

BUSINESS

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Let Convenience Stores Sell Malt Liquor

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Grocery Store Acquire Retail Liquor License

Construction Agreements

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Professional Construction Insurance

In 2010, the General Assembly considered legislation on a variety of business-related topics such as franchise rights of motor vehicle dealers, wage and employee benefits, consumer protection, and licensing and professional occupations.

General Business

The General Assembly passed two bills dealing with the franchise rights of motor vehicle dealers in Colorado. **House Bill 10-1049** created a right of first refusal when a motor vehicle manufacturer terminates a motor vehicle dealer's franchise. The right of first refusal area is defined to mean a 5-mile radius extending from the location of where a motor vehicle dealer has a franchise terminated, cancelled, or not renewed if the franchise was in a county with a population of more than 150,000, or a 10-mile radius if the franchise was in a county with a population of 150,000 or less. **Senate Bill 10-201** expands the civil fines that the Department of Revenue may impose for failing to offer the right of first refusal. The bill authorizes the executive director of the Department of Revenue to impose a civil fine of between \$10,000 and \$25,000 per day on a motor vehicle manufacturer, distributor, or manufacturer's representative for failing to offer the right of first refusal or make a compensation payment to the dealer under the right of first refusal. In addition to recovery of reasonable attorney fees, the bill expands the remedies that may be recovered for failing to offer the right of first refusal to include the costs of the action.

Wages and Employee Benefits

Senate Bill 10-035 allows employers whose retirement plans are not subject to the Employee Retirement Income Security Act of 1974 (ERISA), to initiate automatic enrollment plans for their employees. These employers include 501(c)(3) organizations, public schools, and churches. If an employee does not want to participate in a retirement plan, the employee may opt out. Employers are not liable for investment decisions made on behalf of their employees if the following conditions are met:

- employees have at least quarterly opportunities to select investments;
- employees are given notice of investment alternatives available, how to change investments, and decisions that will be made in absence of employee direction; and
- employees are given at least annual notice of the actual default investments made with employee contributions.

Consumer Protection

The General Assembly considered a number of bills aimed at increasing consumer protection. Gift cards and debit cards were the topic of two consumer protection bills. **Senate Bill 10-155** requires that gift card issuers must redeem the card if the remaining value is less than \$5 and prohibits an issuer from selling a gift card that has a service, dormancy, inactivity, maintenance, or other type of fee. The bill specifies that a violation of these conditions is a deceptive trade practice. **Senate Bill 10-188**, which was deemed lost, would have amended the Consumer Credit Code by adding debit cards to the provision prohibiting retailers from assessing a surcharge on any credit card transaction.

Related to homeowners' associations (HOAs), **House Bill 10-1278** creates the HOA Information and Resource Center in the Division of Real Estate in the Department of Regulatory Agencies (DORA). The director of DORA will appoint an HOA information officer to act as a clearinghouse for information concerning basic rights and duties of unit owners, declarants, and HOAs

and to track inquiries and complaints concerning HOAs. The bill requires HOAs to register with the director of the Division of Real Estate and pay an annual fee, which will be set by the director of the division. The annual fee will be used to cover the operating expenses of the center. The fee is waived for HOAs that have annual revenue of \$5,000 or less, and for HOAs that are not authorized to make assessments and do not have any revenue.

The legislature also considered consumer protection bills related to tax refund anticipation loans and payday loans. **House Bill 10-1400** creates the Refund Anticipation Loans Act, which places restrictions on the practice of offering short-term loans to consumers in anticipation of the consumer receiving a tax refund. The bill requires that individuals who facilitate refund anticipation loans must be employed by an electronic return originator, which is a person or company authorized by the U.S. Internal Revenue Service to originate the electronic submission of income tax returns. The bill further stipulates that a refund anticipation loan may not be given unless the loan facilitator communicates the following information verbally, on a sign posted in the office, and with a written statement:

- a schedule of fees, including examples of interest rates for different loan amounts up to \$5,000;
- the duration, applicable fees, interest rates, and other conditions of the loan;
- the estimated time necessary to receive the anticipated refund; and
- where to make complaints about the refund anticipation loan.

House Bill 10-1351 addresses payday loans. The bill limits the finance charge on a payday loan to a maximum annual percentage rate of 45 percent and requires a minimum loan term of six months with no prepayment penalty. The bill provides that a lender may charge a monthly maintenance fee for each outstanding loan, not to exceed \$7.50 per \$100 loaned, up to a maximum of \$30 per month. Although multiple loans may be made to the same consumer, the total amount financed cannot exceed \$500 at any one time and a 30-day waiting period between loans is required.

Licensing and Professional Occupations

During the 2010 session, the General Assembly considered a variety of legislation related to licensing and professional occupations. A number of these bills addressed health care providers. Currently, certain health care professionals who are licensed in other states may be licensed in Colorado if they meet competency requirements demonstrated by time spent "in the field." **House Bill 10-1175** permits either the director of the Division of Registrations, in the Department of Regulatory Agencies, or the appropriate licensing board to identify by rule an alternate set of criteria to demonstrate competency. Specifically, it allows demonstration of competency for:

- chiropractors;
- dentists;
- dental hygienists;
- optometrists;
- nursing home administrators; and
- physical therapists.

House Bill 10-1415 creates a registration program for surgical assistants in the Division of Registrations. The director of the division is required to establish a database, which will be open to the public, of registered surgical assistants and surgical technologists. Agencies that employ surgical assistants and technologists must check the database to verify proper registration of applicants and inform the director when any disciplinary actions are taken against a registrant. The director is authorized to adopt rules for administering the registrations, take necessary disciplinary actions, and charge a fee to pay for the administration of the bill.

Under current law, a nurse with special skills or training may be included in the advanced practice nurse (APN) registry. **Senate Bill 10-176** modifies terms to refer to a nurse's "role and population focus" instead of a nurse's "specialty area." The bill directs the State Board of Nursing to determine the appropriate graduate degrees nurses are required to complete before inclusion on the registry. A professional nurse may also obtain inclusion on the registry by endorsement if he or she:

- has practiced as a recognized APN in another state for at least two of the last five years; or
- holds a national certification in the appropriate "role and population focus" and possesses an appropriate graduate degree, as determined by the board.

Senate Bill 10-124 modifies the Michael Skolnik Medical Transparency Act, which requires regulated medical practitioners to disclose certain information to the State Board of Medical Examiners in the Department of Regulatory Agencies whenever they obtain or renew a license. The board gathers the specified information and makes it available to the public. The bill requires that no later than July 1, 2011, the following regulated professions also comply with the disclosure and reporting requirements:

- audiologists and hearing aid providers;
- acupuncturists;
- podiatrists;
- chiropractors;
- dentists and dental hygienists;
- physician assistants;
- midwives;
- nurses;
- optometrists;
- physical therapists; and
- all mental health therapists and counselors.

The bill adds new reporting requirements to the list of items already required by impacted medical practitioners, requiring them to report the physical location of their practice, information about past education and licenses or certifications, and information about disciplinary actions. A medical professional is also permitted to report relevant awards and recognition he or she has received.

Under current law, home care agencies must be licensed by the Colorado Department of Public Health and Environment. A home care agency provides skilled home health services or personal care services in a person's residence. **Senate Bill 10-194** requires that Community Centered Boards be licensed as home care agencies by March 1, 2011. Community Centered Boards are private non-profit organizations designated in statute as the single entry point into the long-term service and support

system for persons with developmental disabilities. The state contracts with 20 boards to deliver community-based services. Each board has a geographic service region of 1 to 10 counties serving from 70 to 1,600 individuals each. Agencies providing developmental disabilities services and approved by both the Department of Human Services (DHS) and the Department of Health Care Policy and Financing under certain Medicaid waivers must also be licensed. Qualified early intervention services providers as defined by the DHS are exempt from the license requirements.

House Bill 10-1085, which addresses land surveying and surveyors, does the following:

- changes the qualifying criteria for professional land surveyor applicants beginning January 1, 2011;
- defines the terms "professional land surveyor of record" and "surveyor's affidavit of record";
- establishes a process for corrections to a survey plat or parcel description that a land surveyor had previously recorded with a county clerk; and
- requires that when the courts determine the corners and boundaries of disputed parcels, that determination be recorded in the grantor-grantee index of real property records maintained by the county clerk.

House Bill 10-1148 repeals the continuing professional competency requirement for an architect to maintain his or her license to practice architecture in the state.

House Bill 10-1114 imposes regulations on the agents of money transmitters, which include the following:

- requiring the agent to provide information, which may be shared with law enforcement, to the Banking Board;
- requiring the agent to either ensure that employees sign a statement affirming their understanding of money laundering laws or receive training on money laundering laws within 30 days before performing money transmission services and requiring the agent to keep a record containing the signed statement or evidence of training, which is open to inspection by law enforcement;
- prohibiting a money transmitter from employing an agent who has committed certain crimes related to banking or property; and
- prohibiting an agent from employing a person who has committed certain crimes related to banking or property.

The bill also authorizes the Banking Board to share information about money transmitters with the United States Attorney General.

House Bill 10-1241 creates a registration program for sprinkler fitters in the Division of Fire Safety in the Colorado Department of Public Safety. To register with the state, a person must pay a fee and either:

- provide evidence of successful completion of a sprinkler fitter apprenticeship program;
- complete an application for reciprocity that demonstrates that the applicant is currently authorized to practice as a sprinkler fitter in another state that has requirements similar to Colorado's;

- perform at least 8,000 hours of documented practical work experience on fire suppression systems; or
- demonstrate competency as a sprinkler fitter as determined by the State Fire Suppression Administrator (administrator).

The bill also requires sprinkler fitters to complete continuing education requirements established by the administrator. Finally, the bill requires sprinkler fitters to renew their registration annually and, in years that the fire and safety code is revised, to complete a revised examination.

Liquor and Racing

Liquor. Several bills were introduced in the 2010 legislative session concerning liquor licenses and regulation. Currently, there are several licensed liquor locations authorized within the Colorado state fairgrounds and patrons who purchase a beer at a beer stand, for example, may not carry that beer into another building that is consigned to a different liquor licensee. **House Bill 10-1099** allows any person who purchases an alcohol beverage at the Colorado State Fair to consume and possess the beverage at any location licensed for alcohol consumption within the fairgrounds boundary. The bill does not allow the beverage to be removed from the fairgrounds premises and does not authorize a person to bring an alcohol beverage that was purchased outside of the fairgrounds into the fairgrounds. **House Bill 10-1170** permits the sale of alcohol beverages in sealed containers to adult occupants of luxury boxes located in stadiums, arenas, and similar sports and entertainment venues with a seating capacity of at least 1,500 seats. Occupants are not permitted to leave the luxury box with an alcohol beverage in a sealed container.

Another bill changed the Executive Director of the Department of Revenue's authority to adopt rules regulating the sale of alcohol beverages on credit. **Senate Bill 10-083** requires persons licensed under the "Colorado Liquor Code" to comply with federal regulations that prohibit the extension of credit for more than 30 days for the sale of alcohol beverages. The department is required to enforce the federal prohibition against the extension of credit for more than 30 days. The department is authorized to adopt rules consistent with applicable federal regulations. Licensees, which include persons in business as distillers, brewers, rectifiers, blenders, or other producers; importers or wholesalers of alcohol beverages; or bottlers or warehousemen and bottlers of spiritous liquors, must comply with the credit sales prohibition and with any rules adopted by the state licensing authority. The bill specifies that the extension of credit beyond 30 days or in a manner inconsistent with rules of the state licensing authority constitutes unlawful financial assistance.

A few bills attempted to change who could sell certain types of liquor in Colorado, but failed. **House Bill 10-1150** would have created a new type of alcohol license that authorized caterers to sell and serve alcohol where food is catered, subject to specified limitations. The bill would have imposed an annual state licensing fee of \$325 and an annual local licensing fee of \$500. **House Bill 10-1186** would have allowed the sale of malt liquor in convenience stores which otherwise would be limited to selling 3.2 percent beer. It would not have allowed these establishments to sell other types of alcohol beverages such as wine or spirits. The Department of Revenue would have been required to conduct a study and report to the General Assembly on the effects of the new licensing program by January 1, 2016. Additionally, the bill would have allowed retail liquor stores of less than 5,000 square feet to sell nonperishable food items. **House Bill 10-1279**, as amended in committee, would have allowed a grocery store to apply to state and local licensing authorities for conversion of two

retail liquor store licenses into a single liquor-licensed drugstore license. The liquor-licensed drugstore license would have allowed a grocery store to sell full-strength beer, wine, and hard liquor. The retail liquor stores and the grocery store must have been in the same local licensing authority jurisdiction, the grocery store could not be located within 1,000 feet of another licensed retail liquor store within the same local licensing authority's jurisdiction, and the grocery store would have had to provide evidence that its revenues from food sales during the prior 12 months have been at least 51 percent of its total revenues. A grocery store business would have been allowed to obtain an unlimited number of liquor-licensed drugstore licenses and could have operated in multiple locations. The bill also would have required employees who sell liquor at a liquor-licensed drugstore to be at least 21 years of age.

Racing. Two bills were discussed by the General Assembly relating to racing. **House Bill 10-1134** defines a "source market fee" as a fee payable by persons outside of Colorado who conduct pari-mutuel wagering on simulcast races and who accept wagers from Colorado residents at out-of-state simulcast facilities. The bill authorizes the licensing and regulation of these individuals and facilities, and caps the source market fee at 10 percent of the gross receipts of all pari-mutuel wagering by Colorado residents conducted at out-of-state simulcast facilities. It further authorizes Colorado to enter into interstate compacts governing the racing industry that are designed to prevent illegal interstate pari-mutuel wagering. Unused moneys from the Colorado Horse Breeders' and Owners' Awards and Supplemental Purse Fund may be used to fund participation in an interstate compact. Another bill, **Senate Bill 10-037**, increases the administrative fee cap on the Horse Breeders' and Owners' Awards and Supplemental Purse Fund from 5 to 10 percent.

Construction Agreements

Two bills were introduced concerning construction agreements. **House Bill 10-1394** clarifies the state's policy for the purposes of guiding pending and future actions in interpreting liability insurance policies issued to construction professionals as follows:

- in interpreting a liability insurance policy issued to a construction professional, a court must presume that the work of a construction professional that results in property damage is an accident unless the property damage is intended and expected by the insured;
- upon a finding of ambiguity in an insurance policy, a court may consider a construction professional's objective, reasonable expectations in the interpretation of an insurance policy issued to a construction professional;
- if an insurance policy provision that appears to grant or restore coverage conflicts with an insurance policy provision that appears to exclude or limit coverage, the court must construe the insurance policy to favor coverage if reasonably and objectively possible;
- if an insurer disclaims or limits coverage under a liability insurance policy issued to a construction professional, the insurer must bear the burden of providing a preponderance of the evidence that the policy bars or limits coverage for legal liability and any exception to the limitation, exclusion, or condition in the policy does not restore coverage under the policy; and

- an insurer's duty to defend a construction professional or other insured under a liability insurance policy must be triggered by a potentially covered liability.

House Bill 10-1162, which did not pass, would have set the payment standards for construction contracts between contractors and the entities or property owners they have contracted with. It would have reduced the amount that may be withheld (retainage) from a contractor to ensure that work is satisfactorily completed. Unpaid balances would have been subject to interest, plus applicable penalties of 15 percent per year. The bill also provided for the use of substitute securities, which require the release of retainage within seven days of receipt.