Report to the Colorado General Assembly:

FINANCIAL INSTITUTIONS

COLORADO LEGISLATIVE COUNCIL

LEGISLATIVE COUNCIL

OF THE

COLORADO GENERAL ASSEMBLY

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The Legislative Council, which is composed of five Senators, six Representatives, and the presiding officers of the two houses, 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.

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FINANCIAL INSTITUTIONS

Legislative Council

Report To The

Colorado General Assembly

Research Publication No. 120
December, 1966

COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL

ROOM 341, STATE CAPITOL
DENVER, COLORADO 80203
222-9911 - EXTENSION 2285

November 29, 1966

To Members of the Forty-sixth Colorado General Assembly:

As directed by House Joint Resolution No. 1017 of the 1966 session, the Legislative Council submits the accompanying report on Financial Institutions for your consideration.

The committee appointed by the Council to conduct this study made its report to the Council on November 28, 1964. At that time the Council adopted the report for transmission to the members of the Forty-sixth General Assembly.

Respectfully submitted,

Senator Floyd Oliver
Chairman

FO/mp

COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL

ROOM 341, STATE CAPITOL
DENVER, COLORADO 80203
222-9911 - EXTENSION 2285

November 29, 1966

Senator Floyd Oliver, Chairman
Colorado Legislative Council
Room 341 State Capitol
Denver, Colorado

Dear Mr. Chairman:

Your Committee on Financial Institutions, appointed pursuant to House Joint Resolution No. 1017 of the 1966 General Assembly, submits herewith its report and recommendations.

In the conducting of this study the committee conferred with numerous representatives of all types of financial institutions in Colorado and with state officials responsible for Colorado regulatory authority over all types of financial institutions and organizations. The committee believes that legislative enactment of its recommendations would accomplish several objectives. For example, the state's regulatory activity in regard to a number of types of financial institutions would be centralized under one agency, and numerous gaps in the statutes pertaining to the state's regulatory activity would be closed. In addition, some of the statutory changes are recommended to modernize the present statutes or to provide more explicit authorization or prohibitions of practices of some of the financial institutions.

Since not all of the topics which were suggested for committee consideration could be included within the scope of this study, it is recommended that the 1967 General Assembly authorize the Legislative Council to continue the study another year.

Respectfully submitted,

/s/ Representative Kenneth Monfort
Chairman, Committee on
Financial Institutions

KM/mp

FOREWORD

The Legislative Council's Committee on Financial Institutions was created under provisions of House Joint Resolution No. 1017, 1966 regular session, to undertake a study of the operation of financial institutions from the standpoint of the safety of investments, deposits, or other types of notes, debentures, or securities, and to study the adequacy of the present state regulatory authority over these institutions. Members of the General Assembly appointed to this committee were:

Rep. Kenneth Monfort, Chairman
Rep. W. E. (Bill) Foster, Vice Chairman
Sen. William E. Bledsoe
Sen. David J. Hahn
Sen. Donald E. Kelley
Sen. Vincent Massari
Sen. Lowell E. Sonnenberg
Rep. Ray H. Black
Rep. Floyd K. Haskell
Rep. Gerald Kopel
Rep. Hubert M. Safran
Rep. Donald E. Strait
Rep. John D. Vanderhoof

In conducting this study, the Committee on Financial Institutions held a series of eight meetings in which the statutes pertaining to practically all types of financial institutions in Colorado were reviewed. Statements and recommendations were received from representatives of state associations for all types of financial institutions and from officers of individual corporations and organizations subject to state regulation. The state bank commissioner, Mr. Harry A. Bloom, and the state insurance commissioner, Mr. J. Richard Barnes, were extremely helpful and cooperative in assisting the committee.

This report consists of three sections: The committee report and recommendations; a background report on the regulatory responsibilities of the insurance and banking departments; and an appendix containing the bills prepared by the committee for legislative consideration.

Assisting the committee were James C. Wilson, Jr., assistant attorney general assigned to the Legislative Reference Office, and Stanley Elofson, Senior Research Analyst, and Richard Levengood, Research Assistant, of the Legislative Council staff.

November 29, 1966

Lyle C. Kyle
Director

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Background for this Study

House Joint Resolution No. 1017 of the 1966 regular session of the General Assembly directed the Legislative Council to

> ...undertake a study of the operations of those financial institutions or organizations which accept deposits or investments, issue certificates of indebtedness or certificates of deposit, or sell, trade, or exchange notes, debentures, or other securities, and which appear to lack adequate regulation and control by any state or federal agency; and a study of the present regulatory authority of state agencies over such institutions or organizations, with a view toward updating and strengthening the pertinent statutes of this state.

It was noted in this resolution that several financial institutions or organizations in Colorado had recently experienced financial difficulties, had been placed in receivership, or had gone out of business with a resultant economic loss to the citizens of the state.

The Legislative Council's Committee on Financial Institutions directed its primary attention to legislative issues involving the safety of investors, depositors, shareholders, and holders of various types of indebtedness. Since another committee of the Legislative Council was studying various aspects of consumer problems, including issues of interest rates charged, areas of contracts and arrangements of financial institutions with their customers was not a primary consideration of this committee. Included with the recommendations, however, are some items which are considered particularly beneficial to the general public in dealings with financial institutions. The seriousness of the problem of providing adequate supervisory authority by the state agencies over financial institutions in the state is indicated by the following list of 32 financial institutions which have failed in this state during the last six years:

National Banks (not subject to state regulation)

Brighton National Bank, Brighton
First National Bank of Saguache, Saguache

Industrial Banks

Boulder Industrial Bank, Boulder
Home Industrial Bank, Aurora

Title and Guaranty Companies

National Title and Guaranty Corporation, Denver

Credit Unions

All Star Credit Union, Pueblo
Building Service Credit Union, Denver
Cloverleaf Employees Credit Union, Denver
Craig White Credit Union, Denver
Denver Japanese Credit Union, Denver

Gazette-Telegraph Credit Union, Colorado Springs
Hotel-Restaurant Credit Union, Denver
Iron Workers Credit Union, Denver
Kendrick-Bellamy Employees Credit Union, Denver
No. 7 Retail Clerks Credit Union, Denver

Petroleum Retailers Credit Union, Denver
Pueblo Transit Credit Union, Pueblo
Stemac Employees Credit Union, Denver
T. H. Credit Union, Denver
Titan Credit Union, Littleton

Upholsterers No. 22 Credit Union, Denver
Waiters and Porters Credit Union, Denver
Weicker Southern Credit Union, Pueblo
Westminster Fellowship Credit Union, Westminster
Wonder Credit Union, Pueblo

Finance Companies

Joe Newcomer Finance Company, Colorado Springs
Industrial Finance Company, Englewood
D. & R. G. Mutual Loan Association, Grand Junction

Insurance Companies

Colorado Credit Life, Inc., Boulder
Western Standard Indemnity Co., Denver
World Life Assurance Society, Ltd., Denver

Other Financial Institutions

Republic Savings Corporation, Denver

These institutions failed for a number of reasons. For example, dishonest management and juggling of books were factors involved in the failure of some institutions including the Brighton National Bank, the Joe Newcomer Finance Company, and the Industrial Finance Company of Englewood. The draining of corporate funds for use by alter ego corporations was a practice engaged in by some of the organizations which failed. Inept or unqualified management

was among the principal causes of the failure of some of the credit unions and the insurance companies. In addition, it was reported by the insurance department that all of the insurance companies which failed had allowed their financial reserves to fall below minimum requirements.

Along with these problems, the committee has concluded that additional factors of inadequate supervisory authority or the total lack of statutory authority has precluded the proper regulation and supervision of financial institutions in Colorado. These areas of statutory omission were significant elements in the failure of many of these institutions. Because of these areas of omission, the committee addressed itself to preparing recommendations: (a) filling in areas involving financial institutions which are not now subject to state supervision; (b) strengthening the present regulatory authority of state agencies; (c) placing all financial institutions of the same type under a single regulatory agency; and (d) modernizing outdated statutes under which some types of financial institutions must operate.

The recommendations submitted by the committee may be placed in two general categories: legislation affecting the state insurance department and legislation pertaining to the regulatory authority of the state banking department. Items of interest to all of the state's financial regulatory agencies, including the state securities commissioner and the savings and loan department, are mentioned at the conclusion of this report.

Capital and Surplus Requirement for Insurance Companies

Basic issues of public policy are present when considering minimum financial standards of capital, guaranty funds, and surplus which should be required for insurance companies admitted to the state. Exclusion of smaller companies by unrealistic requirements, or prohibiting new companies from commencing their operations because of overly-high financial requirements would be considered arbitrary and an irresponsible policy. On the other hand, inadequate financial reserves has appeared to be one of the frequent problems encountered by insurance companies in financial difficulty. A poorly-managed insurance company will not be any less poorly operated because a state may have high financial requirements, but the public may be better protected against possible failure of the company if the financial requirements are relatively high rather than low.

As is the case with some of the other areas of financial insitutions in Colorado, there are two separate sets of financial requirements established for insurance companies authorized to conduct business in Colorado. Requirements for companies licensed in the state prior to May 6, 1963, with the exception of multiple line companies, are one-half as high as the standards for companies which

have entered the state since that date. The reason for the difference in requirements is that the 1963 legislation increasing these standards contained a "grandfather" clause exempting already admitted companies from the higher level of requirements. All multiple line companies have the same financial requirements, however.

The committee recommends enactment of legislation to place the financial requirements of all licensed insurance companies at the higher levels of requirements established by the 1963 session. Legislation has been prepared (Bill A in the Appendix) which would increase on a five-year, graduated basis the financial requirements for all companies which are presently at the lower level of requirements. It is recommended that a minimum of one-fifth of the new requirements be added by all companies each year unless this requirement is waived by the insurance commissioner in consideration of extraordinary circumstances involving individual companies. The five-year requirement for meeting the new standards could not be waived, however.

Nonprofit Hospital, Medical-surgical and Health Service Corporations

One area of insurance in which there is no supervisory authority for the state insurance department is in prepaid, nonprofit hospital, medical-surgical and health service corporations. Colorado Blue Cross-Blue Shield and Hospital Service, Inc., of Fort Collins, are the major nonprofit corporations organized in Colorado which offer prepaid health services to their subscribers. There have been smaller corporations offering certain prepaid health services which have been organized from time to time to offer prepaid services such as ambulance or prescription services. The smaller companies have been of particular concern to the insurance department as some have failed and caused economic loss to their investors and to their subscribers.

The committee has concluded that a principal problem with which legislation should be concerned is in the maintenance of minimum financial reserves of companies in order to help avoid their failure, and also to prevent situations in which promoters can organize unstable companies with a minimum of capital. For these reasons, the legislation recommended by the committee (Bill B in the Appendix) would (a) provide incorporation and licensing procedures similar to other types of insurance companies; (b) require maintenance of minimum financial reserves, based on minimum reserves plus a sliding scale to account for the varying size of organizations in this line of insurance; (c) require filing of the corporation's membership certificates and fee schedules with the insurance department; (d) provide for an examination by the insurance department of the company books at least once every three years; and (e) require the filing of annual corporate statements with the insurance department reporting information such as subscription fees collected and the amounts paid annually in benefits to subscribers.

In its consideration of legislation in this area, three types of exemptions or special provisions which would have altered the scope of the state's regulatory authority over these companies were suggested to the committee. The decisions reached in regard to these exemptions are indicative of the committee's reasoning in regard to the type of regulatory authority which should be provided over financial institutions of this type:

(1) The committee rejected the idea of exempting the organizations which offer insurance coverage for heatth services in limited localities or geographic areas, or which offer a single, specialized service such as prescription, dental care, ambulance, or eye-care services. It is the belief of the committee that the small organizations should be subject to the same regulatory authority as required for larger organizations, just as small insurance companies in other lines of insurance are not exempted from the insurance code. However, health service plans provided through employers or labor unions which offer health plans to their employees or members on a self-insured basis should not be included under this act. The General Assembly may wish to consider problems of exempting additional organizations which offer insurance benefits, such as certain professional groups, from regulation under the act.

(2) A sliding scale of minimum financial reserves in the guaranty fund, based on total subscription income for the previous year, is recommended as a means of providing financial requirements having some relationship to the potential liability assumed by these companies. The plan recommended for determining the guaranty fund would base the amount of the fund on the preceding year's subscription income:

(a)	Subscription income not exceeding $2,000,000:	Five per cent deposit
(b)	Subscription income exceeding $2,000,000 but not exceeding $10,000,000:	Two and one-half per cent, plus the deposit required in (a) above
(c)	Subscription income exceeding $10,000,000:	One per cent, plus deposit required in (a) and (b) above.

Some of these required amounts are recommended to be placed on deposit with the insurance department. The deposits are to be on a sliding scale of a minimum of $50,000 to a maximum of $150,000, determined according to the subscription income. Funds on deposit would be maintained in separate safe deposit boxes in Denver banks and would be controlled jointly by the insurance department and each company.

(3) Since corporations in this line of insurance are nonprofit service organizations, a premium tax should not be assessed for subscription income collected. However, a charge of $50 per day for each examiner should be paid by these companies to help pay

for the administrative expenses of the state insurance department in conducting the examination required at least once every three years. No travel or per diem expenses for the department's examiners would be paid by the companies, as these expenses would be offset in the $50 per day charge.

Title Insurance

Two separate state agencies -- the banking department and the insurance department -- are responsible for the regulation of the title insurance industry at the present time in Colorado. Foreign title insurance companies are subject to the general regulation of the insurance department, while domestic companies are supervised by the banking department. The committee has found that the existence of two separate regulatory provisions pertaining to this type of insurance has resulted in inconsistent supervision over foreign and domestic companies and that the scope of regulatory authority exercised by the two state agencies is not adequate for this line of insurance. A number of inconsistencies and omissions in the present statutes may be noted as causing the inconsistent and ineffective supervision of these financial institutions:

(1) Domestic companies, under the banking department, have no rate filings or review of policy forms, whereas foreign companies are required to file their rating schedules and policy forms with the insurance department. Domestic companies may reduce their rates and offer rebates but foreign companies may not do so.

(2) There is no examination or licensing requirement for agents of domestic companies. On the other hand, the examination of agents for foreign companies is required and this is conducted on the basis of the casualty insurance article in lieu of specific authority to give examinations covering the title insurance area.

(3) The only major control of the banking department over domestic title insurance companies is in the checking of their reserve funds which are to be investments in first mortgages or other approved types of securities.

(4) Foreign title insurance companies are licensed under and subject to regulation as casualty insurance companies, even though the casualty insurance business differs greatly from the title insurance business.

During its study, the committee met on several occasions with the insurance department personnel and with representatives of title insurance companies to discuss possible legislation which would provide more adequate regulation of the industry. Considerable progress appears to have been made within the industry toward the formulation of legislation acceptable to all segments of the industry. However, the final draft of legislation prepared by industry representatives and the insurance department for consideration by the committee was

not available until the committee's last meeting. Since time was not adequate for consideration of all aspects of the proposed legislation, the committee has included, without recommendation, a copy of the bill on this subject (Bill C in the Appendix). The general conclusion was reached, however, that the title insurance area needs legislative consideration to correct the divided regulatory activities by two state agencies and to strengthen the state's supervision in this area of the insurance industry.

Credit Life and Credit Health and Accident Insurance

The committee has concluded that more adequate regulatory authority should be provided the insurance department in regard to supervision of credit life and credit health and accident insurance. This type of insurance is purchased by a debtor for the purpose of providing an indemnity for any payments which the debtor may be unable to make on a loan in the event he should die or become disabled.

There is limited authority exercised over this type of insurance by the banking and insurance departments at the present time. An insurance department bulletin has attempted to stop the practice of certain credit insurance companies of accepting insurance written by unlicensed individuals. Colorado insurance statutes provide limited authority over the sale of group life credit insurance, including some general requirements for the writing of policies (C.R.S. 72-6-1 (3)). This section does not pertain to individual life (not group insurance) credit insurance policies, however.

The authority of the insurance department over group health and accident insurance appears to be vague and imprecise (C.R.S. 79-10-16), while individual credit health and accident insurance is not covered within regulatory authority of the insurance department. For example, there is no specific requirement for the filing or approval of policies; and rates, which are filed, are not subject to approval or disapproval by the insurance department.

In addition to the limited responsibilities of the insurance department in the area of credit insurance some supervision is conducted by the banking department under the Consumer Finance Act (C.R.S. Chapter 73, Article 4). Certain checks are made by the department on insurance rate charges and refunds granted, and a prohibition of a requirement for the purchase of insurance as a condition of a loan is contained for loans under the Consumer Finance Act.

Problems reported to the committee in this area include excessive premium rates charged for borrowers and failure to make proper refunds on insurance covering loans paid in advance of the maturity date. Writing of credit insurance for longer periods than the loan or for larger amounts that the loan and the payment of excessive commission rates by companies in this line of insurance are practices which should be subject to state regulation.

The committee believes that there is a need for more complete regulation of credit insurance written in Colorado. Specific re-

sponsibility should be assigned to the insurance department for approving rates and policy provisions. Policies, for example, should contain such items as refund provisions and limitations on the amount and length of time for which the insurance is written. The committee recommends enactment of the model bill on credit insurance prepared by the National Association of Insurance Commissioners (N.A.I.C.) as the means of providing effective supervision in this area of insurance. Information reported in the book Trends In Consumer Credit Legislation indicates that a significant number of states, a total of 29 states, have enacted legislation substantially similar to the model act prepared by the N.A.I.C. The same source reports that in some of the remaining states a general credit insurance act, not patterned after the N.A.I.C. bill, is in force.[1] (Bill D in the Appendix.)

Motor Clubs, Associations, and Travel Promotion Organizations

Motor clubs and travel promotion organizations present two problems which the committee believes should be resolved by comprehensive legislation: first, a number of benefits offered by these organizations are insurance benefits; and, secondly, certain facets of operation by this type of financial institution are considered potential areas of fraudulent activity for which additional regulatory provisions are needed.

For the last six years the insurance department has attempted to regulate the operations of motor clubs on the basis that legal protection provisions typically provided in club membership contracts constitute conducting an insurance business in Colorado. Supervisory activity by the insurance department has been based on a May, 1960, opinion of the Attorney General and on the general regulatory provisions of the Colorado insurance statutes. Upon determining that the membership contracts of some clubs contained insurance provisions, the insurance department directed the organizations concerned either: (a) to remove the insurance provisions from the contracts; (b) to qualify as an insurance company; or (c) to have the insurance coverage provided by a licensed insurance company. There is no authority, however, for adequate supervision over a long list of non-insurance benefits offered by these organizations. Examples of non-insurance benefits include towing services, emergency road service, travel service, theft rewards, and emergency ambulance service.

It is the unregulated aspects of motor clubs and travel promotion organizations that the committee believes to be areas of potential fraudulent promotional activities. Clubs or organizations in this area can be started without first meeting minimum financial standards by persons who have no intention of providing benefits for members after collecting substantial amounts in membership fees and dues. Such persons may leave the state with little fear of either

1. Curran, Barbara A., Trends in Consumer Credit Legislation. (Chicago: University of Chicago Press, 1965). Pp. 125-128.

being apprehended by Colorado authorities or being sued by individuals for collection of benefits promised. There are, of course, highly reputable motor clubs and motor travel promotional organizations in the state which have had long histories of providing their advertised services to the public.

To deal with the problems discussed above, the committee recommends legislation to provide adequate supervision over a number of features of travel organizations. The bill recommended by the committee (a) includes specific definitions of the services and benefits offered; (b) provides for licensing by the insurance department of persons engaged in the operations of travel organizations in Colorado; (c) requires applicants seeking a license in the state to make a deposit of cash or securities with the insurance department, or a bond in lieu thereof, unless the organization already has a certain amount of net worth located in the state; and (d) provides penalties for violation of the act (Bill E in the Appendix).

Commercial Bank Statutes

The committee has found that the banking department, in general, is provided the necessary regulatory authority to supervise state banks in Colorado. A major exception to this statement, however, concerns the addition of a needed provision to prohibit the assumption of control of a bank by persons who have been convicted of a felony or fraud. Most of the other recommendations of the committee relate to removal of obsolete, outdated, or needlessly restrictive procedures found in the banking code (Bill F in the Appendix).

Since the changes proposed relate to a number of specific amendments covering a variety of subjects, each amendment is discussed separately below:

Accounts and interest. (C.R.S. 14-3-2). The recommended changes would remove the outdated reference to a maximum three per cent interest rate on savings and time deposits which may be paid by state banks, and would provide that the state banking board could establish maximum interest rates which are "prudent and sound."

Loans-personal-secured and unsecured. (C.R.S. 14-6-2). The committee recommends that the $2,500 limitation on the amount which a bank may lend to its officers or employees should be removed as constituting an unnecessarily restrictive limitation in view of present economic conditions. C.R.S. 14-9-17, discussed below, would retain adequate restrictions on the amounts of bank loans.

Loans - real estate - security. (C.R.S. 14-6-3). This section should be amended to provide that banks may make real estate

loans, secured by first liens, upon improved as well as unimproved real estate. The determination of improved and unimproved property is sometimes based on arbitrary definitions or interpretations. This unnecessary restriction has made it necessary for some residents to obtain loans from banks in other states which permit loans on unimproved property.

Bank chartering procedures. (C.R.S. 14-9-6 through 14-9-9). The present cumbersome procedure of filing a notice of intention to organize a state bank should be eliminated. A simplified procedure should be used under which the application for a charter would provide all of the essential information now contained in the notice of intent. This change would eliminate an unnecessary waiting period before the banking department commences its processing of an application for a charter.

A revised fee schedule of $1,000 for the filing of an application for a chrrter, with a provision for $750 refund if the application is withdrawn, is suggested as a more realistic fee schedule than the present $500 filing fee, none of which can be refunded if the application is withdrawn.

A new subsection (3) is recommended for C.R.S. 14-9-8 to specify the procedures to be followed by the state bank commissioner relative to the notification of interested parties of the receipt of an application to organize a new bank.

It is suggested that a requirement be added that application for a bank charter is to be made within six months from the date of the first contact to subscribe for stock (C.R.S. 14-9-9 (1)).

The application for a bank charter should provide information on the amount to be borrowed and from whom borrowed on any stock issued to a subscriber possessing more than five per cent of the capital stock. This additional information would assist in the detection of any undesirable connections between banks and would help prevent the control of banks from residing with persons who cannot legally possess control.

In addition, the committee recommends that banks be subject to involuntary liquidation if the banking board finds that control of a bank has been assumed by a person, or organization controlled by a person, who has been convicted of a felony or fraud in this state or in any other jurisdiction. The board may determine, however, that the person has been rehabilitated and that the bank will be honestly and efficiently managed.

Directors - meetings - duties. (C.R.S. 14-9-17). Two amendments are suggested for this section. The first would increase the size of loans that do not require approval of a bank's board of directors. The committee believes that the time of a bank's board of directors would be used more effectively in carefully checking larger loans than in checking the smaller loans.

The second amendment pertains to trust investments, which the committee believes should be checked by the board of directors at least twice a year. If such a check cannot be made that frequently, the committee would hold that the bank should not engage in this type of an account.

Credit Union Statutes

The committee has found that the present article of the Colorado statutes which pertains to credit unions (C.R.S. Chapter 38, Article 1) is in need of revision for three fundamental reasons:

(1) The present statutes contain certain outdated rovisions pertaining to the operation of credit unions which are in need of modernization;

(2) Some of the statutes are in need of greater clarification and corrections in meaning, grammar, and in the use of terms; and

(3) Strengthening is needed in some aspects of the regulation of credit unions by the banking department and in the internal operations of credit unions required under Colorado statutes.

The bill which the committee recommends relative to credit unions is contained in the Appendix to this report (Bill G in the Appendix) with an analysis of the changes recommended in each section.

As an example of efforts to modernize the credit union statutes, C.R.S. 38-1-1 has been substantially modified to eliminate outmoded terminology and to make the filing of articles of incorporation more comparable to the procedures followed by other financial institutions in Colorado. Other examples of modernization include changes in C.R.S. 38-1-2 to provide for the issuance by the bank commissioner of standard by-laws under which all state-chartered credit unions must operate; extension to credit unions of legal authorization to engage in activities which are already existing, such as the right to hold membership in the Colorado Credit Union League, to make contracts, to sue and be sued, and to adopt a corporate seal (38-1-4 (l), (h), (i), (j), and (k)); and statutory authorization to purchase real or personal property which is incidental to the operations of a credit union but which is necessary for the expansion of a credit union's business.

An example of amendments of clarification of the use of terms and in meaning of words is found in C.R.S. 38-1-5 in the definition of what constitutes a member's "immediate family," upon whom membership in a credit union automatically devolves. "Immediate family" is presently defined to include a "spouse, child, including a child by adoption, parent, brother, sister, aunt or uncle and any such step relationship," or, in short, almost anyone related to the actual

member. For purposes of refining and clarifying the definition, "immediate family" "shall be deemed to mean persons related by blood, by marriage or by adoption and living together under one roof and as one household."

Perhaps the most significant changes are found in the third category of amendments which would strengthen the state's regulatory authority and the internal operations specified under the statutes for credit unions. One example is C.R.S. 38-1-6 providing greater regulatory authority for the state bank commissioner over the operations of credit unions, including the power to issue rules and regulations pertaining to their supervision. C.R.S. 38-1-6 (4) would give a credit union the right to appeal decisions of the bank commissioner. C.R.S. 38-1-11 would strengthen the auditing authority of a credit union's supervisory committee by providing that the committee may hire certified public accountants to conduct both the quarterly and annual audits. C.R.S. 38-1-9 (1) (j) would permit the boards of directors of credit unions to provide compensation for necessary clerical and auditing assistance. At the suggestion of the bank commissioner, C.R.S. 38-1-20 was rewritten in order to specify procedures for both voluntary and involuntary suspension and liquidation of the operations of credit unions. Presently, C.R.S. 38-1-20 only outlines the process to be followed in cases of voluntary dissolution.

Changes recommended in C.R.S. 38-1-4 (1), (d), (e), and (f) represent an attempt to clarify, delineate, and restrict the investment powers of credit unions. Subsections (d) and (d), as amended, would provide revised restrictions on the investments of credit unions.

The Committee on Financial Institutions also recommends the adoption of an amendment to C.R.S. 38-1-4 (f) which specifies that credit unions can invest in securities insured by the United States and in state and municipal bonds. A limitation is suggested that a credit union's investment in common stocks, mutual funds, or other uninsured securities be restricted to ten per cent of the credit union's capital. The present language of C.R.S. 38-1-4(f) was deemed too broad, as it allows credit unions "to invest in any investment legal for savings banks or for trust companies."

Solicitation of Funds From the Public

One of the areas of chief concern to the committee involved the solicitation or acceptance of funds from the public by persons in the business of making loans. A substantial portion of committee time was given to the preparation of legislation to provide supervision in this presently unregulated area. Numerous problems encountered by the committee in the consideration of this legislation are noted below and are described in further detail in the research portion of this report. Other problems have been encountered by

the finance industry in relation to this bill and these issues should be considered at hearings by the legislature.

One method by which some consumer finance companies have raised funds for the operation of their businesses has involved the solicitation or acceptance of funds from the public. A total figure of moneys received from the public by the consumer finance industry over a given period is difficult to determine, but the amount of public funds held by companies in this industry would total several millions of dollars each year. Funds received from the public have a wide variety of arrangements for repayment, including demand notes, investment certificates, long and short term promissory notes, and other types of debentures. Some companies reportedly have issued passbooks to individuals in the maintenance of the accounts of funds received and withdrawn.

Information received from consumer finance companies indicates that the solicitation or acceptance of funds from the public is not used by all companies. Some firms have preferred to use financing from established lines of credit with other financial institutions; others rely on family sources or funds from partners, close associates, or stockholders; and other companies use combinations of these sources as their needs for funds arise.

In addition to the numerous methods by which these companies obtain their funds, it was found that the variety of financial standards for companies within the industry makes it impossible for the committee to recommend establishing appropriate financial standards companies would need to meet before they could solicit or accept public funds for their operations. Standards of capital structure, which would be considered reasonable for some companies, were found to be unnecessarily restrictive for other companies, and of little applicability to the financial strength of other companies.

Because of the variations peculiar to this industry, the committee recommends legislation which provides two concepts of regulatory control over promissory notes solicited or accepted from the public (Bill H in the Appendix). First, the public would have the protection of full disclosure of information concerning the terms and conditions of the funds invested with companies engaging in this type of financing. For example, the bill would provide that certain information is to be clearly stipulated on the notes, such as the priority or rights of the holder of the promissory note, that the transaction is an unsecured loan and not a deposit, and that the general creditors of the company may have claims on the company's assets which are prior to the claims of the holder of the note.

The second concept of regulatory control provided under the bill pertains to the authority of the banking department to protect the funds of the public. Companies accepting or soliciting funds from the public would be required to submit certain information to the banking department. Annual statements of ownership and manage-

ment, for example, are to be provided and are to be kept up to date with changes in management. The banking department would be authorized to examine the records and financial condition of companies engaging in this type of financing and would be provided authority to take appropriate legal action to protect the funds of the public.

Trust Company Statutes

The situation in regard to the regulation of trust companies is illustrative of both ineffective supervisory authority provided for a state regulatory agency and antiquated statutes in need of revision. Trust companies may be organized under either of two articles in the Colorado statutes, Article 15 or Article 16, C.R.S. Chapter 14. The regulatory authority provided by these articles, however, is not satisfactory and has permitted a situation in which trust companies have operated in a manner similar to consumer finance companies or as institutions engaging in general banking business. The recommendation of the committee is that Article 15 be repealed and that Article 16 be amended to provide satisfactory regulatory authority over all trust companies organized in Colorado (Bill I in the Appendix).

Specific changes recommended for Article 16 include the amendment of the following sections:

Powers of trust companies. (C.R.S. 14-16-3). This section was reported by the banking department to provide the largest loophole for trust companies conducting general banking or a consumer-loan business. More explicit powers, limited to the trust business, are contained in the amendments recommended by the committee.

Power of court over company. (C.R.S. 14-16-4). More detail concerning the power of courts over trust companies is recommended under this section as revised by the committee.

Liability of stockholders. (C.R.S. 14-16-6). The committee believes that the liability of stockholders in trust companies should be the same, and not greater than, the liability of stockholders in commercial banks. The committee therefore recommends removal of the personal liability of trust company stockholders.

Investments. (C.R.S. 14-16-8). The present statute is reported to have not prohibited the comingling of all trust funds by some companies. This section should be amended to require a separate account for each trust held by a company.

Commissioner to supervise companies. (C.R.S. 14-16-10) and Certificate of authority. (C.R.S. 14-16-11). These sections should be combined to specify that the supervision of trust companies is under the jurisdiction of the banking department and to outline the procedures and guidelines for chartering trust companies. The new requirements for chartering would be similar to the chartering

requirements in the commercial bank and industrial bank statutes. The recommended procedures would eliminate situations under the present statutes, mentioned by the bank commissioner, of trust companies commencing their operations before their charter is granted by the banking department.

Discontinuing trust business. (new provision) It is recommended that a corporation which wishes to discontinue a trust business should be required to furnish satisfactory evidence of its release and discharge from all obligations and trusts. Such a provision would prevent a trust company from leaving its operations without finishing its business with the courts.

Effective date. Since some time would be required for existing trust companies to comply with provisions of the amended act, the committee recommends that the existing trust companies be given until July 1, 1968, to comply with the act.

Items Not Recommended by the Committee

Regulation of Unfair and Deceptive Acts in the Sale of Life Insurance

One of the items under study by the committee was a bill from the 1961 General Assembly (H.B. 437) which would have added a provision in the insurance statutes to prevent insurance agents from making false and decptive claims concerning stock benefits when enaaging in the sale of life insurance. Complaints have been made in the past that some insurance agents had led prospective buyers to believe that they would obtain stock benefits in an insurance company with the purchase of insurance from the company.

The committee found that additional regulatory legislation on this matter was unnecessary since the insurance department is exercising adequate regulatory authority designed to prevent this practice from reoccurring in Colorado. Under the general powers of the insurance commissioner (C.R.S. 72-1-52), a departmental bulletin (No. 44 of May 19, 1965) has been issued which defines various acts and practices which are contrary to the public interest and which would be in violation of specific sections of the insurance code. The bulletin includes definitions pertaining to unfair methods of competition, including offers of stock benefits.

Insurance Sold by Mortgage Lenders

Legislation is not considered necessary by the committee to prohibit a lender on real property from requiring a borrower to purchase mortgage insurance written or sold either by the mortgage lender or by an insurance agent or broker designated by the lender as a condition precedent to making, renewing, or continuing a loan. The bill considered by the committee, S.B. 174 of the 1963 session,

would also prohibit a mortgage lender from refusing to establish an insurance premium escrow account solely because the borrower chose to buy hazard insurance from another agent.

The conclusion was reached that the insurance commissioner currently possesses adequate authority to prohibit such unfair insurance practices by mortgage lenders under C.R.S. 72-14-9, which pertains to unfair and deceptive acts not specifically defined elsewhere in the statutes. It was the belief of the insurance commissioner and other conferees that this matter should be attempted to be resolved by agreements between mortgage lenders and insurers. In this regard, "Uniform Insurance Practices Code" has been adopted by the Colorado Insurors' Association, Inc., and the Savings and Loan League of Colorado. This code outlines the rights and duties of borrowers, lenders, and independent mortgage insurance agents and provides for the establishment of a grievance committee, composed of members of the subscribing groups, to work out satisfactory solutions to complaints arising out of alleged violations of the code. Representatives of the Savings and Loan League and the Colorado Insurors' Association stated their belief that the code was working satisfactorily to all parties.

Other Issues Considered

Consumer - Type Loans Offered by Savings and Loan Associations

Another issue which came to the attention of the committee concerned an authorization, subsequently withdrawn, granted by the state savings and loan commissioner to permit savings and loan associations to offer short-term, consumer-type loans, not secured by first lien trust deeds or mortgages upon improved real estate. During the period in which the commissioner's ruling was in effect, 19 of the 37 state-chartered savings and loan associations had received approval of their loan plans to engage in this type of lending. Such loans generally, but not exclusively, would be made for home improvements.

The committee's activity in regard to the decision authorizing this type of lending activity was to confer at two of its meetings with the savings and loan commissioner and to obtain an opinion of the attorney general in regard to whether the commissioner had statutory authority to permit savings and loan associations to make this type of loan. In his opinion, the attorney general held that there was not statutory authority for the authorization of such loans by the savings and loan commissioner.

Several factors were mentioned by the commissioner as influencing his decision to permit consumer-type loans to be written by savings and loan associations. One factor cited was the recent general decline in the demand for home loans experienced by savings and loan associations. Among other advantages, savings and loan associations could obtain greater liquidity from the shorter term

consumer-type loans than is possible if restricted to longer term home loans. Benefits to the public from this type of loan were suggested including lower interest rates than available from other types of financial institutions. The savings and loan commissioner further suggested that savings and loan associations should be permitted to become lending institutions serving all borrowing needs for the general public.

The committee, of course, was concerned with several factors in the decision to permit this type of lending activity, including the questionable procedure followed in authorizing such loans. Any authorization for savings and loan associations to offer consumer-type loans is properly a legislative decision. Careful legislative consideration would need to be given not only to the factors mentioned above but also to the impact of such a decision upon other types of financial organizations including commercial banks, industrial banks, and consumer finance companies. Among other elements which should be considered in any decision authorizing such loans is the demand for home loan money and the potential effect of any decision which may tend to make the present "tight money" situation even more severe than it is at the present time.

Administrative Reorganization

Time after time the committee ran into problems in which there was serious doubt as to whether the public interest was receiving enough attention in matters concerning the four state agencies -- the banking department, the insurance department, the savings and loan department, and the division of securities. Each of these four state agencies is headed by a commissioner who is very familiar with the financial institutions or activity which he must supervise. Often times the commissioner has come from the business that he must now regulate. This background may well tend to prejudice an individual in favor of the financial institutions which he must regulate.

It is the belief of the committee that reorganization of these agencies must occur to assure the public and the legislature that the public interest is indeed protected. The exact form of this reorganization must correspond with the general reorganization of state government based upon the limit on the number of departments within the executive branch of state government as approved by the electorate this November (Amendment No. 1).

However, the committee would suggest that the insurance department, the banking department, the savings and loan department, and the securities commissioner be placed under one department of financial institutions. We would suggest that the criteria for the commissioner of financial institutions not specifically require experience in the fields that he would regulate but that the commissioner be experienced in administration.

We would further suggest that a board of control be appointed with a member from each of the following: (a) the banking industry,

(b) the insurance industry, (c) the savings and loan industry, and (d) the security industry. In addition we would recommend that five public members also be on this board of control.

We recommend further that this board and the commissioner be responsible for the representation of the public interest in regard to financial institutions. This interest might well concern itself with insurance rates, safety of investments, competition between various financial institutions and similar problems. A separate division should be established within the department specifically for the protection of the public. In addition, a division of liquidation, which should be financed on a self-sustaining basis, should be established to aid and facilitate the liquidation of financial institutions whenever that need should arise.

Other Items for Further Study

The committee was unable to conduct a study covering all the responsibilities of the four major agencies which supervise financial institutions in Colorado. Many of the issues are extremely complex and require considerable study of present practices as well as consideration of possible alternative approaches toward regulatory activities. The committee has concluded that it would be desirable for the 1967 General Assembly to authorize the continuation of the study of financial institutions under the direction of the Legislative Council. Some of the items mentioned for possible future consideration are listed below.

Issues pertaining to insurance. In view of some controversy and public concern in the area of insurance rate-making procedures, it is suggested that a study of these procedures be given further attention by the Legislative Council. Consideration should also be given to the feasibility of regulating the inclusion of subrogation clauses in automobile insurance policies. An example of a state statute prohibiting subrogation clauses, a 1964 Virginia statute, is included in the Appendix as Bill J.

Other areas relating to insurance considered by the committee as possible subjects of further study include the possible need for further refinements in the regulation of "preneed" and "at need" funeral arrangements; the authority of the insurance department in examining the books of holding companies of insurance companies; the adequacy of regulation of the alter ego activities of the managers of insurance companies; and the possibility of requirements with respect to the qualifications of persons who form insurance companies.

State securities act. Among matters in need of further consideration in the securities act are the regulation of offerings of nonprofit corporations organized for religious, educational, charitable, fraternal, or social purposes; exemptions from the registration provisions of the securities act; and provision of a

simplified registration procedure for certain types of issues, such as offerings from nonprofit corporations.

Savings and loan department. Issues relating to the improvement in the regulatory authority of the savings and loan department which should be considered include the establishment of a division within the department to appraise some properties on which associations have made loans; and specific legislation to prevent undesirable persons from obtaining control of savings and loan associations.

Title indexing system. Consideration should be given to simplifying and modernizing the system of indexing the data pertaining to the legal title status of real property in Colorado. One system suggested was the establishment of tract indexes in the offices of county clerks and recorders by use of automatic data processing. Another system mentioned for consideration was the feasibility of implementing the Torrens system of land title registration.

REGULATORY RESPONSIBILITIES OF THE INSURANCE DEPARTMENT

The Colorado Department of Insurance is charged by statute "with the execution of the laws relating to insurance ... and shall have a supervising authority over the business of insurance in this state" (C.R.S. 72-103). The Commissioner of Insurance, the department's chief executive officer, is required to be "a person well versed in insurance, an elector of the state of Colorado, and shall have no pecuniary interest in any insurance company or agency directly or indirectly other than as a policyholder." This officer is appointed by the Governor under provisions of the classified civil service section of the state constitution (Article XII, Section 13).

The types of insurance companies and other financial institutions that are supervised by the Insurance Department are:

(1) Life insurance companies - (Chapter 72, Article 3)

(2) Fire insurance companies - (Chapter 72, Article 3)

(3) Casualty insurance companies - (Chapter 72, Article 12)

(4) Multiple line insurance companies (Chapter 72, Articles 11 and 12)

(5) Mutual benefit life associations - (Chapter 72, Article 9)

(6) County mutual protective associations - (Chapter 72, Article 5)

(7) Reciprocal and interinsurance companies - (Chapter 72, Article 4)

(8) Fraternal benefit societies - (Chapter 72, Article 7)

(9) Title insurance companies which are not Colorado corporations (regulated under the casualty insurance article) - (Chapter 72, Article 18)

(10) Preneed funeral plans - (Chapter 14, Article 19)

(11) Mutual insurance companies - (Chapter 72, Article 5)

(12) Group life insurance companies - (Chapter 72, Article 6)

(13) Employers' mutual liability insurance - (Chapter 72, Article 8)

(14) Bail bondsmen - (Chapter 72, Article 20)

A few of the department's specific responsibilities and procedures in the examination of insurance companies should be noted at the outset since some of the committee's recommendations involve the extension of the department's regulatory authority to presently unregulated types of insurance companies.

All insurance companies doing business in Colorado must file an annual statement on or before March 1, which provides information such as the total annual premiums collected or contracted, amounts paid to policyholders, and information concerning the amount of insurance reinsured in or accepted from other companies. Annual statements are submitted on a form promulgated by the National Association of Insurance Commissioners (C.R.S. 72-1-13). Annual statements are audited carefully and any questions or discrepancies are followed until corrected by the companies.

The statutes also provide that each company shall be examined at least once every three years. The insurance department has its own full-time employees who examine all insurance companies. In the last two years, the department has instituted an additional program of making a partial examination annually of each domestic company which is less than ten years old.

By way of definition, an examination of a company involves far more than an audit of cash balances. Examiners check into every transaction, investment, claim, board proceedings, and all other activities of each company. Each examination covers the full period since the last examination. A detailed report is prepared and if corrective action is needed it is so indicated. The insurance commissioner, deputy, and examiner in charge frequently meet with boards of directors of companies examined to discuss the results of the examinations. If conditions hazardous to the public interest are revealed by an examination, a show cause order is issued and a hearing held to determine the company's fitness to continue operating.

A great many additional responsibilities of the department relating to the insurance industry are included in the statutes. Licensing and examining of agents and brokers; issuing, suspending, and revoking certificates of authority for companies to do business in the state; and certain responsibilities pertaining to a company's cash capital, guaranty fund deposits, and authorized investments are some of the other areas included under the supervisory authority of the insurance department (C.R.S. Chapter 72, Article 1).

The committee's recommendations relative to the supervisory authority of the insurance department have an emphasis slightly different from the recommendations concerning the regulatory activi-

ties and statutes of concern to the banking department. The primary emphasis of the committee's recommendations concerning insurance relate to filling in gaps of presently unregulated areas of the insurance industry and the strengthening of the present financial requirements for insurance companies. Unlike some of the statutes relating to the banking department, the recommendations concerning the insurance code do not pertain to the modernization of outdated statutes, but rather are limited to providing adequate supervision in areas of insurance where inadequate or no regulatory authority now exists.

The specific areas of supervision under the insurance department that are recommended for amendment by the Committee on Financial Institutions include: (1) removal of a "grandfather" clause in the capital and surplus requirements for insurance companies to place the requirements for all companies at the higher level of requirements adopted by the 1963 General Assembly; (2) adoption of a bill to provide for the regulation of non-profit hospital, medical-surgical, and health service corporations; (3) enactment of the model bill of the National Association of Insurance Commissioners pertaining to credit life and credit health and accident insurance; and (4) passage of a bill to provide for the regulation of motor clubs and travel promotion organizations.

The fifth bill discussed in this report is submitted for legislative consideration and would provide for the regulation of all aspects of the title insurance industry through the insurance department. However, the amount of time which the committee members could devote to this bill was too limited for the committee to adopt a favorable or unfavorable recommendation. This bill, therefore, is merely being submitted as a matter of information for consideration by the General Assembly.

Two other items which were considered by the committee -- a bill relating to insurance sold by mortgage lenders and legislation relating to certain unfair and deceptive insurance practices -- are included in the discussion which follows, although further legislation did not appear necessary on these matters.

Capital and Surplus Requirements for Insurance Companies

It is difficult to forecast or to project at what exact level the minimum financial requirements of insurance companies should be set in order to avoid the situation of insolvencies occurring within the insurance industry but yet not exclude from competition smaller, efficiently operated companies. While insolvencies within the insurance industry often might be attributed to a number of factors, such as unqualified or dishonest management or loose underwriting practices, inadequate financial reserves appear to be one of the frequent problems of companies experiencing financial difficulties. The insurance department reported to the committee that eight of nine fire and casualty insurance companies organized in Colorado

between 1951 and 1963 with $50,000 capital or guaranty fund and $25,000 surplus had been placed in receivership.

At the present time there are two separate sets of financial requirements established for insurance companies authorized to do business in Colorado. The level of the capital or guaranty fund, and the surplus requirements for companies licensed in the state prior to May 6, 1963, with the exception of multiple line companies, are one-half as high as the requirements for companies newly authorized to conduct business in the state since that date. Legislation in 1963 (L. 1963, p. 570, § 1) increased the financial requirements for companies seeking admittance to the state but exempted the companies which had previously been granted a certificate of authority in Colorado from these increased requirements.

The statutory requirements for companies issued a certificate of authority prior to May 6, 1963, are specified as:

TYPE OF COMPANY	CAPITAL OR GUARANTY FUND	SURPLUS
Life	$ 100,000.00	$ 50,000.00
Fire	200,000.00	100,000.00
Fire (territory limited to Colorado)	50,000.00	25,000.00
Casualty (including fidelity and surety)	250,000.00	125,000.00
Casualty (excluding fidelity and surety)	100,000.00	50,000.00
Casualty (excluding fidelity and surety -- territory limited to Colorado)	50,000.00	25,000.00
Multiple line	400,000.00	350,000.00

Requirements for companies admitted in Colorado after May 6, 1963, are provided as follows:

TYPE OF COMPANY	CAPITAL OR GUARANTY FUND	SURPLUS
Life	$ 200,000.00	$ 100,000.00
Fire	200,000.00	100,000.00
Fire (territory limited to Colorado)	100,000.00	50,000.00
Casualty (including fidelity and surety)	250,000.00	125,000.00
Casualty (excluding fidelity and surety)	200,000.00	100,000.00
Casualty (excluding fidelity and surety -- territory limited to Colorado)	100,000.00	50,000.00
Multiple line	400,000.00	350,000.00

Subsections (2) and (3) of C.R.S. 72-1-36 provide for the administration of the above requirements and describe the purpose of required deposit:

> (2) The cash or securities representing the minimum capital or guaranty fund required by this law shall be deposited, in the case of domestic companies, with the commissioner of insurance of this state in the manner provided by law, and, in the case of foreign or alien companies, with the commissioner of insurance of this state or with the duly authorized officer of some other state of the United States; provided, the guaranty fund of mutual companies shall be construed to include deposits held for the benefit of policyholders as provided in this chapter.
>
> (3) The deposit shall be held by the commissioner for the benefit of all policyholders wherever located. For a foreign or alien insurer to be allowed credit for deposits in other jurisdictions, such deposits must be held for the benefit of all policyholders wherever located and not solely or with preference for those in the depository jurisdiction.

The recommendation submitted by the Committee on Financial Institutions is to increase, on a graduated basis, the financial requirements for companies presently at the lower level to the higher level of requirements which were added by the 1963 General Assembly. The language recommended by the committee would add a new subsection (4) to C.R.S. 72-1-36:

> (4) Any insurance company issued a certificate of authority in this state prior to May 6, 1963, which does not meet the requirements of subsection (1) (b) of this section, shall within five years after the effective date of this subsection increase its actual paid-up cash capital or guaranty fund and unencumbered surplus in accordance with said subsection (1) (b), by increasing not later than the end of each calendar year said actual paid-up cash capital or guaranty fund and unencumbered surplus by not less than one-fifth of the additional amount required. For good cause, the increase in said funds may be waived in whole or in part by the commissioner for any calendar year, but no such waiver shall extend the final five-year requirement.

A five-year period of time was considered by the committee to be a reasonable time for companies to comply with the proposed new

standards. In order to provide for effective enforcement of the new provision, it was thought advisable to specify that at least one-fifth of the new requirement be added each year. However, since additional factors, such as plans for the merging of companies, may enter into a company's financial status, the insurance commissioner would be given authority to waive, in whole or in part, the increase in funds required for any calendar year, although the requirement for compliance within five years could not be waived.

Regulation of Non-profit Hospital, Medical-Surgical, and Health Service Corporations

Among the financial institutions for which adequate regulatory authority by the state does not now exist are non-profit corporations offering hospital, medical-surgical, and health service coverage. The major organization in this area is Colorado Blue Cross-Blue Shield, which presently has an enrolled membership of approximately 785,000 subscribers. Another company, Hospital Service, Inc., of Fort Collins, has an enrollment of approximately 22,000 subscribers who are residents or former residents of the Larimer County area. The Colorado Optometric Association and the Colorado Dental Society are reported to be sponsoring organizations which offer insurance coverage for services within the scope of these professions. The committee was informed that other corporations, now defunct, had been organized which offered pre-paid health services such as dental care, ambulance service, and prescription service.

For its consideration of legislation in this area, the committee studied Senate Bill 266 of the 1965 General Assembly. Some of the major provisions of the bill are listed below. In general, the type of regulatory activities which the insurance department would exercise under the recommended bill are similar to the authority of the department in other lines of insurance.

Annual statements. The insurance commissioner would be provided information concerning the amount of membership dues or subscriber fees collected annually and the amounts paid annually in benefits to the subscribers or members.

Authority to do business. Corporations under the act would be required to obtain a certificate of authority which is renewable annually. The insurance commissioner is to extend, automatically, the corporation's certificate of authority and an enrollment representative's license upon filing of the corporation's annual statement and the fees due.

Approval of benefit certificates. Copies of subscription or membership certificates and the schedule of rates, dues, or fees charged are to be filed with the insurance commissioner. Forms filed by the companies are subject to disapproval of the commissioner.

Requirements for certificate of authority. Filing of the company's subscription or membership certificates with a schedule of dues and fees to be paid by members or subscribers is required under the act. The schedule of dues and fees is required to be adequate to allow the corporation to meet the expenses for available services without impairing the guaranty fund, yet at the same time not result in an accumulation of reserves in excess of one-third of the total dues or fees received during the preceding year.

Examinations, investigations, and revocation of certificates of authority. Examination by the insurance commissioner of the financial condition, affairs, and management of corporations under this act is required at least once every three years.

The insurance commissioner may suspend or revoke certificates of authority granted corporations, or to their officers or agents, and lists the reasons for which such action may be taken. Procedure for appeals from decisions of the commissioner is specified in the act.

Principal areas of controversy with this bill involved the following four provisions of the act: (1) Possible exemption of small groups operating within a local area or with a limited membership; (2) Rates to be charged for expenses of examinations conducted by the state insurance department; (3) Consideration of the amount of capital and surplus or guaranty fund for organizations under the act; and (4) Establishment of deposits under joint control of the insurance department and the corporation. Each of these issues are discussed in the paragraphs which follow.

Since Hospital Service, Inc., of Fort Collins, and possibly other companies which would come under this act, operate in a limited geographical area and thus serves persons who are well aware of the integrity of the company and with the directors and management of the firm, the committee considered possible amendment of the proposed statute to exempt from the act companies which serve a local community in such a manner. The act was said to be unnecessary and to represent a potential hardship to such corporations as it would not affect the corporation's safety, as far as the protection of the company's subscribers was concerned.

Exclusions from the act granted to any companies which operate either in a localized area, which serve a limited number of members, or which offer limited coverage was considered by the insurance department to be inadvisable public policy. Three small, unregulated companies offering prescription, ambulance, and optometric services had become insolvent in recent years, resulting in some losses to the company subscribers and investors. Exemptions from the act of small companies would negate protection for the public subscribers to these companies which appear to carry substantial risk in the formative years.

Colorado Blue Cross-Blue Shield also objected to the possibility of exempting smaller organizations operating within a specified geographical area, offering limited services, or serving small memberships. It was suggested that any such exemptions would result in a proliferation in the number of small companies. Colorado Blue Cross-Blue Shield further indicated that numerous small companies would be more expensive for their subscribers than is the case with larger companies.

The Committee on Financial Institutions recommends that no exemptions be made under the act but that the bill provide for a sliding scale of financial requirements so that the smaller and larger companies would be subject to requirements based on percentages of annual premium volume. The intent of the legislation is to prevent abuses from occurring in the offering of pre-paid health plans. Any exemption provided for small companies would contradict this intention.

Another objection to the bill cited by Hospital Service, Inc., was the examination fee and travel and living expenses for the insurance department examination and investigation of the company's financial condition, affairs, and management which is to be conducted at least once every three years under section 72-21-20. Alternative suggestions for this examination were that the insurance department accept the annual audit of the company, since an annual audit conducted by a certified public accountant is required under the by-laws of the corporation. The unnecessary duplication of examination expenses could be avoided in this manner.

The bill, as originally discussed by the committee, provided that insurance department fees for examination be "equal to the reasonable costs incurred...as may be determined by the commissioner." The language recommended by the committee, however, provides for a fee of fifty dollars for each examiner for each day required in making such examination, but excludes, as an expense of the companies, transportation and living expenses for insurance department personnel conducting examinations outside of Denver. It is estimated that an examination of Hospital Service, Inc., would require at least five days of examination time, while Colorado Blue Cross-Blue Shield would require considerably more time. The principal reason for charging an examination fee is to recover part of the administration expenses of the insurance department. Companies under this act would not be required to pay a premium tax which, for other companies, would be at rates of one per cent up to two and one-fourth per cent of annual gross premium collections.

It was pointed out by the insurance department that the type of examination of companies which they conduct is not the same as the company's annual audit by a certified public accountant. The department's examinations are based on the requirements of the insurance statutes, which do not cover the same areas as general accounting principles. There are approximately 800 insurance companies in Colorado which require investigation by the insurance department and

it was considered poor policy for the state to establish a precedent of accepting audits conducted by certified public accountants in lieu of examinations by the insurance department.

Two other issues before the committee concerned the financial requirements for companies under this act and the financial reserves in the guaranty fund deposit controlled jointly by each company and by the insurance department. Both of these issues present the difficulty of determining adequate minimum standards, but yet having standards which would account for the variety in the sizes of different companies. Minimum standards which are too high would preclude the organization of new companies, but at the same time the companies should be required to have greater financial reserves as the extent of risk assumed by the companies increases. For these reasons the committee has recommended sliding scales for deposits in the company's guaranty fund.

The plan recommended by the committee would base a company's guaranty fund on the preceding year's subscription income:

(a)	Subscription income of not exceeding $2,000,000:	Five per cent deposit.
(b)	Subscription income exceeding $2,000,000; but not exceeding $10,000,000:	Two and one-half per cent, plus deposit required in (a) above.
(c)	Subscription income exceeding $10,000,000:	One per cent, plus deposits required in (a) and (b) above.

Of the amounts specified above, the committee has recommended that the minimum guaranty fund on deposit with the insurance department (held in a Denver bank) is to be on a scale of from $50,000 to $150,000, maintained according to the company's subscription income. Using these scales, the total guaranty fund for Colorado Blue Cross would be, approximately, $605,000 and Colorado Blue Shield approximately $365,000, of which the portion of the guaranty fund for each company on deposit with the insurance department would be $150,000. Hospital Service, Inc., would be subject to a minimum guaranty fund of $50,000, all of which would be on deposit with the insurance department. Both corporations have substantially greater reserve funds than the minimum requirements specified above.

Some confusion existed in regard to the amounts of the guaranty fund deposited with the insurance commissioner. These funds, required of all insurance companies presently regulated, are maintained in separate safe deposit boxes in various Denver banks, and are controlled jointly by the department and each company. The principal reason for this deposit is to assure that the company's assets will not be dissipated below the minimum amounts held by the department, although the amounts deposited, such as various types of securities and investments, continue to earn money for the company. If a company is required to use a portion of these reserves, it will be closely supervised by the department until its reserves are again at an appropriate level.

Basing the reserve requirements on the number of subscribers in each organization was considered both difficult to administer and an unrealistic approach toward establishing these requirements. Because of the constant changes in their membership, for example, representatives of Blue Cross-Blue Shield stated that their organization does not have an exact number of members covered at any given time which could be used under this approach. It was also emphasized that an arbitrary figure for a reserve requirement, such as one dollar per subscriber, would not be a realistic means of determining the necessary reserves. Use of total subscription income for the previous year was said to provide a more accurate relationship between the necessary guaranty fund and the potential liability of the corporation. A minimum requirement of $50,000 in the guaranty fund deposit was considered necessary by the committee in order to discourage companies starting with too little capital which could be dissipated in a relatively short period of time.

Credit Life and Credit Health and Accident Insurance

Another facet of the insurance industry for which the insurance department does not have adequate regulatory authority is in the area of credit life and credit health and accident insurance written in connection with loans and other credit transactions of less than five years' duration. This type of insurance is purchased by the debtor for the purpose of providing an indemnity for any payments which the debtor may be unable to make in the event of disability or death.

A debtor may be urged by the creditor to buy this type of insurance and, in most cases, this type of term insurance is recognized as advantageous by both parties to a credit transaction. The creditor is assured payment on chattel mortgages in the event of disability or death of the debtor, while the debtor has the assurance that payment on chattel mortgages, such as household furniture, automobiles, and kitchen appliances, will be paid in the event of his death, ill health, or injury.

Credit life and health and accident insurance can be issued in the form of group or individual policies. In the case of group insurance, the lender purchases group insurance and, as the master policy holder, issues certificates of insurance to borrowers. Individual credit life and health and accident insurance policies are written on a term insurance plan.

While recognizing that state regulation of credit insurance should not be too stringent, and thus restrict reasonable competition, or be made too rigid so that no profit could be realized from offering this type of insurance, the Committee on Financial Institutions believes that the credit transactions are now of such proportions, both in terms of money and number of people affected, that there exists a need in Colorado for a specific statute to regulate the field of credit insurance.

Some of the abuses which legislation could help to curb include the possibility of excessive premium rates being charged. Instances have been reported in which borrowers have been required to pay the premiums for credit insurance from three to five years in advance or there has been a failure to make proper refunds on premiums for credit insurance cancelled in cases when a loan has been paid in advance of the maturity date. Other problems cited include the writing of insurance policies for a longer time than the period of the loan or for a larger amount of money than the loan, and excessive commission rates being paid by insurers.

One of the most notable problems which has been brought to the attention of the insurance department is that salesmen of chattels, who are not properly licensed insurance agents, have sold the purchaser of the chattel credit life or addident and health insurance. Insurance Department Bulletin No. 46 of October 15, 1965, attempted to halt the practice of certain credit insurance companies accepting insurance business written by unlicensed individuals. The Bulletin concluded that this practice is in violation of the licensing provisions of the insurance code which requires any person who is not licensed to sell insurance to obtain a license before handling applications for insurance or insurance policies on behalf of an insurance company.

In addition to the licensing power of the insurance commissioner, Colorado statutes provide limited regulatory authority over the sale of credit insurance on the basis of two articles of the insurance code which pertain only to the purchase of group credit insurance. In regard to group life insurance, C.R.S. 72-6-1 (3) stipulates that a group life insurance policy, issued to a creditor for purposes of insuring debtors, must conform to certain requirements.

Under C.R.S. 72-6-1 (3) (b) the persons eligible for group life insurance are "...all of the debtors of the creditor whose indebtedness is repayable in installments,..." C.R.S. 72-6-1 (3) (c) pertains to the payment of the policy premium by either the creditor or the debtors and subsection (3) (d) provides that a group life insurance policy can only be issued to a creditor who has stipulated numbers of debtors.

Under subsection (3) (e) of C.R.S. 72-6-1, the commissioner of insurance is provided some regulatory authority in regard to the total amount of credit life insurance written, which is not to "exceed the amount owed..., or ten thousand dollars whichever is less."

With respect to the regulation of policies for credit health and accident insurance, the commissioner of insurance must rely on a liberal interpretation of a portion of C.R.S. 72-10-16 which specifies requirements for group health and accident policies issued to an employer for purposes of insuring ten or more employees. Subsection (1) (d) of this section (C.R.S. 79-10-16) has been interpreted as granting the commissioner authority to regulate other forms

of group health and accident insurance or credit health and accident insurance. Group sickness and accident insurance is declared to be insurance issued on the following basis:

> (d)...a policy issued to any other substantially similar group /i.e., other than "employers," "private individuals," "partnerships," and "corporations" for purposes of insuring ten or more employees/ which, in the discretion of the commissioner, may be subject to the issuance of a group sickness and accident policy or contract.

It appears that the insurance commissioner is placed in a difficult position of supervising this area of insurance because of the vague or imprecise authorization provided in subsection (1) (d). The remaining provisions of C.R.S. 72-10-16 stipulate what a group health and accident policy must contain. Subsection (2) (b) of C.R.S. 72-10-16 provides that the policy and the application of the policy holder "shall constitute the entire contract between the parties..." insurer, policy holder, and debtors. In subsection (2) (c) of C.R.S. 72-10-16 it is stipulated that each member of the insured group shall receive "an individual certificate setting forth in summary form a statement of the essential features of the insurance coverage ...and to whom benefits thereunder are payable...." C.R.S. 72-10-16 (2) (d) provides that the policy shall make provision for the addition of new members from time to time.

There exist no specific provisions in the insurance code to provide for the regulation of credit life and health and accident insurance policies written on an individual basis. Moreover, the insurance code does contain a specific provision to require that such policies, and certificates of insurance, must be filed and approved by the commissioner of insurance. Rates and the classification of risks must be filed, but the commissioner is not granted approving or disapproving authority over them.

However, the state banking commissioner does have some authority over the use of credit insurance sold in connection with loans of $1500 or less under the Consumer Finance Act. (C.R.S. Chapter 73, Article 4.)

C.R.S. 73-4-1 gives the lender the right to procure insurance as security for loans and the right for the lender or his employee to sell this insurance if he is a licensed insurance agent. The amount of credit insurance shall not exceed the face amount of the unpaid balance of the loan and is to be written on a declining term basis. Section 73-4-1 also provides for refunds of insurance premiums in the event of renewal of a loan or if a new loan is taken out by the same borrower.

C.R.S. 73-4-2 provides that the premium for credit insurance is not to be computed as an additional cost of the loan, though "the premium or identifiable charge may be included in and become part of the loan."

In C.R.S. 73-4-3 the lender is prohibited from requiring the purchase of insurance from the lender or from an agent designated by the lender as a condition for making the loan. The lender may not decline existing insurance provided by an outside agent or insurance company.

Still lacking, however, is an over-all regulation of the writing of credit insurance for security on loans other than for loans under the Consumer Finance Act. Further, there is no statutory authority for the approval of credit insurance rates by the insurance department. Nor are there any requirements that the policies contain certain provisions, such as refund provision or limitations that the amount of insurance written cover only the actual indebtedness of the borrower and be limited to the term of the loan.

After considering the problems of credit life and health insurance not being subject to effective statutory regulation by the insurance department, the Committee on Financial Institutions has recommended the adoption of the model bill on credit insurance prepared by the National Association of Insurance Commissioners in 1958 and introduced in the General Assembly in 1961 as House Bill 281. The purpose of this bill is not to impede reasonable competition nor to prohibit reasonable profits in the writing of credit insurance. Rather, the bill is recommended in order to provide regulatory authority over an increasingly important segment of the insurance industry.

Motor Clubs, Associations, and Motor Travel Promotion Organizations

A recurring problem in Colorado results from a lack of specific legislation to provide supervision of the operation of motor clubs and travel promotion organizations under a state regulatory agency. Briefly described, these clubs and associations have offered their members, for a registration fee and dues, benefits such as tow car service, emergency road service, touring services, reimbursement of legal expenses, and bail bond service to cover the arrest of a member on manslaughter charge arising from the use of an automobile.

During the deliberations of the Committee on Financial Institutions, the state commissioner of insurance reported that the operations of some motor clubs, such as local organizations affiliated with the American Automobile Association, are beyond reproach. However, there have been motor clubs and travel promotion organizations operating in Colorado which have sold memberships to the public but which subsequently either ignored a member's claim or have disappeared from the state after collecting substantial amounts in membership fees.

Since there are no specific licensing requirements for representatives of motor clubs, and the statutes of Colorado do not require such travel organizations to have a capital structure, it is possible

for the promoters to collect money for purported benefits and move to another state with impunity, with little risk of being apprehended by Colorado authorities. Presently, the only real recourse for an individual who has been subject to the operations of unscrupulous promoters in the areas of motor clubs and travel promotion organizations is to bring suit against the individuals for collection of the benefits promised. Such suits, of course, are infrequently pursued due to the expense of adjudication and the difficulty of finding the promoters once they have left Colorado.

The insurance department has attempted to regulate some aspects of the operations of motor clubs in Colorado on the basis of a May, 1960, opinion rendered by the Colorado Attorney General. That opinion held that legal protection provisions constitute doing an insurance business in Colorado and, therefore, are subject to the jurisdiction of the insurance department. On the basis of the Attorney General's opinion, the insurance department has analyzed the club membership contracts which have been sold in Colorado and has determined that a number of these contracts do contain some of the specific insurance provisions. Cease and desist orders have been issued to those organizations which include insurance provisions in their membership certificates and these organizations have been directed either to qualify as insurance companies, to remove the insurance provisions from their contracts, or to have the insurance coverage provided by a licensed insurance company. However, other non-insurance services offered by motor clubs are not subject to the regulation of any state agency. Examples of these benefits include "theft reward service" and "touring service."

The Committee on Financial Institutions has given consideration to legislation to regulate these organizations and has recommended enactment of a bill prepared by the insurance department as a means of preventing abuses in the travel promotion and motor club industry. Included in the bill are specific definitions of the following types of services and benefits offered by motor clubs, associations, or motor travel organizations: bail bond service, emergency road service, financing service, liability insurance service, legal reimbursement service, map service, theft or reward service, touring service, towing service, travel service, and personal accident insurance service.

The bill provides for the licensing by the insurance commissioner of persons engaged in the operations of a travel organization in Colorado. An official of the Rocky Mountain Motor Club (AAA) pointed out that the licensing provision, with a $100 annual fee requirement, and the requirement for financial standards, would help prevent unscrupulous travel club promoters from operating in Colorado. It was noted that periods of economic recession, for example, have brought about increased activity in this area, since some promoters, who might otherwise be unemployed, enter the field by soliciting funds from the public in a fraudulent manner at little financial or legal risk to themselves.

Provision is included in the bill requiring the applicant for a license to place $100,000 on deposit with the insurance commissioner, either in cash or in the form of approved securities. Exempted from the guaranty fund requirement, however, would be corporations organized under Colorado laws and having a net worth located in this state of not less than $100,000. Such organizations would be considered to be established in Colorado and, therefore, would not be subject to sudden or unexpected moves from the state.

Flight from the state is one of the means by which dishonest promoters of travel promotion organizations and motor clubs avoid apprehension after selling worthless certificates of membership. To deal with this problem, the committee has recommended that the violation and penalty provisions of the bill make violation of the act a felony rather than a misdemeanor. It is suggested that making violations of the act a major rather than a minor offense would help avoid any questions of extradition which might otherwise arise. It was also recommended that violation of the act should be further defined as "willful intent to defraud" in order to alleviate the possibility of prosecution resulting from honest errors on the part of a travel club's officers or employees.

Title Insurance Statutes

Colorado statutes presently provide for the regulation of domestic title insurance companies by the state banking department, while foreign title insurance companies are supervised by the insurance department. In addition to inconsistencies which result from two different sets of statutes covering elements of the same industry, the extent of regulatory authority exercised by the two departments was not considered adequate by the Committee on Financial Institutions, tions. A number of provisions of the present statutes may be cited to illustrate the inconsistencies and shortcomings of the present statutes in the area of title insurance:

(1) There is no filing or review of policy forms or rate schedules of domestic title insurance companies although foreign companies are required to file their rates and policy forms with the insurance department. Domestic companies may offer rebates or cut their rates, but foreign companies may not engage in these practices.

(2) There is no examination or licensing requirement for agents of domestic companies. Examinations for foreign company agents are conducted by the insurance department under the casualty insurance article in lieu of specific authority to examine for title insurance underwriting.

(3) The major control which the banking department has over domestic title insurance companies is a check on their reserve funds which are to be investments in first mortgages or other approved types of securities.

(4) Because of the lack of more appropriate statutory provisions, foreign title insurance companies are licensed and regulated as casualty insurance companies even though the casualty article is not designed for regulation in this area.

Some review of a number of the unusual attributes of title insurance, particularly the features of this type of insurance which differentiate it from other lines of insurance, may be advisable before reviewing the committee's decisions. It might be explained that title insurance is

> insurance against loss or damage resulting from defects or failure of title to a particular parcel of realty, or from the enforcement of liens existing against it at the time of the insurance.

Title insurance has been described as an evolutionary step from the abstract system of protecting property with an evidence of title. A purchaser of property or a person loaning money on a mortgage is provided, for a single fee, with insurance against contingencies such as title fraud and mistaken entries which warrants the validity of the title in any and all events. The traditional professional services of an abstracter or title examiner have an additional element of insurance coverage against the invalidity of the title. In effect, the element of insurance coverage would replace the bond held for abstracters for the payment of damages that may be sustained by or accrue to a person having a cause of action as a result of an error, deficiency, or mistake in an abstract issued by a licensed abstracter.

Because of the nature of the risk assumed, the title insurance industry explained that it would be difficult for title companies to have competition in their rates. Unlike other lines of insurance, rates for title insurance are not based on a degree of chance by which the rate can be computed on an actuarial basis. Title insurance is written on the basis of an opinion that the title is valid, so the risk on the part of the company is removed, hopefully, before the policy is written. For this reason, title insurance companies generally would have lower percentages of losses and a higher expense ratio than other types of insurance companies.

Other factors said to influence rate competition in this line of insurance included the relatively limited market of the business which restricts this underwriting to comparatively few companies. It was reported that six companies are writing title insurance in the Denver area and these companies are competing on the basis of their quality of underwriting and service offered rather than on rates. The policies of all companies must be substantially the same as they must be acceptable to financial institutions throughout the nation which provide the funds for local mortgage lending institutions. Federal requirements for Veterans' Administration and Federal Housing Administration loans also require standardization of title insurance policies.

The bill which has been presented to the Committee on Financial Institutions would provide authority for the insurance department to supervise the entire title insurance industry. Examples of the supervision provided by the bill include many features of general insurance law such as the filing of rates based on Colorado experience; the establishing of financial requirements appropriate for this line of insurance; a prohibition of title insurance companies writing other lines of insurance and also a prohibition against other kinds of insurance companies transacting title insurance business; the establishing of requirements for reserves; approval of policy forms; examination and licensing of agents, with an exemption to be made for attorneys-at-law who are working in the area of title insurance; and appropriate supervisory authority for the insurance department over rate deviations, rebates, policy forms, and the examination of records.

The Committee on Financial Institutions is in the position in regard to this legislation of only making note of the issue and its general finding that some legislation in the area of title insurance seems appropriate for clarification of the present situation. In this connection, the bill outlined to the committee was presented too late in the committee's deliberations for the necessary amount of consideration to be given to the legislation. For this reason, it seemed inadvisable for the committee to submit either a positive or negative recommendation of the bill to the 1967 General Assembly. A copy of the bill, which has been prepared for introduction in the 1967 session, is contained in the Appendix to this report.

Insurance Sold by Mortgage Lenders

During its deliberations, the committee gave consideration to legislation to cover a potential problem area of insurance being sold through the mortgage lending industry. The bill under discussion (S.B. 174, 1963 session) would have two principal purposes. First, it would prohibit mortgage lenders from requiring a borrower to purchase insurance on the mortgaged property from the mortgage lender, or from an insurance agent, broker, or company designated by the mortgage lender, as a condition precedent to making, renewing, or continuing the loan. Secondly, the bill would prohibit a mortgage lender from refusing to establish or to maintain an insurance premium escrow account solely because the borrower purchases hazard insurance written or sold by an agent or broker other than the lender, or does not purchase coverage through an agent or broker designated by the lender.

The major problem which the bill would attempt to solve concerns complaints that mortgage lenders have, at times, refused to accept substitute insurance policies written by outside agents for coverage of mortgaged property.

Representatives of the mortgage lending industry, the Colorado Insuror's Association, Inc., the Savings and Loan League of Colorado, and the State Department of Insurance were heard in regard

to the necessity for legislation in this area. The committee was informed that, in some cases, some of the specific reasons given by mortgage companies for refusing to accept substitute insurance policies included situations in which the new policy was submitted after the expiration of the old insurance policy, that the new policy was improperly written, or that the policy provided inadequate coverage.

It was the belief of the insurance commissioner that this matter should be attempted to be resolved by agreements between mortgage lenders and borrowers without the necessity of legislation. A number of steps have already been taken by insurers and mortgage lenders, the most notable of which was the adoption in 1961 of a "Uniform Insurance Practices Code." The Savings and Loan League of Colorado reported that nearly every member of the League and the Colorado Insuror's Association presently subscribe to this Code which outlines the rights and duties of the subscribers in the interest of standardization and uniformity of mortgage insurance including the following relative to the rights of borrowers:

> It is understood and agreed that the lenders will not refuse to make a loan or discriminate in the terms or conditions of any loan or in the application of any uniform procedure adopted by the lender because the borrower will not purchase or accept hazard insurance placed or written by the lender.

The other provisions of the Code state the rights of the lenders with respect to the types and conditions of insurance policies which must be met before a lender is obligated to accept substitute policies, either initially, at a renewal date of the policy, or at some point in the term of the loan. However, the lender is obligated not to solicit business if another policy is written by the same outside agent and submitted to the lender either as a substitute for an existing outside policy or as a substitute at the time of renewal. The lender may solicit business at the time of the substitute policy's expiration or anniversary date. Written authorization by the lender is required, however, in cases where an outside policy is submitted by a different outside agent as a substitute for an existing outside policy.

The Code also provides for the establishment of a Grievance Committee, consisting of one member from each of the subscribing groups, the purpose of which is to work out satisfactory solutions to the complaints submitted. It was reported that in the last two years only six complaints have been submitted to the committee and each of these has been satisfactorily resolved for the parties involved. The Colorado Insuror's Association stated that they have been satisfied with the way the Code has worked since it was agreed to in 1961.

Relative to existing authority of the insurance department to assure the right of borrowers to choose hazard insurance on mortgaged

property, reference was made to C.R.S. 72-14-9 (covering unfair and deceptive acts not defined in the statutes) and to Section B of Insurance Department Bulletin No. 31 issued by the insurance department on September 1, 1958.

The net effect of the Code of Ethics and the administrative supervision of the insurance department was deemed by the Committee on Financial Institutions to be sufficient in preventing mortgage lenders from refusing either to establish escrow premium accounts for outside agents or to accept outside insurance policies submitted by borrowers.

Regulation of Unfair and Deceptive Acts in Selling Insurance

It was reported to the committee that, at times, some insurance agents and companies doing business in Colorado have attempted to sell life insurance by using statements to the effect that the purchaser would obtain certain stock benefits in the insurance company providing the insurance. Sometimes persons may be led to believe that they can realize large financial gains as a stockholder from this type of stock offering through false or misleading statements by insurance agents. The committee gave consideration to the necessity of further legislation in this area, including the possible addition of a specific statutory prohibition against this activity.

The committee found, however, that the insurance department is exercising adequate authority to prevent this practice from occurring. Bulletin No. 44 from the department, issued May 19, 1965, defines various acts and practices which are contrary to the public interest and which would constitute a violation of the insurance code, including C.R.S. 72-1-31 and all of Article 14, Chapter 72, which pertains to unfair methods of competition.

REGULATORY AUTHORITY OF THE STATE BANKING DEPARTMENT

Five areas of regulatory activity under the supervision of the state banking department represent five different problems:

(1) Commercial bank statutes provide, in general, adequate regulatory control but are considered to be in need of modernization.

(2) Regulatory authority of domestic title insurance companies, as discussed in the section pertaining to the regulation of insurance companies, is misplaced as a responsibility of the banking department, domestic title insurance companies are regulated as casualty companies by the insurance department, and neither domestic nor foreign title insurance companies are provided suitable regulatory supervision by the state.

(3) Credit union statutes are in need of modernization and a tightening of supervisory control by the banking department.

(4) The solicitation or acceptance of funds from the public by the consumer finance industry is not now effectively regulated nor supervised under the laws of this state.

(5) Trust companies may be organized under one of two articles of the Colorado statutes, neither of which provides effective supervisory authority by the state banking department.

In considering the responsibilities of the banking department, it is important to note the role of the state banking board. C.R.S. 14-2-2 provides for the establishment of the banking board consisting of six members who are appointed by the Governor, plus the bank commissioner, a classified civil service employee who serves as the chairman of the board. Four of the board members are to be experienced, active bankers, and two members are to be nonbankers knowledgeable in industry, agriculture, and mining. Other statutory requirements for board membership include that not more than one banker member of the board is to be appointed from one congressional district and not more than two banker members are to be from the same major political party. The two nonbanker members also are to be from different congressional districts and different political parties. No board member is to have an interest in a bank in which another member of the board has an interest. Board members, other than the bank commissioner, must be approved by the Senate, and board members serve six-year terms which are staggered to provide that the terms of two board members lapse every two years. The powers of the board are limited to issues concerning the banking code, even though the banking department's regulatory authority encompasses many other types of financial institutions.

Commercial Bank Statutes

The state banking department is required by statute to examine each bank at least twice each calendar year or as often as advisable. In lieu of one examination, the bank commissioner may accept the examination made by the Federal Deposit Insurance Corporation or by the Board of Governors of the Federal Reserve System. The department makes one examination each year and one joint examination is made with examiners of the Federal Deposit Insurance Corporation or the Federal Reserve Bank in instances in which the bank is a member of the Federal Reserve System. These examinations are made at irregular intervals on a surprise basis.

In addition to these regular examinations, all state banks are required to file four reports each year with state and federal supervisory authorities. These reports are submitted on forms supplied by the supervisory authorities, and exhibit, in detail, the total assets and liabilities of the bank at the close of business on the day specified by the supervisory authorities. Each bank is required to file an annual report reflecting the income and expenses and dividends paid for the past year. Progress reports also are requested from banks which are in need of closer supervision.

In other cases, representatives of the banking department, members of the state banking board, and representatives of the Federal Deposit Insurance Corporation or the Federal Reserve System have met with the officers and directors of problem banks to obtain the desired changes necessary to eliminate the problems. Some banks have been placed on a special list and are examined more frequently, either by banking department or by federal authorities. The banking department has encouraged banks to have independent audits made by certified public accountants to verify deposit and loan accounts.

In general, the present regulatory authority provided under the statutes is considered adequate by the committee, with the exception of a needed provision to prohibit assumption of control of a bank by persons who have been convicted of a felony or of fraud. A number of other recommendations center upon the elimination of some provisions of the banking code that are now needlessly restrictive or are obsolete. Particular emphasis has been placed upon revising the presently cumbersome procedures involved in the chartering of state banks. The major statutory changes recommended for the banking statutes are discussed below:

C.R.S. 14-3-2. Accounts and interest. Recommended changes would remove the reference to three per cent maximum interest rate on savings and time deposits, in subsection (3), a provision which appears to be superfluous in view of the immediately following language empowering the state banking board to authorize state banks to pay as high an interest rate as national banks. This change would remove the present references to the interest rates paid by national banks and would establish the tests for determining maximum interest rates as rates which are "prudent and sound." As suggested by the

committee, the revised provision would allow state banks to be competitive with national banks by the banking board not being restricted merely to following the lead of national banks in setting interest rates. The Federal Reserve Act specifies that the rate of interest paid by member banks on time or savings deposits shall not exceed, in any case, the applicable maximum rate permitted under the act or the maximum rate authorized by statutes in a particular state.

Subsections (1) and (2) of C.R.S. 14-3-2 have not been recommended for change. These subsections include the prohibition of the payment of interest, directly or indirectly, on demand accounts and the authority of a bank's board of directors to prescribe regulations concerning the repayment of savings deposits.

C.R.S. 14-6-2. Loans - personal - secured and unsecured. The present statutory limitation of $2,500 as the amount which a bank can lend to its officers or employees was considered by the committee as being an unnecessarily restrictive limitation in view of the present economic conditions.

Under the committee's recommendation for C.R.S. 14-9-17 (2) (b), each loan, advance, discount, overdraft, and purchase or sale of a security in excess of (a) one per cent of a bank's capital and surplus, or (b) over $1,000, whichever is larger, or (c) each loan, advance, discount and overdraft which make the total obligation of one person exceed that amount is to be reviewed, at least monthly, by the bank's board of directors or the board's executive committee. This provision was considered to furnish adequate protection which makes the additional language of the subsection requiring approval of the board of directors of loans to bank officers and employees unnecessary.

C.R.S. 14-6-3. Loans - real estate - security. Subsection (1) (a) presently limits real estate loans secured by first liens to loans upon "improved" real estate but the definition of "improved" or "unimproved" property appears to be a matter of differing points of view. Questions based on artificial or arbitrary differences -- such as whether a minimal development of the property, e.g., a load of gravel for a road, would change the property from an unimproved to the improved classification -- would be eliminated by the amendment suggested by the committee. It was reported that it has been necessary for persons in Colorado to obtain loans on unimproved property in this state from banks in New York or from banks in other states which permit this type of loan.

The suggested amendments indicated in subsection (1) (c) of C.R.S. 14-6-3 would increase the percentages of appraised value of real estate that may be loaned for five and ten-year periods. Federal regulations, which apply to state banks under a 1965 amendment to subsection (2) of this section (L. 1965, Ch. 94, § 2), have had the effect of negating the present 60 per cent limitation on such loans of up to ten year's duration.

C.R.S. 14-9-6 through 14-9-9. Bank Chartering Procedures. The committee has recommended that the present cumbersome procedure of chartering a state bank be simplified by the elimination of the "notice of intention" which is now filed before an application for a charter is filed. The application for a charter could be used to serve the same purposes that the notice of intent has served since the information required by both forms would be essentially the same. Filing an application for a charter, as the first step in chartering a bank, would allow the banking department to begin processing the application immediately instead of having to wait 30 days required under present procedures. The procedures used in holding hearings and in granting or denying a bank charter would not be changed under the committee's recommendation.

A revised application fee has been suggested to be set at $1,000, rather than $500 under present C.R.S. 14-9-6, with $750 to be refunded if the application is withdrawn before the public hearing on the application. No refund is presently available if an application is withdrawn. The banking department has reported that this fee system would be more realistic than is provided under the present law.

A new subsection (3) is recommended for C.R.S. 14-9-9, the section which contains the procedures for making application for a charter. The new provision would outline the duties of the state bank commissioner in notifying interested parties that an application for a new bank charter has been received. The procedure in the new subsection would replace the notices to interested parties which are now mailed after receipt of the notice of application to organize a new bank.

Another amendment to C.R.S. 14-9-9 would provide that an application for a bank charter must be made within six months from the date of the first contact to subscribe for stock. This period of time was considered by the committee to be a reasonable period in which a proposed bank should be organized.

An amendment recommended for C.R.S. 14-9-9 (1) (c) would assist in the detection of any undesirable connections between banks and help prevent the control of banks from residing with persons who legally cannot possess control by requiring information on the amounts borrowed on stocks held by major stockholders. In the recommendations of the Permanent Subcommittee on Investigations of the United States Senate Committee on Government Operations, the subcommittee noted its belief "...that the Brighton (Colorado) National Bank case represents most clearly the need for the imposition of strong restrictions upon the borrowing of funds for organizing newly federally insured banks or purchasing existing banks, and that such restrictions must include controls on the use of bank stock as collateral in such transactions." The amendment to C.R.S. 14-9-9 (1) (c) would provide a disclosure provision which would contain at least some of the necessary information concerning a new bank's financial connections.

As an additional precaution against undesirable elements entering into the banking field, the committee has recommended adoption of a requirement of approval by the state banking board of the assumption of control of a bank by a person, persons, partnership, corporation, or any combination of the same, controlled by any person who has been convicted of a felony or of fraud in this state or in any other jurisdiction.

C.R.S. 14-9-17. Directors - meetings - duties. A suggested amendment would increase the size of loans that do not require approval of a bank's board of directors or its executive committee in order to provide that the time of the board be used in carefully checking the larger loans rather than in spending time on some of the smaller loans.

An amendment for subsection (4) of C.R.S. 14-9-17 is also being recommended by the committee to require the checking of trust investments by the bank's board of directors at least twice a year instead of once a year. If such a check cannot be made twice a year, it is the thinking of the committee that the bank should not engage in this type of account.

Solicitation of Funds from the Public

At each of its meetings the committee devoted considerable attention to a serious problem involving an unregulated area of particular interest to the consumer finance industry. This area concerns the solicitation and acceptance of public funds, usually issued as debentures or other types of promissory notes, which funds are utilized by a number of consumer finance companies as one means of financing their lending operations. While numerous issues and problems are involved in determining the proper vehicle for regulation of such funds, no opposition was expressed to the principle that additional regulation was necessary for the protection of the public in this area of financial transactions. It was noted, for example, that the consumer finance industry was interested in legislation that would provide for additional safety of these funds in order to enhance the marketability of promissory notes as well as provide for the safety of the public's money.

A check of the situation involving the issuance of promissory notes and debentures revealed a wide variety of practices by consumer finance companies engaged in this type of financing. The bank commissioner reported that, according to the last annual financial reports, various types of short and long term notes, bonds, and debentures issued by 58 consumer finance companies totaled over $15,300,000 presumably being held by the public. However, since these figures were obtained from the annual financial statements of these companies, the detail of the exact arrangements was not available without correspondance or conference with each company. For this reason, inquiry was made of these companies and the opportunity was given for these companies to outline and discuss their operations with the committee.

Reports received from the industry confirmed that this type of operation was so varied that the circumstances and financial arrangements differed with practically each company. Some companies advertised for funds from the public, offering debentures or "investment certificates" at a specified price, sometimes with a limitation on the amount held by any one investor. Some debentures were "short term"; others were for periods of up to five years; and passbook type accounts were reported available from some companies. Some funds were found to be obtained from family sources, partners, stockholders, or other close associates of the management of the consumer finance company. A number of companies were found to have received none of their funds from the public, but instead obtained their funds exclusively from lines of credit with banks, mortgage companies, insurance companies, or other financial institutions. Numerous companies used a combination of several of the above sources of money to finance their operations. The large chain organizations appear to have differing methods of operating but one chain was said to make use of almost every possible means of borrowing funds, at one time or another, in the financing of its operation.

The committee was briefed by the Denver Regional Office of the Securities and Exchange Commission concerning the operation of the defunct Joe Newcomer Finance Company of Colorado Springs, which may be considered illustrative of the worst problems caused by the presently unregulated situation. In this operation, notes were sold to at least 2,500 investors through the use of all advertising media, including radio, television, mail, and newspaper advertisements. The funds received were used to finance a number of fraudulent alter ego corporations controlled by Newcomer.

Three principal areas of the company's activities between 1957 and 1963 were pointed out by the SEC. First, as the financial condition of the company became increasingly poor, the interest rates paid were increased from five and one-half per cent to eight and one-half per cent, plus bonuses offered which could result in a total annual interest return of as high as 11 and 12 per cent. Secondly, investors were given the impression, perhaps supplemented by the intensive advertising campaign, that their investments were safe, guaranteed, and payable on demand, in the same manner as a bank account. It was noted that the company attempted to attract more investors so that investors could be paid off on demand and also in order to finance the company's alter ego business ventures. The third factor involved in the company's success in obtaining public funds was the company's aura of respectability created by the advertising campaign.

It was reported by the SEC to the committee that, until 1957, the Newcomer operation had operated as a legitimate business. However, around 1959, the company appeared to have difficulty raising capital from its usual financial sources and it then commenced its advertising campaign to raise capital from the public. The company may not have been in violation of SEC laws until it began soliciting funds from the public.

The SEC reported that it had no reason to check the Newcomer operation until April, 1963, when the company was thought to be in possible violation of the securities acts for failing to register securities which were being offered in the advertising campaign. It was in the somewhat routine check of this violation that the insolvency of the company became apparent. One reason the Newcomer operation did not come to the public's attention at an earlier date was that the company had paid its depositors on demand, even though, under the deposit arrangement, the company had the option of requiring depositors to wait 90 days before returning their funds.

Other elements of the Newcomer case should be mentioned as important factors in the committee's consideration. Public funds deposited with the finance company were being drained off to support two unsuccessful alter ego corporations which Newcomer was promoting. In addition, the three officers of the finance company were being paid monthly salaries of $1,750 to $3,500 from the finance company and from the two alter ego corporations.

According to the SEC Regional Office, the financial condition of the company may have been misrepresented as early as 1958, although the extent of misrepresentation increased as the operation continued. By September 30, 1961, for example, the company's capital and surplus as represented in financial statements totaled $332,604, whereas the extent of insolvency, as adjusted, was minus $287,892, or a difference of $620,496 between the two figures. The company was reported to have lost $1,014,605 of investors' moneys by April 19, 1963, approximately $500,000 of which had been charged to fictitious interest charges for the alter ego companies and another $400,000 of which had been used for advertising and promotion expenses. Among other dishonest accounting procedures used in misrepresenting the company's financial condition, the company capitalized expenses such as salaries for officers, attorneys' fees, and advertising expenses, even though these expenses would have no value.

Present Colorado statutes do not provide for the regulation, disclosure, or reporting to the state banking department of funds obtained from the public. As indicated earlier, the banking department had surmised that over $15,300,000 had been accepted from the public by consumer finance companies, but this total was found to consist of funds from numerous "non-public" sources, including funds from family, close associates, stockholders, and other financial institutions. The authority of the banking department is limited, in the consumer loan field, to examination of loan charges with little supervision over the company's financial requirements.

A substantial portion of the committee's deliberation was devoted to the consideration of the proper approach for the regulation of promissory notes offered by consumer finance companies. A bill has been prepared on the basis of establishing the following requirements for companies in the business of making loans, but which are not otherwise regulated.

The person from whom funds are accepted is to be informed, under section 3 of the bill, that the transaction is an unsecured loan and not a deposit of any type; that the funds are not insured by any government agency; the purpose or proposed use of the funds; the priority or rights of the holder of the evidence of indebtedness; that the general creditors of the person accepting the funds may have claims on the assets which are prior to the holder of the note; and, if applicable, that some of the assets of the person accepting the funds are or may become security or pledged for the payment of other indebtedness of the borrower.

Statements of the ownership and management of the companies soliciting or accepting funds from the public are to be filed annually with the bank commissioner and within ten days of change in the ownership or management of the business. (Section 3 (2), The bill provides that the bank commissioner may examine the records and financial condition of these companies in order to keep sufficiently informed of the financial condition and business methods of persons operating under the act. Action may be brought by the bank commissioner to order a person to cease and desist from deviations from the disclosure provisions of the act (Section 4 (3)), and to bring action in the district court to impound, and to appoint a receiver for, the property and business of the person which the court may deem necessary to protect and preserve the funds of the public (Section 5).

No company is to solicit or accept funds from the public where any owner, officer, director, trustee, partner, or associate, or any shareholder owning, directly or indirectly, ten per cent or more of the company's stock, has been convicted of a felony (Section 6).

The approach of this bill toward achieving full disclosure for the public in the issuance of these notes, plus adequate supervisory authority of the state bank commissioner, was decided upon after several alternative drafts of the bill had been considered by the committee. Earlier draft bills provided more specific financial conditions which companies would be required to meet before any promissory notes could be offered. For example, such an approach could require companies to have a one-to-one ratio between unpledged notes, mortgages, and contracts with the funds accepted from the public, and a ratio of public funds accepted to unsubordinated capital and surplus of not more than five to one. Minimum financial standards of capital and surplus before the issuance of promissory notes was another financial requirement considered by the committee. However, the variety of financial arrangements found in regard to consumer finance companies offering and accepting funds from the public made it impossible to establish meaningful requirements covering the situation of each company. Such requirements, in some cases, would interfere with the operations of legitimate companies but yet not provide adequate regulation covering other situations. The situation from the point of view of the consumer finance industry in regard to an earlier draft bill containing financial requirements was described by the Executive Secretary of the Colorado Association of Consumer Finance Companies in the following manner:

> independents alike, were all so diverse and different that it was impossible to correlate them or come up with recommendations for changes in your proposed bill that a majority would support. The bill as written affects many of them adversely but each so differently that the correction required in one case seems always to unfairly restrict another. I am talking about financially stable companies with a history of years of successful operation in the lending and financing field.
>
> Capital, with which to make loans and finance purchases, is raised by the various companies and individuals in this business in many different ways. Particularly is this true in the case of smaller hometown independents. It is this history that makes it impossible for the Association itself to take any stand on a bill such as the one you have drafted. Thank you again for the time you gave us to study the matter.

The legislation recommended by the committee is believed to offer adequate protection for the public against unscrupulous operations in the area of solicitation of public funds, and still allow for the diversity and flexibility of operations found to be a characteristic of consumer finance companies. Since every contingency of operation within the "business of making loans" could not be drafted as a part of the bill, the committee has taken the alternative approach of providing general rules of disclosure and supervision by the state to establish the necessary framework of regulatory activity.

Trust Company Statutes

In spite of the fact that Colorado presently has two acts pertaining to trust companies, the committee has agreed with the state bank commissioner that this area of financial institutions is not satisfactorily regulated. The recommendation of the committee is to repeal the older of the two acts, Article 15 of Chapter 14, C.R.S. 1963, and to make appropriate amendments to provide for the regulation of corporations in the trust business in Article 16 of Chapter 14. It was reported that three corporations, one of which does not conduct business, are organized under Article 15, and two companies are reportedly organized pursuant to Article 16.

Generally stated, the powers of trust companies operating under Article 15 consist of the ability to act as a trustee and to accept and execute any trust; to provide safekeeping facilities for valuables such as precious metals, jewelry, money, and securities; and to act as surety for administrators, guardians, or the like when required by law (C.R.S. 14-15-8). However, in the opinion of the

state bank commissioner, the first of these powers, concerning trust powers and related authority, have been merged into the second act, i.e., Article 16, even though the first act has not been repealed.

The second of the principal functions of trust companies under Article 15, namely, to receive valuables for safekeeping and storage, has been replaced, to a great extent by safe deposit and safekeeping facilities being provided by state banks and by state and national chartered banks and trust companies established under Article 4 of the banking code. A trust company organized for the purpose of providing facilities for the safekeeping of valuables would not be providing a service which is not available elsewhere in most areas.

The third primary power of trust companies under this article is to act as security or surety for persons in positions of trust. Commenting on this function, the state bank commissioner suggested that an ample number of surety and bonding corporations are licensed by the insurance department to conduct this type of business on a more satisfactory basis than would be afforded under Article 15.

In addition to the comments noted above, the position of the banking department was that Article 15 provides no supervision over companies organized under the article by the banking department or by any other governmental agency. Apparently because of the lack of regulatory authority, it is reported that trust companies are in the position of having a "backdoor approach to banking incapable of being restrained."

On the basis of its analysis, the committee has recommended that Article 15 be repealed and that Article 16 be amended to provide restrictions on the scope of trust companies and proper regulatory authority over trust companies in the state. The following sections have been recommended for amendment:

Powers of trust companies. (C.R.S. 14-16-3) This section was described as the provision which presently provides authority for trust companies to conduct a general banking business. The draft bill submitted by the committee would provide more explicit wording describing the powers of trust companies. The bill would restrict the taking of money, securities, or other personal property to transactions involving only a trust or trustee relationship and would eliminate the holding or keeping of these items "subject to demand or upon time receipts or certificates as may be agreed upon..." which is now authorized under C.R.S. 14-16-3 (1) (c).

Power of court over company. (C.R.S. 14-16-4) The suggested amendment of this section would provide more detail than is presently provided relative to the powers of courts over trust companies.

Liability of stockholders. (C.R.S. 14-16-6) The committee agreed with the recommendation of the banking department that the liability of stockholders in trust companies should be no greater than the liability of stockholders in state-chartered commercial banks.

The suggested change would remove the personal liability of trust company stockholders and would provide that their liability would be limited to the amount of their capital contribution.

Investments. (C.R.S. 14-16-8) The present statute concerning keeping trust funds separate apparently has not been adequate to prevent some companies from comingling all trust funds, rather than keeping a separate account for each trust. Under these circumstances, it is impossible for the bank examiners or anyone else to determine how the funds of an individual's account have been invested. The amendments recommended would permit the examination of portfolios on the same basis as required for state banks.

Commissioner to supervise companies (C.R.S. 14-16-10) and Certificate of authority. (C.R.S. 14-16-11) The committee is recommending that these sections be combined to provide appropriate chartering procedures for trust companies, which would be similar to requirements for chartering state banks. The bank commissioner has reported that the present statutes are so vague and indefinite that some trust companies have started to engage in a general banking business before their charters have been granted. The section also contains fees for chartering which are not provided under the present trust company statutes.

Discontinuing trust business. (new provision) This section would provide that a corporation wishing to discontinue a trust business would be required to furnish the bank commissioner satisfactory evidence of its release and discharge from all of its obligations and trusts which it has assumed. Upon receipt of this information, the bank commissioner is to revoke the charter of the company. This provision would prevent a trust company from leaving its operations without completing all of its business with the courts.

BILL A

A BILL FOR AN ACT

AMENDING 72-1-36, COLORADO REVISED STATUTES 1963, CONCERNING CAPITAL OR GUARANTY FUNDS AND UNENCUMBERED SURPLUS REQUIREMENTS OF INSURANCE COMPANIES.

Be It Enacted by the General Assembly of the State of Colorado:

SECTION 1. 72-1-36, Colorado Revised Statutes 1963, is amended BY THE ADDITION OF A NEW SUBSECTION (4) to read:

72-1-36. Cash capital - guaranty fund - deposit. (4) Any insurance company issued a certificate of authority in this state prior to May 6, 1963, which does not meet the requirements of subsection (1) (b) of this section, shall, prior to January 1, 1973, increase its actual paid-up cash capital or guaranty fund and unencumbered surplus in accordance with said subsection (1) (b), by increasing not later than the end of each calendar year said actual paid-up cash capital or guaranty fund and unencumbered surplus by not less than one-fifth of the additional amount required. For good cause, the increase in said funds may be waived in whole or in part by the commissioner for any calendar year, but no such waiver shall extend the January 1, 1973, limitation.

SECTION 2. Effective date. This act shall take effect on January 1, 1968.

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.

BILL B

A BILL FOR AN ACT

AMENDING CHAPTER 72, COLORADO REVISED STATUTES 1963, CONCERNING NONPROFIT HOSPITAL, MEDICAL-SURGICAL, AND OTHER HEALTH SERVICE CORPORATIONS.

Be It Enacted by the General Assembly of the State of Colorado:

SECTION 1. Chapter 72 of Colorado Revised Statutes 1963, is hereby amended BY THE ADDITION OF A NEW ARTICLE 23 to read:

ARTICLE 23

NONPROFIT HOSPITAL, MEDICAL-SURGICAL, AND HEALTH SERVICE CORPORATIONS.

72-23-1. Short title. This article shall be known and may be cited as "The Nonprofit Hospital, Medical-Surgical, and Health Service Corporation Act".

72-23-2. Purpose. It is the policy of the general assembly, and the intent and purpose of this article, to promote the availability of hospital care, medical-surgical care, and other health services on a voluntary non-profit prepaid basis, and to thereby promote the health and welfare of the people of the state of Colorado.

72-23-3. Incorporation and organization - exemptions. (1) Any nonprofit corporation heretofore or hereafter organized under the laws of the state of Colorado for the purpose of establishing, maintaining, and operating a nonprofit plan, whereby prepaid hospital care, medical-surgical care, and other health services are made available to persons who become subscribers to such plan or plans under a contract with the corporation, shall be subject

to and be governed by the provisions of this article, and, except as hereinafter otherwise specifically provided, shall not be subject to the laws of this state relating to insurance or insurance companies.

(2) The provisions of this article shall not apply to any employer's health plan or services established and maintained solely for its employees and their immediate families, nor to any labor organization's health plan or services established and maintained solely for its members and their immediate families, which plans or services are self-insured, nor to any such health plan or services established, maintained and insured jointly by any employer and any labor organization or organizations.

72-23-4. Filing of articles of incorporation. (1) Whenever any number of persons shall associate to form a corporation for any of the purposes named in section 72-23-3, they shall submit articles of incorporation which shall be issued in triplicate to the commissioner and the attorney general for examination. After being approved by such officers, the articles shall be filed and recorded in the office of the secretary of state who shall issue a certificate of incorporation. A copy of such articles, certified by the secretary of state, shall be filed with the commissioner.

(2) When not less than the amount required by section 72-12-13 shall have been deposited with the commissioner, as provided for in this article, the commissioner shall cause an examination to be made either by himself or some disinterested person, especially appointed by him for the purpose, who shall certify that the provisions of this article have been complied with by said corporation, as far as applicable thereto. Such

certificate shall be filed in the office of the commissioner, who shall thereupon deliver to such corporation a certified copy thereof, which, together with a copy of the articles of incorporation, shall be filed in the office of the clerk and recorder of the county wherein the principal office of the company is to be located, before the authority to commence business is granted.

(3) Whenever any such corporation shall thereafter desire to amend its articles of incorporation, it shall file its certificate of amendment with the commissioner before filing the same with the secretary of state, and if the commissioner, with the advice of the attorney general, shall find the same to have been legally adopted and to be in due legal form and to be not in conflict with the provisions of law governing such companies, then and not otherwise such certificate of amendment shall be filed with the secretary of state.

(4) Any corporation organized under the laws of this state relating to corporations not for profit prior to the effective date of this article for the purposes named in section 72-21-3, shall within one year after said effective date, comply with all of the provisions hereof and shall thereupon become subject to and be governed by said provisions.

72-23-5. Contents of articles. (1) (a) In addition to the contents required or permitted by the general corporation laws of this state relating to corporations not for profit, the articles of incorporation of any corporation shall comply with the following:

(b) The name of the corporation shall not include the words "insurance", "casualty", "surety", "mutual", or any other words

descriptive of the insurance, casualty, or surety business. The corporate name of any corporation to be formed under this article shall not be the same as, or deceptively similar to, the name of any other corporation authorized to do business in this state; and

(c) The statement of purposes shall be in conformity with the provisions of this article.

(d) Any such corporation heretofore organized whose existing articles of incorporation shall not be in substantantial conformity with this article shall forthwith cause to be adopted and filed, as herein required, such amendments thereto as shall be necessary to effect substantial compliance herewith.

72-23-6. Directors. The property and lawful business of every such corporation subject to the provisions of this article shall be held and managed by a board of trustees or directors with such powers and authority as shall be necessary or incidental to the complete execution of the purposes of each such corporation as limited by its articles or the bylaws. No such board shall be less than ten nor more than twenty-four in number.

72-23-7. Contracts. Such corporations subject to the provisions of this article may enter into contracts for the rendering of hospital services, medical-surgical services, and other health services on behalf of any of their subscribers with hospitals maintained by the state, or by any of its political subdivisions, or maintained by a nonprofit corporation organized for hospital purposes, or with other corporations, associations, partnerships, or individuals furnishing hospital services, medical-surgical services, or other health services. Nothing contained

in this article shall require any such corporation to contract or remain under contract with any individual hospital, physician, or other purveyor of health services; nor shall any employee, agent, officer, or trustee of any such corporation influence or seek to influence any subscriber in the choice or selection of a contracting hospital or contracting physician, or any other contracting purveyor of health services.

72-23-8. Annual Statement. All corporations subject to the provisions of this article doing business in this state on the effective date of this article, or which may thereafter do business in this state, shall make and file annually with the commissioner, on or before the first day of March of each year, a statement under oath upon a form to be prescribed by the commissioner stating the amount of all membership dues, or subscriber fees, collected in this state or from residents thereof by the corporation making such statement during the year ending the last day of December next preceding; the amounts actually paid during such year for hospital, medical-surgical, and other health services for the subscribers or members of the corporation, and the amounts placed in established reserves for cases billed but not yet paid, unreported and unbilled cases, retroactive cost adjustments, and membership dues or fees paid in advance but not yet earned. The fee for filing such annual statement shall be fifty dollars.

72-23-9. Fees paid by corporations. (1) (a) There shall be paid to the commissioner by every corporation subject to the provisions of this article the following fees:

(b) For filing a certified copy of articles of incorporation, fifty dollars;

(c) For filing annual statement, fifty dollars;

(d) For certificate of authority to transact business in this state, twenty-five dollars;

(e) For filing each amendment for articles of incorporation, five dollars;

(f) For each enrollment representative's examination, five dollars;

(g) For each enrollment representative's initial license, ten dollars;

(h) For each enrollment representative's renewal license, two dollars;

(i) For each copy of any document or other paper filed in the office of the commissioner, per folio, twenty cents;

(j) For comparing and proofreading a copy of any document or other paper submitted for certification with the original thereof as filed in the office of the commissioner, per folio, twenty cents;

(k) And for affixing the seal of the office of the commissioner and certifying any document or other paper, one dollar.

72-23-10. Authority to do business. No corporation subject to the provisions of this article shall transact any business in this state unless it shall first procure from the commissioner a certificate of authority stating that the requirements of the laws of this state have been complied with and authorizing it to do business. The certificate of authority shall expire on the last day of February in each year and shall be renewed annually if the corporation has continued to comply with the provisions of this article.

72-23-11. Automatic extension of certificate. When the annual statement of a corporation subject to the provisions of this article shall have been filed and all fees due from the corporation shall have been tendered, the corporation's certificate of authority to do business in this state shall automatically be extended until such time as the commissioner should refuse to relicense such corporation, and when the fee involved in the renewal of an enrollment representative's license shall have been tendered by the corporation, or the individual representative the license shall automatically be extended until such time as the commissioner should refuse to renew such license.

72-23-12. Requirements for certificate of authority. (1) (a) The commissioner shall not issue or renew his certificate of authority to any corporation operating or proposing to operate a nonprofit hospital, medical-surgical, and other health services plan, unless:

(b) The subscription or membership certificates which the corporation offers to its subscribers or members, together with a schedule of the dues and fees to be paid by subscribers or members have been filed with the commissioner in accordance with the provisions of section 72-23-15.

(c) The schedule of the dues and fees to be paid by subscribers or members is such as will enable such corporation to meet the expenses of the hospital, medical-surgical, and other health services which are made available to its subscribers or members without inpairing the guarantee fund required by section 72-23-13, and the use of such schedule will not result in an accumulation of excess reserves over and above reserves established for claims

in process, unreported and unbilled claims, retroactive cost adjustments to the purveyors of hospital, medical-surgical, and other health services and membership dues or fees received in advance but not yet earned. So long as a corporation's unencumbered reserve or surplus over and above the required reserves specified in this section do not exceed a sum equal to one-third of the corporation's total membership dues or subscription fees received during the immediate preceding calendar year, such unencumbered reserve or surplus shall not be deemed an excessive accumulation for the purposes of this section.

72-23-13. Liquid reserves - guarantee fund deposit. (1) No corporation subject to the provisions of this article shall be permitted to do any business in this state unless, in addition to the other requirements of law, it shall have and maintain liquid reserves in an amount not less than five per cent of the corporation's subscription income collected in the preceding year of not exceeding two million dollars, plus two and one-half per cent of such income exceeding two million dollars but not exceeding ten million dollars, plus one per cent of such income exceeding ten million dollars; but, in no event shall such reserves be less than fifty thousand dollars. All corporations subject to the provisions of this article shall place on deposit with the commissioner a guarantee fund of cash or approved securities in an amount determined by such formula, but not less than fifty thousand dollars nor more than one hundred fifty thousand dollars. Any amount of said liquid reserves in excess of one hundred fifty thousand dollars shall be maintained by the corporation at all times, but shall be required to be placed on deposit with the insurance commissioner.

(2) The cash or securities representing the guarantee fund required by this section shall be deposited with the commissioner who shall give receipts for all securities so deposited with him to the corporation depositing them. It shall be the duty of the commissioner upon the receipt of such securities to forthwith deposit the same in the presence of an authorized officer of the depositing corporation, in a safety deposit box, accessible only to the commissioner or his representative, and an authorized officer of the corporation, in the vault of any bank, trust company, or safety deposit company in the city and county of Denver to be selected by the commissioner, and the depositing corporation shall pay the several fees for such boxes. So long as the depositing corporation shall continue solvent the commissioner shall permit such corporation to collect and receive the interest and dividends on the securities so deposited, and from time to time, withdraw any such securities on depositing other acceptable securities in the place of those so withdrawn. If the commissioner shall willfully fail, refuse, or neglect to faithfully keep, deposit, and account for any such securities received by him, or shall willfully fail, refuse, or neglect to furnish proper certificate of securities so held by him, the commissioner shall be responsible therefor upon his official bond, and suit may be brought upon said bond by any person damaged by such failure, refusal, or neglect.

72-23-14. Scope of benefits. The benefits or services which a corporation subject to the provisions of this article may contract to make available to its members or subscribers shall include all of the services made available by hospitals, or other licensed health care institutions, doctors of medicine, osteopathy,

dentistry, and podiatry, nursing services, appliances, drugs, medicine, ambulance service, and such other health services or items as the board of trustees of any such corporation may approve; provided, that no corporation subject to provisions of this article may offer to its members or subscribers any certificate or form which would provide for a cash payment or allowance for sickness, accident, disability, or death, other than payments of or toward the charges made by the purveyors of the health services covered by the certificates issued by said corporation, or any form of casualty or life insurance unless such corporation shall first comply with the statutes of this state applicable to companies offering such forms of insurance.

72-23-15. Approval of benefit certificates. (1) On and after the effective date of this article, no corporation subject to the provisions hereof shall deliver or issue for delivery in this state any subscription certificate or membership certificate describing the health benefits available thereunder, or any endorsement, rider, or application which becomes a part thereof, until a copy of the form and the schedule of rates, dues, fees, or other periodic charges applicable thereto, to be paid by subscribers or members, have been filed with the commissioner; nor shall any such certificate endorsement, rider, or application be used until the expiration of thirty days after the filing thereof, unless the commissioner shall sooner give his written approval thereto. The commissioner shall notify, in writing, the corporation which has filed any such form if it does not comply with the requirements of law, or if it contains any provision which is deceptive and ambiguous or misleading, specifying the reasons for

his opinion. In all other cases the commissioner shall give his approval.

(2) After the expiration of such thirty days from the filing of any such form, or at any time after having given written approval thereof, the commissioner, after a hearing of which at least ten days written notice has been given to the corporation issuing such form, may withdraw approval if he finds said form is being offered to the public by means of advertising, communications, or dissemination of information which is deceptive or misleading. Such disapproval shall be effected by written order of the commissioner, which shall state the grounds for disapproval and the date, not less than thirty days after such hearing when the withdrawal of approval shall become effective.

72-23-16. Contracts with other organizations. Any corporation subject to the provisions of this article may contract with any agency, instrumentality, or political subdivision of the United States of America, or of the state of Colorado for the making available of hospital, medical-surgical, and other health care services, and in aid or furtherance of such contract may accept, receive, and administer in trust, funds directly or indirectly made available by such agency, instrumentality, or political subdivision. Any such corporation may also subcontract with any organization which has contracted with any agency, instrumentality, or political subdivision of the United States of America, or of the state of Colorado for the furnishing of hospital, medical-surgical, or other health services by which subcontract such corporation undertakes to furnish the services specified by the basic contract. Any corporation subject to the provisions of this

article may also enter into agreements or contracts with other similar organizations or corporations licensed to do business in this state or any other state for the transfer of subscribers or members, for the reciprocal or joint provision of benefits to the subscribers or members of such corporation and such organizations or such other joint undertakings as the corporation's board of directors or trustees may approve.

72-23-17. Enrollment representative defined. A person who, for compensation, solicits subscription to or the establishment of membership in a prepayment plan offered by a corporation subject to the provisions of this article, or transmits for a person other than himself an application for such subscription or membership, or offers or assumes to act in the negotiation thereof shall be an enrollment representative or agent within the intent of this article.

72-23-18. Licensing of representatives. Every corporation subject to the provisions of this article shall notify the commissioner through its proper officer or agent of the name, title, and address of each person it desires appointed to act as the corporation's enrollment representative or agent. The notice shall be accompanied by an application from the appointee, and shall be in writing upon a form furnished by the commissioner. If upon receipt of such written notice, when accompanied by the fee required by section 72-23-9, it appears that the appointee is a competent and suitable person who intends to hold himself out in good faith as the corporation's agent, and that he qualifies under the provisions of this section, the commissioner shall issue to such appointee a license which shall state in substance that the person

named therein is a constituted enrollment representative or agent of the corporation in this state. The commissioner may at any time prior to the granting of such license require an appointee to submit to an examination, in a form prescribed by the commissioner, on the qualifications of such person to act as an enrollment representative or agent in this state.

72-23-19. Renewals of licenses. If for cause shown, and after a hearing or examination the commissioner shall determine any person to be unsuitable to act as an enrollment representative or agent, he shall thereupon refuse to issue a license or shall revoke any license previously issued, and shall notify in writing both the appointee and the corporation of such refusal. Unless revoked by the commissioner or unless the corporation by written notification to the commissioner cancels the authority of an agent or representative to act for it, any license issued or any renewal thereof shall expire on the first day of January next after its issuance and may be renewed annually upon payment of the annual license renewal fee.

72-23-20. Examinations and investigations. The commissioner, or any person authorized by him, shall have the power to examine the financial condition, affairs, and management of any corporation subject to the provisions of this article. For such purpose he shall have free access to all the books, papers, and documents relating to the business of the corporation, and may summon witnesses and administer oaths and affirmations in the examination of the directors, trustees, officers, agents, representatives, or employees of such corporation, or any other person in relation to its affairs, transactions, and conditions. The commissioner shall

make an examination of each corporation subject to the provisions of this article at least once every three years, and the corporation examined shall pay to the treasurer of the state of Colorado a fee of fifty dollars for each examiner for each day required in making such examination.

72-23-21. Revocation of certificate - appeal. (1) The commissioner shall not make public the result of any examination or investigation of any corporation found to be insolvent, or with its capital impaired prior to suspending or revoking the authority of such company to do business in this state. If the commissioner determines, after examination, hearing, or other evidence, that such corporation is in an unsound condition, or has failed to comply with the law, or with the provisions of its charter, or that its condition is, or its methods are, such as to render its operations hazardous to the public, or to its subscribers, or that its actual assets, exclusive of its capital, are less than its liabilities, or if its officers or agents refuse to submit to examination, or to perform any legal obligation relative thereto, or refuse on behalf of the corporation to pay the examination charges, he shall suspend or revoke all certificates of authority granted to said corporation, and to its officers or agents, and shall cause notice thereof to be published in one or more daily newspapers published in the city and county of Denver, which shall have a general state circulation, and no solicitation of new business shall thereafter be done by it or its agents in this state, while such default or disability continues, nor until its authority to do business is restored. Before suspending or revoking the certificate of authority of any such corporation,

unless it is insolvent or its capital impaired, the commissioner shall grant fifteen days in which to show cause why such action should not be taken.

(2) A corporation whose certificate of authority has been suspended or revoked by the commissioner, may appeal, within fifteen days from such order to the district court of the city and county of Denver, which court, upon the filing of the proper petition, shall cause the records and orders of the commissioner to be brought before it, and upon hearing of the case by the court de novo, the court shall by its final decree either confirm or revoke the order of the commissioner.

(3) The court shall have the power to make an order suspending or staying the order of the commissioner suspending or revoking the license of a corporation pending the appeal; provided, that the corporation appealing shall give a bond, with sureties satisfactory to the court, in such amount as the court determines to be just and proper, conditioned to pay to the state and to any and all persons whomsoever any all loss that may be sustained by reason of the stay or suspension of such order of said commissioner, and that during the period allowed for taking such appeal, the publication of notice of the revocation or suspension of license of such corporation as provided by this section, shall not be made. If the order of the commissioner has been stayed or suspended by the order of said court, such publication shall not be made until after the discharge of such stay or until the affirmation of such order of revocation or suspension.

(4) Upon appeal, the corporation shall be entitled to a

trial by jury upon all issues of fact. If the trial is by jury, the court shall submit to the jury specific requests to find, covering the matters in issue separately, and the jury shall return a special verdict upon each question submitted, and if by such verdict it shall be found that the corporation, association, or society is insolvent because of obligations due and unpaid which exceed its assets, the court may render judgment that it be enjoined from exercising any corporate rights, privileges, or franchises in this state.

(5) (a) In the event of such a finding of insolvency, the commissioner shall have and exercise all of the powers and authorities set forth in article 17 of chapter 72, C.R.S. 1963, known as the "Uniform Insurers Liquidation Act".

(b) If no charge of insolvency is made, or, if made, is not established by the verdict of the jury, but it shall be found by such verdict that the corporation, association, or society has exceeded its corporate powers or failed to comply with any provisions of this article or has done or committed any act for which its license may be revoked or suspended under any of the provisions of this article, or has conducted its business unlawfully or fraudulently, the court may make and enter judgment enjoining and restraining it from the commission of such acts or such of them as the court may determine, and in case of failure to desist therefrom within the time to be specified in such judgment, that the corporation be perpetually enjoined from doing any further business in this state. Pending the trial if no bond has been given as provided, upon motion of the attorney general and upon notice to the corporation, association, or society, the court may

grant an injunction restraining it and its officers from collecting any debt, or demand and from paying out or in any way transferring or delivering to any person any money, property, or effects, during the pendency of the proceedings except by direction of the court, and may appoint one or more temporary receivers in such cases. From the decree of said district court a writ of error shall lie to the supreme court of the state as in other cases; and it shall be the duty of the district court and of the supreme court to advance the hearing of said matter as far as justice and the business of the court may permit.

72-23-22. Complaints. Any individual subscriber of a corporation subject to the provisions of this article who believes himself to be aggrieved by any act or omission of such corporation or its officers, directors, agents, or representatives, may file a statement in writing of his grievance in the office of the commissioner and the commissioner may make such investigation of such grievance as he deems appropriate. No such investigation by the commissioner shall act as a bar to any suit in a court of competent jurisdiction instituted by any such member or subscriber, or any defense thereto by the corporation involved.

72-23-23. Regulations. In the implementation of this article, the commissioner may, after notice and hearing, promulgate such reasonable rules and regulations not inconsistent with the provisions of this chapter as he shall deem necessary for the proper administration of this article.

72-23-24. Exemption of direct payment methods. Nothing contained in this article shall be construed to affect or apply to hospitals, or other licensed health care institutions, nor to any

individuals, partnerships, associations, or corporations which are the direct purveyors of health services; nor shall anything contained herein be construed to in any way limit the rights of such hospitals, or other licensed health care institutions or purveyors of health services to establish methods of payment directly with the purchasers of their services; provided, that the commissioner may require from any such institution or purveyor of service such information as will enable him to determine whether any such arrangements for payment for services are subject to the provisions of this article.

SECTION 2. Effective date. This act shall take effect on July 1, 1967; but, any corporation organized prior to the passage of this act, under the laws of the state of Colorado relating to corporations not for profit, for the purpose of administering, maintaining, and operating a health service plan, as described in this act, shall be allowed a period of one year after the effective date of this act to make the applications and filings and to meet the requirements set forth in this act.

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.

BILL C

A BILL FOR AN ACT

RELATING TO TITLE INSURANCE.

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

SECTION 1. Short title. This act shall be known and may be cited as "The Title Insurance Code of Colorado".

SECTION 2. Definitions. (1) As used in this act, unless the context otherwise requires:

(2) "Title insurance" means insuring, guaranteeing, or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, defects in, or the unmarketability of the title to said property.

(3) The "business of title insurance" means the making or proposing to make, as insurer, guarantor, or surety, of any contract or policy of title insurance; or the transacting or proposing to transact, as insurer, guarantor, or surety, any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of title insurance, and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance.

(4) "Title insurance company" means any domestic company organized under the provisions of this act for the purpose of

insuring titles to real property; any title insurance company organized under the laws of another state or foreign government and licensed to insure titles to real estate within this state pursuant to section 22 of this act; and any domestic, foreign, or alien company having the power and authorized to insure titles to real estate within this state on or before the effective date of this act and which meets the requirements of this act.

(5) "Applicants for insurance" shall be deemed to include all those whether or not a prospective insured, who from time to time apply to a title insurance company, or to its agent, for title insurance, and who at the time of such application are not agents for a title insurance company.

(6) "Premium" for title insurance is that portion of the rate charged by a title insurance company, agent for a title insurance company, or either of them, to an insured or an applicant for insurance for the assumption by the title insurance company of the risk created by the issuance of the title insurance policy, including the cost of doing business and a reasonable profit as contemplated by the provisions of section 42 of this act, but excluding the standard service charge which is an amount added to the premium to cover the normal cost of procuring evidence of title involving a single chain of title.

(7) "Fee" for title insurance means the total gross charge for title insurance including the premium, the standard service charge, and any additional charges for abstracting, title search and examination of title, made by a title insurance company, agent for a title insurance company, or either of them, to an insured or an applicant for insurance for any policy or contract

for the issuance of title insurance.

(8) "Commissioner" means the insurance commissioner of the state of Colorado.

(9) "Approved attorney" means an attorney at law, who is not an employee of a title insurance company or of a title insurance agent, upon whose examination of title and report thereon a title insurance company may issue a policy of title insurance.

(10) "Title insurance agent" means a person, firm, association, corporation, or joint-stock company authorized by a title insurance company to solicit insurance or to collect premiums, or to issue or countersign policies in its behalf; but, the term "title insurance agent" shall not include employees of any title insurance company authorized to do a title insurance business within this state.

(11) "Single insurance risk" means the insured amount of any policy or contract of title insurance issued by a title insurance company unless two or more policies or contracts are simultaneously issued on different estates in identical real property, in which event, it means the sum of the insured amounts of all such policies or contracts. Any such policy or contract that insures a mortgage interest that is excepted in a fee or leasehold policy or contract, and which does not exceed the insured amount of such fee or leasehold policy or contract, shall be excluded in computing the amount of a single insurance risk.

(12) "Net retained liability" means the total liability retained by a title insurance company under any policy or contract of insurance, or under a single insurance risk as defined in or computed in accordance with section 2 (11), after the purchase of reinsurance.

(13) "Foreign title insurance company" means a title insurance company organized under the laws of any other state of the United States.

(14) "Alien title insurance company" means any title insurance company incorporated or organized under the laws of any foreign nation, or of any province or territory thereof, not included under the definition of foreign title insurance company.

SECTION 3. Compliance with act required. On and after the effective date of this act, no person, firm, association, corporation, cooperative, joint-stock company, or trust shall underwrite or issue a policy of title insurance or otherwise engage in the business of title insurance in this state unless authorized by the provisions of this act to transact such a business.

SECTION 4. Corporate form required. Any domestic title insurance company hereafter formed shall be organized as a stock corporation as provided in section 72-1-42, C.R.S. 1963, except as otherwise specified in this act.

SECTION 5. Financial requirements. (1) Every title insurance company shall have a minimum capital, which shall be paid in and maintained, of not less than two hundred thousand dollars, and, in addition, paid-in initial capital surplus of at least one hundred thousand dollars.

(2) Every title insurance company shall, prior to the issuance of any policy of title insurance in this state, have on deposit the sum of one hundred thousand dollars as a guarantee fund for the security and protection of its policyholders, wherever situated, or beneficiaries under such policies. The cash or securities representing the guarantee fund required by

this law shall be deposited, in the case of domestic companies, with the commissioner of insurance of this state in the manner provided by law, and, in the case of foreign or alien companies, with the commissioner of insurance of this state or with the duly authorized officer of some other state or states of the United States. The amount of such guarantee fund shall be increased by the sum of fifty thousand dollars for each state or territorial subdivision of the United States, other than the state of its domicile, in which the title insurance company shall be or become qualified to engage in the business of title insurance, less the amount required by and deposited in such other states or territorial subdivisions as guarantee funds. For a foreign or alien insurer to be allowed credit for deposit in other jurisdictions, such deposits must be held for the benefit of all policyholders wherever located and not solely or with preference for those in the depository jurisdiction. When the aggregate of amounts so deposited in this or such other states or territorial subdivisions has reached the sum of seven hundred and fifty thousand dollars in qualified guarantee funds, no further deposit shall be required of such title insurance company as a condition of its qualification to engage in the business of title insurance in this state.

(3) The deposit required to be made by subsection (2) of this section shall be made in lawful money of the United States or in the classes of investments authorized by section 18 (1) and (2) of this act.

(4) Assets deposited pursuant to subsection (2) of this section may, with the approval of the commissioner, be exchanged

from time to time for other assets of like value.

(5) The depositing title insurance company shall receive the income, interest, and dividends on any assets deposited, except as otherwise provided in this act.

(6) Any title insurance company which has deposited assets pursuant to subsection (2) of this section may, with the approval of the commissioner, withdraw any part of the assets so deposited; but if said title insurance company continues to engage in the business of title insurance, it shall not be permitted to withdraw assets that would reduce the amount of its deposit below the amount required by subsection (2) of this section.

(7) Deposits made pursuant to subsection (2) of this section shall be used solely for the security and protection of the policyholders of the policies and contracts of insurance issued, or reinsurance assumed by such title insurance company. In the event of insolvency or dissolution of such title insurance company, such deposits and any income derived therefrom shall be retained by the commissioner until such time as all outstanding liabilities created by such policies, contracts, or reinsurance agreements have been discharged by reinsurance or otherwise. Such deposits, or so much thereof as shall be necessary, upon the written approval of the commissioner, may be used in the payment of claims arising under such policies, contracts, or reinsurance agreements or to purchase reinsurance thereof. Any amounts then remaining with the commissioner shall be applied first to the payment of other obligations of such title insurance company, and second shall be distributed to such title insurance company or its successor. The actions of the commissioner shall be subject to

judicial review as provided in section 57 of this act.

(8) Every domestic title insurance company which on the effective date of this act has the capital required by law and whose reserve fund required by law has been approved by the state bank commissioner, shall have until July 1 in the tenth year after the effective date of this act to comply with the financial requirements of this act; except, that the capital and reserve fund of each such title insurance company shall at no time be less than that required by law immediately prior to the effective date of this act.

(9) The reserve fund required by law immediately prior to the effective date of this act for each domestic title insurance company engaged in the business of title insurance shall be supervised by the commissioner on and after the effective date of this act. As soon as practicable, the state bank commissioner shall furnish to the commissioner a list of all such title insurance companies and an inventory of securities and deposits approved by said bank commissioner for the reserve fund of each such company, and shall deliver to the commissioner all such securities and deposits then on deposit with the bank commissioner and all safe deposit box keys, deposit receipts, certificates of deposit, and other evidences or means of control thereof to the commissioner. Every bank, savings and loan association, or other escrow or depository agent is hereby authorized to accept the substitution of the insurance commissioner for the state bank commissioner on any certificate of deposit or deposit receipt, or any authority to enter a safe deposit box with reference to any reserve fund of a title insurance company. Every such bank, savings and loan

association, or other escrow or depository agent, and the state bank commissioner, shall be held harmless from any liability as a result of such substitution, and shall take such action as may be necessary or advisable to effect such substitution.

SECTION 6. Insolvency or capital impairment - procedure. (1) A title insurance company shall be deemed insolvent when its admitted assets are less than all of its liabilities, excluding from such liabilities the aggregate amount of the par value of its outstanding capital stock; and its capital shall be deemed impaired when its admitted assets are less than its liabilities, including as a liability the aggregate amount of the par value of the company's outstanding capital stock. If a domestic title insurance company is insolvent, its license may be immediately revoked or suspended by the commissioner, or it may be granted such time in which to become solvent, not exceeding twelve months, and under such conditions and requirements as the commissioner may determine. If a title insurance company's capital is impaired, it shall have six months after that fact is determined to correct the impairment, either by reducing its capital and surplus to not less than the amounts required by section 5 of this act in such a manner that not more than one-third of the net assets existing at the time of such capital reduction shall be designated as surplus, or by any other method approved by the commissioner. The commissioner may extend such time for correcting the impairment of capital if he deems it to be for the best interest of the company or its policyholders so to do. During the time allowed for correcting such impairment, the company's license to do business shall not be suspended or revoked on account of

the impairment.

(2) For the purposes of subsection (1) of this section, liabilities of any title insurance company shall be considered in determining the impairment of capital or insolvency of said company only to the extent that such liabilities are a charge upon, or may be collected from the admitted assets of the company, and in the event any such liability can be collected out of certain assets only of such company, which assets are partially admitted assets, then such liability shall be considered in determining impairment or insolvency only to the extent that such assets are considered to be admitted assets.

(3) If any title insurance company other than a domestic company authorized to do business in this state is found to be insolvent or its capital impaired under the same standards as set forth in subsections (1) and (2) of this section, the commissioner may, after notice and hearing, revoke or suspend its license to transact business in this state; but the commissioner may, if he finds it in the best interest of the company or policyholders so to do, and under such conditions and requirements as he may determine, grant time in which to remove the impairment or insolvency, such time not to exceed the time which might be granted to a domestic company under similar circumstances.

SECTION 7. Determination of insurability required. No policy or contract of title insurance shall be written unless and until the title insurance company has caused to be conducted a reasonable examination of the title and has caused to be made a determination of insurability of title in accordance with sound underwriting practices for title insurance companies. Evidence thereof shall be preserved and retained in the files of the title

insurance company or its agent for a period of not less than fifteen years after the policy or contract of title insurance has been issued. In lieu of retaining the original copy, the title insurance company or the agent of the title insurance company, may in the regular course of business, establish a system whereby all or part of these writings are recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for reproducing the original. This section shall not apply to either a company assuming no primary liability in a contract of reinsurance, or a company acting as a coinsurer if one of the other coinsuring companies has complied with this section.

SECTION 8. Powers. (1) (a) Every title insurance company shall have the following powers:

(b) To do the business defined in section 2 (2) and (3) of this act.

(c) To own, manage, and maintain sets of abstract books and, subject to the provisions of chapter 1, C.R.S. 1963, to make, compile, and sell abstracts of title to real estate.

(d) To acquire by purchase or otherwise, and to hold, sell, mortgage, or otherwise dispose of real estate and personal property, or any interest therein, either within or without the state of Colorado, and to loan or borrow money upon such real estate or personal property.

(e) To act as escrow agent in connection with real estate transactions wherein it has issued or will issue a policy of title insurance, or wherein it guarantees to hold and be accountable

for any money or thing of value pending establishment or release of any lien or the transfer of any title, or any other event or combination of events specified by the depositor, or wherein it guarantees to hold without delivery any instrument, document, or thing of value until it can account to the depositor for any specified sum of money or until the satisfaction of any other conditions specified by the depositor; to receive, hold, and convey title to real estate and such personal property as may pertain thereto in accordance with written instructions from the parties in interest therein and as their trustee.

SECTION 9. Prohibition against guaranteeing mortgages. A title insurance company shall not engage in the business of guaranteeing the payment of the principal or interest of bonds, notes, or other obligations.

SECTION 10. Prohibitions. A title insurance company shall not transact, underwrite, or issue any kind of insurance other than title insurance; nor shall title insurance other than reinsurance as provided in this act be transacted or issued by any company transacting any other kinds of insurance.

SECTION 11. Unearned premium reserve. (1) Every domestic title insurance company, and every foreign or alien title insurance company which under the state of domicile is not required to maintain an unearned premium reserve at least equal to the amount required by this section, shall, in addition to other reserves, establish and maintain a reserve to be known as the "unearned premium reserve" for title insurance, which shall, at all times and for all purposes, constitute the unearned portions of premiums due or received and shall be charged as a reserve liability of

such title insurance company in determining its financial condition.

(2) The unearned premium reserve shall be retained and held by such title insurance company for the protection of the policyholders' interest in policies which have not expired. Except as provided in section 14 of this act, assets equal to the amount of such reserve shall not be subject to distribution among depositors or other creditors or stockholders of such title insurance company until all claims of policyholders or holders of other title insurance contracts or agreements of such title insurance company have been paid in full and all liability on the policies or other title insurance contracts or agreements, whether contingent or actual, has been discharged or lawfully reinsured. Income from the investment of the amount of such reserve shall be the unrestricted property of the title insurance company.

SECTION 12. Amount of unearned premium reserve - release. (1) (a) The unearned premium reserve of every title insurance company shall consist of:

(b) The amount of the unearned premium reserve held as of the effective date of this act, pursuant to law; and

(c) The amount of all additions required to be made to such reserve by this section, less the withdrawals therefrom as permitted by this section.

(2) On and after the effective date of this act, every title insurance company shall add to its unearned premium reserve in respect to each policy or reinsurance agreement issued by it, fifteen cents for each one thousand dollars face amount of net

retained liability, as defined in subsection (12) of section 2 of this act, or the amount reinsured by it, and shall separately record the aggregate amounts so set aside and reserved in respect to such policies, contracts, or agreements written in each calendar year.

(3) The amounts set aside as additions to the unearned premium reserve shall be deducted from income in determining net profits of any title insurance company.

(4) For the purposes of determining the amounts of the unearned premium reserve that may be withdrawn pursuant to subsection (5) of this section, and the interest of the policyholders therein under section 14 of this act, all policies, contracts of title insurance, or reinsurance agreements of title insurance shall be considered as dated on July 1 in the year of issue.

(5) The aggregate of the amounts set aside in unearned premium reserve in any calendar year pursuant to subsection (2) of this section shall be released from said reserve and restored to income pursuant to the following formula: One-tenth of said aggregate sum on July 1 of each of the five years next succeeding the year of addition to the reserve and one-thirtieth of said aggregate sum on July 1 of each succeeding year thereafter until the entire sum shall have been so released and restored to income.

(6) The entire amount of the unearned premium reserve held as of the effective date of this act pursuant to law shall be presumed to have been added to the reserve in the calendar year next preceding the effective date of this act and shall be released from said reserve and restored to income under the formula set forth in subsection (5) of this section.

(7) If substantially the entire outstanding liability under all policies, contracts of title insurance, and reinsurance agreements of any such title insurance company shall be reinsured, the value of the consideration received by a reinsuring title insurance company authorized to transact the business of title insurance in this state, shall constitute in its entirety, unearned portions of original premiums and shall be added to its unearned premium reserve, and shall be deemed, for recovery purposes, to have been provided for liabilities assumed during the year of such reinsurance. The amount of such addition to the unearned premium reserve of such assuming title insurance company shall be not less than two-thirds of the amount of the unearned premium reserve required to be maintained by the ceding title insurance company at the time of such reinsurance.

SECTION 13. Maintenance of unearned premium reserve. If for any reason the amount of the assets of a title insurance company held as investments of its unearned premium reserve should on any date be less than the amount required to be maintained by law in such reserve, and the deficiency shall not be promptly cured, such title insurance company shall forthwith give written notice thereof to the commissioner and shall issue no further policies, contracts of title insurance, or reinsurance agreements of title insurance until the deficiency shall have been eliminated and until it shall have received written approval from the commissioner authorizing it to again issue such policies, contracts of title insurance, or agreements.

SECTION 14. Use of unearned premium reserve on liquidation, dissolution, or insolvency. (1) (a) If a title insurance company

becomes insolvent, or is in the process of liquidation or dissolution, or in the possession of the commissioner as receiver:

(b) Such amount of the assets of such title insurance company equal to the unearned premium reserve then remaining as is necessary may be used, with the written approval of the commissioner, to pay for reinsurance of the liability of such title insurance company upon all outstanding policies, contracts, or reinsurance agreements of title insurance, as to which no claims for losses by the holders are then pending; the balance, if any, of assets equal to the unearned premium reserve fund then remaining, shall be transferred to the general assets of the title insurance company;

(c) The assets other than the unearned premium reserve shall be available to pay claims for losses sustained by holders of policies then pending or arising up to the time reinsurance is effected. In the event claims for losses are in excess of such other assets of the title insurance company, such claims, when established, shall be paid pro rata out of the surplus assets attributable to the unearned premium reserve, to the extent of such surplus, if any.

(2) In the event that reinsurance is not obtained, the unearned premium reserve and assets constituting minimum capital, or so much as remains thereof after outstanding claims have been paid, shall constitute a trust fund to be held by the commissioner for twenty years, out of which claims of policyholders shall be paid as they arise. The balance, if any, of such fund shall, at the expiration of twenty years, revert to the general assets of the title insurance company or its successor.

SECTION 15. Reserve for unpaid losses and loss expense. (1) Each title insurance company, in addition to other reserves, shall at all times establish and maintain reserves against unpaid losses, and against loss expense, and shall calculate such reserves by making a careful estimate in each case of the loss and loss expense likely to be incurred, by reason of every claim presented, pursuant to notice from or on behalf of the policyholder, of a title defect in or lien or adverse claim against the title insured, that may result in a loss or cause expense to be incurred for the proper disposition of the claim. The sums of the items so estimated shall be the total amounts of the reserves against unpaid losses and loss expenses of such title insurance company.

(2) The amounts so estimated may be revised from time to time as circumstances warrant, but shall be redetermined at least once each year.

(3) The amounts set aside in such reserves in any year shall be deducted in determining the net profits for such year of any title insurance company.

SECTION 16. Net retained liability. The net retained liability of any title insurance company under any single insurance risk as defined in subsections (11) and (12) of section 2 of this act shall not exceed fifty per cent of the net amount remaining after deducting from the sum of its capital, surplus, unearned premium reserve, and voluntary reserves, the value, if any, assigned in such summation to its title plant, all as shown in its most recent report on file with the commissioner. The same limitation shall apply to any secondary risk assumed by means of reinsurance or to any policy of excess coinsurance except, whenever the primary

retained liability of a ceding company shall equal or exceed ten per cent of the single insurance risk liability, the net retained or assumed liability limit of this section may be increased by an additional two hundred fifty thousand dollars, but in no event above one hundred per cent of the net amount remaining after deducting from the sum of its capital and surplus, the value, if any, assigned in such summation to its title plants, all as shown by its most recent report on file with the commissioner. Nothing in this section is intended to limit the amount of a single insurance risk, as defined in subsection (11) of section 2 of this act, that may be written by a title insurance company; but it shall cede to one or more other title reinsurers on or before the effective date of such writing, such portion or portions of the said risk as shall be sufficient to bring its net retained liability thereunder within the limits prescribed in this section; and each such cession of risk shall be within the limits of this section as applied to the sum of the capital, surplus, unearned premium reserve, and voluntary reserves, less the value, if any, assigned in such summation to the title plants of the reinsuring company, as shown by its most recent report on file with the supervisory agency in the state of its domicile.

SECTION 17. Power to reinsure. Any title insurance company may cede reinsurance of all or any part of its liability under one or more of its policies, contracts, or reinsurance agreements of title insurance to any reinsurer which meets or exceeds the financial requirements of a title insurance company set forth in section 5 of this act and is authorized to engage in the business of reinsurance of title insurance in this or any other state; but,

no larger amount of reinsurance shall be ceded to any reinsurer on a single policy or contract of title insurance, or on any single title insurance risk as defined in subsection (11) of section 2 of this act, than such reinsurer would be permitted to retain if authorized to engage in the business of title insurance in this state. Any title insurance company may also reinsure policies of title insurance issued by other insurance companies on risks located in this state or elsewhere. Any domestic title insurance company or any foreign or alien title insurance company authorized to do business in this state shall pay to this state taxes required on all business taxable within this state and reinsured, as provided in this section, with any foreign or alien company not authorized to do business within this state. Issuance of contracts of reinsurance by a reinsurer not authorized to engage in the business of title insurance in this state, but authorized to engage in the business of title insurance or in the business of reinsurance of title insurance in any of the United States, which contracts reinsure policies of title insurance issued by a title insurance company authorized to engage in the business of title insurance in this state on real property located in this state, shall not of itself constitute the doing of business in this state by such reinsurer.

SECTION 18. Minimum capital. (1) An amount equivalent to the minimum capital requirements, as defined in subsection (1) of section 5 of this act, shall be retained as cash on hand or on deposit in banks, or shall be invested in the following classes of investments; but, the aggregate amount invested at any time in those classes of investments set forth in subsections (8), (9),

(13), and (17) of this section shall not, without written approval of the commissioner, exceed fifty per cent of the sum of the capital and surplus of such title insurance company as shown by its most recent statement on file with said commissioner:

(2) Government obligations. Bonds, notes, or obligations issued, assumed, or guaranteed by the United States, or by any state, district, or territory of the United States, or the Commonwealth of Puerto Rico.

(3) (a) Governmental subdivision or public instrumentality obligations. Valid and legally authorized bonds, notes, or obligations issued, assumed, or guaranteed by:

(b) Any city, town, county, borough, township, municipality, school district, poor district, water, sewer, drainage, road, or other governmental district or division located in the United States or any state, district, or territory thereof, or the Commonwealth of Puerto Rico, or by

(c) Any governmental agency other than one specified in paragraph (b) of this subsection, if, by statutory or other legal requirements applicable thereto, such bonds or other evidences of indebtedness of such instrumentality are payable, as to principal and interest, from taxes levied or by law required to be levied, upon all taxable property or all taxable income within the jurisdiction of the governmental unit or units of which it is an instrumentality, or from revenues pledged or otherwise appropriated or by law required to be provided for the purpose of such payment.

(d) Any municipal authority, issued pursuant to the laws of the state relating to the creation or operation of municipal

authorities, if the obligations are not in default as to principal or interest and if the project for which the obligations were issued is under lease to a school district or school districts or if the obligations are not in default as to principal or interest and if the project for which the obligations were issued is under lease to a municipality or municipalities or subject to a service contract with a municipality or municipalities, pursuant to which the municipal authority will receive lease rentals or service charges available for fixed charges on the obligations, which will average not less than one and one-fifth times the average annual fixed charges of such obligations over the life thereof, or if the obligations are not in default as to principal or interest and if for a period of five fiscal years next preceding the date of acquisition, the income of such authority available for fixed charges has averaged not less than one and one-fifth times its average annual fixed charges of such obligations over the life of such obligations. As used in this clause, the term "income available for fixed charges" shall mean income after deducting operating and maintenance expenses, and, unless the obligations are payable in serial, annual maturities, or are supported by annual sinking fund payments, depreciation, but excluding extraordinary nonrecurring items of income or expenses; and the term "fixed charges" shall include principal, both maturity and sinking fund, and interest on bonded debt. In computing such income available for fixed charges for the purposes of this section, the income so available of any corporation acquired by any municipal authority may be included, such income to be calculated as though such corporation had been operated by a municipal

authority and an equivalent amount of bonded debt were outstanding. The eligibility for investment purposes of obligations of each project of a municipal authority shall be separately considered hereunder.

(4) Public utility obligations. Bonds, notes, or obligations issued, assumed or guaranteed by any solvent public utility corporation or public utility business trust, incorporated or existing under the laws of the United States or of any state, district, or territory thereof.

(5) (a) Other corporate obligations. Bonds, notes, or obligations issued, assumed, or guaranteed by any other corporation, including railroads, or business trust, incorporated or existing under the laws of the United States, or of any state, district, or territory thereof, whose income available for fixed charges for the period of five fiscal years next preceding the date of investment shall have averaged not less than one and one-half times its average annual fixed charges applicable to such period. As used in this subsection (5), the term "income available for fixed charges" shall mean income, after deducting operating and maintenance expenses, depreciation and depletion, and taxes other than federal or state income taxes, but excluding extraordinary nonrecurring items of income or expense appearing in the regular financial statements of the corporation or business trust, and the term "fixed charges" shall include interest on funded or unfunded debt and amortization of debt discount and expense. If income is determined in reliance upon consolidated income statements of parent and subsidiary corporations or business trusts, such income shall be determined after provision for federal and

state income taxes of subsidiaries, and after proper allowance for minority stock interest, if any, and the required coverage of fixed charges, shall be computed on a basis including fixed charges and preferred dividends of subsidiaries, other than those payable by subsidiaries to the parent corporation or business trust, or to any other such subsidiaries.

(b) In applying an income test under this section to any issuing, assuming, or guaranteeing corporation or business trust, whether or not in legal existence during the whole of the five year period next preceding the date of the investment, which has at any time or times after the beginning of such period acquired the assets or the outstanding shares of capital stock of any other corporation or business trust by purchase, merger, consolidation, or otherwise, substantially as an entirety, or has been reorganized pursuant to the bankruptcy law, the income of such other predecessor or constituent corporation or business trust or of the corporation or business trust so reorganized, available for interest and dividends for such portion of such period as shall have preceded acquisition or reorganization may be included in the income of such issuing, assuming, or guaranteeing corporation or business trust for such portion of such period as may be determined in accordance with adjusted or pro forma consolidated income statements covering such portion of such period, and giving effect to all stock or shares outstanding and all fixed charges existing immediately after acquisition or reorganization.

(6)(a) Trustees', receivers', or equipment trust obligations. Certificates, notes, or obligations issued by trustees or receivers of any corporation or business trust created or existing under

the laws of the United States or of any state, district, or territory thereof, which, or the assets of which, are being administered under the direction of any court having jurisdiction, if such obligation is adequately secured as to principal and interest.

(b) Equipment trust obligations or certificates, which are adequately secured, or other adequately secured instruments, evidencing an interest in transportation equipment, wholly or in part within the United States, and a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of such transportation equipment.

(7) Acceptances and bills of exchange. Bank and bankers' acceptances, and other bills of exchange of the kind and maturities made eligible pursuant to law for purchase in the open market by federal reserve banks.

(8) (a) Real estate loans. Ground rents and bonds, notes, or other evidences of indebtedness, secured by first mortgages or trust deeds upon unencumbered improved real property located in any state, district, or territory of the United States, and in investments in the equity of the seller under contracts for deeds covering the entire balance due on bona fide sales of such real property; but a loan guaranteed or insured in full by the administrator of veterans' affairs pursuant to the provisions of the Federal Servicemen's Readjustment Act of 1944, as heretofore or hereafter amended, may be subject to a prior encumbrance.

(b) Real property shall not be considered to be encumbered within the meaning of this section by reason of the existence of instruments reserving mineral, oil, water or timber rights,

rights of way, sewer rights, rights in walls or driveways, by reason of liens inferior to the lien securing the loan of the insurance company, or liens for taxes or assessments not yet delinquent, or by reason of building restrictions or other restrictive covenants, or by reason of any lease under which rents or profits are reserved to the owner, if, in any event, the security for such loan is a first lien upon such real property, and if there is no condition or right of re-entry or forfeiture under which such lien can be cut off, subordinated or otherwise disturbed.

(c) (i) No mortgage or trust deed, loan, or investment in a seller's equity under a contract for deed issued or acquired by the insurance company on any one property shall at the date of investment exceed three-fourths of the value of the real property securing the loan, or subject to such contract; but, such limitation in respect to value shall not apply to a loan which is:

(ii) Insured by, or for which a commitment to insure has been made by the secretary of housing and urban development of Washington, D. C., pursuant to the provisions of the Federal National Housing Act, as heretofore or hereafter amended;

(iii) Guaranteed by the administrator of veterans' affairs pursuant to the provisions of the Federal Servicemen's Readjustment Act of 1944, as heretofore or hereafter amended, except, that if only a portion of a loan is so guaranteed, such limitation shall apply to the portion not so guaranteed;

(iv) Insured by the administrator pursuant to the provisions of the Federal Servicemen's Readjustment Act of 1944, as heretofore

or hereafter amended;

(v) Upon real estate under lease to a corporation or business trust, incorporated or existing under the laws of the United States or any state, district, or territory thereof, whose income available for fixed charges for the period of five fiscal years next preceding the date of investment, shall have averaged not less than one and one-half times its average annual fixed charges applicable to such period, if there is pledged and assigned, as additional security for the loan, and for application thereon, sufficient of the rentals payable under the lease to provide for repayment of the loan within the unexpired term of the lease;

(vi) Upon such terms that the principal thereof will be amortized by repayments of principal at least once in each year in amounts sufficient to repay the loan within a period of not more than thirty years, and such loan is upon improved real estate, and at the date of investment does not exceed three-fourths of the value of the real estate securing the loan.

(9) Purchase money securities. Purchase money mortgages or like securities received by it upon the sale or exchange of real property, acquired pursuant to subsection (17) of this section.

(10) Federal housing debentures. Debentures issued by the secretary of housing and urban development of Washington, D. C., in settlement of claims pursuant to the Federal National Housing Act, as heretofore or hereafter amended.

(11) National mortgage association securities. Securities of national mortgage associations or similar national mortgage credit institutions organized under the Federal National Housing Act, as heretofore or hereafter amended.

(12) Federal land bank, federal intermediate credit bank, and bank for cooperatives securities. Bonds, debentures, and other obligations of federal land banks or federal intermediate credit banks issued pursuant to the Federal Farm Loan Act, as heretofore or hereafter amended, or of banks for cooperatives issued pursuant to the Farm Credit Act of 1933, as heretofore or hereafter amended.

(13) (a) Loans upon leaseholds or real estate. Loans upon leasehold estates or unencumbered real estate located in any state, district, or territory of the United States; but, no such loan shall exceed two-thirds of the value of the leasehold at the date of investment, unless:

(b) Such loan is guaranteed or insured by, or for which a commitment to guarantee or insure such loan has been made by, the federal housing administrator or commissioner, pursuant to the provisions of the Federal National Housing Act, as heretofore or hereafter amended; or

(c) Such leasehold is of improved real estate and such loan provides for amortization by repayments of principal at least once in each year in amounts sufficient to repay the loan within a period of four-fifths of the unexpired term of the leasehold, but within a period of not more than thirty years, and does not exceed three-fourths of the value of the leasehold at the date of investment; or

(d) Such real estate is under lease to a corporation or business trust, incorporated or existing under the laws of the United States or any state, district, or territory thereof, whose income available for fixed charges for the period of five fiscal

years next preceding the date of investment shall have averaged not less than one and one-half times its average annual fixed charges applicable to such period, if there is pledged and assigned as additional security for the loan and for application thereof sufficient of the rentals payable under such lease to provide for repayment of the loan within the unexpired term of the lease.

(e) The terms of any such loan authorized under paragraphs (b), (c), and (d) of this subsection (13) shall require repayments of principal at least once in each year in amounts sufficient to repay the loan within the term of the leasehold, unexpired at the date of investment, unless a shorter period is required under paragraph (c) of this subsection.

(14) Savings and loan shares. Shares of any federal savings and loan association, or of any building and loan or savings and loan association, to the extent that the withdrawal or repurchasable value of such shares is insured by the federal savings and loan insurance corporation, under the Federal National Housing Act, as heretofore or hereafter amended, and shares of any building and loan or savings association to the extent that the withdrawal or repurchasable value of such shares is insured by a state regulated and supervised savings and loan insurance corporation.

(15) Federal savings and loan insurance corporation obligations. Bonds, notes, or obligations issued, assumed, or guaranteed by the federal savings and loan insurance corporation, under the provisions of the Federal National Housing Act, as heretofore or hereafter amended.

(16) Federal home loan bank obligations. Bonds, notes, or obligations issued, assumed, or guaranteed by the federal home loan bank, or issued, assumed, or guaranteed by the federal home loan bank board under the provisions of the Federal Home Loan Bank Act, as heretofore or hereafter amended.

(17) (a) Real estate. Real estate or any interest therein:

(b) Required for its convenient accommodation in the transaction of its business with reasonable regard to future needs;

(c) Acquired in connection with a claim under a policy of title insurance;

(d) Acquired in satisfaction or on account of loans, mortgages, liens, judgments, or decrees, previously owing to it in the course of its business;

(e) Acquired in part payment of the consideration of the sale of real property owned by it if the transaction shall result in a net reduction in the company's investment in real estate;

(f) Reasonably necessary for the purpose of maintaining or enhancing the sale value of real property previously acquired or held by it under this subsection.

(g) No title insurance company shall continue to hold any real estate acquired by it under paragraphs (c), (d), or (e) of this subsection for more than five years from the date of acquisition thereof, unless it shall obtain the written approval of the commissioner to hold such real estate for a longer period of time.

SECTION 19. Funds in excess of minimum capital, other than unearned premium reserve. (1) (a) Funds over and above minimum capital, other than the unearned premium reserve, may be retained as cash on hand or on deposit in banks, or may be invested in the

following classes of investments:

(b) Any of the classes of investments authorized in section 18 of this act; except that the aggregate amount invested at any time in those classes of investments set forth in subsections (8), (9), (13), and (17) of section 18 of this act, when valued at cost, shall not, without written approval of the commissioner, exceed fifty per cent of the sum of the capital and surplus of such title insurance company as shown by its most recent statement on file with said commissioner.

(c) Corporate stock or shares of any solvent title insurance company or any other solvent corporation exclusively engaged in one or more of the following businesses: The business of title insurance, the business of making, compiling, or selling abstracts of title to real estate or abstracts of any public records, or the business of acting as escrow agent in connection with real estate transactions and which corporation is incorporated under the laws of the United States, or any state, district, or territory thereof, the Commonwealth of Puerto Rico, or the Dominion of Canada or any province thereof.

(d) Corporate stock or shares of any solvent corporation incorporated under the laws of the United States, or any state, district, or territory thereof, the Commonwealth of Puerto Rico, or the Dominion of Canada or any province thereof; but, not more than an aggregate of twenty-five per cent of the amount of the surplus of the title insurance company as shown by its most recent statement on file with the commissioner shall be invested in such corporate stock or shares of such corporations which are not exclusively engaged in the businesses set forth in paragraph (c)

of this subsection.

(e) Canadian governmental subdivision obligations. Valid and legally authorized bonds, notes, or obligations issued, assumed, or guaranteed by any province, county, city, town, village, municipality, or political subdivision of the Dominion of Canada.

(f) Other loans and investments. Loans or investments not qualifying or permitted under paragraphs (b), (c), (d), or (e) of this subsection to an amount not exceeding twenty-five per cent of the amount of the surplus of a title insurance company as shown by its most recent statement on file with the commissioner.

(g) Title plant. If it shall at all times comply with the minimum capital investment requirements of section 18 of this act, a title insurance company may invest in a title plant. The title plant shall be considered an asset at the fair value thereof. In determining the fair value of a title plant, no value shall be attributed to furniture and fixtures. The real estate in which the title plant is housed shall be carried as real estate. The value of title abstracts, title briefs, copies of conveyances or other documents, indices, and other records comprising the title plant shall be determined by considering the expenses incurred in obtaining them, the age thereof, the cost of replacements less depreciation, and all other relevant factors. Once the value of a title plant shall have been so determined, such value may be increased only by the acquisition of another title plant by purchase, consolidation, or merger; in no event shall the value of the title plant be increased by additions made thereto as part of the normal course of abstracting and insuring

titles to real estate. Subject to the above limitations and with the approval of the commissioner, a title insurance company may enter into agreements with one or more other title insurance companies authorized to do business in this state, whereby such companies shall participate in the ownership, management, and control of a title plant to service the needs of all such companies, or such companies may hold stock of a corporation owning and operating a title plant for such purposes.

SECTION 20. Unearned premium reserve. The unearned premium reserve of a title insurance company may be held as cash on hand or on deposit in banks, or shall be invested only in those classes of investments authorized by subsections (2), (3), (4), (5), (6), (7), (10), (11), (12), (14), (15), and (16) of section 18 of this act, except that not more than one-fourth of such reserve may be invested in preferred or guaranteed stock or shares of any solvent corporation or business trust, incorporated or existing under the laws of the United States, or of any state, district, or territory thereof, whose net earnings available for its fixed charges during each of the two years next preceding the date of such investment have been, and during the five years next preceding such date shall have averaged, not less than one and one-half times the sum of its average annual fixed charges, if any, as such fixed charges are defined in subsection (5) of section 18 of this act and its average annual preferred dividend requirements. For the purpose of this section, such computation shall refer to the calendar or other fiscal year or years of such solvent corporation and the term "preferred dividend requirements" shall include cumulative and noncumulative dividends.

SECTION 21. Prior investments. Any investment of a title insurance company, lawfully acquired before the effective date of this act and which but for this section would be considered ineligible as an investment on such effective date, shall be disposed of within five years from such effective date. The commissioner, upon application and proof that forced sale of any such investment would be contrary to the best interests of the title insurance company and its policyholders, may extend the period for sale or disposal of such investment for a further reasonable time, in no event to exceed three years.

SECTION 22. Requisites for foreign and alien title insurance companies to do business in this state. (1) (a) Any title insurance company organized under the laws of another state or foreign government may be licensed to transact a title insurance business within this state if such company is and remains of the same standard of solvency and complies with other requirements fixed by the laws of this state for domestic title insurance companies. No foreign or alien title insurance company shall be admitted and authorized to do business in this state until:

(b) It shall first file in the office of the commissioner, a duly certified copy of its charter or articles of incorporation, together with a statement under oath of the president and secretary or other chief officers of such company showing the condition of affairs of such company on December 31 next preceding the date of such oath. The statement shall be in the same form and shall set forth the same particulars as the annual statement required by section 72-1-13, C.R.S. 1963. All foreign and alien title insurance companies applying to do business in this

state on or after the effective date of this act shall pay to the commissioner the same fee for filing the articles required by this section as that required by law for filing the same document or documents with the secretary of state; but, in no case shall the fee paid be less than twenty-five dollars. After filing its articles of incorporation or charter with the secretary of state, no title insurance company shall be required to file its annual report or other instrument except amendments to its articles of incorporation or charter in the office of the secretary of state, or to pay to the secretary of state an annual corporation tax but shall comply with the requirements of section 72-1-35, C.R.S. 1963.

(c) It has satisfied the commissioner that it is fully and legally organized under the laws of its state or government to do the business it proposes to transact and that it has the requisite amount of capital, fully paid up and unimpaired.

(d) It shall, by a duly executed instrument filed in his office, constitute and appoint the commissioner or his successor its true and lawful agent, upon whom all lawful processes in any action, rule, order, or legal proceeding against it may be served; and therein shall agree that any lawful process against it which may be served upon him as its said agent shall be of the same force and validity as if served on the company, and that the authority thereof shall continue in force irrevocably so long as any liability of the company remains outstanding in this state.

SECTION 23. Foreign and alien title insurance companies - resident agent required. (1) (a) No title insurance company not incorporated or organized under the laws of this state, but

authorized to transact business in this state, shall make, write, place, or cause to be made, written, or placed any policy or contract of insurance covering real property in this state except:

(b) Through a title insurance agent as defined in section 2 (10) of this act, who or which is a resident of this state or maintains his or its principal place of business in this state; or

(c) Through a bona fide branch office located in this state and under the direction and control of such title insurance company, all expenses of which branch office, including compensation of all employees, are paid by such title insurance company; or

(d) Through a subsidiary title insurance company.

(2) This section shall not be applicable to contracts of reinsurance or to policies of excess coinsurance.

SECTION 24. Mergers and consolidations of title insurance companies. (1) (a) A title insurance company organized and incorporated under the laws of this state may merge, be merged by, or consolidate with, one or more title insurance companies whether or not so incorporated, by complying with the applicable provisions of the state laws governing the merger or consolidation of stock corporations, but subject to the following:

(b) (i) No such merger or consolidation shall be effectuated unless in advance thereof, the plan and agreement therefor have been filed with the commissioner. The commissioner shall examine the terms and conditions of such merger or consolidation, and of any exchange of shares or securities pursuant thereto, after holding a hearing at which all persons or parties, to whom shares or securities are proposed to be issued in such exchange, shall have the right to appear. After such hearing, the commissioner shall

either approve or disapprove the fairness of such terms and conditions of exchange. The commissioner shall give such approval within a reasonable time after filing of a plan or agreement unless he finds such plan or agreement:

(ii) Is contrary to law; or

(iii) Inequitable to the stockholders of such title insurance company; or

(iv) Would substantially reduce the security of and services to be rendered to policyholders of such domestic title insurance company in this state or elsewhere.

(c) Where such merger or consolidation involves a parent company absorbing a wholly-owned subsidiary, the commissioner may, in his discretion, dispense with the holding of a hearing.

(2) No director, officer, agent, or employee of any title insurance company party to such acquisition shall receive any fee, commission, compensation, or other valuable consideration whatsoever for in any manner aiding, promoting, or assisting therein except as set forth in such plan or agreement.

(3) If the commissioner does not approve any such plan or agreement, he shall notify the title insurance company in writing specifying in detail his reasons therefor.

SECTION 25. Corporate acquisitions other than by merger or consolidation. (1) (a) A title insurance company organized and incorporated under the laws of this state may issue stock in exchange for all or any part of the assets or stock of a domestic or foreign title insurance company, abstract company, or title insurance agent if, in advance thereof, a plan or agreement of acquisition shall have been filed with the commissioner. The

commissioner shall examine the terms and conditions of such plan or agreement of acquisition, and of any exchange of shares or securities pursuant thereto, after holding a hearing at which all persons or parties to whom it is proposed to issue shares or securities in such exchange shall have the right to appear. After such hearing, the commissioner shall either approve or disapprove the fairness of such terms and conditions of such acquisition and exchange. The commissioner shall give such approval within a reasonable time after filing of a plan or agreement unless he finds such plan or agreement:

(b) Is contrary to law; or

(c) Inequitable to the stockholders of any title insurance or abstract company involved; or

(d) Would substantially reduce the security of and services to be rendered to policyholders of the domestic title insurance company in this state or elsewhere.

(2) No director, officer, agent, or employee of any title insurance company or abstract company party to such acquisition shall receive any fee, commission, compensation, or other valuable consideration whatsoever for in any manner aiding, promoting, or assisting therein except as set forth in such plan or agreement.

(3) If the commissioner does not approve any such plan or agreement, he shall notify the title insurance company in writing specifying in detail his reasons therefor.

SECTION 26. Purchase or acquisition of controlling stock. (1) In the event any person or persons, corporation, or corporations propose to purchase or acquire the controlling capital stock of any domestic title insurance company, such person or

persons, corporation, or corporations shall first make application to the commissioner for approval of such purchase or acquisition. The application shall contain the name and address of the proposed new owner or owners of the controlling stock, and the commissioner shall approve the proposed purchase or acquisition only after he has become satisfied that such purchase or acquisition will not result in violation of the antirebate provisions or controlled business provisions as defined herein by sections 34, 35, and 36 of this act, and that the proposed new owner or owners of the controlling stock are qualified by character, experience, and financial responsibility to control and operate the title insurance company in a lawful and proper manner, and that the interest of the title insurance company stockholders and policyholders and the interest of the public generally will not be jeopardized by the proposed change in ownership and management. If the commissioner does not, by affirmative action, approve or disapprove the proposed purchase or acquisition within thirty days after the date on which such application was so filed with him, the proposed purchase or acquisition shall be deemed to be approved at the expiration of such thirty-day period.

(2) No such purchase or acquisition of a domestic title insurance company shall be effectuated unless approved as provided in subsection (1) of this section.

(3) In the event the commissioner disapproves the proposed purchase or acquisition, he shall give written notice thereof to the person or persons, corporation, or corporations so applying for approval, setting forth in detail the reasons for disapproval.

SECTION 27. Title insurance agents - names to be certified

to commissioner. Every title insurance company authorized to transact business within this state shall certify annually to the commissioner the names of all title insurance agents representing it in this state.

SECTION 28. Title insurance agents licensed. (1) (a) Title insurance agents shall be licensed in the manner provided for agents of insurance companies in section 72-1-18, C.R.S. 1963, except as otherwise provided in this section.

(b) All applicants for a title insurance agent's license shall be required to qualify for such license by taking an examination of sufficient scope to satisfy the commissioner that the applicant has sufficient knowledge of, and is reasonably familiar with, the title insurance laws of this state and with the provisions, terms, and conditions of title insurance, and has an adequate understanding of the duties and obligations of a title insurance agent.

(c) If the applicant for a title insurance agent's license is a firm, association, corporation, cooperative, or joint-stock company, the members, officers, and employees of the applicant who intend to exercise the power and perform the duties of the agency, shall be required to take the examination required of applicants by paragraph (b) of this subsection; but, those employees performing only clerical functions not requiring the knowledge and understanding of title insurance agents shall not be required to take said examination.

(d) All applicants for a title insurance agent's license who are acting as title insurance agents on the effective date of this act shall not be required to take an examination for such

license if application for the issuance of such license is filed with the commissioner within a period of six months immediately following the effective date of this act.

(e) No license shall be required for any attorney at law licensed to practice law in this state, but nothing in this section shall exempt any attorney at law acting as such an agent from compliance with all other provisions of this act.

(2) Licenses of title insurance agents shall expire on January 1 next after their issue, unless sooner terminated by the company or revoked by the commissioner.

(3) Title insurance agents' licenses may be renewed annually upon the filing of an application containing such information as the commissioner deems necessary.

(4) The commissioner may, upon application to him by any person, firm, association, corporation, cooperative, or joint-stock company, grant to such applicant a temporary license as a title insurance agent. Such license shall remain in force and effect for a period of six months or until the expiration of sixty days after the next regularly scheduled examination for applicants for a title insurance agent's license, whichever is later. In the event of failure of the applicant to qualify for a regular title insurance agent's license as provided in this section, no renewal or extension of any temporary license held by said applicant shall be granted by the commissioner.

SECTION 29. Title insurance agents - books, records, escrows. (1) Every title insurance agent shall keep his or its books of account, records, and vouchers pertaining to the business of title insurance in such a manner that the commissioner, or his authorized

representatives, may readily ascertain from time to time whether the agent has complied with all the provisions of this act.

(2) (a) A title insurance agent may be engaged in the business of handling escrows of real property transactions as provided for title insurance companies in section 8 (1) (e) of this act, and so long as:

(b) The agent shall maintain a separate record of all receipts and disbursements of escrow funds and shall not commingle any such funds with the agent's own funds or with funds held by the agent in any other capacity; and

(c) The agent shall procure and file with the commissioner a good and sufficient bond in the amount of five thousand dollars with a corporate surety, duly licensed to do a surety business within the state, which bond has been approved as to form by the attorney general of the state, and is conditioned that said applicant will not practice fraud or make any fraudulent representations or violate any of the provisions of this section in the conduct of the business for which the agent is licensed.

(3) If at any time the commissioner determines that an agent has failed to comply with any of the provisions of this section, the commissioner, after a hearing conducted in accordance with the provisions of article 16 of chapter 3, C.R.S. 1963, may revoke the license of said agent.

SECTION 30. Title insurance agents - attorneys at law. If at any time the commissioner shall determine that an attorney at law who is acting as a title insurance agent has failed to comply with any provision of this act, and the commissioner would be entitled to revoke the license of said agent, the commissioner,

after written notice and affording an opportunity for a hearing, may issue an order in writing revoking the attorney's right to do business as a title insurance agent. A copy of said order shall be sent by the commissioner to the attorney and to each title insurance company for which said attorney is acting as a title insurance agent.

SECTION 31. Title insurance agents' replies to inquiries by commissioner. Every title insurance agent shall reply, in writing, promptly, with a copy thereof to each title insurance company for which said agent is acting, to any inquiry of the commissioner relative to the business of title insurance, and failure to reply shall be a ground for revocation of the agent's license. A copy of any inquiry sent by the commissioner to any agent relative to said agent's conduct of the business of title insurance shall also be sent by the commissioner to each title insurance company for which said agent is acting.

SECTION 32. Title insurance agents - certain names prohibited. On and after the effective date of this act, no agent for a title insurance company shall adopt a firm name containing the words "title insurance", "title guaranty", or "title guarantee", unless such words are followed by the words "agent" or "agency". The words "agent" or "agency" must be in the same size and type as the words preceding them. This section shall not apply to any title insurance company acting as agent for another title insurance company.

SECTION 33. Commissions - right to pay. A title insurance company may pay a commission to a title insurance agent, as defined in section 10 (2) of this act.

SECTION 34. Commissions - other considerations prohibited. No title insurance company and no title insurance agent shall pay or give to any applicant for insurance, or to any person, firm, or corporation who is acting as agent, representative, attorney, or employee of the owner, lessee, mortgagee or of the prospective owner, lessee, or mortgagee of the real property or any interest therein, either directly or indirectly, any commission or any part of its fees or charges, or any other consideration or valuable thing, as an inducement for, or as compensation for, any title insurance business. Nothing in this section shall preclude the payment by a title insurance company of a commission to any attorney, if said attorney is also a title insurance agent of such title insurance company, duly licensed in accordance with the provisions of this act, or the payment of a fee to an attorney for services rendered in the examination of title.

SECTION 35. Rebates or reduced fees. No title insurance company and no title insurance agent shall make any rebate of any portion of the fee or charge established pursuant to section 41 of this act. No title insurance company and no title insurance agent shall quote any fee or make any charge for a title insurance policy to any person which is less than that currently available to others for the same type of title insurance policy in a like amount and involving the same factors as set forth in the schedule of fees and charges established pursuant to section 41 of this act. The amount by which any fee or charge is less than that prescribed by the schedule of fees and charges established pursuant to said section 41 is an unlawful rebate.

SECTION 36. Personal or controlled insurance. (1) (a) As

used in this act, "personal or controlled insurance" means a policy of title insurance where any policyholder thereunder is, or the loss thereunder is payable to:

(b) (i) The title insurance company issuing such policy; or

(ii) Any person or corporation directly or indirectly owning or controlling a majority of the voting stock or controlling interest in such title insurance company; or

(iii) Any corporation which is directly or indirectly controlled by a person or corporation which also controls the title insurance company as described in subparagraph (ii) of this paragraph (b); or

(iv) Any corporation making consolidated returns for United States income tax purposes with such title insurance company or any corporation described in subparagraph (ii) or (iii) of this paragraph (b).

(c) The title insurance agent issuing such policy; or

(d) (i) If such title insurance agent is a natural person:

(ii) His spouse, his employer, or his employer's spouse; or

(iii) Any person related to him or the persons described in subparagraph (ii) of this paragraph (c) within the second degree by blood or marriage; or

(iv) If his employer is a corporation, any person directly or indirectly owning or controlling a majority of the voting stock or controlling interest in such corporation; or

(v) If his employer is a partnership or association, any person owning an interest in such partnership or association.

(e) (i) If such title insurance agent is a corporation:

(ii) Any person directly or indirectly owning or controlling

a majority of the voting stock or controlling interest in such corporation; or

(iii) Any corporation which is directly or indirectly controlled by a person who also controls the title insurance agent as described in subparagraph (ii) of this paragraph (e); or

(iv) Any corporation making consolidated returns for United States income tax purposes with any other corporation described in this paragraph (e).

(2) If the fees and charges for personal or controlled insurance from any one source so issued in any one calendar year received by a title insurance company or by a title insurance agent shall exceed twenty-five per cent or from all such sources shall exceed fifty per cent of the total fees and charges received by such title insurance company or by such title insurance agent for title insurance issued in the same year, the excess shall be deemed to be an unlawful rebate.

SECTION 37. Violations - examination of records. The commissioner, if he has reason to believe that any title insurance agent has violated or is violating any of the provisions of sections 34, 35, or 36 of this act, shall forthwith examine said title insurance agent's books of account and records and vouchers pertaining to the business of title insurance.

SECTION 38. Unlawful commissions, rebates - penalties. Every title insurance company and every title insurance agent which pays any commission or which makes any unlawful rebate, in willful violation of sections 34, 35, or 36 of this act shall be liable to the people of the state of Colorado for five times the amount of any such commission or unlawful rebate in addition to

any other penalty imposed by law. Such penalty shall be collected by and paid to the commissioner for deposit in the general fund.

SECTION 39. Permitted division of fees. Nothing in this act shall be construed to prohibit the division of fees and charges between or among two or more title insurance companies or between or among one or more title insurance companies and one or more title insurance agents, or between or among two or more title insurance agents, if any such division of fees and charges does not constitute an unlawful rebate as defined by section 36 of this act and is not in payment of a forwarding fee or finder's fee.

SECTION 40. General provisions - rates - rating organizations - procedure. The purposes of sections 41 to 52 of this act, are to promote the public welfare by regulating title insurance rates to the end that they shall not be excessive, inadequate, or unfairly discriminatory, and to authorize cooperative action between or among title insurance companies in rate making and other matters within the scope of said sections. Nothing in this section is intended to prohibit or discourage reasonable competition, or to prohibit or discourage, except to the extent necessary to accomplish the purposes stated above, uniformity in title insurance rates, rating systems, and rating plans and practices. The provisions of said sections 41 to 52 shall be liberally interpreted to effect the purposes thereof.

SECTION 41. Rate filing. (1) Every title insurance company shall file with the commissioner its schedule of fees including the premium and standard service charge as provided in section 2 (6) and (7), and every manual of classifications, rules,

and plans pertaining thereto, and every modification of any of the foregoing which it proposes to use in this state. Every such filing shall state the proposed effective date thereof and shall indicate the character and extent of the coverage contemplated. For the purpose of computing premium taxes, every title insurance company shall set forth that part of its filed fees which it designates to be premium as defined in section 2 (6) of this act.

(2) A title insurance company may satisfy its obligations to make such filings by becoming a member of, or a subscriber to, a licensed title insurance rating organization which makes such filings, and by authorizing the commissioner to accept such filings on its behalf.

(3) The commissioner shall make such review of the filings as may be necessary to carry out the provisions of this act.

(4) Subject to the provisions of subsection (6) of this section, each filing shall be on file for a period of fifteen days before it becomes effective. The commissioner may, upon written notice given within such period to the person making the filing, extend such waiting period for an additional period, not to exceed fifteen days, to enable him to complete the review of the filing. Further extensions of such waiting period may also be made with the consent of the title insurance company or rating organization making the filing. Upon written application by the title insurance company or rating organization making the filing, the commissioner may authorize a filing or any part thereof which he has reviewed, to become effective before the expiration of the waiting period or any extension thereof.

(5) Except in the case of rates filed under subsection (6)

of this section, a filing which has become effective shall be deemed to meet the requirements of this act.

(6) When the commissioner finds that any rate for a particular kind or class of risk cannot practicably be filed before it is used, or any contract or kind of title insurance, by reason of rarity or peculiar circumstances, does not lend itself to advance determination and filing of rates, he may, under such rules and regulations as he may prescribe, permit such rate to be used without a previous filing and waiting period.

(7) Beginning ninety days after the effective date of this act, no title insurance company or title insurance agent shall charge any fee for any policy or contract of title insurance except in accordance with filings or rates which are in effect for said title insurance company as provided in this act, or in accordance with subsection (6) of this section.

(8) The commissioner shall not have the power to regulate, or require the filing of rates or fees for reinsurance contracts or agreements or excess coinsurance.

SECTION 42. Justification for rates. (1) A rate filing shall be accompanied by a statement of the title insurance company or title insurance rating organization making the filing, setting forth the basis upon which the rate was fixed and upon which the fees are to be computed.

(2) (a) Any filing may be justified by:

(b) The experience or judgment of the title insurance company or title insurance rating organization making the filing;

(c) Its interpretation of any statistical data relied upon;

(d) The experience of other title insurance companies or

title insurance rating organizations; or

(e) Any other factors which the title insurance company or title insurance rating organizations deem relevant.

(3) The statement and justification shall be open to public inspection after the rate to which it applies becomes effective.

SECTION 43. Making of rates. (1) (a) Every title insurance company that shall make its own rates, and every title insurance rating organization, shall make rates that are neither excessive nor inadequate for the safety and soundness of any title insurer, which do not unfairly discriminate between risks in this state which involve essentially the same exposure to loss and expense elements, and which shall give due consideration to the following matters:

(b) The desirability for stability of rate structures;

(c) The necessity, by encouraging growth in assets of title insurance companies in periods of high business activity, of assuring the financial solvency of title insurance companies in periods of economic depression; and

(d) The necessity for paying dividends on the capital stock of title insurance companies sufficient to induce capital to be invested therein.

(2) Every title insurance company that shall make its own rates, and every title insurance rating organization, shall adopt basic classifications of policies or contracts of title insurance which shall be used as the basis for rates.

(3) Rates within each rate classification may, at the discretion of the title insurance company that files its own rates,

or at the discretion of the title insurance rating organization, be less than the cost of the expense elements in the case of smaller amounts of title insurance, and the excess may be charged against the larger amounts of title insurance without rendering the rates unfairly discriminatory.

SECTION 44. Disapproval of filings. (1) (a) Upon the review at any time by the commissioner of a filing, he shall, before issuing an order of disapproval, hold a hearing after not less than ten days' written notice, specifying in reasonable detail the matters to be considered at such hearing, to every title insurance company and title insurance rating organization which made such filing, and if, after such hearing, he finds that such filing or a part thereof does not meet the requirements of this act, he shall issue an order specifying in what respects he finds that it so fails, and stating when, within a reasonable period thereafter, such filing or a part thereof shall be deemed no longer effective if the filing or a part thereof has become effective under the provisions of section 41 of this act. If not theretofore approved or disapproved after a hearing thereon, or affirmatively approved or disapproved by the commissioner, unless the time therefor is extended as provided in section 41 (4), the filing shall become effective at 12:01 a.m. on the sixteenth day after the filing.

(b) Any title insurance company or title insurance rating organization shall have the right at any time to withdraw a filing or a part thereof, subject to the provisions of section 46 of this act in the case of a deviation filing.

(c) Copies of said order shall be sent to every title

insurance company and title insurance rating organization affected. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

(2) (a) Any person or organization aggrieved with respect to any filing which is in effect, may make written application to the commissioner for a hearing thereon. The title insurance company or title insurance rating organization that made the filing shall not be authorized to proceed under this subsection. Such application shall specify in reasonable detail the grounds to be relied upon by the applicant. If the commissioner shall find that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding such a hearing, he shall, within thirty days after receipt of such application, hold a hearing after not less than ten days' written notice to the applicant and to every title insurance company and title insurance rating organization which made such a filing. If, after such hearing, the commissioner finds that the filing or a part thereof does not meet the requirements of this act, he shall issue an order specifying in what respects he finds that such filing or a part thereof fails to meet the requirements of this act, stating when within a reasonable period thereafter, such filing or a part thereof shall be deemed no longer effective.

(b) Copies of said order shall be sent to the applicant and to every such title insurance company and title insurance rating organization. Said order shall not affect any contract or policy made or issued prior to the expiration of the period

set forth in said order.

SECTION 45. Title insurance rating organizations. (1) (a) Any corporation, unincorporated association, partnership, or individual, whether located within or outside this state, may make application to the commissioner for license as a rating organization for title insurance companies, and shall file therewith:

(b) A copy of its constitution, its articles of agreement or association, or its certificate of incorporation, and of its bylaws, rules and regulations, or an individual's plan of operation, governing the conduct of its business;

(c) A list of its members and subscribers;

(d) The name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served; and

(e) A statement of its qualifications as a title insurance rating organization.

(2) (a) If the commissioner finds that the applicant is competent, trustworthy, and otherwise qualified to act as a title insurance rating organization, and that its constitution, articles of agreement or association, or certificate of incorporation, and its bylaws, rules and regulations, or plan of operation, governing the conduct of its business conform to the requirements of the law, he shall issue a license authorizing the applicant to act as a rating organization for title insurance. Every such application shall be granted or denied in whole or in part by the commissioner within sixty days after the date of its filing. Licenses issued pursuant to this section shall remain in effect for three years unless sooner suspended or revoked by the

commissioner or surrendered by the licensee. The fee for said license shall be the sum of twenty-five dollars. Licenses issued pursuant to this section may be suspended or revoked by the commissioner, after written notice and affording an opportunity for a hearing, in the event the title insurance rating organization ceases to meet the requirements of this subsection.

(b) (i) Every such rating organization shall notify the commissioner promptly of every change in:

(ii) Its constitution, its articles of agreement or association, or its certificate of incorporation, and its bylaws, rules, and regulations governing the conduct of its business;

(iii) Its list of members and subscribers; and

(iv) The name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

(3) (a) Subject to conditions and requirements approved by the commissioner as reasonable, each title insurance rating organization shall permit any title insurance company not a member to subscribe to its rating services. Notices of proposed changes in such conditions and requirements shall be given to subscribers. Each such rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any condition or requirement in its application to subscribers, or the refusal of any such rating organization to admit a title insurance company as a subscriber, shall, at the request of any subscriber or any such title insurance company, be reviewed by the commissioner at a hearing held upon at least ten days' written notice to such rating organization and to such

subscriber.

(b) If the commissioner finds that such condition or requirement is unreasonable in its application to subscribers, he shall order that the same shall not be applicable to subscribers. If the rating organization fails to grant or reject an application of a title insurance company for subscribership within thirty days after such application was made, the title insurance company may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the title insurance company has been refused admittance to the title insurance rating organization as a subscriber without justification, he shall order said rating organization to admit the title insurance company as a subscriber. If he finds that the action of the title insurance rating organization was justified, he shall make an order affirming its action.

(4) Cooperation among title insurance rating organizations, or among such rating organizations and title insurance companies, and concert of action among title insurance companies under the same general management and control in rate making or in other matters within the scope of this act is authorized; but the filings resulting therefrom are subject to all the provisions of this act applicable to filings generally. The commissioner may review such activities and practices and if, after a hearing, he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this act, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this act and requiring the

discontinuance of such activity or practice.

SECTION 46. Deviations. (1) Every member of or subscriber to a title insurance rating organization shall adhere to the filings made on its behalf by such organization, except that any title insurance company which is a member of or subscriber to such a rating organization may file with the commissioner a uniform percentage of decrease or increase to be applied to any or all elements of the fees produced by the rating system so filed for a class of title insurance which is found by the commissioner to be a proper rating unit for the application of such uniform decrease or increase, or to be applied to the rates for a particular area. Such deviation filing shall specify the basis for the modification and shall be accompanied by the data or historical pattern upon which the applicant relies. A copy of the deviation filing and data shall be sent simultaneously to such rating organization.

(2) Any such deviation filing shall be on file for a waiting period of fifteen days before it becomes effective. Extension of such waiting period may be made in the same manner that such period is extended in the case of rate filings. The commissioner may authorize a deviation filing or any part thereof to become effective before the expiration of the waiting period or any extension thereof. Deviation filings shall be subject to the provisions of section 44 of this act. Each deviation shall be effective for at least one year unless terminated sooner, with the approval of the commissioner, or in accordance with the provisions of section 44 of this act.

SECTION 47. Appeal from rating organization decision. (1)

Any member of or subscriber to a title insurance rating organization may appeal to the commissioner from any action or decision of such rating organization in approving or rejecting any proposed change in or addition to the filing of such rating organization, and the commissioner shall, after a hearing held upon not less than ten days' written notice to the appellant and to such rating organization, issue an order approving the action or decision of such rating organization or directing it to give further consideration to such proposal and to take action or make a decision upon it within thirty days.

(2) If such appeal is from the action or decision of the title insurance rating organization in rejecting a proposed addition to its filings, he may, in the event he finds that such action or decision was unreasonable, issue an order directing said rating organization to make an addition to its filings, on behalf of its members and subscribers, in a manner consistent with his findings, within a reasonable time after the issuance of such order. If the appeal is from the action of the title insurance rating organization with regard to a rate or a proposed change in or addition to its filings relating to the character and extent of coverage, he shall approve the action of said rating organization or such modification thereof as shall have been suggested by the appellant, if either be in accordance with this act.

(3) The failure of a title insurance rating organization to take action or make a decision within thirty days after submission to it of a proposal under this section shall constitute a rejection of such proposal within the meaning of this section. If such appeal is based upon the failure of said rating organization

to make a filing on behalf of such member or subscriber which is based on a system of expense allocation which differs, in accordance with the right granted in subsection (3) of section 43 of this act from the system of expense allocation included in a filing made by said rating organization, the commissioner shall, if he grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal, the commissioner shall apply the standards set forth in section 43 of this act.

SECTION 48. Rate administration - authority and duties of commissioner - rules and regulations. (1) (a) The commissioner may, in his discretion, prescribe by regulation rules reasonably adaptable to each of the rating systems on file with him, uniform classification of accounts to be observed, statistics to be reported, and uniform forms for reporting such data by all title insurance companies and title insurance rating organizations.. No such regulation shall be promulgated by the commissioner except after a hearing held upon notice to all title insurance companies and title insurance rating organizations. Any such regulations, or amendments thereto, shall be promulgated by the commissioner not less than six months prior to the first day of the calendar year during which such regulation or amendment shall take effect.

(b) Any title insurance company or title insurance rating organization aggrieved by such rules or regulations, shall have the right to file an action in the district court of the city and county of Denver within thirty days to determine the validity or reasonableness of such rule or regulation. Such action shall be a trial de novo as provided in section 58 of this act.

(2) Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans.

(3) In order to further the uniform administration of rate regulatory laws, the commissioner and every title insurance company and title insurance rating organization may exchange information and experience data with insurance supervisory officials, title insurance companies, and title insurance rating organizations in other states, and may consult with them and with each other with respect to rate making and the application of rating systems.

SECTION 49. False or misleading information. No title insurance company or title insurance agent shall willfully withhold information from, or knowingly give false or misleading information to, the commissioner or any title insurance rating organization, of which the title insurance company is a member or subscriber, which will affect the rates or fees chargeable under this act.

SECTION 50. Penalties - suspension, revocation of licenses. (1) The commissioner may, if he finds that any title insurance rating organization, title insurance company, or title insurance agent has violated any provision of this act, impose a penalty of not more than fifty dollars for each such violation, but if he finds such violation to be willful, he may impose a penalty of not more than five hundred dollars for each such violation. Such penalties may be in addition to any other penalty provided by law.

(2) The commissioner may suspend the license of any title insurance rating organization, title insurance company, or title

insurance agent which fails to comply with an order of the commissioner within the time limited by such order, or any extension thereof, which the commissioner may grant. The commissioner shall not suspend the license of any such rating organization, company, or agent for failure to comply with an order until the time prescribed for an appeal therefrom has expired, or, if an appeal has been taken, until such order has been affirmed.

(3) The commissioner may determine when a suspension of license shall become effective, and it shall remain in effect for the period fixed by him, unless he modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded, or reversed.

(4) No penalty shall be imposed and no license shall be suspended or revoked except upon a written order of the commissioner, stating his findings, made after a hearing held upon not less than ten days' written notice to such person or organization, specifying the alleged violation.

SECTION 51. Hearing procedures. (1) Any title insurance company, title insurance rating organization, or person aggrieved by any action of the commissioner, or by any rule or regulation adopted and promulgated by him, shall have the right to file a complaint with the commissioner and to have a hearing thereon before the commissioner. Pending such hearing and the decision thereon, the commissioner may suspend or postpone the effective date of such action, rule, or regulation.

(2) All hearings provided for in this act shall be conducted,

and the decision of the commissioner on the issue or filing involved shall be rendered, in accordance with article 16 of chapter 3, C.R.S. 1963.

SECTION 52. Existing filings and hearings continued. All title insurance manuals of classifications, rules and rates, rating plans, and all modifications thereof filed under any law repealed by this act shall be deemed to have been filed under this act, and all title insurance rating organizations licensed under such repealed law shall be deemed to have been licensed under this act. All hearings and investigations pending under such repealed law shall be deemed to have been initiated under and shall be continued under this act.

SECTION 53. Forms of policies and other contracts of title insurance. (1) Every title insurance company shall file with the commissioner at least one copy of all forms of title policies and other contracts of title insurance before the same shall be issued. Any such filing may be made by a title insurance rating organization in behalf of all of its members or subscribers. In no event shall any title insurance company issue any such form of policy or contract until thirty days after it shall have been filed with the commissioner, unless it shall have received earlier approval by the commissioner. Unless the commissioner shall disapprove a form of title policy or contract of title insurance within thirty days after the date of its filing, such form shall be deemed to have been approved.

(2) On or after ninety days after the effective date of this act, no title insurance company or title insurance agent shall issue any form of title policy or other contract of title insurance except upon forms filed and approved in accordance with this act.

(3) (a) Forms of title policies and other contracts of insurance, as used in this section, shall be deemed to include preliminary reports of title, binders for insurance, and policies of insurance or guaranty, together with all the terms and conditions of insurance coverage or guaranty that relate to title to any interest in real property and which shall be offered by a title insurance company. Such forms shall not include:

(b) Reinsurance contracts or agreements;

(c) All specific defects in title that may be ascertained from an examination of the risk and excepted in such reports, binders, or policies, together with any affirmative assurance of the title insurance company with respect to such defects whether given by endorsement or otherwise; and

(d) Such further exceptions from coverage by reason of limitations upon the examination of the risk imposed by an applicant for insurance or through failure of an applicant for insurance to provide the data requisite to a judgment of insurability.

SECTION 54. Annual statements of title insurance companies - form and contents. (1) Every title insurance company authorized to do a title insurance business in this state, shall file in the office of the commissioner annually on or before the first day of March a statement, to be known as its annual statement, executed in duplicate, verified under oath by at least two of its principal

officers, showing its financial condition as of December 31 of the preceding year. Such statement shall be in such form and shall contain such matters as the commissioner shall prescribe.

(2) The annual statement made to the commissioner pursuant to this section shall include information required by the convention blank form adopted from year to year by the national association of insurance commissioners.

SECTION 55. Records. (1) (a) Every domestic title insurance company shall, except as otherwise provided in this section, keep and maintain at its principal office in this state the following records:

(b) Its charter and bylaws;

(c) Its books of account;

(d) A record containing the names and addresses of its stockholders, the number and class of shares held by each, and the dates when they respectively became the owners of record thereof; and

(e) The minutes of any meetings of its stockholders, board of directors, and committees thereof.

(2) (a) A domestic title insurance company may keep and maintain its books of account without this state if, in accordance with a plan adopted by its board of directors or trustees and approved by the commissioner, it maintains in this state suitable records in lieu thereof.

(b) The commissioner may, after notice and hearing, direct such title insurance company to return all or any of its books of account to this state if such return is reasonably necessary to protect the interests of the people of this state, or to permit

their inspection in this state by a director or stockholder who has shown to the satisfaction of the commissioner that he has made an application to such title insurance company for inspection of such books in good faith and for a necessary and legitimate purpose, and that such title insurance company has either declined to permit such inspection or to agree to pay any additional expenses reasonably to be incurred by the applicant, or his agent or attorney, in connection with the inspection of such books as a result of their maintenance without this state.

(c) If, in the judgment of the commissioner, delay in the return of any or all books of account of such title insurance company may be hazardous, or may cause irreparable injury to the people of this state or to the policyholders of such title insurance company, he may direct the return thereof without notice and hearing.

SECTION 56. Commissioner may require special reports. The commissioner may require any information in writing from any title insurance company authorized to do business in this state, or its officers, with respect to its title insurance transactions or financial condition, or any matter connected therewith. Every such corporation or person shall furnish such information in writing promptly and truthfully, verified, if required by the commissioner, by such officer or officers of a corporation, as he shall designate.

SECTION 57. Examination of title insurance companies - when authorized or required. (1) (a) The commissioner may make an examination into the affairs of any title insurance company authorized to do title insurance business in this state as often

as he deems it expedient for the protection of the interests of the people of this state.

(b) The commissioner shall make an examination into the affairs of every authorized domestic title insurance company at least once in every three years and every title insurance rating organization at least once in every five years.

SECTION 58. Judicial review of commissioner's action. If any title insurance company, title insurance agent, or title insurance rating organization is dissatisfied with any decision, regulation, order, rate, rule, act, or administrative ruling adopted by the commissioner, such title insurance company, title insurance agent, or title insurance rating organization, after failing to obtain relief from the commissioner, may file a petition setting forth the particular objection to such decision, regulation, order, rate, rule, act, or administrative ruling, or to either or all of them, in the district court of the city and county of Denver, and not elsewhere, against the commissioner as defendant. The action shall not be limited to questions of law and the substantial evidence rule shall not apply, but such action shall be tried and determined upon a trial de novo by a preponderance of the evidence. The commissioner shall not be required to give any appeal bond in any cause arising hereunder.

SECTION 59. Other sections applicable. In addition to the provisions of this act, only the following provisions of the laws governing insurance companies, except as they are inconsistent with the provisions of this act, shall apply to the business of title insurance and to title insurance companies: Sections 72-1-10, 72-1-11, 72-1-12, 72-1-13, 72-1-14, 72-1-15, 72-1-16, 72-1-17,

72-1-34, 72-1-52, 72-2-8, 72-2-10, and 72-2-11, and articles 17 and 18 of chapter 72, C.R.S. 1963, as amended.

SECTION 60. 72-1-41 (7), Colorado Revised Statutes 1963, is amended to read:

72-1-41. Purpose of organization or admittance. (7) No foreign, alien, or domestic insurance company, excluding life insurance companies and title insurance companies, shall expose itself to loss in an amount exceeding ten per cent ~~and no title insurance company shall expose itself to loss in an amount exceeding fifty per cent;~~ of its paid-up capital or guaranty fund and surplus on any one risk or hazard, unless the same shall be reinsured in some other good and responsible company or companies.

SECTION 61. Repeals. 31-12-1 to 31-12-7, 72-1-41 (4) (i), and 72-1-41 (8), C.R.S. 1963, as amended, are repealed.

SECTION 62. Corporate existence preserved. The repeal of sections 31-12-1 to 31-12-7, C.R.S. 1963, as amended, shall not affect the corporate existence of corporations organized under the provisions of said sections which said corporations are now engaged in the business of title insurance or title insurance agents in this state. Such corporations in all other respects shall be subject to the provisions of this act and shall file with the commissioner a copy of its articles of incorporation and all amendments thereto certified by the secretary of state.

SECTION 63. Application of act. The provisions of this act shall apply to all title insurance companies, title insurance rating organizations, title insurance agents, applicants for title insurance, policyholders, and to all persons and business entities deemed to be engaged in the business of title insurance.

SECTION 64. Severability clause. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 65. Effective date. This act shall take effect July 1, 1967.

SECTION 66. 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.

BILL D

A BILL FOR AN ACT

RELATING TO INSURANCE AND TO PROVIDE FOR THE REGULATION OF CREDIT LIFE INSURANCE AND CREDIT ACCIDENT AND HEALTH INSURANCE.

Be It Enacted by the General Assembly of the State of Colorado:

SECTION 1. Purpose. The purpose of this act is to promote the public welfare by regulating credit life insurance and credit accident and health insurance. Nothing in this act is intended to prohibit or discourage reasonable competition. The provisions of this act shall be liberally construed.

SECTION 2. Short title. (1) this act may be cited as the "Model Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance."

SECTION 3. Application of Act. All life insurance and all accident and health insurance in connection with loans or other credit transactions shall be subject to the provisions of this act except such insurance in connection with a loan or other credit transaction of more than five years duration; nor shall insurance be subject to the provisions of this act where the issuance of such insurance is an isolated transaction on the part of the insuror not related to an agreement or a plan for insuring debtors of the creditor.

SECTION 4. Definitions. (1) For the purpose of this act:

(2) "Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction.

(3) "Credit accident and health insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy.

(4) "Creditor" means the lender of money or vendor or lessor of goods, services, property, rights, or privileges, for which payment is arranged through a credit transaction or any successor to the right, title, or interest of any such lender, vendor, or lessor, and an affiliate, associate, or subsidiary of any of them or any director, officer, or employee of any of them or any other person in any way associated with any of them.

(5) "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges for which payment is arranged through a credit transaction.

(6) "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction.

(7) "Commissioner" means commissioner of insurance of Colorado.

SECTION 5. Forms of credit life insurance and credit accident and health insurance. (1) (a) Credit life insurance and credit accident and health insurance shall be issued only in the following forms:

(b) Individual policies of life insurance issued to debtors on the term plan;

(c) Individual policies of accident and health insurance issued to debtors on a term plan or disability benefit provisions in individual policies of credit life insurance;

(d) Group policies of life insurance issued to creditors providing insurance upon the lives of debtors on the term plan;

(e) Group policies of accident and health insurance issued to creditors on a term plan insuring debtors or disability benefit

provisions in group credit life insurance policies to provide such coverage.

SECTION 6. Amount of credit life insurance and credit accident and health insurance. (1) The initial amount of credit life insurance shall not exceed the total amount repayable under the contract of indebtedness and, where an indebtedness is repayable in substantially equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater.

(2) Notwithstanding the provisions of subsection (1), or any other subsection, insurance on agricultural credit transaction commitments, not exceeding one year in duration, may be written up to the amount of the loan commitment, on a non-decreasing or level term plan.

(3) Notwithstanding the provisions of subsection (1), or any other subsection, insurance on educational credit transaction commitments may be written for the amount of the portion of such commitment that has not been advanced by the creditor.

(4) The total amount of periodic indemnity payable by credit accident and health insurance in the event of disability, as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid installments of the indebtedness; and the amount of each periodic indemnity payment shall not exceed the original indebtedness divided by the number of periodic installments.

SECTION 7. Term of credit life insurance and credit accident and health insurance. (1) The term of any credit life insurance or credit accident and health insurance shall, subject to

acceptance by the insurer, commence on the date when the debtor becomes obligated to the creditor, except that, where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to such indebtedness shall commence on the effective date of the policy. Where evidence of insurability is required and such evidence is furnished more than thirty days after the date when the debtor becomes obligated to the creditor, the term of the insurance may commence on the date on which the insurance company determines the evidence to be satisfactory, and in such event there shall be an appropriate refund or adjustment of any charge to the debtor for insurance. The term of such insurance shall not extend more than fifteen days beyond the scheduled maturity date of the indebtedness except when extended without additional cost to the debtor. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited as provided in section 10.

SECTION 8. Provisions of policies and certificates of insurance; disclosure to debtors. (1) All credit life insurance and credit accident and health insurance shall be evidenced by an individual policy, or in the case of group insurance by a certificate of insurance, which individual policy or group certificate of insurance shall be delivered to the debtor.

(2) Each individual policy or group certificate of credit life insurance, or credit accident and health insurance, or credit

life insurance and credit accident and health insurance shall, in addition to other requirements of law, set forth:

(a) The name and home office address of the insurer,

(b) The name or names of the debtor, or in the case of a certificate under a group policy, the identity by name, or otherwise, of the debtor,

(c) The premium or amount of payment, if any, by the debtor separately for credit life insurance and credit accident and health insurance,

(d) A description of the coverage, including the amount and term thereof, and any exceptions, limitations, and restrictions, and shall state that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness and, wherever the amount of insurance may exceed the unpaid indebtedness, that any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to his estate.

(3) Said individual policy or group certificate of insurance shall be delivered to the insured debtor at the time the indebtedness is incurred except as provided in subsection (4) of this section.

(4) (a) (i) If said individual policy or group certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for such policy or a notice of proposed insurance, signed by the debtor and setting forth:

(ii) The name and home office address of the insurer,

(iii) The name or names of the debtor,

(iv) The premium or amount of payment by the debtor, if any,

separately for credit life insurance and credit accident and health insurance,

(v) The amount, term, and a brief description of the coverage provided, shall be delivered to the debtor at the time such indebtedness is incurred.

(b) The copy of the application for, or notice of, proposed insurance shall also refer exclusively to insurance covereage, and shall be separate and apart from the loan, sale, or other credit statement of account, instrument, or agreement, unless the information required by this subsection is prominently set forth therein. Upon acceptance of the insurance by the insurer and within thirty days of the date upon which the indebtedness is incurred, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the debtor. Said application or notice of proposed insurance shall state that upon acceptance by the insurer, the insurance shall become effective as provided in section 7.

(c) If the named insurer does not accept the risk, then and in such event the debtor shall receive a policy or certificate of insurance setting forth the name and home office address of the substituted insurer and the amount of the premium to be charged, and if the amount of premium is less than that set forth in the notice of proposed insurance, an appropriate refund shall be made.

SECTION 9. Filing, approval, and withdrawal of forms. (1) All policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders delivered or issued for delivery in this State and the schedules of premium rates pertaining thereto shall be filed with the commissioner.

(2) The commissioner shall within thirty days after the filing of any such policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders, disapprove any such form if the benefits provided therein are not reasonable in relation to the premium charge, or if it contains provisions which are unjust, unfair, inequitable, misleading, deceptive, or encourage misrepresentation of the coverage, or are contrary to any provision of the insurance code or of any rule or regulation promulgated thereunder.

(3) If the commissioner notifies the insurer that the form is disapproved, it is unlawful thereafter for such insurer to issue or use such form. In such notice, the commissioner shall specify the reason for his disapproval and state that a hearing will be granted within twenty days after request in writing by the insurer. No such policy, certificate of insurance, notice of proposed insurance, nor any application, endorsement, or rider, shall be issued or used until the expiration of thirty days after it has been so filed, unless the commissioner shall give his prior written approval thereto.

(4) The commissioner may, at any time after a hearing held not less than twenty days after written notice to the insurer, withdraw his approval of any such form on any ground set forth in subsection (2) of this section. The written notice of such hearing shall state the reason for the proposed withdrawal.

(5) It is not lawful for the insurer to issue such forms or use them after the effective date of such withdrawal.

(6) If a group policy of credit life insurance or credit accident and health insurance has been delivered in this state

before the effective date of this act, or has been or is delivered in another state before or after the effective date of this act, the insurer shall be required to file only the group certificate and notice of proposed insurance delivered or issued for delivery in this state as specified in subsection (2) and (4) of section 8 of this act and such forms shall be approved by the commissioner if they conform with the requirements specified in said subsections and if the schedules of premium rates applicable to the insurance evidenced by such certificate or notice are not in excess of the insurer's schedules of premium rates filed with the commissioner; but the premium rate in effect on existing group policies may be continued until the first policy anniversary date following the date this act becomes operative as provided in section 14.

(7) Any order or final determination of the commissioner under the provisions of this section shall be subject to judicial review.

SECTION 10. Premiums and refunds. (1) Any insurer may revise its schedules of premium rates from time to time, and shall file such revised schedules with the commissioner. No insurer shall issue any credit life insurance policy or credit accident and health insurance policy for which the premium rate exceeds that determined by the schedules of such insurer as then on file with the commissioner.

(2) Each individual policy, or group certificate shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by the debtor for insurance shall be paid or credited promptly to the person entitled thereto; except that the commissioner shall prescribe a minimum refund and no refund which would

be less than such minimum need be made. The formula to be used in computing such refund shall be filed with and approved by the commissioner.

(3) If a creditor requires a debtor to make any payment for credit life insurance or credit accident and health insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to such debtor and shall promptly make an appropriate credit to the account.

(4) The amount charged to a debtor for any credit life or credit health and accident insurance shall not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.

(5) Nothing in this act shall be construed to authorize any payments for insurance now prohibited under any statute, or rule thereunder, governing credit transactions.

SECTION 11. Issuance of policies. All policies of credit life insurance and credit accident and health insurance shall be delivered or issued for delivery in this state only by an insurer authorized to do an insurance business therein, and shall be issued only through holders of licenses or authorizations issued by the commissioner.

SECTION 12. Claims. (1) All claims shall be promptly reported to the insurer or its designated claim representative, and the insurer shall maintain adequate claim files. All claims shall be settled as soon as possible and in accordance with the terms of the insurance contract.

(2) All claims shall be paid either by draft drawn upon the

insurer or by check of the insurer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or upon direction of such claimant to one specified.

(3) No plan or arrangement shall be used whereby any person, firm, or corporation other than the insurer or its designated claim representative shall be authorized to settle or adjust claims. The creditor shall not be designated as claim representative for the insurer in adjusting claims; but a group policyholder may, by arrangement with the group insurer, draw drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurer.

SECTION 13. Existing insurance - choice of insurer. When credit life insurance or credit accident and health insurance is required as additional security for any indebtedness, the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or of procuring and furnishing the required coverage through any insurer authorized to transact an insurance business within this state.

SECTION 14. Enforcement. The commissioner may, after notice and hearing, issue such rules and regulations as he deems appropriate for the supervision of this act. Whenever the commissioner finds that there has been a violation of this act or any rules or regulations issued pursuant thereto, and after written notice thereof and hearing given to the insurer or other person authorized or licensed by the commissioner, he shall set forth the details of his findings together with an order for compliance by a specified date. Such order shall be binding on the insurer and

other person authorized or licensed by the commissioner on the date specified unless sooner withdrawn by the commissioner or a stay thereof has been ordered by a court of competent jurisdiction. The provisions of sections 6, 7, 8 and 9 of this act shall not be operative until ninety days after the effective date of this act, and the commissioner in his discretion may extend by not more than an additional ninety days the initial period within which the provisions of said sections shall not be operative.

SECTION 15. Judicial review. Any party to the proceeding affected by an order of the commissioner shall be entitled to judicial review by following the procedure set forth in 3-16-5, C.R.S. 1963.

SECTION 16. Penalties. In addition to any other penalty provided by law, any person, firm, or corporation which violates an order of the commissioner after it has become final, and while such order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the state of Colorado a sum not to exceed two hundred fifty dollars which may be recovered in a civil action, except that if such violation is found to be willful, the amount of such penalty shall be a sum not to exceed one thousand dollars. The commissioner, in his discretion, may revoke or suspend the license or certificate of authority of the person, firm, or corporation guilty of such violation. Such order for suspension or revocation shall be upon notice and hearing, and shall be subject to judicial review as provided in section 15 of this act.

SECTION 17. Severability clause. If any provision of this act, or the application of such provision to any person or circumstances,

shall be held invalid, the remainder of the act, and the application of such provision to any person or circumstances other than those as to which it is held invalid, shall not be affected thereby.

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

BILL E

A BILL FOR AN ACT

PROVIDING FOR THE LICENSING AND REGULATION OF MOTOR CLUBS, ASSOCIATIONS, AND MOTOR TRAVEL PROMOTION ORGANIZATIONS.

Be It Enacted by the General Assembly of the State of Colorado:

SECTION 1. Chapter 72, Colorado Revised Statutes 1963, is amended BY THE ADDITION OF A NEW ARTICLE, to read:

ARTICLE 23

MOTOR CLUBS, ASSOCIATIONS AND MOTOR TRAVEL PROMOTION ORGANIZATIONS.

72-23-1. Definitions. (1) As used in this article, unless the context otherwise requires:

(2) (a) "Motor club, association, and motor travel promotion organization", means any person, whether or not residing, domiciled, or incorporated in this state which in consideration of dues, fees, assessments, or periodic payments of money, offers its members, subscribers, or franchise-holders assistance in matters relating to motor travel, the operation, use, or maintenance of a motor vehicle, in supplying of services which may include but not be limited to furnishing bail bond service, community traffic safety service, travel service, towing service, theft or reward service, map service, touring service, emergency road service, legal fee or reimbursement service in the defense of traffic offenses, finance service, insurance service, and personal accident insurance service.

(b) Such term includes any person which by contract or franchise authorizes or empowers another person, in the former's name or style, to offer services of motor club, association, or motor gravel promotion organization.

(c) Such term also includes any person which for a fee, dues, or the periodic payment of money, offers to procure for or direct to the place of business of subscribers or members, travelers seeking services, accommodations, or lodgings.

(3) "Department" means the department of insurance.

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

(5) "Licensee" means a motor club, association, or motor travel promotion organization to which a license has been issued under this article.

(6) "Applicant" means any person, firm, association, or corporation applying for a license or renewal thereof under this article.

(7) "Bail bond service" means the furnishing of or arranging for a cash deposit or undertaking required and acceptable by law for a member or subscriber accused of a violation of any traffic law or ordinance so as to obtain his release from custody pending trial.

(8) "Community traffic safety service" means the offering or providing traffic engineering or traffic safety advice and assistance to governmental agencies for the purpose of promoting the safe and efficient use of streets and highways, and to aid appropriate authorities in the adoption of sound programs for the expeditious flow of traffic for the comfort, convenience and enjoyment of both the motoring public and pedestrians alike.

(9) "Emergency road service" means the adjustment, repair, or replacement of the equipment, tires, or mechanical parts of an automobile so that such automobile may be operated under its own power.

(10) "Financing service" means the arranging for loans or other advances of money by a licensee to members or subscribers.

(11) "Insurance service" means the selling or making available as a result of membership in or affiliation with a licensee a policy of insurance covering liability or loss by the policy holder or other insured resulting from injury or damage to person or property arising out of an accident, such liability or loss being the consequence of the ownership, maintenance, operation, or use of a motor vehicle.

(12) "Legal reimbursement service" means the reimbursing of members or subscribers by a licensee for fees charged by an attorney for his advice or services rendered to them in defense of traffic offenses.

(13) "Map service" means the furnishing of road maps, tour plans, or tour guides to members or subscribers.

(14) "Personal accident insurance service" means the furnishing of a policy of insurance to members or subscribers which provides benefits for accidental injury, dismemberment, or death.

(15) "Theft or reward service" means the offering of assistance in locating, identifying, or recovering stolen or missing motor vehicles owned by members or subscribers, or the offering of a reward for the purpose of detecting or apprehending the person guilty of the theft.

(16) "Touring service" means the furnishing by a licensee of touring information to members or subscribers.

(17) "Towing service" means the furnishing of means to move a motor vehicle, under power other than its own, from one place to another.

(18) "Travel service" means the furnishing of advice, information, assistance, or arrangements for members and the general public concerning reservations, various accommodations, and various types of transportation in connection with travel, both domestic and world-wide.

(19) "Person" means any person, firm, partnership, corporation, or other legal entity.

72-23-2. License required. (1) From and after the effective date of this article, it shall be unlawful for any person to engage in the operation of a motor club, association, or motor travel promotion organization without having first met the requirements of this article, and obtained a license from the commissioner pursuant to this article. The fee for such license shall be one hundred dollars for the initial license and one hundred dollars each year for the renewal thereof.

72-23-3. Applications for licenses, fees, bonds, or deposits. (1) Any motor club, association, or motor travel promotion organization shall obtain a license by filing written application therefor with the commissioner in such form and manner as the commissioner shall require.

(2) (a) The applicant shall furnish to the commissioner such data and information as the commissioner may deem reasonably necessary to enable him to determine, in accordance with the provisions of this article, whether or not a license should be issued to the applicant. It shall be executed under oath by the applicant, or if other than an individual, by an authorized officer of the applicant, and there shall be filed with the application the following:

(b) If such applicant is a corporation, a certificate from the secretary of state of Colorado that it has complied with the corporation laws of this state.

(c) If not incorporated, a list of all persons owning an interest in the applicant, the officers thereof, and the parties to any operating or management agreement affecting the applicant, together with a copy of such agreement.

(d) A balance sheet certified by a certified public accountant within the previous six months, and presenting fairly the financial position of the applicant to the extent necessary to demonstrate the financial ability of the applicant to comply fully with the provisions of this article.

(e) The first year's annual license fee in the amount of one hundred dollars.

(f) (i) Evidence of security, which may be shown by:

(ii) Depositing with the commissioner securities approved by him having a market value of one hundred thousand dollars; or

(iii) A bond in such form as the commissioner may prescribe in the penal sum of one thousand dollars, in favor of the people of the state of Colorado. Said bond shall be issued by a surety company authorized to do business in this state, and it shall be conditioned upon full compliance by the applicant with the provisions of this article and the regulations and rules issued thereunder, and upon the good faith performance by the applicant of its contracts for services.

(iv) If the applicant is a corporation organized and existing under the laws of this state, and it has a net worth in excess of one hundred thousand dollars, then the amount of the bond or

deposit required by this paragraph (f) shall be reduced by the amount of such excess.

(g) The bond or deposit provided for in paragraph (f) of this section shall be maintained so long as the licensee has any outstanding liability or obligation in this state. Upon proof satisfactory to the commissioner that the licensee has ceased to do business and that all its liabilities and obligations have been satisfied, the commissioner shall return the security to the licensee.

(3) The provisions of article 2 of chapter 72, C.R.S. 1963, shall apply to securities pledged or deposited pursuant to this article.

72-23-4. Issuance or refusal of license - renewal. (1) (a) Within thirty days after an application for license is filed, the commissioner shall issue a license to the applicant unless he shall find:

(b) That the applicant has not met all of the requirements of this article; or

(c) That the applicant does not have sufficient financial responsibility to engage in business as a motor club, association or motor travel promotion organization in this state; or

(d) That the applicant has failed to make a reasonable showing that any of its owners, managers, officers, directors or representatives are persons of reliability and integrity.

(e) If the commissioner refuses to issue the license he shall notify the applicant as soon as practicable of the reason for his refusal to issue a license and inform the applicant of its right to a hearing on the matter as provided in section 72-23-6.

(2) All licenses issued hereunder and all renewals thereof shall expire on June 30th following such issuance or renewal. Renewal of all licenses not previously revoked or suspended shall be upon written application in such forms as are provided by the commissioner and shall contain such information as prescribed by him including a financial statement as required under 72-23-3 (d) of this article. The applicant for renewal shall pay the annual license fee of one hundred dollars as in this article provided.

72-23-5. Powers of the commissioner. (1) The commissioner shall have the same powers and authority to conduct investigations and hearings under this article as vested in him by section 72-1-10, C.R.S. 1963.

(2) (a) The commissioner shall have power:

(b) To investigate possible violations of this article and to present the result of such investigation to the district attorney of the proper judicial district when, in his opinion, such violations justify such action;

(c) To suspend or revoke any license issued under this article upon finding, after notice and opportunity for hearing that the licensee has violated any of the provisions of this article, or has failed to maintain the standards required for the issuance of an original license, as indicated in section 72-23-3 hereof, that it is insolvent, that its liabilities exceed its assets, or that it engages in fraudulent acts;

(d) To require any licensee to cease doing business through any particular representative upon a finding after notice and opportunity for hearing that such representative has intentionally made false or misleading statements concerning the services

offered by the licensee represented by him;

(e) To approve or disapprove the name, trademarks, emblems and all forms which an applicant or licensee employs or proposes to employ in connection with its business. If such name, trademarks or emblems are distinctive and are not similar or in conflict with a local organization or a nationally registered or copyrighted name, emblem, or insignia and not likely to confuse or mislead the public as to the nature or identity of the applicant using or proposing to use it, and will not interfere with the transactions of a licensee already operating in this state, then they shall be approved. Otherwise, the commissioner may disapprove their use and order that the licensee cease to use them; and

(f) To make any rules or regulations necessary to administer and enforce the provisions of this article.

72-23-6. Hearing on denial of licensee; judicial review. Any applicant shall be entitled to a hearing before the commissioner in the event such application is denied or not acted upon within a reasonable time. Any applicant or licensee adversely affected by a determination of the commissioner shall have a right to seek judicial review of such determination under the provisions and limitations of section 3-16-5, C.R.S. 1963.

72-23-7. Agent for service of process. (1) Every licensee hereunder shall appoint, in writing, the commissioner of insurance to be the true and lawful attorney of such licensee under this article upon whom all lawful process in any action or proceeding against the licensee under this article may be served. Such power of attorney shall stipulate and agree, upon the part of the licensee under this article, that any lawful process against such

licensee which is served on the commissioner, or in his absence, any employee in charge of his office, shall be of the same legal force and validity as if served on the licensee, and that the authority shall continue in force so long as any liability remains outstanding against the licensee under this article in this state. A certificate of such appointment, duly certified and authenticated, shall be filed in the office of the commissioner, and copies certified by him shall be deemed sufficient evidence, and service upon such attorney shall be deemed sufficient evidence, and service upon such attorney shall be deemed sufficient service upon the licensee under this article.

(2) (a) Whenever lawful process against any licensee under this article shall be served upon the commissioner, three copies shall be furnished and he shall forthwith forward a copy of the process served on him, by registered or certified return receipt requested mail, postpaid, and directed to the secretary of the licensee under this article.

(b) The commissioner shall also forward a copy thereof to the resident manager or other similar official in the state of said licensee. For each service of process the sum of two dollars shall be collected, which shall be paid by the plaintiff at the time of such service, the same to be recovered by him, as part of the taxable costs, if he prevails in the suit.

72-23-8. Violations - penalty. (1) Except as provided in subsection (2) of this section, any person who shall violate any of the provisions of this article shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than one thousand dollars, imprisonment in the county jail for not

more than one year, or both such fine and imprisonment.

(2) Any person who shall violate any of the provisions of this article with intent to deceive, cheat or defraud any person, shall be guilty of a felony and on conviction thereof, shall be imprisoned in the state penitentiary for a term not to exceed ten years.

72-23-9. Disposition of fees. In the event an application for license filed hereunder is not approved, the department shall retain ten dollars of the fee paid to it in connection with said application and return the balance to the applicant.

72-23-10. Insurance licensing provisions not affected. Nothing in this article shall be construed as amending, repealing or in any way affecting any laws now in force relating to the licensing of insurance agents or insurance companies or to the regulation thereof as provided in chapter 72, C.R.S. 1963, and the provisions of this article shall not be construed as affecting insurance and any licensee operating pursuant to a license issued hereunder shall be exempt from all laws regulating the business of insurance, except such laws as may be generally applicable to brokers, agents, general agents and employees in the event a licensee acts in any such capacity in providing insurance service to members or subscribers of such licensee.

72-23-11. Statement of services to be furnished members and the commissioner. (1) (a) Every licensee shall furnish to its members, subscribers or franchise holders and the commissioner a written statement of the services offered, the exact name of the licensee and the exact location of its home office, and its usual place of business in this state.

(b) In addition, the licensee shall file with the commissioner any change, addition or supplement to the services offered, and any change of its office location or name within thirty days of such change.

72-23-12. Solicitation by unauthorized motor club, association or motor travel promotion organization. A person not holding a valid license issued under this article shall not solicit or aid in the solicitation of another person to enter into a contract to purchase a membership from, or subscribe to a motor club, association or motor travel promotion organization.

72-23-13. Advertising limitation. A licensee shall make no reference to its license or approval from the insurance commissioner in any advertising, circular, contract or membership card.

SECTION 2. Effective date. This act shall take effect on July 1, 1967.

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.

BILL F

A BILL FOR AN ACT

CONCERNING BANKING.

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

SECTION 1. 14-3-2 (3), Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

14-3-2. Accounts and interest. (3) State banks shall be allowed to pay interest on savings or time deposits, on certificates of deposit, savings certificates, or other funds on deposit, the maximum annual rate of which shall be determined by the banking board as that which is prudent and sound.

SECTION 2. 14-6-2 (1), Colorado Revised Statutes 1963, is amended to read:

14-6-2. Loans - personal - secured and unsecured. (1) (a) A state bank may lend on the personal obligation of the borrower. ~~provided-that-no-bank-shall-loan-to-any-officer-or-employee-thereof in-an-amount-greater-than-twenty-five-hundred-dollars.--Such-loans shall-be-made-only-with-the-approval-of-a-majority-of-the-board of-directors,-entered-of-record-in-the-minutes-of-the-board;-provided,-that~~

(b) No bank shall loan any officer, director, or employee any funds held in trust, or in any other fiduciary capacity. Loans to directors in excess of ten per cent of the capital stock

and surplus of the bank shall be made only with the approval of a majority of the board of directors, exclusive of the borrower, entered of record in the minutes of the board.

SECTION 3. 14-6-3 (1) (a) and (c), Colorado Revised Statutes 1963, are amended to read:

14-6-3. Loans - real estate - security. (1) (a) A state bank may make real estate loans secured by first liens upon ~~improved~~ real estate. ~~including improved farm land and improved business and residential properties.~~ A state bank may lend on the security of a first mortgage on ~~improved~~ real estate; when

~~(c)~~ (c) The loan (excluding any portion thereof guaranteed by the administrator of veterans' affairs pursuant to any law of the United States) is in the form of an obligation, or obligations, secured by a mortgage, trust deed, or other instrument, upon real estate which shall constitute a first lien on real estate in fee simple or, under such rules and regulations as may be prescribed by the banking board, on a leasehold under a lease for not less than ninety-nine years which is renewable; or under a lease having a period of not less than fifty years to run from the date the loan is made or acquired by the state bank. Any state bank may purchase any obligation so secured as provided in subsection (1) of this section when the entire amount of such obligation is sold to the state bank. The amount of any such loan as provided in subsection (1) of this section hereafter made shall not exceed ~~fifty~~ SEVENTY per centum of the appraised value of the real estate offered as security and no such loan shall be made for a longer term than five years; except that any such loan may be made in an amount not to exceed ~~sixty~~ EIGHTY per

centum of the appraised value of the real estate offered as security and for a term not longer than ten years if the loan is secured by an amortized mortgage, deed of trust, or other such instrument, under the terms of which the installment payments are sufficient to amortize forty per centum or more of the principal of the loan within a period of not more than ten years; the foregoing limitations and restrictions shall not prevent the renewal or extension of loans heretofore made; or when

SECTION 4. 14-9-6, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

14-9-6. Incorporators. Five or more individual incorporators desiring to organize a state bank shall file with the commissioner, in triplicate, an application for charter on the form prescribed therefor and together with all other documents required by section 14-9-9, all of which instruments shall be duly signed by each of the incorporators and sworn to before an officer authorized by the laws of this state to administer oaths. A majority of the incorporators shall be residents of the state and citizens of the United States. Each incorporator shall, prior to the filing of said application, subscribe and pay in full in cash for stock having a par value of not less than one per cent of the minimum capital and paid-in surplus requirements.

SECTION 5. 14-9-7, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

14-9-7. Application fees. Each application for charter shall be accompanied by an application fee of one thousand dollars made payable to the state treasurer. No portion of such application fee shall thereafter be refundable in whole or in

part, except that seven hundred fifty dollars may be refunded to the incorporators by the commissioner if the application for charter is withdrawn by the said incorporators prior to the date set for the public hearing on said application by the banking board as provided in section 14-9-10.

SECTION 6. 14-9-8 (2), Colorado Revised Statutes 1963, is amended to read:

14-9-8. Organization expenses. (2) Upon the grant of a charter, any unexpended balance shall be transferred to undivided profits. If ~~no-application-for-a-charter-has-been-made-within six-months-of-the-filing-of-a-notice-of-intention,-or-any-additional-period-allowed-by-the-commissioner,~~ THE APPLICATION FOR CHARTER HAS BEEN WITHDRAWN BY THE INCORPORATORS, or if the application has been finally denied, ~~an~~ ANY unexpended balance shall be distributed among the contributors in proportion to their respective payments. The commissioner may require an account of disbursements from the fund and may order the incorporators to restore any sum which has been expended for other than proper organization expenses.

SECTION 7. 14-9-9 (1) (a) and (c), Colorado Revised Statutes 1963, are amended, and said 14-9-9 is further amended BY THE ADDITION OF A NEW SUBSECTION (3), to read:

14-9-9. Application for charter. (1) (a) After the capital stock has been fully subscribed and not later than six months from the date of ~~filing-of-the-notice-of-intention,~~ THE FIRST CONTRACT TO SUBSCRIBE FOR STOCK, the incorporators must make application to the commissioner for a charter. ~~or-the-notice-of-intention-and-any-rights-and-privileges-attendant-thereto-shall-be~~

~~deemed-to-have-lapsed.~~ The incorporators shall submit to the commissioner:

(c) An application for a charter in such form, and containing such information, as the banking board requires, including but not limited to the following: The name, business and residence address, and business and professional affiliations of each director and executive officer; the name, residence, citizenship, and occupation of each subscriber, and the number of shares for which he has subscribed; the past and present connection with any bank, other than as a customer, on terms generally available to the public of each director and each subscriber to more than five per cent of the capital stock; THE AMOUNT TO BE BORROWED AND FROM WHOM BORROWED ON ANY STOCK ISSUED TO A SUBSCRIBER TO MORE THAN FIVE PER CENT OF THE CAPITAL STOCK; the address at which it is proposed that the state bank do business, or, if such address is not known, the area within a radius of one-half mile in which the proposed bank is to be located and the community or communities which it proposes to serve; a statement that all the proposed bylaws have been attached as an exhibit to the application; and such other information as the banking board may reasonably require to enable it to determine whether a charter should be issued. The proposed bylaws shall be attached to the application as an exhibit.

(3) Not more than forty days after the date upon which the application and all required documents are properly filed with the commissioner, the commissioner shall mail notice of such filing by registered or certified mail to each bank doing business in the community in which the proposed bank is to be located,

to such additional banks as may be doing business within a three mile radius of the location of the proposed bank, and to such other persons or banks as the commissioner or banking board may designate. Such notice shall be in the form prescribed therefor by the banking board and shall include a statement that an application for a state banking charter has been filed, the date of such filing, the names and addresses of the incorporators thereof, and the location of the proposed bank. The commissioner shall also cause such notice to be published at least one time, not more than forty days after the date of filing such application, in a newspaper of general circulation within the community in which such proposed bank is to be located.

SECTION 8. 14-9-17 (2) (b) and (4), Colorado Revised Statutes 1963, are amended to read:

14-9-17. Directors - meetings - duties. (2) (b) Each loan, advance, discount, overdraft, and purchase or sale of a security which exceeds in amount ~~one-tenth-of~~ one per cent of the capital and surplus of the corporation, or one thousand dollars, whichever is larger, and each loan, advance, discount, and overdraft, which makes the total obligations from one obligor exceed that amount.

(4) A state bank authorized to exercise trust powers shall not accept, or voluntarily relinquish, a fiduciary account without the approval or ratification of the board of directors, or of a committee of officers or directors designated by the board to perform this function, but the board of directors or the committee may prescribe general rules governing acceptances or relinquishment of fiduciary accounts, and action taken by an officer

in accordance with these rules is sufficient approval. Any committee so designated shall keep minutes of its meetings and report at each monthly meeting of the board of directors all action taken since the previous meeting of the board. The board of directors shall designate one or more committees of not less than three qualified officers or directors to supervise the investment of fiduciary funds. No such investment shall be made, retained or disposed of without the approval of a committee as to which the bank has investment or review responsibility. At least ~~once~~ TWICE in every calendar year, at intervals of not more than ~~twelve~~ SIX months, the committee shall review all the assets of each fiduciary account as to which the bank has investment or review responsibility and shall determine their current value, safety, and suitability and whether the investments should be modified or retained. The committee shall keep minutes of its meetings and shall report at each monthly meeting of the board of directors its conclusions on all questions considered and all action taken since the previous meeting of the board.

SECTION 9. 14-11-2 (1), Colorado Revised Statutes 1963, is amended to read:

14-11-2. Involuntary liquidation by commissioner - reorganization. (1) Except as otherwise provided in this code, only the commissioner may take possession of a state bank, if, after a hearing before the banking board, the banking board shall find: The bank's capital is impaired or it is otherwise in an unsound condition; the bank's business is being conducted in an unlawful or unsound manner; the bank is unable to continue normal operations; examination of the bank has been obstructed or impeded;

OR THAT CONTROL OF THE BANK HAS BEEN ASSUMED BY ANY PERSON OR PERSONS CONVICTED OF A FELONY OR OF FRAUD IN THIS STATE OR ANY OTHER JURISDICTION, OR BY ANY PARTNERSHIP, ASSOCIATION, OR CORPORATION CONTROLLED, DIRECTLY OR INDIRECTLY, BY ANY PERSON SO CONVICTED, UNLESS THE BOARD DETERMINES THAT SUCH PERSON HAS BEEN DULY REHABILITATED OR OTHERWISE THAT THE BANK WILL BE HONESTLY AND EFFICIENTLY MANAGED.

SECTION 10. Effective date. This act shall take effect July 1, 1967.

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

TEXT

COMMENTS

A BILL FOR AN ACT

CONCERNING CREDIT UNIONS.

Be It Enacted by the General Assembly of the State of Colorado:

SECTION 1. 38-1-1, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

38-1-1. Definition - organization - charter. (1) A credit union is a cooperative association, incorporated pursuant to this article for the twofold purpose of promoting thrift among its members and creating a source of credit for them at fair and reasonable rates of interest.

Eliminated from C.R.S. 38-1-1 (1) is unnecessary terminology. Language has also been added to provide a more concise definition of the functions of a credit union.

(2) (a) A credit union may be organized in the following manner:

(b) Any eight or more residents of the state of Colorado who have a common bond of employment or association may execute in triplicate articles of incorporation, setting forth therein the terms by which they agree to be bound. The articles shall state the name and address of the proposed credit union; the names and addresses of the incorporators;

The amendments to C.R.S. 38-1-1 (2) (b) would make it more difficult to organize a credit union than it has been in the past by the additional specification that the incorporators must have a "common bond of employment or association" before articles of incorporation can be executed. The changes

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the number of shares subscribed by each incorporator; and the term of existence of the corporation, which may be perpetual. The par value of each share of any credit union shall be five dollars.	also remove the "grandfather" provision allowing the par value of shares of a credit union to be less than five dollars per share.
(c) The incorporators shall prepare in triplicate proposed by-laws for the governing of the credit union, consistent with the provisions of this article, on standard forms approved by the state bank commissioner, and shall define therein the proposed eligibility requirements for membership.	C.R.S. 38-1-1 (2) (c) and sections 38-1-1 (3), (4), (5), (6) have been amended to make the incorporation procedure of credit unions more consistent with the procedures followed by other newly formed financial institutions in Colorado.
(3) The articles of incorporation and the by-laws shall be filed with the commissioner in triplicate upon the payment of a filing fee of five dollars. Within thirty days after such filing and payment of such fee, the commissioner shall determine whether the same conform to the provisions of this article, and whether such a credit union would benefit the members and proposed members thereof, consistent with the purposes of this article.	
(4) Upon approval of such articles and by-laws by the	

commissioner, he shall issue a certificate of approval in triplicate and attach a copy thereof to each copy of the said articles of incorporation. The incorporators shall then file approved articles with the secretary of state pursuant to the "Colorado Corporation Code". A copy of the articles, certified by the secretary of state, shall be filed with the commissioner.

(5) After the said certified copy of articles of incorporation have been filed with the commissioner, he shall issue a charter for such credit union, at which time the credit union shall become a body corporate having the powers enumerated in section 31-2-1, C.R.S. 1963, except as otherwise provided or limited in this article.

(6) The by-laws approved by the commissioner shall then be adopted by the initial board of directors of the credit union.

SECTION 2. 38-1-2, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

38-1-2. By-laws of credit unions. The commissioner

With the exception of certain individual facets of organization and procedure, the recommended amendments to C.R.S. 38-1-2 would require

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shall cause to be prepared a standard form of by-laws, consistent with this article, to be issued to all credit unions. All credit unions organized on or after the effective date of this subsection, as amended, shall operate under the standard by-laws, except that each such credit union, subject to the approval of the commissioner, shall propose its own name, its field of membership, the number of members of its board of directors, its credit committee, and its supervisory committee, and provisions relative to times and places of meetings of the membership and of the board of directors and provisions relative to the conduct of elections and balloting of the credit union. Any and all amendments to the by-laws shall be approved by the commissioner before they become operative.	all state chartered credit unions to operate under standard by-laws which would be prepared by the bank commissioner. Presently, the State Bank Commissioner has authority only to approve or disapprove of amendments to existing by-laws which are not required to be standard.
SECTION 3. 38-1-4, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:	C.R.S. 38-1-4 (1) (e), and (f), as amended, would restrict the investment powers of credit unions in some respects and broaden these powers in other respects.
38-1-4. Powers. (1) (a) A credit union shall have the following powers:	
(b) To receive the savings of its members either as	

payment on shares or as deposits, including the right to conduct Christmas clubs, vacation clubs, and other such thrift organizations or plans within the membership.

(c) To make loans to its members.

(d) To make loans to other credit unions as provided in this article.

(e) To deposit in state and national banks insured by the federal deposit insurance corporation; to invest in the shares or accounts of savings and loan associations insured by the federal savings and loan insurance corporation; and, to an extent which shall not exceed twenty-five per cent of its paid-in capital, to invest in the shares and deposits of the central credit union organized pursuant to this article.

Presently C.R.S. 38-1-4 (1) (e) restricts a credit union's investment power in savings and loan associations to an amount not to exceed "twenty-five per cent of its capital." ("Capital" is not now defined). This restriction was considered to be too rigid, particularly at times when it is difficult for credit unions to make loans to members, and has been removed. However, C.R.S. 38-1-4 (1) (e) has been further amended to permit investment in only savings and loan associations which are insured by the United States government.

While the amended version of C.R.S. 38-1-4 (1) (e) would retain the "twenty-five per cent of capital" limitation

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(f) To invest in any of the following: Obligations of the United States or securities guaranteed or insured by any agency of the United States; obligations of any state or territory of the United States, or of any political subdivision or instrumentality thereof, except revenue obligations issued to provide, enlarge, or improve electric power, gas, water, or sewer facilities, or any combination thereof, issued by any city or town, or other similar municipal corporation having a population of less than five thousand persons, as determined by the latest federal decennial census; and, to an extent which shall not exceed ten per cent	on investments in other credit unions, the new language re-defines "capital" as "paid in capital" and provides that such investments shall be made only in the Central Credit Union. The old language, permitting investment in "other credit unions, organized pursuant to this chapter," was considered too broad as it could be interpreted to mean that one credit union could buy shares in another credit union. Section 38-1-4 (1) (f), presently allowing credit unions "to invest in any investment legal for savings banks or for trust funds in the state," was considered too broad, since it might allow credit unions to make unlimited investments in unsecured stocks, bonds, and other corporate securities. This provision was struck and new language was added which would restrict investments to obligations or securities insured by the U.S. government, state bonds, and certain municipal improvement bonds issued by municipalities having a population of more than 5,000 persons.

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of its paid-in capital, in stocks, bonds, or other securities of any corporation organized under the laws of any state of the United States and listed on any national or regional stock exchange.	Investment in stocks, bonds, and other corporate securities would be limited to ten per cent of paid-in capital.
(g) To borrow money as provided in section 38-1-15.	
(h) To apply for and hold membership in a central credit union organized pursuant to this article, in any other central credit union authorized to transact business in this state, and in any organization or association of credit unions.	
(i) To acquire, through purchase or other lawful transactions, and to hold title to real and personal property necessary and incidental to the operation of the credit union, and to sell, mortgage, or otherwise dispose of the same.	Presently, a credit union does not have power to hold title to real property. C.R.S. 38-1-4 (1) (i) would permit a credit union to purchase and hold property incidental to its operations, e.g., office space or a building. A newly organized credit union frequently relies on donated office space at the outset of operations. As its business grows, however, it is often necessary for the credit union to move to larger rented quarters. The recommended amendment would permit purchase of the necessary property, but it

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(j) To exercise such incidental powers as shall be necessary to enable it to carry on effectively the business for which it is incorporated.	would permit a credit union to become a landlord, renting office space to other businesses.
SECTION 4. 38-1-5 (2), Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:	C.R.S. 38-1-4 (1) (j) has been added to cover incidental powers of credit unions which are necessary to their operations but which are not expressly delegated in this article.
38-1-5. Membership. (2) Credit union organization and membership other than that of a central credit union shall be limited to groups having a common interest or occupation or association. A member of the immediate family of any person, who, under the provisions of this article, is eligible for membership in a credit union may also be admitted to membership therein. "Immediate family" means persons related by blood, by marriage, or adoption, who live together as one household.	C.R.S. 38-1-5 pertains to membership in credit unions. The amendments to 38-1-5 (2) further refine the definition of the membership of a credit union by restricting membership solely to persons of the same occupational group or to those persons having some other common interest, such as a church group or club. The definition "immediate family" of a member has also been defined to restrict membership to "persons related by blood, by marriage or by adoption and living under one roof and as one household." The existing broad definition of "immediate family" could be interpreted to mean anyone related to a member.

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SECTION 5. 38-1-6 (3), Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, and said 38-1-6 is further amended BY THE ADDITION OF NEW SUBSECTIONS (4) AND (5), to read:	Added to the powers granted the State Bank Commissioner under section 36-1-6 are the following:
38-1-6. Examinations - reports - powers of commissioner. (3) The commissioner may issue rules and regulations necessary for the administration and enforcement of this article, and shall reference the same to the section or sections of this article to which they apply. Such rules and regulations shall be promulgated pursuant to the provisions of article 16 of chapter 3, C.R.S. 1963, and a copy of such rules and regulations and of each order shall be mailed to each credit union in this state at least thirty days prior to the effective date thereof, except as to temporary or emergency rules.	Section 38-1-6 (3) empowers the bank commissioner to issue rules and regulations necessary for the administration of the credit union statutes, a power not presently held.
(4) Any person aggrieved and directly affected by any order of the commissioner may obtain judicial review thereof by filing an action for review in the district court for the judicial district in which any credit union affected thereby	Section 38-1-6 (4) expressly grants credit unions the right of court review, as already provided by the Administrative Code.

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is located, within thirty days after the date of issuance of such order. (5) The commissioner shall have the power to charge off the whole or any part of any asset of any credit union which could not be lawfully acquired by it, and to reduce the value of any asset of a credit union to its market value or to a reasonable value, if no market value can be established. If the losses of a credit union exceed its undivided earnings and reserve funds so that the reasonable value of its assets is less than the total amount due the shareholders, the commissioner may order a reduction in the liability to each shareholder, dividing the loss proportionately among all shareholders. Any reduction from each share account shall be a specified percentage sufficient to correct the impaired condition and preserve the solvency of the credit union. If thereafter the credit union shall realize from such assets a greater amount than that fixed by the order of reduction, such excess shall be divided proportionately among the shareholders to whom liability was previously reduced, but	Section 36-1-6 (4) empowers the bank commissioner to determine the current market value of assets held by credit unions and to require credit unions to maintain assets that are at least as great as liabilities.

only to the extent of such reduction.

SECTION 6. 38-1-7, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

38-1-7. Fiscal year - meetings. The fiscal year of all credit unions shall end December 31 of each year. The annual meeting shall be held within forty-five days after the close of said fiscal year. Special meetings may be held in the manner indicated in the by-laws. At all meetings a member shall have but a single vote, whatever his share holdings. There shall be no voting by proxy, but a member other than a natural person may cast a single vote through a delegated agent.

Removed from C.R.S. 38-1-7 is the requirement that amendments to the by-laws of a credit union can only be adopted at annual meetings of the membership. The amendment would permit the board of directors of a credit union to adopt amendments to the by-laws, subject to the approval of the bank commissioner.

SECTION 7. 38-1-8, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

38-1-8. Elections. At the annual meeting, or by balloting by mail within thirty days before and ten days after the annual meeting, the credit union members shall elect a board of directors of not less than five members, a credit committee of not less than three members, and a supervisory

Deleted from C.R.S. 38-1-8 is the requirement that the members of a credit union have to be present at the annual meeting held to elect the board of directors and other officers. Instead, credit union members would be permitted to vote for officers by mail. Also provided is the election of alternate members to the credit committee to serve during the

committee of not less than three members, all to hold office for such terms respectively as the by-laws provide and until successors are elected and qualify. In addition, one or more alternate members of the credit committee may be elected to serve in the absence of members of the credit committee. A record of the names and addresses of the members of the board and such committees and alternates and the officers shall be filed with the commissioner within ten days after their election.

temporary absence of regular members. The recommendation for voting by mail is based on statements of credit union officials, who pointed out that it is very difficult to get all the members of a credit union together at one time for the purpose of electing officers, particularly when the credit union is large and includes employees of firms which have plants in several locations.

SECTION 8. 38-1-9, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

38-1-9. Directors and officers. (1) (a) At their first meeting after the annual election, the directors shall elect from their own number a president, one or more vice-presidents, a secretary, and a treasurer, of whom the last two named may be the same individual. It shall be the duty of the board of directors to have general management of the affairs of the credit union, particularly:

The changes in 38-1-9 (1) (a) would clarify the time at which the board of directors shall elect its officers and would improve the terminology of this section (e.g., specifying that a "secretary" instead of "clerk" shall be elected.) The amendatory language would also permit the election of more than one vice-president, as may be required by the size and scope of operations of individual credit unions.

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(b) To act on applications for membership, or to appoint from among the membership of the credit union, one or more membership officers who may act on applications for membership.	The new language of C.R.S. 38-1-9 (1) (b) would permit the board of directors of a credit union to appoint membership officers to act on applications for membership on a day-to-day basis. The appointment of membership officers would serve as an improvement over the present procedure of delaying action on new applications until the monthly meeting of a credit union's board of directors.
(c) To determine interest rates on loans and on deposits, and to determine whether an interest refund shall be made to members in proportion to the interest paid by them during any given period, and to declare the rate of any such interest refund. Any such refund shall be paid from interest income of the credit union prior to any transfer to reserves, and shall be paid to all members who paid interest to the credit union during the period and who were members of record of the credit union at the close of such period.	C.R.S. 38-1-9 (1) (c), as amended, would give the board of directors of a credit union legal authorization to refund to borrowers a portion of the interest paid on loans in years when the credit union is experiencing good returns on investments.
(d) To fix the amount of the blanket surety bond which shall cover all elected and appointed officials and all	C.R.S. 38-1-9 (1) (d), as amended, would require the board of directors to fix a

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employees of the credit union. Such blanket surety bond shall be in an amount equal to the assets of the credit union as of December 31 of the previous year, or one million dollars, whichever is less.	blanket surety bond for all officers and employees for an amount of 100 per cent of a credit union's assets or $1,000,000, whichever is less. Presently, the board of directors is permitted to fix the amount of the surety bond for officers and employees and, with the exception of the surety bond for the treasurer, the amount of the bond does not necessarily have to be correlated to the assets of the credit union.
(e) To declare dividends; and, subject to approval by the commissioner, adopt amendments to the by-laws of the credit union.	In addition to having the present power of declaring dividends, section 38-1-9 (e), as amended, would permit the board of directors of a credit union to adopt amendments to the by-laws, without requiring the prior approval of the credit union's membership at the annual meeting.
(f) To determine when any vacancy shall exist in the board of directors or in the credit committee and to fill vacancies in the board and in the credit committee until successors are elected at the next annual election and qualify, and to appoint one or more assistant secretaries or treasurers, or both, as needed, or to hire a general	The amended version of C.R.S. 38-1-9 (1) (f) provides that a board of directors has the authority to determine when a vacancy exists on the board of directors or on the credit committee. On occasion, a board or credit committee member will become inactive for a long period of time and the active members on the

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manager other than the treasurer.	board have not had the power to dismiss the delinquent member and appoint a replacement to serve until the next annual election. The changes also permit the board of directors to hire assistant treasurers, as needed, or to hire a general manager other than the treasurer.
(g) To determine the maximum individual share holdings in the credit union, and the maximum amount of individual loans which can be made either with or without security.	No substantive amendment.
(h) To have charge of and supervise investments of credit union funds other than loans to members.	No substantive amendment.
(i) To permit the destruction of old records and files after a period of six years has elapsed or after the same have been recorded on microfilm or other reproduction process.	Since records and files are frequently kept on microfilm, C.R.S. 38-1-9 (1) (i), as amended, would allow records and files to be destroyed once they have been placed on permanent file by means of a reproduction process.
(j) To provide for compensation of necessary clerical and auditing assistance requested by the supervisory committee, and of loan officers appointed by the credit commit-	Subsection (j) of C.R.S. 38-1-9 (1) has been added to give the board of directors authority to provide compensation for clerical and

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tee, and to establish any salary which shall be paid to the treasurer or general manager.	auditing assistants.
(2) The duties of the officers shall be as determined in the by-laws, except that the treasurer shall be the general manager if none has been employed pursuant to subsection (1) (f) of this section. No member of the board of directors, except the treasurer serving as the general manager, or of either committee shall, as such, be compensated by the credit union.	C.R.S. 38-1-9 (2) has been amended to provide explicitly that the treasurer serving as the general manager is the only member on the board of directors who can receive compensation.
SECTION 9. 38-1-10, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:	C.R.S. 38-1-10, as amended, would permit the credit committee of a credit union to appoint loan officers and delegate loaning authority thereto. Action by the loaning officers would be subject to review and approval of the credit committee. No more than one member of the credit committee can be appointed as a loan officer, in which case he shall not receive compensation or be employed by the credit union in any other capacity. The board of directors would be given authority to appoint new members to the credit committee
38-1-10. <u>Credit committee</u>. The credit committee shall have the general supervision of all loans to members. Applications for loans shall be on a form approved by the credit committee, and all applications shall set forth the purpose for which the loan is desired, the security, if any, offered, and such other data as may be required. Within the meaning of this section, an assignment of shares or deposit, or the indorsement of a note, may be deemed security.	

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At least a majority of the members of the credit committee shall pass on all loans and approval of any loan must be unanimous, except, that the credit committee may appoint one or more loan officers, and delegate to the same the power to approve loans which are fully secured by the applicant's shares or which are within limits prescribed by the credit committee. Each loan officer shall furnish to the credit committee a record of each loan approved and each loan not yet approved by him, within seven days after the date of filing of the application therefor. All loans not approved by a loan officer shall be considered by the credit committee. No individual shall have authority to disburse funds of the credit union for any loan which has been approved by him in his capacity as a loan officer. Not more than one member of the credit committee may be appointed as a loan officer, and no member of the credit committee shall receive any compensation as a loan officer or be employed by the credit union in any other capacity. The credit committee shall meet as often as may be necessary after due notice to each member. Vacancies in the credit committee shall be	to fill vacancies, in accordance with 38-1-9 (1) (f), as amended.

filled pursuant to section 38-1-9 (1) (f).

SECTION 10. 38-1-11, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

38-1-11. Supervisory committee. (1) (a) The supervisory committee shall:

(b) Make, or cause to be made, an examination of the affairs of the credit union at least quarterly, including an annual audit of its books, which audit may be made at any time during any quarter and which will serve as the examination for that quarter, and, in the event said committee feels such action to be necessary, it shall call the members of the credit union together thereafter and submit to them its report;

(c) Make an annual report and submit the same at the annual meeting of the members;

(d) By unanimous vote of the committee, if it deems such action to be necessary for the proper conduct of the credit union, suspend any officer or officers of the credit union, or any director or directors, or any member or

C.R.S. 38-1-11 (1) (b) and (c), as amended, would strengthen the auditing authority of the supervisory committees of credit unions by: (1) placing all the requirements in subsection (1) (b); (2) providing for surprise annual audits to be held at any time during the year; and (3) augmenting the auditing authority of the supervisory committee by the addition of the language "or cause to be made," which authorizes the committee to hire a certified public accountant to conduct both the quarterly and annual audits.

In order to eliminate some of the problems concerning suspension of officers which have arisen in the past, C.R.S. 38-1-11 (1) (d), as amended, would require the supervisory committee to

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members of the credit committee, and shall call a special meeting of the members of the credit union not less than seven nor more than fourteen days thereafter to act on such suspension or suspensions. The members at said meeting may sustain any such suspension and remove any such officer, director, or member of the credit union permanently and elect a successor thereto for the unexpired term of office or may reinstate any such person.	call a meeting of a credit union's membership to act on the suspension of any officer of the credit union.
(e) Biennially verify, or cause to be verified, the members' share, deposit, and loan accounts, either by calling in the passbooks, or by sending, or causing to be sent, a statement of account to each member.	Language has been added to C.R.S. 38-1-11 (1) (e) to permit the supervisory committee to delegate authority to employees to verify, biennially, members' shares, deposits, and loan accounts and to send out statements thereon.
(2) By majority vote, the supervisory committee may call a special meeting of the members of the credit union to consider any violation of any provision of this article, the by-laws of the credit union, or any rule or requirement of the credit union, by any officer, director, member of any committee, or any member, which the committee deems to be detrimental to the credit union. The supervisory committee	New language in C.R.S. 38-1-11 (2) defines more specifically than at present the conditions for calling a special meeting of a credit union's membership by the supervisory committee.

shall fill vacancies in its own membership until the next annual election of the credit union.

SECTION 11. 38-1-13, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

38-1-13. Minors. Shares may be issued and deposits received in the name of a minor. A member who is a minor shall be entitled to withdraw or pledge any shares owned by him and to receive from the credit union any and all dividends, or other moneys, at any time the same become due, in the same manner and subject to the same conditions as an adult, and any receipt or acquittance signed by such a minor shall constitute a valid release and discharge to the credit union for the payment of such moneys. A credit union may contract and otherwise transact business with a minor member as if he were an adult, and such a minor shall not, by reason of his minority, be entitled to rescind, avoid, or repudiate such contract or other transaction, or the exercise of any right or privilege thereunder; except, that this provision shall not apply to any contract or transaction entered into after

The revisions suggested for C.R.S. 38-1-13 are attempts to establish in the credit union statute that a minor has both the rights and obligations of an adult member of a credit union when engaging in credit transactions. Limitations on both contractoral obligations and minimum membership age are also provided for by the amendments to this section.

a certified copy of an order of any court of competent jurisdiction appointing a guardian for such minor and prohibiting any such transaction has been filed with the credit union. The board of directors of the credit union may provide in the by-laws of the credit union a minimum age of any minor to be eligible for membership in the credit union and to vote at any meeting of the members.

SECTION 12. 38-1-15, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

38-1-15. Power to borrow and loan money. A credit union may borrow from any source a total sum which shall not exceed fifty per cent of its paid-in shares and deposits. No credit union shall loan more than ten per cent of its assets to another credit union.

The amendatory language of C.R.S. 38-1-15 would restrict a credit union from borrowing amounts in excess of 50 per cent of its "paid-in shares and deposits;" removed is the reference to a credit union's "assets." The present provision, stipulating merely that a credit union cannot borrow in excess of "50% of its assets," was considered too vague and insufficient to prohibit a credit union from pyramiding its assets in order to borrow more money than it can easily repay. It was pointed out, for example, that the

"assets" of a credit union increase each time an amount of money is borrowed.

SECTION 13. 38-1-16, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

38-1-16. Loans. A credit union may make loans to members subject to the provisions of this article and the by-laws of the credit union. A borrower may repay his loan in whole or in part any day the office of the credit union is open for business. Upon the approval of both the credit committee and the board of directors, a director, officer, or member of the supervisory or credit committee may borrow from the credit union in which he holds office beyond the amount of his shares and deposits in said credit union. No director, officer, or member of the supervisory or credit committee may endorse any evidence of indebtedness for any other borrower.

Old language has been stricken and new language has been added to C.R.S. 38-1-16 for clarification of the sections provisions. There are no substantive changes.

SECTION 14. 38-1-17, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

The following substantive amendments have been added to C.R.S. 38-1-17:

38-1-17. Reserves. (1) (a) All entrance fees, and any

C.R.S. 38-1-17 (1) (a)

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fines which may be provided in the by-laws for failure to make payments on loans and shares when due, collected in any month, shall be transferred to the general reserve fund at the end of that month. At the close of each dividend period, and before the declaration of any dividend for such period, twenty per cent of the net earnings of the credit union accumulated during such period, or so much thereof as necessary, shall be transferred to the general reserve fund until such fund, at the close of such period, equals twenty per cent of the total amount of loans then outstanding.	requires credit unions to establish a reserve fund in which 20 per cent of net earnings at the end of all dividend periods are placed in reserve until 20 per cent (instead of 15 per cent, as required by the present provision) of the total amount of loans outstanding at the end of each dividend period is attained. Additional amounts are required to be deposited at the end of each dividend period in order to maintain this 20 per cent figure in the reserve fund. Deleted in the amended version are references to the average of the amount of loans outstanding in the last three fiscal years, upon which three year average the amount of the reserve fund is presently based.
(b) Such reserve fund shall be used by the credit union as a reserve against bad debts and other losses, and shall be distributed only in the process of liquidation of the credit union. If, at the end of any fiscal year, the amount of said reserve fund shall exceed twenty per cent of the total amount of loans then outstanding, the board of directors	C.R.S. 38-1-17 (1) (b) permits the board of directors to transfer to undivided earnings any amount in the reserve fund which is found to be in excess of the requirements of subsection (1) (a) of section 17.

TEXT	COMMENTS
may authorize the transfer of such excess to the undivided earnings account of the credit union. (2) (a) In addition to the general reserve fund established pursuant to subsection (1) of this section, each credit union shall establish a special reserve fund and, at the time of making such transfers pursuant to subsection (1) of this section, and prior to the declaration of any dividend, transfers from net or undivided earnings shall be made so that the special reserve fund shall equal the total of ten per cent of unpaid balances on loans which are delinquent for more than two months but less than six months, plus twenty-five per cent of unpaid balances on loans which are delinquent for six months or more but less than twelve months, plus eighty per cent of unpaid balances on loans which are delinquent for twelve months or more. If the required amount to be transferred to the special reserve fund shall exceed the remaining net earnings and undivided earnings, only such remainder shall be transferred at that time to such special reserve fund.	C.R.S. 38-1-17 (2) (a) provides for the establishment of a special reserve fund (in addition to the general reserve fund above) in which amounts deposited therein are directly correlated to the length of time loans have been delinquent.

TEXT	COMMENTS
(b) If, at the end of any dividend period, the amount in the special reserve fund exceeds the amount required by paragraph (a) of this subsection, the board of directors may authorize the transfer of such excess to the undivided earnings account of the credit union.	C.R.S. 38-1-17 (2) (b) permits the board of directors to transfer to undivided earnings any amount in the special reserve fund which is found to be excess of the requirements of subsection (2) (a) of section 17.
SECTION 15. 38-1-18, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:	
38-1-18. Dividends. Annually or semiannually, as the by-laws may provide, and after provision for the required reserves, the board of directors may declare a dividend not to exceed six per cent per annum on each share, to be paid from the undivided earnings, which dividend shall be paid on all shares outstanding at the end of the dividend period. Shares which become fully paid up during such dividend period shall be entitled to a proportional part of said dividend. Dividend credit for any month may be accrued on shares which are or which become fully paid up during the first five days of that month.	The amendments to C.R.S. 38-1-18 would permit dividends on undivided earnings to be declared on either an annual or semiannual basis, instead of only on an annual basis. Also, shares paid up in full by the fifth of the month would earn dividends as if paid up in full on the first day of the month.

TEXT	COMMENTS
SECTION 16. 38-1-19, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read: 38-1-19. Expulsion or withdrawal of members. A member may be expelled by majority vote of the board of directors if said board determines that the member has not for a period of six years or more, either increased or decreased the amount of his shares in or deposit with the credit union, exclusive of dividend or interest credits thereon; or that for such time has failed to respond to the supervisory committee's efforts to verify his account; or that for such time has failed to attend an annual membership meeting or cast a ballot in any annual election; or that for such time has failed to correspond or otherwise indicate any interest in or knowledge of his shares or deposit. Any member may withdraw from the credit union at any time, but notice of withdrawal may be required in the by-laws. All amounts paid on shares or as deposits of an expelled member or withdrawing member, together with any dividends or interest accredited thereto, to the date thereof, as funds become available and after	The amendments to C.R.S. 38-1-19 would permit the board of directors (instead of the credit union's membership) to expel and close the accounts of members if they have been inactive for a period of six years. If an expelled member cannot be located, the amendment further provides for the transfer of the outstanding shares and earnings to accounts payable of the credit union.

deducting all amounts due from the member to the credit union, shall be paid to such member. The credit union may require sixty days' written notice of intention to withdraw shares and thirty days' written notice of intention to withdraw deposits. Withdrawing or expelled members shall have no further rights in the credit union but shall not, by such expulsion or withdrawal, be released from any remaining liability to the credit union. If any expelled member cannot be located at his last known address, his shares and deposit accounts may be closed and the funds therefrom transferred to an account payable whereupon no dividends or interest shall further accrue.

SECTION 17. 38-1-20, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

38-1-20. Suspension - liquidation - procedures. (1) (a) If it shall appear that any credit union is insolvent, or that it has willfully violated any provision of this article, or that it is operating in an unsafe or unsound manner, the commissioner may issue his order for such credit

The old language of C.R.S. 38-1-20, pertaining only to voluntary liquidation, has been stricken in its entirety and new language has been recommended for adoption. Section 20, as amended, would streamline the procedure to be followed for suspension

TEXT	COMMENTS
union to show cause why its operations should not be suspended until such insolvency, violation, or manner of operation is rectified, and afford the credit union an opportunity for a hearing not less than ten days nor more than twenty days after such order. Such order shall be in writing and delivered by registered or certified mail. If the credit union fails to answer such order or if any officer or director of or attorney for the credit union fails to appear at the time set for the hearing, the commissioner either may revoke the certificate of incorporation of the credit union, or may order the immediate suspension of operations of the credit union except the collection of payments on outstanding loans or other obligations due the credit union, or both, and may enforce any such order by an action, filed in the district court of the judicial district wherein the principal office of the credit union is located, seeking to enjoin further operations or to appoint a receiver for such credit union. (b) Any credit union to which an order to show cause has been issued pursuant to paragraph (a) of this subsection,	and involuntary liquidation of credit unions by the State Bank Commissioner and would incorporate some of the present language of section 20 relative to the procedure for voluntary liquidation.

may include with any answer or may present at any hearing resulting from such order its proposed plan to continue operations and rectify the insolvency, violation, or manner of operation specified in said order; or the credit union may request that it be dissolved and liquidated and a liquidating agent be appointed by the commissioner. Any credit union may request a stay of execution of any order of the commissioner revoking its certificate of incorporation or suspending its operations, by filing an action in the district court for the judicial district in which the principal office of the credit union is located, within ten days after the issuance of such order.

(c) If the commissioner revokes the charter of the credit union, he shall appoint a liquidating agent to liquidate the assets of the credit union pursuant to subsection (3) of this section.

(2) Any credit union may be voluntarily dissolved and liquidated upon majority vote of the entire membership thereof at a meeting especially called for the purpose, or

at the annual meeting where notice of such proposed action is mailed to the members at least thirty days prior to such meeting. In either event, a copy of the notice shall be delivered to the commissioner not less than ten days prior to such meeting. Any member of a credit union may cast his ballot for or against such dissolution and liquidation by mail within twenty days after such meeting. If a majority of the members of the credit union vote in favor of dissolution and liquidation, the board of directors, within five days after the close of voting, shall notify the commissioner of such action and specify the names and addresses of the directors and officers of the credit union who will conduct the dissolution and liquidation of the credit union. Upon such favorable vote, the credit union shall cease to do business except for the collection of payments on outstanding loans or other obligations due the credit union.

(3) Under any procedure to dissolve and liquidate a credit union pursuant to subsections (1) or (2) of this section, the credit union shall continue in existence for

the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business, and it may sue and be sued for the enforcement of its debts and operations until its affairs are fully adjusted in liquidation. The assets of the credit union shall be used to pay, first, the expenses incidental to liquidation; second, liabilities due non-members; and third, deposits and savings club accounts. Any remaining assets shall be distributed to the members proportionately to the shares held by each member as of the date of dissolution.

(4) Upon the liquidation and distribution of all assets of the credit union which may be reasonably expected to be collectible, the board of directors or the liquidating agent, as the case may be, shall execute in duplicate a certificate of dissolution, prescribed by the commissioner, and file the same with the secretary of state, who shall deliver a copy of the same to the commissioner, whereupon, the credit union shall be dissolved.

TEXT	COMMENTS
SECTION 18. 38-1-21, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read: 38-1-21. Change in place of business. A credit union may change its place of business to a location outside of the county or city and county in which previously located upon receiving written permission therefor from the commissioner. A credit union may change its place of business within the county or city and county in which previously located by providing written notice of the new address and the effective date of such change to the commissioner.	The existing provisions of C.R.S. 38-1-21 merely stipulate that a credit union shall submit written notice to the bank commissioner if it intends to change its place of business. Section 21, as amended, would retain this provision, but only if a credit union changes its lo- within the same county or city and county. Additional language would require a credit union, wishing to relocate in a different county or city and county, to obtain the written permission of the bank commissioner, who would have the authority to approve or reject plans for the move after considering the merits of the proposal.
SECTION 19. Effective date. This act shall take effect July 1, 1967. SECTION 20. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public, peace, health, and safety.	

BILL H

A BILL FOR AN ACT

CONCERNING THE SOLICITATION AND ACCEPTANCE OF FUNDS FROM THE PUBLIC IN THIS STATE.

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

SECTION 1. Legislative declaration. The general assembly hereby declares that the solicitation and accepting of funds from the public for use in the business of making loans are affected with a public interest, and the provisions of this act are enacted in the exercise of the police powers of the state to protect the investment of the moneys of the people of this state and to prevent deception, fraud, and misrepresentation in the solicitation, acceptance, use, and repayment of such moneys and earnings thereon.

SECTION 2. Definitions. (1) As used in this act, unless the context requires otherwise, the following words and phrases shall have the following meanings:

(2) "Person engaged in the business of making loans" means any individual, partnership, association, trust, corporation, or any other legal entity making more than five loans of money in any consecutive twelve-month period, regardless of the amount of any such loan and regardless of the rate of interest, amount of charges, or consideration therefor; except, that said term shall

not include any bank, trust company subject to article 16 of chapter 14, C.R.S. 1963, savings and loan association, credit union, pawnbroker, or insurance company licensed and regulated pursuant to the laws of this state.

(3) "Solicitation or acceptance of funds from the public" means the solicitation by public media or by mail or by any advertisement on or off the premises of the solicitor, of funds from the general public, or the acceptance of funds from fifteen or more persons, for use in the business of making loans.

(4) "Loan" or "loan of money" means the amount of money advanced to or for and on behalf of a borrower, including the amount required to retire an existing loan, insurance premiums, and costs incurred for and on behalf of the borrower in connection with the making of a loan, but not including any interest or time charges based upon the amount so advanced.

(5) "Commissioner" means the state bank commissioner.

SECTION 3. Solicitation or acceptance of funds from public - requirements - exceptions. (1) (a) No person engaged in the business of making loans in this state shall solicit or accept funds from the public in this state, other than in connection with the sale of common stock, unless prior to the acceptance of any such funds said person meets the following requirements:

(b) Inform in writing, either on the instrument which is the evidence of indebtedness or on a separate loan agreement entered into prior to execution of such evidence of indebtedness, the person from whom funds are to be accepted that the transaction is an unsecured loan and not a demand, time, or savings deposit of any type; that any funds so accepted will not

be insured by any state or federal governmental agency; the purpose or proposed use of said funds; the priority or rights of the holder of the evidence of indebtedness, including but not limited to whether or not the same is or may be subordinated to other indebtedness of the person accepting such funds, the assignability of the same, and if and when the same may be callable; that the general creditors of the person accepting said funds may have claims on the assets of said person prior to said holder; and, if applicable, that some of the assets of the person accepting such funds are or may become security or pledged for the payment of other indebtedness of said person.

(2) Any person engaged in the business of making loans in this state who solicits or accepts funds from the public shall file with the commissioner not later than July 1, 1967, and July 1 of each year thereafter in which funds are solicited or accepted from the public, or, having been so solicited, are retained, the names, residence addresses, and business addresses of each owner, partner, associate, trustee, officer, and director, and of each stockholder owning directly or indirectly, ten per cent or more of the issued and outstanding capital stock of said business. In case of any change thereof, said person shall file with the commissioner within ten days after such change the new name, residence address, and business address of any such person.

SECTION 4. Examinations - valuations of assets. (1) (a) The commissioner may, as often as he deems necessary, carefully examine the books, records, papers, assets, security interests, and liabilities of every kind and character owned by or relating to any person subject to the provisions of this act. The

commissioner shall keep himself sufficiently informed as to the financial condition and business methods of each such person, and shall make and file in his office as a public record, a correct report in detail disclosing the results of any such examination, and shall mail a copy thereof to the person examined.

(b) If the commissioner deems it necessary, he may examine the books, records, papers, assets, security interests, and the liabilities of any corporation the majority stock of which is owned directly or indirectly by any person subject to the provisions of this act, or which is found by him to be controlled by said person, relative to the business affairs of such person.

(c) The commissioner shall collect from each person subject to the provisions of this act, for each such examination, a fee of fifty-five dollars for each examiner for each day actually and necessarily spent in such examination.

(2) If the commissioner determines that any asset of any person subject to the provisions of this act is not fairly valued on the books of said person, he shall revise the same to reflect a fair value and any reduction therein shall be charged against the capital and surplus of such person.

(3) If the commissioner shall determine that any person subject to the provisions of this act has deviated or intends to deviate from any disclosure made pursuant to section 3 (1) (b) of this act, the commissioner shall immediately issue to said person his order to cease and desist from such deviation and may enforce such order by injunctive action or application for receivership as provided in this act.

SECTION 5. Receivership. If the commissioner determines it is necessary for the protection and preservation of funds of the public solicited or accepted by any person subject to the provisions of this act, he may, through the attorney general, bring an action in any district court of this state to impound, and to appoint a receiver for, the property and business of such person, including the books, papers, documents, and records pertaining thereto, or so much thereof as the court may deem reasonably necessary to protect and preserve such funds of the public. Any such receiver, when appointed and qualified, shall have powers and duties as to custody, collection, administration, payment, winding up, and liquidation of said property and business as shall be conferred by the court.

SECTION 6. Injunctions. Whenever it appears to the commissioner that any person has violated, is violating, or is about to violate, any provision of this act, he may, through the attorney general, apply for and obtain, in an action in any district court of this state, a temporary restraining order, or injunction, or both, pursuant to the Colorado rules of civil procedure, prohibiting such person from continuing such violations or from doing any act which would constitute a violation.

SECTION 7. Persons prohibited from soliciting or accepting funds from the public. No person shall solicit or accept funds from the public where any owner, officer, director, trustee, partner, or associate, or any shareholder owning directly or indirectly ten per cent or more of the issued and outstanding stock thereof, has been convicted of a felony in this or any other jurisdiction, or of a crime which if committed in this

state would constitute a felony, unless the commissioner shall have first determined that the person so convicted has since been rehabilitated or shall otherwise determine that any funds solicited or accepted from the public will not be the subject of deception, fraud, or misrepresentation by such person. For the purposes of this section, the entry and acceptance of a plea of nolo contendere shall be considered as a conviction.

SECTION 8. Violations - penalties. (1) Except as provided in subsection (2) of this section, any person who intentionally violates any provision of this act shall be guilty of a misdemeanor and upon conviction, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(2) If it be shown on the trial of a case involving a violation of this act that the defendant has been twice before convicted of an offense under this act, he shall, upon his third conviction be guilty of a felony and punished by imprisonment in the state penitentiary for not less than one year nor more than five years.

(3) For the purposes of this section, any officer, director, agent, or employee of any corporation who knowingly and intentionally performs any act or assists in the performance of any act which constitutes a violation of this act, or fails and refuses to comply with any requirement of this act, shall be prosecuted for and may be convicted of the offense.

SECTION 9. Applicability of act. The provisions of this act shall apply only with regard to that portion of any business

of making loans which is transacted affecting funds solicited or accepted on or after July 1, 1967.

SECTION 10. Effective date. This act shall take effect July 1, 1967.

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

BILL I

A BILL FOR AN ACT

CONCERNING TRUST COMPANIES.

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

SECTION 1. Short title. This act, with amendments and additions thereto, shall be known and may be cited as "The Colorado Trust Company Act".

SECTION 2. Definitions. (1) As used in this act, unless the context otherwise indicates:

(2) "Trust company" means a company organized pursuant to or subject to regulation by the provisions of this act.

(3) "Court trust" means a trust company acting under appointment, order, or decree of any court, as executor, administrator, guardian, conservator, assignee, receiver, depositary, or trustee, or receiving on deposit money or property from a public administrator, under any provision of this act, or from any executor, administrator, guardian, conservator, assignee, receiver, depositary, or trustee, under any order or decree of any court.

(4) "Private trust" means every trust, agency, fiduciary relationship, or representative capacity, other than a court trust.

(5) "Commissioner" means the state bank commissioner.

SECTION 3. Powers of trust companies. (1) (a) Each trust company shall have power:

(b) To act, or to be appointed by any court to act, in like manner as an individual, as executor, administrator, guardian, or conservator of estates, assignee, receiver, depositary, trustee, custodian, or in any other fiduciary or representative capacity for any purpose permitted by law;

(c) To act as transfer agent or registrar of corporate stocks and bonds;

(d) To purchase, invest in, and sell stocks, bonds, mortgages, and other securities for the account of court or private trusts;

(e) To accept and execute any trust business permitted by any law of this or any other state or of the United States to be taken, accepted, or executed by an individual;

(f) To take oaths and execute affidavits by the oath or affidavit of its president, vice-president, secretary, assistant secretary, manager, trust officer, or assistant trust officer;

(g) To do and perform all acts necessary to exercise the powers enumerated in this section.

(2) A trust company shall not engage in any banking business by accepting deposits or making loans.

(3) A trust company may invest its capital and surplus in stocks, bonds, mortgages, and other securities.

SECTION 4. Organization of trust companies. (1) Any number of persons, not less than five, may associate together for the purpose of forming a trust company in accordance with the provisions of this act.

(2) The persons so associating shall execute articles of incorporation as provided by section 31-3-2, C.R.S. 1963.

SECTION 5. Application for charter - fee. (1) The incorporators shall make application to the commissioner for a charter. The application shall be on forms prescribed by the commissioner and shall contain such information as the commissioner may require.

(2) Each application for charter shall be accompanied by an application fee of two hundred and fifty dollars made payable to the state treasurer. No portion of said application fee shall be refunded.

SECTION 6. Procedure for granting or denying charter. (1) (a) Within sixty days following the filing of the application for charter, the commissioner shall make or cause to be made a careful investigation to determine:

(b) That the persons who will serve as directors or officers, insofar as such persons are known, are qualified by character and experience and that the financial status of the stockholders, directors, and officers is consistent with their responsibilities and duties;

(c) That the name of the proposed company is not deceptively similar to that of another trust company, or otherwise misleading;

(d) That the capital and surplus are not less than the required minimum;

(e) The need for trust facilities or additional trust facilities, as the case may be, in the community where the proposed trust company is to be located;

(f) Such other facts and circumstances bearing on the pro-

posed trust company and its relation to the locality as in the opinion of the commissioner may be relevant.

(2) (a) Within ninety days of the filing of the application, the commissioner shall conduct a public hearing to consider the application. At least thirty days prior to such hearing, the commissioner shall give written notice thereof to all persons doing a trust business in the community in which the proposed trust company is to be located, and to such other persons as he may designate. At such hearing the applicants shall have the burden of proving:

(b) That the public convenience and advantage will be promoted by the establishment of the proposed trust company.

(c) That conditions in the locality in which the proposed trust company will transact business afford reasonable promise of successful operation.

(d) That the trust company is being formed for no other purpose than the legitimate objects contemplated by this act.

(e) That the applicants have complied with all of the applicable provisions of this act.

(3) Within thirty days after the date of the conclusion of the hearing, the commissioner shall grant a charter to the applicants if he determines that the requirements of subsections (1) and (2) of this section have been met.

(4) If the proposed trust company fails to open for business within six months after the date of granting the charter, the privilege of transacting business shall terminate. The commissioner, for good cause and upon written application filed prior to the expiration of such six month period, may extend the

time within which the trust company may open for business.

SECTION 7. Capital stock - amount. No trust company shall be incorporated for any of the purposes enumerated in this act, or possess the rights and franchises provided under this act, unless it shall have paid in capital stock of two hundred and fifty thousand dollars when located in a city or town having a population of one hundred and fifty thousand or more; one hundred thousand dollars when located in a city or town having a population less than one hundred and fifty thousand and more than fifty thousand; and fifty thousand dollars when located in a city or town having a population of fifty thousand or less; and before proceeding to transact business under this act a sworn statement signed and sworn to by the president and secretary of the company shall be filed with the secretary of state to the effect that such capital has been paid up in cash, and all the provisions of this act complied with, and the same be fully paid in.

SECTION 8. Discontinuing trust business. Whenever any corporation desires to discontinue doing a trust business, it shall furnish to the commissioner satisfactory evidence of its release and discharge from all the obligations and trusts which it has assumed or which have been imposed upon it by law. Thereupon the commissioner shall revoke the corporation's charter and thereafter such corporation shall not be permitted to use the word "trust" in its corporate name, or in connection with its business.

SECTION 9. No loans to officers. No loan shall be made by a trust company directly or indirectly to any trustee, director, or officer thereof, and no loan shall be made upon the stock of the company.

SECTION 10. Laws governing individuals apply. (1) In the exercise by a trust company of its powers as guardian, executor, administrator, or conservator, or of any office or duty imposed by any court, the company shall be subject to the same responsibilities, liabilities, and penalties as an individual acting in like capacity, and the company shall have the same powers and shall receive the same compensation as fixed by law for individuals acting in like capacity.

(2) The exercise of the other powers and the performance of the other duties by the company may be as to compensation and otherwise matters of contract with the parties interested.

SECTION 11. Investments. (1) Every trust company shall keep all trust funds and investments separate and apart from the assets of the company, and all investments made by the company as a fiduciary shall be designated so that the trust or estate to which such investments belong may be clearly identified.

(2) Every trust company holding trust funds awaiting investment or distribution may deposit or leave on deposit such funds with a state or national bank. Such funds shall not be deposited or left with the same corporation depositing or leaving on deposit such funds, nor with a corporation or association holding or owning a majority of the capital stock of the trust company making or leaving such deposit, unless such corporation or association shall first pledge, as security for the deposit, securities eligible for investment by state banks that have a market value equal to that of the deposited funds. No security shall be required with respect to any portion of such deposits which is insured under the provisions of any law of the United States.

(3) (a) Every trust company acting in any capacity under a court or private trust, unless the instrument creating such trust provides otherwise, may cause any securities held by it in its representative capacity to be registered in the name of a nominee or nominees of the company.

(b) Every trust company when acting as depositary or custodian for the personal representative of a court or private trust, unless the instrument creating the trust provides otherwise, may with the consent of the personal representative of the trust, cause any securities held by it to be registered in the name of a nominee or nominees of the company.

(c) Every trust company shall be liable for any loss occasioned by the acts of any of its nominees with respect to securities registered under this subsection.

(d) No corporation or the registrar or transfer agent thereof shall be liable for registering or causing to be registered on the books of the corporation any securities in the name of any nominee of a trust company or for transferring or causing to be transferred on the books of the corporation any securities theretofore registered by the corporation in the name of any nominee of a trust company, as provided in this subsection, when the transfer is made on the authorization of the nominee.

SECTION 12. Commissioner to examine trust companies - fees. (1) The commissioner shall examine the business and affairs of each trust company organized under this act at least once each year and at such other times and to such extent as he may deem necessary or advisable. The conduct of such examinations shall be governed by the provisions of section 14-2-8, C.R.S. 1963.

(2) The commissioner shall collect from each trust company for every examination of said trust company the sum of seventy-five dollars per examiner day or portion thereof required for the examination.

SECTION 13. Penalty for noncompliance with the law. It shall be unlawful for any individual, partnership, or corporation to carry on or conduct in this state a trust company business or to advertise or hold himself or itself out as being engaged in or doing a trust company business, or to use in connection with his or its business the words "trust company" or words of similar import without first having complied with all the provisions of law relating to trust companies; nor shall the word "trust" be used as a part of the name of any business or institution unless organized and qualified under the statutes providing for the organization and supervision of trust companies. Any person, and all members of any partnership, and all officers and directors or trustees, of any corporation, violating this section shall be deemed guilty of a misdemeanor and subject to a fine not exceeding one thousand dollars, or imprisonment in the county jail not to exceed one year, or both such fine and imprisonment.

SECTION 14. 14-6-6 (2), Colorado Revised Statutes 1963 (1965 Supp.), is amended to read:

14-6-6. Bank investment - customer's orders. (2) A state bank may invest an amount not exceeding ten per cent of its capital and surplus in the stock of a corporation exclusively engaged in trust business and incorporated as a trust company under ~~sections 14-16-1 to 14-16-14, inclusive,~~ "THE COLORADO TRUST COMPANY ACT", provided every such investment shall be subject to prior

approval of the banking board.

SECTION 15. Repeal. Articles 15 and 16 of chapter 14, Colorado Revised Statutes 1963, as amended, are repealed.

SECTION 16. Effective date. This act shall take effect July 1, 1967, but trust companies that are organized and existing in this state on the effective date of this act shall have until July 1, 1968, to comply with the provisions of this act.

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

BILL J

Virginia Statute Re Subrogation Clause in Auto Insurance

The committee on financial institutions has recommended that consideration be given to the feasibility of regulating the inclusion of subrogation clauses in automobile insurance policies. An example of a state statute prohibiting such clauses, a 1964 Virginia statute, is provided below:

> § 38.1-381.2. Automobile liability medical benefit insurer not to retain right of subrogation to recover from third party. -- On and after January one, nineteen hundred sixty-five no policy or contract of bodily injury liability insurance, or of property damage liability insurance, which contains any representation by an insurance company that such company will pay all reasonable medical expense incurred for bodily injury caused by accident to the insured or any relative or other person coming within the provisions thereof, shall be issued or delivered by any insurer licensed in this State upon any motor vehicle then principally garaged or principally used in this State, if such insurer retains the right of subrogation to recover all amounts paid on behalf of an injured person under the provision of the policy from any third party.