

# OFFICE OF LEGISLATIVE LEGAL SERVICES

COLORADO GENERAL ASSEMBLY

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## Statutory Revision Committee (SRC)

Monday, August 21<sup>st</sup>, 2017

State Capitol, 9:30am, SCR 352

1. Vote on bill drafts<sup>1</sup> authorized at June 27, 2017, SRC meeting<sup>2</sup>
  - a. Nonsubstantive clean-up of law providing state sales tax exemption for drugs and medical and therapeutic devices (§ 39-26-717, C.R.S.) (*Kate Meyer*)<sup>3</sup>
  - b. Repeal odometer reading requirement for VIN verifications (*Jery Payne*)
2. Presentation of memoranda describing potential SRC legislation
  - a. Align certain reports from the Colorado Department of Transportation with § 24-1-136 (11), C.R.S. (*Kristen Forrestal*)
  - b. Rectify discrepancy regarding deputy sheriffs uncertified by the P.O.S.T. Board (*Richard Sweetman*)
  - c. Update state officials' bonds and oaths requirements (*Kip Kolkmeier*)
  - d. Replace the word "pauper" in C.R.S. provisions (*Brita Darling*)
  - e. Eliminate duplicative definitions section in article 60 of title 27, C.R.S. (*Jane Ritter*)
  - f. Repeal unfunded and obsolete Department of Human Services funds and programs (*Jane Ritter*)
  - g. Remove unconstitutional provision relating to interest on damages in § 13-21-101 (1), C.R.S. (*Jane Ritter*)
  - h. Address unconstitutional provisions related to sexually explicit materials harmful to children, part 5 of article 7 of title 18, C.R.S. (*Jane Ritter*)
  - i. Address issues relating to marriage, children, families (*Jane Ritter*)
    - i. Terminology related to "legitimacy" of children
    - ii. "Rights of Married Women" (part 2 of article 2 of title 14, C.R.S.)
    - iii. Unconstitutional provision relating to same-sex marriage
    - iv. "Husband and wife"/"father and mother" terminology relating to same-sex marriage
  - j. Examine permanently enjoined laws on ballot issue petition circulators (*Kate Meyer*)
3. Discuss October meeting (date T.B.D.) (*Kate Meyer*)

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<sup>1</sup> The bill drafts and memoranda listed under agenda items 1 and 2 are attached.

<sup>2</sup> Pursuant to section 2-3-902 (1) (d), C.R.S., legislation recommended by the Statutory Revision Committee must be made by an affirmative vote from at least five legislative members of the Committee.

<sup>3</sup> Presenters are all staff members with the Office of Legislative Legal Services.



**Second Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO**

**BILL (1)(A)**

*Temporary storage location: S:\LLS\2018A\Bills\Pre-Draft\18-0069.wpd*

LLS NO. 18-0069.01 Kate Meyer x4348

**COMMITTEE BILL**

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**Statutory Revision Committee**

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**A BILL FOR AN ACT**

101     **CONCERNING THE NONSUBSTANTIVE REORGANIZATION OF THE LAW**  
102             **EXEMPTING FROM STATE SALES TAX CERTAIN DRUGS AND**  
103             **MEDICAL AND THERAPEUTIC DEVICES.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee.** In order to increase comprehensibility of the law exempting from state sales tax certain drugs and medical and therapeutic devices, the bill:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

- Condenses the 5 essentially identical definitions of the term "prescription" in the current law into a single definition;
- Relocates another defined term within that law so that all definitions are in the same place, which relocation necessitates relettering existing defined terms so as to maintain alphabetical order; and
- Makes other adjustments to the current language by removing the false imperative, removing superfluous verbiage, and updating internal citations to conform to modern drafting format.

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

2           **SECTION 1. Legislative declaration.** The general assembly  
3 hereby declares that its intent in enacting \_\_\_\_\_ <{***Placeholder for bill***  
4 ***#, which will be added after introduction.***> is to effect a nonsubstantive  
5 reorganization of section 39-26-717, C.R.S., so as to increase clarity and  
6 readability of that law. The general assembly further declares that this  
7 reorganization does not in any way alter the scope or applicability of  
8 section 39-26-717, C.R.S. <{***Do you wish to use this nonsubstantive***  
9 ***declaration?***>

10           **SECTION 2.** In Colorado Revised Statutes, **repeal and reenact,**  
11 **with amendments,** 39-26-717 as follows:

12           **39-26-717. Drugs and medical and therapeutic devices -**  
13 **definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT  
14 OTHERWISE REQUIRES:

15           (a) (I) "DURABLE MEDICAL EQUIPMENT" MEANS EQUIPMENT,  
16 INCLUDING REPAIR AND REPLACEMENT PARTS FOR SUCH EQUIPMENT,  
17 DISPENSED PURSUANT TO A PRESCRIPTION, THAT:

18           (A) CAN WITHSTAND REPEATED USE;

19           (B) IS PRIMARILY AND CUSTOMARILY USED TO SERVE A MEDICAL  
20 PURPOSE;

1 (C) IS GENERALLY NOT USEFUL TO A PERSON IN THE ABSENCE OF  
2 ILLNESS OR INJURY; AND

3 (D) IS NOT WORN IN OR ON THE BODY.

4 (II) "DURABLE MEDICAL EQUIPMENT" INCLUDES HOSPITAL BEDS,  
5 INTRAVENOUS POLES AND PUMPS, TRAPEZE BARS, TOILETING AIDS, BATH  
6 AND SHOWER AIDS, STANDING AIDS, ADAPTIVE CAR SEATS,  
7 COMMUNICATION DEVICES, AND ANY RELATED ACCESSORIES FOR SUCH  
8 ITEMS.

9 (b) "LICENSED PROVIDER" MEANS ANY PERSON AUTHORIZED TO  
10 PRESCRIBE DRUGS UNDER TITLE 12.

11 (c) (I) "MOBILITY ENHANCING EQUIPMENT" MEANS EQUIPMENT,  
12 INCLUDING REPAIR AND REPLACEMENT PARTS FOR SUCH EQUIPMENT,  
13 DISPENSED PURSUANT TO A PRESCRIPTION, THAT:

14 (A) IS PRIMARILY AND CUSTOMARILY USED TO PROVIDE OR  
15 INCREASE THE ABILITY TO MOVE FROM ONE PLACE TO ANOTHER;

16 (B) IS APPROPRIATE FOR USE IN A HOME, IN A PERSON'S  
17 COMMUNITY, OR IN A MOTOR VEHICLE;

18 (C) IS NOT GENERALLY USED BY PERSONS WITH NORMAL MOBILITY;  
19 AND

20 (D) DOES NOT INCLUDE ANY MOTOR VEHICLE OR EQUIPMENT ON  
21 A MOTOR VEHICLE NORMALLY PROVIDED BY A MOTOR VEHICLE  
22 MANUFACTURER.

23 (II) "MOBILITY ENHANCING EQUIPMENT" INCLUDES WHEELCHAIRS  
24 AND WHEELCHAIR COMPONENTS OR ACCESSORIES, WALKING AIDS SUCH AS  
25 CRUTCHES, CANES, OR WALKERS, GRAB BARS, TRAPEZE BARS, LIFT CHAIRS,  
26 PATIENT LIFTS, MOTORIZED CARTS, SCOOTERS, CONTROLS THAT ARE  
27 INSTALLED ON MOTOR VEHICLES, AND ANY RELATED ACCESSORIES FOR

1 SUCH ITEMS.

2 (d) FOR PURPOSES OF SUBSECTIONS (1)(a)(I), (1)(c)(I), (2)(g),  
3 (2)(h), AND (2)(i) OF THIS SECTION, "PRESCRIPTION" MEANS ANY ORDER:  
4 <{*This maintains the current law's definitions' applicability, but please*  
5 *see my note under new (2)(a), below.*>

6 (I) (A) IN WRITING, DATED AND SIGNED BY A LICENSED PHYSICIAN,  
7 PHYSICIAN ASSISTANT, OR ADVANCED PRACTICE NURSE WITH  
8 PRESCRIPTIVE AUTHORITY; OR

9 (B) GIVEN ORALLY BY A PERSON DESCRIBED IN SUBSECTION  
10 (1)(d)(I)(A) OF THIS SECTION AND IMMEDIATELY REDUCED TO WRITING BY  
11 THE PHARMACIST, ASSISTANT PHARMACIST, OR PHARMACY INTERN, OR BY  
12 A REPRESENTATIVE OF A BUSINESS LICENSED TO SELL ITEMS DESCRIBED IN  
13 SUBSECTION (1)(a)(I), (1)(c)(I), (2)(g), (2)(h), OR (2)(i) OF THIS SECTION SO  
14 LONG AS SUCH ORDER IS ALSO FOLLOWED BY AN ELECTRONIC SUBMISSION  
15 OF THE ORDER TO THE BUSINESS; AND

16 (II) SPECIFYING THE NAME AND ADDRESS OF THE PERSON FOR  
17 WHOM AN ITEM DESCRIBED IN SUBSECTION (1)(a)(I), (1)(c)(I), (2)(g),  
18 (2)(h), OR (2)(i) OF THIS SECTION IS ORDERED AND DIRECTIONS, IF ANY, TO  
19 BE INCLUDED WITH SUCH ITEM.

20 (2) THE FOLLOWING ARE EXEMPT FROM TAXATION UNDER PART 1  
21 OF THIS ARTICLE 26:

22 (a) ALL SALES OF PRESCRIPTION DRUGS DISPENSED IN  
23 ACCORDANCE WITH A PRESCRIPTION BY A LICENSED PROVIDER OR  
24 FURNISHED BY A LICENSED PROVIDER AS PART OF PROFESSIONAL SERVICES  
25 PROVIDED TO A PATIENT OR CLIENT; <{*These are currently the only*  
26 *instances of the term "prescription" in this statute that aren't defined.*  
27 *Should the definition apply to this (2)(a), too?*>

1 (b) ALL SALES OF INSULIN IN ALL ITS FORMS DISPENSED PURSUANT  
2 TO THE DIRECTION OF A LICENSED PROVIDER;

3 (c) ALL SALES OF GLUCOSE USEABLE FOR TREATMENT OF INSULIN  
4 REACTIONS;

5 (d) ALL SALES OF URINE- AND BLOOD-TESTING KITS AND  
6 MATERIALS;

7 (e) ALL SALES OF INSULIN MEASURING AND INJECTING DEVICES,  
8 INCLUDING HYPODERMIC SYRINGES AND NEEDLES;

9 (f) ALL SALES OF PROSTHETIC DEVICES;

10 (g) ALL SALES OF OXYGEN DELIVERY EQUIPMENT AND DISPOSABLE  
11 MEDICAL SUPPLIES RELATED TO OXYGEN DELIVERY DISPENSED PURSUANT  
12 TO A PRESCRIPTION;

13 (h) ALL SALES OF MEDICAL, FEEDING, AND DISPOSABLE SUPPLIES,  
14 INCLUDING ANY RELATED ACCESSORIES, FOR INCONTINENCE, INFUSION,  
15 ENTERAL NUTRITION, OSTOMY, UROLOGY, DIABETIC CARE, AND WOUND  
16 CARE DISPENSED PURSUANT TO A PRESCRIPTION;

17 (i) ALL SALES OF EQUIPMENT AND RELATED ACCESSORIES FOR  
18 SLEEP THERAPY, INHALATION THERAPY, AND ELECTROTHERAPY DISPENSED  
19 PURSUANT TO A PRESCRIPTION;

20 (j) ALL SALES OF DURABLE MEDICAL EQUIPMENT AND MOBILITY  
21 ENHANCING EQUIPMENT;

22 (k) ALL SALES OF NONPRESCRIPTION DRUGS OR MATERIALS WHEN  
23 FURNISHED BY A LICENSED PROVIDER AS PART OF PROFESSIONAL SERVICES  
24 PROVIDED TO A PATIENT; AND

25 (l) ALL SALES OF CORRECTIVE EYEGLASSES, CONTACT LENSES, OR  
26 HEARING AIDS.

27 **SECTION 3. Act subject to petition - effective date.** This act

1 takes effect at 12:01 a.m. on the day following the expiration of the  
2 ninety-day period after final adjournment of the general assembly (August  
3 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a  
4 referendum petition is filed pursuant to section 1 (3) of article V of the  
5 state constitution against this act or an item, section, or part of this act  
6 within such period, then the act, item, section, or part will not take effect  
7 unless approved by the people at the general election to be held in  
8 November 2018 and, in such case, will take effect on the date of the  
9 official declaration of the vote thereon by the governor.

**Second Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO**

**BILL (1)(B)**

*Temporary storage location: S:\LLS\2018A\Bills\Pre-Draft\18-0066.wpd*

LLS NO. 18-0066.01 Jery Payne x2157

**COMMITTEE BILL**

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**Statutory Revision Committee**

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**A BILL FOR AN ACT**

101     **CONCERNING THE REQUIREMENT FOR AN ODOMETER READING WHEN**  
102             **A MOTOR VEHICLE'S IDENTIFICATION NUMBER IS PHYSICALLY**  
103             **VERIFIED.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee.** Current law authorizes the department of revenue, when a motor vehicle is being titled or registered, to require a physical inspection of a motor vehicle's identification number. Current law also requires that such a verification include an

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*Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

odometer reading. The bill repeals the requirement that the odometer be read when a motor vehicle's identification number is physically verified.

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

2 **SECTION 1.** In Colorado Revised Statutes, 42-3-105, **amend**  
3 (1)(c)(I)(G); and **repeal** (1)(c)(I)(H) as follows:

4 **42-3-105. Application for registration - tax.** (1) (c) (I) Except  
5 as provided in subsection (1)(c)(I.5) of this section, the department may  
6 require those vehicle-related entities specified by rule to verify  
7 information concerning any vehicle through the physical inspection of  
8 the vehicle. The information required to be verified by a physical  
9 inspection must include:

10 (G) The type of fuel used by such vehicle; AND

11 (H) ~~The odometer reading of such vehicle; and~~

12 **SECTION 2.** In Colorado Revised Statutes, 42-6-107, **amend**  
13 (1)(b)(I) as follows:

14 **42-6-107. Certificates of title - contents - rules.**

15 (1) (b) (I) Except as otherwise provided in subsection (1)(b)(II) of this  
16 section, the department may require those vehicle-related entities  
17 specified by regulation to verify information concerning a vehicle through  
18 the physical inspection of the vehicle. The information required to be  
19 verified by a physical inspection must include the vehicle identification  
20 number or numbers, the make of vehicle, the vehicle model, the type of  
21 vehicle, the year of manufacture of the vehicle, the type of fuel used by  
22 the vehicle, ~~the odometer reading of the vehicle,~~ and other information as  
23 may be required by the department. For the purposes of this subsection  
24 (1)(b), "vehicle-related entity" means an authorized agent or designated  
25 employee of the agent, a Colorado law enforcement officer, a licensed

1 Colorado dealer, a licensed inspection and readjustment station, or a  
2 licensed diesel inspection station.

3           **SECTION 3. Act subject to petition - effective date.** This act  
4 takes effect at 12:01 a.m. on the day following the expiration of the  
5 ninety-day period after final adjournment of the general assembly (August  
6 8, 2018, if adjournment sine die is on May 19, 2018); except that, if a  
7 referendum petition is filed pursuant to section 1 (3) of article V of the  
8 state constitution against this act or an item, section, or part of this act  
9 within such period, then the act, item, section, or part will not take effect  
10 unless approved by the people at the general election to be held in  
11 November 2018 and, in such case, will take effect on the date of the  
12 official declaration of the vote thereon by the governor.



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## MEMORANDUM (2)(A)<sup>1</sup>

TO: Statutory Revision Committee

FROM: Kristen Forrestal, Office of Legislative Legal Services

DATE: August 11, 2017

SUBJECT: Align with section 24-1-136 (11)(a)(I) Department of Transportation reports contained in sections 43-4-206 and 43-5-506, C.R.S.

### Summary

This issue came to the attention of the Office of Legislative Legal Services' staff during its annual prepublication review of the statutes in preparation for publication.

### Analysis

Section 24-1-136 (11)(a)(I), C.R.S., requires that any report made to the General Assembly by the executive or judicial branch expires on the day after the third anniversary of the date the first report is due.

Sections 43-4-206 (2)(b) and 43-5-506, C.R.S.<sup>2</sup>, each have reporting requirements that do not reference section 24-1-136, C.R.S. Because there is no reference to section 24-1-136, C.R.S., in these sections of law, there is a conflict that needs to be addressed to avoid a conflict within existing statutes. Without a change to the current law, there is a conflict with these provisions and section 24-1-136, C.R.S.

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<sup>1</sup> This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

<sup>2</sup> See **Addendum A**.

## **Statutory Charge<sup>3</sup>**

Aligning the above-cited reports with section 24-1-136, C.R.S., will eliminate "contradictory rules of law and ... bring the law of this state into harmony with modern conditions."

## **Proposed Bill**

If the Statutory Revision Committee directs the Office of Legislative Legal Services to prepare a bill draft to fix this section of law, the draft bill would either, at the Committee's direction, extend the date of the reports indefinitely or set a specific repeal date for each report.

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<sup>3</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions". § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

## **Addendum A**

**43-4-206. State allocation.** (2)(b) Beginning in 1998, the department of transportation shall report annually to the transportation committee of the senate and the transportation and energy committee of the house of representatives concerning the revenue expended by the department pursuant to subsection (2)(a) of this section and, beginning in 2018, any proceeds of lease-purchase agreements executed as required by section 24-82-1303 (2)(a) that are credited to the state highway fund pursuant to section 24-82-1303 (4)(b) and expended by the department pursuant to subsection (1)(b)(V) of this section. The department shall present the report at the joint meeting required under section 43-1-113 (9)(a), and the report shall describe for each fiscal year, if applicable:

(I) The projects on which the revenue and net proceeds are to be expended, including the estimated cost of each project, the aggregate amount of revenue actually spent on each project, and the amount of revenue allocated for each project in such fiscal year. The department of transportation shall submit a prioritized list of such projects as part of the report.

(II) The status of such projects that the department has undertaken in any previous fiscal year;

(III) The projected amounts of revenue and net proceeds that the department expects to receive under this subsection (2) and subsection (1)(b)(V) of this section during the fiscal year;

(IV) The amount of revenue and net proceeds that the department has already received under this subsection (2) and subsection (1)(b)(V) of this section during the fiscal year; and

(V) How the revenue and net proceeds expended under this subsection (2) and subsection (1)(b)(V) of this section during the fiscal year relate to the total funding of the federal aid transportation projects that are included in the strategic transportation project investment program.

**43-5-506. Report.** [*Editor's note: This version of this section is effective January 1, 2018.*] No later than September 1 of each year, the department of public safety shall report to the legislative audit committee and the house and senate transportation committees, or their successor committees. The report must comment on the effectiveness of the program, annual motorcycle accidents or fatalities, availability of training throughout the state, historic and current training costs, and other performance measures.



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## MEMORANDUM (2)(B)<sup>1</sup>

TO: Statutory Revision Committee

FROM: Richard Sweetman, Office of Legislative Legal Services (OLLS)

DATE: August 11, 2017

SUBJECT: Deputy sheriffs without P.O.S.T. certification

### Summary

Two existing statutory provisions require deputy sheriffs to be certified by the peace officer standards and training (P.O.S.T.) board; however, another statute allows a "noncertified deputy sheriff" to serve with such authority as a sheriff assigns to him or her. It is not clear whether the General Assembly intends to allow some deputy sheriffs to serve without P.O.S.T. certification.

### Analysis

#### 1. Sheriff's authority to appoint deputies.

Section 30-10-506, C.R.S., authorizes sheriffs to appoint deputy sheriffs. This provision does not mention P.O.S.T. certification or any other required training:

**30-10-506. Deputies.** Each sheriff may appoint as many deputies as the sheriff may think proper and may revoke such appointments at will; except that a sheriff shall adopt personnel policies, including policies for the review of revocation of appointments. Before revoking an appointment of a deputy, the

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sheriff shall notify the deputy of the reason for the proposed revocation and shall give the deputy an opportunity to be heard by the sheriff. Persons may also be deputized by the sheriff or undersheriff in writing to do particular acts.

## **2. P.O.S.T. certification of deputies**

Sections 16-2.5-102 and 16-2.5-103 (1), C.R.S., require deputy sheriffs to be P.O.S.T.-certified. However, section 16-2.5-103 (2) describes the authority of a "noncertified" deputy sheriff or detention officer:

**16-2.5-102. Certified peace officer - P.O.S.T. certification required. The following peace officers** shall meet all the standards imposed by law on a peace officer and **shall be certified by the peace officers standards and training board, referred to in this article as the "P.O.S.T. board":** A chief of police; a police officer; a sheriff; an undersheriff; **a deputy sheriff;** a Colorado state patrol officer; a town marshal; a deputy town marshal; a reserve police officer; a reserve deputy sheriff; a reserve deputy town marshal; a police officer or reserve police officer employed by a state institution of higher education; a Colorado wildlife officer; a Colorado parks and recreation officer; a Colorado police administrator or police officer employed by the Colorado mental health institute at Pueblo; an attorney general criminal investigator; a community parole officer; a public transit officer; a municipal court marshal; and the department of corrections inspector general. **(Emphases added)**

**16-2.5-103. Sheriff - undersheriff - certified deputy sheriff - noncertified deputy sheriff.** (1) A sheriff, an undersheriff, and a deputy sheriff are peace officers whose authority shall include the enforcement of all laws of the state of Colorado. A sheriff shall be certified by the P.O.S.T. board pursuant to section 30-10-501.6, C.R.S. **An undersheriff and a deputy sheriff shall be certified by the P.O.S.T. board. (Emphasis added)**

(2) A **noncertified deputy sheriff** or detention officer is a peace officer employed by a county or city and county whose authority is limited to the duties assigned by and while working under the direction of the chief of police, sheriff, an official who has the duties of a sheriff in a city and county, or chief executive of the employing law enforcement agency. **(Emphasis added)**

## Statutory Charge<sup>2</sup>

Because sections 16-2.5-102 and 16-2.5-103 (1), C.R.S., appear to conflict with section 16-2.5-103 (2), C.R.S., regarding the P.O.S.T. certification of deputy sheriffs, this matter fits within the statutory charge of the Statutory Revision Committee.

## Proposed Bill

If the Statutory Revision Committee directs OLLS to draft a bill to clarify that a sheriff may appoint noncertified deputy sheriffs, as contemplated by section 16-2.5-103 (2), C.R.S., that bill would amend sections 16-2.5-102 and 16-2.5-103 (1), C.R.S., by adding qualifying language such as "EXCEPT AS DESCRIBED IN SECTION 16-2.5-103 (2), . . ." and "EXCEPT AS DESCRIBED IN SUBSECTION (2) OF THIS SECTION, . . .".

If the Statutory Revision Committee directs OLLS to draft a bill to clarify that a sheriff *may not* appoint noncertified deputy sheriffs, that bill would amend or repeal subsection (2) of section 16-2.5-103, C.R.S.

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<sup>2</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions". § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.



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## MEMORANDUM (2)(C)<sup>1</sup>

TO: Statutory Revision Committee

FROM: Kip Kolkmeier, Office of Legislative Legal Services

DATE: August 11, 2017

SUBJECT: Public employment-related oaths and bonds

### Summary

During consideration of Senate Bill 17-026 (State Engineer Statutes Cleanup), an issue arose concerning the exiting statutory requirement that the state engineer and his or her deputies take an oath of office and file a personal surety bond. The House sponsor of Senate Bill 17-026, Representative Arndt, requested that the Office of Legislative Legal Services (OLLS) research whether the oath and bond requirements for the office of state engineer were typical of other state officials. As a result of this preliminary research, Rep. Arndt requested OLLS to undertake a comprehensive review of public employment-related oaths and bonds to determine whether these provisions could be updated and harmonized in the Colorado Revised Statutes.

The research revealed that numerous statutory provisions require an oath of office and some type of personal bond related to state or local government service. There is, however, little consistency among these provisions and some requirements appear antiquated. The research results are contained in three attachments: **Addendum A** quotes each state constitutional and statutory section that refers to employment-related oaths or bonds; **Addendum B** cites and summarizes references to oaths and bonds in

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constitutional provisions; and **Addendum C** cites and summarizes references to oaths and bonds in statutory sections.

## Analysis

The Colorado Constitution establishes basic requirements for only a few specific oaths and bonds. Articles 12 and 13 of title 24, C.R.S., establish some standard oath and bond provisions. However, numerous individual statutory sections apply separate and often inconsistent oath and bond requirements. There are two main conclusions that can be drawn from the research:

1. Almost every state and local elected or appointed official must take some type of oath of office. However:
  - Most oaths do not state a specific text for the oath;
  - Where text is provided, it is inconsistent with other oath texts;
  - The methods of taking or documenting an oath of office are inconsistent;
  - The requirements or processes for filing an oath such that it becomes a matter of public record are inconsistent; and
  - The requirements for the date an oath must be taken are inconsistent.
  
2. Most public officials and employees who are required to take an oath of office are also required to provide some type of personal bond. However:
  - The description of the type of bond required is inconsistent;
  - The amount of such bonds is inconsistent;
  - The method of filing the bond is inconsistent, and there is no comprehensive process for making bonds a matter of public record;
  - The approach to determining who pays the cost of a bond is inconsistent, but, generally, bonds are paid for by the governing agency; and
  - While there is a general provision permitting agencies to purchase liability insurance covering acts by officials and employees,<sup>2</sup> insurance is not a substitute for a personal bond. A few provisions allow an

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<sup>2</sup> § 24-14-102, C.R.S.

agency to purchase insurance in lieu of a personal bond, but this option is not generally available.

While some of these variations may be justified by the particular powers or duties of the affected officials and employees, many appear unjustified. However, setting statutory bond amounts may be a policy question beyond merely updating bond provisions, and perhaps beyond the Committee's charge.

## Statutory Charge<sup>3</sup>

The Committee may wish to consider several possible legislative amendments regarding statutory oaths of office and personal bond requirements. Each of these changes would address the Committee's charge by removing an outdated provision, repealing redundant language, or eliminating inconsistent provisions.

### 1. The SRC could propose repealing three anachronistic provisions:

- Section 24-13-122, C.R.S., which states that only a “freeholder” in the county may serve as a surety for an official bond.<sup>4</sup>
- Section 30-10-607, C.R.S., which requires oaths from a “talesmen.”<sup>5</sup>
- Section 24-13-123, C.R.S., which requires a “Statement of Surety.”<sup>6</sup>

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<sup>3</sup> The Statutory Revision Committee is charged with “[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms” and recommending “legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions.” § 2-3-902 (1), C.R.S. In addition, the Committee “shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes.” § 2-3-902 (3), C.R.S.

<sup>4</sup> A “freeholder” is a person who owns real property in the county. A more typical requirement is that a surety company simply be “authorized to do business in the state” rather than be a property owner.

<sup>5</sup> A “talesman” means a “a person added to a jury usually from among bystanders to make up a deficiency in the available number of jurors” and is a “Middle English term from Medieval Latin *tales de circumstantibus* such (persons) of the bystanders; from the wording of the writ summoning them.” Merriam-Webster Dictionary Online, “Talesman,” <https://www.merriam-webster.com/dictionary/talesman> (accessed July 18, 2017). In the Colorado Revised Statutes, talesman refers to a bystander added to a coroner's jury when an original juror is unavailable.

<sup>6</sup> This appears to be the only reference in statute to the filing of a “statement of surety” where a surety must provide an affidavit of assets and liabilities.

**2. The SRC could propose striking the many individual instances in which statutory oath of office provisions appear in statute and instead include in each act that currently contains an oath requirement a cross reference to a new single consistent oath text added to article 12 of title 24, C.R.S.**

This approach would require the general assembly to adopt a single oath text, but most current oaths contain essentially the same basic elements. The most common requirements are:

- That an oath be executed, in writing, and signed;<sup>7</sup>
- That an oath be either sworn or affirmed;<sup>8</sup>
- That the oath is to uphold constitutional and statutory law;<sup>9</sup>
- That the oath-taker will perform his or her duties;<sup>10</sup>
- That the oath be administered by a person who has the power to administer oaths;<sup>11</sup> and
- That the oath be filed before entering office.<sup>12</sup>

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<sup>7</sup> Generally, there is a requirement to “subscribe” an oath, which means "to write (one's name) underneath; to sign (something, such as a document) with one's own hand in token of consent or obligation; to attest by signing." Merriam-Webster Dictionary Online, "subscribe," <https://www.merriam-webster.com/dictionary/subscribe> (accessed July 19, 2017).

<sup>8</sup> Many oaths, but not all, permit either "swearing" or "affirming" the oath of office. There is historical significance to allowing an oath-taker to either swear or affirm the oath. Traditionally, "swearing" an oath suggested a religious element or obligation, while "affirming" did not. Section 8 of article XIV of Colorado's Constitution allows civil officers to take either an oath or affirmation, as does § 2 of article V with regard to members of the General Assembly. Oaths and affirmations have the same legal effect pursuant to § 24-12-102, C.R.S.

<sup>9</sup> In some cases, the oath contains a specific commitment to support the constitution of the United States, the Colorado Constitution, the constitution of "this state," or the "organic law of the state." In a few cases, the oath requires a commitment to refrain from an action, such as engaging in a conflict of interest. In a handful of cases, the statute includes a verbatim text of the required oath unique to that office.

<sup>10</sup> Most statutory provisions contain a reference to faithful performance in office. In some instances, the oath-taker has an obligation to perform duties "impartially" and without "fear or favor."

<sup>11</sup> A significant number of oath provisions are silent as to whether an oath must be administered by a third party. Several specifically state before whom an oath must be taken. Examples include taking an oath before "a judge of a state court," "some officer authorized to administer oaths," a municipal judge or clerk, a county clerk and recorder or county clerk of court, a "clerk of election," and "any qualified elector of the precinct." § 30-10-416, C.R.S., expressly authorizes county clerks and recorders to administer oaths of office, and § 30-10-418, C.R.S., permits the charging of a fee to administer an oath. Three provisions require the administration of an oath to be "memorialized" or "certified." This additional requirement to secure a signature or seal by a third party is not constitutionally required.

A single oath of office text would both eliminate inconsistent language in the various provisions and remove superfluous text from the statutes.<sup>13</sup> A single modernized oath would also be gender-neutral.<sup>14</sup>

A text for a single statutory oath that meets all the above requirements is:

I, [name of the oath-taker], do swear or affirm that I will support the United States Constitution, the Colorado Constitution, and the laws of the state of Colorado, and that I will faithfully perform the duties of the [name of the office, title, or position] upon which I am about to enter.

Signed \_\_\_\_\_

Dated \_\_\_\_\_

Administered by \_\_\_\_\_

### 3. The SRC could propose changes to the personal bond provisions required by law.

The SRC could propose legislation to modernize statutory provisions regarding personal bonds, including one of the following three approaches:

- **Reduce the number of individuals required to provide a personal bond.** The SRC could propose legislation deleting some or all of the statutory personal bond requirements (except for the constitutionally required state treasurer bond), and replacing them with a uniform insurance purchase option. In addition to repealing some or all of the personal bond sections, article 14 of title 24 may need to be amended to clarify that insurance purchase is in lieu of a personal bond requirement.<sup>15</sup>

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<sup>12</sup> Colo. Const. art. XII, § 9, requires executive department officials, judges, and district attorneys to file with the secretary of state and all other officers to file with the county clerk of the county where elected.

<sup>13</sup> More than 50 separate statutory sections reference oaths of office and together consist of over 6,000 words. For comparison, a typical page of the Colorado Revised Statutes contains about 800 words. So this would be at least seven pages.

<sup>14</sup> Statutory oaths currently include references to "his" office, "his or her" office, or to "their" office.

<sup>15</sup> More than 60 separate statutory sections reference personal bonds and together consist of over 7,000 words. For comparison, a typical page of the Colorado Revised Statutes contains about 800 words. So this would be at least nine pages.

- **Continue to require personal bonds, but replace the various bond provisions with a single consistent bond provision.** The Committee could propose legislation deleting all or parts of the statutory bond sections and substituting a cross reference from each act to a new single bond requirement added to article 13 of title 24, C.R.S.
- **Continue to require personal bonds and their individual bond requirements, but remove redundant and superfluous language.** The Committee could propose legislation deleting only those parts of each statutory bond provision that are clearly inconsistent or superfluous. For example, nine different terms are currently used to describe bonds and their functional equivalents.<sup>16</sup> Replacing the various terms with the word "bond" would not have any legal effect. All sections could also uniformly provide for the filing of bonds, the availability of bonds for public inspection, and any requirements for companies selling bonds.

## **Proposed Bill**

OLLS will prepare any legislation as directed by the Statutory Revision Committee regarding oaths and bonds. A draft of this legislation would be provided to the SRC at the next committee meeting for discussion and revisions. A final draft could then be ready for introduction in January 2018.

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<sup>16</sup> The following terms are used to describe a personal bond: "bond," "surety," "surety company bond," "corporate surety bond," "corporate fidelity bond," "individual bond," "schedule bond," "blanket bond," "official bond," and "bond in the form prescribed by law."

## Addendum A

# Constitutional and statutory provisions regarding public employment-related oaths and bonds

*Drafter's note: This document includes relevant portions of both the Colorado Constitution and Colorado Revised Statutes related to public employment-related oaths and bonds. For purposes of this document, "public employment-related oaths and bonds" are those specifically required to serve in an official government position, whether elected or appointed. The cited provisions are organized first as either constitutional or statutory, and then divided by office, jurisdiction, or subject matter.*

*This document does not include other types of oaths and bonds, such as those related to judicial proceedings, regulatory compliance, or procurement. For example, witnesses, jurors, and law enforcement personnel are required in certain circumstances to swear oaths or affirmations. Defendants and civil litigants must often post bonds. Licensees and regulated parties must often be bonded. This document quotes only the provisions with requirements to swear an oath or post a personal bond as a consequence of working in an elected or appointed position in state or local government.*

## Colorado Constitutional Provisions

**Article IV, section 8. Governor may require information from officers - message.** The governor may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices, which information shall be given upon oath whenever so required; he may also require information in writing at any time, under oath, from all officers and managers of state institutions, upon any subject relating to the condition, management and expenses of their respective offices and institutions....

**Article IV, section 13. Succession to the office of governor and lieutenant governor.**

(1) In the case of the death, impeachment, conviction of a felony, or resignation of the governor, the office of governor shall be vacant and the lieutenant governor shall take the oath of office and shall become governor.

**Article IV, section 16. Account and report of moneys.** An account shall be kept by the officers of the executive department and of all public institutions of the state, of all moneys received by them severally from all sources, and for

every service performed, and of all moneys disbursed by them severally, and a semi-annual report thereof shall be made to the governor, under oath.

**Article V, section 2. Election of members - oath - vacancies.** (2) Each member of the general assembly, before he enters upon his official duties, shall take an oath or affirmation to support the constitution of the United States and of the state of Colorado and to faithfully perform the duties of his office according to the best of his ability. This oath or affirmation shall be administered in the chamber of the house to which the member has been elected.

**Article X, section 12. Public funds - report of state treasurer.** (2) The state treasurer shall keep adequate records of all moneys coming into his custody and shall at the end of each quarter of the fiscal year submit a written report to the governor, signed under oath, showing the condition of the state treasury, the amount of money in the several funds, and where such money is kept or deposited. Swearing falsely to any such report shall be deemed perjury.

**Article X, section 12. Public funds - report of state treasurer.** (1) The general assembly may provide by law for the safekeeping and management of the public funds in the custody of the state treasurer, but, notwithstanding any such provision, the state treasurer and his sureties shall be responsible therefor.

**Article XII, section 8. Oath of civil officers.** Every civil officer, except members of the general assembly and such inferior officers as may be by law exempted, shall, before he enters upon the duties of his office, take and subscribe an oath or affirmation to support the constitution of the United States and of the state of Colorado, and to faithfully perform the duties of the office upon which he shall be about to enter.

**Article XII, section 9. Oaths - where filed.** Officers of the executive department and judges of the supreme and district courts, and district attorneys, shall file their oaths of office with the secretary of state; every other officer shall file his oath of office with the county clerk of the county wherein he shall have been elected.

**Article XII, section 10. Refusal to qualify - vacancy.** If any person elected or appointed to any office shall refuse or neglect to qualify therein within the time prescribed by law, such office shall be deemed vacant.

**Article XIII, section 1. House impeach - senate try - conviction - when when chief justice presides.** ...All impeachments shall be tried by the senate, and when sitting for that purpose, the senators shall be upon oath or affirmation to do justice according to law and evidence....

**Article XIX, section 1. Constitutional convention - how called.** ...Before proceeding, the members shall take an oath to support the constitution of the United States, and of the state of Colorado, and to faithfully discharge their duties as members of the convention....

## Colorado Revised Statutes Provisions

### General Oath and Bond Requirements

**24-12-101. Form of oath.** Whenever any person is required to take an oath before he enters upon the discharge of any office, position, or business or on any other lawful occasion, it is lawful for any person employed to administer the oath to administer it in the following form: The person swearing, with his hand uplifted, shall swear "by the everliving God".

**24-12-102. Form of affirmation.** Whenever any person is required to take or subscribe an oath, and in all cases where an oath is to be administered upon any lawful occasion, and such person has conscientious scruples against taking an oath, he shall be permitted to make his solemn affirmation or declaration in the following form: "You do solemnly, sincerely, and truly declare and affirm", which solemn affirmation or declaration is equally valid as if such person had taken an oath in the usual form; and every person guilty of falsely declaring shall incur and suffer the penalties inflicted on persons guilty of perjury in the first degree.

**24-12-103. Oaths administered by whom.** All courts in this state and each judge, justice, magistrate, referee, clerk, and any deputy clerk thereof, members and referees of the division of labor standards and statistics, members of the public utilities commission, and all notaries public have power to administer oaths and affirmations to witnesses and others concerning any matter, thing, process, or proceeding pending, commenced, or to be commenced before them respectively. The courts, judges, magistrates, referees, clerks, and deputy clerks within their respective districts or counties, and notaries public within any county of this state, have the power to administer all oaths of office and other oaths required to be taken by any person upon any lawful occasion and

to take affidavits and depositions concerning any matter or thing, process, or proceeding pending, commenced, or to be commenced in any court or on any occasion wherein such affidavit or deposition is authorized or by law required to be taken.

**30-10-416. Clerk to administer oaths - take affidavit or deposition.**

The county clerks and recorders of the several counties in the state of Colorado are authorized, within their respective counties, to administer all oaths of office, and other oaths required to be taken by any person upon any lawful occasion, and to take affidavits and depositions concerning any matter or thing, process, or proceeding pending or to be commenced in any court, or any occasion wherein such affidavit or deposition is authorized or required by law to be taken.

**24-12-105. Appointees of officers of home rule cities and city and counties.** In all home rule cities and city and counties, the charters of which provide that officers, boards, or commissions named therein shall perform the acts and duties required of county officers by the state constitution or by general law, any deputy, employee, or appointee of such officer, board, or commission may administer any oath or affirmation which, by the state constitution or general law, might be administered by the county officer whose duties are performed by such officer, board, or commission making such appointment or employing such deputy, so long as such deputy, employee, or appointee is employed in such capacity.

**24-12-106. False swearing or affirming, perjury.** All oaths and affirmations, affidavits, and depositions administered or taken shall subject any person who swears or affirms falsely and willfully, in the matter material to any issue or point in question, to the penalties inflicted by law on persons guilty of perjury in the first degree.

**24-12-107. Oaths taken out of state.** All oaths and affirmations required or authorized to be taken by any statute of this state, when the person required to make the same resides out of or is absent from this state, may be made before and administered by any notary public or clerk of any court of record of the state wherein such person may be, such notary or clerk certifying the same under his notarial seal or the seal of such court.

**24-13-105. County board to examine bonds - new bond.** It is the duty of the board of county commissioners of each county, at each regular term, on the first day of each term, to examine and inquire into the sufficiency of the official bond of the county treasurer, sheriff, coroner, county

assessor, county clerk and recorder, and county surveyor and all other official bonds given by any county officer, as required by law. If it appears that one or more of the sureties on the official bond of any such county officer have removed from the county, died, or become insolvent or of doubtful solvency, the board of county commissioners shall cause such officer to be summoned to appear before said board, on a day to be named in said summons, to show cause why he should not be required to give a new bond, with sufficient surety. If, at the appointed time, he fails to satisfy said board as to the sufficiency of the present surety, an order shall be entered of record by said board, requiring such officer to file in the office of the county clerk and recorder, within twenty days, a new bond, to be approved as required by law, unless the number and pecuniary ability of other sureties on the bond are such as to satisfy the board that the bond is sufficient, notwithstanding the fact that one or more of the sureties on said bond may have removed, died, or become insolvent or of doubtful solvency, in which case the bond in question, in the discretion of said board, may be held to be sufficient.

**24-13-108. Failure to file new bond - vacancy.** If any officer or person enumerated in section 24-13-105 fails to file a new bond within the prescribed time when so required by an order entered of record requiring the filing of such new bond, the officer in default shall be deemed to have vacated his office, and the same steps shall be taken to fill such vacancy thus created as are taken to fill a vacancy by the death or resignation of such officer.

**24-13-113. Failure to file bond.** It is the duty of such sheriff, coroner, county treasurer, county assessor, county clerk and recorder, or other officer, if he fails to give bond, to deliver over to his sureties forthwith all books, moneys, vouchers, papers, and every description of property whatever, pertaining to his office; and the sureties, at any time after failure to file bond, may maintain an action of replevin or other appropriate action to recover such property, money, or effects from their principal.

**24-13-116. Approval of bonds - clerk of county board.** The county treasurer, county assessor, county clerk and recorder, or any county officer shall file his official bond in the office of the county clerk and recorder, which bond shall be executed as required by law and shall be approved by the board of county commissioners in open session. If said board is not in session on the filing of such bond, then the county clerk and recorder shall judge of its sufficiency, subject to the final decision and approval of said board at its first meeting thereafter. If said board is not in session, the county clerk and recorder, in filing his bond, shall present the same to the chairman of the board of county commissioners or, in case of his absence or inability to act, to one of the other

members of said board, who shall judge of its sufficiency, subject to the decision and approval of said board at its first meeting thereafter.

**24-13-117. Approval of bonds to be of record.** It is the duty of the board of county commissioners to make an entry in the records of said board of its approval of all official bonds, and, when so approved by said board, the county clerk and recorder shall record the same in the records of said county for inspection by all persons.

**24-13-122. Freeholders only acceptable as surety.** No individual shall be accepted as a surety on any official bond of any county officer unless he is a freeholder of the county in which said officer may be elected or appointed to office.

**24-13-125. Official bonds - expense of premiums.** Any state, county, municipal, district, or court officer required by law to give a bond or other obligation as such officer may include, as part of the lawful expenses of executing and performing the duties of his office, such reasonable premium as may be charged by a company authorized under the laws of this state so to do for becoming his surety on such bond or obligation and such reasonable premium as may be charged by such company for becoming surety upon the bond of any deputy, clerk, or employee of such officer who is required by law or by such officer to give bond. Such premium shall not exceed one-half of one percent per annum on the amount or penalty of each bond or obligation.

**24-13-126. Premiums, how paid.** The expenses provided in section 24-13-125, in the case of state officers and their deputies, clerks, or employees, shall be paid from the state treasury, and the general assembly shall make the necessary appropriations therefor. In the case of all other officers and their deputies, clerks, or employees, such expenses shall be paid from any fund provided by such county, municipality, district, precinct, or court for the payment thereof or for the payment of the incidental or contingent expenses of any such officer, or the same shall be paid by such officer from any fund in his possession from which he is authorized to pay the expenses or salaries of his office.

**24-14-102. Purchase of insurance authorized.** The head of a department of the state of Colorado, with the approval of the governor or, in the case of the county or city and county, the chief executive officer or board of county commissioners, subject to appropriations being available therefor, is hereby authorized to procure insurance, through the department

of personnel as provided in the "Procurement Code", articles 101 to 112 of this title, for the purpose of insuring its officers, employees, and agents against any liability, other than a liability which may be insured against under the provisions of the "Workers' Compensation Act of Colorado", for injuries or damages resulting from their negligence or other tortious conduct during the course of their service or employment. Counties or cities and counties are authorized to insure their officers, employees, and agents against similar liabilities.

**24-14-103. Approval of seller - premium cost.** Any policy of insurance shall be obtained from an insurer authorized to transact business in this state and deemed by the department of personnel or the appropriate governing body of the governmental subdivision to be responsible and financially sound considering the extent of the coverage required. The premium for such insurance shall be a proper charge against the state or the appropriate governmental subdivision.

**24-14-104. Amount of coverage - limitations.** (1) The extent of the insurance coverage shall be limited as follows:

(a) For any bodily injury and property damage to one person in any single occurrence, the sum of one hundred fifty thousand dollars;

(b) For any bodily injury and property damage to two or more persons in any single occurrence, the sum of four hundred thousand dollars; except that, in such instance, no person may recover in excess of one hundred fifty thousand dollars.

## State Elected or Appointed Officials

**24-22-101. Oath - bond and sureties - conditions of bond.** (1) On or before the second Tuesday in January after his election and before entering upon his duties, the state treasurer shall take and subscribe to the oath required by the state constitution and shall give a bond to the people of the state of Colorado in the sum of one million dollars, with not less than ten individual sureties or one or more surety companies authorized to do business in this state. The bond and each surety shall be approved by the governor and the attorney general and held in the custody of the secretary of state.

(2) The conditions of said bond shall be in substance that the state treasurer and all persons employed in the treasury department under his supervision shall faithfully discharge their respective duties and trusts and that the state treasurer shall be held responsible against all risks and losses whatsoever for all state moneys coming into his hands or received by the treasury department.

(3) If the bond is furnished by one or more surety companies, the entire premium therefor shall be paid by the state, and the general assembly shall appropriate the amount thereof.

(4) Whenever the governor, with the concurrence of the attorney general, deems the surety on said bond to be insufficient for the said sum of one million dollars, he may demand, and the state treasurer shall give, additional bond with sureties, at the cost of the state, to be approved by the governor and the attorney general.

**24-2-104. Bonds.** The head of each principal department or any subordinate officer or employee under the same who may be required to handle state funds shall give bond executed by a responsible surety company, authorized to do business within the state, in such sum as may be fixed by law or, in the absence of any such law, such as shall be fixed by the governor as he deems adequate to safeguard the state funds. All such bonds shall be conditioned upon the faithful performance by such head of department, officer, or employee of his duties and, when approved by the governor, shall be filed in the office of the secretary of state. The premiums on all such bonds shall be paid as an ordinary expense of the principal department or the division, section, or unit under the department to which such head of department, officers, or employees are appointed, and due appropriation therefor shall be made by the general assembly.

**24-35-104. Bond of executive director.** The executive director of the department of revenue, on or before entering upon the duties of his office, shall give bond to the state of Colorado in the sum of two hundred thousand dollars, conditioned upon the faithful discharge of the duties of his office. Said bond shall be signed by one or more surety companies authorized to transact business in the state of Colorado, and the entire premium therefor shall be paid in one lump sum from state funds, and the general assembly shall make the necessary appropriation therefor.

**35-1-106. Powers and duties of commission.** (1) In addition to all other powers and duties conferred upon the commission by this article 1, the commission has the following specific powers and duties:

(j) If not already required by law, to require and fix the bonds of such employees of the department as may be deemed necessary;

**37-60-104. Personnel.** (2) ...Before entering upon the discharge of his duties, each appointed member shall make, subscribe, and file with the secretary of state the oath prescribed by the constitution.

(S.B. 17-026 pending) **37-80-101. State engineer.** The governor shall appoint a state engineer, pursuant to section 13 of article XII of the state constitution. The state engineer shall have his office at the state capital, in suitable rooms to be provided for him with suitable furniture, postage, and such proper and necessary stationery, books, and instruments as are required to best enable him to discharge the duties of his office. The state engineer, before entering on the discharge of his duties, shall take and subscribe to an oath, before the judge of a state court of record, to faithfully perform the duties of his office and file said oath with the secretary of state, together with his official bond, in the penal sum of ten thousand dollars, said bond to be executed by a responsible surety company authorized to do business within the state, and conditioned upon the faithful discharge of the duties of his office and for delivering to his successor or other officer authorized by the governor to receive the same all moneys, books, instruments, and other property belonging to the state then in his possession or under his control, or with which he may be legally chargeable as such state engineer.

(S.B. 17-026 pending) **37-80-106. Appointment of deputies.** (1) The state engineer may appoint one or more deputies as he may deem proper for assisting him in the discharge of the duties of his office, or he may deputize any person to do a particular service, and he has the power to revoke such appointments when, in his judgment, there is no further need for the services of anyone so appointed or deputized. Such appointments and revocations thereof shall be in writing over the signature and official seal of the state engineer, the original of which shall be filed in the office of the secretary of state. All persons so appointed or deputized shall take and subscribe to an oath, before a judge of a court of record, to faithfully perform the duties of the office to which he is appointed or required to perform; and such oath shall be filed with his appointment in the office of the secretary of state. All such persons so appointed or deputized by the state engineer shall furnish an official bond with surety executed by a responsible surety company, authorized to do business within the state, in the penal sum of not less than one thousand dollars nor more than five thousand dollars. The cost of such bonds shall be paid by said deputies.

(2) In addition to the deputies provided for in this section, the state engineer may employ, pursuant to section 13 of article XII of the state constitution, such assistants in performing the duties of his office as he may deem necessary.

(S.B. 17-026 pending) **37-80-114. Deputy state engineer - powers.** (1) The state engineer shall appoint a deputy state engineer, subject to the provisions of section 13 of article XII of the state constitution relating to the state personnel system, whose duties shall be to assist the state engineer in the ad-

ministration of his office. The deputy state engineer has the power to act for the state engineer in all his official duties, including the administration of interstate river compacts, during the absence of the state engineer from his office or when so directed by the state engineer.

(2) The salary of the deputy state engineer shall be paid as the salaries of the officers of the executive department of the state are paid. He shall also receive reimbursement monthly for the actual necessary expenses incurred in the performance of his official duties, as shall be allotted by the state engineer from funds appropriated for such purpose. The controller is authorized to pay warrants for said salary and expenses upon vouchers approved by the state engineer.

(3) The deputy state engineer, before entering on the discharge of his duties, shall take and subscribe to an oath before the judge of a state court of record to faithfully perform the duties of his office and file said oath with the secretary of state, together with his official bond in the penal sum of ten thousand dollars. The bond shall be executed by a responsible surety company authorized to do business within the state and conditioned upon the faithful discharge of the duties of his office.

**39-21-112. Duties and powers of executive director.** (5) Subject to the provisions of this article and the state personnel system regulations, the executive director of the department of revenue is authorized to appoint and prescribe the duties and powers of such officers, accountants, experts, and other persons as may be necessary in the performance of his duty. He may delegate to any such person so appointed such power as he deems reasonable and proper for the effective administration of this article and shall bond, in a sufficient amount, any person handling money under this article.

(6) Members of the department of revenue shall each give bond to the state of Colorado in the sum of five thousand dollars conditioned upon the faithful performance of their duties under the provisions of this article.

**43-1-106. Transportation commission - powers and duties - repeal.** (5) All members of the commission, before entering upon the duties of their office, shall take the oath prescribed by the constitution of this state for state officers and file the same in the office of the secretary of state.

## University Boards

**23-20-103. Oath of regents.** The members of the board of regents, before entering upon their duties, shall take and subscribe to the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the

constitution of the United States and of the state of Colorado, and that I will perform the duties of regent of the university of Colorado faithfully and to the best of my ability." Said oath or affirmation shall be filed in the office of the secretary of state.

**23-20-109. Treasurer - duties - bond.** The board of regents shall elect a treasurer of the university, who shall hold his or her office at the pleasure of the board...Before entering upon the duties of his or her office, he or she shall take and subscribe an oath that he or she will faithfully perform the duties of treasurer. He or she shall also give a bond in the penal sum of not less than twenty-five thousand dollars, conditioned for the faithful discharge of his or her duties as treasurer; that he or she will at all times keep and render a true account of all moneys and other valuables received by him or her as treasurer and of the disposition he or she has made of the same; and that he or she will at all times be ready to discharge himself or herself of the trust and to deliver up when required by said board all moneys, notes, bonds, and other valuables entrusted to him or her. The bond shall have two or more sureties and be approved as to its form and the sufficiency of its sureties by the board of regents, the attorney general, and the secretary of state, who shall endorse their approval on the same. The bond shall be filed in the office of the secretary of state.

**23-30-105. Election of officers - terms.** (1) The board of governors of the Colorado state university system shall elect from its membership a chair and a vice-chair and also from its membership or from outside its membership a secretary and a treasurer, all of which said officers shall hold the office to which they are chosen for a period of two years from the date of election and until their successors are duly elected and qualified. The secretary shall give bond in an amount deemed sufficient by the board and discharge all the duties of said office in accordance with section 23-30-107. The treasurer shall give bond in an amount deemed sufficient by the board and safely keep and account for all moneys received by the treasurer and pay the same out only on warrants of the board of governors of the Colorado state university system, signed by its chair and countersigned by its chief financial officer in accordance with section 23-30-108. The board of governors may waive the bond requirements set forth in this subsection (1) and in lieu thereof utilize all applicable governmental insurance coverage.

**23-40-104. Board of trustees.** (1) (b) (VIII) Each trustee shall take and subscribe to the oath of office prescribed by the constitution of this state before entering upon the duties of his or her office, which oath shall be placed and kept on file in the office of the secretary of state.

**23-41-103. Oath of trustees.** Every trustee appointed, before entering upon the duties of his office, shall take an oath to support the constitution of the United States and the constitution of this state and to faithfully perform the duties of his office to the best of his ability and understanding.

**23-41-110. Treasurer's bond.** The board of trustees shall require its treasurer to give such bond as it deems sufficient to protect said institution against loss of any funds which may come into his hands as such treasurer, conditioned for the safekeeping and faithful disbursement thereof. The treasurer of said board shall not pay out any of the funds which shall come into his hands as treasurer, except upon the order of the president of said board countersigned by the secretary thereof.

**23-51-102. Board of trustees - creation - members - powers - duties.**  
(5) A vacancy of an appointed member of the board of trustees shall be filled by appointment by the governor for the unexpired term. A vacancy of either of the elected members of the board of trustees shall be filled by election for the unexpired term. Each member of the board of trustees shall take and subscribe to the oath of office prescribed by the constitution of this state before entering upon the duties of the office, which oath shall be placed and kept on file in the office of the secretary of state.

**23-52-102. Board of trustees - creation - members - powers - duties.**  
(5) Any vacancy in the office of an appointed member of the board of trustees shall be filled by appointment by the governor for the unexpired term. Any vacancy in either of the elected offices on the board of trustees shall be filled by reelection for the unexpired term. Each trustee shall take and subscribe to the oath of office prescribed by the constitution of this state before entering upon the duties of the office, which oath shall be placed and kept on file in the office of the secretary of state.

**23-53-102. Board of trustees - creation - members - powers - duties.**  
(5) A vacancy of an appointed member of the board of trustees shall be filled by appointment by the governor for the unexpired term. A vacancy of either of the elected members of the board of trustees shall be filled by election for the unexpired term. Each member of the board of trustees shall take and subscribe to the oath of office prescribed by the constitution of this state before entering upon the duties of the office, which oath shall be placed and kept on file in the office of the secretary of state.

**23-54-102. Board of trustees - creation - members - powers - duties.**  
(5) Any vacancy in the office of an appointed member of the board of

trustees shall be filled by appointment by the governor for the unexpired term. Any vacancy in either of the elected offices on the board of trustees shall be filled by reelection for the unexpired term. Each trustee shall take and subscribe to the oath of office prescribed by the constitution of this state before entering upon the duties of the office, which oath shall be placed and kept on file in the office of the secretary of state.

**23-56-102. Board of trustees - creation - members - powers - duties.** (5) A vacancy of an appointed member of the board of trustees shall be filled by appointment by the governor for the unexpired term. A vacancy of either of the elected members of the board of trustees shall be filled by election for the unexpired term. Each member of the board of trustees shall take and subscribe to the oath of office prescribed by the constitution of this state before entering upon the duties of the office, which oath shall be placed and kept on file in the office of the secretary of state.

**23-70-102. Auraria board - membership - terms - oaths - voting.** (2) Each member of the Auraria board shall take and subscribe to the oath of office prescribed by the constitution of this state before entering upon the duties of his office, which oath shall be placed and kept on file in the office of the secretary of state.

## Local Elected or Appointed County Officials

**20-1-101. Bond and oath of district attorney and staff.** (1) Every district attorney, before entering upon the duties of his office, shall take and subscribe an oath to support the constitution of the United States and the organic law of the state and that he will faithfully discharge the duties of his office. He shall also execute to the people of the state of Colorado a bond in the sum of five thousand dollars, with a good and sufficient individual, schedule, or blanket corporate surety bond, or other acceptable security, to be approved by the secretary of state, conditioned for the faithful discharge of the duties of his office, as the same are prescribed by law, and upon any breach of such bond, an action shall lie thereon for the benefit of any county fund or person injured thereby.

(2) As the district attorney may direct, the assistant and deputy district attorneys and other employees appointed pursuant to this title may be required to file with the secretary of state the bond required by law to be filed by district attorneys.

**20-1-201. Deputies - chief deputies - staff.** (3) Before such deputy district attorneys, chief deputy district attorneys, or special deputy district attorneys enter upon the duties of their office, they shall file with the secretary of state the oath of office required by law to be filed by district attorneys and may be required, as the district attorney shall direct, to file a like bond as that required to be filed by district attorneys.

**20-1-205. Assistant district attorneys.** (2) Every such assistant district attorney, before entering upon the duties of office, shall file with the secretary of state the oath of office required by law to be filed by district attorneys and shall hold office at the pleasure of the district attorney by whom he is appointed. Such assistant district attorney, before entering upon the duties of office, may be required, as the district attorney may direct, to file like bond as that required to be filed by district attorneys.

**24-13-123. Statement of surety - contents.** Boards of county commissioners, in their respective counties, at any time, whether before or after the approval of the official bond of any county officer, may require any one or more of the sureties on said bond, within six days after the service upon him of a notice in writing to that effect, to make out, subscribe, and deposit in the office of the county clerk and recorder of such county a statement in writing, verified by his affidavit, containing a list of all property owned by said surety in the state of Colorado, its character, in what county situate, its estimated value, and encumbrances thereon, if any, and also the aggregate amount of indebtedness then owing by him or by any other person for the payment of which he was then liable as surety; and any such surety making a false oath or affirmation in such case is guilty of perjury in the second degree and is liable to indictment and prosecution therefor.

**30-10-105. When office becomes vacant.** (1) (e) The incumbent's refusal or neglect to take his oath of office, to give or renew his official bond, or to deposit such oath and bond within the time prescribed by law;

**30-10-110. Bonds or insurance of officers - oaths.** (1) Except as provided in subsection (2) of this section, every county officer named in section 30-10-101, before entering upon the duties of office, on or before the day of the commencement of the term for which the officer was elected, shall execute and deposit an official bond, as prescribed by law. Any such officer shall also take and subscribe the oath of office prescribed by law, before some officer authorized to administer oaths, and deposit the same with the official bond to be filed and preserved therewith.

(2) In lieu of the bond required by subsection (1) of this section, a county may purchase crime insurance coverage on behalf of the county officer and county employees to protect the people of the county from any malfeasance on the part of the officer while in office or employees.

**30-10-301. Oath of commissioners.** Each person elected as commissioner, on receiving a certificate of his election, shall take an oath to support the constitution of the United States and of the state of Colorado, and to perform the duties of his office to the best of his ability, which oath, being endorsed upon said certificate, under the hand and seal of the person administering it, shall be sufficient for said person to act as such commissioner.

**30-10-311. Bonds or insurance of county commissioners.** (1) Except as provided in subsection (2) of this section, each county commissioner of the several counties of this state is required to execute a bond, payable to the people of the state of Colorado, conditioned that the commissioner will faithfully and honestly discharge the duties of the office of county commissioner so long as the commissioner continues in office, and that the commissioner will not, either directly or indirectly, misappropriate, or permit to be misappropriated, any of the funds or property of said county while in office; that the commissioner will not, while in office, be interested or concerned in any manner, directly or indirectly, in any sale, purchase, bargain, or contract whereby any sum of money or thing in action becomes due to such commissioner from such county, or from any person from such county; and that the commissioner will at all times transact the business of such county economically, and to the best of the commissioner's ability, for the best interest of such county.

**30-10-401. County clerk - term - bond - insurance.** (1) A county clerk shall be elected in each county of this state for the term of four years and, except as provided in subsection (2) of this section, before entering upon the duties of the office, shall execute to the people of the state of Colorado, and file with the county clerk then in office, a bond with two or more sufficient sureties in the sum of not less than five thousand dollars, to be affixed and approved by the board of county commissioners according to law, with conditions in substance as follows: "Whereas, The above bounden ..... was elected to the office of the county clerk of ....., on the ..... day of ....., Now, therefore, if the said ..... shall faithfully perform all the duties of the office, and shall pay over all moneys that may come into the hands of the clerk as required by law, and shall deliver to the clerk's successor in office all the books, records, papers, and other things belonging to said office, then the above obligation to be void, otherwise to remain in full force." The bond, after being recorded, shall be at once deposited with the county treasurer for safekeeping.

(2) In lieu of the bond required by subsection (1) of this section, a county may purchase crime insurance coverage in an amount not less than ten thousand dollars on behalf of the county clerk to protect the people of the county from any malfeasance on the part of the clerk while in office.

**30-10-403. Deputy clerk - duties.** Every county clerk shall appoint a deputy, in writing, under the county clerk's hand, and shall file such appointment in the office of the county clerk; and such deputy, in case of the absence or disability of the county clerk, or in case of a vacancy in the office thereof, shall perform all the duties of the county clerk during such absence or until such vacancy is filled. Every county clerk may appoint other deputies and, if the county clerk has executed a bond pursuant to section 30-10-401 (1), the county clerk's sureties shall be responsible under the bond for the acts of all such deputies.

**30-10-501. Sheriff - election - bond - insurance.** (1) A sheriff shall be elected in each county for the term of four years and, except as provided in subsection (2) of this section, before entering upon the duties of office, shall execute to the people of the state of Colorado a bond, with at least three sufficient sureties, in the sum of not less than five thousand nor more than twenty thousand dollars, which the board of county commissioners, or, if it is not in session, the county clerk and recorder, subject to the approval of such board at its next session thereafter, shall specify and approve. When approved, the bond shall be filed in the office of the county clerk and recorder, and no person shall be received as surety who is not worth at least two thousand dollars over and above the surety's just debts.

(2) In lieu of the bond required by subsection (1) of this section, a county may purchase crime insurance coverage in an amount not less than ten thousand dollars on behalf of the sheriff to protect the people of the county from any malfeasance on the part of the sheriff while in office.

**30-10-601. Coroner - election - bond - insurance - authority.** (1) (a) Repealed.

(b) A coroner shall be elected in each county for the term of four years, who, except as provided in subsection (1.5) of this section, before entering upon the duties of office, shall give bond to the people of the state of Colorado of not less than twenty-five thousand dollars, with sufficient sureties, to be approved by the board of county commissioners or, if the board is not in session, by the county clerk and recorder, subject to the approval of such board, the condition of which bond shall be in substance the same as that given by the sheriff. Such bond shall be filed with the county clerk and recorder of the proper county.

(1.5) In lieu of the bond required by subsection (1) of this section, a county may purchase crime insurance coverage in an amount not less than twenty-five thousand dollars on behalf of the coroner to protect the people of the county from any malfeasance on the part of the coroner while in office.

**30-10-602. Deputy coroner - duties - oath - bond - insurance.** (1) The coroner of each county is authorized to appoint a deputy...A deputy coroner shall hold office during and subject to the pleasure of the coroner. Except as provided in subsection (2) of this section, each deputy coroner, before entering the duties of office, shall file with the county clerk and recorder of the county the bond and oath of office required by law to be filed by the coroner.

(2) In lieu of the bond required by subsection (1) of this section, a county may purchase crime insurance coverage on behalf of the deputy coroner to protect the people of the county from any malfeasance on the part of the deputy coroner while in office.

**30-10-607. Talesmen - oath.** If any juror fails to appear, the coroner shall immediately summon the proper number from the bystanders, and proceed to impanel them, and administer the following oath in substance: "You do solemnly swear, or affirm, that you will diligently inquire, and true presentment make, when, how, and by what means the person about whom this inquest is being held came to his death, according to your knowledge and the evidence given you, so help you God."

**30-10-701. Election - term - bond - insurance.** (1) A county treasurer shall be elected in each county for the term of four years and, except as provided in subsection (2) of this section, before entering upon the discharge of duties, shall execute to the people of the state of Colorado a surety bond to be approved by the board of county commissioners and filed in the office of the county clerk and recorder. Prior to the treasurer being sworn into office, the board of county commissioners shall set the amount of the surety bond by written resolution duly adopted by a majority vote of the board, which shall be entered in its minutes.

(2) In lieu of the bond required by subsection (1) of this section, a county may purchase crime insurance coverage on behalf of the treasurer to protect the people of the county from any malfeasance on the part of the treasurer while in office.

**30-10-703. Form of bond.** If a treasurer executes a bond pursuant to section 30-10-701 (1), the condition of the bond shall be in substance as follows: Whereas, ....., was elected to the office of County Treasurer of the County of ..... on the ..... day of .....; Now, therefore, the condition of

this obligation is such, that if the said ..... and the treasurer's deputy and all persons employed in the treasurer's office shall faithfully and promptly perform the duties of said office, and if the said ..... and the treasurer's deputies shall pay or invest according to law, all moneys that shall come to the hands of the treasurer, and shall render a just and true account thereof whenever required by said board of county commissioners, or by any provision of law, and shall deliver over to a successor in office, or to any other person authorized by law to receive the same, all moneys, securities, books, papers, and other things appertaining thereto or belonging to the treasurer's office, the above obligation to be void, otherwise to be in full force and effect; except that the surety shall in no event be liable for any loss caused by the failure or insolvency of the depository in which the county treasurer or the treasurer's deputies deposit any such public funds, or for any loss arising out of the investment of any such funds.

**30-10-801. Assessor - election - bond - insurance - term - oath.** (1) A county assessor shall be elected in each county at a general election and, except as provided in subsection (2) of this section, shall give bond to the people of the state of Colorado with two or more sufficient sureties, in a sum of not less than six thousand dollars for the performance of the assessor's duties according to law and to the satisfaction of the board of county commissioners, and subscribe an oath or affirmation for the faithful performance of the assessor's duties as such assessor, and who shall be a qualified elector of said county and shall hold office for four years and until a successor is elected and qualified.

(2) In lieu of the bond required by subsection (1) of this section, a county may purchase crime insurance coverage in an amount not less than ten thousand dollars on behalf of the assessor to protect the people of the county from any malfeasance on the part of the assessor while in office.

**30-10-802. Assessment district - deputy in each - oath - bond.** (1) When the board of county commissioners of any county is of the opinion that the assessor is unable to perform the duties of office within the time prescribed by law, the board shall divide such county into assessment districts and shall require the assessor to appoint a deputy in each district, who shall be a qualified elector of the district and who shall be sworn and, except as provided in subsection (2) of this section, give bond to the principal.

(2) In lieu of the bond required by subsection (1) of this section, a county may purchase crime insurance coverage on behalf of a deputy assessor to protect the people of the county from any malfeasance on the part of the deputy assessor while in office.

**30-10-901. Surveyor - election - bond - insurance.** (1) A county surveyor shall be elected for a term of four years, shall be a professional land surveyor as provided in part 2 of article 25 of title 12, C.R.S., and, except as provided in subsection (2) of this section, shall file an official bond in the office of the county clerk and recorder, to be approved by the board of county commissioners, in the sum of one thousand dollars, conditioned for the faithful discharge of duties.

(2) In lieu of the bond required by subsection (1) of this section, a county may purchase crime insurance coverage in an amount not less than ten thousand dollars on behalf of the surveyor to protect the people of the county from any malfeasance on the part of the surveyor while in office.

**30-11-119. New bond for officers, when.** When the board of county commissioners of any county in this state deems the bond given by the sheriff or other officer of the county insufficient, or when in its opinion the sureties on said bond are insolvent or permanently removed from the county, or when it for any other reason considers said bond insufficient for the public security, it is lawful for the board to require of said sheriff or other officer a new bond, with such sureties and so conditioned as required by law in the first instance.

**30-11-120. Failure to file bond - office vacant.** In case any sheriff or other officer refuses or neglects, for a period longer than thirty days after receiving notice, to give a new bond as required, it is lawful for the board of county commissioners to declare the office vacant and appoint some other person to fill the vacancy, who shall hold the office until a successor is elected or appointed.

## Municipal Officials

**25-3-303. Organization of trustees.** (1) The members of the board of public hospital trustees within ten days after their appointment shall qualify by taking the oath of office...

(a) Unless otherwise authorized under the provisions of paragraph (b) of this subsection (1), they shall elect one of their number as president, one as vice-president, and one as secretary. No bond shall be required of them...An itemized statement of all such expenses and money paid out shall be made under oath by such trustee and filed with the secretary and allowed only by the affirmative vote of all the trustees present at a meeting of the board.

(b) If approved by resolution of the board of county commissioners, the board may organize and operate by electing one of their number as president,

one as vice-president, and one as secretary-treasurer. The trustees may appoint an assistant secretary-treasurer from outside the membership of the board of trustees. No bond shall be required of the trustees, except of the secretary-treasurer and assistant secretary-treasurer who shall each file with the board of trustees, at the expense of the hospital, a corporate fidelity bond in an amount not less than ten thousand dollars, conditioned on the faithful performance of the duties of his office...An itemized statement of all such expenses and money paid out shall be made under oath by such trustee and filed with the secretary-treasurer and allowed only by the affirmative vote of all the trustees present at a meeting of the board.

**31-4-304. Appointment of officers - compensation.** The board of trustees shall appoint a clerk, treasurer, and town attorney, or shall provide by ordinance for the election of such officers, and may appoint such other officers, including a town administrator, as it deems necessary for the good government of the corporation, and it shall prescribe by ordinance their duties when the same are not defined by law and the compensation or fees they are entitled to receive for their services. The board of trustees may require of them an oath of office and a bond, with surety, for the faithful discharge of their duties. The election of officers shall be at the regular election, and no appointment of any officer shall continue beyond thirty days after compliance with section 31-4-401 by the members of the succeeding board of trustees.

**31-4-401. Oath of officers - bonds - waiver - declaring office vacant.**  
(1) All officers elected or appointed in any municipality shall take an oath or affirmation, administered by the municipal judge, clerk, or other person who is designated by the governing body or who is authorized by law to administer oaths, to support the constitution of the United States and the state constitution.

(2) The governing body of any city or town may require, from the treasurer and such other officers as it determines proper, a bond, with proper penalty and surety, for the care and disposition of municipal funds in their hands and the faithful discharge of the duties of their offices. Such governing body has the power to declare vacant the office of any person appointed or elected to any office who fails to take the oath of office or give bond when required within ten days after he has been notified of his appointment or election, and it shall proceed to appoint his successor as in other cases of vacancy.

**31-25-815. Employees - duties - compensation.** (1) The board shall employ and fix the compensation, subject to the approval of the governing body, of the following, who shall serve at the pleasure of the board:

(a) A director, who shall be a person of good moral character and possessed of a reputation for integrity, responsibility, and business ability...Before entering upon the duties of his office, the director shall take and subscribe to the oath of office and furnish a bond as required by the board....

## Special District Officials

**23-15-105. Organizational meeting - chairman - executive director - surety bond - conflict of interest.** (4) Before the issuance of any bonds under this article, the executive director and associate executive director shall each execute a surety bond in the penal sum of one hundred thousand dollars, and each member of the board shall execute a surety bond in the penal sum of fifty thousand dollars, or, in lieu thereof, the chairman of the board shall execute a blanket bond covering each member, the executive director, the associate executive director, and the employees or other officers of the authority, each surety bond to be conditioned upon the faithful performance of the duties of the office or offices covered, to be executed by a surety authorized to transact business in this state as surety. The cost of each such bond shall be paid by the authority.

**25-25-105. Organization meeting - chair - executive director - surety bond - conflict of interest.** (4) (a) Before the issuance of any bonds under this article, the executive director, associate executive director, and any other officer designated by the board shall each execute a surety bond in the penal sum of one hundred thousand dollars, and each member of the board shall execute a surety bond in the penal sum of fifty thousand dollars.

(b) In lieu of the surety bonds required by paragraph (a) of this subsection (4), the chair of the board may execute a blanket bond covering each member, the executive director, the associate executive director, and the employees or other officers of the authority.

(c) Each surety bond shall be conditioned upon the faithful performance of the duties of the office or offices covered and shall be executed by a surety authorized to transact business in this state as surety. The cost of each such bond shall be paid by the authority.

**32-1-603. Procedure after consolidation election.** (2) The organizational board, within six months after the date of the consolidation election, shall:

(c) Determine the amount of bond for each director of the consolidated district, which amount shall not be less than one thousand dollars per director and may be an individual, schedule or blanket bond at the expense of the consolidated district, and fix the amount of the treasurer's bond in an amount not less than five thousand dollars, which bonds are conditioned upon the faithful performance of their duties.

(3) After making such determinations, the organizational board shall promptly file in the court having jurisdiction as provided in section 32-1-602 (2) (c) a petition stating the name of the consolidated district, the name and address of each member of the first board of the consolidated district, the term of each member thereof, the amount of the surety bonds fixed in accordance with this section, and a description of the director districts, if any, of the consolidated district. Such petition shall also have attached to it photocopies or duplicates of the bonds duly certified by the insurance or surety company issuing the bonds, the originals of which bonds shall be retained in the files of the consolidated district.

**32-1-901. Oath and bond of directors.** (1) Each director, within thirty days after his or her election or appointment to fill a vacancy, except for good cause shown, shall appear before an officer authorized to administer oaths and take an oath that he or she will faithfully perform the duties of his or her office as required by law and will support the constitution of the United States, the constitution of the state of Colorado, and the laws made pursuant thereto. When an election is cancelled in whole or in part pursuant to section 1-13.5-513, C.R.S., each director who was declared elected shall take the oath required by this subsection (1) within thirty days after the date of the regular election, except for good cause shown. The oath may be administered by the county clerk and recorder, by the clerk of the court, by any person authorized to administer oaths in this state, or by the chairman of the board and shall be filed with the clerk of the court and with the division.

(2) At the time of filing said oath, there shall also be filed for each director an individual, schedule, or blanket surety bond at the expense of the special district, in an amount determined by the board of not less than one thousand dollars each, conditioned upon the faithful performance of his duties as director.

(3) If any director fails to take the oath or furnish the requisite bond within the period allowed, except for good cause shown, his office shall be deemed vacant, and the vacancy thus created shall be filled in the same manner as other vacancies in the office of director.

**35-70-105. Hearing on petition - election.** (5) (e) (II) The candidates, according to the number of supervisors to be elected, receiving the most votes cast shall be elected. The supervisors elected shall take office upon the taking of an oath and, if required by the state or local board, the filing of a bond in the same manner as specified in section 32-1-901, C.R.S. Failure to take the oath or furnish a bond, if required, except for good cause shown, shall create a vacancy in the office, and the vacancy shall be filled by the next candidate receiving the highest number of votes in the case of a new district or by the remaining supervisors as specified in section 35-70-107 (4).

**35-75-105. Organization meeting - chairman - personnel - surety bond - conflict of interest.** (4) Before the issuance of any bonds under this article, the executive officer and associate executive officer shall each execute a surety bond in the sum of one hundred thousand dollars, and each member of the board shall execute a surety bond in the sum of fifty thousand dollars or, in lieu thereof, the chairman of the board shall execute a blanket bond covering each member of the board, the executive officer, the associate executive officer, and the employees of the authority, each surety bond to be conditioned upon the faithful performance of the duties of the office covered, to be executed by a surety authorized to transact business in this state as surety. The cost of each such bond shall be paid by the authority.

**37-3-102. Oath - organization.** Each director, before entering upon his or her official duties, shall take and subscribe to an oath, before an officer authorized to administer oaths, that the director will honestly, faithfully, and impartially perform the duties of his or her office and that he or she will not be interested directly or indirectly in any contract let by said district, which oath shall be filed in the office of the clerk of said court in the original case. Upon taking the oath, the board of directors shall choose one of its number as chairman of the board and president of the district and shall elect some suitable person secretary of the board and of the district who may or may not be a member of the board. Such board shall adopt a seal and shall keep in a visual text format that may be transmitted electronically a record of all of its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees, and corporate acts, which shall be open to the inspection of all owners of property in the district as well as to all other interested parties.

**37-21-106. Directors to qualify.** Within ten days after receiving a certificate of election as provided in section 37-21-124, each of said directors shall take and subscribe the official oath and file the same together with his official bond in the office of the county clerk and recorder of the county where the or-

ganization of the district was effected and thereupon assume the duties of his office.

**37-31-115. Canvass of vote - certificate of election.** Within seven days after said election, the board shall meet at the office of the drainage district for the purpose of canvassing the vote cast at said election, and shall issue a certificate of election to the candidate receiving the highest number of votes for said office, and shall file a statement of the result of said election in the clerk and recorder's office of Mesa county, Colorado. Within ten days after receiving a certificate of election, the director certified to be elected shall take and subscribe the official oath and file the same, together with his official bond, in the office of the county clerk and recorder of Mesa county, Colorado, and thereupon assume the duties of his office.

**37-41-106. Directors - election - term.** (2) Within ten days after receiving their certificates of election provided for in section 37-41-112 (2), said officers shall take and subscribe the official oath and file the same in the office of the county clerk and recorder wherein the organization was effected and on January 1 following shall assume the duties of their respective offices. Each member of the board of directors shall execute an official bond in the sum of three thousand dollars, which bond shall be approved by the county judge of the county wherein such organization was effected, and shall be recorded in the office of the county clerk and recorder thereof. Such official bond may be signed by a surety company authorized to do business in the state of Colorado, in which case the district shall be liable for and shall pay premium on said bond. All official bonds shall be in form prescribed by law for official bonds for county officials; except that the obligee named in said bonds shall be to the district and shall be filed with the county clerk and recorder at the same time as the filing of the oath provided for in this section.

**37-44-124. County treasurer ex officio district treasurer.** (1) The county treasurer of the county in which is located the office of any internal improvement district shall be and is hereby constituted ex officio district treasurer of said district, and said county treasurer shall be liable upon his official bond and to indictment and criminal prosecution for malfeasance, misfeasance, or failure to perform any duty prescribed in this article as county treasurer or district treasurer, as is provided by law in other cases as county treasurer. Said county treasurer shall collect, receive, and receipt for all moneys belonging to said district. It is the duty of the county treasurer

of each county in which any internal improvement district is located, in whole or in part, to collect and receipt for all assessments levied in the same manner and at the same time and on the same receipt as is required in the collection of taxes upon real estate for county purposes. The county treasurer of each county comprising a portion only of such internal improvement district, excepting the county treasurer of the county in which the office of said district is located, on the first Monday of every month shall remit to the district treasurer all moneys theretofore collected or received by him on account of said district. Every county treasurer shall keep a bond fund account and a general fund account. The bond fund account shall consist of all moneys received on account of interest and principal of bonds issued by said district, and said accounts for interest and principal shall be kept separate. The general fund shall consist of all other moneys received by the collection of assessments or otherwise.

**37-44-126. Election of officers - oath - bond.** (2) Within ten days after receiving their certificates of election provided for in section 37-44-135, said officers shall take and subscribe the official oath and file the same in the office of the county clerk and recorder wherein the organization was effected and, January 1 following, shall assume the duties of their respective offices. Each member of the board of directors shall execute an official bond in the sum of five thousand dollars, which bond shall be approved by the judge of the district court of the county wherein such organization was effected and shall be filed in the office of the county clerk and recorder thereof. All official bonds shall be in the form prescribed by law for official bonds for county commissioners; except that the obligee named in said bonds shall be the internal improvement district and shall be filed with the county clerk and recorder at the same time as the filing of the oath.

**37-44-130. Administration of oath.** Any judge or clerk of election may administer and certify oaths required to be administered during the progress of an election. Before opening the polls each judge and clerk shall take and subscribe an oath to faithfully perform the duties imposed upon him by law. Any qualified elector of the precinct may administer and certify said oath.

**37-45-115. Organization of the board of directors.** (1) Before entering upon his official duties each director shall take and subscribe to an oath before an officer authorized to administer oaths that he will support the constitutions of the United States and of the state of Colorado and will honestly, faithfully, and impartially perform the duties of his office and that he will not be interested directly or indirectly in any contract let by said district, which oath shall be filed in the office of the clerk of said court in the original case.

**37-45-117. Employment of agents.** The secretary shall be custodian of the records of the district and of its corporate seal, and shall assist the board in such particulars as it may direct in the performance of its duties. The secretary shall attest, under the corporate seal of the district, all certified copies of the official records and files of the district that may be required of him by this article, or by any person ordering the same and paying the reasonable cost of transcription, and any portion of the record so certified and attested shall prima facie import verity. The secretary shall serve as treasurer of the district, unless a treasurer is otherwise provided for by the board. The board may also employ a chief engineer who may be an individual, partnership, or corporation; an attorney, and such other engineers, attorneys, and other agents and assistants as may be necessary; and may provide for their compensation which, with all other necessary expenditures, shall be taken as a part of the cost or maintenance of the improvement. The chief engineer shall be superintendent of all the works and improvements, and shall make a full report to the board each year, or oftener if required by the board, and may make such suggestions and recommendations to the board as he may deem proper. The secretary and treasurer and such other agents or employees of the district as the court may direct, shall furnish corporate surety bonds, at the expense of the district, in amount and form fixed and approved by the court, conditioned upon the faithful performance of their respective duties.

**37-46-106. Vacancies - secretary and treasurer.** The office of director shall become vacant when any member ceases to reside in the county from which he was appointed. In the event a vacancy occurs in said office by reason of death, resignation, removal, or otherwise, it shall be filled by the board of county commissioners of the county from which said member originally came. Before entering upon the discharge of his duties, each director shall take an oath to support and defend the constitutions of the United States and of the state of Colorado and to impartially, without fear or favor, discharge the duties of a director of said district. The board of directors of said district shall appoint a secretary and a treasurer. The same individual may at the election of the board hold both of said offices. The board shall likewise hire such other employees, including engineers and attorneys, as may be required to properly transact the business of the district, and said board is authorized to provide for the compensation of the secretary and treasurer and other appointees. The treasurer shall be required by the board to give bond with corporate surety in such amount as the board may fix and which it deems sufficient to protect the funds in the hands of the treasurer or under his control. Such bond is subject to the approval of the board.

**37-47-106. Vacancy in office of director.** ...Before entering upon the discharge of his duties, each director shall take an oath to support and defend the constitutions of the United States and of the state of Colorado and to impartially, without fear or favor, discharge the duties of a director of said district...The treasurer shall be required by the board to give bond with corporate surety in such amount as the board may fix and which it deems sufficient to protect the funds in the hands of the treasurer or under his control. Such bond is subject to the approval of the board.

**37-48-103. Board of directors.** (2) The office of a director shall become vacant when any director ceases to reside in the county from which he was appointed or when declared vacant by a majority vote of all of the members of the board when any director has failed to attend two consecutive regular meetings without having been excused from attendance by the president. In the event a vacancy occurs in said office by reason of death, resignation, removal, or otherwise, it shall be filled for the remainder of the unexpired term by the board of county commissioners of the county from which said director originally came. Before entering upon the discharge of his duties, each director shall take an oath to support and defend the constitutions of the United States and of the state of Colorado and to impartially, without fear or favor, discharge the duties of a director of said district.

**37-48-104. Employees.** The board of directors of said district shall appoint a secretary and a treasurer. The same individual at the election of the board may hold both offices. The board shall likewise hire such other employees, including engineers and attorneys, as may be required to properly transact the business of the district, and said board is authorized to provide for the compensation of the secretary and treasurer and other appointees. The treasurer shall be required by the board to give bond with corporate surety in such amount as the board may fix and which it deems sufficient to protect the funds in the hands of the treasurer or under his control. Such bond is subject to the approval of the board.

**37-50-104. Board of directors.** (2) The office of a director shall become vacant when the director ceases to reside in the county or ground water management district from which he or she was appointed, or in the case of the director appointed by the Colorado ground water commission when the director ceases to reside in the district or is no longer a member of the Colorado ground water commission, or when declared vacant by a majority vote of all of the members of the board when a director has failed to attend two consecutive regular meetings without having been excused from attendance by the presi-

dent. If a vacancy occurs in the office by reason of death, resignation, removal, or otherwise, it shall be filled for the remainder of the unexpired term by the board of county commissioners of the county, or the ground water management district from which the director was originally appointed. Before entering upon the discharge of his or her duties, each director shall take an oath to support and defend the constitutions of the United States and of this state and to impartially, without fear or favor, discharge the duties of a director of the district.

**37-50-106. Employees.** The board shall appoint a secretary and a treasurer. The same individual may, at the election of the board, hold both offices. The board shall likewise hire such other employees, including engineers and attorneys, as may be required to properly transact the business of the district, and is authorized to provide for the compensation of the secretary and treasurer and other appointees. The treasurer shall be required by the board to give bond with a corporate surety in such amount as the board may fix and that it deems sufficient to protect the funds in the hands of the treasurer or under the treasurer's control. Such bond is subject to the approval of the board.

**37-90-126. Management district - directors - qualifications - oath - bond - vacancies.** The members of the board of directors shall meet the qualifications established in section 37-90-121 (1)(b). Each member of the board shall take an oath of office, shall give bond in the sum of five thousand dollars conditioned that he or she shall faithfully perform the duties of director and of such further office to which he or she may be elected in such district, and shall account for all funds or property coming into his or her hands as such director or other officer. Such bonds shall run to the district, shall be signed by a surety approved by the ground water commission, and shall be filed and recorded in the office of the state engineer. When such bond is so filed and approved, such person so elected shall take and hold office until his or her successor is elected and qualified. When a vacancy occurs on the board, such vacancy shall be filled by the remaining members of the board.

**37-92-204. Water clerks - duties.** (3) Subject to the approval of the water judge, the water clerk in each division shall employ such assistants and deputies as may be necessary for him to carry out his duties. The water clerk, assistants, and deputies shall execute such oath of office and such bond as may be prescribed by the supreme court.

**37-95-104. Establishment of authority - board of directors - removal - organization - compensation - dissolution.** (4) Each member may be removed from office by the governor for cause, after a public hearing, and may be suspended by the governor pending the completion of such hearing. Each member, before entering upon his duties, shall take and subscribe an oath to perform the duties of his office faithfully, impartially, and justly to the best of his ability. A record of all such oaths shall be filed in the office of the secretary of state.

**38-36-113. Examiner of titles - compensation - oath - bond.** The judges of the district court in and for the judicial districts for which they are elected or appointed shall appoint a competent attorney in each county within their district as examiner of titles and legal adviser of the registrar. The examiner of titles in each county shall be paid in each case by the applicant such compensation as the judge of the district court determines. Every examiner of titles shall, before entering upon the duties of his office, take and subscribe an oath of office to faithfully and impartially perform the duties of his office, and shall also give a bond in such amount and with such sureties as shall be approved by the judge of the district court, payable in like manner and with like conditions as required of the registrar. A copy of the bond shall be entered upon the records of said court and the original shall be filed with the registrar.

**38-37-102. Appointment - bond - office.** (1) The governor shall appoint a public trustee in and for each of the counties of the second class...Every person so appointed public trustee in counties of the second class shall, before entering upon the duties of such office, execute a surety bond issued by a company authorized to issue such bonds in the state of Colorado, in the sum of twenty-five thousand dollars, conditioned that the person so appointed as public trustee will well and faithfully execute the duties of such office; and such public trustee shall promptly account for and pay over to such persons as are entitled thereto all moneys and other valuables that come into such person's hands as public trustee.

(2) The county treasurer shall be the public trustee in each of the counties other than those of the first and second classes, and each such county treasurer as public trustee shall execute a surety bond issued by a company authorized to issue such bonds in the state of Colorado in the sum of ten thousand dollars, to be approved by the county commissioners of the county, conditioned that such person will well and faithfully perform the duties of public trustee and properly account for and pay over to such persons as are entitled thereto all moneys and other valuables that come into such person's hands as public trustee...

(4) In lieu of the bond required by subsections (1) and (2) of this section, a county may purchase crime insurance coverage on behalf of the public trustee

to protect the people of the county from any malfeasance on the part of the public trustee and his or her employees.

**38-44-105. Oath - assistants.** The commissioners so appointed shall subscribe and file with the clerk, within ten days from the date of their appointment, an oath for the faithful and impartial discharge of their duties and shall have power to appoint all necessary assistants.

## Addendum B

### Constitution of the State of Colorado - Provisions Referencing Employment Oaths or Bonds

Constitutional Provision	Office	Oath	Bond	Requirements	Additional Information
Article IV, §. 8	Governor may require information under oath	X		The Governor may require written information from all officers of the executive department given under oath.	
Article IV, §13	Succession to office of Governor and Lt. Gov.	X		Requirement to take the oath of office in all cases of succession.	
Article IV, §16	Account of moneys	X		Officers of the executive department shall report quarterly in writing and under oath the location and amounts of funds.	
Article V, §2	Legislators	X		"...shall take an oath or affirmation to support the constitution of the United States and of the state of Colorado and to faithfully perform the duties of his office according to the best of his ability."	Oath administered in the chamber to which the member was elected.
Article X, §12 (2)	State Treasurer	X		State Treasurer shall report quarterly in writing and under oath the location and amounts of funds.	

Constitutional Provision	Office	Oath	Bond	Requirements	Additional Information
Article X, §12 (1)	State Treasurer		X	"The general assembly may provide by law for the safekeeping and management of the public funds in the custody of the state treasurer, but, notwithstanding any such provision, the state treasurer and his sureties shall be responsible therefor."	
Article XII, §8	Civil Officers	X		Shall "take and subscribe an oath or affirmation to support the constitution of the United States and of the state of Colorado, and to faithfully perform the duties of the office upon which he shall be about to enter."	Colorado Supreme Court ruled in <i>Hedstrom v. Motor Vehicle Division</i> , 622 P.2d 173, 176 (Colo.1983), that this section only applies to Governor, Lieutenant Governor, Secretary of State, State Treasurer, and Attorney General.
Article XII, § 9	Filing of oaths	X		"Officers of the executive department and judges of the supreme court and district courts, and district attorneys, shall file their oaths of office with the secretary of state; every other officer shall file his oath of office with the county clerk of the county wherein he shall have been elected."	
Article XII, § 10	Failure to qualify for office			Elected or appointed officer refuses or neglects to qualify for office results in office vacancy.	A failure to timely file oath or bond does not create a permanent vacancy. <i>People v. Scott</i> , 116 P.3d 1231 (Colo. App. 2004).
Article XIII, § 1	Senators sitting for the purpose of impeachment	X		"All impeachments shall be tried by the senate, and when sitting for that purpose, the senators shall be upon oath or affirmation to do justice according to the law and evidence."	

Constitutional Provision	Office	Oath	Bond	Requirements	Additional Information
Article XIX, §1	Constitutional Convention members	X		"...shall take an oath to support the constitution of the United States, and of the state of Colorado, and to faithfully discharge their duties as members of the convention."	

**Addendum C**  
**Colorado Revised Statutes**  
**Provisions Referencing Employment Oaths or Bonds**

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
<b>I. General Provisions</b>							
24-12-101	Form of oath	X		"Whenever any person is required to take an oath before he enters upon the discharge of any office, position, or business or on any other lawful occasion, it is lawful for any person employed to administer the oath to administer it in the following form: The person swearing, with his hand uplifted, shall swear 'by the everliving God'."			

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
24-12-102	Affirmation in lieu of oath	X		"Whenever any person is required to take or subscribe an oath, and in all cases where an oath is to be administered upon any lawful occasion, and such person has conscientious scruples against taking an oath, he shall be permitted to make his solemn affirmation or declaration in the following form: 'You do solemnly, sincerely, and truly declare and affirm', which solemn affirmation or declaration is equally valid as if such person had taken an oath in the usual form; and every person guilty of falsely declaring shall incur and suffer the penalties inflicted on persons guilty of perjury in the first degree."			
24-12-103	Who may administer an oath	X		"...the courts, judges, magistrates, referees, clerks, and deputy clerks within their respective districts or counties, and notaries public within any county of this state, have the power to administer all oaths of office...."			

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
24-12-105	Local government appointees oaths and affirmations	X		"In all home rule cities and city and counties, the charters of which provide that officers, boards, or commissions named therein shall perform the acts and duties required of county officers by the state constitution or by general law, any deputy, employee, or appointee of such officer, board, or commission may administer any oath or affirmation which, by the state constitution or general law, might be administered by the county officer whose duties are performed by such officer, board, or commission making such appointment or employing such deputy, so long as such deputy, employee, or appointee is employed in such capacity."			
24-12-106	False swearing or affirming	X		"All oaths and affirmations...administered or taken shall subject any person who swears or affirms falsely and willfully, in the matter material to any issue or point in question, to the penalties inflicted by law on persons guilty of perjury in the first degree."			

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
24-12-107	Out of state oaths	X		"All oaths and affirmations required or authorized to be taken by any statute of this state, when the person required to make the same resides out of or is absent from this state, may be made before and administered by any notary public or clerk of any court of record of the state wherein such person may be, such notary or clerk certifying the same under his notarial seal or the seal of such court."			
24-13-105	Duty to file and examine bonds		X	"It is the duty of the board of county commissioners of each county, at each regular term, on the first day of each term, to examine and inquire into the sufficiency of the official bond of the county treasurer, sheriff, coroner, county assessor, county clerk and recorder, and county surveyor and all other official bonds given by any county officer, as required by law."			
24-13-108	Failure to file new bond, vacancy		X	"If any officer or person enumerated in section 24-13-105 fails to file a new bond within the prescribed time when so required by an order entered of record requiring the filing of such new bond, the officer in default shall be deemed to have vacated his office...."			

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
24-13-113	Failure to file bond		X	"It is the duty of such sheriff, coroner, county treasurer, county assessor, county clerk and recorder, or other officer, if he fails to give bond, to deliver over to his sureties forthwith all books, moneys, vouchers, papers, and every description of property whatever, pertaining to his office; and the sureties, at any time after failure to file bond, may maintain an action of replevin or other appropriate action to recover such property, money, or effects from their principal."			
24-13-116	Approval of bonds		X	"The county treasurer, county assessor, county clerk and recorder, or any county officer shall file his official bond in the office of the county clerk and recorder, which bond shall be executed as required by law and shall be approved by the board of county commissioners in open session."			
24-13-117	Approval of bonds to be of record		X	"It is the duty of the board of county commissioners to make an entry in the records of said board of its approval of all official bonds, and, when so approved by said board, the county clerk and recorder shall record the same in the records of said county for inspection by all persons."			

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
24-13-125	Expense of bond premiums		X	<p>"Any state, county, municipal, district, or court officer required by law to give a bond or other obligation as such officer may include, as part of the lawful expenses of executing and performing the duties of his office, such reasonable premium as may be charged by a company authorized under the laws of this state so to do for becoming his surety on such bond or obligation and such reasonable premium as may be charged by such company for becoming surety upon the bond of any deputy, clerk, or employee of such officer who is required by law or by such officer to give bond. Such premium shall not exceed one-half of one percent per annum on the amount or penalty of each bond or obligation."</p>			

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
24-13-126	How pay bond premiums		X	"The expenses provided in section 24-13-125, in the case of state officers and their deputies, clerks, or employees, shall be paid from the state treasury, and the general assembly shall make the necessary appropriations therefor. In the case of all other officers and their deputies, clerks, or employees, such expenses shall be paid from any fund provided by such county, municipality, district, precinct, or court for the payment thereof or for the payment of the incidental or contingent expenses of any such officer, or the same shall be paid by such officer from any fund in his possession from which he is authorized to pay the expenses or salaries of his office."			

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
24-14-102	Purchase of insurance		X	<p>"The head of a department of the state of Colorado, with the approval of the governor or, in the case of the county or city and county, the chief executive officer or board of county commissioners, subject to appropriations being available therefor, is hereby authorized to procure insurance, through the department of personnel as provided in the 'Procurement Code', articles 101 to 112 of this title, for the purpose of insuring its officers, employees, and agents against any liability, other than a liability which may be insured against under the provisions of the 'Workers' Compensation Act of Colorado', for injuries or damages resulting from their negligence or other tortious conduct during the course of their service or employment. Counties or cities and counties are authorized to insure their officers, employees, and agents against similar liabilities."</p>			

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
24-14-103	Approval and premium cost		X	"Any policy of insurance shall be obtained from an insurer authorized to transact business in this state and deemed by the department of personnel or the appropriate governing body of the governmental subdivision to be responsible and financially sound considering the extent of the coverage required. The premium for such insurance shall be a proper charge against the state or the appropriate governmental subdivision."			
24-14-104	Insurance coverage limitations		X	"(1) The extent of the insurance coverage shall be limited as follows: (a) For any bodily injury and property damage to one person in any single occurrence, the sum of one hundred fifty thousand dollars; (b) For any bodily injury and property damage to two or more persons in any single occurrence, the sum of four hundred thousand dollars; except that, in such instance, no person may recover in excess of one hundred fifty thousand dollars."			

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
<b>II. Specific Provisions</b>							
20-1-101 (1)	District Attorney	X		Oath to U.S. Const. and organic law of state.	Implied		
20-1-101 (1)	District Attorney		X	\$5,000 bond.	SOS approves form of bond.		
20-1-101 (2)	Deputy District Attorney		X	Same as District Attorney.	X		Only if required by District Attorney.
20-1-101 (2)	Assistant District Attorney		X	Same as District Attorney.	X		Only if required by District Attorney
20-1-201 (3)	Deputy District Attorney	X		Same as District Attorney.	X		
20-1-205 (2)	Assistant District Attorney	X		Same as District Attorney.	X		
23-15-105 (4)	Colorado Educational and Cultural Facilities Authority		X	Exec. Director, Assoc. Exec. Director and others designated by the board \$100,000. Each Board member \$50,000. In lieu of individual bonds, Chairman may get blanket bond for all.			Bonds paid for by Authority.

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
23-20-103	Board of Regents University of Colorado	X		"I do solemnly swear (or affirm) that I will support the constitution of the United States and of the state of Colorado, and that I will perform the duties of regent of the university of Colorado faithfully and to the best of my ability."	X		
23-20-109	Board of Regents University of Colorado Treasurer	X	X	"...shall take and subscribe an oath that he or she will faithfully perform the duties of treasurer." Bond of at least \$25,000, from two or more sureties.	X		Bond approved by Board of regents, Attorney General and Secretary of State and "shall endorse their approval on the same."
23-30-105	Board of Governors of the Colorado State University System Secretary and Treasurer		X	Each shall "give bond in an amount deemed sufficient by the board."			Bond requirements may be waived by the board and "governmental insurance coverage" may be substituted.
23-40-104 (1)(b)(VIII)	Board of Trustees University of Northern Colorado	X		"...shall take and subscribe to the oath of office prescribed by the constitution of this state."	X		
23-41-103	School of Mines Trustee	X		"...shall take an oath to support the constitution of the United States and the constitution of this state and to faithfully perform the duties of his office to the best of his ability and understanding."			

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
23-41-110	School of Mines Treasurer		X	Give such bond as the board deems sufficient.			
23-51-102 (5)	Adams State University Trustee	X		"...shall take and subscribe to the oath of office prescribed by the constitution of this state."	X		
23-52-102 (5)	Fort Lewis College Trustee	X		"...shall take and subscribe to the oath of office prescribed by the constitution of this state."	X		
23-53-102 (5)	Colorado Mesa University Trustee	X		"...shall take and subscribe to the oath of office prescribed by the constitution of this state."	X		
23-54-102 (5)	Metropolitan State University of Denver Trustee	X		"...shall take and subscribe to the oath of office prescribed by the constitution of this state."	X		
23-56-102 (5)	Western State Colorado University Trustee	X		"...shall take and subscribe to the oath of office prescribed by the constitution of this state."	X		
23-70-102 (2)	Auraria Higher Education Center	X		"...shall take and subscribe to the oath of office prescribed by the constitution of this state."	X		

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
24-2-104	Principal Department Officers required to handle state funds		X	"...shall give bond executed by a responsible surety company, authorized to do business within the state, in such sum as may be fixed by law or, in the absence of any such law, such as shall be fixed by the governor as he deems adequate to safeguard state funds."	X Bonds must be approved by the Governor.		
24-13-122	Freeholder required as surety		X	"...No individual shall be accepted as a surety on any official bond of any county officer unless he is a freeholder of the county in which said officer may be elected or appointed to office."			
24-13-123	Board of County Commissioners		X	Must provide affidavit of assets and liabilities within six days of notice.		X County Clerk and Recorder	Oath regarding bond.
24-22-101	State Treasurer	X	X	"...shall take and subscribe to the oath required by the state constitution and shall give bond to the people of Colorado in the sum of one million dollars, with not less than ten individual sureties or one or more surety companies authorized to do business in this state."	X The bond and each surety must be approved by the Governor and Attorney General.		Premiums for bonds paid by the state and general assembly shall appropriate funds. When Governor with concurrence of Attorney General deems surety insufficient, may demand additional bond.

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
24-35-104	Dept. of Revenue Executive Director		X	\$200,000 bond signed by one or more surety companies.			Premiums for bonds paid by the state and general assembly shall appropriate funds.
25-25-105 (4)	Colorado Health Facilities Authority		X	Exec. Director, Assoc. Exec. Director and others designated by the board \$100,000. Each Board member \$50,000. In lieu of individual bonds, Chair may get blanket bond for all.			Bonds paid for by Authority.
25-3-303 (1)	Public Hospital Secretary and Treasurer		X	Corporate fidelity bond of not less than \$10,000.		X Filed with Board	Bond paid for by hospital.
30-10-105 (1)(e)	All county offices	X	X	Office becomes vacant upon refusal or neglect to file oath or bond.			
30-10-110 (1)	Sheriff, County Clerk and Recorder, County Treasurer, Clerk of Court	X		"...take and subscribe the oath of office prescribed by law."			"Oath before some officer authorized to administer oaths." Pursuant to 30-10-416 county clerks and recorders may administer oaths of office, and pursuant to 30-10-418 may charge fee for administering oath.

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
30-10-110 (1)	Sheriff, County Clerk and Recorder, County Treasurer, Clerk of Court		X	No statutory amount.			Pursuant to 30-10-110 (2), the county may purchase crime insurance in lieu of bond.
30-10-301	County Commissioners	X		To support the U.S. and Colorado Constitutions, and perform duties to best of ability.			Oath memorialized on a certificate under "the hand and seal of the person administering it."
30-10-311 (1)	County Commissioners		X	No statutory amount.			Pursuant to 30-10-311 (2), the county may purchase crime insurance in lieu of bond.
30-10-401 (1)	County Clerk		X	"Whereas, The above bounden....was elected to the office of county clerk of...., on the ....day of...., Now, therefore, if the said....shall faithfully perform all duties of the office, and shall pay over all moneys that may come into the hands.....etc." A bond with two or more sureties in sum of at least \$5,000.		X County Clerk and Recorder	Deposited with County Treasurer. Pursuant to 30-10-401 (2) county may purchase crime insurance in amount of at least \$10,000 in lieu of bond. Statute includes form of bond/oath.
30-10-403	Deputy County Clerk		X	If county clerk filed bond, deputies covered under that bond.		X County Clerk and Recorder	

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
30-10-416	County Clerk and Recorder may administer oaths	X		"The county clerks and recorders of the several counties in the state of Colorado are authorized, within their respective counties, to administer all oaths of office, ..."			
30-10-501	County Sheriff		X	Bond with at least three sureties the sum of not less than \$5,000 or more than \$20,000.		X County Clerk and Recorder	Pursuant to 30-10-501 (2) county may purchase crime insurance in amount of at least \$10,000 in lieu of bond. 30-10-502, form of bond/oath. Pursuant to 30-10-505, malfeasance of undersheriff is breach of sheriff's bond.
30-10-601 (1)(b)	County Coroner		X	Bond of not less than \$25,000.		X County Clerk and Recorder	Pursuant to 30-10-601 (1.5), county may purchase crime insurance of not less than \$25,000 in lieu of bond.
30-10-602	Deputy County Coroner	X	X	Bond and oath of office are same as required for coroner.		X County Clerk and Recorder	Pursuant to 30-10-602 (2), county may purchase crime insurance in lieu of bond.

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
30-10-607	Talesman	X		Replacement inquest juror summoned from "bystanders." "You do solemnly swear, or affirm, that you will diligently inquire, and true presentment make, when, how, and by what means the person about whom this inquest is being held came to his death, according to your knowledge and the evidence given you, so help you God."			Pursuant to 30-10-606 (3) calling of six jurors for inquiry.
30-10-701 (1)	County Treasurer		X	County board sets amount of bond.		X County Clerk and Recorder	Pursuant to 30-10-701 (2), county may purchase crime insurance in lieu of bond.
30-10-703	County Treasurer		X	Statutory form of bond.			
30-10-801 (1)	County Assessor	X	X	Two or more sureties of at least \$6,000 and swear an oath "for the faithful performance of the assessor's duties."			Pursuant to 30-10-801 (2), county may purchase crime insurance of not less than \$10,000 in lieu of bond.
30-10-802 (1)	Deputy county assessors	X	X	No statutory bond amount, and oath requirement consists of "who shall be sworn."			Pursuant to 30-10-802 (2), county may purchase crime insurance of not less than \$10,000 in lieu of bond.

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
30-10-901(1)	County Surveyor		X	\$1,000 bond.		X County Clerk and Recorder	Pursuant to 30-10-901 (2), county may purchase crime insurance of not less than \$10,000 in lieu of bond.
30-11-119	Sheriff or other officer of the county		X	Board of commissioners deem bond insufficient can order a new bond.			
30-11-120	Sheriff or other officer		X	30 days after notice of insufficiency, if refuses or neglects to give bond, office declared vacant.			
31-25-815 (1)(a)	Local Development Authority director	X	X	"...director shall take and subscribe to the oath of office and furnish a bond as required by the board."			
31-4-304	Appointed municipal clerk, treasurer, and town attorney	X	X	Trustees "may require of them an oath of office and a bond, with surety, for the faithful discharge of their duties."			
31-4-401 (1)	All elected or appointed municipal officers	X		"...to support the constitution of the United States and the state constitution."			Administered by municipal judge, clerk or other person designated or authorized by law to administer oaths.

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
31-4-401 (2)	City or town treasurer, or other officers		X	May require bond, no statutory amount.			Power to declare office vacant after notice plus 10 days if oath or bond not completed.
32-1-603 (2)(c)	Special District Directors and Treasurer, following consolidation		X	Bond shall be not less than \$1,000 per director, and not less than \$5,000 for treasurer. Bond may be "individual, schedule or blanket."		X Copies of bonds filed with court	Bonds paid for by district.
32-1-901 (1)	Elected or appointed Special District Director	X		"...will faithfully perform duties of his or her office as required by law and will support the constitution of the United States, the constitution of the state of Colorado, and the laws made pursuant thereto."		X Clerk of the Court	Appear within 30 days of election or appointment before county clerk and recorder, clerk of court, person authorized to administer oaths, or chairman of the board.
32-1-901 (2)	Elected or appointed Special District Director		X	\$1,000 "individual, schedule, or blanket bond."			Pursuant to 32-1-901 (3), failure to file oath or bond, office shall be deemed vacant.
35-1-106 (1)(j)	State Agricultural Commission employees		X	May require and fix bonds of employees of the department.			
35-70-105 (5)(e)(II)	Conservation District Supervisor	X	X	Shall take oath, if required by state or local board, also file a bond.		X Clerk of the Court	Failure to take oath or bond results in office vacancy.

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
35-75-105 (4)	Colorado Agricultural Development Authority		X	Exec. Director, Assoc. Exec. Director and others designated by the board \$100,000. Each Board member \$50,000. In lieu of individual bonds, Chairman may get blanket bond for all.			Bonds paid for by Authority.
37-21-106	Drainage District Director	X	X	Within 10 days of election, take oath and file with "official bond". No statutory bond amount.		X County Clerk and Recorder	
37-3-102	Conservancy District Director	X	X	"...shall take and subscribe to an oath,...will honestly, faithfully, and impartially perform the duties of his or her office and that he or she will not be interested directly or indirectly in any contract." Board shall keep "in a visual text format" all "bonds given by employees."		X Clerk of the Court	Administered by officer authorized to administer oaths.
37-31-115	Mesa County Drainage District Director	X	X	Within 10 days of election, take oath and file with "official bond". No statutory bond amount.		X Mesa County Clerk and Recorder	
37-41-106 (2)	Irrigation District Director	X	X	Within 10 days of election, take oath and file a \$3,000 bond "in the form prescribed by law for official bonds of county officials" and approved by county judge.		X County Clerk and Recorder	Board pays the cost of the bond.

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
37-44-124 (1)	Internal Improvement District Treasurer		X	County Treasurer serves as district treasurer and "shall be liable upon his official bond and to indictment and criminal prosecution for malfeasance, misfeasance, or failure to perform any duty."			
37-44-126 (2)	Internal Improvement District Director	X	X	Within 10 days of election, take oath and file a \$5,000 bond "in the form prescribed by law for official bonds of county commissioners" and approved by county judge.		X County Clerk and Recorder	Pursuant to 37-44-130, any judge, or clerk of election "may administer and certify" oaths.
37-44-130	Election Judge and Clerk	X		Before opening polls "shall take and subscribe an oath to faithfully perform duties imposed upon him by law."			Oath administered and certified by "any qualified elector of the precinct."
37-45-115 (1)	Water Conservancy District Director	X		"...shall take and subscribe to an oath, ... will support the constitutions of the United States and the state of Colorado and will honestly, faithfully, and impartially perform the duties of his office and that he will not be interested directly or indirectly in any contract."		X Clerk of the Court	Administered by officer authorized to administer oaths.

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
37-45-117	Water Conservancy District Secretary, Treasurer, and such other agents and employees as the court may direct		X	"...shall furnish corporate surety bonds" in amount and form fixed and approved by the court.			
37-46-106	Colorado River Water Conservation District Director and Treasurer	X	X	"...shall take oath to support and defend the constitutions of the United States and the state of Colorado and to impartially, without fear or favor, discharge the duties of a director." Treasurer shall "give bond with corporate surety" in amount fixed and approved by Board.			
37-47-106	Southwestern Water Conservation District Director and Treasurer	X	X	"...shall take oath to support and defend the constitutions of the United States and the state of Colorado and to impartially, without fear or favor, discharge the duties of a director." Treasurer shall "give bond with corporate surety" in amount fixed and approved by Board.			
37-48-103 (2)	Rio Grande Water Conservation District Director	X		"shall take oath to support and defend the constitutions of the United States and the state of Colorado and to impartially, without fear or favor, discharge the duties of a director."			

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
37-48-104	Rio Grande Water Conservation District Treasurer		X	Treasurer shall "give bond with corporate surety" in amount fixed and approved by Board.			
37-50-104 (2)	Republican River Water Conservation District Director	X		"...shall take oath to support and defend the constitutions of the United States and of this state and to impartially, without fear or favor, discharge the duties of a director."			
37-50-106	Republican River Water Conservation District Treasurer		X	Treasurer shall "give bond with corporate surety" in amount fixed and approved by Board.			
37-60-104 (2)	Colorado Water Conservation Board members	X		"...shall make, subscribe, and file...the oath prescribed by the constitution."	X		
37-80-101	State Engineer	X	X	"...shall take and subscribe an oath, before a judge of a state court of record, to faithfully perform the duties of his office" \$10,000 bond	X Both oath and bond filed with SOS.		S.B. 17-026 repeals.

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
37-80-106 (1)	State Engineer deputies	X	X	"...shall take and subscribe to an oath, before a judge of a court of record, to faithfully perform the duties of the office to which he is appointed or required to perform." Bond of no less than \$1,000 or more than \$5,000.	X Only oath filed with SOS.		Deputy personally pays cost of the bond. S.B. 17-026 repeals.
37-80-114 (3)	Deputy State Engineer	X	X	"...shall take and subscribe to an oath before the judge of a state court of record to faithfully perform the duties of his office." \$10,000 bond	X Both oath and bond filed with SOS.		S.B. 17-026 repeals.
37-90-126	Ground Water Management District Director	X	X	"...shall take an oath of office, [and] shall give a bond in the sum of" \$5,000.	X Bond filed with State Engineer.		
37-92-204 (3)	Water Clerks	X	X	"...shall execute such oath of office and such bond as may be prescribed by the supreme court."			
37-95-104 (4)	Colorado Water Resources and Power Development Authority Board member	X		"...shall take and subscribe an oath to perform the duties of his office faithfully, impartially, and justly to the best of his ability."	X Filed with SOS		

Statutory Citation	Office	Oath	Bond	Requirements	Filed with SOS	Filed with County	Additional Information
38-36-113	Examiner of titles	X	X	"...take and subscribe an oath to faithfully and impartially perform the duties of his office, and shall also give a bond" as approved by judge of district court.		X Copy entered upon records of the court and original filed with the registrar	
38-37-102 (1) and (2)	Public Trustee		X	\$25,000 surety bond in (Counties 2nd class), \$10,000 (Counties other than 1st and 2nd).			Pursuant to 38-37-102 (4) county may purchase crime insurance in lieu of bond.
38-44-105	Commissioners-county surveyor	X		"...oath for faithful and impartial discharge of duties."		X Clerk of the Court	
39-21-112 (5) and (6)	Dept. of Revenue		X	Executive Director "shall bond, in a sufficient amount, any person handling money under this article." "Members of the department of revenue shall each give bond to the state of Colorado in the sum of" \$5,000.			
43-1-106 (5)	Transportation Commissioners	X		"...shall take oath ... for state officers."	X		

# OFFICE OF LEGISLATIVE LEGAL SERVICES

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## MEMORANDUM (2)(D)<sup>1</sup>

TO: Statutory Revision Committee

FROM: Brita Darling, Office of Legislative Legal Services

DATE: August 11, 2017

SUBJECT: Removing the term "pauper" from the statutes

### Summary

In several places in the Colorado Revised Statutes, the terms "pauper" or "pauper dead" are used. Referring to a person as a "pauper" or "pauper dead" is antiquated and the language should be modernized to refer to an "indigent person", a "person who is indigent", or a "deceased indigent person".

This issue was raised by Office of Legislative Legal Services in the course of reviewing statutes as part of the annual publications process for the Colorado Revised Statutes.

### Analysis

**The term "pauper" is antiquated and should be replaced in the Colorado Revised Statutes with the term "indigent".**

The terms "pauper", "paupers", or "pauper dead" appear in the following sections of the Colorado Revised Statutes included in **Addendum A**:

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<sup>1</sup> This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

15-19-302. Duty of public officers as to unclaimed bodies.  
25-3-309. Hospital fees.  
28-5-502. Internment of deceased veterans.

These terms are antiquated and should be replaced in the Colorado Revised Statutes with more modern language. "Pauper" is defined in *Black's Law Dictionary, Seventh Edition*, as "A very poor person, esp. one who receives aid from charity or public funds; an indigent." Therefore, the terms "pauper", "paupers", and "pauper dead" should be replaced with "indigent person", "indigent persons", or "deceased indigent persons".

## **Statutory Charge<sup>2</sup>**

Removing or modernizing antiquated references to a "pauper", "paupers", and the "pauper dead" meets the Committee's statutory charge to remove antiquated language and to bring the law of this state into harmony with modern conditions.

## **Proposed Bill**

Staff has attached a bill draft<sup>3</sup> to address the issue. Staff has sought input on the proposed changes from Colorado Counties, Inc., and the Colorado Hospital Association.

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<sup>2</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions". Section 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." Section 2-3-902 (3), C.R.S.

<sup>3</sup> See **Addendum B**.

## **Addendum A**

**15-19-302. Duty of public officers as to unclaimed bodies.** (2) Such notices shall be given to the anatomical board in all cases, but no such body shall be delivered if any relative, by blood or marriage, shall previously claim the body for burial at the expense of the relative, but the body shall be surrendered to the claimant for interment; nor shall any such body be delivered if any representative of a fraternal society of which the deceased was a member, or a representative of any charitable organization, or if any friend of the deceased shall claim the body for burial prior to delivery to the board, the burial to be at the expense of the fraternal society, charitable organization, or friend. In the case of death of any person whose body is required to be buried at public expense and the duly authorized officer or agent of the anatomical board deems the body unfit for anatomical purposes, he or she shall notify the board of county commissioners or such other agency as may be **in charge of the county paupers** of the county in which the person dies, in writing, and the board of county commissioners or other agency shall direct some person to take charge of the body of the **deceased indigent person**, and cause it to be buried, and draw warrants upon the treasurer of the county for the payment of such expenses. **(Emphasis added)**

(3) No warrants for the payment of the expenses of the burial of any person whose body is required to be buried at public expense shall be drawn or paid except upon the certificate of the duly authorized officer or agent of the anatomical board to the effect that the unclaimed body is unfit for anatomical purposes, by reason of decomposition or contagious disease, and that the provisions of this part 3 have been complied with. If, through the failure of any person to deliver the body of a **deceased indigent** as required by this part 3, the unclaimed body becomes unfit for anatomical purposes, and is so certified by the duly authorized officer or agent of the anatomical board, the body shall be buried in accordance with the provisions of this part 3, and the person so failing to deliver the unclaimed body shall pay to the county treasurer the expense so incurred. Upon the refusal or failure of the person, on demand, to pay the expense, the board of county commissioners, or such other agency as may be **in charge of the county paupers**, may bring suit to recover the expenses, and the same may be recovered, as debts of like amount are collectible by law. **(Emphasis added)**

**25-3-309. Hospital fees.** Every hospital established under this part 3 shall be for the benefit of the inhabitants of such county and of any person falling sick or being injured or maimed within its limits. **Every inhabitant or person who is not a pauper** shall pay to the board of public hospital trustees or such officer as it shall designate for such county public hospital a reasonable

compensation for occupancy, nursing, laboratories, care, medicine, or attendants according to the rules and regulations prescribed by said board in order to render the use of said hospital of the greatest benefit to the greatest number. (**Emphasis added**)

**Addendum B**  
**Second Regular Session**  
**Seventy-first General Assembly**  
**STATE OF COLORADO**

**BILL (2)(D)**

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LLS NO. 18-####.## Brita Darling x2241

**COMMITTEE BILL**

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**Statutory Revision Committee**

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**A BILL FOR AN ACT**

101 **CONCERNING MODERNIZING LANGUAGE IN STATUTORY SECTIONS THAT**  
102 **REFER TO PAUPERS.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee.** The bill modernizes the language in statutory sections by replacing the terms "pauper" and "paupers" with "indigent" or "indigent persons".

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**Shading denotes HOUSE amendment.** Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

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

2 **SECTION 1.** In Colorado Revised Statutes, 15-19-302, **amend**  
3 (2) and (3) as follows:

4 **15-19-302. Duty of public officers as to unclaimed bodies.**

5 (2) ~~Such notices~~ NOTICE shall be given to the anatomical board in all  
6 cases, but ~~no such~~ THE body ~~shall~~ MUST NOT be delivered if any relative,  
7 by blood or marriage, ~~shall~~ HAS previously ~~claim~~ CLAIMED the body for  
8 burial at the expense of the relative, ~~but~~ IN WHICH CASE the body ~~shall~~  
9 MUST be surrendered to the claimant for interment. ~~nor shall any such~~  
10 FURTHER, THE body MUST NOT be delivered if any representative of a  
11 fraternal society of which the deceased was a member, or a representative  
12 of any charitable organization, or if any friend of the deceased ~~shall claim~~  
13 INDIGENT PERSON CLAIMS the body for burial prior to delivery to the  
14 board, WITH the burial ~~to be~~ at the expense of the fraternal society,  
15 charitable organization, or friend. In the case of death of any person  
16 whose body is required to be buried at public expense and the duly  
17 authorized officer or agent of the anatomical board deems the body unfit  
18 for anatomical purposes, he or she shall notify the board of county  
19 commissioners or ~~such other~~ agency ~~as may be~~ in charge of ~~the county~~  
20 ~~paupers of~~ INDIGENT PERSONS IN the county in which the person dies, in  
21 writing, and the board of county commissioners or ~~other~~ agency shall  
22 direct ~~some~~ A person to take charge of the body of the deceased indigent  
23 person, and cause it to be buried, and draw warrants upon the treasurer of  
24 the county for the payment of ~~such~~ expenses.

25 (3) ~~No~~ Warrants for the payment of the expenses of the burial of  
26 any person whose body is required to be buried at public expense ~~shall~~  
27 MUST NOT be drawn or paid except upon the certificate of the duly

1 authorized officer or agent of the anatomical board to the effect that the  
2 unclaimed body is unfit for anatomical purposes ~~by reason of~~ DUE TO  
3 decomposition or contagious disease, and that the provisions of this part  
4 3 have been complied with. If, through the failure of any person to deliver  
5 the body of a deceased indigent PERSON as required by this part 3, the  
6 unclaimed body ~~becomes~~ IS unfit for anatomical purposes, and is ~~so~~  
7 certified AS UNFIT by the duly authorized officer or agent of the  
8 anatomical board, the body ~~shall~~ MUST be buried in accordance with the  
9 provisions of this part 3, and the person ~~so failing~~ WHO FAILED to deliver  
10 the unclaimed body shall pay to the county treasurer the ~~expense so~~  
11 EXPENSES incurred. Upon the refusal or failure of the person, on demand,  
12 to pay the ~~expense~~ EXPENSES, the board of county commissioners, or such  
13 other agency as may be in charge of ~~the county paupers~~ INDIGENT  
14 PERSONS IN THE COUNTY, may bring suit to recover the expenses, and the  
15 ~~same~~ EXPENSES may be recovered as debts ~~of like amount are~~ collectible  
16 by law.

17 **SECTION 2.** In Colorado Revised Statutes, **amend** 25-3-309 as  
18 follows:

19 **25-3-309. Hospital fees.** Every hospital established under this part  
20 3 ~~shall be~~ IS for the benefit of the inhabitants of ~~such~~ THE county and of  
21 any person falling sick or ~~being~~ WHO IS injured or maimed within its  
22 limits. Every inhabitant or person who is not a ~~pauper~~ INDIGENT shall pay  
23 to the board of public hospital trustees or ~~such~~ TO THE officer as it ~~shall~~  
24 ~~designate~~ DESIGNATES for ~~such~~ THE county public hospital a reasonable  
25 compensation for occupancy, nursing, laboratories, care, medicine, or  
26 attendants according to ~~the rules and regulations~~ prescribed by ~~said~~ THE  
27 board in order to render the use of ~~said~~ THE hospital of the greatest benefit

1 to the greatest number.

2 **SECTION 3.** In Colorado Revised Statutes, **amend** 28-5-502 as  
3 follows:

4 **28-5-502. Interment of deceased veterans.** (2) ~~Such Burial shall~~  
5 MUST not be made in that portion of ~~any~~ A cemetery or burial ground used  
6 exclusively for the burial of ~~the pauper dead~~ DECEASED INDIGENT  
7 PERSONS. Each county, by resolution of its board of county  
8 commissioners, shall establish the maximum expense to the county for  
9 each burial, exclusive of any federal funds provided for such purposes. In  
10 case the deceased VETERAN has relatives or friends who desire to conduct  
11 the funeral services, they shall be permitted to do so, and the expenses  
12 shall be paid as provided in this section.

13 **SECTION 4. Act subject to petition - effective date.** This act  
14 takes effect at 12:01 a.m. on the day following the expiration of the  
15 ninety-day period after final adjournment of the general assembly (August  
16    , 2018, if adjournment sine die is on May    , 2018); except that, if a  
17 referendum petition is filed pursuant to section 1 (3) of article V of the  
18 state constitution against this act or an item, section, or part of this act  
19 within such period, then the act, item, section, or part will not take effect  
20 unless approved by the people at the general election to be held in  
21 November 2018 and, in such case, will take effect on the date of the  
22 official declaration of the vote thereon by the governor.

# OFFICE OF LEGISLATIVE LEGAL SERVICES

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## MEMORANDUM (2)(E)<sup>1</sup>

TO: Statutory Revision Committee

FROM: Jane Ritter, Office of Legislative Legal Services

DATE: August 11, 2017

SUBJECT: Duplicate definition sections for article 60 of title 27, C.R.S.

### Summary

Staff became aware of this issue during the annual publications process for title 27, C.R.S., following the 2017 legislative session. Senate Bill 17-242 created a new section 27-60-100.3, which included general definitions for article 60 of title 27, C.R.S. Senate Bill 17-207 added a different section, 27-60-102.5, C.R.S., which included the same general definitions for article 60 of title 27, C.R.S.. The two sets of definitions are identical, with the exception of that for "behavioral health". The wording for the two definitions differs, yet the substance is the same.

The two sections should be combined into one section, 27-60-100.3, C.R.S., using the more refined definition of "behavioral health". Section 27-60-102.5, C.R.S., can then be repealed.

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<sup>1</sup> This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

## Analysis

Senate Bill 17-242 was a lengthy bill that updated terminology throughout the Colorado Revised Statutes to reflect the more appropriate language for "behavioral health", "mental health disorders", "alcohol use disorders", and "substance use disorders".

Senate Bill 17-207 was a bill providing a comprehensive update allowing for additional funding for services for persons who are experiencing a behavioral health crisis of some sort.

Article 60 of title 27, C.R.S., includes general provisions related to behavioral health. Prior to the passage of Senate Bill 17-242 and Senate Bill 17-207, article 60 did not include a general definitions section for the article. Both bills added such a section, using different section numbers. Both bills (and new statutory sections) define "behavioral health", "crisis intervention services", "crisis response system", "crisis response system contractor", "state board", and "state department"<sup>2</sup>. Of all these definitions, only "behavioral health" differs.

Section 27-60-100.3 (1), C.R.S., (from Senate Bill 17-242) reads:

- 1) "Behavioral health" refers to an individual's mental and emotional well-being and actions that affect an individual's overall wellness. Behavioral health problems and disorders include substance use disorders, serious psychological distress, suicide, and other mental health disorders. Problems ranging from unhealthy stress or subclinical conditions to diagnosable and treatable diseases are included in the term "behavioral health". The term "behavioral health" is also used to describe service systems that encompass prevention and promotion of emotional health, prevention and treatment services for mental health and substance use disorders, and recovery support.

Section 27-60-102.5 (1), C.R.S., (from Senate Bill 17-207) reads:

- (1) "Behavioral health" is inclusive of both mental health and substance use disorders.

Although the wording differs significantly, substantively, the sections have the same meaning. The longer definition from section 27-60-100.3 (1), C.R.S., simply spells out

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<sup>2</sup> See **Addendum A**.

more examples of mental health and substance use disorders. The second sentence of that definition, however, reads almost identically to that in 27-60-102.5 (1), C.R.S.<sup>3</sup>

## **Statutory Charge<sup>4</sup>**

The proposed legislation would eliminate redundant rules of law and this fits within the Committee's charge.

## **Proposed Bill**

The attached draft bill<sup>5</sup> to correct the duplicative definition section in article 60 of title 27, C.R.S., repeals section 27-60-102.5, C.R.S. This would leave in place the more detailed definition of "behavioral health" set forth in section 27-60-100.3, C.R.S., from Senate Bill 17-242, as well as the other identical five definitions found in both sections. Section 27-60-100.3, C.R.S., would then be the sole definitions section for the entirety of article 60 of title 27, C.R.S.

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<sup>3</sup> § 27-60-100.3 (1) "...Behavioral health problems and disorders include substance use disorders, serious psychological distress, suicide, and other mental health disorders..."

<sup>4</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions". § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

<sup>5</sup> See **Addendum B**.

## **Addendum A**

**27-60-102.5. Definitions.** As used in this article 60, unless the context otherwise requires:

(1) "Behavioral health" is inclusive of both mental health and substance use disorders.

(2) "Crisis intervention services" means the array of behavioral health crisis services that are funded by public or private sources and exist to serve individuals who are experiencing a behavioral health crisis.

(3) "Crisis response system" means the behavioral health crisis response system developed and implemented pursuant to this article 60.

(4) "Crisis response system contractor" means an entity that has been awarded a contract to provide one or more crisis intervention services pursuant to section 27-60-103.

(5) "State board" means the state board of human services created and authorized pursuant to section 26-1-107.

(6) "State department" means the state department of human services created pursuant to section 26-1-105.

**27-60-100.3. Definitions.** As used in this article 60, unless the context otherwise requires:

(1) "Behavioral health" refers to an individual's mental and emotional well-being and actions that affect an individual's overall wellness. Behavioral health problems and disorders include substance use disorders, serious psychological distress, suicide, and other mental health disorders. Problems ranging from unhealthy stress or subclinical conditions to diagnosable and treatable diseases are included in the term "behavioral health". The term "behavioral health" is also used to describe service systems that encompass prevention and promotion of emotional health, prevention and treatment services for mental health and substance use disorders, and recovery support.

(2) "Crisis intervention services" means the array of behavioral health crisis services that are funded by public or private sources and exist to serve individuals who are experiencing a behavioral health crisis.

(3) "Crisis response system" means the behavioral health crisis response system developed and implemented pursuant to this article 60.

(4) "Crisis response system contractor" means an entity that has been awarded a contract to provide one or more crisis intervention services pursuant to section 27-60-103.

(5) "State board" means the state board of human services created and authorized pursuant to section 26-1-107.

(6) "State department" means the state department of human services created pursuant to section 26-1-105.

**Addendum B**  
**Second Regular Session**  
**Seventy-first General Assembly**  
**STATE OF COLORADO**

**BILL (2)(E)**

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LLS NO. 18-####.## Jane Ritter x4342

**COMMITTEE BILL**

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**Statutory Revision Committee**

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**A BILL FOR AN ACT**

101 **CONCERNING THE REPEAL OF A DUPLICATE DEFINITION SECTION IN**  
102 **ARTICLE 60 OF TITLE 27, COLORADO REVISED STATUTES.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee.** The bill repeals section 27-60-102.5, Colorado Revised Statutes, which is a duplicate definitions section for general provisions related to behavioral health found in article 60 of title 27, Colorado Revised Statutes. Two separate, but substantively the same, definition sections were added by two separate bills in the 2017

**Shading denotes HOUSE amendment.** Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

legislative session. The bill leaves in place section 27-60-100.3, Colorado Revised Statutes, enacted by Senate Bill 17-242.

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

2 **SECTION 1.** In Colorado Revised Statutes, **repeal** 27-60-102.5.

3 **SECTION 2. Act subject to petition - effective date.** This act  
4 takes effect at 12:01 a.m. on the day following the expiration of the  
5 ninety-day period after final adjournment of the general assembly (August  
6  , 2018, if adjournment sine die is on May  , 2018); except that, if a  
7 referendum petition is filed pursuant to section 1 (3) of article V of the  
8 state constitution against this act or an item, section, or part of this act  
9 within such period, then the act, item, section, or part will not take effect  
10 unless approved by the people at the general election to be held in  
11 November 2018 and, in such case, will take effect on the date of the  
12 official declaration of the vote thereon by the governor.

**OFFICE OF LEGISLATIVE LEGAL SERVICES**

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**MEMORANDUM (2)(F)<sup>1</sup>**

**TO:** Statutory Revision Committee  
**FROM:** Jane M. Ritter, Office of Legislative Legal Services  
**DATE:** August 11, 2017  
**SUBJECT:** Longstanding unfunded programs in the Department of Human Services

**Summary and Analysis**

This issue is in response to a query to the Department of Human Services (DHS) regarding any programs or funds that were created but either were never funded or have not been funded in several years, and, as such, DHS believes should be repealed.

Three of the programs and funds have not been funded since 2011,<sup>2</sup> and one had funding repealed in 2009 and never reinstated.<sup>3</sup>

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<sup>1</sup> This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

<sup>2</sup> The medically correctable program and report, § 26-2-135, C.R.S.; the county block grant support fund, § 26-2-720.5, C.R.S.; and the Colorado works program maintenance fund, § 26-2-721.3, C.R.S.

<sup>3</sup> The child welfare and mental health services pilot program, § 19-3-208.5, C.R.S.

## **Statutory Charge<sup>4</sup>**

By repealing programs that have not been funded in more than six years, the proposed bill fits into the Committee's statutory charge by bringing statute in line with current conditions.

## **Proposed Bill**

The attached bill draft<sup>5</sup> repeals the four programs and funds that have not received funding since 2009 and 2011.

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<sup>4</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions". § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

<sup>5</sup> See **Addendum A**.

**Addendum A**  
**Second Regular Session**  
**Seventy-first General Assembly**  
**STATE OF COLORADO**

**BILL (2)(F)**

*Temporary storage location: S:\LLS\2018A\Bills\Pre-Draft\18-SRC-DHS obsolete progs and funds.wpd*

LLS NO. 18-####.## Jane Ritter x4342

**COMMITTEE BILL**

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**Statutory Revision Committee**

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**A BILL FOR AN ACT**

101 **CONCERNING THE REPEAL OF UNFUNDED PROGRAMS IN THE**  
102 **DEPARTMENT OF HUMAN SERVICES.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee.** The bill repeals programs, funds, and related reports established in the department of human services that had funding repealed 7 or more years ago or are otherwise obsolete. The bill makes conforming amendments.

**Shading denotes HOUSE amendment.** Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

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

2 **SECTION 1.** In Colorado Revised Statutes, **repeal** 19-3-208.5 as  
3 follows:

4 **19-3-208.5. Pilot program - legislative declaration - child**  
5 **welfare - mental health services - rules - repeal.** ~~(1) The general~~  
6 ~~assembly hereby finds and declares that:~~

7 ~~(a) Child abuse and neglect is a serious and reprehensible problem~~  
8 ~~in our society and state;~~

9 ~~(b) A child who has been abused or neglected is at a significantly~~  
10 ~~increased risk of suffering from mental health or behavioral issues;~~

11 ~~(c) If a child who has been abused or neglected does not receive~~  
12 ~~treatment for mental health or behavioral issues, those issues may~~  
13 ~~significantly limit that child's quality of life and future productivity;~~

14 ~~(d) A child who has been abused or neglected and who is not~~  
15 ~~provided with treatment for mental health or behavioral issues has a~~  
16 ~~significantly increased risk of involvement in substance abuse, crime, and~~  
17 ~~teen pregnancy and is more likely to have lower performance results on~~  
18 ~~standardized tests, to repeat a grade, or to experience depression or~~  
19 ~~suicidal behavior;~~

20 ~~(e) The social and medical issues that may arise in the future for~~  
21 ~~a child who has been abused or neglected and who has not received~~  
22 ~~treatment for mental health or behavioral issues will be more likely to~~  
23 ~~result in a substantial increase in costs to the state for juvenile and~~  
24 ~~correctional facilities, alcohol and drug abuse programs, and loss of~~  
25 ~~productivity;~~

26 ~~(f) Providing mental health screenings, evaluations, and mental~~

1 health services is necessary to creating the best opportunity for a child  
2 who is the victim of child abuse or neglect to have a bright future and  
3 lead a productive life;

4 (g) Including mental health screenings, evaluations, and mental  
5 health services for siblings of children who are the subject of a  
6 substantiated case of abuse or neglect may increase the likelihood of more  
7 effective and positive outcomes for everyone involved; and

8 (h) Establishing a pilot program concerning child welfare and  
9 mental health services will provide the opportunity to evaluate the  
10 effectiveness of providing mental health screenings and evaluations and  
11 mental health services for children from four through ten years of age  
12 who are the subject of a substantiated case of abuse or neglect and for  
13 siblings to whom they are related.

14 (2) There is hereby created the child welfare and mental health  
15 services pilot program, referred to in this section as the "pilot program",  
16 in the state department of human services. The purpose of the pilot  
17 program is to provide mental health screenings and evaluations and  
18 mental health services for any child who is from four through ten years  
19 of age and who is the subject of a case of abuse or neglect that has been  
20 substantiated by a county department of social services and to evaluate  
21 the effectiveness of providing such services. The pilot program shall  
22 provide mental health screenings and evaluations and mental health  
23 services regardless of whether the child remains at home with his or her  
24 parents, is placed in foster or kinship care, or is under court supervision.  
25 The pilot program shall also provide mental health screenings and  
26 evaluations and mental health services to siblings of the abused or  
27 neglected child.

1           ~~(3) Notwithstanding the provisions of subsection (2), any child~~  
2           ~~who is receiving services through the pilot program shall continue to be~~  
3           ~~eligible to receive services through the pilot program after his or her tenth~~  
4           ~~birthday.~~

5           ~~(4) On or before July 1, 2015, the state department of human~~  
6           ~~services shall issue a request for proposals for the selection of a~~  
7           ~~contractor for the development of the pilot program pursuant to this~~  
8           ~~section. The state department of human services shall establish criteria for~~  
9           ~~the selection of the pilot program contractor, including the expertise of~~  
10           ~~the contractor related to the requirements of the pilot program, the~~  
11           ~~capabilities and resources of the contractor necessary to perform the~~  
12           ~~work, and the quality of the application. On or before April 1, 2016, the~~  
13           ~~state department of human services shall promulgate rules necessary to~~  
14           ~~implement the provisions of this section. The rules shall include, but need~~  
15           ~~not be limited to, criteria based upon scientifically rigorous methods for~~  
16           ~~evaluating the effectiveness of the pilot program.~~

17           ~~(5) Beginning on or before July 1, 2016, and ending June 30,~~  
18           ~~2019, the pilot program shall be implemented in a minimum of three~~  
19           ~~Colorado counties or regions selected by the executive director of the~~  
20           ~~state department of human services based upon applications submitted by~~  
21           ~~a department of human or social services for one or more counties, in~~  
22           ~~conjunction with local community mental health centers, and criteria~~  
23           ~~established by the state department, including a commitment of resources~~  
24           ~~by or through the county, the quality of the county's application, and the~~  
25           ~~historical practices and collaborative initiatives of the county.~~

26           ~~(6) The pilot program shall provide the following services and~~  
27           ~~programs:~~

1           ~~(a) Age-appropriate mental health screenings for children and~~  
2 ~~their siblings who meet the criteria described in subsection (2) of this~~  
3 ~~section;~~

4           ~~(b) A mental health evaluation if the mental health screening~~  
5 ~~described in paragraph (a) of this subsection (6) determines the child or~~  
6 ~~his or her sibling needs such an evaluation;~~

7           ~~(c) Mental health services, including evidence-based practices or~~  
8 ~~available practices, in community mental health center settings for~~  
9 ~~children and their siblings based upon the results of the mental health~~  
10 ~~evaluation performed pursuant to paragraph (b) of this subsection (6) and~~  
11 ~~included in the case management plan;~~

12           ~~(d) Referrals to other agencies and programs as appropriate for~~  
13 ~~children and their siblings based upon the results of the mental health~~  
14 ~~evaluation performed pursuant to paragraph (b) of this subsection (6);~~

15           ~~(e) Integrated child welfare and mental health programs for~~  
16 ~~children and their siblings eligible for services through the pilot program;~~  
17 ~~and~~

18           ~~(f) Training programs to provide training and consultation on~~  
19 ~~evidence-based and available practices and the provision of integrated~~  
20 ~~child welfare and community mental health center programs.~~

21           ~~(7) If a child is eligible to receive pilot program services pursuant~~  
22 ~~to subsection (3) of this section and he or she is also eligible to receive~~  
23 ~~public assistance funding for those services through the "Colorado~~  
24 ~~Medical Assistance Act", article 4 of title 25.5, C.R.S., or the "Children's~~  
25 ~~Basic Health Plan Act", article 8 of title 25.5, C.R.S., the pilot program~~  
26 ~~services shall be funded with the public assistance moneys first, with any~~  
27 ~~balance to be funded out of moneys available through the pilot program.~~

1           ~~(8) The state department of human services shall conduct an~~  
2 ~~evaluation of the pilot program based upon the criteria established~~  
3 ~~pursuant to subsection (4) of this section, as well as the costs of the pilot~~  
4 ~~program, and submit a report based on its evaluation to the health and~~  
5 ~~human services committees of the house of representatives and the senate,~~  
6 ~~or any successor committees, on or before January 30, 2019.~~

7           ~~(9) This section is repealed, effective July 1, 2019.~~

8           **SECTION 2.** In Colorado Revised Statutes, **repeal** 26-2-720.5 as  
9 follows:

10           **26-2-720.5. County block grant support fund - created.**

11 ~~(1) The state department shall create a county block grant support fund~~  
12 ~~that shall consist of moneys annually appropriated thereto by the general~~  
13 ~~assembly. Any unexpended moneys remaining in the county block grant~~  
14 ~~support fund at the end of a fiscal year shall be remitted to the Colorado~~  
15 ~~long-term works reserve.~~

16           ~~(2) The state department, with input from the works allocation~~  
17 ~~committee, shall allocate moneys in the county block grant support fund~~  
18 ~~to counties according to criteria and procedures established by the state~~  
19 ~~department and the works allocation committee.~~

20           ~~(3) A county that meets the criteria established by the state~~  
21 ~~department and the works allocation committee pursuant to subsection (2)~~  
22 ~~of this section may request moneys from the county block grant support~~  
23 ~~fund. Priority shall be given to any county that exhausts all moneys~~  
24 ~~available in the county's block grant for the Colorado works program for~~  
25 ~~that fiscal year.~~

26           ~~(4) The state department, with input from the works allocation~~  
27 ~~committee, may allocate moneys to counties out of the county block grant~~

1 support fund during the state fiscal year or at the end of a state fiscal year.

2 (5) ~~The state department shall annually report to the joint budget~~  
3 ~~committee on any allocations made from the county block grant support~~  
4 ~~fund, including the amount requested by each county and the county's~~  
5 ~~reason for requesting the moneys, and the amount allocated to each~~  
6 ~~county and the reasons for the state department's decision regarding each~~  
7 ~~request.~~

8 **SECTION 3.** In Colorado Revised Statutes, 26-2-721, **amend** (1)  
9 and (2) introductory portion; and **repeal** (2)(a)(I) as follows:

10 **26-2-721. Colorado long-term works reserve - creation - use.**

11 (1) ~~There is hereby created~~ The Colorado long-term works reserve,  
12 referred to in this section as the "reserve", ~~that shall consist~~ IS CREATED  
13 AND CONSISTS of unappropriated TANF block grant ~~moneys~~ MONEY, state  
14 general fund ~~moneys~~ MONEY appropriated ~~thereto~~ by the general  
15 assembly, and ~~moneys~~ MONEY transferred ~~thereto~~ pursuant to sections  
16 26-2-714 (5)(a) AND 26-2-716 (4)(b). ~~26-2-720.5 (1), and 26-2-721.3 (1).~~  
17 A county's excess unspent TANF reserves that are transferred to another  
18 county pursuant to section 26-2-714 (5)(a)(I)(B) or (5)(a)(I)(C) ~~shall~~ ARE  
19 not ~~be~~ considered unappropriated TANF block grant ~~moneys~~ MONEY for  
20 purposes of this section. Any excess unspent TANF reserves for state  
21 fiscal year 2009-10 shall be excluded from the Colorado long-term works  
22 reserve and ~~shall~~ be available for transfer to a county pursuant to section  
23 26-2-714 (5)(a)(I)(B).

24 (2) The general assembly, upon request of the state department,  
25 may appropriate the ~~moneys~~ MONEY in the reserve for the purposes of:

- 26 (a) Implementing the works program, including but not limited to:  
27 (I) ~~Funding the Colorado works program maintenance fund~~

1 created in section 26-2-721.3; and

2 **SECTION 4.** In Colorado Revised Statutes, 26-2-804, **amend** (2)  
3 introductory portion; and **repeal** (2)(d) as follows:

4 **26-2-804. Funding - allocation - maintenance of effort.** (2) In  
5 state fiscal years 1998-99 and thereafter, the state department may adjust  
6 the county block grant identified in subsection (1) of this section by  
7 increasing or reducing the amount of such grants based upon factors that  
8 shall include but ARE not be limited to:

9 (d) ~~The fact that the county received funds from the county block~~  
10 ~~grant support fund, created in section 26-2-720.5, in the previous fiscal~~  
11 ~~year for allowable child care expenditures, which may indicate that the~~  
12 ~~previous fiscal year's allocation was insufficient to meet the county's~~  
13 ~~needs.~~

14 **SECTION 5.** In Colorado Revised Statutes, **repeal** 26-2-721.3 as  
15 follows:

16 **26-2-721.3. Colorado works program maintenance fund -**  
17 **creation - use - report.** (1) ~~There is hereby created the Colorado works~~  
18 ~~program maintenance fund, referred to in this section as the "maintenance~~  
19 ~~fund". The maintenance fund shall consist of moneys appropriated thereto~~  
20 ~~by the general assembly from the Colorado long-term works reserve. The~~  
21 ~~moneys in the maintenance fund shall be subject to annual appropriation~~  
22 ~~by the general assembly to the executive director for use in responding to~~  
23 ~~emergency or otherwise unforeseen purposes that are authorized by this~~  
24 ~~part 7 or by federal law and that are necessary for the efficient and~~  
25 ~~effective implementation of the Colorado works program at the state and~~  
26 ~~county levels. Any unexpended moneys remaining in the maintenance~~  
27 ~~fund at the end of a fiscal year shall revert to the Colorado long-term~~

1 works reserve.

2 (2) On or before February 15, 2009, and on or before February 15  
3 each year thereafter, the executive director shall report to the joint budget  
4 committee and the health and human services committees of the senate  
5 and the house of representatives, or any successor committees, concerning  
6 the use of moneys appropriated to the maintenance fund in the preceding  
7 fiscal year.

8 **SECTION 6.** In Colorado Revised Statutes, 26-2-712, **amend**  
9 (2)(b) and (5)(e) as follows:

10 **26-2-712. State department duties - authority.** (2) **County**  
11 **block grant allocation.** (b) ~~Except as provided in section 26-2-720.5,~~  
12 The county block grant ~~shall represent~~ REPRESENTS the total amount that  
13 a county ~~shall receive~~ RECEIVES from the state for the administration and  
14 implementation of the Colorado works program.

15 (5) **Oversight.** In connection with overseeing the works program,  
16 the state department ~~shall have~~ HAS the specific ~~duties~~ DUTY to:

17 (e) Monitor the counties' provision of basic cash assistance grants  
18 pursuant to section 26-2-706.6 and, if necessary due to increased  
19 caseloads or economic downturns, do the following to ensure that the  
20 basic cash assistance grant is provided in a consistent manner statewide:

21 ~~(I) Grant moneys to one or more counties from the county block~~  
22 ~~grant support fund administered pursuant to section 26-2-720.5; or~~

23 ~~(II) If no funds administered pursuant to section 26-2-720.5 are~~  
24 ~~available:~~

25 ~~(A)~~ (I) Request supplemental appropriations from the general  
26 assembly, including but not limited to an appropriation from the Colorado  
27 long-term works reserve created pursuant to section 26-2-721; or

1           ~~(B)~~ (II) Reduce the county block grant of any county that  
2 maintains ~~moneys~~ MONEY in a county reserve account pursuant to section  
3 26-2-714 (5) in order that ~~moneys~~ MONEY may be made available to one  
4 or more counties to avoid the need to reduce or eliminate the basic cash  
5 assistance grant statewide. If the state department makes a reduction in a  
6 county's reserve account pursuant to this ~~sub-subparagraph (B)~~  
7 SUBSECTION (5)(e)(II), the state department shall increase the county's  
8 block grant for the following fiscal year by the amount of the reduction  
9 authorized pursuant to this ~~sub-subparagraph (B)~~ SUBSECTION (5)(e)(II);  
10 or

11           (III) After taking the actions described in ~~subparagraphs (I) and~~  
12 ~~(II) of this paragraph (e)~~ SUBSECTIONS (5)(e)(I) AND (5)(e)(II) OF THIS  
13 SECTION, take any actions necessary to reduce the costs of, or reduce or  
14 eliminate, the basic cash assistance grant statewide.

15           **SECTION 7.** In Colorado Revised Statutes, 26-2-716, **repeal**  
16 (1)(c) as follows:

17           **26-2-716. County duties - appropriations - penalties - hardship**  
18 **extensions - domestic violence extensions - incentives - rules.**  
19 (1) (c) ~~Whenever a county anticipates that it may be financially unable~~  
20 ~~to meet requests for assistance from participants, the county may seek~~  
21 ~~additional moneys from the county block grant support fund administered~~  
22 ~~by the state department pursuant to section 26-2-720.5.~~

23           **SECTION 8.** In Colorado Revised Statutes, 27-66-105, **amend**  
24 (1)(e) as follows:

25           **27-66-105. Standards for approval.** (1) In approving or  
26 rejecting community mental health clinics for the purchase of behavioral  
27 or mental health services, the executive director shall:

1 (e) Require that each clinic from which services may be purchased  
2 ~~be~~ IS under the control and direction of a county or community board of  
3 health, a board of directors or trustees of a corporation, for profit or not  
4 for profit, a regional mental health ~~and mental retardation~~ board, or a  
5 political subdivision of the state;

6 **SECTION 9.** In Colorado Revised Statutes, **repeal** 27-66-106 as  
7 follows:

8 **27-66-106. Federal grants-in-aid - administration.** ~~The~~  
9 ~~department is designated the official mental health and mental retardation~~  
10 ~~authority, and is authorized to receive grants-in-aid from the federal~~  
11 ~~government under the provisions of 42 U.S.C. sec. 246, and shall~~  
12 ~~administer said grants in accordance therewith.~~

13 **SECTION 10. Act subject to petition - effective date.** This act  
14 takes effect at 12:01 a.m. on the day following the expiration of the  
15 ninety-day period after final adjournment of the general assembly (August  
16  , 2018, if adjournment sine die is on May  , 2018); except that, if a  
17 referendum petition is filed pursuant to section 1 (3) of article V of the  
18 state constitution against this act or an item, section, or part of this act  
19 within such period, then the act, item, section, or part will not take effect  
20 unless approved by the people at the general election to be held in  
21 November 2019 and, in such case, will take effect on the date of the  
22 official declaration of the vote thereon by the governor.



# OFFICE OF LEGISLATIVE LEGAL SERVICES

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## MEMORANDUM (2)(G)<sup>1</sup>

TO: Statutory Revision Committee

FROM: Jane M. Ritter, Office of Legislative Legal Services

DATE: August 11, 2017

SUBJECT: Unconstitutional provision related to interest on damages in section 13-21-101 (1), C.R.S.

### Summary and Analysis

Staff became aware of this matter through a search of the Colorado Revised Statutes for references to statutory provisions that have been found unconstitutional by the Colorado or United States Supreme Court.

In this case, the Colorado Supreme Court determined that the prejudgment interest provisions of section 13-21-101 (1), C.R.S., violate constitution equal protection by creating an arbitrary distinction between classes of judgment creditors and of judgment debtors without a rational basis in fact.<sup>2</sup> The court declared that in order to avoid violating the equal protection clause, section 13-21-101 (1), C.R.S., should be read as follows:

**13-21-101. Interest on damages.** (1) ... On and after January 1, 1983, if a judgment for money in an action brought to recover damages for personal injuries is appealed by the judgment debtor, POSTJUDGMENT interest, whether pre-judgment or postjudgment, shall be calculated on such sum at the rate set forth in subsections (3) and (4) of this section from the date the action accrued and

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<sup>1</sup> This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

<sup>2</sup> *Rodriguez v. Schutt*, 914 P.2d 921 (Colo. 1996) (attached as **Addendum A**).

shall include compounding of interest annually from the date such suit was filed."<sup>3</sup> (Emphasis in original)

## Statutory Charge<sup>4</sup>

Amending section 13-21-101 (1), C.R.S., meets the committee's statutory charge to remedy a defective section of law – one that has been declared unconstitutional by the Colorado Supreme Court

## Proposed Bill

The attached bill draft<sup>5</sup> makes the one-word amendment to section 13-21-101 (1), C.R.S., as set forth by the Colorado Supreme Court in *Rodriguez*.<sup>6</sup>

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<sup>3</sup> *Id* at 929.

<sup>4</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions". § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

<sup>5</sup> See **Addendum B**.

<sup>6</sup> § 13-21-101, C.R.S, currently includes an Editor's Note with the directive and language from the Colorado Supreme Court. A change to statute was never made, however.

# Addendum A

## Rodriguez v. Schutt

Supreme Court of Colorado

April 15, 1996, Decided

No. 95SC97

### Reporter

914 P.2d 921 \*; 1996 Colo. LEXIS 153 \*\*; 20 BTR 546

JAMES RODRIGUEZ and YOLANDA RODRIGUEZ,  
Petitioners, v. JOHN W. SCHUTT, Respondent.

**Prior History:** **[\*\*1]** .Certiorari to the Colorado Court of Appeals.

**Disposition:** JUDGMENT AFFIRMED IN PART AND REVERSED IN PART, AND CASE REMANDED WITH DIRECTIONS

## Case Summary

### Procedural Posture

Petitioner tenants sought a writ of certiorari to review an order of the Colorado Court of Appeals, which held that [Colo. Rev. Stat. § 13-21-101](#) was not unconstitutional and remanded an order for recalculation of prejudgment interest in petitioner's action against respondent landlord at a lower, market-determined interest rate pursuant to [§ 13-21-101](#).

### Overview

Respondent landlord appealed a prejudgment interest award to plaintiff tenants on plaintiff's damages for personal injuries suffered on respondent's premises. Plaintiff cross-appealed on the basis that [Colo. Rev. Stat. § 13-21-101](#), under which prejudgment interest was calculated, was unconstitutional. The lower court concluded that [§ 13-21-101](#) was not unconstitutional and remanded the order for recalculation of interest at the then lower, market-determined interest rate on the basis that respondent had appealed. Petitioner sought a writ of certiorari as to the lower court's order, which the court granted, and reversed and remanded the lower court's decision as to the constitutionality of the statute in relation to prejudgment interest when respondent appealed. The court held that the calculation of prejudgment interest on the basis of whether or not

respondent appealed was unconstitutional because it created a statutory distinction between judgment creditors whose debtor appealed and those whose debtor did not appeal. The court held that the statutory distinction violated equal protection rights because it had no rational basis in fact.

### Outcome

An order awarding prejudgment interest to petitioner tenants on an award of damages against respondent landlord for personal injuries was reversed and remanded on the grounds that the statute under which the interest was calculated violated petitioner's equal protection rights in distinguishing the amount of recovery between judgment creditors whose debtor appealed and those whose debtor did not without a rational basis for the distinction.

**Counsel:** Philip A. Klein, Esq. and Charles Welton, P.C., Charles Welton, Philip A. Klein, Denver, Colorado, Attorneys for Petitioners.

Harris, Karstaedt, Jamison & Powers, P.C., A. Peter Gregory, Englewood, Colorado, Attorney for Respondent.

Wilcox & Ogden, P.C., Ralph Ogden, Denver, Colorado, Attorney for Amicus Curiae, The Colorado Trial Lawyers' Association.

**Judges:** JUSTICE ERICKSON delivered the Opinion of the Court. JUSTICE SCOTT dissents.

**Opinion by:** ERICKSON

## Opinion

**[\*923]** EN BANC

James Rodriguez was injured by broken glass on a storm door on the premises which he and his wife, Yolanda, rented from John W. Schutt. The Rodriguezes

sued Schutt for negligence. A jury found Schutt 70% negligent and James Rodriguez 30% negligent. The jury awarded judgments to James Rodriguez for \$ 275,000 and to Yolanda Rodriguez for \$ 25,000. The court reduced these judgments to \$ 192,000 and \$ 17,500, respectively, due to James Rodriguez' comparative negligence. The trial court calculated interest **[\*\*2]** at the nine-percent annual interest rate prescribed by section 13- 21-101, 6A C.R.S. (1987). Schutt appealed. The Rodriguezes cross-appealed, challenging the operation of [section 13-21-101](#) on statutory and constitutional grounds. The court of appeals affirmed the judgments and held that: (1) [section 13-21-101](#) did not establish a floor on the rate at which interest accrues on a personal injury money judgment; and (2) [section 13-21-101](#) did not violate equal protection.<sup>1</sup> **[\*924]** The court of appeals remanded the case to the district court for recalculation of interest at the then-lower, market-determined interest rate pursuant to [section 13-21-101](#). [Rodriguez v. Schutt, 896 P.2d 881, 887 \(Colo. App. 1994\)](#).

The Rodriguezes petitioned this court for certiorari, and we granted certiorari on the following issues:

1. Should [§ 13-21-101, 6A C.R.S.](#) (1987), be interpreted to establish a floor on interest on judgments at nine percent (9%) when the **[\*\*3]** personal injury judgment creditor has been subjected to an appeal?
2. Alternatively, is an appeal-reduced interest rate pursuant to [§ 13-21-101, 6A C.R.S.](#) (1987), a constitutionally prohibited denial of equal protection to personal injury judgment creditors subjected to appeal?

We affirm the court of appeals holding that section 13-21- 101 does not establish a floor on the interest rate applicable to personal injury money judgments. However, we reverse, in part, the court of appeals determination that [section 13-21-101](#) does not violate equal protection. Accordingly, we affirm in part, reverse in part, and remand this case to the court of appeals with directions.

I

[Section 13-21-101](#) provides:

(1) In all actions brought to recover damages for personal injuries sustained by any person resulting from

or occasioned by the tort of any other person, corporation, association, or partnership, whether by negligence or by willful intent of such other person, corporation,

association, or partnership and whether such injury has resulted fatally or otherwise, it is lawful for the plaintiff in the complaint to claim interest on the damages alleged from the date said suit is filed; and, **[\*\*4]** on and after July 1, 1979, it is lawful for the plaintiff in the complaint to claim interest on the damages claimed from the date the action accrued. When such interest is so claimed, it is the duty of the court in entering judgment for the plaintiff in such action to add to the amount of damages assessed by the verdict of the jury, or found by the court, interest on such amount calculated at the rate of nine percent per annum on actions filed on or after July 1, 1975, and at the legal rate on actions filed prior to such date, and calculated from the date such suit was filed to the date of satisfying the judgment and to include the same in said judgment as a part thereof. On actions filed on or after July 1, 1979, the calculation shall include compounding of interest annually from the date such suit was filed. On and after January 1, 1983, if a judgment for money in an action brought to recover damages for personal injuries is appealed by the judgment debtor, interest, whether prejudgment or postjudgment, shall be calculated on such sum at the rate set forth in subsections

(3) and (4) of this section from the date the action accrued and shall include compounding **[\*\*5]** of interest annually from the date such suit was filed.

(2) (a) If a judgment for money in an action brought to recover damages for personal injuries is appealed by a judgment debtor and the judgment is affirmed, interest, as set out in subsections

(3) and (4) of this section, shall be payable from the date the action accrued until satisfaction of the judgment.

(b) If a judgment for money in an action to recover damages for personal injuries is appealed by a judgment debtor and the judgment is modified or reversed with a direction that a judgment for money be entered in the trial court, interest, as set out in subsections (3) and (4) of this section, shall be payable from the date the action accrued until the judgment is satisfied. This interest shall be payable on the amount of the final judgment.

(3) The rate of interest shall be certified each January 1

<sup>1</sup> The court of appeals also resolved other issues which are not relevant here.

by the secretary of state to be two percentage points above the discount rate, which discount rate shall be the rate of interest a commercial bank pays to the federal reserve bank of Kansas City using a government bond or other eligible [\*925] paper as security, and shall be rounded to the nearest full percent. . . .

(4) [\*\*6] The rate at which interest shall accrue during each year shall be the rate which the secretary of state has certified as the annual interest rate under subsection (3) of this section.

II

The right to interest on personal injury money judgments in Colorado is derived from [section 13-21-101](#) and is in derogation of the common law. See, e.g., [Clark v. Hicks, 127 Colo. 25, 31- 32, 252 P.2d 1067, 1070 \(1953\)](#) (applying earlier version of the interest statute). Thus, we must strictly construe section 13- 21-101, [id. at 32, 252 P.2d at 1070](#), while bearing in mind that our primary goal is to give effect to the intent of the General Assembly. See [Thurman v. Tafoya, 895 P.2d 1050, 1055 \(Colo. 1995\)](#). To do so, we must read and consider the statute "as a whole in order to give consistent, harmonious, and sensible effect to all of its parts." *Id.*; see [§ 2-4-201\(c\), 1B C.R.S.](#) (1980). We will give effect to the plain meaning of the statute's words and phrases, unless the result is absurd or unconstitutional. [Snyder Oil Co. v. Embree, 862 P.2d 259, 262 \(Colo. 1993\)](#).

If we determine that [section 13-21-101](#) is ambiguous, we may look to rules of statutory construction and to the legislative history [\*\*7] as indicative of the legislature's intent. See [Thurman, 895 P.2d at 1055](#). However, if we determine that the statute is unambiguous, "we need not resort to interpretative rules of statutory construction" to determine the statute's meaning. [Snyder Oil, 862 P.2d at 262](#). If we can "give effect to the ordinary meaning of the words adopted by a legislative body, the statute should be construed as written since it may be presumed that the General Assembly meant what it clearly said." [Resolution Trust Corp. v. Heiserman, 898 P.2d 1049, 1054 \(Colo. 1995\)](#).

III

Before 1982, [section 13-21-101](#) required that the court calculate all interest on personal injury money judgments at an annual rate of nine percent. See [§ 13-21-101, 6 C.R.S.](#) (1973 & 1981 Supp.). In 1982, the General Assembly amended the statute to require the

court to recalculate interest on personal injury money judgments at a market-determined interest rate when the judgment debtor appeals and the appellate court affirms the judgment in whole or in part. Act of March 25, 1982, ch. 39, 1982 Colo. Laws 227. The 1982 amendment did not change the nine- percent statutory rate on judgments which the judgment debtor does not appeal. *Id.*

[\*\*8] The Rodriguezes contend that [section 13-21-101](#) establishes a floor of nine percent on the interest rate applicable to personal injury money judgments. However, the plain language of the statute does not support this argument. Cf. [§§ 5-12-102\(4\)\(b\), - 106\(2\), 2 C.R.S.](#) (1992) (establishing a floor of an annual rate of eight-percent interest for appealed, civil money judgments which are not personal injury judgments).

Rather, we conclude that the plain language of section 13- 21-101, as amended, requires a nine-percent interest rate for personal injury money judgments which the judgment debtor does not appeal and a market-determined interest rate for both prejudgment and postjudgment interest on personal injury money judgments which the judgment debtor does appeal.

<sup>2</sup> [\*\*9] See [Ackerman v. Power Equip. Co., 881 P.2d 451, 452-53 \(Colo. App. 1994\)](#); John C. Tredennick, Jr. & Gregory B. Cairns, Collecting Pre- and Post-Judgment Interest in Colorado: A Primer, 15 Colo. Law. 753, 758 (1986).<sup>3</sup>

[\*926] However, the lack of ambiguity in [section 13-21-101](#) does not ensure its constitutionality. Thus, we examine the Rodriguezes' argument that the statute

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<sup>2</sup>We have held that [section 13-21-101](#) was ambiguous as to whether it authorized prejudgment interest on punitive damages. See [Seaward Const. Co. v. Bradley, 817 P.2d 971, 975 \(Colo. 1991\)](#). However, the ambiguity of a statute in one respect does not necessitate a conclusion of ambiguity in every other respect.

<sup>3</sup>The Rodriguezes also contend that the statute, as written, requires a double award of prejudgment interest because the phrase "such sum" in the last sentence of subsection (1) refers back to "judgment," which, at that point, includes the nine-percent interest added by the previous sentence. See [§ 13-21-101\(1\)](#). Thus, the Rodriguezes argue, the plain language of the statute would require the judgment debtor who appeals to pay nine-percent prejudgment interest on the judgment itself and market-determined interest on the judgment amount plus nine- percent interest. We did not grant the Rodriguezes certiorari review of this issue, see *supra* at 2, and our holding in part V of this opinion eliminates the need for its resolution.

violates equal protection.

IV

The Rodriguezes argue that, as applied, the alternative interest rates established by [section 13-21-101](#) violate their right to equal protection of the laws. See *U.S. Const. amend. XIV*; [Colo. \[\\*\\*10\] Const. art. II, § 25](#); [Millis v. Board of County Comm'rs, 626 P.2d 652, 657 \(Colo. 1981\)](#) (holding that the due process clause contained in the Colorado Constitution encompasses a guarantee of equal protection). The threshold question we must ask is "whether the legislation results in dissimilar treatment of similarly situated individuals." [Duran v. Industrial Claim Appeals Office, 883 P.2d 477, 481 \(Colo. 1994\)](#).

The receipt of interest on judgment is not a fundamental right, see [Clark, 127 Colo. at 31-32, 252 P.2d at 1070](#), nor does [section 13-21-101](#) affect or create a suspect or quasi-suspect class. See [Higgs v. Western Landscaping & Sprinkler Sys., Inc., 804 P.2d 161, 164 \(Colo. 1991\)](#). Therefore, any disparity in treatment of similarly situated individuals under section 13-21- 101 must have a "rational basis." [Duran, 883 P.2d at 482](#); [Willer v. City of Thornton, 817 P.2d 514, 519 \(Colo. 1991\)](#).

Under the rational basis standard, we presume that [section 13-21-101](#) is constitutional, see [Duran, 882 P.2d at 482](#), and place the burden upon the Rodriguezes to prove, beyond a reasonable doubt, that the statutory classification: (1) has no rational basis in fact; or (2) is not rationally **[\*\*11]** related to a legitimate governmental purpose. See *id.*; [Higgs, 804 P.2d at 164](#). A statutory classification is rationally based in fact if the classification is "based on differences that are real and not illusory." [Higgs, 804 P.2d at 164](#).

The appropriate analysis of the Rodriguezes' equal protection challenge to [section 13-21-101](#) turns on the classifications which the statute creates. [Section 13-21-101](#) establishes differential interest rates for two separate categories of interest: prejudgment and postjudgment. Within each category, the statute differentiates between judgments which are appealed and those which are not. In effect, the statute creates two classes of personal injury money judgment creditors: those whose judgment debtors appeal the judgment and those whose judgment debtors do not appeal. Likewise, the statute creates two classes of personal injury money judgment debtors: those who appeal and those who do not appeal.

The plain language of [section 13-21-101](#) dictates that judgment creditors whose judgment debtors do not appeal are entitled to prejudgment interest at a rate of nine percent, while judgment creditors whose judgment debtors do appeal are entitled to prejudgment **[\*\*12]** interest at a market-determined rate. As a necessary corollary, judgment debtors who do not appeal must pay prejudgment interest at a rate of nine percent, while judgment debtors who do appeal pay prejudgment interest at a market- determined rate.

The plain language of [section 13-21-101](#) makes a similar distinction with regard to postjudgment interest. Judgment creditors whose judgment debtors do not appeal are entitled to postjudgment interest at a rate of nine percent, while judgment creditors whose judgment debtors do appeal are entitled to postjudgment interest at a market-determined rate. Again, as a necessary corollary, judgment debtors who do not appeal pay postjudgment interest at a rate of nine percent, while judgment debtors who do appeal pay postjudgment interest at a market- determined rate.

We analyze separately the statute's treatment of the two categories of interest, prejudgment and postjudgment, as that treatment affects the two classes of judgment **[\*927]** debtors and the two classes of judgment creditors.<sup>4</sup>

**[\*\*13]** A

When the trial court awards prejudgment interest, both classes of judgment creditors are similarly situated, and both classes of judgment debtors are similarly situated. That is, both the judgment creditor whose judgment debtor later appeals and the judgment creditor whose judgment debtor does not appeal have a personal injury money judgment in hand. Likewise, at that point in time, the judgment debtors have not yet "classified" themselves by opting to appeal or not to appeal.

However, the statute requires the court to recalculate the prejudgment interest owing to the class of judgment creditors whose judgment debtors appeal and,

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<sup>4</sup>We have previously determined that "prejudgment interest [under [section 13-21-101](#)] is a form of damages," see [Allstate Ins. Co. v. Starke, 797 P.2d 14, 20 \(Colo. 1990\)](#), and have recognized that prejudgment interest differs substantively from postjudgment interest. *Id. at 21*. Thus, it is appropriate to consider the two categories of interest separately, although "a single rate of interest [applies] to the entire period from accrual of the action until payment of the judgment." See *id.*

necessarily, to recalculate the interest owed by that group of judgment debtors.<sup>5</sup> When the market-determined interest rate is lower than nine percent, the plain language of the statute creates an anomalous result: after recalculation of interest, the judgment debtor who appeals owes the judgment creditor less prejudgment interest than the judgment debtor who does not appeal, even if the appellate court affirms the judgment in its entirety. Similarly, when the market-determined interest rate is higher than nine percent, the judgment debtor who appeals<sup>6</sup> is effectively penalized by being charged a higher rate of prejudgment interest.

We conclude that, at the time prejudgment interest is awarded, the statutory distinction between classes of judgment creditors and judgment debtors depends upon whether the judgment debtors later appeal, has no rational basis in fact, and cannot be sustained. At the time prejudgment interest is awarded, the groups are in exactly the same situation. The statute's ex post facto classification of the groups according to their later conduct distinguishes between the groups based upon an arbitrary and illusory difference and, therefore, violates the guarantee of equal protection of the laws. Because the statutory distinction has no rational basis in fact, we need not<sup>7</sup> analyze whether the distinction is rationally related to a legitimate governmental purpose to conclude that it is unconstitutional. See [Higgs, 804 P.2d at 165](#).

We note that the recalculation of prejudgment interest requires the court to re-open the judgment and recalculate the amount due. This recalculation of an amount which the trial court has determined to be owing, even where the judgment is affirmed in its entirety, does violence to the finality of the judgment and should not be tolerated.

B

The statute's treatment of postjudgment interest does not suffer from the same deficiency. [Section 13-21-101](#) treats postjudgment interest in a like manner to prejudgment interest: judgments which the judgment debtor appeals accrue postjudgment interest at the market-determined rate, while judgments which the

judgment debtor does not appeal accrue postjudgment interest at the rate of nine percent. However, at this point, a rational basis in fact distinguishes the classes: their entry or non- entry into the appellate process.

In the usual case, [C.A.R. 4](#) requires that a party seeking appellate review of a final judgment file a notice of appeal with the appellate court within forty-five days<sup>8</sup> of the entry of judgment. We recognize that [C.A.R. 4](#), in combination with the postjudgment interest provisions of [section 13-21-101](#), creates a window of forty-five days within which the parties' later conduct may<sup>9</sup> affect the rate at which postjudgment interest accrues. That is, a judgment debtor may file a notice of appeal on the forty-fifth day after the entry of final judgment. At that point, the rate at which postjudgment interest accrues becomes the market-determined rate, rather than the rate of nine percent. Thus, the judgment debtor's decision to appeal will retroactively affect the rate of postjudgment interest during the forty-five days immediately following the original judgment. However, we also recognize that:

[a] statute will not be found unconstitutional under the rational basis test because the distinctions created by the legislature are not made with mathematical nicety. Rather, the problems of government being practical ones, equal protection will tolerate a rough accommodation of variant interests. So long as the distinction drawn by the General Assembly is rationally related to some governmental interest, the Equal

Protection Clause is not offended simply<sup>10</sup> because the line which is drawn is imperfect. [Duran, 883 P.2d at 483](#) (citations and internal quotation marks omitted).

We thus examine whether the distinction which section 13-21- 101 draws with regard to postjudgment interest is rationally related to a legitimate governmental purpose. See [id. at 484](#). We have little difficulty concluding that the statutory classification has some reasonable relationship to a legitimate governmental purpose.

In determining the purpose of [section 13-21-101](#), it is appropriate to look to legislative history as indicative of the intent of the General Assembly. See, e.g., [Willer, 817 P.2d at 519-20](#). The 1982 amendment to [section 13-21-101](#) created the distinction between judgments which the judgment debtor appeals and those which the judgment debtor does not appeal. The General Assembly intended that the amendment, and its market-determined interest rate, apply only to judgments which the judgment debtor appeals. See Act of March 25,

<sup>5</sup>Under the statute, the only time when the interest rate is uniform, regardless of appeal, and when no recalculation of interest is necessary is when the interest rate certified by the secretary of state is nine percent for all relevant years. See [§ 13-21-101\(1\), \(3\)](#).

1982, ch. 39, 1982 Colo. Laws 227 (entitled "An Act Concerning Interest Payable on Appealed Money Judgments in Civil Actions" (emphasis added)); see [City of Ouray v. Olin, 761 P.2d 784, 789 \(Colo. 1988\)](#) (holding that the title **[\*\*18]** of legislation is relevant to legislative intent).

The statements of the bill's sponsors also indicate an intent to neutralize the economic benefits and detriments of appeal under the statutorily-set rate of interest. Senator Ralph Cole introduced the bill to the Senate and stated:

This addresses a problem we have today in Colorado where it is to the advantage of a person who has lost a case in trial court to appeal rather than pay the judgment because the standard rate of interest which accrues on a judgment is so much less than what the judgment debtor can earn if he keeps the money. Hearings on S.B. 140 Before the Senate Comm. on the Judiciary, 53d General Assembly, 2d Sess. 2 (1982). Representative Ronald H. Strahle introduced the bill to the House Committee with the caveat that:

as to judgments which are not appealed in this bill they would draw interest at the set legal rate on the theory that this bill is not designed to raise rates on judgments generally where people pay them promptly, but rather to reach the problem of the person or the agency which appeals simply to make money, notwithstanding the fact the appeal may not be a good one. Hearings on S.B. 140 Before the House **[\*\*19]** Comm. on the Judiciary, 53d General Assembly, 2d Sess. 4-5 (1982). Representative David Skaggs stated that the Bill proposed a "neutrality" which "splits the difference between what the [insurance] company might earn on its investments and what the injured party might earn if they had the money earlier along." [Id. at 23-24](#). Representative Skaggs went on to state:

I would really like to strongly urge that we get away from talking in terms of penalty, which is not what is involved in the bill at all. All we're doing is trying to hit an interest rate that approximates the market, and it's neither a penalty or an incentive. . . . We're not trying to penalize anybody. We're merely trying to impose a fair return on the use of money that is **[\*929]** determined to have belonged to someone else. [Id. at 26](#).

We may infer the following purposes, among others, from the title of the amendment, its legislative history, and its plain language: to eliminate the financial incentive (or disincentive) to appeal and to ensure that

the judgment creditor whose satisfaction is delayed due to an unsuccessful appeal receives the time value of his or her money judgment. We hold that these legislative purposes **[\*\*20]** are reasonable and within the General Assembly's authority. We also conclude that the General Assembly's imposition of a market-determined rate of postjudgment interest is rationally related to these purposes. Accordingly, [section 13-21-101](#), as applied to postjudgment interest, does not violate equal protection.

V

We may sever and strike any portion of a statute which we hold to be unconstitutional, see [§ 2-4-204, 1B C.R.S.](#) (1986), and may limit the portion stricken to single words or phrases where appropriate. See [Shroyer v. Sokol, 191 Colo. 32, 35, 550 P.2d 309, 311 \(1976\)](#). The intent of the General Assembly aids our determination of the propriety of severing statutory language. [Colorado Project-Common Cause v. Anderson, 177 Colo. 402, 404, 495 P.2d 218, 219 \(1972\)](#).

As discussed above, the prejudgment interest provisions of [section 13-21-101](#) violate equal protection in that those provisions create an arbitrary distinction between classes of judgment creditors and of judgment debtors without a rational basis in fact. Accordingly, we conclude that the last sentence of [section 13-21-101\(1\)](#) must be read and applied as follows:

On and after January 1, 1983, if a judgment for money **[\*\*21]** in an action brought to recover damages for personal injuries is appealed by the judgment debtor, POSTJUDGMENT interest, whether prejudgment or postjudgment, shall be calculated on such sum at the rate set forth in subsections (3) and (4)

of this section from the date the action accrued and shall include compounding of interest annually from the date such suit was filed. Thus, prejudgment interest on all personal injury money judgments will accrue at nine percent. Postjudgment interest on personal injury money judgments which the judgment debtor appeals will accrue at the market-determined rate, while postjudgment interest on personal injury money judgments which the judgment debtor does not appeal will accrue at nine percent. Our severance of the market-determined prejudgment interest rate for judgments which the judgment debtor appeals not only alleviates the constitutional concerns, but effectuates the legislature's intent in amending the statute.

We recognize that, during the period between judgment and satisfaction, interest on judgments which the judgment debtor does not appeal will likely accrue at a different rate than interest on judgments which the judgment debtor does **[\*\*22]** appeal. See *supra* note 5. We also recognize that the date at which a judgment is satisfied is not fixed, but depends on a number of factors, including a potential appeal. That is, a judgment creditor whose judgment debtor does not appeal may obtain a writ of execution and begin collection proceedings once he or she receives a final judgment pursuant to [C.R.C.P. 58](#) and all stays have expired. See [C.R.C.P. 62, 69](#). By contrast, a judgment creditor whose judgment debtor appeals must generally await judgment on appeal before obtaining a writ of execution. See [C.R.C.P. 62\(d\)](#). Again, however, we recognize that the line drawn by a statute need not be perfect nor "made with mathematical nicety" so long as the distinction has a rational basis in fact and is rationally related to some governmental interest. See [Duran, 883 P.2d at 482-83](#) (citation and internal quotation marks omitted). As discussed above, the General Assembly, in enacting the 1982 amendment, rationally distinguished between appealed and non-appealed personal injury money judgments, and that distinction, as it relates to postjudgment interest, is rationally based in fact.

VI

We affirm the court of appeals holding that section **[\*\*23]** 13-21- 101 does not establish a floor **[\*930]** for the interest rate at which interest on personal injury money judgments accrues. We conclude, however, that the provision in [section 13-21-101](#) relating to prejudgment interest on personal injury money judgments which the judgment debtor appeals violates equal protection. Accordingly, we reverse the court of appeals decision that the market-determined interest rate applies to both prejudgment and postjudgment interest on a judgment which the judgment debtor unsuccessfully appeals. Pursuant to section 2-4- 204, we strike the unconstitutional portion of [section 13-21-101](#), as set forth above. Finally, we return this case to the court of appeals with directions to remand this case to the district court for a recalculation of interest in accordance with this opinion.

JUSTICE SCOTT dissents.

**Dissent by:** SCOTT

**Dissent**

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JUSTICE SCOTT, dissenting:

A nine percent interest rate on nonappealed judgments and a market-determined rate on appealed judgments introduces a variable against which defendant debtors can measure the profitability of appeal. I agree with the majority that this distinction contravenes the General Assembly's attempt to encourage the prompt payment **[\*\*24]** of judgments and to discourage non-meritorious appeals. See *maj. op.* at 15. I also agree with the majority that this distinction violates equal protection. *Id.* at 11. Nonetheless, a distinction between prejudgment interest at nine percent and postjudgment interest at the market rate violates equal protection because, without a rational basis in fact, nonappealed judgment creditors and appealed judgment creditors will receive different rates of interest while they await satisfaction of judgment. Such disparate treatment equal protection was intended to prohibit.

In contrast, allowing the market to determine the interest rate on both appealed and nonappealed judgments furthers the legislative purpose of compensating personal injury victims for the lost time value of their awards and encourages the prompt payment of judgments by eliminating the profitability of appeal. Furthermore, a single market rate of interest eliminates arbitrary distinctions between judgment creditors subject to appeal and judgment creditors who are not.

I

A

[Article II, section 25, of the Colorado Constitution](#) and the *Fourteenth Amendment of the United States Constitution* guarantee the right to equal protection **[\*\*25]** of the laws and assures that persons similarly situated will receive like treatment. <sup>6</sup> [Estate of Stevenson v. Hollywood Bar, 832 P.2d 718, 723 \(Colo. 1992\)](#); see [City of Montrose v. Public Util. Comm'n, 732 P.2d 1181, 1189 \(Colo. 1987\)](#).

The parties do not dispute the appropriate standard which governs our constitutional analysis. Because the

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<sup>6</sup>The Fourteenth Amendment provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." [U.S. Const. amend XIV, § 1](#). We have long recognized that [article II, § 25 of the Colorado Constitution](#) provides the same protection. [Lujan v. Colorado State Bd. of Educ., 649 P.2d 1005 \(Colo. 1982\)](#); [People v. Max, 70 Colo. 100, 198 P. 150 \(1921\)](#).

interest statute does not involve a fundamental right nor a suspect classification, review is limited to a determination of whether the challenged legislation is rationally related to a legitimate state interest. See [Duran v. Industrial Claim Appeals Office, 883 P.2d 477, 482 \(Colo. 1994\)](#). Under **[\*\*26]** that standard, a classification is presumed constitutional and does not violate equal protection unless it is proven, beyond a reasonable doubt, that the classification has no rational basis or is not rationally related to a legitimate governmental purpose. *Id.* I consider the two prongs of the rational basis test in turn, considering first whether there is "a rational basis in fact for the statutory classification." [Duran, 883 P.2d at 482](#).

The majority's construction of the interest statute, with an interest rate distinction between prejudgment interest at nine percent and postjudgment interest at the market rate, violates the first prong of the rational basis test because nonappealed judgment creditors and appealed judgment creditors will receive different rates of interest, and thus are treated differently, while they await satisfaction without a rational basis for the disparate result. A single market-determined **[\*931]** rate of interest, regardless of appeal or the entry of judgment, eliminates the equal protection violation. Diagram A maps the different interest rates resulting from the majority opinion and a single market-determined rate, which avoids constitutional challenge.

DIAGRAM **[\*\*27]** A SEE DIAGRAM IN ORIGINAL B

I now turn to the second inquiry in a rational basis examination: whether the statutory classification bears a reasonable relationship to a legitimate government interest. [Duran, 883 P.2d at 484](#); [Western Metal v. Acoustical and Const., 851 P.2d 875, 881 \(Colo. 1993\)](#).

The General Assembly enacted the amendments to [section 13-21-101](#) to discourage non-meritorious appeals and to encourage the prompt payment of judgments. However, a prejudgment- postjudgment distinction creates disparate treatment and thwarts the prompt payment of judgments. Recognizing that the prejudgment-postjudgment distinction violates the rational basis test, the majority writes:

In the usual case, [C.A.R. 4](#) requires that a party seeking appellate review of a final judgment file a notice of appeal with the appellate court within forty-five days of the entry of judgment. We recognize that [C.A.R. 4](#), in combination with the postjudgment interest provisions of [section 13-21-101](#), creates a window of forty-five days

within which the parties' later conduct may affect the rate at which postjudgment interest accrues. That is, a judgment debtor may file a notice of appeal on the forty-fifth day after the entry of final judgment.

**[\*\*28]** At that point, the rate at which postjudgment interest accrues becomes the market-determined rate, rather than the rate of nine percent. Thus, the judgment debtor's decision to appeal will retroactively affect the rate of postjudgment interest during the forty-five days immediately following the original judgment. *Maj. op.* at 12-13. Rather than offer a reasonable relationship between the disparate treatment during the window and a legitimate government purpose, which the second prong of the rational basis test demands, the majority simply states that equal protection does not require the General Assembly to exact mathematical nicety. See *maj. op.* at 13. This response is woefully inadequate. However, it is unavoidable because the disparate treatment lacks any justification. Furthermore, the prejudgment-postjudgment distinction eliminates the judgment debtor's incentive to satisfy judgment or expedite the appeal process.

C

Statutes should be construed in a manner that avoids constitutional infirmities. [People v. Zapotocky, 869 P.2d 1234, 1240 \(Colo. 1994\)](#); [Committee for Better Health Care v. Meyer, 830 P.2d 884, 894 \(Colo. 1992\)](#); [Renteria \*\*\[\\*\\*29\]\*\* v. State Dept. of Personnel, 811 P.2d 797, 799 \(Colo. 1991\)](#); Norman J. Singer, *Statutes and Statutory Construction* § 45.11 at pp. 48-49 (1992 rev.) (stating the courts are to construe legislative enactments in a way that avoids constitutional difficulties to the greatest extent possible). Thus, if a statute is capable of alternative constructions, only one **[\*932]** of which is constitutional, then the constitutional interpretation must be adopted. [People v. McBurney, 750 P.2d 916, 920 \(Colo. 1988\)](#).

A prejudgment-postjudgment distinction effects an unconstitutional distinction between nonappealed and appealed judgment creditors who await satisfaction. Therefore, I reject this alternative. Applying a market-determined rate of interest on both appealed and nonappealed judgments completely neutralizes the financial incentive to appeal; therefore, it is rationally related to the legitimate governmental interest to discourage meritless appeals and encourage the timely payment of judgments. Furthermore, a single rate of interest completely eliminates arbitrary and disparate categories of judgment creditors and debtors.

II

Accordingly, I would find that the market rate of interest as determined **[\*\*30]** by the secretary of state should apply to both appealed and nonappealed judgments. As a consequence, I would reverse the court of appeals and remand with instructions that it return the case to the trial court with directions to recalculate interest applying the market rate of interest as certified by the secretary of state. Therefore, I respectfully dissent.

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**Addendum B**  
**Second Regular Session**  
**Seventy-first General Assembly**  
**STATE OF COLORADO**

**BILL (2)(G)**

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LLS NO. 18-####.## Jane Ritter x4342

**COMMITTEE BILL**

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**Statutory Revision Committee**

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**A BILL FOR AN ACT**

101     **CONCERNING AMENDING A STATUTORY PROVISION RELATING TO**  
102             **INTEREST ON DAMAGES THAT WAS RULED UNCONSTITUTIONAL**  
103             **BY THE COLORADO SUPREME COURT.**

---

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee.** The bill amends section 13-21-101 (1), Colorado Revised Statutes, concerning interest on damages to reflect a 1996 decision made by the Colorado supreme court that ruled certain language in that subsection violated the equal protection

**Shading denotes HOUSE amendment.** Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

clause of the constitution.

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

2 **SECTION 1.** In Colorado Revised Statutes, 13-21-101, **amend**  
3 (1) as follows:

4 **13-21-101. Interest on damages.** (1) In all actions brought to  
5 recover damages for personal injuries sustained by any person resulting  
6 from or occasioned by the tort of any other person, corporation,  
7 association, or partnership, whether by negligence or by willful intent of  
8 ~~such~~ THE other person, corporation, association, or partnership and  
9 whether ~~such~~ THE injury has resulted fatally or otherwise, it is lawful for  
10 the plaintiff in the complaint to claim interest on the damages alleged  
11 from the date ~~said~~ THE suit is filed; and, on and after July 1, 1979, it is  
12 lawful for the plaintiff in the complaint to claim interest on the damages  
13 claimed from the date the action accrued. When such interest is ~~so~~  
14 claimed, it is the duty of the court in entering judgment for the plaintiff  
15 in ~~such~~ THE action to add to the amount of damages assessed by the  
16 verdict of the jury, or found by the court, interest on ~~such~~ THE amount  
17 calculated at the rate of nine percent per annum on actions filed on or  
18 after July 1, 1975, and at the legal rate on actions filed prior to such date,  
19 and calculated from the date ~~such~~ THE suit was filed to the date of  
20 satisfying the judgment and to include the same in ~~said~~ THE judgment. ~~as~~  
21 ~~a part thereof.~~ On actions filed on or after July 1, 1979, the calculation  
22 ~~shall~~ MUST include compounding of interest annually from the date ~~such~~  
23 THE suit was filed. On and after January 1, 1983, if a judgment for money  
24 in an action brought to recover damages for personal injuries is appealed  
25 by the judgment debtor, POSTJUDGMENT interest ~~whether pre-judgment or~~

1 ~~postjudgment, shall~~ MUST be calculated on ~~such~~ THE sum at the rate set  
2 forth in subsections (3) and (4) of this section from the date the action  
3 accrued and ~~shall~~ MUST include compounding of interest annually from  
4 the date ~~such~~ THE suit was filed.

5           **SECTION 2. Act subject to petition - effective date.** This act  
6 takes effect at 12:01 a.m. on the day following the expiration of the  
7 ninety-day period after final adjournment of the general assembly (August  
8 ■, 2018, if adjournment sine die is on May ■, 2018); except that, if a  
9 referendum petition is filed pursuant to section 1 (3) of article V of the  
10 state constitution against this act or an item, section, or part of this act  
11 within such period, then the act, item, section, or part will not take effect  
12 unless approved by the people at the general election to be held in  
13 November 2018 and, in such case, will take effect on the date of the  
14 official declaration of the vote thereon by the governor.

# OFFICE OF LEGISLATIVE LEGAL SERVICES

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## MEMORANDUM (2)(H)<sup>1</sup>

TO: Statutory Revision Committee

FROM: Jane M. Ritter, Office of Legislative Legal Services

DATE: August 11, 2017

SUBJECT: Unconstitutional provisions related to sexually explicit materials harmful to children, part 5 of article 7 of title 18, C.R.S.

### Summary and Analysis

This matter was discovered through staff's search of the Colorado Revised Statutes for references to statutory provisions that have been found unconstitutional by the Colorado or United States Supreme Court. In this case, the Colorado Supreme Court ruled that the entire part 5 of article 7 of title 18, C.R.S., ("Sexually explicit materials harmful to children") was unconstitutional.

First, the court held that the display provision of section 18-7-502 (5), C.R.S., was overly broad and infringed on free speech rights of adults:

**18-7-502. Unlawful acts.** (5) It shall be unlawful for any person knowingly to **exhibit, expose, or display in public** at newsstands or any other business or commercial establishment frequented by children or where children are or may be invited as part of the general public: **(Emphasis added)**

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<sup>1</sup> This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

Specifically, the Court found that a literal enforcement of the display provision as a criminal statute would have a chilling effect on and interfere with the "unfettered expression and interchange, *inter alia*, of literary, artistic, political and scientific ideas which are found in the human interest in sex".<sup>2</sup>

Second, the court held that the provision of section 18-7-503, C.R.S., granting an exemption to "accredited" museums, libraries, schools, and institutions of higher education was, in violation of the due process and equal protection clauses of the United States and Colorado constitutions, unconstitutionally vague:<sup>3</sup>

**18-7-503. Applicability.** (1) Nothing contained in this part 5 shall be construed to apply to:

(a) The purchase, distribution, exhibition, or loan of any work of art, book, magazine, or other printed or manuscript material by any **accredited museum, library, school, or institution of higher education**;

(b) The exhibition or performance of any play, drama, tableau, or motion picture by any theatre, museum, school, or institution of higher education, either supported by public appropriation **or which is an accredited institution supported by private funds.** (Emphases added)

Although part 5 of article 7 of title 18, C.R.S., includes a severability clause,<sup>4</sup> the court concluded that the offending provisions in sections 18-7-502 (5) and 18-7-503, C.R.S., could not be severed from the remainder of the act without impacting the validity of the remaining provisions of part 5.<sup>5</sup> The court's reasoning for this was, essentially, that it was not persuaded that the General Assembly would not have adopted the entire part without the display and exemption provisions detailed above. To simply sever those pieces from the part would leave in statute a law without a clear exemption or a specific action that the legislature contemplated when it passed part 5. Therefore, the court held that the entire part 5 is unconstitutional and left it to the legislature, as a body, to correct.

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<sup>2</sup> *Tattered Cover v. Tooley*, 696 P.2d 780 at 783 (Colo. 1985) (attached as **Addendum A**).

<sup>3</sup> *Id.*

<sup>4</sup> Section 18-7-504, C.R.S.

<sup>5</sup> *Id.* at 787.

# Addendum A

## Tattered Cover, Inc. v. Tooley

Supreme Court of Colorado

February 25, 1985

No. 82SA85

### Reporter

696 P.2d 780 \*; 1985 Colo. LEXIS 395 \*\*

TATTERED COVER, INC., a Colorado corporation, d/b/a Tattered Cover Bookstore; Joyce Knauer; Pioneer Ventures, Inc., a Colorado corporation, d/b/a Columbine Books and Records; Larry Hamilton; American Booksellers Association, Inc.; Association of American Publishers, Inc., a New York corporation, and Council For Periodical Distributors Associations, Plaintiffs-Appellees, Cross-Appellants, v. Dale TOOLEY, District Attorney, Second Judicial District; Arthur Dill, Chief of Police, Denver Police Department; and Jerry Kennedy, Captain, Vice Squad, Denver Police Department, Defendants-Appellants, Cross-Appellees

**Subsequent History:** **[\*\*1]** Rehearing Denied April 1, 1985.

**Prior History:** Appeal from District Court, City and County of Denver, Honorable Henry E. Santo, Judge.

**Disposition:** Judgment Affirmed in Part and Reversed in Part.

## Case Summary

### Procedural Posture

Defendants, prosecutor and municipal police department, appealed a judgment from the District Court, City and County of Denver (Colorado), which declared that [Colo. Rev. Stat. §§ 18-7-502\(5\)](#), -503, (1984 Supp.) of the Sexually Explicit Materials Harmful to Children Act (Act), were unconstitutional. Plaintiffs, bookstores and publishers, appealed from the order severing the invalid provisions rather than declaring the entire Act invalid.

### Overview

Commercial bookstores and publishers' associations sought a declaration that the Sexually Explicit Materials

Harmful to Children Act (Act), [Colo. Rev. Stat. § 18-7-501 et seq.](#) (1984 Supp.) was unconstitutional. The trial court concluded that [§ 18-7-502\(5\)](#), the display provision, and [§ 18-7-503](#), the exemption provisions, were unconstitutional but severed the invalid provisions rather than declaring the entire Act unconstitutional. On appeal, the court affirmed in part, holding that the display part of the statute could not be upheld because it infringed upon the booksellers' right to sell adult materials and an adult's ability to purchase them, thus violating both *U.S. Const. amend. I* and [Colo. Const. art. II, § 10](#). Further, the provision exempting of the Act's applicability to "accredited" institutions was too vague. However, the court reversed in part, and held the entire Act to be unconstitutional, concluding that if the unconstitutional provisions were severed as provided in [Colo. Rev. Stat. § 18-7-504](#), the Act would then violate the commercial bookstores' rights to equal protection under *U.S. Const. amend. XIV* and [Colo. Const. art. II, § 25](#).

### Outcome

The court affirmed the trial court's decision that the challenged provisions were unconstitutional but reversed its ruling that the offending provisions were severable and held that the entire statute was unconstitutional.

**Counsel:** Peter H. Ney, Littleton, Colorado; Finley, Kumble, Wagner, Heine, Underberg and Casey, Jeffrey A. Mitchell, Michael A. Bamberger, New York, New York; Attorneys for Plaintiffs-Appellees, Cross-Appellants.

Norman S. Early, Jr., District Attorney, Brooke Wunnicke, Chief Appellate Deputy, David Purdy, Chief Deputy District Attorney, Donna Skinner Reed, Deputy District Attorney, Denver, Colorado; Attorneys for Defendants-Appellants, Cross-Appellees.

L. Duane Woodard, Attorney General, Charles B. Howe, Deputy Attorney General, Richard Forman, Solicitor General, John Milton Hutchins, Assistant Attorney

General, Denver, Colorado; Attorneys for Amicus Curiae, Colorado Attorney General.

**Judges:** En Banc. Justice Neighbors.

**Opinion by:** NEIGHBORS

## Opinion

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[\*782] JUSTICE NEIGHBORS delivered the Opinion of the Court.

This is an appeal from the judgment of the Denver District Court declaring that [sections 18-7-502\(5\) and 18-7-503, 8 C.R.S.](#) (1984 Supp.), are unconstitutional and severing them from the remainder of the [\*\*2] provisions governing "Sexually Explicit Materials Harmful to Children" (the Act), [sections 18-7-501 to -504, 8 C.R.S.](#) (1984 Supp.).<sup>1</sup> The plaintiffs<sup>2</sup> request reversal of the trial court's order severing the invalid provisions rather than declaring the entire Act unconstitutional. The defendants<sup>3</sup> seek review of the declarations of unconstitutionality. We affirm the trial court's decision that the challenged provisions are unconstitutional but reverse its ruling that the offending provisions are severable from the Act. Accordingly, we hold the Act unconstitutional.

[\*\*3] I.

In their complaint, the plaintiffs requested that the Act be declared unconstitutional because it violated their rights of free speech and expression and rights to due process and that the defendants be enjoined from enforcing the Act. At trial, the plaintiffs introduced testimony from booksellers and publishers to the effect that the Act is vague and difficult to apply and that any method of separating the books and magazines so that children would not be able to view sexually explicit materials

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<sup>1</sup> The full text of the Act which was in effect when this case was filed in the district court is found in the 1981 Session Laws of Colorado at chapter 225 beginning on page 1004. The statutes contained in the 1984 Supplement to the 1978 Replacement Volume 8 are identical to the Act adopted in 1981. The 1981 Act is attached as Appendix A.

<sup>2</sup> The plaintiffs are two bookstores and their managers, and booksellers' and publishers' trade associations.

<sup>3</sup> The defendants are the former District Attorney for the City and County of Denver, the Denver Police Department, and two of its officials.

would interfere with adults' exercise of their rights of free speech and expression.

[\*783] The parties stipulated to several possible methods of complying with the Act: (1) prohibiting entry into the plaintiffs' stores of persons under the age of eighteen; (2) refusing to carry or display all sexually explicit material; (3) refusing to carry or display material proscribed by the Act; (4) restricting access to substantial portions of their material by segregating sections of their establishment with an "adults only" section; and (5) establishing an "adults only" section solely for material proscribed by the Act. The trial court found that "any of the foregoing alternatives would [\*\*4] not be commercially . . . . feasible or sound." The trial court concluded that [section 18-7-502\(5\)](#), the display provision, is unconstitutional:

[A] literal enforcement of this statute would impinge upon the constitutional rights of adults. It is admitted that the adults would have the right under the laws that now exist to view the material that is set forth in the statute we are considering. The problem is the chilling effect that literal enforcement of a criminal statute such as this have [sic] on the channels of dissemination. The court specifically finds and concludes that the statute effectively closes the channels of dissemination. The court specifically would find that the application of this display part of the statute would interfere, diminish and severely curtail the unfettered expression and interchange, *inter alia*, of literary, artistic, political and scientific ideas which are found in the human interest in sex. Enforcing this provision . . . . would be a regulation to an unreasonable degree and unconstitutional in violation of the *First Amendment to the United States Constitution* and Article II, Section 10 of the Constitution of the State of Colorado.

[\*\*5] The court also declared [section 18-7-503](#), the exemption provision, unconstitutional. The court stated:

[C.R.S. 1973, 18-7-503](#) provides for an exemption of the applicability of the remaining parts of the statute to so-called accredited museums, libraries, schools or institutions of higher learning. The court finds that such exemption is entirely too vague, too broad and overreaching. Applying the general statutory rules of interpretation including a strict scrutiny test the court hereby finds and determines that the section is likewise invalid and unconstitutional in violation of the due process and equal protection

clauses of the United States and Colorado Constitutions. The court therefore declares [C.R.S. 1973, 18-7-503](#) unconstitutional and invalid.

The district court then applied the qualified severability statute found in [section 18-7-504](#) of the Act to its determinations of unconstitutionality and concluded that the offending provisions were severable. The court upheld the remaining provisions in the Act and the defendants appealed. The plaintiffs then cross-appealed. Accordingly, four issues are presented for our consideration: (1) Whether the display provision in [section \[\\*\\*6\] 18-7-502\(5\)](#) is constitutional; (2) whether the word "accredited" in [section 18-7-503](#) is unconstitutionally vague; (3) whether the exemption provision denies plaintiffs' equal protection guarantees; and (4) whether the exemption and display provisions can be severed from the Act.

II.

The state's interest in protecting the well-being of children permits the state greater latitude in adopting restrictions which limit children's access to sexually explicit materials than can be imposed on adults. [Ginsberg v. New York, 390 U.S. 629, 20 L. Ed. 2d 195, 88 S. Ct. 1274 \(1968\)](#). In *Ginsberg*, the Court upheld a statute regulating the sale, *not display*, of sexually explicit materials to persons under seventeen years of age. The Court stated:

Material which is protected for distribution to adults is not necessarily constitutionally protected from restriction upon its dissemination to children. In other words, the concept of obscenity or of unprotected matter may vary according to the group to whom the questionable matter is directed or from whom it is quarantined. Because of the State's exigent interest in preventing distribution to children of objectionable material, it [\*784] [\*\*7] can exercise its power to protect the health, safety, welfare and morals of its community by barring the distribution to children of books recognized to be suitable for adults.

[Ginsberg, 390 U.S. at 636](#) (quoting [Bookcase, Inc. v. Broderick, 18 N.Y.2d 71, 218 N.E.2d 668, 671, 271 N.Y.S.2d 947 \(N.Y. 1966\)](#)). In [People v. Enea, 665 P.2d 1026 \(Colo. 1983\)](#), we upheld the constitutionality of the statute prohibiting the sexual exploitation of children, [section 18-6-403, 8 C.R.S.](#) (1984 Supp.). In that opinion, we noted the variable obscenity standard which permits "states to ban the sale to minors of materials deemed legally obscene as to children, but not to adults . . . ."

[Enea, 665 P.2d at 1028](#). See also [F.C.C. v. Pacifica Foundation, 438 U.S. 726, 57 L. Ed. 2d 1073, 98 S. Ct. 3026 \(1978\)](#). The parties agree that the materials involved in this case are not obscene as defined in [section 18-7-101, 8 C.R.S.](#) (1984 Supp.); rather, they are protected under the *first amendment of the United States Constitution* and [article II, section 10 of the Colorado Constitution](#). Therefore, only reasonable regulations of the time, place, and manner of protected speech, where those [\*\*8] regulations are necessary to further a compelling government interest, are permitted by the federal and state constitutions. [Young v. American Mini Theatres, Inc., 427 U.S. 50, 49 L. Ed. 2d 310, 96 S. Ct. 2440 \(1976\)](#); [Marco Lounge, Inc. v. City of Federal Heights, 625 P.2d 982 \(Colo. 1981\)](#).

It is within this analytical framework that the display provision in [section 18-7-502\(5\)](#) must be evaluated. [Section 18-7-502\(5\)](#) provides:

(5) It shall be unlawful for any person knowingly to exhibit, expose, or display in public at newsstands or any other business or commercial establishment frequented by children or where children are or may be invited as part of the general public:

(a) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which is harmful to children; or

(b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (a) of this subsection (5), or explicit verbal descriptions or narrative accounts of sexual excitement, [\*\*9] sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to children.

The plaintiffs' principal contention is that this provision is objectionable, not because it prohibits sale or display of certain materials to children, but rather because in doing so it infringes upon the free speech rights of adults. This is so, they claim, because there is no reasonable way for a commercial establishment to prohibit children from being exposed to material "harmful to children" while allowing adults access to such material.

We conclude that this provision is overly broad. Statutes designed to restrict children's access to sexually explicit materials must be narrowly drawn. As we noted earlier, the Supreme Court in [Ginsberg v. New York, 390 U.S. 629, 20 L. Ed. 2d 195, 88 S. Ct. 1274 \(1968\)](#), upheld a

statute which prohibited the sale of such materials to minors. However, the state cannot prevent adults from reading or having access to these materials on the ground they would be objectionable if read or seen by children. In *Butler v. Michigan*, 352 U.S. 380, 1 L. Ed. 2d 412, 77 S. Ct. 524 (1957), the Court declared unconstitutional a statute which made it an offense **[\*\*10]** to make available to the general public sexually explicit materials found to have a potentially harmful influence on minors. Thus, in *American Booksellers Association v. McAuliffe*, 533 F. Supp. 50 (N.D. Ga. 1981), the court declared unconstitutional a display provision similar to the one involved in this case. <sup>4</sup> **[\*785]** The court stated: "However, an examination of the Act reveals that it infringes on the protected rights of adults. The language includes a public display prohibition which necessarily prevents perusal by, and limits sale to, adults." *McAuliffe*, 533 F. Supp. at 56. The Supreme Court has never upheld the validity of a "display provision" as broad as the one involved in this litigation.

**[\*\*11]** The evolving rule concerning the validity of display regulations is this: A display provision will be upheld if it is so narrowly drawn that it has only an incidental effect on the booksellers' right to sell adult materials and an adult's ability to purchase them. *M.S. News Co. v. Casado*, 721 F.2d 1281 (10th Cir. 1983); *Dover News, Inc. v. City of Dover*, 117 N.H. 1066, 381 A.2d 752 (N.H. 1977). See also *Young v. American Mini Theatres*, 427 U.S. 50, 49 L. Ed. 2d 310, 96 S. Ct. 2440 (1976).

In the context of this case, the parties stipulated to five alternative ways which might have been available to the plaintiffs in order to comply with the statute. The trial

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<sup>4</sup>The court summarized the display provision and identified the overbreadth problem:

Under the Act: "*It shall be unlawful for any person knowingly . . . to display in public or . . . any . . . business establishment frequented by minors or where minors may be invited as part of the general public,*" certain defined materials "the cover or content of which" contains the proscribed "descriptions or depictions." Code § 26-3502 (emphasis added). If any of the proscribed descriptions or depictions are contained in the cover or in even an isolated part of a work, then the entire work may not be displayed where minors may frequent or be invited as part of the general public.

*American Booksellers Ass'n v. McAuliffe*, 533 F. Supp. 50, 55 (N.D. Ga. 1981).

court, however, found that none were commercially feasible. This factual determination is supported by ample evidence in the record. Accordingly, it is binding on appeal. *People v. Fish*, 660 P.2d 505 (Colo. 1983); *Gebhardt v. Gebhardt*, 198 Colo. 28, 595 P.2d 1048 (1979). Therefore, in light of the factual determinations made by the trial court, we conclude that *section 18-7-502(5), 8 C.R.S.* (1984 Supp.), is unconstitutional.

III.

We next review the trial court's ruling that the word "accredited" in *section [\*\*12] 18-7-503* is unconstitutional. *Section 18-7-503* contains the following exemptions to the Act:

18-7-503. Applicability. (1) Nothing contained in this part 5 shall be construed to apply to:

- (a) The purchase, distribution, exhibition, or loan of any work of art, book, magazine, or other printed or manuscript material by any accredited museum, library, school, or institution of higher education;
- (b) The exhibition or performance of any play, drama, tableau, or motion picture by any theatre, museum, school, or institution of higher education, either supported by public appropriation or which is an accredited institution supported by private funds.

In *People ex rel. Tooley v. Seven Thirty-Five East Colfax, Inc.*, 697 P.2d 348, 357 (Colo. 1985), we held that the word "accredited" was void for vagueness in the context of Colorado's obscenity statute. We reach the same result here for the identical reasons stated in our opinion in that case. Thus, we hold that the word "accredited" contained in *section 18-7-503* is unconstitutionally vague.

IV.

The trial court held that the exemption provision provided by *section 18-7-503* denied the plaintiffs equal protection of the law under **[\*\*13]** both federal and state constitutions. We agree with its conclusion.

Our analysis begins with the recognition that the materials involved in this case are not obscene and are therefore protected by the freedom of speech guarantee embodied in the *first amendment to the United States Constitution* and *article II, section 10 of the Colorado Constitution*.

Freedom of speech is a fundamental constitutional right. E.g., *Stromberg v. California*, 283 U.S. 359, 75 L. Ed. 1117, 51 S. Ct. [\*\*786] 532 (1931); *Gitlow v. New York*, 268 U.S. 652, 69 L. Ed. 1138, 45 S. Ct. 625 (1925).

Since first amendment rights, including free speech, have been held to be fundamental, the classifications in terms of the ability to exercise those rights must be judged against the strict scrutiny standard. [Speiser v. Randall](#), 357 U.S. 513, 2 L. Ed. 2d 1460, 78 S. Ct. 1332 (1958). Where a fundamental right is affected, the state has the burden of establishing that the act is necessarily related to a compelling governmental interest. [San Antonio Independent School District v. Rodriguez](#), 411 U.S. 1, 36 L. Ed. 2d 16, 93 S. Ct. 1278 (1973); [Austin v. Litvak](#), 682 P.2d 41 (Colo. 1984); [Lujan v. Colorado](#) [\*\*14] [State Board of Education](#), 649 P.2d 1005 (Colo. 1982).

The deletion of the word "accredited" from the exception provision creates a classification distinguishing, on the one hand, private, commercial bookstores, and, on the other, museums, libraries, and bookstores operated by schools, colleges and universities. Under the exception provision, the entities in the latter group may sell or loan materials proscribed by the statute but the former class may not.<sup>5</sup> [\*\*15] We conclude that there is no compelling or overriding justification shown by the state in this case which supports the classification. Therefore, the exception provision, [section 18-7-503](#), 8 C.R.S. (1984 Supp.), violates the plaintiffs' rights to equal protection under the United States<sup>6</sup> and Colorado Constitutions<sup>7</sup> and is unconstitutional. See [Seven Thirty-Five East Colfax, Inc.](#), 697 P.2d at 357 n.12.

V.

We now address the severability issues in light of our holdings that [section 18-7-502\(5\)](#) and [18-7-503](#) are unconstitutional. We conclude that the offending provisions are not severable from the remainder of the Act.

In [Seven Thirty-Five East Colfax, Inc.](#), 697 P.2d 348, slip op. at 39, we enunciated the principles applicable to our consideration of the effect of qualified severability statutes. The Act here contains such a provision. [Section 18-7-504](#) states:

---

<sup>5</sup>The record, through the testimony of a bookstore manager, reflects the following examples of books displayed and for sale at the Auraria Book Center, the college bookstore for the Auraria campus, which could not be sold by the plaintiffs in their establishments: *The Joy of Sex*, *The Joy of Lesbian Sex*, *The Joy of Gay Sex*, and *Where Did I Come From?*

<sup>6</sup>U.S. Const. amend. XIV.

<sup>7</sup>Colo. Const. art. II, § 25.

**18-7-504. Severability.** If any provision of this part 5 or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions of this part 5 which may be given effect without the invalid provision or application, and, to this end, the provisions of this part 5 are declared to be severable.

Even though we held that the word "accredited" was unconstitutional, we declined to strike down the entire exception provision in [Seven Thirty-Five East Colfax, Inc.](#) In contrast, the entire exception statute here [\*\*16] has been declared unconstitutional on equal protection grounds. Part of the rationale for our decision not to invalidate the exception statute in [Seven Thirty-Five East Colfax, Inc.](#) is equally applicable to this appeal. To sever the exemption provision from the Act would subject to criminal liability a class of facilities and institutions which the legislature sought to exclude from coverage and would be contrary to clearly expressed legislative intent. [Seven Thirty-Five East Colfax, Inc.](#), 697 P.2d 348, slip op. at 41. Accordingly, the qualified severability statute in the Act here does not provide a satisfactory basis upon which to uphold the validity of the remainder of its provisions. Moreover, we are persuaded that the General Assembly would not have adopted the Act if the display and exemption provisions had not been included in House Bill 1310.<sup>8</sup> Therefore, we conclude that the Act is unconstitutional.

[\*\*17] [\*787] The judgment of the district court is affirmed in part and reversed in part. This case is remanded to the trial court for further proceedings consistent with this opinion.

APPENDIX A

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<sup>8</sup>The evidence supporting this determination comes from two sources. We assume that the considerations which prompted the General Assembly to include the exemption provision in the obscenity statute as described in [People ex rel. Tooley v. Seven Thirty-Five East Colfax, Inc.](#), 697 P.2d 348, 358 n.13 (Colo. 1985), are identical. With regard to the display provision, our review of the legislative history indicates that House Bill 1310 was disapproved and vetoed by the Governor on June 5, 1981. The Governor's veto message reflects his position that the display provision was unconstitutional. Colo. H.J., 53rd Gen. Ass'y. 1st Sess. 2263 (June 5, 1981). Rather than deleting the display provision, both the House and the Senate passed the bill over the Governor's veto on June 29, 1981. Colo. H.J., 53rd Gen. Ass'y. 1st Sess. 2328-29 (June 29, 1981); Colo. S.J., 53rd Gen. Ass'y. 1st Sess. 2597-98 (June 29, 1981).

## PART 5

## SEXUALLY EXPLICIT MATERIALS HARMFUL TO CHILDREN

**18-7-501. Definitions.** As used in this part 5, unless the context otherwise requires:

(1) "Child" means a person under the age of eighteen years.

(2) "Harmful to children" means that quality of any description or representation, in whatever form, of sexually explicit nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:

(a) Taken as a whole, predominantly appeals to the prurient interest in sex of children;

(b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for children; and

(c) Is, when taken as a whole, lacking in serious literary, artistic, political, and scientific value for children.

(3) "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry, or both, of:

(a) The character and content of any material described herein which is reasonably **[\*\*18]** susceptible of examination; and

(b) The age of the child; however, an honest mistake shall constitute an excuse from liability hereunder if a reasonable bona fide attempt is made to ascertain the true age of such child.

(4) "Sadomasochistic abuse" means actual or explicitly simulated flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

(5) "Sexual conduct" means actual or explicitly simulated acts of masturbation, homosexuality, sexual intercourse, sodomy, or physical contact in an act of apparent sexual stimulation or gratification with a person's clothed or unclothed genitals, pubic area, buttocks or, if such be female, breast.

(6) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(7) "Sexually explicit nudity" means a state of undress so as to expose the human male or female genitals, pubic area, or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof **[\*\*19]** below the top of the areola, or the depiction of covered or uncovered male genitals in a discernibly turgid state.

**18-7-502. Unlawful acts.** (1) It shall be unlawful for any person knowingly to sell or loan for monetary consideration to a child:

(a) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to children; or

**[\*788]** (b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (a) of this subsection (1), or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to children.

(2) It shall be unlawful for any person knowingly to sell to a child an admission ticket or pass, or knowingly to admit a child to premises whereon there is exhibited a motion picture, show, or other presentation which, in whole or in part, depicts sexually explicit nudity, sexual conduct, or **[\*\*20]** sadomasochistic abuse and which is harmful to children or to exhibit any such motion picture at any such premises which are not designed to prevent viewing from any public way of such motion picture by children not admitted to any such premises.

(3) It shall be unlawful for any child falsely to represent to any person mentioned in subsection (1) or (2) of this section, or to his agent, that he is eighteen years of age or older, with the intent to procure any material set forth in subsection (1) of this section, or with the intent to procure his admission to any motion picture, show, or other presentation, as set forth in subsection (2) of this section.

(4) It shall be unlawful for any person knowingly to make a false representation to any person mentioned in subsection (1) or (2) of this section, or to his agent, that he is the parent or guardian of any juvenile, or that any child is eighteen years of age or older, with the intent to procure any material set forth in subsection (1) of this

section, or with the intent to procure any child's admission to any motion picture, show, or other presentation, as set forth in subsection (2) of this section.

(5) It shall be unlawful for any **[\*\*21]** person knowingly to exhibit, expose, or display in public at newsstands or any other business or commercial establishment frequented by children or where children are or may be invited as part of the general public:

(a) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which is harmful to children; or

(b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (a) of this subsection (5), or explicit verbal description or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to children.

(6) A violation of any provision of this section is a class 2 misdemeanor.

**18-7-503. Applicability.** (1) Nothing contained in this part 5 shall be construed to apply to:

(a) The purchase, distribution, exhibition, or loan of any work of art, book, magazine, or other printed or manuscript material by any accredited museum, library, school, or institution of higher education;

**[\*\*22]** (b) The exhibition or performance of any play, drama, tableau, or motion picture by any theatre, museum, school, or institution of higher education, either supported by public appropriation or which is an accredited institution supported by private funds.

**18-7-504. Severability.** If any provision of this part 5 or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions of this part 5 which may be given effect without the invalid provision or application, and, to this end, the provisions of this part 5 are declared to be severable.



**Addendum B**  
**Second Regular Session**  
**Seventy-first General Assembly**  
**STATE OF COLORADO**

**BILL (2)(H)**

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LLS NO. 18-####.## Jane Ritter x4342

**COMMITTEE BILL**

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**Statutory Revision Committee**

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**A BILL FOR AN ACT**

101      **CONCERNING THE REPEAL OF STATUTORY PROVISIONS RELATING TO**  
102               **SEXUALLY EXPLICIT MATERIALS HARMFUL TO CHILDREN THAT**  
103               **WERE RULED UNCONSTITUTIONAL BY THE COLORADO SUPREME**  
104               **COURT.**

---

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee.** The bill repeals part 5 of article 7 of title 18, Colorado Revised Statutes, concerning sexually explicit

**Shading denotes HOUSE amendment.** Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

materials harmful to children to reflect a 1985 decision made by the Colorado supreme court that held that the entire part was unconstitutional.

---

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

2 **SECTION 1.** In Colorado Revised Statutes, **repeal** part 5 of  
3 article 7 of title 18 as follows:

4 **18-7-501. Definitions.** ~~As used in this part 5, unless the context~~  
5 ~~otherwise requires:~~

6 (1) ~~"Child" means a person under the age of eighteen years.~~

7 (2) ~~"Harmful to children" means that quality of any description or~~  
8 ~~representation, in whatever form, of sexually explicit nudity, sexual~~  
9 ~~conduct, sexual excitement, or sadomasochistic abuse, when it:~~

10 (a) ~~Taken as a whole, predominantly appeals to the prurient~~  
11 ~~interest in sex of children;~~

12 (b) ~~Is patently offensive to prevailing standards in the adult~~  
13 ~~community as a whole with respect to what is suitable material for~~  
14 ~~children; and~~

15 (c) ~~Is, when taken as a whole, lacking in serious literary, artistic,~~  
16 ~~political, and scientific value for children.~~

17 (3) ~~"Knowingly" means having general knowledge of, or reason~~  
18 ~~to know, or a belief or ground for belief which warrants further inspection~~  
19 ~~or inquiry, or both, of:~~

20 (a) ~~The character and content of any material described herein~~  
21 ~~which is reasonably susceptible of examination; and~~

22 (b) ~~The age of the child; however, an honest mistake shall~~  
23 ~~constitute an excuse from liability hereunder if a reasonable bona fide~~  
24 ~~attempt is made to ascertain the true age of such child.~~

25 (4) ~~"Sadomasochistic abuse" means actual or explicitly simulated~~

1 ~~flagellation or torture by or upon a person who is nude or clad in~~  
2 ~~undergarments, a mask or bizarre costume, or the condition of being~~  
3 ~~fettered, bound, or otherwise physically restrained on the part of one so~~  
4 ~~clothed.~~

5 (5) ~~"Sexual conduct" means actual or explicitly simulated acts of~~  
6 ~~masturbation, homosexuality, sexual intercourse, sodomy, or physical~~  
7 ~~contact in an act of apparent sexual stimulation or gratification with a~~  
8 ~~person's clothed or unclothed genitals, pubic area, buttocks, or, if such be~~  
9 ~~female, breast.~~

10 (6) ~~"Sexual excitement" means the condition of human male or~~  
11 ~~female genitals when in a state of sexual stimulation or arousal.~~

12 (7) ~~"Sexually explicit nudity" means a state of undress so as to~~  
13 ~~expose the human male or female genitals, pubic area, or buttocks with~~  
14 ~~less than a full opaque covering, or the showing of the female breast with~~  
15 ~~less than a fully opaque covering of any portion thereof below the top of~~  
16 ~~the areola, or the depiction of covered or uncovered male genitals in a~~  
17 ~~discernibly turgid state.~~

18 **18-7-502. Unlawful acts.** (1) ~~It shall be unlawful for any person~~  
19 ~~knowingly to sell or loan for monetary consideration to a child:~~

20 (a) ~~Any picture, photograph, drawing, sculpture, motion picture~~  
21 ~~film, or similar visual representation or image of a person or portion of~~  
22 ~~the human body which depicts sexually explicit nudity, sexual conduct,~~  
23 ~~or sadomasochistic abuse and which, taken as a whole, is harmful to~~  
24 ~~children; or~~

25 (b) ~~Any book, pamphlet, magazine, printed matter however~~  
26 ~~reproduced, or sound recording which contains any matter enumerated in~~  
27 ~~paragraph (a) of this subsection (1), or explicit and detailed verbal~~

1 ~~descriptions or narrative accounts of sexual excitement, sexual conduct,~~  
2 ~~or sadomasochistic abuse and which, taken as a whole, is harmful to~~  
3 ~~children.~~

4 (2) ~~It shall be unlawful for any person knowingly to sell to a child~~  
5 ~~an admission ticket or pass, or knowingly to admit a child to premises~~  
6 ~~whereon there is exhibited a motion picture, show, or other presentation~~  
7 ~~which, in whole or in part, depicts sexually explicit nudity, sexual~~  
8 ~~conduct, or sadomasochistic abuse and which is harmful to children or to~~  
9 ~~exhibit any such motion picture at any such premises which are not~~  
10 ~~designed to prevent viewing from any public way of such motion picture~~  
11 ~~by children not admitted to any such premises.~~

12 (3) ~~It shall be unlawful for any child falsely to represent to any~~  
13 ~~person mentioned in subsection (1) or (2) of this section, or to his agent,~~  
14 ~~that he is eighteen years of age or older, with the intent to procure any~~  
15 ~~material set forth in subsection (1) of this section, or with the intent to~~  
16 ~~procure his admission to any motion picture, show, or other presentation,~~  
17 ~~as set forth in subsection (2) of this section.~~

18 (4) ~~It shall be unlawful for any person knowingly to make a false~~  
19 ~~representation to any person mentioned in subsection (1) or (2) of this~~  
20 ~~section, or to his agent, that he is the parent or guardian of any juvenile,~~  
21 ~~or that any child is eighteen years of age or older, with the intent to~~  
22 ~~procure any material set forth in subsection (1) of this section, or with the~~  
23 ~~intent to procure any child's admission to any motion picture, show, or~~  
24 ~~other presentation, as set forth in subsection (2) of this section.~~

25 (5) ~~It shall be unlawful for any person knowingly to exhibit,~~  
26 ~~expose, or display in public at newsstands or any other business or~~  
27 ~~commercial establishment frequented by children or where children are~~

1 or may be invited as part of the general public:

2 (a) ~~Any picture, photograph, drawing, sculpture, motion picture~~  
3 ~~film, or similar visual representation or image of a person or portion of~~  
4 ~~the human body which depicts sexually explicit nudity, sexual conduct,~~  
5 ~~or sadomasochistic abuse and which is harmful to children; or~~

6 (b) ~~Any book, pamphlet, magazine, printed matter however~~  
7 ~~reproduced, or sound recording which contains any matter enumerated in~~  
8 ~~paragraph (a) of this subsection (5), or explicit verbal descriptions or~~  
9 ~~narrative accounts of sexual excitement, sexual conduct, or~~  
10 ~~sadomasochistic abuse and which, taken as a whole, is harmful to~~  
11 ~~children.~~

12 (6) ~~A violation of any provision of this section is a class 2~~  
13 ~~misdemeanor.~~

14 **18-7-503. Applicability.** (1) ~~Nothing contained in this part 5~~  
15 ~~shall be construed to apply to:~~

16 (a) ~~The purchase, distribution, exhibition, or loan of any work of~~  
17 ~~art, book, magazine, or other printed or manuscript material by any~~  
18 ~~accredited museum, library, school, or institution of higher education;~~

19 (b) ~~The exhibition or performance of any play, drama, tableau, or~~  
20 ~~motion picture by any theatre, museum, school, or institution of higher~~  
21 ~~education, either supported by public appropriation or which is an~~  
22 ~~accredited institution supported by private funds.~~

23 **18-7-504. Severability.** ~~If any provision of this part 5 or the~~  
24 ~~application thereof to any person or circumstances is held invalid, such~~  
25 ~~invalidity shall not affect other provisions of this part 5 which may be~~  
26 ~~given effect without the invalid provision or application, and, to this end,~~  
27 ~~the provisions of this part 5 are declared to be severable.~~

1           **SECTION 2. Act subject to petition - effective date.** This act  
2 takes effect at 12:01 a.m. on the day following the expiration of the  
3 ninety-day period after final adjournment of the general assembly (August  
4 ■, 2018, if adjournment sine die is on May ■, 2018); except that, if a  
5 referendum petition is filed pursuant to section 1 (3) of article V of the  
6 state constitution against this act or an item, section, or part of this act  
7 within such period, then the act, item, section, or part will not take effect  
8 unless approved by the people at the general election to be held in  
9 November 2018 and, in such case, will take effect on the date of the  
10 official declaration of the vote thereon by the governor.

# OFFICE OF LEGISLATIVE LEGAL SERVICES

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## MEMORANDUM (2)(I)(i)<sup>1</sup>

TO: Statutory Revision Committee

FROM: Jane M. Ritter, Office of Legislative Legal Services

DATE: August 11, 2017

SUBJECT: Repeal outdated "legitimate"/"illegitimate" child terminology

### Summary and Analysis

Since the repeal and reenactment of the "Uniform Parentage Act"<sup>2</sup> in 1987, Colorado has gradually ceased referring to children born in this state as either "legitimate" or "illegitimate", depending upon the marital status of the child's parents. All children are considered "legitimate".

This is clearly established in section 19-4-103, C.R.S.:

**19-4-103. Relationship not dependent on marriage.** The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

However, a handful of outdated terminology references remain in statute, serving no purpose, legal or otherwise.

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<sup>1</sup> This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

<sup>2</sup> Article 4 of title 19, C.R.S.

## **Statutory Charge<sup>3</sup>**

Removing outdated references to "legitimate" or "illegitimate" children meets the Committee's statutory charge to remove antiquated language and to bring the law of this state into harmony with modern conditions.

## **Proposed Bill**

The attached bill draft<sup>4</sup> makes the necessary changes to remove outdated statutory references to "legitimate" or "illegitimate" as they applied to children.

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<sup>3</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions". § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

<sup>4</sup> See **Addendum A**.

**Addendum A**  
**Second Regular Session**  
**Seventy-first General Assembly**  
**STATE OF COLORADO**

**BILL (2)(I)(i)**

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LLS NO. 18-####.## Jane Ritter x4342

**COMMITTEE BILL**

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**Statutory Revision Committee**

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**A BILL FOR AN ACT**

101 **CONCERNING THE REMOVAL OF STATUTORY REFERENCES TO THE**  
102 **MARITAL STATUS OF PARENTS OF A CHILD.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee.** The bill removes or modernizes outdated statutory references to a "legitimate" or "illegitimate" child and a "child born out of wedlock". Colorado only recognizes parentage of a child and acknowledges that the parent and child relationship extends equally to every child and every parent, regardless of the marital status of

**Shading denotes HOUSE amendment.** Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

the parents.

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

2           **SECTION 1.** In Colorado Revised Statutes, **amend** 8-41-505 as  
3 follows:

4           **8-41-505. Minor children.** ~~Illegitimate minor children~~ A MINOR  
5 CHILD of a deceased putative father ~~shall be~~ IS entitled to compensation  
6 ~~in the same respect as a legitimate minor child of said decedent~~ when it  
7 is proved to the satisfaction of the director that the father, during his  
8 lifetime, has acknowledged ~~said children to be~~ THE CHILD AS his and has  
9 regularly contributed to ~~their~~ HIS OR HER support and maintenance for a  
10 reasonable period of time prior to his death.

11           **SECTION 2.** In Colorado Revised Statutes, 10-16-104, **amend**  
12 (6)(b) as follows:

13           **10-16-104. Mandatory coverage provisions - definitions -**  
14 **rules. (6) Dependent children.** (b) ~~No~~ AN entity described in paragraph  
15 ~~(a) of this subsection (6) shall~~ SUBSECTION (6)(a) OF THIS SECTION MUST  
16 NOT refuse to provide coverage for a dependent child under the health  
17 plan of the child's parent for the sole reason that: ~~the child:~~

18           (I) THE CHILD does not live in the home of the parent applying for  
19 the policy; or

20           (II) THE CHILD does not live in the insurer's service area,  
21 notwithstanding any other provision of law restricting enrollment to the  
22 persons who reside in an insurer's service area; or

23           (III) ~~Was born out of wedlock~~ THE CHILD'S PARENTS WERE NOT  
24 MARRIED AT THE TIME OF HIS OR HER BIRTH; or

25           (IV) THE CHILD is not claimed as a dependent on the CHILD'S

1 PARENT'S federal or state income tax return. ~~of the child's parent.~~

2 **SECTION 3.** In Colorado Revised Statutes, 13-25-126, **amend**

3 (1)(i) as follows:

4 **13-25-126. Genetic tests to determine parentage.** (1) (i) The  
5 presumption of ~~legitimacy~~ PARENTAGE of a child born during ~~wedlock~~ A  
6 MARRIAGE may be overcome, as provided in section 19-4-105 (2)(a),  
7 ~~C.R.S.~~, if the court finds that the conclusion of the experts conducting the  
8 tests, as disclosed by the evidence based upon the tests, shows that ~~the~~  
9 ~~husband or wife~~ ONE OF THE SPOUSES is not the parent of the child.

10 **SECTION 4.** In Colorado Revised Statutes, 14-2-110, **repeal** (2)  
11 as follows:

12 **14-2-110. Prohibited marriages.** (2) ~~Children born of a~~  
13 ~~prohibited marriage are legitimate.~~

14 **SECTION 5.** In Colorado Revised Statutes, **amend** 14-2-111 as  
15 follows:

16 **14-2-111. Putative spouse.** ~~Any~~ A person who has cohabited with  
17 another to whom he OR SHE is not legally married in the good faith belief  
18 that he OR SHE was married to that person is a putative spouse until  
19 knowledge of the fact that he OR SHE is not legally married terminates his  
20 OR HER status and prevents acquisition of further rights. ~~Children born of~~  
21 ~~putative spouses are legitimate.~~ A putative spouse acquires the rights  
22 conferred upon a legal spouse, including the right to maintenance  
23 following termination of his OR HER status, whether or not the marriage  
24 is prohibited under section 14-2-110, declared invalid, or otherwise  
25 terminated by court action. If there is a legal spouse or other putative  
26 spouses, rights acquired by a putative spouse do not supersede the rights  
27 of the legal spouse or those acquired by other putative spouses, but the

1 court shall apportion property, maintenance, and support rights among the  
2 claimants as appropriate in the circumstances and in the interests of  
3 justice.

4 **SECTION 6.** In Colorado Revised Statutes, **amend** 14-6-108 as  
5 follows:

6 **14-6-108. Citizenship - residence.** FOR ALL THE PURPOSES OF  
7 THIS ARTICLE 6, citizenship or residence once acquired in this state by any  
8 parent of ~~any legitimate or illegitimate~~ A child living in this state ~~shall be~~  
9 ~~deemed for all the purposes of this article to continue~~ CONTINUES until  
10 ~~such~~ THE child has arrived at the age of sixteen years, so long as ~~said~~ THE  
11 child continues to live in this state. In case of prosecution under this  
12 ~~article~~ ARTICLE 6 for the violation of any of the provisions of this ~~article~~  
13 ARTICLE 6, such citizenship or residence ~~shall likewise be deemed to~~  
14 ~~continue~~ CONTINUES so long as ~~such~~ THE spouse or parent resides in this  
15 state and is entitled to the support or maintenance provided for in section  
16 14-6-101.

17 **SECTION 7.** In Colorado Revised Statutes, 14-10-111, **repeal** (4)  
18 as follows:

19 **14-10-111. Declaration of invalidity.** (4) ~~Children born of a~~  
20 ~~marriage declared invalid are legitimate.~~

21 **SECTION 8.** In Colorado Revised Statutes, 14-10.5-102, **amend**  
22 (1) as follows:

23 **14-10.5-102. Legislative declaration.** (1) The general assembly  
24 ~~hereby~~ finds and declares that in most situations it is important to the  
25 healthy development of children that the children spend quality time with  
26 both parents. The general assembly further finds that due to dissolution  
27 of marriage, legal separation, and ~~out-of-wedlock births~~ CHILDREN BORN

1 TO SINGLE PARENTS, families are often divided. ~~and~~ As a result, many  
2 children do not have the opportunity to spend the time with both parents  
3 that a court may have determined is in their best interests.

4 **SECTION 9.** In Colorado Revised Statutes, 14-14-112, **amend**  
5 (2) introductory portion and (2)(c) as follows:

6 **14-14-112. Deductions for health insurance.** (2) THE OBLIGEE  
7 OR THE OBLIGEE'S REPRESENTATIVE SHALL MAIL notice of the deduction  
8 for health insurance ~~shall be mailed by first-class mail by the obligee or~~  
9 ~~the obligee's representative~~ to the obligor's employer. The notice of the  
10 deduction for health insurance ~~shall~~ MUST contain:

11 (c) A statement that the employer shall enroll an obligor's child in  
12 the health insurance plan in which the obligor is enrolled if the child can  
13 be covered under that plan or, if the obligor is not enrolled, in the least  
14 costly plan otherwise available to the child, regardless of ~~whether the~~  
15 ~~child was born out of wedlock~~, THE MARITAL STATUS OF THE CHILD'S  
16 PARENTS WHEN HE OR SHE WAS BORN OR WHETHER THE CHILD IS claimed  
17 as a dependent on the obligor's federal or state income tax return, lives  
18 with the obligor, or lives within the insurer's service area, notwithstanding  
19 any other provision of law restricting enrollment to persons who reside in  
20 an insurer's service area;

21 **SECTION 10.** In Colorado Revised Statutes, 19-5-203, **amend**  
22 (1)(f) as follows:

23 **19-5-203. Availability for adoption.** (1) A child may be  
24 available for adoption only upon:

25 (f) Written and verified consent of the parent or parents as defined  
26 in section 19-1-103 (82) in a stepparent adoption where the ~~child is~~  
27 ~~conceived and born out of wedlock~~ CHILD'S PARENTS WERE NOT MARRIED

1 AT THE TIME THE CHILD WAS CONCEIVED AND BORN;

2 **SECTION 11.** In Colorado Revised Statutes, 19-5-211, **amend**  
3 (1) as follows:

4 **19-5-211. Legal effects of final decree.** (1) After the entry of a  
5 final decree of adoption, the person adopted ~~shall be,~~ **to IS,** FOR all intents  
6 and purposes, the child of the petitioner. He ~~shall be~~ **OR SHE IS** entitled to  
7 all the rights and privileges and ~~be~~ **IS** subject to all the obligations of a  
8 child born ~~in lawful wedlock~~ to the petitioner.

9 **SECTION 12.** In Colorado Revised Statutes, **amend** 25-2-107 as  
10 follows:

11 **25-2-107. Reports of adoption, dissolution of marriage,**  
12 **parentage, and other court proceedings affecting vital statistics - tax**  
13 **on court action affecting vital statistics.** (1) The clerk of each court or,  
14 for parentage proceedings, the clerk of the court or a delegate child  
15 support enforcement unit, shall prepare a report containing ~~such~~  
16 information and using ~~such form~~ **FORMS** as may be prescribed and  
17 furnished by the state registrar with respect to every decree entered by the  
18 court with respect to parentage, ~~legitimacy,~~ adoption, change of name,  
19 dissolution of marriage, legal separation, or declaration of invalidity of  
20 marriage, and every decree amending or nullifying such a decree and also  
21 with respect to every decree entered pursuant to section 25-2-114. On or  
22 before the tenth day of each month, or more frequently if so requested by  
23 the state registrar, ~~such~~ **THE** clerk shall forward to the state registrar the  
24 reports for all such decrees entered during the preceding period.

25 (2) In order to help defray the maintenance of vital statistics  
26 records, ~~there shall be levied,~~ **AND** in addition to the tax levied under  
27 section 2-5-119, ~~C.R.S.,~~ a tax of three dollars **SHALL BE LEVIED** upon each

1 action with respect to parentage, ~~legitimacy~~, adoption, change of name,  
2 dissolution of marriage, legal separation, or declaration of invalidity of  
3 marriage that is filed in the office of each clerk of a court of record in this  
4 state on or after July 1, 1985. The tax ~~shall~~ MUST be paid at the time of ~~the~~  
5 ~~filing of such action~~ THE ACTION IS FILED, and the clerk shall keep ~~such~~  
6 THE tax in a separate fund and ~~shall~~ transmit ~~such~~ THE tax monthly to the  
7 state treasurer, who shall credit the same to the vital statistics records cash  
8 fund pursuant to section 25-2-121. A delegate child support enforcement  
9 unit acting pursuant to article 13 of title 26 ~~C.R.S., shall be~~ IS exempt  
10 from paying the tax authorized in this subsection (2).

11 **SECTION 13.** In Colorado Revised Statutes, 25-2-113, **amend**  
12 (1)(a) and (3) as follows:

13 **25-2-113. New certificates of birth following adoption -**  
14 **parentage determination.** (1) (a) THE STATE REGISTRAR SHALL PREPARE  
15 a new certificate of birth ~~shall be prepared by the state registrar~~ as to any  
16 person born in this state whenever he OR SHE receives, with respect to  
17 such a person, any of the following: A report concerning adoption  
18 ~~legitimacy~~, or parentage as required by section 25-2-107; or a report or  
19 certified copy of a decree concerning the adoption ~~legitimacy~~, or  
20 parentage of ~~such a~~ THE person from a court of competent jurisdiction  
21 outside this state; or a certified copy of the marriage certificate of the  
22 parents, together with a statement of the husband, executed after ~~such~~ THE  
23 marriage, in which the husband acknowledges paternity. ~~but with respect~~  
24 ~~to adoptions, no~~ THE STATE REGISTRAR SHALL NOT PREPARE A NEW  
25 certificate of birth ~~shall be prepared if the state registrar is requested not~~  
26 ~~to do so by~~ FOR AN ADOPTION IF the court that has decreed the adoption,  
27 ~~by an adoptive parent, or by the adopted person~~ HAS REQUESTED THAT

1 THE STATE REGISTRAR NOT PREPARE SUCH NEW CERTIFICATE OF BIRTH.  
2 Each new certificate ~~shall~~ MUST show all information shown on the  
3 original certificate of birth, except information for which substitute  
4 information is included as a result of the report or decree which prompts  
5 the preparation of the new certificate.

6 (3) Thereafter, the original certificate and evidence concerning  
7 adoption ~~legitimacy~~, or parentage ~~shall~~ MUST be sealed and ~~not be~~ IS NOT  
8 subject to inspection, except as provided in section 25-2-113.5 or in part  
9 3 of article 5 of title 19, ~~C.R.S.~~, by regulation, or upon order of a court of  
10 competent jurisdiction after the court has satisfied itself that the interests  
11 of the child or the child's descendants or the parents will best be served  
12 by opening ~~said~~ THE seal. The information obtained from opening ~~said~~  
13 THE seal may be withheld from public view or from being presented as  
14 evidence at the discretion of the judge.

15 **SECTION 14.** In Colorado Revised Statutes, 25-2-115, **amend**  
16 (1) as follows:

17 **25-2-115. Alteration of reports and certificates - amended**  
18 **reports and certificates.** (1) ~~No~~ A vital statistics report or certificate  
19 shall NOT ever be altered in any way except in accordance with this ~~article~~  
20 ARTICLE 2 and applicable ~~regulations~~ RULES. The date of alteration and a  
21 summary description of the evidence submitted in support of the  
22 alteration ~~shall~~ MUST be endorsed on or made a part of each vital statistics  
23 certificate that is altered. Every vital statistics report or certificate that is  
24 altered in any way ~~shall~~ MUST be marked "Amended" except the birth  
25 report or certificate of ~~any illegitimate~~ A child altered by the addition of  
26 a father's name pursuant to section 25-2-112 (3), in which case, upon  
27 request of the parents, the surname of the child shall be changed on the

1 report and certificate to that of the father, and also except additions and  
2 minor corrections made within one year after the date of the statistical  
3 event as may be specified by applicable ~~regulations~~ RULES. A child's  
4 surname may be changed upon affidavit of the parent that the change is  
5 being made to conform ~~such~~ THE child's surname to the parent's legal  
6 surname.

7 **SECTION 15.** In Colorado Revised Statutes, 26-2-705, **amend**  
8 (2)(c) as follows:

9 **26-2-705. Works program - purposes.** (2) The purposes of the  
10 works program are to:

11 (c) Prevent and reduce the incidence of ~~out-of-wedlock~~  
12 pregnancies OF WOMEN AND MEN WHO ARE NOT MARRIED and to establish  
13 annual numerical goals for preventing and reducing the incidences of  
14 these pregnancies;

15 **SECTION 16.** In Colorado Revised Statutes, 26-2-712, **amend**  
16 (5) introductory portion and (5)(d) as follows:

17 **26-2-712. State department duties - authority.** (5) **Oversight.**  
18 In connection with overseeing the works program, the SPECIFIC DUTIES OF  
19 THE state department ~~shall have the specific duties~~ ARE to:

20 (d) Establish statewide goals and monitor the state's progress  
21 toward meeting such goals for the reduction in the incidence of  
22 ~~out-of-wedlock~~ pregnancies OF WOMEN AND MEN WHO ARE NOT MARRIED;

23 **SECTION 17. Act subject to petition - effective date.** This act  
24 takes effect at 12:01 a.m. on the day following the expiration of the  
25 ninety-day period after final adjournment of the general assembly (August  
26     , 2018, if adjournment sine die is on May     , 2018); except that, if a  
27 referendum petition is filed pursuant to section 1 (3) of article V of the

1 state constitution against this act or an item, section, or part of this act  
2 within such period, then the act, item, section, or part will not take effect  
3 unless approved by the people at the general election to be held in  
4 November 2018 and, in such case, will take effect on the date of the  
5 official declaration of the vote thereon by the governor.

# OFFICE OF LEGISLATIVE LEGAL SERVICES

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## MEMORANDUM (2)(I)(ii)<sup>1</sup>

TO: Statutory Revision Committee

FROM: Jane M. Ritter, Office of Legislative Legal Services

DATE: August 11, 2017

SUBJECT: Modernized "rights of married women" statutory sections

### Summary and Analysis

Part 2 of article 2 of title 14, C.R.S., is titled "Rights of Married Women".<sup>2</sup> The language of the ten sections in this part 2 is outdated and, it can be argued, unnecessary because it is duplicative of modern legal doctrines. For instance, section 14-2-202, C.R.S., allows that a married woman "may sue and be sued"; section 14-2-203, C.R.S., allows that a married woman may own and operate a business or trade and that such business may be her sole property and used and invested in her own name; and section 14-2-208, C.R.S., allows that a wife "may contract".

Each of the sections currently grant certain rights to "married women":

- 14-2-201. Married woman's own property.
- 14-2-202. Married woman sue and be sued.
- 14-2-203. Rights in her separate business.
- 14-2-204. Not to affect marriage settlements.
- 14-2-205. Wife's land subject to judgment.
- 14-2-206. Husband cannot convey wife's lands.
- 14-2-207. Wife may convey lands as if sole.

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<sup>1</sup> This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

<sup>2</sup> § 14-2-201 et seq., C.R.S.

- 14-2-208. Wife may contract.
- 14-2-209. Loss of consortium.
- 14-2-210. Domicile – sex or marriage not a ban.

Two issues present with the existing language of this part 2. First, women and men, regardless of marital status, already have all the legal rights enumerated in each of the statutory sections in this part 2. Not only is there ample legal precedent for most of the rights enumerated, but there is significant case law supporting the precedent and doctrines. Second, by specifically referencing the "rights of married women", the various sections leave open the question of what rights, if any, are to be provided to spouses of same sex marriages.

### **Statutory Charge<sup>3</sup>**

Removing or modernizing outdated references to the "rights of married women" meets the Committee's statutory charge to remove antiquated language and to bring the law of this state into harmony with modern conditions.

### **Recommendation/Proposed Bill**

Should the Statutory Revision Committee accept staff recommendation to modernize the statutory references to the "rights of married women," two distinct draft bills are attached that address the issue. Bill (2)(I)(ii)(a)<sup>4</sup> simply repeals the entire part 2 of article 2 of title 14, C.R.S. Bill (2)(I)(ii)(b)<sup>5</sup> retains the sections in statute but modernizes the language so that references are to a "married person", "spouse", or "husband or wife" and modernizes the pronouns into gender neutral format. Additionally, staff would like to consult with other experts in family law and other fields regarding the effect of these changes.

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<sup>3</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions". § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

<sup>4</sup> See **Addendum A**.

<sup>5</sup> See **Addendum B**.

**Addendum A**  
**Second Regular Session**  
**Seventy-first General Assembly**  
**STATE OF COLORADO**

**BILL (2)(I)(ii)(a)**

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repeal.wpd*

LLS NO. 18-####.## Jane Ritter x4342

**COMMITTEE BILL**

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**Statutory Revision Committee**

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**A BILL FOR AN ACT**

101 **CONCERNING THE REPEAL OF STATUTORY SECTIONS CONCERNING**  
102 **"RIGHTS OF MARRIED WOMEN".**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee.** The bill repeals outdated statutory sections concerning the "rights of married women". The sections are unnecessary and duplicative of accepted modern legal doctrines.

**Shading denotes HOUSE amendment.** Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

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

2           **SECTION 1.** In Colorado Revised Statutes, **repeal** part 2 of  
3 article 2 of title 14 as follows:

4           **14-2-201. Married woman's own property.** ~~The property, real  
5 and personal, which any woman in this state owns at the time of her  
6 marriage, and the rents, issues, profits, and proceeds thereof, and any real,  
7 personal, or mixed property which comes to her by descent, devise, or  
8 bequest, or the gift of any person except her husband, including presents  
9 or gifts from her husband, such as jewelry, silver, tableware, watches,  
10 money, and wearing apparel, shall remain her sole and separate property,  
11 notwithstanding her marriage, and shall not be subject to the disposal of  
12 her husband or liable for his debts.~~

13           **14-2-202. Married woman may sue and be sued.** ~~Any woman,  
14 while married, may sue and be sued, in all matters having relation to her  
15 property, person, or reputation, in the same manner as if she were sole.~~

16           **14-2-203. Rights in her separate business.** ~~Any married woman  
17 may carry on any trade or business and perform any labor or services on  
18 her sole and separate account, and the earnings of any married woman  
19 from her trade, business, labor, or services shall be her sole and separate  
20 property and may be used and invested by her in her own name. Her  
21 property acquired by trade, business, and services and the proceeds  
22 thereof may be taken on any execution against her.~~

23           **14-2-204. Not to affect marriage settlements.** ~~Nothing in  
24 sections 14-2-201 to 14-2-206 shall invalidate any marriage settlement or  
25 contract.~~

26           **14-2-205. Wife's land subject to judgment.** ~~When any woman~~

1 against whom liability exists marries and has or acquires lands, judgment  
2 on such liability may be rendered against her and her husband jointly, to  
3 be levied on such lands only.

4 **14-2-206. Husband cannot convey wife's lands.** ~~The separate~~  
5 ~~deed of the husband shall convey no interest in the wife's lands.~~

6 **14-2-207. Wife may convey lands as if sole.** ~~Any woman, while~~  
7 ~~married, may bargain, sell, and convey her real and personal property and~~  
8 ~~enter into any contract in reference to the same as if she were sole.~~

9 **14-2-208. Wife may contract.** ~~Any woman, while married, may~~  
10 ~~contract debts in her own name and upon her own credit, and may execute~~  
11 ~~promissory notes, bonds, bills of exchange, and other instruments in~~  
12 ~~writing, and may enter into any contract the same as if she were sole; and,~~  
13 ~~in all cases where any suit or other legal proceedings are instituted against~~  
14 ~~her and any judgment, decree, or order therein is rendered or pronounced~~  
15 ~~against her, the same may be enforced by execution or other process~~  
16 ~~against her the same as if she were sole.~~

17 **14-2-209. Loss of consortium.** ~~In all actions for a tort by a~~  
18 ~~married woman, she shall have the same right to recover for loss of~~  
19 ~~consortium of her husband as is afforded husbands in like actions.~~

20 **14-2-210. Domicile - sex or marriage not a ban.** ~~The right of any~~  
21 ~~person to become a resident domiciled in the state of Colorado shall not~~  
22 ~~be denied or abridged because of sex or marital status, and the common~~  
23 ~~law rule that the domicile of a married woman is that of her husband shall~~  
24 ~~no longer be in effect in this state.~~

25 **SECTION 2. Act subject to petition - effective date.** This act  
26 takes effect at 12:01 a.m. on the day following the expiration of the  
27 ninety-day period after final adjournment of the general assembly (August

1     ■, 2018, if adjournment sine die is on May ■, 2018); except that, if a  
2     referendum petition is filed pursuant to section 1 (3) of article V of the  
3     state constitution against this act or an item, section, or part of this act  
4     within such period, then the act, item, section, or part will not take effect  
5     unless approved by the people at the general election to be held in  
6     November 2018 and, in such case, will take effect on the date of the  
7     official declaration of the vote thereon by the governor.

**Addendum B**  
**Second Regular Session**  
**Seventy-first General Assembly**  
**STATE OF COLORADO**

**BILL (2)(I)(ii)(b)**

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LLS NO. 18-####.## Jane Ritter x4342

**COMMITTEE BILL**

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**Statutory Revision Committee**

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**A BILL FOR AN ACT**

101 **CONCERNING MODERNIZATION OF LANGUAGE IN STATUTORY SECTIONS**  
102 **CONCERNING "RIGHTS OF MARRIED WOMEN".**

---

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee.** The bill modernizes the language in statutory sections concerning the "rights of married women" to include single and married men and women.

**Shading denotes HOUSE amendment.** Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

---

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** part 2 of  
3 article 2 of title 14 as follows:

4 **14-2-201. Property ownership.** The property, real and personal,  
5 ~~which any woman~~ THAT A PERSON in this state owns at the time of HIS OR  
6 her marriage, and the rents, issues, profits, and proceeds thereof, and any  
7 real, personal, or mixed property which comes to HIM OR her by descent,  
8 devise, or bequest, or the gift of any person except HIS OR her husband OR  
9 WIFE, including presents or gifts from HIS OR her husband OR WIFE, such  
10 as jewelry, silver, tableware, watches, money, and wearing apparel, ~~shall~~  
11 ~~remain~~ REMAINS HIS OR her sole and separate property, notwithstanding  
12 HIS OR her marriage, and ~~shall not be~~ IS NOT subject to the disposal of HIS  
13 OR her husband OR WIFE or liable for his OR HER debts.

14 **14-2-202. Married person may sue and be sued.** ~~Any woman~~ A  
15 PERSON, while married, may sue and be sued, in all matters having  
16 relation to HIS OR her property, person, or reputation, in the same manner  
17 as if HE OR she were ~~sole~~ UNMARRIED.

18 **14-2-203. Rights in separate business.** ~~Any~~ A married ~~woman~~  
19 PERSON may carry on any trade or business and perform any labor or  
20 services on HIS OR her sole and separate account, and the earnings of ~~any~~  
21 A married ~~woman~~ PERSON from HIS OR her trade, business, labor, or  
22 services ~~shall be~~ IS HIS OR her sole and separate property and may be used  
23 and invested by HIM OR her in HIS OR her own name. ~~Her~~ Property  
24 acquired by trade, business, and services BY THE MARRIED PERSON and the  
25 proceeds ~~thereof~~ may be taken on any execution against ~~her~~ THE PERSON.

26 **14-2-204. Not to affect marriage settlements.** Nothing in

1 sections 14-2-201 to 14-2-206 shall ~~invalidate~~ INVALIDATES any marriage  
2 settlement or contract.

3 **14-2-205. Married person's land subject to judgment.** When  
4 ~~any woman~~ A PERSON against whom liability exists marries and has or  
5 acquires lands, judgment on such liability may be rendered against HIM OR  
6 her and HIS OR her husband OR WIFE jointly, to be levied on such lands  
7 only.

8 **14-2-206. Spouse cannot convey other spouse's lands.** The  
9 separate deed of ~~the husband shall convey~~ A SPOUSE CONVEYS no interest  
10 in the ~~wife's~~ OTHER SPOUSE'S lands.

11 **14-2-207. Spouse may convey lands as if unmarried.** ~~Any~~  
12 ~~woman~~ A PERSON, while married, may bargain, sell, and convey HIS OR  
13 her real and personal property and enter into any contract in reference to  
14 the same as if HE OR she were ~~sole~~ UNMARRIED.

15 **14-2-208. Married person may contract.** ~~Any woman~~ A PERSON,  
16 while married, may contract debts in HIS OR her own name and upon HIS  
17 OR her own credit, and may execute promissory notes, bonds, bills of  
18 exchange, and other instruments in writing, and may enter into any  
19 contract the same as if HE OR she were ~~sole; and~~ UNMARRIED. In all cases  
20 where any suit or other legal proceedings are instituted against ~~her~~ THE  
21 MARRIED PERSON and any judgment, decree, or order ~~therein~~ is rendered  
22 or pronounced against ~~her~~ THE MARRIED PERSON, the same may be  
23 enforced by execution or other process against ~~her the same as if she were~~  
24 ~~sole~~ THE MARRIED PERSON AS IF HE OR SHE WERE UNMARRIED.

25 **14-2-209. Loss of consortium.** In all actions for a tort by a  
26 married ~~woman, she shall have the same right~~ PERSON, BOTH SPOUSES  
27 HAVE AN EQUAL RIGHT to recover for loss of consortium of ~~her husband~~

1 ~~as is afforded husbands in like actions~~ HIS OR HER SPOUSE.

2 **14-2-210. Domicile.** The right of ~~any~~ A person to become a  
3 resident domiciled in the state of Colorado ~~shall~~ MUST not be denied or  
4 abridged because of sex or marital status, and the common law rule that  
5 the domicile of a married ~~woman~~ PERSON is that of ~~her husband~~ ~~shall~~ HIS  
6 OR HER SPOUSE IS no longer ~~be~~ in effect in this state.

7 **SECTION 2. Act subject to petition - effective date.** This act  
8 takes effect at 12:01 a.m. on the day following the expiration of the  
9 ninety-day period after final adjournment of the general assembly (August  
10     , 2018, if adjournment sine die is on May     , 2018); except that, if a  
11 referendum petition is filed pursuant to section 1 (3) of article V of the  
12 state constitution against this act or an item, section, or part of this act  
13 within such period, then the act, item, section, or part will not take effect  
14 unless approved by the people at the general election to be held in  
15 November 2018 and, in such case, will take effect on the date of the  
16 official declaration of the vote thereon by the governor.

# OFFICE OF LEGISLATIVE LEGAL SERVICES

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## MEMORANDUM (2)(D)(iii)<sup>1</sup>

TO: Statutory Revision Committee

FROM: Jane M. Ritter, Office of Legislative Legal Services

DATE: August 11, 2017

SUBJECT: Unconstitutional provisions related to same-sex marriages in section 14-2-104, C.R.S.

### Summary and Analysis

This matter was brought to the staff's attention through a search of the Colorado Revised Statutes for references to statutory provisions that have been found unconstitutional by the Colorado or United States Supreme Court.

In this case, the United States Supreme Court ruled in *Obergefell v. Hodges*<sup>2</sup> that the right to marry is a fundamental right and that the Fourteenth Amendment requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out of state.

Section 14-2-104 (1)(b), C.R.S., states that a marriage in Colorado is only valid if it is between one man and one woman. Subsection (2) further states that a marriage performed outside of Colorado is not valid if it is not performed between one man and

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<sup>1</sup> This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

<sup>2</sup> *Obergefell v. Hodges*, 576 U.S. \_\_\_ (2015). Due to the length of the opinion, *Obergefell* is not attached here. It is available online at [https://www.supremecourt.gov/opinions/14pdf/14-556\\_3204.pdf](https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf)

one woman. Finally, subsection (3) refers to an otherwise valid common law marriage between one man and one woman:

**14-2-104. Formalities.** (1) Except as otherwise provided in subsection (3) of this section, a marriage is valid in this state if:

- (a) It is licensed, solemnized, and registered as provided in this part 1; and
- (b) It is only between one man and one woman.

(2) Notwithstanding the provisions of section 14-2-112, any marriage contracted within or outside this state that does not satisfy paragraph (b) of subsection (1) of this section shall not be recognized as valid in this state.

(3) Nothing in this section shall be deemed to repeal or render invalid any otherwise valid common law marriage between one man and one woman:

- (a) Entered into prior to September 1, 2006; or
- (b) Entered into on or after September 1, 2006, that complies with section 14-2-109.5.

## **Statutory Charge<sup>3</sup>**

Amending section 14-2-104, C.R.S., meets the Committee's statutory charge to remedy a defective section of law – one that has been declared unconstitutional by the United States Supreme Court.

## **Recommendation/Proposed Bill**

Should the Statutory Revision Committee accept staff recommendation to amend the statute to comply with the *Obergefell* decision, a draft bill is attached<sup>4</sup> that demonstrates the change. Additionally, staff would like to consult with other experts regarding the effect of this change and, more generally, the alignment of this statute with the *Obergefell* decision.

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<sup>3</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions". § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

<sup>4</sup> See **Addendum A**.

**Addendum A**  
**Second Regular Session**  
**Seventy-first General Assembly**  
**STATE OF COLORADO**

**BILL (2)(I)(iii)**

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LLS NO. 18-####.## Jane Ritter x4342

**COMMITTEE BILL**

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**Statutory Revision Committee**

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**A BILL FOR AN ACT**

101     **CONCERNING AMENDING STATUTORY PROVISIONS RELATING TO**  
102             **SAME-SEX MARRIAGES THAT WERE RULED UNCONSTITUTIONAL**  
103             **BY THE UNITED STATES SUPREME COURT.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee.** The bill amends provisions of statutes related to same-sex marriages to reflect a 2015 decision by the United States supreme court that ruled that the fourteenth amendment requires a state to license a marriage between 2 people of the same sex

**Shading denotes HOUSE amendment.** Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

and to recognize a marriage between 2 people of the same sex when their marriage was lawfully licensed and performed out of state.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 14-2-104 as  
3 follows:

4 **14-2-104. Formalities.** (1) Except as otherwise provided in  
5 subsection (3) of this section, a marriage is valid in this state if:

6 (a) It is licensed, solemnized, and registered as provided in this  
7 part 1; and

8 (b) It is ~~only~~ between one man and one woman OR TWO PERSONS  
9 OF THE SAME SEX.

10 (2) Notwithstanding the provisions of section 14-2-112, any  
11 marriage contracted within or outside this state that does not satisfy  
12 ~~paragraph (b) of subsection (1)~~ SUBSECTION (1)(b) of this section ~~shall~~ IS  
13 not be recognized as valid in this state.

14 (3) Nothing in this section ~~shall be~~ IS deemed to repeal or render  
15 invalid any otherwise valid common law marriage between one man and  
16 one woman OR TWO PERSONS OF THE SAME SEX:

17 (a) Entered into prior to September 1, 2006; or

18 (b) Entered into on or after September 1, 2006, that complies with  
19 section 14-2-109.5.

20 **SECTION 2. Act subject to petition - effective date.** This act  
21 takes effect at 12:01 a.m. on the day following the expiration of the  
22 ninety-day period after final adjournment of the general assembly (August  
23 ■, 2018, if adjournment sine die is on May ■, 2018); except that, if a  
24 referendum petition is filed pursuant to section 1 (3) of article V of the  
25 state constitution against this act or an item, section, or part of this act

1     within such period, then the act, item, section, or part will not take effect  
2     unless approved by the people at the general election to be held in  
3     November 2018 and, in such case, will take effect on the date of the  
4     official declaration of the vote thereon by the governor.



**OFFICE OF LEGISLATIVE LEGAL SERVICES**

**COLORADO GENERAL ASSEMBLY**

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**MEMORANDUM (2)(D)(iv)<sup>1</sup>**

TO: Statutory Revision Committee

FROM: Jane M. Ritter, Office of Legislative Legal Services

DATE: August 11, 2017

SUBJECT: Modernizing statutory references to "husband", "wife", "father", "mother", and related terms and phrases in the context of same-sex marriage in Colorado

**Summary and Analysis**

Staff became aware of this issue after preparing the memo and proposed bill concerning the United States Supreme Court ruling on same-sex marriages in *Obergefell v. Hodges*.<sup>2</sup> The issue here concerns the use of the specific terms "husband and wife", "husband or wife", "husband", "wife", "mother and father", "mother or father", "mother", or "father", etc., when, in the context of same-sex marriage, it is not always clear who is "husband", "wife", "mother", or "father".

The United States Supreme Court ruled in *Obergefell v. Hodges* that the right to marry is a fundamental right and that the Fourteenth Amendment requires a state to license a marriage between two people of the same sex and to recognize a marriage between

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<sup>1</sup> This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

<sup>2</sup> *Obergefell v. Hodges*, 576 U.S. \_\_\_\_ (2015). Due to the length of the opinion, *Obergefell* is not attached here. It is available online at [https://www.supremecourt.gov/opinions/14pdf/14-556\\_3204.pdf](https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf)

two people of the same sex when their marriage was lawfully licensed and performed out of state.<sup>3</sup>

A separate memo and proposed bill before the Committee addresses the single piece in statute that is considered unconstitutional under the *Obergefell* ruling. Regardless of the outcome of that bill with the Committee, and even if the General Assembly decides to keep Colorado's current statutory requirement that a valid marriage in Colorado must be between "one man and one woman"<sup>4</sup>, hundreds of same-sex marriages now exist in Colorado. The issue presented in this memo and the proposed bill is that the rest of our statutes do not accurately reflect that reality.

**Addendum A** lists the statutory sections that include a reference to a husband, wife, father, or mother, or some combination of those terms. The range of usage includes the Uniform Commercial Code, dissolution of marriage, paternity and assisted reproduction, the probate code, evidentiary spousal privilege, and K-12 school enrollment issues, to name just a few. In most of the references, when viewed through the context of a same-sex marriage, it is unclear, at best, who is being referred to.

For instance, the "spousal privilege" set forth in section 13-90-107, C.R.S., exists to protect persons who are married to one another, as well as partners in a civil union, from being forced to testify against the other spouse. The language of the statute, however, leaves it ambiguous if the privilege also applies to a same-sex married couple who refer to themselves as "husband and husband" or "wife and wife".

**13-90-107. Who may not testify without consent - definitions.**

(1) There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person shall not be examined as a witness in the following cases:

(a) (I) Except as otherwise provided in section 14-13-310 (4), C.R.S., **a husband shall not be examined for or against his wife without her consent nor a wife for or against her husband without his consent**; nor during the marriage or afterward shall either be examined without the consent of the other as to any communications made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, a criminal action or proceeding for a crime committed by one against the other, or a criminal action or proceeding against one or both spouses when the alleged offense occurred prior to

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<sup>3</sup> *Id.*

<sup>4</sup> § 14-2-104 (1)(b), C.R.S.

the date of the parties' marriage. However, this exception shall not attach if the otherwise privileged information is communicated after the marriage.

(II) The privilege described in this paragraph (a) does not apply to class 1, 2, or 3 felonies as described in section 18-1.3-401 (1)(a)(IV) and (1)(a)(V), C.R.S., or to level 1 or 2 drug felonies as described in section 18-1.3-1.3-401.5 (2)(a), C.R.S. In this instance, during the marriage or afterward, a **husband shall not be examined for or against his wife as to any communications intended to be made in confidence and made by one to the other during the marriage without his consent, and a wife shall not be examined for or against her husband** as to any communications intended to be made in confidence and made by one to the other without her consent.

(III) **Communications between a husband and wife are not privileged pursuant to this paragraph (a)** if such communications are made for the purpose of aiding the commission of a future crime or of a present continuing crime.

(IV) The burden of proving the existence of a marriage for the purposes of this paragraph (a) shall be on the party asserting the claim.

(V) Notice of the assertion of the marital privilege shall be given as soon as practicable but not less than ten days prior to assertion at any hearing.

(a.5) (I) Except as otherwise provided in section 14-13-310 (5), C.R.S., **a partner in a civil union shall not be examined for or against the other partner in the civil union without the other partner's consent**, nor during the civil union or afterward shall either be examined without the consent of the other as to any communications made by one to the other during the civil union; except that this exception does not apply to a civil action or proceeding by one against the other, a criminal action or proceeding for a crime committed by one against the other, or a criminal action or proceeding against one or both partners when the alleged offense occurred prior to the date of the parties' certification of the civil union. However, this exception shall not attach if the otherwise privileged information is communicated after the certification of the civil union.

(II) The privilege described in this paragraph (a.5) does not apply to class 1, 2, or 3 felonies as described in section 18-1.3-401 (1)(a)(IV) and (1)(a)(V), C.R.S., or to level 1 or 2 drug felonies as described in section 18-1.3-401.5 (2)(a), C.R.S. In this instance, during the civil union or afterward, a partner in a civil union shall not be examined for or against the other partner in the civil union as to any communications intended to be made in confidence and made by one to the other during the civil union without the other partner's consent.

(III) Communications between partners in a civil union are not privileged pursuant to this paragraph (a.5) if such communications are made for the purpose of aiding the commission of a future crime or of a present continuing crime.

(IV) The burden of proving the existence of a civil union for the purposes of this paragraph (a.5) shall be on the party asserting the claim.

(V) Notice of the assertion of the privilege described in this paragraph (a.5) shall be given as soon as practicable but not less than ten days prior to assertion at any hearing.

(VI) For the purposes of this paragraph (a.5), "partner in a civil union" means a person who has entered into a civil union established in accordance with the requirements of article 15 of title 14, C.R.S. (**Emphasis added**)

Similar ambiguity appears in the other statutory references listed in **Addendum A**. Some can be fixed by changing the term "husband" or "wife" to "spouse" or the term "father" or "mother" to "parent". Some of the references are a bit more nuanced and challenging, and those will be noted in the attached proposed bill.

## **Statutory Charge<sup>5</sup>**

Modernizing references to "husband and wife", "husband or wife", "husband", "wife", "mother and father", "mother or father", "mother", and "father", as well as similar terms, to reflect the existence of same-sex marriages in Colorado meets the Committee's statutory charge to remove antiquated language, to clarify language, and to bring the law of this state into harmony with modern conditions.

## **Recommendation/Proposed Bill**

Should the Statutory Revision Committee accept staff recommendation to modernize the statutory references to "husband", "father", and "mother" so they apply equally to opposite-sex and same-sex marriages, a draft bill is attached<sup>6</sup> that demonstrates how the statutes would be amended. Additionally, staff would like to consult with other

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<sup>5</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions". § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

<sup>6</sup> See **Addendum B**.

experts regarding the effect of these changes and, more generally, the alignment of these statutes with the *Obergefell* decision.

## Addendum A

### *Conforming amendments for "husband", "wife", "father", and "mother"*

4-9-203 (j)	Unif. Comm. Code
4-9-525 (2)	Unif. Comm. Code
5-3-205	Credit code
8-2-202	Damages in case of death
8-2-203 (1)(a)/(b)/(c)	Labor relations – who may sue
8-9-104	Assignment of wages/joinder
8-70-129	Employee security
8-70-142 (1)(h)	Wages
8-80-103	Assignment of benefits
10-4-601 (10)	Auto insurance policy regulations
10-16-201 (1)(c)	Sickness/accident coverage
12-36-133 (2)	Medical practice – postmortems
12-37.5-103 (2)	Parental Notification Act – definitions
12-47-303 (1)(b)	Alcohol code – transfer of ownership
13-21-103	Damages – selling liquor to intoxicated person
13-21-201 (1)(c)(I)/(II) and (1)(d)	Damages – death by negligence
13-21-203 (1)(a)	Damages – death by negligence

13-54-104 (3)(b)(I)(A)	Restrictions on garnishment
**13-90-107 (1)(a)(I)/(II)/(III)	Spousal privilege against testifying against "husband/wife". Provision in section for partners in civil union, but nothing for individuals in a same-sex marriage
13-90-108	Witnesses/testimony
14-2-201 et seq.	"Rights of Married Women"
14-5-316 (i)	Unif. Interstate Family Support Act
14-6-101 (1)	Domestic law – nonsupport
14-6-105	Domestic law – desertion/nonsupport
14-6-110	Domestic law/nonsupport
14-10-106 (1)(c)(I)/(II)	Dissolution of marriage ("child of marriage")
14-10-107 (2)(d)	Dissolution of marriage
14-10-120.3 (1)(a)	Dissolution of marriage
14-12-104 (1)(b)/(c)	Dissolution of marriage/counseling
14-13-310 (4)	Unif. Child Custody Jurisdiction/Enforcement
15-1.5-106 (1)	Colo. Uniform Custodial Trust Act
15-11-120 (1)(c)(I), (4)	Assisted reproduction
15-11-712 (4)	Probate Code – intestate succession
15-11-802 (1)	Probate Code – intestate succession

15-11-804 (1)(b)	Probate Code – intestate succession
15-12-713 (1)	Sales/encumbrances
17-26-106	Prisoners – holding of male & female
18-3-102 (4)	Spousal privilege – homicide
18-3-411 (5)	Spousal privilege – sexual offenses
18-6-401 (3)	Spousal privilege – child abuse
18-6-401.1 (5)	Spousal privilege-wrongs to children
18-7-201	Prostitution
18-7-205	Prostitution
18-7-406	Prostitution
19-1-103 (44.5), (56), (56.5)	Children's Code – def. of "parent"/"grandparent"
19-3-311 (2)	Spousal privilege – child abuse
19-4-106 (1), (3), (4), (5)	Assisted reproduction
19-4-108	Unif. Parentage Act – statute limitations
19-4-110 (2 versions)	Unif. Parentage Act – parties
22-1-127 (1)(c)	School enrollment definitions
22-33-102 (10)	School attendance – def. of "parent"
24-6-202 multiple	Income disclosure

25-2-112 (2), IP(3)(a), (3)(a)(II)/(III)/(IV)	Birth certificates
29-11.8-105 (6)	Licensing/escort services
30-28-101 (10)(c)(VII)	County planning/bldg. codes
38-35-118 (1)	Conveyance of homestead
38-36-104 (1)(b)	Torrens Title Registration Act
38-36-107	Torrens – form of application
38-36-134	Torrens Title Registration Act
38-36-139	Torrens Title Registration Act
38-36-157	Torrens Title Registration Act
38-41-208 (1), (2)	Homestead exemptions
39-29-114 (3)	Members of group-tax purposes
40-33-101	Damages for injury to employee
40-33-108	Damages for injury – rt of action survives



**Addendum B**  
**Second Regular Session**  
**Seventy-first General Assembly**  
**STATE OF COLORADO**

**BILL (2)(I)(iv)**

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LLS NO. 18-####.## Jane Ritter x4342

**COMMITTEE BILL**

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**Statutory Revision Committee**

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**A BILL FOR AN ACT**

101      **CONCERNING AMENDING STATUTORY PROVISIONS THAT CONTAIN**  
102               **TERMINOLOGY DESCRIBING INDIVIDUALS BY THEIR MARITAL**  
103               **STATUS THAT CAN BE AMBIGUOUSLY CONSTRUED IN THE**  
104               **CONTEXT OF A SAME-SEX MARRIAGE.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Statutory Revision Committee.** The bill amends statutory provisions that contain terms such as "husband", "wife", "father", and

**Shading denotes HOUSE amendment.** Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

"mother" that have unclear meaning or can be ambiguously construed when placed in the context of same-sex marriages.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 5-3-205 as  
3 follows:

4 **5-3-205. Use of multiple agreements.** A creditor may not use  
5 multiple agreements with respect to a single consumer credit transaction  
6 for the purpose of obtaining a higher finance charge than would otherwise  
7 be permitted by this code or to avoid disclosure of an annual percentage  
8 rate pursuant to the provisions on disclosure and advertising. Dividing a  
9 single consumer credit transaction between a husband and wife shall be  
10 MARRIED SPOUSES IS presumed to be a violation of this section. The  
11 excess amount of finance charge provided for in agreements in violation  
12 of this section is an excess charge for the purposes of the provisions on  
13 the effect of violations on rights of parties contained in section 5-5-201  
14 and the provisions on civil actions by the administrator contained in  
15 section 5-6-114.

16 **SECTION 2.** In Colorado Revised Statutes, **amend** 8-2-202 as  
17 follows:

18 **8-2-202. Damages in case of death - limit.** If the death of a  
19 ~~person~~ A PERSON'S DEATH is caused by an act of carelessness, omission of  
20 duty, or negligence as provided in section 8-2-201, the corporation or  
21 individual who would have been liable if the death had not ensued shall  
22 ~~be~~ IS liable to an action for damages regardless of the death of the party  
23 injured. In each such case the jury may award such damages as it deems  
24 fair and just, with reference to the necessary injury resulting from such  
25 THE death, to the parties who may be entitled to sue under this part 2;

1 except that, if the decedent ~~left neither~~ DID NOT LEAVE a ~~widow, widower,~~  
2 ~~or~~ SURVIVING SPOUSE, minor children, ~~nor~~ OR a dependent ~~father or~~  
3 ~~mother~~ PARENT, the damages recoverable in any such action shall not  
4 exceed forty-five thousand dollars.

5 **SECTION 3.** In Colorado Revised Statutes, 8-2-203, **amend** (1)  
6 introductory portion, (1)(a), (1)(b), and (1)(c) as follows:

7 **8-2-203. Who may sue - consolidation of actions.** (1) Every  
8 ~~such action shall~~ ACTION in case of death SHALL be maintained:

9 (a) By the ~~husband or wife~~ SURVIVING SPOUSE of the deceased;

10 (b) If there is no ~~husband or wife~~ SURVIVING SPOUSE or if ~~he or~~  
11 ~~she~~ THE SURVIVING SPOUSE fails to sue within one year after such death,  
12 by the children of the deceased or their descendants;

13 (c) If ~~such~~ THE deceased is a minor or unmarried, without issue,  
14 by ~~the father or mother~~ A PARENT or by both PARENTS jointly; or

15 **SECTION 4.** In Colorado Revised Statutes, **amend** 8-9-104 as  
16 follows:

17 **8-9-104. Joinder of spouses in assignment - acknowledgment.**

18 ~~No~~ AN assignment of wages, except for child support, not already earned  
19 at the time of the assignment or any sum to become due the assignor after  
20 the date of ~~such~~ THE assignment ~~shall be~~ IS NOT valid unless, if the  
21 assignor is married and residing with his OR HER spouse, ~~such~~ THE spouse  
22 joins in and signs ~~such~~ THE assignment and ~~such~~ THE assignment is duly  
23 acknowledged before a notary public or some other officer authorized by  
24 the laws of Colorado to take acknowledgments.

25 **SECTION 5.** In Colorado Revised Statutes, **amend** 8-70-129 as  
26 follows:

27 **8-70-129. Employment does not include - spouse - minor.**

1 "Employment" does not include services performed by an individual in  
2 the employ of his OR HER spouse and service performed by a child under  
3 the age of twenty-one in the employ of his father or mother ONE OR BOTH  
4 OF HIS OR HER PARENTS.

5 **SECTION 6.** In Colorado Revised Statutes, 8-70-142, **amend**  
6 (1)(h) as follows:

7 **8-70-142. Wages - remuneration not included as wages.**

8 (1) "Wages" does not include:

9 (h) Any contribution, payment, or service provided by an  
10 employer which may be excluded from the gross income of an employee,  
11 his OR HER spouse, or his OR HER dependents under the provisions of **26**  
12 **U.S.C. section 120** <{*check status of this section. existing? repealed?*}>

13 (relating to amounts received under qualified group legal services plans);

14 **SECTION 7.** In Colorado Revised Statutes, **amend** 8-80-103 as  
15 follows:

16 **8-80-103. Assignment of benefits void - exemptions.** Any  
17 assignment, pledge, or encumbrance of any right to benefits which are or  
18 may become due or payable under articles 70 to 82 <{*Do articles 83 and*  
19 *84 need to be added?*}> of this title ~~shall be~~ TITLE 8 IS void. Except as  
20 provided in the "Colorado Child Support Enforcement Procedures Act",  
21 article 14 of title 14, ~~C.R.S.~~, such rights to benefits ~~shall be~~ ARE exempt  
22 from levy, execution, attachment, or any other remedy provided for the  
23 collection of debt. Benefits received by any individual, so long as they are  
24 not mingled with other funds of the recipient, ~~shall be~~ ARE exempt from  
25 any remedy for the collection of all debts except debts incurred for  
26 necessities furnished to ~~such~~ THE individual, his OR HER spouse, or HIS OR  
27 HER dependents during the time when ~~such~~ THE individual was

1 unemployed, or child support debt or arrearages as specified in article 14  
2 of title 14. ~~C.R.S.~~ Any waiver of any exemption provided for in this  
3 section ~~shall be~~ IS void.

4 **SECTION 8.** In Colorado Revised Statutes, 10-4-601, **amend**  
5 (10) introductory portion as follows:

6 **10-4-601. Definitions.** As used in this part 6, unless the context  
7 otherwise requires:

8 (10) "Policy" means an automobile insurance policy providing  
9 coverage for all or any of the following coverages: Collision,  
10 comprehensive, bodily injury liability, property damage liability, medical  
11 payments, and uninsured motorist coverage, or a combination automobile  
12 policy providing bodily injury liability, property damage liability, medical  
13 payments, uninsured motorist, and physical damage coverage, delivered  
14 or issued for delivery in this state, insuring a single individual, or ~~husband~~  
15 ~~and wife~~ EITHER SPOUSE OF A MARRIAGE, or family members residing in  
16 the same household, as named insured, and under which the insured  
17 vehicles ~~therein~~ designated are of the following types only:

18 **SECTION 9.** In Colorado Revised Statutes, 10-16-201, **amend**  
19 (1) introductory portion and (1)(c) as follows:

20 **10-16-201. Form and content of individual sickness and**  
21 **accident insurance policies.** (1) ~~No such~~ A policy ~~shall~~ MUST NOT be  
22 delivered or issued for delivery in this state unless:

23 (c) It purports to insure only one person, except as provided in  
24 sections 10-16-214 and 10-16-215, and except that a policy or contract  
25 may be issued upon the application of an adult member of a family, who  
26 ~~shall be~~ IS deemed the policyholder, covering members of any one family,  
27 including ~~husband, wife~~ A SPOUSE, dependent children or any children

1 under the age of nineteen, and other dependents living with the family;  
2 and

3 **SECTION 10.** In Colorado Revised Statutes, 12-36-133, **amend**  
4 (2) as follows:

5 **12-36-133. Postmortem examinations by licensee - definition**  
6 **- application of this section.** (2) Consent for a licensee to conduct a  
7 postmortem examination of the body of a deceased person ~~shall be~~ IS  
8 deemed sufficient when given by whichever one of the following assumes  
9 custody of the body for purposes of burial: ~~Father, mother, husband, wife~~  
10 A PARENT, SPOUSE, child, guardian, next of kin, or, in the absence of any  
11 of the foregoing, a friend or a person charged by law with the  
12 responsibility for burial. If two or more such persons assume custody of  
13 the body, the consent of one of them ~~shall be deemed~~ IS sufficient.

14 **SECTION 11.** In Colorado Revised Statutes, 12-37.5-103,  
15 **amend** the introductory portion and (2) as follows:

16 **12-37.5-103. Definitions.** As used in this ~~article~~ ARTICLE 37.5,  
17 unless the context otherwise requires:

18 (2) "Parent" means the natural or adoptive ~~mother and father~~  
19 PARENT OR PARENTS of the minor who is pregnant, if they are both living;  
20 one parent of the minor if only one is living, or if the other parent cannot  
21 be served with notice, as hereinafter provided; or the court-appointed  
22 guardian of ~~such~~ THE minor if she has one or any foster parent to whom  
23 ~~the~~ HER care and custody of ~~such minor shall have~~ HAS been assigned by  
24 any agency of the state or county making ~~such~~ THE placement.

25 **SECTION 12.** In Colorado Revised Statutes, 12-47-303, **amend**  
26 (1)(b) as follows:

27 **12-47-303. Transfer of ownership and temporary permits.**

1 (1) (b) When a license has been issued to a ~~husband and wife~~ SPOUSE IN  
2 A MARRIAGE, or to general or limited partners, the death of a spouse or  
3 partner ~~shall~~ DOES not require the surviving spouse or partner to obtain a  
4 new license. All rights and privileges granted under the original license  
5 ~~shall~~ continue in full force and effect as to such survivors for the balance  
6 of the license period.

7 **SECTION 13.** In Colorado Revised Statutes, **amend** 13-21-103  
8 as follows:

9 **13-21-103. Damages for selling liquor to intoxicated person.**  
10 ~~Every husband, wife, child, parent~~ A PARENT, CHILD, SPOUSE, guardian,  
11 employer, or other person who is injured in person, or property, or means  
12 of support by ~~any~~ AN intoxicated person, or in consequence of ~~the~~ A  
13 PERSON'S intoxication, ~~of any person,~~ has a right of action, in his OR HER  
14 name, against any person who, by selling or giving away intoxicating  
15 liquors to ~~any habitual drunkard~~ A PERSON WHO IS HABITUALLY  
16 INTOXICATED OR WHO HAS AN ALCOHOL USE DISORDER, causes the  
17 intoxication, in whole or in part, of ~~such habitual drunkard and~~ THE  
18 INTOXICATED PERSON. All damages recovered by a minor under this  
19 section ~~shall~~ MUST be paid either to the minor or to his OR HER parent,  
20 guardian, or next friend, as the court directs. The unlawful sale or giving  
21 away of intoxicating liquors works a forfeiture of all rights of the lessee  
22 or tenant under any lease or contract of rent upon the premises. ~~No~~  
23 Liability ~~shall~~ DOES NOT accrue against any such person as provided  
24 unless the ~~husband, wife, child,~~ parent, CHILD, SPOUSE, guardian, ~~or~~  
25 employer, OR OTHER PERSON first, by written or printed notice, has  
26 notified ~~such~~ THE person, or his OR HER agents or employees, not to sell  
27 or give away any intoxicating liquors to ~~any habitual drunkard~~ A PERSON

1 WHO IS HABITUALLY INTOXICATED OR HAS AN ALCOHOL USE DISORDER.

2 **SECTION 14.** In Colorado Revised Statutes, 13-21-201, **amend**  
3 (1) introductory portion, (1)(c)(I), (1)(c)(II), and (1)(d) as follows:

4 **13-21-201. Damages for death - definition.** (1) When ~~any~~ A  
5 person dies from any injury resulting from or occasioned by the  
6 negligence, unskillfulness, or criminal intent of any officer, agent,  
7 servant, or employee while running, conducting, or managing any  
8 locomotive, car, or train of cars, or of any driver of any coach or other  
9 conveyance operated for the purpose of carrying either freight or  
10 passengers for hire while in charge of the same as a driver, and when any  
11 passenger dies from an injury resulting from or occasioned by any defect  
12 or insufficiency in any railroad or any part ~~thereof~~ OF THE RAILROAD, or  
13 in any locomotive or car, or other conveyance operated for the purpose of  
14 carrying either freight or passengers for hire, the corporation or  
15 individuals in whose employ ~~any such~~ THE officer, agent, servant,  
16 employee, master, pilot, engineer, or driver is at the time ~~such~~ THE injury  
17 is committed, or who owns any such railroad, locomotive, car, or other  
18 conveyance operated for the purpose of carrying either freight or  
19 passengers for hire at the time ~~any such~~ OF THE injury, ~~is received~~, and  
20 resulting from or occasioned by the defect or insufficiency ~~above~~  
21 described ~~shall forfeit and pay~~ IN SUBSECTION (1)(c) OF THIS SECTION  
22 FORFEITS AND PAYS for every person and passenger ~~so injured the~~ A sum  
23 ~~of~~ not exceeding ten thousand dollars and not less than three thousand  
24 dollars, which may be sued for and recovered:

25 (c) (I) If the deceased is an unmarried minor without descendants  
26 or an unmarried adult without descendants and without a designated  
27 beneficiary pursuant to article 22 of title 15, ~~C.R.S.~~, by ~~the father or~~

1 ~~mother who~~ ONE OR BOTH OF THE DECEASED'S PARENTS may join in the  
2 suit. Except as provided in ~~subparagraphs (II) and (III) of this paragraph~~  
3 ~~(c), the father and mother shall~~ SUBSECTION (1)(c)(II) AND (1)(c)(III) OF  
4 THIS SECTION, THE PARENT OR PARENTS OF THE DECEASED have an equal  
5 interest in the judgment, or if either of them is dead, then the surviving  
6 parent ~~shall have~~ HAS an exclusive interest in the judgment.

7 (II) For cases in which the ~~father and mother~~ DECEASED'S PARENTS  
8 are divorced, separated, or living apart, a motion may be filed by either  
9 ~~the father or the mother~~ PARENT prior to trial requesting the court to  
10 apportion fairly any judgment awarded in the case. Where such a motion  
11 is filed, the court shall conduct a post-judgment hearing at which the  
12 ~~father and the mother shall~~ DECEASED'S PARENTS have the opportunity to  
13 be heard and to produce evidence regarding each parent's relationship  
14 with the deceased child.

15 (d) For purposes of this section, ~~"father or mother"~~ "PARENT"  
16 means a natural parent of the deceased or a parent of the deceased by  
17 adoption. ~~"Father or mother"~~ "PARENT" does not include a person whose  
18 parental rights concerning the deceased were terminated pursuant to the  
19 provisions of title 19. ~~C.R.S.~~

20 **SECTION 15.** In Colorado Revised Statutes, 13-21-203, **amend**  
21 (1)(a) as follows:

22 **13-21-203. Limitation on damages.** (1) (a) All damages  
23 accruing under section 13-21-202 ~~shall~~ MUST be sued for and recovered  
24 by the same parties and in the same manner as provided in section  
25 13-21-201. ~~and~~ In every such action, the jury may give such damages as  
26 they ~~may~~ deem fair and just, with reference to the necessary injury  
27 resulting from such death, including damages for noneconomic loss or

1 injury, as defined in section 13-21-102.5, and subject to the limitations of  
2 this section. ~~and including~~ THE JURY MAY INCLUDE within noneconomic  
3 loss or injury damages for grief, loss of companionship, pain and  
4 suffering, and emotional stress, to the surviving parties who may be  
5 entitled to sue. ~~and also having regard to the~~ THE JURY MAY INCLUDE  
6 mitigating or aggravating circumstances attending any such wrongful act,  
7 neglect, or default; except that, if the decedent ~~left neither a widow, a~~  
8 ~~widower, minor children, nor a dependent father or mother~~ WAS NOT  
9 SURVIVED BY A SPOUSE, MINOR CHILDREN, OR A DEPENDENT PARENT, the  
10 damages recoverable in any such action ~~shall~~ MUST not exceed the  
11 limitations for noneconomic loss or injury set forth in section  
12 13-21-102.5, unless the wrongful act, neglect, or default causing death  
13 constitutes a felonious killing, as defined in section 15-11-803 (1)(b)  
14 ~~€R.S.~~, and as determined in the manner described in section 15-11-803  
15 (7), ~~€R.S.~~, in which case there ~~shall be~~ IS no limitation on the damages  
16 for noneconomic loss or injury recoverable in such action. ~~No action shall~~  
17 AN ACTION MUST NOT be brought, and ~~no recovery shall~~ MUST NOT be had  
18 under ~~both section~~ sections 13-21-201 and ~~section~~ 13-21-202. ~~and~~ In all  
19 cases, the plaintiff is required to elect under which section he or she will  
20 proceed. There ~~shall~~ MUST be only one civil action under this part 2 for  
21 recovery of damages for the wrongful death of any one decedent.  
22 Notwithstanding anything in this section or in section 13-21-102.5 to the  
23 contrary, there ~~shall be~~ IS no recovery under this part 2 for noneconomic  
24 loss or injury in excess of two hundred fifty thousand dollars, unless the  
25 wrongful act, neglect, or default causing death constitutes a felonious  
26 killing, as defined in section 15-11-803 (1)(b) ~~€R.S.~~, and as determined  
27 in the manner described in section 15-11-803 (7). ~~€R.S.~~

1           **SECTION 16.** In Colorado Revised Statutes, 13-54-104, **amend**  
2           **(3)(b)(I) introductory portion and (3)(b)(I)(A) as follows:**

3           **13-54-104. Restrictions on garnishment and levy under**  
4           **execution or attachment - definitions.** (3) (b) (I) The maximum part of  
5           the aggregate disposable earnings of an individual for any workweek  
6           ~~which is~~ subject to garnishment or levy under execution or attachment to  
7           enforce any order for the support of any person ~~shall~~ **MUST** not exceed:

8           (A) Where such individual is supporting his OR HER spouse or  
9           dependent child, other than a spouse or child with respect to whose  
10          support such order is used, fifty percent of ~~such~~ **THE** individual's  
11          disposable earnings for that week; and

12          **SECTION 17.** In Colorado Revised Statutes, 13-90-107, **amend**  
13          **(1)(a) and (1)(a.5) as follows:**

14          **13-90-107. Who may not testify without consent - privileges -**  
15          **definitions.** (1) There are particular relations in which it is the policy of  
16          the law to encourage confidence and to preserve it inviolate; therefore, a  
17          person shall not be examined as a witness in the following cases:

18          (a) (I) Except as otherwise provided in section 14-13-310 (4),  
19          ~~C.R.S., a husband~~ **A SPOUSE** shall not be examined for or against his ~~wife~~  
20          **OR HER SPOUSE** without ~~her~~ **THE SPOUSE'S** consent. ~~nor a wife for or~~  
21          ~~against her husband without his consent; nor~~ During the marriage or  
22          afterward, **NEITHER SPOUSE** shall ~~either~~ be examined without the consent  
23          of the other as to any communications made by one to the other during the  
24          marriage. ~~but~~ This exception does not apply to a civil action or  
25          proceeding by one **SPOUSE** against the other **SPOUSE**, a criminal action or  
26          proceeding for a crime committed by one **SPOUSE** against the other  
27          **SPOUSE**, or a criminal action or proceeding against one or both spouses

1 when the alleged offense occurred prior to the date of the parties'  
2 marriage. However, this exception ~~shall~~ DOES not attach if the otherwise  
3 privileged information is communicated after the marriage.

4 (II) The privilege described in this ~~paragraph (a)~~ SUBSECTION  
5 (1)(a) does not apply to class 1, CLASS 2, or CLASS 3 felonies as described  
6 in section 18-1.3-401 (1)(a)(IV) and (1)(a)(V), ~~C.R.S.~~, or to level 1 or  
7 LEVEL 2 drug felonies as described in section 18-1.3-401.5 (2)(a). ~~C.R.S.~~  
8 In this instance, during the marriage or afterward, a ~~husband~~ SPOUSE shall  
9 not be examined for or against his ~~wife~~ OR HER SPOUSE as to any  
10 communications intended to be made in confidence and made by one  
11 SPOUSE to the other SPOUSE during the marriage without ~~his~~ THE SPOUSE'S  
12 consent. ~~and a wife shall not be examined for or against her husband as~~  
13 ~~to any communications intended to be made in confidence and made by~~  
14 ~~one to the other without her consent.~~

15 (III) Communications between a ~~husband and wife~~ SPOUSES are  
16 not privileged pursuant to this ~~paragraph (a)~~ SUBSECTION (1)(a) if ~~such~~  
17 THE communications are made for the purpose of aiding the commission  
18 of a future crime or of a present continuing crime.

19 (IV) The burden of proving the existence of a marriage for the  
20 purposes of this ~~paragraph (a)~~ ~~shall be~~ SUBSECTION (1)(a) IS on the party  
21 asserting the claim.

22 (V) Notice of the assertion of the ~~marital~~ SPOUSAL privilege shall  
23 be given as soon as practicable but not less than ten days prior to assertion  
24 at any hearing.

25 (VI) FOR THE PURPOSES OF THIS SUBSECTION (1)(a), "SPOUSE"  
26 MEANS A PERSON WHO HAS ENTERED INTO A LEGAL MARRIAGE.

27 (a.5) (I) Except as otherwise provided in section 14-13-310 (5),

1     ~~C.R.S.~~, a partner in a civil union shall not be examined for or against the  
2     other partner in the civil union without the other partner's consent. ~~nor~~  
3     During the civil union or afterward, NEITHER PARTNER shall ~~either~~ be  
4     examined without the consent of the other as to any communications  
5     made by one to the other during the civil union. ~~except that~~ This  
6     exception does not apply to a civil action or proceeding by one against the  
7     other, a criminal action or proceeding for a crime committed by one  
8     against the other, or a criminal action or proceeding against one or both  
9     partners when the alleged offense occurred prior to the date of the parties'  
10    certification of the civil union. However, this exception ~~shall~~ DOES not  
11    attach if the otherwise privileged information is communicated after the  
12    certification of the civil union.

13           (II) The privilege described in this ~~paragraph (a.5)~~ SUBSECTION  
14    (1)(a.5) does not apply to class 1, CLASS 2, or CLASS 3 felonies as  
15    described in section 18-1.3-401 (1)(a)(IV) and (1)(a)(V), ~~C.R.S.~~, or to  
16    level 1 or LEVEL 2 drug felonies as described in section 18-1.3-401.5  
17    (2)(a). ~~C.R.S.~~ In this instance, during the civil union or afterward, a  
18    partner in a civil union shall not be examined for or against the other  
19    partner in the civil union as to any communications intended to be made  
20    in confidence and made by one to the other during the civil union without  
21    the other partner's consent.

22           (III) Communications between partners in a civil union are not  
23    privileged pursuant to this ~~paragraph (a.5) if such~~ SUBSECTION (1)(a.5) IF  
24    THE communications are made for the purpose of aiding the commission  
25    of a future crime or of a present continuing crime.

26           (IV) The burden of proving the existence of a civil union for the  
27    purposes of this ~~paragraph (a.5) shall be~~ SUBSECTION (1)(a.5) IS on the

1 party asserting the claim.

2 (V) Notice of the assertion of the privilege described in this  
3 ~~paragraph (a.5)~~ SUBSECTION (1)(a.5) shall be given as soon as practicable  
4 but not less than ten days prior to assertion at any hearing.

5 (VI) For the purposes of this ~~paragraph (a.5)~~ SUBSECTION (1)(a.5),  
6 "partner in a civil union" means a person who has entered into a civil  
7 union established in accordance with the requirements of article 15 of title  
8 14. C.R.S.

9 **SECTION 18.** In Colorado Revised Statutes, **amend** 13-90-108  
10 as follows:

11 **13-90-108. Offer taken as consent.** The offer of a person of  
12 himself OR HERSELF as a witness ~~shall be~~ IS deemed a consent to the  
13 examination. The offer of a ~~wife, husband~~ SPOUSE, attorney, ~~clergyman~~  
14 MEMBER OF THE CLERGY, physician, surgeon, certified public accountant,  
15 or certified psychologist as a witness ~~shall be~~ IS deemed a consent to the  
16 examination, within the meaning of section 13-90-107 (1)(a) to (1)(d),  
17 (1)(f), and (1)(g).

18 **SECTION 19.** In Colorado Revised Statutes, 14-6-101, **amend**  
19 (1) as follows:

20 **14-6-101. Nonsupport of spouse and children - penalty.**

21 (1) ~~Any~~ A person who willfully neglects, fails, or refuses to provide  
22 reasonable support and maintenance for his OR HER spouse or for his OR  
23 HER children under eighteen years of age, whether natural, adopted, or  
24 whose parentage has been judicially determined, or who willfully fails,  
25 refuses, or neglects to provide proper care, food, and clothing in case of  
26 sickness for his OR HER spouse or ~~such~~ HIS OR HER children or any ~~such~~  
27 OF HIS OR HER children being legally the inmates of a state or county home

1 or school for children in this state, or who willfully fails or refuses to pay  
2 to a trustee, who may be appointed by the court to receive such payment,  
3 or to the board of control of such home or school the reasonable cost of  
4 keeping ~~such~~ HIS OR HER children in said home, or any person, being the  
5 ~~father or mother of children~~ PARENT OF CHILDREN under eighteen years  
6 of age, who leaves ~~such~~ HIS OR HER children with intent to abandon ~~such~~  
7 THOSE children, or any ~~man~~ PERSON who willfully neglects, fails, or  
8 refuses to provide proper care, food, and clothing to the mother of his  
9 child during childbirth and attendant illness is guilty of a class 5 felony.

10 <{Note: This will require outside sources to weigh in on how to word  
11 or if it is something that no longer gets enforced.}> It shall be IS an  
12 affirmative defense, as defined in section 18-1-407, C.R.S., to a  
13 prosecution under this section that owing to physical incapacity or other  
14 good cause the defendant is unable to furnish the support, care, and  
15 maintenance required by this section. ~~No~~ A child shall be IS NOT deemed  
16 to lack proper care for the sole reason that he OR SHE is being provided  
17 remedial treatment in accordance with section 19-3-103. C.R.S.

18 **SECTION 20.** In Colorado Revised Statutes, **amend** 14-6-105 as  
19 follows:

20 **14-6-105. Spouse is competent witness.** In all proceedings or  
21 prosecutions ~~under~~ PURSUANT TO this article, a wife or husband shall be  
22 ARTICLE 6, A SPOUSE IS a competent witness against his OR HER spouse  
23 with or without ~~his~~ THE SPOUSE'S consent.

24 **SECTION 21.** In Colorado Revised Statutes, **amend** 14-6-110 as  
25 follows:

26 **14-6-110. Joint liability for family expenses.** The expenses of  
27 the family and the education of the children are chargeable upon the

1 property of both ~~husband and wife~~ SPOUSES, or either of ~~them~~ SPOUSE  
2 SEPARATELY, and in relation ~~thereto~~ they may be sued jointly or  
3 separately.

4 **SECTION 22.** In Colorado Revised Statutes, 14-10-106, **amend**  
5 (1)(c) introductory portion, (1)(c)(I), and (1)(c)(II) as follows:

6 **14-10-106. Dissolution of marriage - legal separation.** (1)(c) In  
7 a proceeding to dissolve a marriage, ~~or in~~ a proceeding for legal  
8 separation, or ~~in~~ a proceeding for declaration of invalidity, the court is  
9 deemed to have made an adjudication of the parentage of a child of the  
10 marriage if the court acts under circumstances that satisfy the  
11 jurisdictional requirements of section 14-5-201 and the final order:

12 (I) Expressly identifies a child as a "child of the marriage", "issue  
13 of the marriage", or similar words indicating that the husband is the father  
14 BOTH SPOUSES ARE THE PARENTS of the child; or <{*Note: This is tricky*  
15 *because of issues related to assisted reproduction. Need to check with*  
16 *a family law/assisted reproduction legal expert on best way to handle.*}>

17 (II) Provides for support of the child by the husband ONE OF THE  
18 SPOUSES, unless paternity is specifically disclaimed in the order. <{*Same*  
19 *note as above.*}>

20 **SECTION 23.** In Colorado Revised Statutes, 14-10-107, **amend**  
21 (2) introductory portion and (2)(d) as follows:

22 **14-10-107. Commencement - pleadings - abolition of existing**  
23 **defenses - automatic, temporary injunction - enforcement.** (2) The  
24 petition in a proceeding for dissolution of marriage or legal separation  
25 ~~shall~~ MUST allege that the marriage is irretrievably broken and ~~shall~~ set  
26 forth:

27 (d) The names, ages, and addresses of any living children of the

1 marriage and whether ~~the wife~~ ONE OF THE SPOUSES is pregnant;

2 **SECTION 24.** In Colorado Revised Statutes, 14-10-120.3,  
3 **amend** (1)(a) as follows:

4 **14-10-120.3. Dissolution of marriage or legal separation upon**  
5 **affidavit - requirements.** (1) Final orders in a proceeding for dissolution  
6 of marriage or legal separation may be entered upon the affidavit of either  
7 or both parties when:

8 (a) There are no minor children of the ~~husband and wife~~  
9 MARRIAGE and ~~the wife is not~~ NEITHER SPOUSE IS pregnant or ~~the husband~~  
10 ~~and wife are both~~ BOTH SPOUSES ARE represented by counsel and have  
11 entered into a separation agreement that provides for the allocation of  
12 parental responsibilities concerning the children of the marriage and  
13 setting out the amount of child support to be provided by ~~the husband or~~  
14 ~~wife~~ ONE SPOUSE SEPARATELY or both SPOUSES COMBINED; and

15 **SECTION 25.** In Colorado Revised Statutes, **amend** 14-12-104  
16 as follows:

17 **14-12-104. Duties of domestic relations counselors.**

18 (1) Domestic relations counselors shall, under the supervision of and as  
19 directed by the judge of the district court in which they are serving,  
20 perform the following duties:

21 (a) Promptly consider all requests for counseling for the purpose  
22 of disposing of such requests pursuant to this ~~article~~ ARTICLE 12;

23 (b) Counsel ~~husband or wife or both~~ ONE OR BOTH SPOUSES under  
24 a schedule of fees set by the judge of the district court wherein the case  
25 is heard. ~~said~~ THE fee IS to be paid by either ~~the husband or wife~~ SPOUSE  
26 or jointly by ~~the husband and wife~~ BOTH SPOUSES, as determined by the  
27 court, whether or not a petition for dissolution of marriage, declaration of

1     invalidity of marriage, or legal separation has been filed, if the spouses  
2     have marital difficulties which may lead to a termination of the marriage  
3     relationship;

4             (c) If, in the judgment of the counselor, prolonged counseling is  
5     necessary or if it appears that medical, psychiatric, or religious assistance  
6     is indicated, refer ~~the husband or wife~~ ONE or both SPOUSES to a  
7     physician, psychiatrist, psychologist, social service agency, or ~~clergyman~~  
8     MEMBER OF THE CLERGY of any religious denomination to which the  
9     parties may belong.

10            **SECTION 26.** In Colorado Revised Statutes, 14-13-310, **amend**  
11     (4) as follows:

12            **14-13-310. Hearing and order.** (4) A privilege against  
13     disclosure of communications between spouses and a defense of  
14     immunity based on the relationship of ~~husband and wife~~ THE SPOUSES or  
15     parent and child may not be invoked in a proceeding under this part 3.

16            **SECTION 27.** In Colorado Revised Statutes, 15-1.5-106, **amend**  
17     (1) as follows:

18            **15-1.5-106. Multiple beneficiaries - separate custodial trusts**  
19     **- survivorship.** (1) Beneficial interests in a custodial trust created for  
20     multiple beneficiaries are deemed to be separate custodial trusts of equal  
21     undivided interests for each beneficiary. Except in a transfer or  
22     declaration for use and benefit of ~~husband and wife~~ SPOUSES, for whom  
23     survivorship is presumed, a right of survivorship does not exist unless the  
24     instrument creating the custodial trust specifically provides for  
25     survivorship.

26            **SECTION 28.** In Colorado Revised Statutes, **amend 15-11-120**  
27     as follows: *<{Note: This whole section will need review and input from*

1 *family law/assisted reproduction attorneys.*}>

2 **15-11-120. Child conceived by assisted reproduction other**  
3 **than child born to gestational carrier - definitions. (1) Definitions.** AS  
4 USED in this section, UNLESS THE CONTEXT OTHERWISE REQUIRES:

5 (a) "Birth mother" means a woman, other than a gestational carrier  
6 under section 15-11-121, who gives birth to a child of assisted  
7 reproduction. The term is not limited to a woman who is the child's  
8 genetic mother.

9 (b) "Child of assisted reproduction" means a child conceived by  
10 means of assisted reproduction by a woman other than a gestational  
11 carrier under section 15-11-121.

12 (c) "Third-party donor" means an individual who produces eggs  
13 or sperm used for assisted reproduction, whether or not for consideration.  
14 The term does not include:

15 (I) A husband who provides sperm, or a wife who provides eggs,  
16 that are used for assisted reproduction by the wife;

17 (II) The birth mother of a child of assisted reproduction; or

18 (III) An individual who has been determined under subsection (5)  
19 or (6) of this section to have a parent-child relationship with a child of  
20 assisted reproduction.

21 (2) **Third-party donor.** A parent-child relationship does not exist  
22 between a child of assisted reproduction and a third-party donor.

23 (3) **Parent-child relationship with birth mother.** A parent-child  
24 relationship exists between a child of assisted reproduction and the child's  
25 birth mother.

26 (4) **Parent-child relationship with husband whose sperm were**  
27 **used during his lifetime by his wife for assisted reproduction.** Except

1 as otherwise provided in subsections (9) and (10) of this section, a  
2 parent-child relationship exists between a child of assisted reproduction  
3 and the husband of the child's birth mother if the husband provided the  
4 sperm that the birth mother used during his lifetime for assisted  
5 reproduction.

6 (5) **Birth certificate - presumptive effect.** A birth certificate  
7 identifying an individual other than the birth mother as the other parent  
8 of a child of assisted reproduction presumptively establishes a  
9 parent-child relationship between the child and that individual.

10 (6) **Parent-child relationship with another.** Except as otherwise  
11 provided in subsections (7), (9), and (10) of this section, and unless a  
12 parent-child relationship is established under subsection (4) or (5) of this  
13 section, a parent-child relationship exists between a child of assisted  
14 reproduction and an individual other than the birth mother who consented  
15 to assisted reproduction by the birth mother with intent to be treated as the  
16 other parent of the child. Consent to assisted reproduction by the birth  
17 mother with intent to be treated as the other parent of the child is  
18 established if the individual:

19 (a) Before or after the child's birth, signed a record that,  
20 considering all the facts and circumstances, evidences the individual's  
21 consent; or

22 (b) In the absence of a signed record under paragraph (a) of this  
23 subsection (6) PURSUANT TO SUBSECTION (6)(a) OF THIS SECTION:

24 (I) Functioned as a parent of the child no later than two years after  
25 the child's birth;

26 (II) Intended to function as a parent of the child no later than two  
27 years after the child's birth but was prevented from carrying out that intent

1 by death, incapacity, or other circumstances; or

2 (III) Intended to be treated as a parent of a posthumously  
3 conceived child, if that intent is established by clear and convincing  
4 evidence.

5 (7) **Record signed more than two years after the birth of the**  
6 **child - effect.** For the purpose of paragraph (a) of subsection (6)  
7 SUBSECTION (6)(a) of this section, neither an individual who signed a  
8 record more than two years after the birth of the child, nor a relative of  
9 that individual who is not also a relative of the birth mother, inherits from  
10 or through the child unless the individual functioned as a parent of the  
11 child before the child reached eighteen years of age.

12 (8) **Presumption - birth mother is married or surviving spouse.**  
13 For the purpose of paragraph (b) of subsection (6) SUBSECTION (6)(b) of  
14 this section, the following rules apply:

15 (a) If the birth mother is married at the time of conception and no  
16 A divorce proceeding is then NOT pending, her spouse is presumed to  
17 satisfy the requirements of subparagraph (I) or (II) of paragraph (b) of  
18 subsection (6) SUBSECTION (6)(b)(I) OR (6)(b)(II) of this section.

19 (b) If the birth mother is a surviving spouse and at her deceased  
20 spouse's death no A divorce proceeding was NOT pending, her deceased  
21 spouse is presumed to satisfy the requirements of subparagraph (II) or  
22 (III) of paragraph (b) of subsection (6) SUBSECTION (6)(b)(II) OR  
23 (6)(b)(III) of this section.

24 (9) **Divorce before placement of eggs, sperm, or embryos.** If a  
25 married couple is divorced before placement of eggs, sperm, or embryos,  
26 a child resulting from the assisted reproduction is not a child of the birth  
27 mother's former spouse, unless the former spouse consented in a record

1 that if assisted reproduction were to occur after divorce, the child would  
2 be treated as the former spouse's child.

3 (10) **Withdrawal of consent before placement of eggs, sperm,**  
4 **or embryos.** If, in a record, an individual withdraws consent to assisted  
5 reproduction before placement of eggs, sperm, or embryos, a child  
6 resulting from the assisted reproduction is not a child of that individual,  
7 unless the individual subsequently satisfies subsection (6) of this section.

8 (11) **When posthumously conceived child treated as in**  
9 **gestation.** If, under this section, an individual is a parent of a child of  
10 assisted reproduction who is conceived after the individual's death, the  
11 child is treated as in gestation at the time of the individual's death for  
12 purposes of section 15-11-104 (1)(b) if the child is:

13 (a) In utero not later than thirty-six months after the individual's  
14 death; or

15 (b) Born not later than forty-five months after the individual's  
16 death.

17 **SECTION 29.** In Colorado Revised Statutes, 15-11-712, **amend**  
18 (4) as follows: <{*Note: will need to have probate attorneys review and*  
19 *provide input on this section.*>

20 **15-11-712. Simultaneous death - disposition of property.**

21 (4) Where a husband and wife TWO SPOUSES have died leaving  
22 community property and there is no clear and convincing evidence that  
23 they have died otherwise than simultaneously, one-half of all the  
24 community property shall pass as if the husband had survived, and as if  
25 said one-half were his separate property, and the other one-half thereof  
26 shall pass as if the wife had survived, and as if said other one-half were  
27 her separate property.

1           **SECTION 30.** In Colorado Revised Statutes, 15-11-802, **amend**  
2 (1) as follows:

3           **15-11-802. Effect of divorce, annulment, and decree of**  
4 **separation.** (1) An individual who is divorced from the decedent or  
5 whose marriage to the decedent has been annulled is not a surviving  
6 spouse unless, by virtue of a subsequent marriage, he or she is married to  
7 the decedent at the time of death. A decree of separation that does not  
8 terminate the MARITAL status of ~~husband and wife~~ SPOUSES is not a  
9 divorce for purposes of this section.

10           **SECTION 31.** In Colorado Revised Statutes, 15-11-804, **amend**  
11 (1)(b) as follows:

12           **15-11-804. Revocation of probate and nonprobate transfers by**  
13 **divorce - no revocation by other changes of circumstances -**  
14 **definitions.** (1) **Definitions.** As used in this section, unless the context  
15 otherwise requires:

16           (b) "Divorce or annulment" means any divorce or annulment, or  
17 any dissolution or declaration of invalidity of a marriage, that would  
18 exclude the spouse as a surviving spouse within the meaning of section  
19 15-11-802. A decree of separation that does not terminate the MARITAL  
20 status of ~~husband and wife~~ SPOUSES is not a divorce for purposes of this  
21 section.

22           **SECTION 32.** In Colorado Revised Statutes, 15-12-713, **amend**  
23 (1) introductory portion as follows:

24           **15-12-713. Sale, encumbrance, or transaction involving**  
25 **conflict of interest - voidable - exceptions.** (1) Any sale or  
26 encumbrance to the personal representative, his OR HER spouse, agent, or  
27 attorney, or any corporation or trust in which he OR SHE has a beneficial

1 interest, or any transaction which is affected by a conflict of interest on  
2 the part of the personal representative, is voidable by any person  
3 interested in the estate except one who has consented, unless:

4 **SECTION 33.** In Colorado Revised Statutes, **amend 17-26-106**  
5 **as follows:**

6 **17-26-106. Male and female prisoners.** Male and female  
7 prisoners, except husband and wife, shall not be put or kept in the same  
8 room. <{*Question: Does this need any change?*}>

9 **SECTION 34.** In Colorado Revised Statutes, 18-3-102, **amend**  
10 **(4)** as follows:

11 **18-3-102. Murder in the first degree.** (4) The statutory privilege  
12 between patient and physician and between ~~husband and wife shall not be~~  
13 SPOUSES IS NOT available for excluding or refusing testimony in any  
14 prosecution for the crime of murder in the first degree as described in  
15 ~~paragraph (f) of subsection (1)~~ SUBSECTION (1)(f) of this section.

16 **SECTION 35.** In Colorado Revised Statutes, 18-3-411, **amend**  
17 **(5)** as follows:

18 **18-3-411. Sex offenses against children - "unlawful sexual**  
19 **offense" defined - limitation for commencing proceedings - evidence**  
20 **- statutory privilege.** (5) The statutory privilege between ~~the husband~~  
21 ~~and the wife shall not be~~ SPOUSES IS NOT available for excluding or  
22 refusing testimony in any prosecution of an unlawful sexual offense.

23 **SECTION 36.** In Colorado Revised Statutes, 18-6-401, **amend**  
24 **(3)** as follows:

25 **18-6-401. Child abuse - definition - statutory privilege.** (3) The  
26 statutory privilege between patient and physician and between ~~husband~~  
27 ~~and wife shall not be~~ SPOUSES IS NOT available for excluding or refusing

1 testimony in any prosecution for a violation of this section.

2 **SECTION 37.** In Colorado Revised Statutes, 18-6-401.1, **amend**  
3 (5) as follows:

4 **18-6-401.1. Child abuse - limitation for commencing**  
5 **proceedings - evidence - definition - statutory privilege.** (5) The  
6 statutory privilege between the victim-patient and his OR HER physician  
7 and between ~~the husband and the wife shall not be~~ SPOUSES IS NOT  
8 available for excluding or refusing testimony in any prosecution of an act  
9 of child abuse.

10 **SECTION 38.** In Colorado Revised Statutes, 18-7-201, **amend**  
11 (1) as follows:

12 **18-7-201. Prostitution prohibited - definitions.** (1) ~~Any~~ A  
13 person who performs or offers or agrees to perform any act of sexual  
14 intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with  
15 any person WHO IS not his OR HER spouse in exchange for money or other  
16 thing of value commits prostitution.

17 **SECTION 39.** In Colorado Revised Statutes, 18-7-205, **amend**  
18 (1) introductory portion as follows:

19 **18-7-205. Patronizing a prostitute.** (1) ~~Any~~ A person who  
20 performs any of the following with a person WHO IS not his OR HER  
21 spouse commits patronizing a prostitute:

22 **SECTION 40.** In Colorado Revised Statutes, 18-7-406, **amend**  
23 (1) introductory portion as follows:

24 **18-7-406. Patronizing a prostituted child.** (1) ~~Any~~ A person  
25 who performs any of the following with a child not his OR HER spouse  
26 commits patronizing a prostituted child: <{**Does this mean "with a child**  
27 **and NOT with his or her spouse? Surely it doesn't mean what it almost**

1 *literally says... "a child who is not his spouse..."? }>*

2 SECTION 41. In Colorado Revised Statutes, 19-1-103, **amend**  
3 (44.5), (56), and (56.5) as follows:

4 **19-1-103. Definitions.** As used in this title 19 or in the specified  
5 portion of this title 19, unless the context otherwise requires:

6 (44.5) "Donor", as used in section 19-4-106, means an individual  
7 who produces eggs or sperm used for assisted reproduction, whether or  
8 not for consideration. "Donor" does not include a husband who provides  
9 sperm, or a wife who provides eggs, to be used for assisted reproduction  
10 by the wife. <{*Need to harmonize with 15-11-120 above...Discuss with*  
11 *assisted reproduction atty...*}>

12 (56) (a) "Grandparent" means a person who is the parent of ONE  
13 OF a child's ~~father or mother~~ PARENTS, who is related to the child by  
14 blood, in whole or by half, adoption, or marriage.

15 (b) "Grandparent", as used in sections 19-1-117 and 19-1-117.5,  
16 has the same meaning as set forth in ~~paragraph (a) of this subsection (56)~~  
17 SUBSECTION (56)(a) OF THIS SECTION; except that "grandparent" does not  
18 include the parent of ONE OF a child's legal ~~father or mother~~ PARENTS  
19 whose parental rights have been terminated in accordance with sections  
20 19-5-101 and 19-1-104 (1)(d).

21 (56.5) "Great-grandparent", as used in sections 19-1-117 and  
22 19-1-117.5, means a person who is the grandparent of ONE OF a child's  
23 ~~father or mother~~ PARENTS, who is related to the child by blood, in whole  
24 or by half, adoption, or marriage. "Great-grandparent" does not include  
25 the grandparent of ONE OF a child's legal ~~father or mother~~ PARENTS whose  
26 parental rights have been terminated in accordance with sections  
27 19-5-101 and 19-1-104 (1)(d).

1           **SECTION 42.** In Colorado Revised Statutes, 19-3-311, **amend**  
2 (2) as follows:

3           **19-3-311. Evidence not privileged.** (2) The privileged  
4 communication between ~~husband and wife shall not be a ground~~ SPOUSES  
5 IS NOT GROUNDS for excluding evidence in any judicial proceeding  
6 resulting from a report pursuant to this part 3.

7           **SECTION 43.** In Colorado Revised Statutes, 19-4-106, **amend**  
8 (1), (3), (4), and (5) as follows: <{*Need to harmonize with*  
9 *15-11-120..discuss with assisted reproduction atty...}*>

10           **19-4-106. Assisted reproduction.** (1) If, under the supervision  
11 of a licensed physician or advanced practice nurse and with the consent  
12 of her husband, a wife consents to assisted reproduction with sperm  
13 donated by a man not her husband, the husband is treated in law as if he  
14 were the natural father of a child thereby conceived. If, under the  
15 supervision of a licensed physician or advanced practice nurse and with  
16 the consent of her husband, a wife consents to assisted reproduction with  
17 an egg donated by another woman, to conceive a child for herself, not as  
18 a surrogate, the wife is treated in law as if she were the natural mother of  
19 a child thereby conceived. Both the husband's and the wife's consent must  
20 be in writing and signed by each of them. The physician or advanced  
21 practice nurse shall certify their signatures and the date of the assisted  
22 reproduction and shall file the consents with the department of public  
23 health and environment, where they shall be kept confidential and in a  
24 sealed file; however, the physician's failure to do so does not affect the  
25 father and child relationship or the mother and child relationship. All  
26 papers and records pertaining to the assisted reproduction, whether part  
27 of the permanent record of a court or of a file held by the supervising

1 physician or advanced practice nurse or elsewhere, are subject to  
2 inspection only upon an order of the court for good cause shown.

3 (3) If a husband provides sperm for, or consents to, assisted  
4 reproduction by his wife as provided in subsection (1) of this section, he  
5 is the father of the resulting child.

6 (4) The requirement for consent set forth in subsection (1) of this  
7 section does not apply to the donation of eggs by a married woman for  
8 assisted reproduction by another woman or to the donation of sperm by  
9 a married man for assisted reproduction by a woman who is not his wife.

10 (5) Failure of the husband to sign a consent required by subsection  
11 (1) of this section before or after the birth of the child does not preclude  
12 a finding that the husband is the father of a child born to his wife pursuant  
13 to section 19-4-105 (2)(a).

14 **SECTION 44.** In Colorado Revised Statutes, **amend** 19-4-108 as  
15 follows:

16 **19-4-108. Statute of limitations.** An action to determine the  
17 existence of the father and child relationship may be brought at any time  
18 prior to the child's eighteenth birthday by ~~the mother or father of said~~  
19 EITHER PARENT OF THE child, by the child, or by the delegate child support  
20 enforcement agency. If, however, the statute of limitations in effect at the  
21 time of the child's birth was less than eighteen years, the delegate child  
22 support enforcement agency may bring an action on behalf of the ~~said~~  
23 THE child at any time prior to the child's twenty-first birthday. An action  
24 brought by a child whose paternity has not been determined may be  
25 brought at any time prior to the child's twenty-first birthday. This section  
26 and section 19-4-107 do not extend the time within which a right of  
27 inheritance or a right to a succession may be asserted beyond the time

1 provided by law relating to distribution and closing of decedents' estates  
2 or to the determination of heirship, or otherwise.

3 **SECTION 45.** In Colorado Revised Statutes, **amend** 19-4-110 as  
4 follows:

5 **19-4-110. Parties.** The child may be made a party to the action.  
6 If the child is a minor, the court may appoint a guardian ad litem.  
7 NEITHER OF the child's ~~mother or father~~ PARENTS may ~~not~~ represent the  
8 child as guardian or otherwise. The court shall make the natural mother,  
9 each man presumed to be the father under section 19-4-105, and each  
10 man alleged to be the natural father parties or, if not subject to the  
11 jurisdiction of the court, provide notice of the action in a manner  
12 prescribed by the court and an opportunity to be heard. If a man who is  
13 alleged to be the natural father is deceased, the court shall make the  
14 personal representative of his estate, if one has been appointed, a party.  
15 If a personal representative has not been appointed, the court shall make  
16 the deceased man's spouse or an immediate blood relative a party. If a  
17 spouse or immediate blood relative is not known or does not exist, the  
18 court shall appoint a representative for the alleged natural father who is  
19 deceased. The court may align the parties. When the person to be served  
20 has no residence within Colorado and his or her place of residence is not  
21 known or when he or she cannot be found within the state after due  
22 diligence, service must be by publication pursuant to rule 4 (g) of the  
23 Colorado rules of civil procedure; except that service must be by a single  
24 publication and must be completed not less than five days prior to the  
25 time set for hearing on paternity adjudication.

26 **SECTION 46.** In Colorado Revised Statutes, 22-1-102, **amend**  
27 (2) introductory portion and (2)(f) as follows:

1           **22-1-102. Residence of child.** (2) A child ~~shall be~~ IS deemed to  
2 reside in a school district if:

3           (f) If one of the child's parents or ~~the~~ HIS OR HER guardian ~~of his~~  
4 ~~person~~ is a public officer or employee living temporarily for the  
5 performance of his OR HER duties in a school district other than that of his  
6 OR HER residence. **Unless the parents of a child are permanently**  
7 **separated, the residence of the husband shall be deemed to be IS the**  
8 **residence of the child, but, if the parents have permanently separated, the**  
9 **residence of the child shall be IS that of the parent with whom the child**  
10 **actually lives.** <{***Problematic - need to get review/input from family law***  
11 ***atty and CDE.***>

12           **SECTION 47.** In Colorado Revised Statutes, 22-1-127, **amend**  
13 (1)(c) as follows:

14           **22-1-127. Incentives for school enrollment or attendance -**  
15 **prohibited - exceptions - definitions.** (1) As used in this section, unless  
16 the context otherwise requires:

17           (c) "Parent" means the biological or adoptive ~~mother or father or~~  
18 ~~stepmother or stepfather~~ PARENT OR STEPPARENT of a child or any other  
19 person having legal or physical custody of a child.

20           **SECTION 48.** In Colorado Revised Statutes, 22-33-102, **amend**  
21 the introductory portion and (10) as follows:

22           **22-33-102. Definitions.** As used in this ~~article~~ ARTICLE 33, unless  
23 the context otherwise requires:

24           (10) "Parent" means the ~~mother or father~~ NATURAL OR ADOPTIVE  
25 PARENT of a child or any other person having custody of a child.

26           **SECTION 49.** In Colorado Revised Statutes, 24-6-202, **amend**  
27 (2) introductory portion, (2)(a), (2)(b), (2)(c), (2)(d), (2)(f), (2)(g), and (6)

1 as follows:

2 **24-6-202. Disclosure - contents - filing - false or incomplete**  
3 **filing - penalty.** (2) Disclosure ~~shall include~~ INCLUDES:

4 (a) The names of any source or sources of any income, including  
5 capital gains, whether or not taxable, of the person making disclosure, his  
6 OR HER spouse, and minor children residing with ~~him~~ THE PERSON  
7 MAKING DISCLOSURE;

8 (b) The name of each business, insurance policy, or trust in which  
9 ~~he, his spouse~~ THE PERSON MAKING DISCLOSURE, HIS OR HER SPOUSE, or  
10 minor children residing with ~~him~~ THE PERSON MAKING DISCLOSURE has  
11 a financial interest in excess of five thousand dollars;

12 (c) The legal description of any interest in real property, including  
13 an option to buy, in the state in which the person making disclosure, his  
14 OR HER spouse, or minor children residing with ~~him~~ THE PERSON MAKING  
15 DISCLOSURE have any interest, direct or indirect, the market value of  
16 which is in excess of five thousand dollars;

17 (d) The identity, by name, of all offices, directorships, and  
18 fiduciary relationships held by the person making disclosure, his OR HER  
19 spouse, and minor children residing with ~~him~~ THE PERSON MAKING  
20 DISCLOSURE;

21 (f) The name of each creditor to whom the person making  
22 disclosure, his OR HER spouse, or minor children RESIDING WITH THE  
23 PERSON MAKING DISCLOSURE owe money in excess of one thousand  
24 dollars and the interest rate;

25 (g) A list of businesses with which the person making disclosure  
26 or his OR HER spouse are associated that do business with or are regulated  
27 by the state and the nature of such business or regulation;

1 (6) Any person subject to the provisions of this section may elect  
2 to file ANNUALLY with the secretary of state ~~annually~~ a copy of his OR HER  
3 federal income tax return and any separate federal income tax return filed  
4 by his OR HER spouse or minor children residing with ~~him~~ THE PERSON  
5 MAKING DISCLOSURE, together with a certified statement of any  
6 investments held by ~~him, his~~ THE PERSON MAKING DISCLOSURE, HIS OR  
7 HER spouse, or minor children residing with ~~him~~ THE PERSON MAKING  
8 DISCLOSURE which are not reflected by the income tax returns in lieu of  
9 complying with the provisions of subsections (1) to (4) of this section.  
10 ~~which~~ THE tax return and any statement filed under the provisions of this  
11 subsection (6) ~~shall be~~ ARE public information.

12 **SECTION 50.** In Colorado Revised Statutes, 25-2-112, **amend**  
13 (2), (3)(a) introductory portion, (3)(a)(II), (3)(a)(III), and (3)(a)(IV) as  
14 follows:

15 **25-2-112. Certificates of birth - filing - establishment of**  
16 **paternity.** (2) When a birth occurs in an institution, or upon order of any  
17 court with proper jurisdiction, the person in charge of the institution or  
18 ~~such person's~~ HIS OR HER designated representative shall obtain the  
19 personal data, prepare the certificate, certify the authenticity of the birth  
20 registration either by signature or by an approved electronic process, and  
21 file it with the state registrar or as otherwise directed by the state registrar  
22 within the required ten days. The physician in attendance shall provide the  
23 medical information required by the certificate within five days after the  
24 birth. When the birth occurs outside an institution, THE PHYSICIAN IN  
25 ATTENDANCE SHALL PREPARE AND FILE the certificate ~~shall be prepared~~  
26 ~~and filed by the physician in attendance~~ at or immediately after birth, or  
27 in the absence of such a physician, by any person witnessing the birth, or

1 in the absence of any such witness by ~~the father or mother~~ ONE OR BOTH  
2 OF THE PARENTS, or in the absence of ~~the father and the inability of the~~  
3 ~~mother~~ OR INABILITY OF BOTH PARENTS by the person in charge of the  
4 premises where the birth occurred. The person who completes and files  
5 the certificate shall also be responsible for obtaining the social security  
6 account numbers of the parents and delivering those numbers to the state  
7 registrar along with the certificate.

8 (3) (a) If the mother was married either at the time of conception  
9 or birth, the name of the husband shall be entered on the certificate as the  
10 father of the child unless: *<{Need input from family law/assisted*  
11 *reproduction attys on this whole subsection (3)}>*

12 (II) The mother and the mother's husband execute joint or separate  
13 forms prescribed and furnished by the state registrar reflecting the  
14 mother's and the husband's signatures individually witnessed and attesting  
15 that the husband is not the father of the child, in which case, information  
16 about the father shall be omitted from the certificate; or

17 (III) The mother executes a form prescribed and furnished by the  
18 state registrar attesting that the husband is not the father and that the  
19 putative father is the father, the putative father executes a form prescribed  
20 and furnished by the state registrar attesting that he is the father, and the  
21 husband executes a form prescribed and furnished by the state registrar  
22 attesting that he is not the father. Such forms may be joint or individual  
23 or a combination thereof, and each signature shall be individually  
24 witnessed. In such event, the putative father shall be shown as the father  
25 on the certificate.

26 (IV) A court of competent jurisdiction has determined the husband  
27 is not the presumed father and the putative father executes a form

1 prescribed and furnished by the state registrar which is individually  
2 witnessed attesting that he is the father and the mother executes a form  
3 prescribed and furnished by the state registrar which is individually  
4 witnessed that the putative father is the father. In such event the putative  
5 father shall be shown as the father on the birth certificate.

6 **SECTION 51.** In Colorado Revised Statutes, 29-11.8-105,  
7 **amend** (6) as follows:

8 **29-11.8-105. Licensing - general provisions.** (6) When a license  
9 has been issued to a ~~husband and wife~~ MARRIED SPOUSE, the death of a  
10 spouse ~~shall~~ DOES not require the surviving spouse to obtain a new  
11 license. All rights and privileges granted under the original license ~~shall~~  
12 continue in full force and effect as to the survivor for the balance of the  
13 license.

14 **SECTION 52.** In Colorado Revised Statutes, 30-28-101, **amend**  
15 (10)(c) introductory portion and (10)(c)(VII) as follows:

16 **30-28-101. Definitions.** As used in this part 1, unless the context  
17 otherwise requires:

18 (10) (c) Unless the method of disposition is adopted for the  
19 purpose of evading this part 1, the terms "subdivision" and "subdivided  
20 land", as defined in ~~paragraph (a) of this subsection (10), shall~~  
21 SUBSECTION (10)(a) OF THIS SECTION, DO not apply to any division of  
22 land:

23 (VII) Which is created by the acquisition of an interest in land in  
24 the name of a ~~husband and wife~~ MARRIED SPOUSES or other persons in  
25 joint tenancy or as tenants in common, and any such interest ~~shall be~~ IS  
26 deemed for purposes of this subsection (10) as only one interest;

27 **SECTION 53.** In Colorado Revised Statutes, 38-35-118, **amend**

1 (1) as follows:

2 **38-35-118. Homestead, how conveyed - claimant insane.**

3 (1) Except as provided in section 38-41-202 (3), to convey or encumber  
4 homesteaded property, ~~the husband and wife~~ MARRIED SPOUSES, if the  
5 owner ~~thereof~~ is married, shall execute the conveyance or encumbrance.  
6 ~~Such~~ THE conveyance or encumbrance may be by one instrument or  
7 separate instruments which may be acknowledged in the manner provided  
8 by articles 30 to 44 of this ~~title~~ TITLE 38. A recital in any recorded  
9 conveyance or encumbrance of real property of the marital status of the  
10 party executing the same or that the property is or is not occupied as a  
11 home by the owner ~~thereof~~ or his OR HER family shall be prima facie  
12 evidence of the facts. ~~therein stated.~~ **If the owner of the homesteaded**  
13 **property and a person of the opposite sex, both bearing the same surname,**  
14 **join in the conveyance or encumbrance, thereof, the identity of surnames**  
15 **shall be prima facie evidence that such parties are husband and wife for**  
16 **the purposes of this article ARTICLE 35.** <{Need review/input from family  
17 law atty...}>

18 **SECTION 54.** In Colorado Revised Statutes, 38-36-104, **amend**  
19 (1) introductory portion and (1)(b) as follows:

20 **38-36-104. Contents of application.** (1) The application ~~shall~~  
21 MUST be in writing and ~~shall~~ MUST be signed and verified by the oath of  
22 the applicant or the person acting ~~in~~ ON his OR HER behalf. It ~~shall~~ MUST  
23 set forth substantially:

24 (b) Whether the applicant (except in the case of a corporation) is  
25 married or not, and if married, the name and residence of the ~~husband or~~  
26 ~~wife~~ APPLICANT'S SPOUSE, and the age of the applicant;

27 **SECTION 55.** In Colorado Revised Statutes, **amend** 38-36-134

1 as follows:

2 **38-36-134. Contents of decree - certified copy filed.** (1) Every  
3 decree of registration ~~shall~~ MUST bear the year, day, hour, and minute of  
4 its entry and ~~shall~~ MUST be signed by one of the judges of the district  
5 court. ~~It shall~~ THE DECREE OF REGISTRATION MUST ALSO:

6 (a) State whether the owner is married or unmarried and, if  
7 married, the name of the ~~husband or wife~~ OWNER'S SPOUSE;

8 (b) If the owner is under disability, ~~it shall~~ state the nature of the  
9 disability, and, if a minor, ~~shall~~ state his OR HER age;

10 (c) ~~It shall~~ Contain a description of the land as finally determined  
11 by the court and ~~shall~~ set forth the estate of the owner, and also, in such  
12 manner as to show their relative priority, all particular estates, mortgages,  
13 easements, liens, attachments, homesteads, and other encumbrances,  
14 including rights of ~~husband and wife~~ EACH SPOUSE, if any, to which the  
15 land or the owner's estate is subject and ~~shall~~ contain any other matter or  
16 information properly to be determined by the court in pursuance of this  
17 ~~article. The decree shall~~ ARTICLE 36; AND

18 (d) Be stated in a convenient form for transcription upon the  
19 certificate of title, to be made as provided in section 38-36-139 by the  
20 registrar of titles.

21 (2) Immediately upon the filing of the decree of registration, the  
22 clerk shall file a certified copy ~~thereof~~ in the office of the registrar of  
23 titles.

24 **SECTION 56.** In Colorado Revised Statutes, **amend** 38-36-139  
25 as follows:

26 **38-36-139. Contents and form of certificate of registration.**

27 (1) The certificate of registration ~~shall~~ MUST contain the name of the

1 owner, a description of the land and of the estate of the owner, and ~~shall~~  
2 MUST by memorial or notation contain a description of all encumbrances,  
3 liens, and interest to which the estate of the owner is subject. ~~It shall~~ THE  
4 CERTIFICATE OF REGISTRATION MUST ALSO:

5 (a) State the residence of the owner and, if a minor, give his OR  
6 HER age;

7 (b) If THE OWNER IS under disability, ~~it shall~~ state the nature of the  
8 disability;

9 (c) ~~it shall~~ State whether married or not, and, if married, the name  
10 of the ~~husband or wife~~ OWNER'S SPOUSE;

11 (d) In case of a trust, condition, or limitation, ~~it shall~~ state the  
12 trust, condition, or limitation, as the case may be;

13 (e) ~~It shall~~ Contain and conform in respect to all statements in the  
14 certified copy of the decree of registration filed with the registrar of titles  
15 as provided in section 38-36-134; and

16 (f) ~~shall~~ Be in a form substantially as follows:

17 FIRST CERTIFICATE OF TITLE.

18 Pursuant to order of district court of ..... county.

19 STATE OF COLORADO )

20 ) ss.

21 County of .....)

22 This is to certify that A ..... B ..... of ....., county of  
23 ....., state of ..... is now the owner of an estate (describe the  
24 estate) of, and in (describe the land), subject to the encumbrances, liens,  
25 and interests noted by the memorial underwritten or endorsed thereon,  
26 subject to the exceptions and qualifications mentioned in section  
27 38-36-133. (Here note all statements provided herein to appear upon the

1 certificate.)

2 In witness whereof, I have hereunto set my hand and affixed the  
3 official seal of my office this ..... day of ....., A.D. 20.... .

4 (Seal)

5 .....

6 Registrar of Titles.

7 **SECTION 57.** In Colorado Revised Statutes, **amend** 38-36-157  
8 as follows:

9 **38-36-157. Registered land subject to same laws as**  
10 **unregistered land.** Registered land and ownership ~~therein shall~~ MUST in  
11 all respects be subject to the same burdens and incidents which attach by  
12 law to unregistered land. Nothing in this ~~article shall~~ ARTICLE 36 in any  
13 way ~~be construed to relieve~~ RELIEVES registered land or the owners  
14 ~~thereof~~ from any rights incident to the relation of ~~husband and wife~~  
15 MARRIED SPOUSES, or from liability to attachment on mesne process, or  
16 levy on execution, or from liability of any lien of any description  
17 established by law on land and the improvements thereon, or the interest  
18 of the owner in ~~such~~ THE land or improvements, or to change the laws of  
19 descent, or the rights of partition between cotenants, or the right to take  
20 the same by eminent domain, or to relieve ~~such~~ THE land from liability to  
21 be recovered by an assignee in insolvency or trustee in bankruptcy under  
22 the provisions of law relating thereto, or to change or affect in any way  
23 any other rights or liabilities created by law and applicable to unregistered  
24 land, except as otherwise expressly provided in this ~~article~~ ARTICLE 36.

25 **SECTION 58.** In Colorado Revised Statutes, **amend** 38-41-208  
26 as follows:

27 **38-41-208. Survival of exemption.** (1) If the property qualifies

1 as a homestead for a joint tenant who is the ~~husband or wife~~ SPOUSE of  
2 the other joint tenant or one of the other joint tenants, then, upon the  
3 death of either spouse, the homestead ~~shall continue~~ CONTINUES in effect  
4 on the interest in ~~such~~ THE property of the surviving spouse. If the  
5 property qualifies as a homestead for a joint tenant who is the parent of  
6 one or more of the other joint tenants who are minors, then, upon the  
7 death of such parent leaving no spouse surviving, the homestead ~~shall~~  
8 ~~continue~~ CONTINUES in effect on the interest in ~~such~~ THE property of the  
9 surviving minor children.

10 (2) If the property qualifies as a homestead for a joint tenant who  
11 is not related to any other joint tenant as ~~husband or wife~~ A SPOUSE or  
12 parent and minor child, then, upon the death of ~~such~~ THE joint tenant, his  
13 OR HER homestead ~~shall cease and terminate~~ CEASES AND TERMINATES,  
14 and THE SURVIVING TENANTS SHALL HOLD the property ~~shall be held by~~  
15 ~~the surviving tenants~~ free of any homestead interest of ~~such~~ THE decedent,  
16 his OR HER spouse, or his OR HER minor children.

17 **SECTION 59.** In Colorado Revised Statutes, 39-29-114, **amend**  
18 (3) as follows:

19 **39-29-114. Component members of a controlled group treated**  
20 **as one taxpayer - definition.** (3) In the case of individuals who are  
21 members of the same family, the exemptions allowed under this ~~article~~  
22 ~~shall~~ ARTICLE 29 MUST be allocated among ~~such~~ THE individuals in  
23 proportion to their respective quantities of production from the property  
24 of ~~such~~ THE individuals. For the purposes of this ~~article~~ ARTICLE 29, the  
25 family of an individual ~~shall be deemed to include~~ INCLUDES only his OR  
26 HER spouse and children.

27 **SECTION 60.** In Colorado Revised Statutes, **amend** 40-33-101

1 as follows:

2 **40-33-101. Damages for injury of employee.** Every common  
3 carrier by railroad in the state of Colorado ~~shall be~~ IS liable in damages  
4 to any person suffering injury while he OR SHE is employed by ~~such~~ THE  
5 carrier in or about the transporting or handling of any freight, property,  
6 passengers, engine, locomotive, or other vehicle upon the tracks of ~~such~~  
7 THE carrier, or in case of the death of ~~such~~ THE employee, to his OR HER  
8 personal representative for the benefit of the surviving ~~widow, or husband~~  
9 SPOUSE, children, parents, or dependents of ~~such~~ THE employee, for such  
10 injury or death resulting in whole or in part from the negligence of any of  
11 the officers, agents, or employees of ~~such~~ THE employer, or by reason of  
12 any defect or insufficiency due to the employer's negligence.

13 **SECTION 61.** In Colorado Revised Statutes, **amend** 40-33-108  
14 as follows:

15 **40-33-108. Right of action survives.** Any right of action given  
16 by this ~~article~~ ARTICLE 33, to a person suffering injury ~~shall survive~~  
17 SURVIVES to his OR HER personal representative, for the benefit of the  
18 surviving ~~widow or husband~~ SPOUSE and children of ~~such~~ THE employee;  
19 and, if none, then of ~~such~~ THE employee's parents; and, if none, then of  
20 the next of kin dependent upon ~~such~~ THE employee, but in such cases  
21 there ~~shall~~ MUST be only one recovery for the same injury.

22 **SECTION 62. Act subject to petition - effective date.** This act  
23 takes effect at 12:01 a.m. on the day following the expiration of the  
24 ninety-day period after final adjournment of the general assembly (August  
25 ■, 2018, if adjournment sine die is on May ■, 2018); except that, if a  
26 referendum petition is filed pursuant to section 1 (3) of article V of the  
27 state constitution against this act or an item, section, or part of this act

1     within such period, then the act, item, section, or part will not take effect  
2     unless approved by the people at the general election to be held in  
3     November 2018 and, in such case, will take effect on the date of the  
4     official declaration of the vote thereon by the governor.



# OFFICE OF LEGISLATIVE LEGAL SERVICES

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## MEMORANDUM (2)(J)<sup>1</sup>

TO: Statutory Revision Committee

FROM: Kate Meyer, Office of Legislative Legal Services

DATE: August 11, 2017

SUBJECT: Permanently enjoined laws regulating ballot issue petition circulators

### Summary

In 2013, the United States District Court for the District of Colorado issued a permanent injunction<sup>2</sup> against enforcement of several unconstitutional laws regarding petition circulators. Staff of the Office of Legislative Legal Services (OLLS) has been aware of this decision and appends to statutes implicated in that holding an “editor’s note” advising readers of the C.R.S. of that injunction.

Because the laws are legally unenforceable, OLLS staff is advising that they be repealed. However, staff recommends that the Statutory Revision Committee allow staff to solicit feedback on the scope of the draft legislation prior to taking action to recommend any draft bill.

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<sup>1</sup> This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

<sup>2</sup> *Independence Inst. v. Gessler*, 936 F. Supp. 2d 1256 (D. Colo. 2013) (Attached to this memorandum as **Addendum A**).

## Analysis

Section 1-40-112, C.R.S.,<sup>3</sup> regulates circulators of initiative and referendum petitions. Relevant to this memorandum, subsection (1) of that law requires that circulators possess certain attributes in order to circulate petitions, while subsection (4) of that section restricts the manner in which paid circulators are compensated:

**1-40-112. Circulators - requirements - training.** (1) No person shall circulate a petition for an initiative or referendum measure unless the person is a resident of the state, a citizen of the United States, and at least eighteen years of age at the time the petition is circulated.

\*\*\*

(4) It shall be unlawful for any person to pay a circulator more than twenty percent of his or her compensation for circulating petitions on a per signature or petition section basis.

Subsection (1) was most recently amended in 2007.<sup>4</sup> Subsection (4) was enacted in 2009<sup>5</sup> and has not been modified since that time.

In 2010, various plaintiffs<sup>6</sup> filed suit in federal district court challenging several statutory aspects of the ballot initiative process, including a challenge to the constitutionality of the circulator state residency criterion on subsection (1) and the “hybrid compensation scheme”<sup>7</sup> of subsection (4).

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<sup>3</sup> § 1-40-112, in its entirety, is attached as **Addendum B**.

<sup>4</sup> See Senate Bill 07-083 (“Concerning technical changes to statutory provisions under the “Uniform Election Code of 1992” governing the manner in which elections are conducted, and making an appropriation in connection therewith”).

<sup>5</sup> See House Bill 09-1326 (“Concerning the integrity of the statewide citizen-initiated petition process, and making an appropriation therefor”).

<sup>6</sup> Plaintiffs to the action included “petition circulators, non-profit organizations, and petition entities involved in the initiative and referendum process in the State of Colorado.”

<sup>7</sup> The District Court described the hybrid compensation scheme, also known as a “partial pay ban”, as follows: “The statute does not restrict all compensation to circulators on a per-signature basis; however, as a practical matter, the twenty percent restriction limits per-signature compensation to bonuses or incentive payments. As a result, the statute requires that circulators receive the majority of their compensation in the form of hourly payments.” *Independence Inst. v. Gessler*, supra note 1 at 1258. So, the statute does not categorically prohibit, but does limit, per-signature bases on which to calculate circulator pay.

As to the state residency requirement of section 1-40-112 (1), C.R.S., the United States District Court found the decision in *Yes on Term Limits, Inc. v. Savage*,<sup>8</sup> which held that a blanket ban on non-resident circulators violated the First and Fourteenth Amendments to the United States Constitution, dispositive. The defendant Secretary of State did not dispute the applicability of that case and stipulated to the entry of final judgment on this claim for relief.

With regard to section 1-40-112 (4), C.R.S., the Court stated that petition circulation is “core political speech” and that, by raising the cost of signature-gathering activities, the law would have the “inevitable effect of reducing the total quantum of speech on a public issue”. Therefore, the Court applied strict scrutiny analysis. While the Court found that Colorado has a compelling interest in ensuring the reliability and honesty of the referendum and initiative process, the statute (in light of both the lack of evidence that the hybrid compensation scheme would actually redress petition fraud and the existence of less burdensome tools at the legislature’s disposal) was deemed not to be narrowly (or even reasonably) tailored.

The Court thus permanently enjoined the enforcement of subsections (1) and (4) of section 1-40-112, C.R.S., and any ancillary statutes that enforced the latter [namely, sections 1-40-135 and 1-40-121, C.R.S., to the extent that those sections apply to the restriction on per-signature compensation found in section 1-40-112 (4), C.R.S.]. The Secretary of State did not appeal this ruling.

## **Statutory Charge<sup>9</sup>**

The Statutory Revision Committee is tasked with examining judicial decisions to discover defects in the law. Because the laws at issue in this memorandum have been declared by a court to be unconstitutional and are permanently enjoined from being enforced (and any appeal of that ruling is now time-barred), they may, in staff’s opinion, be properly deemed defective.

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<sup>8</sup> 550 F.3d 1023 (10th Cir. 2008).

<sup>9</sup> The Statutory Revision Committee is charged with “[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms” and recommending “legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions”. § 2-3-902 (1), C.R.S. In addition, the Committee “shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes.” § 2-3-902 (3), C.R.S.

## Recommendation/Proposed Bill

If the Statutory Revision Committee accepts staff recommendation to align the C.R.S. with the *Independence Institute* holding, the legislation would repeal section 1-40-112 (4), C.R.S., and section 1-40-135 (2)(b) and (2)(c)(V), C.R.S.<sup>10</sup> Additionally, staff would like to consult with the Secretary of State's office and other elections law experts regarding any ancillary laws that are also permanently enjoined from enforcement pursuant to *Independence Institute*.

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<sup>10</sup> § 1-40-135, C.R.S., is attached in its entirety as **Addendum C**.

# Addendum A

## Independence Inst. v. Gessler

United States District Court for the District of Colorado

March 29, 2013, Decided; March 29, 2013, Filed

Civil Action No. 10-cv-00609-PAB-MEH

### Reporter

936 F. Supp. 2d 1256 \*; 2013 U.S. Dist. LEXIS 45562 \*\*; 2013 WL 1302391

THE INDEPENDENCE INSTITUTE, et al., Plaintiffs, v. SCOTT GESSLER, in his official capacity as Colorado Secretary of State, Defendant.

Arthur Lane, LEAD ATTORNEY, Killmer, Lane & Newman, LLP, Denver, CO.

For Scott Lamm, Daniel Kennedy, Albie Hurst, Plaintiffs: David Arthur Lane, Killmer, Lane & Newman, LLP, Denver, CO.

**Subsequent History:** Motion granted by, in part, Motion denied by, in part [Independence Inst. v. Gessler, 2013 U.S. Dist. LEXIS 81833 \(D. Colo., June 11, 2013\)](#)

For Scott Gessler, in his official capacity as Colorado Secretary of State, Defendants: Amy Christine Colony, LeeAnn Morrill, Matthew David Grove, Melody Mirbaba, Colorado Attorney General's Office, Ralph L. Carr Colorado Judicial Center, Denver, CO.

**Prior History:** [Independence Inst. v. Gessler, 869 F. Supp. 2d 1289, 2012 U.S. Dist. LEXIS 58319 \(D. Colo., 2012\)](#)

For Heidi Verougstraete, National Ballot Access, Inc., Interested Parties: Robert James Bruce, Lawlis & Bruce, LLC, Denver, CO.

## Case Summary

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### Overview

HOLDINGS: [1]-[Colo. Rev. Stat. § 1-40-112\(4\)](#) imposed a severe burden on the petition proponents and strict scrutiny applied because [§ 1-40-112\(4\)](#) would have had the inevitable effect of reducing the total quantum of speech on a public issue; [2]-[Section 1-40-112\(4\)](#) was an unconstitutional infringement of the proponents' *First Amendment* rights because, while the State had a compelling interest in ensuring the reliability and honesty of the referendum and initiative process, [§ 1-40-112\(4\)](#) was not narrowly tailored to meet this compelling interest because none of the evidence established a connection between the type of compensation and the validity rates of petition sections, and there were less restrictive means to accomplish the State's goal; [3]-The proponents met their burden of showing that they were entitled to a permanent injunction of the enforcement of [§ 1-40-112\(4\)](#).

### Outcome

Judgment entered in favor of petition proponents.

**Counsel:** **[\*\*1]** For The Independence Institute, Jon Caldara, Dennis Polhill, Mason Tvert, Russell Haas, Douglas Campbell, Louis Schroeder, Plaintiffs: David

**Judges:** PHILIP A. BRIMMER, United States District Judge.

**Opinion by:** PHILIP A. BRIMMER

## Opinion

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### [\*1258] ORDER

The Court presided over a trial to the court from May 14 to May 24, 2012. The trial addressed one principal issue — whether the State of Colorado's limitation on per-signature compensation for petition circulators violates the *First Amendment to the United States Constitution*. The following constitute the Court's findings of fact and conclusions of law pursuant to [Rule 52\(a\)\(1\) of the Federal Rules of Civil Procedure](#).

### [\*\*2] I. FINDINGS OF FACT

Plaintiffs are petition circulators, non-profit organizations, and petition entities involved in the initiative and referendum process in the State of Colorado. They filed this 42 U.S.C. § 1983 action challenging the constitutionality of House Bill 09-1326

("H.B. 1326"), which amends the rules and procedures pertaining to the initiative and referendum processes. On April 26, 2012, the Court granted defendant [\*1259] Scott Gessler's motion for summary judgment [Docket No. 327] on plaintiffs' second, third, fourth, eighth, ninth, and tenth claims for relief. Plaintiffs' sixth and seventh claims for relief were dismissed as moot and the Secretary stipulated to the entry of final judgment on plaintiffs' first claim for relief [Docket No. 339]. The trial to court addressed plaintiffs' only remaining claim — the fifth claim for relief, which challenges the constitutionality of Colorado's hybrid compensation scheme.

The hybrid compensation scheme is codified at [Colo. Rev. Stat. § 1-40-112\(4\)](#) and states as follows: "It shall be unlawful for any person to pay a circulator more than twenty percent of his or her compensation for circulating petitions on a per signature or petition section basis." [\*\*3] The statute does not restrict all compensation to circulators on a per-signature basis; however, as a practical matter, the twenty percent restriction limits per-signature compensation to bonuses or incentive payments. As a result, the statute requires that circulators receive the majority of their compensation in the form of hourly payments.

Plaintiffs claim that the hybrid scheme severely infringes their *First Amendment* rights to free speech because it decreases the pool of professional circulators who are necessary for any successful signature-gathering campaign. Plaintiffs also argue that the hybrid scheme increases the cost of signature-gathering efforts, making it more difficult to qualify measures for the statewide ballot. Finally, plaintiffs assert that there is no evidence that the hybrid scheme will reduce the rate or incidence of fraud in the initiative and referendum process. The Secretary responds that plaintiffs offer no proof that [§ 1-40-112\(4\)](#) will actually reduce the number of available professional circulators or that the statute will increase the cost of signature-gathering efforts in Colorado.

The Court previously enjoined the Secretary from enforcing [Colo. Rev. Stat. § 1-40-112\(4\)](#), [\*\*4] [§ 1-40-135](#), and [§ 1-40-121](#) to the extent that those sections applied to the hybrid scheme. See Docket No. 60 at 37. Evidence at the preliminary injunction hearing established that the statute would deter most professional circulators from working in Colorado and would raise the cost of qualifying a measure for statewide vote. The Court also found that the Secretary failed to establish that pay-per-signature compensation was connected to the likelihood of circulator fraud. *Id.* at

29-30.

The evidence and arguments presented at trial established the following:

#### A. The Initiative and Referendum Process

The constitution of the State of Colorado permits its citizens to place propositions on the ballot through the initiative process. [Colo. Const. Art. V, § 1](#). Proponents of a measure have two years to qualify an issue for the ballot, but may only propose Taxpayer's *Bill of Rights*<sup>1</sup> measures — issues pertaining to taxes — for statewide vote in odd years.

To qualify a measure, proponents must complete the statutorily mandated process as set forth in [Colo. Rev. Stat. § 1-40-101 et seq.](#) Proponents must first submit a draft of the proposed legislation to the Legislative Counsel Office for review and comment. [Colo. Rev. Stat. § 1-40-105\(1\)](#). Following a public hearing, the draft is submitted to the Title Board, to designate [\*1260] a title (the measure's title cannot mislead or confuse voters) and a submission clause (paragraph summarizing the proposed legislation). [Colo. Rev. Stat. § 1-40-106](#). Once the petition title and the submission clause are set, proponents must provide the Secretary with a sample petition section which contains a circulator affidavit,<sup>2</sup> the ballot title, and the submission clause as approved by the Title Board. Thereafter, the Secretary must endorse a sample petition section and proponents may provide sequential copies of the petition section for circulation. Finally, proponents need to complete the circulation process in a six-month period, wherein they must collect the requisite

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<sup>1</sup> The Colorado Taxpayer's *Bill of Rights*, [Colo. Const. art. X, § 20](#), is a constitutional amendment approved by Colorado voters during the 1992 general election. [Huber v. Colo. Mining Ass'n](#), 264 P.3d 884, 886 (Colo. 2011). The amendment requires, among [\*\*5] other things, that governmental entities obtain voter approval before imposing any tax increases or extending tax legislation set to expire. *Id.*

<sup>2</sup> Circulators are required by law to sign an affidavit in the presence of a notary attesting, among other things, that they witnessed every signature in the petition section, that they individually circulated the petition, that every signature in the petition is from a registered voter, and that they understand Colorado law. [Colo. Rev. Stat. § 1-40-111\(1\)](#); see also Ex. C-97 (all citations to exhibits in this Order are to exhibits admitted at trial).

[\*\*6] number of valid signatures<sup>3</sup> to present to the Secretary for review.<sup>4</sup> The signature-gathering process is the matter at issue in this case.

## **B. Section 1-40-112(4)'s Effect on the Cost of Signature-Gathering**

### **1. Pay-Per-Signature vs. Hybrid Compensation**

The testimony from both sides established that the effect of [§ 1-40-112\(4\)](#) is to raise the per-signature cost to a petition entity. The cost of running signature-gathering campaigns will increase because the hybrid scheme excludes some professional circulators from working in Colorado and makes the signature-gathering process significantly less efficient. The evidence, however, did not provide an easily determinable method to quantify that increase in costs.

#### **a. Pool of Circulators**

At the preliminary injunction hearing, the Court found that petition entities<sup>5</sup> in Colorado rely on a group of itinerant professional circulators<sup>6</sup> to perform signature-gathering activities. Docket No. 60 at 7. Testimony from the preliminary injunction hearing established that itinerant professional circulators are integral to signature-gathering [**\*\*8**] campaigns because they (1)

are able to gather a large number of signatures in a short amount of time, (2) do not require training because they are familiar with the laws of various states, and (3) are easy to locate. *Id.* at 6. The testimony at trial, however, demonstrated [**\*\*1261**] that petition entities are not so dependent on professional circulators, but instead rely on a variety of circulators during signature-gathering campaigns. Dan Kennedy, owner of Kennedy Enterprises LLC, a petition entity in Colorado, testified that petition entities typically rely on three types of circulators: (1) low-volume but high-validity professionals<sup>7</sup> (i.e. individuals who occasionally circulate petitions for additional income); (2) medium-volume professionals (i.e. individuals who circulate on a part-time basis and produce an hourly average of 15 to 30 signatures); and (3) high-volume itinerant professionals (i.e. individuals who rely on signature-gathering campaigns for their primary income and travel between states in search of the best compensation).<sup>8</sup>

Jon Caldara, president of plaintiff The Independence Institute,<sup>9</sup> testified that his 2010 Healthcare Choice measure would not have qualified for the statewide ballot without professional circulators. Caldara stated that, between April 2010 and August 2010, his all-volunteer signature-gathering effort yielded just 20,000 signatures.<sup>10</sup> Only after this Court enjoined [§ 1-40-112\(4\)](#) and he retained Kennedy Enterprises to enlist professional circulators was his signature-gathering campaign able to collect the necessary 110,676 signatures.<sup>11</sup> See Ex. B-43 at 9. Kennedy estimated that

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<sup>3</sup>The statute requires that the petition signatures collected must be from electors who are registered to vote in Colorado. [Colo. Rev. Stat. § 1-40-111\(1\)](#). The Secretary does not count signatures if the name on the petition section is not found in the voter registration database. The Secretary also does not count signatures if the registered voter's name is found in the voter registration database, but the address provided in the petition section does not match the address in the database. [Colo. Rev. Stat. § 1-40-116\(3\)](#).

<sup>4</sup>The number of valid signatures required must be in an amount equal to at least five percent [**\*\*7**] of the total number of votes cast for all candidates for the Office of Secretary of State during the last preceding general election. The amount of valid signatures required in 2012 was 86,105; this number was 76,047 for both the 2010 and 2008 election cycles.

<sup>5</sup>Petition entities are defined as "any person or issue committee that provides compensation to a circulator to circulate a ballot petition." [Colo. Rev. Stat. § 1-40-135\(1\)](#). [**\*\*9**] Petition entities are the primary signature gatherers in Colorado, with five petition entities currently operating in the State.

<sup>6</sup>Circulators are individuals who carry petitions and attempt to persuade registered voters to sign a petition section.

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<sup>7</sup>The testimony sometimes referred to these circulators as low-volume but high-validity. This Order will refer to the low-volume but high-validity professionals as low-volume professional circulators.

<sup>8</sup>During the trial, witnesses sometimes referred to the itinerant professionals as "nomads." This Order will refer to these individuals as "itinerant professionals."

<sup>9</sup>The Independence Institute is a think tank whose mission is to promote public policies that enhance personal and economic freedom.

<sup>10</sup>Michael Arno, the owner of a petition entity in California, knew of only one instance of a successful all volunteer effort in the 1980s. The volunteer effort was to pass a measure to protect the California mountain lion and its habitat. The measure was so popular that it barely faced opposition. See [Outfitter Props., LLC v. Wildlife Conservation Bd.](#), 207 Cal. App. 4th 237, 237-38, 143 Cal. Rptr. 3d 312 (Cal. App. 3d 2012) (discussing Proposition 117).

<sup>11</sup>In 2010, Colorado required 76,087 valid signatures to qualify

40% of the **[\*\*10]** circulators working the Healthcare Choice measure were itinerant professionals. He testified that itinerant professionals are important to all signature-gathering efforts because they do not require training,<sup>12</sup> have a high validity rate, and consistently collect 30 signatures in an hour and sometimes can collect 100 signatures in an hour.

Kennedy Enterprises contracted with Lamm Consulting, a petition entity in Colorado, to gather signatures on the Healthcare Choice Measure. Scott Lamm, owner of Lamm Consulting, also testified that itinerant professionals were the first contacted to circulate that petition. Lamm relied on itinerant circulators because only seven and a half weeks remained to collect signatures after the Court enjoined [§ 1-40-112\(4\)](#). In Lamm's words, the signature-gathering campaign had "no time to **[\*1262]** waste on training people or orienting people on what we needed to do."

The evidence at trial established that any campaign performed without professional circulators would likely spend additional time and resources training new circulators. Although proponents have six months to collect signatures in Colorado, testimony **[\*\*12]** revealed that, due to legal challenges,<sup>13</sup> signature-gathering efforts are never conducted within a full six-month window. Additionally, new circulators require at least a week of training before they are able to collect signatures at a consistent rate. Thus, as the time to collect signatures grows shorter, professional circulators are an increasingly important part of a successful signature-gathering campaign.<sup>14</sup>

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a measure for statewide vote. Petition entities collect additional signatures to create a "buffer" zone in anticipation that some of the collected signatures are invalid. For example, Caldara needed to provide 76,087 valid signatures **[\*\*11]** to qualify his Healthcare Choice measure for the ballot but contracted with Kennedy Enterprises to collect 110,000 signatures with a 75% validity rate. Ex. B-43.

<sup>12</sup>Lamm and Kennedy testified that itinerant professionals attend a single one-hour training session at the beginning of a campaign in order to review some key statutory provisions regarding the signature-gathering process in Colorado.

<sup>13</sup>Individuals unsatisfied with the Title Board decision may file a challenge with the Secretary within seven days of the decision. [Colo. Rev. Stat. § 1-40-107\(1\)](#). Registered voters may challenge Secretary's statement of sufficiency. See [Colo. Rev. Stat. § 1-40-118](#). Caldara said that challenges to the statement of sufficiency raise the cost of qualifying petitions and delay the completion of signature-gathering drives.

Edward Blaszak, who owns a pay-per-hour signature gathering firm **[\*\*13]** in Oregon and has run pay-per-hour campaigns in other states, testified about the importance of well-trained petition circulators. Blaszak stated that the training he provides to new circulators allows them to become efficient circulators. For example, during a petition campaign, the first day at Blaszak's company includes intensive training sessions where circulators practice pitching a proposed measure to registered voters, role playing activities where circulators simulate actual conditions, and on-site training once new circulators are out in public. Moreover, Blaszak often retrains poorly performing circulators rather than terminating them so long as they continue to provide adequate effort.

Lamm, Kennedy, Blaszak, and William Huckins, one of Blaszak's circulators, testified that, although petition circulation is not a difficult concept to understand, it is not an easy task to master. Lamm opined that only one out of every ten individuals who attempts to circulate is ultimately successful, while Huckins testified that it took him a "week [to] two weeks" to acquire the necessary skills. Edward Agazarm, who has been involved in signature-gathering for 19 years, testified that new **[\*\*14]** circulators are less productive because they have not acquired the skills necessary to identify eligible voters and collect a large number of signatures. Agazarm, Lamm, Blaszak, and Kennedy testified that nonprofessional circulators' lack of skills typically results in lower overall production and lower validity rates.

The evidence at trial established that [§ 1-40-112\(4\)](#) would likely exclude some professional circulators (both itinerant professionals and low-volume professional circulators) from working in Colorado. The testimony demonstrated that itinerant professionals are driven primarily by their earning potential. Jacob Thaler and David Vaughn, two pay-per-signature itinerant professionals, testified that they would work in Colorado under [§ 1-40-112\(4\)](#) if they could earn between \$30 to \$50 per hour. Jeffrey Zax, professor of economics at the University of Colorado, Boulder, testified that earning potential is an important criteria itinerant professionals consider when choosing signature-gathering

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<sup>14</sup>Edward Blaszak, who owns a pay-per-hour signature gathering firm in Oregon, testified that his inability to qualify the casino initiative in Oregon was due in part to the "condensed time-frame." In that drive, Blaszak charged proponents \$5 per signature to collect signatures at a cost of \$600,000.

campaigns.<sup>15</sup>

Zax opined that itinerant professionals avoid working in pay-per-hour states such as [\*1263] as Oregon because the hourly rate for circulators in those states is between \$9 and \$12 per hour. He testified that professional circulators would work in Colorado if their compensation was closely linked to productivity.<sup>16</sup> Zax described a hybrid compensation model consistent with [§ 1-40-112\(4\)](#) that he argued would allow itinerant professionals to maintain the earning potential they possessed under a pay-per-signature system.<sup>17</sup> Zax testified that itinerant professionals could earn \$35 per hour, which consisted of an hourly wage of \$28 and a 20¢ bonus for every signature collected up to 35. Petition entities could also replicate this hybrid compensation scheme by calculating a 20% bonus rate from the anticipated hourly production total for an itinerant professional.

Despite the theoretical plausibility of Zax's model,<sup>18</sup> the Court finds that [§ 1-40-112\(4\)](#) will likely deter most itinerant professionals from working in Colorado. First, there was no testimony that any pay-per-hour signature gathering entity pays circulators the \$28 to \$50 per hour that pay-per-signature itinerant professionals can earn. Blaszak typically pays \$14 per hour.<sup>19</sup> Second, the

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<sup>15</sup> Huckins was the only circulator who testified that working with a group towards a common goal was more important than his earning potential. The Court finds that Huckins [\*15] is not representative of the overwhelming majority of circulators.

<sup>16</sup> Arno testified that some itinerant professionals could be attracted to a hybrid system. Blaszak also testified that he has attracted a couple of itinerant circulators to his petition entity.

<sup>17</sup> Zax explained that, if a circulator under a pay-per-signature compensation scheme earns [\*16] \$1 per signature and collects 35 signatures in an hour, he will earn \$35 per hour. Under [§ 1-40-112\(4\)](#), a circulator could earn \$35 for 35 signatures in an hour if he had a base salary of \$28 per hour or 80% of his typical earnings in a hour-and the petition entity offered the circulator a bonus of 20¢ for each signature in an hour up to 35 signatures. The maximum bonus or incentive per hour would equal \$7, allowing the circulator to earn up to \$35 in an hour as long as he maintained the same rate of collection for each hour worked.

<sup>18</sup> Zax admitted that he has not interviewed any circulators, either pay-per-hour or pay-per-signature, [\*18] and that he did not review the testimony of any circulators.

<sup>19</sup> Blaszak testified that he pays part-time employees, those who work fewer than 30 hours a week, \$10 per hour. Full-time

flexibility afforded to itinerant professionals by the pay-per-signature model would not be available under a hybrid compensation scheme. Moreover, because a petition entity operating under [§ 1-40-112\(4\)](#)'s hybrid scheme must exert more control over its circulators, itinerant [\*17] professionals will likely decline to work under such conditions. According to Arno, itinerant professionals want the freedom to work in places and during times they are likely to gather a high volume of signatures (e.g. grocery store after 6:00 p.m., outdoor events, or sporting events). Thaler and Vaughn testified that they had reservations about pay-per-hour systems because they would not adequately compensate them for the unusually high production days when they can collect up to 100 signatures in an hour.<sup>20</sup> Thus, imposing restrictions on itinerant professionals' freedom to work where they want and when they want is likely to not only curtail their production, but also to result in certain professionals' refusal to submit to such conditions. Additionally, the uncertainty surrounding circulators' employment status (i.e. employee or independent contractor) under a hybrid [\*1264] system will likely deter most itinerant professionals from working in Colorado just as they currently avoid Oregon.<sup>21</sup> Consequently, the net effect of [§ 1-40-112\(4\)](#) will be to deter the majority of itinerant professionals.

The Court finds that the hybrid scheme will also eliminate low-volume professional circulators. Kennedy and Lamm testified that, because low-volume professional circulators collect only a few signatures during any given week, it would not be economically feasible to compensate these circulators with an hourly wage. Additionally, they [\*19] testified that, because it is not feasible to pay low-volume professionals by the hour, the only alternative under the hybrid scheme would be to pay low-volume professional circulators 20¢ per signature. However, low-volume professional

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employees earn \$14 per hour.

<sup>20</sup> This is particularly the case under bundling. Bundling occurs when circulators carry two or more petition sections contemporaneously. A circulator can significantly increase his earning potential under a pay-per-signature system by utilizing bundling if he can convince one voter to sign multiple petition sections at the same time.

<sup>21</sup> In 2002 Oregon voters passed Measure 26 which bans the use of pay-per-signature compensation for circulators in connection with ballot initiatives in the State of Oregon. Measure 26's constitutionality was challenged in federal court and was upheld by the Ninth Circuit in [Prete v. Bradbury, 438 F.3d 949 \(9th Cir. 2006\)](#).

circulators would not find compensation of 20¢ per signature sufficient to continue signature-gathering activities. By contrast, Lamm and Kennedy testified that, under a pay-per-signature system, they can collect signatures from low-volume professional circulators without oversight because their low productivity (i.e. a net gain of five to fifteen signatures over the course of a week) garners the same compensation regardless of the length of time to collect. Kennedy and Lamm both testified that the constant flow of high-validity signatures from low-volume professional circulators can account for 20% of total signatures. These signatures are essential because the high validity rate decreases the burden of collecting "buffer" signatures.

Without access to the majority of itinerant professionals and low-volume professional circulators, petition entities will have to expend more resources training new circulators. In addition, petition entities will have **[\*\*20]** to compensate circulators for more hours of work in order to generate the 20% of signatures usually provided by low-volume professional circulators. When time is of the essence, the necessarily greater reliance on new circulators under [§ 1-40-112\(4\)](#) increases the likelihood of poor validity and thereby makes it more likely that a signature-gathering campaign will be unsuccessful.<sup>22</sup> As a result, the loss of itinerant professionals and low-volume professional circulators is likely to raise costs for proponents and make it less likely that an issue qualifies.

### b. Inefficiency Costs

The testimony at trial established that [§ 1-40-112\(4\)](#) would significantly decrease the efficiency of signature-gathering campaigns. Lamm, Kennedy, and Albie Hurst, an employee of Lamm Consulting, testified that circulators in Colorado under their pay-per-signature models receive compensation only for the signatures they provide **[\*\*21]** and are not compensated for training or travel time.<sup>23</sup> Additionally, Kennedy and Lamm testified that their firms review petition sections to determine validity rates.<sup>24</sup> Circulators with validity rates

**[\*1265]** lower than 75% have their compensation partially reduced.

Kennedy testified that he has relatively low day-to-day expenses. He hires his daughters or temporary agency workers to perform office functions. On signature collection days, which happen **[\*\*22]** twice a week, crew managers<sup>25</sup> help perform validity checks and Bonnie Todd, a circulator who is also a licensed notary, usually notarizes petition sections. Moreover, because everyone performing work on behalf of Kennedy Enterprises is considered an independent contractor, completing payroll does not require specialized skill. Kennedy testified that the hybrid scheme would increase his costs of conducting a signature-gathering campaign because he would have to collect signatures daily, could not reduce circulator compensation for low validity rates, and would have to compensate circulators for activities that do not directly yield signatures such as training, rest breaks, and travel time.

Agazarm, who has participated in both pay-per-signature and pay-per-hour campaigns in the State of Oregon,<sup>26</sup> testified that circulators are not as productive under pay-per-hour systems. Agazarm stated that, because circulator compensation is not tied to

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<sup>24</sup> To perform validity checks, petition entities purchase the official list of registered voters from the Secretary of State. The official list contains the names and addresses of all registered voters in Colorado. Petition entities then take a random sample of names from petition sections and compare them to the Secretary's official list. Petition entities mark names or addresses in petition sections as invalid if they do not match the names and addresses in the official list. Additionally, petition entities mark signatures as invalid if they believe the signatures were forged.

<sup>25</sup> Petition entities usually engage three levels of independent contractors. First, they enter into an independent contract agreement ("ICA") with an area coordinator who is in charge of a large geographic area of the State (i.e. northern Colorado, the Denver metro area, and southern Colorado) but does not collect signatures. Petition entities then sign ICAs with crew managers who are professional circulators in charge of small groups of circulators. The crew managers collect signatures and are responsible **[\*\*23]** for choosing circulators based on reputation and previous work experiences. Finally, petition entities enter into ICAs with circulators based on the recommendation of crew managers.

<sup>26</sup> In 1999, Agazarm worked in Oregon as a circulator compensated on a pay-per-signature basis and in 2003 he worked in Oregon as a volunteer coordinator for a pay-per-hour campaign.

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<sup>22</sup> Blaszak testified that he only had seven weeks to circulate petitions for the casino initiative in Oregon and, although Blaszak was able to gather the requisite number of signatures, the measure failed because reliance on newly trained circulators significantly lowered his validity rate.

<sup>23</sup> Occasionally, petition entities provide advance payments to highly coveted circulators for travel and lodging costs, which are deducted from circulators' future earnings.

productivity under a pay-per-hour system, circulators "shirk"<sup>27</sup> their responsibility to gather signatures. He further testified that shirking increases a petition entity's exposure to loss because circulators are compensated regardless of how many signatures they collect. Shirking, however, is non-existent in a pay-per-signature system because circulators are not compensated if they fail to collect signatures.

Arno, who has qualified more than 650 initiatives nationwide since 1979, [\*\*24] testified that the cost of running a pay-per-hour drive can double the cost of a pay-per-signature campaign. Arno based this estimate on a pay-per-hour campaign he performed in Oregon after the passage of Measure 26. Arno testified that, under a pay-per-signature system, he could collect 140,000 signatures in Oregon at a rate of \$1.55 per signature for a total of \$217,000. However, in 2003, after the passage of Measure 26, he spent over \$500,000 to collect the same number of signatures. In addition to the added costs identified by Agazarm and Kennedy, Arno testified that pay-per-hour campaigns increase costs because petition entities must hire additional field supervisors to counter shirking, pay overtime to circulators who work longer than 8 hours in a day without permission, [\*1266] and cannot reduce circulator compensation even if circulators report inflated hours.

This testimony was consistent with Blaszak's experience conducting pay-per-hour campaigns. Blaszak testified that he compensates circulators for training and travel time and has field managers supervise circulators. Additionally, Blaszak testified that, in order to counter shirking, his circulators report signature totals twice [\*\*25] daily. Blaszak provides bonuses in the form of movie tickets and pizza parties to increase production.<sup>28</sup> Blaszak terminates a circulator if a circulator consistently collects below a certain number of signatures.<sup>29</sup>

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<sup>27</sup> Shirking occurs when circulators do not provide the appropriate effort in return for the hourly wage.

<sup>28</sup> Blaszak testified that only 1.8% of the circulators utilized the bonus during his campaign in California.

<sup>29</sup> Although Blaszak did not provide a minimum number of signatures necessary for a circulator to avoid termination, the pay schedule from his recent California campaign shows that the expectation is to collect at least 80 signatures in a 7-hour work shift, or 11 signatures per hour. See Ex. D-5. Blaszak's circulators work 8-hour shifts with a 1-hour break.

Zax acknowledged that a principal weakness of a pay-per-hour system is that circulators will attempt to shirk when given the opportunity. However, Zax opined that the 20¢ per signature incentive payment built into [§ 1-40-112\(4\)](#) could effectively deter shirking. Zax also believed that itinerant professionals would not misrepresent their hours (i.e. collect 35 signatures in 30 minutes while reporting work for the whole hour) because petition entities and circulators could renegotiate contracts weekly if an itinerant professional's [\*\*26] production exceeded compensation. Zax testified that the hybrid compensation model protects both itinerant circulators and petition entities from the vicissitudes of signature-gathering because itinerant professionals could potentially earn \$28 per hour even when circulating in poor conditions (i.e. bad weather) and, on the other hand, petition entities would be underpaying circulators, compared to pay-per-signature compensation schemes, during periods of unusually high production.

The Secretary's argument about the flexibility and viability of the hybrid compensation scheme cannot survive careful consideration. From a theoretical perspective, there is no discernible difference between the use of a hybrid system and a pay-per-signature system. Under either system, the economic reality for itinerant professionals is that they would earn \$35 for collecting 35 signatures in an hour. Moreover, although Zax argues that a hybrid system protects itinerant professionals against poor working conditions, the testimony from Arno, Kennedy, and Thaler established that itinerant professionals in a pay-per-signature system do not work in poor weather conditions. Thus, to the extent Zax's model anticipates [\*\*27] protecting itinerant professionals from poor conditions, the testimony at trial established that this is an assurance that is not required and would not provide an incentive to attract itinerant professionals to the hybrid scheme described by Zax.

Second, the prospect of renegotiating a contract is insufficient motivation for itinerant professionals to counter shirking. Thaler and Vaughn, the two itinerant professionals at trial, testified that the prospect of providing free signatures to petition entities in exchange for future contract renegotiation was unappealing. Itinerant professionals earn on average \$1 for every signature collected. Under Zax's hybrid model hypothetical, once itinerant professionals meet their negotiated signature threshold (i.e. 35 signatures in an hour), they have no incentive to gather additional signatures. As Blaszak testified, using a quota is more

of a stick, meaning that circulators will work [\*1267] only as hard as necessary to reach the quota and, once reached, will not provide additional effort.<sup>30</sup>

The likely effect [\*\*28] of the hybrid compensation scheme described by Zax is that it will not attract itinerant professionals and the lower training cost and higher productivity associated with them and, as a result, will not give petition entities the benefit that Zax noted of undercompensating such persons during periods of higher productivity.

The Court finds that Zax's hybrid model would significantly increase the costs of a signature-gathering campaign. Zax's model requires that petition entities provide hourly compensation to circulators for orientation, travel costs, and paid rest breaks which are not compensated under a pay-per-signature model. Petition entities will also have to provide additional compensation for crew managers who would have significantly greater supervisory responsibilities. Petition entities will likely have to collect signatures daily to ensure that new circulators gather an adequate number of signatures. These daily collections will increase costs in two ways: first, petition entities will have to secure the daily services of a notary; and second, petition entities will have to hire an employee to track circulator productivity and make a decision to either terminate employment, [\*\*29] renegotiate the contract, or provide more training. Moreover, negotiating employment contracts on a frequent basis increases exposure to lawsuits for wrongful terminations, employment benefits, or other labor related claims.<sup>31</sup>

Third, because the testimony indicated that only one out of ten new circulators develops into a professional circulator, petition entities will incur greater costs as they compensate unproductive circulators. For example, Blaszak testified that, even if a circulator provided only 10 signatures for a full 7-hour workday, the circulator would receive compensation of \$70<sup>32</sup> for the hours

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<sup>30</sup> Blaszak testified that he does not tell his circulators to gather 10 signatures per hour because otherwise they will only return 10 signatures.

<sup>31</sup> Currently, petition entities are largely immune to unemployment claims because circulators are treated as independent contractors. Only one instance of an unemployment claim against a pay-per-signature entity was presented at trial.

<sup>32</sup> As noted above, Blaszak's part-time employees earn \$10 per hour. Assuming a full-time employee worked a 7-hour

worked that day. Although at some point the petition entity could terminate an unproductive worker, the cumulative daily loss of \$70 to compensate unproductive circulators will increase the costs of the entire campaign.<sup>33</sup>

Accordingly, the Court finds that the cumulative inefficiencies likely to occur as a result of [§ 1-40-112\(4\)](#) will significantly increase the costs of running signature-gathering campaigns.

### c. Independent Contractor vs. Employee

The testimony at trial did not establish whether circulators were currently employees or independent contractors under Colorado law.<sup>34</sup> As noted above, petition [\*1268] entities in Colorado currently classify circulators as independent contractors. However, a 2003 audit of Lamm Consulting by the Colorado Department of Labor and Employment ("CDLE") reclassified Lamm's circulators from independent contractors to employees. See Ex. D-79. Lamm did not appeal the CDLE's decision; instead, Lamm entered into an installment agreement with the CDLE accepting the department's decision. See Ex. D-86. Nevertheless, to the extent Lamm's failure to appeal the CDLE's [\*\*31] decision might have defined the employment status of his circulators, Kennedy and other petition entities have not had to reclassify their circulators.<sup>35</sup>

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shift, he would be [\*\*30] compensated \$98 for the 10 signatures returned.

<sup>33</sup> Blaszak testified that it is unlikely a new circulator could work an entire day and provide only 10 signatures because circulators report signatures twice a day. However, he testified that he would compensate the circulator for the day even if he returned fraudulent signatures.

<sup>34</sup> Under Colorado law, an individual performing activities on behalf of a business is generally considered an employee. To rebut the "employee" presumption, an employer must prove that the worker is "free from control and direction in the performance of the service, both under his contract for the performance of service and in fact." [Colo. Rev. Stat. § 8-70-115\(1\)\(b\)](#). [\*\*32] To determine whether an employer has "control and direction" over an employee, courts examine the degree of control the employer has over the means and methods of the employee's work, the ability to terminate a worker at any time without liability, and the ability to set quality standards. [Carpet Exch. of Denver, Inc. v. Indus. Claim Appeals Office, 859 P.2d 278, 281 \(Colo. App. 1993\)](#).

<sup>35</sup> Arno testified that he was not required to reclassify his circulators as employees after an audit by both the Internal

See [Colo. Rev. Stat. § 8-74-108](#) (determinations made under the Employment Security Act are not binding on any other agency or court); see also [Gloston v. ITT Fed. Servs. Int'l Corp., No. 06-cv-02168-PSF-BNB, 2007 U.S. Dist. LEXIS 45418, 2007 WL 1830486, at \\*3 \(D. Colo. June 21, 2007\)](#) (finding that outcomes made in an unemployment proceeding are not binding in any subsequent litigation not brought under the Colorado Employment Security Act). Because a determination of whether circulators are employees or independent contractors is usually a fact intensive inquiry, and such facts were not presented at this trial, the Court will not resolve this legal issue as it is not necessary for the holding in this case.<sup>36</sup>

#### d. Approximate Cost Increase

The evidence at trial established that an increase in signature gathering **[\*\*33]** costs is unlikely to have an effect on individuals or entities who can raise large sums to qualify a measure for the statewide ballot. However, the cost increase is likely to disproportionately impact individuals with limited resources by making measure qualification unaffordable. Caldara, Mason Tvert, and Jennifer Gratz testified that they had to suspend qualifying potential measures in 2010 because of the cost increase associated with [§ 1-40-112\(4\)](#). Although the testimony at trial demonstrated that the per signature price is unlikely to increase to \$5.50 because of [§ 1-40-112\(4\)](#), the evidence established that the statute will likely raise prices from a baseline of \$2.07 per signature to \$2.50 per signature (18%) and possibly to more than \$3 per signature.

Kennedy testified that he usually charges a proponent \$2.07 per signature for unbundled petitions under a pay-per-signature model. See also Ex. B-43. On the other hand, Blaszak testified that he typically charges a proponent \$5<sup>37</sup> per signature **[\*1269]** for unbundled

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Revenue Service ("IRS") and the Employment Development Department of California. Kennedy testified that, after seeking his accountant's professional opinion, he was advised that circulators were independent contractors under Colorado law.

<sup>36</sup> Terry West, an audit manager for the Colorado Department of Labor and Employment, testified that the CDLE usually undertakes a comprehensive review of an employee's duties in connection with the business when making a determination of whether an employee is misclassified as an independent contractor. See, e.g., Ex. D-32; [Colo. Rev. Stat. § 8-70-115](#).

<sup>37</sup> In 2006 Blaszak proposed an hourly rate of \$30 for 16,500 hours of supervised collection which equals \$495,000. See Ex.

petitions.<sup>38</sup> Blaszak, however, attributed 15 to 20% of his proposed price per signature to the fact that he withholds Federal Insurance Contributions Act ("FICA") tax and provides **[\*\*34]** unemployment and workers' compensation insurance benefits. Notwithstanding, when discounting 20% from Blaszak's \$5 per signature price, his average bid for an unbundled measure remains close to \$4. Assuming Blaszak's typical bid was further discounted from what has been termed his "Cadillac" services, such as 13¢ for creating a voter database, 30¢ for background checks and volunteer recruitment, and 12¢ for processing volunteer signatures, his typical charge remains at \$3.45. Moreover, at the preliminary injunction hearing, Blaszak testified that he would likely bid \$2.50 per signature for a Colorado signature-gathering campaign. Docket No. 48 at 128.<sup>39</sup>

In addition to raising the per-signature price of campaigns, [§ 1-40-112\(4\)](#) deprives petition entities of the flexibility they currently enjoy when negotiating contracts. Arno, Kennedy, and Lamm testified that pay-per-signature entities can sometimes negotiate to pay circulators as little as 50¢ per signature in order to lower costs to proponents. Because overhead for petition entities under a pay-per-signature model is typically low, pay-per-signature entities can nevertheless make a profit despite significant decreases in contract prices. See Ex. A-5 at 5-6. The testimony showed that petition entities will not have this flexibility under a hybrid system as they will be forced to pass on their overhead costs **[\*\*36]** to proponents in order to remain profitable.<sup>40</sup> Blaszak testified that an unbundled pay-per-hour

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D-28. Blaszak testified that this contract had terms similar to those he currently offers. Blaszak lowered his pay-per-hour rate from \$5 to \$2.65 in California by bundling petitions.

<sup>38</sup> Blaszak testified that the Casino initiatives are currently re-run as bundled petitions and are averaging \$3.25 per signature, while the other two bundled petitions he is running are averaging \$2.75 and \$2.40 per signature.

<sup>39</sup> Some factors **[\*\*35]** that influence the cost of a signature-gathering campaign include weather, local competition, time available to circulate, election regulations, the popularity of the issue, commercial access, the number of signatures required, the regulatory scheme, and bundling. Because pay-per-hour and pay-per-signature entities are subject to the same external factors when submitting bids to proponents, the majority of these factors will be consistent for proponents submitting bids in Colorado.

<sup>40</sup> Blaszak testified that it would cost \$25,000 in overhead to run his company in Colorado.

campaign was likely to be too expensive for individuals with limited funds. He often advises individuals with limited funds to run a campaign using friends and acquaintances. Given that campaigns run by nonprofessionals are unlikely to succeed, the Court finds that the cost increase associated with [§ 1-40-112\(4\)](#) is likely to lower the chances of under-funded proponents succeeding in the initiative and referendum process.

### **C. Section 1-40-112(4)'s Effect on Reducing Fraud and Invalidity**

#### **1. Validity Rates**

Kathryn Mikeworth, the operations manager for the Colorado Secretary of State, testified about the signature verification process.<sup>41</sup> She said that the Secretary performs a random sample of 5% of the signatures or a minimum of 4,000 signatures on a petition. [Colo. Rev. Stat. § 1-40-116\(4\)](#). The Secretary has 30 days to verify signatures and issue a statement of sufficiency, which explains whether proponents have submitted a sufficient number of valid signatures to qualify for the ballot. [Colo. Rev. Stat. § 1-40-118\(1\)](#). **[\*\*37]** If the random sample establishes that the number of **[\*1270]** "presumed valid signatures"<sup>42</sup> is 90% or less of the number needed to qualify for the ballot, the petition is deemed insufficient. If the random sample establishes that the number of presumed valid signatures is over 110% of the minimum number of signatures required to qualify for the ballot, the measure automatically qualifies. However, if the random sample shows that the number of signatures is more than 90%, but less than 110% of the number needed to qualify, the Secretary must undertake a line-by-line review of the petition section. This line-by-line review must be completed within the original 30-day window, meaning that if it takes the Secretary 20 days to conduct a sample of signatures, he has 10 days left to do a line-by-line review of the same petition section.<sup>43</sup>

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<sup>41</sup> Prior to her current position, Mikeworth was the manager of the ballot access program and oversaw the qualification of initiatives for the statewide ballot.

<sup>42</sup> A circulator affidavit creates a presumption of validity for all signatures on the petition section. These signatures are then counted as valid unless proven otherwise.

<sup>43</sup> During the 2007-2008 election cycle, **[\*\*38]** the Secretary examined approximately 182,000 signatures from 11 proposed measures during the same 30-day window. To manage the influx of signatures, the Secretary usually employs 30 to 40

The Secretary's statement of sufficiency must indicate the number of signatures sampled and whether the number of valid signatures was less than 90% or less than 110%. See, e.g., Ex. 132 (Statement of Sufficiency). If the signatures provided by a proponent are insufficient, then the proponent can cure the deficiency by collecting additional valid signatures to meet the statutory threshold (76,047 valid signatures in 2008). "Cure" signatures must be provided to the Secretary no later than three months before the election is held.

The Secretary follows Rule 17.3 of the Colorado Secretary of State Election Rules to perform the line-by-line review of petition sections.<sup>44</sup> See Ex. C-51. The Secretary rejects a signature as invalid if the name on the petition section is illegible, the signature is a duplicate, or the name listed in the petition section does not match the address listed in the registered voter database.<sup>45</sup> To verify submitted signatures, **[\*\*39]** the Secretary compares the name and the address listed on the petition section to SCORE, the voter registration database for the State of Colorado.<sup>46</sup> Certain restricted databases in SCORE contain copies of registered voters' signatures. The Secretary, however, does not compare the signatures in the petition section with those in SCORE because it is a security risk to grant temporary employees access to restricted databases.<sup>47</sup>

The testimony from both sides established that signature compensation schemes have no measurable

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temporary staff members during the petition review cycle.

<sup>44</sup> The Secretary has little discretion to reject signatures as invalid and must accept borderline signatures as valid because the circulator affidavit establishes a presumption of validity.

<sup>45</sup> The Secretary undertakes a multi-step process to identify a registered voter if the name is illegible. First, he searches by name; second, he searches a combination of a few letters of the first name; third, he searches a combination of a few letters of the last name; and, fourth, he tries to locate the name by the address listed.

<sup>46</sup> At the time of trial, SCORE contained voter registration information for 3.4 million voters in the State of Colorado. The 3.4 million number included active and inactive voters. An inactive voter is an individual who has not participated in the previous **[\*\*40]** November general election or has had a mailed ballot returned as undeliverable. Inactive voters accounted for 1.2 million voters in the database.

<sup>47</sup> Since 2001, 44 petition sections have gone through the Secretary's verification process and 41 have made the ballot.

impact on validity rates. Blaszak testified that his validity rate is usually around 72 to 74%,<sup>48</sup> [\*1271] while Arno and Lamm testified that their validity rates are often between 70 and 75%. The testimony also demonstrated that petition entities attempt to curtail the collection of invalid signatures under both pay-per-hour and pay-per-signature systems. Lamm, Arno, Agazarm, and Kennedy testified that they reduce circulator compensation for validity rates below 75%. Blaszak testified that he provides extensive training to his circulators, performs "secret shopper" activities,<sup>49</sup> and holds daily validity checks to curtail the collection of invalid signatures. As Blaszak concluded, the validity rates for signatures provided to the Secretary under both systems is comparable, even if the validity of signatures gathered in the field differs.

Moreover, petition entities have an incentive to maintain high validity rates because failure to qualify an issue is detrimental to future business. For example, Lamm Consulting was replaced by another petition entity when it failed to qualify Tvert's marijuana initiative in 2010.<sup>50</sup> Caldara testified that he only contracts with Kennedy Enterprises because it "gets the job done." Caldara stated that, because the money paid for signature-gathering campaigns is non-refundable, proponents carefully select petition entities as proponents stand to lose significant sums if their measure fails to qualify for the ballot.<sup>51</sup>

Finally, none of the evidence presented linked low validity rates to fraud or professional circulators. On the contrary, low validity rates were usually attributed to new circulators who did not have the skills necessary to ask the right questions. Blaszak testified that his casino initiative in Oregon failed in part because of the "condensed time-frame" in which to collect signatures

and the overreliance on new circulators. In rare instances, the nature of the ballot initiative, by itself, can affect the validity rates. For example, Lamm attributed the failure of the marijuana initiative to the nature of the measure. Lamm and Hurst testified that overzealous signers of the marijuana initiative often lied about their age, whether they were registered voters, or whether they signed previous petition sections. Lamm and Hurst testified that the marijuana initiative had similar problems in Colorado in 2006 and in other states that have attempted to pass a similar measure. Accordingly, the evidence at trial established that invalid signatures are typically the result of inexperienced circulators or voter error, i.e. registered voters changing addresses without updating the voter registration card,<sup>52</sup> illegible signatures, or individuals not knowing their current voter status. The testimony did not show that validity rates were affected by the form of compensation scheme.

## 2. Incidence of Fraud

Ballot petition fraud is a crime in the State of Colorado. [Colo. Rev. Stat. § 1-40-130](#). Examples of fraudulent circulator practices include forging signatures, misrepresenting [\*1272] the issue, using an otherwise unqualified person to circulate petition sections on the circulator's behalf (surrogate fraud), signing a circulator affidavit without actually circulating the petition (false witnessing), and offering a registered voter something of value in exchange for a signature (inducement). Kennedy, Arno, Lamm, Hurst, and Blaszak testified that circulator fraud occurs regardless of the compensation scheme because certain individuals are prone to commit fraud. None of the evidence, however, established the rate of fraud in the initiative process or the amount of fraud attributed to pay-per-signature circulators.

Mikeworth and Hillary Rudy, the senior legislative and policy analyst for the elections division of the Secretary of State's office, testified that, because of a lack of resources, the Secretary is unable to detect circulator fraud that occurs in the field, such as misrepresentation, surrogate fraud, false witnessing, and inducement. Rudy testified that the Secretary is also unable to detect forgeries when petition sections are reviewed because the temporary employees who are often hired to conduct validity checks do not have access to restricted

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<sup>48</sup> The [\*41] highest possible validity rate in the State of Oregon is 92%; however, even when adjusting for this baseline, Blaszak's validity rates are only 5 to 7% higher when compared to pay-per-signature entities.

<sup>49</sup> Blaszak's managers sometimes disguise themselves as registered voters and approach new circulators about petition sections to determine whether the new circulator is responding to training.

<sup>50</sup> The marijuana campaign had a validity rate of 51% in 2010. Lamm also testified that he did the marijuana initiative in 2006 and had only a validity rate of 65%.

<sup>51</sup> The proponents of the [\*42] casino initiative in Oregon lost \$600,000 when it failed to qualify for the ballot.

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<sup>52</sup> The voter registration database is a live system so that as soon as a voter registration is updated, the system makes the change retroactively.

SCORE databases.<sup>53</sup>

The Secretary argues that pay-per-signature systems provide more of an incentive to commit fraud when compared to pay-per-hour systems or [§ 1-40-112\(4\)](#)'s hybrid scheme. However, the evidence at trial actually proved the contrary, namely, that the incentive to commit fraud is likely stronger under a hybrid scheme when compared to a pay-per-signature system.

Huckins, Blaszak, and Zax testified that one of the benefits of working under an hourly wage system is the security of guaranteed compensation **[\*\*45]** for the hours worked. Yet both Blaszak and Zax acknowledged that an employee getting below a certain number of signatures should eventually be terminated. Blaszak testified that he terminates employees who consistently fail to reach a minimum number of signatures. As Arno noted, the security of guaranteed compensation is undermined by the pressure to maintain a minimum level of production. As a result, the existence of a minimum number of signatures that an hourly employee must gather creates an incentive to commit fraud. For example, if at the end of a given workweek, a circulator employed under a hybrid system of compensation is several signatures short of her weekly quota and knows she faces termination if she does not reach the quota, that circulator has an incentive to fraudulently obtain the remaining signatures. Under this scenario, an underperforming circulator in a hybrid system faces a stark choice: either provide fraudulent signatures and retain employment, or miss the weekly quota and forgo future compensation. Moreover, it is difficult to detect these fraudulent "fill-in" signatures because the other signatures on the petition section are usually valid. Therefore, the **[\*\*46]** circulator's validity rate remains high because of the small chance of sampling the "fill-in" signatures. Although a hybrid scheme may decrease the incentive to commit fraud because it guarantees compensation, it will act to encourage fraud by pressuring nonproductive circulators to meet daily or weekly quotas, whether those quotas are stated or not.

On the contrary, the incentive to commit fraud under a pay-per-signature system is the possibility of earning an extra dollar for every fraudulently collected signature. Circulators in pay-per-signature systems have no pressure to meet weekly quotas, are not at risk of losing their positions, and, in fact, pay-per-signature entities rely on low-volume professional circulators to **[\*1273]**

provide 20% of the overall signatures collected. Thus, any incentive to commit fraud in a pay-per-signature model is solely based on a circulator's desire to maximize his or her compensation. Arno, Blaszak, and Agazarm testified that large scale forgery is easily detectable<sup>54</sup> as evidenced by the examples of Claudia Kenny in Washington and Blaszak's employee in Maine.<sup>55</sup> Vaughn also testified that it is actually easier to collect signatures than to attempt forgery. **[\*\*47]** Consequently, because large scale fraud is easier to detect, circulators who commit such fraud are unlikely to escape detection.<sup>56</sup> As a result, under a pay-per-hour system, the marginal return of forging a signature can be, by meeting a quota, retaining one's employment, whereas the marginal return of forging a signature under a pay-per-signature system is what is paid for a signature. Losing one's job is a greater incentive to commit fraud when compared to the prospect of earning an additional dollar.

From a theoretical viewpoint, pay-per-hour signature gathering, rather than pay-per-signature gathering, incentivizes fraud. However, the evidence at trial of actual fraud was minimal and established that fraud occurs under both pay-per-hour<sup>57</sup> and pay-per-signature systems because some individuals are simply prone to commit fraud.<sup>58</sup>

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<sup>54</sup> For example, large scale forgeries may be obvious because the petition section is in alphabetical order, all the male signatures are legible, all signatures have the same handwriting, or the petition section is clean.

<sup>55</sup> Kenny was a pay-per-hour circulator in the State of Washington who forged a large number of signatures; Agazarm was able to detect the fraud because her petition section was clean and all the signatures were of the same handwriting. Blaszak testified that one of his pay-per-hour employees in Maine requested to switch compensation to pay-per-signature. The next day the employee returned with 3,000 signatures, which Blaszak determined were fraudulently gathered due to the **[\*\*48]** short turnaround.

<sup>56</sup> Because petition entities have the official list of registered voters' names and addresses, circulators are unlikely to escape detection if they provide a large number of false names and addresses.

<sup>57</sup> Blaszak testified that he had at least nine instances of circulator fraud in his recent campaign in California. See Ex. D-31.

<sup>58</sup> During the 2008 election cycle, Thomas Coombes, a Lamm Consulting pay-per-signature circulator, was charged with circulator fraud for inducing voters to provide signatures in

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<sup>53</sup> There have been no reported incidents of a forged signature discovered by the Secretary.

## II. CONCLUSIONS OF LAW

When plaintiffs challenge a State statute regulating the election process under the *First Amendment*, the court must first consider the "character and magnitude" of the burden the State's regulation imposes on plaintiffs' *First Amendment* rights and then weigh this burden against the precise interests the State contends justify the burden. [\*Timmons v. Twin Cities Area New Party\*, 520 U.S. 351, 358, 117 S. Ct. 1364, 137 L. Ed. 2d 589 \(1997\)](#). Regulations imposing severe burdens on plaintiffs' rights are subject to strict scrutiny and must be narrowly tailored to advance a compelling State interest. [\*Id.\* at 358-59](#); see also [\*Yes On Term Limits, Inc. v. Savage\*, 550 F.3d 1023, 1028 \(10th Cir. 2008\)](#) (noting that, to survive strict scrutiny, the State "has the burden [\*1274] of proving that its [regulation] is narrowly tailored to serve a compelling state interest") (citation omitted). Regulations that impose lesser burdens, however, trigger less exacting review [\*50] and are subject to a balancing test whereby "a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions." [\*Timmons\*, 520 U.S. at 358-59](#). Because of the flexibility of the standard, there are no bright line rules that separate permissible election-related regulation from unconstitutional infringements of *First Amendment* Freedoms. *Id.*; see also [\*Lee v. Keith\*, 463 F.3d 763, 768 \(7th Cir. 2006\)](#) (describing the Supreme Court's flexible approach in similar *First Amendment* cases as a "sliding scale"). Accordingly, the Court must determine which standard of review will apply to [\*§ 1-40-112\(4\)\*](#). See [\*Campbell v. Buckley\*, 203 F.3d 738, 742 \(10th Cir. 2000\)](#).

Generally, whether a regulation faces a balancing test or strict scrutiny depends on the severity of the burden the regulation places on speech. [\*Lee\*, 463 F.3d at 768](#). Where a law appears on its face to regulate the initiative process, courts should engage in a searching inquiry to determine if, in regulating the process, a State has gone too far by instituting procedures which effectively limit

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exchange for sunglasses. See Ex. D-47. Jerome Toliver, a Lamm Consulting pay-per-signature circulator, signed a circulator affidavit for a petition section he did not circulate (false witnessing). See Ex. C-83 at 16-20. Other complaints during the 2008 election cycle include allegations that certain circulators did not wear petition circulator [\*49] badges, provided false and misleading statements about certain petitions, and used trickery to collect signatures. See Ex. C61-72. However, all of these complaints were dismissed for failure to state a claim. See Ex D-73 (dismissing claims identified in C61-C72).

underlying speech. Therefore, the essential consideration is how severe a burden a particular [\*51] regulation effectively places on the underlying speech. See [\*Timmons\*, 520 U.S. at 358](#).

In [\*Meyer v. Grant\*, 486 U.S. 414, 108 S. Ct. 1886, 100 L. Ed. 2d 425 \(1988\)](#), the Supreme Court observed that initiative petition circulation necessarily involved "both the expression of a desire for political change and a discussion of the merits of the proposed change." [\*Id.\* at 421](#). The Court explained that, because petition circulation involves the type of interactive communication concerning political change, it is appropriately described as "core political speech." [\*Id.\* at 422](#). The Court characterized Colorado's statute barring the use of paid circulators as "a limitation on political expression" and applied "exacting" scrutiny because the statute imposed an unacceptable burden on the exercise of *First Amendment* rights. [\*Id.\* at 420-22](#).

In [\*Buckley v. Am. Constitutional Law Found., Inc.\*, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 \(1999\)](#), the Supreme Court addressed three different provisions of a Colorado ballot initiative statute which required that (1) circulators be registered voters, (2) circulators wear identification badges, and (3) proponents of an initiative report the names and addresses of all paid circulators and the amount paid to each circulator. [\*Id.\* at 186](#). [\*52] After describing petition circulation as core political speech, the Supreme Court explained that "'no litmus-paper test' will separate valid ballot-access provisions from invalid interactive speech restrictions; we have come upon 'no substitute for the hard judgments that must be made.'" [\*Id.\* at 192](#) (quoting [\*Timmons\*, 520 U.S. at 359](#)). Without specifying whether these restrictions imposed a severe burden on speech necessitating strict scrutiny or a lesser test, the Court struck down each of the three restrictions. The Court found that the regulations discouraged participation in the petition circulation process, which limited the number of voices available to convey a proponent's message and cut down the size of the audience that could be reached. [\*Id.\* at 194-95](#).

The reasoning employed by the Supreme Court in [\*Buckley\*](#) suggests that the level of scrutiny applicable in a case such as this depends on the extent to which the [\*1275] relevant statutory provision burdens the expressive activities of the parties challenging its validity. See [\*525 U.S. at 192\*](#) (applying exacting scrutiny because the challenged statutory provisions "significantly inhibit[ed] communication with voters about proposed political [\*53] change"); [\*Prete v. Bradbury\*](#),

[438 F.3d 949, 961-68 \(9th Cir. 2006\)](#) (reading *Buckley* to account not only for the existence of a "decrease in the pool of available circulators" in determining the severity of the burden on expressive activities resulting from a statutory provision, but also for the "degree of the decrease") (emphasis in original); [Citizens for Tax Reform v. Deters, 518 F.3d 375, 385-87 \(6th Cir. 2008\)](#) (applying strict scrutiny because the harsh penalties and the broad ban on the types of payments made the Ohio provision closer to the ban in *Meyer*); [Person v. New York State Board of Elections, 467 F.3d 141, 143 \(2d Cir. 2006\)](#) (applying a balancing test rather than strict scrutiny because the challenged statute did not significantly burden the plaintiffs' expressive activities); [Initiative & Referendum Institute v. Jaeger, 241 F.3d 614, 616-17 \(8th Cir. 2001\)](#) (applying what appears to be a balancing test and finding that plaintiffs "produced no evidence" that the regulation burdened their *First Amendment* rights, while the State presented evidence of fraud in support of the regulation).

Here, the Secretary contends that [§ 1-40-112\(4\)](#) imposes an insignificant burden on speech **[\*\*54]** and should be subject to a balancing test under *Timmons*. Plaintiffs, on the other hand, contend that [§ 1-40-112\(4\)](#) is a severe burden on core political speech under *Meyer* and the statute should be subject to strict scrutiny.

#### **A. Severity of the Burden**

[Section 1-40-112\(4\)](#) states that "[i]t shall be unlawful for any person to pay a circulator more than twenty percent of his or her compensation for circulating petitions on a per signature or petition section basis." [Colo. Rev. Stat. § 1-40-112\(4\)](#). Plaintiffs argue that the hybrid scheme reduces the pool of available circulators and increases the costs of running a signature-gathering campaign as it significantly decreases efficiency.

Courts faced with challenges to statutes similar to [§ 1-40-112\(4\)](#) have reached different conclusions as to whether restrictions on per-signature compensation are subject to strict scrutiny or a balancing test. For example, in *Deters*, the Sixth Circuit applied strict scrutiny to a statute restricting per-signature compensation because the statute increased the cost of qualifying an initiative and likely decreased the number of professionals willing to collect signatures. [518 F.3d at 385](#). The Sixth Circuit found **[\*\*55]** that eliminating all but one form of payment was not merely "academic" because preventing plaintiffs from providing bonuses, setting minimum signature requirements, or tying productivity to compensation stripped plaintiffs of the

means to motivate circulators, thereby making qualifying initiatives more expensive. *Id.* *Deters* rejected the State of Ohio's argument that pay-per-signature compensation created an incentive to forge signatures because the State had provided no evidence to that effect. [Id. at 387](#).

In *Prete*, the Ninth Circuit found that plaintiffs had not shown that pay-per-signature compensation significantly burdened their *First Amendment* rights because there was no evidence that the statute in question "caused a reduction in the number of available circulators or otherwise limit[ed] the size of plaintiff's audience." [438 F.3d at 965](#). The Ninth Circuit applied a balancing test and found that the statute was distinguishable from the statute in *Meyer* because it only prohibited one form of payment and allowed **[\*1276]** for incentive payments and other tools to motivate circulators. [Id. at 952 n.1](#).

In *Jaeger*, the Eighth Circuit upheld a ban on per-signature compensation because plaintiffs **[\*\*56]** had failed to provide evidence that "payment by the hour, rather than on commission, would in any way burden their ability to collect signatures." [241 F.3d at 617-18](#). Similarly, the Second Circuit in *Person* found that the plaintiff had failed to provide evidence that the ban on pay-per-signature compensation significantly burdened his expressive activities. [467 F.3d at 143](#). The Second Circuit explained that it found "insufficient support for a claim that the ban on per-signature payment is akin to the complete prohibition on paying petition circulators that was deemed unconstitutional in *Meyer*, or that the alternative methods of payment it leaves available are insufficient." *Id.*; see also [Bernbeck v. Gale, 2011 U.S. Dist. LEXIS 96972, 2011 WL 3841602 \(D. Neb. Aug. 30, 2011\)](#) (plaintiffs did not show evidence of a burden on their *First Amendment* **[\*1277]** rights by a pay-per-signature requirement); [Citizens in Charge v. Gale, 810 F. Supp. 2d 916 \(D. Neb. 2011\)](#) (the State had not shown how its statute promoted its interest when it relied on only three instances of fraud).

Unlike some of the aforementioned cases, the plaintiffs in this case have provided evidence showing that [§ 1-40-112\(4\)](#) imposes a severe burden on their expressive **[\*\*57]** activities. Although [§ 1-40-112\(4\)](#) is not a categorical restriction on one form of circulator compensation as in *Deters*, or a categorical exclusion of circulators, see [Buckley, 525 U.S. at 192-98](#) (exclusion of circulators not registered to vote); [Meyer, 486 U.S. at 414](#) (exclusion of all paid circulators); [Yes On Term Limits, 550 F.3d at 1028](#) (exclusion of out-of-state circulators); [Chandler v. City of Arvada, Co., 292 F.3d 1236, 1244 \(10th Cir. 2002\)](#) (exclusion of circulators that

were not residents of the city), the effect of the hybrid scheme is nevertheless significant as it excludes a key component of circulators from the initiative process. Although [§ 1-40-112\(4\)](#) allows for incentive payments to motivate circulators, the benefits of the incentive payments are outweighed by the exclusion of the most effective circulators and the additional costs the statute imposes on signature-gathering activities. See [Deters, 518 F.3d at 383](#) (although the availability of other payment methods might reduce the burden, the extent to which the more effective means are foreclosed is an important consideration).

As discussed above, the statute is likely to eliminate low-volume professional circulators **[\*\*58]** from participating in the initiative process and likely to deter most itinerant professionals from working in Colorado. Their absence will make it significantly more difficult for proponents to qualify measures for the ballot. Without low-volume professional circulators and itinerant professionals, proponents will have to rely on volunteers and untrained paid circulators who are unlikely to "get the job done." Thus, the effect of [§ 1-40-112\(4\)](#) will be the exclusion from the initiative process of those who, through experience and self-selection, are the most efficient and effective circulators. See [Meyer, 486 U.S. at 424](#) ("The *First Amendment* protects appellees' right not only to advocate their cause but also to select what they believe to be the most effective means for so doing."). To the extent [§ 1-40-112\(4\)](#) prevents proponents from using individuals who would most effectively convey their message to the public, the statute places a substantial burden on the proponents' *First Amendment* rights, even if the statute only restricts proponents from using some, but not all, circulators. See [Krislov v. Rednour, 226 F.3d 851, 862 \(7th Cir. 2000\)](#) (finding that a circulator residency restriction **[\*\*59]** imposed a significant burden on plaintiff's *First Amendment* rights even if it excluded only a few circulators).

The testimony at trial established that the effect of [§ 1-40-112\(4\)](#) will be to raise the per signature cost for a ballot petition campaign by at least 18%. The effect of raising the per signature cost by 18% will be to restrict participation in the initiative process for proponents with limited resources. See [Meyer, 486 U.S. at 423](#) (statute is a burden on speech as it limits proponents' "ability to make the matter the focus of statewide discussion"). Gratz testified that, after the Colorado Civil Rights Initiative failed in 2008, donors were deterred from pursuing a petition campaign in the 2010 general election because of the anticipated increase in costs

once the Colorado Assembly enacted H.B. 1326. Caldara said that, although some proponents could afford the high costs of a campaign, he would be unable to fund future signature-gathering campaigns because of the increases in costs. Tvert testified that, because of the large number of signatures required to qualify an issue for the ballot, even minor increases in the price of a single signature could significantly raise the **[\*\*60]** costs of a signature-gathering campaign from \$200,000 to \$300,000. Finally, Kennedy testified that even a 25¢ increase in the per signature price could have the effect of pricing proponents out of running initiatives, especially in a tough economic climate. The Court finds that an 18% cost increase is significant. By raising the cost of signature-gathering activities, [§ 1-40-112\(4\)](#) will have the inevitable effect of reducing the total quantum of speech on a public issue. *Id.*<sup>59</sup>

Accordingly, the Court finds that [§ 1-40-112\(4\)](#) imposes a severe burden on petition proponents and strict scrutiny applies. As the Tenth Circuit stated in *Chandler*, "petition circulation . . . is core political speech, because it involves interactive communication concerning political change," and consequently, *First Amendment* protection for this activity is "at its zenith." [292 F.3d at 1241](#) **[\*\*61]** (quotations and alteration omitted). "[W]here the government restricts the overall quantum of speech available to the election or voting process . . . [such as] where the quantum of speech is limited due to restrictions on . . . the available pool of circulators or other supporters of a candidate or initiative," strict scrutiny applies. [Yes on Term Limits, 550 F.3d at 1028](#) (quotations and citations omitted).

## **B. Strict Scrutiny**

To survive strict scrutiny, the Secretary has the burden of proving that the hybrid scheme is narrowly tailored to serve a compelling State interest. [Yes on Term Limits, 550 F.3d at 1028](#) (citation omitted). The Secretary argues that [§ 1-40-112\(4\)](#) furthers the State of Colorado's compelling interest in maintaining the integrity of the initiative process by reducing the incentive to commit fraud, increasing the validity of signatures, and maintaining public confidence in the

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<sup>59</sup> Moreover, because [§ 1-40-112\(4\)](#) restricts the means of communication (i.e. payment to circulators), it affects the *communicative means* of persons advocating a position in a referendum and does not solely touch the process by which legislation is enacted. See [Initiative & Referendum Inst. v. Walker, 450 F.3d 1082, 1100 \(10th Cir. 2006\)](#).

initiative process.

The Court finds that the State of Colorado has a compelling interest in ensuring the reliability and honesty of the referendum and initiative process. See [Buckley, 525 U.S. at 187](#) (there must be substantial regulation of elections if they are to be fair and honest and if some **[\*\*62]** sort of order, rather than chaos, is to accompany the democratic process); [Am. Constitutional Law \*\*\[\\*1278\]\*\* Found., Inc. v. Meyer, 120 F.3d 1092, 1098 \(10th Cir. 1997\)](#) (the State has interest in both candidate elections and ballot issues); [Campbell, 203 F.3d at 741](#) (the Colorado General Assembly has authority to adopt legislation designed to prevent fraud or mistake or other abuses in petition process). Nevertheless, the Court finds that [§ 1-40-112\(4\)](#) is not narrowly tailored to meet this compelling interest. See [Frisby v. Schultz, 487 U.S. 474, 485, 108 S. Ct. 2495, 101 L. Ed. 2d 420 \(1988\)](#) (noting that a "statute is narrowly tailored [for *First Amendment* purposes] if it targets and eliminates no more than the exact source of the 'evil' it seeks to remedy"). None of the evidence at trial established a connection between the type of compensation and the validity rates of petition sections. Instead, low validity rates were often the result of voter error or the use of inexperienced circulators. In addition, the trial evidence established that the incentive to commit fraud under a hybrid compensation system is likely greater than the incentive to commit fraud under a pay-per-signature system. Moreover, the frequency of fraud showed **[\*\*63]** no measurable difference under any compensation model. Rather, the evidence established that, because most compensation models create financial incentives to motivate workers, certain individuals will commit fraud to earn more money regardless of the compensation scheme. Thus, the Secretary has provided no evidence that, as a class, pay-per-signature circulators are more likely to commit fraud when compared to circulators compensated under a different compensation scheme. See [Buckley, 525 U.S. at 204 n.23](#) ("While testimony in the record suggests that occasional fraud in Colorado's petitioning process involved paid circulators, it does not follow like the night the day that 'paid circulators are more likely to commit fraud and gather false signatures than other circulators'") (citations omitted); [Deters, 518 F.3d at 387](#) (whether "someone faced with the incentive to pad signatures will actually act upon it . . . is an empirical question, one for which there is little in the record to answer."); [Meyer, 486 U.S. at 426](#) ("we are not prepared to assume that a professional circulator — whose qualifications for similar future assignments may well depend on a reputation for competence and integrity

**[\*\*64]** — is any more likely to accept false signatures than a volunteer who is motivated entirely by an interest in having the proposition placed on the ballot").

Additionally, the Court finds that the evidence relied upon by the Colorado General Assembly in enacting [§ 1-40-112\(4\)](#) does not entitle the statute to deference.<sup>60</sup> See [Landmark Commc'ns, Inc. v. Virginia, 435 U.S. 829, 843, 98 S. Ct. 1535, 56 L. Ed. 2d 1 \(1978\)](#) ("Deference to a legislative finding cannot limit judicial inquiry when *First Amendment* rights are at stake."); [Turner Broadcasting Sys., Inc. v. F.C.C., 512 U.S. 622, 666, 114 S. Ct. 2445, 129 L. Ed. 2d 497 \(1994\)](#) (noting that, although legislatures are far better equipped than the judiciary to "amass and evaluate the vast amounts of data," courts have an "obligation to exercise independent judgment **[\*1279]** when *First Amendment* rights are implicated"); [Sable Commc'ns of Cal., Inc. v. F.C.C., 492 U.S. 115, 129, 109 S. Ct. 2829, 106 L. Ed. 2d 93 \(1989\)](#) (noting that deference to the legislature does not "foreclose [courts] independent judgment of the facts bearing on an issue of constitutional law"); [Sampson v. Buescher, 625 F.3d 1247, 1261 \(10th Cir. 2010\)](#) (finding that the State had not shown the disclosure regulation was sufficiently important to a governmental interest in light of **[\*\*65]** the burden on plaintiffs' associational rights). Although a State need not present "elaborate, empirical verification" of the weight of its purported justification when the burden is moderate, see [Timmons, 520 U.S. at 364](#), it must come forward with compelling evidence when the burden is higher. See [Buckley, 525 U.S. at 203-04](#); [Meyer, 486 U.S. at 425](#); [Deters, 518 F.3d at 387](#).

Furthermore, there are less restrictive means to accomplish the State's goal of protecting the integrity of the initiative process. Rudy and Mikeworth testified that, **[\*\*66]** because of a lack of resources, the Secretary is unable to detect a significant amount of circulator fraud. However, the Supreme Court has never held the lack of

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<sup>60</sup>Mark Grueskin, an attorney who specializes in election campaign finance and initiative petition litigation, testified that during the General Assembly debate on H.B. 1326 the legislators were shown a videotape of an underaged petition circulator, see Ex. D-49, and were presented with three photographs of allegedly false circulator addresses and a letter showing that five notaries who notarized circulator signatures were not licensed in Colorado. See, e.g., Ex. D-68 (Legislative History of H.B. 1326). Grueskin said that the General Assembly also heard testimony from various individuals about the benefits and potential problems raised by H.B. 1326.

public resources to be sufficient justification for a regulation to survive strict scrutiny. Cf. [Ohio Citizen Action v. City of Englewood](#), 671 F.3d 564, 575 (6th Cir. 2012) (noting that the "[Supreme] Court has never held the efficient allocation of public resources to be an interest sufficient to survive heightened scrutiny"). There are alternatives that would address the problems targeted by [§ 1-40-112\(4\)](#) without imposing a severe burden on plaintiffs' *First Amendment* rights. As the Supreme Court noted in [Buckley](#), Colorado retains several safeguards to protect the integrity of the initiative process and diminish corruption. See, e.g., [Colo. Rev. Stat. § 1-40-106](#) (making it a crime to forge signatures); [Colo. Rev. Stat. § 1-40-130](#) (making false witnessing, surrogate fraud, and false witnessing punishable by a fine of up to \$1500 or imprisonment for not more than a year). "These provisions seem adequate to the task of minimizing the risk of improper conduct in the circulation of a petition," especially since there has been **[\*\*67]** little evidence that [§ 1-40-112\(4\)](#) will have any effect on the incidence of fraud. [Meyer](#), 486 U.S. at 427; see also [Riley v. Nat'l Fed'n of the Blind of N.C.](#), 487 U.S. 781, 800, 108 S. Ct. 2667, 101 L. Ed. 2d 669 (1988) (noting that "the State may vigorously enforce its antifraud laws to prohibit professional fundraisers from obtaining money on false pretenses or by making false statements"). Second, Colorado could publicly disclose petition sections, which would communicate information to the public without burdening plaintiffs' *First Amendment* rights. See [Doe v. Reed](#), U.S. , 130 S.Ct. 2811, 2820, 177 L. Ed. 2d 493 (2010) ("The signer [of the petition] is in the best position to detect these types of fraud, and public disclosure can bring the issue to the signer's attention"). These more narrowly tailored options are in keeping with the *First Amendment* directive that government not infringe on the freedom of speech absent compelling necessity, and then, only by means precisely tailored. [Burdick v. Takushi](#), 504 U.S. 428, 439, 112 S. Ct. 2059, 119 L. Ed. 2d 245 (1992).

Given the availability of other effective and less burdensome statutory tools to safeguard the State's interest, the Court concludes that [§ 1-40-112\(4\)](#) poses an undue restriction on plaintiffs' *First Amendment* **[\*\*68]** rights. While the Secretary has provided evidence that fraud has occurred when the pay-per-signature method is used, he has not isolated the cause of circulator fraud as being the pay-per-signature method. Consequently, the State has failed to provide evidence that its regulation is narrowly (or even reasonably) **[\*\*1280]** tailored to further its important interests. Accordingly, the Court finds that [Colo. Rev. Stat. § 1-40-](#)

[112\(4\)](#) is unconstitutional because it "unjustifiably inhibit[s] the circulation of ballot-initiative petitions." See [Buckley](#), 525 U.S. at 205.

### **C. Balancing Test**

Given the Secretary's failure to show that pay-per-signature compensation incentivizes fraud to a greater extent than pay-per-hour compensation, the statute also fails the balancing test that courts have applied. See, e.g., [Burdick](#), 504 U.S. at 434 (noting that courts should balance "the character and magnitude of the asserted injury" to the rights protected by the *First Amendment* against "the precise interests put forward by the State as justifications for the burden imposed" by the regulation); [Tashjian v. Republican Party of Conn.](#), 479 U.S. 208, 213, 107 S. Ct. 544, 93 L. Ed. 2d 514 (1986) (same). As noted above, the State has a legitimate interest **[\*\*69]** in ensuring the reliability and honesty of the referendum and initiative process. See [Buckley](#), 525 U.S. at 187. Colorado's law does not survive a balancing test, however, because the hybrid scheme does not sufficiently relate to the State's legitimate interest in reducing fraud or corruption. See [Deters](#), 518 F.3d at 387. Although the State is permitted "considerable leeway" in regulating the electoral process, this latitude is premised on the requirement that legislative choices not produce "undue hindrances to political conversations and the exchange of ideas." [Buckley](#), 525 U.S. at 191-92. This leeway does not apply here because the precise interest that the State identifies — fraud reduction — is not furthered by the statute. Moreover, the burden imposed by the statute, as discussed above, will likely reduce the number of qualifying initiatives and make it more difficult for proponents to attract financial support. The net effect will be to encumber the petition process unjustifiably and thereby reduce the "unfettered interchange of ideas for the bringing about of political and social changes." [Meyer](#), 486 U.S. at 421 (citation omitted). Thus, on balance, the State's legitimate interest **[\*\*70]** in reducing fraud is outweighed by the burden imposed on plaintiffs' *First Amendment* rights. See [Anderson v. Celebrezze](#), 460 U.S. 780, 789, 103 S. Ct. 1564, 75 L. Ed. 2d 547 (1983) ("In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests; it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights").

### **D. Permanent Injunction**

Having found that [Colo. Rev. Stat. § 1-40-112\(4\)](#) is an

unconstitutional infringement of plaintiffs' *First Amendment* rights, the Court next addresses plaintiffs' request for a permanent injunction and declaratory judgment that the statute is unconstitutional.

To obtain permanent injunctive relief, a party must satisfy the following four factors: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. *Monsanto Co. v. Geerston Seed Farms*, U.S. , 130 S.Ct. 2743, 2756, 177 L. Ed. 2d 461 (2010) (citation omitted).

Addressing **[\*\*71]** the first factor, plaintiffs have shown that, unless the statute is enjoined, they will likely face irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373-74, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976); see also *Dombrowski v. Pfister*, 380 U.S. 479, 485-86, [\*\*1281] 85 S. Ct. 1116, 14 L. Ed. 2d 22 (1965) (holding that an allegation of impairment of freedom of expression demonstrated an irreparable injury).

With respect to the second factor, plaintiffs have no adequate remedies at law because damages cannot replace the loss of protected *First Amendment* rights. See *Nat'l People's Action v. Vill. of Wilmette*, 914 F.2d 1008, 1013 (7th Cir. 1990) ("[I]njunctive relief is especially appropriate in the context of *first amendment* violations because of the inadequacy of money damages"); see also *Legend Night Club v. Miller*, 637 F.3d 291, 297 (4th Cir. 2011).

With regard to the balance of the equities, "[s]peech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people." *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 130 S.Ct. 876, 898, 175 L. Ed. 2d 753 (2010). Plaintiffs have a fundamental interest in being able to express their desire for political change and actively work toward achieving that goal through the ballot initiative process **[\*\*72]** that the Colorado Constitution has provided. The State is unlikely to be harmed because, as discussed above, there is no evidence that there would be any less fraud under § 1-40-112(4)'s hybrid compensation scheme than under a pay-per-signature scheme. Therefore, the equities also tilt in plaintiffs' favor.

Based on the foregoing, the Court finds that plaintiffs

have met their burden of showing that they are entitled to a permanent injunction of the enforcement of Colorado Revised Statutes § 1-40-112(4). Plaintiffs are also entitled to a permanent injunction of any ancillary statute which enforces § 1-40-112(4), namely, Colorado Revised Statutes §§ 1-40-135 and 1-40-121 to the extent that those sections apply to the restriction on per-signature compensation found in § 1-40-112(4).

### III. CONCLUSION

Therefore, it is

**ORDERED** that, pursuant to the parties' Consent to Entry of Final Judgment on Plaintiffs' First Claim [Docket No. 339], judgment shall enter in favor of plaintiff and against defendant Scott Gessler, in his official capacity as Colorado Secretary of State, on plaintiffs' first claim for relief. It is further

**ORDERED** that judgment shall enter in favor of plaintiffs and against defendant **[\*\*73]** Scott Gessler, in his official capacity as Colorado Secretary of State, on plaintiffs' fifth claim for relief. It is further

**ORDERED** that defendant Scott Gessler, in his official capacity as Colorado Secretary of State, is PERMANENTLY ENJOINED AND RESTRAINED from enforcing Colo. Rev. Stat. § 1-40-112(4), any ancillary provision which enforces Colo. Rev. Stat. § 1-40-112(4), and Colo. Rev. Stat. § 1-40-112(1).

DATED March 29, 2013.

BY THE COURT:

/s/ Philip A. Brimmer

PHILIP A. BRIMMER

United States District Judge

## **Addendum B**

**1-40-112. Circulators - requirements - training.** (1) No person shall circulate a petition for an initiative or referendum measure unless the person is a **resident of the state**, a citizen of the United States, and at least eighteen years of age at the time the petition is circulated.

(2) (a) A circulator who is not to be paid for circulating a petition concerning a ballot issue shall display an identification badge that includes the words "VOLUNTEER CIRCULATOR" in bold-faced type that is clearly legible.

(b) A circulator who is to be paid for circulating a petition concerning a ballot issue shall display an identification badge that includes the words "PAID CIRCULATOR" in bold-faced type that is clearly legible and the name and telephone number of the individual employing the circulator.

(3) The secretary of state shall develop circulator training programs for paid and volunteer circulators. Such programs shall be conducted in the broadest, most cost-effective manner available to the secretary of state, including but not limited to training sessions for persons associated with the proponents or a petition entity, as defined in section 1-40-135 (1), and by electronic and remote access. The proponents of an initiative petition or the representatives of a petition entity shall inform paid and volunteer circulators of the availability of these training programs as one manner of complying with the requirement set forth in the circulator's affidavit that a circulator read and understand the laws pertaining to petition circulation.

**(4) It shall be unlawful for any person to pay a circulator more than twenty percent of his or her compensation for circulating petitions on a per signature or petition section basis. (Emphasis added)**

## **Addendum C**

**1-40-135. Petition entities - requirements - definition.** (1) As used in this section, "petition entity" means any person or issue committee that provides compensation to a circulator to circulate a ballot petition.

(2) (a) It is unlawful for any petition entity to provide compensation to a circulator to circulate a petition without first obtaining a license therefor from the secretary of state. The secretary of state may deny a license if he or she finds that the petition entity or any of its principals have been found, in a judicial or administrative proceeding, to have violated the petition laws of Colorado or any other state and such violation involves authorizing or knowingly permitting any of the acts set forth in paragraph (c) of this subsection (2), excluding subparagraph (V) of said paragraph (c). The secretary of state shall deny a license:

(I) Unless the petition entity agrees that it shall not pay a circulator more than twenty percent of his or her compensation on a per signature or per petition basis; or

(II) If no current representative of the petition entity has completed the training related to potential fraudulent activities in petition circulation, as established by the secretary of state, pursuant to section 1-40-112 (3).

**(b) The secretary of state may at any time request the petition entity to provide documentation that demonstrates compliance with section 1-40-112 (4).**

(c) The secretary of state shall revoke the petition entity license if, at any time after receiving a license, a petition entity is determined to no longer be in compliance with the requirements set forth in paragraph (a) of this subsection (2) or if the petition entity authorized or knowingly permitted:

(I) Forgery of a registered elector's signature;

(II) Circulation of a petition section, in whole or part, by anyone other than the circulator who signs the affidavit attached to the petition section;

(III) Use of a false circulator name or address in the affidavit;

(IV) Payment of money or other things of value to any person for the purpose of inducing the person to sign or withdraw his or her name from the petition;

**(V) Payment to a circulator of more than twenty percent of his or her compensation on a per signature or per petition section basis; or**

(VI) A notary public's notarization of a petition section outside of the presence of the circulator or without the production of the required identification for notarization of a petition section.

(3) (a) Any procedures by which alleged violations involving petition entities are heard and adjudicated shall be governed by the "State Administrative Procedure Act", article 4 of title 24, C.R.S. If a complaint is filed with the secretary of state pursuant to section 1-40-132 (1) alleging that a petition entity was not licensed when it compensated any circulator, the secretary may use information that the entity is required to produce pursuant to section 1-40-121 and any other information to which the secretary may reasonably gain access, including documentation produced pursuant to paragraph (b) of subsection (2) of this section, at a hearing. After a hearing is held, if a violation is determined to have occurred, such petition entity shall be fined by the secretary in an amount not to exceed one hundred dollars per circulator for each day that the named individual or individuals circulated petition sections on behalf of the unlicensed petition entity. If the secretary finds that a petition entity violated a provision of paragraph (c) of subsection (2) of this section, the secretary shall revoke the entity's license for not less than ninety days or more than one hundred eighty days. Upon finding any subsequent violation of a provision of paragraph (c) of subsection (2) of this section, the secretary shall revoke the petition entity's license for not less than one hundred eighty days or more than one year. The secretary shall consider all circumstances surrounding the violations in fixing the length of the revocations.

(b) A petition entity whose license has been revoked may apply for reinstatement to be effective upon expiration of the term of revocation.

(c) In determining whether to reinstate a license, the secretary may consider:

(I) The entity's ownership by, employment of, or contract with any person who served as a director, officer, owner, or principal of a petition entity whose license was revoked, the role of such individual in the facts underlying the prior license revocation, and the role of such individual in a petition entity's post-revocation activities; and

(II) Any other facts the entity chooses to present to the secretary, including but not limited to remedial steps, if any, that have been implemented to avoid future acts that would violate this article.

(4) The secretary of state shall issue a decision on any application for a new or reinstated license within ten business days after a petition entity files an application, which application shall be on a form prescribed by the secretary. No license shall be issued without payment of a nonrefundable license fee to the secretary of state, which license fee shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., to cover the cost of administering this section.

(5) (a) A licensed petition entity shall register with the secretary of state by providing to the secretary of state:

(I) The ballot title of any proposed measure for which a petition will be circulated by circulators coordinated or paid by the petition entity;

(II) The current name, address, telephone number, and electronic mail address of the petition entity; and

(III) The name and signature of the designated agent of the petition entity for the proposed measure.

(b) A petition entity shall notify the secretary of state within twenty days of any change in the information submitted pursuant to paragraph (a) of this subsection (5). (**Emphases added**)