of this subsection
(9).

(12) (a) The executive director of the department of
regulatory agencies may direct the board to conduct an
investigation of a person licensed to practice medicine about
whom the executive director has received complaints.

(b) The board, within sixty days, shall accept or reject
the directive of the executive director under paragraph (a) of this
subsection (12), and the board shall notify the executive director
of its decision. If the board rejects the investigation or if, upon
review, the executive director and the attorney general find that
the board has not proceeded with a thorough investigation, the
executive director may then cause an investigation to be made of
the complaints presented to him; but no new investigation shall be
made by the executive director for the sole reason of disagreement
with the findings and conclusions of the board. In any
investigation conducted by the executive director pursuant to this
paragraph (b), the executive director may utilize the staff,
records, and moneys of the board. After an investigation and, if
necessary, a hearing, the executive director shall submit to the
board the findings of fact and conclusions of law for further
action.

(c) Except as specifically provided in this subsection
(12), actions taken by the executive director are subject to the
limitations imposed by section 24-1-105 (1), C.R.S., relating to
the powers, duties, and functions of the board under a type 1
transfer.

SECTION 14. 12-36-119, Colorado Revised Statutes,
1991 Repl. Vol., is amended to read:

12-36-119. Appeal of final board actions. (1)-(a) The
board, on its own motion or upon application, at any time after
the refusal to grant a license, the imposition of any discipline as
provided in section 12-36-118, or the ordering of probation, as
provided in section 12-36-118 (5) (g) (III), may reconsider its
prior action and grant, reinstate, or restore such license or
terminate probation, or reduce the severity of its prior disciplinary
action. The taking of any such further action, or the holding of
a hearing with respect thereto, shall rest in the sole discretion of
the board.

(b) Upon the receipt of such application, it may be
forwarded to the attorney general for such investigation as may be
demed necessary. A copy of the application and the report of
investigation shall be forwarded to the hearings panel which shall
consider the same and report its findings and conclusions. The
proceedings shall be governed by the applicable provisions governing formal hearings in disciplinary proceedings. The attorney general may present evidence bearing upon the matters in issue, and the burden shall be upon the applicant seeking reinstatement to establish the averments of his application as specified in section 24-4-105 (7), C.R.S. No application for reinstatement or for modification of a prior order shall be accepted unless the applicant deposits with the board all amounts unpaid under any prior order of the board.

(2) The action of the board in refusing to grant a license, in taking any disciplinary action as provided in section 12-36-118, or in placing a physician on probation may be reviewed by the court of appeals by appropriate proceedings under section 24-4-106 (11), C.R.S. When the board refuses to grant a license, imposes disciplinary action pursuant to section 12-36-118, or places a physician on probation, such action may be reviewed by the court of appeals pursuant to section 24-4-106 (11), C.R.S., unless the physician has accepted a license subject to terms of probation as set forth in section 12-36-116 (3).

SECTION 15. 12-36-122, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-36-122. Internship - residency - registration. Any person serving an approved internship or an approved residency, as defined by this article, in a hospital in the state of Colorado this state may do so for an aggregate period of not-to-exceed up to six years without a license to practice medicine or the payment of any fee. Such person must register with the board in such manner and form as the board shall prescribe. Licensed physicians responsible for the supervision of interns or residents in graduate training programs are required to shall promptly report to the board anything concerning an individual in such graduate medical education programs which would constitute a violation of this article. Such physicians shall also report to the board any individual who has not progressed satisfactorily in the program or who has been dismissed from the program for inadequate performance or ethical reasons.

SECTION 16. 12-36-123 (1) (a), (1) (b), (2) (a), (2) (b), and (3), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

12-36-123. Procedure - registration - fees. (1) (a) The board shall establish procedures for the maintenance of licensee lists and the establishment of renewal fees and schedules, which fees and schedules shall be established subject to the provisions of section 24-34-102 (8), C.R.S. Every licensee and every certified physician assistant shall pay the secretary board a registration fee to be determined and collected pursuant to section 24-34-105, C.R.S., and shall obtain a registration certificate for the current calendar-year renewal period.

(b) A licensee desiring to obtain an annual registration certificate shall submit the information necessary to show that he has fulfilled the board's continuing medical education requirements pursuant to paragraph (c) of this subsection (1). Any licensee aggrieved by a decision relating to such continuing
education requirements may ask the executive director of the department of regulatory agencies to review such requirements in accordance with the procedures established by section 24-34-102 (11), C.R.S. The board shall design a questionnaire to accompany the renewal form for the purpose of determining whether a licensee has acted in violation of this article or been disciplined for any action that might be considered a violation of this article or might make the licensee unfit to practice medicine with reasonable care and safety. If an applicant fails to answer the questionnaire accurately, such failure shall constitute unprofessional conduct under section 12-36-117 (1) (aa).

The board shall mail to each such licensee at his last address as shown on the records of the board, during December of each year, notice of the foregoing provisions together with such form of application for registration as may be prescribed by the board. Failure of any licensee to mail notice of the provisions of this section, with the application for registration prescribed by the board, to each licensee at the last address shown on the board's records. Such mailing shall be made in accordance with the renewal schedule established pursuant to section 24-34-102 (8), C.R.S. If a licensee or certified physician assistant fails to pay the registration fee prescribed by subsection (1) of this section, means that the license has lapsed, and the name of any lapsed licensee or certificate of such licensee or certificate holder shall lapse and the name of the licensee or certificate holder shall be omitted from such list.

(b) The board shall establish a questionnaire to accompany the renewal form. Said questionnaire shall be designed to determine if the licensee has acted in violation of or has been disciplined for actions that might be construed as violations of this article or that might make the licensee unfit to practice medicine with reasonable care and safety. Failure of the applicant to answer the questionnaire accurately shall constitute unprofessional conduct as specified in section 12-36-117. When a licensee's license lapses, the licensee may file a board-approved application for reinstatement with the board, and the license shall be reinstated subject to payment to the board of the renewal fee and a reinstatement fee determined by the board pursuant to section 24-34-105, C.R.S. If charges are made against the licensee pursuant to section 12-36-118, the board shall defer action on the pending application for reinstatement and proceed with a hearing on such charges in accordance with section 12-36-118. After such hearing, the board shall reinstate, further suspend, or revoke such license. The board shall not reinstate any license to practice medicine which has lapsed for more than two years unless the applicant demonstrates continued professional competence in the manner prescribed by the board.

(3) Upon application made to the board by any such
licensee on a form prescribed by the board, his license shall be
reinstated, subject to the payment to the board of the current
renewal fee and a reinstatement fee determined by the board
pursuant to section 24-34-105, C.R.S. If, before or after such
application for reinstatement has been made, charges are preferred
against the licensee by the board or by any person, as provided by
section 12-36-118, the board shall defer action on the pending
application for reinstatement, if any, and proceed with a hearing
on such charges in accordance with section 12-36-118 and
thereupon shall reinstate, further suspend, or revoke such license.
No license to practice medicine which has lapsed for more than
two years shall be reinstated unless the applicant demonstrates to
the board his continued professional competence in such manner
as prescribed by the board:

SECTION 17. 12-36-123.5 (3.5), (4), and (5), Colorado
Revised Statutes, 1991 Repl. Vol., as amended, are amended to
read:

12-36-123.5. Physicians' and physician assistants' peer health assistance fund. (3.5) (a) No later than June 30,
1994, the board shall transfer the balance in the fund, if any, to
the administering entity chosen by the board pursuant to
paragraphs (d) and (e) of this subsection (3.5):

(b) Effective July 1, 1994, as a condition of licensure in
this state, and effective July 1, 1995, as a condition of
PHYSICIAN ASSISTANT CERTIFICATION, every applicant shall pay to
the administering entity that has been selected by the board
pursuant to the provisions of paragraphs (d) and (e) of this
subsection (3.5) an amount set by the board not to exceed
twenty-eight dollars per year, which amount shall be used to
support designated providers that have been selected by the board
to provide assistance to physicians AND PHYSICIAN ASSISTANTS
needing help in dealing with physical, emotional, or psychological
problems which may be detrimental to their ability to practice
medicine.

(c) The board shall select one or more peer health assistance programs as designated providers. To be eligible for
designation by the board a peer health assistance program shall:

(I) Provide for the education of physicians AND PHYSICIAN ASSISTANTS with respect to the recognition and
prevention of physical, emotional, and psychological problems and
provide for intervention when necessary or under circumstances
which may be established by rules promulgated by the board;

(II) Offer assistance to a physician OR PHYSICIAN ASSISTANT in identifying physical, emotional, or psychological
problems;

(III) Evaluate the extent of physical, emotional, or psychological problems and refer the physician OR PHYSICIAN
ASSISTANT for appropriate treatment;

(IV) Monitor the status of a physician OR PHYSICIAN ASSISTANT who has been referred for treatment;

(V) Provide counseling and support for the physician OR PHYSICIAN ASSISTANT and for the family of any physician OR
PHYSICIAN ASSISTANT referred for treatment;

(VI) Agree to receive referrals from the board;
(VII) Agree to make their services available to all licensed Colorado physicians AND CERTIFIED COLORADO PHYSICIAN ASSISTANTS.

(d) The administering entity shall be a qualified, nonprofit private foundation that is qualified under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, and shall be dedicated to providing support for charitable, benevolent, educational, and scientific purposes that are related to medicine, medical education, medical research and science, and other medical charitable purposes.

(e) The responsibilities of the administering entity shall be:

(I) To collect the required annual payments;

(II) To verify to the board, in a manner acceptable to the board, the names of all physician AND PHYSICIAN ASSISTANT applicants who have paid the fee set by the board;

(III) To distribute the moneys collected, less expenses, to the approved designated provider, as directed by the board;

(IV) To provide an annual accounting to the board of all amounts collected, expenses incurred, and amounts disbursed; and

(V) To post a surety performance bond in an amount specified by the board to secure performance under the requirements of this section. The administering entity may recover the actual administrative costs incurred in performing its duties under this section in an amount not to exceed ten percent of the total amount collected.

(f) NO LATER THAN JUNE 30, 1994, THE BOARD SHALL TRANSFER THE BALANCE IN THE FUND, IF ANY, TO THE ADMINISTERING ENTITY CHOOSEN BY THE BOARD PURSUANT TO PARAGRAPHS (d) AND (e) OF THIS SUBSECTION (3.5).

(4) No grant shall be made by the board pursuant to subsection (3) of this section until sufficient moneys have been credited to the physicians’ peer health assistance fund in accordance with subsection (2) of this section.

(5) Nothing in this section shall be construed to create any liability on the board or the state of Colorado for the actions of the board in making grants to peer assistance programs, and no civil action may be brought or maintained against the board or the state for an injury alleged to have been the result of the activities of any state-funded peer assistance program or the result of an act or omission of a physician OR PHYSICIAN ASSISTANT participating in or referred by a state-funded peer assistance program.

SECTION 18. 12-36-125 (3), Colorado Revised Statutes, 1991 Repl. Vol., is repealed as follows:

12-36-125. Division of fees - independent advertising or marketing agent. (3) The board shall not have the authority to regulate, directly or indirectly, advertising or marketing activities of independent advertising or marketing agents except as provided in this section. The board may, in the name of the people of the state of Colorado, apply for an injunction in the district court to enjoin any independent advertising or marketing agent from the use of advertising or marketing which the court finds on the basis of the evidence presented by the board to be misleading, deceptive, or false or otherwise in violation of section
SECTION 19. 12-36-129 (5) (a), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

1236129. Violation - penalties. (5) (a) No specialty society, or association of physicians, whether through by-laws, rules, regulations, or otherwise, and no or licensed physician may discriminate against any person licensed to practice medicine if such physician is otherwise qualified for membership in the specialty society or association. If board certification or board eligibility in a specialty is a membership requirement, such certification or board eligibility in a specialty must be granted by either the American board of medical specialties or the American osteopathic association based upon the applicant's training as a doctor of medicine or as a doctor of osteopathy, with respect to any aspect of membership in such specialty society or association of physicians is sufficient. Notwithstanding any other remedies provided under this article, any a licensed physician or who is discriminated against in violation of this section shall have a private right of action for damages against any such the licensed physician and against the or specialty society or association of physicians that so discriminates.

SECTION 20. 12-36.5-104 (7), Colorado Revised Statutes, 1991 Repl. Vol., is amended by the addition of a new paragraph to read:

12-36.5-104. Establishment of professional review committees - function. (7) The written bylaws, policies, or procedures of any professional review committee shall provide for at least the following:

(f) A copy of any recommendations made pursuant to paragraph (d) of this subsection (7) shall be promptly forwarded to the board of medical examiners.

SECTION 21. 24-34-104 (24) (b), Colorado Revised Statutes, 1988 Repl. Vol., is repealed as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (24) The following boards in the division of registrations shall terminate on July 1, 1995:

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

SECTION 22. 24-34-104, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended by the addition of a new subsection to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (41) The following agencies, functions, or both, shall terminate on July 1, 2010:
(a) The following board in the division of registrations in the Department of Regulatory Agencies:

(i) The Colorado State Board of Medical Examiners, created by Article 36 of Title 12, C.R.S.

SECTION 23. 13-4-102 (2) (f), Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

13-4-102. Jurisdiction. (2) The court of appeals shall have initial jurisdiction to:

(f) Review actions of the state board of medical examiners in refusing to grant or in revoking or suspending a license or in placing the holder thereof on probation, as provided in section 12-36-119 (2), C.R.S. 12-36-119, C.R.S.;


SECTION 25. Effective date - applicability. This act shall take effect July 1, 1995, and shall apply to acts occurring on or after said date.

SECTION 26. 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.
SENATE BILL 95

Joint Legislative Sunrise and Sunset Review Committee

November 17, 1994

A BILL FOR AN ACT

CONCERNING THE REGULATION OF THE PRACTICE OF
CHIROPRACTIC BY THE STATE BOARD OF CHIROPRACTIC
EXAMINERS.

Bill Summary

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

Joint Legislative Sunrise and Sunset Review Committee

Extends the authority of the state board of chiropractic examiners. Requires licensed chiropractors to display their licenses. Permits license applicants to complete their required course work by attending a course given by a board-approved provider. States that a licensee's license shall automatically expire if it is not renewed prior to its expiration date. Provides the board from refunding any renewal fee. Requires that a licensee furnish the board with a new address within thirty days after the change. Authorizes the board to issue a letter of admonition or impose conditions on a person's license, in addition to the other disciplinary actions already authorized. Makes the following actions grounds for discipline: Using misrepresentation, fraud, or deceit in securing, retaining, or seeking reinstatement of a license or taking an examination; failing to meet generally accepted standards of practice; being addicted to or dependent upon alcohol or drugs or habitually using controlled substances; commission of a fraudulent insurance act; allowing colonic irrigation to be performed at the practitioner's premises; fee-splitting; failing to report the(normal) of a license to an agency in another state for acts that would constitute grounds for discipline in this state; engaging in a sexual act with a patient during the course of care or within a specified time following the termination of the professional relationship; abandoning a patient; and failing to provide adequate supervision when employing unlicensed persons in chiropractic practice. Provides that disciplinary action taken against a practitioner's license to practice in another state shall constitute prima facie evidence of a violation in this state and grounds for discipline. Authorizes the board, in its discretion, to require a chiropractor to take an examination when the chiropractor has been proven incompetent or negligent. Requires that no order for examination include the board's reasons for believing a licensee is unable to practice with reasonable skill and safety. Authorizes the board to require a licensee to take a mental or physical examination if reasonable cause exists to believe he or she is unable to practice with reasonable skill and safety. States that a licensee shall be deemed to have waived any claim of privilege regarding an examining physician's testimony and reports. Allows the board to suspend a licensee's license for failure to undergo such an examination except due to circumstances that are beyond his or her control. Provides that the results of an examination from being used as evidence in another proceeding or made available to the public. Requires that recipients of letters of admonition be advised they have a specified time from the date of mailing the letter to request that formal disciplinary proceedings be initiated. Authorizes the board to issue cease and desist orders and establishes requirements for the issuance of such orders. Requires licensed chiropractors to report to the board any chiropractor known or believed to have violated statutory provisions.

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

SECTION 1. 12-33-107 (1) (b). Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

(1) The board is authorized to and shall:

(b) Identify and proscribe, by rule, chiropractic trade practices which are untrue, deceptive, or misleading.


ADDITION OF A NEW SECTION to read:

DISPLAY OF LICENSE REQUIRED. EVERY LICENSED PRACTITIONER OF CHIROPRACTIC SHALL CONSPICUOUSLY
DISPLAY HIS OR HER LICENSE TO PRACTICE IN THIS STATE. IF A
CHIROPRACTOR PRACTICES AT SEVERAL LOCATIONS, HIS OR HER
NAME AND LICENSE NUMBER SHALL BE DISPLAYED IN A MANNER
THAT CAN BE EASILY RECOGNIZED BY PATIENTS. PERSONS WHO
ENGAGE IN THE PRACTICE OF CHIROPRACTIC UNDER THE NAME OF
A PARTNERSHIP, ASSOCIATION, OR OTHER ENTITY SHALL
CONSPICUOUSLY DISPLAY AT THE ENTRANCE OF THEIR PLACE OF
BUSINESS THE NAME OF EACH MEMBER OR ASSOCIATE OF SUCH
ENTITY WHO IS ENGAGED IN THE PRACTICE OF CHIROPRACTIC.

SECTION 3. 12-33-112, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-33-112. Application for license - fee - examination.

Any person who fulfills the minimum educational requirements prescribed by this article and by the board, who is not less than twenty-one years of age, who desires to obtain a license to practice chiropractic in this state, and who is not entitled to a license therefor under other provisions of this article may make application for such license upon such forms and in such manner as prescribed by the board, which application shall be accompanied by an examination fee. The board may refuse to examine or license an applicant if the applicant has committed any act that would be grounds for disciplinary action against a licensed chiropractor. Such applicant shall be examined by the board in the subjects outlined in section 12-33-111 to determine the applicant's qualifications to practice chiropractic. A license shall be granted to all applicants who on such examination are found qualified by attaining a passing grade on each section of the examination. Any applicant receiving a passing grade in all but one subject may, within one year from the date of such failure, repeat the examination in only that subject, upon payment of the total examination fee, and will be licensed upon receiving a passing grade in such subject. Qualification in that portion of the examination relating to the basic sciences shall be established by the applicant submitting proof satisfactory to the board of successfully passing the examination in the basic sciences given by the national board of chiropractic examiners. Any chiropractic applicant who desires to practice electrotherapy shall present evidence that he or she has successfully completed a course of not less than one hundred twenty classroom hours in this subject at a school approved by the board or under the instruction of an approved provider.

SECTION 4. 12-33-114 (1), Colorado Revised Statutes, 1991 Repl. Vol., is amended, and the said 12-33-114 is further amended by the addition of the following new subsections, to read:

12-33-114. Renewal of license. (1) Every licensed chiropractor who desires to retain his license shall pay to the board a renewal fee set pursuant to law on or before October 1 of each year, except that the board may change the period of the validity of a license as provided by section 24-34-102 (7), C.R.S. Upon payment of this fee and showing of a certificate of continuing education attendance of fifteen hours by the chiropractor, the board shall issue a renewal license permitting the continued practice of chiropractic and of electrotherapy if
A PERSON LICENSED TO PRACTICE CHIROPRACTIC IN THIS STATE WHO IS ELIGIBLE TO HAVE HIS OR HER LICENSE RENEWED SHALL RECEIVE A RENEWAL LICENSE UPON:

(a) Timely submission of a renewal application in a form prescribed by the Board; and

(b) Payment of a renewal fee established by the board pursuant to sections 24-34-102 (8) and 24-34-105, C.R.S.

1.2 If a licensee fails to renew his or her license prior to its expiration, such license shall automatically expire. A chiropractor formerly licensed in this state may have an expired license reinstated pursuant to rules established by the board.

1.3 A renewal fee paid pursuant to subsection (1) of this section shall not be refunded.

SECTION 5. Part 1 of article 33 of title 12, Colorado Revised Statutes, 1991 Repl. Vol., is amended by the addition of a new section to read:

12-33-114.5. Change of address - reporting required.

Each person licensed under this article, upon changing his or her address, shall inform the board of the their new address within thirty days after such change. The address change shall be reflected on the next license or renewal certificate issued to the licensee.

SECTION 6. The introductory portion to 12-33-117 (1) and 12-33-117 (1) (a), (1) (b), (1) (c), (1) (e), (1) (j), (1) (k), (1) (l), (2), and (4), Colorado Revised Statutes, 1991 Repl. Vol., are amended, and the said 12-33-117 (1) is further amended by the addition of the following new paragraphs, to read:

12-33-117. Discipline of licensees - letters of admonition, suspension, revocation, denial, and probation - grounds. (1) The board may refuse, suspend, or revoke a license, including but not limited to a license under section 12-33-113, to practice chiropractic or electrotherapy by chiropractors for any of the following causes. Upon any of the following grounds, the board may issue a letter of admonition to a licensee or may revoke, suspend, deny, refuse to renew, or impose conditions on such licensee's license:

(a) Using fraud, misrepresentation, or deceit in applying for, securing, renewing, or seeking reinstatement of a license or in taking an examination provided for in this article;

(b) Unprofessional, incompetent, or negligent conduct.

An act or omission that constitutes negligent chiropractic practice or fails to meet generally accepted standards of chiropractic practice;

(c) Conviction of a felony or any crime that would constitute a violation of this article. For purposes of this subsection (1), "conviction" includes the acceptance of a guilty plea or a plea of nolo contendere to a felony or the imposition of a deferred sentence.

(d) Habitual intemperence in the use of alcoholic liquors.
ADDIC~ON TO OR DEPENDENCE ON ALCOHOL OR HABIT-FORMING
DRUGS OR HABITUAL USE OF CONTROLLED SUBSTANCES, AS
DEFINED IN SECTION 12-22-303 (7), OR OTHER DRUGS HAVING
SIMILAR EFFECTS;

(j) Failure to report malpractice judgments or settlements
within thirty SIXTY days;

(k) Violation of abuse of health insurance pursuant to
section 18-13-119, C.R.S., OR COMMISSION OF A FRAUDULENT
INSURANCE ACT, AS DEFINED IN SECTION 10-1-127, C.R.S.;

(l) TREATING a patient by colonic irrigation
OR ALLOWING COLONIC IRRIGATION TO BE PERFORMED AT THE
LICENSEE’S PREMISES;

(2) For the purpose of this article, any one of the
following acts by a licensed chiropractor is declared to constitute
unprofessional conduct:

(e) (m) Practicing while license is WITH A Suspended OR
EXPIRED LICENSE;

(b) (n) Willfully deceiving or attempting to deceive the
board of examiners or their agents with reference to any matter
under investigation by the board;

(e) (o) Practicing under an assumed name;

(d) (p) Unethical advertising, as defined in subsection (3)
of this section, OR ADVERTISING THROUGH ANY MEDIUM THAT THE
LICENSEE WILL PERFORM AN ACT PROHIBITED BY SECTION
18-13-119 (3), C.R.S.;

(e) Repealed, L. 79, p. 495, § 18, effective July 1,
1979.

(f) (q) Violating this article or aiding any person to
violate this article;

(g) (r) Knowingly practicing in the employment of or in
association with any person who is practicing in an unlawful or
unprofessional manner;

(h) Repealed, L. 85, p. 511, § 10, effective July 1,
1985.

(4) (s) Either—directly or indirectly—paying or
compensating or agreeing to pay or compensate any person, firm,
association, or corporation for sending or bringing any patient or
any person to such licentiate for examination or treatment, for
recommending such licentiate to any person, or for being
instrumental in causing any other licentiate to rebate fees on a
referral basis; OFFERING, GIVING, OR RECEIVING COMMISSIONS,
REBATES, OR OTHER FORMS OF REMUNERATION FOR THE REFERRAL
OF CLIENTS; EXCEPT THAT A LICENSEE MAY COMPENSATE AN
INDEPENDENT ADVISORY OR MARKETING AGENT FOR ADVERTISING
OR MARKETING SERVICES, WHICH SERVICES MAY INCLUDE THE
REFERRAL OF PATIENTS IDENTIFIED THROUGH SUCH SERVICES, AND
A LICENSEE MAY GIVE AN INCIDENTAL GIFT TO A PATIENT IN
APPRECIATION FOR A REFERRAL.

(t) Conducting any enterprise other than the regular
practice of chiropractic whereby the holder’s license is used as a
means of attracting patients or attaining prestige or patronage in
the conduct of such enterprise.

(u) (v) Permitting the practice of chiropractic, or the
holding out of such practice, or the maintenance of an office for
such by an unlicensed person in association with himself or herself:

(i) Advertising through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the licensee will perform any act prohibited by section 48-13-119(3), C.R.S.;

(ii) Engaging in any of the following activities and practices: Willful and repeated ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies; the administration, without clinical justification, of treatment which is demonstrably unnecessary; the failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care for the profession; or ordering or performing, without clinical justification, any service, X-ray, or treatment which is contrary to recognized standards of the practice of chiropractic as interpreted by the board;

(iii) Falsifying or repeatedly making incorrect essential entries or repeatedly failing to make essential entries on patient records;

(iv) Committing a fraudulent insurance act, as defined in section 10-1-127, C.R.S.;

(v) Violating the provisions of section 8-42-101 (3.6), C.R.S.;

(vi) Any violation of the provisions of violating section 12-33-202 or any rule or regulation of the board adopted pursuant to said section;

(vii) Failing to report to the board the surrender of a license to, or adverse action taken against a license by, a licensing agency in another state, territory, or country, a governmental agency, a law enforcement agency, or a court for acts or conduct that would constitute grounds for discipline pursuant to this article;

(aa) Engaging in a sexual act with a patient during the course of such patient's care or within six months immediately following the termination of the chiropractor's professional relationship with the patient. "Sexual act", as used in this paragraph (aa), means sexual contact, sexual intrusion, or sexual penetration, as defined in section 18-3-401, C.R.S.

(bb) Abandoning a patient by any means, including, but not limited to, failing to provide a referral to another chiropractor or other appropriate health care practitioner when such referral was necessary to meet generally accepted standards of chiropractic care;

(cc) Failing to provide adequate or proper supervision when employing unlicensed persons in a chiropractic practice;

(2) Disciplinary action taken against a licensee's ability to practice in another state or country shall be prima facie evidence of a violation of this article and shall constitute grounds for discipline if the acts giving rise to such disciplinary action would violate this article.
(4) (e) Any doctor of chiropractic proven to be incompetent or negligent shall be required to take an examination, given by the board, in the subjects outlined in section 12-33-111. In addition, the board may also order the doctor of chiropractic to take such therapy or courses of training or education as may be needed to correct deficiencies found in the hearing.

(b) In addition to the provisions of subsections (1), (2), and (3) of this section, incompetent, negligent, or unprofessional conduct consists of two or more acts or omissions within a twenty-year period which fail to meet generally accepted standards of chiropractic practice.

SECTION 7. Part 1 of article 33 of title 12, Colorado Revised Statutes, 1991 Repl. Vol., is amended by the addition of a new section to read:

12-33-117.5. Mental and physical examination of licensees. (1) If the board has reasonable cause to believe a licensee is unable to practice with reasonable skill and safety, it may require such licensee to take a mental or physical examination given by a physician or other qualified provider designated by the board. If the licensee refuses to undergo such examination or to release all medical records necessary to determine his or her ability to practice safely, unless such refusal or failure is due to circumstances beyond the licensee’s control, the board may suspend such licensee’s license until the results of such examination are known and the board has made a determination of the licensee’s fitness to practice. The board shall proceed with an order for examination and make its determination in a timely manner.

(2) An order for examination issued by the board pursuant to subsection (1) of this section shall include the board’s reasons for believing the licensee is unable to practice with reasonable skill and safety.

(3) For purposes of any disciplinary proceeding authorized under this article, a licensee shall be deemed to have waived all objections to the admissibility of an examining physician’s testimony and examination reports on the basis of privilege.

(4) A licensee may submit to the board testimony and examination reports received from a physician chosen by the licensee, if such testimony and reports pertain to a condition that the board has alleged may preclude the licensee from practicing with reasonable skill and safety.

(5) The results of a mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than one held before the board and shall not be a public record nor made available to the public.

SECTION 8. 12-33-119 (9), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:
12-33-119. Disciplinary proceedings. (9) When a
complaint or an investigation discloses an instance of misconduct
which, in the opinion of the board, does not warrant formal action
by the board but which should not be dismissed as being without
merit, a letter of admonition may be sent by certified mail to the
chiropractor against whom a THE complaint was made and a copy
thereof also sent to the person making the complaint. but, When
a letter of admonition is sent by certified mail by the board to a
chiropractor complained against, such chiropractor shall be
advised that he or she has the right to request in writing, within
twenty thirty days after proven receipt of mailing the letter,
that formal disciplinary proceedings be initiated against him to
adjudicate the propriety of the conduct upon which the letter of
admonition is based. If such request is timely made, the letter of
admonition shall be deemed vacated, and the matter shall be
processed by means of formal disciplinary proceedings.

SECTION 9. Part 1 of article 33 of title 12, Colorado
Revised Statutes, 1991 Repl. Vol., is amended BY THE
ADDITION OF THE FOLLOWING NEW SECTIONS to read:

12-33-119.2. Cease and desist orders - fines. (1) IF
AFTER INVESTIGATING A COMPLAINT THE BOARD DETERMINES
THAT A PERSON IS ACTING OR HAS ACTED IN VIOLATION OF THIS
ARTICLE OR OF ANY RULE ADOPTED UNDER THIS ARTICLE, IT MAY,
IN ADDITION TO ALL OTHER ACTIONS AUTHORIZED IN THIS
ARTICLE, ENTER AN ORDER WITHOUT PREJUDICE REQUIRING SUCH
PERSON TO CEASE AND DESIST FROM SUCH VIOLATION. SUCH
ORDER SHALL SET FORTH THE STATUTES AND RULES ALLEGED TO
HAVE BEEN VIOLATED, THE FACTS ALLEGED TO HAVE
CONSTITUTED THE VIOLATION, AND THE REQUIREMENT THAT ALL
UNLAWFUL ACTS IMMEDIATELY CEASE.

(2) NO STAY OF A CEASE AND DESIST ORDER SHALL BE
ISSUED BEFORE A HEARING HAS BEEN HELD AT WHICH BOTH
PARTIES HAVE HAD AN OPPORTUNITY TO APPEAR.

(3) MATTERS BROUGHT BEFORE A COURT PURSUANT TO
THIS SECTION SHALL HAVE PREFERENCE OVER OTHER MATTERS ON
THE COURT’S CALENDAR.

(4) AFTER INVESTIGATION THE BOARD MAY FINE ANY
PERSON WHO IS DETERMINED TO BE VIOLATING OR TO HAVE
VIOLATED THIS ARTICLE. SUCH FINE SHALL BE IN AN AMOUNT NOT
LESS THAN FIFTY DOLLARS AND NOT MORE THAN EIGHT HUNDRED
FIFTY DOLLARS.

12-33-125. Reporting requirements. A PERSON
LICENSED TO PRACTICE CHIROPRACTIC IN THIS STATE SHALL
REPORT TO THE BOARD ANY CHIROPRACTOR KNOWN OR BELIEVED
TO HAVE VIOLATED THIS ARTICLE.

SECTION 10. 12-33-103 (3) (b), Colorado Revised
Statutes, 1991 Repl. Vol., is amended to read:

12-33-103. State board of chiropractic examiners -
subject to termination - repeal of article. (3) (b) This article is
repealed, effective July 1, 1998 July 1, 2010.

SECTION 11. 24-34-104 (24) (a), Colorado Revised
Statutes, 1991 Repl. Vol., is amended, and the said 24-34-104, as
amended, is further amended BY THE ADDITION OF A NEW
SUBSECTION, to read:
24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (24) The following boards in the division of registrations shall terminate on July 1, 1995:

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

(36) The following boards and functions shall terminate on July 1, 2010: The Colorado state board of chiropractic examiners, created by article 33 of title 12, C.R.S.

SECTION 12. Effective date - applicability. This act shall take effect July 1, 1995, and shall apply to acts occurring on or after said date.

SECTION 13. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.
Joint Legislative Sunrise and Sunset Review Committee

October 6, 1994

A BILL FOR AN ACT

CONCERNING THE REGULATION OF PSYCHIATRIC TECHNICIANS BY
THE STATE BOARD OF NURSING.

Bill Summary

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

Joint Legislative Sunrise and Sunset Review Committee.

Extends until a specified date the regulatory and licensing authority of the state board of nursing over psychiatric technicians.

Empowers the board to limit the scope of a licensee's practice within specified limitations. Removes the limitation that a psychiatric technician must practice in a state-run institution if the technician performs certain duties. Clarifies the grounds for which disciplinary action may be taken against a licensee.

Removes the specific subject areas which must be covered by a licensing examination, allowing the state board of nursing to specify such subject areas by rule. Changes certain educational requirements for accreditation of a psychiatric technician educational program.

Changes the procedure for license renewal.

Allows mental or physical examinations of licensees to be conducted by a qualified professional, who may or may not be a physician, rather than requiring such examination to be done only by a physician.

Modifies how medical records of a licensee may be released, utilized, or obtained by the state board of nursing.

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

SECTION 1. 12-38-108 (1) (k) (I), Colorado Revised Statutes, 1991 Repl. Vol. is amended to read:

12-38-108. Powers and duties of the board. (1) The board has the following powers and duties:

(k) To administer the licensing and regulation of psychiatric technicians pursuant to article 42 of this title and to adopt and revise rules and regulations consistent with the laws of this state as may be necessary:

(l) To renew, grant, suspend, LIMIT THE SCOPE OF, and revoke licenses of psychiatric technicians IN ACCORDANCE WITH ARTICLE 42 OF THIS TITLE;

SECTION 2. 12-42-102 (4), Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

12-42-102. Definitions. As used in this article, unless the context otherwise requires:

(4) The practice as a "psychiatric technician" means the performance for compensation of selected acts requiring interpersonal and technical skills and includes the administering of selected treatments and selected medications prescribed by a licensed physician or dentist, in the care of and in the observation and recognition of symptoms and reactions of the mentally ill patient or developmentally disabled individual under the direction of a licensed physician and the supervision of a registered professional nurse. The selected acts in the care of the mentally ill patient or developmentally disabled individual shall not require the substantial specialized skill, judgment, and knowledge required in...
professional nursing.

SECTION 3. 12-42-103, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-42-103. State board of nursing - repeal of article - review of licensing and regulation functions. (1) The licensing and regulation of psychiatric technicians shall be under the control of the board.

(2) (a) This article is repealed, effective July 1, 1995.

(b) Prior to such repeal, the licensure and regulation functions of the state board of nursing shall be reviewed as provided in section 24-34-104, C.R.S.

SECTION 4. 12-42-106 (1), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-42-106. Examinations. (1) All applicants, unless licensed by endorsement, shall be required to pass a written examination in the following subject areas:

(a) Nursing principles related to health and disease, including human growth and development;

(b) (I) Basic psychiatric nursing, including social and cultural concepts for psychiatric technicians working with mentally ill patients;

(ii) Mental retardation theory and practice, human development, and behavior management for psychiatric technicians working with developmentally disabled individuals.

SECTION 5. 12-42-108, Colorado Revised Statutes, 1991 Repl. Vol., is repealed as follows:

12-42-108. License by waiver and examination.

(1) The board may issue a license without examination to any person who, not later than July 1, 1980, submits to the board written evidence, verified by oath, that such person:

(a) Has not committed any act which would be grounds for disciplinary action against a licensee under this article;

(b) Has practiced in a state hospital or other state institutional setting approved by the department of human services, working with developmentally disabled individuals, for at least twelve consecutive months within the three-year period immediately prior to application pursuant to this section. The board may accept evidence of such practice through written statements, verified by oath, of one physician and two registered professional nurses, each licensed to practice in this state, that each has personal knowledge of the applicant's practice working with developmentally disabled individuals.

(c) Has passed a written examination on nursing service and mental retardation approved by the state board of nursing.

SECTION 6. 12-42-111 (1), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-42-111. Accredited psychiatric technician educational program. (1) (a) Any institution within the state of Colorado desiring to conduct an accredited preservice psychiatric technician educational program may apply to the board and submit evidence that it is prepared to carry out a psychiatric technician curriculum including, but not limited to, that contains theoretical content and clinical practice to prepare the
PSYCHIATRIC TECHNICIAN STUDENT TO CARE FOR CLIENTS WITH DEVELOPMENTAL DISABILITIES OR MENTAL ILLNESS IN INSTITUTIONAL AND COMMUNITY SETTINGS.

(a) Nursing principles which shall include, but not be limited to, learning experiences to develop:

(I) An understanding of the principles of mental and physical health and the maintenance of health;

(II) A knowledge of health services and community resources and the role of the psychiatric technician in these health services; and the ability to perform the following functions as required:

(A) Activities concerned with daily hygiene;

(B) Activities concerned with prescribed therapeutic measure with understanding of underlying basic principles; and

(C) Observing the appearance and behavior of patients and reporting to the appropriate persons; and

(II) Ability to work with licensed physicians, professional nurses, dentists, and other treatment personnel in assisting with nursing situations;

(b) (I) Psychiatric nursing, for psychiatric technicians working with mentally ill patients, which shall include, but not be limited to, fundamentals of psychiatric and mental health nursing with learning experience planned to develop the following skills: The knowledge, skills, and attitudes necessary to function adequately as a contributing member of the psychiatric team, understanding of self and patient relationship, principles of psychiatric nursing, including social and cultural studies, rehabilitation, and special therapies.

(II) Mental retardation practice for psychiatric technicians working with developmentally disabled individuals, which shall include, but not be limited to, mental retardation theory and practice, human development, and behavior management.

(b) CONTENT IN A PSYCHIATRIC TECHNICIAN EDUCATIONAL PROGRAM SHALL INCLUDE BUT SHALL NOT BE LIMITED TO:

(I) FUNDAMENTAL NURSING PRINCIPLES AND SKILLS;

(II) GROWTH AND DEVELOPMENTAL AND OTHER PHYSICAL AND BEHAVIORAL SKILLS;

(III) MENTAL RETARDATION THEORY AND REHABILITATION NURSING PRINCIPLES AND SKILLS IF THE TECHNICIAN INTENDS TO CARE FOR CLIENTS WITH DEVELOPMENTAL DISABILITIES; AND

(IV) PSYCHOPATHOLOGY AND PSYCHIATRIC NURSING PRINCIPLES AND SKILLS IF THE TECHNICIAN INTENDS TO CARE FOR CLIENTS WITH MENTAL ILLNESS.

SECTION 7. 12-42-112 (1), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-42-112. Renewal of license. (1) Each license issued under the provisions of this article shall be renewed annually; except that the period of validity of any license may be changed pursuant to the provisions of section 24-34-102 (7), C.R.S. On or before April 30 of each year, the board shall mail an application for renewal of license to each person to whom a
license was issued or renewed during the current year, which application shall be mailed to the most recent address of said person as it appears on the records of the board. Such person shall complete the renewal application and return it to the board with a renewal fee established pursuant to section 24-34-105, C.R.S., before July 1 of the year in which said application was received. Upon receipt of any such application and fee, the board shall verify the accuracy of such application and fee and issue to the applicant a certificate of renewal of license for the current year, beginning July 1 and expiring June 30. To renew a license issued pursuant to this article, a licensee shall submit an application for renewal on a form prescribed by the board and pay a fee in an amount set by the board in accordance with section 24-34-105, C.R.S. Upon receipt by the board of a completed application and the requisite fee, the board shall issue a certificate of renewal of licensure. No more than one renewal fee shall be assessed or collected in conjunction with the submittal of an application for license renewal.

SECTION 8. The introductory portion to 12-42-113 (1) and 12-42-113 (1) (b) and (1) (i), Colorado Revised Statutes, 1991 Repl. Vol., are amended, and the said 12-42-113 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

12-42-113. Grounds for discipline. (1) The board has the power to revoke, suspend, withhold, LIMIT THE SCOPE OF, or refuse to renew any license to practice as a psychiatric technician, to place on probation a licensee, or to issue a letter of admonition to a licensee in accordance with the procedures set forth in subsection (3) of this section, upon proof that such person:

   (b) (I) Has been convicted of a felony or has had accepted by a court a plea of guilty or no lo contendere to a felony ANY CRIME THAT WOULD CONSTITUTE A VIOLATION OF THIS ARTICLE.

   (II) (A) FOR PURPOSES OF THIS PARAGRAPH (b), a conviction includes a plea of guilty or no lo contendere OR THE IMPOSITION OF A SENTENCE THAT IS DEFERRED PRIOR TO FINAL SENTENCING OR DISMISSAL WITH PREJUDICE.

   (B) A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea shall be prima facie evidence of such conviction.

   (III) In considering the possible revocation, suspension, limiting, or nonrenewal of a license or temporary license, the board shall be governed by the provisions of section 24-5-101, C.R.S.

   (i) Is addicted to or dependent on alcohol or habit-forming drugs, or is a habitual user of controlled substances, as defined in section 12-22-303 (7), or other drugs having similar effects, OR IS DIVERTING CONTROLLED SUBSTANCES, AS DEFINED IN SECTION 12-22-303 (7), OR OTHER DRUGS HAVING SIMILAR EFFECTS FROM THE LICENSEE’S PLACE OF EMPLOYMENT; except that the board has the discretion not to discipline the licensee if he SUCH LICENSEE is participating in good faith in a program approved by the board designed to end such addiction or
THE BOARD SHALL NOT DISCIPLINE A LICENSEE BY LIMITING THE SCOPE OF SUCH LICENSEE'S LICENSE BASED UPON A LICENSEE'S VIOLATION OF PARAGRAPH (i) OF SUBSECTION (1) OF THIS SECTION UNTIL THE LICENSEE HAS COMPLETED A PROGRAM APPROVED BY THE BOARD DESIGNED TO END ADDICTION TO OR DEPENDENCY ON ALCOHOL, HABIT-FORMING DRUGS, CONTROLLED SUBSTANCES, AS DEFINED IN SECTION 12-22-303 (7), OR OTHER DRUGS HAVING SIMILAR EFFECTS. UNTIL SUCH TIME AS THE LICENSEE COMPLETES AN APPROVED PROGRAM, THE BOARD MAY IMPOSE ANY OF THE OTHER FORMS OF DISCIPLINE SET FORTH IN SUBSECTION (1) OF THIS SECTION.

SECTON 9. 12-42-115 (2) (a), Colorado Revised Statutes, 1991 Repl. Vol., is amended, and the said 12-42-115 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

12-42-115. Mental or physical examination of licensees - review of medical records. (2) (a) If the board has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety to patients because of a condition described in section 12-42-113 (1) (i) or (1) (j), it may require such person to submit to a mental or physical examination by a physician QUALIFIED PROFESSIONAL it designates. Upon the failure of such person to submit to such mental or physical examination, unless due to circumstances beyond his such person's control, the board may suspend such person's license until such time as such person submits to the required examination.

THE BOARD MAY REQUIRE THAT A LICENSEE SUBMIT MEDICAL RECORDS FOR REVIEW IN CONJUNCTION WITH AN INVESTIGATION MADE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2): EXCEPT THAT SUCH RECORDS SHALL REMAIN CONFIDENTIAL AND SHALL BE REVIEWED BY THE BOARD ONLY TO THE EXTENT NECESSARY TO CONDUCT AN INVESTIGATION.

SECTION 10. 12-42-115.3 (6), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-42-115.3. Disciplinary proceedings - administrative law judges. (6) In order to aid the board in any hearing or investigation instituted pursuant to this section, the board, through any member or executive officer thereof, shall have the power to issue subpoenas commanding production of copies of any records containing information relevant to practice as a psychiatric technician rendered by any licensee, including, but not limited to, hospital and physician records. The person providing such copies shall prepare them from the original record and shall delete from the copy provided pursuant to the subpoena the name of the patient, but he shall identify the patient by a numbered code, to be retained by the custodian of the records from which the copies were made. Upon certification of the custodian that the copies are true and complete except for the patient's name, they shall be deemed authentic, subject to the right to inspect the originals for the limited purpose of ascertaining the accuracy of the copies. No privilege of confidentiality shall exist with respect to such copies, and no liability shall lie against the board or the custodian or his
THE CUSTODIAN'S authorized employee for furnishing or using such copies in accordance with this subsection (6).

SECTION 11. 24-34-104 (24.1) (h), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended, and the said 24-34-104 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (24.1) The following functions of the specified agencies shall terminate on July 1, 1995:

(h) The licensing of psychiatric technicians through the state board of nursing in accordance with Article 42 of Title 12, C.R.S.;

(41) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, OF THE SPECIFIED AGENCIES SHALL TERMINATE ON JULY 1, 2010:

THE LICENSING AND REGULATION OF PSYCHIATRIC TECHNICIANS BY THE STATE BOARD OF NURSING PURSUANT TO ARTICLE 42 OF TITLE 12, C.R.S.

SECTION 12. Effective date - applicability. This act shall take effect July 1, 1995, and shall apply to acts occurring on or after said date.

SECTION 13. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.
Joint Legislative Sunrise and Sunset Review Committee

November 17, 1994

A BILL FOR AN ACT
CONCERNING THE REGULATION OF NURSING BY THE STATE BOARD OF NURSING.

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

Joint Legislative Sunrise and Sunset Review Committee.
Continues the authority of the state board of nursing to regulate professional nurses.
Requires licensees to carry out nursing functions in accordance with accepted practice standards. Allows the board to adopt rules authorizing advanced practice nurses to prescribe certain medications.
Changes the professional experience required of certain members of the board, including removing all but one member who is engaged in professional nursing education. Authorizes the state board of nursing to issue temporary permits to certain persons who are being supervised by licensees.
 Creates a new mode of discipline that allows the state board of nursing to limit the scope of a license held by a licensee. Changes certain existing grounds for disciplinary action against a licensee and adds new grounds, including improper dispensing of steroids. Empowers the state board of nursing to require a licensee to furnish certain medical records in conjunction with an investigation of such licensee. Allows physical or mental examinations of licensees to be conducted by a qualified professional, who may or may not be a physician, rather than requiring such examinations to be done by a physician. Requires the state board of nursing to consider enumerated factors before disciplining a licensee.
Removes certain requirements for releasing medical records of a licensee.
Repeals the nursing peer health assistance diversion program.

Bills enacted by the General Assembly of the State of Colorado:

SECTION 1. 12-38-103 (10), Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

12-38-103. Definitions. As used in this article, unless the context otherwise requires:
(10) (a) "Practice of professional nursing" means the performance of both independent nursing functions and delegated medical functions including the initiation and performance of nursing care through prevention, diagnosis, and treatment of human disease, ailment, pain, injury, deformity, or physical or mental condition which requires such specialized knowledge, judgment, and skill involving the application of principles of biological, physical, social, and behavioral sciences as are required for licensing as a professional nurse pursuant to section 12-38-111, in accordance with accepted practice standards. Such practice standards include the initiation and performance of nursing care through health promotion, supportive or restorative care, disease prevention, diagnosis and treatment of human disease, ailment, pain, injury, deformity, and physical or mental condition using specialized knowledge, judgment, and skill involving the application of biological, physical, social, and behavioral science principles required for licensure as a professional nurse pursuant to section 12-38-111.

(b) The "practice of professional nursing" shall include
the performance of such services as:

(a) (I) Evaluating health status through the collection and assessment of health data;
(b) (II) Health teaching and health counseling;
(c) (III) Providing therapy and treatment that is supportive and restorative to life and well-being either directly to the patient or indirectly through consultation with, delegation to, supervision of, or teaching of others;
(d) (IV) Executing delegated medical functions;
(e) (V) Referring to medical or community agencies those patients who need further evaluation or treatment;
(f) (VI) Reviewing and monitoring therapy and treatment plans.

SECTION 2. 12-38-104 (1) and (4), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

12-38-104. State board of nursing created.

(1) (a) There is hereby created the state board of nursing in the division of registrations in the department of regulatory agencies, which board shall consist of eleven members, to be appointed by the governor with senate confirmation, as follows:

(I) Three members of the board shall be licensed practical nurses engaged in the practice of practical nursing, one of whom shall be employed by a licensed hospital in a rural area;

(II) Six members of the board shall be licensed professional nurses as follows:

(A) One member shall be engaged in professional nursing education at the associate degree or diploma level; one member shall be engaged in practical nursing education;

(B) One member shall be engaged in home health care;

(C) One member shall be engaged in any non-educational facet of professional nursing not otherwise designated in this subparagraph (II);

(D) One member shall be engaged in nursing service administration; and

(E) Two members shall be engaged as staff nurses, including one staff nurse who is employed in a hospital or a long-term patient care delivery system.

(III) Two members of the board shall be persons who are not licensed, employed, or in any way connected with, or with any financial interest in, any health care facility, agency, or insurer.

(b) The nurse members of the board shall be actively employed in their respective nursing professions, and the professional nurse members shall have been employed for at least three years in their respective categories. All members shall be residents of this state and the nurse members shall be licensed in this state.

(c) (I) Each member of the board shall be appointed for a term of three years, except as otherwise provided in subsection (2) of this section.

(II) Any interim appointment necessary to fill a vacancy which has occurred by any reason other than the expiration of a
tsrm shall be for the remainder of the term of the individual member whose office has become vacant.

(III) A member may be reappointed for a subsequent term at the pleasure of the governor, with the consent of the senate, but no member shall serve for more than two consecutive terms.

(4) (a) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the state board of nursing created by this section.

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

SECTION 3. Article 38 of title 12, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

12-38-111.6. Prescriptive authority - advance practice nurses - repeal. (1) An advanced practice nurse who is listed on the advanced practice registry, has an unrestricted license issued pursuant to section 12-38-111, and has fulfilled requirements established by the board pursuant to this section may be authorized by the board to prescribe controlled substances or prescription drugs as defined in article 22 of this title.

(2) (a) The board shall adopt rules to implement this section.

(b) Rules adopted pursuant to this section shall reflect current, accepted professional standards for the safe and effective use of controlled substances and prescription drugs. (3) (a) An advanced practice nurse may be granted authority to prescribe controlled substances or prescription drugs to provide treatment for persons requiring:

(I) routine health maintenance or routine preventative care.

(II) care for an acute, self-limiting illness;

(III) care for a chronic condition that has been stabilized; or

(IV) terminal comfort care.

(b) For purposes of this subsection (3), "self-limiting illness" means an illness that has a defined diagnosis and a predictable outcome and is not threatening to life or limb.

(4) An advanced practice nurse applying for prescriptive authority shall provide evidence to the board of the following:

(a) a graduate degree in a nursing specialty;

(b) satisfactory completion of specific educational requirements in the use of controlled substances and prescription drugs, as established by the board, either as part of a degree program or in addition to a degree program;

(c) post-graduate experience as an advanced practice nurse in a relevant clinical setting, as defined by the board, consisting of not less than one thousand eight hundred hours to be completed within the immediately preceding five-year period. The board shall
DEFINE THE REQUIREMENTS FOR SUCH EXPERIENCE TO INCLUDE:

(I) SATISFACTORY COMPLETION OF A STRUCTURED PLAN;

(II) ADEQUATE INTERACTION BETWEEN THE ADVANCED PRACTICE NURSE, THE PHYSICIAN, AND ANY OTHER HEALTH PROFESSIONAL;

(III) EXPERIENCE WITH THE SPECIFIC DRUGS RELEVANT TO THE SCOPE OF PRACTICE OF THE ADVANCED PRACTICE NURSE; AND

(IV) ANY OTHER REQUIREMENT THE BOARD DEEMS RELEVANT AND NECESSARY.

(d) (I) EXECUTION OF A WRITTEN COLLABORATIVE AGREEMENT WITH A PHYSICIAN LICENSED IN COLORADO WHOSE MEDICAL EDUCATION, TRAINING, EXPERIENCE, AND ACTIVE PRACTICE CORRESPOND WITH THAT OF THE ADVANCED PRACTICE NURSE.

(II) THE WRITTEN COLLABORATIVE AGREEMENT SHALL INCLUDE THE DUTIES AND RESPONSIBILITIES OF EACH PARTY, PROVISIONS REGARDING CONSULTATION AND REFERRAL, AND OTHER PROVISIONS AS ESTABLISHED BY THE BOARD.

(III) THE NURSE SHALL PROVIDE TO THE BOARD THE NAME AND APPROPRIATE IDENTIFIER OF THE PHYSICIAN AND SHALL KEEP SUCH INFORMATION CURRENT WITH THE BOARD. THIS INFORMATION SHALL ALSO BE AVAILABLE TO THE BOARD OF MEDICAL EXAMINERS, THE BOARD OF PHARMACY, AND, EXCEPT FOR IDENTIFICATION NUMBERS GRANTED BY THE DRUG ENFORCEMENT ADMINISTRATION, TO THE GENERAL PUBLIC.

(IV) NOTHING IN THIS PARAGRAPH (d) SHALL BE CONSTRUED TO:

(A) LIMIT THE ABILITY OF AN ADVANCED PRACTICE NURSE TO MAKE AN INDEPENDENT JUDGMENT;

(B) REQUIRE ON-SITE SUPERVISION BY A PHYSICIAN; OR

(C) REQUIRE THE USE OF PROTOCOLS.

(5) (a) THE BOARD MAY REVIEW THE EDUCATION AND EXPERIENCE OF AN INDIVIDUAL AND MAY GRANT THE INDIVIDUAL PRESCRIPTIVE AUTHORITY UPON A FINDING THAT SUCH EDUCATION AND EXPERIENCE ARE SUBSTANTIALLY EQUIVALENT TO THE REQUIREMENTS OF THIS SECTION.

(b) FOR PURPOSES OF THIS SUBSECTION (5), SUBSTANTIAL EQUIVALENCE INCLUDES, BUT IS NOT LIMITED TO, A FINDING THAT THE INDIVIDUAL RECEIVED EDUCATION FROM AN INSTITUTION ACCREDITED THROUGH THE UNITED STATES DEPARTMENT OF EDUCATION.

(c) THE BOARD SHALL MAINTAIN STATISTICS ON PERSONS APPLYING FOR REVIEW PURSUANT TO THIS SUBSECTION (5).

(d) THIS SUBSECTION (5) IS REPEALED, EFFECTIVE JULY 1, 2000.

(6) ADVANCED PRACTICE NURSES FROM OTHER STATES APPLYING FOR PRESCRIPTIVE AUTHORITY SHALL COMPLY WITH ALL REQUIREMENTS SET FORTH IN THIS SECTION OR ANY RULE ADOPTED BY THE BOARD PURSUANT TO THIS SECTION.

(7) AN ADVANCED PRACTICE NURSE WHO OBTAINS PRESCRIPTIVE AUTHORITY PURSUANT TO THIS SECTION SHALL BE ASSIGNED A SPECIFIC IDENTIFIER BY THE BOARD. THIS IDENTIFIER
SHALL BE AVAILABLE TO THE BOARD OF MEDICAL EXAMINERS AND
THE BOARD OF PHARMACY. THE BOARD SHALL ESTABLISH A
MECHANISM TO ASSURE THAT THE PRESCRIPTIVE AUTHORITY OF AN
ADVANCED PRACTICE NURSE MAY BE READILY VERIFIED.

(8) (a) The scope of practice for an advanced
practice nurse may be determined by the board in
accordance with this article.

(b) The board may consider information provided
by nursing, medical, or other health professional
organizations, associations, or regulatory boards.

(c) Prescriptive authority by an advanced
practice nurse shall be limited to those patients
appropriate to such nurse's scope of practice.
Prescriptive authority may be limited or withdrawn and
the advanced practice nurse may be subject to further
disciplinary action in accordance with this article if such
nurse has prescribed outside such nurse's scope of
practice or for other than a therapeutic purpose.

(9) All prescriptions shall be in compliance with
applicable federal and state laws, including article 22 of
this title and part 2 of article 18 of title 18, C.R.S.

(10) Nothing in this section shall be construed to
permit dispensing or distribution, as defined in section
12-22-102, by an advanced practice nurse, except for
samples, under article 22 of this title and the federal
"Prescription Drug Marketing Act of 1987".

AND CUSTOMARY PRACTICE OF A NURSE LICENSED PURSUANT TO
SECTION 12-38-111 OR SECTION 12-38-112.

1991 Repl. Vol., is amended BY THE ADDITION OF A NEW
SUBSECTION to read:

12-38-115. Temporary licenses and permits.
(3.5) The board may, as it deems appropriate, issue a
permit to a person who is under the supervision of a
professional nurse licensed pursuant to this article.

SECTION 5. The introductory portion to 12-38-117 (1)
and 12-38-117 (1) (b) and (1) (i), Colorado Revised Statutes, 1991
Repl. Vol., are amended to read:

12-38-117. Grounds for discipline. (1) The board has
the power to revoke, suspend, withhold, LIMIT THE SCOPE OF, or
refuse to renew any license, to place on probation a licensee or
temporary license holder, or to issue a letter of admonition to a
licensee in accordance with the procedures set forth in subsection
(3) of this section, upon proof that such person:

(b) (I) Has been convicted of a felony or has had
accepted by a court a plea of guilty or nolo contendere to a
felony, or ANY CRIME THAT WOULD CONSTITUTE A VIOLATION
OF THIS ARTICLE.

(II) (A) FOR PURPOSES OF THIS PARAGRAPH (b),
"CONVICTION" INCLUDES THE ENTRY OF A PLEA OF GUILTY OR
NOLO CONTENDERE OR THE IMPOSITION OF A DEFERRED SENTENCE.

(B) A certified copy of the judgment of a court of
competent jurisdiction of such conviction or plea shall be prima
facie evidence of such conviction.

(III) In considering the possible revocation, suspension, limiting, or nonrenewal of a license or a temporary license, the board shall be governed by the provisions of section 24-5-101, C.R.S.

(i) Is addicted to or dependent on alcohol or habit-forming drugs, or is a habitual user of controlled substances, as defined in section 12-22-303 (7), or other drugs having similar effects, or is diverting controlled substances, as defined in section 12-22-303 (7), or other drugs having similar effects from the licensee's place of employment; except that the board has the discretion not to discipline the licensee if the such licensee is participating in good faith in a program approved by the board designed to end such addiction or dependency;

SECTION 6. 12-38-117 (1), Colorado Revised Statutes, 1991 Repl. Vol., is amended by the addition of the following new paragraphs to read:

12-38-117. Grounds for discipline. (1) The board has the power to revoke, suspend, withhold, or refuse to renew any license, to place on probation a licensee or temporary license holder, or to issue a letter of admonition to a licensee in accordance with the procedures set forth in subsection (3) of this section, upon proof that such person:

(p) Has prescribed, distributed, or given to himself or herself or a family member any controlled substance as defined in part 2 of article 18 of title 18, C.R.S., or as contained in schedule II of 21 U.S.C. Sec. 812;

(q) Has dispensed, injected, or prescribed an anabolic steroid, as defined in section 12-22-102 (2.5), for the purpose of hormonal manipulation that is intended to increase muscle mass, strength, or weight without a medical necessity to do so or for the intended purpose of improving performance in any form of exercise, sport, or game;

(r) Has dispensed or injected an anabolic steroid, as defined in section 12-22-102 (2.5), unless such anabolic steroid is dispensed from a pharmacy pursuant to a written prescription or is dispensed by any person licensed to practice medicine in the course of such person's professional practice;

(s) Has administered, dispensed, or prescribed any habit-forming drug, as defined in section 12-22-303 (13), or any controlled substance, as defined in section 12-22-303 (7), other than in the course of legitimate professional practice.

SECTION 7. 12-38-119 (2) (a), Colorado Revised Statutes, 1991 Repl. Vol., is amended, and the said 12-38-119 (2) is further amended by the addition of a new paragraph to read:

12-38-119. Mental and physical examination of licensees. (2) (a) If the board has reasonable cause to believe that a licensee or temporary license holder is unable to practice with reasonable skill and safety to patients because of a condition
described in section 12-38-117 (1) (i) or (1) (j), it may require such person to submit to a mental or physical examination by a physician qualified professional it designates. Upon the failure of such person to submit to such mental or physical examination, unless due to circumstances beyond his such person's control, the board may suspend such person's license until such time as such person submits to the required examinations.

(e) The board may require that a licensee submit medical records for review in conjunction with an investigation made pursuant to paragraph (a) of this subsection (2); except that such records shall remain confidential and shall be reviewed by the board only to the extent necessary to conduct an investigation.

SECTION 8. 12-38-120 (4) and (7), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

1238-120. Disciplinary proceedings - administrative law judges - judicial review. (4) (a) Disciplinary proceedings shall be conducted in the manner prescribed by article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to said article by the board or an administrative law judge at the board's discretion.

(b) Before determining what disciplinary action should be imposed against a licensee, the board shall determine what sanctions, if any, are necessary to protect or compensate the public. After any such protection is in place or compensation made, or both, the board may consider and impose requirements or forms of relief designed to rehabilitate or relieve the licensee. Protection of the public shall be the primary concern in a disciplinary proceeding.

(7) In order to aid the board in any hearing or investigation instituted pursuant to this section, the board, through any member or executive officer thereof, shall have the power to issue subpoenas commanding production of copies of any records containing information relevant to the practice of practical or professional nursing rendered by any licensee, including, but not limited to, hospital and physician records. The person providing such copies shall prepare them from the original record and shall delete from the copy provided pursuant to the subpoena the name of the patient, but he shall identify the patient by a numbered code, to be retained by the custodian of the records from which the copies were made. Upon certification of the custodian that the copies are true and complete except for the patient's name, they shall be deemed authentic, subject to the right to inspect the originals for the limited purpose of ascertaining the accuracy of the copies. No privilege of confidentiality shall exist with respect to such copies, and no liability shall lie against the board or the custodian or his authorized employee for furnishing or using such copies in accordance with this subsection (7).

SECTION 9. Article 38 of title 12, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended by the addition of a new section to read:
12-38-133. Repeal - review of functions. (1) This article is repealed, effective July 1, 2010.

(2) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the State Board of Nursing created by this article.

SECTION 10. 12-36-106 (3), Colorado Revised Statutes, 1991 Repl. Vol., is amended by the addition of a new paragraph to read:

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

(I) The rendering of services by an advanced practice nurse who is practicing within such nurse's recognized scope of practice in compliance with section 12-38-111.6.

(II) A physician who signs a collaborative agreement with an advanced practice nurse pursuant to the requirements of section 12-38-111.6 (4) (d) shall have an unrestricted license to practice medicine in Colorado and an unrestricted registration by the Drug Enforcement Administration for the same schedules as the collaborating advanced practice nurse.

(III) The board of medical examiners shall establish a maximum number of advanced practice nurses with whom a physician may sign a collaborative agreement pursuant to the provisions of section 12-38-111.6 (4) (d).

(B) It is unlawful and a violation of this article for any person, corporation, or other entity to require as a condition of contract, employment, or compensation to exceed the limitation set pursuant to sub-subparagraph (A) of this subparagraph (III).

(C) The board may waive the maximum number of advanced practice nurses with whom a physician may sign a collaborative agreement for a specific physician upon a finding that quality patient care can be maintained.

SECTION 11. 24-34-104 (24) (c), Colorado Revised Statutes, 1988 Repl. Vol., is amended, and the said 24-34-104, as amended, is further amended by the addition of a new subsection, to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (24) The following boards in the division of registrations shall terminate on July 1, 1995:

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

(41) The following agencies, functions, or both, shall terminate on July 1, 2010:

(a) The following board in the division of registrations in the department of regulatory agencies:

(i) The state board of nursing, created by article
38 OF TITLE 12, C.R.S.


SECTION 13. Effective date - applicability. This act shall take effect July 1, 1995, and shall apply to acts occurring on or after said date.

SECTION 14. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.
A BILL FOR AN ACT
CONCERNING THE REGULATORY AUTHORITY OF THE DEPARTMENT
OF AGRICULTURE UNDER THE "MEASUREMENT
STANDARDS ACT OF 1983".

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

Joint Legislative Sunrise and Sunset Review Committee. Continues the licensing functions of the department of agriculture under the "Measurement Standards Act of 1983". Adopts standards for evaluation and inspection of National Institute of Standards and Technology ("Institute") weighing and measuring devices, and eliminates the statutory provisions that apply to moisture-testing devices. Requires that all commercial devices have a certificate of conformance issued by the Institute. Eliminates, as conditions for qualification as a certified weigher, the current requirements that a person be a U.S. citizen and have good moral character. Grants the commissioner of agriculture authority to deny applications for licensure and certification and to discipline holders of licenses and certificates. Replaces provisions for licensure of weighing and measuring device salesmen with certification provisions. Requires the commissioner of the department of agriculture to establish metrology service fees based on the cost of providing such services. Defines "cost". Eliminates current language that limits such fees to a stated amount.

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

SECTION 1. 35-14-102 (16), (22), and (31), Colorado Revised Statutes, 1984 Repl. Vol., are amended, and the said 35-14-102, as amended, is further amended, BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

35-14-102. Definitions. As used in this article, unless the context otherwise requires:

(1.7) "Certificate of conformance" means a document issued by the National Institute of Standards and Technology based on testing in participating laboratories, said document constituting evidence of conformance of a type with the requirements of National Institute of Standards and Technology Handbooks 44, 105-1, 105-2, or 105-3.

(8.5) "Cost" or "actual cost" means the direct cost of providing goods or services, including, but not limited to, the total cost of labor and all related benefits, maintenance costs, materials, provisions, supplies, equipment rentals, equipment purchases, insurance, financing, supervision, engineering, clerical and accounting services, the value of the use of equipment, including the depreciation or replacement value of such equipment, and an equitable share of other administrative costs not otherwise directly attributable to a particular good or service that may be reasonably apportioned to each particular good or service in accordance with generally accepted accounting principles and standards.

(16) "Metrology services" means all testing, calibrating,
and opening of weights and, when necessary, the making of
adjustments to weights and measures in order to meet tolerances
prescribed by the National Institute of Standards and Technology.

(20.5) "National Type Evaluation Program" means
a program of cooperation between the National Institute
of Standards and Technology, the National Conference
on Weights and Measures, the State of Colorado, and the
private sector for the purpose of determining, on a
uniform basis, conformance of a type with the relevant
provisions of the following National Institute of
Standards and Technology Handbooks:
(a) Handbook 44, "Specifications, Tolerances, and
Other Technical Requirements for Weighing and
Measuring Devices"; (b) Handbook 105-1, "Specifications
and Tolerances for Reference Standards and Field
Standard Weights and Measures, Specifications and
Tolerances for Field Standard Weights (NIST Class F)";
(c) Handbook 105-2, "Specifications and
Tolerances for Reference Standards and Field Standard
Measuring Flasks"; or
(d) Handbook 105-3, "Specifications and
Tolerances for Reference Standards and Field Standard
Weights and Measures, Specifications and Tolerances for
Graduated Neck Type Volumetric Field Standards".

(22) "Not susceptible of repair" means any weight or
measure which is designed or constructed in such a fashion so as
to fail to comply with the applicable design or construction
standards for such weight or measure as promulgated by the
National Institute of Standards and Technology or which cannot be repaired to meet the
tolerance standards for such weight or measure as promulgated by
the National Bureau of Standards.

(23.5) "Participating Laboratory" means any
State Measurement Laboratory that has been certified by
the National Institute of Standards and Technology, in
accordance with its program for the Certification of
Capability of Measurement Laboratories, to conduct a
type evaluation under the National Type Evaluation
Program.

(31) "Traceable" means the system of determining the
value of a standard by comparison with approved standards of the
National Institute of Standards and Technology.

(31.5) "Type" means a model or models of a
particular measurement system, instrument, element, or
field standard that positively identifies the design. A
specific type may vary in its measurement ranges, size,
performance, and operating characteristics as specified
in the Certificate of Conformance.

(31.6) "Type evaluation" means the testing,
examination, or evaluation of a Type by a Participating
Laboratory under the National Type Evaluation
Program.
SECTION 2. 35-14-103. Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

35-14-103. Systems of weights and measures - customary or metric. The inch pound system and the metric system of weights and measures are jointly valid, and either one or both of these systems shall be used for all commercial purposes in this state. The definitions of basic units of weights and measures, the tables of weights and measures, and the equivalents of weights and measures, as published by the National Bureau of Standards, are recognized and shall govern weighing and measuring equipment and transactions in this state.

SECTION 3. 35-14-104, Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

35-14-104. Physical standards. Weights and measures that are traceable to the United States prototype standards supplied by the federal government, or approved as being satisfactory by the National Bureau of Standards, shall be the state's primary standards of weights and measures and shall be maintained in such calibration as prescribed by the National Bureau of Standards. All secondary standards may be prescribed by the commissioner and shall be verified upon their initial receipt and as often thereafter as deemed necessary by the commissioner. The commissioner shall have the custody of the state standards of weights and measures and of the other standards and equipment provided for by this article, and he shall keep accurate records of the same.

SECTION 4. 35-14-105. Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

35-14-105. Technical requirements for weighing and measuring devices - certificate required. The specifications, tolerances, and other technical requirements for commercial, law enforcement, data gathering, and other weighing and measuring devices as adopted by the national conference on weights and measures and published in the National Institute of Standards and Technology handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Commercial Weighing and Measuring Devices", and supplements thereto or revisions thereof, shall apply to weighing and measuring devices in this state, except as modified or rejected by this article or any rule or regulation promulgated pursuant to this article. The commissioner shall require any weight or measure or any weighing or measuring instrument or device to be issued a certificate of conformance from the National Type Evaluation Program prior to use for commercial or law enforcement purposes.

SECTION 5. 35-14-107 (1) (a) and (1) (I), Colorado Revised Statutes, 1984 Repl. Vol., are amended, and the said 35-14-107 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

35-14-107. Powers and duties of the commissioner. (1) The commissioner shall:
(a) Maintain traceability of this state's standards to the National Institute of Standards and Technology;

(l) Weigh, measure, or inspect packaged commodities kept, offered, or exposed for sale, sold, or in the process of delivery to determine whether they contain the amounts represented and whether they are kept, offered, or exposed for sale in accordance with this article and the rules and regulations promulgated pursuant thereto. Accuracy of weight, measure, or count shall be determined by procedures set forth in the National Institute of Standards and Technology handbook 133 as adopted by the national conference on weights and measures 1980, and any supplements or revisions thereto. When the nature of the packaged commodity requires assistance in testing, the commissioner may request the person in possession of the package to furnish equipment and assistance to complete the test.

(q) Set fees for metrology services, pursuant to sections 35-14-127 and 35-14-128. Such fees shall be based on actual costs, as defined in section 35-14-102 (8.5).  

SECTION 6. 35-14-114 (2) (a), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

35-14-114. Method of sale - special nonfood products - repeal. (2) (a) In addition to other methods of measurement, motor fuels may be sold by gallon equivalents pursuant to the requirements of section 8-20-232.5, C.R.S., notwithstanding the provisions of any National Institute of Standards and Technology handbook or other national standard that is adopted by this state.

SECTION 7. 35-14-121 (1) and (7), Colorado Revised Statutes, 1984 Repl. Vol., are amended to read:

35-14-121. Weigher - qualification - certification - revocation. (1) A citizen of the United States or a person who has declared his intention of becoming such a citizen, who is a resident of this state and of good moral character, a person who has sufficiently good moral character to carry on the business stated in the application, subject to section 24-5-101, C.R.S., who has the ability to weigh accurately, and to make correct weight certificates, and who has received from the commissioner a certificate of certified weigher may use the title of and shall be authorized to act as a certified weigher.

(7) The commissioner, in accordance with section 24-4-104, C.R.S., may suspend, or deny, revoke, restrict, place on probation, or refuse to renew the certificate of any certified weigher or applicant for such certificate if he or she has been convicted in any court of competent jurisdiction of violating any provision of this article or if the commissioner is satisfied that the weigher person has violated any provision of this article.

SECTION 8. 35-14-123 (1), the introductory portion to 35-14-123 (2), and 35-14-123 (3), (5), (6), (7), (9), and (10), Colorado Revised Statutes, 1984 Repl. Vol., as amended, are amended to read:

35-14-123. Weighing and measuring device sales and
repair - certification of service persons. (1) Except as provided in subsection (1) of this section, before selling or offering for sale any new device or installing or performing any repairs or services on any weighing or measuring device which is required to be licensed in this state, a person shall make written application to the commissioner for a license certification upon forms provided by the department. For the purposes of this section, only one license CERTIFICATE is required for each business employing salesmen or servicemen. SERVICE PERSONS.

(2) Scale servicemen's license CERTIFICATES FOR SCALE SERVICE PERSONS shall be issued in the following classes:

(3) If ten percent or more of the devices installed or repaired in any one calendar year by a serviceman SERVICE PERSON are rejected, such serviceman PERSON shall be ordered to appear before the commissioner in accordance with the provisions of section 24-4-104, C.R.S., to show cause why his serviceman's license THE PERSON'S CERTIFICATE should not be revoked.

(5) (a) No scale serviceman SERVICE PERSON shall have in his OR HER possession any test weights other than those weights meeting the requirements of the national-bureau-of-standards NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY handbook 105-1: "Field Standard Weights", and any supplements or additions there to. Weights employed in the testing, servicing, or repairing of a scale shall conform to the tolerances prescribed for such weights as set forth in said handbook 105-1, and any supplements or additions there to, and scale servicemen SERVICE PERSONS shall maintain their testing equipment within such tolerances at all times.

(b) All repairs and adjustments made by weighing or measuring device servicemen SERVICE PERSONS shall conform to the technical requirements for weighing and measuring devices adopted in ACCORDANCE WITH section 35-14-105.

(6) Each serviceman SERVICE PERSON shall annually submit his OR HER weights and standards to the laboratory for certification; EXCEPT THAT, if such weights or standards are annually certified in another state by that state's metrology laboratory and evidence is shown of current certification, traceable to standards of the national—bureau—of—standards, NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY, which is less than a year from date of issuance, the serviceman SERVICE PERSON shall be exempt from obtaining the annual a Colorado certificate for his weights and standards THE CURRENT YEAR.

(7) Upon the completion of an installation or the repair of any device, the serviceman SERVICE PERSON shall submit a placing-in-service report to the commissioner within ten days of AFTER such completion date. The report shall include a scale status report for scale capacities of five thousand pounds or more. Any weighing or measuring device tagged for repairs by the commissioner shall be repaired by the serviceman SERVICE PERSON within thirty days after receiving notification from the owner of the device.

(9) Salesmen who install devices shall only install them in the proper position, level the device, and adjust the zero balance.
(10) Licenses for servicemen and persons who sell weighing and measuring devices in existence on June 30, 1983, shall expire December 31, 1988. All licenses and certificates issued on or after July 1, 1983, shall expire five years after issuance. Renewal application shall be in such form as the commissioner shall prescribe. Persons licensed or certified as servicemen service persons shall also have authority to sell weighing and measuring devices without obtaining a separate license therefor.


35-14-124.5. Disciplinary powers. (1) The commissioner may deny an application for, refuse to renew, revoke, or suspend a license or certificate or place a licensee or certificate holder on probation, if such person has:

(a) Violated any provision of this article or of any rule adopted by the commissioner under this article;

(b) Been convicted of a felony under any state or federal law; except that, in considering a conviction of a felony, the commissioner shall be governed by section 24-5-101, C.R.S.;

(c) Committed fraud or deception in the procurement or attempted procurement of a license or certificate;

(d) Failed to comply with a lawful order of the commissioner concerning the administration of this article;

(e) Been convicted of deceptive trade practices under any state of federal law;

(f) Used a commercial measuring device or moisture-testing device in deceptive trade practices in violation of any state of federal law.

(2) All proceedings concerning the denial, refusal to renew, revocation, or suspension of a license or certificate or the placing of a licensee or certificate holder on probation shall be conducted pursuant to article 4 of title 24, C.R.S.

(3) Any previous violation of this article by an applicant or associate of the applicant shall be sufficient grounds for denial of a license. For purposes of this subsection (3), "associate" means:

(a) A person associated with the applicant in the business for which such applicant seeks to be licensed or certified;

(b) A partner, officer, director, or stockholder of more than thirty percent of the outstanding shares of a partnership or corporation, when such partnership or corporation is the applicant.

SECTION 10. 35-14-127 (12), Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

35-14-127. Licenses - fees - stickers - certificates. (12) The fee for a special test where passenger vehicles, or light duty
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services, repairs, or sells a moisture-measuring device shall cause
a placing in-service report to be filed with the department. This
report shall indicate the date of placing in-service, the name and
address of the owner, the manufacturer, and the model and serial
number of the device within ten days of the in-service date. All
installers, servicemen, and salesman of moisture-testing devices
shall meet the requirements of section 35-14-123.

(5) Every moisture-testing device that is in commercial
use shall be tested for accuracy by the department at least once
each year. An official grain sample shall be used for all tests of
moisture-measuring devices. A grain sample taken from a lot of
grain—for moisture-content determination shall be taken in a
manner recognized by the United States department of agriculture.
The tolerance of the moisture-testing device shall be plus or minus
five hundredths times the moisture content of the official grain
sample.

(6) All specifications and tolerances pertaining to
moisture-measuring devices specified in this section shall be in
effect until such time as specifications and tolerances for
moisture-testing devices are included among the technical
requirements adopted in section 35-14-105.

SECTION 13. 35-14-131 (1), (2) (b), (2) (d), (2) (e),
(2) (f), (2) (j), (2) (l), (2) (m), and (3). Colorado Revised
Statutes, 1984 Repl. Vol., are amended to read:

35-14-131. Civil penalties. (1) Any person who, by
himself OR HERSELF, by his OR HER servant or agent, or as the
servant or agent of another person commits any of the acts
enumerated in subsection (2) of this section shall be subject to a
civil penalty of not more than seven hundred fifty dollars for each
day of violation.

(2) It is a violation for any person to:

(b) Use, or have in his OR HER possession for current
use or for hire, in the buying or selling of any commodity or
thing, in the computation of any basic charge or payment for
services rendered on the basis of weight or measurement, or in
the determination of weight or measurement when a charge is
made for such determination, any weight or measure which has
not been sealed by the commissioner or his THE COMMISSIONER'S
designated agent within the last year, unless specific written
permission to use such weight or measure has been received from
the commissioner;

(d) Remove, break, or deface, contrary to law or
regulation, any tag, seal, or mark placed on any weight or
measure pursuant to the requirements of this article, except in the
case of the commissioner or a serviceman, LICENSED SERVICE
PERSON, CERTIFIED pursuant to section 35-14-123, performing his
duties as provided FOR in this article or any rule or regulation
adopted pursuant thereto;

(e) Sell, or offer or expose for sale, less than the
quantity he OR SHE represents of any commodity, thing, or
service;

(f) Take more than the quantity he OR SHE represents of
any commodity, thing, or service when, as a buyer, he OR SHE
furnishes the weight or measure by means of which the amount of
the commodity, thing, or service is determined;

(j) Act as or represent himself OR HERSELF to be a certified weigher without being certified therefor, or for any certified weigher to: Falsely certify the weight of any load, or part of any load, or of any article whatsoever; falsely certify any net or gross weight required by this article to be in said certificate; refuse to weigh any article or thing which it is his OR HER duty to weigh; or refuse to state in any weight certificate anything required to be therein;

(l) Hinder or obstruct in any way the commissioner or his THE COMMISSIONER'S authorized agent in the performance of the commissioner's official duties under this article;

(m) Act as or represent himself OR HERSELF to be a licensed CERTIFIED weighing or measuring device serviceperson without being so licensed CERTIFIED.

(3) Any civil penalty collected under this section shall be transmitted to the state treasurer, who shall credit the same to the general fund. Penalties shall be determined by the commissioner or his THE COMMISSIONER'S designee and may be collected by the department by action instituted in a court of competent jurisdiction for collection of such penalty. In determining the amount of any civil penalty to be assessed, the commissioner shall consider any relevant factors. The final decision of the commissioner or his THE COMMISSIONER'S designee shall be subject to judicial review. In the event that such an action is instituted for the collection of such penalty, the court may consider the appropriateness of the amount of the penalty, if such issue is raised by the party against whom the penalty was assessed.

SECTION 14. 35-14-134. Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

35-14-134. Repeal of sections - review of functions.
Sections 35-14-102 (3), 35-14-121 to 35-14-124 35-14-124.5. 35-14-127, 35-14-129, 35-14-131 (1) (d), (1) (j), and (1) (m) are repealed, effective JULY 1, 1995. Prior to such repeal, the licensing AND CERTIFICATION functions of the department shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 15. 24-34-104 (24.1) (d), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended, and the said 24-34-104 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (24.1) The following functions of the specified agencies shall terminate on July 1, 1995:

(d) The issuance of licenses related to measurement standards through the department of agriculture in accordance with article 14 of title 35, C.R.S.;

(41) The following agencies, functions, or both, shall terminate on July 1, 2010:

(a) The following functions of the commissioner of agriculture:

(i) The issuance of licenses and certificates related to measurement standards in accordance with
ARTICLE 14 OF TITLE 35, C.R.S.

SECTION 16. Effective date - applicability. This act shall take effect July 1, 1995, and shall apply to acts occurring on or after said date.

SECTION 17. 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.
LLS NO. 95-0016.01 DDC  SENATE BILL 95-

Joint Legislative Sunrise and Sunset Review Committee
October 6, 1994

A BILL FOR AN ACT
CONCERNING THE REGULATION OF EGGS BY THE DEPARTMENT OF AGRICULTURE.

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

Joint Legislative Sunrise and Sunset Review Committee.
Continues the licensing functions of the department of agriculture with respect to egg production, handling, and sale.
Amends the definition of "edible egg" to conform to United States department of agriculture requirements. Eliminates the licensing of egg breakers. Excludes the sale of gasoline from the definition of "total annual gross sales", which must be reported to determine the license fee paid by a retailer. Replaces the current requirement that eggs be kept in refrigeration at or below sixty degrees with a requirement that they be kept at a temperature specified by the agricultural commission by rule. Deletes certain provisions dealing with invoices, advertisements, sale of eggs, and placement of certificates on cases.
Deletes license requirement for egg candlers, out-of-state wholesalers or truckers selling eggs in Colorado, first receivers, and sellers of frozen eggs or egg solids.
Designates the commissioner as the enforcer of the article and gives the commissioner or a designee access to business places and records pertinent to egg production. Gives the commissioner the ability to impose civil penalties and to deny licensure, place a licensee on probation, or restrict or refuse to renew the license of a person found to be in violation of the article.

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

SECTION 1. 35-21-101 (6), (8), (9), and (12).
Colorado Revised Statutes, 1984 Repl. Vol., are amended to read:
35-21-101. Definitions. As used in this article, unless the context otherwise requires:
(6) "Dealer" means any person who is not a producer and who is engaged in buying, or selling, eggs or buying and selling eggs.
(8) "Edible eggs" means eggs which are free from mould, blood ring, blood spot, bloody whites, filth, stuck yolk, black rot, white rot, mixed rot, or any other inedible quality as defined by the United States department of agriculture.
This includes adhering fecal or other extraneous matter covering more-than-one-fourth of the shell surface. Eggs which have been subjected to incubation practices, whether natural or artificial, shall be classed as inedible.
(9) "Egg breaker"—means any person who commercially engages in the business of removing eggs from their shells in the production of liquid, frozen, egg solids, or any preparation of egg products.
(12) The terms "gross sales" and "total annual gross sales of the establishment" are synonymous and when used for license fee classification purposes mean the gross sales of all items including poultry eggs, sold annually as reported to the department of revenue, but does not include gasoline sales.

SECTION 2. 35-21-103, Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:
35-21-103. Eggs to be candled - refrigeration -
Every person buying shell eggs from producers for resale shall candle and grade the eggs according to United States department of agriculture standards, grades, and weight classes for shell eggs. The candling and grading required by this subsection (1) shall be done in the presence of the producer if so requested. 

IN BUYING EGGS FOR RESALE OR SELLING EGGS, no person shall, in buying or selling eggs, give or take a greater or less deduction for eggs rejected as unfit for food or a lower grade than the actual loss or grade which has been determined by the careful examination of the same.

All eggs shall be kept under adequate refrigeration from the time they are first received from the producer until sold to the consumer. This refrigeration shall be such that the temperature of the eggs does not exceed sixty degrees Fahrenheit.

Every vehicle used to transport eggs from a producer to any dealer, processing plant, or retailer shall be maintained in a sanitary condition and shall be enclosed to protect eggs from extreme heat or cold.

A certificate shall be placed upon the top layer of each case or part case of candled and graded loose eggs showing the grade, size, date of candling, and the name and address of the dealer selling the eggs. The person selling the eggs shall be responsible for the maintenance of grade for a period of ten days, after which the subsequent buyer is responsible.

An invoice shall be furnished the subsequent purchaser of eggs by the first receiver, showing the name of the seller, the date sold, and the grade and size classification of the eggs sold. A copy of this invoice shall be retained by the buyer and seller of such eggs for a period of thirty days after receipt of the eggs.

Every carton or container of eggs offered for sale to the consumer in the state of Colorado shall have clearly imprinted thereon, or shall bear a tag or adhesive label securely fastened thereto, showing that the eggs have been candled and graded, together with the date of candling and the name and address of the firm, and stating, in letters not less than one-fourth inch in height, the grade and weight designation as specified in section 35-21-102.

Any person advertising eggs for sale in this state shall include in the advertisement, in type at least one-half the size of the statement of price, a statement of the correct grade and weight of such eggs; but a person may add a special name, design, or trademark to the grade and weight if such special name, design, or trademark is not misleading or contradictory to the actual grade and weight and if such special name, design, or trademark is first approved by and registered with the commissioner.

It is unlawful for any person to sell or offer for sale eggs in any carton or container on which there is evidence of adhering filth or contamination on the inside or outside of such carton, or in any used carton on which there is printed, stamped, or affixed any trademark, design, or other identification of any
person other than the person so selling such eggs.

(9) It is unlawful to sell eggs labeled as "fertile" unless seventy-five percent of the eggs are actually fertile as determined for inspection purposes by culling, by incubation, or by any other means, including breaking out for physical examination.

SECTION 3. 35-21-104, Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

35-21-104. Licenses - application - fees. (1) Every person buying POULTRY EGGS FOR RE SALE or selling culling, or receiving on consignment poultry eggs within this state shall obtain, on or before July 1 of each year, from the department, a retailer's or wholesaler's or candler's license applicable for each place where such business is conducted. A license shall not be is NOT transferable and shall expire EXPIRES on June 30 of each year, and No reduction of license fee shall MAY be made for a fractional part of a year.

(2) (a) No person shall, without first obtaining a license from the commissioner, engage commercially in the business of removing eggs from their shells in the preparation of frozen, liquid, egg solids, or any other forms of whole eggs, any mixture of yolks, whites, sugared yolks, salted yolks, or any preparation of egg meat with or without other wholesome ingredients.

(b) Before such license is granted, the commissioner shall inspect the establishment and the equipment to be used in the egg-breaking process, and shall also determine whether or not the building, equipment, and method of operation comply with the sanitary regulations established by the commission or other recognized regulatory authority.

(c) If, after such inspection, it is evident that the establishment complies with the sanitary requirements, the commissioner shall issue an egg-breaker license to the establishment. Such license shall not be transferable and shall expire on June 30 of each year, and no reduction of license fees shall be made for a fractional part of a year.

(d) Every egg-breaking establishment shall include its license number as a part of the proper labeling of all cans or containers in which frozen eggs or egg products are sold or offered for sale for human consumption.

(3) An application for any a license shall state:

(a) The name of the applicant; and

(b) If the applicant is a firm, the names of its members; and

(c) If the applicant is a corporation, the names of its officers;

(d) The location of the business; and

(e) The telephone number, if any.

(4) (a) The annual license fees for retailers shall be based on the total annual gross sales, EXCLUDING THE SALE OF GASOLINE, of the establishment for the previous calendar year, as reported to the department of revenue. In the case of chain stores, the annual license fee is based on total annual gross sales, EXCLUDING THE SALE OF GASOLINE, of individual stores for the previous calendar year as reported by the home office of such chain to the department. Except that, for NOTWITHSTANDING ANY
PROVISION OF THIS PARAGRAPH (a) TO THE CONTRARY, a retailer who has not been engaged in business during the previous calendar year shall pay two dollars for its annual license fee. Retail classes and fees shall be as follows:

Class I. Retailer - Gross sales up to and including $50,000, fee $2.00.
Class II. Retailer - Over $50,000 to and including $100,000 gross sales, fee $5.00.
Class III. Retailer - Over $100,000 to and including $200,000 gross sales, fee $8.00.
Class IV. Retailer - Over $200,000 to and including $500,000 gross sales, fee $15.00.
Class V. Retailer - Over $500,000 gross sales, fee $25.00.

(b) The annual license fees for wholesalers shall be based on the average number of cases of eggs (thirty dozen per case) sold per week during the previous year; except that for a wholesaler who has not been engaged in business during the previous calendar year, the fee shall be twenty-five dollars. The applicant for a wholesale license shall keep such records as may be necessary to indicate accurately the quantity of eggs sold per week during the year and shall allow the commissioner to examine these records in determining the quantity of eggs sold. A WHOLESALE LICENSEE SHALL RETAIN such records of quantity sold shall be held by a wholesaler for a period of two years. The wholesale classes and fees shall be as follows:

Class I. Wholesaler - Up to and including 50 cases per week, fee $25.00.
Class II. Wholesaler - Over 50 cases to and including 100 cases per week, fee $50.00.
Class III. Wholesaler - Over 100 cases to and including 250 cases per week, fee $100.00.
Class IV. Wholesaler - Over 250 cases to and including 750 cases per week, fee $300.00.
Class V. Wholesaler - Over 750 cases per week, fee $500.00.

c) Any out-of-state wholesaler or trucker selling eggs in this state shall be classified as a Class IV wholesaler and shall obtain a Class IV wholesaler license. This includes any person, other than a common or contract carrier, hauling eggs into this state for the account of a person other than himself.

d) Any person receiving eggs on consignment to be shipped to a first receiver for culling shall obtain a license to carry on such business. The license fee for a consignment receiver shall be fifteen dollars per year.

e) Any person operating retail delivery trucks or other vehicles and selling eggs from those such trucks or vehicles to the consumer shall obtain a Class I retailer license for each vehicle so used.

(f) Any Colorado resident not holding a wholesale license for a place of business who uses a truck or other vehicle in buying eggs from producers or other dealers shall obtain a license for each vehicle so used, the fee for which shall be
twenty-five dollars per year.

(g) The license fee for egg breakers shall be based on
the establishment's annual production in pounds: Class I breaker's
license—up to and including fifty thousand pounds per year,
twenty-five dollars; Class II breaker's license, over fifty thousand
pounds per year, fifty dollars; except that, for any egg breaker
who has not been engaged in business during the previous year,
the fee shall be twenty-five dollars.

(h) Any person selling frozen eggs or egg solids (dried
eggs) shall obtain the applicable wholesale license based on the
number of pounds sold per week per year converted to cases at
the rate of thirty-six pounds per case on frozen eggs or twelve
pounds per case on egg solids. If the person has a wholesale
license for shell eggs or a breaker's license, he shall be credited
for such license on his frozen egg or egg solids license.

(i) Any person candling eggs in this state shall obtain a
candler's license. This includes producers selling candled and
graded eggs of their own production to retailers, restaurants, or
manufacturers. The fee for such license shall be two dollars per
year. This license shall entitle the holder to candle and grade
eggs in this state.

(5) All license fees from licensees shall be deposited
with the state treasurer and credited to the general fund.
Commencing with the fiscal year beginning July 1, 1965, the
general assembly shall appropriate to the department of agriculture
from the general fund such moneys as are necessary for the
administration of this article.

SECTION 4. 35-21-106 (1) and (2), Colorado Revised
Statutes, 1984 Repl. Vol., are amended to read.

35-21-106. Rules - commissioner to enforce -
procedure. (1) The commission is authorized to formulate such
rules and regulations as it may deem proper and necessary for the
enforcement of the provisions of this article.

(2) (a) The commissioner is responsible for
enforcing this article. The commissioner or the
commissioner's designee shall have access during regular
business hours to those places of business and those
business records pertinent to activities regulated under
this article.

(b) If the commissioner upon determining determines
that the provisions of this article or the rules and regulations
promulgated for its enforcement are being violated, the
commissioner may cause "stop sale notices" to be placed on all
eggs being sold or offered for sale in violation of the provisions
of this article or the said rules and regulations thereof. No
person may sell or otherwise dispose of eggs upon which a
"stop sale notice" has been issued shall not be sold or otherwise
disposed of until such "stop sale notice" has been cancelled by the
commissioner or his a duly authorized agent.

SECTION 5. 35-21-107 (2), Colorado Revised Statutes,
1984 Repl. Vol., is amended to read:

35-21-107. Penalty. (2) The commissioner may After
proper hearing as provided in article 4 of title 24, C.R.S., the
commissioner may deny an application for licensure, place
A LICENSEE ON PROBATION, OR RESTRICT, SUSPEND, OR REVOLVE, ANY 
OR REFUSE TO RENEW THE LICENSE ISSUED TO ANY OF A PERSON WHO 
VIOLATES ANY OF THE PROVISIONS OF THIS ARTICLE OR ANY RULE AND 
REGULATIONS ISSUED BY THE COMMISSIONER PURSUANT THERETO. RULE 
ADOPTED UNDER THIS ARTICLE. SUCH RESTRICTION, REVOCATION, SUSPENSION OF OR REFUSAL TO RENEW A LICENSE MAY BE IN ADDITION 
TO, OR IN LIEU OF, ANY PENALTIES OR FINES IMPOSED IN SUBSECTION (1) 
OF THIS SECTION.

SECTION 6. Article 21 of title 35, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended by the addition of a new section to read:

35-21-107.5. Civil penalties. (1) (a) The commissioner may impose a civil penalty on any person who violates any provision of this article or any rule adopted under this article. Such penalty shall not exceed seven hundred fifty dollars per day per violation.

(b) Before imposing a civil penalty, the commissioner may consider the effect of such penalty on the ability of the violator to stay in business.

(2) (a) The commissioner shall not impose a civil penalty unless the person charged is given notice and an opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(b) Upon a finding that the commissioner did not have probable cause to impose a civil penalty, the person charged may recover from the department such person's costs and attorney fees.

(3) If the commissioner is unable to collect a civil penalty or if any person fails to pay all or any portion of a civil penalty imposed pursuant to this section, the commissioner may recover the amount of the penalty, plus costs and attorney fees, by action in a court of competent jurisdiction.

(4) All money collected pursuant to this section shall be transmitted to the state treasurer and credited to the general fund.

SECTION 7. 35-21-108, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:


Prior to such repeal, the licensing functions of the department shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 8. 24-34-104 (24.1) (e), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is repealed as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (24.1) The following functions of the specified agencies shall terminate on July 1, 1995:

(e) The issuance of licenses relating to poultry eggs through the department of agriculture or the commissioner of agriculture in accordance with article 21 of title 35, C.R.S.

SECTION 9. 24-34-104. Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended by the addition
(41) The following agencies, functions, or both, shall terminate on July 1, 2010:

(a) The following function of the commissioner of the department of agriculture:

(1) The issuance of licenses relating to poultry eggs in accordance with article 21 of title 35, C.R.S.

SECTION 10. Effective date - applicability. This act shall take effect July 1, 1995, and shall apply to acts occurring on or after said date.

SECTION 11. 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.
SENATE BILL 95-

A BILL FOR AN ACT

CONCERNING THE REGULATION BY THE DEPARTMENT OF
AGRICULTURE OF PERSONS DEALING IN AGRICULTURAL
PRODUCTS.

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

Joint Legislative Sunrise and Sunset Review Committee. Continues the regulatory and licensing authority of the department of agriculture over certain handlers of farm products. Deregulates transporters of farm products. Adds having a license revoked, suspended, or not renewed or having been placed on probation in another jurisdiction to the list of grounds for which a licensee or applicant may be disciplined in this state.

Adds new definitions to the "Farm Products Act" and the "Commodity Warehouse Act" so that certain key terms used in those acts are defined.

Requires persons who act as agents for commodity handlers to be licensed. Allows a person who is bonded pursuant to the "Farm Products Act" to use that bond to fulfill the bonding requirements of the "Commodity Warehouse Act".

Eliminates licensing requirements for apple storage. Allows the commissioner of agriculture to adopt rules for the voluntary inspection of apples stored in compliance with the "Controlled Atmosphere Storage of Apples Act".

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

SECTION 1. 12-16-103 (3.5) and (11), Colorado Revised Statutes, 1991 Repl. Vol., are amended, and the said

12-16-103, as amended, is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

12-16-103. Definitions. As used in this part, unless the context otherwise requires:

(3.5) "Credit sale contract" means a contract for the sale of a commodity farm product when the sale price is to be paid on a date later than sixty days after delivery of the commodity farm product to the buyer and includes but is not limited to those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, and price later contracts.

(5.5) "LIVESTOCK" HAS THE SAME MEANING AS SET FORTH IN SECTION 35-1-102 (6), C.R.S.

(11) "Transporter" means any person, other than a dealer or agent, who transports for hire any farm products or commodities originating in Colorado.

SECTION 2. 12-16-104 (1) and (4), Colorado Revised Statutes, 1991 Repl. Vol., as amended, as they will become effective March 1, 1995, are amended to read:

12-16-104. Application for license. (1) No person shall act as a dealer, small-volume dealer, or agent or transporter without having obtained a license as provided in this part. Every person acting as a dealer, small-volume dealer, or agent or transporter shall file an application in writing with the commissioner for a license to transact the business of dealer, small-volume dealer, or agent, or transporter, and such application shall be accompanied by the license fee provided for in section 12-16-105 for each specified class of business.
4) Upon the applicant's filing of the proper application with the commissioner, accompanied by the proper fee, and when the commissioner is satisfied that the convenience and necessity of the industry and the public will be served thereby, the commissioner shall issue to such applicant a license entitling the applicant to conduct the business described in the application at the place named in the application until the last day of February next following or until the license has been suspended or revoked.

The license of an agent shall expire upon the date of expiration of the license of the principal for whom the agent acts. The commissioner may also issue a license to each agent, with a separate agent's license being required for each principal. Any dealer, small-volume dealer, or agent shall show said license upon the request of any interested person. Each licensed dealer, small-volume dealer, or agent shall post such person's license or a copy thereof in the person's office or salesroom in plain view of the public.

SECTION 3. 12-16-105 (1) (c), Colorado Revised Statutes, 1991 Repl. Vol., is repealed as follows:

12-16-105. License fee - renewal. (1) For filing the application described in section 12-16-104, each applicant shall pay the following fee to the commissioner, who shall transmit all such fees to the state treasurer for credit to the general fund:

(c) Transporters, fifty dollars for each year.

SECTION 4. 12-16-108 (1), Colorado Revised Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

12-16-108. Disciplinary powers - licenses. (1) The commissioner may deny any application for a license, or may refuse to renew a license, or may revoke or suspend a license, or may place a licensee on probation, as the case may require, if the licensee or applicant has:

(g) HAD A LICENSE REVOKED, SUSPENDED, OR NOT RENEWED OR HAS BEEN PLACED ON PROBATION IN ANOTHER STATE FOR CAUSE, IF SUCH CAUSE COULD BE THE BASIS FOR THE SAME OR SIMILAR DISCIPLINARY ACTION IN THIS STATE.

SECTION 5. 12-16-115 (1) (e) and (1) (k), Colorado Revised Statutes, 1991 Repl. Vol., as amended, as they will become effective March 1, 1995, are amended to read:

12-16-115. Unlawful acts. (1) It is unlawful and a violation of this part 1 for any person to:

(e) Act as a dealer, small-volume dealer, or agent or transporter without having obtained a license or act as a dealer or agent without having filed a surety bond or an irrevocable letter of credit, as provided in this part 1. Violation of this paragraph shall constitute a class 6 felony.

(k) Act as a dealer, small-volume dealer, or agent or transporter and, with intent to defraud, make, draw, utter, or deliver any check, draft, or order for the payment of money upon any bank or other depository to the owner for the purchase price of any farm products or any part thereof upon obtaining possession or control thereof, when at the time of the making, drawing, uttering, or delivery the maker or drawer has not
sufficient funds in or credit with such bank or other depository for
the payment of such check, draft, or order in full upon its
presentation. The making, drawing, uttering, or delivery of such
check, draft, or order shall be prima facie evidence of an intent
to defraud. "Credit", as used in this paragraph (k), means an
arrangement or understanding with the bank or depository for the
payment of such check, draft, or order. Violation of this
paragraph (k) shall constitute fraud by check, as defined in section
18-5-205, C.R.S.

SECTION 6. 12-16-202 (1), Colorado Revised Statutes,
1991 Repl. Vol., is amended, and the said 12-16-202, as
amended, is further amended BY THE ADDITION OF THE
FOLLOWING NEW SUBSECTIONS, to read:

12-16-202. Definitions. As used in this part 2, unless
the context otherwise requires:

(1) "BAILEE" MEANS A PERSON WHO, BY A NEGOTIABLE
warehouse receipt or other document of title, acknowledges
possession of goods and contracts to deliver them. "AGENT"
MEANS A PERSON WHO, ON BEHALF OF A COMMODITY HANDLER,
BUYS, RECEIVES, CONTRACTS FOR, OR SOLICITS FARM PRODUCTS
FROM OR SELLS FARM PRODUCTS FOR THE OWNER THEREOF OR
WHO NEGOTIATES THE CONSIGNMENT OR PURCHASE OF FARM
PRODUCTS ON BEHALF OF A COMMODITY HANDLER.

(1.5) "BAILEE" MEANS A PERSON WHO, BY A NEGOTIABLE
WAREHOUSE RECEIPT OR OTHER DOCUMENT OF TITLE,
ACKNOWLEDGES POSSESSION OF GOODS AND CONTRACTS TO
DELIVER THEM.

(9.5) "LIVESTOCK" HAS THE SAME MEANING AS SET
FORTH IN SECTION 35-1-102 (6), C.R.S.

SECTION 7. 12-16-203 (1) and (2). Colorado Revised
Statutes, 1991 Repl. Vol., are amended to read:

12-16-203. Licenses - commodity handler - agent.
(1) No person shall act as a commodity handler or as an agent
for a commodity handler in this state without having first
obtained a license from the department.

(2) Every person intending to act as a commodity
handler or as an agent for a commodity handler in this state
shall, before March 1 of each year, obtain a license from the
department.

SECTION 8. 12-16-205 (1) and the introductory portion
to 12-16-205 (2), Colorado Revised Statutes, 1991 Repl. Vol., are
amended, and the said 12-16-205 is further amended BY THE
ADDITION OF A NEW SUBSECTION, to read:

12-16-205. Commodity handler or agent licenses -
application requirements. (1) Each applicant for a commodity
handler license shall pay a license fee of fifty dollars for each
year, which the department shall collect and transmit to the state
treasury, who shall credit the same to the general fund.

(2) Application for a commodity handler license
under this section shall be made to the department upon forms
furnished by the department. The application shall include the
following information:

(2.5) (a) Application for an agent license under
this section shall be made to the department upon forms
FURNISHED BY THE DEPARTMENT. THE APPLICATION SHALL INCLUDE THE FOLLOWING INFORMATION:

(I) The name and principal business address of the applicant in Colorado and in each state in which the applicant operates;

(II) The name of the person authorized to receive and accept service of summons and legal notices of all kinds on behalf of the applicant in each state;

(III) The name and address of the commodity handler represented or that will be represented upon licensure of the agent;

(IV) A written letter of intention from the commodity handler named in subparagraph (III) of this paragraph (a) to name the applicant as such commodity handler's agent upon licensure;

(V) The name and address of any commodity handler for whom the agent has been issued a license pursuant to this subsection (2.5); and

(VI) Any other information that the commissioner deems reasonably necessary to carry out the purposes of this part 2.

(b) No person may be licensed as agent for any commodity handler that is not licensed.

(I) A separate license shall be required for each commodity handler that an agent seeks to represent.

(ii) A license issued pursuant to this subsection (2.5) shall expire upon expiration of the license of the commodity handler the agent represents.

SECTION 9. 12-16-206, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-16-206. Licenses - requirements. (1) To receive or maintain a license, each applicant or commodity handler licensee shall satisfy the following requirements:

(a) The applicant or commodity handler licensee shall furnish the commissioner with evidence of minimum provisional insurance coverage in an amount sufficient to protect the applicant's storage obligations. If, at any time, the commissioner evaluates an applicant's provisional insurance coverage to be insufficient, the commissioner may require such additional insurance as the commissioner considers sufficient. Failure to provide evidence of the additional insurance within thirty days after written notice from the commissioner constitutes grounds for the suspension or revocation of the license.

(b) The applicant or commodity handler licensee shall furnish the commissioner with a financial statement that presents accurately his or her financial condition. The commissioner may promulgate rules that clearly state the information required from each applicant or commodity handler licensee under this section. Any financial statement submitted to the commissioner in support of a license application made pursuant to the provisions of this part 2 shall be confidential.

(2) If any commodity handler licensee fails to apply for license renewal before March 1 of each year, such licensee shall, upon application for a renewal license and before
such license is issued, pay a penalty fee equal to the license fee. Such penalty fee shall be in addition to the license fee.

SECTION 10. 12-16-206.5 (1), Colorado Revised Statutes, 1991 Repl. Vol., is amended by the addition of a new paragraph to read:

12-16-206.5. Disciplinary powers - licenses. (1) The commissioner may deny any application for a license, or may refuse to renew a license, or may revoke or suspend a license, or may place a licensee on probation, as the case may require, if the licensee or applicant has:

(h) Had a license revoked, suspended, or not renewed or has been placed on probation in another state for cause, if such cause could be the basis for similar disciplinary action in this state.

SECTION 11. 12-16-218 (1), Colorado Revised Statutes, 1991 Repl. Vol., is amended by the addition of a new paragraph to read:

12-16-218. Bonds or irrevocable letters of credit - exemptions. (1) (e) Any person licensed pursuant to part 1 of this article may apply for a license as a commodity handler or agent and shall not be subject to the license fee required by section 12-16-205. The bond or irrevocable letter of credit required by section 12-16-106 shall also apply to such person's activities as a commodity handler or agent and shall be subject to the provisions of this section and section 12-16-215.

SECTION 12. 12-16-221 (1) (e) and (1) (l), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

12-16-221. Unlawful acts. (1) It is unlawful and a violation of this part 2 for any person to:

(e) Act as a commodity handler or agent without having obtained a license or act as a commodity handler without having filed a surety bond or irrevocable letter of credit, as provided in this part 2. Violation of this paragraph (e) shall constitute a class 5 felony.

(l) Act as a commodity handler or agent and, with intent to defraud, make, draw, utter, or deliver any check, draft, or order for the payment of money upon any bank or other depository to the owner for the purchase price of any commodities or any part thereof upon obtaining possession or control thereof, when at the time of the making, drawing, uttering, or delivery the maker or drawer has not sufficient funds in or credit with such bank or other depository for the payment of such check, draft, or order in full upon its presentation. The making, drawing, uttering, or delivery of such check, draft, or order shall be prima facie evidence of an intent to defraud. "Credit", as used in this paragraph (l), means an arrangement or understanding with the bank or depository for the payment of such check, draft, or order. Violation of this paragraph (l) shall constitute fraud by check, as defined in section 18-5-205, C.R.S.

SECTION 13. 12-16-223, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-16-223. Repeal of article. This article is repealed, effective July 1, 1995. Prior to such repeal, the
licensing functions of the commissioner shall be reviewed as
provided for in section 24-34-104, C.R.S.

SECTION 14. 24-34-104 (24.1) (i), Colorado Revised
Statutes, 1988 Repl. Vol., as amended, is amended, and the said
24-34-104 is further amended BY THE ADDITION OF A NEW
SUBSECTION, to read:

24-34-104. General assembly review of regulatory
agencies and functions for termination, continuation, or
reestablishment. (24.1) The following functions of the specified
agencies shall terminate on July 1, 1995:

(i) The licensing functions of the commissioner of
agriculture pursuant to article 16 of title 12, C.R.S.

(41) The following agencies, functions, or both,
shall terminate on July 1, 2010:

(a) The following function of the commissioner of
agriculture:

(I) The licensing and regulation of persons
pursuant to article 16 of title 12, C.R.S.

SECTION 15. 35-23.5-103, Colorado Revised Statutes,
1984 Repl. Vol., is amended to read:

35-23.5-103. Voluntary inspection of facility - rules -
fee. On or after July 1, 1977, no person shall operate a controlled
atmosphere storage facility for the storage of apples without
applying for and receiving a license therefor from the
commissioner. A fee established by the commissioner to cover
the costs of issuing the license and making the inspection shall
accompany the application. Prior to the issuance of the license,
the commissioner or his authorized agent shall inspect the storage
facility to determine compliance with this article and the rules
adopted pursuant thereto. Each license shall expire three years
after issuance but may be renewed upon paying the current fee
established by the commissioner for an original license, unless his
license has been revoked or suspended for a violation of this
article or the rules adopted pursuant thereto within the last two
years. The commissioner may inspect a controlled
atmosphere storage facility upon request by the operator
or under conditions set forth in rules adopted by the
commissioner pursuant to sections 24-4-103, C.R.S., and
35-23.5-104. The commissioner may fix, assess, and collect
fees in amounts that cover actual costs associated with
inspection and the issuance of certificates of inspection.

SECTION 16. 35-23.5-104, Colorado Revised Statutes,
1984 Repl. Vol., is amended to read:

35-23.5-104. Commissioner to develop rules. The
commissioner shall develop reasonable rules concerning the
voluntary inspection of apples stored pursuant to this
article and the controlled atmosphere storage of apples,
including, among other factors, the following: Storage facility
regulations; record keeping and reports; length of storage time,
including the maximum time allowed to reach prescribed
atmospheric conditions of temperature, oxygen, and carbon
dioxide; quality regulations; and labeling and marketing.

SECTION 17. The introductory portion to 35-23.5-107
and 35-23.5-107 (1) (a) and (1) (b), Colorado Revised Statutes, 1984 Repl. Vol., are amended to read:

35-23.5-107. Penalty. (1) On or after July 1, 1977, it shall be unlawful for any person to:

(a) Operate a facility for the storage of apples that is represented as being a controlled atmosphere storage facility unless it has been licensed to meet the standards set pursuant to section 24-34-104, C.R.S.

(b) Sell, exchange, offer for sale, advertise, label, or otherwise represent that apples grown in Colorado which are represented as having been exposed to controlled atmosphere storage, unless such apples have been stored in a facility licensed to meet the standards set pursuant to section 24-34-104, C.R.S.

SECTION 18. 35-23.5-108, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

35-23.5-108. Repeal - review of functions. Sections 35-23.5-106 and 35-23.5-107 (1) (c) are repealed, effective July 1, 1995. Prior to such repeal, the licensing functions of the commissioner shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 19. Effective date - applicability. This act shall take effect upon passage, and shall apply to acts occurring on or after said date.

SECTION 20. 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
A BILL FOR AN ACT

Concerning the licensing function of the Department of Agriculture under the "Slaughter, Processing, and Sale of Meat Animals Act".

Bill Summary

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

Joint Legislative Sunrise and Sunset Review Committee. Continues the licensing function of the department of agriculture with respect to the slaughter, processing, and sale of meat animals.

Removes certain temperature requirements from the statutes and allows the department to specify temperature requirements by rule. Authorizes the department to adopt rules concerning the sale of meat and food plan operators. Makes it unlawful to sell adulterated meat and sets out penalties for doing so.

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

SECTION 1. 35-33-103 (18), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

35-33-103. Definitions. As used in this article, unless the context otherwise requires:

(18) "Locker plant" means a location or establishment in which space in individual lockers is rented for the storage of FROZEN food at or below a temperature of forty degrees Fahrenheit.

SECTION 2. 35-33-104 (1) and (7), Colorado Revised Statutes, 1984 Repl. Vol., as amended, are amended to read:

35-33-104. Department of agriculture - powers and duties. (1) The department is hereby authorized to formulate reasonable rules and regulations, and standards of construction, operation, and sanitation for all meat processing facilities and shall establish regulations and standards pertaining to containers, packaging materials, mobile slaughter units, slaughter rooms, processing rooms, chill rooms, storage and locker rooms, sharp freezing facilities, and premises of meat processing facilities, with respect to the service of slaughtering, cutting, preparing, wrapping, and packaging meat and meat products necessary for the proper preservation of food, AND SHALL ESTABLISH RULES AND STANDARDS PERTAINING TO THE SALE OF MEAT OR MEAT PRODUCTS AND FOR FOOD PLAN OPERATORS TO THE END OF PROTECTING THE PUBLIC HEALTH AND PROTECTING THE PUBLIC FROM DECEPTION, FRAUD, OR UNETHICAL SALES PRACTICES.

(7) The licensing functions of the department as set forth in this article are terminated on July 1, 1995. Prior to such termination, the licensing functions shall be reviewed as provided in section 24-34-104, C.R.S.

SECTION 3. 35-33-107 (3) and (5), Colorado Revised Statutes, 1984 Repl. Vol., as amended, are amended to read:

35-33-107. Exemptions. (3) Any person who holds an establishment number issued by the United States department of...
agriculture for purposes of inspection and does not sell meat or
meat products at retail or engage in the custom processing of meat
animals shall be exempt from the requirements of this article;
EXCEPT THAT ANY SUCH PERSON SHALL BE SUBJECT TO THE
REQUIREMENTS OF SECTION 35-33-204.
(5) This section is repealed, effective July 1, 1995.

SECTION 4. 35-33-201 (7), Colorado Revised Statutes,
1984 Repl. Vol., as amended, is amended to read:
35-33-201. Processing facilities - operation. (7) All
poultry and rabbits shall be chilled immediately after processing
so that the internal temperature is reduced to forty degrees
Fahrenheit or less A TEMPERATURE ESTABLISHED BY THE
DEPARTMENT BY RULE AND SUFFICIENT TO PROTECT THE PUBLIC
HEALTH.

SECTION 5. 35-33-204, Colorado Revised Statutes,
1984 Repl. Vol., as amended, is amended to read:
35-33-204. Sale of adulterated or diseased meat.
(1) Notwithstanding any other provision of this article, it is
unlawful for any person to receive for the purpose of slaughter,
slaughter, sell, expose for sale, can or pack for the purposes of
transportation or sale, or give away for use as human food, any
meat which he SUCH PERSON knows or has reason to know is:
(a) ADULTERATED, AS DEFINED IN SECTION 25-5-410,
C.R.S.; OR
(b) Diseased or came from the carcass of an animal that
died from disease or exposure or was not slaughtered for the
purpose of human consumption.
(2) (a) Any person who violates paragraph (a) of
subsection (1) of this section commits a class 2
MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED IN SECTION
18-1-106, C.R.S.
(b) Any person who violates paragraph (b) of
subsection (1) of this section commits a class 5 felony and shall
be punished as provided in section 18-1-105, C.R.S.

SECTION 6. 35-33-205, Colorado Revised Statutes,
1984 Repl. Vol., as amended, is repealed as follows:
35-33-205. Repeal of part. This part 2 is repealed,
effective July 1, 1995. Prior to such repeal, the licensing
functions of the department shall be reviewed as provided for in
section 24-34-104, C.R.S.

SECTION 7. 35-33-407, Colorado Revised Statutes,
1984 Repl. Vol., as amended, is amended to read:
35-33-407. Repeal of article. This part 4 ARTICLE is
repealed, effective July 1, 1995 July 1, 2010. Prior to such
repeal, the licensing functions of the department shall be reviewed
as provided for in section 24-34-104, C.R.S.

SECTION 8. 24-34-104 (24.1) (c), Colorado Revised
Statutes, 1988 Repl. Vol., as amended, is repealed as follows:
24-34-104. General assembly review of regulatory
agencies and functions for termination, continuation, or
re establishment. (24.1) The following functions of the specified
agencies shall terminate on July 1, 1995:
(c) The issuance of licenses relating to slaughter,
processing, and sale of meat through the commissioner of
SECTION 9. 24-34-104, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended by the addition of a new subsection to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (41) The following agencies, functions, or both, shall terminate July 1, 2010:

(a) The following function of the commissioner of the department of agriculture:

(i) The issuance of licenses relating to slaughter, processing, and sale of meat in accordance with article 33 of title 35, C.R.S.

SECTION 10. Effective date - applicability. This act shall take effect July 1, 1995, and shall apply to acts occurring on or after said date.

SECTION 11. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.
Joint Legislative Sunrise and Sunset Review Committee

October 6, 1994

A BILL FOR AN ACT

CONCERNING THE REGULATION OF PODIATRISTS BY THE COLORADO
PODIATRY BOARD.

Bill Summary

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

Joint Legislative Sunrise and Sunset Review Committee.

Extends the regulatory authority of the Colorado podiatry board.

Requires persons to purchase professional liability insurance in specified amounts to lawfully practice podiatry in this state. Authorizes the board to exempt from this requirement any person who signs an affidavit stating that the person will not perform surgical operations.

Expands the definition of "unprofessional conduct" to include misleading omissions or material deception in renewing or seeking the reinstatement of a license, engaging in a sexual act with a patient during the period of treatment or for a specified period immediately thereafter, and conviction of any crime that would constitute a violation of the podiatry statutes. Includes within the definition of "conviction" the imposition of a deferred sentence.

Provides that letters of concern shall be confidential.

Eliminates provisions that empower the director of the department of regulatory agencies to order the podiatry board to investigate a complaint whenever one is received by the department.

Empowers the board to establish by rule the requirements for license reinstatement when the applicant has been unlicensed for more than two years.

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


1991 Repl. Vol. is amended to read:

12-32-102. Podiatry license required - professional liability insurance required - exceptions. (1) It is unlawful for any person to practice podiatry within the state of Colorado who does not hold a license to practice medicine issued by the Colorado state board of medical examiners or a license to practice podiatry issued by the Colorado podiatry board as provided by this article. A podiatry license is not required for a person serving a one-year or two-year approved residency program.

Such persons must register with the Colorado podiatry board in such manner and form as such board shall prescribe. As used in this section, an "approved residency" is a residency in a hospital conforming to the minimum standards for residency training established or approved by the Colorado podiatry board, which has the authority, upon its own investigation, to approve any residency.

(2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3)

OF THIS SECTION, IT IS UNLAWFUL FOR ANY PERSON TO PRACTICE PODIATRY WITHIN THE STATE OF COLORADO UNLESS SUCH PERSON PURCHASES AND MAINTAINS PROFESSIONAL LIABILITY INSURANCE IN AN AMOUNT NOT LESS THAN FIFTY THOUSAND DOLLARS PER CLAIM AND ONE HUNDRED FIFTY THOUSAND DOLLARS PER YEAR FOR ALL CLAIMS.

(3) THE BOARD MAY EXEMPT ANY LICENSED PODIATRIST FROM THE INSURANCE REQUIREMENT SPECIFIED IN SUBSECTION (2)

OF THIS SECTION IF SAID PODIATRIST SIGNS AN AFFIDAVIT STATING
THAT SAID PODIATRIST WILL NOT PERFORM SURGICAL OPERATIONS.

SECTION 2. 12-32-103 (4) (b), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-32-103. Appointment of members of podiatry board - terms - repeal of article. (4) (b) This article is repealed, effective July 1, 1995 J ULY 1, 2010.

SECTION 3. 12-32-107 (3) (b), (3) (e), (3) (s), and (3) (x), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

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

(3) "Unprofessional conduct" as used in this article means:

(b) Resorting to fraud, misrepresentation, or MATERIAL deception, OR MAKING A MISLEADING OMISSION, in applying for, or in securing, RENEWING, OR SEEKING REINSTATEMENT OF a license or in taking the examination provided for REQUIRED in this article;

(e) Conviction of a felony or ANY CRIME THAT WOULD constitute a VIOLATION OF THIS ARTICLE. FOR PURPOSES OF THIS PARAGRAPH (e), "CONVICTION" INCLUDES THE ENTRY OF A plea of guilty or nolo contendere to a felony or THE IMPOSITION OF A DEFERRED SENTENCE;

(s) Engaging in a sexual act with a patient during the course of patient care OR DURING THE SIX-MONTH PERIOD IMMEDIATELY FOLLOWING THE TERMINATION OF SUCH CARE.

"Sexual act", as used in this paragraph (s), means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S.;

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

SECTION 4. 12-32-108.3 (2) (c) (V), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-32-108.3. Disciplinary action by board. (2) (c) On completion of an investigation, the board shall make a finding that:

(V) The investigation discloses an instance of conduct which, in the opinion of the board, does not warrant formal action but in which the board has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, in which case, a CONFIDENTIAL letter of concern shall be sent to the podiatrist against whom a complaint was made. If the board learns of second or subsequent actions of the same or similar nature by the licensee, the board shall not issue a CONFIDENTIAL letter of concern but shall take such other course of action as it deems appropriate.

SECTION 5. 12-32-108.3 (14), Colorado Revised Statutes, 1991 Repl. Vol., is repealed as follows:

12-32-108.3. Disciplinary action by board.

(14) (a) The executive director of the department of regulatory agencies may direct the Colorado podiatry board to conduct an investigation of a person licensed to practice podiatry about whom the executive director has received complaints.

(b) The Colorado podiatry board, within sixty days,
SECTIIN 6. 12-32-111 (1), Colorado Revised Statutes, 1991 Repl. Vol., is repealed as follows:

12-32-111. Renewal of license.

(1) The Colorado podiatry board shall submit to the Colorado podiatry board the information the board believes necessary to show that he has fulfilled the board's continuing education requirements and a fee to be determined and collected pursuant to section 24-34-105, C.R.S.

SECTION 7. 12-32-115 (1) and (3), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

12-32-115. Procedure - registration - fees. (1) (a) The Colorado podiatry board shall establish procedures for the maintenance of licensee lists and the establishment of renewal fees and schedules, which fees and schedules shall be established subject to the provisions of section 24-34-102 (8), C.R.S. Every licensee shall pay the secretary a registration fee to be determined and collected pursuant to section 24-34-105, C.R.S., and shall obtain a registration certificate for the current calendar year.

(b) A licensee desiring to obtain a registration certificate shall submit the information necessary to show that he has fulfilled the Colorado podiatry board's continuing education requirements. Any licensee approved by a decision relating to such continuing education requirements may ask the executive director of the department of regulatory agencies to review such requirements in accordance with the procedures established by section 24-34-102 (11), C.R.S.

(3) Upon application to the Colorado podiatry board within two years from the date of the lapse of a license by any such licensee on a form prescribed by the board, his license shall be reinstated, subject to the payment to the board of the
current renewal fee and a reinstatement fee determined by the board pursuant to section 24-34-105, C.R.S. If, before or after such application for reinstatement has been made, charges are preferred against the licensee by the board or by any person, as provided by section 12-32-108.3, the board shall defer action on the pending application for reinstatement, if any, and proceed with a hearing on such charges in accordance with section 12-32-108.3, and thereupon shall impose such disciplinary action as the board deems appropriate. No license to practice podiatry which has been delinquent for more than two years shall be reinstated unless the applicant fulfills and meets the requirements and conditions required of an applicant applying for the issuance of an original license by the board. The board shall establish the criteria for reinstatement of a license that has been delinquent for more than two years.

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

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (41) The following agencies, functions, or both, shall terminate on July 1, 2010: The Colorado Podiatry board, created by article 32 of title 12, C.R.S.

SECTION 10. Effective date - applicability. This act shall take effect July 1, 1995, and shall apply to acts committed on or after said date.

SECTION 11. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.
A BILL FOR AN ACT
CONCERNING THE ADMINISTRATION OF THE ASBESTOS CERTIFICATION PROGRAM BY THE AIR QUALITY CONTROL COMMISSION.

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

Joint Legislative Sunrise and Sunset Review Committee. Continues the authority of the air quality control commission, created in the department of public health and environment, to regulate asbestos abatement certification.

Allows the commission to adopt rules requiring certain training for persons seeking certification, recertification, or renewal of a certificate. Requires annual refresher courses.

Reduces the time within which a certificate holder may reinstate a certificate after it expires. Sets out requirements for the renewal of a certificate. Expands the time periods for which a certificate may be renewed.

Adds the plea of nolo contendere to a violation of an asbestos abatement law or regulation in another jurisdiction as a basis for taking disciplinary action against a certificate holder. Changes the basis for issuance of a letter of admonition from conduct that does not warrant formal action to conduct that does not warrant suspension or revocation. Lengthens the waiting period for reapplication after a certificate is revoked.

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

SECTION 1. 25-7-503 (1), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

25-7-503. Powers and duties of the commission - rules and regulations - delegation of authority to division. (1) The commission has the following powers and duties:

(f) (I) To adopt rules pursuant to section 24-4-103, C.R.S., setting out required training for persons applying for certification, recertification, or renewal of certificates as it deems appropriate in accordance with requirements of the federal environmental protection agency or in response to information provided by said agency including, but not limited to, specifying the number of days required for training for initial certification or recertification and specifying the refresher courses required for renewal of a certificate.

(II) Training required pursuant to this paragraph (f) shall not be unduly duplicative or excessive.

(III) Refresher courses shall be required annually.

SECTION 2. The introductory portion to 25-7-506 (2) and 25-7-506 (5), Colorado Revised Statutes, 1989 Repl. Vol., as amended, are amended to read:

25-7-506. Certificate of trained supervisors - application - approval by division - responsibilities of trained supervisors - renewal of a certificate. (2) Within thirty days after receiving a completed application and the results of the examination administered pursuant to paragraph (b) of this subsection (2), the division shall issue a certification valid for one
A ONE-, TWO-, OR THREE-YEAR PERIOD from the date of issuance upon a finding:

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

SECTION 3. Part 5 of article 7 of title 25, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended by the addition of a new section to read:

25-7-507.5. Renewal of certificates - recertification.

(1) Any certificate issued pursuant to this part 5 that has lapsed shall be deemed to have expired.

(2) (a) A certificate issued pursuant to this part 5 may be renewed prior to expiration upon payment of a renewal fee set by the commission.

(b) Renewal of a certificate may be made for time periods of one, two, or three years pursuant to rules promulgated by the commission.

(3) An individual may reinstate an expired certificate within one year after such expiration upon payment of a reinstatement fee in an amount set by the commission.

(4) An individual whose certificate has lapsed for a period longer than one year after expiration shall apply to the division for certification as required by this part 5 and shall not be recertified until the division determines that such individual has fully complied with the requirements of this part 5 and any rules promulgated pursuant thereto.

(5) (a) Any individual whose certificate has lapsed because such individual has not completed the refresher course required pursuant to section 25-7-503 (1), (f), may complete such refresher course within one year after the date the certificate lapses.

(b) Completion of the refresher course shall be a requirement for recertification.

SECTION 4. 25-7-508 (2) (a) (II), (2) (b), and (6), Colorado Revised Statutes, 1989 Repl. Vol., as amended, are amended to read:

25-7-508. Grounds for disciplinary action - letters of admonition - denial of certification - suspension, revocation, or refusal to renew - requirement for corrective education - administrative fines. (2) (a) The division may take disciplinary action in the form of the issuance of a letter of admonition or, in conformity with the provisions of article 4 of title 24, C.R.S., the suspension, revocation, or refusal to renew certification pursuant to section 25-7-505, 25-7-506, or 25-7-507, should the division
find that a person certified under this part 5:

(II) (A) Has been subject to a disciplinary action relating to a certification or other form of registration or license to practice asbestos abatement under this part 5 or any related occupation in any other state, territory, or country for disciplinary reasons, which action shall be deemed to be prima facie evidence of grounds for disciplinary action, including denial of certification by the division.

(B) This subparagraph (II) shall apply only to disciplinary actions based upon acts or omissions in such other state, territory, or country substantially similar to those set out as grounds for disciplinary action pursuant to this part 5.

(C) A PLEA OF NOLO CONTENDERE OR ITS EQUIVALENT TO A CHARGE OF VIOLATING A LAW OR REGULATION GOVERNING THE PRACTICE OF ASPEROS REMOVAL IN ANOTHER STATE, TERRITORY, OR COUNTRY THAT IS ACCEPTED BY THE DISCIPLINING BODY OF SUCH OTHER STATE, TERRITORY, OR COUNTRY MAY BE CONSIDERED TO BE THE SAME AS A FINDING OF GUILT FOR PURPOSES OF A HEARING CONDUCTED BY THE DIVISION PURSUANT TO THIS SUBSECTION (2).

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

(6) If a certification is revoked by the division, the person against whom such action was taken shall not apply for recertification for a period of six months ONE YEAR after such revocation and shall be required to demonstrate compliance with any disciplinary action imposed by the division and to demonstrate competency in asbestos abatement procedures prior to receiving a new certificate.

SECTION 5. 25-7-512, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

25-7-512. Repeal of part. This part 5 is repealed, effective July 1, 1996 JULY 1, 2010. Prior to such repeal, the functions of the division under this part 5 shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 6. 24-34-104 (24.2), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended, and the said 24-34-104 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

24-34-104. General assembly review of regulatory
agencies and functions for termination, continuation, or
reestablishment. (24.2) The functions of the division of
administration in the department of public health and environment
relating to asbestos control performed in accordance with part 5
of article 7 of title 25, C.R.S., shall terminate on July 1, 1996.

(41) The following agencies, functions, or both,
shall terminate on July 1, 2010: The certification of
persons in connection with the control of asbestos
pursuant to part 5 of article 7 of title 25, C.R.S.

SECTION 7. Effective date - applicability. This act
shall take effect July 1, 1995, and shall apply to applications
received, certificates issued, and acts committed on or after said
date.

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.
SENATE BILL 95

Joint Legislative Sunrise and Sunset Review Committee
November 17, 1994

A BILL FOR AN ACT
CONCERNING THE REGULATION OF PERSONS WHO TREAT THE
HEARING IMPAIRED, AND, IN CONNECTION THEREWITH,
REQUIRING REGISTRATION OF AUDIOLOGISTS AND
HEARING AID DEALERS.

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

Joint Legislative Sunrise and Sunset Review Committee.
Requires the registration of audiologists and hearing aid dealers by the director of the division of registrations in the department of regulatory agencies. Sets forth the filing requirements for applicants for registration. States that a person who registers as an audiologist may also practice as a hearing aid dealer without registering as a hearing aid dealer. Requires applicants to submit to the director proof that they have obtained a surety bond. Allocates registration fees to the division of registrations cash fund. Provides for future repeal of the registration provisions.

Empowers the director to discipline registered hearing aid dealers and audiologists after giving notice and holding a hearing. Authorizes the director to fine registrants or place them on probation, issue letters of admonition, or refuse, revoke, or suspend registration as disciplinary measures.

Increases the period during which a hearing aid dealer must refund the purchase price of a hearing aid. Tolls such rescission period for any period during which a hearing aid dealer takes possession of a hearing aid after its original delivery. Requires dealers to include in contracts of sale a statement that if the hearing aid is not delivered within a specified period of time after the sale the purchase price shall be fully refunded, and provides that such statement may not be waived by the purchaser.

Directs that fines collected pursuant to consumer protection act provisions be distributed to state and local law enforcement agencies and to the general fund.

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

SECTION 1. Title 12, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended by the addition of a new article to read:

ARTICLE 5.5
Audiologists and Hearing Aid Dealers

PART 1
AUDIOLIGISTS
12-5.5-101. Definitions. As used in this part 1, unless the context otherwise requires:
(1) "Audiologist" means a person who:
(a) holds a master's or doctoral degree in audiology;
(b) has passed an examination conducted under the auspices of the American Speech-Language-Hearing Association or an equivalent examination, as determined by the director; and
(c) has obtained a certificate of competency in audiology from a nationally recognized certification agency or has been certified as a school audiologist by the Colorado department of education pursuant to section 22-60-104, C.R.S.
(2) "Director" means the director of registrations.
(3) "Division" means the division of registrations in the department of regulatory agencies.

(4) "Registrant" means an audiologist who holds a current certificate of registration from the division of registrations pursuant to this part 1.

12-5.5-102. Registration required - application - bond. (1) An audiologist shall register with the division of registrations before performing audiology services in this state. Upon registering, the audiologist shall be given a certificate of registration bearing a unique registration number. The audiologist shall include the registration number on all written contracts and receipts.

(2) An audiologist desiring to register pursuant to this section shall submit to the director an application containing the information described in subsection (3) of this section and shall pay a fee to be determined and collected by the director pursuant to section 24-34-105, C.R.S. The director may deny an application for registration if the required information is not submitted. If an applicant or registrant does not notify the director of a change in the submitted information within thirty days after such change, such failure shall be cause for disciplinary action.

(3) The following information shall be included in every application for registration under this section:

(a) The audiologist's name, business address, and business telephone number;

(b) A listing of the audiologist's education, experience, and degrees or credentials, including all degrees or credentials awarded to such audiologist that are related to the practice of audiology;

(c) A statement indicating whether any license, certificate, or registration in audiology was issued to the audiologist by a local, state, or national health care agency, whether any such license, certificate, or registration was suspended or revoked, whether charges or complaints are pending against such license, certificate, or registration, and whether disciplinary action was taken;

(d) The length of time and the locations where the applicant has been engaged in the practice of audiology; and

(e) Proof that the audiologist has obtained a surety bond in the amount of at least of twenty-five thousand dollars, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. Such bond shall be conditioned upon compliance with this part 1 and rules promulgated under this part 1.

12-5.5-103. Registration procedure. (i) The director shall register all applicants who meet the requirements of this part 1 and shall provide each registrant with a certificate indicating that the person named in such
(2) All certificates issued under this section shall expire on December 31 following the date of issuance, but may be renewed by payment of the renewal fee established by the director pursuant to section 24-34-105, C.R.S., and continued compliance with the provisions of this part 1. A registration that has expired may be reinstated within two years after such expiration upon payment of the appropriate renewal fee if the applicant meets all other requirements of this part 1.

(3) All fees collected under this part 1 shall be deposited in accordance with section 12-5.5-104.

12-5.5-104. Division of registrations cash fund. It is the intent of the general assembly that all direct and indirect costs incurred in the implementation of this part 1 be funded by annual registration and renewal fees. All fees collected by the director shall be transmitted to the state treasurer, who shall credit the same to the division of registrations cash fund, created by section 24-34-105, C.R.S.

12-5.5-105. Grounds for discipline - disciplinary actions. (1) (a) If, after investigation, notice, and the opportunity for hearing in accordance with article 4 of title 24, C.R.S., the director determines that an applicant or registrant has committed any of the acts specified in paragraph (b) of this subsection (1), the director may:

(I) impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense;

(II) issue a letter of admonition;

(III) place a registrant on probation, which shall entail close supervision on such terms and for such time as the director deems appropriate; or

(IV) deny, refuse to renew, revoke, or suspend the registration of an applicant or registrant.

(b) The following acts shall constitute grounds for discipline:

(I) using false or misleading advertising or making a false or misleading statement or omission in an application for registration;

(II) conviction or acceptance of a plea of guilty or nolo contendere or receipt of a deferred sentence in any court to a crime involving fraud, deception, false pretense, theft, misrepresentation, false advertising, or dishonest dealing;

(III) failing to comply with a stipulation or agreement made with the director or a final agency order;

(IV) violation of any provision of this part 1, including failure to comply with the registration requirements of section 12-5.5-102, or violation of any rule promulgated by the director under this part 1;

(V) violating the "Colorado Consumer
PROTECTION ACT", ARTICLE 1 OF TITLE 6, C.R.S.;

(VI) Employing a sales agent or employee who violates any provision of this Part 1;

(VII) Failing to notify the director of a change in the information filed pursuant to section 12-5.5-102; and

(VIII) Intentionally causing physical harm to a customer.

(2) Any disciplinary action taken with respect to an audiologist by another state or local jurisdiction or the federal government shall be deemed prima facie evidence of grounds for disciplinary action, including denial of registration under this Part 1; except that this subsection (2) shall apply only to disciplinary actions that are substantially similar to those set out as grounds for disciplinary action under this Part 1.

(3) When a complaint or investigation discloses an instance of misconduct that in the opinion of the director does not warrant formal action but should not be dismissed as being without merit, the director may send a letter of admonition by certified mail, return receipt requested, to the registrant who is the subject of the complaint or investigation and a copy thereof to any person making such complaint. Such letter shall advise the registrant of his or her right to request in writing, within twenty days after proven receipt, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(4) All administrative fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit them to the general fund.

12-5.5-106. Director - powers - duties. (1) The director may make such investigations and inspections as are necessary to determine whether an applicant has violated this Part 1 or any rule adopted by the director.

(2) The director may apply to a court of competent jurisdiction for an order enjoining any act or practice which constitutes a violation of this Part 1, and, upon a showing that a person is engaging in or intends to engage in any such act or practice, an injunction, restraining order, or other appropriate order shall be granted by the court regardless of the existence of another remedy. All proceedings related to such injunction or restraining order shall be governed by the Colorado rules of civil procedure.

(3) The director or the administrative law judge appointed for a hearing under this Part 1 may issue a subpoena compelling the attendance and testimony of witnesses and the production of books, papers, or records. The director may also issue a subpoena compelling the testimony of witnesses and the production of books,
PAPERS, OR RECORDS FOR INVESTIGATION PURPOSES. ANY SUCH
SUBPOENA SHALL BE SERVED IN THE SAME MANNER AS SUBPOENAS
ISSUED BY DISTRICT COURTS.

(4) The director shall adopt all rules necessary
for the enforcement and administration of this Part 1,
including, but not limited to, a requirement that
registrants maintain for at least seven years records
identifying customers by name, the goods or services
provided to each customer, and the date and price of
each transaction.

PART 2
HEARING AID DEALERS

12-5.5-201. Definitions. As used in this Part 2,
unless the context otherwise requires:
(1) "Director" means the director of
registrations.
(2) "Division" means the division of registrations
in the Department of Regulatory Agencies.
(3) "Hearing aid dealer" has the same meaning as
set forth in section 6-1-105.5 (1)(c), C.R.S.
(4) "Registrant" means a hearing aid dealer who
holds a current certificate of registration from the
Division of Registrations pursuant to this Part 2.

12-5.5-202. Registration required - application -
bond. (1) A hearing aid dealer shall register pursuant to
this Part 2 before selling or negotiating to sell, directly
or indirectly, any hearing device for the hearing
impaired, unless such dealer holds a current registration
pursuant to Part 1 of this Article. Upon registering, the
hearing aid dealer shall be given a certificate of
registration bearing a unique registration number. The
hearing aid dealer shall include the registration number
on all written contracts and receipts. A hearing aid
dealer who is also an audiologist and is registered only
under Part 1 of this Article shall include the
registration number issued pursuant to such Part 1 on all
written contracts and receipts.

(2) (a) A hearing aid dealer desiring to register
pursuant to this section shall submit to the Director an
application containing the information described in this
subsection (2), and shall pay a fee to be determined and
collected pursuant to section 24-34-105, C.R.S. The
Director may deny an application for registration if the
required information is not submitted. If an applicant or
registrant does not notify the Director of a change in the
submitted information within thirty days after such
change, such failure shall be cause for disciplinary
action.

(b) The following information shall be included
in every application for registration under this section:
(I) The name, business address, and business
telephone number of the hearing aid dealer;
(II) The location of each office from which sales
of hearing devices for the hearing impaired are intended
TO BE MADE;

(III) A STATEMENT INDICATING WHETHER ANY LICENSE, CERTIFICATE, OR REGISTRATION FOR THE SALE OF HEARING AIDS WAS ISSUED TO THE HEARING AID DEALER BY A LOCAL, STATE, OR NATIONAL HEALTH CARE AGENCY, AND WHETHER ANY SUCH LICENSE, CERTIFICATE, OR REGISTRATION WAS SUSPENDED OR REVOKED;

(IV) A STATEMENT INDICATING WHETHER ANY HEARING AID DEALER LICENSE, CERTIFICATE, OR REGISTRATION WAS ISSUED TO THE HEARING AID DEALER BY A LOCAL, STATE, OR NATIONAL HEALTH CARE AGENCY, WHETHER ANY SUCH LICENSE, CERTIFICATE, OR REGISTRATION WAS SUSPENDED OR REVOKED, WHETHER CHARGES OR COMPLAINTS ARE PENDING AGAINST SUCH LICENSE, CERTIFICATE, OR REGISTRATION, AND WHETHER DISCIPLINARY ACTION WAS TAKEN;

(V) PROOF THAT THE DEALER HAS OBTAINED A SURETY BOND IN THE AMOUNT OF AT LEAST TWENTY-FIVE THOUSAND DOLLARS, EXECUTED BY THE APPLICANT AS PRINCIPAL AND BY A SURETY COMPANY QUALIFIED AND AUTHORIZED TO DO BUSINESS IN THIS STATE AS SURETY. SUCH BOND SHALL BE CONDITIONED UPON COMPLIANCE WITH THIS PART 2 AND RULES PROMULGATED UNDER THIS PART 2.

12-5.5-204. Division of registrations cash fund. It is the intent of the general assembly that all direct and indirect costs incurred in the implementation of this part 2 be funded by annual registration and renewal fees. All fees collected by the director shall be transmitted to the state treasurer, who shall credit the same to the division of registrations cash fund, created by section 24-34-105, C.R.S.

12-5.5-205. Grounds for discipline - disciplinary action. (1) (a) If, after investigation, notice, and the opportunity for hearing in accordance with article 4 of title 24, C.R.S., the director determines that an applicant
OR REGISTRANT HAS COMMITTED ANY OF THE ACTS SPECIFIED IN
PARAGRAPH (b) OF THIS SUBSECTION (I), THE DIRECTOR MAY:
(I) IMPOSE AN ADMINISTRATIVE FINE NOT TO EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS FOR EACH SEPARATE
OFFENSE;
(II) ISSUE A LETTER OF ADMONITION;
(III) PLACE A REGISTRANT ON PROBATION, WHICH SHALL
ENTAIL CLOSE SUPERVISION ON SUCH TERMS AND FOR SUCH TIME
AS THE DIRECTOR DEEMS APPROPRIATE; OR
(IV) DENY, REFUSE TO RENEW, REVOKE, OR SUSPEND
THE REGISTRATION OF AN APPLICANT OR REGISTRANT.
(b) THE FOLLOWING ACTS SHALL CONSTITUTE GROUNDS
FOR DISCIPLINE:
(I) MlfREPRESENTING OR CONCEAULNG A MATERIAL FACT
FROM A PURCHASER OF A HEARING DEVICE FOR THE HEARING
IMPAIRED;
(II) EMPLOYING A DEVICE, SCHEME, OR ARTIFICE WITH
THE INTENT TO DEFRAUD A PURCHASER OF A HEARING DEVICE FOR
THE HEARING IMPAIRED;
(III) DISPOSING OF, CONCEALING, DIVERTING,
CONVERTING, OR OTHERWISE FAILING TO ACCOUNT FOR ANY
FUNDS OR ASSETS OF A PURCHASER OF A HEARING DEVICE FOR THE
HEARING IMPAIRED THAT IS UNDER THE CONTROL OF SUCH
PERSON;
(IV) VIOLATING THE "COLORADO CONSUMER
PROTECTION ACT", ARTICLE 1 OF TITLE 6, C.R.S.;
(V) REFUSING TO HONOR A BUYER'S REQUEST TO CANCEL
A CONTRACT FOR THE PURCHASE OF A HEARING DEVICE FOR THE
HEARING IMPAIRED, IF SUCH REQUEST WAS MADE DURING THE
RESCSSION PERIOD SET FORTH IN SECTION 6-1-105.5 (2) (e),
C.R.S.;
(VI) FAILING TO NOTIFY THE DIRECTOR OF ANY CHANGE
IN THE INFORMATION FILED PURSUANT TO SECTION 12-5.5-202;
(VII) Conviction or acceptance of a plea of guilty
OR NOLO CONTENDERE OR RECEIPT OF A DEFERRED SENTENCE IN
ANY COURT TO A CRIME INVOLVING FRAUD, DECEPTION, FALSE
PRETENSE, THEFT, MISREPRESENTATION, FALSE ADVERTISING, OR
DISHONEST DEALING;
(VIII) FAILING TO COMPLY WITH A STIPULATION OR
AGREEMENT MADE WITH THE DIRECTOR OR A FINAL AGENCY
ORDER;
(IX) INTENTIONALLY CAUSING PHYSICAL HARM TO A
CUSTOMER.
(2) ANY DISCIPLINARY ACTION TAKEN WITH RESPECT TO
A HEARING AID DEALER BY ANOTHER STATE OR LOCAL
JURISDICTION OR THE FEDERAL GOVERNMENT SHALL BE DEEMED
PRIMA FACIE EVIDENCE OF GROUNDS FOR DISCIPLINARY ACTION,
INCLUDING DENIAL OF REGISTRATION UNDER THIS PART 2; EXCEPT
THAT THIS SUBSECTION (2) SHALL APPLY ONLY TO DISCIPLINARY
ACTIONS THAT ARE SUBSTANTIALLY SIMILAR TO THOSE SET OUT AS
GROUNDS FOR DISCIPLINARY ACTION UNDER THIS PART 2.
(3) WHEN A COMPLAINT OR INVESTIGATION DISCLOSES
AN INSTANCE OF MISCONDUCT THAT IN THE OPINION OF THE
DIRECTOR DOES NOT WARRANT FORMAL ACTION BUT SHOULD NOT
BE DISMISSED AS BEING WITHOUT MERIT, THE DIRECTOR MAY SEND
A LETTER OF ADMONITION BY CERTIFIED MAIL, RETURN RECEIPT
REQUESTED, TO THE REGISTRANT WHO IS THE SUBJECT OF THE
COMPLAINT OR INVESTIGATION AND A COPY THEREOF TO ANY
PERSON MAKING SUCH COMPLAINT. SUCH LETTER SHALL ADVISE
THE REGISTRANT OF HIS OR HER RIGHT TO REQUEST IN WRITING,
WITHIN TWENTY DAYS AFTER PROVEN RECEIPT, THAT FORMAL
DISCIPLINARY PROCEEDINGS BE INITIATED TO ADJUDICATE THE
PROPRIETY OF THE CONDUCT UPON WHICH THE LETTER OF
ADMONITION IS BASED. IF SUCH REQUEST IS TIMELY MADE, THE
LETTER OF ADMONITION SHALL BE DEEMED VACATED AND THE
MATTER SHALL BE PROCESSED BY MEANS OF FORMAL DISCIPLINARY
PROCEEDINGS.

(4) ALL ADMINISTRATIVE FINES COLLECTED PURSUANT
to this section shall be transmitted to the state
treasurer, who shall credit them to the general fund.

12-5.5-206. Director - powers - duties. (1) The
DIRECTOR MAY MAKE SUCH INVESTIGATIONS AND INSPECTIONS AS
ARE NECESSARY TO DETERMINE WHETHER AN APPLICANT
HAS VIOLATED THIS PART 2 OR ANY RULE PROMULGATED BY THE
DIRECTOR.

(2) THE DIRECTOR MAY APPLY TO A COURT OF
COMPETENT JURISDICTION FOR AN ORDER ENJOINING ANY ACT OR
PRACTICE WHICH CONSTITUTES A VIOLATION OF THIS PART 2, AND,
UPON A SHOWING THAT A PERSON IS ENGAGING IN OR INTENDS TO
ENGAGE IN ANY SUCH ACT OR PRACTICE, AN INJUNCTION,
RESTRAINING ORDER, OR OTHER APPROPRIATE ORDER SHALL BE
GRANTED BY THE COURT REGARDLESS OF THE EXISTENCE OF
ANOTHER REMEDY. ALL PROCEEDINGS RELATED TO SUCH
INJUNCTION OR RESTRAINING ORDER SHALL BE GOVERNED BY THE
COLORADO RULES OF CIVIL PROCEDURE.

(3) THE DIRECTOR OR THE ADMINISTRATIVE LAW JUDGE
APPOINTED FOR A HEARING UNDER THIS PART 2 MAY ISSUE A
SUBPOENA COMPPELLING THE ATTENDANCE AND TESTIMONY OF
WITNESSES AND THE PRODUCTION OF BOOKS, PAPERS, OR RECORDS.
THE DIRECTOR MAY ALSO ISSUE A SUBPOENA COMPPELLING THE
TESTIMONY OF WITNESSES AND THE PRODUCTION OF BOOKS,
PAPERS, OR RECORDS FOR INVESTIGATION PURPOSES. ANY SUCH
SUBPOENA SHALL BE SERVED IN THE SAME MANNER AS SUBPOENAS
ISSUED BY DISTRICT COURTS.

(4) THE DIRECTOR SHALL ADOPT ALL RULES NECESSARY
FOR THE ENFORCEMENT OR ADMINISTRATION OF THIS PART 2,
INCLUDING, BUT NOT LIMITED TO, RULES THAT REQUIRE:
(a) WRITTEN DISCLOSURES TO PURCHASERS, AS MAY BE
NEEDED TO PROTECT SUCH PURCHASERS; AND
(b) THAT REGISTRANTS MAINTAIN FOR AT LEAST SEVEN
YEARS RECORDS IDENTIFYING CUSTOMERS BY NAME, THE GOODS
OR SERVICES PROVIDED TO EACH CUSTOMER, AND THE DATE AND
PRICE OF EACH TRANSACTION.

(5) THE DIRECTOR MAY REQUIRE HEARING AID DEALERS
TO MAKE DISCLOSURES TO PURCHASERS IN THEIR WRITTEN
CONTRACTS OF SALE OR IN SEPARATE WRITTEN DOCUMENTS IF THE
DIRECTOR FINDS THAT SUCH DISCLOSURES ARE NECESSARY FOR
THE PROTECTION OF PURCHASERS.
12-5.5-208. Repeal of article. (1) THIS ARTICLE IS
REPEALED, EFFECTIVE JULY 1, 2005.

(2) PRIOR TO SUCH REPEAL, THE REGISTRATION
FUNCTIONS OF THE DIRECTOR SHALL BE REVIEWED AS PROVIDED IN
SECTION 24-34-104, C.R.S.

SECTION 2. 6-1-105.5 (2) (e), Colorado Revised
Statutes, 1992 Repl. Vol., as amended, is amended, and the said
6-1-105.5 is further amended BY THE ADDITION OF A NEW
SUBSECTION, to read:

6-1-105.5. Hearing aid dealers - deceptive trade
practices. (2) In addition to any other deceptive trade practices
under section 6-1-105, a hearing aid dealer engages in a deceptive
trade practice when such dealer:

(e) Fails to provide a thirty-day sixty-day rescission
period with the following terms:

(I) The buyer shall have the right to cancel the purchase
for any reason before the expiration of the sixty-day rescission period
by giving or mailing written notice of cancellation to the seller.

The sixty-day rescission period shall be tolled for any
period during which a hearing aid dealer takes possession
or control of a hearing aid after its original delivery.

(II) The buyer, upon cancellation, is entitled to receive
a full refund of any payment made for the hearing aid within
thirty days of return of the hearing aid to the seller; except that,
if the hearing aid is returned for any reason other than a defect in
such hearing aid, the seller may retain an itemized amount to
cover the minimum costs of materials used by the dealer and a
manufacturer's return fee, but such amount may not be greater
than five percent of the total charge for the hearing aid.

(III) (A) The seller shall provide a written receipt or
contract to the buyer which includes, in immediate proximity to
the space reserved for the signature of the buyer, the following
specific statement in all capital letters of no less than ten-point
bold-faced type:

"THE BUYER HAS THE RIGHT TO
CANCEL THIS PURCHASE FOR ANY
REASON AT ANY TIME PRIOR TO 12
MIDNIGHT OF THE 60TH
CALENDAR DAY AFTER RECEIPT OF
THE HEARING AID BY GIVING OR
MAILING THE SELLER WRITTEN
NOTICE OF CANCELLATION AND BY
RETURNING THE HEARING AID. BY
LAW, THE SELLER IS ALLOWED TO
RETAIN AN ITEMIZED AMOUNT, NOT
TO EXCEED FIVE PERCENT OF THE
TOTAL CHARGE FOR THE HEARING
AID, TO COVER THE COSTS OF A
MANUFACTURER'S RETURN FEE AND
THE MINIMUM COSTS OF MATERIALS
USED BY THE DEALER, UNLESS THE
HEARING AID IS RETURNED BECAUSE
IT IS DEFECTIVE."

(B) THE WRITTEN CONTRACT OR RECEIPT PROVIDED TO
THE BUYER SHALL ALSO CONTAIN A STATEMENT, IN PRINT SIZE NO
SMALLER THAN TEN-POINT TYPE, THAT THE SALE IS VOID AND
UNENFORCEABLE IF THE HEARING AID BEING PURCHASED IS NOT
DELIVERED TO THE CONSUMER WITHIN THIRTY DAYS AFTER THE
DATE THE WRITTEN CONTRACT IS SIGNED OR THE RECEIPT IS
ISSUED, WHICHEVER OCCURS LATER. THE WRITTEN CONTRACT OR
RECEIPT SHALL ALSO INCLUDE THE HEARING AID DEALER'S
REGISTRATION NUMBER AND A STATEMENT THAT THE HEARING AID
DEALER SHALL PROMPTLY REFUND ALL MONEYS PAID FOR THE
PURCHASE OF A HEARING AID IF IT IS NOT DELIVERED TO THE
CONSUMER WITHIN SUCH THIRTY-DAY PERIOD. SUCH STATEMENT
IS NOT SUBJECT TO WAIVER BY THE BUYER.

(IV) A refund request form shall be attached to each
receipt and shall contain the information in subparagraph (f) of
paragraph (a) of this subsection (2) and the statement, in all
capital letters of no less than ten-point bold-faced type: "Refund
request - this form must be postmarked by ________ (Date to be
filled in). No refund will be given until the hearing aid or
hearing aids are returned to the seller." A space for the buyer's
address, telephone number, and signature must be provided. The
buyer shall only be required to sign, list the buyer's current
address and telephone number, and mail the refund request form
to the seller. If the hearing aid is sold in the buyer's home, at the
buyer's option, the seller shall be responsible for arranging the
return of the hearing aid.

(3) FINES COLLECTED PURSUANT TO THIS PART 1 SHALL
BE DISTRIBUTED IN THE FOLLOWING MANNER: FIFTY PERCENT

SHALL BE DIVIDED BY THE COURT BETWEEN STATE AND LOCAL
LAW ENFORCEMENT AGENCIES ASSISTING WITH THE PROSECUTION,
INCLUDING BUT NOT LIMITED TO THE OFFICE OF THE ATTORNEY
GENERAL AND THE DISTRICT ATTORNEY'S OFFICE, AND FIFTY
PERCENT SHALL BE PAID TO THE STATE TREASURER, WHO SHALL
CREDIT THE SAME TO THE GENERAL FUND.

SECTION 3. 24-34-104, Colorado Revised Statutes,
1988 Repl. Vol., as amended, is amended BY THE ADDITION
OF A NEW SUBSECTION to read:

24-34-104. General assembly review of regulatory
agencies and functions for termination, continuation, or
reestablishment. (36) THE FOLLOWING AGENCIES, FUNCTIONS,
or both, shall terminate on JULY 1, 2005: THE REGISTRATION
OF AUDIOUMISTS AND HEARING AID DEALERS BY THE DIVISION OF
REGISTRATIONS, PURSUANT TO ARTICLE 5.5 OF TITLE 12, C.R.S.

SECTION 4. Effective date - applicability. This act
shall take effect July 1, 1995, and shall apply to audiologists and
hearing aid dealers practicing on or after January 1, 1996.

SECTION 5. Safety clause. The general assembly
hereby finds, determines, and declares that this act is necessary
for the immediate preservation of the public peace, health, and
safety.
Joint Legislative Sunrise and Sunset Review Committee

A BILL FOR AN ACT
CONCERNING ADVISORY BODIES SCHEDULED FOR REPEAL JULY 1, 1995.

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

Joint Legislative Sunrise and Sunset Review Committee.
Continues the following advisory bodies scheduled for repeal July 1, 1995: The private occupational school policy advisory committee; the pollution prevention advisory board; the underground storage tank advisory committee; and the homeless prevention advisory committee.

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

SECTION 1. 2-3-1203 (3) (h) (II), (3) (h) (IV), (3) (h) (V), and (3) (h) (VII), Colorado Revised Statutes, 1980 Repl. Vol., as amended, are amended 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:

(h) July 1, 1995:

(II) The advisory committee for underground storage tanks appointed pursuant to section 25-18-105, C.R.S., and The advisory committee to the state inspector of oils for underground storage tank installers appointed pursuant to section 8-20-603 (1) (i), C.R.S.;

(IV) The private occupational school policy advisory committee created pursuant to section 23-60-704, C.R.S.;

(V) The homeless prevention advisory committee created pursuant to section 26-7.8-103 (1.5), C.R.S.;

(VII) The pollution prevention advisory board appointed pursuant to section 25-16.5-104, C.R.S.;

SECTION 2. 23-60-704 (5), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is repealed as follows:

23-60-704. Private occupational school policy advisory committee - established - duties - membership. (5) (a) - This section is repealed, effective July 1, 1995.

(b) - Prior to said repeal, the advisory committee shall be reviewed as provided for in section 2-3-1203, C.R.S.

SECTION 3. 25-16.5-104 (2), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is repealed as follows:

25-16.5-104. Pollution prevention advisory board - creation. (2) (a) - This section is repealed, effective July 1, 1995.

(b) - Prior to said repeal, the advisory board shall be reviewed as provided for in section 2-3-1203 (3) (h), C.R.S.

SECTION 4. 25-18-105 (5), Colorado Revised Statutes, 1989 Repl. Vol., is repealed as follows:

(5) (a) - This section is repealed, effective July 1, 1995.

(b) - Prior to said repeal, the advisory committee shall be
SECTION 5. 26-7.8-106, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is repealed as follows:

26-7.8-106. Repeal of article. (1) This article is repealed, effective July 1, 1995.

(2) Prior to such repeal, the homeless prevention advisory committee established in section 26-7.8-103.1 shall be reviewed as provided for in section 2-3-1203, C.R.S.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.
Joint Legislative Sunrise and Sunset Review Committee  
October 6, 1994

A BILL FOR AN ACT
CONCERNING THE ONE-YEAR EXTENSION OF CERTAIN FUNCTIONS
SUBJECT TO REVIEW BY THE JOINT LEGISLATIVE SUNRISE
AND SUNSET REVIEW COMMITTEE.

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

Joint Legislative Sunrise and Sunset Review Committee
Continues the licensing authority of the department of
public health and environment for persons who manufacture or
distribute drug precursors.
Continues the regulatory authority of the coal mine board
of examiners for persons required to be certified to work in coal
mines.

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

SECTION 1. 12-22-304 (2.5) (d), (5.5) (b), and (5.6)
(b), Colorado Revised Statutes, 1991 Repl. Vol., as amended, are
amended to read:

12-22-304. License required - controlled substances-
drug precursors - fund created - repeal. (2.5) (d) This
subsection (2.5) is repealed, effective July 1, 1995.
Prior to said repeal, this subsection (2.5) shall be subject to
review by the sunrise and sunset review committee pursuant to the
provisions of section 2-3-1201, C.R.S. section 24-34-104, C.R.S.

(5.5) (b) This subsection (5.5) is repealed, effective July
1, 1996. Prior to said repeal, this subsection (5.5)
shall be subject to review by the sunrise and sunset review
committee pursuant to the provisions of section 2-3-1201, C.R.S.
section 24-34-104, C.R.S.

(5.6) (b) This subsection (5.6) is repealed, effective July
1, 1996. Prior to said repeal, this subsection (5.6)
shall be subject to review by the sunrise and sunset review
committee pursuant to the provisions of section 2-3-1201, C.R.S.
section 24-34-104, C.R.S.

SECTION 2. 12-22-305 (1.5) (c), Colorado Revised
Statutes, 1991 Repl. Vol., as amended, is amended to read:

12-22-305. Issuance of license - fees - repeal. (1.5) (c)
This subsection (1.5) is repealed, effective July 1, 1995.
Prior to said repeal, this subsection (1.5) shall be subject to
review by the sunrise and sunset review committee pursuant to the
provisions of section 2-3-1201, C.R.S. section 24-34-104, C.R.S.

SECTION 3. 12-22-318 (1) (b) (II), (7) (d), (8) (b), (9)
(b), (10) (c), and (11) (b), Colorado Revised Statutes, 1991 Repl.
Vol., as amended, are amended to read:

12-22-318. Records to be kept - order forms - repeal.
(1) (b) (II) This paragraph (b) is repealed, effective July 1, 1995
(7) (d) This subsection (7) is repealed, effective July 1,
JULY 1, 1996.

This subsection (8) is repealed, effective July 1, 1996.

This subsection (9) is repealed, effective July 1, 1996.

This subsection (10) is repealed, effective July 1, 1996.

This subsection (11) is repealed, effective July 1, 1996.

SECTION 4. 34-22-113, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

34-22-113. Board of examiners - repeal - review of functions. Unless continued by the general assembly, this article is repealed, effective July 1, 1996, and the coal mine board of examiners is abolished. The provisions of section 24-34-104 (5) to (12), C.R.S., concerning a wind-up period, an analysis and evaluation, public hearings, and claims by or against an agency shall apply to the powers, duties, and functions of the board specified in this article.

SECTION 5. 24-34-104, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTION to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (25.7) The following agencies, functions, or both, shall terminate on July 1, 1996:

(a) The issuance of licenses relating to the manufacture or distribution of drug precursors through the Department of Public Health and Environment in accordance with part 3 of article 22 of title 12, C.R.S.;

(b) The regulation of persons working in coal mines by the coal mine board of examiners in accordance with article 22 of title 34, C.R.S.

SECTION 6. 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.