

SENATE JOURNAL
Sixty-eighth General Assembly
STATE OF COLORADO
First Regular Session

37th Legislative Day

Thursday, February 17, 2011

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Prayer	By Senator Morse.	11
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Call to Order	By the President at 9:00 a.m.	13
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Pledge	By Senator Grantham.	15
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Roll Call	Present--35	17
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Quorum	The President announced a quorum present.	19
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Reading of Journal	On motion of Senator Morse, reading of the Journal of Wednesday, February 16, 2011, was dispensed with and the Journal was approved as corrected by the Secretary.	21
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MESSAGE FROM THE HOUSE

February 16, 2011

Mr. President:

The House has adopted and returns herewith SJR11-016.

SIGNING OF BILLS -- RESOLUTIONS -- MEMORIALS

The President has signed: SJR11-013, 014 and 016.

SENATE SERVICES REPORT

Correctly Engrossed: SJR11-016.

Correctly Reengrossed: SB11-031, 061, 100, 101, 103, 106 and 123.

Correctly Rerevised: HB11-1006, 1022 and 1037.

Correctly Enrolled: SJR11-016.

**THIRD READING OF BILLS -- FINAL PASSAGE --
CONSENT CALENDAR**

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

SB11-087	by Senator(s) Boyd; also Representative(s) Fields and Beezley--Concerning authority for the public utilities commission to create an exemption from tiered electricity rate plans based on a customer's medical condition.	63
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The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	35	NO	0	EXCUSED	0	ABSENT	0
Aguilar	Y	Guzman	Y	Kopp	Y	Scheffel	Y
Bacon	Y	Harvey	Y	Lambert	Y	Schwartz	Y
Boyd	Y	Heath	Y	Lundberg	Y	Spence	Y
Brophy	Y	Hodge	Y	Mitchell	Y	Steadman	Y
Cadman	Y	Hudak	Y	Morse	Y	Tochtrop	Y
Carroll	Y	Jahn	Y	Newell	Y	White	Y
Foster	Y	Johnston	Y	Nicholson	Y	Williams S.	Y
Giron	Y	King K.	Y	Renfroe	Y	President	Y
Grantham	Y	King S.	Y	Roberts	Y		

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

Co-sponsors added: Aguilar, Carroll, Guzman, Heath, Hudak, Jahn, King S., Newell, Schwartz, Steadman and Tochtrop.

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

**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:

HB11-1050 by Representative(s) Soper; also Senator(s) Tochtrop--Concerning boiler inspection regulation by the division of oil and public safety.

Ordered revised and placed on the calendar for third reading and final passage.

SB11-096 by Senator(s) Steadman, Bacon, Carroll, Giron, Guzman, Hodge, Hudak, Jahn, King K., King S., Mitchell, Morse, Newell, Nicholson, Roberts; also Representative(s) McCann, DelGrosso, Ferrandino, Levy, Nikkel--Concerning excluding a class 6 felony drug possession conviction as a qualifying offense for the habitual criminal statute.

Ordered engrossed 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 Schwartz, the report of the Committee of the Whole was adopted on the following roll call vote:

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YES	35	NO	0	EXCUSED	0	ABSENT	0
Aguilar	Y	Guzman	Y	Kopp	Y	Scheffel	Y
Bacon	Y	Harvey	Y	Lambert	Y	Schwartz	Y
Boyd	Y	Heath	Y	Lundberg	Y	Spence	Y
Brophy	Y	Hodge	Y	Mitchell	Y	Steadman	Y
Cadman	Y	Hudak	Y	Morse	Y	Tochtrop	Y
Carroll	Y	Jahn	Y	Newell	Y	White	Y
Foster	Y	Johnston	Y	Nicholson	Y	Williams S.	Y
Giron	Y	King K.	Y	Renfroe	Y	President	Y
Grantham	Y	King S.	Y	Roberts	Y		

The Committee of the Whole took the following action:

Passed on second reading: SB11-096, HB11-1050.

On motion of Senator Morse, and with a majority of those elected to the Senate having voted in the affirmative, the balance of the calendar of Thursday, February 17 was laid over until Friday, February 18, retaining its place on the calendar.

General Orders -- Second Reading of Bills: SB11-013, SB11-010, SB11-039, SB11-012, SB11-019, SB11-034, SB11-043, SB11-009, SB11-007, SB11-016, SB11-055, SB11-110, SB11-008, SB11-107, SB11-025, SB11-040, SB11-124, SB11-068.

Consideration of Resolutions: SJR11-005.

Consideration of Governor's Appointments:

Executive Director of the Department of Local Affairs

COMMITTEE OF REFERENCE REPORTS

Local Government

After consideration on the merits, the Committee recommends that **SB11-119** be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation.

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

"SECTION 1. 39-8-107, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-8-107. Hearings on appeal. (5) (a) ON AND AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (5), IN ADDITION TO ANY OTHER REQUIREMENTS UNDER LAW, ANY PETITIONER APPEALING A VALUATION OF INCOME-PRODUCING NONRESIDENTIAL REAL PROPERTY TO THE BOARD OF ASSESSMENT APPEALS PURSUANT TO SECTION 39-8-108(1) SHALL PROVIDE TO THE COUNTY BOARD OF EQUALIZATION OR TO THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY IN THE CASE OF AN ABATEMENT, AND NOT TO THE BOARD OF ASSESSMENT APPEALS, THE FOLLOWING INFORMATION, IF APPLICABLE:

- (I) DETAILED ACTUAL ANNUAL REAL ESTATE INCOME;
- (II) TENANT REIMBURSEMENTS;
- (III) ITEMIZED DETAILED EXPENSES;
- (IV) DETAILED RENT ROLL DATA, INCLUDING THE NAME OF ANY TENANTS, THE ADDRESS, UNIT, OR SUITE NUMBER OF THE SUBJECT PROPERTY, LEASE START AND END DATES, OPTION TERMS, BASE RENT, SQUARE FOOTAGE LEASED, AND VACANT SPACE FOR TWO FULL YEARS INCLUDING THE BASE YEAR FOR THE RELEVANT PROPERTY TAX YEAR; AND

(V) ANY APPRAISAL RELATED TO THE SUBJECT PROPERTY PREPARED DURING THE BASE YEAR FOR THE RELEVANT PROPERTY TAX YEAR BY A PERSON WHO HOLDS EITHER AN MAI OR SRA MEMBERSHIP AS AWARDED AND DESIGNATED BY THE APPRAISAL INSTITUTE.

(b) IN EXCHANGE FOR OBTAINING THE INFORMATION PROVIDED BY THE PETITIONER PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (5), THE ASSESSOR SHALL, UPON REQUEST MADE BY THE PETITIONER, PROVIDE TO THE PETITIONER ALL OF THE UNDERLYING DATA USED BY THE COUNTY IN

CALCULATING THE CAPITALIZATION RATE FOR THE SUBJECT PROPERTY. BEFORE ANY SUCH INFORMATION MAY BE MADE PUBLIC BY THE COUNTY IN CONNECTION WITH A HEARING ON THE APPEAL, THE ASSESSOR SHALL REDACT ALL CONFIDENTIAL INFORMATION CONTAINED THEREIN.

(c) THE PETITIONER SHALL PROVIDE THE INFORMATION REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (5) WITHIN SIXTY DAYS AFTER THE APPEAL HAS BEEN FILED WITH THE BOARD OF ASSESSMENT APPEALS. INTEREST SHALL CEASE TO ACCRUE ON THE UNDERLYING PROPERTY TAX OBLIGATION AS OF THE DATE THE PETITIONER FAILS TO PROVIDE SUCH INFORMATION. THE PETITIONER MAY BE GRANTED AN EXTENSION OF THIRTY DAYS TO PROVIDE SUCH INFORMATION UPON A SHOWING OF GOOD CAUSE.

(d) IF A PETITIONER FAILS TO PROVIDE THE INFORMATION REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (5) BY THE DEADLINE SPECIFIED IN PARAGRAPH (c) OF THIS SUBSECTION (5), THE COUNTY MAY MOVE THE BOARD OF ASSESSMENT APPEALS TO COMPEL DISCLOSURE AND TO ISSUE APPROPRIATE SANCTIONS FOR NONCOMPLIANCE WITH SUCH ORDER. THE MOTION MAY BE MADE DIRECTLY BY THE COUNTY ASSESSOR AND SHALL BE ACCOMPANIED BY A CERTIFICATION THAT THE COUNTY ASSESSOR HAS IN GOOD FAITH CONFERRED OR ATTEMPTED TO CONFER WITH SUCH PETITIONER IN AN EFFORT TO OBTAIN THE INFORMATION WITHOUT ACTION BY THE BOARD OF ASSESSMENT APPEALS. IF AN ORDER COMPELLING DISCLOSURE IS ISSUED UNDER THIS PARAGRAPH (d) AND THE PETITIONER FAILS TO COMPLY WITH SUCH ORDER, THE BOARD OF ASSESSMENT APPEALS MAY MAKE SUCH ORDERS IN REGARD TO THE NONCOMPLIANCE AS ARE JUST AND REASONABLE UNDER THE CIRCUMSTANCES, INCLUDING AN ORDER DISMISSING THE ACTION OR THE ENTRY OF A JUDGMENT BY DEFAULT AGAINST THE PETITIONER.

(e) IN THE NOTICE OF DETERMINATION, THE COUNTY BOARD OF EQUALIZATION SHALL INFORM A TAXPAYER OF THE TAXPAYER'S OBLIGATION TO PROVIDE THE INFORMATION REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (5).

(f) ANY INFORMATION PROVIDED BY A PETITIONER PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (5) SHALL CONSTITUTE PROPRIETARY INFORMATION THAT RELATES SPECIFICALLY AND SOLELY TO THE VALUATION OF THE TAXPAYER'S PROPERTY AND SHALL NOT CONSTITUTE A PUBLIC RECORD WITHIN THE MEANING OF THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S. ALL SUCH INFORMATION SHALL BE AND REMAIN CONFIDENTIAL AND MAY BE USED ONLY BY THE BOARD OF ASSESSMENT APPEALS, THE COUNTY BOARD OF EQUALIZATION, THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY, THE ASSESSOR'S OFFICE, OR BY A PERSON HIRED TO APPRAISE THE SUBJECT PROPERTY WHEN SUCH INFORMATION IS PERTINENT TO AN APPEAL.

SECTION 2. 4-72-202 (6) (b) (XII) and (6) (b) (XIII), Colorado Revised Statutes, are amended, and the said 24-72-202 (6) (b) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

24-72-202. Definitions. As used in this part 2, unless the context otherwise requires:

(6) (b) "Public records" does not include:

(XII) Information security audit and assessment reports prepared pursuant to section 24-37.5-403 (2) (d) or 24-37.5-404.5 (2) (d); or

(XIII) State and local applications and licenses for an optional premises cultivation operation as described in section 12-43.3-403, C.R.S., and the location of the optional premises cultivation operation; OR

(XIV) ANY SUBJECT PROPERTY FINANCIAL INFORMATION PRODUCED BY A TAXPAYER IN CONNECTION WITH THE APPEAL OF A VALUATION OF NONRESIDENTIAL REAL PROPERTY IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 39-8-107 (5) (a), C.R.S.

SECTION 3. Act subject to petition - effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2012 and shall take effect on the date of the official declaration of the vote thereon by the governor.

(2) The provisions of this act shall apply to property tax years commencing on or after January 1, 2011."

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Local Government After consideration on the merits, the Committee recommends that **SB11-063** be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation.

Amend printed bill, page 3, line 10, strike "and".

Page 3, strike line 12 and substitute "accessibility; and

(i) As critical delivery points for the provision of health care and emergency services to a community, and major contributors to a community's workforce, hospitals bring a unique capacity to increase positive health outcomes for Colorado residents and to educate stakeholders about the safety and quality of health care in their community."

Page 3, after line 23 insert:

"(b) Under Senate Bill 08-194, the department of public health and environment was required to develop a comprehensive, statewide public health improvement plan, referred to herein as the "state plan", on or before December 31, 2009, and every five years thereafter, and, as soon as practicable after the approval of each state plan, each county or district public health agency was required to prepare a county or district public health plan, referred to herein as the "local plan", which was required to be consistent with the state plan;"

Reletter succeeding paragraphs accordingly.

Page 4, line 19, strike "11-___," and substitute "11-063,".

Page 4, line 24, strike "11-___" and substitute "11-063".

Page 4, line 27, strike "11-___" and substitute "11-063".

Page 6, after line 4 insert:

"(II) NOTHING IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (h) SHALL BE CONSTRUED TO PRECLUDE THE DEVELOPMENT OF A HEALTH CARE FACILITY OR HOSPITAL THAT IS NOT INCLUDED IN THE MASTER PLAN OF A COUNTY OR REGION, NOR SHALL ANYTHING IN SAID SUBPARAGRAPH (I) BE CONSTRUED AS REQUIRING ANY HOSPITAL OR FACILITY TO OFFER ANY SERVICE THAT IS INCLUDED IN THE PLAN."

(III) TO THE EXTENT PRACTICABLE, A COUNTY OR REGION THAT ELECTS TO INCLUDE A COMMUNITY HEALTH ELEMENT IN ITS MASTER PLAN IS STRONGLY ENCOURAGED TO COLLABORATE WITH A PUBLIC HEALTH AGENCY OF THE COUNTY OR DISTRICT, AS APPLICABLE, IN THE INCLUSION OF SUCH ELEMENT AND TO FURTHER USE INFORMATION CONTAINED IN A PUBLIC HEALTH PLAN GOVERNING THE COUNTY OR REGION PURSUANT TO THE PROVISIONS OF SUBPART 3 OF PART 5 OF ARTICLE 1 OF TITLE 25, C.R.S., IN THE INCLUSION OF SUCH ELEMENT."

Renumber succeeding subparagraph accordingly.

Page 6, line 8, strike "HOSPITALS;"

Page 6, line 11, after "PHARMACIES." add "FOR PURPOSES OF THIS PARAGRAPH (h), "HEALTH CARE FACILITY" SHALL NOT INCLUDE A HOSPITAL, OR ANY FACILITY OWNED OR OPERATED BY A HOSPITAL, THAT IS LICENSED OR CERTIFIED PURSUANT TO SECTION 25-3-101, C.R.S."

Page 7, after line 22 insert:

(b) TO THE EXTENT PRACTICABLE, A MUNICIPALITY THAT ELECTS TO INCLUDE A COMMUNITY HEALTH ELEMENT IN ITS MASTER PLAN IS STRONGLY ENCOURAGED TO COLLABORATE WITH A PUBLIC HEALTH AGENCY OF THE MUNICIPALITY OR OF THE COUNTY OR DISTRICT WITHIN WHICH THE MUNICIPALITY IS LOCATED, AS APPLICABLE, IN THE INCLUSION OF SUCH ELEMENT AND TO FURTHER USE INFORMATION CONTAINED IN A PUBLIC HEALTH PLAN GOVERNING THE MUNICIPALITY PURSUANT TO THE PROVISIONS OF SUBPART 3 OF PART 5 OF ARTICLE 1 OF TITLE 25, C.R.S., IN

THE INCLUSION OF SUCH ELEMENT."

"(c) NOTHING IN PARAGRAPH (a) OF THIS SUBSECTION (5.5) SHALL BE CONSTRUED TO PRECLUDE THE DEVELOPMENT OF A HEALTH CARE FACILITY OR HOSPITAL THAT IS NOT INCLUDED IN THE MASTER PLAN OF A MUNICIPALITY, NOR SHALL ANYTHING IN SAID PARAGRAPH (a) BE CONSTRUED AS REQUIRING ANY HOSPITAL OR FACILITY TO OFFER ANY SERVICE THAT IS INCLUDED IN THE PLAN."

Reletter succeeding paragraph accordingly.

Page 7, line 26, strike "HOSPITALS;"

Page 8, line 2, after "PHARMACIES." add "FOR PURPOSES OF THIS SUBSECTION (5.5), "HEALTH CARE FACILITY" SHALL NOT INCLUDE A HOSPITAL, OR ANY FACILITY OWNED OR OPERATED BY A HOSPITAL, THAT IS LICENSED OR CERTIFIED PURSUANT TO SECTION 25-3-101, C.R.S."

Local Government After consideration on the merits, the Committee recommends that **SB11-060** be referred to the Committee of the Whole with favorable recommendation.

Business, Labor, & Technology After consideration on the merits, the Committee recommends that **SB11-075** be postponed indefinitely.

State, Veterans, & Military Affairs After consideration on the merits, the Committee recommends that **SB11-054** be postponed indefinitely.

State, Veterans, & Military Affairs After consideration on the merits, the Committee recommends that **SB11-132** be postponed indefinitely.

State, Veterans, & Military Affairs After consideration on the merits, the Committee recommends that **SB11-129** be postponed indefinitely.

State, Veterans, & Military Affairs After consideration on the merits, the Committee recommends that **SB11-057** be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation.

Amend printed bill, page 2, line 2, strike "(5) (a) and".

Page 2, line 3, strike "are" and substitute "is".

Page 2, line 4, strike "A NEW PARAGRAPH," and substitute "THE FOLLOWING NEW PARAGRAPHS,".

Page 2, strike lines 6 through 19 and substitute "**manner of election - notice - permanent mail-in voters.** (5) (b) In an election conducted by the board OF A METROPOLITAN".

Page 3, strike lines 1 through 13.

Page 3, line 27, strike "THE" and substitute "ONE OF THE TWO".

Page 4, line 1, strike "ELECTION;" and substitute "ELECTIONS; AND".

Page 4, strike lines 2 and 3.

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Renumber succeeding subparagraph.

Page 4, after line 5 insert:

"(b.7) IF A METROPOLITAN DISTRICT CHOOSES NOT TO DELIVER A MAIL-IN BALLOT TO AN ELECTOR BECAUSE THE ELECTOR HAS NOT RETURNED A MAIL-IN BALLOT IN THE TWO MOST RECENT METROPOLITAN DISTRICT ELECTIONS AS SPECIFIED IN SUBPARAGRAPH (I) OF PARAGRAPH (b.5) OF THIS SECTION, THE METROPOLITAN DISTRICT SHALL MAIL TO THE ELECTOR BY FORWARDABLE MAIL, NO LATER THAN FORTY-FIVE DAYS BEFORE THE METROPOLITAN DISTRICT ELECTION, A POSTCARD NOTICE. THE POSTCARD NOTICE SHALL INCLUDE BUT NOT BE LIMITED TO:

(I) A STATEMENT INFORMING THE ELECTOR THAT THE ELECTOR MAY CAST A BALLOT IN PERSON AT ANY POLLING PLACE IN THE METROPOLITAN DISTRICT;

(II) A STATEMENT THAT THE ELECTOR MAY REQUEST A MAIL BALLOT FOR THE ELECTION BY CONTACTING THE DESIGNATED ELECTION OFFICIAL BY PHONE, MAIL, ELECTRONIC MAIL, OR IN PERSON;

(III) CONTACT INFORMATION FOR THE DESIGNATED ELECTION OFFICIAL INCLUDING BUT NOT LIMITED TO A PHONE NUMBER, PHYSICAL ADDRESS, AND ELECTRONIC MAIL ADDRESS; AND

(IV) THE LOCATION OF ANY POLLING PLACE WHERE AN ELECTOR MAY CAST A BALLOT IN PERSON."

State,
Veterans, &
Military
Affairs

After consideration on the merits, the Committee recommends that **SB11-095** be postponed indefinitely.

Health &
Human
Services

After consideration on the merits, the Committee recommends that **SB11-125** be referred to the Committee on Finance with favorable recommendation.

Health &
Human
Services

After consideration on the merits, the Committee recommends that **SB11-114** be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation.

Amend printed bill, page 4, strike lines 23 through 27.

Page 5, strike lines 1 through 3.

Renumber succeeding sections accordingly.

Page 5, line 5, strike "12-22-705 (3) (e) and (3) (f)," and substitute "12-22-705 (3) (d) and (3) (e)."

Page 5, line 7, strike "A NEW PARAGRAPH," and substitute "THE FOLLOWING NEW PARAGRAPHS,".

Page 5, after line 20 insert:

"(d) Licensed pharmacists with statutory authority to dispense controlled substances to the extent the information requested relates specifically to a current patient to whom the pharmacist is dispensing or considering dispensing a controlled substance OR TO WHOM THE PHARMACIST IS PROVIDING CLINICAL PATIENT CARE SERVICES;".

Page 5, line 22, strike "PRACTITIONER".

Page 5, strike lines 25 through 27.

Page 6, line 5, strike "SUBPOENA." and substitute "SUBPOENA; AND

(h) A RESIDENT PHYSICIAN WITH AN ACTIVE PHYSICIAN TRAINING LICENSE ISSUED BY THE COLORADO MEDICAL BOARD AND UNDER THE SUPERVISION OF A LICENSED PHYSICIAN."

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Health & Human Services

After consideration on the merits, the Committee recommends that **SB11-084** be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation and with a recommendation that it be placed on the Consent Calendar.

Amend printed bill, page 3, line 3, after "(2)" insert "(a)".

Page 3, after line 11 insert:

"(b) NOTHING IN THIS SUBSECTION (2) SHALL BE CONSTRUED TO PERMIT NONMEDICAL PERSONS TO MAKE MEDICAL DECISIONS IN A LONG-TERM CARE FACILITY."

Judiciary

After consideration on the merits, the Committee recommends that **SB11-049** be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation.

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

SECTION 1. Part 1 of article 1 of title 26, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

26-1-136.5. Prohibition against the use of prone restraints.

(1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "PRONE RESTRAINT" MEANS A METHOD OR DEVICE USED TO INVOLUNTARILY RESTRICT THE FREEDOM OF MOVEMENT OF A PERSON WHILE THE PERSON IS SECURED IN A FACE-DOWN POSITION, INCLUDING BUT NOT LIMITED TO BODILY PHYSICAL FORCE, MECHANICAL DEVICES, OR CHEMICALS. "PRONE RESTRAINT" DOES NOT INCLUDE THE BRIEF, TEMPORARY FACE-DOWN POSITIONING OF A PERSON BY TRAINED PERSONNEL USING BODILY FORCE TO GAIN CONTROL OF THE PERSON IN ORDER TO PREVENT HARM TO THE PERSON OR TO OTHERS.

(2) (a) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE STATE DEPARTMENT, INCLUDING ANY DIVISION THEREOF, A COUNTY DEPARTMENT, A STATE DESIGNATED AGENCY, AND A PERSON EMPLOYED BY OR UNDER CONTRACT WITH SUCH A DEPARTMENT OR AGENCY IS PROHIBITED FROM USING A PRONE RESTRAINT ON A PERSON.

(b) NOTWITHSTANDING THE PROHIBITION CONTAINED IN PARAGRAPH (a) OF THIS SUBSECTION (2), THE USE OF A PRONE RESTRAINT IS NOT PROHIBITED:

(I) WHEN USED IN A LICENSED OR CERTIFIED HOSPITAL IN THE CONTEXT OF PROVIDING MEDICAL OR DENTAL SERVICES THAT ARE PROVIDED WITH THE CONSENT OF THE PERSON OR THE PERSON'S GUARDIAN; OR

(II) WHEN USED AS PART OF A PROTECTIVE DEVICE OR ADAPTIVE DEVICE FOR PROVIDING PHYSICAL SUPPORT, PREVENTION OF INJURY TO THE PERSON, OR VOLUNTARY OR LIFE-SAVING MEDICAL PROCEDURES.

SECTION 2. 26-20-102, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

26-20-102. Definitions. As used in this article, unless the context otherwise requires:

(5.5) "PRONE RESTRAINT" MEANS A METHOD OR DEVICE USED TO INVOLUNTARILY RESTRICT THE FREEDOM OF MOVEMENT OF A PERSON WHILE THE PERSON IS SECURED IN A FACE-DOWN POSITION, INCLUDING BUT NOT LIMITED TO BODILY PHYSICAL FORCE, MECHANICAL DEVICES, OR CHEMICALS. "PRONE RESTRAINT" DOES NOT INCLUDE THE BRIEF, TEMPORARY FACE-DOWN POSITIONING OF A PERSON BY TRAINED PERSONNEL USING BODILY FORCE TO GAIN CONTROL OF THE PERSON IN ORDER TO PREVENT HARM TO THE PERSON OR TO OTHERS.

SECTION 3. 26-20-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

26-20-103. Basis for use of restraint. (7) NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE TO THE CONTRARY, PURSUANT TO THE PROVISIONS OF SECTION 26-1-136.5, THE DEPARTMENT OF HUMAN SERVICES, INCLUDING ANY DIVISION THEREOF, A COUNTY DEPARTMENT, AS DEFINED IN SECTION 26-1-103, A STATE DESIGNATED AGENCY, AS DEFINED IN SECTION 26-1-103, AND A PERSON EMPLOYED BY OR UNDER

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CONTRACT WITH SUCH A DEPARTMENT OR AGENCY IS PROHIBITED FROM USING A PRONE RESTRAINT ON A PERSON.

SECTION 4. 27-10.5-115, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

27-10.5-115. Right to humane care and treatment.

(5.5) EXCEPT AS AUTHORIZED PURSUANT TO THE PROVISIONS OF SECTION 26-1-136.5, C.R.S., THE USE OF A PRONE RESTRAINT, AS DEFINED IN SECTION 26-1-136.5, C.R.S., ON A PERSON WITH A DEVELOPMENTAL DISABILITY IS PROHIBITED.

SECTION 5. 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."

Page 1, line 101, after "OF" insert "PRONE".

Judiciary After consideration on the merits, the Committee recommends that **SB11-122** be postponed indefinitely.

Judiciary After consideration on the merits, the Committee recommends that **SB11-083** be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation and with a recommendation that it be placed on the Consent Calendar.

Amend printed bill, page 2, after line 1 insert:

SECTION 1. Article 10 of title 15, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 6

COMPENSATION AND COST RECOVERY

15-10-601. Definitions. AS USED IN THIS PART 6, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ESTATE" MEANS THE PROPERTY OF THE DECEDENT, TRUST, OR OTHER PERSON WHOSE AFFAIRS ARE SUBJECT TO THIS CODE AS THE ESTATE IS ORIGINALLY CONSTITUTED AND AS THE ESTATE EXISTS FROM TIME TO TIME DURING ADMINISTRATION. "ESTATE" INCLUDES CUSTODIAL PROPERTY AS DESCRIBED IN THE "COLORADO UNIFORM TRANSFERS TO MINORS ACT," ARTICLE 50 OF TITLE 11, C.R.S.; CUSTODIAL TRUST PROPERTY AS DESCRIBED IN THE "COLORADO UNIFORM CUSTODIAL TRUST ACT," ARTICLE 1.5 OF THIS TITLE; AND THE PROPERTY OF A PRINCIPAL THAT IS SUBJECT TO A POWER OF ATTORNEY.

(2) "FIDUCIARY" MEANS:

(a) A PERSONAL REPRESENTATIVE, GUARDIAN, CONSERVATOR, OR TRUSTEE;

(b) A CUSTODIAN AS DESCRIBED IN THE "COLORADO UNIFORM TRANSFERS TO MINORS ACT", ARTICLE 50 OF TITLE 11, C.R.S.;

(c) A CUSTODIAL TRUSTEE AS DESCRIBED IN THE "COLORADO UNIFORM CUSTODIAL TRUST ACT", ARTICLE 1.5 OF THIS TITLE;

(d) AN AGENT AS DEFINED IN SECTIONS 15-10-201 (1), 15-14-602 (3), AND 15-14-702 (1); AND

(e) A PUBLIC ADMINISTRATOR AS DESCRIBED IN SECTION 15-12-619.

(3) (a) "GOVERNING INSTRUMENT" MEANS A WILL OR A TRUST OR A DONATIVE, APPOINTIVE, OR NOMINATIVE INSTRUMENT OF ANY OTHER TYPE, INCLUDING BUT NOT LIMITED TO:

(I) AN INSTRUMENT THAT CREATES A CUSTODIAL TRANSFER AS DESCRIBED IN THE "COLORADO UNIFORM TRANSFERS TO MINORS ACT", ARTICLE 50 OF TITLE 11, C.R.S.;

(II) A CUSTODIAL TRUST AS DESCRIBED IN THE "COLORADO UNIFORM CUSTODIAL TRUST ACT", ARTICLE 1.5 OF THIS TITLE;

(III) A MEDICAL DURABLE POWER OF ATTORNEY AS DESCRIBED IN SECTION 15-14-506;

(IV) AN AGENCY INSTRUMENT AS DEFINED IN SECTION 15-14-602 (2);

(V) A POWER OF ATTORNEY AS DEFINED IN SECTION 15-14-702 (7);

(VI) A COURT ORDER APPOINTING A GUARDIAN AS DESCRIBED IN PARTS 2 AND 3 OF ARTICLE 14 OF THIS TITLE; AND

(VII) A COURT ORDER APPOINTING A CONSERVATOR AS DESCRIBED

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IN PART 4 OF ARTICLE 14 OF THIS TITLE.

(b) "GOVERNING INSTRUMENT" DOES NOT INCLUDE A DEED; AN INSURANCE OR ANNUITY POLICY; A MULTIPLE-PARTY ACCOUNT; A SECURITY REGISTERED IN BENEFICIARY FORM; A PENSION; A PROFIT-SHARING, RETIREMENT, OR SIMILAR BENEFIT PLAN; OR AN INDIVIDUAL RETIREMENT ACCOUNT.

15-10-602. Recovery of reasonable compensation and costs.

(1) A FIDUCIARY AND HIS OR HER LAWYER ARE ENTITLED TO REASONABLE COMPENSATION FOR SERVICES RENDERED ON BEHALF OF AN ESTATE.

(2) A LAWYER HIRED BY A RESPONDENT, WARD, OR PROTECTED PERSON IS ENTITLED TO REASONABLE COMPENSATION AND COSTS INCURRED FOR THE LEGAL REPRESENTATION THE LAWYER PROVIDES FOR THE RESPONDENT, WARD, OR PROTECTED PERSON.

(3) A THIRD PARTY WHO PERFORMS SERVICES AT THE REQUEST OF A COURT IS ENTITLED TO REASONABLE COMPENSATION.

(4) A PERSON'S ENTITLEMENT TO COMPENSATION OR COSTS SHALL NOT LIMIT OR REMOVE A COURT'S INHERENT AUTHORITY, DISCRETION, AND RESPONSIBILITY TO DETERMINE THE REASONABLENESS OF COMPENSATION AND COSTS WHEN APPROPRIATE.

(5) EXCEPT AS LIMITED OR OTHERWISE RESTRICTED BY A COURT ORDER, COMPENSATION AND COSTS THAT MAY BE RECOVERED PURSUANT TO THIS SECTION MAY BE PAID DIRECTLY OR REIMBURSED WITHOUT A COURT ORDER. A COURT SHALL ORDER A PERSON WHO RECEIVES EXCESSIVE COMPENSATION OR PAYMENT FOR INAPPROPRIATE COSTS TO MAKE APPROPRIATE REFUNDS.

(6) EXCEPT AS PROVIDED IN SECTIONS 15-10-605 (4), 15-14-318 (4), AND 15-14-431 (5), IF ANY FIDUCIARY OR PERSON WITH PRIORITY FOR APPOINTMENT AS PERSONAL REPRESENTATIVE, CONSERVATOR, GUARDIAN, AGENT, CUSTODIAN, OR TRUSTEE DEFENDS OR PROSECUTES A PROCEEDING IN GOOD FAITH, WHETHER SUCCESSFUL OR NOT, THE FIDUCIARY OR PERSON IS ENTITLED TO RECEIVE FROM THE ESTATE REIMBURSEMENT FOR NECESSARY COSTS AND DISBURSEMENTS, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY FEES.

(7) (a) EXCEPT AS OTHERWISE PROVIDED IN PART 5 OF THIS ARTICLE OR IN THIS PART 6, A NONFIDUCIARY OR HIS OR HER LAWYER IS NOT ENTITLED TO RECEIVE COMPENSATION FROM AN ESTATE.

(b) IF A LAWYER OR ANOTHER PERSON NOT APPOINTED BY THE COURT PROVIDES SERVICES THAT RESULT IN AN ORDER BENEFICIAL TO THE ESTATE, RESPONDENT, WARD, OR PROTECTED PERSON, THE LAWYER OR OTHER PERSON NOT APPOINTED BY THE COURT MAY RECEIVE COSTS AND REASONABLE COMPENSATION FROM THE ESTATE AS PROVIDED BELOW:

(I) THE LAWYER OR OTHER PERSON SHALL FILE A REQUEST FOR COMPENSATION FOR SERVICES OR COSTS ALLEGED TO HAVE RESULTED IN THE ORDER WITHIN FIFTEEN DAYS AFTER THE ENTRY OF THE ORDER, OR WITHIN A GREATER OR LESSER TIME AS THE COURT MAY DIRECT. ANY OBJECTION THERETO SHALL BE FILED WITHIN FIFTEEN DAYS AFTER THE FILING OF THE REQUEST FOR COMPENSATION OR COSTS.

(II) AFTER A REQUEST FOR COMPENSATION OR COSTS OR AN OBJECTION TO SUCH A REQUEST, IF ANY HAS BEEN FILED, THE COURT SHALL DETERMINE WITHOUT A HEARING, THE BENEFIT, IF ANY, THAT THE ESTATE RECEIVED FROM THE SERVICES PROVIDED.

(III) IF THE COURT DETERMINES THAT A COMPENSABLE BENEFIT RESULTED FROM THE SERVICES, THEN THE PERSON REQUESTING COMPENSATION OR COSTS SHALL SUBMIT TO THE COURT ONLY THOSE FEES OR COSTS PURPORTEDLY INCURRED IN PROVIDING THE BENEFICIAL SERVICES. IF NO OBJECTION TO THOSE FEES AND COSTS IS FILED, THE COURT SHALL DETERMINE THE AMOUNT OF COMPENSATION OR COSTS TO BE AWARDED FOR THE BENEFIT, WITHOUT A HEARING.

(IV) AN INTERESTED PERSON DISPUTING THE REASONABLENESS OF THE AMOUNT OF COMPENSATION OR COSTS REQUESTED FOR THE BENEFICIAL SERVICES MAY FILE AN OBJECTION. IF AN OBJECTION IS FILED, THE PROCEEDINGS TO RESOLVE THE DISPUTE SHALL BE GOVERNED BY SECTION 15-10-604.

(c) IN DETERMINING A REASONABLE AMOUNT OF COMPENSATION OR COSTS, THE COURT MAY TAKE INTO ACCOUNT, IN ADDITION TO THE FACTORS SET FORTH IN SECTION 15-10-603 (3):

(I) THE VALUE OF A BENEFIT TO THE ESTATE, RESPONDENT, WARD, OR PROTECTED PERSON;

(II) THE NUMBER OF PARTIES INVOLVED IN ADDRESSING THE ISSUE;

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(III) THE EFFORTS MADE BY THE LAWYER OR PERSON NOT APPOINTED BY THE COURT TO REDUCE AND MINIMIZE ISSUES; AND

(IV) ANY ACTIONS BY THE LAWYER OR PERSON NOT APPOINTED BY THE COURT THAT UNNECESSARILY EXPANDED ISSUES OR DELAYED OR HINDERED THE EFFICIENT ADMINISTRATION OF THE ESTATE.

(d) FOR THE PURPOSES OF THIS SUBSECTION (7), SERVICES RENDERED BY A LAWYER OR A PERSON NOT APPOINTED BY A COURT THAT CONFER A BENEFIT TO AN ESTATE, RESPONDENT, WARD, OR PROTECTED PERSON ARE THOSE SIGNIFICANT, DEMONSTRABLE, AND GENERALLY NONCUMULATIVE SERVICES THAT ASSIST THE COURT IN RESOLVING MATERIAL ISSUES IN THE ADMINISTRATION OF AN ESTATE. BY WAY OF EXAMPLE AND NOT LIMITATION, SUCH BENEFITS MAY RESULT IN SIGNIFICANTLY INCREASING OR PREVENTING A SIGNIFICANT DECREASE IN THE SIZE OF THE ESTATE, PREVENTING OR EXPOSING MALADMINISTRATION OR A MATERIAL BREACH OF FIDUCIARY DUTY, OR CLARIFYING AND UPHOLDING A DECEDENT'S, SETTLORS, PRINCIPAL'S, RESPONDENT'S, WARD'S, OR PROTECTED PERSON'S INTENT WITH RESPECT TO A MATERIAL ISSUE IN DISPUTE.

(8) A FIDUCIARY WHO IS A MEMBER OF A LAW FIRM MAY USE THE SERVICES OF THE LAW FIRM AND CHARGE FOR THE REASONABLE VALUE OF THE SERVICES OF THE MEMBERS AND STAFF OF THE FIRM THAT ASSIST THE FIDUCIARY IN PERFORMING HIS OR HER DUTIES.

(9) EVERY APPLICATION OR PETITION FOR APPOINTMENT OF A FIDUCIARY FILED UNDER THIS CODE, INCLUDING WITHOUT LIMITATION THOSE REQUIRED UNDER SECTIONS 15-12-301, 15-12-402, 15-12-614, 15-12-621, 15-12-622, 15-14-202, 15-14-204, 15-14-304, AND 15-14-403, SHALL INCLUDE A STATEMENT BY THE APPLICANT OR PETITIONER DISCLOSING THE BASIS UPON WHICH ANY COMPENSATION IS TO BE CHARGED TO THE ESTATE BY THE FIDUCIARY AND HIS OR HER OR ITS COUNSEL, OR SHALL STATE THAT THE BASIS HAS NOT YET BEEN DETERMINED. THE DISCLOSURE STATEMENT SHALL SPECIFICALLY DESCRIBE, AS IS APPLICABLE, THE HOURLY RATES TO BE CHARGED, ANY AMOUNTS TO BE CHARGED PURSUANT TO A PUBLISHED FEE SCHEDULE, INCLUDING THE RATES AND BASIS FOR CHARGING FEES FOR ANY EXTRAORDINARY SERVICES, AND ANY OTHER BASES UPON WHICH A FEE CHARGED TO THE ESTATE WILL BE CALCULATED. THIS DISCLOSURE OBLIGATION SHALL BE CONTINUING IN NATURE SO AS TO REQUIRE SUPPLEMENTAL DISCLOSURES IF MATERIAL CHANGES TO THE BASIS FOR CHARGING FEES TAKE PLACE.

15-10-603. Factors in determining the reasonableness of compensation and costs. (1) A COURT MAY REVIEW AND DETERMINE:

(a) THE REASONABLENESS OF THE COMPENSATION OF ANY FIDUCIARY, LAWYER, OR OTHER PERSON WHO:

(I) IS EMPLOYED ON BEHALF OF AN ESTATE, FIDUCIARY, RESPONDENT, WARD, OR PROTECTED PERSON;

(II) IS APPOINTED BY THE COURT; OR

(III) PROVIDES BENEFICIAL SERVICES TO AN ESTATE, RESPONDENT, WARD, OR PROTECTED PERSON; AND

(b) THE APPROPRIATENESS OF ANY COST SOUGHT TO BE PAID BY OR RECOVERED FROM AN ESTATE.

(2) IN CONSIDERING THE REASONABLENESS OF THE COMPENSATION, THERE SHALL BE NO PRESUMPTION THAT ANY METHOD OF CHARGING A FEE FOR SERVICES RENDERED TO AN ESTATE, FIDUCIARY, PRINCIPAL, RESPONDENT, WARD, OR PROTECTED PERSON IS PER SE UNREASONABLE. REGARDLESS OF THE METHOD USED FOR CHARGING A FEE, IN DETERMINING APPROPRIATE COMPENSATION, THE COURT SHALL APPLY THE STANDARD OF REASONABLENESS IN LIGHT OF ALL RELEVANT FACTS AND CIRCUMSTANCES.

(3) THE COURT SHALL CONSIDER ALL OF THE FACTORS DESCRIBED IN THIS SUBSECTION (3) IN DETERMINING THE REASONABLENESS OF ANY COMPENSATION OR COST. THE COURT MAY DETERMINE THE WEIGHT TO BE GIVEN TO EACH FACTOR AND TO ANY OTHER FACTOR THE COURT CONSIDERS RELEVANT IN REACHING ITS DECISION:

(a) THE TIME AND LABOR REQUIRED, THE NOVELTY AND DIFFICULTY OF THE QUESTIONS INVOLVED, AND THE SKILL REQUIRED TO PERFORM THE SERVICE PROPERLY;

(b) THE LIKELIHOOD, IF APPARENT TO THE FIDUCIARY, THAT THE ACCEPTANCE OF THE PARTICULAR EMPLOYMENT WILL PRECLUDE THE PERSON EMPLOYED FROM OTHER EMPLOYMENT;

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(c) (I) THE COMPENSATION CUSTOMARILY CHARGED IN THE COMMUNITY FOR SIMILAR SERVICES WITH DUE CONSIDERATION AND ALLOWANCE FOR THE COMPLEXITY OR UNIQUENESS OF ANY ADMINISTRATIVE OR LITIGATED ISSUES, THE NEED FOR AND LOCAL AVAILABILITY OF SPECIALIZED KNOWLEDGE OR EXPERTISE, AND THE NEED FOR AND ADVISABILITY OF RETAINING OUTSIDE FIDUCIARIES OR LAWYERS TO AVOID POTENTIAL CONFLICTS OF INTEREST;

(II) AS USED IN THIS SUBSECTION (3), UNLESS THE CONTEXT OTHERWISE REQUIRES, "COMMUNITY" MEANS THE GENERAL GEOGRAPHICAL AREA IN WHICH THE ESTATE IS BEING ADMINISTERED OR IN WHICH THE RESPONDENT, WARD, OR PROTECTED PERSON RESIDES.

(d) THE NATURE AND SIZE OF THE ESTATE, THE LIQUIDITY OR ILLIQUIDITY OF THE ESTATE, AND THE RESULTS AND BENEFITS OBTAINED DURING THE ADMINISTRATION OF THE ESTATE;

(e) WHETHER AND TO WHAT EXTENT ANY LITIGATION HAS TAKEN PLACE AND THE RESULTS OF SUCH LITIGATION;

(f) THE LIFE EXPECTANCY AND NEEDS OF THE RESPONDENT, WARD, PROTECTED PERSON, DEVISEE, BENEFICIARY, OR PRINCIPAL;

(g) THE TIME LIMITATIONS IMPOSED ON OR BY THE FIDUCIARY OR BY THE CIRCUMSTANCES OF THE ADMINISTRATION OF THE ESTATE;

(h) THE ADEQUACY OF ANY DETAILED BILLING STATEMENTS UPON WHICH THE COMPENSATION IS BASED;

(i) WHETHER THE FIDUCIARY HAS CHARGED VARIABLE RATES THAT REFLECT COMPARABLE PAYMENT STANDARDS IN THE COMMUNITY FOR LIKE SERVICES;

(j) THE EXPERTISE, REPUTATION, AND ABILITY OF THE PERSON PERFORMING THE SERVICES AND, IN THE CASE OF A FIDUCIARY, WHETHER AND TO WHAT EXTENT THE FIDUCIARY HAS HAD ANY PRIOR EXPERIENCE IN ADMINISTERING ESTATES SIMILAR TO THOSE FOR WHICH COMPENSATION IS SOUGHT;

(k) THE TERMS OF A GOVERNING INSTRUMENT;

(l) THE VARIOUS COURSES OF ACTION AVAILABLE TO A FIDUCIARY OR AN INDIVIDUAL SEEKING COMPENSATION FOR A PARTICULAR SERVICE OR ALLEGED BENEFIT AND WHETHER THE COURSE OF ACTION TAKEN WAS REASONABLE AND APPROPRIATE UNDER THE CIRCUMSTANCES EXISTING AT THE TIME THE SERVICE WAS PERFORMED; AND

(m) THE VARIOUS COURSES OF ACTION AVAILABLE TO A FIDUCIARY OR AN INDIVIDUAL SEEKING COMPENSATION FOR A PARTICULAR SERVICE OR ALLEGED BENEFIT AND THE COST-EFFECTIVENESS OF THE ACTION TAKEN UNDER THE CIRCUMSTANCES EXISTING AT THE TIME THE SERVICE WAS PERFORMED.

(4) IF A GOVERNING INSTRUMENT PROVIDES THAT A FIDUCIARY IS ENTITLED TO RECEIVE COMPENSATION IN ACCORDANCE WITH A PUBLISHED FEE SCHEDULE IN EFFECT AT THE TIME THE SERVICES ARE PERFORMED, FEES CHARGED IN ACCORDANCE WITH THE PUBLISHED FEE SCHEDULE SHALL BE PRESUMED TO BE REASONABLE. THE ABSENCE OF SUCH A PROVISION IN A GOVERNING INSTRUMENT SHALL NOT PRECLUDE THE FIDUCIARY FROM RECEIVING COMPENSATION IN ACCORDANCE WITH A PUBLISHED FEE SCHEDULE IN EFFECT AT THE TIME THE SERVICES ARE PERFORMED.

(5) NOTHING IN THIS SECTION SHALL BE INTERPRETED TO PROHIBIT MEMBERS OR EMPLOYEES OF A PROFESSIONAL FIDUCIARY'S ORGANIZATION OR LAW FIRM, INCLUDING PARTNERS, ASSOCIATES, PARALEGALS, LAW CLERKS, TRUST OFFICERS, CAREGIVERS, AND SOCIAL WORKERS, FROM COLLABORATING ON THE SAME SERVICE SO LONG AS THE COLLABORATION IS REASONABLE AND THE TOTAL COMPENSATION CHARGED FOR THE SERVICE IN THE AGGREGATE IS REASONABLE UNDER THE CIRCUMSTANCES.

15-10-604. Fee disputes - process and procedure. (1) A DISPUTE OVER THE REASONABLENESS OF A REQUEST FOR COMPENSATION OR COSTS AUTHORIZED BY THIS PART 6 SHALL BE RESOLVED IN ACCORDANCE WITH THE FACTORS SET FORTH IN SECTION 15-10-603 (3) AND THE PROCESS AND PROCEDURE SET FORTH IN THIS SECTION.

(2) FOR PURPOSES OF THIS SECTION, A FEE DISPUTE SHALL BE DEEMED TO HAVE ARISEN WHEN AN OBJECTION TO COMPENSATION OR COSTS HAS BEEN FILED IN A PROCEEDING.

(3) AFTER THE OBJECTION TO COMPENSATION OR COSTS HAS BEEN FILED, THE PERSON REQUESTING COMPENSATION OR COSTS SHALL HAVE THIRTY DAYS, OR A GREATER OR LESSER TIME AS THE COURT MAY DIRECT, TO MAKE AVAILABLE TO THE OBJECTOR FOR INSPECTION AND COPYING ALL

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DOCUMENTATION THAT THE PERSON DEEMS NECESSARY TO ESTABLISH THE REASONABLENESS OF THE COMPENSATION AND COSTS IN CONSIDERATION OF THE FACTORS SET FORTH IN SECTION 15-10-603 (3) AND TO CERTIFY TO THE COURT THAT SUCH DOCUMENTATION WAS MADE AVAILABLE TO THE OBJECTOR ON A CERTAIN DATE. THE OBJECTOR SHALL THEN HAVE FIFTEEN DAYS, OR A GREATER OR LESSER TIME AS THE COURT MAY DIRECT, TO FILE SPECIFIC WRITTEN OBJECTIONS TO SUCH COMPENSATION AND COSTS BASED ON THE FACTORS SET FORTH IN SECTION 15-10-603 (3). THE FIFTEEN DAYS SHALL COMMENCE ON THE DATE THAT THE PERSON MAKES THE DOCUMENTATION AVAILABLE TO THE OBJECTOR OR UPON THE FILING OF THE PERSON'S CERTIFICATION, WHICHEVER IS LATER. THE COURT MAY PERMIT FURTHER DISCOVERY ON THE COMPENSATION AND COST ISSUES RAISED BY THE PLEADINGS ONLY UPON GOOD CAUSE SHOWN.

(4) SUBJECT TO THE COURT'S INHERENT AUTHORITY TO ORDER ALTERNATIVE DISPUTE RESOLUTION METHODS, THE COURT SHALL DETERMINE, AFTER NOTICE AND HEARING, THE AMOUNT OF COMPENSATION AND COSTS IT CONSIDERS TO BE REASONABLE AND SHALL ISSUE ITS FINDINGS OF FACT AND CONCLUSIONS OF LAW REFERENCING THE FACTORS SET FORTH IN SECTION 15-10-603 (3) AND ANY OTHER FACTORS IT DEEMS RELEVANT TO ITS DECISION.

15-10-605. Compensation and costs - assessment - limitations.

(1) IF THE COURT DETERMINES THAT ANY PROCEEDINGS PURSUANT TO THIS CODE OR ANY PLEADINGS FILED IN SUCH PROCEEDINGS WERE BROUGHT, DEFENDED, OR FILED IN BAD FAITH, THE COURT MAY ASSESS THE FEES AND THE COSTS, INCLUDING REASONABLE ATTORNEY FEES, INCURRED BY THE FIDUCIARY AND OTHER AFFECTED PARTIES IN RESPONDING TO THE PROCEEDINGS OR PLEADINGS, AGAINST AN ESTATE, PARTY, PERSON, OR ENTITY THAT BROUGHT OR DEFENDED THE PROCEEDINGS OR FILED THE PLEADINGS IN BAD FAITH. NOTHING IN THIS SECTION IS INTENDED TO LIMIT ANY OTHER REMEDY, SANCTION, OR SURCHARGE PROVIDED BY LAW.

(2) IF ANY PERSON ENTITLED TO COMPENSATION UNDER THIS PART 6 IS REQUIRED TO DEFEND THE REASONABLENESS OF COMPENSATION OR COSTS IN A PROCEEDING, THE COURT MAY REVIEW THE FEES AND COSTS INCURRED BY THE PERSON IN DEFENDING THE COMPENSATION OR COSTS, AND THE FEES INCURRED IN CHALLENGING THE COMPENSATION AND COSTS, AND MAY ASSESS THE REASONABLE FEES AND COSTS INCURRED IN THE PROCEEDING AS THE COURT DEEMS EQUITABLE. THE COURT MAY ALLOCATE FEES OR COSTS ASSESSED PURSUANT TO THIS SUBSECTION (2) IN FAVOR OF OR AGAINST THE ESTATE OR ANY PARTY, PERSON, OR ENTITY INVOLVED IN THE PROCEEDING AS JUSTICE AND EQUITY MAY REQUIRE.

(3) A PERSON WHO IS UNSUCCESSFUL IN DEFENDING THE REASONABLENESS OF COMPENSATION OR COSTS AT A HEARING SHALL NOT BE ENTITLED TO RECOVER THE FEES OR COSTS OF THAT DEFENSE AS THE COURT DEEMS EQUITABLE.

(4) A FIDUCIARY WHO IS UNSUCCESSFUL IN DEFENDING THE FIDUCIARY'S CONDUCT IN A PROCEEDING PURSUANT TO THIS CODE ALLEGING BREACH OF FIDUCIARY DUTY SHALL NOT RECOVER THE FEES OR COSTS OF THAT DEFENSE AS THE COURT DEEMS EQUITABLE.

15-10-606. Applicability. (1) THIS PART 6 APPLIES TO:

(a) AN ESTATE EXISTING BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS PART 6; AND

(b) PROCEEDINGS TO DETERMINE THE REASONABLENESS OF COMPENSATION AND COSTS COMMENCED ON OR AFTER THE EFFECTIVE DATE OF THIS PART 6.

(2) THIS PART 6 DOES NOT APPLY TO PROCEEDINGS TO DETERMINE THE REASONABLENESS OF COMPENSATION AND COSTS COMMENCED BEFORE THE EFFECTIVE DATE OF THIS PART 6 UNLESS THE COURT DETERMINES THAT THE APPLICATION OF THIS PART 6 WOULD NOT PREJUDICE THE RIGHTS OF ANY PARTY TO THE PROCEEDING AND THE COURT DIRECTS OTHERWISE.

SECTION 2. 15-10-504 (2) (b), Colorado Revised Statutes, is amended to read:

15-10-504. Surcharge - contempt - sanctions against fiduciaries. (2) **Surcharge.** (b) In awarding attorney fees and costs pursuant to this section, a court may consider the provisions of ~~sections 15-12-719, 15-12-720, and 15-14-417~~ PART 6 OF THIS ARTICLE."

Renumber succeeding bill sections accordingly.

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Page 6, after line 10 insert:

"SECTION 7. 15-12-805 (1) (a), Colorado Revised Statutes, is amended to read:

15-12-805. Classification of claims. (1) The allowed claims against the estate of a decedent shall be paid by the personal representative in the following order:

(a) Property held by or in the possession of the deceased person as fiduciary or trustee of a trust, which shall include a resulting trust, as long as the reasonable expenses of administering such property and of investigating and determining such claim, as provided by ~~section 15-12-720~~ SECTION 15-10-602, BUT SUBJECT TO SECTION 15-10-605, shall be paid from such property as determined by the court;"

Renumber succeeding bill sections accordingly.

Page 7, after line 22 insert:

"SECTION 10. 15-14-318, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

15-14-318. Termination or modification of guardianship - resignation or removal of guardian. (3.5) THE FOLLOWING PROVISIONS APPLY IN A TERMINATION PROCEEDING THAT IS INITIATED BY THE WARD:

(a) THE GUARDIAN MAY FILE A WRITTEN REPORT TO THE COURT REGARDING ANY MATTER RELEVANT TO THE TERMINATION PROCEEDING, AND THE GUARDIAN MAY FILE A MOTION FOR INSTRUCTIONS REGARDING ANY RELEVANT MATTER INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

(I) WHETHER AN ATTORNEY, GUARDIAN AD LITEM, OR VISITOR SHOULD BE APPOINTED FOR THE WARD;

(II) WHETHER ANY FURTHER INVESTIGATION OR PROFESSIONAL EVALUATION OF THE WARD SHOULD BE CONDUCTED, THE SCOPE OF THE INVESTIGATION OR PROFESSIONAL EVALUATION, AND WHEN THE INVESTIGATION OR PROFESSIONAL EVALUATION SHOULD BE COMPLETED; AND

(III) WHETHER THE GUARDIAN IS TO BE INVOLVED IN THE TERMINATION PROCEEDINGS AND, IF SO, TO WHAT EXTENT;

(b) IF THE GUARDIAN ELECTS TO FILE A WRITTEN REPORT OR A MOTION FOR INSTRUCTIONS, THE GUARDIAN SHALL FILE SUCH INITIAL PLEADINGS WITHIN FIFTEEN DAYS AFTER THE PETITION TO TERMINATE HAS BEEN FILED. ANY INTERESTED PERSON SHALL THEN HAVE TEN DAYS TO FILE A RESPONSE. IF A RESPONSE IS FILED, THE GUARDIAN SHALL HAVE SEVEN DAYS TO FILE A REPLY. IF A MOTION FOR INSTRUCTIONS IS FILED BY THE GUARDIAN AS HIS OR HER INITIAL PLEADING, THE COURT SHALL RULE ON THE MOTION BEFORE THE PETITION FOR TERMINATION OF THE GUARDIANSHIP IS SET FOR HEARING. UNLESS A HEARING ON THE MOTION FOR INSTRUCTIONS IS REQUESTED BY THE COURT, THE COURT MAY RULE ON THE PLEADINGS WITHOUT A HEARING AFTER THE TIME PERIOD FOR THE FILING OF THE LAST RESPONSIVE PLEADING HAS EXPIRED. AFTER THE FILING OF THE GUARDIAN'S INITIAL MOTION FOR INSTRUCTIONS, THE GUARDIAN MAY FILE SUBSEQUENT MOTIONS FOR INSTRUCTION AS APPROPRIATE.

(c) EXCEPT FOR THE ACTIONS AUTHORIZED IN PARAGRAPHS (a), (b), AND (e) OF THIS SUBSECTION (3.5), OR AS OTHERWISE ORDERED BY THE COURT, THE GUARDIAN MAY NOT TAKE ANY ACTION TO OPPOSE OR INTERFERE IN THE TERMINATION PROCEEDING. THE FILING OF THE INITIAL OR SUBSEQUENT MOTION FOR INSTRUCTIONS BY THE GUARDIAN SHALL NOT, IN AND OF ITSELF, BE DEEMED OPPOSITION OR INTERFERENCE.

(d) UNLESS ORDERED BY THE COURT, THE GUARDIAN SHALL HAVE NO DUTY TO PARTICIPATE IN THE TERMINATION PROCEEDING, AND THE GUARDIAN SHALL INCUR NO LIABILITY FOR FILING THE REPORT OR MOTION FOR INSTRUCTION OR FOR FAILING TO PARTICIPATE IN THE PROCEEDING;

(e) NOTHING IN THIS SUBSECTION (3.5) SHALL PREVENT:

(I) THE COURT, ON ITS OWN MOTION AND REGARDLESS OF WHETHER THE GUARDIAN HAS FILED A REPORT OR REQUEST FOR INSTRUCTIONS, FROM ORDERING THE GUARDIAN TO TAKE ANY ACTION THAT THE COURT DEEMS APPROPRIATE OR FROM APPOINTING AN ATTORNEY, GUARDIAN AD LITEM, VISITOR, OR PROFESSIONAL EVALUATOR;

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(II) THE COURT FROM ORDERING THE GUARDIAN TO APPEAR AT THE TERMINATION PROCEEDING AND GIVE TESTIMONY; OR

(III) ANY INTERESTED PERSON FROM CALLING THE GUARDIAN AS A WITNESS IN THE TERMINATION PROCEEDING;

(f) ANY INDIVIDUAL WHO HAS BEEN APPOINTED AS A GUARDIAN, AND IS AN INTERESTED PERSON IN HIS OR HER INDIVIDUAL CAPACITY, AND WANTS TO PARTICIPATE IN THE TERMINATION PROCEEDING IN HIS OR HER INDIVIDUAL CAPACITY AND NOT IN HIS OR HER FIDUCIARY CAPACITY MAY DO SO WITHOUT RESTRICTION OR LIMITATION. THE PAYMENT OF ANY FEES AND COSTS TO THAT INDIVIDUAL, RELATED TO HIS OR HER DECISION TO PARTICIPATE IN THE TERMINATION PROCEEDING, SHALL BE GOVERNED BY SECTION 15-10-602 (7) AND NOT BY SECTION 15-10-602 (1).

(6) WHEN A WARD DIES, ALL FEES, COSTS, AND EXPENSES OF THE ADMINISTRATION OF THE GUARDIANSHIP, INCLUDING ANY UNPAID GUARDIAN FEES AND COSTS AND THOSE OF HIS OR HER COUNSEL, MAY BE SUBMITTED TO THE COURT FOR COURT APPROVAL IN CONJUNCTION WITH THE TERMINATION OF THE GUARDIANSHIP. THEREAFTER, ALL COURT-APPROVED FEES, COSTS, AND EXPENSES OF ADMINISTRATION ARISING FROM THE GUARDIANSHIP SHALL BE PAID AS COURT-APPROVED CLAIMS FOR COSTS AND EXPENSES OF ADMINISTRATION IN THE DECEDENT'S ESTATE. IN THE EVENT THAT THERE ARE INSUFFICIENT MONEYS TO PAY ALL CLAIMS IN THE DECEDENT'S ESTATE IN FULL, THE FEES, COSTS, AND EXPENSES OF ADMINISTRATION ARISING FROM THE GUARDIANSHIP SHALL RETAIN THEIR CLASSIFICATION AS "COSTS AND EXPENSES OF ADMINISTRATION" IN THE DECEDENT'S ESTATE AND SHALL BE PAID PURSUANT TO SECTION 15-12-805.

SECTION 11. 15-14-413 (6), Colorado Revised Statutes, is amended to read:

15-14-413. Who may be conservator - priorities - prohibition of dual roles. (6) (a) Unless the court makes specific findings for good cause shown OR THE PERSON IS A FAMILY CAREGIVER AS DEFINED IN SECTION 27-10.5-102 (15.5), C.R.S., the same professional may not act as an incapacitated person's or a protected person's:

- (I) Guardian and conservator; or
- (II) Guardian and direct service provider; or
- (III) Conservator and direct service provider.

(b) In addition, a guardian or conservator may not employ the same person to act as both care manager and direct service provider for the incapacitated person or protected person UNLESS THE PERSON IS A FAMILY CAREGIVER AS DEFINED IN SECTION 27-10.5-102 (15.5), C.R.S."

Renumber succeeding bill sections accordingly.

Page 7, after line 26 insert:

"SECTION 13. 15-14-428, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

15-14-428. Death of protected person. (3) WHEN A PROTECTED PERSON DIES, ALL FEES, COSTS, AND EXPENSES OF ADMINISTRATION OF THE CONSERVATORSHIP, INCLUDING ANY UNPAID CONSERVATOR FEES AND COSTS AND THOSE OF HIS OR HER COUNSEL, MAY BE SUBMITTED TO THE COURT FOR APPROVAL IN CONJUNCTION WITH THE TERMINATION OF THE CONSERVATORSHIP. THEREAFTER, ALL COURT-APPROVED FEES, COSTS, AND EXPENSES OF ADMINISTRATION ARISING FROM THE CONSERVATORSHIP SHALL BE PAID AS COURT-APPROVED CLAIMS FOR COSTS AND EXPENSES OF ADMINISTRATION IN THE DECEDENT'S ESTATE. IN THE EVENT THAT THERE ARE INSUFFICIENT MONEYS TO PAY ALL CLAIMS IN THE DECEDENT'S ESTATE IN FULL, THE FEES, COSTS, AND EXPENSES OF ADMINISTRATION ARISING FROM THE CONSERVATORSHIP SHALL RETAIN THEIR CLASSIFICATION AS "COSTS AND EXPENSES OF ADMINISTRATION" IN THE DECEDENT'S ESTATE AND SHALL BE PAID PURSUANT TO SECTION 15-12-805.

SECTION 14. 15-14-431, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

15-14-431. Termination of proceedings. (4.5) THE FOLLOWING PROVISIONS APPLY IN A TERMINATION PROCEEDING THAT IS INITIATED BY THE PROTECTED PERSON:

(a) THE CONSERVATOR MAY FILE A WRITTEN REPORT TO THE COURT REGARDING ANY MATTER RELEVANT TO THE TERMINATION PROCEEDING, AND THE CONSERVATOR MAY FILE A MOTION FOR

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INSTRUCTIONS CONCERNING ANY RELEVANT MATTER INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

(I) WHETHER AN ATTORNEY, GUARDIAN AD LITEM, OR VISITOR SHOULD BE APPOINTED FOR THE PROTECTED PERSON;

(II) WHETHER ANY FURTHER INVESTIGATION OR PROFESSIONAL EVALUATION OF THE PROTECTED PERSON SHOULD BE CONDUCTED, THE SCOPE OF THE INVESTIGATION OR PROFESSIONAL EVALUATION, AND WHEN THE INVESTIGATION OR PROFESSIONAL EVALUATION SHOULD BE COMPLETED; AND

(III) WHETHER THE CONSERVATOR IS TO BE INVOLVED IN THE TERMINATION PROCEEDINGS, AND IF SO, TO WHAT EXTENT.

(b) IF THE CONSERVATOR ELECTS TO FILE A WRITTEN REPORT OR A MOTION FOR INSTRUCTIONS, THE CONSERVATOR SHALL FILE SUCH INITIAL PLEADINGS WITHIN FIFTEEN DAYS AFTER THE PETITION TO TERMINATE HAS BEEN FILED. ANY INTERESTED PERSON SHALL THEN HAVE TEN DAYS TO FILE A RESPONSE. IF A RESPONSE IS FILED, THE CONSERVATOR SHALL HAVE SEVEN DAYS TO FILE A REPLY. IF A MOTION FOR INSTRUCTIONS IS FILED BY THE CONSERVATOR AS HIS OR HER INITIAL PLEADING, THE COURT SHALL RULE ON THAT MOTION BEFORE THE PETITION FOR TERMINATION OF THE CONSERVATORSHIP IS SET FOR HEARING. UNLESS A HEARING ON THE MOTION FOR INSTRUCTIONS IS REQUESTED BY THE COURT, THE COURT MAY RULE ON THE PLEADINGS WITHOUT A HEARING AFTER THE TIME PERIOD FOR THE FILING OF THE LAST RESPONSIVE PLEADING HAS EXPIRED. AFTER THE FILING OF THE CONSERVATOR'S INITIAL MOTION FOR INSTRUCTIONS, THE CONSERVATOR MAY FILE SUBSEQUENT MOTIONS FOR INSTRUCTION AS APPROPRIATE.

(c) EXCEPT FOR THE ACTIONS AUTHORIZED IN PARAGRAPHS (a), (b), AND (e) OF THIS SUBSECTION (4.5) OR AS OTHERWISE ORDERED BY THE COURT, THE CONSERVATOR MAY NOT TAKE ANY ACTION TO OPPOSE OR INTERFERE IN THE TERMINATION PROCEEDING. THE FILING OF THE INITIAL OR SUBSEQUENT MOTION FOR INSTRUCTIONS BY THE CONSERVATOR SHALL NOT, IN AND OF ITSELF, BE DEEMED OPPOSITION OR INTERFERENCE.

(d) UNLESS ORDERED BY THE COURT, THE CONSERVATOR SHALL HAVE NO DUTY TO PARTICIPATE IN THE TERMINATION PROCEEDING AND THE CONSERVATOR SHALL INCUR NO LIABILITY FOR FILING THE REPORT OR MOTION FOR INSTRUCTION OR FOR FAILING TO PARTICIPATE IN THE PROCEEDING.

(e) NOTHING IN THIS SUBSECTION (4.5) SHALL PREVENT:

(I) THE COURT, ON ITS OWN MOTION AND REGARDLESS OF WHETHER THE CONSERVATOR HAS FILED A REPORT OR REQUEST FOR INSTRUCTIONS, FROM ORDERING THE CONSERVATOR TO TAKE ANY ACTION THAT THE COURT DEEMS APPROPRIATE, OR FROM APPOINTING AN ATTORNEY, GUARDIAN AD LITEM, VISITOR, OR PROFESSIONAL EVALUATOR;

(II) THE COURT FROM ORDERING THE CONSERVATOR TO APPEAR AT THE TERMINATION PROCEEDING AND GIVE TESTIMONY; OR

(III) ANY INTERESTED PERSON FROM CALLING THE CONSERVATOR AS A WITNESS IN THE TERMINATION PROCEEDING.

(f) ANY INDIVIDUAL WHO HAS BEEN APPOINTED AS A CONSERVATOR, IS AN INTERESTED PERSON IN HIS OR HER INDIVIDUAL CAPACITY, AND WANTS TO PARTICIPATE IN THE TERMINATION PROCEEDING IN HIS OR HER INDIVIDUAL CAPACITY AND NOT IN HIS OR HER FIDUCIARY CAPACITY, MAY DO SO WITHOUT RESTRICTION OR LIMITATION. THE PAYMENT OF ANY FEES AND COSTS TO THE INDIVIDUAL THAT ARE RELATED TO HIS OR HER DECISION TO PARTICIPATE IN THE TERMINATION PROCEEDING SHALL BE GOVERNED BY SECTION 15-10-602 (7) AND NOT SECTION 15-10-602 (1)."

Renumber succeeding bill sections accordingly.

Page 18, after line 16 insert:

"SECTION 22. Repeal. 15-12-719, 15-12-720, 15-12-721, and 15-14-417, Colorado Revised Statutes, are repealed."

Renumber succeeding bill section accordingly.

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On motion of Senator Morse, the Senate adjourned until 9:00 a.m., Friday, February 18, 2011.

Approved:

Brandon C. Shaffer
President of the Senate

Attest:

Cindi Markwell
Secretary of the Senate

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