

SENATE JOURNAL
 Sixty-fifth General Assembly
STATE OF COLORADO
 Second Regular Session

45th Legislative Day Friday, February 24, 2006

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| Prayer | By the chaplain, Pastor Heidi McGinness, Presbyterian Church USA. | 11 |
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| Pledge | By Senator Tapia. | 13 |
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| Call to Order | By the President at 9:00 a.m. | 15 |
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| Roll Call | Present--34. | 18 |
| | Excused--1; Johnson. | 19 |
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| Quorum | The President announced a quorum present. | 21 |
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| Reading of Journal | On motion of Senator Sandoval, reading of the Journal of February 23, 2006 was dispensed with and the Journal was approved as corrected by the Secretary. | 23 |
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**COMMITTEE OF REFERENCE REPORTS
 CORRECTED**

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| Judiciary | After consideration on the merits, the Committee recommends that SB06-089 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation. | 31 |
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Amend printed bill, page 2, after line 1, insert the following:

"SECTION 1. 38-33.3-103, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

38-33.3-103. Definitions. As used in the declaration and bylaws of an association, unless specifically provided otherwise or unless the context otherwise requires, and in this article:

(20.5) "MIXED-USE DEVELOPMENT" MEANS A COMMON INTEREST COMMUNITY THAT CONTAINS TWO OR MORE OF THE FOLLOWING ELEMENTS: RESIDENTIAL, COMMERCIAL, BUSINESS, RETAIL, OFFICE, AGRICULTURAL, RECREATIONAL, OR INDUSTRIAL.

(21.5) "PHASED COMMUNITY" MEANS A COMMON INTEREST COMMUNITY IN WHICH THE DECLARANT RETAINS DEVELOPMENT RIGHTS."

Renumber succeeding sections accordingly.

Page 3, line 1, strike "(1) (c) (I)," and substitute "(1) (c),";

strike lines 8 through 27 and substitute the following:

"(c) (I) The display of a political sign by a unit owner on that unit owner's property or in a window of the unit owner's residence; except that:

(A) An association may prohibit the display of political signs earlier than forty-five days before the day of an election and later than seven days after an election day; AND

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(B) An association may regulate the size and number of political signs that may be placed on a unit owner's property if the association's regulation is no more restrictive than any applicable city, town, or county ordinance that regulates the size and number of political signs on residential property. If the city, town, or county in which the property is located does not regulate the size and number of political signs on residential property IN ACCORDANCE WITH SUBPARAGRAPH (II) OF THIS PARAGRAPH (c).

(II) The association shall permit at least one political sign per political office or ballot issue that is contested in a pending election. with The maximum dimensions of EACH SIGN MAY BE LIMITED TO THE LESSER OF THE FOLLOWING:

(A) THE MAXIMUM SIZE ALLOWED BY ANY APPLICABLE CITY, TOWN, OR COUNTY ORDINANCE THAT REGULATES THE SIZE OF POLITICAL SIGNS ON RESIDENTIAL PROPERTY; OR

(B) Thirty-six inches by forty-eight inches. on a unit owner's property.

(H) (III) As used in this paragraph (c), "political sign" means a sign that carries a message intended to influence the outcome of an election, including supporting or opposing the election of a candidate, the recall of a public official, or the passage of a ballot issue.

(d) The parking of a motor vehicle by THE OCCUPANT OF a unit owner on a street, driveway, or guest parking area in the common interest community if the vehicle is required to be available at designated periods at the unit owner's SUCH OCCUPANT'S residence as a condition of the unit owner's OCCUPANT'S employment and all of the following criteria are met:".

Page 4, line 1, strike "unit owner" and substitute "unit owner OCCUPANT";

line 8, after "owners", insert "OR OCCUPANTS";

after line 9, insert the following:

SECTION 3. 38-33.3-117 (1) (g), (1.5) (a), and (1.5) (e), Colorado Revised Statutes, are amended to read:

38-33.3-117. Applicability to preexisting common interest communities. (1) Except as provided in section 38-33.3-119, the following sections shall apply to all common interest communities created within this state before July 1, 1992, with respect to events and circumstances occurring on or after July 1, 1992:

(g) 38-33.3-122 and 38-33.3-123; (2);

(1.5) Except as provided in section 38-33.3-119, the following sections shall apply to all common interest communities created within this state before July 1, 1992, with respect to events and circumstances occurring on or after January 1, 2006:

(a) 38-33.3-123 (1);

(e) 38-33.3-223;".

Renumber succeeding sections accordingly.

Page 5, strike lines 23 through 27.

Page 6, strike lines 1 through 3 and substitute the following:

"(j) A LIST OF THE ASSOCIATION'S MAINTENANCE RESPONSIBILITIES AS PROVIDED FOR IN THE COMMON INTEREST COMMUNITY'S DECLARATION RELATED TO THE COMMON ELEMENTS AND UNITS.

SECTION 7. 38-33.3-209.4, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

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38-33.3-209.4. Public disclosures required - identity of association - agent - manager - contact information. (2.5) IN ADDITION TO THE DISCLOSURES REQUIRED IN PARAGRAPHS (a) TO (j) OF SUBSECTION (2) OF THIS SECTION, EACH ASSOCIATION IS ENCOURAGED, BUT NOT REQUIRED, TO DISCLOSE A LIST OF THE ASSOCIATION'S INSURANCE RESPONSIBILITIES AS PROVIDED FOR IN THE COMMON INTEREST COMMUNITY'S DECLARATION RELATED TO THE COMMON ELEMENTS, UNITS, OWNER'S PROPERTY, AND OWNER'S LIABILITY WITHIN UNITS. SUCH LIST SHALL STATE THAT UNIT OWNERS ARE RESPONSIBLE FOR DETERMINING WHAT ADDITIONAL INDIVIDUAL INSURANCE COVERAGE MUST BE CARRIED TO COVER INSURANCE RESPONSIBILITIES NOT ALLOCATED TO THE ASSOCIATION IN THE DECLARATION. IT SHALL BE IN THE EXECUTIVE BOARD'S SOLE DISCRETION TO DETERMINE THE SCOPE OF THE LIST, IF PROVIDED. NEITHER THE ASSOCIATION NOR ANY EXECUTIVE BOARD MEMBER SHALL BE LIABLE FOR THE CONTENTS OF THE LIST SO LONG AS PREPARATION OF THE LIST WAS NOT WILLFULLY OR GROSSLY NEGLIGENT."

Renumber succeeding sections accordingly.

Page 6, line 11, strike "A CASH" and substitute "AN ACCRUAL, CASH,";

strike line 12 and substitute "ACCRUAL BASIS OF ACCOUNTING; and";

strike lines 22 through 27.

Page 7, strike lines 1 and 2 and substitute the following:

"38-33.3-217. Amendment of declaration. (1) (a) (I) Except in cases of amendments that may be executed by a declarant under section 38-33.3-205 (4) and (5), 38-33.3-208 (3), 38-33.3-209 (6), 38-33.3-210, or 38-33.3-222, by an association under section 38-33.3-107, 38-33.3-206 (4), 38-33.3-208 (2), 38-33.3-212, 38-33.3-213, or 38-33.3-218 (11) and (12), or by the district court for any county that includes all or any portion of a common interest community under subsection (7) of this section, and except as limited by subsection (4) of this section, AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), the declaration,";

after line 16, insert the following:

"(II) THIS PARAGRAPH (a) SHALL NOT APPLY:

(A) TO THE EXTENT THAT ITS APPLICATION IS LIMITED BY SUBSECTION (4) OF THIS SECTION;

(B) TO AMENDMENTS EXECUTED BY A DECLARANT UNDER SECTION 38-33.3-205 (4) AND (5), 38-33.3-208 (3), 38-33.3-209 (6), 38-33.3-210, OR 38-33.3-222;

(C) TO AMENDMENTS EXECUTED BY AN ASSOCIATION UNDER SECTION 38-33.3-107, 38-33.3-206 (4), 38-33.3-208 (2), 38-33.3-212, 38-33.3-213, OR 38-33.3-218 (11) AND (12);

(D) TO AMENDMENTS EXECUTED BY THE DISTRICT COURT FOR ANY COUNTY THAT INCLUDES ALL OR ANY PORTION OF A COMMON INTEREST COMMUNITY UNDER SUBSECTION (7) OF THIS SECTION; OR

(E) TO AMENDMENTS THAT AFFECT MIXED-USE DEVELOPMENTS, PHASED COMMUNITIES, OR DECLARANT-CONTROLLED COMMUNITIES."

Page 9, strike lines 1 through 12 and substitute the following:

"SECTION 10. Repeal. 38-33.3-223, Colorado Revised Statutes, is repealed.

SECTION 11. 38-33.3-303 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

38-33.3-303. Executive board members and officers - powers and duties - audit. (2) (c) NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE TO THE CONTRARY, THE OFFICERS AND MEMBERS OF THE EXECUTIVE BOARD SHALL NOT BE LIABLE FOR THE FINANCIAL RESULTS OF

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ANY INVESTMENT OF RESERVE FUNDS IF THE CONDUCT OF SUCH OFFICERS AND MEMBERS IN MAKING SUCH INVESTMENT WAS PERMISSIBLE UNDER THE PRINCIPLE OF LAW GENERALLY KNOWN AS THE BUSINESS JUDGMENT RULE."

Renumber succeeding sections accordingly.

Page 9, line 21, strike "a" and substitute "a AN INDEPENDENT";

line 23, strike "IS TO BE PREPARED";

strike lines 24 through 27 and substitute the following:

"REPORT SHALL COVER THE ASSOCIATION'S FINANCIAL STATEMENTS, WHICH SHALL BE PREPARED USING GENERALLY ACCEPTED ACCOUNTING PRINCIPLES ON THE ACCRUAL BASIS OF ACCOUNTING OR USING ANOTHER COMPREHENSIVE BASIS OF ACCOUNTING."

Page 12, line 18, strike "THE MEETING," and substitute "AN OPEN MEETING,".

Page 14, after line 23, insert the following:

"SECTION 16. 38-35.7-102, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

38-35.7-102. Disclosure - common interest community - obligation to pay assessments - requirement for architectural approval. (1) EVERY CONTRACT FOR THE PURCHASE AND SALE OF RESIDENTIAL REAL PROPERTY IN A COMMON INTEREST COMMUNITY SHALL CONTAIN A DISCLOSURE STATEMENT IN BOLD-FACED TYPE THAT IS CLEARLY LEGIBLE AND IN SUBSTANTIALLY THE FOLLOWING FORM:

"THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNER'S ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION."

(2) (a) THE OBLIGATION TO PROVIDE THE DISCLOSURE SET FORTH IN SUBSECTION (1) OF THIS SECTION SHALL BE UPON THE SELLER, AND, IN THE EVENT OF THE FAILURE BY THE SELLER TO PROVIDE THE WRITTEN DISCLOSURE DESCRIBED IN SUBSECTION (1) OF THIS SECTION, THE

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PURCHASER SHALL HAVE A CLAIM FOR RELIEF AGAINST THE SELLER FOR ACTUAL DAMAGES DIRECTLY AND PROXIMATELY CAUSED BY SUCH FAILURE PLUS COURT COSTS. IT SHALL BE AN AFFIRMATIVE DEFENSE TO ANY CLAIM FOR DAMAGES BROUGHT UNDER THIS SECTION THAT THE PURCHASER HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE FACTS AND INFORMATION REQUIRED TO BE DISCLOSED.

(b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (2), CONTRACTS FOR THE PURCHASE AND SALE OF RESIDENTIAL REAL PROPERTY PREPARED BY A LICENSED REAL ESTATE BROKER SHALL NOT BE REQUIRED TO CONTAIN THE DISCLOSURE SET FORTH IN SUBSECTION (1) OF THIS SECTION UNTIL THE REAL ESTATE COMMISSION HAS PROMULGATED A FORM OF PURCHASE AND SALE CONTRACT, OR ADDENDUM THERETO, THAT CONTAINS SUCH DISCLOSURE, AND, UNTIL SUCH FORM HAS BEEN PROMULGATED, SELLERS REPRESENTED BY A LICENSED REAL ESTATE BROKER SHALL NOT BE LIABLE FOR FAILING TO PROVIDE SUCH DISCLOSURE.

(3) THIS SECTION SHALL NOT APPLY TO THE SALE OF A UNIT THAT IS A TIME SHARE UNIT, AS DEFINED IN SECTION 38-33-110 (7).".

Renumber succeeding sections accordingly.

Page 15, line 16, strike "(2) (j)," and substitute "(2.5).".

COMMITTEE OF REFERENCE REPORTS

Agriculture, Natural Resources, & Energy

After consideration on the merits, the Committee recommends that SB06-190 be referred to the Committee of the Whole with favorable recommendation.

Local Government

After consideration on the merits, the Committee recommends that SB06-148 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation.

Amend printed bill, page 4, line 7, strike "OF" and substitute "OF:";

strike line 8 and substitute the following:

"(a) POVERTY, UNEMPLOYMENT AND UNDEREMPLOYMENT, SUBSTANCE ABUSE,";

strike line 11 and substitute the following:

"AT RISK; OR

(b) ALCOHOL ABUSE, PUBLIC INTOXICATION, OR REPETITIVE DISTURBANCES OF THE PEACE.";

line 13, strike "MUNICIPALITIES OR" and substitute "MUNICIPALITIES,";

line 14, strike "SHERIFF." and substitute "SHERIFF, OR A CAMPUS POLICE AGENCY.".

Appropriations

After consideration on the merits, the Committee recommends that SB06-135 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation.

Amend printed bill, page 4, after line 7, insert the following:

"SECTION 3. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of moneys in the health care expansion fund created in section 24-22-117 (2) (a) (I), Colorado Revised Statutes, not otherwise appropriated, to the department of health care policy and financing, for allocation to the indigent care division,

children's basic health plan premiums costs, for the fiscal year beginning July 1, 2005, the sum of three hundred fifty-three thousand one hundred sixty-one dollars (\$353,161), or so much thereof as may be necessary, for the implementation of this act."

Renumber succeeding section accordingly.

Page 1, line 104, strike "PROVIDED." and substitute "PROVIDED, AND MAKING AN APPROPRIATION."

Appropriations

After consideration on the merits, the Committee recommends that **HB06-1033** be referred to the Committee of the Whole with favorable recommendation.

Appropriations

After consideration on the merits, the Committee recommends that **SB06-015** be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation.

Amend printed bill, page 3, after line 17, insert the following:

"SECTION 3. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the motor fleet management fund created in section 24-30-1115, Colorado Revised Statutes, not otherwise appropriated, to the department of personnel, for central services, fleet management program and motor pool services, for operating expenses, for the fiscal year beginning July 1, 2006, the sum of four million five hundred thousand dollars (\$4,500,000), or so much thereof as may be necessary, for the implementation of this act."

Renumber succeeding section accordingly.

Page 1, line 102, strike "VEHICLES." and substitute "VEHICLES, AND MAKING AN APPROPRIATION THEREFOR."

Appropriations

After consideration on the merits, the Committee recommends that **HB06-1028** be referred to the Committee of the Whole with favorable recommendation.

MESSAGE FROM THE REVISOR OF STATUTES

February 23, 2006

We herewith transmit:

Without comment, HB06-1189, 1192, 1237, and 1244.

Without comment, as amended, HB06-1072, 1086, 1090, 1123, 1147, 1185, 1190, 1191, 1198, 1240, 1260, 1268, and 1271.

THIRD READING OF BILLS -- FINAL PASSAGE

On Third Reading, the titles of the following bills were publicly read, the reading at length having been dispensed with by unanimous consent:

SB06-068

by Senator(s) Sandoval; also Representative(s) Frangas--Concerning additional authority of a local licensing authority over alcohol beverage licenses.

The question being "Shall the bill pass?", the roll call was taken with the following result:

| YES | 23 | NO | 11 | EXCUSED | 1 | ABSENT | 0 |
|----------|----|----------|----|----------|---|-----------|---|
| Bacon | Y | Hanna | Y | Mitchell | N | Tochtrop | Y |
| Brophy | N | Isgar | Y | Owen | N | Traylor | Y |
| Dyer | N | Johnson | E | Sandoval | Y | Tupa | Y |
| Entz | Y | Jones | N | Shaffer | Y | Veiga | Y |
| Evans | N | Keller | Y | Spence | N | Wiens | N |
| Gordon | Y | Kester | Y | Takis | Y | Williams | Y |
| Groff | Y | Lamborn | N | Tapia | Y | Windels | Y |
| Grossman | Y | May R. | N | Taylor | Y | President | Y |
| Hagedorn | Y | McElhany | N | Teck | Y | | |

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Groff.

SB06-154 by Senator(s) May R.; also Representative(s) Pommer--Concerning the creation of a central statutory reference for statutes that authorize the use of the power of eminent domain.

The question being "Shall the bill pass?", the roll call was taken with the following result:

| YES | 34 | NO | 0 | EXCUSED | 1 | ABSENT | 0 |
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| Bacon | Y | Hanna | Y | Mitchell | Y | Tochtrop | Y |
| Brophy | Y | Isgar | Y | Owen | Y | Traylor | Y |
| Dyer | Y | Johnson | E | Sandoval | Y | Tupa | Y |
| Entz | Y | Jones | Y | Shaffer | Y | Veiga | Y |
| Evans | Y | Keller | Y | Spence | Y | Wiens | Y |
| Gordon | Y | Kester | Y | Takis | Y | Williams | Y |
| Groff | Y | Lamborn | Y | Tapia | Y | Windels | Y |
| Grossman | Y | May R. | Y | Taylor | Y | President | Y |
| Hagedorn | Y | McElhany | Y | Teck | Y | | |

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Brophy, Dyer, Entz, Evans, Hanna, Jones, Keller, Lamborn, Mitchell, Shaffer, Spence, Takis, Taylor, Tochtrop, Traylor, Tupa, Wiens and Williams.

HB06-1063 by Representative(s) Cadman; also Senator(s) McElhany--Concerning clarifying a court's ability to impose global position monitoring on persons involved in criminal matters.

The question being "Shall the bill pass?", the roll call was taken with the following result:

| YES | 34 | NO | 0 | EXCUSED | 1 | ABSENT | 0 |
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| Bacon | Y | Hanna | Y | Mitchell | Y | Tochtrop | Y |
| Brophy | Y | Isgar | Y | Owen | Y | Traylor | Y |
| Dyer | Y | Johnson | E | Sandoval | Y | Tupa | Y |
| Entz | Y | Jones | Y | Shaffer | Y | Veiga | Y |
| Evans | Y | Keller | Y | Spence | Y | Wiens | Y |
| Gordon | Y | Kester | Y | Takis | Y | Williams | Y |
| Groff | Y | Lamborn | Y | Tapia | Y | Windels | Y |
| Grossman | Y | May R. | Y | Taylor | Y | President | Y |
| Hagedorn | Y | McElhany | Y | Teck | Y | | |

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Bacon, Dyer, Entz, Evans, Groff, Grossman, Jones, Kester, Lamborn, May R., Mitchell, Sandoval, Shaffer, Spence, Taylor, Teck, Traylor, Tupa and Wiens.

Committee of the Whole On motion of Senator Veiga, the Senate resolved itself into the Committee of the Whole for consideration of General Orders--Second Reading of Bills--Consent Calendar and Senator Veiga was called to the Chair to act as Chairman.

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**GENERAL ORDERS -- SECOND READING OF BILLS --
CONSENT CALENDAR**

The Committee of the Whole having risen, the Chairman reported that the following bills, reading at length having been dispensed with by unanimous consent, had been considered and action taken thereon as follows:

HB06-1027 by Representative(s) Lindstrom; also Senator(s) Johnson--Concerning persons authorized as peace officers in Colorado.

Ordered revised and placed on the calendar for Third Reading and Final Passage.

HB06-1051 by Representative(s) Witwer; also Senator(s) Sandoval--Concerning elections to recall elected officials.

Ordered revised and placed on the calendar for Third Reading and Final Passage.

HB06-1002 by Representative(s) Carroll M., Borodkin, Butcher, Cerbo, Coleman, McCluskey, Paccione; also Senator(s) Isgar--Concerning the continuation of the office of consumer counsel for the purpose of representing the public interest in matters concerning utilities regulated by the public utilities commission.

Ordered revised and placed on the calendar for Third Reading and Final Passage.

HB06-1140 by Representative(s) McCluskey; also Senator(s) Veiga--Concerning the registration of trademarks.

Amendment No. 1(L.002), by Senator Veiga.

Amend reengrossed bill, page 18, line 4, strike "AFFAIRS" and substitute "ACTIVITIES";

line 20, strike "AFFAIRS" and substitute "ACTIVITIES".

As amended, ordered revised and placed on the calendar for Third Reading and Final Passage.

HB06-1040 by Representative(s) Marshall, Coleman, Paccione; also Senator(s) Veiga--Concerning the sunset review of the functions of the division of insurance, and, in connection therewith, continuing the functions of the division relating to the issuance of certificates of authority for health and life insurers, adding the sunset review of the division's regulation of life insurance and health care coverage, broadening the sunset review of the regulation of property and casualty insurance, and requiring the division to track information pertaining to its compliance with the uniform certificate of authority application process.

Amendment No. 1, Business, Labor, and Technology Committee Amendment.
(Printed in Senate Journal, February 21, page 288 and placed in members' bill files.)

As amended, ordered revised and placed on the calendar for Third Reading and Final Passage.

HB06-1009 by Representative(s) Liston; also Senator(s) Spence--Concerning an increase in the limit on the amount of money to be collected as penalties for delinquent property tax payments that the county treasurer is authorized to refrain from collecting.

Ordered revised and placed on the calendar for Third Reading and Final Passage.

HB06-1042 by Representative(s) Kerr; also Senator(s) Jones--Concerning the repeal of certain provisions of the "Bank Electronic Funds Act".

Ordered revised and placed on the calendar for Third Reading and Final Passage.

**ADOPTION OF THE REPORT OF THE COMMITTEE OF THE WHOLE --
CONSENT CALENDAR**

On motion of Senator Veiga, the Report of the Committee of the Whole was adopted and, a majority of all members elected to the Senate having voted in the affirmative, the following action was taken:

Passed on Second Reading: HB06-1027, HB06-1051, HB06-1002, HB06-1140 as amended, HB06-1040 as amended, HB06-1009, HB06-1042.

Committee of the Whole On motion of Senator Veiga, the Senate resolved itself into the Committee of the Whole for consideration of General Orders--Second Reading of Bills and Senator Veiga was called to the Chair to act as Chairman.

GENERAL ORDERS -- SECOND READING OF BILLS

The Committee of the Whole having risen, the Chairman reported that the following bills, reading at length having been dispensed with by unanimous consent, had been considered and action taken thereon as follows:

SB06-037 by Senator(s) Isgar; also Representative(s) Curry--Concerning the adjudication of recreational in-channel diversions.

Laid over until Monday, February 27, retaining its place on the calendar.

SB06-143 by Senator(s) Fitz-Gerald; also Representative(s) Madden--Concerning the statute of limitations for civil actions alleging unlawful sexual conduct.

Laid over until Monday, February 27, retaining its place on the calendar.

SB06-125 by Senator(s) Windels; --Concerning on-line education programs.

Amendment No. 1, Education Committee Amendment.

(Printed in Senate Journal, February 13, pages 184-185 and placed in members' bill files.)

Amendment No. 2(L.002), by Senator Windels.

Amend the Education Committee Report, dated February 9, 2006, page 1, strike lines 12 through 17 and substitute the following:

"strike lines 24 through 27.

Page 6, strike lines 1 through 17.

Renumber succeeding section accordingly."

Strike page 2 of the committee report.

As amended, laid over until Monday, February 27, retaining its place on the calendar.

SB06-159 by Senator(s) Traylor, Spence, Williams, Windels; also Representative(s) King--Concerning information about persons employed in public schools.

(Amended in General Orders as printed in Senate Journal, February 23, pages 319-320.)

As amended, laid over until Monday, February 27, retaining its place on the calendar.

On motion of Senator Gordon, and with a majority of those elected to the Senate having voted in the affirmative, (SB06-187, SCR06-002, SB06-180) were advanced on the General Orders -- Second Reading of Bills calendar.

SB06-187 by Senator(s) Shaffer; also Representative(s) Witwer--Concerning title 7 of the Colorado Revised Statutes.

Ordered engrossed and placed on the calendar for Third Reading and Final Passage.

SCR06-002 by Senator(s) Owen; also Representative(s) Coleman--Submitting to the registered electors of the state of Colorado amendments to articles XVII, XVIII, XX, XXIV, and XXVI of the

constitution of the state of Colorado, concerning the elimination of obsolete provisions of the state constitution.

Ordered engrossed and placed on the calendar for Third Reading and Final Passage.

SB06-180 by Senator(s) Isgar; also Representative(s) Green--Concerning the premium rates charged for coverage under CoverColorado.

Amendment No. 1, Business, Labor, and Technology Committee Amendment.
(Printed in Senate Journal, February 21, page 288 and placed in members' bill files.)

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

SB06-123 by Senator(s) Owen; also Representative(s) Hall--Concerning the authority of military forces to use lethal force.

Laid over until Tuesday, February 28, retaining its place on the calendar.

SB06-164 by Senator(s) Keller, Entz, Hanna; --Concerning the business practices of pharmacy benefit managers.

Amendment No. 1, Health and Human Services Committee Amendment.
(Printed in Senate Journal, February 17, pages 241-243 and placed in members' bill files.)

Amendment No. 2(L.009), by Senator Keller.

Strike the Health and Human Services Committee Report, dated February 16, 2006, and substitute the following:

"Amend printed bill, strike everything below the enacting clause and substitute the following:

SECTION 1. Part 1 of article 16 of title 10, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

10-16-122.5. Pharmacy benefit manager - duties - enforcement - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "COVERED ENTITY" MEANS A NONPROFIT HOSPITAL OR MEDICAL SERVICE CORPORATION; A HEALTH INSURER; A HEALTH BENEFIT PLAN; A HEALTH MAINTENANCE ORGANIZATION; A HEALTH PROGRAM ADMINISTERED BY THE STATE IN THE CAPACITY OF A PROVIDER OF HEALTH COVERAGE; OR AN EMPLOYER, LABOR UNION, OR OTHER GROUP OF PERSONS ORGANIZED IN THIS STATE THAT PROVIDES HEALTH COVERAGE TO COVERED INDIVIDUALS WHO ARE EMPLOYED OR RESIDE IN THE STATE. "COVERED ENTITY" DOES NOT INCLUDE A SELF-FUNDED PLAN THAT IS EXEMPT FROM STATE REGULATION PURSUANT TO THE FEDERAL "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974", AS AMENDED, 29 U.S.C. SEC. 1001, ET SEQ.; A PLAN ISSUED FOR COVERAGE FOR FEDERAL EMPLOYEES; OR A HEALTH PLAN THAT PROVIDES COVERAGE ONLY FOR ACCIDENTAL INJURY, SPECIFIED DISEASE, HOSPITAL INDEMNITY, MEDICARE SUPPLEMENT, DISABILITY INCOME, LONG-TERM CARE, OR OTHER LIMITED BENEFIT HEALTH INSURANCE POLICIES AND CONTRACTS.

(b) "COVERED INDIVIDUAL" MEANS A MEMBER, PARTICIPANT, ENROLLEE, CONTRACT HOLDER, POLICYHOLDER, OR BENEFICIARY OF A COVERED ENTITY WHO IS PROVIDED HEALTH COVERAGE BY THE COVERED ENTITY. "COVERED INDIVIDUAL" INCLUDES A DEPENDENT OR OTHER INDIVIDUAL WHO IS PROVIDED COVERAGE THROUGH A POLICY, CONTRACT, OR PLAN FOR A COVERED INDIVIDUAL.

(c) "PAYMENTS RECEIVED BY THE PHARMACY BENEFIT MANAGER" MEANS THE AGGREGATE AMOUNT OF THE FOLLOWING TYPES OF PAYMENTS:

(I) AN ADMINISTRATIVE FEE COLLECTED FROM A

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PHARMACEUTICAL MANUFACTURER IN CONSIDERATION OF AN ADMINISTRATIVE SERVICE PROVIDED BY THE PHARMACY BENEFIT MANAGER TO THE MANUFACTURER;

(II) A PHARMACY NETWORK FEE;

(III) ANY OTHER FEE OR AMOUNT COLLECTED BY THE PHARMACY BENEFIT MANAGER FROM A PHARMACEUTICAL MANUFACTURER OR LABELER FOR A DRUG SWITCH PROGRAM, FORMULARY MANAGEMENT PROGRAM, MAIL SERVICE PHARMACY, OR EDUCATIONAL SUPPORT PROGRAM; DATA SALES RELATED TO A COVERED INDIVIDUAL; OR ANY OTHER ADMINISTRATIVE FUNCTION;

(IV) REVENUES FROM A PHARMACEUTICAL MANUFACTURER THAT FAVOR THE MANUFACTURER'S PRODUCT OVER A COMPETITOR'S PRODUCT OR PLACE THE MANUFACTURER'S DRUG ON THE PHARMACY BENEFIT MANAGER'S LIST OR FORMULARY, OR SWITCH THE DRUG PRESCRIBED BY THE PATIENT'S HEALTH CARE PROVIDER;

(V) REVENUES FROM AN AGREEMENT WITH A PHARMACEUTICAL MANUFACTURER TO SHARE MANUFACTURER REBATES, DISCOUNTS, OR REBATES AND DISCOUNTS OR FROM AN AGREEMENT TO PAY MONEY OR OTHER ECONOMIC BENEFITS TO THE PHARMACY BENEFIT MANAGER THAT ARE NOT SHARED WITH THE COVERED ENTITY;

(VI) REVENUES FROM THE DIFFERENCE BETWEEN WHAT IS BILLED TO THE COVERED ENTITY AND WHAT THE PHARMACY BENEFIT MANAGER REIMBURSES TO THE PHARMACY; AND

(VIII) REVENUES FROM THE SALE OF PRESCRIPTION DRUG DATA, INCLUDING DATA CONCERNING THE PRESCRIBING PRACTICES OF HEALTH CARE PROVIDERS IN THIS STATE.

(d) "PHARMACY BENEFIT MANAGEMENT" MEANS THE ADMINISTRATION OR MANAGEMENT OF PRESCRIPTION DRUG BENEFITS PROVIDED TO A COVERED ENTITY.

(e) (I) "PHARMACY BENEFIT MANAGER" MEANS A PERSON WHO PERFORMS PHARMACY BENEFIT MANAGEMENT. "PHARMACY BENEFIT MANAGER" INCLUDES A PERSON ACTING FOR A PHARMACY BENEFIT MANAGER IN A CONTRACTUAL OR EMPLOYMENT RELATIONSHIP IN THE PERFORMANCE OF PHARMACY BENEFIT MANAGEMENT FOR A COVERED ENTITY.

(II) "PHARMACY BENEFIT MANAGER" DOES NOT INCLUDE:

(A) A LICENSED OR CERTIFIED HOSPITAL;

(B) A PUBLIC SELF-FUNDED POOL OR A PRIVATE SINGLE-EMPLOYER SELF-FUNDED PLAN THAT PROVIDES BENEFITS OR SERVICES DIRECTLY TO ITS BENEFICIARIES; OR

(C) A HEALTH CARRIER OR HEALTH MAINTENANCE ORGANIZATION LICENSED UNDER THIS TITLE IF THE HEALTH CARRIER OR HEALTH MAINTENANCE ORGANIZATION IS PROVIDING MANAGED PHARMACY BENEFITS TO ITS INSURED, MEMBERS, OR ENROLLEES.

(2) A PHARMACY BENEFIT MANAGER SHALL DISCLOSE TO A COVERED ENTITY ANY OWNERSHIP INTEREST OF ANY KIND WITH ANY PARENT COMPANY, SUBSIDIARY, OR OTHER ORGANIZATION THAT IS RELATED TO THE PROVISION OF PHARMACY SERVICES, THE PROVISION OF OTHER PRESCRIPTION DRUG OR DEVICE SERVICES, OR A PHARMACEUTICAL MANUFACTURER.

(3) A PHARMACY BENEFIT MANAGER SHALL PERFORM HIS OR HER DUTIES EXERCISING CARE, GOOD FAITH, AND FAIR DEALING TOWARD A COVERED ENTITY.

(4) A PHARMACY BENEFIT MANAGER SHALL NOT REQUIRE A

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PHARMACIST OR PHARMACY TO PARTICIPATE IN ONE CONTRACT AS A PREREQUISITE TO PARTICIPATE IN ANOTHER CONTRACT.

(5) (a) THE AGREEMENT BETWEEN THE PHARMACY BENEFIT MANAGER AND THE COVERED ENTITY SHALL INCLUDE A PROVISION ALLOWING THE COVERED ENTITY TO PERIODICALLY AUDIT PAYMENTS RECEIVED BY THE PHARMACY BENEFIT MANAGER AND THE PHARMACY BENEFIT MANAGER'S BOOKS, ACCOUNTS, RECORDS, AND UTILIZATION INFORMATION IN ACCORDANCE WITH THE "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", AS AMENDED, 42 U.S.C. 1320d-8 AND IN ACCORDANCE WITH 45 CFR 164.512, AS AMENDED.

(b) AN AUDIT PERFORMED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (5) SHALL NOT BE CONDUCTED MORE THAN ONCE IN EACH TWELVE-MONTH PERIOD AND SHALL NOT BE CONDUCTED WITHOUT AT LEAST THIRTY BUSINESS DAYS' WRITTEN NOTICE TO THE PHARMACY BENEFIT MANAGER.

(c) THE COVERED ENTITY AND THE PHARMACY BENEFIT MANAGER SHALL MUTUALLY SELECT AN INDEPENDENT ENTITY TO CONDUCT AN AUDIT, AND THE INDEPENDENT ENTITY SHALL SIGN A CONFIDENTIALITY AGREEMENT WITH THE COVERED ENTITY AND THE PHARMACY BENEFIT MANAGER THAT ENSURES THAT ALL INFORMATION OBTAINED DURING THE AUDIT WILL BE TREATED AS CONFIDENTIAL.

(6) A VIOLATION OF THIS SECTION IS A VIOLATION OF THE "COLORADO CONSUMER PROTECTION ACT", PART 1 OF ARTICLE 1 OF TITLE 6, C.R.S.

(7) THIS SECTION SHALL NOT APPLY TO PHARMACY BENEFITS ADMINISTERED BY THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES.

SECTION 2. 6-1-105 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

6-1-105. Deceptive trade practices. (1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:

(xx) VIOLATES ANY PROVISION OF SECTION 10-16-122.5, C.R.S.

SECTION 3. Applicability. This act applies to contracts between a pharmacy benefit manager and a covered entity that are entered into or renewed on or after the applicable effective date of this act.

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

Amendment No. 3(L.012), by Senator Keller.

Amend the Keller floor amendment, (SB164_L.009), page 4, strike lines 22 through 24 and substitute the following:

"(6) A COVERED ENTITY MAY BRING A CIVIL ACTION TO ENFORCE THE PROVISIONS OF THIS SECTION OR TO SEEK CIVIL DAMAGES TO A VIOLATION OF THIS SECTION.";

strike lines 28 through 33.

Renumber succeeding sections accordingly.

Amendment No. 4(L.011), by Senator Keller.

Amend the Keller floor amendment, (SB164_L.009), page 3, strike lines

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31 and 32.

Page 4, strike line 1.

Renumber succeeding subsections accordingly.

Page 4, line 12, strike "(5)" and substitute "(4)".

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

(For further action, see Amendments to the Report of the Committee of the Whole and Roll Call vote on SB06-164.)

SB06-040 by Senator(s) Teck; --Concerning increased consumer protections with regard to negative option plans.

Amendment No. 1, Business, Labor, and Technology Committee Amendment.

(Printed in Senate Journal, February 16, pages 219-220 and placed in members' bill files.)

Amendment No. 2(L.004), by Senator Teck.

Amend the Business, Labor and Technology Committee Report, dated February 15, 2006, page 2, after line 27, insert the following:

"(c) THIS SECTION SHALL NOT APPLY TO THE ISSUANCE OF CREDIT CARDS OR DEBIT CARDS BY A NATIONAL OR STATE-CHARTERED COMMERCIAL OR INDUSTRIAL BANK, SAVINGS AND LOAN ASSOCIATION, OR CREDIT UNION."

As amended, laid over until Monday, February 27, retaining its place on the calendar.

On motion of Senator Gordon, and with a majority of those elected to the Senate having voted in the affirmative, the balance of the General Orders -- Second Reading of Bills Calendar (SB06-089, SB06-171) of February 24, was laid over until Monday, February 27, retaining its place on the calendar.

AMENDMENTS TO THE REPORT OF THE COMMITTEE OF THE WHOLE

SB06-164 by Senator(s) Keller, Entz, Hanna; --Concerning the business practices of pharmacy benefit managers.

Senator Hagedorn moved to amend the Report of the Committee of the Whole to show that the following Keller floor amendment, (L.009) to SB 06-164, did not pass and that SB 06-164, as amended by the Health and Human Services Committee, did pass.

Strike the Health and Human Services Committee Report, dated February 16, 2006, and substitute the following:

"Amend printed bill, strike everything below the enacting clause and substitute the following:

"SECTION 1. Part 1 of article 16 of title 10, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

10-16-122.5. Pharmacy benefit manager - duties - enforcement - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "COVERED ENTITY" MEANS A NONPROFIT HOSPITAL OR MEDICAL SERVICE CORPORATION; A HEALTH INSURER; A HEALTH BENEFIT PLAN; A HEALTH MAINTENANCE ORGANIZATION; A HEALTH PROGRAM ADMINISTERED BY THE STATE IN THE CAPACITY OF A PROVIDER OF HEALTH

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COVERAGE; OR AN EMPLOYER, LABOR UNION, OR OTHER GROUP OF PERSONS ORGANIZED IN THIS STATE THAT PROVIDES HEALTH COVERAGE TO COVERED INDIVIDUALS WHO ARE EMPLOYED OR RESIDE IN THE STATE. "COVERED ENTITY" DOES NOT INCLUDE A SELF-FUNDED PLAN THAT IS EXEMPT FROM STATE REGULATION PURSUANT TO THE FEDERAL "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974", AS AMENDED, 29 U.S.C. SEC. 1001, ET SEQ.; A PLAN ISSUED FOR COVERAGE FOR FEDERAL EMPLOYEES; OR A HEALTH PLAN THAT PROVIDES COVERAGE ONLY FOR ACCIDENTAL INJURY, SPECIFIED DISEASE, HOSPITAL INDEMNITY, MEDICARE SUPPLEMENT, DISABILITY INCOME, LONG-TERM CARE, OR OTHER LIMITED BENEFIT HEALTH INSURANCE POLICIES AND CONTRACTS.

(b) "COVERED INDIVIDUAL" MEANS A MEMBER, PARTICIPANT, ENROLLEE, CONTRACT HOLDER, POLICYHOLDER, OR BENEFICIARY OF A COVERED ENTITY WHO IS PROVIDED HEALTH COVERAGE BY THE COVERED ENTITY. "COVERED INDIVIDUAL" INCLUDES A DEPENDENT OR OTHER INDIVIDUAL WHO IS PROVIDED COVERAGE THROUGH A POLICY, CONTRACT, OR PLAN FOR A COVERED INDIVIDUAL.

(c) "PAYMENTS RECEIVED BY THE PHARMACY BENEFIT MANAGER" MEANS THE AGGREGATE AMOUNT OF THE FOLLOWING TYPES OF PAYMENTS:

(I) AN ADMINISTRATIVE FEE COLLECTED FROM A PHARMACEUTICAL MANUFACTURER IN CONSIDERATION OF AN ADMINISTRATIVE SERVICE PROVIDED BY THE PHARMACY BENEFIT MANAGER TO THE MANUFACTURER;

(II) A PHARMACY NETWORK FEE;

(III) ANY OTHER FEE OR AMOUNT COLLECTED BY THE PHARMACY BENEFIT MANAGER FROM A PHARMACEUTICAL MANUFACTURER OR LABELER FOR A DRUG SWITCH PROGRAM, FORMULARY MANAGEMENT PROGRAM, MAIL SERVICE PHARMACY, OR EDUCATIONAL SUPPORT PROGRAM; DATA SALES RELATED TO A COVERED INDIVIDUAL; OR ANY OTHER ADMINISTRATIVE FUNCTION;

(IV) REVENUES FROM A PHARMACEUTICAL MANUFACTURER THAT FAVOR THE MANUFACTURER'S PRODUCT OVER A COMPETITOR'S PRODUCT OR PLACE THE MANUFACTURER'S DRUG ON THE PHARMACY BENEFIT MANAGER'S LIST OR FORMULARY, OR SWITCH THE DRUG PRESCRIBED BY THE PATIENT'S HEALTH CARE PROVIDER;

(V) REVENUES FROM AN AGREEMENT WITH A PHARMACEUTICAL MANUFACTURER TO SHARE MANUFACTURER REBATES, DISCOUNTS, OR REBATES AND DISCOUNTS OR FROM AN AGREEMENT TO PAY MONEY OR OTHER ECONOMIC BENEFITS TO THE PHARMACY BENEFIT MANAGER THAT ARE NOT SHARED WITH THE COVERED ENTITY;

(VI) REVENUES FROM THE DIFFERENCE BETWEEN WHAT IS BILLED TO THE COVERED ENTITY AND WHAT THE PHARMACY BENEFIT MANAGER REIMBURSES TO THE PHARMACY; AND

(VIII) REVENUES FROM THE SALE OF PRESCRIPTION DRUG DATA, INCLUDING DATA CONCERNING THE PRESCRIBING PRACTICES OF HEALTH CARE PROVIDERS IN THIS STATE.

(d) "PHARMACY BENEFIT MANAGEMENT" MEANS THE ADMINISTRATION OR MANAGEMENT OF PRESCRIPTION DRUG BENEFITS PROVIDED TO A COVERED ENTITY.

(e) (I) "PHARMACY BENEFIT MANAGER" MEANS A PERSON WHO PERFORMS PHARMACY BENEFIT MANAGEMENT. "PHARMACY BENEFIT MANAGER" INCLUDES A PERSON ACTING FOR A PHARMACY BENEFIT MANAGER IN A CONTRACTUAL OR EMPLOYMENT RELATIONSHIP IN THE PERFORMANCE OF PHARMACY BENEFIT MANAGEMENT FOR A COVERED ENTITY.

(II) "PHARMACY BENEFIT MANAGER" DOES NOT INCLUDE:

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- (A) A LICENSED OR CERTIFIED HOSPITAL;
 - (B) A PUBLIC SELF-FUNDED POOL OR A PRIVATE SINGLE-EMPLOYER SELF-FUNDED PLAN THAT PROVIDES BENEFITS OR SERVICES DIRECTLY TO ITS BENEFICIARIES; OR
 - (C) A HEALTH CARRIER OR HEALTH MAINTENANCE ORGANIZATION LICENSED UNDER THIS TITLE IF THE HEALTH CARRIER OR HEALTH MAINTENANCE ORGANIZATION IS PROVIDING MANAGED PHARMACY BENEFITS TO ITS INSUREDS, MEMBERS, OR ENROLLEES.
- (2) A PHARMACY BENEFIT MANAGER SHALL DISCLOSE TO A COVERED ENTITY ANY OWNERSHIP INTEREST OF ANY KIND WITH ANY PARENT COMPANY, SUBSIDIARY, OR OTHER ORGANIZATION THAT IS RELATED TO THE PROVISION OF PHARMACY SERVICES, THE PROVISION OF OTHER PRESCRIPTION DRUG OR DEVICE SERVICES, OR A PHARMACEUTICAL MANUFACTURER.
 - (3) A PHARMACY BENEFIT MANAGER SHALL PERFORM HIS OR HER DUTIES EXERCISING CARE, GOOD FAITH, AND FAIR DEALING TOWARD A COVERED ENTITY.
 - (4) A PHARMACY BENEFIT MANAGER SHALL NOT REQUIRE A PHARMACIST OR PHARMACY TO PARTICIPATE IN ONE CONTRACT AS A PREREQUISITE TO PARTICIPATE IN ANOTHER CONTRACT.
 - (5) (a) THE AGREEMENT BETWEEN THE PHARMACY BENEFIT MANAGER AND THE COVERED ENTITY SHALL INCLUDE A PROVISION ALLOWING THE COVERED ENTITY TO PERIODICALLY AUDIT PAYMENTS RECEIVED BY THE PHARMACY BENEFIT MANAGER AND THE PHARMACY BENEFIT MANAGER'S BOOKS, ACCOUNTS, RECORDS, AND UTILIZATION INFORMATION IN ACCORDANCE WITH THE "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", AS AMENDED, 42 U.S.C. 1320d-8 AND IN ACCORDANCE WITH 45 CFR 164.512, AS AMENDED.
 - (b) AN AUDIT PERFORMED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (5) SHALL NOT BE CONDUCTED MORE THAN ONCE IN EACH TWELVE-MONTH PERIOD AND SHALL NOT BE CONDUCTED WITHOUT AT LEAST THIRTY BUSINESS DAYS' WRITTEN NOTICE TO THE PHARMACY BENEFIT MANAGER.
 - (c) THE COVERED ENTITY AND THE PHARMACY BENEFIT MANAGER SHALL MUTUALLY SELECT AN INDEPENDENT ENTITY TO CONDUCT AN AUDIT, AND THE INDEPENDENT ENTITY SHALL SIGN A CONFIDENTIALITY AGREEMENT WITH THE COVERED ENTITY AND THE PHARMACY BENEFIT MANAGER THAT ENSURES THAT ALL INFORMATION OBTAINED DURING THE AUDIT WILL BE TREATED AS CONFIDENTIAL.
 - (6) A VIOLATION OF THIS SECTION IS A VIOLATION OF THE "COLORADO CONSUMER PROTECTION ACT", PART 1 OF ARTICLE 1 OF TITLE 6, C.R.S.
 - (7) THIS SECTION SHALL NOT APPLY TO PHARMACY BENEFITS ADMINISTERED BY THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES.

SECTION 2. 6-1-105 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

6-1-105. Deceptive trade practices. (1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:

- (xx) VIOLATES ANY PROVISION OF SECTION 10-16-122.5, C.R.S.

SECTION 3. Applicability. This act applies to contracts between a pharmacy benefit manager and a covered entity that are entered into or renewed on or after the applicable effective date of this act.

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

The amendment to the Report of the Committee of the Whole was declared LOST on the following roll call vote:

| YES | 11 | NO | 23 | EXCUSED | 1 | ABSENT | 0 |
|----------|----|----------|----|----------|---|-----------|---|
| Bacon | N | Hanna | N | Mitchell | Y | Tochtrop | N |
| Brophy | N | Isgar | N | Owen | Y | Traylor | Y |
| Dyer | Y | Johnson | E | Sandoval | Y | Tupa | N |
| Entz | N | Jones | Y | Shaffer | N | Veiga | N |
| Evans | N | Keller | N | Spence | Y | Wiens | Y |
| Gordon | N | Kester | N | Takis | N | Williams | N |
| Groff | N | Lamborn | N | Tapia | N | Windels | N |
| Grossman | N | May R. | N | Taylor | N | President | N |
| Hagedorn | Y | McElhany | Y | Teck | Y | | |

ROLL CALL VOTE ON SB06-164

SB06-164 by Senator(s) Keller, Entz, Hanna; --Concerning the business practices of pharmacy benefit managers.

Senator McElhany requested a roll call vote on SB06-164.

| YES | 22 | NO | 12 | EXCUSED | 1 | ABSENT | 0 |
|----------|----|----------|----|----------|---|-----------|---|
| Bacon | Y | Hanna | Y | Mitchell | N | Tochtrop | Y |
| Brophy | Y | Isgar | Y | Owen | N | Traylor | N |
| Dyer | N | Johnson | E | Sandoval | Y | Tupa | Y |
| Entz | Y | Jones | N | Shaffer | Y | Veiga | Y |
| Evans | N | Keller | Y | Spence | N | Wiens | N |
| Gordon | Y | Kester | Y | Takis | Y | Williams | Y |
| Groff | Y | Lamborn | N | Tapia | Y | Windels | Y |
| Grossman | Y | May R. | Y | Taylor | Y | President | Y |
| Hagedorn | N | McElhany | N | Teck | N | | |

ADOPTION OF THE REPORT OF THE COMMITTEE OF THE WHOLE

On motion of Senator Veiga, the Report of the Committee of the Whole was adopted and, a majority of all members elected to the Senate having voted in the affirmative, the following action was taken:

Passed on Second Reading: SB06-187, SCR06-002, SB06-180 as amended, SB06-164 as amended.

Laid over until Monday, February 27: SB06-037, SB06-143, SB06-125 as amended, SB06-159 as amended, SB06-040 as amended, SB06-089, SB06-171.

Laid over until Tuesday, February 28: SB06-123.

COMMITTEE OF REFERENCE REPORTS

Health & Human Services

After consideration on the merits, the Committee recommends that **SB06-099** be postponed indefinitely.

Health & Human Services

After consideration on the merits, the Committee recommends that **HB06-1180** be referred to the Committee of the Whole with favorable recommendation and with a recommendation that it be placed on the Consent Calendar.

Health &
Human
Services

The Committee on Health and Human Services has had under consideration and has had a hearing on the following appointments and recommends that the appointments be confirmed:

**EXECUTIVE DIRECTOR OF THE
DEPARTMENT OF HEALTH CARE POLICY AND FINANCING**

for a term expiring at the pleasure of the Governor:

Stephen C. Tool of Fort Collins, Colorado, to replace Karen Reinertson of Aurora, Colorado, who resigned.

MESSAGE FROM THE HOUSE

February 24, 2006
Madame President:

The House has adopted and returns herewith SJR06-002.

February 24, 2006
Madame President:

The House has voted to concur in the Senate amendments to HB06-1094 and has repassed the bill as so amended.

MESSAGE FROM THE GOVERNOR

February 23, 2006

To the Honorable
Senate
Sixty-fifth General Assembly
Second Regular Session
Denver, CO 80203

Ladies and Gentlemen:

Pursuant to the authority vested in the Office of the Governor of the State of Colorado, I, Jane Norton, serving in the capacity of the Governor of the State of Colorado as specified in Article IV, Section 13 (5) of the Colorado Constitution, have the honor to inform you that I have approved and filed with the Secretary of State the following act:

S.B. 009 - Concerning A Requirement That Discussions Occurring In Executive Sessions Of Public Bodies Be Electronically Recorded.

Approved February 23, 2006 at 1:01 p.m.

Sincerely,
(signed)
Jane Norton
Lieutenant Governor
Rec'd 2/23/06, 4:10 p.m.
Karen Goldman, Secretary of the Senate

CHANGE IN SPONSORSHIP

Upon announcement of President Fitz-Gerald, Senator Dyer was removed as a sponsor on HB06-1125.

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SENATE SERVICES REPORT

Correctly Printed: SB06-194, and 195; SJR06-011.
Correctly Engrossed: SB06-068, and 154.
Correctly Reengrossed: SB06-102.
Correctly Revised: HB06-1063.

SIGNING OF BILLS -- RESOLUTIONS -- MEMORIALS

The President has signed: HB06-1014, 1087, HJR06-1009.
The President has signed: SJR06-009 and 010.

On motion of Senator Gordon, and with a majority of those elected to the Senate having voted in the affirmative, the balance of the calendar of February 24 was laid over until Monday, February 27, retaining its place on the calendar.

Conference Committees to Report: HB06-1215.

On motion of Senator Gordon, the Senate adjourned until 10:00 a.m., Monday, February 27, 2006.

Approved:

Joan Fitz-Gerald
President of the Senate

Attest:

Karen Goldman
Secretary of the Senate

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