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HOUSE BILL 12-1268

BY REPRESENTATIVE(S) Acree, Beezley, Joshi, Kerr J., McCann, Ramirez, Gerou, Liston, Summers, Todd;
also SENATOR(S) Hudak, King S., Newell, Tochtrop, White, Williams S.

CONCERNING A TRANSFER OF FUNCTIONS PERTAINING TO HEALTH FACILITY COMPLIANCE WITH CERTAIN BUILDING SAFETY STANDARDS FROM THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT TO THE DIVISION OF FIRE SAFETY IN THE OFFICE OF PREPAREDNESS, SECURITY, AND FIRE SAFETY WITHIN THE DEPARTMENT OF PUBLIC SAFETY, AND, IN CONNECTION THEREWITH, CREATING THE HEALTH FACILITY CONSTRUCTION AND INSPECTION SECTION IN THE DIVISION OF FIRE SAFETY.

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

SECTION 1. In Colorado Revised Statutes, 25-1.5-103, **add** (5) as follows:

25-1.5-103. Health facilities - powers and duties of department - limitations on rules promulgated by department. (5) (a) THIS SUBSECTION (5) APPLIES TO CONSTRUCTION, INCLUDING SUBSTANTIAL RENOVATION, AND ONGOING COMPLIANCE WITH ARTICLE 33.5 OF TITLE 24, C.R.S., OF A HEALTH CARE FACILITY BUILDING OR STRUCTURE ON OR AFTER

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

JULY 1, 2013. ALL HEALTH FACILITY BUILDINGS AND STRUCTURES SHALL BE CONSTRUCTED IN CONFORMITY WITH THE STANDARDS ADOPTED BY THE DIRECTOR OF THE DIVISION OF FIRE SAFETY IN THE OFFICE OF PREPAREDNESS, SECURITY, AND FIRE SAFETY WITHIN THE DEPARTMENT OF PUBLIC SAFETY.

(b) EXCEPT AS PROVIDED IN PARAGRAPH (c) OF THIS SUBSECTION (5) BUT NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE DEPARTMENT SHALL NOT ISSUE OR RENEW ANY LICENSE UNDER THIS ARTICLE UNLESS THE DEPARTMENT HAS RECEIVED A CERTIFICATE OF COMPLIANCE FROM THE DIVISION OF FIRE SAFETY CERTIFYING THAT THE BUILDING OR STRUCTURE OF THE HEALTH FACILITY ARE IN CONFORMITY WITH THE STANDARDS ADOPTED BY THE DIRECTOR OF THE DIVISION OF FIRE SAFETY.

(c) THE DEPARTMENT HAS NO AUTHORITY TO ESTABLISH OR ENFORCE STANDARDS RELATING TO BUILDING OR FIRE CODES. ALL FUNCTIONS, PERSONNEL, AND PROPERTY OF THE DEPARTMENT AS OF JUNE 30, 2013, THAT ARE PRINCIPALLY DIRECTED TO THE ADMINISTRATION, INSPECTION, AND ENFORCEMENT OF ANY BUILDING OR FIRE CODES OR STANDARDS SHALL BE TRANSFERRED TO THE HEALTH FACILITY CONSTRUCTION AND INSPECTION SECTION OF THE DIVISION OF FIRE SAFETY PURSUANT TO SECTION 24-33.5-1201 (5), C.R.S.

(d) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, ALL HEALTH FACILITIES SEEKING CERTIFICATION PURSUANT TO THE FEDERAL INSURANCE OR ASSISTANCE PROVIDED BY TITLE XIX OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED AND COMMONLY KNOWN AS "MEDICAID", OR THE FEDERAL INSURANCE OR ASSISTANCE PROVIDED BY TITLE XVIII OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED AND COMMONLY KNOWN AS "MEDICARE", OR ANY SUCCESSOR CODE ADOPTED OR PROMULGATED BY THE APPROPRIATE FEDERAL AUTHORITIES, SHALL CONTINUE TO MEET SUCH CERTIFICATION REQUIREMENTS.

(e) NOTHING IN THIS SUBSECTION (5) DIVESTS THE DEPARTMENT OF THE AUTHORITY TO PERFORM HEALTH SURVEY WORK OR PREVENTS THE DEPARTMENT FROM ACCESSING RELATED FUNDS.

SECTION 2. In Colorado Revised Statutes, 25-3-102, **amend** (1); and **add** (3) as follows:

25-3-102. License - application - issuance - certificate of compliance required. (1) An application for a license described in section 25-3-101 shall be made to the department of public health and environment annually upon such form and in such manner as prescribed by the department; except that a community residential home shall make application for a license pursuant to section 27-10.5-109, C.R.S. The department has authority to administer oaths, subpoena witnesses or documents, and take testimony in all matters relating to issuing, denying, limiting, suspending, or revoking such license. The department shall issue licenses to applicants furnishing satisfactory evidence of fitness to conduct and maintain a facility described in section 25-3-101 in accordance with ~~the provisions of this part 1 and the rules and regulations adopted by such~~ THE department. The license shall be signed by the president and attested by the secretary of the state board of health and have the seal thereof affixed thereto. ~~Such~~ THE license expires one year from the date of issuance.

(3) (a) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT SHALL NOT ISSUE OR RENEW ANY LICENSE DESCRIBED IN SECTION 25-3-101 FOR A FACILITY COVERED BY SECTION 25-1.5-103 (5) UNLESS THE DEPARTMENT RECEIVES A CERTIFICATE OF COMPLIANCE FOR THE APPLICANT'S BUILDING OR STRUCTURE FROM THE DIVISION OF FIRE SAFETY IN THE OFFICE OF PREPAREDNESS, SECURITY, AND FIRE SAFETY WITHIN THE DEPARTMENT OF PUBLIC SAFETY IN ACCORDANCE WITH PART 12 OF ARTICLE 33.5 OF TITLE 24, C.R.S.

(b) THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT SHALL TAKE ACTION ON AN APPLICATION FOR LICENSURE WITHIN THIRTY DAYS AFTER THE DATE THAT THE DEPARTMENT RECEIVES FROM THE APPLICANT ALL OF THE NECESSARY INFORMATION AND DOCUMENTATION REQUIRED FOR LICENSURE, INCLUDING A CERTIFICATE OF COMPLIANCE FROM THE DIVISION OF FIRE SAFETY.

SECTION 3. In Colorado Revised Statutes, 25-3-105, **add** (4) as follows:

25-3-105. License - fee - rules - penalty. (4) ON JULY 1, 2013, ANY MONEYS REMAINING IN THE HEALTH FACILITIES GENERAL LICENSURE CASH FUND CREATED IN SECTION 25-3-103.1 (1) FROM FEES COLLECTED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT FOR HEALTH FACILITY

BUILDING AND STRUCTURE CODE PLAN REVIEWS AND INSPECTIONS ARE TRANSFERRED TO THE HEALTH FACILITY CONSTRUCTION AND INSPECTION CASH FUND CREATED IN SECTION 24-33.5-1207.8, C.R.S.

SECTION 4. In Colorado Revised Statutes, **amend** 25-27-107.5 as follows:

25-27-107.5. Assisted living residence cash fund created. (1) The fees collected pursuant to section 25-27-107, plus any civil penalty collected pursuant to section 25-27-103 (1) (b), shall be transmitted to the state treasurer, who shall credit the same to the assisted living residence cash fund, which fund is hereby created. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs of the department in performing its duties under this article. NOTWITHSTANDING SUBSECTION (2) OF THIS SECTION, at the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund.

(2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, ON JULY 1, 2013, ANY MONEYS REMAINING IN THE FUND FROM FEES COLLECTED BY THE DEPARTMENT FOR ASSISTED LIVING RESIDENCE BUILDING AND STRUCTURE CODE PLAN REVIEWS AND INSPECTIONS ARE TRANSFERRED TO THE HEALTH FACILITY CONSTRUCTION AND INSPECTION CASH FUND CREATED IN SECTION 24-33.5-1207.8, C.R.S.

SECTION 5. In Colorado Revised Statutes, 24-33.5-1201, **add** (5) as follows:

24-33.5-1201. Division of fire safety - creation - public school construction and inspection section - health facility construction and inspection section - legislative declaration. (5) (a) THERE IS HEREBY CREATED WITHIN THE DIVISION THE HEALTH FACILITY CONSTRUCTION AND INSPECTION SECTION TO IMPLEMENT SECTION 24-33.5-1212.5 AND TO ADMINISTER AND ENFORCE THE CODES IN ACCORDANCE WITH SECTIONS 24-33.5-1212.5 AND 24-33.5-1213. THE HEALTH FACILITY CONSTRUCTION AND INSPECTION SECTION SHALL PERFORM ITS DUTIES AND FUNCTIONS UNDER THE DIVISION AND THE EXECUTIVE DIRECTOR AS IF THE SAME WERE TRANSFERRED TO THE DEPARTMENT BY A **TYPE 2** TRANSFER, AS SUCH TRANSFER IS DEFINED IN THE "ADMINISTRATIVE ORGANIZATION ACT OF

1968", ARTICLE 1 OF THIS TITLE.

(b) ON AND AFTER JULY 1, 2013, ALL POSITIONS OF EMPLOYMENT IN THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT FOR WHICH PRINCIPAL DUTIES ARE CONCERNED WITH LIFE SAFETY INSPECTION AND THAT ARE DETERMINED BY THE DIRECTOR TO BE NECESSARY TO CARRY OUT THE PURPOSES OF THE HEALTH FACILITY CONSTRUCTION AND INSPECTION SECTION ARE TRANSFERRED TO THE DIVISION AND ARE EMPLOYMENT POSITIONS THEREIN. THE EXECUTIVE DIRECTOR SHALL APPOINT SUCH EMPLOYEES AS ARE NECESSARY TO CARRY OUT THE DUTIES AND EXERCISE THE POWERS SPECIFIED IN THIS PART 12. THE EXECUTIVE DIRECTOR MAY DELEGATE APPOINTING AUTHORITY AS APPROPRIATE.

(c) ON AND AFTER JULY 1, 2013, ALL EMPLOYEES OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT CARRYING OUT THE DUTIES PRINCIPALLY RELATING TO LIFE SAFETY CODE COMPLIANCE ARE EMPLOYEES OF THE HEALTH FACILITY CONSTRUCTION AND INSPECTION SECTION IN THE DIVISION. THE EMPLOYEES RETAIN ALL RIGHTS UNDER THE STATE PERSONNEL SYSTEM AND TO RETIREMENT BENEFITS PURSUANT TO THE LAWS OF THIS STATE, AND THEIR SERVICES ARE DEEMED TO HAVE BEEN CONTINUOUS.

(d) ON JULY 1, 2013, ALL ITEMS OF PROPERTY, REAL AND PERSONAL, INCLUDING OFFICE FURNITURE AND FIXTURES, BOOKS, DOCUMENTS, AND RECORDS OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT USED IN CARRYING OUT THE DUTIES PRINCIPALLY RELATING TO LIFE SAFETY CODE COMPLIANCE ARE TRANSFERRED TO THE HEALTH FACILITY CONSTRUCTION AND INSPECTION SECTION IN THE DIVISION AND BECOME THE PROPERTY OF THAT SECTION.

(e) BY OCTOBER 1, 2012, THE DIVISION AND THE GOVERNOR SHALL SUBMIT AN APPLICATION TO THE SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR A MODIFICATION TO THE AGREEMENT ENTERED INTO BETWEEN THE SECRETARY AND THE STATE OF COLORADO PURSUANT TO SECTION 1864 OF THE FEDERAL "SOCIAL SECURITY ACT", 42 U.S.C. SEC. 1395AA, WHICH MODIFICATION ALLOWS THE DIVISION TO FULFILL THE DUTIES UNDER THAT LAW ASSOCIATED WITH THE ASSESSMENT OF COMPLIANCE WITH THE FEDERAL FIRE SAFETY CODE REQUIREMENTS FOR HEALTH FACILITIES, AND A MODIFICATION TO WAIVERS FOR RESIDENTIAL MEDICAID PROVIDER TYPES TO ALLOW THE DIVISION TO

CONDUCT CONSTRUCTION PLANS AND INSPECTIONS.

(f) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT, IN DISCHARGING ITS DUTIES UNDER THIS ARTICLE, AS THEY PERTAIN TO HEALTH FACILITY BUILDINGS AND STRUCTURES, THE HEALTH FACILITY CONSTRUCTION AND INSPECTION SECTION IS ENCOURAGED TO COOPERATE WITH LOCAL AUTHORITIES, ESPECIALLY IN REGARD TO PLAN REVIEWS AND WHETHER SUCH PLANS COMPORT WITH LOCAL REQUIREMENTS.

SECTION 6. In Colorado Revised Statutes, 24-33.5-1202, **amend** (7.7); and **add** (7.9) as follows:

24-33.5-1202. Definitions. As used in this part 12, unless the context otherwise requires:

(7.7) ~~"Manufacturer" means any one or more of the following:~~

~~(a) An entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured with the intent that such cigarettes be sold in Colorado, regardless of where the cigarettes are manufactured or produced and regardless of whether they are imported from outside the United States;~~

~~(b) The first purchaser anywhere that intends to resell, in the United States, cigarettes manufactured anywhere that the original manufacturer or producer does not intend to be sold in the United States; or~~

~~(c) An entity that becomes a successor to an entity described in paragraph (a) or (b) of this subsection (7.7) "HEALTH FACILITY" MEANS A GENERAL HOSPITAL, HOSPITAL UNIT AS DEFINED IN SECTION 25-3-101 (2), C.R.S., PSYCHIATRIC HOSPITAL, COMMUNITY CLINIC, REHABILITATION CENTER, CONVALESCENT CENTER, COMMUNITY MENTAL HEALTH CENTER, ACUTE TREATMENT UNIT, FACILITY FOR PERSONS WITH DEVELOPMENTAL DISABILITIES, HABILITATION CENTER FOR CHILDREN WITH BRAIN DAMAGE, CHIROPRACTIC CENTER AND HOSPITAL, MATERNITY HOSPITAL, NURSING CARE FACILITY, REHABILITATIVE NURSING FACILITY, HOSPICE CARE FACILITY, DIALYSIS TREATMENT CLINIC, AMBULATORY SURGICAL CENTER, BIRTHING CENTER, HOME CARE AGENCY, ASSISTED LIVING RESIDENCE, OR OTHER FACILITY OF A LIKE NATURE; EXCEPT THAT "HEALTH FACILITY" DOES NOT INCLUDE A FACILITY AT WHICH HEALTH SERVICES ARE NOT PROVIDED TO~~

INDIVIDUALS.

(7.9) "MANUFACTURER" MEANS ANY ONE OR MORE OF THE FOLLOWING:

(a) AN ENTITY THAT MANUFACTURES OR OTHERWISE PRODUCES CIGARETTES OR CAUSES CIGARETTES TO BE MANUFACTURED WITH THE INTENT THAT SUCH CIGARETTES BE SOLD IN COLORADO, REGARDLESS OF WHERE THE CIGARETTES ARE MANUFACTURED OR PRODUCED AND REGARDLESS OF WHETHER THEY ARE IMPORTED FROM OUTSIDE THE UNITED STATES;

(b) THE FIRST PURCHASER ANYWHERE THAT INTENDS TO RESELL, IN THE UNITED STATES, CIGARETTES MANUFACTURED ANYWHERE THAT THE ORIGINAL MANUFACTURER OR PRODUCER DOES NOT INTEND TO BE SOLD IN THE UNITED STATES; OR

(c) AN ENTITY THAT BECOMES A SUCCESSOR TO AN ENTITY DESCRIBED IN PARAGRAPH (a) OR (b) OF THIS SUBSECTION (7.9).

SECTION 7. In Colorado Revised Statutes, 24-33.5-1203, **amend** (1) (b.5); and **add** (1) (p.5) as follows:

24-33.5-1203. Duties of division. (1) The division shall perform the following duties:

(b.5) Advise the governor and the general assembly regarding implementation of the public school construction and inspection program AND THE HEALTH FACILITY CONSTRUCTION AND INSPECTION PROGRAM;

(p.5) WHEN THERE IS NO LOCAL BUILDING DEPARTMENT OR FIRE DEPARTMENT, OR WHEN NECESSARY FOR FACILITIES CERTIFIED OR SEEKING CERTIFICATION BY THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES, CONDUCT CONSTRUCTION PLAN REVIEWS AND INSPECTIONS OF HEALTH FACILITY BUILDINGS AND STRUCTURES, ENFORCE THE CODES IN ACCORDANCE WITH SECTIONS 24-33.5-1212.5 AND 24-33.5-1213, AND ISSUE CERTIFICATES OF COMPLIANCE FOR SUCH BUILDINGS AND STRUCTURES;

SECTION 8. In Colorado Revised Statutes, 24-33.5-1204.5, **amend** (1) (g); and **add** (1) (f.5) as follows:

24-33.5-1204.5. Powers and duties of administrator - rules.

(1) In addition to any other duties and powers granted by this section or sections 24-33.5-1206.2 and 24-33.5-1206.4, the administrator has the following duties and powers:

(f.5) TO ESTABLISH AND ADOPT RULES NECESSARY TO ADMINISTER THE HEALTH FACILITY CONSTRUCTION AND INSPECTION PROGRAM FOR:

(I) WHERE THERE IS NO LOCAL BUILDING DEPARTMENT OR FIRE DEPARTMENT, THE INSPECTION OF HEALTH FACILITY BUILDINGS AND STRUCTURES AND PERFORMANCE OF PLAN REVIEWS; AND

(II) THE DEVELOPMENT OF A PROGRAM FOR CERTIFICATION OF HEALTH FACILITY LIFE SAFETY INSPECTORS;

(g) To conduct hearings upon charges for discipline of a school building inspector, HEALTH FACILITY LIFE SAFETY CODE INSPECTOR, OR THIRD-PARTY INSPECTOR; issue subpoenas; compel attendance of witnesses; compel the production of books, records, papers, and documents; administer oaths to persons giving testimony at hearings; and recommend prosecution of persons violating this part 12.

SECTION 9. In Colorado Revised Statutes, 24-33.5-1206, **amend** (2) as follows:

24-33.5-1206. Education and training programs - certification programs - supervision and control. (2) The public school construction and inspection program, THE HEALTH FACILITY CONSTRUCTION AND INSPECTION PROGRAM, and the certification ~~program~~ PROGRAMS for public school and junior college building inspectors AND LIFE SAFETY CODE INSPECTORS established pursuant to this part 12 ~~shall be~~ ARE under the supervision and control of the director with the advice of the board of appeals created in section 24-33.5-1213.7.

SECTION 10. In Colorado Revised Statutes, **add** 24-33.5-1207.8 as follows:

24-33.5-1207.8. Health facility construction and inspection cash fund - created. ALL MONEYS COLLECTED BY THE DIVISION PURSUANT TO SECTION 24-33.5-1212.5 SHALL BE TRANSMITTED TO THE STATE TREASURER,

WHO SHALL CREDIT THE SAME TO THE HEALTH FACILITY CONSTRUCTION AND INSPECTION CASH FUND, WHICH IS HEREBY CREATED. ALL MONEYS CREDITED TO THE FUND AND ALL INTEREST EARNED THEREON ARE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY FOR PAYING THE EXPENSES OF THE HEALTH FACILITY CONSTRUCTION AND INSPECTION PROGRAM. ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE FUND AT THE END OF A FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANOTHER FUND.

SECTION 11. In Colorado Revised Statutes, **add** 24-33.5-1212.5 as follows:

24-33.5-1212.5. Health facility fire and building codes - third-party inspections authorized - temporary certificate of occupancy - fees - rules - board of appeals. (1) (a) THIS SECTION APPLIES TO HEALTH FACILITY BUILDINGS OR STRUCTURES, INCLUDING THE CONSTRUCTION OR SUBSTANTIAL REMODELING AND ONGOING COMPLIANCE WITH THIS ARTICLE THEREOF, WHEN THERE IS NO LOCAL BUILDING DEPARTMENT OR FIRE DEPARTMENT TO PERFORM SUCH FUNCTIONS. THE DIVISION SHALL CONDUCT THE NECESSARY PLAN REVIEWS AND INSPECTIONS AND ISSUE CERTIFICATES OF COMPLIANCE TO CERTIFY THAT SUCH BUILDINGS OR STRUCTURES ARE CONSTRUCTED OR MAINTAINED IN CONFORMITY WITH THE CODES ADOPTED BY THE DIRECTOR.

(b) ON AND AFTER JULY 1, 2013, HEALTH FACILITY BUILDINGS AND STRUCTURES SHALL BE MAINTAINED IN ACCORDANCE WITH THEIR LOCAL BUILDING AND FIRE CODES OR, IF NO SUCH LOCAL BUILDING AND FIRE CODES EXIST, WITH THE BUILDING AND FIRE CODES ADOPTED BY THE DIRECTOR PURSUANT TO SECTION 24-33.5-1203.5.

(c) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (1), UPON REQUEST OF THE LOCAL FIRE AUTHORITY, THE DIRECTOR OF THE DIVISION SHALL PROVIDE TECHNICAL ASSISTANCE IN THE REVIEW OF HEALTH FACILITY PLANS AND, IF APPROPRIATE, CONDUCT INSPECTIONS ON BEHALF OF THE LOCAL FIRE AUTHORITY.

(2) EXCEPT AS SPECIFIED IN SUBSECTION (3) OF THIS SECTION, IN THE ABSENCE OF A LOCAL BUILDING DEPARTMENT OR FIRE DEPARTMENT, THE DIVISION SHALL CONDUCT THE NECESSARY PLAN REVIEWS, ISSUE BUILDING PERMITS, CAUSE THE NECESSARY INSPECTIONS TO BE PERFORMED, PERFORM

FINAL INSPECTIONS, AND ISSUE CERTIFICATES OF OCCUPANCY TO ASSURE THAT A HEALTH FACILITY BUILDING OR STRUCTURE HAS BEEN CONSTRUCTED IN CONFORMITY WITH THE BUILDING AND FIRE CODES ADOPTED BY THE DIRECTOR AND THAT THE HEALTH FACILITY HAS COMPLIED WITH THIS SECTION.

(3) **Third-party inspectors.** (a) THE DIVISION MAY CONTRACT WITH THIRD-PARTY INSPECTORS WHO ARE CERTIFIED IN ACCORDANCE WITH SECTION 24-33.5-1213.5 TO PERFORM INSPECTIONS.

(b) (I) A HEALTH FACILITY MAY HIRE AND COMPENSATE THIRD-PARTY INSPECTORS UNDER CONTRACT WITH THE DIVISION OR HIRE AND COMPENSATE OTHER THIRD-PARTY INSPECTORS WHO ARE CERTIFIED IN ACCORDANCE WITH SECTION 24-33.5-1213.5 TO PERFORM INSPECTIONS.

(II) IF A THIRD-PARTY INSPECTOR IS USED, THE DIVISION SHALL REQUIRE A SUFFICIENT NUMBER OF THIRD-PARTY INSPECTION REPORTS TO BE SUBMITTED BY THE INSPECTOR TO THE DIVISION BASED UPON THE SCOPE OF THE PROJECT TO ENSURE QUALITY INSPECTIONS ARE PERFORMED. EXCEPT AS SPECIFIED IN SUBSECTION (4) OF THIS SECTION, THE THIRD-PARTY INSPECTOR SHALL ATTEST THAT INSPECTIONS ARE COMPLETE AND ALL VIOLATIONS ARE CORRECTED BEFORE THE HEALTH FACILITY IS ISSUED A CERTIFICATE OF OCCUPANCY. INSPECTION RECORDS SHALL BE RETAINED BY THE THIRD-PARTY INSPECTOR FOR TWO YEARS AFTER THE CERTIFICATE OF OCCUPANCY IS ISSUED. IF THE DIVISION FINDS THAT INSPECTIONS ARE NOT COMPLETED SATISFACTORILY, AS DETERMINED BY RULE OF THE DIVISION, OR THAT ALL VIOLATIONS ARE NOT CORRECTED, THE DIVISION SHALL TAKE ENFORCEMENT ACTION AGAINST THE APPROPRIATE HEALTH FACILITY PURSUANT TO SECTION 24-33.5-1213.

(4) **Temporary certificate of occupancy.** IF INSPECTIONS ARE NOT COMPLETED AND A BUILDING OR STRUCTURE REQUIRES IMMEDIATE OCCUPANCY, AND IF THE HEALTH FACILITY HAS PASSED THE APPROPRIATE INSPECTIONS THAT INDICATE THERE ARE NO LIFE SAFETY ISSUES, THE DIVISION MAY ISSUE A TEMPORARY CERTIFICATE OF OCCUPANCY. THE TEMPORARY CERTIFICATE OF OCCUPANCY EXPIRES NINETY DAYS AFTER THE DATE OF OCCUPANCY. IF NO RENEWAL OF THE TEMPORARY CERTIFICATE OF OCCUPANCY IS ISSUED OR A PERMANENT CERTIFICATE OF OCCUPANCY IS NOT ISSUED, THE BUILDING OR STRUCTURE SHALL BE VACATED UPON EXPIRATION OF THE TEMPORARY CERTIFICATE. THE DIVISION SHALL ENFORCE THIS

SUBSECTION (4) PURSUANT TO SECTION 24-33.5-1213.

(5) **Division fees.** IF THE DIVISION CONDUCTS THE NECESSARY PLAN REVIEWS AND PERFORMS THE NECESSARY INSPECTIONS TO DETERMINE THAT A BUILDING OR STRUCTURE HAS BEEN CONSTRUCTED IN CONFORMITY WITH THE BUILDING AND FIRE CODES ADOPTED BY THE DIRECTOR, THE DIVISION SHALL CHARGE FEES AS ESTABLISHED BY THE DIRECTOR BY RULE, BASED ON THE DIRECT AND INDIRECT COST OF PROVIDING THE SERVICE. THE FEES SHALL COVER THE ACTUAL, REASONABLE, AND NECESSARY EXPENSES OF THE DIVISION. THE DIRECTOR, BY RULE OR AS OTHERWISE PROVIDED BY LAW, MAY INCREASE OR REDUCE THE AMOUNT OF THE FEES AS NECESSARY TO COVER THE ACTUAL, REASONABLE, AND NECESSARY COSTS OF THE DIVISION. ANY FEES COLLECTED BY THE DIVISION PURSUANT TO THIS SUBSECTION (5) SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE HEALTH FACILITY CONSTRUCTION AND INSPECTION CASH FUND CREATED IN SECTION 24-33.5-1207.8.

(6) **Rules.** RULES PROMULGATED PURSUANT TO THIS SECTION SHALL BE ADOPTED IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE.

(7) **Board of appeals.** (a) (I) THERE IS HEREBY CREATED IN THE DIVISION THE HEALTH FACILITY CONSTRUCTION AND INSPECTION PROGRAM BOARD OF APPEALS, REFERRED TO IN THIS SECTION AS THE "BOARD OF APPEALS". THE BOARD OF APPEALS CONSISTS OF SEVEN MEMBERS APPOINTED BY THE EXECUTIVE DIRECTOR AND ONE EX OFFICIO NONVOTING MEMBER APPOINTED IN ACCORDANCE WITH SUB-SUBPARAGRAPH (C) OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (a).

(II) THE MEMBERS OF THE BOARD OF APPEALS SHALL BE PERSONS WHO ARE QUALIFIED BY EXPERIENCE AND TRAINING TO PASS UPON MATTERS PERTAINING TO HEALTH FACILITY BUILDING CONSTRUCTION, INCLUDING ONE MEMBER WITH EXPERIENCE AND KNOWLEDGE OF THE LIFE SAFETY CODE, AND SHALL INCLUDE:

(A) THE FOUR MEMBERS OF THE BOARD OF APPEALS CREATED IN SECTION 24-33.5-1213.7 WHO REPRESENT THE COLORADO CHAPTER OF THE INTERNATIONAL CODE COUNCIL, THE FIRE MARSHAL'S ASSOCIATION OF COLORADO, THE COLORADO STATE FIRE CHIEFS' ASSOCIATION, AND COLORADO COUNTIES, INCORPORATED, OR ANY MEMBER APPOINTED FROM A SUCCESSOR TO ANY OF THESE ORGANIZATIONS REPRESENTING

COMPARABLE INTERESTS;

(B) ONE REPRESENTATIVE FROM EACH OF THE FOLLOWING ORGANIZATIONS OR A SUCCESSOR TO ANY OF SUCH ORGANIZATIONS REPRESENTING COMPARABLE INTERESTS: THE COLORADO ASSOCIATION OF HEALTHCARE ENGINEERS AND DIRECTORS; THE AMERICAN SOCIETY FOR HEALTHCARE ENGINEERING; AND THE COLORADO CHAPTER OF THE AMERICAN INSTITUTE OF ARCHITECTS; AND

(C) ONE EX OFFICIO NONVOTING MEMBER, APPOINTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, WHO IS EMPLOYED BY THAT DEPARTMENT AS A HEALTH SURVEYOR.

(III) THE MEMBERS OF THE BOARD OF APPEALS SERVE AT THE PLEASURE OF THE EXECUTIVE DIRECTOR.

(IV) FOR THE INITIAL APPOINTMENTS TO THE BOARD OF APPEALS:

(A) THE MEMBERS SERVING PURSUANT TO SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (a) SERVE TERMS COEXTENSIVE WITH THE TERMS TO WHICH THEY WERE APPOINTED UNDER SECTION 24-33.5-1213.7; AND

(B) FOR THE MEMBERS APPOINTED PURSUANT TO SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), THE EXECUTIVE DIRECTOR SHALL APPOINT ONE MEMBER FOR A ONE-YEAR TERM, ONE MEMBER FOR A TWO-YEAR TERM, AND ONE MEMBER FOR A THREE-YEAR TERM. EACH TERM FOR THE MEMBER APPOINTED PURSUANT TO SUB-SUBPARAGRAPH (C) OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (a) IS TWO YEARS. ALL SUBSEQUENT APPOINTMENTS ARE FOR THREE-YEAR TERMS; EXCEPT THAT AN APPOINTMENT TO FILL A VACANCY ON THE BOARD SHALL BE FOR THE REMAINDER OF THE PREDECESSOR'S TERM.

(V) THE MEMBERS OF THE BOARD OF APPEALS SHALL NOT BE COMPENSATED FOR THEIR SERVICE ON THE BOARD AND SHALL NOT BE REIMBURSED FOR EXPENSES.

(b) THE BOARD OF APPEALS SHALL SELECT A CHAIR FROM AMONG ITS MEMBERS AND SHALL ADOPT REASONABLE PROCEDURES FOR CONDUCTING

ITS DELIBERATIONS.

(c) (I) A HEALTH FACILITY REPRESENTATIVE MAY APPEAL TO THE BOARD OF APPEALS A FINAL WRITTEN DECISION OF A DIVISION INSPECTOR OR THIRD-PARTY INSPECTOR THAT CONDUCTS A PLAN REVIEW OR INSPECTION PURSUANT TO THIS SECTION. THE APPEAL SHALL BE FILED WITH THE DIVISION WITHIN THIRTY DAYS AFTER THE DATE OF THE DECISION. THE DIVISION SHALL SPECIFY THE FORM ON WHICH AN APPEAL SHALL BE MADE AND SHALL PROVIDE THE FORM TO A HEALTH FACILITY REPRESENTATIVE UPON REQUEST.

(II) UPON RECEIPT OF AN APPEAL, THE DIVISION SHALL NOTIFY THE CHAIR OF THE BOARD OF APPEALS AND SCHEDULE A HEARING NO MORE THAN FIFTEEN DAYS AFTER THE DATE ON WHICH THE APPEAL WAS FILED.

(III) THE BOARD OF APPEALS MAY REVIEW A FINAL WRITTEN DECISION BY AN INSPECTING ENTITY THAT IS BASED ON THE CODES OR STANDARDS ADOPTED BY THE DIRECTOR. THE BOARD OF APPEALS SHALL NOT WAIVE ANY REQUIREMENT OF THE CODES OR STANDARDS. THE BOARD OF APPEALS MAY RECOMMEND ALTERNATIVE MATERIALS AS PROVIDED IN THE CODES OR STANDARDS. THE FINAL WRITTEN DECISION OF THE BOARD IS FINAL AGENCY ACTION FOR PURPOSES OF SECTION 24-4-106.

(d) IN ADDITION TO HEARING APPEALS AS PROVIDED IN THIS SECTION, THE BOARD OF APPEALS SHALL ADVISE THE DIRECTOR IN PROMULGATING RULES AND ENACTING STANDARDS FOR THE HEALTH FACILITY CONSTRUCTION AND INSPECTION PROGRAM.

SECTION 12. In Colorado Revised Statutes, 24-33.5-1213, **amend** (1), (2) (a), and (4) (b) as follows:

24-33.5-1213. Fire and building code - violations - enforcement - inspections. (1) The director shall enforce ~~the provisions of sections 22-32-124 (2), and 23-71-122 (1) (v), C.R.S., and sections 24-33.5-1212.5, 24-33.5-1213.3, and 24-33.5-1213.5, C.R.S.,~~ by appropriate actions in courts of competent jurisdiction.

(2) (a) The director may issue a notice of violation to a person who is believed to have violated the codes as determined by an inspection pursuant to section 22-32-124 (2), ~~or 23-71-122 (1) (v), C.R.S., or section 24-33.5-1212.5, OR 24-33.5-1213.3, C.R.S.~~ The notice shall be delivered to

the alleged violator by certified mail, return receipt requested, or by any means that verifies receipt as reliably as certified mail, return receipt requested.

(4) (b) A civil penalty collected pursuant to this subsection (4) shall be deposited in the public school construction and inspection cash fund created in section 24-33.5-1207.7 OR THE HEALTH FACILITY CONSTRUCTION AND INSPECTION CASH FUND CREATED IN SECTION 24-33.5-1207.8, AS APPROPRIATE.

SECTION 13. In Colorado Revised Statutes, 24-33.5-1213.7, **add** (6) as follows:

24-33.5-1213.7. Board of appeals. (6) THIS SECTION ONLY APPLIES TO MATTERS RELATED TO SCHOOL REVIEWS AND INSPECTIONS.

SECTION 14. In Colorado Revised Statutes, 24-75-402, **amend** (5) (y) as follows:

24-75-402. Cash funds - limit on uncommitted reserves - reduction in amount of fees - exclusions. (5) Notwithstanding any provision of this section to the contrary, the following cash funds are excluded from the limitations specified in this section:

(y) The public school construction and inspection cash fund created in section 24-33.5-1207.7 AND THE HEALTH FACILITY CONSTRUCTION AND INSPECTION CASH FUND CREATED IN SECTION 24-33.5-1207.8;

SECTION 15. Effective date. (1) Except as otherwise provided in subsection (2) of this section, this act takes effect July 1, 2013, only if the division of fire safety in the department of public safety notifies the revisor of statutes in writing, by June 30, 2013, that the secretary of the United States department of health and human services has granted a modification to the agreement entered into between said secretary and the state of Colorado pursuant to section 1864 of the federal "Social Security Act", 42 U.S.C. sec. 1395aa, which modification allows said division to fulfill the duties under that law associated with the assessment of compliance with the federal fire safety code requirements for health facilities.

(2) Section 24-33.5-1201 (5) (e), Colorado Revised Statutes, as

enacted in section 5 of this act, takes effect upon passage.

SECTION 16. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO