

RECEIVED

DEC 04 '84

UNIVERSITY OF DENVER
LAW LIBRARY

Report to the Colorado General Assembly:

**RECOMMENDATIONS FOR 1985
COMMITTEES ON:**

**Business Issues
Sunset Reviews**



COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 290

December, 1984

Law Lib.
KFC
1820
.L4
no. 290



Law Lib. KFC 1820 .L4 no.
290
Colorado. General Assembly.
Legislative Council.

Colorado Legislative Council
recommendations for 1985

LEGISLATIVE COUNCIL
OF THE
COLORADO GENERAL ASSEMBLY

Senators

Sen. Ted L. Strickland,
Chairman
Sen. Martha M. Ezzard
Sen. Regis F. Groff
Sen. Don MacManus
Sen. Dan D. Noble
Sen. Ray Powers
Sen. Ronald K. Stewart

Representatives

Rep. Carl B. "Bev" Bledsoe,
Vice Chairman
Rep. Frank DeFilippo
Rep. Charles W. Heim
Rep. Jerry Kopel
Rep. Bob Martinez
Rep. David E. Skaggs
Rep. Ronald H. Strahle

The fourteen-member Legislative Council serves as the fact-finding and information-collecting agency of the General Assembly. The Speaker of the House and the Majority Leader of the Senate serve ex officio with twelve appointed legislators -- six senators and six representatives.

Between sessions, the interim legislative committees concentrate on specific study assignments approved by resolution of the General Assembly or directed by the council. Committee documents, data, and reports are prepared with the aid of the council's professional staff.

During sessions, the council staff provides support services to the various committees of reference and furnishes individual legislators with facts, figures, arguments, and alternatives.

NON-CIRCULATING

Law Lib.
KFC
1730
no. 290

COLORADO LEGISLATIVE COUNCIL
"RECOMMENDATIONS FOR 1985

*Colorado, General Assembly, Legislative Council,
"Committees on Business Issues"*

COMMITTEES ON:

Business Issues
Sunset Review

Legislative Council
Report to the
Colorado General Assembly

Research Publication No. 290
December, 1984

↓
Law Lib. KFC 1820 .L4 no.
290

Colorado. General Assembly.
Legislative Council.

Colorado Legislative Council
recommendations for 1985

COLORADO GENERAL ASSEMBLY

OFFICERS

SEN. TED L. STRICKLAND

Chairman

REP. CARL B. "BEV" BLEDSOE

Vice Chairman

Staff

LYLE C. KYLE

Director

DAVID F. MORRISSEY

Assistant Director



LEGISLATIVE COUNCIL

ROOM 46 STATE CAPITOL
DENVER, COLORADO 80203
866-3521
AREA CODE 303

MEMBERS

SEN. MARTHA M. EZZARD
SEN. REGIS F. GROFF
SEN. DON MACMANUS
SEN. DAN D. NOBLE
SEN. RAY POWERS
SEN. RONALD K. STEWART
REP. FRANK DEFILIPPO
REP. CHARLES W. HEIM
REP. JERRY KOPEL
REP. BOB MARTINEZ
REP. DAVID E. SKAGGS
REP. RONALD H. STRAHLE

To Members of the Fifty-fifth Colorado General Assembly:

Submitted herewith are the final reports of the Committees on Business Issues and Sunset Review. The committee on Business Issues was appointed by the Legislative Council pursuant to House Joint Resolution No. 1027, 1984 session. The Sunset Review Committee was created by the Executive Committee of the Legislative Council on August 17, 1984, pursuant to section 24-34-104, Colorado Revised Statutes.

At its meeting of October 15, the Legislative Council reviewed these reports and approved a motion to forward the committees' recommendations to the Fifty-fifth General Assembly. However, the council did not recommend Bill 25, on the grounds that its subject matter is not within the committee's statutory directive.

Respectfully submitted,

/s/ Senator Ted L. Strickland
Chairman
Colorado Legislative Council

TLS/pn

TABLE OF CONTENTS

	<u>Page</u>
LETTER OF TRANSMITTAL.....	iii
TABLE OF CONTENTS.....	v
LIST OF BILLS AND RESOLUTIONS.....	vii
 COMMITTEE ON BUSINESS ISSUES	
Members of Committee.....	1
Summary of Recommendations.....	3
Background Report.....	7
The Unitary Method of Taxing Corporate Income.....	8
Separate Accounting.....	8
Formula Apportionment.....	8
Colorado Corporate Income Tax.....	10
Committee Activities.....	12
Committee Recommendations.....	21
State and Local Sales and Use Tax Simplification.....	23
Committee Activities.....	25
Committee Recommendations.....	30
Appendix A.....	81
 SUNSET REVIEW COMMITTEE	
Members of Committee.....	85
Summary of Recommendations.....	87
Committee Recommendations.....	88
Bills 20 to 25.....	88

LIST OF BILLS AND RESOLUTIONS

	<u>Page</u>
BILL 15 -- Concerning the Creation of a Department of Commerce and Community Affairs.....	35
BILL 16 -- Concerning Application of the Unitary Method of Determining the Taxable Income of Corporations.....	37
BILL 17 -- Concerning a Credit Against the State Income Tax Based Upon the Development of Business Facilities and Employment Opportunities Resulting from Such Development.....	45
BILL 18 -- Concerning the Collection of Sales and Use Taxes, and Making an Appropriation Therefor.....	59
BILL 19 -- Concerning Removal of the Ceiling on the Exemption of Purchases of Machinery and Machine Tools from Sales and Use Taxes.....	79
BILL 20 -- Concerning the Practice of Optometry, and Providing for the Continuation of the State Board of Optometric Examiners and Relating to the Powers and Duties of Said Board.....	97
BILL 21 -- Concerning the Practice of Chiropractic, and Providing for the Continuation of the State Board of Chiropractic Examiners and Relating to the Powers and Duties of Said Board.....	105
BILL 22 -- Concerning the Practice of Medicine, and Providing for the Continuation of the Colorado State Board of Medical Examiners and Relating to the Powers and Duties of Said Board.....	115
BILL 23 -- Concerning the Practice of Podiatry, and Providing for the Continuation of the Colorado Podiatry Board and Relating to the Powers and Duties of Said Board.....	131
BILL 24 -- Concerning Professions Licensed by the State Board of Nursing, and Providing for the Continuation of Said Board and Relating to the Powers and Duties Thereof.....	169
BILL 25 -- Concerning the Prohibition of Treatment by Colonic Irrigation Therapy.....	187

LEGISLATIVE COUNCIL
COMMITTEE ON BUSINESS ISSUES

Members of the Committee

Sen. Joel Hefley, Chairman	Rep. Mike Bird
Rep. Peter Minahan Vice-Chairman	Rep. Charlie Brown
Sen. Wayne Allard	Rep. Cliff Bryan
Sen. Polly Baca	Rep. John Herzog
Sen. John Donley	Rep. Peggy Reeves
Sen. Don MacManus	Rep. Larry Trujillo
Sen. Ray Powers	Rep. Glenn Underwood
Sen. James Rizzuto	

Council Staff

Deb Godshall Senior Analyst	Doug Hock Senior Research Assistant
David Hite Principal Analyst	

Legislative
Drafting Staff

Margaret Makar Senior Attorney	Lee Donelson Staff Attorney
-----------------------------------	--------------------------------

COMMITTEE ON BUSINESS ISSUES

The Committee on Business Issues was directed to study the following:

(1) the desirability of creating a department of commerce as a principal department of state government;

(2) the unitary method of identifying corporate income tax liability, and the impact that this approach may have on maintaining and enhancing Colorado's business climate;

(3) state and local sales and use taxes, including a determination of whether simplification could result in efficiencies and economies in the administration of the taxes; and

(4) the fiscal impact of federal contracts on state expenditures, facilities, employment, and tax policies.

The committee held six meetings and as a result of its deliberations, recommends five bills: (1) a bill to change the name of the Department of Local Affairs to the Department of Commerce and Community Affairs, (2) a bill modifying the unitary method of assessing corporate income tax, (3) a bill establishing the "Job Expansion and Investment Credit Act", (4) a bill to simplify the collection of sales and use taxes, and (5) a bill exempting certain sales of machinery and machine tools from the state sales tax.

Bill 15 -- Executive Department Name Change

Bill 15 changes the name of the Department of Local Affairs to the Department of Commerce and Community Affairs without transferring functions from existing executive departments or creating new functions for the "new" department.

The committee discussed but could not reach a consensus on the desirability of consolidating the state's economic development and regulatory functions into a single department. Instead, the committee chose to retain the present departmental structure and use the name change as a means of focusing more attention on the economic development functions of the department of local affairs.

Bills 16 and 17 -- Corporate Income Tax Modifications

Bill 16, the unitary tax bill approved by the committee, modifies the method of determining the income tax of multijurisdictional corporations. Colorado's current method of assessing income tax on a "worldwide" basis would be replaced by a domestic or "water's edge" approach.

The bill lists the requirements that a corporation or group of corporations must meet in order to file a unitary or domestic combined return. These requirements include tests for ownership, intercompany sales and services, use of proprietary materials, and interlocking officers and directors. Foreign corporations -- those which have more than 80 percent of their property and payroll outside the United States -- would not be considered part of the unitary group; and thus, their income would not be included in a combined return in Colorado. Colorado would tax the income of an 80/20 corporation as a separate entity apart from the remainder of the unitary group. The apportionment of income would be based on the corporation's operations in Colorado relative to its operations elsewhere.

The bill sets forth formulae for taxing foreign source income. Foreign source income includes interest, dividends, and rentals or royalties paid by corporations outside the fifty states and the District of Columbia to corporations inside the United States. The corporate taxpayer is given two options to determine the extent to which foreign source income is subject to Colorado income tax. The taxpayer can either deduct foreign taxes paid or claim a credit for those taxes, depending on the method chosen at the federal level.

Corporations could continue to apportion income using either the two-factor (property and revenue) or three-factor (property, revenue, and payroll) formula. The provisions of the bill would apply to income tax years beginning on or after January 1, 1986.

Bill 17 adopted by the committee modifies a policy first enacted in 1978 of providing corporate income tax credits for new or expanded business operations and employment opportunities. The bill allows a corporate taxpayer a credit against his tax liability for a new or expanded business facility, providing such facility employs at least two new persons and is established after January 1, 1984.

The credit is limited to the first taxable year of commercial operations. If, however, the credit exceeds the tax liability for that first year, the remaining credit is applied to reduce the owner's subsequent years' tax liability for a period not to exceed ten years. The amount of the credit is \$50 for each new business facility employee and \$50 for each \$100,000 in new business facility investment (defined as the value of property, except inventory, which constitutes the new business facility). The amount of the credit is doubled for taxpayers with facilities in counties of less than 50,000 population.

The bill provides credit for not only new facilities but expanded or replacement facilities providing: 1) the taxpayer's investment in the expansion exceeds \$1 million or 100 percent of the investment in an original facility; or 2) the investment in the replacement facility is \$3 million or 300 percent of the investment in the old facility.

Bills 18 and 19 -- Sales and Use Tax Simplification and Exemption

Bill 18, concerning the collection of sales and use taxes, revises the local government sales and use tax statutes and codifies certain provisions relating to home rule cities. A description of the major provisions of the bill follows.

-- The bill requires that home rule cities use the state sales tax base and definitions of taxable items with the following additional options: food, machinery and machine tools, residential power, industrial power, cable television, admissions, lodging, aviation jet fuel, and long distance access charges. Home rule cities may tax two additional items named at the discretion of the local taxing jurisdiction.

-- The state revenue director is authorized to develop and issue regulations to standardize the definition of items subject to local sales and use taxes and to standardize auditing procedures. These definitions and auditing procedures would apply to home rule cities.

-- The bill prohibits levying a sales tax on the sale of construction materials if there is evidence that a local use tax has or will be paid. It also forbids the imposition of a sales tax if a transaction has already been taxed by another entity in an amount equal to or more than the second taxing jurisdiction's rate. In these instances, a credit is allowed.

-- To eliminate multiple audits of businesses, the bill sets forth an auditing procedure for use by all local government entities that audit businesses. Each jurisdiction must provide the state revenue director prior notice of businesses it wishes to audit. If the business operates solely within one jurisdiction, the audit may be conducted after notifying the executive director. If, however, the business operates in more than one jurisdiction, the state revenue director determines when and by whom the audit is conducted.

-- At the discretion of the taxpayer, the state Department of Revenue is authorized to conduct hearings and make determinations regarding tax deficiencies claimed by local governmental entities. Determinations made by the state revenue director may be appealed to the district court.

-- The bill directs the state Department of Revenue to distribute to those local governments for which it collects sales tax 95 percent of each entity's estimated monthly sales tax revenue by the twenty-first day of the following month.

-- The bill directs all local governmental entities to conform the following ordinances to state law: statute of limitations for enforcement of sales and use tax collections, statute of limitations applicable to sales and use tax refunds, penalties and interest payable on delinquent remittance of sales and use taxes, and the posting of bonds pending a decision on a contested sales and use tax assessment.

-- The state revenue director is to adopt by regulation a standard sales and use tax reporting form to be used by home rule entities that collect their own sales and use tax. The form is to be separate from the state sales and use tax form.

-- The bill deletes the local government authority of both home rule and statutory cities and counties to impose a tax on storage.

The provisions of the bill delegating authority to the Department of Revenue to develop regulations on the definitions of taxable items, a standardized municipal reporting form, and uniform audit procedures are to become effective July 1, 1985. The remaining provisions of the bill are to take effect January 1, 1986.

Bill 19. As a result of its discussions on the relationship between taxes and economic development, the committee recommends Bill 19. This bill exempts purchases of machinery and machine tools in excess of \$1,000 from the state sales tax. The machinery or machine tools must be purchased by a person engaged in manufacturing personal property in Colorado. "Manufacturing" is defined in section 39-26-114 (11) (c), Colorado Revised Statutes, as the operation of producing a new product, article, substance, or commodity different from and having a distinctive name, character, or use from raw or prepared materials.

Current law exempts purchases of machinery and machine tools from the state sales tax if they are between \$1,000 to \$500,000. Statutory cities and counties presently have the option of taxing these purchases or exempting them from the local sales tax base.

BACKGROUND REPORT

THE UNITARY METHOD OF TAXING CORPORATE INCOME

Colorado is one of forty-five states which assesses a corporate income tax. In determining a corporation's state tax liability for multijurisdictional corporations, there are two methods of accounting which may be used -- separate accounting and formula apportionment.

Separate Accounting

Separate accounting attempts to divide a corporation's income-producing activities and income sources within a particular state from income-producing activities and income sources in other states and nations. In other words, in-state firms are treated as separable, independent businesses whose taxable income can be determined without reference to their out-of-state branches, subsidiaries, or affiliates. A key aspect of separate accounting involves computing the value of goods and services exchanged between related corporate entities across state or national boundaries. As guidelines, the prices of "arm's length" transactions -- comparable transactions occurring between independent firms -- are used.

Although separate accounting was used predominantly in the early years of state corporate income taxation, difficulties with the accounting method have led states to abandon separate accounting as their preferred method of allocating income. In most instances, accurately determining fair and reasonable selling prices for goods and services exchanged between related corporate entities has proved to be extremely cumbersome. For this reason, the formula apportionment method is more commonly used.

Formula Apportionment

Unlike separate accounting, under the formula apportionment method, a corporation operating across state lines is treated as a single, income-earning unit or "unitary business." A particular state's share of the taxable income from a unitary business is based on a share of the corporation's total business activity relative to its business activity conducted in that state. Business activity is generally defined in terms of three factors -- payroll, property, and sales. Currently, all forty-five states that tax corporate income use the formula apportionment method to determine the tax liability of a corporation and its subdivisions, and most states calculate taxable income according to the following rule.

$$\text{state taxable income} = \frac{\text{total apportionable income}}{\text{total apportionable income}} \times \text{state's share of apportionable income}$$

The state's share of apportionable income =

$$\left[\frac{\text{in-state property}}{\text{total property}} + \frac{\text{in-state payroll}}{\text{total payroll}} + \frac{\text{in-state sales}}{\text{total sales}} \right] \div 3$$

Thus, if 10 percent of a corporation's total business activity (i.e., property, payroll and sales) occurs within a particular state, then 10 percent of the corporation's total income would be taxable in that state.

Combined Reporting -- Domestic and Worldwide

The definition of a unitary business has been expanded to include multicompany groups operating across state or national borders through separately incorporated subsidiaries and affiliates. The inclusion of income of subsidiaries and affiliates is done through a technique known as "combined reporting." The apportionment formula is applied to the combined income and business activity of a commonly controlled corporation or group of corporations, either on a domestic or worldwide basis.

Domestic. Approximately one-half of the states that use formula apportionment apply the formula to the income of the multistate operations of a centrally controlled U.S. corporation and its subsidiaries. This method of taxation is referred to variously as "domestic combined reporting" or "water's edge combination." In comparison with the previous example, under domestic combined reporting, if 10 percent of a corporation's business activity, which includes the business activity of its U.S. subsidiaries, occurs in a particular state, then 10 percent of the corporation's and its subsidiaries' income would be taxable in that state. Domestic combined reporting is expressed in an equation as:

$$\left[\frac{\text{in-state property}}{\text{total property of U.S. subsidiaries}} + \frac{\text{in-state payroll}}{\text{total payroll of U.S. subsidiaries}} + \frac{\text{in-state sales}}{\text{total sales of U.S. subsidiaries}} \right] \div 3 \times \text{total corporate income of U.S. subsidiaries} = \text{income taxable by the state}$$

Worldwide. Ten of the states that use domestic combined reporting, including Colorado, have expanded the definition of a unitary business even further by including foreign subsidiaries in their apportionment formula. This type of taxation is known as "worldwide combined reporting" or "worldwide unitary taxation."

In a state using worldwide combined reporting, 10 percent of the income would be taxable if 10 percent of the total business activity of the corporation (its domestic and foreign subsidiaries) occurs in that state. Worldwide unitary taxation is expressed in an equation as:

$$\begin{array}{r}
 \boxed{\begin{array}{l}
 \text{in-state property} \\
 \text{total property} \\
 + \text{total property} \\
 \text{of U.S.} \\
 \text{and foreign} \\
 \text{subsidiaries}
 \end{array}} + \begin{array}{l}
 \text{in-state payroll} \\
 \text{total payroll} \\
 + \text{total payroll} \\
 \text{of U.S.} \\
 \text{and foreign} \\
 \text{subsidiaries}
 \end{array} + \boxed{\begin{array}{l}
 \text{in-state sales} \\
 \text{total sales} \\
 + \text{total sales} \\
 \text{of U.S.} \\
 \text{and foreign} \\
 \text{subsidiaries}
 \end{array}} + 3 \times \begin{array}{l}
 \text{total corporate} \\
 \text{income +} \\
 \text{total corporate} \\
 \text{income of U.S.} \\
 \text{and foreign} \\
 \text{subsidiaries}
 \end{array} = \begin{array}{l}
 \text{income} \\
 \text{taxable} \\
 \text{by the} \\
 \text{state}
 \end{array}
 \end{array}$$

As noted above, there are presently nine other states besides Colorado which employ worldwide combined reporting in assessing corporate income tax. These states include Alaska, California, Florida, Idaho, Massachusetts, Montana, New Hampshire, North Dakota, and Utah. Within the past year, the states of Oregon and Indiana have eliminated the use of worldwide combination in assessing their corporate income taxes. The Florida legislature approved a bill providing for the repeal of worldwide combination in favor of a domestic combination or "water's edge" approach. However, the bill failed when legislators could not agree upon a means of replacing revenue lost through the repeal of worldwide combination. In California, Governor Deukmejian sought passage of a bill which would have allowed corporations to choose between being taxed under worldwide combination or domestic combination. The California legislature recessed without acting on this bill and other bills to modify the unitary tax.

Colorado Corporate Income Tax

Every corporation doing business in Colorado or deriving income from Colorado sources is required to file a corporate income tax return in Colorado. The state assesses the tax on income at the rate of 5 percent of Colorado net income which is based on federal taxable income with modifications as provided by Colorado law.

Intrastate corporations or corporations operating solely within Colorado are not eligible to apportion income. Thus, the modified federal taxable income is the Colorado taxable income, and the 5 percent rate is applied to determine Colorado tax liability. Intrastate corporations represent about 80 percent of the firms doing business in Colorado.

Corporations doing business in other states as well as Colorado are classified as interstate corporations. Approximately one-fifth of the firms in Colorado are interstate or multijurisdictional firms. The tax liability of these corporations is determined by formula apportionment. Interstate corporations each year may elect to apportion income under the provisions of the "Colorado Income Tax Act"

or the Multistate Tax Compact. The Multistate Tax Compact prescribes the three-factor formula consisting of property, payroll, and sales discussed above. The income tax act permits corporations to apportion income using only two factors -- property and sales. 1/

Worldwide Combined Reporting in Colorado

Colorado's authority to impose combined reporting on multicompany groups is derived from the power granted to the Director of Revenue under the provisions of sections 39-22-301 (1) and 39-22-303 (6), Colorado Revised Statutes. These sections read as follows.

39-22-301. Corporate tax imposed. (1) (a) For income tax years commencing on or after January 1, 1983, but before January 1, 1986, a tax is imposed upon each domestic corporation and foreign corporation doing business in Colorado annually in an amount equal to five percent of the net income of such corporation during the year derived from sources within Colorado.... Income from sources within Colorado includes income from tangible or intangible property located or having a situs in this state and income from any activities carried on in this state, regardless of whether carried on in intrastate, interstate, or foreign commerce.

39-22-303. Apportionment of income - domestic and foreign. (6) In case of two or more corporations, whether domestic or foreign, owned or controlled directly or indirectly by the same interests, the executive director may distribute or allocate the gross income and deductions between or among such corporations or may require returns on a consolidated basis, if deemed necessary, in order to clearly reflect income.

The power to include income from foreign corporations and domestic subsidiaries in combined reports allows the director to determine the income attributable to Colorado of each corporation or group of corporations operating as part of a unitary business. Although this law was adopted in 1937, the use of worldwide combined reporting has only been gradually implemented in Colorado over the past decade, mainly as a result of court decisions and directives from the Director of Revenue.

In recent years, the use of combined reporting has been challenged in Colorado courts. The most pertinent state court decision involving its use in Colorado is the 1980 case of Joslin Dry

1/ Corporate Income Tax Returns Filed in FY 1982-83, prepared by the Colorado Department of Revenue, Colorado Legislative Research Publication No. 287, July, 1984.

Goods v. Dolan, 615 P.2d 16 (1980). In that case, the Colorado Supreme Court ruled that tax evasion is not a necessary factor for the department to require a corporation to submit a combined report.

Rather, it is the portion of 39-22-303 (6), Colorado Revised Statutes, dealing with the distribution and allocation of income and deductions which authorizes the department to require combined reports. According to the court, in this particular language the legislature provided separate methods for the department to employ in order to carry out the legislative intent to "tax all income that Colorado can constitutionally tax" by taxing "the net income of every corporation derived from sources within this state." ^{2/} Thus, the department can distribute or allocate the income of corporations owned or controlled by the same interests if it concludes that that is the most effective method of taxing all the income that Colorado can constitutionally tax.

Since the Joslin decision, legislative attempts to modify the revenue director's authority in this area have been introduced twice: in 1981 as House Bill 1230 and in 1984 as House Bill 1351. Both bills failed.

Committee Activities

The committee discussed the issue of the unitary apportionment method of taxation at three of its six meetings. Testimony was presented by the state Department of Revenue, the Colorado Association of Commerce and Industry (CACI), economic developers, and business representatives from corporations such as Pentax and Hewlett Packard. Two differing viewpoints emerged from these discussions.

Department of Revenue

The issues discussed by representatives of the Department of Revenue included the fairness of the unitary tax and the department's authority to use the accounting method, its role in economic development, and the effect of changing the tax method on the state general fund and intrastate as well as interstate businesses.

Appropriateness of unitary method. The Department of Revenue expressed the opinion that unitary apportionment is a fair and equitable method of taxation. Since the three-factor formula for property, payroll, and sales reflects the ratio of business activity within the state to business activity elsewhere, it will normally attribute a fair amount of income to each state. Thus, combined

^{2/} Joslin Dry Goods Co. v. Dolan, 615 P.2d at 19 (1980).

reporting avoids influencing the apportionment of income by artificial boundaries such as state or corporate lines which themselves do not influence the production of income. The department argued that such a method is needed in determining tax liability in order to obtain a true picture of company finances and prevent multinationals from avoiding taxes by hiding profits overseas. Furthermore, without access to the unitary apportionment formula, the department cannot effectively administer state corporate income tax laws as companies grow more complex.

Many corporations advocate the separate accounting method as being preferable to the unitary approach. The department asserts that two major flaws exist with the use of separate accounting, however. The first flaw with the methodology is that it assumes that corporations can accurately measure the value of goods and services that flow among corporate affiliates. In fact, the contributions to the total net income of a unitary enterprise may be essentially immeasurable, whether the contributions come from subdivisions of one corporation or from the various affiliated corporations comprising the unitary enterprise. Secondly, separate accounting permits affiliated corporations to arbitrarily measure the flow of value in ways that may minimize state taxes but may not provide an actual representation of the economic realities of the business enterprise.

Voluntary compliance with the department's requirements on combined reporting has rapidly increased in recent years primarily due to the support given the accounting method by state and U.S. supreme court decisions. In June, 1983, the United States Supreme Court rendered a decision in the case of Container Corporation of America v. California Franchise Tax Board, 77 L.Ed 2d 545, affirming the right of states to require worldwide combined reports. In this case, Container Corporation brought suit in California Superior Court for a refund of state taxes, alleging that it should not have to treat its overseas subsidiaries as part of its unitary business. The California Superior Court upheld the assessment of the taxes and, on appeal, the U.S. Supreme Court affirmed the decision of the superior court.

In its decision, the U.S. Supreme Court held that: (1) the application of the unitary business principle to overseas subsidiaries was proper; (2) the use of the three-factor formula to apportion the income of the unitary business was fair and did not violate the constitutional requirement of fair apportionment; and (3) the tax did not violate the foreign commerce clause of the U.S. Constitution.

In Colorado, the unitary approach has been validated by both the state courts, particularly the Colorado Supreme Court in its decision in the Joslin case, and by the state legislature. Bills were introduced in the 1981 and 1984 legislative sessions attempting to restrict the department's use of the unitary method. Both bills were defeated.

Economic development. The relationship between economic development and the unitary tax is twofold -- psychological and

objective. The department admits that the corporate perception of the unitary methodology is that it is "corporate poison." This view is particularly expressed by those corporations headquartered overseas. Apparently, it is the perception of unitary and not the actual tax consequences which influences the corporate attitude.

According to the Department of Revenue, the facts indicate that there is no relationship between the unitary method and economic growth. The preponderance of data indicates that in making a corporate siting decision, practically every factor has primacy over the corporate income tax. Factors such as proximity to markets, quality of life, available financing, labor force, transportation, and educational opportunity outweigh the income tax as key considerations. States using the unitary methodology have not suffered economic decline. For example, Hewlett-Packard, IBM, Kodak, Neoplan, Honeywell, Digital, and Sperry Rand have located or expanded in Colorado in recent years in spite of the unitary tax.

To illustrate the point that dollar consequences of unitary taxation are not the determining factor in corporate location decisions, revenue department representatives referred to an Arthur Andersen & Company study summarizing the comparative tax costs of locating a specific manufacturing plant in either Colorado or North Carolina. The firm subsequently chose North Carolina citing, in part, Colorado's unitary tax. However, some interesting observations can be made as to why the firm chose North Carolina. The Arthur Andersen analysis estimates that a one-time application of the state and local use tax on machinery, equipment, and building materials results in a \$1.1 million higher price tag in Colorado. The property tax in Colorado would be \$712,000 higher every year. Interestingly enough, the analysis reveals that when the numbers for the corporate franchise tax and income tax were combined, Colorado's tax would be at least \$86,000 per year lower than North Carolina's. The unitary method was applied for Colorado in making this determination; North Carolina does not use the unitary method.

Department of Revenue representatives contend that if the objective of the committee is to foster economic development, then legislation should be proposed targeting economic development. Tax incentives can be specifically designed to encourage location into a state. Colorado's new business facilities credit was cited as an example of such an incentive, and its reconstitution was recommended as an approach to target economic development.

Revenue impact. Any restrictions on the department's current method of assessing corporate income taxes would result in a loss in general fund revenues. As evidenced by shortfalls in the general fund in recent years, representatives of the department observed that the state cannot afford to enact measures which will severely curtail general fund revenue sources. If it is determined that the abolishment of the unitary tax is warranted, the problem of finding replacement income must be solved.

It should be noted that the business community is divided on the unitary tax issue because it is a tax liability issue. Some corporations benefit from the abolishment or modification of the unitary tax while others do not. For example, Caterpillar Corporation, with various briefs from other corporations, sued the Illinois Department of Revenue for permission to file under the unitary method. The U.S. Supreme Court held that Illinois could not prevent Caterpillar from submitting combined reports.

The department suggested that intrastate businesses in Colorado would not be beneficiaries of any changes involving the unitary tax. Large Colorado-based national businesses would not reap substantial gains because their corporate situations do not allow them to redirect taxable income to other taxing jurisdictions. In fact, many Colorado corporations prefer unitary and voluntarily file on a worldwide combined basis simply because it gives them a lower tax liability. The firms with the most to gain from abolishment of unitary are the large, non-Colorado-based corporations and foreign multinationals. Within this category, the international oil conglomerates, comprising approximately 40 percent of any projected revenue loss, would be the largest single beneficiaries of such a change.

In considering modifications of the unitary tax, the Department of Revenue reasoned that the issue of corporate contributions to the general fund should be addressed. Some type of tax increase may be warranted if the general assembly wants to maintain the current level of corporate contribution to the general fund. The department asserted that, comparatively speaking, Colorado's 5 percent corporate income tax rate is low. Of the forty-five states that impose a corporate income tax, only five states -- Michigan, Indiana, Illinois, Oklahoma, and Utah -- have a lower rate than Colorado. Thirty-six states have a rate in excess of 5 percent. As a component of the state general fund, corporate taxes have declined from a high of about 23 percent of the general fund in fiscal year 1950 to 9.2 percent in fiscal 1975 and to 4.7 percent in fiscal 1983. Recent state and federal tax packages affecting the base and rate, and tax credits have in fiscal year 1983-84 reduced the aggregate corporate tax liability from \$120 million to \$56.4 million.

View of the Business Community

In contrast to the department's view, the Colorado Association of Commerce and Industry and other business representatives claim the unitary apportionment method is unfair, arbitrary, and intrusive in the way it is imposed, prohibits economic development, and creates international tensions.

Central to their objection is the difficulty of defining what constitutes a unitary business. Many corporations or firms are composed of independent subsidiaries, each making and selling products where they are located. What is defined as a unitary part of a business and what is excluded often seems to hinge on the whim of the

taxing jurisdiction. The U.S. Supreme Court's ruling in the Container Corporation case gives the states broad leeway to determine whether a corporation with subsidiaries overseas is really a number of separate companies or is actually part of a "unitary" business for taxing purposes.

Worldwide unitary is unfair. The business community reasons that the use of worldwide unitary is offensive primarily to overseas corporations operating subsidiaries in the United States and to U.S. corporations conducting business through subsidiaries located abroad. Representatives of the business community contend that the state of Colorado should not be entitled to tax the income of a foreign parent or its other foreign subsidiaries or overseas subsidiaries of domestic corporations. Corporations should not be taxed on profits that were not derived from that corporation's business activity or on business activities that the corporation does not control.

As mentioned earlier, the unitary method uses the value of property, payroll, and sales as the basis for determining the amount of worldwide income taxable in Colorado. It is contended that this method is based on some faulty assumptions. First, the method of calculating property value varies from country to country. Even when property valuation is based on the same principle, such as historical value, a distorted picture can emerge. A similar situation exists with salaries and payroll. Typically, salaries in the United States are higher than those in other parts of the world or the salary structure may be vastly different. Thus, the size of payroll is not a good indication of one subsidiary's share of the total business.

It was observed that the arbitrary nature of the unitary tax is compounded by the difficulty of gathering necessary information from foreign parents and foreign subsidiaries. Problems exist because of different systems of accounting, language, currencies, levels of productivity, costs of labor, costs of materials, and elements of risk.

Central to the issue of worldwide unitary taxation being unfair is the possibility of double taxation. Foreign parent corporations and overseas subsidiaries of U.S. corporations pay income taxes to the country in which they are located and also to the state of Colorado. If a credit is not allowed to offset taxes paid to another jurisdiction, double taxation will occur.

Economic development. Representatives of the business community contend that the use of the unitary tax method presents a major hindrance to economic development because firms, both foreign and domestic, tend to avoid considering plant location or expansion in unitary tax states. For this reason, representatives of the business community view unitary apportionment as an impediment to a state's economic growth and development. Indeed, the committee was presented with several cases in which businesses considering locating in Colorado subsequently located elsewhere due in part to Colorado's use of unitary apportionment. Examples were also cited of instances where the unitary methodology proved to be an obstacle in other states.

It was observed that the unitary tax issue is not just a big business issue in this state; small businesses are also interested in the debate. The loss of major businesses in the state of Colorado directly affects the small business community. Small businesses in Colorado act as suppliers of services and products to the larger corporations. Thus, a multiplier effect is created when a larger corporation locates in Colorado, providing additional jobs and income.

The business community agreed that there are a number of factors to be considered in choosing a plant site. Some of these factors, such as transportation, the availability of high-quality education, an attractive lifestyle, and proximity to major markets may, in fact, outweigh a state's tax policies. However, the business climate of a particular area oftentimes becomes the major factor in selecting a site because so many of the other factors are equal among possible site selections. When various states are compared with regard to their business climate, the subject of taxes is a major consideration.

With respect to replacement revenue, it is the opinion of the business community that in the long run the tax dollars realized by the state and local governments through increased economic development will more than compensate for the short-term revenue losses experienced if worldwide unitary is eliminated. Colorado is gaining short-term revenue advantage from its use of unitary. That advantage will reveal itself as a detriment with long-term negative effects on economic development, jobs, and future state revenues.

International tension. It is asserted that the worldwide unitary apportionment method creates friction with the governments of the United States' foreign trading partners. Foreign governments do not tax worldwide income generated by U.S.-owned companies with subsidiaries in their homelands. However, foreign governments have threatened to reevaluate their tax policies because the worldwide profits of their home companies with subsidiaries in unitary tax states are subject to taxation. The continuation of the practice of states taxing income generated in and attributable to foreign countries could result in retaliatory measures from foreign governments.

A Water's Edge Approach

The committee agreed that, rather than abandoning the unitary methodology altogether, it would work on a proposal limiting unitary apportionment to a domestic or water's edge approach. Three issues were identified as being pivotal in determining what constitutes a water's edge application of unitary apportionment. These issues were:

- defining which corporations would be includible in a domestic combined return;
- describing procedures for the taxation of foreign dividends; and

-- the inclusion or exclusion of corporations organized in the United States but having 80 percent of their business offshore or overseas ("80/20 corporations").

The committee chairman asked the Department of Revenue and CACI to meet, attempt to resolve their differences on the issues, and present the committee with a compromise proposal. The department and CACI were unable to resolve their differences. Thus, the committee was presented with two approaches to a water's edge application of unitary apportionment: one by the Department of Revenue and the other by CACI.

Revenue proposal. The department submitted a proposal containing four elements: 1) a bill for the application of a water's-edge approach to unitary apportionment; 2) a bill revitalizing the new business facilities tax credit to target economic development; 3) a suggestion that the state move toward a graduated corporate income tax in a form emphasizing sensitivity to the interests of small business; and 4) a suggestion that any replacement income needed to offset any lost revenue be provided by the business sector. Specific proposals were not provided for the latter two items.

Under the department's water's-edge proposal, an affiliated group of corporations eligible to file a federal consolidated return must file a consolidated return in Colorado. Thus, the federal consolidated return is used as the starting point for determining which corporations are includible in a domestic combined return. The following corporations included in the federal consolidated return are excluded for purposes of a combined return in Colorado: corporations not subject to taxation under Colorado law, income from insurance companies taxed on a premium basis; income from certain foreign corporations that have been included in a federal return under section 1504 (b) of the Internal Revenue Code, and income from corporations that are not unitary with any other member of the consolidated group. Businesses are considered to be unitary if they are engaged in activities that constitute a single trade or business as demonstrated by centralized management or a common executive force, centralized administrative services, or a flow of values, goods, capital resources, or services demonstrating functional integration.

The domestic combined return would include income from all unitary corporations owned 50 percent or more by another member of the affiliated group that are:

- (1) U.S. possessions corporations;
- (2) companies incorporated in U.S. possessions or territories;
- (3) domestic international sales corporations (DISCs) or foreign sales corporations (FSCs);
- (4) corporations that are part of the unitary business operating in countries having a tax rate less than 90 percent of the federal tax rate;
- (5) foreign corporations with at least \$10 million in U.S. sales activity; and

- (6) U.S. corporations not includible in the federal consolidated return.

Foreign source dividends and income from 80/20 corporations would be included as taxable income in a federal consolidated return. Therefore, foreign source dividends and 80/20 income would be subject to some taxation in Colorado.

The department's proposal would still allow for the authorized use of worldwide combined reporting if:

- (1) consolidated reporting or separate accounting fails to prevent evasion of taxes or to clearly reflect income;
- (2) a taxpayer does not provide relevant information on the operations of a foreign-based parent or subsidiary or if the government of a foreign country does not allow the states to access information; or
- (3) a taxpayer fails to disclose his tax liability and the method of calculation for each state in which it operates.

The Colorado numerator includes only the Colorado portion of the sales, property, and payroll of those corporations subject to Colorado's jurisdiction to tax. The denominator includes all the various factors for each entity that are part of the consolidated return as modified.

To target economic development, the department recommended the re-creation of the new business facilities tax credit which expired December 31, 1983. Specifically, the proposal provides for an income tax credit for taxpayers who hire new employees, establish a new business facility, or expand or replace a current business facility. The investment in a new facility must exceed \$100,000. If the investment in an expansion is less than \$1 million, the expansion must be equal to 100 percent of the investment in the original facility. If the replacement facility investment is less than \$3 million, the replacement investment must be 300 percent of the investment in the old facility.

Any taxpayer who establishes a new business facility may receive a credit for hiring new employees if the employment at the new facility equals or exceeds five persons. The amount of the credit is \$50 for each \$100,000 of investment and \$50 for each new employee. The credit is doubled if the facilities are located in counties with population less than 50,000.

The credit is available for each of five consecutive years and can be deferred for three years. The credit is nonrefundable and is limited to the amount of income tax liability before the credit. There is no effective date in the proposed bill, but facilities acquired on or after January 1, 1985, are eligible for the credit.

In making a preliminary estimate of the fiscal impact of the proposal, the department assumed that utilization of this credit would occur at approximately the same rate as for the prior new business facilities credit. The credit claimed in recent years amounted to \$1.3 million in fiscal 1982, \$1.1 million in fiscal 1983, and \$1.2 million in fiscal 1984.

CACI proposal. Under the CACI proposal, a corporation or group of corporations must file a combined return if they are affiliated and they meet the definition of a unitary business. Thus, a combined return is to be filed if at least 50 percent of the voting stock of one corporation is held by other corporations in the group and three of the following six factors apply to the group:

- (1) at least 50 percent of gross operating receipts is made up of intercompany sales among other corporations in the group;
- (2) at least 50 percent of five or more key services -- advertising, accounting, legal, sales, or personnel services, etc. -- are provided by corporations in the group;
- (3) at least 20 percent of the long-term debt is owed to or guaranteed by another corporation in the group;
- (4) a corporation uses, to a substantial extent, patents, trademarks, copyrights, or other proprietary material owned by another corporation in the group;
- (5) at least 50 percent of the members of the board of directors of one corporation serve as members of the board or corporate officers of another corporation in the group; or
- (6) at least 25 percent of the highest ranking officers are members of the board or officers of another corporation in the group.

Income from corporations which conduct more than 80 percent of their business activities (measured by property and payroll) outside the United States would not be included in a combined return of a unitary group. Thus, 80/20s are by definition excluded from the combined report, and their income is taxed separately. If a taxpayer elects for federal income tax purposes to deduct foreign taxes, all foreign source income and all deductions for such taxes are to be taken into account in determining apportionable income. If the taxpayer elects for federal income tax purposes to take credits for foreign taxes, only the amount which exceeds the "excluded amount" can be used in determining apportionable income. The excluded amount is equal to:

$$\text{foreign source income} \times \left[\frac{\text{taxes paid to foreign countries}}{0.46 \times \text{foreign source income}} \right]$$

The proposal prohibits the Department of Revenue from requiring that a worldwide combined report be filed. However, corporations would be able to continue to file under the worldwide combined method after January 1, 1985, if they filed that type of return in the preceding taxable year. These corporations, however, could not change their method of filing without the consent of the Department of Revenue, and they would not be eligible to claim the exclusion of foreign source income.

Committee Recommendations

As a result of its deliberations on the unitary method of taxation the committee recommends three bills: two bills modifying the state's corporate income tax and one affecting state sales and use taxes.

Unitary tax. Bill 16 is the committee's recommendation regarding the unitary tax. The committee voted to approve the CACI water's-edge proposal with one modification. The grandfather clause allowing corporations to continue to file a worldwide combined return after January 1, 1985, was removed. Instead, for all tax years on or after January 1, 1986, no corporation operating in Colorado will file under the worldwide combined method of income tax reporting. Preliminary estimates by the state Department of Revenue of the fiscal impact of the bill predict a loss of \$10.6 million to the general fund in the last six months of fiscal 1986. For the full fiscal year 1986-87, the estimated loss is \$22.8 million.

Business facilities credit. The committee also recommends bill 17 reinstating the new business facilities tax credit first enacted by the General Assembly in 1978 but not extended past its termination date of December 31, 1983. The bill deviates somewhat from the 1978 enactment and the proposal tendered by the Department of Revenue. It allows a corporate taxpayer a credit against his tax liability for a new business facility if the facility employs at least two new persons and is established or acquired after January 1, 1984.

The credit is limited to the first taxable year of commercial operations. If, however, the credit exceeds the tax liability for that first year, the remaining credit can be applied to reduce subsequent years' tax liability for a period of ten years. The amount of the credit is \$50 for each new business facility employee and \$50 for each \$100,000 in new business facility investment. The amount of the credit is doubled for taxpayers with facilities in counties with populations of less than 50,000.

The bill provides credit for not only new facilities but expanded or replacement facilities if the taxpayer's investment in the expansion exceeds \$1 million or 100 percent of the investment in the original facility or the investment in the replacement facility is \$3 million or 300 percent of the investment in the old facility.

The fiscal impact of the 1978 enactment as reported by the state Department of Revenue shows that 2,405 claims were filed with a value of \$4.5 million before the act's termination in 1983. The fiscal impact of the committee's recommended bill is estimated by the state Department of Revenue to be \$1.7 million for a full fiscal year.

Machine tax exemption. Bill 19 does not modify the corporate income tax but addresses a sales and use tax problem which came to light during the committee's discussion of the unitary tax and its impact on economic development. Currently, any expenditure of between \$1,000 and \$500,000 for machinery and machine tools is exempt from the state sales and use tax. Purchases in excess of \$500,000 are subject to the state tax. Business representatives contend that the state sales tax on machinery and machine tools is impeding economic growth because of the huge sales tax bills confronting corporations locating or expanding in Colorado.

The committee recommends that the \$500,000 ceiling for the sales tax exemption on machinery and machine tools be removed. Thus, any purchase of machinery and machine tools greater than \$1,000 would be exempt from a state sales and use tax.

STATE AND LOCAL SALES AND
USE TAX SIMPLIFICATION

The tax derived from the sale of tangible personal property has become a major source of funding for state and local governments in Colorado. The \$558 million in net state sales tax collections for fiscal year 1983 accounted for nearly 40 percent of the state's net general fund revenue. For local entities of government, the sales tax represents 25 percent of the revenue supporting these jurisdictions; for municipalities alone, the sales tax accounts for over 40 percent of their revenues.

Since the sales tax has become an important source of revenue for government, it is not surprising to find that a large number of governmental jurisdictions impose the tax. In Colorado, 229 jurisdictions impose a sales tax while ninety-nine charge a use tax. Jurisdictions charging a sales tax include the state, home rule and statutory municipalities, counties, and the regional transportation district. The chart below summarizes the sales tax options for the state's local jurisdictions.

TABLE 1
SALES TAX OPTIONS FOR LOCAL JURISDICTIONS

	<u>Home Rule Municipalities</u>	<u>Statutory Municipalities</u>	<u>Counties</u>	<u>Special Districts</u>
Total Number	63	200	62***	1,000+
May Charge Tax	Yes	Yes	Yes	1 (RTD)
Charge Sales Tax	60	139	28***	1
May Collect Tax	Yes	No	No	No
Collecting Sales Tax	32	0	0	0
May Set Base	Yes	Yes*	Yes*	Yes****
May Charge Use Tax	Yes	Yes**	Yes**	No

* May make base decisions regarding food, utilities and machines and machine tools only.
 ** May charge use tax on building materials and automobiles only.
 *** Not including Denver.
 **** May make base decisions regarding machines and machine tools.

State sales and use tax. The state imposes a sales tax of 3 percent on the purchase price of all sales of tangible personal property at retail, intrastate telephone and telegraph services, gas and electric service for commercial consumption, steam, food and drink sold for on-premise consumption, and rooms or accommodations. This tax is collected for the state by the retailers who are able to retain 3.33 percent of the sales tax collected as a vendor's fee. Section 39-26-114, Colorado Revised Statutes, lists items exempt from the sales tax. (See Appendix A for a full list of the state exemptions.)

The state also imposes a tax of 3 percent of storage or acquisition charges or costs for storing, using, or consuming in the state any article of tangible personal property purchased at retail. The state use tax cannot be levied on the storage, use, or consumption of any item on which a sales tax has been paid. There are numerous exemptions to the use tax, many of which mirror the exemptions to the sales tax.

Local sales and use taxes. Sections 29-2-102 and 103, Colorado Revised Statutes, empower statutory cities and counties to impose a sales tax by ordinance. The ordinance must state that the personal property and services taxable are to be the same as those taxed by the state. Counties and cities must exempt the same items as the state with the exception of machinery or machine tools, residential power, and sales of food for off-premise consumption. The state Department of Revenue is responsible for the collection, administration, and enforcement of any countywide or municipal sales tax. Of the approximately 200 statutory cities, 139 impose a sales tax; twenty-eight counties impose a sales tax.

Statutory municipalities and counties are also authorized to levy a use tax. This tax, however, may be imposed only on the storage, use, or consumption of construction and building materials and motor and other vehicles on which registration is required. The collection, administration, and enforcement of a city or county use tax is the responsibility of the local entity.

The imposition of a sales or use tax by a home rule city and the administration, enforcement, and collection thereof has generally been considered a matter of local concern. The right of home rule municipalities to levy sales and use taxes was confirmed in 1965 in the Colorado Supreme Court case of Berman v. the City and County of Denver, 156 Colo. 538 (1965). For the most part, the law is silent on sales taxes in home rule cities. Section 29-2-106 (4) (a) does permit the Department of Revenue at the request of the home rule city to administer, collect, and distribute the sales tax of the home rule city. For this to occur, however, the home rule city's sales tax ordinance must tax and exempt the same items as the state. Again, the options of machinery and machine tools, residential power, and food are available to home rule cities for which the state collects the tax. Sixty home rule cities charge a sales tax; the state collects the tax for twenty-eight of them while thirty-two home rule cities collect and enforce their own tax.

Committee Activities

In its deliberations on the sales tax issue, the committee heard from the business community and the cities, primarily represented by the Colorado Association of Commerce and Industry (CACI) and the Colorado Municipal League (CML), respectively. Each organization presented its view of the problems inherent in the sales tax collection process and suggested solutions to overcome these obstacles. Disagreement existed between the two groups on the extent of the problem, however.

Position of the Business Community

Many of the difficulties encountered by vendors in collecting and remitting sales taxes stem from the ability of home rule cities to enact their own ordinances on the collection, administration, and enforcement of the sales tax. Thus, the sales tax ordinance of a particular home rule city may differ greatly from state law, the ordinances of statutory cities, and the ordinances of other home rule cities. Businesses which operate in several jurisdictions may have to comply with several different procedures.

Representatives of the business community assert that, because the current collection process is cumbersome, compliance with the various jurisdictional sales tax laws is difficult to achieve. As a result, revenues to the state and the cities may be lost. The ideal sales tax system would mandate state collection, a uniform rate and base, and point of sale taxation. The difficulties encountered by vendors in collecting local sales taxes and the proposed solutions thereto are described below.

Base variations. Statutory cities and counties must use the same tax base as the state with three additional options: food, utilities, and machinery and machine tools. Home rule cities are not bound by state law and exercise their local option in this area. Businesses which operate across jurisdictional boundaries must be familiar with various sales tax bases to accurately collect and report sales tax collections. The suggested solutions are either a statewide uniform base or a statewide base with a few identifiable options.

Definition of taxable items. In addition to base variations among the cities, there exist variations in the definitions of what is considered a taxable item. For example, in two cities that tax food, there may be definitional differences in what constitutes a "food" item. This situation causes considerable confusion for businesses located in several taxing jurisdictions. The suggested remedy is establishment of uniform definitions of those items which are taxable.

Multiple reporting. A business operating within a statutory city or a county for which the state collects sales tax files one form with the Department of Revenue annually, quarterly, or monthly, depending

on the volume of business. However, any business operating within one of the home rule cities that collects its own tax is required to file at least two sales tax returns each reporting period -- one to the city and one to the state. The process is further complicated for businesses operating in many jurisdictions. Tax return forms vary among the cities and city forms are different from the state form. These variations make computerization of return preparation difficult for many retailers. The suggested remedy is statewide collection of sales taxes.

Multiple rates. The varying rates among the cities cause difficulty for retailers that operate businesses across jurisdictional boundaries. The vendors are required to be familiar with a variety of rates and the municipal boundaries in which they are charged to ensure the proper tax is collected. If vendors undercollect the tax, any assessment will be subtracted from their profits.

Multiple audits. Municipalities that collect their own sales tax also do their own auditing for compliance with municipal tax ordinances. Thus, businesses may be audited by more than one taxing jurisdiction (state and city) in the same fiscal period. A business which has undercollected the state tax may have also undercollected the local sales tax and vice versa. Therefore, one jurisdiction's auditor could perform both functions. The inability of one auditor to assess for other entities' tax deficiencies during one audit leads to revenue losses, duplicative efforts by auditors, and multiple audits for taxpayers. Audits tend to disrupt business activities. The suggested remedy is a coordinated audit procedure in which both the state and cities work together.

Double taxation. According to representatives of the business community, some cities have designed their sales and use taxes so that a tax on a sale (or use) is levied even if a tax on the same sale is due another city. Sales of construction materials are the most common example. They may be taxed both by the city where the sale occurs on the point of sale theory and by the city where the use occurs (if the two cities are not the same).

Appeal process. Municipalities collecting their own sales tax establish their own procedures for appealing tax assessments separate from the state and separate from other cities. Administrative rulings on particular questions may vary substantially from city to city or city to state, resulting in different sales tax bookkeeping for different taxing entities. Furthermore, refund procedures, penalties, interest, and statutes of limitation vary among the different taxing entities. Likewise, collection processes differ among taxing jurisdictions. The present dual system causes duplication of expense and effort.

Use tax problems -- storage tax. Some cities now impose a use tax on property which is merely stored within a city while awaiting transfer between shippers or during warehousing until the property is shipped elsewhere. The property on which the tax is imposed is not

sold nor put to use in the city which imposes the tax on the storage. The cities where the sale or use of the same property occurs may also impose a tax. Businesses contend that this practice is generating a series of "tariff barriers" across the state in major warehousing or shipping transfer cities. The suggested solution is that local governments be prohibited from imposing a use tax on storage.

Businesses also encounter problems with use taxes when they are imposed on used property which is moved into a city by its owner several years after the purchase of the property. For example, a use tax may be levied when a manufacturer moves used equipment from one plant to another. The equipment may be old or substantially obsolete but some cities impose a use tax on its full original purchase price. This use tax problem becomes particularly severe when used mobile equipment is moved temporarily into a city for a short period of time as in the case of equipment needed for construction jobs.

Taxable moment. Representatives of the business community stress the need for codification of the "taxable moment," or the time at which tangible personal property is subject to a sales or use tax. The lack of a uniform system encourages both undercollection of taxes and double taxation. Taxes are undercollected because of the built-in tax loophole which results when there is no clear-cut definition of the taxable moment. For example, cities may be losing substantial revenue from use taxes which are not collected on small consumer items purchased inside one city and delivered in another jurisdiction. Double taxation occurs when a city levies a tax on a sale or use when a tax on the same sale is owed to another city. A sales tax imposed strictly at the point of sale would eliminate many of these problems and increase compliance with sales tax ordinances.

Nexus. A city's sales or use tax cannot be effectively collected on small consumer items unless the retailer collects the tax for the city. Cities impose a use tax on property purchased by residents outside the city and brought into the city. However, this tax cannot practically be collected unless the out-of-city retailer collects it. Businesses assert that cities put pressure on out-of-city retailers to collect their use taxes.

The Colorado Supreme Court, in the case of The Denver Dry Goods v. City of Arvada, 593 P.2d 1375 (1979), ruled on the question of when a city can force an out-of-city retailer to collect its taxes. The court required that "nexus," or sufficient connection, be established and held that mere delivery into a city does not constitute nexus. The court implied that if a retailer has any one of the following seven items in the city, nexus has been established: a store, a warehouse or other building, an office, a salesman, repair or customer assistance personnel, employees who work in the city, or locally directed advertising. Retailers are requesting clarification in statute as to when an out-of-city retailer must collect the city tax.

Position of Home Rule Cities Collecting Tax

Municipalities have become increasingly dependent on the revenues generated from sales and use taxes to provide municipal services and facilities. In 1983, the thirty-two home rule cities that collected their own sales tax generated \$304 million in sales tax revenues and \$55 million in use tax revenues while collecting \$85 million from property taxes. Thus, these cities realized more than four times as much revenue through sales and use taxes as through property taxes.

In response to the claims of the business community, the Colorado Municipal League noted that many of the proposals offered by the business community go beyond administrative simplification of the sales tax collection process. The procedural aspects of the system can be simplified at both the state and local levels without substantively affecting the ability of home rule cities to control their revenue sources. Municipal representatives commented on the issues raised by businesses.

Uniform base. A state policy mandating conformity between the state sales tax base and that of home rule cities would create serious financial concerns for those home rule cities currently determining their own base. One of the reasons for the complexity of the sales tax system is the large number of state exemptions. Until the late 1970's, the state and local bases were fairly uniform. When the state began exempting items from the sales tax in the late 1970's because of revenue surpluses, the local bases began deviating from the state base. The municipal league estimates that from 1975 through 1984, some thirty-five items were exempted from the state base. If the base of home rule cities was tied to that of the state, each exemption would have the immediate impact of eroding the base of the city. Cities would lose fiscal control of their most important revenue source. Furthermore, increasing the number of exemptions necessitates higher tax rates and shifts the tax burden to a smaller number of taxpayers.

Uniform rate. A statewide uniform rate would cause practical as well as political problems. Currently, many areas of the state either do not impose a sales tax or levy one at a relatively low rate. Local residents determine whether or not to have a sales tax and the rate of that tax through elections. Establishing a uniform rate would deprive local residents of their power to determine the local rate and the level of municipal services. It would also cause an averaging of the various sales tax rates currently imposed across the state resulting in a redistribution of sales tax revenues. Municipalities with high tax rates could be required to decrease their rates while county rates are increased.

Point-of-sale taxation. The consequence of point of sale taxation would also be a redistribution of sales tax revenue. Initially, cities would experience an increase in tax revenues due to the increase in taxes paid by persons living in unincorporated areas. These individuals currently may be purchasing items in cities but

because the item is delivered outside the municipal boundary the city is not collecting a sales tax. Eventually, however, the point of sale system would provide an incentive for businesses to locate in unincorporated areas where there is a low tax rate or no sales tax at all. Thus, in the long term, cities would experience a loss in sales tax revenues. A point-of-sale system would effectively eliminate collection of use taxes.

State collection. Municipal representatives question the capacity of the state Department of Revenue to adequately collect the increased sales taxes. The municipal league estimated that 85 percent of all local sales and use taxes collected in the state are collected by the thirty-two home rule cities collecting their own tax. Municipal officials fear that much if not all of the revenue collected by licensed vendors located outside the corporate limits would be lost; that ultimately the cities would be forced to pay for state collection of the tax; and that it would be difficult for cities to obtain information needed for audits in an accurate and timely manner. The cities could also experience financial loss in interest with a state-collected tax. Finally, state collection would cause the cities to lose control over their major revenue source.

Audits. Municipalities that collect their own sales tax want to maintain the responsibility for auditing vendors and enforcing the collection of any assessments. The state Department of Revenue operates with a limited audit staff which has not been expanded since the late 1970's. The present staffing patterns at the department are not conducive to prompt and effective action in dealing with delinquent taxpayers. Because sales tax constitutes the cities' major source of revenue, the auditing of vendors is the number one priority of the auditors in home rule cities. Municipal officials work in the community and, therefore, are in the best position to know of new businesses starting up and of which businesses are failing. The municipal league asserts that the problem of multiple audits is not as far-reaching as the business community contends. If multiple audits present a problem, businesses should have the option of whether to be subjected to a unified audit.

Use tax on storage. Eliminating the use tax in storage will erode the taxable base of the cities resulting in revenue losses. The owners of warehouses in cities in which property is stored are recipients of municipal services and should be required to pay for those services. Additionally, the philosophy of maintaining a state tax on storage while divesting local governments of their right to levy that tax, which is perceived as an "unfair" tax, seems incongruous.

Position of Statutory Cities and Counties and Home Rule Cities for Which State Collects Tax

Statutory cities and counties and home rule cities for which the state collects the sales tax operate under the statutory scheme

established for the administration, collection, and enforcement of sales taxes. Thus, some of the problems they experience are different from those of home rule cities and are rooted in the law and the Department of Revenue's administration of that law. Dissatisfaction was expressed with tax remittance procedures, auditing, and information sharing.

Tax remittance. By law, retailers must remit monthly sales tax collections by the twentieth of the following month. There is no statutory provision for when these tax revenues are to be sent back to the appropriate jurisdiction. Thus, sales tax collected by vendors in January must be sent to the Department of Revenue by the twentieth of February. In practice, the department mails the actual receipts to the appropriate entity about the seventeenth of the next following month or, in the example above, the seventeenth of March. Local governments for which the state collects the tax would prefer to have their money as soon as the state collects it. An earlier remittance procedure might serve as an incentive to keep home rule cities in the state collection system and as a catalyst to entice other home rule cities into the system.

Audits. Cities and counties in the state system requested the statutory authority to conduct audits and to take enforcement action in their jurisdiction. State auditors concentrate on the larger businesses. Consequently, many small businesses or seasonal businesses in rural areas never get audited. Yet, the local jurisdiction may largely depend on these businesses for revenue.

Communication. Local officials stressed the importance of improved communication between the revenue department and the local governmental entities. Local officials accumulate useful information on local businesses and problem accounts which they can transmit to the state. In return, the cities and counties would like more data on the state's activities in their areas and would like to be able to monitor any action taken by the state to ensure that collections in their jurisdiction are thorough.

Committee Recommendations

The committee chairman requested that CACI and CML meet, attempt to resolve their differences, and present the committee with a compromise bill. CACI and CML were unable to agree on a proposal; thus, each organization presented the committee with its own draft bill. The provisions of both bills and the committee's action are highlighted below.

Reporting. Rather than proposing state collection of all local sales taxes, CACI proposed that the state revenue director establish a uniform sales and use tax form for use by all home rule cities collecting their own tax by December 31, 1986. One year later the director is to have established a single sales and use tax form for

use by the state and all local governments. The CML proposal simply mandated a uniform reporting form to be used by cities collecting their own tax. The revenue director would adopt such a form by regulation. The committee recommends the CML proposition.

Uniform base. The CACI bill required that home rule cities use the state tax base with the following nine local options: food, machinery and machine tools, residential power, industrial power, cable television, admissions, lodging, aviation fuel, and interstate long-distance access charges. In the event a city's revenue loss on an item no longer taxable exceeded one half of one percent of gross sales and use taxes collected in 1983, the item would continue to be taxed until 1988. The municipal league is adamantly opposed to conformity of the sales tax base of home rule cities to that of the state even if several local options are allowed.

The committee recommends a provision mandating that the home rule cities use the state base with the nine additional options specified above and two more local options to be determined by the governmental entity.

Tax remittance. Both CACI and CML submitted similar proposals to accelerate tax remittance to those entities for which the state collects sales taxes. The committee recommends the CML idea, which calls for the department to remit 95 percent of the estimated monthly sales tax revenue to the local jurisdiction on the twenty-first day of the following month.

Definition of taxable items. The CACI bill designated the state Department of Revenue as the agency responsible for developing and issuing regulations for standard definitions of taxable items to be used statewide. The CML proposal created a sales tax simplification task force to be composed of persons representing business and state and municipal government interests. The task force would be directed to make recommendations to the department and the General Assembly on standard definitions and regulations to be adopted by the state and home rule cities. The committee recommends a policy whereby the state revenue director will standardize the definitions of items subject to tax.

Uniform collection procedures. Both organizations proposed and the committee concurs conforming the following ordinances of all local governments to state law: statute of limitations for enforcement of sales and use tax collections, statute of limitations applicable to sales and use tax refunds, penalties and interest payable on delinquent remittance of sales and use taxes, and the posting of bonds pending a decision or a contested sales and use tax assessment.

The committee also approves a provision directing each taxing entity that collects its own tax to make available to requesting vendors a map showing the boundaries of the taxing jurisdiction. Both CACI and CML had suggested this provision.

Audits. The CML bill draft permitted those jurisdictions for whom the state collects the sales tax to conduct audits insofar as the procedures and regulations of the revenue department were used. The proposal also included a coordinated audit procedure to be used only upon initiation by the taxpayer. A taxpayer could choose, upon written notice to the state revenue director, to be subject to only one audit during a calendar year. Any governmental entity intending to conduct an audit of a taxpayer who has given notice would give thirty days notice to all other affected governmental entities. Any governmental entity entitled to receive notification of a proposed audit could participate in the audit. One entity could audit for sales taxes due other entities. If a taxpayer has complied with the notification procedure, he could not be subject to more than one audit in a calendar year.

Any enforcement or collection action taken as a result of an audit would be the sole responsibility of the jurisdiction to whom the tax is owed. An entity conducting a coordinated audit would be entitled to 33.3 percent of the sales and use tax revenue due to a nonparticipating entity as a result of the audit.

The CACI proposal did not authorize auditing by statutory cities and counties, but it mandated that home rule cities comply with the department's regulations and procedures for auditing.

The coordinated audit procedure in the CACI bill required that audits be unified. Whenever an audit would be conducted, state auditors would audit for and assess city taxes and city auditors would audit for and assess state taxes due from within the city's boundaries. Any governmental entity intending to conduct an audit would give twenty days notice to all other governmental entities whose geographical areas are included in the audited area; these entities could participate in the audit. Any governmental entity eligible to participate in the audit which fails to do so would be prohibited from auditing the taxpayer for one year.

An entity conducting a coordinated audit would receive 10 percent of any sales and use tax revenue due a nonparticipating entity as the result of an audit. Home rule cities could opt to collect delinquent taxes themselves pursuant to methods established by the state or to request state collection. Home rule cities could institute judicial proceedings for collection of delinquent taxes only in district court.

The audit provisions adopted by the committee allow any local government to conduct sales and use tax audits providing it participates in the coordinated audit plan. Under this plan, each jurisdiction must give the state revenue director prior notice of businesses it wishes to audit. If the business operates solely within one entity's jurisdiction, the audit may be conducted after notifying the executive director. If, however, the business operates in more than one jurisdiction, the revenue director determines when the audit is conducted and who conducts it. The auditing jurisdiction is entitled to all vendor's fees.

The revenue director is to adopt uniform audit procedures by rule and regulation. All auditors are to complete auditor training before conducting any audits. After an audit is completed, the taxpayer is to remit any deficiency to the Department of Revenue which is to distribute the local shares.

Interjurisdictional disputes - appeals. The CML bill set forth a procedure for resolving disputes when one entity, statutory or home rule, asserts the right to taxes paid to another jurisdiction. If the local jurisdictions involved cannot resolve the dispute among themselves, any of them or the taxpayer involved may submit the issue to the district court. The court would determine which jurisdiction has the superior claim to the tax, including any penalties and interest paid, and award the entire amount to that jurisdiction. Appeals would be made to the Colorado Supreme Court.

The committee voted to accept the CACI proposal on this issue. It provides that the state Department of Revenue will, at the election of the taxpayer, conduct hearings and make determinations regarding claims by local governmental entities, either home rule or statutory. Appeals of determinations made by the state revenue director are to the district court.

Storage tax. The CACI bill prohibited local governments from imposing a use tax on storage. The CML proposal exempted construction materials from local storage taxes. The committee approved the provision prohibiting a tax on all local storage.

Double taxation. The CACI bill prohibited multiple taxation of a particular sale or use. A sales tax would be paid at the point in which delivery of property to the purchaser takes place and a use tax would be due the local government within which the property was first significantly used. A credit would be applied against sales and use taxes assessed on transactions when a tax has already been assessed in another jurisdiction. Construction materials would be taxed only in the jurisdiction where they will be used.

The CACI proposal also provided that a sales or use tax would not be levied on construction materials to be used for government projects or by charitable organizations. No use tax would be allowed on property which is purchased and used in one location and moved to a different location after more than one year. For property owned less than one year and used in one city less than twenty days and then moved out of the city for at least 120 days, the tax must be prorated.

The municipal league addressed the problem of double taxation by prohibiting the imposition of a sales tax if the transaction had already been taxed by one entity in an amount equal to or greater than the second taxing jurisdiction's rate. The second taxing jurisdiction would be allowed a credit in these instances. Construction materials would be exempted from a local sales tax where evidence is provided that a local use tax has been paid or is required to be paid in the jurisdiction in which the materials will be used.

The committee recommends the CML provisions.

Nexus. The CACI proposal contained a definition of nexus to provide guidance as to when out-of-city retailers would be required to collect a city's tax. The committee does not recommend this definition.

License fees. Both the CML and CACI proposals included a provision to increase the rates of the annual retail license fee, the application and filing fee, and the renewal and filing fee. The purpose of the fee increase was to provide funding for additional auditors and audit training. Because of testimony forecasting substantial revenue gains resulting from the unified audits, the committee does not recommend an increase in license fees.

BILL 15

CONCERNING THE CREATION OF A DEPARTMENT OF COMMERCE AND COMMUNITY
AFFAIRS

Due to the length and technical nature of this bill, complete copies are not included in this report. Copies of the bill are available at the Legislative Drafting Office.

BILL 16

A BILL FOR AN ACT

1 CONCERNING APPLICATION OF THE UNITARY METHOD OF DETERMINING
2 THE TAXABLE INCOME OF CORPORATIONS.

Bill Summary

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

Limits application of the unitary concept of corporate income by excluding corporations doing 80% of their business outside the 50 states and the district of Columbia from combined reporting requirements, by excluding from income the dividends a corporation receives from another corporation includible in a combined report, by establishing a formula for determining foreign source income, and by setting forth factors to determine the scope of the unitary business and unitary income.

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

4 SECTION 1. 39-22-303, Colorado Revised Statutes, 1982
5 Repl. Vol., is amended BY THE ADDITION OF THE FOLLOWING NEW
6 SUBSECTIONS to read:

7 39-22-303. Apportionment of income - domestic and
8 foreign. (8) The executive director shall not require the
9 inclusion in a combined report of the income of any

1 corporation which conducts business outside the United States
2 if eighty percent or more of the corporation's property and
3 payroll, as determined by factoring pursuant to section
4 24-60-1301, C.R.S., is assigned to locations outside the
5 United States. For the purpose of this subsection (8),
6 "United States" shall be restricted to the fifty states and
7 the District of Columbia.

8 (9) Dividends which a corporation includible in a
9 combined report receives from another corporation also
10 includible in the combined report shall be excluded from
11 taxable income.

12 (10) As used in this subsection (10), "foreign source
13 income" means taxable income from sources without the United
14 States, as used in section 862 of the internal revenue code.
15 In apportioning income pursuant to article IV of section
16 24-60-1301, C.R.S., or this section, foreign source income
17 shall be considered only to the extent provided in this
18 subsection (10):

19 (a) If, for federal income tax purposes, the taxpayer
20 has elected to claim foreign taxes paid or accrued as a
21 deduction, then all foreign source income minus such deduction
22 shall be considered;

23 (b) If, for federal income tax purposes, the taxpayer
24 has elected to claim foreign taxes paid or accrued as a
25 credit, then foreign source income shall be considered only to
26 the extent that such income exceeds the exclusion provided by

1 this paragraph (b). The amount to be excluded shall be
2 determined by multiplying the foreign source income by a
3 fraction, the numerator of which is the total of taxes paid or
4 accrued to foreign countries and United States possessions by
5 or on behalf of the corporation pursuant to section 901 or 902
6 of the internal revenue code, deemed paid pursuant to section
7 902 or 960 of the internal revenue code for the tax year, or
8 carried over or carried back to such tax year pursuant to
9 section 904 (c) of the internal revenue code. The denominator
10 of said fraction shall be forty-six percent of the foreign
11 source income.

12 (c) Foreign source income from a foreign corporation
13 within an affiliated group of corporations shall be determined
14 without regard to section 882 (a) (2) of the internal revenue
15 code.

16 (11) (a) In the case of an affiliated group of
17 corporations, the executive director may require, or the
18 taxpayer may file, a combined report, but such report shall
19 only include those members of an affiliated group of
20 corporations as to which any three of the following facts have
21 been in existence in the tax year and the two preceding tax
22 years:

23 (I) Sales or leases by one affiliated corporation to
24 another affiliated corporation constitute fifty percent or
25 more of the gross operating receipts of the corporation making
26 the sales or leases; or, purchases or leases from one

1 affiliated corporation by another affiliated corporation
2 constitute fifty percent or more of the cost of goods sold or
3 leased by the corporation making the purchases or leases.

4 (II) Five or more of the following services are provided
5 by one or more affiliated corporations for the benefit of
6 another affiliated corporation: Advertising and public
7 relations services; accounting and bookkeeping services; legal
8 services; personnel services; sales services; purchasing
9 services; research and development services; insurance
10 procurement and servicing exclusive of employee benefit
11 programs; and employee benefit programs including pension,
12 profit-sharing, and stock purchase plans. A service shall be
13 deemed provided if fifty percent or more of the service is
14 provided without provision for an "arm's length charge" within
15 the meaning of the United States treasury regulation 1.482-2
16 (b) (3).

17 (III) Twenty percent or more of the long-term debt of
18 one affiliated corporation is owed to or guaranteed by another
19 affiliated corporation. For the purposes of this subparagraph
20 (III), "long-term debt" means debt which becomes due more than
21 one year after incurred.

22 (IV) One affiliated corporation substantially uses the
23 patents, trademarks, service marks, logo-types, trade secrets,
24 copyrights, or other proprietary materials owned by another
25 affiliated corporation.

26 (V) Fifty percent or more of the members of the board of

1 directors of one affiliated corporation are members of the
2 board of directors or are corporate officers of another
3 affiliated corporation.

4 (VI) Twenty-five percent or more of the twenty
5 highest-ranking officers of an affiliated corporation are
6 members of the board of directors or are corporate officers of
7 another affiliated corporation.

8 (b) The net income of the affiliated corporations which
9 are to be included in a combined report shall be determined
10 pursuant to the rules and regulations promulgated pursuant to
11 section 1502 of the internal revenue code, as modified by
12 section 39-22-304.

13 (c) At the election of the affiliated corporations to be
14 included in the combined report, section 39-22-303 or section
15 24-60-1301, C.R.S., shall be applied with the following
16 modifications:

17 (I) Intercompany transactions among the affiliated
18 corporations shall be excluded from the numerator and
19 denominator of the apportionment factor; and

20 (II) The numerators of the apportionment factors shall
21 be, to the extent applicable, the sum of the revenue, the sum
22 of the property, and the sum of the payroll factors of those
23 affiliated corporations subject to Colorado income tax under
24 15 U.S.C. 381-384, 391.

25 (d) The executive director shall not require returns to
26 be made on a consolidated basis, but an affiliated group of

1 corporations may elect to file a consolidated return as
2 otherwise provided in this article.

3 (e) The provisions of this subsection (11) shall apply
4 to corporations which apportion net taxable income by use of
5 the two-factor formula under this section or to corporations
6 which apportion net taxable income by use of the three-factor
7 formula under section 24-60-1301, C.R.S.

8 (12) (a) As used in subsections (10) and (11) of this
9 section, the term "affiliated group" means one or more chains
10 of includible corporations connected through stock ownership
11 with a common parent corporation which is an includible
12 corporation if:

13 (I) Stock possessing fifty percent or more of the voting
14 power of all classes of stock and fifty percent or more of
15 each class of the nonvoting stock of each of the includible
16 corporations, except the common parent corporation, is owned
17 directly by one or more of the other includible corporations;
18 and

19 (II) The common parent corporation owns directly stock
20 possessing fifty percent or more of the voting power of all
21 classes of stock and fifty percent or more of each class of
22 the nonvoting stock of at least one of the other includible
23 corporations.

24 (b) As used in this subsection (12), the term "stock"
25 does not include nonvoting stock which is limited and
26 preferred as to dividends, employer securities, within the

1 meaning of section 409A(1) of the internal revenue code, while
2 such securities are held under a tax credit employee stock
3 ownership plan, or qualifying employer securities, within the
4 meaning of section 4975(e)(8) of the internal revenue code,
5 while such securities are held under an employee stock
6 ownership plan which meets the requirements of section
7 4975(e)(7) of the internal revenue code.

8 SECTION 2. Applicability. This act shall apply to
9 income tax years beginning on or after January 1, 1986.

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

BILL 17

A BILL FOR AN ACT

1 CONCERNING A CREDIT AGAINST THE STATE INCOME TAX BASED UPON
2 THE DEVELOPMENT OF BUSINESS FACILITIES AND EMPLOYMENT
3 OPPORTUNITIES RESULTING FROM SUCH DEVELOPMENT.

Bill Summary

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

Establishes the "Job Expansion and Investment Credit Act of 1985", which provides an income tax credit for taxpayers who establish a new business facility, as defined, if there are a certain number of new business facility employees. Such credit is based upon the number of new business facility employees and the amount of new business facilities investment. Provides a double credit for such facilities located in counties with less than a specified population and specifies that the establishment or expansion of a public utility does not qualify for the credit. Requires that the department of revenue promulgate guidelines to assist taxpayers in understanding and using such credit.

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

5 SECTION 1. Part 5 of article 22 of title 39, Colorado
6 Revised Statutes, 1982 Repl. Vol., as amended, is amended BY
7 THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

8 39-22-513.1. Short title. Sections 39-22-513.1 to

1 39-22-513.6 shall be known and may be cited as the "Job
2 Expansion and Investment Credit Act of 1985".

3 39-22-513.2. Definitions - construction of terms. As
4 used in sections 39-22-513.2 to 39-22-513.6, unless the
5 context otherwise requires:

6 (1) "Commencement of commercial operations" shall be
7 deemed to occur during the first taxable year for which the
8 new business facility is first available for use by the
9 taxpayer, or first capable of being used by the taxpayer, in
10 the revenue-producing enterprise in which the taxpayer intends
11 to use the new business facility.

12 (2) (a) "Facility" means any factory, mill, plant,
13 refinery, warehouse, feedlot, building, or complex of
14 buildings located within the state, including the land on
15 which such facility is located and all machinery, equipment,
16 and other real and tangible personal property located at or
17 within such facility and used in connection with the operation
18 of such facility. "Building", as used in this paragraph (a),
19 includes only structures within which individuals are
20 customarily employed or which are customarily used to house
21 machinery, equipment, or other property.

22 (b) (I) If a facility which does not constitute a new
23 business facility, as defined in subsection (3) of this
24 section, is expanded by the taxpayer, the expansion shall be
25 considered a separate facility eligible for the credit
26 authorized by section 39-22-513.3, if:

1 (A) The taxpayer's investment in the expansion exceeds
2 one million dollars or, if less, one hundred percent of its
3 investment in the original facility prior to expansion; and

4 (B) The expansion otherwise constitutes a new business
5 facility, as defined in subsection (3) of this section.

6 (II) The taxpayer's investment in the expansion and in
7 the original facility prior to expansion shall be determined
8 in the manner provided in subsection (5) of this section.

9 (3) "New business facility" means a facility which
10 satisfies the following requirements:

11 (a) Such facility is employed by the taxpayer in the
12 operation of a revenue-producing enterprise, as defined in
13 subsection (8) of this section. Such facility shall not be
14 considered a "new business facility" in the hands of the
15 taxpayer if the taxpayer's only activity with respect to such
16 facility is to lease it to another person. If the taxpayer
17 employs only a portion of such facility in the operation of a
18 revenue-producing enterprise and leases another portion of
19 such facility to another person or does not otherwise use such
20 other portions in the operation of a revenue-producing
21 enterprise, the portion employed by the taxpayer in the
22 operation of a revenue-producing enterprise shall be
23 considered a "new business facility" if the requirements of
24 paragraphs (b), (c), and (d) of this subsection (3) are
25 satisfied.

26 (b) Such facility is acquired by, or leased to, the

1 taxpayer on or after January 1, 1984. A facility shall be
2 deemed to have been acquired by, or leased to, the taxpayer on
3 or after said date if the transfer of title to the taxpayer,
4 the transfer of possession pursuant to a binding contract to
5 transfer title to the taxpayer, or the commencement of the
6 term of the lease to the taxpayer occurs on or after said date
7 or, if the facility is constructed, erected, or installed by
8 or on behalf of the taxpayer, such construction, erection, or
9 installation is completed on or after said date.

10 (c) If such facility was acquired by the taxpayer from
11 another person, such facility was not employed, immediately
12 prior to the transfer of title to such facility to the
13 taxpayer or to the commencement of the term of the lease of
14 such facility to the taxpayer, by any other person in the
15 operation of a revenue-producing enterprise, as defined in
16 subsection (8) of this section, and the taxpayer continues the
17 operation of the same or a substantially identical
18 revenue-producing enterprise, as defined in subsection (9) of
19 this section, at such facility.

20 (d) Such facility is not a replacement business
21 facility, as defined in subsection (7) of this section.

22 (4) (a) "New business facility employee" means a person
23 employed by the taxpayer in the operation of a new business
24 facility during the taxable year for which the credit allowed
25 by section 39-22-513.3 is claimed. A person shall be deemed
26 to be so engaged if such person performs duties in connection

1 with the operation of the new business facility on:

2 (I) A regular, full-time basis;

3 (II) A part-time basis if such person is customarily
4 performing such duties at least twenty hours per week
5 throughout the taxable year; or

6 (III) A seasonal basis if such person performs such
7 duties for substantially all of the season customary for the
8 position in which such person is employed.

9 (b) The number of new business facility employees during
10 the taxable year shall be determined by dividing by twelve the
11 sum of the number of new business facility employees on the
12 last business day of each month of such taxable year. If the
13 new business facility is in operation for less than the entire
14 taxable year, the number of new business facility employees
15 shall be determined by dividing the sum of the number of new
16 business facility employees on the last business day of each
17 full calendar month during the portion of such taxable year
18 during which the new business facility was in operation by the
19 number of full calendar months during such period.
20 Notwithstanding the provisions of this subsection (4), for the
21 purpose of computing the credit allowed by section 39-22-513.3
22 in the case of a facility which qualifies as a new business
23 facility because it satisfies the requirements of this
24 paragraph (b) and also subsection (7) of this section, the
25 number of new business facility employees employed in the
26 operation of such facility shall be reduced by the average

1 number, computed as provided in this subsection (4), of
2 individuals employed in the operation of the facility which
3 such new business facility replaces during the two taxable
4 years preceding the taxable year in which commencement of
5 commercial operations occurs at such new business facility.

6 (5) "New business facility investment" means the value
7 of the real and tangible personal property, except inventory
8 or property held for sale to customers in the ordinary course
9 of the taxpayer's business, which constitutes the new business
10 facility or which is used by the taxpayer in the operation of
11 the new business facility during the taxable year for which
12 the credit allowed by section 39-22-513.3 is claimed. The
13 value of such property during such taxable year shall be its
14 original cost if owned by the taxpayer or eight times the net
15 annual rental rate if leased by the taxpayer. "Net annual
16 rental rate", as used in this subsection (5), means the annual
17 rental rate paid by the taxpayer, less any annual rental rate
18 received by the taxpayer from subrentals.

19 (6) (a) "Related taxpayer" means:

20 (I) An individual, corporation, partnership, trust, or
21 association controlled by the taxpayer; or

22 (II) A corporation, partnership, trust, or association
23 controlled by an individual, corporation, partnership, trust,
24 or association under the control of the taxpayer.

25 (b) For the purposes of this subsection (6): "Control of
26 a corporation" means ownership, directly or indirectly, of

1 stock possessing at least eighty percent of the total combined
2 voting power of all classes of stock entitled to vote and at
3 least eighty percent of all other classes of stock of the
4 corporation; "control of a partnership or association" means
5 ownership of at least eighty percent of the capital or profits
6 interest in such partnership or association; and "control of
7 a trust" means ownership, directly or indirectly, of at least
8 eighty percent of the beneficial interest in the principal or
9 income of such trust.

10 (7) (a) "Replacement business facility" means a facility
11 (otherwise described in subsection (3) of this section and
12 referred to in this subsection (7) as a "new facility") which
13 replaces another facility (referred to in this subsection (7)
14 as an "old facility") located within the state which the
15 taxpayer or a related taxpayer, as defined in subsection (6)
16 of this section, previously operated but discontinued
17 operating on or before the close of the taxable year in which
18 the credit allowed by section 39-22-513.3 is claimed. A new
19 facility shall be deemed to replace an old facility if the
20 following conditions are met:

21 (I) The old facility was operated by the taxpayer or a
22 related taxpayer for more than three full taxable years out of
23 the five taxable years next preceding the taxable year in
24 which commencement of commercial operations, as defined in
25 subsection (1) of this section, occurs at the new facility;

26 (II) The old facility was employed by the taxpayer or a

1 related taxpayer in the operation of a revenue-producing
2 enterprise, as defined in subsection (8) of this section, and
3 the taxpayer continues the operation of the same or a
4 substantially identical revenue-producing enterprise, as
5 defined in subsection (9) of this section, at the new
6 facility.

7 (b) Notwithstanding the provisions of paragraph (a) of
8 this subsection (7), a facility shall not be considered a
9 "replacement business facility" if the taxpayer's investment
10 in the new facility exceeds three million dollars or, if less,
11 three hundred percent of the investment in the old facility by
12 the taxpayer or related taxpayer. The investment in the new
13 facility and in the old facility shall be determined in the
14 manner provided in subsection (5) of this section.

15 (8) "Revenue-producing enterprise" means:

16 (a) The production, assembly, fabrication, manufacture,
17 or processing of any agricultural, mineral, or manufactured
18 product;

19 (b) The storage, warehousing, distribution, or sale of
20 any products of agriculture, mining, or manufacturing;

21 (c) The feeding of livestock at a feedlot;

22 (d) The operation of laboratories or other facilities
23 for scientific, agricultural, animal husbandry, or industrial
24 research, development, or testing;

25 (e) The performance of services of any type;

26 (f) The administrative management of any of the

1 activities listed in paragraphs (a) to (e) of this subsection
2 (8); or

3 (g) Any combination of any of the activities referred to
4 in paragraph (f) of this subsection (8).

5 (9) "Same or a substantially identical revenue-producing
6 enterprise" means a revenue-producing enterprise in which the
7 products produced or sold, the services performed, or the
8 activities conducted are the same in character and use and are
9 produced, sold, performed, or conducted in the same manner and
10 to or for the same types of customers as the products,
11 services, or activities produced, sold, performed, or
12 conducted in another revenue-producing enterprise.

13 39-22-513.3. Special credit available - new business
14 facility - new employees. (1) Any taxpayer who establishes a
15 new business facility, as defined in section 39-22-513.2 (3),
16 shall be allowed a credit, in an amount determined under
17 subsection (2) of this section, against the tax imposed by
18 this article for the taxable year during which commencement of
19 commercial operations, as defined in section 39-22-513.2 (1),
20 occurs at such new business facility. No credit shall be
21 allowed under this section unless the number of new business
22 facility employees, as determined under section 39-22-513.2
23 (4), engaged or maintained in employment at the new business
24 facility for the taxable year for which the credit is claimed
25 equals or exceeds two persons.

26 (2) Except as provided in subsection (3) of this

1 section, the credit authorized by subsection (1) of this
2 section shall be an amount equal to the sum of the following:

3 (a) Fifty dollars for each new business facility
4 employee, as determined under section 39-22-513.2 (4); and

5 (b) Fifty dollars for each one hundred thousand dollars,
6 or major fraction thereof (which shall be deemed to be
7 fifty-one percent or more), in new business facility
8 investment, as determined under section 39-22-513.2 (5).

9 (3) In counties with less than fifty thousand
10 population, as determined by the most recent federal decennial
11 census, the credit shall be double that prescribed in
12 paragraphs (a) and (b) of subsection (2) of this section.

13 (4) No credit shall be allowed under this section for
14 the establishment or expansion of a public utility, as such
15 term is defined in section 40-1-103, C.R.S.

16 (5) If the credit authorized by subsection (1) of this
17 section exceeds the income taxes otherwise due on the
18 taxpayer's income, the amount of the credit not used as an
19 offset against income taxes may be carried forward as a tax
20 credit against subsequent years' income tax liability for a
21 period not exceeding ten years and shall be applied first to
22 the earliest years possible.

23 39-22-513.4. Effect of transfers of new business
24 facilities. (1) If a taxpayer (referred to in this section as
25 a "transferor") has established a new business facility and,
26 prior to using all the carry-forward allowed by section

1 39-22-513.3 (5), all or a portion of such new business
2 facility is acquired by, or leased to, a related taxpayer (as
3 defined in section 39-22-513.2 (6) and referred to in this
4 section as a "transferee"), the transferor shall elect either
5 to allow the transferee to claim the remaining carry-forward,
6 as provided in subsection (2) of this section, or to retain
7 the remaining carry-forward, as provided in subsection (3) of
8 this section.

9 (2) If all or a portion of the new business facility is
10 acquired by, or leased to, the transferee, the portion thereof
11 so acquired by, or leased to, the transferee shall be
12 considered a new business facility in the hands of the
13 transferee. In such event, the transferee shall be entitled,
14 with respect to the portion of the new business facility held
15 by it, to the remaining carry-forward allowed by section
16 39-22-513.3 (5). Such carry-forward shall be allowed for the
17 remaining portion of the ten-year period during which the
18 transferor could have claimed such credit if all or a portion
19 of the new business facility had not been acquired by, or
20 leased to, the transferee. The portion, if any, of the new
21 business facility retained by the transferor shall continue to
22 be a new business facility in the hands of the transferor, and
23 it shall be entitled to the carry-forward allowed by section
24 39-22-513.3 (5), with respect to the portion of the new
25 business facility retained by it, for the remaining portion of
26 such ten-year period.

1 (3) If a portion of the new business facility is
2 acquired by, or leased to, the transferee, the transferor may,
3 notwithstanding such acquisition or lease, treat the portion
4 of the new business facility acquired by, or leased to, the
5 transferee as a new business facility held by the transferor.
6 In such event, the transferor shall be entitled to the
7 carry-forward allowed by section 39-22-513.3 (5) for the
8 remaining portion of such ten-year period, but the transferee
9 shall not be entitled to any such carry-forward.

10 (4) The transferor shall perfect the election authorized
11 by subsection (1) of this section by notifying the executive
12 director, by a written statement attached to the return for
13 the taxable year in which the new business facility is
14 acquired by, or leased to, the transferee, of the election
15 made and setting forth such other information as the executive
16 director may, by rules and regulations, require. If the
17 transferor fails to make such election, the transferee shall
18 be deemed entitled to the credit in accordance with subsection
19 (2) of this section.

20 (5) If an individual taxpayer entitled to the
21 carry-forward allowed by section 39-22-513.3 (5) dies prior to
22 using all such carry-forward and the new business facility
23 with respect to which such carry-forward was claimed passes to
24 the estate of the deceased taxpayer, such estate shall be
25 entitled to the carry-forward with respect to such new
26 business facility. Upon distribution of the new business

1 facility, or a portion thereof, to a distributee of such
2 estate, the distributee shall be entitled to the carry-forward
3 with respect to such new business facility, or portion
4 thereof, distributed to it. The amount of the carry-forward
5 to which such estate or distributee shall be entitled shall
6 not exceed the amount of the carry-forward which the deceased
7 taxpayer would have been allowed had he not died. The
8 aggregate number of taxable years for which the estate and the
9 distributee may claim such carry-forward shall not exceed ten
10 taxable years, reduced by the number of taxable years for
11 which the deceased taxpayer claimed the carry-forward.

12 39-22-513.5. Effect of termination of enterprise or
13 facility. If a taxpayer has terminated the operation of a
14 revenue-producing enterprise at a new business facility prior
15 to using all the carry-forward allowed by section 39-22-513.3
16 (5) and later resumes the operation of the same or a different
17 revenue-producing enterprise at such new business facility,
18 the taxpayer may, with the consent of the executive director,
19 elect to claim the remainder of the carry-forward, upon
20 resuming the operation of a revenue-producing enterprise at
21 such new business facility, but only for a number of years
22 following resumption of such operation equal to ten, reduced
23 by the number of years for which the carry-forward was claimed
24 prior to the termination of the operation of such
25 revenue-producing enterprise. The executive director shall
26 grant such consent if it is determined that the termination of

1 the operation was due to reasonable cause and that the
2 resumption of the operation of a revenue-producing enterprise
3 at such new business facility will provide increased
4 opportunities for employment and result in a substantial
5 contribution to the economy of the state.

6 39-22-513.6. Guidelines to assist taxpayers. The
7 department of revenue shall promulgate guidelines which are
8 designed to assist taxpayers in understanding and making use
9 of the credit provided for in section 39-22-513.3. Such
10 guidelines shall include, but need not be limited to, examples
11 which clarify the meaning of the definitions contained in
12 section 39-22-513.2 (3), (8), and (9) and which clarify what
13 constitutes an expansion within the meaning of section
14 39-22-513.2 (2) (b). Such guidelines shall be promulgated in
15 accordance with the "State Administrative Procedure Act",
16 article 4 of title 24, C.R.S.

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

BILL 18

A BILL FOR AN ACT

1 CONCERNING THE COLLECTION OF SALES AND USE TAXES, AND MAKING
2 AN APPROPRIATION THEREFOR.

Bill Summary

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

Creates, for both home rule and statutory entities, an exemption from local sales tax for building and construction materials if such materials are subject to use tax, and provides a credit against sales tax on sales of tangible personal property at retail or sales of services when a sales or use tax has been previously paid. Limits home rule entities to the same type of sales taxable transactions as statutory entities but with the addition of six specified options plus two unspecified options so long as the unspecified options are not used to tax a transaction otherwise exempt by the provisions of article 2 of title 29, C.R.S. Requires the executive director of the department of revenue to promulgate standardized definitions of taxable items after consulting local governments and businesses. Requires the department to remit, by a certain date, a specified percentage of the taxes it collects on behalf of statutory local governments. Requires home rule entities to conform their collection procedures to state law with regard to statutes of limitation, penalties, interests, and bonds. Requires a standard form for reporting home rule and statutory municipal sales and use taxes. Establishes coordinated audits among state and local taxing jurisdictions. Provides for deficiency disputes to be heard and resolved by the executive director of the department of revenue, subject to appeal to district court. Provides a remedy when the taxpayer has paid the disputed tax but to the wrong jurisdiction. Requires home

rule entities to provide boundary maps upon which a vendor may rely in determining whether a sales or use tax is collectible. Eliminates use tax on storage of construction and building materials, tangible personal property, and motor vehicles for which registration is required, purchased at retail.

Makes an appropriation to the department of revenue for the implementation of the act. Provides that the act takes effect January 1, 1986, except the rule-making provisions, which become effective July 1, 1985.

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

2 SECTION 1. 29-2-105 (1) (b), Colorado Revised Statutes,
3 1977 Repl. Vol., as amended, is amended, and the said 29-2-105
4 is further amended BY THE ADDITION OF THE FOLLOWING NEW
5 SUBSECTIONS, to read:

6 29-2-105. Contents of sales tax ordinances and
7 proposals. (1) (b) A provision that, for the purpose of the
8 sales tax ordinance or proposal enacted in accordance with
9 this article, all retail sales are consummated at the place of
10 business of the retailer unless the tangible personal property
11 sold is delivered by the retailer or his agent to a
12 destination outside the limits of the local taxing entity or
13 to a common carrier for delivery to a destination outside the
14 limits of the incorporated town, city, or county. The gross
15 receipts from such sales shall include delivery charges when
16 such charges are subject to the state sales and use tax
17 imposed by article 26 of title 39, C.R.S., regardless of the
18 place to which delivery is made. If a retailer has no
19 permanent place of business in such incorporated town, city,
20 or county, or has more than one place of business, the place

1 at which the retail sales are consummated for the purpose of a
2 sales tax imposed by ordinance pursuant to this article shall
3 be determined by the provisions of article 26 of title 39,
4 C.R.S., and by rules and regulations promulgated by the
5 department of revenue. ~~Notwithstanding any other provision of~~
6 ~~this article; the value of construction and building materials~~
7 ~~on which a use tax has previously been collected by an~~
8 ~~incorporated town; city; or county shall be exempt from the~~
9 ~~town; city; or county sales tax if the materials are delivered~~
10 ~~by the retailer or his agent to a site within the limits of~~
11 ~~such town; city; or county:~~

12 (2) No sales tax of any statutory or home rule city,
13 town, city and county, or county shall apply to the sale of
14 construction and building materials, as the term is used in
15 section 29-2-109, if the purchaser of such materials presents
16 to the retailer a building permit evidencing that a local use
17 tax has been paid or is required to be paid.

18 (3) No sales tax of any statutory or home rule city,
19 town, city and county, or county shall apply to the sale of
20 tangible personal property at retail or the furnishing of
21 services if the transaction was previously subjected to a
22 sales or use tax lawfully imposed on the purchaser or user by
23 a statutory or home rule city, town, city and county, or
24 county equal to or in excess of that sought to be imposed by
25 the subsequent local entity. A credit shall be granted
26 against the sales tax imposed by the subsequent local entity

1 with respect to such transaction, equal in amount to the
2 lawfully imposed local sales or use tax previously paid by the
3 purchaser or user. The amount of the credit shall not exceed
4 the sales tax imposed by the subsequent local entity.

5 (4) The sales tax ordinance or proposal of any home rule
6 city, town, or city and county adopted pursuant to its home
7 rule charter shall be imposed on the sale of tangible personal
8 property or the furnishing of services in accordance with the
9 following provisions:

10 (a) Uniform provisions. Except as provided in paragraph
11 (b) of this subsection (4), the tangible personal property and
12 services taxable shall be the same as the tangible personal
13 property and services taxable pursuant to section 39-26-104,
14 C.R.S., and subject to the same exemptions as those specified
15 in section 39-26-114, C.R.S., except the exemption allowed by
16 section 39-26-114 (11), C.R.S., for purchases of machinery or
17 machine tools, the exemption of sales and purchases of those
18 items in section 39-26-114 (1) (a) (XXI), C.R.S., and the
19 exemption for sales of food specified in section 39-26-114 (1)
20 (a) (XX), C.R.S. Sales of food, as defined in section
21 39-26-102 (4.5), C.R.S., exempted from the state sales tax
22 pursuant to section 39-26-114 (1) (a) (XX), C.R.S., sales and
23 purchases of those items exempted from the state sales tax
24 pursuant to section 39-26-114 (1) (a) (XXI), C.R.S., or
25 purchases of machinery or machine tools as provided in section
26 39-26-114 (11), C.R.S., may be exempted from a home rule city,

1 town, or city and county sales tax only by the express
2 inclusion of such exemption either at the time of adoption of
3 the initial sales tax ordinance or by amendment thereto. Any
4 such amendment shall be adopted in the same manner as the
5 initial ordinance. In the absence of express provision for
6 the exemption for sales of food, as defined in section
7 39-26-102 (4.5), C.R.S., or purchases of machinery or machine
8 tools as provided in section 39-26-114 (11), C.R.S., or
9 exemption of sales and purchases of those items in section
10 39-26-114 (1) (a) (XXI), C.R.S., all sales tax ordinances,
11 whether adopted prior to, on, or subsequent to January 1,
12 1986, which provide in substance that the tangible personal
13 property and services taxed shall be the same as the tangible
14 personal property and services taxable pursuant to section
15 39-26-104, C.R.S., and subject to the same exemptions as those
16 specified in section 39-26-114, C.R.S., shall be construed as
17 imposing or continuing to impose the city, town, or city and
18 county sales tax on food, as defined in section 39-26-102
19 (4.5), C.R.S., purchases of machinery and machine tools as
20 described in section 39-26-114 (11), C.R.S., and sales or
21 purchases of those items described in section 39-26-114 (1)
22 (a) (XXI), C.R.S.

23 (b) Local options. The ordinance of a home rule city,
24 town, or city and county may provide for a tax to be imposed
25 on sales of the following:

26 (I) Rooms or accommodations, as provided in section

1 39-26-102 (11), C.R.S., at a higher rate than the sales tax
2 imposed on sales taxable transactions or the tax imposed on
3 cable television service;

4 (II) Electricity, coal, gas, fuel oil, coke, or nuclear
5 fuel used in processing, manufacturing, mining, refining,
6 irrigation, construction, telegraph, telephone and radio
7 communication, street and railroad transportation services,
8 and all other industrial uses designated in section 39-26-102
9 (21), C.R.S.;

10 (III) Cable television service;

11 (IV) Admissions to places of public entertainment;

12 (V) Aviation jet engine fuel at the same rate which the
13 taxing entity imposes on sales of other taxable tangible
14 personal property or at a rate of one and one-half percent of
15 the sales price;

16 (VI) Access services by a local telephone exchange
17 carrier to an interexchange carrier; and

18 (VII) Any other tangible personal property, intangible
19 right, or services, the taxation of which is not otherwise
20 prohibited by this article, up to a maximum of two such
21 optional transactions.

22 (5) It is the intent of the general assembly that local
23 governments retain the autonomy to determine whether the items
24 listed in this section be taxed within their jurisdictions.

25 (6) The executive director of the department of revenue
26 shall promulgate rules and regulations to standardize the

1 definitions of items subject to tax pursuant to this section.
2 In the development of such rules and regulations, the
3 executive director shall consult representatives of municipal
4 and county governments and businesses for their
5 recommendations. All participants in these discussions shall
6 be notified when the public rule-making hearing is scheduled
7 for the adoption of such rules and regulations.

8 SECTION 2. 29-2-106 (3) (a), Colorado Revised Statutes,
9 1977 Repl. Vol., is amended, and the said 29-2-106, as
10 amended, is further amended BY THE ADDITION OF THE FOLLOWING
11 NEW SUBSECTIONS, to read:

12 29-2-106. Collection, administration, enforcement.
13 (3) (a) The executive director of the department of revenue
14 shall, at no charge, except as provided in paragraph (b) of
15 this subsection (3), administer, collect, and distribute any
16 sales tax imposed in conformity with this article. The
17 executive director shall make monthly distributions of sales
18 tax collections to the appropriate official in each county and
19 in each incorporated city or town in the amount determined
20 under the distribution formula established in accordance with
21 this article. ON THE TWENTY-FIRST DAY OF EACH MONTH, THE
22 DEPARTMENT OF REVENUE SHALL DISTRIBUTE TO EACH LOCAL ENTITY
23 FOR WHICH IT COLLECTS A SALES TAX NINETY-FIVE PERCENT OF THE
24 ESTIMATED SALES TAX DUE SUCH LOCAL ENTITY FOR THE PREVIOUS
25 MONTH. IN ESTIMATING THE AMOUNT DUE, THE DEPARTMENT OF
26 REVENUE SHALL USE, WHERE AVAILABLE, DATA FOR ACTUAL

1 COLLECTIONS FOR THE SAME MONTH IN THE IMMEDIATELY PRECEDING
2 YEAR. WITHIN THIRTY DAYS THEREAFTER, THE DEPARTMENT OF
3 REVENUE SHALL DISTRIBUTE THE REMAINING REVENUE DUE SUCH LOCAL
4 ENTITY FOR SUCH PREVIOUS MONTH OR MAKE ANY ADJUSTMENTS
5 NECESSITATED BY OVERPAYMENT. EACH DISTRIBUTION SHALL BE MADE
6 BY ELECTRONIC TRANSFER IF REQUESTED IN WRITING BY THE LOCAL
7 ENTITY. Except as provided in section 39-26-208, C.R.S.,
8 1973; any use tax imposed pursuant to section 29-2-109 shall
9 be collected, administered, and enforced by the city, town, or
10 county as provided by ordinance or resolution.

11 (8) Uniform collection procedures. Each home rule city,
12 town, and city and county shall follow, and conform its
13 ordinances where necessary to, the statute of limitations
14 applicable to the enforcement of state sales and use tax
15 collections, the statute of limitations applicable to refunds
16 of state sales and use taxes, the amount of penalties and
17 interest payable on delinquent remittances of state sales and
18 use taxes, and the posting of bonds pursuant to section
19 39-21-105 (4), C.R.S.

20 (9) Standard sales and use tax reporting form. (a) The
21 executive director of the department of revenue shall adopt,
22 by regulation, a standard municipal sales and use tax
23 reporting form. Such form shall be separate from the state
24 form and shall be the only sales and use tax reporting form
25 required to be used by any person collecting the sales or use
26 tax of any home rule city, town, or city and county which

1 collects its own sales or use tax.

2 (b) Such form shall be designed so as to permit
3 reporting of variations in base, rate, and vendor's fee, and
4 shall contain adequate location coding and use tax remittance
5 items. Prior to the adoption of and any revision to the form,
6 each home rule city, town, and city and county which collects
7 its own sales tax shall be given the opportunity to comment on
8 the proposed form or revision to the form.

9 (c) Such standard form and any subsequent revisions
10 shall be used by each home rule city, town, and city and
11 county which collects its own sales tax by the first full
12 month commencing one hundred twenty days after the effective
13 date of the regulation adopting or revising the standard form.

14 SECTION 3. Article 2 of title 29, Colorado Revised
15 Statutes, 1977 Repl. Vol., as amended, is amended BY THE
16 ADDITION OF THE FOLLOWING NEW SECTIONS to read:

17 29-2-106.1. Coordinated audits. (1) Legislative
18 declaration. The general assembly hereby finds, determines,
19 and declares that the enforcement of sales and use taxes
20 affects people and businesses across the jurisdictional
21 boundaries of taxing jurisdictions throughout the state and
22 that a coordinated plan of auditing and enforcement is a
23 matter of statewide concern which shall be applied uniformly
24 throughout the state.

25 (2) Definitions. As used in this section, unless the
26 context otherwise requires:

1 (a) "Audit" means the examination of books, records,
2 papers, and memoranda bearing upon any matters required to be
3 included in a sales tax return, conducted under the authority
4 of the executive director of the department of revenue or
5 under the authority of any local government.

6 (b) "Audited area" means, in the case of an audit
7 initiated by a local government, the area included within its
8 geographical boundaries and the area included within the
9 geographical boundaries of any local government which it
10 overlaps. "Audited area" means, in the case of an audit
11 initiated by the department of revenue, the geographical area
12 designated by the department of revenue in its notification of
13 the audit, which shall not be less than the entire
14 geographical area of any local government, any portion of the
15 area of which is included in the area to be audited by the
16 department of revenue.

17 (c) "Local government" means a town, city, city and
18 county, or county, whether home rule or statutory, which
19 imposes a sales tax.

20 (d) "Taxpayer" means any person or entity liable for
21 collection or payments of sales tax as a vendor or liable in
22 any other capacity for such a tax.

23 (3) Coordinated audit and enforcement plan established.
24 To enforce the provisions of this article and the Colorado
25 sales and use tax statutes, there is hereby established a
26 coordinated plan for enforcing payment of delinquent sales and

1 use taxes for all political subdivisions of the state of
2 Colorado.

3 (4) Administration. (a) Except as otherwise provided
4 in this article, administration of enforcement of sales and
5 use tax shall be in accordance with the provisions of part 1
6 of article 21 of title 39, C.R.S., and section 39-26-117,
7 C.R.S. If the payment of delinquent taxes is in jeopardy, any
8 local government having a financial interest in such
9 delinquent taxes may take appropriate, necessary action to
10 ensure the collection of such taxes. The local government
11 shall inform the executive director of any such action within
12 seventy-two hours.

13 (b) Any local government may audit sales and use tax
14 records of businesses providing it participates in the
15 coordinated audit plan established in this subsection (4).

16 (c) Local governments wishing to conduct sales and use
17 tax audits shall coordinate with each other and the department
18 of revenue for the purpose of auditing sales and use tax
19 records.

20 (d) As often as it deems necessary, but at least
21 annually, each local government that wishes to audit for
22 delinquent sales and use tax shall present a list of
23 businesses it wishes to audit in the upcoming audit period to
24 the executive director.

25 (e) If a local government wishes to audit a business
26 whose operations take place solely within its jurisdiction, it

1 may audit such business for all delinquent state and local
2 sales and use taxes at a convenient time after notifying the
3 executive director.

4 (f) If any local government wishes to audit a business
5 with operations in more than one jurisdiction, the executive
6 director shall determine which jurisdiction or jurisdictions
7 will conduct the audit and when. In no case shall a local
8 government with a financial interest in an audit be prohibited
9 from participating in such an audit.

10 (g) The auditing jurisdiction shall retain all vendor's
11 fees for delinquent tax.

12 (h) Uniform audit procedures shall be adopted by the
13 executive director by rule and regulation. These procedures
14 shall include, but need not be limited to, notification of
15 intent to audit, pre-conference hearings, random and valid
16 statistical sampling, standardized forms and procedures, and
17 post-conference hearings. Before conducting any audit, all
18 auditors shall satisfactorily complete auditor training. The
19 executive director shall promulgate rules and regulations
20 concerning such training, which shall be conducted as is
21 necessary but in no event less than twice annually. In
22 promulgating the rules and regulations required by this
23 paragraph (h), the executive director shall consult
24 representatives of municipal and county governments and
25 businesses for their recommendations. All participants in
26 these discussions shall be notified when the public

1 rule-making hearing is scheduled for the adoption of such
2 rules and regulations.

3 (i) After an audit is completed, it shall be reviewed by
4 the executive director. If deficiencies are found through the
5 audit, the taxpayer shall receive a statement detailing all
6 delinquent taxes and applicable penalties and interest, as
7 provided in section 29-2-106.2 (1). The entire deficiency
8 shall be paid to the department which shall distribute local
9 shares. No local government shall be charged an
10 administration or handling charge for these services.

11 29-2-106.2. Deficiency notice - dispute resolution.

12 (1) When an audit discloses taxes due in an amount greater
13 than the amount assessed to or paid by a taxpayer, the
14 governmental body conducting the audit shall mail a deficiency
15 notice to the taxpayer by certified mail. The deficiency
16 notice shall include state and local sales and use taxes due
17 to the extent disclosed by the audit. The deficiency notice
18 shall also contain notification, in clear and conspicuous
19 type, that the taxpayer has the right to elect a hearing on
20 the deficiency pursuant to subsection (2) of this section.

21 (2) The taxpayer may request the executive director of
22 the department of revenue to conduct a hearing on the proposed
23 tax, and such hearing shall be conducted in the same manner as
24 set forth in section 39-21-103, C.R.S. All local governments
25 to which the deficiency notice claims taxes are due shall be
26 notified by the executive director that a hearing is scheduled

1 and shall be allowed to participate in the hearing.

2 (3) If the taxpayer asserts that all or part of a sales
3 or use tax which is the subject of the deficiency hearing has
4 been paid to or is due to another local government, then such
5 other local government shall be joined as a party to the
6 proceeding. The taxpayer need not file a claim for refund in
7 order to pursue the remedy provided by this subsection (3).
8 If the executive director determines that the disputed tax was
9 paid but to the wrong local government, then the taxpayer
10 shall be relieved of the tax due up to the amount paid
11 together with an abatement of interest thereon and all
12 penalties. If the amount paid exceeds the tax due, then the
13 government in receipt of such payment shall refund the
14 overpayment to the taxpayer within thirty days of the
15 executive director's decision together with interest thereon
16 from the date the taxpayer made the payment until the date the
17 overpayment is refunded. If the amount paid is less than the
18 taxes due, then the taxpayer shall pay the deficiency to the
19 appropriate local government within thirty days of the
20 executive director's decision with interest from the date full
21 payment was due until the date that the deficiency is paid.
22 The local government which erroneously received payment from
23 the taxpayer shall forward such payment to the appropriate
24 local government within thirty days of the executive
25 director's decision with interest from the date the amount was
26 received from the taxpayer until the date the amount was

1 forwarded to the appropriate local government. All interest
2 payable pursuant to this subsection (3) shall be at the same
3 rate which applies to deficiency payments.

4 (4) Appeals from the final determination of the
5 executive director may be taken in the same manner as provided
6 in section 39-21-105, C.R.S., at the election of any party
7 bound by the executive director's decision.

8 (5) This section applies to home rule and statutory
9 cities, towns, cities and counties, and counties.

10 29-2-106.3. Location guides. Each home rule city, town,
11 and city and county collecting its own sales or use tax shall
12 make available to any requesting vendor a map or other
13 location guide showing the boundaries of the municipality.
14 The requesting vendor may rely on the map or other location
15 guide and any update thereof available to the vendor in
16 determining whether to collect a sales or use tax, or both, of
17 the municipality. No penalty shall be imposed or action for
18 deficiency maintained if the requesting vendor in good faith
19 complies with the most recent map or other location guide
20 available to it.

21 SECTION 4. 29-2-107 (1) and (3), Colorado Revised
22 Statutes, 1977 Repl. Vol., are amended to read:

23 29-2-107. Limitation on applicability. (1) Nothing in
24 this article shall be construed to APPLY TO, affect, or limit
25 the powers of home rule ~~cities~~ MUNICIPALITIES organized under
26 article XX of the state constitution to impose, administer, or

1 enforce any local sales OR USE tax except ~~as-is-provided-in~~
2 ~~section-29-2-106~~ THOSE PROVISIONS WHICH SPECIFICALLY REFER TO
3 "HOME RULE".

4 (3) Nothing in this article shall be construed to
5 invalidate any sales tax adopted by ordinance OR RESOLUTION by
6 any ~~incorporated-town-or-city-prior--to--July--1,--1967~~ TOWN,
7 CITY, CITY AND COUNTY, OR COUNTY, WHETHER HOME RULE OR
8 STATUTORY, PRIOR TO JANUARY 1, 1986. ~~No--sales~~ EXCEPT AS
9 PROVIDED IN SUBSECTION (1) OF THIS SECTION, NO SALES OR USE
10 tax of any ~~incorporated-town-or-city-or-any-county;-home--rule~~
11 ~~cities--excepted~~ SUCH LOCAL GOVERNMENT shall conflict with the
12 provisions of this article after January 1, ~~1968~~ 1986.

13 SECTION 5. 29-2-109, Colorado Revised Statutes, 1977
14 Repl. Vol., is amended to read:

15 29-2-109. Contents of use tax ordinances and proposals.

16 (1) The use tax ordinance, resolution, or proposal of any
17 town, city, or county adopted pursuant to this article shall
18 be imposed only for the privilege of ~~storing~~; using or
19 consuming in the town, city, or county any construction and
20 building materials and motor and other vehicles on which
21 registration is required, purchased at retail. The ordinance,
22 resolution, or proposal shall recite that the use tax shall
23 not apply:

24 (a) To the ~~storage~~; use or consumption of any tangible
25 personal property the sale of which is subject to a retail
26 sales tax imposed by the town, city, or county;

1 (b) To the **storage**; use or consumption of any tangible
2 personal property purchased for resale in the town, city, or
3 county, either in its original form or as an ingredient of a
4 manufactured or compounded product, in the regular course of a
5 business;

6 (c) To the **storage**; use or consumption of tangible
7 personal property brought into the town, city, county by a
8 nonresident thereof for his own **storage**; use or consumption
9 while temporarily within the town, city, or county; however,
10 this exemption does not apply to the **storage**; use or
11 consumption of tangible personal property brought into this
12 state by a nonresident to be used in the conduct of a business
13 in this state;

14 (d) To the **storage**; use or consumption of tangible
15 personal property by the United States government or the state
16 of Colorado, or its institutions or political subdivisions, in
17 their governmental capacities only or by religious or
18 charitable corporations in the conduct of their regular
19 religious or charitable functions;

20 (e) To the **storage**; use or consumption of tangible
21 personal property by a person engaged in the business of
22 manufacturing or compounding for sale, profit, or use any
23 article, substance, or commodity, which tangible personal
24 property enters into the processing of or becomes an
25 ingredient or component part of the product or service which
26 is manufactured, compounded, or furnished and the container,

1 label, or the furnished shipping case thereof;

2 (f) To the ~~storage~~; use or consumption of any article of
3 tangible personal property the sale or use of which has
4 already been subjected to a sales or use tax of another town,
5 city, or county equal to or in excess of that imposed by this
6 article. A credit shall be granted against the use tax
7 imposed by this article with respect to a person's ~~storage~~;
8 use or consumption in the town, city, or county of tangible
9 personal property purchased OR USED by him elsewhere. The
10 amount of the credit shall be equal to the tax paid by him by
11 reason of the imposition of a sales or use tax of another
12 town, city, or county on his purchase or use of the property.
13 The amount of the credit shall not exceed the tax imposed by
14 this article. THE CREDIT ALLOWED BY THIS PARAGRAPH (f) SHALL
15 NOT APPLY TO TAXES IMPOSED BY OVERLAPPING JURISDICTIONS.

16 (g) To the ~~storage~~; use or consumption of tangible
17 personal property and household effects acquired outside of
18 the town, city, or county and brought into it by a nonresident
19 acquiring residency;

20 (h) To the ~~storage--or~~ use of a motor vehicle if the
21 owner is or was, at the time of purchase, a nonresident of the
22 town, city, or county and he purchased the vehicle outside of
23 the town, city, or county for use outside the town, city, or
24 county and actually so used it for a substantial and primary
25 purpose for which it was acquired and he registered, titled,
26 and licensed said motor vehicle outside of the town, city, or

1 county;

2 (i) To the ~~storage~~; use or consumption of any
3 construction and building materials and motor and other
4 vehicles on which registration is required if a written
5 contract for the purchase thereof was entered into prior to
6 the effective date of such use tax;

7 (j) To the ~~storage~~; use or consumption of any
8 construction and building materials required or made necessary
9 in the performance of any construction contract bid, let, or
10 entered into at any time prior to the effective date of such
11 use tax ordinance, resolution, or proposal;

12 (2) THE USE TAX OF ANY TOWN, CITY, CITY AND COUNTY, OR
13 COUNTY, WHETHER HOME RULE OR STATUTORY, SHALL NOT APPLY TO THE
14 STORAGE OF ANY TANGIBLE PERSONAL PROPERTY, CONSTRUCTION AND
15 BUILDING MATERIALS, AND MOTOR OR OTHER VEHICLES ON WHICH
16 REGISTRATION IS REQUIRED, PURCHASED AT RETAIL.

17 SECTION 6. Article 2 of title 29, Colorado Revised
18 Statutes, 1977 Repl. Vol., as amended, is amended BY THE
19 ADDITION OF A NEW SECTION to read:

20 29-2-113. Administration of local sales and use tax.

21 (1) The department of revenue is authorized to promulgate
22 rules and regulations and to otherwise prepare for the
23 administration of its responsibilities enumerated in sections
24 29-2-105 (6), 29-2-106 (9), and 29-2-106.1 (4) (h), as said
25 sections will exist on January 1, 1986.

26 (2) This section is repealed, effective January 1, 1986.

1 SECTION 7. Appropriation. In addition to any other
2 appropriation, there is hereby appropriated, out of any moneys
3 in the general fund not otherwise appropriated, to the
4 department of revenue, for the fiscal year beginning July 1,
5 1985, the sum of _____ (\$), or so much thereof as may be
6 necessary, for the implementation of this act, including the
7 employment of additional auditing staff.

8 SECTION 8. Effective date - applicability. Sections 1
9 to 5 of this act shall take effect January 1, 1986, and shall
10 apply to sales and use transactions consummated on or after
11 said date. The remainder of this act shall take effect on
12 July 1, 1985.

13 SECTION 9. Safety clause. The general assembly hereby
14 finds, determines, and declares that this act is necessary
15 for the immediate preservation of the public peace, health,
16 and safety.

BILL 19

A BILL FOR AN ACT

1 CONCERNING REMOVAL OF THE CEILING ON THE EXEMPTION OF
2 PURCHASES OF MACHINERY AND MACHINE TOOLS FROM SALES AND
3 USE TAXES.

Bill Summary

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

Effective with the quarter beginning July 1, 1985, purchases of machinery or machine tools in excess of \$1,000 are exempted from sales and use taxes without limit on the dollar amount of the purchases.

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

5 SECTION 1. 39-26-114 (11) (a), Colorado Revised
6 Statutes, 1982 Repl. Vol., is amended to read:

7 39-26-114. Exemptions - disputes - credits or refunds.

8 (11) (a) ~~Effective--July--1;--1979;~~ Purchases of machinery or
9 machine tools in excess of one thousand dollars by a person
10 engaged in manufacturing to be used in Colorado directly and
11 exclusively by such person in manufacturing tangible personal
12 property, for sale or profit, are exempt from taxation under

1 this part 1. to-the-extent-such-purchases-do--not--exceed--one
2 hundred--thousand--dollars--in-calendar-year-1979;-two-hundred
3 thousand-dollars-in-calendar-year-1980;-three-hundred-thousand
4 dollars-in-calendar-year-1981;-four-hundred--thousand--dollars
5 in--calendar--year--1982;--or-five-hundred-thousand-dollars-in
6 calendar-year-1983;-and-in-each-calendar-year-thereafter:

7 SECTION 2. Effective date. This act shall take effect
8 July 1, 1985.

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

APPENDIX A

STATE SALES TAX EXEMPTIONS

The state imposes a sales tax of 3 percent on the purchase price of all sales of tangible personal property at retail, intrastate telephone and telegraph services, gas and electric service for commercial consumption, steam, food and drink sold for on-premise consumption, and rooms or accommodations. Section 39-26-114, C.R.S., lists items exempt from the sales tax. They include the following:

- sales to the U.S. and Colorado governments and their political subdivisions;
- sales made to charitable organizations for use in their regular charitable functions and activities;
- sales to residents of adjoining states who come to the state to specifically make purchases if the sale is made within twenty miles of the Colorado border and if the adjoining state does not charge a sales tax;
- cigarettes;
- prescription drugs, insulin and insulin measuring and injecting devices, wheelchairs and hospital beds, prosthetic devices, corrective eyewear, hearing aids, and therapeutic devices;
- rooms and accommodations to a permanent resident;
- gasoline and special fuels (diesel engine fuel, kerosene, liquified petroleum gases, and natural gas) used to propel motor vehicles on highways or farm vehicles on farms, and aviation fuel;
- sales made to schools, other than schools conducted for private or corporate profit;
- sales of new or used trailers, semitrailers, trucks, truck tractors, or truck bodies if (1) the vehicle is purchased for use exclusively outside the state or in interstate commerce, (2) the vehicle is moved outside the state within thirty days of delivery, and (3) the purchaser furnishes the seller with an affidavit stating that the vehicle will be permanently licensed and registered outside the state and will be moved within thirty days;
- sales of construction and building materials to a railroad company for use in construction and maintenance of its railroad tracks (at time of actual use, these materials are subject to use tax);

- rental property leased for a maximum of three years if the lessor has paid a sales or use tax when the property was acquired; otherwise, sales tax is to be collected by the lessor on all lease payments received on the property;
- the transfer of property to an out-of-state buyer for use outside the state in selling products normally sold at wholesale by the transferor;
- the sale of tangible personal property for testing, modification, inspection, or similar type of activities in this state if the ultimate use of the property will occur outside the state;
- any sale of an article, container, or bag to a retailer or vendor of food, meals, or beverages that accompanies the sale of food, meals, or beverages to the consumer if a tax has been paid on the retail sale of the article, container, or bag;
- transactions in which the fair market value of the exchanged property is excluded from the consideration or purchase price because the exchanged property is covered by other provisions of the law and in which, because there is no additional consideration involved in the transaction, there is no purchase price;
- all sales of construction and building materials to contractors and subcontractors for use in the building, alteration, or repair of structures, highways, roads, streets and other public works owned and used by the U.S. government, the state of Colorado and its political subdivisions, charitable organizations, and schools;
- food for off-premise consumption;
- residential power;
- sales and purchases of domestic cattle, sheep, lambs, poultry, swine, goats, mares and stallions for breeding purposes, live fish for stocking purposes, and all farm close-out sales;
- sales or purchases of feed for livestock, seeds, and orchard trees;
- vending machine sales under thirty cents;
- sales and purchases of straw and other bedding used in the care of livestock or poultry;
- forty-eight percent of the purchase price of new factory-built housing, resales are exempt from the sales tax;
- purchases of machinery or machine tools in excess of \$1,000 but less than \$500,000 if purchased by a person engaged in manufacturing to be used in Colorado;

- the purchase price of electric-powered motor vehicles and the batteries and controls required for the operation and maintenance of such vehicles;
- sales and purchases of refractory materials and carbon electrodes used by a person manufacturing iron and steel and all sales of inorganic chemicals used in the processing of vanadium-uranium ores; and
- sales of aircraft used or purchased for use in interstate commerce by a commercial airline.

In addition, purchasers of lubricating oil used other than in motor vehicles are entitled to a refund of the state sales tax paid which is attributable to the federal excise tax imposed on the lubricating oil.

There are other items which are exempted from the state sales tax by definition. These items are contained in section 39-26-102, Colorado Revised Statutes, and include:

- certain transactions with respect to business assets and the repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
- newspapers; and
- sales by wholesalers to retail merchants for resale.

Sales and purchases of electricity, coal, gas, fuel oil, coke, or nuclear fuel for industrial uses, and newsprint and printer's ink used by newspaper publishers and commercial printers have been determined to be wholesale sales and, thus, are exempt from the state sales tax. The same is true of property which enters into the processing of or becomes an ingredient or component part of another product or service. With respect to food, property that enters into the processing of food products is exempt from taxation if it becomes an integral or constituent part of the product. A chemical, solvent, agent, mold, skin casing, or other material used for the purpose of placing a food product in a more marketable condition is also exempt from taxation.

Finally, section 39-26-104, Colorado Revised Statutes, exempts from the state sales tax employee meals which are provided as part of salary or wages.

LEGISLATIVE COUNCIL
SUNSET REVIEW COMMITTEE

Members of the Committee

Rep. Carol Taylor-Little, Chairman	Rep. Jerry Kopel
Sen. Martha Ezzard, Vice-Chairman	Rep. Jim Scherer
Sen. Ray Peterson	

Council Staff

Larry Thompson Senior Analyst	Cheri Craib Research Assistant
Wallace Pulliam Principal Analyst	

Legislative
Drafting Staff

Olivia Smith Staff Attorney	Kent Singer Staff Attorney
Matthew Flora Senior Attorney	

SUMMARY OF RECOMMENDATIONS

Pursuant to section 24-34-104, Colorado Revised Statutes, the Legislative Council, on August 17, 1984, appointed a committee consisting of two senators and three representatives to conduct public hearings on the continuation of and statutory revisions to the State Board of Optometric Examiners, State Board of Chiropractic Examiners, State Board of Medical Examiners, Colorado Podiatry Board, and the State Board of Nursing.

The "sunset law" seeks to provide legislative oversight of the boards and commissions which have regulatory powers within the executive branch of state government. The law gives an agency a terminable life of ten years. Prior to the end of the ten-year period, the general assembly must conduct a review and evaluation of the agency. If the general assembly determines that the agency should be continued, it is reestablished for another ten-year period.

Each board's sunset report, submitted by the Department of Regulatory Agencies, contains an evaluation of its performance and recommendations for statutory changes. Copies of the sunset reports are on file in the Legislative Council office.

In carrying out the sunset reviews, the committee held three meetings during the interim. Testimony concerning continuation and suggested statutory changes was presented by representatives from the Department of Regulatory Agencies, representatives of the various health-related boards subject to review, professional associations, health industry members, and interested persons. The testimony provided the committee with an evaluation of the effectiveness and efficiency of those agencies subject to sunset review in performing their statutorily assigned tasks.

A total of six bills are recommended by the committee. The bills (Bills 20 through 25) recommend continuation and contain statutory changes for the following boards: State Board of Optometric Examiners, State Board of Chiropractic Examiners, State Board of Medical Examiners, Colorado Podiatry Board, and the State Board of Nursing. Bill 25 is also recommended which will provide a ban on the treatment by colonic irrigation therapy. Bill 25 was rejected by the Legislative Council at its October 15 meeting. It was the contention of a majority of the members of the Legislative Council that Bill 25 is not within the scope of the charge given to the committee.

The sunset reports for each of the above listed boards recommended repealing continuing education requirements. A majority of the committee did not endorse the recommendation, believing that continuing education is helpful in meeting minimum competency levels, upgrading skills in the health-related professions, and in providing an incentive to improve the quality of health care.

SUNSET REVIEW COMMITTEE

Committee Recommendations

Concerning the Practice of Optometry, and Providing for the Continuation of the State Board of Optometric Examiners, and Relating to the Powers and Duties of Said Board -- Bill 20

The committee recommends Bill 20, which provides a new termination date of July 1, 1995, for the State Board of Optometric Examiners. Testimony before the committee indicated that the primary purpose of the State Board of Optometric Examiners is to assure that only qualified optometrists be permitted to practice in this state. The committee believes that in the delivery of visual health care to the public it is the responsibility of the state to regulate optometric practice for the public health and safety.

Bill 20 strikes the examination percentage score requirement from existing statutes and, in lieu thereof, requires that a person must have a passing score on the optometric licensure examination. The committee concluded, in the interest of licensure credibility, that percentage examination score requirements should be deleted from the optometric statutes.

Testimony to the committee pointed out that the statutes defining "unprofessional conduct" are vague and imprecise. In the current optometric statute there are twenty-six circumstances that are defined as unprofessional conduct. The committee concluded that several of those circumstances are overly subjective, making it difficult to prove that an optometrist has not met accepted standards of optometric practice. The committee recommends amending paragraph 12-40-118 (1) (k), Colorado Revised Statutes to add the following conditions in defining unprofessional conduct:

An act or omission constituting grossly negligent optometric practice or two or more acts or omissions which fail to meet generally accepted standards of optometric practice.

The committee found that imprecise language also exists in defining "moral turpitude." The committee concluded that the statutes should be clarified by deleting the moral turpitude standard and by adding language stating that the acceptance by a court of a plea of guilty or nolo contendere (tacit admittance of guilt) is grounds for denial of a license.

Bill 20 grants the board statutory authority to impose probation or issue a letter of admonition in lieu of license suspension or revocation. Testimony provided to the committee indicated that it is difficult for a board to prove that the actions of a licensee should result in a license being suspended, or revoked. Complaints

- provides that appeals of the chiropractic board's decisions go directly to the Court of Appeals rather than to the district court;
- repeals the requirement that chiropractors forming professional service corporations file the articles of incorporation and a list of shareholders with the board;
- amends the license renewal section of the statutes to refer to license renewal rather than registration renewal, states that a license expires if not renewed in a timely fashion, and allows the board to charge a reinstatement fee.

Concerning the Practice of Medicine, and Providing for the Continuation of the State Board of Medical Examiners and Relating to the Powers and Duties of Said Board -- Bill 22

The committee recommends Bill 22, which provides a new termination date of July 1, 1995, for the Colorado State Board of Medical Examiners. The committee believes it is in the public interest to restrict the practice of medicine to qualified practitioners. All fifty states and the District of Columbia regulate medical practice.

Physician assistants require certification under the "Medical Practice Act." The committee recommends several statutory changes relating to physician assistants. Bill 22 requires physician assistants to be at least 21 years of age and allows the board to refuse to issue a certificate if a physician assistant applicant has committed any act constituting unprofessional conduct. Testimony indicated that the State Board of Medical Examiners cannot properly monitor physician assistants or assess physician assistants for a portion of the board's costs of regulation through renewal fees. As a result, Bill 22 includes physician assistant certificate renewal provisions.

Bill 22 revises examination procedures for the board. The bill deletes the requirement of a percentage score for passing the medical examination. Under provisions of Bill 22, the board has the responsibility to determine a passing score for the medical exam. Subsection 12-36-113(1), Colorado Revised Statutes, outlines specific subject areas that are to be included in the examination for medical licensure. Testimony to the committee pointed out that the board no longer develops and administers its own examinations. Bill 22 provides that the exam cover the basic and clinical sciences and eliminates the listings in the statute of specific scientific specialities to be addressed in the exam.

The committee concluded that several portions of the statute relating to disciplinary actions against physicians are vague and unenforceable. The bill allows the board to take disciplinary action on the basis of conviction of a felony or a plea of guilty or nolo

contendere to a felony rather than on the more subjective moral turpitude standard. Bill 22 amends paragraph 12-36-117(1)(g) which allows the board to take action against a physician prescribing certain habit-forming drugs if it's done "other than in the course of legitimate practice and for the prevention, alleviation, or cure of disease or for the relief of suffering and not for the purpose of catering to the cravings of an addict." Said language forces the board to prove that an individual was an addict at the time of treatment. To allow the board to have a more enforceable standard, Bill 22 deletes the language after "other than in the course of legitimate professional practice."

Bill 22 adds sexual misconduct within the definition of unprofessional conduct in section 12-36-117, Colorado Revised Statutes. The committee believes that a clear statutory statement is needed in the "Medical Practice Act" to allow the board to discipline physicians guilty of sexual misconduct.

Other provisions of Bill 22 include:

- require that hospital and health care trusts report to the board information relating to any medical malpractice claim against a licensee which is settled or in which judgment is rendered against the licensee;
- repeal the requirement that physicians forming professional service corporations file the articles of incorporation and a list of shareholders with the board;
- delete the good moral character requirement for licensure; and
- give the board the authority to establish procedures for the maintenance of licensee lists and the establishment of renewal fees and schedules.

Concerning the Practice of Podiatry, and Providing for the Continuation of the Colorado Podiatry Board and Relating to the Powers and Duties of said board -- Bill 23

Bill 23 provides a new termination date of July 1, 1995, for the Colorado Podiatry Board. The committee believes that there should be an assurance that persons engaging in the practice of podiatry meet at least a minimum level of competency.

The bill establishes the Colorado Podiatry Board as an independent board composed of four podiatrists and one public member for the purpose of regulating the practice of podiatry. Testimony to the committee by a representative of the Department of Regulatory Agencies indicated that in a recent survey sent to every Colorado podiatrist 94 percent of the respondents preferred regulation by an independent board. The Colorado Podiatry Board is currently under the jurisdiction of the State Board of Medical Examiners. The statutory

requirement that the medical board seek the advice of the podiatry board on all podiatry matters coming before the medical board results in a duplication of effort.

Section 12-32-105, Colorado Revised Statutes, requires that a person applying to take the examination for licensure as a podiatrist be of good moral character. The committee concluded that this is an unnecessarily subjective standard. Bill 23 allows the podiatry board to refuse to issue a license if the applicant has committed any of the acts defined as unprofessional conduct in subsection 12-32-107(3), Colorado Revised Statutes. The bill also repeals immoral conduct as grounds for disciplinary action against a licensee. As an alternative, Bill 23 adds language stating that the acceptance by a court of a plea of guilty or nolo contendere to a felony is grounds for disciplinary action.

Under provisions of Bill 23, the statutory requirement that specific subject areas be included in the podiatry examination has been repealed and replaced with a general provision that the basic and clinical sciences and other subjects deemed necessary by the board be included in the examination. The bill repeals the requirement that the podiatry examination be a written examination. The committee believes that this provision unnecessarily restricts the board as to the type of examination given.

Bill 23 also includes the following provisions:

- allows the governor to remove any podiatry board member for misconduct, incompetency, or neglect of duty; and
- amends the "Medical Practice Act" regarding the methods for proving that a podiatrist's conduct is unprofessional in prescribing certain habit-forming drugs (The same provisions are included as those found in Bill 22 concerning unprofessional conduct by physicians).

Concerning Professions Licensed by the State Board of Nursing, and Providing for the Continuation of Said Board and Relating to Powers and Duties Thereof -- Bill 24

Under the provisions of Bill 24, the State Board of Nursing's termination date would be extended to July 1, 1995. The committee believes that it is in the public interest to require some minimum level of competency for the nursing board's licensees and to discipline those licensees who do not practice in a manner consistent with the public interest.

Psychiatric technicians are licensed by the State Board of Nursing. Testimony provided to the committee indicated that a number of statutory changes were needed regarding psychiatric technicians to bring such statutes into conformity with administrative procedures

governing the practice of nursing. Section 12-42-113, Colorado Revised Statutes, in Bill 24, rewrites the disciplinary sections of the psychiatric technician statute to provide grounds for disciplinary action similar to that provided for nurses and gives the nursing board the same disciplinary options and procedures for psychiatric technicians and nurses. The current grounds for disciplinary action against psychiatric technicians are very limited. The bill removes good moral character as a qualification for licensure for psychiatric technicians and, in lieu thereof, allows the board to deny licensure of psychiatric technicians if an applicant has committed any act that would be grounds for disciplinary action against a licensee. Bill 24 permits the board to issue a letter of admonition or place a licensed psychiatric technician on probation in the same manner as is followed for nurses. The bill also amends the disciplinary time frames and procedures provided in the psychiatric technician statute to conform with those provided in the State Administrative Procedure Act.

Other provisions in Bill 24 include:

- adjust the terms of the board members so that no more than four members are appointed in a given year;
- repeal the requirement that the board publish a list of advanced practitioners of nursing (Currently it is voluntary for nurses with advanced degrees to list themselves with the board.);
- provide a technical correction to the "Nurse Practice Act" which now allows the nursing board to take disciplinary action if a nurse pleads no contest to a felony but does not allow such action in cases of the nurse being found guilty of a felony;
- provide that appeals of the board's decisions go directly to the Court of Appeals rather than to the district court; and
- allow flexibility in the frequency of renewal of licenses for psychiatric technicians. Current statutes require annual license renewal, while the actual practice is biannual renewal of such licenses.

The sunset report on the State Board of Nursing recommended deletion of the statutory requirement that the program administrator of the nursing board be a professional nurse. In view of the testimony provided to the committee that a professional nurse is best qualified to be the program administrator for the State Board of Nursing, the committee did not accept the sunset report recommendation on this matter.

Concerning the Prohibition of Treatment by Colonic Irrigation Therapy
-- Bill 25

Bill 25 provides that any person who treats a patient by the use of colonic irrigation therapy commits a Class 3 misdemeanor. Bill 21 bans the use of colonic therapy by chiropractors. According to testimony by a representative of the Department of Health's Epidemiology Division, the majority of persons providing colonic therapy are unlicensed. Bill 25 will help insure that persons other than chiropractors cannot legally use colonic irrigation therapy.

The Legislative Council, at its October 15, 1984, meeting rejected this bill on the grounds that its subject matter is not within the committee's statutory directive.

BILL 20

A BILL FOR AN ACT

1 CONCERNING THE PRACTICE OF OPTOMETRY, AND PROVIDING FOR THE
2 CONTINUATION OF THE STATE BOARD OF OPTOMETRIC EXAMINERS
3 AND RELATING TO THE POWERS AND DUTIES OF SAID BOARD.

Bill Summary

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

Continues the state board of optometric examiners in the department of regulatory agencies for an additional ten years.

Makes the following substantive changes in the statutory provisions governing optometrists: (1) Authorizes the governor to remove any member of the state board of optometric examiners for misconduct, incompetency, or neglect of duty; (2) removes the examination percentage score requirement for persons seeking an optometrist license; (3) states that the period of validity of a license may be changed by the board in accordance with provisions governing the department of regulatory agencies generally; (4) eliminates the requirement that a licensee have a duplicate license for each office he maintains, but requires that the licensee provide the board with the address of each office; (5) clarifies an inconsistency in the definition of unprofessional conduct; (6) allows the board to impose probation or supervision on a licensee in addition to revocation, suspension, or nonrenewal of a license for violations of unprofessional conduct or probation; and (7) repeals certain unclear provisions regarding unprofessional conduct and repeals the provision concerning filing requirements for articles of incorporation.

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

2 SECTION 1. 12-40-106 (1), Colorado Revised Statutes,
3 1978 Repl. Vol., as amended, is amended to read:

4 12-40-106. State board of optometric examiners - subject
5 to termination. (1) The state board of optometric examiners,
6 referred to in this article as the "board", shall be under the
7 supervision and control of the division of registrations as
8 provided by section 24-34-102, C.R.S. The members of the
9 board on July 1, 1973, shall continue as members of the board
10 under this article until the expiration of the terms for which
11 they were appointed. Thereafter the terms of all newly
12 appointed members of the board shall begin on April 20, and
13 such board shall constitute the agency of the state of
14 Colorado to carry out the provisions of this article. The
15 board shall consist of five optometrists and two
16 members-at-large, to be appointed by the governor to serve for
17 terms of five years; except that no person shall be appointed
18 to serve more than two consecutive terms. Each member of the
19 board, except for the members-at-large, shall have been
20 actually engaged and licensed in the practice of optometry as
21 defined in section 12-40-102 in Colorado for the five years
22 next preceding his appointment. At least one of the two
23 members-at-large shall not be a member or representative of,
24 nor have any direct interest in, any profession, agency, or
25 institution providing health services. Any four members of
26 said board shall constitute a quorum for the purpose of

1 holding examinations, granting licenses, or transacting any
2 business connected with the board. A vacancy in the
3 membership of said board shall be filled by the governor for
4 the remainder of the unexpired term. ANY MEMBER OF THE BOARD
5 MAY BE REMOVED BY THE GOVERNOR FOR MISCONDUCT, INCOMPETENCY,
6 OR NEGLECT OF DUTY.

7 SECTION 2. 12-40-108 (1) (c), Colorado Revised Statutes,
8 1978 Repl. Vol., as amended, is amended to read:

9 12-40-108. Application for license. (1) (c) He has
10 successfully passed the written examination of the national
11 board of examiners in optometry. ~~with-an-average-grade-of-not~~
12 ~~less-than-seventy-five-percent-and-a-grade-in-each-section--of~~
13 ~~not--less--than--sixty-five-percent:~~ The board shall have the
14 authority, upon its investigation and approval of the
15 examination standards, to approve some body other than the
16 national board of examiners in optometry as the examining
17 body.

18 SECTION 3. 12-40-109 (2), Colorado Revised Statutes,
19 1978 Repl. Vol., as amended, is amended to read:

20 12-40-109. Examination - licenses. (2) Each person who
21 makes a passing grade ~~averaging-seventy-five--percent~~ on the
22 written examination of the national board of examiners in
23 optometry and each of the practical and clinical examinations
24 of the state board of optometric examiners and ~~a-grade-of-not~~
25 ~~less--than--sixty-five--percent~~ on each section of the
26 examination and who is otherwise qualified shall be granted a

1 license evidenced by a certificate signed by the president and
2 the secretary of the board and impressed with the seal of the
3 board. No license shall be granted by less than the majority
4 vote of the board. The license certificate provided for in
5 this section shall be in such form and wording as may be
6 adopted by the board.

7 SECTION 4. 12-40-113 (1), Colorado Revised Statutes,
8 1978 Repl. Vol., as amended, is amended to read:

9 12-40-113. License renewal - requirements - fee, failure
10 to pay. (1) On or before the first day of July of each year,
11 every optometrist licensed to practice optometry in this state
12 shall transmit to the secretary of the board, upon a form
13 prescribed by the board, his signature, post-office address,
14 and office address, the number of his license certificate, and
15 such other pertinent information as may be requested, together
16 with a fee which shall be determined and collected pursuant to
17 section 24-34-105, C.R.S., and receive therefor ~~an annual~~ A
18 renewal certificate authorizing him to continue the practice
19 of optometry in this state; ~~for a period of one year~~ EXCEPT
20 THAT THE PERIOD OF VALIDITY OF ANY LICENSE MAY BE CHANGED
21 PURSUANT TO THE PROVISIONS OF SECTION 24-34-102 (7), C.R.S.
22 Any optometrist whose application for renewal is received by
23 the secretary of the board after the ~~first--day-of-July~~
24 DEADLINE FOR RENEWAL shall, in addition to the renewal fee,
25 transmit to the board with his application an additional sum
26 which shall be determined and collected pursuant to section

1 24-34-105, C.R.S. Failure to so remit shall cause a denial of
2 the application for renewal. Any optometrist whose
3 application for renewal indicates that he has not actively
4 practiced optometry or that he has not been engaged in
5 teaching optometry for the preceding five years shall be
6 issued a renewal certificate by the board only after hearing
7 and upon notice to said applicant, wherein such applicant has
8 demonstrated to the board that he has maintained the
9 qualifications set out in section 12-40-109, but no
10 reexamination shall be required unless the board finds good
11 cause to believe that the person has not maintained the
12 professional ability and knowledge required of an original
13 licensee under this article.

14 SECTION 5. 12-40-114 (2), Colorado Revised Statutes,
15 1978 Repl. Vol., as amended, is amended to read:

16 12-40-114. Change of address, duplicate license
17 certificates. (2) Any licensee may maintain offices which he
18 periodically visits, other than that in which he maintains and
19 carries on his principal practice. ~~and--a--duplicate--license~~
20 ~~certificate--shall--be--issued--for--each--such--additional--office~~
21 ~~upon--application--to--the--board--upon--forms--provided--for--such~~
22 ~~purpose--and--upon--payment--of--a--fee--which--shall--be--determined~~
23 ~~and--collected--pursuant--to--section--24--34--105;--C.R.S. A LICENSEE~~
24 WHO MAINTAINS OFFICES WHICH HE VISITS PERIODICALLY SHALL
25 NOTIFY THE BOARD IN WRITING OF THE ADDRESS OF EACH OF SAID
26 OFFICES.

1 SECTION 6. 12-40-118 (1) (k) and (1) (t), Colorado
2 Revised Statutes, 1978 Repl. Vol., as amended, are REPEALED
3 AND REENACTED, WITH AMENDMENTS, to read:

4 12-40-118. Unprofessional conduct defined. (1) (k) An
5 act or omission constituting grossly negligent optometric
6 practice or two or more acts or omissions which fail to meet
7 generally accepted standards of optometric practice;

8 (t) Conviction of a felony or the acceptance of a plea
9 of guilty or nolo contendere to a felony;

10 SECTION 7. 12-40-119 (1) (a), Colorado Revised Statutes,
11 1978 Repl. Vol., as amended, is amended to read:

12 12-40-119. Revocation, suspension, supervision,
13 probation procedure - professional review. (1) (a) The board
14 may ~~refuse to renew, may~~ IMPOSE PROBATION ON A LICENSEE, ISSUE
15 A LETTER OF ADMONITION TO A LICENSEE, suspend, ~~or may~~ revoke,
16 OR REFUSE TO RENEW any license provided for by this article
17 for any reason stated in section 12-40-118 or for violating
18 any term of probation of the board. IF THE BOARD DETERMINES
19 THAT THE VIOLATION OF ANY PROVISION OF SECTION 12-40-118 OR
20 THE VIOLATION OF PROBATION BY A LICENSEE IS MARGINAL, IT MAY
21 ELECT TO SUPERVISE THE LICENSEE'S PRACTICE AS MAY BE NECESSARY
22 TO DETERMINE THE QUALITY OF HIS PRACTICE AND TO CORRECT ANY
23 DEFICIENCIES THEREIN.

24 SECTION 8. 12-40-119 (2) (e), Colorado Revised Statutes,
25 1978 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH
26 AMENDMENTS, to read:

1 12-40-119. Revocation, suspension, supervision,
2 probation - professional review. (2) (e) The action of the
3 board in refusing to grant, revoking, or suspending a license,
4 issuing a letter of admonition, or placing a licensee on
5 probation or under supervision pursuant to subsection (1) of
6 this section may be reviewed by the court of appeals by
7 appropriate proceedings under section 24-4-106 (11), C.R.S.

8 SECTION 9. 13-4-102 (2), Colorado Revised Statutes, as
9 amended, is amended to read:

10 13-4-102. Jurisdiction. (2) The court of appeals shall
11 have initial jurisdiction to review awards or actions of the
12 industrial commission, as provided in articles 53 and 74 of
13 title 8, C.R.S., to review orders of the banking board
14 granting or denying charters for new state banks, as provided
15 in article 2 of title 11, C.R.S., to review actions of the
16 board of medical examiners in refusing to grant or in revoking
17 or suspending a license or in placing the holder thereof on
18 probation, as provided in section 12-36-119 (2), C.R.S., to
19 review actions of the board of dental examiners in refusing to
20 issue or renew or in suspending or revoking a license to
21 practice dentistry or dental hygiene, as provided in section
22 12-35-115, C.R.S., TO REVIEW ACTIONS OF THE STATE BOARD OF
23 OPTOMETRIC EXAMINERS IN REFUSING TO GRANT, REVOKING, OR
24 SUSPENDING A LICENSE, ISSUING A LETTER OF ADMONITION, OR
25 PLACING A LICENSEE ON PROBATION OR UNDER SUPERVISION, AS
26 PROVIDED BY SECTION 12-40-119 (2) (e), C.R.S., to review

1 decisions of the board of education in proceedings for the
2 dismissal of a teacher, as provided in section 22-63-117,
3 C.R.S., and to review final decisions and orders of the
4 Colorado civil rights commission, as provided in parts 3, 4,
5 and 7 of article 34 of title 24, C.R.S.

6 SECTION 10. 24-34-104, Colorado Revised Statutes, 1982
7 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW
8 SUBSECTION to read:

9 24-34-104. General assembly review of regulatory
10 agencies for termination, continuation, or reestablishment.

11 (24) The following board in the department of regulatory
12 agencies shall terminate on July 1, 1995: The state board of
13 optometric examiners, created by article 40 of title 12,
14 C.R.S.

15 SECTION 11. Repeal. 12-40-118 (1) (g) and (1) (x) and
16 12-40-125 (2), Colorado Revised Statutes, 1978 Repl. Vol., as
17 amended, and 24-34-104 (14) (d), Colorado Revised Statutes,
18 1982 Repl. Vol., as amended, are repealed.

19 SECTION 12. Effective date. This act shall take effect
20 July 1, 1985.

21 SECTION 13. Safety clause. The general assembly hereby
22 finds, determines, and declares that this act is necessary
23 for the immediate preservation of the public peace, health,
24 and safety.

BILL 21

A BILL FOR AN ACT

1 CONCERNING THE PRACTICE OF CHIROPRACTIC, AND PROVIDING FOR THE
2 CONTINUATION OF THE STATE BOARD OF CHIROPRACTIC EXAMINERS
3 AND RELATING TO THE POWERS AND DUTIES OF SAID BOARD.

Bill Summary

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

Continues the state board of chiropractic examiners in the department of regulatory agencies for an additional ten years.

Makes the following substantive changes in the statutory provisions governing chiropractors: (1) Authorizes the governor to remove any member of the state board of chiropractic examiners for misconduct, incompetency, or neglect of duty; (2) mandates that one board member shall be from the public at large; (3) states that acupuncture and colonic irrigation therapy are not within the definition of "chiropractic" but includes venipuncture in said definition; (4) gives the board the authority to issue letters of admonition in lieu of other disciplinary actions and removes the twelve-month limitation as the maximum period of probation; (5) limits advertising-related grounds for disciplinary actions to false or misleading advertising by repealing other advertising-related grounds; (6) provides that review of a disciplinary action by the board shall be to the court of appeals; (7) eliminates the filing requirement for articles of incorporation; (8) removes the requirement that the board examine applicants by using written, practical, and oral tests; (9) eliminates the percentage requirement as criteria for determining a passing score on any given

examination; (10) removes the provision requiring the board to promulgate rules to provide for board review of examination failures of only one section of the examination; (11) eliminates good moral character as a qualification for licensure and, instead, allows the board to refuse to examine or license an applicant if he has committed any act that would be grounds for disciplinary action; (12) states that the period of validity of a license may be changed by the board in accordance with provisions governing the department of regulatory agencies generally; and (13) makes changes in the grounds for which disciplinary action may be taken.

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

2 SECTION 1. 12-33-102 (1), Colorado Revised Statutes,
3 1978 Repl. Vol., is amended, and the said 12-33-102, as
4 amended, is further amended BY THE ADDITION OF A NEW
5 SUBSECTION, to read:

6 12-33-102. Definitions. (1) "Chiropractic" means that
7 branch of the healing arts which is based on the premise that
8 disease is attributable to the abnormal functioning of the
9 human nervous system. It includes the diagnosing and
10 analyzing of human ailments and seeks the elimination of the
11 abnormal functioning of the human nervous system by the
12 adjustment or manipulation, by hand, of the articulations and
13 adjacent tissue of the human body, particularly the spinal
14 column, and the usage as indicated of procedures which
15 facilitate and make the adjustment or manipulation more
16 effective, and the use of sanitary, hygienic, nutritional, and
17 physical remedial measures necessary to such practice.
18 "CHIROPRACTIC" DOES NOT INCLUDE TREATMENT BY ACUPUNCTURE OR
19 COLONIC IRRIGATION THERAPY, BUT THE TERM DOES INCLUDE THE

1 PRACTICE OF VENIPUNCTURE.

2 (4) "Venipuncture" means the puncture of a vein for the
3 withdrawal of blood for the purpose of diagnosis through blood
4 analysis. Any blood analysis shall be done by a laboratory
5 certified by the department of health.

6 SECTION 2. 12-33-103 (1), Colorado Revised Statutes,
7 1978 Repl. Vol., as amended, is amended to read:

8 12-33-103. State board of examiners - subject to
9 termination. (1) There is hereby created a Colorado state
10 board of chiropractic examiners, referred to in this article
11 as the "board", consisting of five members who are citizens of
12 the United States, four of whom shall have practiced
13 chiropractic in the state of Colorado for five years prior to
14 their appointment and one of whom may SHALL be appointed from
15 the public at large. The governor shall appoint members of the
16 board as follows: One for a five-year term, one for a
17 four-year term, one for a three-year term, one for a two-year
18 term, and one for a one-year term. At the expiration of the
19 term of each board member, a member shall be appointed by the
20 governor for a term of five years. ANY BOARD MEMBER MAY BE
21 REMOVED BY THE GOVERNOR FOR MISCONDUCT, INCOMPETENCE, OR
22 NEGLECT OF DUTY.

23 SECTION 3. 12-33-112, Colorado Revised Statutes, 1978
24 Repl. Vol., as amended, is amended to read:

25 12-33-112. Application for license - fee - examination.
26 Any person who fulfills the minimum educational requirements

1 prescribed by this article and by the board, who is not less
2 than twenty-one years of age, who desires to obtain a license
3 to practice chiropractic in this state, and who is not
4 entitled to a license therefor under other provisions of this
5 article may make application for such license upon such forms
6 and in such manner as prescribed by the board, which
7 application shall be accompanied by an examination fee. and
8 ~~such--evidence--of--the--applicant's--good--moral--character--as--the~~
9 ~~board--may--prescribe,--In--determining--an--applicant's--character,~~
10 ~~the--board--shall--be--governed--by--the--provisions--of--section~~
11 ~~24-5-101,--G.R.S.~~ THE BOARD MAY REFUSE TO EXAMINE OR LICENSE
12 AN APPLICANT IF THE APPLICANT HAS COMMITTED ANY ACT THAT WOULD
13 BE GROUNDS FOR DISCIPLINARY ACTION AGAINST A LICENSED
14 CHIROPRACTOR. Such applicant shall be examined by the board
15 ~~which--shall--employ--written,--oral,--and--practical--tests~~ in the
16 subjects outlined in section 12-33-111 to determine the
17 applicant's qualifications to practice chiropractic. A
18 license shall be granted to all applicants who on such
19 examination are found qualified by attaining a passing grade
20 ~~of--seventy-five--percent~~ on each section of the examination.
21 Any applicant NOT receiving a PASSING grade ~~below--seventy-five~~
22 ~~percent~~ in only one subject may, within one year from the date
23 of such failure, repeat the examination in only that subject,
24 upon payment of the total examination fee, and will be
25 licensed upon receiving a PASSING grade ~~of--seventy-five~~
26 ~~percent--or--higher~~ in such subject. ~~The--board--shall--promulgate~~

1 rules--to--provide--for--board--review-of-examination-failures
2 based-on-failures-of-only--one--section--of--the--examination
3 Qualification in that portion of the examination relating to
4 the basic sciences shall be established by the applicant
5 submitting proof satisfactory to the board of successfully
6 passing the examination in the basic sciences given by the
7 national board of chiropractic examiners. Any chiropractic
8 applicant who desires to practice electrotherapy shall present
9 evidence that he has successfully completed a course of not
10 less than one hundred twenty classroom hours in this subject
11 at a school approved by the board.

12 SECTION 4. 12-33-114, Colorado Revised Statutes, 1978
13 Repl. Vol., as amended, is amended to read:

14 12-33-114. Renewal of license. (1) Every licensed
15 chiropractor who desires to retain his ~~registration~~ LICENSE
16 shall pay to the board a renewal fee set pursuant to law on or
17 before October 1 of each year; EXCEPT THAT THE BOARD MAY
18 CHANGE THE PERIOD OF THE VALIDITY OF A LICENSE AS PROVIDED BY
19 SECTION 24-34-102 (7), C.R.S. Upon payment of this fee and
20 showing of a certificate of continuing education attendance of
21 fifteen hours by the chiropractor, the board shall issue a
22 renewal ~~certificate~~ LICENSE permitting the continued practice
23 of chiropractic and of electrotherapy if previously so
24 licensed.

25 (2) ANY CHIROPRACTOR WHOSE APPLICATION FOR RENEWAL IS
26 RECEIVED BY THE BOARD AFTER THE DEADLINE FOR RENEWAL SHALL, IN

1 ADDITION TO THE RENEWAL FEE, TRANSMIT TO THE BOARD WITH HIS
2 APPLICATION AN ADDITIONAL SUM WHICH SHALL BE DETERMINED AND
3 COLLECTED PURSUANT TO SECTION 24-34-105, C.R.S. FAILURE TO SO
4 REMIT SHALL CAUSE A DENIAL OF THE APPLICATION FOR RENEWAL.
5 ANY CHIROPRACTOR WHOSE APPLICATION FOR RENEWAL INDICATES THAT
6 HE HAS NOT ACTIVELY PRACTICED CHIROPRACTIC OR THAT HE HAS NOT
7 BEEN ENGAGED IN TEACHING CHIROPRACTIC FOR THE PRECEDING FIVE
8 YEARS SHALL BE ISSUED A RENEWAL LICENSE BY THE BOARD ONLY
9 AFTER HEARING AND UPON NOTICE TO SAID APPLICANT, WHEREIN SUCH
10 APPLICANT HAS DEMONSTRATED TO THE BOARD THAT HE HAS MAINTAINED
11 THE QUALIFICATIONS SET OUT IN SECTION 12-33-112, BUT NO
12 REEXAMINATION SHALL BE REQUIRED UNLESS THE BOARD FINDS GOOD
13 CAUSE TO BELIEVE THAT THE PERSON HAS NOT MAINTAINED THE
14 PROFESSIONAL ABILITY AND KNOWLEDGE REQUIRED OF AN ORIGINAL
15 LICENSEE UNDER THIS ARTICLE.

16 SECTION 5. 12-33-117 (1) (c) and (4) (a), Colorado
17 Revised Statutes, 1978 Repl. Vol., as amended, are amended,
18 and the said 12-33-117 (1) is further amended BY THE ADDITION
19 OF A NEW PARAGRAPH, to read:

20 12-33-117. Suspension or revocation of license.

21 (1) (c) Conviction of ~~any-crime-involving-moral-turpitude; in~~
22 ~~considering-the-conviction-of-a--crime,--the--board--shall--be~~
23 ~~governed--by-the-provisions-of-section-24-5-101, C.R.S., 1973~~ A
24 FELONY OR THE ACCEPTANCE OF A GUILTY PLEA OR A PLEA OF NOLO
25 CONTENDERE TO A FELONY;

26 (k) Treatment of a patient by colonic irrigation therapy

1 or acupuncture.

2 (4) (a) Any doctor of chiropractic proven to be
3 incompetent or negligent shall be required to take an
4 examination, given by the board, ~~employing-written, oral, and~~
5 ~~practical--testing~~ in the subjects outlined in section
6 12-33-111. In addition, the board may also order the doctor
7 of chiropractic to take such therapy or courses of training or
8 education as may be needed to correct deficiencies found in
9 the hearing.

10 SECTION 6. 12-33-117 (2), Colorado Revised Statutes,
11 1978 Repl. Vol., as amended, is amended BY THE ADDITION OF A
12 NEW PARAGRAPH to read:

13 12-33-117. Suspension or revocation of license.

14 (2) (1) Failing to refer or direct a patient to a physician
15 whenever it comes to the attention of the licensee that a
16 patient exhibits signs or symptoms of disease requiring
17 treatment by a physician.

18 SECTION 7. 12-33-119 (4) and (8), Colorado Revised
19 Statutes, 1978 Repl. Vol., as amended, are amended to read:

20 12-33-119. Disciplinary proceedings - judicial review.

21 (4) Disciplinary proceedings AND HEARINGS shall be conducted
22 in the manner prescribed by article 4 of title 24, C.R.S., and
23 ~~the-hearing-and-opportunity--for--review--shall--be--conducted~~
24 ~~pursuant--to--article-4-of-title-24, C.R.S., by the board or a~~
25 ~~hearing--officer--at--the--board's--discretion.~~ ANY PERSON
26 AGGRIEVED AS A RESULT OF A DISCIPLINARY ACTION BY THE BOARD

1 MAY SEEK REVIEW BY THE COURT OF APPEALS BY APPROPRIATE
2 PROCEEDINGS UNDER SECTION 24-4-106 (11), C.R.S.

3 (8) If a licensee has committed an act which violates
4 section 12-33-117, the board shall withhold, revoke, or
5 suspend an existing license, ISSUE A LETTER OF ADMONITION, or
6 grant probation ~~not-to-exceed-twelve-months~~ on terms and
7 conditions set by the board, or otherwise discipline a
8 licensee as provided for in this article. A revoked or
9 suspended license may thereafter be reissued by the board.
10 The board may dismiss or terminate probation prior to the
11 completion of the probationary period.

12 SECTION 8. 12-33-120, Colorado Revised Statutes, 1978
13 Repl. Vol., is amended to read:

14 12-33-120. Penalty. (1) EXCEPT AS PROVIDED IN
15 SUBSECTION (2) OF THIS SECTION, any person who violates any of
16 the provisions of this article is guilty of a misdemeanor and,
17 upon conviction thereof, shall be punished by a fine of not
18 less than fifty dollars nor more than two hundred dollars, or
19 by imprisonment in the county jail for not less than ten days
20 nor more than thirty days, or by both such fine and
21 imprisonment.

22 (2) ANY CHIROPRACTOR LICENSED PURSUANT TO THIS ARTICLE
23 WHO TREATS A PERSON BY COLONIC IRRIGATION THERAPY COMMITS A
24 CLASS 3 MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED IN
25 SECTION 18-1-106, C.R.S.

26 SECTION 9. 13-4-102 (2), Colorado Revised Statutes, as

1 amended, is amended to read:

2 13-4-102. Jurisdiction. (2) The court of appeals shall
3 have initial jurisdiction to review awards or actions of the
4 industrial commission, as provided in articles 53 and 74 of
5 title 8, C.R.S., to review orders of the banking board
6 granting or denying charters for new state banks, as provided
7 in article 2 of title 11, C.R.S., to review actions of the
8 board of medical examiners in refusing to grant or in revoking
9 or suspending a license or in placing the holder thereof on
10 probation, as provided in section 12-36-119 (2), C.R.S., to
11 review actions of the board of dental examiners in refusing to
12 issue or renew or in suspending or revoking a license to
13 practice dentistry or dental hygiene, as provided in section
14 12-35-115, C.R.S., TO REVIEW ACTIONS OF THE BOARD OF
15 CHIROPRACTIC EXAMINERS IN WITHHOLDING, REVOKING, OR SUSPENDING
16 A LICENSE, ISSUING A LETTER OF ADMONITION, OR GRANTING
17 PROBATION, AS PROVIDED IN SECTION 12-33-119 (4), C.R.S., to
18 review decisions of the board of education in proceedings for
19 the dismissal of a teacher, as provided in section 22-63-117,
20 C.R.S., and to review final decisions and orders of the
21 Colorado civil rights commission, as provided in parts 3, 4,
22 and 7 of article 34 of title 24, C.R.S.

23 SECTION 10. 24-34-104, Colorado Revised Statutes, 1982
24 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW
25 SUBSECTION to read:

26 24-34-104. General assembly review of regulatory

1 agencies for termination, continuation, or reestablishment.
2 (24) The following board in the department of regulatory
3 agencies shall terminate on July 1, 1995: The board of
4 chiropractic examiners, created by article 33 of title 12,
5 C.R.S.

6 SECTION 11. Repeal. 12-33-107 (1) (g), 12-33-117 (2)
7 (d), (2) (h), (2) (j), and (3), and 12-33-124 (2), Colorado
8 Revised Statutes, 1978 Repl. Vol., as amended, and 24-34-104
9 (14) (a), Colorado Revised Statutes, 1982 Repl. Vol., as
10 amended, are repealed.

11 SECTION 12. Effective date. This act shall take effect
12 July 1, 1985.

13 SECTION 13. Safety clause. The general assembly hereby
14 finds, determines, and declares that this act is necessary
15 for the immediate preservation of the public peace, health,
16 and safety.

BILL 22

A BILL FOR AN ACT

1 CONCERNING THE PRACTICE OF MEDICINE, AND PROVIDING FOR THE
2 CONTINUATION OF THE COLORADO STATE BOARD OF MEDICAL
3 EXAMINERS AND RELATING TO THE POWERS AND DUTIES OF SAID
4 BOARD.

Bill Summary

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

Continues the Colorado state board of medical examiners and amends the statutes concerning the powers and duties of the board with respect to physician assistants, qualifications for physicians, determination of unprofessional conduct, disciplinary action, and administrative procedures. Requires the trustee of a trust established for the purpose of providing an alternative for malpractice insurance for physicians and hospitals to report malpractice claims against a licensed practitioner which are settled or in which judgment is rendered against the insured to the Colorado state board of medical examiners.

Repeals the requirement that professional service corporations file a copy of their articles of incorporation with the board.

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

6 SECTION 1. 11-70-102, Colorado Revised Statutes, as

1 amended, is amended to read:

2 11-70-102. Title to property of trusts - liability of
3 trust and trustees. The trustees of trusts established
4 pursuant to this article shall hold the legal title to all
5 property at any time belonging to the trusts. They shall have
6 control over such property, as well as the control and
7 management of the business and affairs of the trust.
8 Liability to third persons for any act, omission, or
9 obligation of a trustee of a trust, when acting in such
10 capacity, shall extend to the whole of the trust estate, or so
11 much thereof as may be necessary to discharge such obligation,
12 but no trustee shall be personally liable for any such act,
13 omission, or obligation. The trustees shall have such powers
14 as to the investment of the trust estate as may be set out in
15 the declaration of trust, without regard to the type of
16 investments to which trustees generally are restricted by the
17 provisions of part 8 of article 1 of title 15, C.R.S., nor
18 shall such trustees be subject to the provisions of title 10,
19 C.R.S., concerning the regulation of insurance; EXCEPT THAT
20 THE TRUSTEES SHALL REPORT ANY MALPRACTICE CLAIM AGAINST A
21 LICENSED PRACTITIONER WHICH IS SETTLED OR IN WHICH JUDGMENT IS
22 RENDERED AGAINST THE INSURED TO THE COLORADO STATE BOARD OF
23 MEDICAL EXAMINERS, WHICH BOARD SHALL PROVIDE STATISTICAL DATA
24 CONCERNING SUCH CLAIMS TO THE COMMISSIONER OF INSURANCE.
25 Without limiting the generality of the foregoing, the trustees
26 shall have any powers, whether conferred upon them by the

1 agreement of trust or otherwise, to perform all acts necessary
2 or desirable to the conduct of the business of a public
3 liability insurer.

4 SECTION 2. 12-36-106 (5) (c) (III), (5) (d), (5) (i),
5 and (5) (j), Colorado Revised Statutes, 1978 Repl. Vol., as
6 amended, are amended, and the said 12-36-106 (5) (c) is
7 further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to
8 read:

9 12-36-106. Practice of medicine defined - exemptions
10 from licensing requirements. (5) (c) (III) Applied to the
11 board on the forms and in the manner designated by the board
12 and paid the appropriate fee established by the board pursuant
13 to section 24-34-105, C.R.S.; AND

14 (IV) Attained the age of twenty-one years.

15 (d) The board may determine whether any applicant for
16 certification as a physician assistant possesses sufficient
17 education, experience, or training in health care which may be
18 accepted in lieu of the qualifications required for
19 certification under subparagraphs (I) and (II) of paragraph
20 (c) of this subsection (5) as long as such applicant shall
21 have successfully completed the national certification
22 examination for physician assistants. THE BOARD MAY DENY
23 CERTIFICATION TO ANY APPLICANT WHO HAS PERFORMED ANY ACT WHICH
24 CONSTITUTES UNPROFESSIONAL CONDUCT, AS DEFINED IN SECTION
25 12-36-117. For any person making application for certification
26 as a physician assistant to the board prior to January 1,

1 1985, there shall be a presumption that he has fulfilled the
2 necessary requirements for certification as a physician
3 assistant pursuant to this subsection (5) if he has
4 successfully practiced as a physician assistant for a total of
5 five years preceding his application and if he has filed with
6 the board a certificate from a physician or physicians
7 licensed to practice in this state that he has competently so
8 practiced as a physician assistant.

9 (i) The board shall certify and keep a record of
10 physician assistants who have been certified pursuant to
11 paragraph (c) of this subsection (5) AND SHALL ESTABLISH
12 RENEWAL FEES AND SCHEDULES SUBJECT TO THE PROVISIONS OF
13 SECTION 24-34-102 (8), C.R.S. EVERY CERTIFIED PHYSICIAN
14 ASSISTANT SHALL PAY TO THE SECRETARY OF THE BOARD A
15 REGISTRATION FEE TO BE DETERMINED AND COLLECTED PURSUANT TO
16 SECTION 24-34-105, C.R.S., AND SHALL OBTAIN A REGISTRATION
17 CERTIFICATE FOR THE CURRENT CALENDAR YEAR.

18 (j) This subsection (5) is repealed, effective January
19 ~~1~~; 1986 JULY 1, 1986.

20 SECTION 3. 12-36-107 (2), Colorado Revised Statutes,
21 1978 Repl. Vol., as amended, is amended to read:

22 12-36-107. Qualifications for licensure. (2) No person
23 shall be granted a license to practice medicine as provided by
24 subsection (1) of this section unless he is at least
25 twenty-one years of age, ~~is--of-good-moral-character~~; is a
26 graduate of an approved medical college, as defined in section

1 12-36-108, and has completed an approved internship of at
2 least one year, as defined in section 12-36-109, or has
3 completed at least one year of postgraduate training approved
4 by the board. The board may grant a license subject to terms
5 of probation or may refuse to grant a license to any such
6 person if it has reasonable grounds to believe he has
7 committed any of the acts or offenses defined in this article
8 as unprofessional conduct. ~~In--determining--a--person's~~
9 ~~character;-the-board-shall-be-governed-by--the--provisions--of~~
10 ~~section-24-5-101;-C.R.S.:~~

11 SECTION 4. 12-36-113 (1) and (2), Colorado Revised
12 Statutes, 1978 Repl. Vol., as amended, are amended to read:

13 12-36-113. Examinations. (1) Examinations for a
14 license to practice medicine shall be held not less than twice
15 in each year at such times and places as may be specified by
16 the board, if there are applicants desiring to be examined.
17 The examination shall be conducted in the English language
18 ~~shall-be-in-writing;-and-shall-be-on-the--following--subjects:~~
19 ~~Anatomy;-physiology;-pharmacology;-chemistry;-bacteriology;~~
20 ~~pathology;-surgery;-obstetrics-and-gynecology;-symptomatology~~
21 ~~and--therapeutics;-public--health--and--sanitation;~~ AND SHALL
22 COVER THE BASIC AND CLINICAL SCIENCES and such other subjects
23 as the board may prescribe. The examinations shall be fair
24 and impartial and practical in character. The examination
25 papers shall not disclose the name of any applicant but shall
26 be identified by a number to be assigned.

1 (2) ~~No person shall be granted a license to practice~~
2 ~~medicine based on such written examination if he fails to~~
3 ~~attain an average grade of at least seventy-five percent in~~
4 ~~all subjects~~ THE BOARD SHALL BE RESPONSIBLE FOR DETERMINING
5 THE PASSING SCORE TO REFLECT A STANDARD OF MINIMUM COMPETENCY
6 FOR THE PRACTICE OF MEDICINE. If an applicant fails to meet
7 such minimum ~~grade requirements~~ PASSING SCORE, he may be
8 reexamined at any subsequent scheduled examination upon paying
9 a fee to be determined and collected pursuant to section
10 24-34-105, C.R.S. If he fails in a second examination, a
11 further examination may be taken, but not less than one year
12 after the date of the preceding examination, and he shall be
13 required to file a new application and pay a fee to be
14 determined and collected pursuant to section 24-34-105, C.R.S.
15 The board may determine by regulation whether any second or
16 further examination shall be on all subjects included in the
17 scheduled examination. No fees remitted with an application
18 shall be refunded, but, in case an applicant is prevented
19 through no fault of his own from taking the examination
20 applied for, he may take a subsequently scheduled examination
21 within one year without payment of another fee or submission
22 of a new application.

23 SECTION 5. 12-36-114 (2), Colorado Revised Statutes,
24 1978 Repl. Vol., is amended to read:

25 12-36-114. Issuance of licenses - prior practice
26 prohibited. (2) Prior to the ~~issuance to him~~ APPROVAL of

1 such license, the applicant shall not engage in the practice
2 of medicine in this state, and any person who practices
3 medicine in this state without first obtaining APPROVAL OF
4 such license shall be deemed to have violated the provisions
5 of this article.

6 SECTION 6. 12-36-117 (1) (f) and (1) (g), Colorado
7 Revised Statutes, 1978 Repl. Vol., as amended, are amended,
8 and the said 12-36-117 (1) is further amended BY THE ADDITION
9 OF A NEW PARAGRAPH, to read:

10 12-36-117. Unprofessional conduct. (1) (f) Conviction
11 of-any-offense-involving-moral-turpitude;-or-the Conviction of
12 a felony and;-in-determining-if-a-license--should--be--denied;
13 revoked;-or-suspended;-or-if-the-licensee-should-be-placed-on
14 probation;-the-board-shall-be-governed-by--the--provisions--of
15 section--24-5-101;-E.R.S.--1973 OR PLEADING GUILTY OR NOLO
16 CONTENDERE TO A FELONY;

17 (g) Administering, dispensing, or prescribing any
18 habit-forming drug, as defined in section 12-22-102 (13), or
19 any controlled substance, as defined in section 12-22-303 (7),
20 other than in the course of legitimate professional practice;
21 and-for-the-prevention;-alleviation;-or-cure-of-disease-or-for
22 the--relief--of-suffering;-and-not-for-the-purpose-of-catering
23 to-the-cravings-of-an-addict;

24 (r) Engaging in a sexual act with a patient during the
25 course of patient care. "Sexual act", as used in this
26 paragraph (r), means sexual contact, sexual intrusion, or

1 sexual penetration as defined in section 18-3-401, C.R.S.

2 SECTION 7. 12-36-118 (4) (c) (III), (5) (a), (5) (c),
3 (5) (g) (I), and (7), Colorado Revised Statutes, 1978 Repl.
4 Vol., as amended, are amended to read:

5 12-36-118. Disciplinary action by board.

6 (4) (c) (III) The investigation discloses ~~an~~ ~~ethical~~
7 ~~violation~~ ~~or~~ an instance of ~~misconduct~~ UNPROFESSIONAL CONDUCT
8 which, in the opinion of the inquiry panel, does not warrant
9 formal action by the board but which should not be dismissed
10 as being without merit; in such case a certified letter,
11 return receipt requested, of admonition shall be sent to the
12 physician or podiatrist of whom a complaint was made and a
13 copy thereof to the person making the complaint, but, when a
14 letter of admonition is sent by the inquiry panel to a
15 physician or podiatrist complained against, such physician or
16 podiatrist shall be advised that he has the right to request
17 in writing, within twenty days after receipt of the letter,
18 that formal disciplinary proceedings be initiated against him
19 to adjudicate the propriety of the conduct upon which the
20 letter of admonition is based. If such request is timely
21 made, the letter of admonition shall be deemed vacated, and
22 the matter shall be processed by means of formal disciplinary
23 proceedings; or

24 (5) (a) All formal complaints seeking disciplinary
25 action against a physician or podiatrist shall be filed with
26 the board. A formal complaint shall set forth the charges

1 with sufficient particularity as to inform the physician or
2 podiatrist clearly and specifically of the acts of ~~misconduct~~
3 UNPROFESSIONAL CONDUCT with which he is charged.

4 (c) It is the duty of the physician or podiatrist so
5 served with such citation to file with the board his answer to
6 the complaint in which he shall admit or deny the material
7 allegations thereof and shall set forth any affirmative
8 defenses he may have. He may include in his answer any
9 request for a more particular statement of the alleged acts of
10 ~~misconduct~~ UNPROFESSIONAL CONDUCT or may raise any other
11 objections, including a plea that the complaint does not
12 charge ~~misconduct~~ UNPROFESSIONAL CONDUCT warranting the
13 imposition of discipline.

14 (g) (I) To warrant a finding of ~~misconduct~~
15 UNPROFESSIONAL CONDUCT, the charges shall be established as
16 specified in section 24-4-105 (7), C.R.S. Except as provided
17 in subsection (1) of this section, the hearings panel shall
18 make a report of its findings and conclusions which, when
19 approved and signed by a majority of those members of the
20 hearings panel who have conducted the hearing pursuant to
21 paragraphs (e) and (f) of this subsection (5), shall be and
22 become the action of the board.

23 (7) Upon the expiration of the term of suspension, the
24 license shall be reinstated by the board if the holder thereof
25 furnishes the board with evidence that he ~~is--then--of--good~~
26 ~~morat--character--and~~ has complied with all terms of the

1 suspension. In-determining-a-person's--character;--the--board
2 shall--be--governed--by--the--provisions--of--section-24-5-101;
3 C.R.S.---If--such--evidence--fails---to---establish---to---the
4 satisfaction--of--the--board--that--the-holder-is-then-of-good
5 moral-character-or If such evidence shows he has not complied
6 with all terms of the suspension, the board shall revoke the
7 license at a hearing, notice of which and the procedure at
8 which shall be as provided in this section.

9 SECTION 8. 12-36-119 (1) (b), Colorado Revised Statutes,
10 1978 Repl. Vol., as amended, is amended to read:

11 12-36-119. Reconsideration and review of action of
12 board. (1) (b) Upon the receipt of such application, it
13 shall MAY be forwarded to the attorney general for such
14 investigation as may be deemed necessary. A copy of the
15 application and the report of investigation shall be forwarded
16 to the hearings panel which shall consider the same and report
17 its findings and conclusions. The proceedings shall be
18 governed by the applicable provisions governing formal
19 hearings in disciplinary proceedings. The attorney general
20 may present evidence bearing upon the matters in issue, and
21 the burden shall be upon the applicant seeking reinstatement
22 to establish the averments of his application as specified in
23 section 24-4-105 (7), C.R.S. No application for reinstatement
24 or for modification of a prior order shall be accepted unless
25 the applicant deposits with the board all amounts unpaid under
26 any prior order of the board.

1 SECTION 9. 12-36-123 (1) (a), Colorado Revised Statutes,
2 1978 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH
3 AMENDMENTS, to read:

4 12-36-123. Procedure - registration - fees.

5 (1) (a) The board shall establish procedures for the
6 maintenance of licensee lists and the establishment of renewal
7 fees and schedules, which fees and schedules shall be
8 established subject to the provisions of section 24-34-102
9 (8), C.R.S. Every licensee shall pay the secretary a
10 registration fee to be determined and collected pursuant to
11 section 24-34-105, C.R.S., and shall obtain a registration
12 certificate for the current calendar year.

13 SECTION 10. 12-36-123 (2) and (3), Colorado Revised
14 Statutes, 1978 Repl. Vol., as amended, are amended to read:

15 12-36-123. Procedure - registration - fees. (2) The
16 secretary shall mail to each such licensee at his last address
17 as shown by the records of the board, during December of each
18 year, notice of the foregoing provisions together with such
19 form of application for ~~annual~~ registration as may be
20 prescribed by the board. Failure of any licensee to pay the
21 ~~annual~~ registration fee prescribed by subsection (1) of this
22 section ~~on--or--before--March--1--of--each-year~~ shall operate
23 automatically to suspend his license while he is so
24 delinquent, and the name of any delinquent licensee shall be
25 omitted from such list.

26 (3) Upon application ~~at-any-time-after-March-1--of--each~~

1 year; made to the board by any such licensee on a form
2 prescribed by the board, his license shall be reinstated,
3 subject to the payment to the board of all registration fees
4 which would have accrued under this article had his license
5 not been suspended and the payment of an additional fee in the
6 same amount as required for the original issuance of the
7 license. If, before or after such application for
8 reinstatement has been made, charges are preferred against the
9 licensee by the board or by any person, as provided by section
10 12-36-118, the board shall defer action on the pending
11 application for reinstatement, if any, and proceed with a
12 hearing on such charges in accordance with section 12-36-118,
13 and thereupon shall reinstate, further suspend, or revoke such
14 license. No license to practice medicine which has been
15 delinquent for more than two years shall be reinstated unless
16 the applicant demonstrates to the board his continued good
17 moral-character-and professional competence.

18 SECTION 11. 12-36-124, Colorado Revised Statutes, 1978
19 Repl. Vol., as amended, is amended to read:

20 12-36-124. Certification of licensing: Upon request
21 therefor and the payment of a fee of-five-dollars DETERMINED
22 PURSUANT TO SECTION 24-34-105, C.R.S., the secretary of the
23 board shall issue its certificate or endorsement with respect
24 to the licensing of, and the official record of the board
25 relating to, any licensee to whom a license to practice
26 medicine or podiatry in this state has been issued by this or

1 any prior board; and, upon request therefor and the payment of
2 a fee ~~of one dollar~~ DETERMINED PURSUANT TO SECTION 24-34-105,
3 C.R.S., the secretary shall issue a certificate evidencing
4 that any such licensee is duly licensed to practice medicine
5 or podiatry in this state.

6 SECTION 12. 12-36-129 (1), Colorado Revised Statutes,
7 1978 Repl. Vol., is amended to read:

8 12-36-129. Violations - penalties. (1) EXCEPT AS
9 PROVIDED IN SUBSECTION (2) OF THIS SECTION, if any person,
10 association, or corporation practices medicine within this
11 state without complying with the provisions of this article,
12 or if any person, association, or corporation otherwise
13 violates any provision of this article, such person or any
14 officer or director of any such association or corporation is
15 guilty of a misdemeanor and, upon conviction thereof, shall be
16 punished by a fine of not less than fifty dollars nor more
17 than five hundred dollars, or by imprisonment in the county
18 jail for not less than ten days nor more than thirty days, or
19 by both such fine and imprisonment; and each day's failure to
20 comply with, or each day's violation of, the provisions of
21 this article shall constitute a separate offense.

22 SECTION 13. 24-34-104, Colorado Revised Statutes, 1982
23 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW
24 SUBSECTION to read:

25 24-34-104. General assembly review of regulatory
26 agencies for termination, continuation, or reestablishment.

1 (24) The following board in the department of regulatory
2 agencies shall terminate on July 1, 1995: The Colorado state
3 board of medical examiners, created by article 36 of title 12,
4 C.R.S.

5 SECTION 14. 25-3.5-203 (1), Colorado Revised Statutes,
6 1982 Repl. Vol., as amended, is amended to read:

7 25-3.5-203. Emergency medical technicians -
8 certification - renewal of certificate. (1) Emergency
9 ~~medical-technicians-shall-be--certified--and~~ The duties and
10 functions ~~thereof-enumerated~~ OF EMERGENCY MEDICAL TECHNICIANS,
11 including the acts which they are authorized to perform, ~~as~~
12 ~~provided~~ SHALL BE REGULATED by rules and regulations adopted
13 by the Colorado state board of medical examiners. The council
14 shall advise and make recommendations to said board concerning
15 such rules and regulations before final adoption. An
16 emergency medical technician certificate shall be issued by
17 the emergency medical services division of the department of
18 health and shall be valid for a period of three years after
19 the date of issuance. Such certificate shall be renewable at
20 its expiration upon the certificate holder's satisfactory
21 completion of a refresher course established pursuant to
22 subsection (2) of this section.

23 SECTION 15. Repeal. 12-36-134 (2), Colorado Revised
24 Statutes, 1978 Repl. Vol., and 24-34-104 (14) (b), Colorado
25 Revised Statutes, 1982 Repl. Vol., as amended, are repealed.

26 SECTION 16. Effective date. This act shall take effect

1 July 1, 1985.

2 SECTION 17. Safety clause. The general assembly hereby
3 finds, determines, and declares that this act is necessary
4 for the immediate preservation of the public peace, health,
5 and safety.

BILL 23

A BILL FOR AN ACT

1 CONCERNING THE PRACTICE OF PODIATRY, AND PROVIDING FOR THE
2 CONTINUATION OF THE COLORADO PODIATRY BOARD AND RELATING
3 TO THE POWERS AND DUTIES OF SAID BOARD.

Bill Summary

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

Provides for the continuation of the Colorado podiatry board and makes various changes in the statutes concerning podiatry, including the following: Changes the podiatry board to an independent board; changes the composition of the board by reducing the number of podiatrist members by one and requiring a member of the public at large to be on the board; authorizes the governor to remove board members; eliminates the showing of good moral character as a prerequisite to licensure; repeals the list of specific subjects which shall be examined; eliminates the requirement of a showing of good moral character preceding the renewal of a license; authorizes the board to issue letters of admonition; specifies which board actions are reviewed in the court of appeals; provides for disciplinary proceedings; clarifies the license renewal procedure; and authorizes the board to carry out injunctive proceedings.

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

5 SECTION 1. 12-32-102, Colorado Revised Statutes, 1978

1 Repl. Vol., as amended, is amended to read:

2 12-32-102. Podiatry license required - exceptions for
3 licensing requirements. It is unlawful for any person to
4 practice podiatry within the state of Colorado who does not
5 hold ~~a license to practice medicine or~~ a license to practice
6 podiatry issued by the Colorado state PODIATRY board of
7 ~~medical-examiners~~ as provided by this article. A podiatry
8 license is not required for a person serving a one-year
9 approved residency program. Such persons must register with
10 the Colorado state PODIATRY board of ~~medical-examiners~~ in such
11 manner and form as such board shall prescribe. As used in
12 this section, an "approved residency" is a residency in a
13 hospital conforming to the minimum standards for residency
14 training established or approved by the Colorado state
15 PODIATRY board, of ~~medical-examiners~~; which has the authority,
16 upon its own investigation, to approve any residency.

17 SECTION 2. 12-32-103, Colorado Revised Statutes, 1978
18 Repl. Vol., as amended, is amended to read:

19 12-32-103. Appointment of members of board - terms. The
20 governor shall appoint five podiatrists to act as the Colorado
21 podiatry board. The three members serving on the board on
22 July 1, 1973, shall continue to serve the terms for which they
23 were appointed, and the governor shall appoint two new members
24 to take office on July 1, 1973, of which one shall serve for a
25 term to expire on March 17, 1977, and one shall serve for a
26 term to expire on March 17, 1978. The governor shall annually

1 appoint one member to serve for a term of five years. THE
2 FIVE MEMBERS SERVING ON THE BOARD ON JULY 1, 1985, SHALL
3 CONTINUE TO SERVE THE TERMS FOR WHICH THEY WERE APPOINTED.
4 UPON THE EXPIRATION OF THE TERM OF OFFICE OF THE PODIATRIST
5 MEMBER WHOSE TERM FIRST EXPIRES, THE MEMBERSHIP OF THE BOARD
6 SHALL CHANGE FROM FIVE PODIATRIST MEMBERS TO FOUR PODIATRIST
7 MEMBERS AND ONE MEMBER FROM THE PUBLIC AT LARGE; AND, UPON
8 SUCH FIRST EXPIRATION DATE, THE GOVERNOR SHALL APPOINT A NEW
9 MEMBER FROM THE PUBLIC AT LARGE TO REPLACE THE MEMBER WHOSE
10 TERM HAS EXPIRED ON SAID DATE. THE NEW MEMBER SHALL BE
11 APPOINTED FOR A TERM OF FIVE YEARS. THE GOVERNOR MAY REMOVE
12 ANY MEMBER OF THE BOARD FOR MISCONDUCT, INCOMPETENCY, OR
13 NEGLECT OF DUTY.

14 SECTION 3. 12-32-104, Colorado Revised Statutes, 1978
15 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
16 read:

17 12-32-104. Powers and duties of board. (1) The
18 Colorado podiatry board shall regulate the practice of
19 podiatry. The board shall exercise, subject to the provisions
20 of this article, the following powers and duties:

21 (a) Adopt, promulgate, and from time to time revise such
22 rules and regulations as may be necessary to enable it to
23 carry out the provisions of this article;

24 (b) Examine, license, and renew licenses of duly
25 qualified podiatric applicants;

26 (c) Conduct hearings upon complaints concerning the

1 disciplining of podiatrists;

2 (d) Conduct investigations and inspections for
3 compliance with the provisions of this article;

4 (e) Cause the prosecution of and seek injunctions
5 against all persons violating this article; and

6 (f) Approve or refuse to approve podiatric colleges.

7 SECTION 4. 12-32-105, Colorado Revised Statutes, 1978
8 Repl. Vol., as amended, is amended to read:

9 12-32-105. Examination as to qualifications. (1) Every
10 person desiring to practice podiatry in this state shall be
11 examined as to his qualifications, except as otherwise
12 provided in this article. Each applicant, at least thirty
13 days before the date of his examination, shall present to the
14 secretary of the Colorado state PODIATRY board of--medical
15 examiners a written application upon the form provided by said
16 board, which application shall contain satisfactory proof that
17 said applicant is twenty-one years of age is-of-good-moral
18 character; and is a graduate of a school of podiatry at which
19 not less than a two-year prepodiatry course and a four-year
20 course of podiatry is required and which is recognized and
21 approved by-the-Colorado-state-board-of-medical-examiners-and
22 by the Colorado podiatry board. In--determining--a--person's
23 character;--the--board--shall-be-governed-by-the-provisions-of
24 section--24-5-101;--E:R:5: The education qualifications
25 prescribed by this subsection (1) shall not apply to any
26 applicant who, on or before March 17, 1943, was duly

1 matriculated in and actually attending a school of podiatry
2 which grants the degree of doctor of podiatric medicine and
3 which, prior to March 17, 1943, had been recognized and
4 approved by the Colorado state board of medical examiners.

5 (2) The examination, ~~shall be in each of the following~~
6 ~~named subjects and~~ IF WRITTEN, shall be written in the English
7 language, but the board, in its discretion, may use
8 supplementary oral or practical examinations. The subjects in
9 which the applicant shall be examined are Anatomy; ~~pathology;~~
10 ~~chemistry;-----physiotherapy;-----histology;-----bacteriology;~~
11 ~~dermatology;roentgenology;diagnosis;pharmacology;clinical;~~
12 ~~orthopedic;and surgical--podiatry;~~ THE BASIC AND CLINICAL
13 SCIENCES and such other subjects as the board may deem
14 advisable, limited in their scope to the treatment of the
15 human foot. Qualification in that portion of the examination
16 relating to the basic sciences shall be established by the
17 applicant submitting proof satisfactory to ~~both the Colorado~~
18 ~~state board of medical examiners--and~~ the Colorado podiatry
19 board of successfully passing the examination in the basic
20 sciences given by the national board of podiatry examiners.

21 SECTION 5. 12-32-107 (1), (2), (3) (e), (3) (n), (3)
22 (o), (4) (a) (I), (4) (b), and (5), Colorado Revised Statutes,
23 1978 Repl. Vol., as amended, are amended to read:

24 12-32-107. Issuance, revocation, or suspension of
25 license - probation - immunity in professional review.

26 (1) If the Colorado state ~~PODIATRY board of medical examiners~~

1 determines that an applicant possesses the qualifications
2 required by this article, HAS PAID A FEE TO BE DETERMINED AND
3 COLLECTED PURSUANT TO SECTION 24-34-105, C.R.S., and is
4 entitled thereto TO A LICENSE TO PRACTICE PODIATRY, the board
5 shall issue a SUCH license, to-practice-podiatry; which shall
6 be signed by its president or vice-president AND attested TO
7 by its secretary. and-sealed-with-the-seal-of-the-board:

8 (2) The Colorado state PODIATRY board of--medical
9 examiners may REFUSE TO ISSUE OR MAY revoke, or suspend, OR
10 REFUSE TO RENEW the license to practice podiatry issued to any
11 person, or THE BOARD MAY ISSUE A LETTER OF ADMONITION TO OR
12 place on probation any person who, while holding such a
13 license, is guilty of any immoral-or unprofessional conduct.
14 The-procedure-for-denying;-revoking;-or-suspending--a--license
15 to-practice-podiatry-or-granting-probation-is-the-same-as-that
16 for--denying;--revoking;--or--suspending-a-license-to-practice
17 medicine-or-granting-probation-to-the-holder--thereof;--except
18 as-altered-by-section-12-32-104:

19 (3) (e) Conviction of any--offense--involving--moral
20 turpitude;-or-the-conviction-of a felony and;--in--determining
21 if--a--license-should-be-denied;-revoked;-or-suspended;-or-if-a
22 licensee-should-be-placed-on-probation;--the--board--shall--be
23 governed-by-the-provisions-of-section-24-5-101;-C.R.S.-1973 OR
24 A PLEA OF GUILTY OR NOLO CONTENDERE TO A FELONY;

25 (n) Administering, dispensing, or prescribing any
26 habit-forming drug, as defined in section 12-22-102 (13), or

1 any controlled substance, as defined in section 12-22-303 (7),
2 other than in the course of legitimate professional practice;
3 ~~and-for-the-prevention;-alleviation;-or-cure-of-disease-or-for~~
4 ~~the-relief-of-suffering;-and-not-for-the-purpose--of--catering~~
5 ~~to-the-cravings-of-an-addict;~~

6 (o) Conviction of violation of any federal or state law
7 regulating the possession, distribution, or use of any
8 controlled substance, as defined in section 12-22-303 (7);
9 ~~and;-in-determining-if-a-license-should-be-denied;-revoked;-or~~
10 ~~suspended;-or-if-the-licensee-should-be-placed--on--probation;~~
11 ~~the--state-board-of-medical-examiners-should-be-governed-by-the~~
12 ~~provisions-of-section-24-5-101;-C.R.S.;~~

13 (4) (a) (I) The Colorado state PODIATRY board; of
14 ~~medical-examiners; or~~

15 (b) Any member of the Colorado state PODIATRY board of
16 ~~medical--examiners~~ or a professional review committee
17 authorized by said board and any witness appearing before said
18 board or such professional review committee shall be immune
19 from suit in any civil action brought by a licensee who is the
20 subject of a professional review proceeding if such member or
21 witness acts in good faith within the scope of the function of
22 said board or such committee, has made a reasonable effort to
23 obtain the facts of the matter as to which he acts, and acts
24 in the reasonable belief that the action taken by him is
25 warranted by the facts. The immunity provided by this
26 paragraph (b) shall extend to the members of an authorized

1 professional review committee of a society or an association
2 of persons licensed pursuant to this article and witnesses
3 appearing before such committee if such committee is
4 authorized to act as provided in subparagraph (II) of
5 paragraph (a) of this subsection (4).

6 (5) To prevent the use of advertising which is
7 misleading, deceptive, or false, the Colorado state PODIATRY
8 board of-medical-examiners may adopt regulations governing
9 advertising by podiatrists.

10 SECTION 6. The introductory portion to 12-32-108 (1),
11 Colorado Revised Statutes, 1978 Repl. Vol., is amended to
12 read:

13 12-32-108. When examination may be waived. (1) The
14 Colorado state PODIATRY board of-medical-examiners may, in its
15 discretion, waive the examination required by section
16 12-32-105 when proof satisfactory to both the board of-medical
17 examiners--and--the-Colorado-podiatry-board is submitted by an
18 applicant showing that:

19 SECTION 7. Article 32 of title 12, Colorado Revised
20 Statutes, 1978 Repl. Vol., as amended, is amended BY THE
21 ADDITION OF THE FOLLOWING NEW SECTIONS to read:

22 12-32-108.3. Disciplinary action by board. (1) The
23 president of the Colorado podiatry board shall divide those
24 members of the board other than himself into two panels. Each
25 panel shall act as both an inquiry and a hearings panel.
26 Members of such board may be assigned from one panel to the

1 other by the president. The president may be a member of both
2 panels, but in no event shall the president or any other
3 member who has considered a complaint as a member of one panel
4 acting as an inquiry panel take any part whatever in the
5 consideration of a formal complaint involving the same matter.
6 All matters referred to one panel for investigation shall be
7 heard, if referred for formal hearing, by the other panel or a
8 committee thereof. However, in its discretion, either inquiry
9 panel of the Colorado podiatry board may elect to refer a case
10 for formal hearing to a qualified hearing officer in lieu of a
11 hearings panel of said board for his initial decision pursuant
12 to the provisions of section 24-4-105, C.R.S. The initial
13 decision of the hearing officer may be reviewed pursuant to
14 section 24-4-105 (14) and (15), C.R.S., by the filing of
15 exceptions to the initial decision by the respondent or the
16 board's counsel with the hearings panel which would have heard
17 the case if it had not been referred to a hearing officer or
18 by review upon the motion of such hearings panel.

19 (2) Investigations shall be under the supervision of the
20 panel to which they are assigned. The persons making such
21 investigation shall report the results thereof to the
22 assigning panel for appropriate action.

23 (3) In the discharge of its duties, the Colorado
24 podiatry board may enlist the assistance of other podiatrist
25 licensed to practice podiatry in this state. Podiatrists have
26 the duty to report to the board any podiatrist known, or upon

1 information and belief, to have violated any of the provisions
2 of section 12-36-117 (1). Any person participating in good
3 faith in the making of a complaint or report or participating
4 in any investigative or administrative proceeding pursuant to
5 this section shall be immune from any liability, civil or
6 criminal, that otherwise might result by reason of such
7 action.

8 (4) (a) Complaints in writing relating to the conduct of
9 any podiatrist licensed or authorized to practice podiatry in
10 this state may be made by any person or may be initiated by
11 the Colorado podiatry board on its own motion. The podiatrist
12 complained of shall be given notice by certified mail of the
13 nature of all matters complained of and shall be given twenty
14 days to make explanation or answer thereto. Upon receipt of
15 the podiatrist's answer or at the conclusion of twenty days if
16 no answer has been received, the matter shall be referred to
17 one panel acting as an inquiry panel for that particular case,
18 referred to in this subsection (4) as the "inquiry panel", for
19 investigation. The investigation may be made by one or more
20 members of the inquiry panel, by one or more podiatrists who
21 are not members of the Colorado podiatry board, by a member of
22 the staff of such board, or by a professional investigator, as
23 the inquiry panel directs, and it shall be entirely informal.

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

26 (I) Disciplinary actions taken by hospitals to suspend

1 or revoke the privileges of a podiatrist and reported to such
2 board pursuant to section 25-3-107, C.R.S.;

3 (II) Disciplinary actions taken by a professional review
4 committee established pursuant to article 43.5 of this title
5 or section 12-32-107 (4) against a podiatrist;

6 (III) An instance of a medical malpractice settlement or
7 judgment against a podiatrist reported to the board pursuant
8 to section 10-1-124, C.R.S.; or

9 (IV) Podiatrists who have been allowed to resign from
10 hospitals for medical misconduct. Such hospitals shall report
11 the same.

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

14 (I) The complaint is without merit and no further action
15 need be taken with reference thereto;

16 (II) There is no reasonable cause to warrant further
17 action with reference thereto;

18 (III) The investigation discloses an instance of
19 unprofessional conduct which, in the opinion of the inquiry
20 panel, does not warrant formal action by the Colorado podiatry
21 board but which should not be dismissed as being without
22 merit; in such case, a certified letter, return receipt
23 requested, of admonition shall be sent to the podiatrist
24 against whom a complaint was made and a copy thereof to the
25 person making the complaint, but, when a letter of admonition
26 is sent by the inquiry panel to a podiatrist complained

1 against, such podiatrist shall be advised that he has the
2 right to request in writing, within twenty days after receipt
3 of the letter, that formal disciplinary proceedings be
4 initiated against him to adjudicate the propriety of the
5 conduct upon which the letter of admonition is based. If such
6 request is timely made, the letter of admonition shall be
7 deemed vacated, and the matter shall be processed by means of
8 formal disciplinary proceedings; or

9 (IV) The investigation discloses facts which warrant
10 further proceedings by formal complaint, as provided in
11 subsection (5) of this section, in which event the complaint
12 shall be referred to the attorney general for preparation and
13 filing of a formal complaint.

14 (d) All proceedings pursuant to this subsection
15 (4) shall be expeditiously and informally conducted so that
16 no podiatrist is subjected to unfair and unjust charges and
17 that no complainant is deprived of his right to a timely,
18 fair, and proper investigation of his complaint. A finding
19 that no further action need be taken on the complaint shall
20 not preclude the complainant from further pursuing the matter
21 by filing a formal complaint as provided in subsection (5) of
22 this section.

23 (5) (a) All formal complaints seeking disciplinary
24 action against a podiatrist shall be filed with the Colorado
25 podiatry board. A formal complaint shall set forth the
26 charges with sufficient particularity as to inform the

1 podiatrist clearly and specifically of the acts of
2 unprofessional conduct with which he is charged.

3 (b) Upon the filing of a formal complaint, the Colorado
4 podiatry board shall issue a citation, together with a copy of
5 the complaint attached thereto. The citation shall require
6 said podiatrist to file with the board, within twenty days
7 after service thereof, a written answer to the complaint. Such
8 citation and complaint may be served by certified mail, return
9 receipt requested, addressed to the podiatrist at his last
10 registered or known post-office address. The return receipt
11 signed by the podiatrist complained of shall be proof of
12 service thereof. In the event the podiatrist refuses to
13 accept such certified mail and sign the receipt therefor, the
14 citation and a copy of the complaint may be served upon him as
15 other process and proof thereof made, all as provided in rule
16 4 of the Colorado rules of civil procedure. The time to
17 answer shall commence from the date of service.

18 (c) It is the duty of the podiatrist so served with such
19 citation to file with the Colorado podiatry board his answer
20 to the complaint in which he shall admit or deny the material
21 allegations thereof and shall set forth any affirmative
22 defenses he may have. He may include in his answer any
23 request for a more particular statement of the alleged acts of
24 unprofessional conduct or may raise any other objections,
25 including a plea that the complaint does not charge
26 unprofessional conduct warranting the imposition of

1 discipline.

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

10 (e) Except as provided in subsection (1)° of this
11 section, all formal hearings shall be conducted by the
12 hearings panel. The podiatrist may be present in person, and
13 by counsel if he so desires, to offer evidence and be heard in
14 his defense. At formal hearings, the witnesses shall be
15 sworn, and a complete record shall be made of all proceedings
16 had and testimony taken. Hearings on formal complaints shall
17 be conducted in accordance with paragraph (f) of this
18 subsection (5) and the applicable provisions of section
19 24-4-105, C.R.S.

20 (f) Except as provided in subsection (1) of this
21 section, a hearing officer shall preside at the hearing, and
22 he shall advise the hearings panel on all such legal matters
23 in connection with the hearing as the panel may request. He
24 shall provide such advice or assistance as the hearings panel
25 may request in connection with its preparations of its
26 findings and recommendations or conclusions to be made. Such

1 hearing officer shall have the authority to administer oaths
2 and affirmations, sign and issue subpoenas, and perform such
3 other duties as the hearings panel may authorize him to
4 perform. Such hearing officer shall have the qualifications
5 provided in section 24-30-1003 (2), C.R.S., with five years'
6 experience as a licensed attorney.

7 (g) (I) To warrant a finding of unprofessional conduct,
8 the charges shall be established as specified in section
9 24-4-105 (7), C.R.S. Except as provided in subsection (1) of
10 this section, the hearings panel shall make a report of its
11 findings and conclusions which, when approved and signed by a
12 majority of those members of the hearings panel who have
13 conducted the hearing pursuant to paragraphs (e) and (f) of
14 this subsection (5), shall be and become the action of the
15 Colorado podiatry board.

16 (II) If it is found that the charges are unfounded and
17 unproven, the hearings panel, or a hearing officer sitting in
18 lieu of the hearings panel pursuant to subsection (1) of this
19 section, shall enter an order dismissing the complaint,
20 whereupon the matter shall be terminated, but any person who
21 has filed a complaint in the proceedings who desires to have
22 the matter of dismissal of the complaint reviewed may seek
23 such review pursuant to the provisions of section 12-32-108.5.

24 (III) If the hearings panel finds the charges proven and
25 orders that discipline be imposed, it shall also determine the
26 extent of such discipline in the form of a letter of

1 admonition, private censure, public censure, suspension for a
2 definite or indefinite period, or revocation of license to
3 practice. In any discipline other than revocation of a
4 license to practice, the hearings panel may also order that
5 the podiatrist be granted probation and allowed to continue to
6 practice during the period of such probation. The hearings
7 panel may also include in any disciplinary order which allows
8 the podiatrist to continue to practice such conditions as said
9 panel may deem appropriate to assure that the podiatrist is
10 physically, mentally, morally, and otherwise qualified to
11 practice podiatry in accordance with generally accepted
12 professional standards of practice, including any or all of
13 the following:

14 (A) Submission by the respondent to such examinations as
15 the hearings panel may order to determine his physical or
16 mental condition or his professional qualifications;

17 (B) The taking by him of such therapy or courses of
18 training or education as may be needed to correct deficiencies
19 found either in the hearing or by such examinations;

20 (C) The review or supervision of his practice as may be
21 necessary to determine the quality of his practice and to
22 correct deficiencies therein; and

23 (D) The imposition of restrictions upon the nature of
24 his practice to assure that he does not practice beyond the
25 limits of his capabilities.

26 (IV) Upon the failure of the podiatrist to comply with

1 any conditions imposed by the hearings panel pursuant to
2 subparagraph (III) of this paragraph (g), unless due to
3 conditions beyond the podiatrist's control, the hearings panel
4 may order suspension of the podiatrist's license to practice
5 in this state until such time as the podiatrist complies with
6 such conditions.

7 (V) In making any of the orders provided in
8 subparagraphs (III) and (IV) of this paragraph (g), the
9 hearings panel may take into consideration the podiatrist's
10 prior disciplinary record. If the hearings panel does take
11 into consideration any prior discipline of the podiatrist, its
12 findings and recommendations shall so indicate.

13 (VI) In all cases of revocation, suspension, or
14 probation, the Colorado podiatry board shall enter in its
15 records the facts of such revocation, suspension, or probation
16 and of any subsequent action of the board with respect
17 thereto.

18 (h) The attorney general shall prosecute those charges
19 which have been referred to him by the inquiry panel pursuant
20 to subparagraph (IV) of paragraph (c) of subsection (4) of
21 this section. The Colorado podiatry board may direct the
22 attorney general to perfect an appeal.

23 (6) A majority of the members of the Colorado podiatry
24 board shall constitute a quorum. The action of the majority
25 shall be the action of the board, the inquiry panel, or the
26 hearings panel.

1 (7) Upon the expiration of the term of suspension, the
2 license shall be reinstated by the Colorado podiatry board if
3 the holder thereof furnishes the board with evidence that he
4 has complied with all terms of the suspension. If such
5 evidence shows he has not complied with all terms of the
6 suspension, the board shall revoke the license at a hearing,
7 notice of which and the procedure at which shall be as
8 provided in this section.

9 (8) In case any person holding a license to practice
10 podiatry in this state is determined to be mentally
11 incompetent or insane by a court of competent jurisdiction and
12 a court enters, pursuant to part 3 or part 4 of article 14 of
13 title 15 or section 26-3-104 (4), 27-10-109 (4), or 27-10-125,
14 C.R.S., an order specifically finding that the mental
15 incompetency or insanity is of such a degree that the person
16 holding a license is incapable of continuing to practice
17 podiatry, his license shall automatically be suspended by the
18 board, and, anything in this article to the contrary
19 notwithstanding, such suspension shall continue until the
20 licensee is found by such court to be competent to practice
21 podiatry.

22 (9) (a) If the Colorado podiatry board has reasonable
23 cause to believe that a person licensed to practice podiatry
24 in this state is unable to practice podiatry with reasonable
25 skill and safety to patients because of a condition described
26 in section 12-32-107 (3) (f) or (3) (p), it may require such

1 licensee to submit to mental or physical examinations by
2 physicians designated by said board. Upon the failure of such
3 licensee to submit to such mental or physical examinations,
4 unless due to circumstances beyond his control, the board may
5 suspend such licensee's license to practice podiatry in this
6 state until such time as he submits to the required
7 examinations.

8 (b) Every person licensed to practice podiatry in this
9 state shall be deemed, by so practicing or by applying for
10 annual registration of his license to practice podiatry in
11 this state, to have given his consent to submit to mental or
12 physical examinations when directed in writing by the board
13 and, further, to have waived all objections to the
14 admissibility of the examining physician's testimony or
15 examination reports on the ground of privileged communication.

16 (c) The results of any mental or physical examination
17 ordered by the board shall not be used as evidence in any
18 proceeding other than before the Colorado podiatry board.

19 (10) Investigations, examinations, hearings, meetings,
20 or any other proceedings of the Colorado podiatry board
21 conducted pursuant to the provisions of this section shall be
22 exempt from the provisions of any law requiring that
23 proceedings of the board be conducted publicly or that the
24 minutes or records of the board with respect to action of the
25 board taken pursuant to the provisions of this section be open
26 to public inspection.

1 (11) A person licensed to practice podiatry who, at the
2 request of the Colorado podiatry board, examines another
3 person licensed to practice podiatry shall be immune from suit
4 for damages by the person examined if the examining person
5 conducted the examination and made his findings or diagnosis
6 in good faith.

7 (12) (a) The executive director of the department of
8 regulatory agencies may direct the Colorado podiatry board to
9 conduct an investigation of a person licensed to practice
10 podiatry about whom the executive director has received
11 complaints.

12 (b) The Colorado podiatry board, within sixty days,
13 shall accept or reject the directive of the executive director
14 under paragraph (a) of this subsection (12), and the board
15 shall notify the executive director of its decision. If said
16 board rejects the investigation or if, upon review, the
17 executive director and the attorney general find that the
18 board has not proceeded with a thorough investigation, the
19 executive director may then cause an investigation to be made
20 of the complaints presented to him; but no new investigation
21 shall be made by the executive director for the sole reason of
22 disagreement with the findings and conclusions of the board.
23 In any investigation conducted by the executive director
24 pursuant to this paragraph (b), the executive director may
25 utilize the staff, records, and moneys of the Colorado
26 podiatry board. After an investigation and, if necessary, a

1 hearing, the executive director shall submit to the board the
2 findings of fact and conclusions of law for further action.

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

8 12-32-108.5. Reconsideration and review of action of
9 board. (1) (a) The Colorado podiatry board, on its own
10 motion or upon application, at any time after the refusal to
11 grant a license, the imposition of any discipline as provided
12 in section 12-32-108.3, or the ordering of probation, as
13 provided in section 12-32-108.3 (5) (g) (III), may reconsider
14 its prior action and grant, reinstate, or restore such license
15 or terminate probation, or reduce the severity of its prior
16 disciplinary action. The taking of any such further action,
17 or the holding of a hearing with respect thereto, shall rest
18 in the sole discretion of the board.

19 (b) Upon the receipt of such application, it may be
20 forwarded to the attorney general for such investigation as
21 may be deemed necessary. A copy of the application and the
22 report of investigation shall be forwarded to the hearings
23 panel which shall consider the same and report its findings
24 and conclusions. The proceedings shall be governed by the
25 applicable provisions governing formal hearings in
26 disciplinary proceedings. The attorney general may present

1 evidence bearing upon the matters in issue, and the burden
2 shall be upon the applicant seeking reinstatement to establish
3 the averments of his application as specified in section
4 24-4-105 (7), C.R.S. No application for reinstatement or for
5 modification of a prior order shall be accepted unless the
6 applicant deposits with the board all amounts unpaid under any
7 prior order of the board.

8 (2) The action of the Colorado podiatry board in
9 refusing to grant a license, in taking any disciplinary action
10 as provided in section 12-32-108.3, or in placing a podiatrist
11 on probation may be reviewed by the court of appeals by
12 appropriate proceedings under section 24-4-106 (11), C.R.S.

13 SECTION 8. 12-32-109 (1), Colorado Revised Statutes,
14 1978 Repl. Vol., as amended, is amended, and the said
15 12-32-109 is further amended BY THE ADDITION OF A NEW
16 SUBSECTION, to read:

17 12-32-109. Violations - penalties - exemptions.

18 (1) Except as provided in subsections (1.5), (5), (6), and
19 (7) of this section, if any person, association, or
20 corporation practices podiatry within this state without
21 complying with the provisions of this article or if any
22 person, association, or corporation otherwise violates any
23 provision of this article, such person or any officer or
24 director of any such association or corporation is guilty of a
25 misdemeanor and, upon conviction thereof, shall be punished by
26 a fine of not less than fifty dollars nor more than five

1 hundred dollars, or by imprisonment in the county jail for not
2 less than ten days nor more than thirty days, or by both such
3 fine and imprisonment; and each day's failure to comply with,
4 or each day's violation of, the provisions of this article
5 shall constitute a separate offense.

6 (1.5) Any person who presents as his own the diploma,
7 license, certificate, or credentials of another, or who gives
8 either false or forged evidence of any kind to the Colorado
9 podiatry board, or any member thereof, in connection with an
10 application for a license to practice podiatry, or who
11 practices podiatry under a false or assumed name, or who
12 falsely impersonates another licensee of a like or different
13 name commits a class 5 felony and shall be punished as
14 provided in section 18-1-105, C.R.S.

15 SECTION 9. 12-32-111 (1), Colorado Revised Statutes,
16 1978 Repl. Vol., as amended, is amended, and the said
17 12-32-111 is further amended BY THE ADDITION OF THE FOLLOWING
18 NEW SUBSECTIONS, to read:

19 12-32-111. Renewal of license. (1) The Colorado
20 podiatry board shall set reasonable continuing education
21 requirements for renewal of license, but in no event shall the
22 board require more than fourteen hours' credit of continuing
23 education per year. A podiatrist desiring to renew his
24 license to practice podiatry shall submit to the Colorado
25 podiatry board the information the board believes necessary to
26 show that he has fulfilled the board's continuing education

1 requirements AND A FEE TO BE DETERMINED AND COLLECTED PURSUANT
2 TO SECTION 24-34-105, C.R.S.

3 (3) Any license issued by the Colorado podiatry board
4 shall expire for failure of the licensee to timely renew his
5 license pursuant to the rules and regulations established by
6 the board, including the payment of all required fees. Upon
7 compliance with the applicable rules and regulations regarding
8 renewal and payment of fees, the expired license shall be
9 reinstated.

10 (4) No license to practice podiatry which^o has been
11 delinquent for more than two years shall be renewed unless the
12 applicant demonstrates to the Colorado podiatry board his
13 continued professional competence.

14 SECTION 10. Article 32 of title 12, Colorado Revised
15 Statutes, 1978 Repl. Vol., as amended, is amended BY THE
16 ADDITION OF A NEW SECTION to read:

17 12-32-113. Injunctive proceedings. The Colorado
18 podiatry board, in the name of the people of the state of
19 Colorado, may apply for injunctive relief through the attorney
20 general in any court of competent jurisdiction to enjoin any
21 person who does not possess a currently valid or active
22 podiatry license from committing any act declared to be
23 unlawful or prohibited by this article. If it is established
24 that the defendant has been or is committing an act declared
25 to be unlawful or prohibited by this article, the court or any
26 judge thereof shall enter a decree perpetually enjoining said

1 defendant from further committing such act. In the case of a
2 violation of any injunction issued under the provisions of
3 this section, the court or any judge thereof may summarily try
4 and punish the offender for contempt of court. Such
5 injunctive proceedings shall be in addition to, and not in
6 lieu of, all penalties and other remedies provided for in this
7 article.

8 SECTION 11. 12-36-118 (3), (4) (a), (4) (b) (I), (4) (b)
9 (II), (4) (b) (III), (4) (b) (IV), (4) (c) (III), (4) (d), (5)
10 (a), (5) (b), (5) (c), (5) (d), and (5) (e), the introductory
11 portion to 12-36-118 (5) (g) (III), and 12-36-118 (5) (g)
12 (IV), (5) (g) (V), (8), (9) (a), (9) (b), (11), and (12) (a),
13 Colorado Revised Statutes, 1978 Repl. Vol., as amended, are
14 amended to read:

15 12-36-118. Disciplinary action by board. (3) In the
16 discharge of its duties, the board may enlist the assistance
17 of other physicians licensed to practice medicine in this
18 state. Physicians and-podiatrists have the duty to report to
19 the board any physician or--podiatrist known, or upon
20 information and belief, to have violated any of the provisions
21 of section 12-36-117 (1). ~~or--12-32-107--(3):~~ Any person
22 participating in good faith in the making of a complaint or
23 report or participating in any investigative or administrative
24 proceeding pursuant to this section shall be immune from any
25 liability, civil or criminal, that otherwise might result by
26 reason of such action.

1 (4) (a) Complaints in writing relating to the conduct of
2 any physician or-podiatrist licensed or authorized to practice
3 medicine or-podiatry in this state may be made by any person
4 or may be initiated by the board on its own motion. The
5 physician or-podiatrist complained of shall be given notice by
6 certified mail of the nature of all matters complained of and
7 shall be given twenty days to make explanation or answer
8 thereto. Upon receipt of the physician's or--podiatrist's
9 answer or at the conclusion of twenty days if no answer has
10 been received, the matter shall be referred to one panel
11 acting as an inquiry panel for that particular case, referred
12 to in this subsection (4) as the "inquiry panel", for
13 investigation. The investigation may be made by one or more
14 members of the inquiry panel, by one or more physicians or
15 podiatrists who are not members of the board, by a member of
16 the staff of the board, or by a professional investigator, as
17 the inquiry panel directs, and it shall be entirely informal.

18 (b) (I) Disciplinary actions taken by hospitals to
19 suspend or revoke the privileges of a physician or-podiatrist
20 and reported to the board pursuant to section 25-3-107,
21 C.R.S.;

22 (II) Disciplinary actions taken by a professional review
23 committee established pursuant to article 43.5 of this title
24 or-section-12-32-107-(4) against a physician; or--podiatrist;

25 (III) An instance of a medical malpractice settlement or
26 judgment against a physician or-podiatrist reported to the

1 board pursuant to section 10-1-124, C.R.S.; or

2 (IV) Physicians or-podiatrists who have been allowed to
3 resign from hospitals for medical misconduct. SUCH hospitals
4 shall report the same.

5 (c) (III) The investigation discloses an ethical
6 violation or an instance of misconduct which, in the opinion
7 of the inquiry panel, does not warrant formal action by the
8 board but which should not be dismissed as being without
9 merit; in such case, a certified letter, return receipt
10 requested, of admonition shall be sent to the physician or
11 podiatrist-of AGAINST whom a complaint was made and a copy
12 thereof to the person making the complaint, but, when a letter
13 of admonition is sent by the inquiry panel to a physician or
14 podiatrist complained against, such physician or--podiatrist
15 shall be advised that he has the right to request in writing,
16 within twenty days after receipt of the letter, that formal
17 disciplinary proceedings be initiated against him to
18 adjudicate the propriety of the conduct upon which the letter
19 of admonition is based. If such request is timely made, the
20 letter of admonition shall be deemed vacated, and the matter
21 shall be processed by means of formal disciplinary
22 proceedings; or

23 (d) All proceedings pursuant to this subsection
24 (4) shall be expeditiously and informally conducted so that
25 no physician or-podiatrist is subjected to unfair and unjust
26 charges and that no complainant is deprived of his right to a

1 timely, fair, and proper investigation of his complaint. A
2 finding that no further action need be taken on the complaint
3 shall not preclude the complainant from further pursuing the
4 matter by filing a formal complaint as provided in subsection
5 (5) of this section.

6 (5) (a) All formal complaints seeking disciplinary
7 action against a physician or-podiatrist shall be filed with
8 the board. A formal complaint shall set forth the charges
9 with sufficient particularity as to inform the physician or
10 podiatrist clearly and specifically of the acts of misconduct
11 with which he is charged.

12 (b) Upon the filing of a formal complaint, the board
13 shall issue a citation, together with a copy of the complaint
14 attached thereto. The citation shall require said physician or
15 podiatrist to file with the board, within twenty days after
16 service thereof, a written answer to the complaint. Such
17 citation and complaint may be served by certified mail, return
18 receipt requested, addressed to the physician or-podiatrist at
19 his last registered or known post-office address. The return
20 receipt signed by the physician or--podiatrist complained of
21 shall be proof of service thereof. In the event THAT the
22 physician or-podiatrist refuses to accept such certified mail
23 and sign the receipt therefor, the citation and a copy of the
24 complaint may be served upon him as other process and proof
25 thereof ARE made, all as provided in rule 4 of the Colorado
26 rules of civil procedure. The time to answer shall commence

1 from the date of service.

2 (c) It is the duty of the physician or-podiatrist so
3 served with such citation to file with the board his answer to
4 the complaint in which he shall admit or deny the material
5 allegations thereof and shall set forth any affirmative
6 defenses he may have. He may include in his answer any
7 request for a more particular statement of the alleged acts of
8 misconduct or may raise any other objections, including a plea
9 that the complaint does not charge misconduct warranting the
10 imposition of discipline.

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

20 (e) Except as provided in subsection (1) of this
21 section, all formal hearings shall be conducted by the
22 hearings panel. The physician or-podiatrist may be present in
23 person, and by counsel if he so desires, to offer evidence and
24 be heard in his defense. At formal hearings, the witnesses
25 shall be sworn, and a complete record shall be made of all
26 proceedings had and testimony taken. Hearings on formal

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

4 (g) (III) If the hearings panel finds the charges proven
5 and orders that discipline be imposed, it shall also determine
6 the extent of such discipline in the form of a letter of
7 admonition, private censure, public censure, suspension for a
8 definite or indefinite period, or revocation of license to
9 practice. In any discipline other than revocation of a
10 license to practice, the hearings panel may also order that
11 the physician or-podiatrist be granted probation and allowed
12 to continue to practice during the period of such probation.
13 The hearings panel may also include in any disciplinary order
14 which allows the physician or--podiatrist to continue to
15 practice such conditions as said panel may deem appropriate to
16 assure that the physician or--podiatrist is physically,
17 mentally, morally, and otherwise qualified to practice
18 medicine or--podiatry in accordance with generally accepted
19 professional standards of practice, including any or all of
20 the following:

21 (IV) Upon the failure of the physician or-podiatrist to
22 comply with any conditions imposed by the hearings panel
23 pursuant to subparagraph (III) of this paragraph (g), unless
24 due to conditions beyond the physician's or--podiatrist's
25 control, the hearings panel may order suspension of the
26 physician's or-podiatrist's license to practice in this state

1 until such time as the physician or-podiatrist complies with
2 such conditions.

3 (V) In making any of the orders provided in
4 subparagraphs (III) and (IV) of this paragraph (g), the
5 hearings panel may take into consideration the physician's or
6 podiatrist's prior disciplinary record. If the hearings panel
7 does take into consideration any prior discipline of the
8 physician, or-podiatrist; its findings and recommendations
9 shall so indicate.

10 (8) In case any person holding a license to practice
11 medicine or--podiatry in this state is determined to be
12 mentally incompetent or insane by a court of competent
13 jurisdiction and a court enters, pursuant to part 3 or part 4
14 of article 14 of title 15 or section 26-3-104 (4), 27-10-109
15 (4), or 27-10-125, C.R.S., an order specifically finding that
16 the mental incompetency or insanity is of such a degree that
17 the person holding a license is incapable of continuing to
18 practice medicine, or---podiatry; his license shall
19 automatically be suspended by the board, and, anything in this
20 article to the contrary notwithstanding, such suspension shall
21 continue until the licensee is found by such court to be
22 competent to practice medicine. or-podiatry:

23 (9) (a) If the board has reasonable cause to believe
24 that a person licensed to practice medicine or--podiatry in
25 this state is unable to practice medicine or-podiatry with
26 reasonable skill and safety to patients because of a condition

1 described in section 12-36-117 (1) (i) or (1) (o), or--section
2 ~~12-32-107--(3)-(f)-or-(3)-(p)~~; it may require such licensee to
3 submit to mental or physical examinations by physicians
4 designated by the board. Upon the failure of such licensee to
5 submit to such mental or physical examinations, unless due to
6 circumstances beyond his control, the board may suspend such
7 licensee's license to practice medicine or-podiatry in this
8 state until such time as he submits to the required
9 examinations.

10 (b) Every person licensed to practice medicine or
11 podiatry in this state shall be deemed, by so practicing or by
12 applying for annual registration of his license to practice
13 medicine or-podiatry in this state, to have given his consent
14 to submit to mental or physical examinations when directed in
15 writing by the board and, further, to have waived all
16 objections to the admissibility of the examining physician's
17 testimony or examination reports on the ground of privileged
18 communication.

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

25 (12) (a) The executive director of the department of
26 regulatory agencies may direct the board to conduct an

1 investigation of a person licensed to practice medicine or
2 podiatry about whom the executive director has received
3 complaints.

4 SECTION 12. 12-36-119 (2), Colorado Revised Statutes,
5 1978 Repl. Vol., as amended, is amended to read:

6 12-36-119. Reconsideration and review of action of
7 board. (2) The action of the board in refusing to grant a
8 license, in taking any disciplinary action as provided in
9 section 12-36-118, or in placing a physician or-podiatrist on
10 probation may be reviewed by the court of appeals by
11 appropriate proceedings under section 24-4-106 (11), C.R.S.

12 SECTION 13. 12-36-121, Colorado Revised Statutes, 1978
13 Repl. Vol., as amended, is amended to read:

14 12-36-121. Duplicates of license. The board is
15 authorized to issue a duplicate license to any person to whom
16 a license to practice medicine or-podiatry in this state has
17 been issued, upon application, properly verified by oath,
18 establishing to the satisfaction of the board that the
19 original license has been lost or destroyed and upon payment
20 to the board of a fee to be determined by regulation adopted
21 by the board. No person shall be entitled to a duplicate
22 license unless he is a licensee in good standing.

23 SECTION 14. 12-36-123 (1) (a), Colorado Revised
24 Statutes, 1978 Repl. Vol., as amended, is amended to read:

25 12-36-123. List of licensees - registration - fee -
26 when payable. (1) (a) During March of each year, the board

1 may cause its secretary to mail to each holder of an
2 unsuspended and unrevoked license to practice medicine or
3 podiatry in this state, at his last known address, a complete
4 list of the class of licensees to which the addressee belongs,
5 corrected to March 1 of the current year, including the name,
6 date, and number of the license and the business address of
7 each licensee entitled to practice. Every such licensee,
8 before March 1 of each year, shall pay to the secretary an
9 annual registration fee to be determined and collected
10 pursuant to section 24-34-105, C.R.S., and obtain an annual
11 registration certificate for the current calendar year.

12 SECTION 15. 12-36-124, Colorado Revised Statutes, 1978
13 Repl. Vol., as amended, is amended to read:

14 12-36-124. Certification of licensing. Upon request
15 therefor and the payment of a fee of five dollars, the
16 secretary of the board shall issue its certificate or
17 endorsement with respect to the licensing of, and the official
18 record of the board relating to, any licensee to whom a
19 license to practice medicine or-podiatry in this state has
20 been issued by this or any prior board; and, upon request
21 therefor and the payment of a fee of one dollar, the secretary
22 shall issue a certificate evidencing that any such licensee is
23 duly licensed to practice medicine or-podiatry in this state.

24 SECTION 16. 12-36-125 (2), Colorado Revised Statutes,
25 1978 Repl. Vol., is amended to read:

26 12-36-125. Division of fees. (2) Violation of the

1 provisions of this section shall constitute grounds for the
2 suspension or revocation of a license to practice medicine or
3 podiatry or the placing of the holder thereof on probation.

4 SECTION 17. 12-36-129 (2), Colorado Revised Statutes,
5 1978 Repl. Vol., as amended, is amended to read:

6 12-36-129. Violations - penalties. (2) Any person who
7 presents as his own the diploma, license, certificate, or
8 credentials of another, or who gives either false or forged
9 evidence of any kind to the board, or any member thereof, in
10 connection with an application for a license to practice
11 medicine, or--podiatry; or who practices medicine or-podiatry
12 under a false or assumed name, or who falsely impersonates
13 another licensee of a like or different name commits a class 5
14 felony and shall be punished as provided in section 18-1-105,
15 C.R.S.

16 SECTION 18. 13-4-102 (2), Colorado Revised Statutes, as
17 amended, is amended to read:

18 13-4-102. Jurisdiction. (2) The court of appeals shall
19 have initial jurisdiction to review awards or actions of the
20 industrial commission, as provided in articles 53 and 74 of
21 title 8, C.R.S., to review orders of the banking board
22 granting or denying charters for new state banks, as provided
23 in article 2 of title 11, C.R.S., to review actions of the
24 STATE board of medical examiners in refusing to grant or in
25 revoking or suspending a license or in placing the holder
26 thereof on probation, as provided in section 12-36-119 (2),

1 C.R.S., to review actions of the board of dental examiners in
2 refusing to issue or renew or in suspending or revoking a
3 license to practice dentistry or dental hygiene, as provided
4 in section 12-35-115, C.R.S., TO REVIEW ACTIONS OF THE
5 COLORADO PODIATRY BOARD IN REFUSING TO GRANT OR IN REVOKING OR
6 SUSPENDING A LICENSE OR IN PLACING THE HOLDER THEREOF ON
7 PROBATION, AS PROVIDED IN SECTION 12-32-108.5 (6), C.R.S., to
8 review decisions of the board of education in proceedings for
9 the dismissal of a teacher, as provided in section 22-63-117,
10 C.R.S., and to review final decisions and orders of the
11 Colorado civil rights commission, as provided in parts 3, 4,
12 and 7 of article 34 of title 24, C.R.S.

13 SECTION 19. 24-34-104, Colorado Revised Statutes, 1982
14 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW
15 SUBSECTION to read:

16 24-34-104. General assembly review of regulatory
17 agencies for termination, continuation, or reestablishment.

18 (24) The following board in the department of regulatory
19 agencies shall terminate on July 1, 1995: The Colorado
20 podiatry board, created by article 32 of title 12, C.R.S.

21 SECTION 20. Repeal. 12-36-120, Colorado Revised
22 Statutes, 1978 Repl. Vol., as amended, and 24-34-104 (14) (e),
23 Colorado Revised Statutes, 1982 Repl. Vol., as amended, are
24 repealed.

25 SECTION 21. Effective date. This act shall take effect
26 July 1, 1985.

1 SECTION 22. Safety clause. The general assembly hereby
2 finds, determines, and declares that this act is necessary
3 for the immediate preservation of the public peace, health,
4 and safety.

BILL 24

A BILL FOR AN ACT

1 CONCERNING PROFESSIONS LICENSED BY THE STATE BOARD OF NURSING,
2 AND PROVIDING FOR THE CONTINUATION OF SAID BOARD AND
3 RELATING TO THE POWERS AND DUTIES THEREOF.

Bill Summary

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

Provides for the continuation of the state board of nursing and makes various changes in the statutes concerning nurses and psychiatric technicians, including the following: Adjusts the terms of the board members so that no more than four members are appointed in a given year; repeals the requirement that the board list advanced practitioners of nursing; extends the grounds for discipline of nurses to include a plea of guilty to a felony; provides that the court of appeals will review decisions of the board which are appealed; establishes that the license renewal period for psychiatric technicians may be varied by the state board of nursing in accordance with provisions governing the department of regulatory agencies; conforms the disciplinary sections of the statutes relating to psychiatric technicians to those governing nurses; removes good moral character as a qualification for licensure of psychiatric technicians; and allows the board to deny licensure of psychiatric technicians if an applicant has committed any act that would be grounds for disciplinary action against a licensee.

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

1 SECTION 1. 12-38-104 (2), Colorado Revised Statutes,
2 1978 Repl. Vol., as amended, is amended to read:

3 12-38-104. Board created - subject to termination.
4 (2) (a) Two members of the former state board of practical
5 nursing and four members of the former state board of nursing,
6 existing immediately prior to July 1, 1980, shall serve as
7 members of the board created by this section. The terms of
8 said members shall automatically be extended to July 1 of the
9 year following the year in which their terms would have
10 expired; and, as the terms of the respective members of the
11 former boards expire, the governor shall make the required
12 appointments pursuant to this section.

13 (b) FROM THE FIVE BOARD MEMBERS WHOSE TERMS ARE TO
14 EXPIRE ON JULY 1, 1985, THE GOVERNOR SHALL SELECT ONE MEMBER
15 AND EXTEND THAT MEMBER'S TERM TO JULY 1, 1987. THE TERMS OF
16 THE FOUR OTHER MEMBERS SHALL EXPIRE AS SCHEDULED ON JULY 1,
17 1985. FROM THE FIVE BOARD MEMBERS WHOSE TERMS ARE TO EXPIRE
18 ON JULY 1, 1986, THE GOVERNOR SHALL SELECT ONE MEMBER AND
19 EXTEND THAT MEMBER'S TERM TO JULY 1, 1987. THE TERMS OF THE
20 FOUR OTHER MEMBERS SHALL EXPIRE AS SCHEDULED ON JULY 1, 1986.
21 THE TERM OF THE ELEVENTH MEMBER SHALL EXPIRE ON JULY 1, 1987,
22 AS SCHEDULED.

23 SECTION 2. 12-38-117 (1) (b), Colorado Revised Statutes,
24 1978 Repl. Vol., as amended, is amended to read:

25 12-38-117. Grounds for discipline. (1) (b) Has been
26 convicted of a felony or has had accepted by a court a plea of

1 GUILTY OR nolo contendere to a felony. A certified copy of
2 the judgment of a court of competent jurisdiction of such
3 conviction or plea shall be prima facie evidence of such
4 conviction. In considering the possible revocation,
5 suspension, or nonrenewal of a license or temporary license,
6 the board shall be governed by the provisions of section
7 24-5-101, C.R.S.

8 SECTION 3. 12-38-120 (6), Colorado Revised Statutes,
9 1978 Repl. Vol., as amended, is amended to read:

10 12-38-120. Disciplinary proceedings - hearing officers -
11 judicial review. (6) Final board action may be judicially
12 reviewed ~~as provided in section 24-4-106, C.R.S.~~ IN THE COURT
13 OF APPEALS, and judicial proceedings for the enforcement of a
14 board order may be instituted in accordance with section
15 24-4-106, C.R.S.

16 SECTION 4. 12-42-105 (1) (a), Colorado Revised Statutes,
17 1978 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS,
18 to read:

19 12-42-105. License by examination. (1) (a) Has not
20 committed an act which would be grounds for disciplinary
21 action against a licensee under this article;

22 SECTION 5. 12-42-108 (1) (a), Colorado Revised Statutes,
23 1978 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH
24 AMENDMENTS, to read:

25 12-42-108. License by waiver and examination.
26 (1) (a) Has not committed an act which would be grounds for

1 disciplinary action against a licensee under this article;

2 SECTION 6. 12-42-109, Colorado Revised Statutes, 1978
3 Repl. Vol., is amended to read:

4 12-42-109. License by endorsement. The board may issue
5 a license without examination to an applicant who is licensed
6 or otherwise registered as a psychiatric technician by another
7 state or a territory of the United States if the requirements
8 for license or registration in such state or territory are
9 substantially equal to the requirements in this article; but
10 in no event shall an applicant be required to meet
11 qualifications higher than those in force in this state at the
12 time of his application for license in this state. Every
13 applicant under this section shall state under oath that he is
14 ~~of-good-morad-character~~ HAS NOT COMMITTED AN ACT WHICH WOULD
15 BE GROUNDS FOR DISCIPLINARY ACTION UNDER THIS ARTICLE and THAT
16 HE has completed a four-year high school course of study or
17 the equivalent thereof.

18 SECTION 7. 12-42-112 (1), Colorado Revised Statutes,
19 1978 Repl. Vol., as amended, is amended to read:

20 12-42-112. Renewal of license. (1) Each license issued
21 under the provisions of this article shall be renewed
22 annually; ~~except-as-provided-in-this-section~~ EXCEPT THAT THE
23 PERIOD OF VALIDITY OF ANY LICENSE MAY BE CHANGED PURSUANT TO
24 THE PROVISIONS OF SECTION 24-34-102 (7), C.R.S. On or before
25 April 30 of each year, the board shall mail an application for
26 renewal of license to each person to whom a license was issued

1 or renewed during the current year, which application shall be
2 mailed to the most recent address of said person as it appears
3 on the records of the board. Such person shall complete the
4 renewal application and return it to the board with a renewal
5 fee established pursuant to section 24-34-105, C.R.S., before
6 July 1 of the year in which said application was received.
7 Upon receipt of any such application and fee, the board shall
8 verify the accuracy of such application and fee and issue to
9 the applicant a certificate of renewal of license for the
10 current year, beginning July 1 and expiring June 30.

11 SECTION 8. 12-42-113, Colorado Revised Statutes, 1978
12 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
13 read:

14 12-42-113. Grounds for discipline. (1) The board has
15 the power to revoke, suspend, withhold, or refuse to renew any
16 license to practice as a psychiatric technician; to place on
17 probation a licensee; or to issue a letter of admonition to a
18 licensee in accordance with the procedures set forth in
19 subsection (3) of this section, upon proof that such person:

20 (a) Has procured or attempted to procure a license by
21 fraud, deceit, misrepresentation, misleading omission, or
22 material misstatement of fact;

23 (b) Has been convicted of a felony or has had accepted
24 by a court a plea of guilty or nolo contendere to a felony. A
25 certified copy of the judgment of a court of competent
26 jurisdiction of such conviction or plea shall be prima facie

1 evidence of such conviction. In considering the possible
2 revocation, suspension, or nonrenewal of a license or
3 temporary license, the board shall be governed by the
4 provisions of section 24-5-101, C.R.S.

5 (c) Has willfully or negligently acted in a manner
6 inconsistent with the health or safety of persons under his
7 care;

8 (d) Has had a license to practice as a psychiatric
9 technician or any other health care occupation suspended or
10 revoked in any jurisdiction. A certified copy of the order of
11 suspension or revocation shall be prima facie evidence of such
12 suspension or revocation.

13 (e) Has violated any provision of this article or has
14 aided or knowingly permitted any person to violate any
15 provision of this article;

16 (f) Has negligently or willfully practiced as a
17 psychiatric technician in a manner which fails to meet
18 generally accepted standards for such practice;

19 (g) Has negligently or willfully violated any order,
20 rule, or regulation of the board pertaining to practice or
21 licensure as a psychiatric technician;

22 (h) Has falsified or in a negligent manner made
23 incorrect entries or failed to make essential entries on
24 patient records;

25 (i) Is addicted to or dependent on alcohol or
26 habit-forming drugs or is a habitual user of controlled

1 substances, as defined in section 12-22-303 (7), or other
2 drugs having similar effects; except that the board has the
3 discretion not to discipline the licensee if he is
4 participating in good faith in a program approved by the board
5 designed to end such addiction or dependency;

6 (j) Has a physical or mental disability which renders
7 him unable to practice as a psychiatric technician with
8 reasonable skill and safety to the patients and which may
9 endanger the health or safety of persons under his care;

10 (k) Has violated the confidentiality of information or
11 knowledge as prescribed by law concerning any patient;

12 (1) Has engaged in any conduct which would constitute a
13 crime as defined in title 18, C.R.S., and which conduct
14 relates to such person's employment as a psychiatric
15 technician.

16 (2) Except as specifically provided in subsection (1) of
17 this section, the board need not find that the actions which
18 are grounds for discipline were willful, but it may consider
19 the same in determining the nature of disciplinary sanctions
20 imposed.

21 (3) When a complaint or an investigation discloses an
22 instance of misconduct which, in the opinion of the board,
23 does not warrant formal action by the board but which should
24 not be dismissed as being without merit, a letter of
25 admonition may be sent by certified mail to the psychiatric
26 technician against whom a complaint was made and a copy

1 thereof to the person making the complaint, but, when a letter
2 of admonition is sent by certified mail by the board to a
3 psychiatric technician complained against, such psychiatric
4 technician nurse shall be advised that he has the right to
5 request in writing, within twenty days after proven receipt of
6 the letter, that formal disciplinary proceedings be initiated
7 against him to adjudicate the propriety of the conduct upon
8 which the letter of admonition is based. If such request is
9 timely made, the letter of admonition shall be deemed vacated,
10 and the matter shall be processed by means of formal
11 disciplinary proceedings.

12 (4) Any license issued by the board shall be summarily
13 suspended by operation of law for failure of the licensee to
14 timely renew his license pursuant to the rules and regulations
15 established by the board, including the payment of all
16 required fees. Upon compliance with the applicable rules and
17 regulations regarding renewal and payment of fees, the
18 suspended license shall be reinstated.

19 (5) If the board finds the charges proven and orders
20 that discipline be imposed, it may also require the licensee
21 to take such therapy or courses of training or education as a
22 requirement for reinstatement as may be needed to correct any
23 deficiency found in the hearing.

24 SECTION 9. 12-42-114, Colorado Revised Statutes, 1978
25 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
26 read:

1 12-42-114. Withholding or denial of license - hearing.

2 (1) The board is empowered to determine summarily whether an
3 applicant for a license to practice as a psychiatric
4 technician possesses the qualifications required by this
5 article or whether there is probable cause to believe that an
6 applicant has done any of the acts set forth in section
7 12-42-113 as grounds for discipline. As used in this section,
8 "applicant" does not include a renewal applicant.

9 (2) If the board determines that an applicant does not
10 possess the qualifications required by this article or that
11 probable cause exists to believe that an applicant has done
12 any of the acts set forth in section 12-42-113, the board may
13 withhold or deny the applicant a license. In such instance,
14 the provisions of section 24-4-104 (9), C.R.S., shall apply,
15 and the board shall provide such applicant with a statement in
16 writing setting forth the basis of the board's determination
17 that the applicant does not possess the qualifications
18 required by this article or the factual basis for probable
19 cause that the applicant has done any of the acts set forth in
20 section 12-42-113.

21 (3) If the applicant requests a hearing pursuant to the
22 provisions of section 24-4-104 (9), C.R.S., and fails to
23 appear without good cause at such hearing, the board may
24 affirm its prior action of withholding or denial without
25 conducting a hearing.

26 (4) Following a hearing, the board shall affirm, modify,

1 or reverse its prior action in accordance with its findings at
2 such hearing.

3 (5) No action shall lie against the board for the
4 withholding or denial of a license without a hearing in
5 accordance with the provisions of this section if the board
6 acted reasonably and in good faith.

7 (6) At such hearing, the applicant shall have the burden
8 of proof to show that he possesses the qualifications required
9 for licensure under this article. The board shall have the
10 burden of proof to show commission of acts set forth in
11 section 12-42-113.

12 SECTION 10. 12-42-115, Colorado Revised Statutes, 1978
13 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to
14 read:

15 12-42-115. Mental and physical examination of licensees.

16 (1) If any licensee is determined to be mentally incompetent
17 or insane by a court of competent jurisdiction, his license
18 shall automatically be suspended by the board, and such
19 suspension shall continue until the licensee is determined by
20 such court to be restored to reason or until such person is
21 duly discharged as restored to reason in any other manner
22 provided by law.

23 (2) (a) If the board has reasonable cause to believe
24 that a licensee is unable to practice with reasonable skill
25 and safety to patients because of a condition described in
26 section 12-42-113 (1) (i) or (1) (j), it may require such

1 person to submit to a mental or physical examination by a
2 physician it designates. Upon the failure of such person to
3 submit to such mental or physical examination, unless due to
4 circumstances beyond his control, the board may suspend such
5 person's license until such time as such person submits to the
6 required examinations.

7 (b) Every licensee, by engaging in the practice of a
8 psychiatric technician in this state or by applying for the
9 renewal of his license therefor, shall be deemed to have given
10 consent to submit to a mental or physical examination when so
11 directed in writing by the board. The direction to submit to
12 such an examination shall contain the basis of the board's
13 reasonable cause to believe that the licensee is unable to
14 practice with reasonable skill and safety to patients because
15 of a condition described in section 12-42-113 (1) (i) or (1)
16 (j). The licensee shall be deemed to have waived all
17 objections to the admissibility of the examining physician's
18 testimony or examination reports on the ground of privileged
19 communication.

20 (c) Nothing in this section shall prevent the licensee
21 from submitting to the board testimony or examination reports
22 of a physician designated by the licensee pertaining to a
23 condition described in section 12-42-113 (1) (i) or (1) (j)
24 which may be considered by the board in conjunction with, but
25 not in lieu of, testimony and examination reports of the
26 physician designated by the board.

1 (d) The results of any mental or physical examination
2 ordered by the board shall not be used as evidence in any
3 proceeding other than one before the board and shall not be
4 deemed public records nor made available to the public.

5 SECTION 11. Article 42 of title 12, Colorado Revised
6 Statutes, 1978 Repl. Vol., as amended, is amended BY THE
7 ADDITION OF THE FOLLOWING NEW SECTIONS to read:

8 12-42-115.3. Disciplinary proceedings - hearing officers
9 - judicial review. (1) The board, through the department of
10 regulatory agencies, may employ hearing officers, on a
11 full-time or part-time basis, to conduct hearings as provided
12 by this article or on any matter within the board's
13 jurisdiction upon such conditions and terms as the board may
14 determine.

15 (2) A proceeding for discipline of a licensee may be
16 commenced when the board has reasonable grounds to believe
17 that a licensee under the board's jurisdiction has committed
18 acts which may violate section 12-42-113.

19 (3) The attendance of witnesses and the production of
20 books, patient records, papers, and other pertinent documents
21 at the hearing may be summoned by subpoenas issued by the
22 board, which shall be served in the manner provided by the
23 Colorado rules of civil procedure for service of subpoenas.

24 (4) Disciplinary proceedings shall be conducted in the
25 manner prescribed by article 4 of title 24, C.R.S., and the
26 hearing and opportunity for review shall be conducted pursuant

1 to said article by the board or a hearing officer at the
2 board's discretion.

3 (5) No previously issued license to engage in practice
4 as a psychiatric technician shall be revoked or suspended
5 until after a hearing conducted pursuant to section 24-4-105,
6 C.R.S., except as provided for emergency situations by section
7 24-4-104, C.R.S. The denial of an application to renew an
8 existing license shall be treated in all respects as a
9 revocation. If an application for a new license is denied,
10 the applicant, within sixty days after the giving of notice of
11 such action, may request a hearing as provided in section
12 24-4-105, C.R.S.

13 (6) Final board action may be judicially reviewed in the
14 court of appeals, and judicial proceedings for the enforcement
15 of a board order may be instituted in accordance with section
16 24-4-106, C.R.S.

17 (7) In order to aid the board in any hearing or
18 investigation instituted pursuant to this section, the board,
19 through any member or executive officer thereof, shall have
20 the power to issue subpoenas commanding production of copies
21 of any records containing information relevant to practice as
22 a psychiatric technician rendered by any licensee, including,
23 but not limited to, hospital and physician records. The
24 person providing such copies shall prepare them from the
25 original record and shall delete from the copy provided
26 pursuant to the subpoena the name of the patient, but he shall

1 identify the patient by a numbered code, to be retained by the
2 custodian of the records from which the copies were made.
3 Upon certification of the custodian that the copies are true
4 and complete except for the patient's name, they shall be
5 deemed authentic, subject to the right to inspect the
6 originals for the limited purpose of ascertaining the accuracy
7 of the copies. No privilege of confidentiality shall exist
8 with respect to such copies, and no liability shall lie
9 against the board or the custodian or his authorized employee
10 for furnishing or using such copies in accordance with this
11 subsection (7).

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

17 (9) An employer of a psychiatric technician shall report
18 to the board any disciplinary action taken against the
19 psychiatric technician or resignation in lieu of a
20 disciplinary action for conduct which constitutes a violation
21 of this article.

22 (10) Except when a decision to proceed with a
23 disciplinary action has been agreed upon by a majority of the
24 board, investigations, examinations, hearings, meetings, or
25 any other proceedings of the board conducted pursuant to the
26 provisions of this section shall be exempt from the provisions

1 of any law requiring that proceedings of the board be
2 conducted publicly or that the minutes or records of the board
3 with respect to action of the board taken pursuant to the
4 provisions of this section be open to public inspection.

5 12-42-115.5. Immunity in professional review. (1) If a
6 professional review committee is established pursuant to
7 section 12-38-109 to investigate the quality of care being
8 given by a person licensed pursuant to this article, it shall
9 include in its membership at least three persons licensed in
10 the same category as the licensee under review, but such
11 committee may be authorized to act only by the board.

12 (2) Any member of the board or a professional review
13 committee authorized by the board and any witness appearing
14 before the board or such professional review committee shall
15 be immune from suit in any civil action brought by a licensee
16 who is the subject of a professional review proceeding if such
17 member or witness acts in good faith within the scope of the
18 function of the board or such committee, has made a reasonable
19 effort to obtain the facts of the matter as to which he acts,
20 and acts in the reasonable belief that the action taken by him
21 is warranted by the facts.

22 12-42-115.7. Surrender of license. (1) Prior to the
23 initiation of an investigation or hearing, any licensee may
24 surrender his license to practice as a psychiatric technician.

25 (2) Following the initiation of an investigation or
26 hearing and upon a finding that to do so would be in the

1 public interest, the board may allow a licensee to surrender
2 his license to practice.

3 (3) The board shall not issue a license to a former
4 licensee whose license has been surrendered unless the
5 licensee meets all of the requirements of this article for a
6 new applicant, including the passing of an examination.

7 (4) The surrender of a license in accordance with this
8 section removes all rights and privileges to practice as a
9 psychiatric technician, including renewal of a license.

10 SECTION 12. 13-4-102 (2), Colorado Revised Statutes, as
11 amended, is amended to read:

12 13-4-102. Jurisdiction. (2) The court of appeals shall
13 have initial jurisdiction to review awards or actions of the
14 industrial commission, as provided in articles 53 and 74 of
15 title 8, C.R.S., to review orders of the banking board
16 granting or denying charters for new state banks, as provided
17 in article 2 of title 11, C.R.S., to review actions of the
18 board of medical examiners in refusing to grant or in revoking
19 or suspending a license or in placing the holder thereof on
20 probation, as provided in section 12-36-119 (2), C.R.S., to
21 review actions of the board of dental examiners in refusing to
22 issue or renew or in suspending or revoking a license to
23 practice dentistry or dental hygiene, as provided in section
24 12-35-115, C.R.S., TO REVIEW ACTIONS OF THE BOARD OF NURSING
25 IN REFUSING TO GRANT, REVOKING, SUSPENDING, WITHHOLDING, OR
26 REFUSING TO RENEW A LICENSE, ISSUING A LETTER OF ADMONITION,

1 OR PLACING A LICENSEE ON PROBATION, AS PROVIDED IN ARTICLES 38
2 AND 42 OF TITLE 12, C.R.S., to review decisions of the board
3 of education in proceedings for the dismissal of a teacher, as
4 provided in section 22-63-117, C.R.S., and to review final
5 decisions and orders of the Colorado civil rights commission,
6 as provided in parts 3, 4, and 7 of article 34 of title 24,
7 C.R.S.

8 SECTION 13. 24-34-104, Colorado Revised Statutes, 1982
9 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW
10 SUBSECTION to read:

11 24-34-104. General assembly review of regulatory
12 agencies for termination, continuation, or reestablishment.

13 (24) The following board in the department of regulatory
14 agencies shall terminate on July 1, 1995: The state board of
15 nursing, created by article 38 of title 12, C.R.S.

16 SECTION 14. Repeal. 12-38-103 (1) and 12-38-108 (1)
17 (e), Colorado Revised Statutes, 1978 Repl. Vol., as amended,
18 and 24-34-104 (14) (c), Colorado Revised Statutes, 1982 Repl.
19 Vol., as amended, are repealed.

20 SECTION 15. Effective date. This act shall take effect
21 July 1, 1985.

22 SECTION 16. Safety clause. The general assembly hereby
23 finds, determines, and declares that this act is necessary
24 for the immediate preservation of the public peace, health,
25 and safety.

BILL 25

A BILL FOR AN ACT

1 CONCERNING THE PROHIBITION OF TREATMENT BY COLONIC IRRIGATION
2 THERAPY.

Bill Summary

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

Prohibits treatment by colonic irrigation therapy. Makes the use of such treatment a class 3 misdemeanor.

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

4 SECTION 1. Article 13 of title 18, Colorado Revised
5 Statutes, 1978 Repl. Vol., as amended, is amended BY THE
6 ADDITION OF A NEW SECTION to read:

7 18-13-119. Treatment by colonic irrigation therapy. Any
8 person who treats another by the use of colonic irrigation
9 therapy commits a class 3 misdemeanor.

10 SECTION 2. Effective date. This act shall take effect
11 July 1, 1985.

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

1 for the immediate preservation of the public peace, health,
2 and safety.