Report to the Colorado General Assembly:

RECOMMENDATIONS FOR 1976 COMMITTEES ON:

Medical Malpractice

Local Government

Health, Environment, Welfare, and Institutions

Transportation

VOLUME II

COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 212
DECEMBER 1975

LEGISLATIVE COUNCIL

OF THE

COLORADO GENERAL ASSEMBLY

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The Legislative Council, which is composed of six Senators, six Representatives, plus the Speaker of the House and the Majority Leader of the Senate, serves as a continuing research agency for the legislature through the maintenance of a trained staff. Between sessions, research activities are concentrated on the study of relatively broad problems formally proposed by legislators, and the publication and distribution of factual reports to aid in their solution.

During the sessions, the emphasis is on supplying legislators, on individual requests, with personal memoranda, providing them with information needed to handle their own legislative problems. Reports and memoranda both give pertinent data in the form of facts, figures, arguments, and alternatives.

COLORADO LEGISLATIVE COUNCIL
RECOMMENDATIONS FOR 1976

(Volume II)

Committees on:

Medical Malpractice

Local Government

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Transportation

Legislative Council

Report To The

Colorado General Assembly

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COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL

ROOM 46 STATE CAPITOL
DENVER, COLORADO 80203
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AREA CODE 303

December 19, 1975

To Members of the Fiftieth Colorado General Assembly:

Submitted herewith are the final reports of the Legislative Council interim committees for 1975. This year's report consolidates the individual reports of fifteen committees into three volumes. The reports of the Committees on Mineral Taxation and the Equal Rights Amendments are contained in two separate volumes.

The recommendations of the committees were reviewed by the Legislative Council on November 24 and December 19 and submitted to Governor Lamm for his consideration in designating subjects to be considered by the General Assembly. The Legislative Council submitted items to the Governor with favorable recommendation, without recommendation, and with the recommendation that certain of these items not be placed on the call.

Respectfully submitted,

/s/ Representative Phillip Massari
Chairman
Colorado Legislative Council

PM/mp

FOREWORD

The recommendations of the Colorado Legislative Council for 1975 appear in three consolidated volumes and two separate volumes for the Committees on Mineral Taxation and the Equal Rights Amendments. Volume I contains the reports of the Committees on the Penitentiary, Agriculture, State Affairs, Business Affairs and Labor, and Education; Volume II, the reports of the Committees on Medical Malpractice, Local Government, Health, Environment, Welfare, and Institutions, and Transportation; and Volume III, the reports of the Committees on Denver Metro Water, Federal and State Lands, Finance, Judiciary, Property Tax Assessment Practices and School Finance, and Legislative Procedures.

This Volume II contains the reports, all recommended bills, constitutional amendments, and resolutions for the Committees on Medical Malpractice, Local Government, Health, Environment, Welfare, and Institutions, and Transportation. A minority report, with an accompanying bill, is included in the report of the Committee on Local Government.

All recommendations of these committees were submitted to the Governor by the Legislative Council with favorable recommendation, with the following exceptions: (1) A bill from the Committee on Medical Malpractice providing for the creation of a medical liability extraordinary loss fund and a bill relating to group homes for the developmentally disabled from the Committee on Health, Environment, Welfare, and Institutions were submitted without recommendation; and (2) A bill from the Committee on Local Government which would prohibit the formation of certain types of urban service districts was transmitted to the Governor with the recommendation that it not be placed on the call.

The Legislative Drafting Office assisted in the preparation of committee bills. Doug Brown and Gary Davis assisted the Committee on Medical Malpractice; Terry Walker and John Lansdowne, the Committee on Local Government; Mike Risner and Gary Davis, the Committee on Health, Environment, Welfare, and Institutions; and Vince Hogan and John Lansdowne, the Committee on Transportation.

December, 1975

Lyle C. Kyle
Director

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COMMITTEE ON MEDICAL MALPRACTICE

House Joint Resolution No. 1046, 1975 session, included a study on medical malpractice liability to determine "...to what extent professional liability suits and rising professional liability insurance rates affect the delivery of health care to Colorado's citizens and to explore alternatives to current methods of reducing and resolving medical malpractice claims."

The Committee on Medical Malpractice conducted this study by holding a series of hearings with interested persons and representatives of organizations immediately involved with these problems. A wide spectrum of views were presented in these hearings and considerable data on various issues were collected by the committee. Draft bills were presented by several organizations, private citizens, and members of the committee. The committee's consideration of the medical malpractice problem and proposals for change focused on four major areas:

I. Changes relating to the quality of medical care;

II. Alternatives to malpractice litigation;

III. Changes in the law of negligence relating to professional liability; and

IV. Changes relating to the availability of insurance.

Some of the major findings of the committee relative to medical malpractice are indicative of the extent to which Colorado may be said to have a medical malpractice problem and the areas in which the problem has the most serious consequences. A summary of these findings follows.

Cost of Insurance

Professional liability insurance for medical doctors has increased in recent years as illustrated by the following tabulations showing selected specialties of practice over the four years from 1971 to 1975:

Area of Practice or Specialty	Class	1975 1/	1971 1/	Percent Increase
General Practice:				
No surgery	I	$ 430	$ 325	32%
Minor surgery	II	730	575	27%
Minor surgery	III	1,570	1,125	40%
General Surgery	IV	2,490	1,650	51%
Anesthesiology	V	3,590	2,150	67%

Rates for malpractice insurance in Colorado rank in about the middle range of rates charged throughout the nation. Available information indicated that for Class I risks, seventeen states had rates lower than Colorado rates and 22 states had higher rates. Five states showed approximately the same rates. No report was available from six states. Rates for the highest risk physicians (Class V) show 21 states having lower rates, 22 having higher rates.

In regard to the actual cost of premiums, Colorado rates were closer to the states having the lowest rates than to the states with the highest rates. Premiums in a few states, notably California, Florida, Michigan, and New York, are substantially higher than most other states. To give two comparisons of rates with Colorado, one company in California showed rates of $4,112 for Class I and $15,808 for Class V; in Dade (Miami) and Broward (Ft. Lauderdale) counties, Florida rates are $1,113 and $8,243 for Classes I and V respectively. Respective rates in Colorado are $430 and $3,590 for these classes.

Availability of Coverage

Insurance for individual physicians is still available, with primarily three insurance companies underwriting medical malpractice policies in Colorado. These companies include the Hartford Insurance Group, the St. Paul Companies, and Empire Casualty Co. However, the malpractice insurance coverage provided by these underwriters presents some difficulties for the individual physician.

The Hartford Insurance Group offers coverage of up to $1,000,000 per occurrence/$3,000,000 aggregate per year which is available through a contractual agreement between the company and the

1/ Rates shown are from one of the insurance companies writing $100,000/$300,000 coverage in Colorado, which is generally considered the minimum coverage. Other medical specialties within each class had the same rates as the specialties listed.

Colorado Medical Society. A potential difficulty exists in that the present CMS-Hartford agreement will expire June 30, 1976. If not renewed, approximately 2,800 Colorado physicians under this agreement would need to find another insurance carrier.

The St. Paul Companies provide coverage of up to $1,000,000/$3,000,000 on a "claims-made" rather than an "occurrence" basis. The claims-made coverage means that insurance coverage would be purchased to only cover claims which were made (i.e., reported) during the policy year. Under insurance written on an occurrence basis, the insurance covers claims which were alleged to have occurred during the period in which the policy was in effect, even if a claim is reported after the policy expires. However, if a claims-made policy is not renewed, another policy would need to be purchased in order to cover claims made after the policy lapses. Policies offered by St. Paul are available only on renewal for doctors who presently obtain their insurance from St. Paul or to new doctors who jointly practice with a St. Paul policyholder.

Empire Casualty Co. of Denver provides the primary malpractice insurance coverage of $100,000/$300,000, amounts which some sources believe are not adequate for the present time. If a physician believes that the $100,000/$300,000 coverage is not sufficient, the physician would need to purchase excess coverage from another source.

The Number and Amount of Claims

Data received from the major companies writing basic coverage for medical doctors indicate that the number of claims filed and claims paid has increased in recent years. However, it should also be noted that the number of medical doctors insured in Colorado by these companies has also increased, although this rate of increase has been at a lesser rate than the number of claims filed. Data obtained by the committee on the number and amount of claims is not conclusive, except in indicating these trends.

The Problems for Hospitals

In discussing the problems which Colorado hospitals are facing in obtaining malpractice insurance, the special problems recently encountered by Colorado General and Denver General Hospitals might be discussed separately from the problems of other hospitals. These hospitals have had difficulty obtaining coverage in excess of $100,000/$300,000 at a cost considered acceptable by the hospitals. Both hospitals also project substantial increases in rates for this coverage for the next policy period.

The University of Colorado Medical Center was notified by the insurance company which provides the medical center's umbrella coverage of the company's decision to discontinue underwriting medical malpractice insurance as of October, 1975. The policy was reinstated for

the remainder of the one-year policy period ending June 30, 1976, after intervention of the office of the Governor and the insurance commissioner. The university has contacted over 50 insurance carriers to obtain rate comparisons. At present, it appears that Colorado General will be able to obtain excess coverage for the next policy year, but the costs may be dramatically higher.

The following table lists the total cost of both primary and excess coverage insurance for Colorado General, as paid by the state and other sources. Expenditures cited for Fiscal Year 1975, the current year, and estimates for the upcoming year are taken from the University of Colorado Medical Center 1976-1977 Request Budget, Appendix II, November 25, 1975.

Policy Period	State Cost 1/	FPR 2/	AHH 3/	Total Premium Cost
July 1974-75	$ 19,423	$108,111	$ 22,204	$ 149,738 [169,638] 4/
July 1975-76	172,785	134,386	69,925	377,096
July 1976-77	859,989	735,232	404,779	2,000,000

Not only is the cost for the basic coverage expected to double in the 1976-1977 policy year, but the cost of excess coverage is expected to increase radically according to the insurance agent for CU's medical center. In previous years, the cost of excess coverage has been approximately 27 to 37 percent of the cost for the basic coverage. For the upcoming policy year, the University of Colorado's insurance agent estimates that the cost of the excess coverage will be roughly equivalent to the cost of the basic coverage. The university insures approximately 1,100 physicians, in addition to other health care specialists.

1/ The state costs include the cost of coverage for Colorado General staff and housestaff, and Colorado Psychiatric Hospital housestaff.

2/ FPR is the Faculty Practice Fund.

3/ AHH is the Affiliated Hospital Housestaff.

4/ In 1974-75 the premium of $19,900 for malpractice umbrella coverage was charged to the physical plant insurance account. When this is added to the base coverage premium of $149,738, the total 1974-75 malpractice premium becomes $169,638.

In the past year, Denver General has provided individual physicians employed by the hospital with a maximum coverage of $100,000 per occurrence, an amount considered inadequate particularly by physicians who practice in high risk specialties. Denver General was also faced with a substantial increase in the cost of malpractice insurance, from $90,000 for the year ending September 30 to $450,000 for the same coverage. Ultimately, Denver General was able to obtain coverage for its physicians with the Hartford Insurance Group, although physicians who previously were not members of the Denver Medical Society branch of the CMS were required to join in order to qualify for the CMS insurance program underwritten by the Hartford Group.

Other hospitals in the state have experienced lesser problems although new coverage has been difficult to obtain and rates are expected to escalate in the future. The major carrier of hospital coverage is St. Paul, with a number of other companies writing for relatively few hospitals. The rates charged depended on hospital size and the type of coverage needed for the institution. The Colorado Hospital Association has an agreement with the St. Paul Companies for a group hospital plan. This insurance is offered on an "occurrence" basis but it is expected that insurance will be written on a "claims-made" basis in the near future.

Quality of Medical Care

Five bills are submitted which the committee believes would provide for changes to improve the quality of medical care. In Bill 23 the state board of medical examiners would be strengthened in its membership and in its ability to take disciplinary actions against medical doctors who have a history of malpractice cases against them. Bill 24 would extend immunity from suit for review committees and hospital boards in actions relating to removal of medical doctors from hospitals. Bill 25 would require that hospitals establish internal risk management programs as a means of reducing malpractice claims for hospitals. Bills 26 and 27 also would relate to hospitals by providing access to patient records and the establishment of a grievance mechanism for patients. The bills are discussed in greater detail below:

Board of Medical Examiners -- Bill 23

Membership on the board would be changed by the addition of two public members. All members would be appointed by the Governor from a list of nominees selected by an eleven-member nominating commission. This procedure is patterned after the judicial nomination commissions but, unlike judges, members appointed to the board would not run for election after their original appointment.

The bill would establish a procedure by which the board would receive more information concerning medical malpractice cases than it presently receives. Insurance companies would be required to report all cases in which claims involving medical malpractice have been settled and hospitals would be required to report disciplinary actions involving suspension or revocation of physician staff privileges. Professional review committees are already required to report recommendations for disciplinary action if the final action taken results in the disciplining of a physician.

The board would have discretion to start proceedings on the basis of the disciplinary actions taken by hospitals or professional review committees or on the basis of repeated malpractice settlements or judgments against medical doctors. These proceedings would result in additional expenses for investigations and costs for hearings by the board estimated at approximately $80,000 annually. For this reason the schedule of license fees is recommended to be increased from five to ten dollars for license renewal for residents; ten to twenty dollars for nonresident renewals; $35 to $50 for board exam; and $75 to $85 for national board exam. It is estimated that the additional costs to the board would be off-set by the increase in revenue from fees.

The committee further recommends that the administrative arrangement of the board be changed from a type 1 to a type 2 transfer whereby the board would be under the supervision of the executive director of the Department of Regulatory Agencies. Since the board would be directly responsible to the executive director of the department, the director could compel the board to take action on any matters presented to it, thus attempting to assure that the board would act with greater vigor than it has in the past.

In another provision of the bill, the board would be empowered to adopt continuing medical education requirements for relicensing. Also, a physician who examines another physician at the request of the board would be protected by the granting of immunity from damage suits which might otherwise be filed by the physician who is being examined, if the examination were conducted and the findings were made in good faith.

Professional Review Committees -- Bill 24

While the previous bill would extend immunity for individuals who participate in investigations for the board, this bill would extend immunity to the corporate boards of the hospitals and to individual members of the boards for disciplinary actions taken in good faith. Judicial review of actions by a board of trustees would not be precluded, however.

Section 1 would establish a method whereby findings, recommendations, and actions taken by a professional review committee would be submitted to the Board of Medical Examiners. Review committees

would not be required to meet publicly or to have their records open to public inspection.

Hospital Internal Risk Management Programs -- Bill 25

Internal risk management programs would be required in each hospital having in excess of 50 beds under Bill 25. Purposes of the program would be to investigate and analyze accidents which cause injury to patients, to develop procedures which would minimize risks to patients, and to analyze grievances relating to patient care and the quality of medical services.

This bill was based on a Florida statute which mandated this approach for hospitals of 300 beds and over. Information received from that state indicated that the program would be beneficial for hospitals of smaller size and that the additional expenses for this program, which were considered minimal, were justified in the light of the high cost of malpractice insurance. Success of a program, of course, cannot rest with a statute but must be in association with an administrative commitment to the program. A number of hospitals in Colorado presently have these programs and risk management specialists are employed by insurance companies for consultation with and inspection of hospitals. The bill is recommended as a means of assuring that all hospitals of over 50 beds establish some system controlling risks at their institutions.

Patient Records -- Bill 26

This bill would provide that records of patients in hospitals and records in doctors' offices be available to patients for inspection and copying. The hospital or the individual health care provider may set reasonable time periods for review of records and may require that notice be given by the patient before the records are provided. Charges may be made to cover additional expenses involved in the copying of the records. Excepted from the act would be psychological and psychiatric records, from which a summary may be made, and records of minors who seek diagnosis or treatment of veneral diseases or treatment for drug addiction or drug usage without knowledge or consent of their parents or guardians.

Patient records were considered to be a matter of such concern to the patient that access to the records should not be denied, except for the extraordinary circumstances noted in the bill. Additional suits for medical malpractice may result from patients being given a statutory right to review records. On the other hand, suits may also be avoided for the reason that some cases have been filed as the only available procedure for obtaining the records for the patients. Medical records have been withheld in some institutions and by some health care providers and this bill, in the committee's opinion, will be beneficial by providing a uniform policy throughout the state.

Patients' Rights -- Bill 27

An area of increasing interest throughout the country concerns the rights of patients while they are hospitalized. The concern for patients' rights is an emerging area and, up to this time, has been based largely on case law rather than statutory law. One problem with legislation which attempts to specify patients' rights is that the rights which may be appropriate for one type of hospital may not be appropriate for a totally different type of institution. Bill 27 would approach the subject of patients' rights in the following three respects:

(a) As part of the licensing procedures, hospitals of over 50 beds would be required to submit a plan to the Department of Health for a mechanism for the handling of grievances of patients;

(b) This mechanism would require appointment of a patient representative who would serve as liaison between the patient and the institution. Some requirements for the liaison position are specified in the bill, such as the posting of information as to how this officer could be reached; and

(c) A policy statement concerning the obligations of the institution to the patients would be developed by each hospital and would be subject to review by the state Department of Health. This statement would need to include, among other topics, concerns of patients such as informed consent, admission procedures, privacy of patients, billing procedures, and the availability of medical records. The statement would be subject to approval of the department and would be posted and made available to each patient.

Alternatives to Malpractice Litigation

No recommendations concerning alternative procedures to the judicial system are submitted for legislative consideration, although consideration was given to this topic. One approach considered was the establishment of a medical malpractice claims commission which would have had the responsibility of reviewing and making findings in regard to access of medical malpractice before they could be taken to the court system. Discussion was also held on the possibility of adopting a statute similar to the workmen's compensation statute which would involve the use of a hearing officer in an administrative hearing prior to the filing of a court action.

Legislation is not submitted for the reason that Colorado does not have the number of medical malpractice cases that would warrant the establishment of extraordinary procedures for screening, hearings, or arbitration prior to action in the courts. In addition, a joint medical society-bar association committee does review cases voluntarily submitted and functions as a screen which prevents some unwarranted cases from being filed.

Changes in the Law of Negligence Relating to Professional Liability

Bills submitted under this topic concern three topics -- informed consent, the statute of limitations, and the method of payment of future medical expenses that may be used following judgment in favor of a plaintiff. Other states have enacted legislation on more subjects and in a more drastic manner in regard to the law of negligence than are recommended for Colorado at this time. For example, legislation in some states has specified the amount or percentage which may be allowed attorneys for contingency fees and the maximum amount of damage awards has been specified by legislation in a number of states. These approaches, plus other modifications of the law of negligence in other states, were not considered advisable in Colorado in view of the state's generally low damage awards and favorable experience in settlement cases.

Informed Consent -- Bill 28

The bill does not define "informed consent" but does describe what is meant by the "lack of informed consent". This term means the failure of a health care provider to disclose to the patient alternatives to the procedure contemplated and the reasonably forseeable risks and benefits involved which a reasonable health care provider, under similar circumstances, would disclose. In addition, such disclosure is to be in a manner that would permit a patient to make a knowledgeable evaluation. The test for recovery of damages based on a lack of informed consent, is that a reasonably prudent person, in the patient's position, would not have undergone the treatment or diagnosis if he had been fully informed.

Bill 28 would limit the right to recovery to non-emergency treatment, procedure, or surgery and to diagnostic procedures which involve invasion or disruption of the integrity of the body. This exemption would limit recovery for emergency treatment but would include treatment or diagnosis involving the administration of drugs.

Three defenses are included for the alleged failure to obtain informed consent:

(a) The patient stated in writing that he would undergo the treatment procedure or diagnosis regardless of the risks;

(b) The patient stated in writing that he did not want to be informed;

(c) Consent by or for the patient was not reasonably possible.

Statute of Limitations -- Bill 29

The present statute of limitations for filing medical malpractice actions, except for discovery of a foreign object, provides that cases must be filed within six years after the act or omission. Bill 29 would reduce this period to five years. Minor persons now have until age 21 to file an action involving medical malpractice and this provision would be amended to the age of eighteen. No change would be made in the two-year period for filing following discovery of a foreign object.

Another amendment to the present statute of limitations would provide that the statute would run while the person is in another state but would not run if he is out of the country. The committee thought that modern communications and transportation were such that it is not imposing a hardship on persons outside of Colorado, but still in the United States, to file within the same time as Colorado residents. Persons who reside in another country may have special difficulties in meeting the statute of limitations and the statute would not be changed in regard to persons outside the country.

Payment of Future Medical Expenses -- Bill 30

If a judgment is entered in favor of a plaintiff, Bill 30 would provide that the court could order the payment of medical expenses as they arise, for as long a period as the plaintiff requires treatment and without regard to the amount required. An escrow fund or trust would be established under an order to pay the expenses as they arise. If there were funds remaining in such a fund at the time of the plaintiff's death, they would then be refunded to the health care provider or his insurance carrier. This provision would mean that plaintiff's estate would not receive the remaining funds but, on the other hand, the plaintiff would be relieved of concern that the lump-sum award for medical expenses would not be sufficient to provide for medical expenses throughout his life.

Availability of Insurance

One of the reasons that Colorado is said to have a problem, but not a crisis, of professional liability insurance is that insurance coverage is still available, although the extent of competition is limited. A major concern of the committee related to questions of what the state could do if the companies now writing this insurance should decide to withdraw from the field or if the rates become so high that significant numbers of medical doctors are forced out of practice of some specialties or if hospitals could not continue to practice or to remain open. It should be noted that representatives of companies which now offer the major portion of this insurance in Colorado have indicated their intent to continue writing in this state.

Joint Underwriting Association -- Bill 31

The committee recommends enactment of a JUA on a standby basis to provide a method of furnishing coverage if one or two situations arise. The JUA would be effectuated on a finding of the insurance commissioner that either: (a) medical malpractice insurance is not available; or (b) that the premiums for the coverage are unreasonably high. Upon making such a finding, the commissioner would consult with the companies writing casualty insurance and then would adopt a plan to create a JUA on a temporary, three-year basis.

A ten-member board would be appointed by the Governor, consisting of five representatives of participating insurance companies, an attorney, a physician, a hospital administrator, and the insurance commissioner or his representative who would act as chairman.

The JUA plan would include a system for the classification of risks and rates for different areas of practice; a rating plan based on prior claims; and provisions for different rates for persons who are retired or are in partial practice, and rates for the estates of deceased insureds. Insurance protection for hospitals which are cancelled after the effective date of the act and not able to secure coverage would also need to be included. Whether the plan would offer excess coverage over the basic coverage would be a decision of the board of directors.

Financing of the plan would be by the health care providers in accordance with the rate classifications and schedule set in the plan. Any underwriting deficits at the end of a year would be recovered in one or two ways. First, each policy holder would pay a premium contingency assessment of not over one-third of the annual premium. Second, if this amount collected is not sufficient, the insurance companies participating in the plan would pay an amount in proportion to the net direct premiums written during the preceding year.

The bill also contains provisions relating to the offering of policy and claims services through the participating insurance companies. Another section would provide for the continuation of coverage for claims occurring during the time the plan was in effect but arising after the termination of the plan.

Medical Liability Extraordinary Loss Fund -- Bill 32

The purpose of this bill is to create a fund from which awards for extraordinary losses or damages, i.e., amounts of over $100,000, would be paid. The fund would have the effect of replacing the present malpractice insurance system for claims in excess of $100,000 per claim and $300,000 aggregate per year, providing instead a state-administered fund for this coverage. The bill is based on a Pennsylvania statute which created a "medical professional liability catastrophe loss fund", which fund was to provide excess coverage for that state's JUA.

Along with the payment claims or judgments in the excess coverage area, the bill would also be the source for claim payments against health care providers which are filed later than the statutory six-year period. This provision would assist insurance companies by eliminating the "long tail" claims. (The term refers to claims which are filed many years after the incident but, for some reason, were claims not subject to the six-year statute of limitations.)

The actual number of claims filed after the ordinary period of the statute of limitations is not great but does present problems of predicting losses for insurance companies in that the company's books for claims in a given year cannot be closed for as long as 20-25 years. Minors, for example, presently are exempt from the statute for 21 years and this exemption can result in cases being brought as long as 23 years after the incident. Another factor resulting in "long tail" claims is the provision which allows the bringing of an action relating to foreign bodies left in a patient within two years of discovery, whether the state of limitations was in effect or had run out. The bill provides that claims over six years would be handled by the extraordinary loss fund.

Funding for the extraordinary loss fund would be through an annual surcharge on all health care providers. This surcharge could not exceed 30 percent of the cost of the provider's malpractice insurance for the first $100,000/$300,000 coverage or $300, whichever is greater. Administration of the fund would be the responsibility of the Commissioner of Insurance.

The limitation on the size of the fund would be $7,000,000. If the fund were to reach that approximate level, the annual surcharge would be reduced and, if the fund would be exhausted by the full payment of claims in any one year, the amount to be paid each claimant would be prorated with the unpaid amount to be paid the next year. The only sources of revenue for the fund would be the annual surcharge on health care providers and income from investment or reinvestment of moneys in the fund.

The maximum liability of the fund would be $900,000 per incident or $2,900,000 aggregate per year. The first $100,000 per claim would be paid from the basic coverage, so the total limit of liability would be $1,000,000/$3,000,000.

Cancellation or Nonrenewal of Policies -- Bill 33

The purpose of this bill is to assure that a person or institution carrying medical malpractice insurance will have adequate notice of cancellation or nonrenewal with sufficient time to find other coverage. Cancellation of the insurance, for reasons of losses incurred, could occur only at the end of the period for which the policy is written and 60 days notice would be required. Both the insured and the insurance commissioner would receive the notice of cancellation.

As for notice of nonrenewal, the insured would be so informed within 30 days after the company receives the insured's application for renewal.

Captive Insurance Law -- Bill 34

The "Colorado Captive Insurance Company Act" was enacted in Colorado in 1972 in order to provide an alternative to the regular insurance market to enable corporations and commercial associations to form their own insurance companies. The need for the captive approach was found to exist in certain areas where insurance companies were withdrawing from the market or where the costs of coverage were considered to be too high. In other words, a situation not unlike the medical malpractice insurance situation existed for some industries at the time the captive insurance statute was enacted. The committee concluded that the captive company statute, if amended, might serve to provide a mechanism for the writing of malpractice insurance, perhaps through professional associations for individuals or through groups of health care providers, such as hospitals, who are in a common association.

There are two types of "captive" insurance companies that may be organized under Colorado statutes. "Pure" captive companies insure and reinsure the risks, hazards, and liabilities of parent companies and of subsidiary, associated, and affiliated companies. "Association" captive companies may be organized to insure and reinsure risks, hazards, and liabilities of member organizations of an association or group of companies. Bill 34 would extend the article under which captive companies are created to provide that captive companies may write personal insurance to provide coverage for professional liability or errors and omissions when combined with comprehensive general liability coverage.

Insurance Rate Making and Disclosure of Reported Losses -- Bill 35

Bill 35 would amend the state's general statutes pertaining to property and casualty insurance to define, and thus differentiate between, the following terms:

> Losses paid -- moneys actually paid in settlement of an insurance claim before or after judgment.
>
> Losses incurred -- the amount of money set aside for payment after a formal claim is made on the insurance company.
>
> Losses anticipated -- the amount of money the company places in reserve for potential payment of a loss before a formal claim is made. The bill would require that insurers and rating organizations submit quarterly reports to their insurance commissioner of losses paid and to provide information that would allow comparison of the actual losses paid with the losses incurred and losses anticipated.

The insurance commissioner, in his evaluation of rates filed, is not to resort to experience outside of the state until it is found that Colorado's experience in a given line is insufficient. If it is necessary to go outside of the state for rating experience, the commissioner is to use the experience of states which have social, economic, geographic, and population characteristics similar to Colorado.

COMMITTEE ON MEDICAL MALPRACTICE

BILL 23

A BILL FOR AN ACT

CONCERNING THE BOARD OF MEDICAL EXAMINERS, AND MAKING AN APPROPRIATION THEREFOR.

Bill Summary

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

Adds two public members to the board of medical examiners; the public members and all future members are to be appointed by the governor from nominees whose names are to be submitted by a special eleven-member nominating commission modeled after judicial nominating commissions; increases physician's licensing and renewal fees; empowers the board to adopt continuing education requirements and to commence disciplinary proceedings upon being informed of revocation of a doctor's privileges by a hospital, professional review commission disciplinary actions, or repeated malpractice settlements or judgments and amends other laws to require that said information is submitted to the board; under certain circumstances, protects a physician who examines another physician at the request of the board from a suit for damages by the examined physician; makes the board of medical examiners and the chiropody board the subjects of a type 2 transfer thus transferring their powers, duties, and functions to the executive director of the department of regulatory agencies.

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

SECTION 1. 12-36-103 (1) and (2), Colorado Revised Statutes 1973, are amended, and the said 12-36-103 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

12-36-103. State board of medical examiners - immunity.

(1) There is hereby created the Colorado state board of medical examiners, referred to in this article as the "board", which shall consist of nine PHYSICIAN members AND TWO MEMBERS FROM THE PUBLIC AT LARGE to be appointed by the governor and to have the qualifications provided in this article. On or after July 1, 1951, the state board of medical examiners as constituted under the law of this state immediately prior thereto is hereby abolished but the members thereof shall constitute the initial board under this article and the respective terms of such members shall extend through and expire on the third day of May of the year in which their respective terms, as determined by their appointments under such prior law, would have expired. In 1953 and in each second year thereafter, the governor shall appoint three PHYSICIAN members for terms beginning May ~~fourth~~ 4 of said year and expiring ~~on~~ May ~~third~~ 3 of the sixth year thereafter. THE MEMBERS FROM THE PUBLIC AT LARGE SHALL BE APPOINTED AS PROVIDED IN SUBSECTION (2.2) OF THIS SECTION.

(2) The board shall be comprised at all times of seven members having the degree of doctor of medicine, ~~and~~ two members having the degree of doctor of osteopathy, all of whom shall have been licensed and actively engaged in the practice of their professions in this state for at least three years next preceding their appointments and shall have been residents of this state for at least five years next preceding their appointments, AND TWO MEMBERS OF THE PUBLIC AT LARGE. In making appointments to the board OR IN FILLING VACANCIES, the governor shall ~~give due consideration to recommendations submitted by the Colorado state~~

~~medical--society--with-respect-to-appointments-to-each-office;-if any;-to-be-filled-by-a-physician-holding-the-degree-of-doctor--of medicine---and--to--recommendations--submitted--by--the--Colorado osteopathic-association-with--respect--to--appointments--to--each office;-if-any;-to-be-filled-by-a-physician-holding-the-degree-of doctor--of--osteopathy~~ CHOOSE FROM A LIST OF THREE NOMINEES TO BE CERTIFIED TO HIM BY THE BOARD OF MEDICAL EXAMINERS NOMINATING COMMISSION CREATED BY SECTION 12-36-103.5. IN CASE THERE IS MORE THAN ONE VACANCY ON THE BOARD, THE LIST SHALL CONTAIN NOT LESS THAN TWO MORE NOMINEES THAN THERE ARE VACANCIES TO BE FILLED. THE LIST SHALL BE SUBMITTED BY THE NOMINATING COMMISSION NOT LATER THAN SIXTY DAYS PRIOR TO EXPIRATION OF A TERM NOR LATER THAN SIXTY DAYS AFTER A VACANCY OCCURS. THE GOVERNOR SHALL MAKE THE APPOINTMENT, OR ALL OF THE APPOINTMENTS IN CASE OF MULTIPLE-TERM EXPIRATIONS OR VACANCIES, FROM SUCH LIST WITHIN FIFTEEN DAYS AFTER THE DAY THE LIST IS SUBMITTED TO HIM.

(2.2) On or before September 1, 1976, the board of medical examiners nominating commission shall submit an appropriate list of nominees to become the public members of the board to the governor and the governor shall make his appointments from said list within fifteen days after the day the list is submitted to him. One appointment shall be for a term ending May 3, 1979, and the other for a term ending May 3, 1981. Thereafter, public member appointments shall be for six-year terms.

(2.5) The meetings of the commission are exempt from any requirement of law that they be public, and the records of the commission relating to the nomination process are exempt from any

requirement of law that they be open to the public.

(2.8) A member of the board may apply to the nominating commission for nomination for reappointment, and such board member shall be considered by the commission in the same manner as other nominees.

SECTION 2. Article 36 of title 12, Colorado Revised Statute 1973, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

12-36-103.5. Board of medical examiners nominating commission. There is hereby created the board of medical examiners nominating commission which shall be comprised of eleven members, one member of the public at large and one physician member from each congressional district, both of whom reside in said district, and one additional member of the public at large, who shall be the chairman. Physician members shall have been licensed and actively engaged in the practice of the profession for at least three years prior to appointment. Three of the physician members shall be doctors of medicine and the remaining physician members shall be doctors of osteopathy. No more than six of the commission members shall be members of the same political party. Four members shall be appointed for terms ending December 31, 1976, four for terms ending December 31, 1978, and three for terms ending December 31, 1980. Members of the commission shall be appointed by the governor after giving due consideration to recommendations of the Colorado medical society and Colorado osteopathic association.

SECTION 3. 12-36-112, Colorado Revised Statutes 1973, is

amended to read:

12-36-112. License fee. An applicant for a license to practice medicine to be issued on the basis of an examination by the board shall pay a fee of ~~thirty-five~~ FIFTY dollars, and an applicant for such a license to be issued on the basis of a certificate from the national board of medical examiners or the national board of examiners for osteopathic physicians and surgeons, or on the basis of a license or certificate from another duly constituted examining board, shall pay a fee of ~~seventy-five~~ EIGHTY-FIVE dollars.

SECTION 4. 12-36-118 (1), Colorado Revised Statutes 1973, as amended, is amended, and the said 12-36-118 is further amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-36-118. Revocation or suspension of license - probation. (1) (a) The board, whenever it has been brought to its attention by the filing with the board of a sworn complaint of any person or otherwise that there is reasonable cause to believe that any person having a license to practice medicine in this state has been guilty of unprofessional conduct as defined in this article, has practiced medicine while his license was suspended, or, while under probation, has violated the terms thereof shall cause an investigation to be made to determine the probability of the commission of any of such offenses. If the board finds such probability great, the secretary-treasurer shall mail to such person, at his last address of record with the board, a specification of the charges against him, together with a written notice of the time and place of a hearing thereon, advising him

that he may be present in person, and by counsel if he so desires, to offer evidence and be heard in his defense. The time fixed for such hearing shall be not less than thirty days after the date of mailing the notice.

(b) IN ITS DISCRETION, THE BOARD MAY COMMENCE PROCEEDINGS UNDER THIS SECTION ON THE BASIS OF ALLEGED UNPROFESSIONAL CONDUCT WHEN THE BOARD IS INFORMED OF:

(I) DISCIPLINARY ACTIONS TAKEN BY HOSPITALS TO SUSPEND OR REVOKE THE PRIVILEGES OF A PERSON LICENSED TO PRACTICE MEDICINE AND REPORTED PURSUANT TO SECTION 25-3-107, C.R.S. 1973;

(II) DISCIPLINARY ACTIONS TAKEN BY A PROFESSIONAL REVIEW COMMITTEE ESTABLISHED PURSUANT TO ARTICLE 43.5 OF THIS TITLE AGAINST A PERSON LICENSED TO PRACTICE MEDICINE;

(III) REPEATED MEDICAL MALPRACTICE SETTLEMENTS OR JUDGMENTS AGAINST A PERSON LICENSED TO PRACTICE MEDICINE REPORTED TO THE BOARD PURSUANT TO SECTION 10-1-124, C.R.S. 1973.

(10) A person licensed to practice medicine who, at the request of the board, examines another person licensed to practice medicine shall be immune from suit for damages by the person examined if the examining person conducted the examination and made his findings or diagnosis in good faith.

SECTION 5. 12-36-123 (1), Colorado Revised Statutes 1973, is amended to read:

12-36-123. <u>List of licentiates - registration - fee - when payable</u>. (1) (a) During March of each year the board shall cause its secretary-treasurer to publish and mail to each holder of an unsuspended and unrevoked license to practice medicine,

podiatry, or midwifery in this state, at his last known address, a complete list of the class of licentiates to which the addressee belongs, corrected to the first of March of the current year, including the name, date, and number of the license and the business address of each licentiate entitled to practice. Every such licentiate, before March ~~first~~ 1 of each year, shall pay to the secretary-treasurer an annual registration fee of ~~five~~ TEN dollars if he is a legal resident of Colorado and of ~~ten~~ TWENTY dollars if he is not a legal resident of Colorado and obtain an annual registration certificate for the current calendar year.

(b) A LICENTIATE 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.

SECTION 6. Article 1 of title 10, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SECTION to read:

10-1-124. Reporting of medical malpractice claims. (1) Each insurance company licensed to do business in this state and engaged in the writing of medical malpractice insurance for licensed practitioners shall send to the state board of medical examiners, in the form prescribed by the insurance commissioner, information relating to each medical malpractice claim against a licensed practitioner which is settled or in which judgment is rendered against the insured.

(2) The insurance company shall provide such information as is deemed necessary by the board of medical examiners to conduct a further investigation and hearing.

SECTION 7. 24-1-122 (4), Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-1-122. Department of regulatory agencies - creation. (4) (d) Colorado state board of medical examiners, created by article 36 of title 12, C.R.S. 1973; and the Colorado chiropody board, created by article 32 of title 12, C.R.S. 1973;

SECTION 8. Part 1 of article 3 of title 25, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SECTION to read:

25-3-107. Disciplinary actions reported to state board of medical examiners. (1) Any disciplinary action to suspend or revoke the privileges of a licensed osteopath or medical doctor which is taken by the governing board of a hospital required to be licensed pursuant to this part 1 or required to obtain a certificate of compliance pursuant to section 25-1-107 (1) (1) (II), which action is not based on the recommendation of a professional review committee, shall be reported to the Colorado state board of medical examiners.

(2) Said hospital shall provide such information as is deemed necessary by the Colorado state board of medical examiners to conduct a further investigation and hearing.

SECTION 9. Repeal. 24-1-122 (3) (m), Colorado Revised Statutes 1973, is repealed.

SECTION 10. Appropriation. (1) There is hereby appropriated, out of any moneys in the state treasury not otherwise appropriate, for the fiscal year commencing July 1, 1976:

(a) To the department of regulatory agencies, the sum of fifty-four thousand six hundred fifty dollars ($54,650), or so much thereof as may be necessary, for the implementation of this act, for allocation as follows:

(I) Thirty-eight thousand seven hundred fifty dollars ($38,750), to the office of executive director;

(II) Fifteen thousand nine hundred dollars ($15,900), to the Colorado state board of medical examiners.

(b) To the office of the attorney general, the sum of twenty-five thousand dollars ($25,000), or so much thereof as may be necessary, for the implementation of this act.

SECTION 11. Effective date. This act shall take effect July 1, 1976.

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

COMMITTEE ON MEDICAL MALPRACTICE

BILL 24

A BILL FOR AN ACT

CONCERNING PROFESSIONAL REVIEW COMMITTEES, AND RELATING TO THE PROCEEDINGS, RECORDS, AND RECOMMENDATIONS THEREOF.

Bill Summary

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

Provides that proceedings of a professional review committee are exempt from laws requiring public conduct of such proceedings and that the minutes or records are exempt from public record laws; provides that the records of such a committee are not subject to subpoena except by a physician seeking judicial review of an action of a committee or a hospital board, but that a summary of said records may be provided to the state board of medical examiners. A hospital board or its individual members are immune from suit for damages for good faith actions based upon the recommendations of a professional review committee.

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

SECTION 1. 12-43.5-102 (3), Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS to read:

12-43.5-102. Establishment of review committee - function. (3) (e) The records of a review committee shall not be subject to subpoena in any civil suit against the physician, but, at the request of the state board of medical examiners, the board shall

be provided a summary of the findings, recommendations, and disposition of actions taken by a review committee. Said board may also request, and shall receive, a summary of the actions of the hospital board of trustees in regard to recommendations of a review committee. The records of a review committee or a hospital board may be subpoenaed in a suit brought by the physician seeking judicial review of any action of the review committee or a hospital board.

(f) Investigations, examinations, hearings, meetings, or any other proceedings of a professional review committee conducted pursuant to the provisions of this article shall be exempt from the provisions of any law requiring that proceedings of the committee be conducted publicly or that the minutes or records of the committee with respect to action of the committee taken pursuant to the provisions of this article be open to public inspection.

SECTION 2. 12-43.5-103, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-43.5-103. Immunity from liability. (3) The board of trustees of a hospital and the individual members of a board of trustees shall be immune from suit for damages in a civil action brought by a physician who is the subject of action taken in good faith by such board if the action is based upon recommendations of the review committee; but nothing in this subsection (3) shall preclude judicial review of the action of a board of trustees.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for

the immediate preservation of the public peace, health, and safety.

COMMITTEE ON MEDICAL MALPRACTICE

BILL 25

A BILL FOR AN ACT

CONCERNING HOSPITAL INTERNAL RISK MANAGEMENT.

Bill Summary

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

Provides that a hospital having in excess of a specific number of beds is to establish an internal risk management program dealing with investigation and analysis of incidents causing injury to patients, measures to minimize risk, and analyses of patient grievances.

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

SECTION 1. Part 1 of article 3 of title 25, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SECTION to read:

25-3-107. Internal risk management program. (1) Every hospital required to be certified pursuant to section 25-1-107 (1) (1) (II) or licensed pursuant to this part 1, having in excess of fifty beds, as a part of its administrative functions, shall establish an internal risk management program, which shall include the following components:

(a) The investigation and analysis of the frequency and

causes of general categories and specific types of adverse incidents causing injury to patients;

(b) The development of appropriate measures through the cooperative efforts of all personnel to minimize the risk of injuries and adverse incidents to patients;

(c) The analysis of patient grievances which relate to patient care and the quality of medical services.

(2) The internal risk management program shall be carried out by a person on the administrative staff of a hospital as part of his administrative duties, or by a committee of the hospital board of trustees or directors, or by the medical staff in a manner deemed appropriate.

(3) The internal risk management programs adopted by hospitals shall be subject to review by the department of health during its hospital inspections.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

COMMITTEE ON MEDICAL MALPRACTICE

BILL 26

A BILL FOR AN ACT

CONCERNING ACCESS TO PATIENT RECORDS.

Bill Summary

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

Provides that, with certain exceptions, patient records in the custody of individual or institutional health care providers shall be available to the patient or his designated representative for inspection and copying at reasonable times and upon reasonable notice.

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

SECTION 1. Article 1 of title 25, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW PART to read:

PART 8

PATIENT RECORDS

25-1-801. Patient records in custody of hospitals. (1) (a) Every patient record in the custody of a hospital or related facility or institution required to be certified pursuant to section 25-1-107 (1) (I) (II) or licensed under part 1 of article 3 of this title, except records pertaining to psychiatric or psychological problems, shall be available for inspection to the

patient or his designated representative at reasonable times and upon reasonable notice. A summary of records pertaining to a patient's psychiatric or psychological problems may, upon request, be made available to the patient or his designated representative following termination of the treatment program.

(b) Following the patient's discharge from the hospital or related facility or institution, copies of said records, including x-rays, shall be furnished upon payment of the reasonable cost of copying.

(c) The hospital or related facility or institution shall post in conspicuous public places on the premises a statement of the requirements set forth in paragraphs (a) and (b) of this subsection (1) and shall make available a copy of said statement to each patient upon admission.

(d) Nothing in this section shall be construed to require a person responsible for the diagnosis or treatment of venereal diseases or addiction to or use of drugs in the case of minors pursuant to sections 25-4-402 (4) and 13-22-102, C.R.S. 1973, to release patient records of such diagnosis or treatment to a parent, guardian, or person other than the minor or his designated representative.

25-1-802. Patient records in custody of individual health care providers. (1) (a) Every patient record in the custody of a chiropodist or podiatrist, chiropractor, dentist, doctor of medicine, doctor of osteopathy, nurse, optometrist, or physical therapist required to be licensed under title 12, C.R.S. 1973, except records pertaining to psychiatric or psychological

problems, shall be available for inspection to the patient or his designated representative at reasonable times and upon reasonable notice. A summary of records pertaining to a patient's psychiatric or psychological problems may, upon request, be made available to the patient or his designated representative following termination of the treatment program.

(b) A copy of such records, including x-rays, shall be made available to the patient or his designated representative upon payment of the reasonable cost of copying.

(2) Nothing in this section shall be construed to require a person responsible for the diagnosis or treatment of venereal diseases or addiction to or use of drugs in the case of minors pursuant to sections 25-4-402 (4) and 13-22-102, C.R.S. 1973, to release patient records of such diagnosis or treatment to a parent, guardian, or person other than the minor or his designated representative.

(3) For purposes of this section, "patient record" does not include doctors' notes written prior to July 1, 1976, but does include doctors' notes written on or after said date.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

COMMITTEE ON MEDICAL MALPRACTICE

BILL 27

A BILL FOR AN ACT

CONCERNING CERTAIN HEALTH CARE FACILITIES, AND RELATING TO A PATIENT GRIEVANCE MECHANISM, PATIENT REPRESENTATIVE, AND INSTITUTIONAL OBLIGATIONS TO THE PATIENT.

Bill Summary

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

Requires each health care facility with more than a specified number of beds to submit to the department of health a plan for a patient grievance mechanism and a policy statement with respect to the institution's obligations to the patient. The plan and policy statement must be approved by the department prior to issuance of a license to the health care facility.

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

SECTION 1. Part 1 of article 1 of title 25, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

25-1-121. Patient grievance mechanism and institution's obligations to the patient. (1) As used in this section, "institution" means every hospital or related facility or institution having in excess of fifty beds and required to be licensed under part 1 of article 3 of this title or required to

be certified pursuant to section 25-1-107 (1) (l) (II).

(2) The department shall require every institution to submit to the department a plan for a patient grievance mechanism and a policy statement with respect to the obligations of the institution to patients using the facilities of such institution. The plan and policy statement must meet with the approval of the department prior to certification of compliance or issuance or renewal of a license.

(3) A patient grievance mechanism plan shall include, but not be limited to:

(a) A provision for a patient representative to serve as a liaison between the patient and the institution;

(b) A description of the qualifications of the patient representative;

(c) An outline of the job description of the patient representative;

(d) A description of the amount of decision-making authority given to the patient representative;

(e) A requirement for posting of the patient representative's telephone number in each room.

(4) The policy statement with respect to the obligations of the institution to patients using facilities of such an institution shall be posted conspicuously in a public place on its premises and made available to each patient upon admission. Such policy statement shall include, but need not be limited to, a clarification of informed consent, admission procedures, staff identification, privacy, medical records, billing procedures, and

research, experimental or educational projects relating to the patient's own case.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

COMMITTEE ON MEDICAL MALPRACTICE

BILL 28

A BILL FOR AN ACT

CONCERNING INFORMED CONSENT TO HEALTH CARE PROCEDURES.

Bill Summary

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

States the basis for the right to recover in a medical malpractice action based on lack of informed consent, and describes increases in which the right does not apply and the defenses to such an action.

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

SECTION 1. Article 20 of title 13, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW PART to read:

PART 3

INFORMED CONSENT TO HEALTH CARE PROCEDURES

13-20-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Health care provider" means any:

(a) Licensed or certified hospital, health care facility, dispensary, or other institution for the treatment or care of the sick or injured; or

(b) Person licensed in this state or any other state to practice medicine, chiropractic, nursing, physical therapy, chiropody, dentistry, pharmacy, optometry, or other healing arts.

(2) "Lack of informed consent" means the failure of a health care provider to disclose to the patient such alternatives and reasonably foreseeable risks and benefits involved as a reasonable health care provider under similar circumstances would have disclosed, in a manner permitting the patient to make a knowledgeable evaluation.

(3) "Medical malpractice claim" means any claim against a health care provider which is based upon an allegation that a claimant sustained damages, either to his person or to his property, as the result of medical malpractice on the part of a health care provider.

13-20-302. Informed consent to health care procedures. (1) To recover for medical malpractice based on a lack of informed consent, it must be established that a reasonably prudent person in the patient's position would not have undergone the treatment or diagnosis if he had been fully informed.

(2) The right to recover for a medical malpractice claim based on lack of informed consent is limited to those cases involving either:

(a) Nonemergency treatment, procedure, or surgery; or

(b) A diagnostic procedure which involved invasion or disruption of the integrity of the body.

(3) It shall be a defense to any action for medical malpractice based upon an alleged failure to obtain such an

informed consent that:

(a) The patient assured the health care provider in his own writing and not on a prepared form that he would undergo the treatment procedure or diagnosis regardless of the risk involved, or the patient indicated to the health care provider in his own writing and not on a prepared form that he did not want to be informed of the matters to which he would be entitled to be informed; or

(b) Consent by or on behalf of the patient was not reasonably possible.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

COMMITTEE ON MEDICAL MALPRACTICE

BILL 29

A BILL FOR AN ACT

CONCERNING LIMITATION OF ACTIONS, AND PERTAINING TO THE PERIOD DURING WHICH A PERSON MAY MAINTAIN AN ACTION FOR MEDICAL MALPRACTICE.

Bill Summary

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

Shortens the period during which a person, not under a disability or suffering from an unauthorized foreign object, may maintain a medical malpractice action. Provides that absence from the United States will toll a statute of limitations, but absence from the state will not. Clarifies that a person under the age of eighteen is considered under a disability for purposes of limitation of actions.

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

SECTION 1. 13-80-105, Colorado Revised Statutes 1973, is amended to read:

13-80-105. Actions barred in two years. (1) No person shall be permitted to maintain an action, whether such action sounds in tort or contract, to recover damages from a licensed or certified hospital, health care facility, dispensary, or other institution for the treatment or care of the sick or injured due to alleged negligence or breach of contract in providing care or

TO RECOVER DAMAGES from any person licensed in this state or any other state to practice medicine, chiropractic, nursing, physical therapy, chiropody, veterinary medicine, midwifery, dentistry, pharmacy, optometry, or other healing arts on account of the alleged negligence or breach of contract of such person in the practice of the profession for which he is licensed or on account of his failure to possess or exercise that degree of skill which he actually or impliedly represented, promised, or agreed that he did possess and would exercise, unless such action is instituted within two years after the person bringing the action either discovered, or in the exercise of reasonable diligence and concern should have discovered, the seriousness and character of his injuries and the negligence or breach of contract which gave rise to such action. In no event may such action be instituted more than ~~six~~ FIVE years after the act or omission which gave rise thereto, except where the action arose out of the leaving of an unauthorized foreign object within the body of such person.

SECTION 2. 13-80-126, Colorado Revised Statutes 1973, is amended to read:

13-80-126. Absence or concealment of debtor. If, when a cause of action accrues against a person, he is out of the **state** UNITED STATES or has **absconded-or** concealed himself, the period limited for the commencement of the action by any statute of limitations shall not begin to run until he comes into the **state** UNITED STATES or **while** UNTIL he is NO LONGER so **absconded-or** concealed. If, after the cause of action accrues, he departs from the **state** UNITED STATES or **absconds-or** conceals himself, the

time of his absence or concealment shall not be computed as a part of the period within which the action must be brought.

SECTION 3. 13-81-101 (3), Colorado Revised Statutes 1973, is amended to read:

13-81-101. Definitions. (3) "Person under disability" means a minor UNDER EIGHTEEN YEARS OF AGE, A mental incompetent, or ~~any~~ A person under any other legal disability.

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

COMMITTEE ON MEDICAL MALPRACTICE

BILL 30

A BILL FOR AN ACT

CONCERNING THE METHOD OF PAYMENT OF FUTURE MEDICAL EXPENSE IN MEDICAL MALPRACTICE ACTIONS.

Bill Summary

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

Provides that, in a medical malpractice action, a court may order that a judgment for future medical expense be paid from a trust fund as the expense arises, payment to continue for as long as related future medical expense is incurred, but that any balance remaining in the trust fund at the time of the plaintiff's death be returned to the health care provider or the insurance carrier thereof.

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

SECTION 1. Article 20 of title 13, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW PART to read:

PART 3

PAYMENT OF FUTURE MEDICAL EXPENSE

13-20-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Health care provider" means any:

(a) Licensed or certified hospital, health care facility,

dispensary, or other institution for the treatment or care of the sick or injured; or

(b) Person licensed in this state or any other state to practice medicine, chiropractic, nursing, physical therapy, chiropody, dentistry, pharmacy, optometry, or other healing arts.

(2) "Medical malpractice claim" means any claim against a health care provider which is based upon an allegation that a claimant sustained damages, either to his person or to his property, as the result of medical malpractice on the part of a health care provider.

13-20-302. Payment of future medical expense as expense arises. (1) If, in a civil action based on a medical malpractice claim, a judgment including payment for future medical expenses is entered against a health care provider, the health care provider may petition the court for an order allowing the health care provider or the insurance carrier thereof to pay such expenses as they arise. If the court finds it to be in the best interests of all parties, it shall enter an order providing for payment of expenses as they arise. If such an order is entered, the health care provider shall continue the payments for as long as the plaintiff requires treatment, regardless of the amount required.

(2) The order shall contain such provisions for the deposit of moneys in an escrow or trust fund as the court may deem necessary under the circumstances. If, at the time of the plaintiff's death, any balance remains in the escrow or trust fund, such amount shall be refunded to the health care provider

or the insurance carrier thereof.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

COMMITTEE ON MEDICAL MALPRACTICE

BILL 31

A BILL FOR AN ACT

CONCERNING THE CREATION OF A JOINT UNDERWRITING ASSOCIATION TO PROVIDE PROFESSIONAL LIABILITY INSURANCE FOR HEALTH CARE PROVIDERS.

Bill Summary

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

Upon the insurance commissioner's determination that medical malpractice insurance is unavailable or the premiums therefor are unreasonably high, the division of insurance, after consultation with casualty insurers doing business in the state, is to adopt a three-year temporary joint underwriting plan. The plan is to provide for a joint underwriting association which is to be governed by a ten-member board of directors and is to provide a method under which all said casualty insurers, operating on a risk-sharing basis, can offer medical malpractice insurance for individual and institutional health care providers.

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

SECTION 1. Article 4 of title 10, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW PART to read:

PART 8

MEDICAL MALPRACTICE INSURANCE - JOINT UNDERWRITING ASSOCIATION

10-4-801. Definitions. As used in this part 8, unless the

context otherwise requires:

(1) "Association" means the joint underwriting association created pursuant to this part 8.

(2) "Board" means the board of directors of the association created by this article.

(3) "Casualty insurance" means casualty insurance on risks or operation in this state, including, but not limited to, fidelity, surety, and guaranty bonds and all forms of motor vehicle insurance, except:

(a) Reinsurance, other than joint reinsurance to the extent stated in section 10-4-312;

(b) Accident and health insurance;

(c) Insurance against loss of or damage to aircraft or against liability arising out of the ownership, maintenance, or use of aircraft; and

(d) Marine or inland marine insurance.

(4) "Health care provider" means any:

(a) Licensed or certified hospital, health care facility, dispensary, or other institution for the treatment or care of the sick or injured; or

(b) Person licensed in this state or any other state to practice medicine, osteopathy, chiropractic, nursing, physical therapy, podiatry, dentistry, pharmacy, optometry, or other healing arts.

(5) "Net direct premiums" means premiums collected for casualty coverage, including premiums for casualty coverage issued under package policies.

(6) "Plan" means the temporary joint underwriting plan developed by the division of insurance pursuant to this part 8.

10-4-802. Finding by commissioner - division to develop plan. (1) (a) The plan provided for by this part 8 shall not be implemented until the insurance commissioner finds that medical malpractice insurance is not available, or that it is probable that it will not be available in the near future from private insurers, or that premiums are unreasonably high and cause or threaten to cause a significant impediment to needed health care for the residents of the state.

(b) Upon request of any health care provider, the insurance commissioner shall, or upon his own motion may, hold a hearing to determine if the conditions described in paragraph (a) of this subsection (1) exist.

(2) (a) The division of insurance shall, after consultation with insurers as set forth in paragraph (b) of this subsection (2), adopt a temporary joint underwriting plan as set forth in paragraph (d) of this subsection (2).

(b) Entities licensed by this state to issue casualty insurance pursuant to this article shall participate in the plan and shall be members of the temporary joint underwriting association.

(c) The joint underwriting association shall operate subject to the supervision and approval of a board of directors appointed by and serving at the pleasure of the governor, consisting of representatives of five of the insurers participating in the association, an attorney licensed to

practice in this state, a physician licensed to practice in this state, a hospital administrator, a member of the public at large, and the insurance commissioner or his designated representative employed by the division of insurance. The insurance commissioner or his representative shall be the chairman of the board.

(d) The temporary joint underwriting plan shall function for a period not exceeding three years from the date of its adoption by the division of insurance and, if still in existence at the end of such three-year period, it shall automatically terminate, unless its continued existence is provided for by action of the general assembly. The plan shall provide professional liability or malpractice coverage in a standard policy form for all health care providers. The plan shall include, but need not be limited to, the following:

(I) Rules for the classification of risks and rates which reflect past and prospective loss and expense experience in different areas of practice in the state;

(II) A rating plan which recognizes the prior claims experience of insureds in the state;

(III) Provisions as to rates for insureds who are retired or semi-retired, part-time professionals, or rates for the estate of a deceased insured;

(IV) Protection in an amount to be determined by the insurance commissioner for those hospitals whose policies are cancelled after the effective date of this part 8 which are not able to otherwise secure coverage in the standard market. The

plan shall provide for continuous coverage at the limits available in the plan from the date of cancellation; and

(V) Rules to implement the orderly dissolution of the plan at its termination.

(e) The board shall require, at its discretion, that insurers participating in the association offer excess coverage.

10-4-803. Premium contingency assessment. (1) In the event an underwriting deficit exists at the end of any year the plan is in effect, each policyholder shall pay to the association a premium contingency assessment not to exceed one-third of the annual premium payment paid by such policyholder to the association. The association shall cancel the policy of any policyholder who fails to pay the premium contingency assessment.

(2) Any deficit sustained under the plan shall first be recovered through the premium contingency assessment. Concurrently, the rates for insureds shall be adjusted for the next year so as to be actuarially sound.

(3) If there is any remaining deficit under the plan after maximum collection of the premium contingency assessment, such deficit shall be recovered from the companies participating in the plan in the proportion that the net direct premiums of each such member written during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the association.

10-4-804. Policy service. The plan shall provide for one or more insurers to provide policy service through licensed resident agents and claims service on behalf of all other

insurers participating in the plan.

10-4-805. Continuing coverage for claims from incidents occurring during the existence of the plan. The division of insurance, prior to termination of the plan, shall determine whether a need exists for continuing coverage for those who have been insured by the plan, as to claims solely for incidents which occurred during the existence of the plan. If such need is found, the division of insurance shall establish a plan for the purchase of such coverage for a reasonable time prior to termination of the plan.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

COMMITTEE ON MEDICAL MALPRACTICE

BILL 32

A BILL FOR AN ACT

CREATING A MEDICAL LIABILITY EXTRAORDINARY LOSS FUND.

Bill Summary

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

Provides for creation of a fund which would pay: (1) The excess of medical malpractice judgments or settlements against a health care provider over the provider's basic insurance coverage; (2) judgments or settlements in actions which, for reasons such as disability of the patient - plaintiff or presence of an unauthorized foreign object, are brought more than six years after the health care provider's act or omission. The insurance commissioner shall collect an annual surcharge not to exceed thirty percent of the health care provider's insurance premium or three hundred dollars, whichever is greater, in order to maintain the fund of approximately seven million dollars. The insurance commissioner is given powers to administer, protect, and defend the fund and is required to report annually to the general assembly on the status of the fund.

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

SECTION 1. Article 4 of title 10, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW PART to read:

PART 8

MEDICAL LIABILITY EXTRAORDINARY

LOSS FUND

10-4-801. Definitions. As used in this part 8, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of insurance.

(2) "Fund" means the medical liability extraordinary loss fund created pursuant to this part 8.

(3) "Health care provider" means any:

(a) Licensed or certified hospital, health care facility, dispensary, or other institution for the treatment or care of the sick or injured; or

(b) Person licensed in this state to practice medicine, osteopathy, chiropractic, nursing, physical therapy, podiatry, dentistry, pharmacy, optometry, or other healing arts.

10-4-802. Basic coverage - fund created - purpose. (1) Every health care provider shall insure his liability by purchasing professional liability insurance in the amount of one hundred thousand dollars per occurrence and three hundred thousand dollars per annual aggregate, known in this part 8 as "basic coverage insurance".

(2) No insurer providing professional liability insurance to a health care provider pursuant to the provisions of subsection (1) of this section shall be liable for payment of any claim against a health care provider for any loss or damages awarded in a professional liability action in excess of one hundred thousand dollars per occurrence and three hundred thousand dollars per annual aggregate.

(3) (a) There is hereby created a medical liability extraordinary loss fund for the purpose of paying that portion of

any award for loss or damages against a health care provider as a consequence of any medical malpractice action which exceeds one hundred thousand dollars. The limit of liability of the fund shall be nine hundred thousand dollars for each occurrence and two million seven hundred thousand dollars per annual aggregate.

(b) In the event of filing of a claim against any health care provider more than six years after the act or omission, the claim or judgment or settlement relating thereto shall be paid by the fund. If such claim is made after six years because of the wilfull concealment by the health care provider, the fund shall have the right of indemnity from such health care provider.

10-4-803. Annual surcharge to be levied. (1) The fund shall be funded by the levying of an annual surcharge on all health care providers. The surcharge shall be determined by the commissioner based upon actuarial principles and subject to the prior approval of the commissioner. The surcharge shall not exceed thirty percent of the cost to each health care provider for maintenance of professional liability insurance or three hundred dollars, whichever is greater. The fund and all income from the fund shall be held in trust, deposited in a segregated account, and invested and reinvested by the commissioner and shall not become a part of the general fund of the state. If the total fund exceeds the sum of seven million dollars at the enc of any calendar year after the payment of all claims and expenses, including the related expenses of operation of the office of the commissioner, the commissioner shall reduce the surcharge provided in this subsection (1) in order to maintain the fund at

an approximate level of seven million dollars. All claims shall be computed on December 31 of the year in which the claim becomes final. All such claims shall be paid within two weeks thereafter. If the fund would be exhausted by the payment in full of all claims allowed during any calendar year, then the amount paid to each claimant shall be prorated. Any amounts due and unpaid shall be paid in the following calendar year. The annual surcharge on health care providers and any income realized by investment or reinvestment shall constitute the sole and exclusive sources of funding for the fund. No claims or expenses against the fund shall be deemed to constitute a debt of the state or a charge against the general fund of the state. The commissioner shall issue rules and regulations consistent with this section regarding the establishment of the fund and the levying, payment, and collection of the surcharges.

(2) The failure of any health care provider to comply with this section or any of the rules and regulations issued by the commissioner shall result in the suspension or revocation of the health care provider's license by the licensure board.

10-4-804. Commissioner - powers to protect the fund. (1) The fund shall be administered by the commissioner.

(2) The basic coverage insurance carrier shall promptly notify the commissioner of any case where it reasonably believes that the value of the claim exceeds the basic insurer's coverage. Failure to so notify the commissioner shall make the basic coverage insurance carrier responsible for the payment of the entire award or verdict, if the fund has been prejudiced by the

failure of notice.

(3) The basic coverage insurance carrier shall at all times be responsible to provide a defense for the insured health care provider. In such instances where the commissioner has been notified in accordance with subsection (2) of this section, the commissioner may, at his option, join in the defense and be represented by counsel.

(4) In the event that the basic coverage insurance carrier enters into a settlement with the claimant to the full extent of its liability as provided in this part 8, it may obtain a release from the claimant to the extent of its payment, which payment shall have no effect upon any excess claim against the fund.

(5) The commissioner is authorized to defend, litigate, settle, or compromise any claim in excess of the basic coverage provided for in this part 8.

(6) Nothing in this part 8 shall preclude the commissioner from adjusting or paying for the adjustment of claims.

10-4-805. Determination of adequacy of surcharge. Determination of the adequacy of the surcharge is to be based on the reasonably anticipated payment of claims and other expenses of the fund during the period for which the surcharge is made. The surcharge shall be assessed against each health care provider qualifying as such at the time the surcharge is made.

10-4-806. Power to adopt rules and regulations. The commissioner may adopt rules and regulations not inconsistent with the intent of this part 8 to carry out the objectives of

this part 8.

10-4-807. Status of the fund - studies. (1) The status of the fund shall be reported by the commissioner to the general assembly annually and shall include the total amount of premium dollars collected, the total amount of claims paid and expenses incurred therewith, the total amount of reserve set aside for future claims, the nature and substance of each claim, the date and place in which each claim arose, the amounts paid, if any, and the disposition of each claim disposed of by judgment of court, settlement, or otherwise, and such additional information as the general assembly shall require.

(2) The commissioner shall conduct studies and review member records for the purpose of determining the causes of patient compensation claims and shall make recommendations for legislative, regulatory, and other changes necessary to reduce the frequency and severity of such claims.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

COMMITTEE ON MEDICAL MALPRACTICE

BILL 33

A BILL FOR AN ACT

CONCERNING THE TERMINATION OF MEDICAL MALPRACTICE INSURANCE POLICIES, AND LIMITING THE REASONS FOR CANCELLATION OF SAID POLICIES BEFORE THE END OF THE POLICY PERIOD.

Bill Summary

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

Prohibits cancellation of a policy of medical malpractice insurance before the end of the policy period, for reason of losses incurred. Makes special provisions for notice of cancellation and nonrenewal of such policies.

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

SECTION 1. Article 1 of title 10, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SECTION to read:

10-1-124. Cancellation of medical malpractice policies. Notwithstanding any contractual provision or provision of law to the contrary, no policy of medical malpractice insurance may be cancelled before the end of the period for which the policy is written, by reason of losses incurred. Cancellation for any reason may be effected only after at least sixty days written notice is given the insured and the insurance commissioner by the

insurer. Notice of nonrenewal of such a policy shall be given by the insurer to the insured within thirty days after the insurer receives the insured's application for renewal.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

COMMITTEE ON MEDICAL MALPRACTICE

BILL 34

A BILL FOR AN ACT

CONCERNING CAPTIVE INSURANCE COMPANIES, AND AUTHORIZING SAID COMPANIES TO MAKE INSURANCE AND REINSURANCE FOR PROFESSIONAL LIABILITY OR ERRORS OR OMISSIONS COMBINED WITH COMPREHENSIVE GENERAL LIABILITY.

Bill Summary

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

Authorizes captive insurance companies to make insurance and reinsurance for professional liability or errors and omissions combined with comprehensive general liability; exempts captive insurance companies providing said insurance from other requirements generally applicable to captive insurance companies.

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

SECTION 1. 10-6-104 (2), Colorado Revised Statutes 1973, is amended to read:

10-6-104. Scope of article. (2) No captive insurance company may make insurance, EXCEPT FOR PROFESSIONAL LIABILITY OR ERRORS AND OMISSIONS COMBINED WITH COMPREHENSIVE GENERAL LIABILITY, providing personal insurance coverage for individuals, except where the individual is a parent. ~~as defined in section 10-6-103 (8).~~

SECTION 2. 10-6-105 (1) and (2) (a), Colorado Revised Statutes 1973, are amended to read:

10-6-105. Purpose - admission. (1) Any captive insurance company when permitted by its articles of incorporation or charter may apply to the commissioner for a certificate of authority to engage in insurance business in the state of Colorado to make insurance and reinsurance TO PROTECT AGAINST PROFESSIONAL LIABILITY OR ERRORS AND OMISSIONS COMBINED WITH COMPREHENSIVE GENERAL LIABILITY, AND as provided in section 10-3-102 (1) (a) and in all subparagraphs of section 10-3-102 (1) (c) except subparagraphs (I) and (II) thereof, as limited by section 10-6-104.

(2) (a) Any pure captive insurance company applying for a certificate of authority to engage in the insurance business in the state of Colorado must demonstrate to the satisfaction of the commissioner that adequate insurance markets in the United States are not available to cover the risks, hazards, and liabilities of the parent and companies to be insured or that such needed coverage is only available at excessive rates or with unreasonable deductibles and that the total insurance coverage necessary to insure all risks, hazards, and liabilities of the parent and companies to be insured would develop, in the aggregate, gross annual premiums of at least five hundred thousand dollars; EXCEPT THAT A PURE CAPTIVE INSURANCE COMPANY MAY BE ORGANIZED TO UNDERWRITE PROFESSIONAL LIABILITY OR ERRORS AND OMISSIONS COMBINED WITH COMPREHENSIVE GENERAL LIABILITY INSURANCE WITHOUT REGARD TO THIS PARAGRAPH (a).

SECTION 3. 10-6-113 (2), Colorado Revised Statutes 1973, is amended to read:

10-6-113. Authority to do business. (2) No certificate of authority to transact any kind of insurance business in this state, EXCEPT PROFESSIONAL LIABILITY OR ERRORS AND OMISSIONS COMBINED WITH COMPREHENSIVE GENERAL LIABILITY INSURANCE, shall be issued or renewed to any company which is owned, or financially controlled in whole or in part, by another state of the United States, a foreign government, or any political subdivision, instrumentality, or agency of the United States or any state.

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

COMMITTEE ON MEDICAL MALPRACTICE

BILL 35

A BILL FOR AN ACT

CONCERNING THE DUTIES OF THE COMMISSIONER, INSURERS, AND RATING ORGANIZATIONS RELATING TO INSURANCE RATE-MAKING.

Bill Summary

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

Amends insurance statutes to differentiate between "losses paid", meaning losses actually paid in settling a claim before or after judgment, "losses incurred", meaning the amount set aside for payment after a formal claim is made, and "losses anticipated", meaning the amount set aside for payment before a formal claim is made. Provides that, in evaluating insurance rates, the insurance commissioner shall not resort to experience outside the state until he makes a formal finding that the Colorado experience is insufficient. If required to go outside the state for experience, he must go to states with social, economic, geographic, and population make-up which is similar to Colorado's. Requires insurers and rating organizations to make quarterly reports of losses paid and provide information allowing comparison of losses paid to losses incurred and losses anticipated.

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

SECTION 1. 10-4-401, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-4-401. Purpose - applicability - definitions - construction. (4) As used in this part 4, unless the context

otherwise requires:

(a) "Loss paid" or "losses paid" means the amount of money which is actually paid in settlement of an insurance claim before or after judgment.

(b) "Loss incurred" or "losses incurred" means the amount of money put in an insurance company reserve account for potential payment on a loss after a formal claim is made on the insurance company, whether orally, in writing, or by legal action.

(c) "Loss anticipated" or "losses anticipated" means the amount of money put in an insurance company reserve for potential payment of a loss before a formal claim is made.

SECTION 2. 10-4-402 (1), Colorado Revised Statutes 1973, is amended to read:

10-4-402. Standards for rates - competition - procedure. (1) Rates shall not be excessive, inadequate, unfairly discriminatory, destructive of competition, or detrimental to the solvency of insurers, as measured by a reasonable underwriting profit. In determining whether rates comply with the foregoing standards, the commissioner shall consider insurers' earnings on investments of ~~incurred~~ ALL loss and unearned premium reserves. Moreover, in considering past and prospective loss experience, the commissioner ~~shall~~ MAY consider loss experience ~~within-and without-the-state-of-Colorado.--In-considering--such--experience;~~ OUTSIDE THIS STATE ONLY IF THERE IS INSUFFICIENT EXPERIENCE WITHIN THIS STATE UPON WHICH A RATE COULD BE BASED. PRIOR TO CONSIDERING EXPERIENCE OUTSIDE THIS STATE, THE COMMISSIONER SHALL

FIRST MAKE A FORMAL WRITTEN FINDING THAT THERE IS INSUFFICIENT EXPERIENCE WITHIN THIS STATE UPON WHICH A RATE COULD BE BASED. HOWEVER, IN CONSIDERING EXPERIENCE OUTSIDE THIS STATE, THE INSURANCE COMMISSIONER SHALL ATTEMPT TO GATHER EXPERIENCE ONLY FROM STATES WITH SOCIAL, ECONOMIC, GEOGRAPHIC, AND POPULATION MAKE-UP SIMILAR TO THIS STATE. IN ALL OTHER INSTANCES THE COMMISSIONER SHALL CONSIDER THIS STATE'S EXPERIENCE EXCLUSIVELY AND IN INSTANCES WHEN THIS STATE'S EXPERIENCE IS INSUFFICIENT the commissioner shall give as much weight as possible to ~~the Colorado~~ THIS STATE'S experience.

SECTION 3. 10-4-405, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-4-405. Public disclosure. (4) Quarterly, every insurer and every rating organization shall furnish the commissioner with a comprehensive list of losses paid for the previous quarter. In addition to listing each loss paid, the report shall itemize the corresponding amount which the insurer had set aside as the loss incurred reserve and, if any, the loss anticipated reserve for each loss paid by said insurer, as well as the total losses paid in relation to the total losses incurred for all such losses paid.

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

LEGISLATIVE COUNCIL

COMMITTEE ON LOCAL GOVERNMENT

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COMMITTEE ON LOCAL GOVERNMENT

The Committee on Local Government was charged with conducting a study of:

(a) The structure and functions of counties in relation to the services to be provided by counties and municipalities, including limits on the geographic areas each should be responsible for, and the interrelated financing thereof;

(b) The implementation of county functional home rule as a response to meeting such defined responsibilities;

(c) The need for retention of special districts if the state's policy places the responsibilities for local services upon counties and municipalities;

(d) The role each segment of government should be assigned in implementing any state policy;

(e) The role of regional service authorities; and

(f) Legislation regarding mining in Colorado, including the major aspects of reclamation, demand for minerals unique to Colorado in addition to coal and oil shale, and federal regulation of minerals and lands in Colorado.

Recommendations Regarding Local Government

The local government proposals presented herein reflect the consensus of the committee that the state's policy should place greater responsibilities upon counties and municipalities for the provision of urban functions and services in order to help reduce the fragmentation of governmental administrative responsibility which results, in part, from a reliance on special districts. To accomplish this, the committee recommends five bills on local government which combine elements of four of the committee's local government study directives. The committee did not have time to specifically address the role of regional service authorities.

County and Municipal Plans for Service and Transfer of Special District Functions to Counties and Municipalities -- Bill 36

Bill No. 36 offers a composite approach designed to: reduce the proliferation of, and reliance on, independent special districts; provide a mechanism by which the governing body of a county and municipality can finance and provide special district type services; and coordinate the provision of such services between counties and municipalities.

Formation of new special districts. Bill No. 36 would place a prohibition, effective July 1, 1976, on the future formation of certain types of urban service districts, namely, metropolitan recreation districts, metropolitan districts, water districts, water and sanitation districts, fire protection districts, cemetery districts, and hospital districts, as separate quasi-municipal entities.

The termination of the ability to form the above special districts would not prevent the provision of similar services in undeveloped areas or in urban areas where a particular service is needed. Counties and municipalities are authorized to use the powers granted by the existing acts and to establish, under the control of the governing body of the county or municipality, special taxing districts to provide these specific services to a given area.

Existing special districts. Existing special districts would not be abolished by the proposal nor would the existing special district acts be repealed. However, counties and municipalities would be granted greater authority to take over existing districts and assume the responsibility for the provision of services of any special district located wholly or partially within their boundaries. Takeover of districts is not required, but it is permitted. This transfer would be accomplished in the following manner:

(1) The transfer may be initiated by a county or municipality filing notice of its intent to take over the district with that district and the district court. The district would then be required to prepare a statement describing the district's assets, liabilities, territory, facilities, programs, and plans. The only requirements placed on the general purpose governments would be that they agree to continue the services provided by the district and provide a mechanism to insure that any outstanding bonded indebtedness would be paid. Unless a petition, signed by five percent of the qualified electors of the district to be assumed by the county or municipality, is filed asking that an election be held, takeover would be automatic. If such a petition is filed, an election must be held on the takeover.

(2) The district court would be responsible only for: receiving the records of transfer and, in case of dispute, providing for the orderly transfer of powers, duties, assets, and liabilities; insuring payment of outstanding indebtedness and the continuation of services; and designating the local government to which the district would be transferred.

(3) Districts located in an unincorporated area and located within one mile of a municipality would be governed by the provisions outlined below.

County and municipal plans for service. The proposal would require counties and municipalities to jointly develop, by 1980, land use, development, and service plans for the provision of the urban services which are now provided by the urban service districts which the bill precludes from being formed as separate entities. Such plans

are required because the takeover of special districts located within the territory of two or more general purpose governments and the formation of new special taxing districts for urban services (by either a county or a municipality near an adjoining municipality) may pose inter-jurisdictional problems. The use of these plans for service as a means of preventing inter-jurisdictional conflicts is an adaptation of a concept proposed in H.B. 1092, 1975 session (a comprehensive land use and urban service area act). It is, however, utilized in the proposal only as a mechanism to plan for fire, water, sanitation, parks and recreation, cemetery, and hospital services which are now provided to a great extent by special districts. The committee's proposal is outlined below:

(1) Under the proposal, cities would have the primary authority to provide services within one mile of their boundaries or one-half the distance to the next municipality, whichever is less, unless otherwise agreed to in the county and municipal plans for service.

(2) Counties and cities would be able to mutually agree to land use, development, and plans of service for water, sanitation, fire, hospital, park and recreation, and cemeteries on the periphery of the municipality. To accomplish this, the county would be required to develop, as part of its comprehensive plan, plans for service for the unincorporated area of the county and specifically for the periphery of each municipality. The county plan would then be submitted to each affected municipality for review and suggested modifications. The municipality would simultaneously develop its own plans for the extension of these services into the unincorporated areas adjoining its current boundaries. The county and the municipality would negotiate, by 1981, any differences in their respective plans. Once agreement is reached, the plans would be filed with the district court. The assumption of any existing district located within two or more jurisdictions, or located on or near the boundaries of a municipality, would be governed by the agreed upon plans. The district court would be responsible for resolving any questions on interpretation.

If the county and municipality could not agree on a joint plan, the municipality would be authorized to use its primary authority to plan and extend services within the above-mentioned one-mile limit.

Special taxing districts. The committee recognizes that, in the past, special districts may have provided the only available means for the provision of urban services in many areas. As a means of assuring a mechanism for the provision of these services, the proposal would authorize counties and municipalities to establish special taxing districts under the control of the county or municipal governing body. These districts could be established to provide a means of assuring continuation of the services of any district which may be assumed under the bill or they may be established to provide such services to specific areas within the local government's jurisdiction.

Police Powers to Home Rule Counties -- Bill 37

In recommending Bill 37, the committee is responding to one of the most common requests of county governments -- the authority to enact ordinances and set penalties for nuisance-type offenses, within the unincorporated territory of the county. Bill 37 would grant specific police powers to home rule counties.

The committee does not recommend granting such powers to all counties. The consensus was that counties should be encouraged to reorganize their structure pursuant to the existing county home rule statute. Limiting police powers to home rule counties may encourage the adoption of structural home rule charters.

Among the suggested police powers which would be granted to home rule counties are the powers to enact ordinances:

(1) To prevent and suppress riots, disorderly conduct, noises, disturbances, and disorderly assemblies in any public or private place;

(2) To use the county jail for the confinement or punishment of offenders;

(3) To provide for fire control within the boundaries of the county;

(4) To authorize the acceptance of a bail bond;

(5) To license, control, and regulate the operation and location of any nuisance activity which is of local concern within the county;

(6) To control and regulate the speed and use of vehicles on county roads not under the jurisdiction of the state;

(7) To adopt codes relating to buildings or other structures;

(8) To adopt codes by reference, subject to certain conditions; and

(9) To regulate and prohibit the running-at-large and keeping of animals within the county.

Disposition of fines. Since county ordinances would be enforced in the county courts, and county courts are a part of the state-funded judicial system, the committee proposes that one-half of all fines and forfeitures for the violation of ordinances be paid to the county and one-half of the fines and forfeitures be paid to the general fund of the state of Colorado.

Compensation of County Officers -- Bill 38

Periodically the General Assembly is asked to fulfill its constitutional responsibility and set, by law, the salaries for all elected county officials in non-home rule counties. (A 1970 constitutional amendment allows counties adopting a structural home rule charter to set the salaries of elected officials.) As indicated earlier in this report, the committee believes that local government should be provided with greater administrative authority and the committee agreed that the determination of the salaries to be paid to local officials should be a local responsibility and not a state legislative function.

Therefore, the committee recommends that a constitutional amendment be submitted to the voters providing that the county commissioners shall set the salaries of all elective county officers (including county commissioners). In brief, the amendment would provide that in May of each general election year the board of county commissioners would fix, by resolution, the salaries of all elected county officials. The salaries would apply for the next two years, and no salary of an elected official could be decreased during his term of office. The salaries of all county commissioners of that county would be equal.

Amendments to the Special District Exclusion Act -- Bill 39

For a number of years, municipalities have contended that the Special District Exclusion Act is too restrictive to accomplish its purpose, i.e., to allow territory to be excluded from a special district's boundaries. At the request of the Colorado Municipal League, the committee considered, and recommends, a bill to amend the exclusion act.

The existing act requires that a municipality wishing to have territory excluded must agree to provide "the service provided by the district" to the excluded territory. Some have interpreted this requirement to mean that, for example, if a recreation district provides a golf course, the municipality must also provide a golf course before the territory can be excluded. The committee's proposal amends this requirement so that a municipality would be required to provide "the general type of service", e.g., recreational facilities, that are provided by the district.

The proposal would also shift the emphasis on other requirements. For example, under the existing act, the district court is directed to order the exclusion of territory if it finds that certain conditions are met (the continuation of services described above is an example). The proposal would direct the court to order the territory excluded unless it finds that the municipality has not agreed to certain conditions such as to provide recreational facilities as described above. The proposal would also expand the procedures for the disposition of assets between the district and the municipality.

Buildings Constructed with Funds of Public Agencies -- Bill 40

Bill 40 also results from a recommendation of the Colorado Municipal League. The bill would encourage cooperation and coordination among units of state and local government in order that site locations for public buildings would be compatible with plans and land use policies of local government and that construction of public buildings would be adequate for the safety of the public. Local governments would be encouraged to assist public agencies in reviewing the construction of buildings to help ensure structural, mechanical, fire resistance and other standards adequate for the public safety.

Reclamation of Land Disturbed by Mining

The committee was charged with examining mining in Colorado, including the major aspects of reclamation.

Current Laws

Colorado's mined land reclamation laws presently appear in three separate articles of Title 34, each applicable to different types of mining operations. Article 22 of Title 34 deals with underground coal mines; Article 32 regulates the reclamation of lands disturbed by the open mining of coal, limestone used for construction purposes, quarry aggregate, and sand and gravel; and, Article 40, often referred to as the "hard rock law", concerns the reclamation of various other types of mining operations. After reviewing the above laws, and after public hearings marked by conflicting testimony concerning the effectiveness of these reclamation statutes, the committee agreed that four areas of the existing law needed revision. These were:

- Regulation of the disturbance to surface areas caused by the exploration for minerals;
- Expansion or revision of the composition of the present Mined Land Reclamation Board;
- The criteria presently used by the board to approve a mining permit application, and the duties imposed on the operator at the time of approval; and
- The specific inclusion of the mining of oil shale as an activity to be regulated by the state.

The Mined Land Reclamation Act -- Bill 41

Restoration of lands disturbed by prospecting. None of Colorado's present reclamation laws regulate the disturbances to the

land's surface caused by the exploration for minerals. Testimony indicated there exists the potential for a significant amount of disturbance during certain phases of an exploration operation. It was therefore the consensus of the committee that some measures should be taken to deal with this disturbance. The committee recognizes, however, that both state and federal statutes have traditionally encouraged the exploration for minerals. The committee does not wish to interfere unnecessarily with exploration and has endeavored to avoid placing unreasonable restrictions thereon. Consequently, in recommending the proposed provisions regulating reclamation of lands disturbed by mineral exploration, the committee elected to incorporate into Colorado's statute, in so far as possible, the exploration requirements now in effect on federal lands under the jurisdiction of the United States Bureau of Land Management (B.L.M.).

In brief, the bill, in order to conform to B.L.M. requirements, would require a prospector to file with the Mined Land Reclamation Board a notice of intent to conduct prospecting operations and to provide surety for subsequent reclamation. Upon the completion of the prospecting operation the operator would file a notice of completion. The board then would notify the operator of the steps necessary to reclaim the land disturbed, inspect the reclamation upon completion, and, if satisfied, release the surety posted.

The Mined Land Reclamation Board. The present Mined Land Reclamation Board is composed of the executive director of the Department of Natural Resources, the deputy commissioner of mines, the chief inspector of coal mines, the state geologist, and a member of the State Soil Conservation Board. The committee noted that three of the five members of the board are employees of the Department of Natural Resources under the supervision of the executive director. The committee agreed with the contention that the present composition fails to provide for adequate representation of other diverse interests, such as agriculture, conservation, and mining. Therefore, the committee recommends the membership be revised in order to provide more effective representation of other interests.

The committee proposes that the three employees of the department, the deputy commissioner of mines, state geologist, and chief inspector of coal mines, be removed, and that the board be expanded to seven members composed of: the executive director of the Department of Natural Resources; a member of the State Soil Conservation Board; and five persons appointed by the Governor to serve at his pleasure, three of whom would possess experience in agriculture or conservation, and two of whom would be representatives of the mining industry.

Reclamation of all lands disturbed by mining. The committee agreed that Colorado's reclamation laws should govern the surface disturbance resulting from all types of mining, and should therefore be drafted as one single statute. The committee elected to use the most comprehensive of the three mining laws -- Article 32 of Title 34, the Open Mine Reclamation Act -- as the vehicle to incorporate all reclamation provisions. The committee recognizes that its decision to

incorporate all reclamation provisions into one article of law is a significant change from current policy. However, the committee found that different types of mining are presently subject to significantly different requirements as to the extent of reclamation required. For example, mines regulated by Article 40 (essentially all mining except underground coal mines and surface mines for limestone used for construction purposes, coal, sand, gravel, and quarry aggregates) are required only to reclaim lands to prevent landslides, floods, or erosion. This is significantly less than the reclamation requirements imposed on the surface coal mines or quarrys.

The consensus of the committee was that more uniform reclamation standards were justified. However, the committee recognizes that the many various types of mining present varying reclamation problems. Thus, while the committee proposes some uniform minimum standards, it attempts to provide enough statutory flexibility to allow the Land Reclamation Board and the operator to recognize and deal individually with each reclamation problem.

Mining permits. The committee's proposal would provide that an operator may not engage in any mining without obtaining a permit to do so. As noted, this is a significant change because mines operating under Articles 22 and 40 are not now governed by a mandatory permit process. In order to deal with this change, provision would be made for the "phasing-in" of operations currently subject to these articles.

In brief, a permit would be obtained by filing with the board an application containing certain specific information, such as: the legal description of land to be affected; the owners of the surface and of the substance to be mined; a description of the method of operation; and the size of the area to be worked at any one time. The application would also include a reclamation plan showing the type of reclamation the operator chooses to conduct. Finally, a map would accompany the application showing the location of all land features and structures such as creeks, roads, and buildings around and on the area to be affected; the topography of the area; the type of soil over the area; the type of vegetation; and the depth and thickness of the mineral deposit to be mined. The application would be accompanied by a basic fee of 50 dollars, plus fifteen dollars per acre of land affected. In the event the permit is denied, 75 percent of the fee would be refunded.

Upon receipt of the application described above, the board must set a date for its consideration within 90 days. At that time the board would approve or deny the application, or for good cause, set a date for a hearing. However, the board must act upon the application within 120 days. If the board did not act within this time, the application, upon the presentation of surety, would be considered approved. The application would be denied if, among other things, the proposed operation: 1) would violate any city, town, or county zoning or subdivision regulation; 2) would violate a law or regulation of this state or the federal government; or 3) could not be carried out

in conformance with the act. The proposal also states that an application may be denied if the operation would take place upon certain state and federal lands which have been specifically exempted by state or federal regulation or statute. Finally, the proposal sets forth several minimum standards of reclamation which an operator must meet.

The proposed bill would also make provision for a simplified application procedure to be used in the case of a small operation which employs five or less individuals, disturbs ten acres or less, and extracts 50,000 tons of overburden or mineral each calendar year. It should be noted that the operator would still comply with the reclamation duties outlined in the bill.

Length of permit. The existing surface mined land reclamation act provides that each permit issued is to be valid for a five-year period, which may be renewed. In view of the expanded scope of its proposal, the committee did not elect to retain this provision. Instead, the committee's proposal would allow a permit to be issued for the "life of the mine". This decision effectively alters the present method of enforcement from one emphasizing permit renewal to one stressing a program of monitoring by the board. Under the present act, the burden of proof of compliance is largely placed upon the operator at the time of each renewal. With the life-of-the-mine permit, the reclamation board and the Department of Natural Resources must enforce the reclamation provisions largely by inspection of operations, and, thus, prove non-compliance with reclamation standards.

Fiscal note. Because of the shift in emphasis from a permit renewal process to an on-going enforcement program, and because the committee's proposal expands the number of mines to be governed by the reclamation act, the committee recommends that the Department of Natural Resource's reclamation budget be increased by $140,000 over the 1976 requested increase ($100,000) made by the department to administer the existing law. The department is currently funded at $60,000.

MINORITY REPORT

A minority of the committee herewith submits Bill 42. Bill 42 is a redraft of H.B. 1092, 1975 session -- the Urban Service Area Act.

The basic concept of the bill involves designating urban service areas throughout the state, controlling incompatible development within these areas, and preserving non-urban areas from urban encroachments through an integrated local planning process.

As introduced in 1975, the state land use commission was granted the authority to finally designate all urban service areas. This function would be removed. As presented to the interim committee, the commission would review and comment only on local urban service area plans. The revised bill would offer two alternatives to ensure that local governments comply with the designation require-

ments. Failure of county and municipal officials to jointly designate urban service areas would constitute either malfeasance in office or contempt of court.

In brief, Bill 42 would provide that:

(1) Counties and municipalities as a part of their comprehensive plans would jointly be responsible for defining proposed urban service areas which would include all territory within their boundaries plus, in the case of municipalities, such contiguous areas as should logically be included.

(2) Delineation of urban service areas would be based on criteria contained in the bill. Some of the standards or considerations which would be used to determine local urban service areas include:

(a) Local desires as to the size and character of the community;

(b) Ability and willingness to provide or make available adequate and economical water, sewer, police, and fire protection and other urban services;

(c) Regional housing needs by type, quantity, and impact;

(d) School needs and impact;

(e) Regional transportation needs and impact; and

(f) Natural and man-made barriers to expansion of urban areas or service within urban areas.

The bill also includes mechanisms to help regulate: future development outside of urban service areas; annexation of territory by a municipality within its designated urban service area; any proposed formation or extension of a special district providing water or sewer service within a municipal service area, provided the municipality was able and willing to annex the territory or otherwise serve it within a reasonable period; and the incorporation of new municipalities within the service area of an existing municipality.

COMMITTEE ON LOCAL GOVERNMENT

BILL 36

A BILL FOR AN ACT

CONCERNING SPECIAL DISTRICTS, AND PROVIDING FOR THE TRANSFER OF FUNCTIONS PROVIDED THEREBY TO MUNICIPALITIES AND COUNTIES.

Bill Summary

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

Places a moratorium on the formation of special districts and provides for the transfer of special district functions to local governments. Requires municipalities and counties to develop a plan in the development and provision of services to the territory adjoining their boundaries. Defines duties of counties, municipalities, and special districts during the transfer of special district functions. Provides for special taxing districts within municipalities and counties.

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

SECTION 1. Title 32, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 1.5

Transfer to General-purpose Local Governments

32-1.5-101. Legislative declaration. In enacting this article it is the intent of the general assembly to provide for the implementation of amendments made to articles XI and XIV of the state constitution, adopted at the 1970 general election,

concerning local government; to simplify the structure of local government in this state; to provide a means of vesting single-purpose government decision making with general-purpose local governments; and to reduce overlapping boundaries of local governments. The general assembly further declares that the procedures, powers, and authority set forth in this article are a matter of state concern, will serve a public use, and will promote the health and general welfare of the people of this state.

32-1.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Division" means the division of local government of the department of local affairs.

(2) "Notice of intent" means a resolution declaring the intent of a municipality or a county to succeed to the powers, rights, property, and other assets and assume the obligations of any special district.

(3) "Services" means those services which may be provided by a special district.

(4) "Special district" means any district organized pursuant to article 2 or 3, part 1, 2, or 3 of article 4, article 5, or article 10 of this title.

32-1.5-103. Moratorium declared. On and after July 1, 1976, no new special district shall be organized in this state, nor shall the types of services provided by, or the area of, any existing special district be expanded. The provisions of this section shall not preclude the organization of any special

district for which a petition for formation has been filed, prior to July 1, 1976, with the district court of the county in which such district is sought to be formed. Any district so organized shall comply with the provisions of this article in the same manner as all other existing special districts.

32-1.5-104. Transfer of special district functions. (1) Pursuant to the provisions of section 18 (1) (c) of article XIV of the state constitution, a municipality or a county shall have the right to succeed to the powers, rights, properties, and other assets and assume the obligations of any special district as provided in this article. Adequate provision shall be made for payment of outstanding indebtedness of the special district as it becomes due, and no such transfer shall deprive residents of such special district of any existing services necessary for their health, welfare, and safety.

(2) All transfers of special district functions authorized in this article shall only occur at the close of the special district's budget year.

(3) Only the entire area of a special district shall be transferred to a municipality or a county, unless otherwise provided for by agreement between the county and the municipality.

(4) Upon the petition of five percent of the qualified electors of the special district to be transferred, an election of the residents of the district shall be held concerning the transfer of the district. The election shall be conducted, insofar as practicable, in accordance with the provisions of part

8 of article 1 of this title. At such election the voters shall vote for or against the transfer of such special district. If a majority of the electors vote against such transfer, the transfer procedure shall cease.

32-1.5-105. Municipality and county service plans. (1) (a) On or before July 1, 1980, every municipality, as a part of its comprehensive plan, shall develop and submit to the counties and other municipalities lying within one mile of its corporate boundaries a land use, development, and service plan for the development and provision of services to the territory adjoining its boundaries.

(b) On or before July 1, 1980, the board of county commissioners of every county, as a part of the county's comprehensive plan, shall have developed and shall submit to the municipalities lying within, partially within, or within one mile of its boundaries a land use, development, and service plan for the development and provision of services throughout the county.

(c) Such plan shall be based on a twenty-year period, shall provide for the projected land use, development of adjoining territory, and the extension of services and the possible transfer of existing special districts, and shall designate the future service areas of such municipalities and counties.

(d) Any differences in such service plans shall be jointly resolved by agreements between such municipalities and counties.

(e) The final plans, and any agreements relating thereto, as adopted by resolution of the board of county commissioners and the governing body of the municipality, shall be filed with the

appropriate district court. Unless subsequently amended jointly by the parties, such plans and agreements shall be binding, and any conflicts concerning such documents shall be resolved by such district court.

(2) If a resolution of the differences in such plans of service cannot be made on or before January 1, 1981, such plans shall be filed with the appropriate district court. The following criteria shall be used by the court in reaching a resolution of any jurisdictional disputes in the absence of agreement:

(a) Municipalities shall have primary authority for the provision of services, the land use planning, and the approval of development, within an area extending one mile from their corporate boundaries or one-half the distance to the next municipality, whichever is less, as they may from time to time be adjusted.

(b) Counties shall not provide any land use planning or any services or authorize any development within one mile of a municipality without the approval of such municipality.

(c) No petition for the incorporation of a new municipality shall be filed within the unincorporated territory of any county without the approval of the board of county commissioners.

(d) No petition for incorporation of a new municipality shall be filed where any portion of the boundaries of the proposed municipality is within one mile of the boundaries of an existing municipality without the approval of the existing municipality.

(3) A municipality shall have the right to assume services being provided by a special district or a special taxing district once such services are provided to an area within one mile of its corporate boundary, as provided in sections 32-1.5-104, 32-1.5-106, and 32-1.5-107.

32-1.5-106. Duties of the special district. (1) Upon receipt of a notice of intent from a municipality or a county, the board of directors of the special district shall promptly and in good faith take the necessary steps to provide for the orderly transfer of the powers, rights, properties, assets, and liabilities of its respective special district to the appropriate municipality or county.

(2) On or before thirty days after receipt of a notice of intent, the board of directors of the special district shall file with the appropriate municipality or county and with the division a transfer statement, on a form prescribed by the division.

(3) The transfer statement shall:

(a) Describe the territory embraced in the special district and have appended a map of the district as constituted at the time of application;

(b) Contain a current financial statement of the district;

(c) Describe the assets, properties, liabilities, financial obligations, employee contracts, bonded indebtedness, and other information essential to the general administration of the district;

(d) Include a current service plan of the district if such plan is available; and

(e) Describe any current contract negotiations and any proposed extension of service areas.

32-1.5-107. Duties of the municipality or county. (1) Subject to the provisions of subsection (3) of this section, upon receipt of the transfer statement from the special district pursuant to section 32-1.5-106, the governing body of the municipality or county shall initiate action to provide for the orderly transfer of power from the special district to such municipality or county.

(2) (a) As a part of the transfer procedure, the governing body of the county or municipality shall conduct a public hearing concerning the orderly transfer of the special district's functions.

(b) If the special district is located within more than one county or municipality or partly within a municipality and partly within the unincorporated territory of a county, the governing bodies of such counties and municipalities shall be parties in interest at such hearings.

(c) The transfer procedure shall include consideration of the manner in which any residents of the special district located in areas outside the jurisdiction of the municipality or county are to continue to receive the services provided by such district.

(3) It is the duty of the governing body of the county or municipality to:

(a) Negotiate necessary contracts and adopt appropriate ordinances or resolutions essential to ensure that any

outstanding obligations of the district are met;

(b) Ensure that services essential to the health and safety of the residents of the district are continued;

(c) Provide for the orderly transfer of property, assets, and liabilities of the district;

(d) Establish, when necessary, special taxing districts as provided in section 32-1.5-108;

(e) Contract, when necessary, with municipal or county governments for the provision of services to any residents of the district located outside the boundaries of the municipality or county.

(4) The governing body of the county or municipality shall develop a plan to provide for the following:

(a) Operation and maintenance of the services and facilities of the special district;

(b) Establishment of rates, charges, and certification of mill levies for areas to be served;

(c) Establishment of procedures for contract modification;

(d) Provision for the general administration of the services provided by the district; and

(e) Provision for any applicable employee rights and retirement benefits.

(5) If the special district being transferred is a fire protection district, provision shall be made for the continuation of paid employees' rights, as provided in section 32-5-315, and the retirement benefits of paid and volunteer firemen, as provided in parts 4 and 5 of article 30 of title 31, C.R.S. 1973.

(6) Once the provisions of this section and sections 32-1.5-104 to 32-1.5-106 are met, the special district shall be transferred to the appropriate local government at the end of its current budget year as provided in section 32-1.5-104 (2).

32-1.5-108. Special taxing districts. (1) Pursuant to the provisions of section 18 (1) (d) of article XIV of the state constitution, the governing body of any municipality or county shall, unless it can show the capability of providing the services formerly provided by the district by other means, establish special taxing districts to provide services formerly provided or which would likely have been provided by special districts and to facilitate the collection of ad valorem taxes and charges for such services. Such special taxing districts shall be utilized where services are to be provided to a specific area and where resulting ad valorem taxes or charges may vary from those imposed in other areas within the municipality or county. Territory included within a special taxing district need not be contiguous, and the same territory may lie within more than one special taxing district.

(2) Except as otherwise provided in subsection (3) of this section, any ordinance or resolution establishing a special taxing district pursuant to this section shall meet the following conditions:

(a) A service plan for the proposed special taxing district shall be developed showing how the proposed services are to be provided and financed. The service plan shall include a map of the proposed special taxing district and an estimate of the

population and the valuation for assessment of the territory included within the area; a description of the facilities, land, and equipment necessary for the operation of the special taxing district; estimates for the cost of engineering and legal services; proposed indebtedness of the special taxing district, including the maximum interest rates; and other information deemed relevant to the financing and operation of the special taxing district.

(b) Legal notice of the date, time, and place of a public hearing concerning formation of the special taxing district shall be given in a newspaper of general circulation in the county in which such special taxing district is located once each week for a period of three consecutive weeks, the first of which shall be at least twenty days prior to the hearing date.

(c) At such hearing any person may be heard on the proposal, including questions of inclusion in or exclusion from the district. All such matters shall be determined by the governing body of the county or the municipality on the basis of the public interest, the needs of the county or the municipality and of the territory to be served, the service to be provided, and the taxes or charges to be imposed.

(d) The governing body may continue the hearing as necessary and may, after the conclusion thereof, enact the proposed ordinance, with or without amendments, or may reject the proposed ordinance.

(e) An election of the residents of the area to be included in the special taxing district shall be held concerning the

formation of such special taxing district. The election shall be conducted, insofar as practicable, in accordance with the provisions of part 8 of article 1 of this title. At such election the voters shall vote for or against the organization of the district.

(3) Decisions of the governing body of the county or municipality concerning the formation of a special taxing district are not subject to review unless review by certiorari, in accordance with the Colorado rules of civil procedure, is instituted by an aggrieved party within forty-five days after the effective date of the ordinance. If such action is not brought within such time, the action shall forever be barred.

(4) No restraining order or temporary injunction enjoining the formation, the inclusion or exclusion of territory, or the operation or financing of the special taxing district may be issued pending final judgment of the district court. Any such final judgment which has the effect of enjoining the formation, the inclusion or exclusion of territory, or the operation or financing of a special taxing district shall automatically by stayed upon the filing of any appeal of such decision, and no application for supersedeas shall be necessary. Such stay shall continue in full force and effect pending final disposition of the proceedings.

(5) The provisions of paragraphs (b) to (e) of subsection (2) and subsections (3) and (4) of this section shall not be applicable to any special taxing district created by a municipality or a county pursuant to the transfer and assumption

of services of a special district pursuant to this article wherein the area and provision of service remains essentially unchanged.

32-1.5-109. Indebtedness of the transferred special district. The outstanding bonds of a special district which is transferred to a municipality or a county pursuant to the provisions of this article shall be satisfied and discharged in the following manner: For the purpose of retiring the district's outstanding indebtedness and the interest thereon existing at the effective date of the transfer, the district shall remain intact and all territory within the district shall be obligated to the same extent. The governing body of the municipality or the county shall levy annually a property tax on all such property sufficient, together with other funds and revenues of the district, to pay such outstanding indebtedness and the interest thereon. The governing body of the county or municipality is also empowered to establish, maintain, enforce, and, from time to time, modify such service charges, tap fees, and other rates, fees, tolls, and charges, upon residents or users in the area of the district as it existed prior to the transfer, as, in the discretion of the governing body, may be necessary to supplement the proceeds of said tax levies in the payment of the outstanding indebtedness and the interest thereon.

32-1.5-110. Report to division. Any change in the status of a special district effected pursuant to this article shall be reported to the division by the municipality or the county which has assumed the powers, rights, assets, and liabilities of the

special district within thirty days after such change is finally effected.

32-1.5-111. Responsibilities of counties and municipalities. Unless the person initiating the request agrees otherwise in writing, before finally adopting an amendment to a zoning regulation, or platting or replatting any area, or granting a new building permit, the governing body of a county or municipality has an obligation to ensure, through the creation of a special taxing district, use of general tax revenues, or other governmental mechanisms, that services essential to the health and welfare of the existing or potential residents of the affected area are provided or continued.

SECTION 2. Effective date. This act shall take effect July 1, 1976.

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

COMMITTEE ON LOCAL GOVERNMENT

BILL 37

A BILL FOR AN ACT

CONCERNING HOME RULE COUNTIES, AND DEFINING THE POWERS AND FUNCTIONS THEREOF.

Bill Summary

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

Defines powers and functions of home rule counties.

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

SECTION 1. Title 30, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 11.5

Home Rule Counties

PART 1

GENERAL PROVISIONS

30-11.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board" means the principal governing body of any home rule county as specified in the county's home rule charter.

(2) "Home rule county" means a county which has adopted a home rule charter pursuant to the provisions of part 5 of article

11 of this title.

30-11.5-102. General police protection powers. In addition to any other powers granted or prescribed by law, the board has the authority to provide police protection throughout the unincorporated areas of the county and throughout the entire county by contracting with its municipalities.

30-11.5-103. Police powers. (1) The board, if authorized by home rule charter, has the power to enact regulatory ordinances not in conflict with state law for the control of any activity which is of purely local concern within the unincorporated territory of the county, including the following activities:

(a) To do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease;

(b) To declare what is a nuisance and abate the same and to impose fines upon parties who may create or continue nuisances or suffer them to exist;

(c) (I) To provide for and compel the removal of weeds, brush, and rubbish of all kinds from lots and tracts of land within the county at such time, upon such notice, and in such manner as the board may prescribe by ordinance and to assess the whole cost thereof, including the costs of inspection and other incidental costs in connection therewith, upon the lots and tracts of land from which the weeds, brush, and rubbish are removed. The assessment shall be a lien against each lot or tract of land until paid and shall have priority over all other