TORT AND INSURANCE REFORM--
AN OVERVIEW

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The insurance crisis of the mid-1980's spawned a massive readjustment of Colorado's tort and damage systems. The following is an abbreviated summary of the reform measures enacted the past 20 years.

I. DAMAGE REFORMS

Damage Caps

S.B. 67 in 1986 added a new C.R.S. 13-21-102.5 placing a damage cap on "**non-economic injury**" (such as pain, suffering and emotional distress). Such damages could not exceed $250,000 [increased in 1998 to $366,250] unless the Court finds justification for a greater amount by "clear and convincing evidence." In no case could such damages ex ceed $500,000 [increased in 1998 to $732,500]. In addition, subsection (3)(b) provided that no damages for "**derivative non-economic injury**" (such as non-economic components of loss of consortium) could be awarded unless the Court found justification for such damages by "clear and convincing evidence," and even when justified, such damages could not exceed $250,000 [increased in 1998 to $366,500]. The statute specifies that these damage limitations are not to be disclosed to the jury, but will be imposed by the Court before judgment. The statute further specifies that the limits imposed do not apply to compensatory damages for "physical impairment" or "disfigurement." The statute be came effective as to actions commenced on and after July 1, 1986 [amended in 1998].

Medical Malpractice Damage Caps

S.B. 143 in 1988 added a new C.R.S. 13-64-101, et seq., called the "Health Care Availability Act." Several of the features of that statute pertained to limitations on damages as against licensed health care professionals and health care institutions:

- It provided a cap on damages of $1 million present value per patient, which includes any derivative claim by any other claimant and not more than $250,000 present value per patent (including any derivative claim by any other claimant) attributable to non-economic loss or injury. The Court could increase the limit by the present value of economic losses if, upon good cause shown, the Court determined that the present value of lost earnings, medical or other health care costs would make imposition of the limitation unfair.

- The Act further provided for periodic payments where an award of future damages exceeded the present value of $150,000 and allowed the Court discretion to allow periodic payments for future damages of less than that amount. The enactment specified the method of funding of periodic payments and how such periodic payments would be determined and handled.

The effective date of S.B. 143 was to acts or omissions accruing on and after July 1, 1988. Parts of the statute were amended in 2003, 2004 and 2005.

Collateral Source Rule Modification

S.B. 67 in 1986 added a new C.R.S. 13-21-111.6 which provided that in any action to recover damages for tort resulting in death or injury to a person or property, the Court, after the finder of fact has returned its verdict stating the amount of damages, must reduce the verdict by the amount which such person, his estate or personal representative has or will be fully or partially indemnified or compensated by the loss by any other person, corporation, insurance company or fund. There was and continues to be significant exception, however. The verdict may not be reduced by the amount of a benefit paid as a result of a contract entered into and paid for by or on behalf of the claiming party. The statute, therefore, appears to apply only to **gratuities** and has only limited effect. The statute became effective as to actions commenced on and after July 1, 1986.

Liquor Liability Damages Limitation

As later discussed, alcoholic beverage liability of commercial dispensers and social hosts was significantly limited by legislation enacted in 1986 [S.B. 86 creating a new C.R.S. 12-46-112.5 and 12-47-128.5, now by amendment C.R.S. 12-47-801]. Those enactments also limit the amount of damages recoverable in alcohol liability cases against commercial vendors and social hosts to a combined maximum of $150,000 [increased in January of 1998 to $219,750] for all injuries, damages or losses. The effective date of S.B. 86 was to serving or sale of an alcoholic beverage on and after May 3, 1986. The amendment of the damages amount became effective as to claims accruing on and after January 1, 1998.

Ski Area Operators/Employees Damages Limitations

S.B. 80 in 1990 added a new C.R.S. 33-44-113 which limited liability of ski area operators and their employees to $1 million present value (including any derivative claim which cannot exceed $250,000 present value) and limited non-economic damages to $250,000. The limitations of S.B. 80 became applicable to all actions filed on and after July 1, 1990.

Punitive/Exemplary Damages Limitations

H.B. 1197 in 1986 amended C.R.S. 13-21-102 to provide significant changes to and limitations on punitive/exemplary damages. The amendment limited punitive/exemplary damages to an amount equal to the amount of actual damages awarded (a one-to-one ration), but permitted the Court to increase the award not to exceed three times the amount of actual damages if the conduct has continued during pendency of the case or defendant has acted in a willful and wanton manner during the action which further aggravated plaintiff's damages. The amendment defined "willful and wanton" conduct. It provided that one-third of the collected punitive/exemplary damages were to be paid to the state's General Fund. [Note: The state's share provision was declared unconstitutional in Kirk v. Denver Publishing Co., 818 P.2d 262 (Colo. 1991)]. The amendment provided that exemplary damages could not be awarded for mere "recklessness" or "insult." It

permitted the Court to disallow punitive/exemplary damages to the extent that a deterrent effect had been accomplished; the wrongful conduct has ceased; or the purpose of such damages as otherwise been served. The amendment prohibited punitive/exemplary damages in administrative or arbitration proceedings, and prohibited consideration of evidence of the income or net worth of the party in determining the appropriateness or amount of such damages. The amendment became effective as to causes of action accruing on and after July 1, 1986. The statute was again amended in 2003 to prohibit pleading punitive/exemplary damages in an initial complaint, counterclaim or third-party complaint. After disclosures, if there is sufficient evidence to justify it, the Court may allow amendment of the initial pleading to include a claim for such damages [see C.R.S. 13-21-102 (1.5)].

Punitive Damages Limitations in Medical Malpractice Actions and Proceedings Under the Health Care Availability Act

H.B. 1069 in 1990 added a new C.R.S. 13-64-302.5 to establish the procedural standards and limitations on exemplary damages awardable against health care professionals. The Act provided that exemplary damages could not be included in any initial claim for relief against a health care professional, but if warranted, may be asserted by amendment after substantial completion of discovery and plaintiff's establishment of prima facie proof of a triable exemplary damages issue. The Act then incorporated the standards of C.R.S. 13-21-102 and 13-25-127(2) and provided that no exemplary damages may be imposed for use of any drug or product approved for use by any state or federal regulatory agency and used within approved standards for the drug or product. The Act also specified that exemplary damages may not be assessed against a health care professional as a result of acts of others unless the professional specifically directed the act to be done or ratified it. H.B. 1069 became effective to actions or arbitration proceedings filed or commenced on and after July 1, 1990.

H.B. 1093 in 1991 amended C.R.S. 13-64-302.5(5) to provide that no exemplary damages can be imposed for use of a drug or product approved for use by any state or federal regulatory agency and used within recommended guidelines, or where the use falls within the standards of prudent health care professionals. It further provided that no exemplary damages can be imposed where the clinically-justified use of such drug or product is beyond regulatory approval or standards (experimental in nature) and where such use has been agreed upon pursuant to a written informed consent signed by the patient. H.B. 1093 be came effective to actions and arbitration proceedings filed or commenced on and after July 1, 1991.

II. TORT LIABILITY REFORMS

"Joint and Several" Liability Abolished--Accounting for Negligence of "Non-Parties" and Change in the Effect of Partial Settlements in Multiple-Party Cases

S.B. 70 in 1986 added a new C.R.S. 13-21-111.5 called the "Several Liability Act." It abolished "joint and several" liability in tort actions, limiting a defendant's liability to the amount represented by his share of the negligence or fault that produced the claimed injury, death, damage or loss. The Act requires use of a special verdict procedure to account for all of the

causal negligence of non-parties if: (1) such non-party settled with the claimant, or (2) the defending party files a "Designation of Non-Party" within 90 days of the commencement of the action, giving notice of the existence and identity of the non-party and stating the basis for the non-party's fault. Baseless designations are subject to sanctions under C.R.S. 13-17-102. Partial settlements are credited to the remaining defendants based on the percentage of fault of the settling tortfeasor instead of a dollar-for-dollar credit as was the previous rule. Where several liability is applicable, there is no right of contribution because it is not needed. The Several Liability Act became effective as to actions commenced on and after July 1, 1986 regardless of when the cause of action accrued.

The Several Liability Act was amended in 1987 by H.B. 1184 to add a new subpart (4) which created an exception to several liability by imposed joint liability where two or more persons "consciously conspire and deliberately pursue a common plan to commit a tortious act." Such co-conspirators are liable only for the degree or percentage of fault assessed to the persons involved in the conspiracy and have a right of contribution against their fellow conspirators. This amendment became effective as to actions commenced on and after July 1, 1987.

The Several Liability Act was further amended in 1990 by H.B. 1065 which amended C.R.S. 13-21-111.5(3)(b) to add the provision that if the designated non-party is a licensed health care professional, requirements and procedures of C.R.S. 13-20-602 [called a "Certificate of Review"] apply.

Informing the Jury of the Effect of Their Special Verdict Findings in a Comparative Negligence Fault Case

S.B. 67 in 1986 repealed subsection (4) of C.R.S. 13-21-111 (the Comparative Negligence Act) to reinstate the rule of Avery v. Wadlington, 526 P.2d 295 (Colo. 1974) so that juries were no longer to be instructed or told of the effect of their special verdict findings. The effective date of that change was to actions commenced on and after July 1, 1986, regardless of when the cause of action accrued. The amendment to the Several Liability Act in 1987, however, reinstated the jury instruction requirement. The new subsection 13-21-111.5(5) added in 1987 requires that the jury be instructed of the effect of their special findings as between plaintiffs and defendants, but prohibits telling the jury the effect of their special findings on the allocation of fault among defendants. The effective date of the 1987 amendment was to actions commenced on and after July 1, 1987. As a result of these changes, for actions commenced during the year between July 1, 1986 and July 1, 1987, juries will not be told anything. For actions commenced on and after July 1, 1987, the jury is to be instructed on the effect of their special findings but only as to plaintiff's contributory negligence. A new Pattern Jury Instruction issued in 2002 reflects and gives guidance on this confusing change [see C.J.I.(4th) 9:31].

"Assumption of Risk" Reinstated as a Defense

S.B. 67 in 1986 created a new C.R.S. 13-21-111.7 which reinstated the defense of "Assumption of Risk." The enactment provides that assumption of risk by a person shall be considered by the trier of fact in apportioning negligence pursuant to the Colorado Comparative Negligence Act and provides a definition that is similar to the Pattern Jury Instruction that

existed on the subject before the defense was judicially eliminated in 1977. The statute requires that a jury instruction on the defense of assumption of risk be given and contain the elements set forth in the statutory definition (see C.J.I.(4th) 9:31. The effective date of the enactment was to actions commenced on and after July 1, 1986. [Note: C.R.S. 13-21-111.7 was held to be constitutional in Harris v. The Ark, 810 P.2d 226 (Colo. 1991)].

Owners and Occupiers of Real Property Liability Limitations--New Standards of Care--Reenactment After Being Ruled Unconstitutional

H.B. 1205 in 1986 created a new C.R.S. 13-21-115 limiting liability of landowners [including persons in possession, persons responsible for the condition of or activities on the property and their agents] legislatively overruling Mile High Fence Co. v. Radovich, 489 P.2d 308 (Colo. 1971), and substituting certain statutory standards of care. The 1986 statute was, however, declared unconstitutional in Gallegos v. Phipps, 779 P.2d 836 (Colo. 1989).

In 1990, H.B. 1107 restored (with amendments) C.R.S. 13-21-115. The reenacted statute appears to overcome the difficulties which made the previous statute unconstitutional and once again legislatively overruling Mile High Fence Co. v. Radovich, supra, by substituting the following statutory standards of care:

(1) If the claimant entered or remained on the owner's/occupier's real property without consent (a "**trespasser**"), claimant may recover only for damages "willfully" or "deliberately" caused by the landowner/occupier.

(2) If the claimant remains on the land of another for his own convenience or to advance his own interests pursuant to the landowner/occupier's permission or consent (a "**licensee**"), he may recover only for damages caused b the landowner/occupier's unreasonable failure to exercise reasonable care with respect to dangers created by the landowner/occupier of which the landowner/occupier actually knew or the landowner/occupier's unreasonable failure to warn of dangers not created by the landowner/ occupier which are not ordinarily present on property of the type involved and of which the landowner/occupier actually knew.

(3) If the claimant enters or remains on land of another to transact business in which the parties are mutually interested or enters or remains on land in response to the landowner/occupier's express or implied representation that the public is requested, expected or intended to enter or remain (an "**invitee**"), the invitee claimant may recover only for damages caused by the landowner/occupier's unreasonable failure to exercise reasonable care to protect against dangers of which the landowner/ occupier actually knew or should have known. If the landowner/occupier's property is classified for property tax purposes as "agricultural land" or "vacant land," an invitee

may recover for damages caused by the landowner/occupier's unreasonable failure to exercise reasonable care to protect against dangers of which the landowner/occupier actually knew.

The statute included definitions of "**trespasser**," "**licensee**," "**invitee**" and "**landowner**" and clearly states the legislative purpose of the Act. Former provisions pertaining to attractive nuisances to children under the age of 18 (presumed competent over the age of 14) were retained from the 1986 legislation.

As with the former statute, it will be the judge's duty to determine which standard of care applies, but determination of liability and damages will be by the trier of fact. C.J.I.(4th) 12:1 through 12:13 set forth Jury Instructions pertaining to this subject area. The effective date of the amendments to C.R.S. 13-21-115 was to accidents occurring after April 20, 1990 at 12:45 p.m.

Ski Area Operator Liability Limitations

S.B. 80 in 1990 amended the "Ski Safety Act of 1979" (C.R.S. 33-44-101, et seq.) by adding provisions to the effect that a skier assumes the risk of harm from "inherent dangers and risks of skiing." Such term does not include the negligence of a ski area operator as set forth in C.R.S. 33-44-104(2) and does not limit the liability of the ski area operator for injury caused by use or operation of ski lifts. The amendment requires giving of a specified statutory warning on signs at described locations and on ski lift tickets.

The enactment provides that a skier is not precluded from suing another skier for injury or loss resulting from another skier's acts or omissions and that the risk of a skier/skier collision is neither an inherent risk nor a risk assumed by a skier in an action by one skier against another.

The statute of limitations against ski area operators and their employees was reduced from three years to two; no skier may make a claim against a ski area operator for injury resulting from any of the inherent dangers and risks of skiing (as defined in the Act); and there is a limitation on damages against a ski area operator of $1 million present value (including any derivative claim by any other claimant, which may not exceed $250,000 present value) and a limitation on non-economic damages of $250,000. Persons rendering emergency assistance in good faith are rendered exempt from civil liability under the enactment. S.B. 80 was applicable to all civil actions filed on and after July 1, 1990.

Public Recreational Use of Private Land Liability Limitations

H.B. 1344 in 1988 created several new subsections to C.R.S. 33-41-101, et seq., pertaining to liability of private landowners whose property is leased to or used by public entities for recreational purposes. The new subsection limits the liability of private landowners who lease or permit rights to use their land to a public entity for recreational purposes to the same limits as in the "Colorado Governmental Immunity Act." The legislation provides that such limitations on liability apply only when access to the property is limited to invited guests, when the person injured is an invited

guest of the public entity and when use of the land is for recreational purposes. The legislation states specifically that the new provision does not limit, enlarge or affect the liability of the public entity and does not otherwise limit statutory protections applicable to landowners. The effective date of the legislation was May 29, 1988 [the Act was amended in 1997].

H.B. 1092 in 1989 amended the 1988 legislation (C.R.S. 33-41-103) to change definitions of "invited guests," "land" and "lease." The definitional changes reduce the scope of situations subject to the limitation. The new definition of "lease" or "leased" added by subsection (II.5) now includes lease-purchase agreements. It also provides that any lease to a public entity for recreational purposes must contain a disclosure advising the private landowner of the right to bargain for indemnification from liability. The effective date of H.B. 1092 amendments was April 27, 1989.

Equine/Llama Activities Liability Limitations

S.B. 84 in 1990 created a new C.R.S. 13-21-120 [now by renumbering 13-21-119], which limited liability of persons organizing and sponsoring equine (horse, mule, donkey, etc.) events (including dude ranch activities). Under the enactment, subject to certain exceptions, equine activity participants are deemed to have assumed the "inherent risks of equine activities" as defined by the statute, and equine professionals and sponsors are exempted from liability. The enactment requires that equine professionals post warning signs in compliance with certain requirements setting forth a statutory warning. S.B. 84 became applicable to actions filed on and after July 1, 1990. "Llama activities" were added to the statute in 1992.

Baseball Spectator Safety Act--Liability Limitations

S.B. 231 in 1993 created a new C.R.S. 13-21-120, which limited the liability of persons and entities owning or in control of professional baseball teams and professional baseball stadiums. Similar to the Ski Safety Act and Equine/Llama Act, subject to certain exceptions, spectators are presumed to have knowledge and assume the inherent risks of observing professional baseball games, insofar as those risks are obvious and necessary [including injuries which result from being struck by a baseball or a baseball bat]. The enactment provides that nothing in the statute prevents or limits liability of an owner who fails to make reasonable and prudent efforts to design, alter and maintain the premises of the stadium in a reasonably safe condition; intentionally injuries a spectator; or fails to post and maintain the prescribed warning signs required by the Act. S.B. 231 became effective January 1, 1994.

Doctrine of "Assumed Duty" Abolished

S.B. 76 in 1986 added a new C.R.S. 13-21-116 which abolished the court-made doctrine of "Assumed Duty." The statute begins with a legislative declaration of the intent to encourage voluntary service and assistance to enhance public safety, rather than to allow judicial decisions to establish precedent which discourage voluntary service and assistance. The Act then provides that a person shall not be deemed to have assumed a duty of care where none otherwise existed when he or she performs a service or act of assistance, without compensation or expectation of compensation, for the benefit of another person, or adopts or enforces a policy or regulation to protect another's health or safety. The Act further provides that the person

providing such service or assistance or adopting or enforcing of such policy or regulation shall not be liable for acts or omissions in good faith. Subsection (2)(b) of the Act provided that no member of a Board of Directors of a non-profit corporation could be held liable for actions or omissions made in the performance of his or her duties except for "wanton" or "willful" acts or omissions [amended in 1987 by H.B. 1142 to "willful and wanton"].

The purpose of this far-reaching reform was to undo the chilling effect the prospect of civil liability had on volunteer services. The effective date of .R.S. 13-21-116 was to acts or omissions occurring on and after July 1, 1986.

"Young Person" Assistance Volunteer Liability Limitations

S.B. 80 in 1987 was a new statutory subsection (2.5) to C.R.S. 13-21-116 providing for immunity for volunteers assisting young person service or recreational organizations. As an extension of the 1986 statute that abolished the doctrine of "Assumed Duty," this new subsection immunizes persons who volunteer to work with "young persons," except for "willful and wanton" acts or omissions. The immunity does not extend to liability for harm to third persons. A "young person" is defined as a person who is 18 years of age or under. The new subsection became effective on the Governor's signature on April 30, 1987. The Act was amended in 1992 and 2003.

Corporate Officers and Director Liability Limitations

H.B. 1142 in 1987 was a composite of changes to the Colorado Corporation and Banking Codes to limit liability of persons serving as directors, officers, agents or employees of corporate entities. In general, H.B. 1142 allowed entities to provide for immunity of its directors except for a breach of the director's duty of loyalty, acts or omissions not in good faith, acts which involve intentional misconduct or knowing violation of the law, or a transaction in which the director derived an improper personal benefit. It provided that no officer or director shall be personally liable for injury to persons or property arising out of a tort committed by an employee unless the officer or director was personally involved in the situation giving rise to the litigation or unless the officer or director committee a criminal offense. In addition, C.R.S. 13-21-116 (referred to above as abolishing the doctrine of "Assumed Duty") was amended to immunize board members of a non-profit corporation to include directors of a public hospital certified pursuant to C.R.S. 25-1-107(1), and changed exception language from "wanton or willful acts" to "wanton and willful acts." The effective date of changes made by H.B. 1142 was to acts or omissions accruing on and after May 20, 1987. The enactment was relocated and renumbered to C.R.S. 7-108-402 in 1993.

H.B. 1125 in 1988 added additional language to C.R.S. 7-40-104, 7-56-107, 7-56-109 and 7-56-107.5 [now all in C.R.S. 13-21-116(2)(b)] to clarify that directors, officers, employees and agents of non-profit corporations have the same powers, privileges and immunities as their for-profit corporate counterparts. Those amendments originally became effective May 17, 1988. The latest amendment was July 1, 2003.

Wrongful Death Statute Amended to Allow Non-Economic Damages and to Specify Who May Bring, Prosecute and be Awarded Wrongful Death Damages

S.B. 93 in 1989 amended C.R.S. 13-21-203 to permit compensation for non-economic damages such as grief, loss of companionship, pain and suffering and emotional stress to statutory beneficiaries in C.R.S. 13-21-201 (as amended in 1988--see below). The statute made such non-economic damages subject to the limitation in C.R.S. 13-21-102.5 and provided that regardless of the number of statutory beneficiaries, there is only one civil action for non-economic damages and that such non-economic damages could not exceed $250,000 [increased to $341,250 in January of 1998]. This allowance for non-economic loss is superimposed on the existing system of damages for "net pecuniary loss." S.B. 93 also provided in a new C.R.S. 13-21-203.5 an alternative means for establishing damages. The combined group of persons entitled to sue under C.R.S. 13-21-201(1) could elect as an alternative to non-economic damages in 13-21-203, to claim a "solatium" of $50,000 [increased in 1998 to $68,250]. S.B. 93 became effective to causes of action accruing on and after July 1, 1989. The amount increases became effective as to claims for relief that accrued on and after January 1, 1998.

H.B. 1289 in 1988 was a repeal and reenactment of C.R.S. 13-21-201(1)(a), (b) and (c) concerning persons who may commence, prosecute and be awarded damages in actions for wrongful death. The amendment provided that in the first year after death, the action is to be brought by the spouse of the deceased, or upon written election by the spouse, by the spouse and/or the heir or heirs of the deceased [lineal descendants]; or, if there is no spouse, by the heir or heirs of the deceased. In the second year after the death, the action is to be brought by the spouse of the deceased; by the heir or heirs of the deceased; or by the spouse and heir or heirs of the deceased. If during the second year, the heir or heirs of the deceased commence an action, the spouse, upon motion filed within 90 days after service of written notice on the spouse, is permitted to join in the action as a party plaintiff. If the deceased is an unmarried minor without descendants or an unmarried adult without descendants, the action is brought by the father or mother who may join in the suit, and each has an equal interest in the judgment. if either parent is deceased, the right of action is in the surviving parent. A judgment obtained for wrongful death is owned b such persons as are heirs-at-law of the deceased under the Statute of Descent and Distribution and divided among heirs-at-law in the same manner as real estate is divided according to the Statute of Descent and Distribution. The effective date of amendments effected by H.B. 1289 was to civil actions based on death occurring on and after July 1, 1988.

Alcohol Liability Limitations--Reduced Responsibility of Vendors and Social Hosts

S.B. 86 in 1986 created a new C.R.S. 12-46-112.5 and a new C.R.S. 12-47-128.5 [now by renumbering in 2000, 12-47-801] limiting civil liability of persons who sell or serve alcoholic beverages. It abolished the cause of action of the intoxicated person himself and limits the bases for the amount of recovery by third persons. Vendors are liable only when they "willfully and knowingly" serve a minor or visibly intoxicated person. Social hosts are liable only when they "willfully and knowingly" serve a minor. Total damages in such a case could not exceed $150,000 [increased as of

January 1, 1998 to $219,750]. Any action for alcohol liability must be commenced within one year of the date of the serving or sale of the alcoholic beverage. The effective date of S.B. 86 was to serving or sale of an alcoholic beverage on and after May 3, 1986. [Note: The Social Host section of the Act was held constitutional in Charlton v. Kimata, 815 P.2d 946 (Colo. 1991)].

Flow of Water From Reservoirs and Dams
Liability Limitations

H.B. 1185 in 1986 was a repeal and reenactment of C.R.S. 37-87-104 and addition of a new C.R.S. 7-42-118 pertaining to liability for damages resulting from escape of water from a reservoir. It repealed strict liability and replaced it with a negligence standard. It eliminated liability for allowing inflow to a reservoir to pass through to a natural stream below. Under the enactment, shareholders, officers and board members of a corporate reservoir owner are not individually liable if a certain level of insurance is maintained, but the limitation of liability by purchase of insurance does not apply to the corporate entity itself.

Predicting Water Flows and Hazards
Liability Limitations

H.B. 1186 in 1986 repealed and reenacted C.R.S. 37-87-102(2) and (3) and added a new subsection (3.5) concerning liability for determination of future water flows and hazards associated with those flows. It relieves persons acting in accordance with the legislation from liability for an occurrence different from that predicted. It also provides that no dam safety requirement is to be imposed to meet a potential flood whose magnitude is such that the hazard would probably exist whether or not the dam failed. The effective date of H.B. 1186 was April 4, 1986.

Discretionary Actions by State Employees
Liability Limitations

H.B. 1187 in 1986 amended C.R.S. 37-87-115 to make it clear that actions undertaken by the state (and the state engineer, their staff and appointed persons) are in the discretionary exercise of governmental authority and hence immune from civil liability. H.B. 1187 became effective May 3, 1986.

Firearms and Ammunition Manufacturers'
Liability Limitations

H.B. 1192 in 1986 added a new C.R.S. 13-21-501 to 505 providing limitation of liability to manufacturers of firearms and ammunition. The enactment was a legislative reaction to court decisions in other states where manufacturers were held strictly liable for injuries or deaths simply because a firearm product was used. It provides that injury, damage or death caused by discharge of a firearm or ammunition shall be based only on actual defects in the design or manufacture of the firearm or ammunition and not on the inherent potential of the firearm or ammunition to cause injury. H.B. 1192 became effective May 12, 1986.

Self-Publication of Defamatory Statements Claims Abolished

S.B. 25 in 1989 created a new C.R.S. 13-25-125.5 which eliminated damage claims for self-publication of defamatory statements. The new section provides that claims based solely on "self-publication" are abolished and that no action for libel or slander may be brought or maintained if the person charged with the defamation has not made the defamatory statement to a person other than the claiming party. The effective date of this new statutory section was to causes of action accruing on and after April 8, 1989.

Governmental Immunity Act Revised

H.B. 1196 in 1986 was a lengthy package of amendments to the Governmental Immunity Act [C.R.S. 24-10-101, et seq.]. It added a legislative declaration to clarify that liability of public entities and employees is necessarily limited. It amended the definition of "dangerous condition." It included authorized volunteers within the definition of public employee. It allowed the public entity to control its liability above statutory limits so that mere purchase of insurance was not of itself a waiver of immunity. It authorized the state to pool insurance. The amendment contained a number of other clarifications and limitations and became effective to injuries occurring on and after July 1, 1986.

In 1987, two additional governmental immunity-related statutes were enacted. A new subsection (4) was added to C.R.S. 24-10-106 to abolish "absolute or strict liability" of public entities and public employees in operation or maintenance of public water or sanitation facilities. Under the 1987 enactment, liability may not be imposed unless negligence is proved. The effective date of that subsection was May 13, 1987.

The other amendment in 1987 was to C.R.S. 24-10-103 clarifying that the Governmental Immunity Act applies to health care practitioners at public institutions. The amendment was designed to ensure that defenses and requirements of the Governmental Immunity Act apply to interns and residents even when in training at a private hospital. S.B. 108 became effective June 20, 1987.

S.B. 59 in 1988 amended C.R.S. 24-10-103(4)(b)(I), (IV) and (V) to extend protections of the Governmental Immunity Act to part-time health care practitioners, licensed nurses and volunteers at public entity health care facilities. Physicians in a residence program sponsored by a public entity now have public employee status while rotating at other government hospitals or clinics for purposes of the tort limitations in the Governmental Immunity Act. S.B. 59 became effective March 10, 1988.

Medical Malpractice Reform

S.B. 143 in 1988 was a new C.R.S. 13-64-101 titled "Health Care Availability Act." This new legislation in 1988 contained multiple features to ease or eliminate the medical malpractice insurance crisis. The Act:

- Provided for periodic payments where an award of future damages exceeds the present value of $150,000 and allows the Court discretion to allow periodic payments for

future damages of less than that amount. It specifies the method of funding of periodic payments and how such periodic payments are determined and handled.

- Specified physician, dentist and health care institution financial responsibility by requiring that they maintain certain minimum insurance coverage.

- Provided a cap on damages of $1 million present value per patient, which includes any derivative claim by any other claimant and not more than $250,000 present value per patient (including any derivative claim by any other claimant) attributable to non-economic loss or injury. The Court may increase the limit by the present value of economic losses if, upon good cause shown, the Court determines that the present value of lost earnings, medical or other health care costs would make imposition of the limitation unfair.

- Required reporting of judgments and settlements within a certain time to the professional's malpractice insurer or licensing agency for disciplinary action where appropriate.

- Provided for minimum qualifications of persons who testify as an expert witness and prohibits an expert in one medical sub-specialty to testify against a physician in another sub-specialty unless standards of care and practice in the two fields are similar.

- Provided that written notice must be given to health, sickness or accident insurance providers and their rights of subrogation recognized through specified procedures.

- Permitted voluntary agreements between a patient and health care providers to submit malpractice disputes to binding arbitration under certain specified safeguards, including a right of the patient to rescind such agreement by written notice to the health care provider within 90 days after signature if the person is not hospitalized, or within 90 days after discharge from the hospital if hospitalization was contemplated. A health care provider cannot withhold services because of a person's refusal to sign an agreement containing a provision for binding arbitration.

- Made special provisions for health care professionals and health care institutions involved in labor, delivery or immediate post-delivery care and vaccine-related injury or death.

- Empowered the Colorado Insurance Commissioner to oversee professional liability insurance and its rates.

- Established a requirement that the State Auditor make a study of the structure, operation, financing and fiscal soundness of patient compensation funds or other similar funds which provide excess coverage over minimum

private insurance for the payment of damages in medical malpractice actions against physicians, dentists and health care institutions.

The effective date of S.B. 143 was to acts and omissions occurring on and after July 1, 1988 (see article by John Salmon in 17 Colorado Lawyer 1719 (1988).

Mental Health Care to Violent Persons Liability Limitations

H.B. 1201 in 1986 added a new C.R.S. 13-21-117 to limit liability of persons providing mental health care to violent persons. It provides that no mental health practitioner, hospital, center or clinic is liable for civil damages for failure to warn or protect against a mental health patient's violent behavior except where the patient has communicated to the particular care provider a serious threat of imminent physical violence against a specific person. The enactment further provides that when there is a duty to warn and protect, the duty is discharged by making reasonable and timely efforts to notify the person or persons specifically threatened, as well as notifying appropriate law enforcement authorities. Immunity is then conferred against claims by the mental patient for having warned others of the potentially violent behavior. The Act does not apply to negligent release of a mental health patient from a mental hospital or negligent failure to initiate involuntary 72-hour treatment and evaluation when the person appears to be mentally ill and an imminent danger to others. H.B. 1201 became effective May 22, 1986.

Physicians and Optometrists Rendering Opinions for Driver's License Purposes Liability Limitations

H.B. 1199 in 1986 amended C.R.S. 42-2-110.5 to eliminate the "willfully or wantonly" exception to the statute granting immunity to any physician or optometrist providing a medical or optometric opinion regarding a driver's license to the Department of Revenue, substituting instead a "good faith and without malice" standard. H.B. 1199 became effective April 17, 1986.

Further Measures to Promote Availability of Health Care and Insurance Enacted

H.B. 1065 in 1990 amended C.R.S. 13-17-102 (the "frivolous/ baseless" litigation statute) to add a new subsection (2.1) to create a rebuttable presumption that a claim or action is not frivolous or groundless if there is compliance with the "Certificate of Review" procedure outlined in C.R.S. 13-020-602. The subsection further provides, however, that such presumption shall not relieve plaintiff or plaintiff's attorney from ongoing obligations under C.R.C.P. 11.

H.B. 1065 also amended C.R.S. 13-21-108(1) to clarify that the limitation of liability provision for good faith rendering of emergency care or assistance does not apply to a physician who renders such emergency care to a person who is at that time already his patient or the physician is otherwise obligated to cover.

H.B. 1065 in 1990 also amended C.R.S. 13-21-111.5(3) (the "Several Liability Act") to require a C.R.S. 13-20-602 "Certificate of Review" in designation of a licensed health care provider as an at-fault non-party.

Provisions of H.B. 1065 became applicable to civil actions filed on and after July 1, 1990.

Financial Responsibility Standards for Volunteer Health Care Providers Decreased or Eliminated

H.B. 1102 in 1991 amended C.R.S. 13-64-301(1)(a) to provide that uncompensated health care providers may be ruled either exempt from or to have a decrease in the Financial Responsibility standards imposed by C.R.S. 13-64-301 upon enactment of a rule by the Board of Medical Examiners and/or the Board of Dental Examiners or for other reasons that render the limits provided in the statute unreasonable or unattainable. H.B. 1102 became effective May 6, 1991.

"Unprofessional Activities" of Certain Health Care Professionals Codified and Made Subject to Disciplinary Action

H.B. 1183 in 1989 amended C.R.S. §§ 10-4-127, 12-32-104.5, 12-32-107, 12-33-107.5, 12-33-117, 12-33-119, 12-35-107.5, 12-35-118, 12-36-104.5, 12-36-117, 12-38-108.5, 12-38-117, 12-40-107.5, 12-40-119, 12-41-108.5, 12-41-118, 12-41-120, 12-43-203.5 and 12-43-704 to bring about regulation of unprofessional activities by subjecting health care professionals to disciplinary action. The amendments made engaging in the following conduct "unprofessional activities" subjecting the health care professional (M.D.s, chiropractors, podiatrists, dentists, psychologists, etc.) to disciplinary action (including revocation or suspension of license):

- Willful and repeated ordering or performance without clinical justification of unnecessary laboratory tests or studies;
- Treatment (without clinical justification) which is demonstrably unnecessary;
- Failure to obtain consultations or make referrals when failing to do so is not consistent with the standard of care for the profession;
- Ordering or performance (without clinical justification) any service, x-ray or treatment which is contrary to recognized standards of practice;
- Falsifying or repeatedly making incorrect essential entries or repeatedly failing to make essential entries on patient records; and/or
- committing a fraudulent insurance act defined in C.R.S. 10-4-127(1).

The effective date of H.B. 1183 was to activities and practices occurring on and after July 1, 1989.

Physician Professional Peer Review

S.B. 261 in 1989 established a new C.R.S. 12-36.5-101. The legislation provided for a professional review committee; gave members of such a committee immunity from suit brought by a physician who is the subject of the review; provided guidelines for evidentiary hearings; and incorporated provisions of the "Federal Health Care Quality Improvement Act of 1986." S.B. 261 became effective to actions of such governing boards on and after July 1, 1989.

Certificate of Review Necessary to Sue a Licensed Professional

H.B. 1201 in 1987 added a new C.R.S. 13-20-601, et seq., to require filing of a "certificate" in every action for damages or indemnity against a "licensed professional." The certificate, which must be filed within 60 days after service of the complaint, counterclaim, or cross-claim against a licensed professional, must state that the attorney has consulted a person who has expertise in the area of the alleged negligent conduct and that the claim "does not lack substantial justification." This legislation repealed a 1986 statute pertaining only to architects and engineers and extended the concept to other "licensed professionals," including lawyers. H.B. 1201 become effective to civil actions commenced on and after July 1, 1987.

H.B. 1284 in 1989 amended C.R.S. 13-20-602 of the 1987 enactment. Amended subsection 602(1) clarifies that a certificate of review is required for each licensed professional named as a party. Subsection 602(3)(a)(II) specified that the professional consultant should have also reviewed such records, documents and other materials the professional found to be relevant. Subsection 602(3)(c) incorporates the requirements of the 1988 "Health Care Availability Act" [13-64-402] to require a statement that the professional consultant is competent to express an opinion as to the negligent act alleged. Subsection 602(4) was amended to bring about automatic dismissal of compliant, counterclaim or cross-claim where a certificate of review has not been filed. The amendments in H.B. 1284 became effective to causes of action accruing on and after April 12, 1989.

Seat Belt--Mitigation of Damages and Criminal Penalties Now Apply

S.B. 12 in 1987 was a new C.R.S. 42-4-236, which requires use of a safety belt system by the driver and front seat passengers in all motor vehicles on and after July 1, 1987. A violation constitutes a Class B traffic infraction, and evidence of failure to wear a fastened safety belt restraint is admissible to mitigate damages in a civil suit for injury. Such mitigation, however, is limited to awards for "pain and suffering" and may not be used for limiting recovery of economic loss and medical expense.

There are several exceptions to applicability of the Seat Belt Act. It does not apply to passenger buses, school buses or farm machinery. It also does not apply to a child restrained by an approved child restraint system; a member of an ambulance team other than the driver while involved in patient care; a peace officer while performing official duties in accordance with applicable rules and regulations; a person with a physically or psychologically disabling condition which prevents use of a safety belt system if the person possesses a written certification by their physician; a rural U.S. Post Office

letter carrier while in the performance of his or her duties; a person functioning in a commercial or residential delivery or pickup service, except on their way to or from their route; and persons driving or riding in a motor vehicle not equipped with a safety belt system because Federal law does not require the vehicle to be so equipped.

The effective date of C.R.S. 42-4-236 was July 1, 1987, with a sunset review provision on July 1, 1989 based on whether highway deaths in 1988 reduced over those in 1987. S.B. 152 in 1989 amended a language problem in the sunset provision so that the seat belt law remained in effect.

Minimum Drinking Age Increased to Twenty-One

H.B. 1320 in 1987 raised the minimum age for consumption of alcoholic beverages to 21. The enactment [C.R.S. 12-46-101 and 12-47-101, et seq.] changed all of the liquor code and civil liability statutes to reflect the increase in age requirement. There was a "grandfather" provision for persons who were 18 or older on the day before the effective date of the legislation, which was July 30, 1987. There was also a provision that if the Federal "Surface Transportation Assistance Act of 1982" imposing the drinking age requirement was found unconstitutional or otherwise invalid by the United States Supreme Court, the drinking age would reduce to 19 years of age effective 60 days from the date of such final decision. The U.S. Supreme Court had, however, already determined the Federal statute to be constitutionally proper in a case handed down on June 23, 1987 [Dakota v. Dole, 107 S. Ct. 2793 (1987)].

Bicycle Traffic Laws Amended

H.B. 1246 was a new C.R.S. 42-4-106.5 [now renumbered C.R.S. 42-4-1412] pertaining to operation of bicycles and other human-powered land devices. It established specific rules and regulations for operation of bicycles and separated bicycles from previously-controlling statutes. The amendment also eliminated a previous bicycle registration requirement. The effective date of the new statute was to acts occurring or committee on and after July 1, 1988; amended in 1994 and 2005.

Expense of Emergency Services Rendered in Response to a Fire or Hazardous Substance Incident Liability Imposed

S.B. 78 in 1989 created a new C.R.S. 10-10-513.5 which authorized the sheriff of any county to request assistance from a fire protection district or municipality in controlling and extinguishing a fire occurring on private property where the sheriff believes that the fire constitutes a danger to the health and safety of the public or a risk of serious damage to property. The fire protection district or municipality assisting in controlling and extinguishing the fire is entitled to reimbursement of expenses from the property owner or the party responsible for the fire. S.B. 78 also amended C.R.S. 29-22-104 to allow the public entity, political subdivision of the state, unit of local government or fire protection district to claim reimbursement from persons responsible for a hazardous substance incident. The effective date of S.B. 78 was April 26, 1989.

Statutory Immunity of Donors of Food to Non-Profit Organizations Amended

H.B. 1218 amended C.R.S. 13-21-113 (pertaining to limitation of liability of donations of food to non-profit organizations). The amendment added "food service establishments" to the list of entities entitled to the immunity. The effective date of H.B. 1218 was April 10, 1989.

Indemnification/Hold Harmless Agreements in Some Public Contracts Prohibited

H.B. 1125 in 1988 amended the Colorado Contribution Act [C.R.S. 13-50.5-102] to add a new subsection (8) to provide that a promise or agreement to indemnify or hold a public entity harmless from its own negligence in a public construction contract is void as against public policy and unenforceable. The prohibition, however, does not apply to construction bonds, contracts of insurance or contract clauses regarding insurance or defense litigation costs. Subsection (8) of the 1988 statute did not apply to licensed architects. S.B. 28 in 1989, however, made the statute applicable to licensed architects. The 1988 amendment became effective May 17, 1988. The 1989 amendment was effective March 15, 1989.

"No-Damage-For-Delay" Clauses in Public Works Contracts Prohibited

H.B. 1233 in 1989 added a new C.R.S. 24-91-103.5 prohibiting "no-damage-for-delay" clauses in public works contracts where the delay is caused in whole or in part by acts or omissions by or within the control of the contracting public entity. H.B. 1233 became effective to public works contracts executed on and after July 1, 1989.

Legislation Enacted to Regulate "Infectious Waste"

H.B. 1328 in 1989 created a new C.R.S. 25-15-401, et seq. defining and regulating "infectious waste." Section 406 established both criminal and civil penalties for violation. it is unclear whether the provided civil penalty is meant to be exclusive. The effective date of the enactment was April 23, 1989.

Underground Storage Tanks Regulated

H.B. 1299 in 1989 was a new C.R.S. 8-20-501, et seq., which required the Colorado Inspector of Oils to promulgate regulations setting forth standards for underground storage tanks. The legislation provides extensive requirements for installation and inspection of underground storage tanks and reporting of leaks and releases; provides for enforcement orders and civil penalties; and regulates installers of underground tanks. S.B. 1299 became effective July 1, 1989.

Definition of "Owner" in C.R.S. 25-18-101 Environmental Liability Actions Made More Restrictive

H.B. 1141 in 1990 amended C.R.S. 25-18-102(7) to eliminate from the definition of real property "owner" in that statute those persons who

merely hold an indicia of ownership primarily to protect a security interest but do not participate in management of an underground storage tank and are not otherwise engaged in petroleum production. This limitation was further carried forward by a new C.R.S. 13-20-701, et seq., to limit liability of lender-owners so as to make lenders more willing to lend to certain types of businesses. H.B. 1141 became effective to civil actions filed on and after July 1, 1990.

Criminal Restitution Orders Now an Enforceable Civil Judgment

H.B. 1068 in 1988 added a new C.R.S. 16-11-101.5, which provides that an order of restitution in a criminal case would constitute a final judgment and have the same force and effect as a civil judgment. The statute permitted enforcement of an order of restitution by the state, the victim or the victim's immediate family in the same manner as a judgment in a civil action. It allowed the party who executed an order of restitution to collect reasonable attorney's fees and costs. It provided that any compensation received by a victim or member of the victim's immediate family under an order of restitution to be credited against any amount such victim later recovered as compensatory damages in any federal or state civil proceeding. The effective date of H.B. 1068 was to offenses committee on and after July 1, 1988.

The statute was amended in 2003 to clarify that a restitution order should not include losses for which there was insurance or governmental entity indemnification. Insurers, however, can fit the statute's definition of "victims" and claim their payments as restitution. The amended statute also contains a trap. Any amount ordered as restitution before an insurer pays is technically no longer covered by insurance and relieves the insurer from paying it [see H.B. 03-1212, which amended C.R.S. §§ 18-1.3-603 and 16-18-101, et seq.].

Employment Discrimination Prohibited Against Married Co-Workers

H.B. 1080 was a new C.R.S. 24-34-402 which, subject to certain exceptions, made it a discriminatory act to discharge or refuse to hire a person solely on the basis that such person was married to or planned or marry another employee. The prohibition was stated to apply only to employers with more than 25 employees. The effective date of H.B. 1080 was April 17, 1989.

"Rape Shield" Protection Extended to Civil Actions Involving Professional-Client/Clergy/Parental/Position of Trust/ and Authority Relationships

S.B. 70 added a new C.R.S. 13-25-131 to preclude or limit evidence of a sexual assault victim's sexual history in civil actions arising from a professional/client relationship. The statute also applies to civil actions against clergy, parents or other persons in a position of trust, power or authority over the alleged victim. The statutory rule operates to the effect that the assault victim's sexual history is presumed irrelevant and not subject to discovery except in certain circumstances. The exceptions are the victim's prior or subsequent sexual conduct with the with the defendant or specific instances of sexual activity showing the source of semen, pregnancy or

disease for purpose of showing the alleged acts were not committed by defendant. To use evidence of a victim's sexual history, a pre-trial hearing is required to be held prior to conducting any discovery to determine justification and admissibility pursuant to C.R.E. 403. S.B. 70 became effective as to causes of action arising on and after July 1, 1991.

Ethnic Intimidation--Civil Damage Claims Established

S.B. 54 added a new C.R.S. 13-21-106.5 to create civil and criminal remedies for property damage or bodily injury caused by ethnic intimidation to a victim or member of the victim's immediate family. The statute defines a "perpetrator" as one who knowingly causes bodily injury to another or places another person in fear of lawless action, with intent to intimidate or harass because of his or her race, color, religion or national origin. A criminal conviction for ethnic intimidation is not a condition to civil relief. Civil damages include actual and punitive damages. Awarded punitive damages are not subject to any of the statutory limitations in C.R.S. 13-21-102 or 13-21-102.5. S.B. 54 became effective April 19, 1991.

Landlord Required to Repair Faulty Natural Gas Equipment

H.B. 1241 in 1991 added a new C.R.S. 38-12-104 to impose a duty on a landlord to repair gas equipment within seventy-two hours of notice of such defect (Saturdays, Sundays or holidays excluded). A tenant must give immediate written notice of the faulty gas equipment to the landlord. A landlord's failure to repair allows the tenant to void the lease. Subsequent to a tenant's voiding of a lease, the landlord's wrongful withholding of a security deposit or of unused prorated rent entitles a tenant to recover twice the amount of the deposit and attorney's fees. H.B. 1241 became effective July 1, 1991.

Consumer Protection Laws Strengthened

H.B. 1305 in 1989 amended C.R.S. 6-1-105, 42-13-101 and 5-5-110 to strengthen several consumer protection laws. The legislation requires disclosure of the value of prizes awarded in connection with any solicitation; prohibits the sale of motor vehicle service contracts without a motor service reimbursement insurance policy held by the seller; requires a consumer creditor to provide a written statement twice a year (without charge) of the dates and amounts of payments; and requires written evidence of release of any security interest and termination of a financing statement to be provided to the debtor within 30 days of payment of the obligation. The effective date of the legislation was June 7, 1989.

Consumer Protection Statute Further Strengthened

H.B. 1090 in 1990 amended C.R.S. 6-1-102; 6-1-105 and 18-15-109 to strengthen consumer protection laws to regulate buyers clubs; to restrict use of the designation "Dr."; and to regulate loan-finding services. H.B. 1090 became effective to acts committed on and after July 1, 1990.

Colorado's No-Fault Auto Accident Reparations System Repealed by Legislative Inaction-- Non-Availability of Equivalent Protection

On July 1, 2003, Colorado's three-decades-old No-Fault Motor Vehicle Reparations Act was allowed to go out of force by "sunset" repeal [see C.R.S. 10-4-726]. Effective that same date, Part 6 of Title 10 was amended to make Motor Vehicle Liability insurance the only compulsory coverage and to bring into Part 6 a number of the general and administrative features previously found in the Reparations Act [Part 7]. New and renewed policies after July 1, 2003 were no longer required to have the No-Fault [called "Personal Injury Protection" or "PIP"] components that had been required by the Reparations Act, and thereafter, no insurer offered them. Meeting a C.R.S. 10-4-714 tort threshold to be entitled to sue for motor vehicle injuries was no longer required for those who no longer had No-Fault protection.

Contrary to the insurance industry line, the No-Fault system was not forced into sunset repeal because it was too expensive. It was because the insurance industry did not want it and would not allow realistic adjustment of the several-decades-old tort modification threshold feature that kept the system in balance. The result has been a $131,000 gap in the protection motor vehicle accident victims previously had, and now cannot replace. The so-called "return to the tort system" was not and is not an acceptable replacement of the No-Fault system. The change-over was not in the best interests of the public.

III. PROCEDURAL REFORMS

Statutes of Limitation Reform

S.B. 69 in 1986 was a repeal and reenactment of C.R.S. 13-80-101, et seq., consolidating, shortening and modifying language of a number of personal statutes of limitation. Most tort actions are either or two years. Contract actions are three years. Six years was retained for matters of debt, rent and replevin. Section 108 specified when particular causes of action accrue. C.R.S. 13-81-101 was amended to allow a real party in interest to apply for appointment of a legal representative to cause a limitation of action to begin to run against a "person under a disability." By operation of corrective provisions in H.B. 1352, the statutory changes in S.B. 69 became effective as to causes of action accruing on and after July 1, 1986.

S.B. 75 in 1987 was a composite of corrective changes. Several changes refined references to "debt;" there was a refinement of several types of misrepresentation referred to in other statutes; there was a reenactment of the statute pertaining to limitation of liability for injuries sustained while in commission of or flight from a commission of a felonious act which had erroneously been repealed in the 1986 revision process. "Breach of warranty" was removed from the two-year limitation of actions and is now treated as a matter of contract under the three-year provision. The effective date of changes provided by S.B. 75 was to claims for relief arising on and after July 1, 1987.

Special Limitations of Action

Special limitations of action were set forth in C.R.S. 13-80-104, 105, 106 and 107. These specialized sections were kept separate because of existing special provisions and Statutes of Repose not applicable to other subject areas. In addition to a 2-year limitation of action against architects, contractors, builders, builder vendors, engineers, inspectors, and manufacturers/lessors of new manufacturing equipment are several "Statutes of Repose." For the architects, contractors, builders, builder vendors, engineers, inspectors and entities in the building trades, the Statute of Repose is 6 years after substantial completion of the improvement to the real property. Land surveyors have a 3-year statute of limitation and a 10-year Statute of Repose that begins to run after the completion of the survey upon which the action is based. The Statute of Repose for manufacturers, sellers and lessors of new manufacturing equipment is 7 years after the equipment was first used for its intended purpose, except when the claim arises from an injury due to hidden defects or prolonged exposure to hazardous material.

H.B. 1078 in 1988 added a new C.R.S. 13-80-102.5 concerning limitation of actions as against licensed "health care professionals" and "health care institutions" (as defined in (2) of that new section). In addition to moving the 2-year statute of limitations for health care providers from C.R.S. 13-80-102, this new § 102.5 created a Statute of Repose of 3 years, which begins to run from the date of the act or omission which gave rise to the action. The Statute of Repose is not applicable, however, to situations where: (a) the act or omission giving rise to the cause of action was knowingly concealed; (b) involved leaving an unauthorized foreign object in the body of the patient; (c) involved a situation where both the physical injury and its cause were not known or could not have been known by exercise of reasonable diligence; (d) involved a minor under the age of 8 years who was under 6 years of age on the date of the occurrence (in which case the action may be maintained at any time prior to the child's attaining 8 years of age); or (e) involved a person otherwise under a disability as defined in C.R.S. 13-81-101 (except as provided in C.R.S. 13-81-101.5). The effective date of H.B. 1078 was to acts or omissions occurring on and after June 1, 1988.

H.B. 1085 in 1990 created a new C.R.S. 13-80-103.7 which extended the statute of limitations for any civil litigation arising out of a sexual assault or sexual offense against a child to 6 years after a disability (within contemplation of C.R.S. 13-81-101(3) has been removed or 6 years after a cause of action accrues, whichever is later. H.B. 1085 became effective on April 16, 1990 at 8:42 a.m.

H.B. 1281 in 1994 created a new C.R.S. 13-80-107.5 to create specific statutes of limitation for Uninsured and Underinsured Motorist claims. It also clarified statutory time limits for motor vehicle property damage and motor vehicle wrongful death claims by amending C.R.S. 13-80-101 and C.R.S. 13-80-102. Under H.B. 94-1281, an action or arbitration of an Uninsured or Underinsured Motorist claim must be "commenced" or "demanded" by "Arbitration Demand" within 3 years after the cause of action accrues. A UM/UIM bodily injury claim is deemed to have accrued on the date that both the existence of the injury and the cause of the injury are known or should have been known by the exercise of reasonable diligence. For Uninsured Motorist coverage, if the underlying bodily injury claim against the Uninsured Motorist is preserved by commencing an action against the

Uninsured Motorist before the applicable statute of limitations runs, an action or arbitration of an Uninsured Motorist claim is timely if it is commenced (by court action) or arbitration demanded within 2 years after the insured knows that the particular tortfeasor was not covered by any applicable insurance [even if that is more than 3 years after the injury and cause are known]. An Underinsured Motorist claim is preserved by commencing an action against the Underinsured Motorist within applicable statutes of limitation and considered timely if an Uninsured Motorist coverage claim is commenced (by court action) or arbitration demanded within 2 years after the insured received payment of the settlement with the Underinsured Motorist or judgment on the underlying bodily injury liability claim [even if more than 3 years after the injury and its cause are known]. H.B. 94-1281 defines the terms "action" and "arbitration demand." The special limitations of action for UM and UIM were necessary because, as a practical matter, there was no actual statute of limitations for those sorts of claims. Motor vehicle property damage and motor vehicle death claims have now been clarified as each being 3 years from the date the cause of action accrues. The effective date of H.B. 94-1281 was July 1, 1994 and became applicable to motor vehicle accidents occurring on and after said date.

When Statutes of Limitations Begin to Run

The section on when particular causes of action accrue [C.R.S. 13-80-108] was an important part of the statutes of limitations reform. For example, a cause of action for injury to person, property, reputation, possession, relationship or status shall be considered to accrue on the date that both the injury and its cause are known or should have been known by the exercise of diligence. As a second example, a cause of action for breach of contract is considered to accrue on the date the breach is discovered or should have been discovered by the exercise of reasonable diligence. Reference should always be made to this new § 108 to ascertain when a particular limitation period begins. The beginning point of the several Statutes of Repose are found in §§ 104, 105 and 107. If the person is a minor or incompetent, provisions of C.R.S. 13-81-101, et seq., control.

Ad Damnum Clause--Statement of Amount Prohibited

As one of the several changes of Colorado Rules of Civil Procedure emerging from the tort reform movement, C.R.C.P. 8(a) was amended by the Colorado Supreme Court to prohibit statement of dollar amounts in the prayer for relief in civil damage complaints. The purpose of the amendment was to avoid the distortion that occurs, particularly in small communities, when the media publicizes an overstated amount. That amendment became effective January 1, 1987.

Colorado's Adoption of a Modified Federal Rule 11

The Colorado Supreme Court has also adopted a change to C.R.C.P. 11 pertaining to attorney certification by signing of pleadings. The pertinent part of the change provides that the attorney's signature constitutes a certificate that the attorney has read the pleading and that to the best of his or her knowledge, there is good ground to support it, that it is not interposed for delay, and that it is not signed with the intent to defeat the purpose of the Rule. The change raises the Colorado standard to conform with a recent amendment to the Federal Rules of Civil Procedure, which places a greater burden on attorneys and serves as an additional deterrent to assertion of ill-

founded claims and defenses. The amendment imposes a duty on an attorney to make reasonable inquiry into both the facts and existing law before filing a pleading. By signing the pleading, the attorney certifies that he/she has made this reasonable inquiry.

Colorado's Rule 11 differs slightly from the Federal Rule in that Colorado incorporates several desirable features of Colorado's "Frivolous Litigation" statute by enabling an attorney to voluntarily dismiss a claim or defense within a reasonable time after it has been filed without being subject to sanctions. The effective date of Amended Rule 11 was January 1, 1987.

State Court Case Management System Adopted--
C.R.C.P. 16 and 16.1

In successive steps between 1988 and 2005, the Colorado Supreme Court made changes to C.R.C.P. 16 and C.R.C.P. 121, and developed a new C.R.C.P. 16.1 to establish much more efficient, largely self-executing Case and Trial Management systems. Rule 16 moved disclosure of essential information to the beginning of the case by way of a mandatory disclosure requirement; required that the parties adopt or state a discovery plan; required imposition of deadlines, including discovery and motions cutoff a reasonable time before trial; and eliminated pre-trial conferences. Parties having difficulty agreeing to a case or trial management order had access to judicial assistance by way of a "case management" or "trial management" conference, but were required to certify that despite reasonable efforts, the parties were not able to work out the dispute themselves. The up-front disclosure provides basic information about the case without discovery requests; informs the trial judge of the nature of the case and its potential complexity; and permits the Court to monitor and order its own full or partial "case" or "trial" management conference if it chooses. For most cases, the mechanism is fully self-executing and designed to provide an orderly and efficient management of the case from beginning through trial [if trial is ultimately necessary].

A more simplified case/trial management procedure was also developed under C.R.C.P. 16.1. Under 16.1, emphasis is upon more detailed disclosures, with discovery, by usual means, prohibited. There is only a Case Management Order, which includes procedures, deadlines and requirements for trial. C.R.C.P. 16.1 is for simple cases or matters involving a low monetary amount.

With adoption of C.R.C.P. 16 and 16.1, there was a corresponding change in C.R.C.P. 121, which sets forth state-wide practice standards. Of significance was a total repeal of all District Court "local rules" and the establishment of a mechanism where proposed local rules from that time forward would require prior approval by the Supreme Court under a plan of uniform formatting, subject-area and numbering.

The effective dates of C.R.C.P. 16, 16.1 and changes in C.R.C.P. 121 began in 1988, and have been refined by amendments from time-to-time as recently as 2004 and 2005.

Arbitration

H.B. 1080 in 2004 repealed and reenacted C.R.S. 13-22-201, et seq., to completely update Colorado's version of the Uniform Arbitration Act

of 1975. The enactment adds and clarifies definitions; clarifies procedural issues; and adds provisions concerning conflicts of interest. The majority of the updated enactment is similar to the former statute, but improved and more efficient. The enactment expressly provides that it operates as a default procedure and that most of its provisions may be varied or waived by contract and those that cannot, specified. The enactment now specifically allows the Court to order provisional remedies before an arbitrator is selected. The effective date of H.B. 1080 was August 4, 2004. For a detailed overview of the 2004 Act, see Carr, Stone and Boonin, "Colorado's Revised Uniform Arbitration Act," 33 Colo. Law., No. 9, p 11.

"Dispute Resolution Act" Amended

H.B. 1217 in 1988 was a series of amendments to the Colorado "Dispute Resolution Act" to make the Act available whether or not an action has been filed in Court. The amended Act required that Dispute Resolution programs (such as mediation) be established or made available in various Judicial Districts as designated by the Chief Justice. The amendment established an "Office of Dispute Resolution" to administer dispute resolution programs. The amendment provided for promulgation of appropriate rules, charging of fees and authorized discretionary Court referral to mediation. The 1988 amendment became effective July 1, 1988.

S.B. 161 in 1991 amended C.R.S. §§ 13-22-302; 13-22-305; 13-22-306; 13-22-307; 13-22-308; 13-22-311 and added new C.R.S. §§ 13-22-302(2.5) and (2.7); 13-22-307(2) - (5) and 13-22-312. In addition, S.B. 161 repealed and reenacted C.R.S. 13-22-310. The amendments and new provisions concerned confidentiality of mediation proceedings under the Colorado Dispute Resolution Act. It provided that, subject to several narrowly drawn exceptions, neither the parties nor the mediator in a dispute resolution proceeding were permitted to voluntarily disclose or be required to disclose any "mediation communication." Unless the communications met one of the exceptions, communications disclosed in violation of the confidentiality requirements of the Act would not be admissible. The effective date of S.B. 161 was July 1, 1991.

Alternative Dispute Resolution Required for Disputes Involving Property Damage Caused by Water or Sanitation Special Districts

H.B. 1068 in 1989 added a new C.R.S. 32-1-1006 to require all disputes involving special districts furnishing sanitation or water services be submitted, with the consent of the district and customer, to alternative dispute resolution under the Colorado Dispute Resolution Act [C.R.S. 13-22-301, et seq.]. Once a party to such dispute has submitted the dispute to alternative dispute resolution procedures, neither party may remove the dispute from that forum without consent of the other party. The effective date of H.B. 1068 was March 15, 1989.

Bilateral "Offer of Settlement" Procedure Legislatively Enacted--Offer of Judgment Rules 68 and 368 Repealed

S.B. 150 in 1990 established a bilateral "Offer of Settlement" procedure similar to C.R.C.P. 68 and 368 for all courts of record of this state, including District Courts. New C.R.S. 13-17-202(1) provides that if a plaintiff

or defendant makes an offer of settlement which is rejected by the other party, and the offeror recovers a final judgment that is more favorable to the offeror than the amount offered, the offeror shall be awarded actual costs accruing after the offer of settlement. The statutory definition of "actual costs" does not include attorneys' fees, and when comparing the amount of the offer of settlement to the amount of "final judgment" actually awarded, interest subsequent to the date of the offer is not considered. Unlike C.R.C.P. 68 and 368, the bilateral "Offer of Settlement" procedure in C.R.S. 13-17-202(1) can be used at any time up to the amount of the final judgment. C.R.S. 13-17-202(3) of the new statute created a procedure whereby the offer of settlement, if accepted, can be converted into a judgment. Subsection (3) contains a 10-days-before-trial limitation. Subsection (3) also contains a provision which allows an "Offer of Settlement" under the statute to be made after liability has been determined, but before the amount or extent of liability is determined by further proceedings. That provision also has a 10-days-before-commencement-of-the-subsequent-hearing limit. The "Offer of Settlement" provisions of S.B. 150 became effective to offers made on and after May 31, 1990.

C.R.C.P. 68 and 368 (pertaining to Offers of Judgment) were repealed by the Supreme Court effective September 1, 1990 because of the similar but broader provisions of C.R.S. 13-17-202.

Preferential Trial Dates Now Mandated in Civil Actions in Which a Party is Elderly or Terminally Ill

H.B. 1050 in 1990 added a new C.R.S. 13-1-129 requiring a preferential trial date, upon motion and establishment of necessary facts, in matters where a party is elderly or terminally ill. If the motion is granted, the Court must set the case for trial not more than 100 days from the date the motion was filed and establish an accelerated discovery schedule. H.B. 1050 became applicable to civil actions pending or commenced on and after July 1, 1990.

Worker's Compensation Changes

H.B. 218 in 1991 substantially revised the Colorado Worker's Compensation system effective July 1, 1991 and applying to injuries occurring on and after that date. For a summary of 1991 Worker's Compensation law changes, see Salmon, "1991 Update on Worker's Compensation Law"–20 Colo. Law. 2224 (November, 1991).

IV. INSURANCE REFORMS

Insurer Bad Faith Codified

S.B. 67 in 1987 was a new statutory section numbered C.R.S. 10-3-1113 designed to codify remedies available to persons injured by acts of insurers. The new section provides that the jury may be instructed that the insurer owes its insured a duty of good faith and fair dealing, which duty is breached if the insurer delays or denies payment without a reasonable basis for its delay or denial. The statute then specifies in keeping with Farmers Group v. Trimble [691 P.2d 1138 (Colo. 1984], that under a policy of "liability insurance," determination of whether the insurer's delay or denial is

reasonable is to be based on whether the insurer's delay or denial was "negligent." However, under a policy of "first-party insurance," the determination of whether the insurer's delay or denial was reasonable is to be based on whether the insurer knew its delay or denial was unreasonable or whether the insurer recklessly disregarded the fact that its delay or denial was unreasonable--a standard in keeping with the case of Travelers Ins. Co. v. Savio, 706 P.2d 1258 (Colo. 1985). The statute provides that in determining whether the insurer's delay or denial is reasonable, the jury may be instructed that the willful conduct of the kind set forth in C.R.S. 10-3-1104(1)(h)(I) through (1)(h)(XIV) is prohibited and may be considered if the delay or denial and the claimed injury, damage or loss was caused by or contributed to such prohibited conduct.

There is a specific statement in the statute that nothing in the Unfair Claim Practices Act is to be construed to create a private cause of action based on violations of that Act.

The effective date of S.B. 67 was to causes of action arising on and after July 1, 1987.

Rental Car Collision Damage Waivers Now Legislatively Regulated

H.B. 1195 in 1989 added a new C.R.S. 6-1-201, et seq. pertaining to collision damage waivers in private passenger auto rental contracts. The legislation requires that any Collision Damage Waiver form be understandable and written in simple and readable language, and that it set forth the terms of the Waiver and its conditions or exclusions prominently. Restrictions must be printed in at least brevier or 10-point type and include a statement of the amount being charged. The Waiver form must set forth a specifically-worded statutory notice in boldface (at least 10-point type). Failure of a rental company to comply with the requirements of the Act is a "deceptive trade practice," which will void exclusions and limitations of the Collision Damage Waiver. Section 204 states that no Collision Damage Waiver agreement may contain an exclusion for damages caused by ordinary negligence of the lessee. Such Waivers, however, may exclude: willful and wanton conduct; intoxication; participation in speed contests; carrying of persons or property for hire; pushing or towing anything; use of the vehicle while committing a crime; use of the vehicle by an unauthorized driver; the lessor supplying false information; use of the vehicle outside the United States; and tampering with the speedometer/odometer. Section 205 imposes advertisement requirements. H.B. 1195 became effective to rental agreements entered on and after January 1, 1990.

Non-Original Manufacturers Auto Crash Parts Regulated

H.B. 1155 in 1989 adopted a new C.R.S. 10-3-1301, et seq., pertaining to use of non-original manufacturers' auto crash parts. The Act defines "non-original equipment replacement crash parts" and requires such non-original parts have the name or trademark of the manufacturer affixed so as to be visible after installation of the part. The Act prohibits insurers from specifying use of non-original equipment replacement crash parts in repair of an insured's motor vehicle without disclosing such intended use to its insured. Non-compliance with the Act constitutes an "unfair method of competition" and an "unfair" or "deceptive act or practice" in the business of insurance. The

statute further provides that nothing in the Act impairs or limits the rights, defenses or liabilities of parties arising from the use of replacement crash parts. The effective date of the Act was July 1, 1989.

Motor Vehicle Salvage Titles

H.B. 1185 in 1990 added new subsections to C.R.S. 42-6-102 and amended C.R.S. 42-6-134 [renumbered in 1994 as C.R.S. 42-6-136] to facilitate obtaining of salvage titles. Under the 1990 legislative change, the owner of a motor vehicle for which a Colorado title has been issued must surrender a title for cancellation (after obtaining the lienholder's consent) upon destruction or dismantling of the vehicle, upon the vehicle being changed in a manner that it is no longer a motor vehicle or the vehicle being sold or disposed of as salvage. Upon sale or transfer of a vehicle which has become "salvage" (as defined by the Act), the owner must apply for a "Salvage Certificate of Title." "Salvage vehicle" is defined as a vehicle damaged by collision, fire, flood, accident, trespass or other occurrence to the extent that the owner or insurer, or other person acting on behalf of the owner, determines that the cost of parts and labor makes it uneconomical to repair ore build the vehicle. Said definition, however, does not apply to a vehicle that is six years old or older or which is to be parted-out or used for scrap. An owner of a "salvage vehicle" that has been made "roadworthy" (as defined in the statute) may make application for a Certificate of Title after all appropriate and requested information required by the Department of Revenue is filed. The title certificate that then issued was to be marked with an "S" in a conspicuous place on the face of the certificate and will appear on the certificate each time title of the vehicle is thereafter transferred. Since 1994, a disclosure affidavit is required that sets forth in bold print: "Rebuilt from Salvage." H.B. 1185 became effective as to Certificates of Title issued on and after October 1, 1990. DMV Regulation 42-6-134 was changed to reflect the new statutory definitions and procedures.

Insurance Guaranty Association Limits Increased

S.B. 70 in 1988 was an amendment of C.R.S. 10-4-508(1)(a) of the Colorado Insurance Guaranty Act to increase the maximum limit of the obligation of the Guaranty Association for each covered claim from $50,000 to $100,000 for orders of liquidation with a finding of insolvency by a court of competent jurisdiction occurring on and after July 1 of 1988.

Insurance Guaranty Association Act Amended to Change Primacy as Between Guaranty Associations of Several States and to Restrict Extent of Recovery Under the Colorado Act

H.B. 1258 in 1989 amended C.R.S. 10-4-504 and 10-4-512 to lessen the burden on the Colorado Guaranty Association in instances of mass tort litigation (such as asbestos) against a policyholder who is headquartered in Colorado. Amended C.R.S. 10-4-504 limits claim eligibility depending upon the net worth of the insured entity. Amended C.R.S. 10-4-512 requires that claimants first seek recovery from the Guaranty Association of the place of their residence and prevents duplication of recovery under the Colorado Act. H.B. 1258 became effective April 17, 1989.

Life and Health Guaranty Association Statute Enacted

H.B. 1243 in 1991 established a new Life and Health Insurance Protection Association system under a newly-created C.R.S. 10-20-101, et seq. The arrangement is similar to the Colorado Insurance Guaranty Act that has been in effect for a number of years. The legislation created the Association and mandated that the Association provide coverage benefits to persons who are holders of policies or contracts where the life or health insurer has become insolvent, unless such holder can obtain protection from a similar association in another state. The Act requires life and health insurers to become members of the Association as a condition to doing business in Colorado and allows the Association to levy assessments against member insurers. To be eligible for protection under the Act, a claimant must reside in Colorado at the time a member insurer is determined to be insolvent. The Act also provides coverage to non-residents through an insurer issuing the policies domiciled in Colorado, but under extremely limited circumstances. To be covered under the Act, a claimant must not only satisfy residency requirements, but it must also be determined whether the Act grants coverage to the particular policy or contract in question. The Act applied prospectively only. Therefore, there was no protection or for policies of an insolvent insurer whose insolvency was declared before July 1, 1991, nor an insurer which was unable to fulfill its contractual obligations on July 1, 1991. Monetary limits of protection are the lessor of the insolvent insurer's obligations under the policy or $300,000 net life insurance death benefits; $100,000 cash surrender and net cash withdrawal values for life insurance; $100,000 health insurance benefits; $100,000 present value of annuity benefits; and $300,000 in the aggregate with respect to any one life. The statute provides that the Association has no liability for any extra-contractual, punitive damages or attorneys' fees unless provided by the particular policy. For an overview of the new Life and Health Insurance Protection Association Act, see the article by Ruth Lurie and David Harris in the September, 1991 Colorado Lawyer at page 1767.

Regulation of Insurance Handling of AIDS Codified

S.B. 167 in 1989 was a new C.R.S. 10-3-1104.5 which established procedures to be followed in testing an insurance applicant for HIV and specified that non-compliance with such procedures constitutes an unfair or deceptive insurance practice. The statute defines various terms; proscribes AIDS testing for insurance applicants except under conditions; controls reporting of positive AIDS results; prohibits inquiring into an applicant's sexual orientation; and allows for the acceleration for insurance death benefits to pay for AIDS health care expenses. S.B. 167 became effective April 12, 1989.

Pregnancy and Childbirth Expense Mandatorily Imposed Group Health Insurance Provisions

S.B. 211 in 1989 created new C.R.S. §§ 10-8-122.2, 10-8-125, 10-16-114.6 and 10-17-131.6 [now numbered C.R.S. 10-16-104(2) and (3)] requiring that all group, sickness and group health service contracts provide coverage against the expense of normal pregnancy and childbirth. If an employer provides this protection through self-insurance, such self-insurance must provide written notice to affected employees of the employer's choice to self-insure. Employers who employ fewer than 15 full-time employees or part-time employees for not more than 6 consecutive months each year on a

seasonal basis are allowed to provide the protection on a self-insurance or partially-insured basis. S.B. 211 became effective April 15, 1989 and was amended in 1992.

Screening Mammography Must be Provided by Sickness and Accident Policies

H.B. 1101 in 1989 provided a new C.R.S. 10-8-124 [now numbered C.R.S. 10-16-104(4)], which mandated coverage for screening mammography in all individual and group sickness and accident policies (except supplemental policies covering a specified disease or other limited benefit). The Act defined "low-dose mammography" and established guidelines for the required coverage. The effective date of H.B. 1101 was to all individual, group sickness and accident policies delivered or issued for delivery within Colorado on and after January 1, 1990. The enactment was amended in 1992.

Insurance Fraud Information Reporting Act--Immunity

H.B. 1087 in 1987 was a new section 10-1-127 [amended and renumbered in 2003 as 10-1-128] to confer immunity to persons, including insurers, for reporting, furnishing or receiving information concerning fraudulent insurance acts. The enactment paralleled the Arson Information Reporting Act of 1979 [C.R.S. 10-4-1001, et seq.] and was designed to encourage reporting and free exchange of information concerning suspected insurance fraud. "Fraudulent Insurance Act" is defined in subpart (1) of the statute, and the immunity provision is found in subsection (2). It provides that in the absence of fraud or bad faith, no civil cause of action of any nature shall arise against any person or his agents, designees or employees for the furnishing or receiving of information relating to suspected fraudulent insurance acts.

The statute is specific that an allegation of a fraudulent insurance act does not excuse the insurer from its duty to promptly investigate a claim, and that the statute did not purport to change any other common law or statutory privilege or immunity existing prior to the enactment's effective date [March 25, 1987].

Insurers' Ability to Cancel, Non-Renew, Increase Premium or Reduce Coverage Limited

H.B. 1193 in 1986 was an insurance reform measure that restricted insurers' cancellation or non-renewal of certain policies. C.R.S. 10-4-108 and 109, pertaining to medical malpractice policies, were amended to require that the insurer give 90 days advance notice of its intention to cancel or non-renew. That requirement was reduced to 45 days by a 1987 amendment that was effective May 1, 1987.

C.R.S. 10-4-107 was also amended in 1986 to add a new subsection (d) to allow for cancellations where there has been a substantial change in the exposure of risk other than that indicated in the application and underwritten as of the effective date of the policy, unless the insured notified the insurer of the change and the insurer accepted such change. In addition, a new section 109.5 was added in 1986 to restrict a medical malpractice insurer from unilateral increase in premium or decrease in coverage without first providing 90 days advance notice accompanied by the reason for the

company's action. The time interval was reduced to 45 days by a 1987 amendment (H.B. 1291) effective May 1, 1987.

H.B. 1193 in 1986 also added a new C.R.S. 10-4-109.7, amended in 10-4-110, and added a new C.R.S. 10-4-110.5 to require 90 days advance notice to the insured of an intention to cancel, non-renew, unilaterally increase premium or decrease coverage in policies containing "commercial exposures" such as general liability, municipal liability, automobile liability and physical damage, fidelity and surety, fire and allied lines, inland marine, errors and omissions, excess liability, products liability, police liability, professional liability or false arrest insurance. That 90-day interval was reduced to 45 days by the H.B. 1291 amendment in 1987 that became effective on May 1, 1987.

Insurers providing policies containing commercial risks may not cancel except for certain specified reasons, which reason must be stated in the notice of cancellation. The reasons are: non-payment of premium, a false statement knowingly made by the insured on the application for insurance, or a substantial change in the exposure or risk other than that indicated in the application and underwritten, unless the insured notified the insurer of the change and the insurer accepted it.

The effective date of the 1986 legislation was July 1, 1986.

H.B. 1291 in 1987 was a composite of amendments to statutes regulating property and casualty insurance. As indicated above, C.R.S. 10-4-109.7(1), 10-4-110, and 10-4-110.5(1) were amended to reduce the 1986 90-day advance notice of intent to cancel, non-renew or unilaterally increase premium or decrease coverage to 45 days. C.R.S. 10-4-110.5(1) was amended to require that the insurer state the renewal terms and amount of premium due at least 45 days before expiration of the policy, and if the insurer is late in doing so, the policy is automatically extended for a period of 45 days and the premium prorated based on the then-existing policy. If the insurer fails to meet the requirements of the statute before the expiration of the existing policy, he insurer is deemed to have renewed the insured's policy for an identical policy period on the same terms, conditions, and premium as the existing policy.

H.B. 1291 in 1987 also added a new C.R.S. 10-4-110.7 to require Homeowner insurers to notify the named insured of intent to cancel or non-renew at least 30 days in advance of the intended action, and to specifically state the reasons for such action. If cancellation is for non-payment of premium, only 10 days' notice and a statement of such reason is required.

New sections 10-5-118 and 10-5-119 w ere added by H.B. 1291 in 1987 to clarify that notice provisions of C.R.S. 10-4-109.7, 10-4-110, 10-4-110.5 and 10-4-110.7 are not applicable to surplus lines insurers, and to require certain disclosures be made concerning claims-made policies issued by surplus lines brokers and insurers.

H.B. 1291 in 1987 further added a new C.R.S. 10-4-1101, et seq. to permit forming of commercial liability insurance "Joint Underwriting Associations" to ensure continuing availability of commercial liability insurance in this state.

The effective date of amendments of H.B. 1291 was May 1, 1987.

Insurer and Insurance Policy Form Regulation

H.B. 1204 in 1986 was a collection of amendments and new sections to increase the authority of the Insurance Commissioner to regulate insurance practices, approve policies and require insurers to maintain records. A new C.R.S. 10-4-113 was added to authorize the Commissioner to grant exemptions to insurers from certain of Colorado's regulatory statutes if one or more enumerated reasons existed. The purpose was to provide flexibility during periods of reduced insurance availability to avoid withdrawal of insurers from the market.

Amendments were also provided in H.B. 1204 to C.R.S. 10-4-418 to clarify that the Commissioner has authority to oversee policy forms and endorsements, including those suggested by advisory organizations such as ISO.

H.B. 1358 in 1986 generally enlarged the powers of the Commissioner and increased certain fees and charges in the Division of Insurance to enable an increase in its budget.

A significant addition in 1986 was a new C.R.S. 10-4-404(5), (6) and (7), which increased the Commissioner's powers to promulgate rules to require insurers to file reports and submit closed-claim files to permit studies to determine insurance availability and affordability. The new section also required a report by the Commissioner analyzing the reasons for insurance availability and affordability problems in Colorado and required that a summary of the Commissioner's findings be made available to the public.

The effective date of both H.B. 1204 and 1358 was July 1, 1986.

Financial Solvency of Life Companies-- Legislative Measures Enacted

Financial problems of several large life insurance companies increased public concern about life company financial solvency. In 1991, the Colorado Legislature took some significant legislative steps to deal with the looming problem: There were a number of measures to strengthen the Colorado Insurance Division's regulatory oversight of insurers. The legislation required that domestic insurers keep their books and records in this state or readily accessible to Colorado Insurance Division examiners; increased capital and surplus requirements of insurance companies; and contained a new provision for valuation of securities and filing of insurer annual financial statements with the National Association of Insurance Commissioners. Another statute [H.B. 1192] subjects previously-unregulated entities to examination by the Colorado Insurance Commissioner for determination of organization insolvency. In addition to the other legislation, the new "Life and Health Insurance Protection Act" [H.B. 1243--summarized at p 27, supra] eliminated the lack of protection that previously existed when life insurers became insolvent.