

BUSINESS

Consumer Protection

HB 09-1052 (Enacted)

Donation Bin Signs When Sold For Profit

HB 09-1077 (Postponed Indefinitely)

Behind-the-counter Tobacco Sales

HB 09-1276 (Enacted)

Delay Foreclosure Residential Property

SB 09-071 (Postponed Indefinitely)

Entertainment Event Ticket Sale Price

Construction Agreements

HB 09-1149 (Enacted)

Solar Home Prewire and Consultation

HB 09-1354 (Postponed Indefinitely)

New Home Builder Offer Wind Electric Generator Option

SB 09-040 (Enacted)

Regulation of Manufactured Homes

SB 09-095 (Lost)

Construction Contract Prompt Pay

SB 09-137 (Enacted)

Property Lien Waiver Debt Third Party

SB 09-246 (Postponed Indefinitely)

Homeowner Protection Act of 2009

SB 09-248 (Enacted)

Public Works Contracts Surety Requirements

Gaming, Liquor, and Racing

HB 09-1152 (Postponed Indefinitely)

Modernize Horse Racing Simulcast

HB 09-1272 (Enacted)

Limited Gaming Amendment 50 Community College Funding

HB 09-1192 (Postponed Indefinitely)

Eliminate 3.2 Beer Restrictions

SB 09-174 (Enacted)

Horse & Greyhound Racing Regulation

SB 09-254 (Enacted)

Common Licensed Premises Manufacturing Beer

Labor

HB 09-1170 (Vetoed)

Unemployment Insurance Employee Lockout

SB 09-180 (Vetoed)

Firefighter and Law Enforcement Collective Bargain

Licensing and Professional Occupations

HB 09-1085 (Enacted)

Mortgage Loan Originator Licensing Act

HB 09-1090 (Enacted)

Deaf Interpreters Title Unauthorized Use

HB 09-1104 (Postponed Indefinitely)

Interior Designer Certification

HB 09-1136 (Enacted)

Electrical Education License Requirements

HB 09-1183 (Enacted)

Classify Real Estate Appraiser Offenses

HB 09-1202 (Enacted)

Mortuary Science Registration

SB 09-026 (Enacted)

Regulation of Athletic Trainers

SB 09-028 (Postponed Indefinitely)

Real Estate License Fee Increase Limit

SB 09-091 (Enacted)

Motor Vehicle Dealer Franchise Agreement

Wages and Employee Benefits

HB 09-1076 (Enacted)

Remuneration From Employment Separation

HB 09-1108 (Enacted)

Paycheck Bounce Cause Insufficient Funds

HB 09-1208 (Postponed Indefinitely)

Public Works Prevailing Wages & Benefits

HB 09-1210 (Postponed Indefinitely)

Mandatory Paid Sick Leave

Consumer Protection

Foreclosure. The foreclosure process begins when a lender files a notice of election and demand with the Public Trustee's Office in the county where the property is located. Under **House Bill 09-1276** the lender must also file a document notifying the public trustee that the property referred to in the notice of election and demand is property that requires a posting of a notice related to foreclosure deferment and that the property has received a posting. The posted notice must contain:

- a description of the foreclosure deferment opportunity and the procedures an eligible borrower may follow to seek a foreclosure deferment;
- the number of the Colorado Foreclosure Hotline and the address of the United States Housing and Urban Development web site identifying approved housing counselor agencies in Colorado; and
- the date the notice was posted and the deadline by which an eligible borrower seeking a foreclosure deferment must contact a foreclosure counselor.

An eligible borrower may be eligible to defer a foreclosure for 90-days if the borrower contacts a foreclosure counselor within 20 days after the posting of the notice of deferment by the lender. A foreclosure counselor will determine whether an eligible borrower qualifies for a foreclosure deferment by calculating whether, considering the eligible borrower's household expenses and gross monthly income, the nature of the loan, any written loan modification agreement between the eligible borrower and the lender entered into during the preceding 12 months, and any other relevant factors, there is a reasonable likelihood that the lender and eligible borrower can achieve a mutually acceptable agreement to avoid foreclosure. In making a determination, the housing counselor must determine:

- what the eligible borrower is able to pay in monthly housing expenses, including principal, interest, taxes, insurance, and any applicable homeowners association dues on a sustainable basis; and
- whether the lender would be likely to receive greater revenue from the modification necessary to achieve such a monthly payment than it would be likely to receive from a completed foreclosure.

An eligible borrower will not qualify for a foreclosure deferment if he or she:

- has abandoned the property;
- provided materially false information to obtain credit;
- has engaged in gross waste of the property, has been cited for major code violations, or has used the property for illegal purposes;
- is currently in a bankruptcy proceeding in which the property subject to the notice of election and demand is property of the bankruptcy estate or within the preceding 24 months has been discharged from a chapter seven bankruptcy in which the property subject to the notice of election and demand was property of the bankruptcy estate; or
- within the immediately preceding 24 months, been discharged from a chapter 13 bankruptcy with a modified loan agreement for which the property subject to the notice of election and demand is the security.

A borrower is only eligible for one foreclosure deferment on the same property. The act went into effect on June 2, 2009 and applies to all foreclosures that are commenced 60 days after June 2.

Other consumer protections. **House Bill 09-1052** requires a for-profit entity that places a container in a public place to collect donated items and that does not direct all of the items in the container to a charitable purpose or, if the items are sold, does not direct all the proceeds of the sale to a charitable purpose to affix a disclosure label on the container that states that items left in the container will be sold for profit and are not tax-deductible. This does not apply to containers that collect used paper, cardboard, motor oil, bottles, cans, or other containers or materials for recycling or waste diversion purposes.

A few bills attempted to provide limits on ticket resellers and restrict the sale of cigarettes. Each of these bills were postponed indefinitely.

Senate Bill 09-071 would have prohibited a ticket reseller from charging more than the face value of a ticket plus \$5 or 25 percent, whichever is greater. The bill authorized the Attorney General or a district attorney to bring an action against a ticket reseller who violated the prohibition which could have resulted in forfeiture of the tickets or the proceeds from the tickets. Additionally, an event sponsor would have been prohibited from charging fees greater than 10 percent of the face value of an event ticket.

House Bill 09-1077 would have prohibited the retail sale of cigarettes or tobacco products by use of a self-service display, except in tobacco specialty stores and in other situations where the self-service display is a legally authorized vending machine. The bill included violations as a penalty under existing statutes assessing fines for the sale of tobacco to minors.

Construction Agreements

During the 2009 session, the General Assembly considered several bills related to construction agreements. One bill modifies the recording requirements for documents related to a manufactured home. Several bills address construction contracts and payment agreements.

Regulation of manufactured homes. **Senate Bill 09-040** modifies the recording requirements for documents related to a manufactured home. The bill changes rules regarding the submission of information for recording, requesting title, deeds, certificates, abandonment, and other legal real or personal property documentation concerning manufactured housing. The bill defines the terms "manufactured home," "mobile home," and "modular home."

Construction contracts and payment agreements. **Senate Bill 09-137** requires a property lien waiver for a construction loan to contain a statement that all debts associated with the lien have been paid or will be paid. The bill creates a class 1 misdemeanor to knowingly fail to timely pay the debts covered by the lien waiver, unless there is a bona fide dispute as to the existence or the amount of the debt. **Senate Bill 09-248** allows a contractor to provide a letter of credit in lieu of other forms of surety on public works contracts with a total value of \$500 million or more and limits the surety to one-half of the amount payable in each calendar year.

Senate Bill 09-095 would have set payment standards to govern construction agreements between contractors and private property owners or public entities. Among other things, the bill would have required invoices to be paid within 30 days, or within 25 days if a subcontractor was involved. It would also have required a contractor to forward progress payments to any subcontractors within 5 days or within a 30-day billing cycle, whichever was sooner. Owners, contractors, and subcontractors would have been required to pay at least 12 percent interest per year

on unpaid invoices. Another bill, **Senate Bill 09-246**, would have modified the "Construction Defect Action Reform Act" to require that moratory interest (which is extra interest due on an obligation if regular payments are late) be awarded in residential construction defect cases from the time the construction defect is created through the end of the statutory notice of claim process. The bill would have set an interest rate for awards and would have specified certain situations in which moratory interest would not be awarded. Both bills were postponed indefinitely.

One bill, **House Bill 09-1354**, would have broadened the requirements of **House Bill 09-1149**, which requires home builders to provide prewiring for solar electric generation or solar thermal systems. Specifically, House Bill 09-1354 would have required home builders to offer prospective buyers of single-family detached residences the opportunity to have the residence's electrical or plumbing system constructed to accommodate renewable energy generation devices, including wind-electric generators.

Gaming, Liquor, and Racing

Two bills addressed alcohol licenses in the 2009 legislative session. **Senate Bill 09-254** authorizes licensed brew pubs and licensed manufacturers of beer products (malt liquor and fermented malt beverages) to obtain approval from the Department of Revenue to use a common licensed premises to manufacture their product. **House Bill 09-1192**, which was postponed indefinitely, would have removed the limitation in current law on the percentage of alcohol contained in fermented malt beverages (beer with not more than 3.2 percent alcohol by weight), thereby allowing 3.2 beer licensees to manufacture, sell at wholesale or retail, or distribute full strength beer.

The General Assembly discussed a few bills relating to gambling and racing. **House Bill 09-1272** implements Amendment 50, the initiated measure approved by Colorado voters in November 2008 to change the parameters for limited gaming under the Colorado Constitution. **Senate Bill 09-174** concerns pari-mutuel racing. Under current law, an in-state simulcast facility located on the premises of a Class B racetrack may receive up to 250 days of simulcast horse races per year from an out-of-state host racetrack. Senate Bill 09-174 eliminates the cap on simulcast race days and authorizes the Colorado Racing Commission to make that determination. The bill also makes several modifications to the regulation of pari-mutuel racing. **House Bill 09-1152**, which was postponed indefinitely, would have authorized the following two new methods of conducting pari-mutuel wagering on horse races:

- ***advance deposit account wagering***, in which the patron would establish a deposit account with a licensee and direct the placement of wagers from that account via the internet; and
- ***historical horse racing***, in which the patron would have wagered on the outcome of digitally recorded races previously held at licensed horse tracks, but as to which identifying information has been deleted so that the patron must make the same type of judgment as to the likely winner as if the race had not yet been run.

The bill also would have modified requirements for licensed tracks.

Labor

House Bill 09-1170, which was vetoed by the Governor, would have allowed an employee subject to an employer-initiated lockout that was not initiated because of a strike or labor dispute to receive unemployment benefits under certain circumstances.

Currently, firefighters may obtain collective bargaining rights through voter approval in their local communities. **Senate Bill 09-180**, vetoed by the Governor, would have given firefighters the ability to form a union and bargain collectively concerning compensation, hours, and terms and conditions of their employment or to address grievances without seeking approval. Once designated, a union would have been given the authority to act as the exclusive representative of firefighters. The bill applied to public employers, including municipalities, home rule municipalities, special districts, fire authorities, or county improvement districts, that offer fire protection service and employs two or more firefighters. The bill did not apply to volunteer firefighters and public fire departments that employ less than 50 firefighters were exempt. Finally, the bill would have prohibited firefighters from striking.

Licensing and Professional Occupations

During the 2009 session, the General Assembly considered a variety of legislation related to licensing and professional occupations. Many bills addressed professions that are already licensed or regulated in some way. Other bills addressed professions that are not yet regulated by the state. The General Assembly also considered a number of sunset bills, which continue and potentially modify existing regulations on professional occupations.

Professions that are already licensed or regulated. Several bills concerning real estate were introduced. **House Bill 09-1085** renames the Mortgage Broker Licensing Act as the Mortgage Loan Originator Licensing Act. Mortgage Brokers offer or negotiate the terms of a residential home loan. They are regulated by the Division of Real Estate in the Department of Regulatory Agencies (DORA). The bill defines the term "mortgage loan originator" and replaces the term "mortgage broker" in the text and title of the law. On and after July 31, 2010, mortgage loan originators must be registered with the Nationwide Mortgage Licensing System and Registry (NMLS&R), a national tracking system established by the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008. Registry in the national system is a condition of receiving a license from the department. In addition, the bill makes several changes related to application and renewal processes for licenses, and allows the department to order that a mortgage loan originator pay for damages to consumers.

House Bill 09-1183 increases the penalty for violations of law related to real estate appraisals. The bill clarifies that, among other things, it is illegal for real estate appraisers to:

- accept anything of value in order to influence the outcome of an appraisal;
- use fraud or misrepresentation to obtain a license; or
- conduct an appraisal in a fraudulent manner.

Senate Bill 09-028, which was postponed indefinitely, would have limited the amount the Division of Real Estate in the Department of Regulatory Agencies could charge for real estate license fees. Under the provisions of the bill, the division would have been prohibited from increasing fees more than 20 percent in any year, and no more than 50 percent in any 10 year period, or between sunset reviews, whichever was greater.

The General Assembly also considered legislation concerning motor vehicle dealers and electricians. **Senate Bill 09-091** makes several changes to the relationship between motor vehicle dealers and motor vehicle manufacturers, distributors, or manufacturer representatives. Among other things, manufacturers, distributors, or manufacturer representatives are required to provide the dealer:

- compensation for facility use upon franchise contract termination;
- compensation for the fair market value of the dealer's goodwill;
- compensation for dealer costs incurred in trying to sell a franchise if the manufacturer, distributor, or manufacturer representative disapproved of the sale; and
- 60 days notice for the denial of either the location selected for relocation, the sale of the dealership, or a change in management.

Senate Bill 09-091 outlines the ability of a manufacturer, distributor, or manufacturer representative to audit a dealer regarding warrantee, sales, or incentives claims. Finally, the bill prohibits certain actions by manufacturers, distributors, or manufacturer representatives that would place dealers in a situation where:

- unreasonable sales and service standards must be met in order to sell all models within a line of vehicles;
- the dealer must devote facilities, personnel, or space exclusively to one brand;
- the dealer is not offered the same incentives as other dealers; and
- a franchise agreement is contingent on facilities improvements.

Violation of the bill is a class 1 misdemeanor. The bill is effective July 1, 2009.

House Bill 09-1136 sets renewal requirements for professional electrician licenses. The State Electrical Board in the Department of Regulatory Agencies (DORA) is required to set standards and adopt rules for a program ensuring the continued competency of electricians. At a minimum, the rules must include:

- a test of the knowledge and skills required to renew a license;
- identification of a method to obtain the required knowledge and skills based on information obtained in the test; and
- documents necessary to confirm the professional is in compliance.

The bill adds new license requirements for the profession of journeyman electrician. In addition to existing requirements, an applicant for this license type must have at least 288 hours of training in safety, the national electric code, or other areas identified by the board. The board is instructed to strive to reduce barriers to license by endorsement or through reciprocity agreements with other states. The bill applies to all new and renewed licenses beginning January 1, 2011. In addition, House Bill 09-1136:

- modifies the definitions of terms regarding electricity, electricians, and the national electrical code;
- clarifies that electric power may be supplied from a renewable energy system;
- adds electric power from renewable energy systems to the categories of power subject to inspection and approval; and
- repeals the requirement that the board test persons for license renewal or registration, and replaces it with the continued competency program described above.

Professions that are not currently licensed or regulated. Several bills create new licenses or regulations for professions that were not previously regulated by the state. **Senate Bill 09-026** requires individuals to register with the DORA in order to practice as an athletic trainer.

House Bill 09-1090 makes it a deceptive trade practice to claim to be an interpreter for the deaf unless the person holds a current certification of competence from the Registry of Interpreters for the Deaf.

House Bill 09-1202 creates a registration program for funeral establishments and crematories in the Division of Registrations in the DORA.

House Bill 09-1104, which was postponed indefinitely, would have created a certification program for interior designers.

Wages and Employee Benefits

The General Assembly considered several wage-related bills during the 2009 session. **House Bill 09-1108** adds employee protections and employer penalties to the Colorado Wage Act. It addresses situations when an employee's paycheck is not honored by the employer's bank two or more times within any 24-month period.

Unemployment benefits. **House Bill 09-1076** requires that all types of payments a person receives when leaving employment be treated the same in calculating when he or she is eligible to begin receiving unemployment insurance benefits and the maximum allowable benefit. The bill also removes the social security offset provision in Colorado law which deducts 50 percent of a retiree's Social Security benefits from his or her unemployment insurance benefits.

House Bill 09-1208, which was postponed indefinitely, would have required that contractors and subcontractors on state public works contracts worth more than \$100,000 pay prevailing wages and fringe benefits to their workers.

Mandatory paid sick leave. **House Bill 09-1210** would have created the "Healthy Families and Workplaces Act" and required private employers in Colorado with more than 5 employees to provide paid sick leave to their employees. The bill would have required:

- ▶ employers with 6 to 15 employees to provide 1 hour of paid sick leave for every 60 hours worked by an employee up to 40 hours a year; and
- ▶ employers with more than 15 employees to provide 1 hour of paid sick leave for every 30 hours worked by an employee up to 72 hours a year.

The bill would have required the Division of Labor in the Department of Labor and Employment to adopt rules, create notices with information about the bill, monitor compliance, and investigate complaints.