HOUSE JOURNAL

SIXTY-SEVENTH GENERAL ASSEMBLY STATE OF COLORADO

Second Regular Session

Ninety-ninth Legislative Day

Wednesday, April 21, 2010

1 2 3	Prayer by the Reverend Rhoades Hollowell, St. Mary Magdalene Episcopal Church, Boulder.
4	The Speaker called the House to order at 9:00 a.m.
5 6 7	Pledge of Allegiance led by Lakeif McDonald, Columbine Elementary, Denver.
8	The roll was called with the following result:
10 11 12 13 14	Present58. ExcusedRepresentative(s) Labuda, Looper, Merrifield, Middleton, Nikkel, Scanlan, Solano7. Present after roll callRepresentative(s) Labuda, Middleton.
16 17	The Speaker declared a quorum present.
18 19 20 21	On motion of Representative Miklosi, the reading of the journal of April 20, 2010, was declared dispensed with and approved as corrected by the Chief Clerk.
22 23 24 25	
26 27 28 29	On motion of Representative Primavera, the House resolved itself into Committee of the Whole for consideration of General Orders, and she was called to the Chair to act as Chairman.
30 31	GENERAL ORDERSSECOND READING OF BILLS
32 33 34 35 36 37	The Committee of the Whole having risen, the Chairman reported the titles of the following bills had been read (reading at length had been dispensed with by unanimous consent), the bills considered and action taken thereon as follows:
88 89	(Amendments to the committee amendment are to the printed committee report which was printed and placed in the members' bill file.)

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"some sex CERTAIN".".

HB10-1287 by Representative(s) Lambert, Acree, Baumgardner, 2 Bradford, DelGrosso, Ferrandino, Gardner C., Gerou, 3 Kerr J., Looper, May, McNulty, Murray, Nikkel, Pommer, Priola, Sonnenberg, Stephens, Summers, Tipton; also Senator(s) Cadman, Renfroe, Harvey, Mitchell, Keller, 4 5 6 King K., Kopp, Lundberg, Schultheis, Spence, Tapia, 7 White--Concerning the use of a state-owned motor vehicle 8 for commuting purposes. 9 10 Amendment No. 1, Finance Report, dated April 14, 2010, and placed in 11 member's bill file; Report also printed in House Journal, April 15, pages 1254-1257. 12 13 Amendment No. 2, Appropriations Report, dated April 16, 2010, and 14 15 placed in member's bill file; Report also printed in House Journal, 16 April 16, page 1298. 17 As amended, ordered engrossed and placed on the Calendar for Third 18 19 Reading and Final Passage. 20 21 **HB10-1338** by Representative(s) McCann; also Senator(s) Steadman--22 Concerning the eligibility for probation of a person who 23 has two or more felony convictions. 24 25 Amendment No. 1, Judiciary Report, dated March 11, 2010, and placed in member's bill file; Report also printed in House Journal, March 12, 27 pages 776-778. 28 Amendment No. 2, Appropriations Report, dated April 16, 2010, and placed in member's bill file; Report also printed in House Journal, 30 31 April 16, pages 1298-1299. 32 33 As amended, ordered engrossed and placed on the Calendar for Third 34 Reading and Final Passage. 35 HB10-1364 by Representative(s) Ryden; also Senator(s) Hudak--37 Concerning the sex offender management board, and, in connection therewith, continuing the sex offender 38 39 management board. 40 41 Amendment No. 1, Judiciary Report, dated March 25, 2010, and placed in member's bill file; Report also printed in House Journal, March 26, 42 43 pages 990-991. 44 45 Amendment No. 2, Appropriations Report, dated April 16, 2010, and 46 placed in member's bill file; Report also printed in House Journal, 47 April 16, pages 1301-1302. 48 49 <u>Amendment No. 3</u>, by Representative(s) Ferrandino. 50 Amend the Judiciary Committee Report, dated March 25, 2010, before 52 line 1 insert: 53

"Amend printed bill, page 4, line 19, strike "some sex" and substitute

1 2	Page 1 of the and substitute	committee report, line 1, strike "Amend printed bill, page" e "Page".				
3 4 5	Page 1 of the committee report, line 2, strike "SOME" and substitute "CERTAIN".					
6 7 8	Page 1 of the "CERTAIN".	e committee report, line 3, strike "SOME" and substitute				
9 0 1	As amended, ordered engrossed and placed on the Calendar for Third Reading and Final Passage.					
12 13 14 15 16 17 18 19 20 21	<u>HB10-1370</u>	by Representative(s) Court, Apuan, Carroll T., Casso, Curry, Ferrandino, Fischer, Frangas, Gagliardi, Hullinghorst, Kagan, Kerr A., King S., Labuda, Levy, Looper, Massey, McCann, McFadyen, Merrifield, Middleton, Miklosi, Murray, Pace, Peniston, Pommer, Primavera, Rice, Roberts, Ryden, Scanlan, Schafer S., Solano, Soper, Todd, Tyler, Vaad, Vigil, Weissmann; also Senator(s) SteadmanConcerning certain disclosure requirements that apply to statewide ballot measures.				
22 23 24 25 26	House Journal, April 7, page 1131.					
27 28	As amended, ordered engrossed and placed on the Calendar for Thir Reading and Final Passage.					
29 30 31 32 33	<u>HB10-1398</u>	by Representative(s) Fischer; also Senator(s) Whitehead-Concerning the species conservation trust fund, and, in connection therewith, approving the species conservation eligibility list.				
35 36	Ordered engrossed and placed on the Calendar for Third Reading and Final Passage.					
37 38 39 40 41	<u>HB10-1394</u>	by Representative(s) Rice; also Senator(s) Scheffel-Concerning professional liability insurance policies issued to construction professionals.				
12 13	Amendment No. 1, by Representative(s) Rice.					
14 15	Strike the Business Affairs and Labor Committee Report, dated April 7 2010, and substitute:					
16 17 18 19	"Amend printed bill, page 3, strike lines 3 and 4 and substitute "ARISING OUT OF CONSTRUCTION DEFECTS IS IN THE BEST INTEREST OF INSURERS CONSTRUCTION PROFESSIONALS, AND PROPERTY".					
50 51	Page 3, line 11, before "INSURANCE" insert "LIABILITY".					
52 53 54	Page 4, after line 4 insert:					
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"(d) "LIABILITY INSURANCE POLICY" MEANS A CONTRACT OF INSURANCE COVERING OCCURRENCES OF DAMAGE OR INJURY DURING THE

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56 Page 5, strike line 20 and substitute:

POLICY PERIOD AND THAT INSURES A CONSTRUCTION PROFESSIONAL FOR LIABILITY ARISING FROM CONSTRUCTION-RELATED WORK.". 4 Page 4, strike lines 5 through 19 and substitute: 6 "(3) (a) IN INTERPRETING A LIABILITY INSURANCE POLICY ISSUED 7 TO A CONSTRUCTION PROFESSIONAL, A COURT SHALL PRESUME THAT: 8 9 COMPLIANCE WITH A CONSTRUCTION PROFESSIONAL'S 10 OBJECTIVE, REASONABLE EXPECTATIONS IS INTENDED; 11 12 (II) THE ENTIRE POLICY IS TO BE EFFECTIVE AND IS INTENDED TO 13 BE READ HARMONIOUSLY AS A WHOLE; 14 15 (III) A JUST AND REASONABLE RESULT IS INTENDED; 16 17 (IV) AMBIGUITY IN THE INTERPRETATION OF A POLICY IS TO BE 18 CONSTRUED IN FAVOR OF COVERAGE; 19 20 (V) AN INTERPRETATION THAT RENDERS A COVERAGE PROVISION 21 ILLUSORY IS NOT INTENDED; AND (VI) THE WORK OF A CONSTRUCTION PROFESSIONAL THAT RESULTS 24 IN PROPERTY DAMAGE, INCLUDING DAMAGE TO THE WORK ITSELF OR 25 OTHER WORK, IS AN ACCIDENT UNLESS THE PROPERTY DAMAGE IS 26 INTENDED AND EXPECTED BY THE INSURED. 27 28 (b) THE PRESUMPTION OF SUBPARAGRAPH (I) OF PARAGRAPH (a) 29 OF THIS SUBSECTION (3) IS REBUTTABLE.". 31 Page 4, line 22, strike "SHALL" and substitute "MAY". 32 33 Page 4, line 24, after "POLICY;" add "AND". 34 35 Page 4, line 27, strike "PROPERTY; AND" and substitute "PROPERTY.". 36 37 Page 5, strike lines 3 through 14 and substitute "A COURT MAY CONSIDER 38 AND GIVE WEIGHT TO ANY WRITING CONCERNING THE INSURANCE POLICY 39 PROVISION IN DISPUTE THAT IS NOT PROTECTED FROM DISCLOSURE BY THE 40 ATTORNEY-CLIENT PRIVILEGE, WORK-PRODUCT PRIVILEGE, OR ARTICLE 72 41 OF TITLE 24, C.R.S., AND THAT IS GENERATED, APPROVED, ADOPTED, OR 42 RELIED ON BY THE INSURER OR ITS PARENT OR SUBSIDIARY COMPANY; OR 43 AN INSURANCE RATING OR POLICY DRAFTING ORGANIZATION, SUCH AS THE 44 INSURANCE SERVICES OFFICE, INC., OR ITS PREDECESSOR OR SUCCESSOR 45 ORGANIZATIONS; EXCEPT THAT SUCH WRITING SHALL NOT BE USED TO 46 RESTRICT, LIMIT, EXCLUDE, OR CONDITION COVERAGE OR THE INSURER'S 47 OBLIGATION BEYOND THAT WHICH IS REASONABLY INFERRED FROM THE 48 WORDS USED IN THE INSURANCE POLICY.". 49 50 Page 5, line 15, after "GRANT" insert "OR RESTORE". 52 Page 5, line 17, after "EXCLUDE" insert "OR LIMIT". 53 54 Page 5, line 18, strike "CONTRACT" and substitute "INSURANCE POLICY".

"(6) If an insurer disclaims or limits coverage under a 2 LIABILITY INSURANCE POLICY ISSUED TO A". 4 Page 5, strike lines 24 and 25 and substitute "INSURANCE POLICY BARS OR 5 LIMITS COVERAGE FOR THE INSURED'S LEGAL LIABILITY IN AN ACTION OR 6 NOTICE OF CLAIM MADE PURSUANT TO SECTION 13-20-803.5 CONCERNING 7 A CONSTRUCTION DEFECT; AND". 9 Page 5, line 27, strike "COVERAGE GRANT" and substitute "INSURANCE 10 POLICY". 11 12 Page 6, after line 1 insert: 13 14 "(7) (a) AN INSURER'S DUTY TO DEFEND A CONSTRUCTION 15 PROFESSIONAL OR OTHER INSURED UNDER A LIABILITY INSURANCE POLICY 16 ISSUED TO A CONSTRUCTION PROFESSIONAL SHALL BE TRIGGERED BY A 17 POTENTIALLY COVERED LIABILITY DESCRIBED IN: 18 19 (I) A NOTICE OF CLAIM MADE PURSUANT TO SECTION 13-20-803.5; 20 OR 21 A COMPLAINT, CROSS-CLAIM, COUNTERCLAIM, OR 23 THIRD-PARTY CLAIM FILED IN AN ACTION AGAINST THE CONSTRUCTION 24 PROFESSIONAL CONCERNING A CONSTRUCTION DEFECT. 25 26 (b) (I) AN INSURER SHALL DEFEND A CONSTRUCTION 27 PROFESSIONAL WHO HAS RECEIVED A NOTICE OF CLAIM MADE PURSUANT 28 TO SECTION 13-20-803.5 REGARDLESS OF WHETHER ANOTHER INSURER 29 MAY ALSO OWE THE INSURED A DUTY TO DEFEND THE NOTICE OF CLAIM 30 UNLESS AUTHORIZED BY LAW. IN DEFENDING THE CLAIM, THE INSURER 31 SHALL: 32 33 (A) REASONABLY INVESTIGATE THE CLAIM; AND 34 35 (B) REASONABLY COOPERATE WITH THE INSURED IN THE NOTICE 36 OF CLAIMS PROCESS. 37 38 (II) THIS PARAGRAPH (b) DOES NOT REQUIRE THE INSURER TO 39 RETAIN LEGAL COUNSEL FOR THE INSURED OR TO PAY ANY SUMS TOWARD 40 SETTLEMENT OF THE NOTICE OF CLAIM THAT ARE NOT COVERED BY THE 41 INSURANCE POLICY. 42 43 (III) AN INSURER SHALL NOT WITHDRAW ITS DEFENSE OF AN 44 INSURED CONSTRUCTION PROFESSIONAL OR COMMENCE AN ACTION 45 SEEKING REIMBURSEMENT FROM AN INSURED FOR EXPENDED DEFENSE 46 COST UNLESS AUTHORIZED BY LAW AND UNLESS THE INSURER HAS 47 RESERVED SUCH RIGHT IN WRITING WHEN ACCEPTING OR ASSUMING THE 48 DEFENSE OBLIGATION. 49 50 (8) NOTHING IN THIS SECTION CREATES INSURANCE COVERAGE NOT 51 INCLUDED IN THE CONTRACT OF INSURANCE.".

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53 Page 6, line 5, strike "of" and substitute "in".

55 Page 6, strike lines 13 through 27 and substitute:

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50 <u>Amendment No. 2</u>, by Representative(s) Rice.

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52 Amend, Amendment No. 1, by Representative Rice, as printed in House Journal, page 1364, strike lines 8 through 15, and substitute "ACTUAL" 54 KNOWLEDGE OF THE INJURY OR DAMAGES BEFORE THE POLICY'S INCEPTION 55 DATE.".

Amendment No. 3, by Representative(s) Rice.

Amend Amendment No. 1, by Representative Rice, as printed in House Journal, page 1362, line 26, strike "INSURED." and substitute "INSURED, BUT NOTHING IN THIS SUBPARAGRAPH (VI) CREATES INSURANCE COVERAGE NOT INCLUDED IN THE CONTRACT OF INSURANCE.".

Page 1363, strike lines 48 through 51 and substitute "DEFENSE" OBLIGATION.".

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As amended, ordered engrossed and placed on the Calendar for Third Reading and Final Passage. 12

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On motion of Representative Weissmann, the remainder of the General Orders Calendar (**HB10-1373**, **SB10-153**, **159**, **HB10-1181**) was laid over until April 23, retaining place on Calendar.

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ADOPTION OF COMMITTEE OF THE WHOLE REPORT

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> Passed Second Reading: HB10-1287 amended, 1338 amended, 1364 amended, 1370 amended, 1398, 1394 amended.

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Laid over until date indicated retaining place on Calendar: **HB10-1373**, **SB10-153, 159, HB10-1181**--April 23, 2010.

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The Chairman moved the adoption of the Committee of the Whole Report. As shown by the following roll call vote, a majority of those elected to the House voted in the affirmative, and the Report was adopted.

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33	YES	60	NO	0	EXCUSED	5	ABSENT	0
34	Acree	Y	Gerou	Y	McFadyen	Y	Ryden	Y
35	Apuan	Y	Hullinghorst	Y	McKinley	Y	Scanlan	E
36	Balmer	Y	Judd	Y	McNulty	Y	Schafer S.	Y
37	Baumgardner	Y	Kagan	Y	Merrifield	E	Solano	E
38	Benefield	Y	Kefalas	Y	Middleton	Y	Sonnenberg	Y
39	Bradford	Y	Kerr A.	Y	Miklosi	Y	Soper	Y
40	Casso	Y	Kerr J.	Y	Murray	Y	Stephens	Y
41	Court	Y	King S.	Y	Nikkel	Ε	Summers	Y
42	Curry	Y	Labuda	Y	Pace	Y	Swalm	Y
43	DelGrosso	Y	Lambert	Y	Peniston	Y	Tipton	Y
44	Ferrandino	Y	Levy	Y	Pommer	Y	Todd	Y
45	Fischer	Y	Liston	Y	Primavera	Y	Tyler	Y
46	Frangas	Y	Looper	Е	Priola	Y	Vaad	Y
47	Gagliardi	Y	Massey	Y	Rice	Y	Vigil	Y
48	Gardner B.	Y	May	Y	Riesberg	Y	Waller	Y
49	Gardner C.	Y	McCann	Y	Roberts	Y	Weissmann	Y
50							Speaker	Y

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House in recess. House reconvened.

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1	REPORT(S) OF COMMITTEE(S) OF REFERENCE
2	STATE, VETERANS, & MILITARY AFFAIRS
4	After consideration on the merits, the Committee recommends the
5	following:
6	Tono wing.
7	HB10-1402 be referred favorably to the Committee on Appropriations.
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0	HCR10-1004 be referred to the Committee of the Whole with favorable
1	recommendation.
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5	PRINTING REPORT
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7	The Chief Clerk reports the following bill has been correctly printed:
8	HB10-1420.
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21	MESSAGE(S) FROM THE SENATE
22 23	MESSAGE(S) FROM THE SENATE
24	The Senate has passed on Third reading and transmitted to the Revisor
24 25	of Statutes: SB10-186.
26	
27	SB10-054 amended as printed in Senate Journal, April 20, 2010, pages
28	946-947 and April 21, 2010.
29 30	SB10-039 amended as printed in Senate Journal, April 20, 2010, page 947.
31	SB10-126 amended as printed in Senate Journal, April 20, 2010, page
32	947.
33	SB10-128 amended as printed in Senate Journal, April 20, 2010, page
34	947.
35	SB10-141 amended as printed in Senate Journal, April 20, 2010, page
36 37	948. SB10-187 amended as printed in Senate Journal, April 20, 2010, page
38	948.
39	<i>7</i> 10.
10	The Senate has passed on Third Reading and transmitted to the Revisor
11	of Statutes:
12	HP10 1000
13	HB10-1328 amended as printed in Senate Journal, April 19, 2010,
14 15	pages 929-930 and April 21, 2010.
16	The Senate has passed on Third Reading and returns herewith:
ŀ7	HB10-1242.
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19	The Senate voted to concur in House amendments to SB10-177 and
50	repassed the bill as amended.
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1		MESSAGE(S) FROM THE REVISOR				
3 4 5 6 7	 Without comment, as amended, HB10-1328. Without comment, as amended, SB10-054, 039, 126, 128, 141, an 					
8 9 10	:	MESSAGE(S) FROM THE GOVERNOR				
11 12 13 14 15	2:55 p.m. T	ceived the following on the 20th day of April, 2010, at the original is on file in the records of the House of the General Assembly.				
16 17 18		Marilyn Eddins, Chief Clerk of the House				
19 20	April 20, 2010					
21 22 23 24 25	To the Honorable House of Representatives Sixty-seventh General Assembly Second Regular Session State Capitol Denver, CO 80203					
26 27 Ladies and Gentlemen:						
28 29 30	I have the honor to inform you that I have approved and filed with the Secretary of State the following Acts:					
31 32 33	<u>HB10-1004</u>	CONCERNING STANDARDIZATION OF HEALTH INSURANCE INFORMATION PROVIDED TO CONSUMERS.				
34 35 36		Approved April 20, 2010 at 12:54 p.m.				
37 38 39 40	HB10-1138	CONCERNING THE PROGRAM TO REPAY EDUCATIONAL LOANS OF HEALTH CARE PROFESSIONALS.				
41 42 43		Approved April 20, 2010 at 12:55 p.m.				
44 45 46	<u>HB10-1166</u>	CONCERNING THE USE OF PLAIN LANGUAGE IN INSURANCE POLICIES.				
47 48 49 50 51 52 53 54 55 56	Sincerely, (signed) Bill Ritter, Jr. Governor	Approved April 20, 2010 at 12:56 p.m.				

1 2 3		INTRODUCTION OF BILLS First Reading
5 4 5 6	The following indicated:	g bills were read by title and referred to the committees
7 8 9 10 11	SB10-039 Committee on	by Senator(s) Carroll M., Heath, Hudak, Shaffer B., Tochtrop, Williams; also Representative(s) Gagliardi, Fischer, KefalasConcerning scholarships for job training, and making an appropriation therefor. Education
12 13 14 15 16 17	SB10-054 Committee on	by Senator(s) Hudak, Steadman; also Representative(s) LevyConcerning the provision of educational services for juveniles against whom charges have been filed in district court, and making an appropriation therefor. Judiciary
18 19 20 21 22	SB10-126 Committee on	by Senator(s) Carroll M.; also Representative(s) Tyler-Concerning increased transparency reporting requirements for certain pharmaceutical manufacturers. Health and Human Services
23 24 25 26 27 28	SB10-128 Committee on	by Senator(s) Hudak, Newell, Carroll M., Steadman; also Representative(s) RiceConcerning invasion of privacy, and making an appropriation in connection therewith. Judiciary
29 30 31 32 33 34 35	SB10-141 Committee on	by Senator(s) King K.; also Representative(s) Lambert-Concerning the transfer of responsibility for the regulation of games of chance from the secretary of state to the department of revenue in accordance with House Concurrent Resolution 09-1003, and making an appropriation therefor.
36 37 38 39 40 41 42 43	SB10-186 Committee on	by Senator(s) Tochtrop, Carroll M., Mitchell, Schultheis; also Representative(s) Primavera, Kerr J., McNulty, MiklosiConcerning state warrants for tax refunds that are not presented for payment within six months from the date of issuance.
44 45 46 47	SB10-187 Committee on	by Senator(s) Tochtrop; also Representative(s) RiesbergConcerning workers' compensation. Business Affairs and Labor
47 48 49 50 51 52 53 54 55 56	SB10-189 Committee on	by Senator(s) Steadman, Boyd, Carroll M., Heath, Romer, Tochtrop; also Representative(s) Weissmann, Levy, RiesbergConcerning authorization for government agencies to approve clean syringe exchange programs to reduce the spread of blood-borne disease. Health and Human Services

1	LAY OVER OF CALENDAR ITEM(S)
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2 3	On motion of Representative Weissmann, the following item(s) on the
4 5	Calendar (was)were laid over until April 22, retaining place on Calendar
6	Consideration of Third ReadingHB10-1393.
7	Consideration of Conference Committee Report(s) HB10-1099 .
	Consideration of Resolution(s)HJR10-1020, 1021, SJR10-025
9	HJR10-1023, 1019, 1024, 1025.
	Consideration of Senate Amendment(s)HB10-1188, HJR10-1015
11	HB10-1118, 1133, 1147, 1149.
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15	On motion of Representative Weissmann, the House adjourned until
16	9:00 a.m., April 22, 2010.
17	•
18	Approved:
19	TÊRRANCE D. CARROLL
20	Speaker
21	Attest:
22	MARILYN EDDINS,
23	Chief Clerk
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