

Business

General Business

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HB 11-1135 (Postponed Indefinitely)
Reform Regulation of Bail Bonding
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SB 11-060 (Enacted)
3.2 Beer for On-premises Consumption

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SB 11-194 (Deemed Lost)
Alcohol Beverage Regulation

SB 11-273 (Enacted)
Alcohol Beverage Festival Area

HB 11-1284 (Lost in the House)
Sale of Full Beer

In 2011, the General Assembly considered legislation on a variety of business-related topics such as wages and employee benefits, consumer protection, licensing and professional occupations, liquor, and construction agreements.

General Business

The General Assembly passed **Senate Bill 11-191**, which enacts the "Colorado Uniform Limited Cooperative Association Act" as recommended by the Colorado Commission on Uniform State Laws. The act creates the option of a statutorily defined entity that combines traditional cooperative values with modern financing mechanisms by providing two distinct categories of members: patron members and investor members. A cooperative is defined as an unincorporated association of individuals or businesses that unite to meet their mutual interests by creating and using a jointly owned enterprise. The act contemplates the formation of various types of limited cooperative associations, including marketing, advertising, bargaining, processing, purchasing, real estate, and worker-owned cooperatives. A limited cooperative association under the act can be organized to pursue any lawful purpose.

House Bill 11-1206 amends the "Uniform Debt-Management Services Act" (UDMSA), which regulates agreements for debt-management services between individuals and debt-management services providers, as follows:

- prohibits advance fees for debt-management services and removes the statutory fee cap, but continues to allow advance fees of up to \$50 per month for credit counseling;
- withdraws the ability of a provider to settle a debt with a power of attorney;
- requires an individual's signed authorization for each settlement;
- harmonizes with Federal Trade Commission (FTC) provisions regarding consumer disclosures, except where state law already included those disclosures or provided greater consumer protection;
- conforms trust account requirements to comply with FTC rules;
- repeals the statutory mandate to the UDMSA administrator to adopt, by rule, dollar amounts that differ from those contained in the UDMSA in order to account for inflation;
- retains the current exemption from the definition of "debt-management services" for services provided by licensed attorneys and certified public accountants (CPAs) and clarifies that a person providing services on behalf of, but not employed by, an attorney or CPA is ineligible for the exemption;
- repeals the requirement that a provider be insured against the risks of misconduct, leaving intact the existing UDMSA requirement that a provider post a surety bond;
- repeals the requirement that provider employees be certified; and
- allows the administrator of the UDMSA to recover in a lawsuit the penalties now available through administrative action.

House Bill 11-1188 affects franchise agreements between motor vehicle and powersports vehicle manufacturers and distributors, and their Colorado dealers. Specifically, the bill:

- requires a manufacturer or distributor to notify a dealer at least 90 days before ending a franchise agreement or modifying a franchise agreement if the modification is detrimental to the dealer; and
- prohibits a manufacturer or distributor from requiring, coercing, or attempting to coerce a dealer to substantially alter a facility or premises if the facility or premises has been altered within the last seven years, the alteration is required and approved by the manufacturer or distributor, and the upgrade costs more than \$250,000 for a motor vehicle dealer or \$25,000 if the dealer only sells motorcycles or motorcycles and powersports vehicles. An exception is made for improvements made to comply with health or safety laws or to accommodate the technology requirements necessary to sell or service a line make.

A motor vehicle dealer who believes a violation of this law has occurred may appeal to the Motor Vehicle Dealer Board by filing a complaint with the executive director of the Department of Revenue. Upon receiving a complaint and upon a showing of specific facts that a violation has occurred, the executive director must issue a cease-and-desist order staying the termination, elimination, modification, or non-renewal of the franchise agreement. The order remains in effect until the hearing is held. If a determination is made at the hearing that a violation occurred, the executive director will make the cease-and-desist order permanent and take any action authorized by statute.

The General Assembly did not pass **Senate Bill 11-005**, which would have created the Colorado Benefit Corporation Act. A benefit corporation would have had to identify its corporate purpose as promoting a specific public benefit such as improving human health, preserving the environment, or providing low-income individuals with beneficial products or services. In addition, a benefit corporation would have been required to consider how corporate decisions affect its employees, the community, and environment. The social and environmental performance of a benefit corporation would have been measured using third-party standards and reported to shareholders and the Secretary of State.

House Bill 11-1290 specified that a lender may charge a nonrefundable origination fee, not to exceed 20 percent of the first \$300 loaned plus 7.5 percent of any amount loaned in excess of \$300 for each deferred deposit loan or payday loan. The nonrefundable origination fee would have been deemed fully earned as of the date of the deferred deposit loan. The bill was postponed indefinitely.

Labor

During the 2011 session, the legislature considered, but did not pass, two bills concerning collective bargaining. **Senate Bill 11-112** would have prohibited a state, county, municipal or other government entity, or its representatives, from recognizing a labor union or employee association as a bargaining agent for public employees. Another bill, **House Bill 11-1320**, would have prohibited a state representative from recognizing a labor union or employee association as a bargaining agent for public employees. The state would have been prohibited from engaging in collective bargaining with these groups or entering into any collective bargaining contracts with them for any purpose.

Senate Bill 11-129, postponed indefinitely, would have repealed the current requirements for employers to examine and retain records concerning the legal work status of new employees and would have created the Fair and Legal Employment for Coloradans Act. The act would have required all nongovernmental employers in the state to participate in the federal electronic verification program (e-verify program) for purposes of verifying the work eligibility status of all new employees hired by an employer. The e-verify program is an electronic employment verification program jointly administered by the U.S. Department of Homeland Security and the Social Security Administration.

Consumer Protection

House Bill 11-1221 adds legal remedies to the consumer credit laws that are enforced by the administrator of the "Uniform Consumer Credit Code." The act allows:

- the administrator to assess a penalty of up to \$1,000 for each violation of the "Refund Anticipation Loans Act" and a penalty of up to \$1,000 for each violation of the "Colorado Rental Purchase Agreement Act;"
- the court to assess a penalty of up to \$1,000 for each violation of the "Uniform Consumer Credit Code" and transfers the moneys collected to the General Fund;
- the district court for the City and County of Denver to order restitution for consumers or creditors for violations of the "Colorado Fair Debt Collection Practices Act," to impose civil penalties per violation, and to award reasonable costs and attorney fees to the administrator if the administrator prevails in an action brought under the "Colorado Fair Debt Collection Practices Act"; and
- restitution and penalties for violations of the "Colorado Credit Services Organization Act," and transfers the moneys collected to the General Fund.

Other bills regarding consumer protection were considered, but did not pass.

House Bill 11-1127 would have restricted the permissible uses of consumer credit information, including restricting use by employers for employment purposes, use by an insurer offering property and casualty insurance, and use in automobile underwriting.

Case law interpreting the Colorado Consumer Protection Act has resulted in a requirement that plaintiffs establish that a defendant's challenged practice caused a significant public impact. **Senate Bill 11-068**, which was postponed indefinitely, defined the elements of a private cause of action brought under the Colorado Consumer Protection Act and would have omitted the significant public impact requirement. The bill would have declared that in order to prevail in a claim for damages brought under the Colorado Consumer Protection Act, a plaintiff would have been required to establish that:

- the defendant engaged in an unfair or deceptive trade practice;
- the challenged practice occurred in the course of the defendant's business, vocation, or occupation;
- the plaintiff suffered injury in fact to a legally protected interest; and
- the challenged practice caused the plaintiff's injury.

Senate Bill 11-271 would have made it a deceptive trade practice for a person who gathers, solicits, aggregates, or relays customer orders for florist services by means of a web site or any other method when the person:

- fails to disclose the person's name, physical location, and local telephone number and the name, physical location, and telephone number of the florist who will fill the order;
- charges the customer any fee or surcharge that is not clearly disclosed, in advance, to both the customer and the florist who will fill the order; or
- fails to relay the customer's order immediately to the florist who will fill it.

House Bill 11-1020, as introduced, would have required a person providing goods or services to a job site to provide notice to the owner, or reputed owner, or to the superintendent of construction, agent, architect, or financing institution or other person disbursing construction funds, within 20 days after the person first furnishes goods or services to the job site as a prerequisite to the validity of a mechanic's lien claim. A principal contractor and any subcontractor would have been required to include in any subcontract with another person to furnish goods or services to the job site a notice of the requirement to provide the notice as a prerequisite to the validity of a mechanic's lien claim. In addition, the bill would have required the principal contractor or the person who contracted with the principal contractor to require lien waivers from the noticing party for the goods or services provided by the party and to issue joint checks to the noticing party and the party with whom he or she contracted.

Professions and Occupations

The General Assembly passed a number of bills related to professions and occupations that changed existing requirements. With regard to the regulation of mortuary science, **House Bill 11-1178** updates the standards for cremation to include alternatives such as chemical methods of cremation, and clarifies the registration requirements to cover holding oneself out to the public as selling and offering to sell funeral goods and services and providing memorial services for compensation. The act also clarifies that a cemetery or mausoleum may be used to dispose of unclaimed cremated remains and that there is no liability for records that are destroyed unless the custodian is negligent. The bill also allows a funeral establishment or crematory to dispose, in an unrecoverable manner, cremated remains that have been abandoned for 3 years.

Senate Bill 11-091 continues the State Board of Veterinary Medicine and its functions until September 1, 2022. The bill also:

- creates an exemption to the veterinarian-client-patient relationship for the purpose of dispensing prescription drugs;
- allows veterinarians to establish professional service corporations under statutory guidelines;
- directs the board to develop a uniform system and schedule of fines for violations and modifies the grounds for discipline;
- imposes a two-year waiting period for a veterinarian whose license was revoked to reapply for licensure;
- requires the establishment of a peer assistance program to be funded by fees;
- exempts the practice of animal physical therapy by a licensed physical therapist from the licensing requirements of the Colorado Veterinary Practice Act;
- requires that all veterinary clinics have a Colorado-licensed veterinarian designated as responsible for all veterinary medical decisions and care provided to a patient present in the facility and allows the board to assess a fine against a corporate veterinary practice that fails to do so; and
- allows the board to issue a license by endorsement to an applicant licensed in another jurisdiction who possesses credentials and qualifications substantially equivalent to Colorado licensure requirements.

Currently, mortgage loan originators in Colorado are regulated through the license and registration requirements identified in the Mortgage Loan Originator Licensing and Mortgage Company Registration Act. **Senate Bill 11-206** exempts the following from the requirements of the act:

- to the extent that it is providing affordable housing programs, an agency of the federal government, the Colorado government, or any of Colorado's political subdivisions or any employees of the above;
- quasi-governmental agencies, United States Department of Housing and Urban Development (HUD) approved housing counseling agencies, or employees of the above;
- community development organizations or their employees; and
- self-help housing organizations or their employees, or volunteers acting as an agent of self-help housing organizations.

Another bill, **House Bill 11-1022**, exempts any person, estate, or trust that provides seller financing for the sale of no more than three residential properties within a 12-month period from the requirements of act.

Another bill dealing with professional licensure and qualifications is **House Bill 11-1015**. The bill specifies that to become licensed as a certified public accountant (CPA) pursuant to the applicant's educational and experience qualifications, a CPA must take an ethics course and have either one year's experience or 30 hours of additional study. Registered CPA firms are added to the list of persons against whom the State Board of Accountancy may issue cease-and-desist orders. Additionally, the act removes obsolete language and revises the authority of the State Board of Accountancy to take disciplinary action.

The General Assembly also created a new voluntary license for private investigators through the adoption of **House Bill 11-1195**. The director of the Division of Registrations in the Department of Regulatory Agencies (DORA) is authorized to adopt rules, establish fees, and take disciplinary action. Beginning July 1, 2012, only those persons who meet certain requirements and have been issued a voluntary state license may use the term "licensed private investigator." Using this title without a state-issued license is punishable as a class 2 misdemeanor for the first offense and as a class 1 misdemeanor for second and subsequent offenses. The licensing program is repealed, effective September 1, 2016, following a sunset review.

New regulations for other professions were considered but did not pass. **Senate Bill 11-067** attempted to create a registration program for interior designers in the Division of Registrations in DORA. In order to register, an interior designer would have been required to possess written documentation that he or she:

- graduated with at least a four-year degree in interior design from a college or university and completed two years of interior design experience or graduated from at least a two-year degree in interior design from a college or university and completed two years of interior design experience; and
- met the education and experience requirements of, and subsequently passed, the qualification examination promulgated by the National Council for Interior Design qualification or its successor organization or engaged in the functions of a registered interior designer for a minimum number of years as determined by the Director of the Division of Registrations in the Department of Regulatory Agencies.

Senate Bill 11-207 would have created a registration program for professional roofers in the Division of Registrations in DORA. Beginning March 1, 2012, roofers who received in excess of \$1,000 per contract to perform roofing work on either residential or commercial property would have been required to obtain a valid registration with the division. After that date, persons who performed roofing work without a registration would have committed a class 2 misdemeanor. To receive a registration, an applicant would have had to:

- pay the required fee;
- pass a nationally recognized examination approved by the director; and
- submit proof of minimum general liability coverage, and post a bond of at least \$25,000 if performing residential roofing work only and at least \$100,000 if performing commercial roofing work.

The bill would have permitted the director to issue a provisional registration to a residential or master roofer who had not yet passed the examination and who applied for a registration on or after March 1, 2012, but prior to a date determined by the director.

Lastly, **Senate Bill 11-075** would have eliminated an exemption for inflatable amusements under current regulation of amusement rides by the Department of Labor and Employment, Division of Oil and Public Safety. Inflatable amusements and inflatable play structures are defined as a recreational structure made of flexible fabric which are kept inflated by continuous air flow. To regulate inflatable amusements, the bill would have required operators to submit inspection certificates and proof of financial responsibility to the division.

House Bill 11-1135 attempted to transfer the regulation of bail bonding agents within DORA from the Division of Insurance to the newly created State Bail Bonding Agent Board within the Division of Registrations. The bill would have increased education requirements for initial licensure and license renewals and changed the allowable charges for bail bonding agents.

House Bill 10-1241 created a registration program for sprinkler fitters in the Division of Fire Safety in the Colorado Department of Public Safety (DPS). A sprinkler fitter is a person authorized to work on fire suppression systems. Beginning July 1, 2011, sprinkler fitters are required to register with the division. **House Bill 11-1120** attempted to repeal the registration requirement and program regarding sprinkler fitters passed in the 2010 legislative session in House Bill 10-1241.

Liquor

The General Assembly considered a number of bills relating to liquor during the 2011 legislative session. Under current law, persons licensed to sell beer, wine, or spirituous liquors for on-premises consumption are not technically authorized to sell fermented malt beverages (also known as low-alcohol-content beer or 3.2 beer). **Senate Bill 11-060** will permit license holders to sell 3.2 beer for consumption on licensed premises.

Senate Bill 11-066 authorizes local liquor licensing authorities to independently issue special event permits rather than the Colorado Department of Revenue, Liquor Enforcement Division. Temporary special event permits accommodate fund-raising activities for qualified organizations such

as nonprofits, political candidates, or a municipal arts board. The bill also repeals a requirement that a special event permit applicant show that existing facilities are inadequate and repeals the state licensing authority's discretion to compel applicants to post a performance bond. The number of days any organization may hold a special event permit or permits in one calendar year is increased from 10 to 15 days. To ensure compliance with the 15-day annual special event permit limit, the state licensing authority is directed to establish and maintain a website tracking special event permit activity by applicants. Local liquor licensing authorities are required to access the state special event permit website before approving any application.

Senate Bill 11-273 allows the governing body of a municipality to create an entertainment district. An entertainment district can be no more than 100 acres containing at least 50,000 square feet of premises licensed as a tavern, hotel and restaurant, brew pub, retail gaming tavern, or vintner's restaurant. A promotional association may create a common consumption area within an entertainment district. Within a common consumption area, an alcohol beverage may be purchased from an attached vendor, and consumed within the festival area. A common consumption area must have a qualified promotional association that represents approved vendors. The bill sets standards for approving both the promotional association and the vendors.

The General Assembly considered additional bills regarding liquor that did not pass. Current law contains a separate category of licenses for establishments manufacturing or selling fermented malt beverages. Malt beverages are defined as beer with an alcohol content of 3.2 percent or less by weight, as distinguished from licenses that permit the manufacture or sale of other alcohol beverages with higher alcohol content, full-strength beer, wine, and spirits. Persons licensed under the Colorado Beer Code may manufacture or sell only 3.2 percent beer, while persons licensed under the Colorado Liquor Code may manufacture or sell only full-strength beer, wine, and spirits.

Senate Bill 11-194 would have established a new category of license, a malt liquor retailer's license, and would have allowed convenience stores to sell full strength beer in addition to 3.2 percent beer. Another bill, **House Bill 11-1284**, would have eliminated the maximum alcohol content of fermented malt beverages (3.2 percent beer), as defined under the Colorado Beer Code, thereby allowing persons licensed under the beer code to manufacture or sell full-strength beer. Also, the minimum alcohol content of malt liquor (full-strength beer), as defined under the Colorado Liquor Code, was reduced to 0.5 percent, thereby allowing persons licensed under the liquor code to manufacture or sell 3.2 percent beer.