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MEMORANDUM

TO: Interested Persons

FROM: Office of Legislative Legal Services

DATE: February 16, 2023

SUBJECT: Explanation of S.B. 23-102, the Rule Review Bill

Explanation of the Rule Review Process

Since 1976, executive agencies have been required by section 24-4-103 (8)(d), C.R.S., of the State Administrative Procedure Act (APA) to submit their rules to the General Assembly for review.

Under section 24-4-103 (8)(c)(I), C.R.S., all rules adopted or amended during any one-year period that begins each November 1 and continues through the following October 31 expire on the May 15 that follows the one-year period, unless the General Assembly by bill acts to postpone the expiration.

Every newly adopted or amended rule is submitted by the adopting agency to the Office of Legislative Legal Services, where the rule is reviewed to determine whether the rule is within the agency's rule-making authority and consistent with law. If the Office finds a possible problem with a rule, and if the Office is unable to resolve the problem with the agency, the Office prepares a memorandum on the issue and presents the issue to the Committee on Legal Services after notice to the affected agency. At the committee hearing, an attorney with the Office explains why the rule lacks statutory authority or conflicts with the law and argues that the rule should not be extended beyond the May 15 expiration date. The committee gives the affected agency an opportunity to respond and gives members of the public or other interested parties an opportunity to speak on the issue. After hearing all the testimony and asking questions,

the committee then takes a vote to determine whether the rule should be extended beyond the May 15 expiration date.

Each year, the committee sponsors a bill (the annual rule review bill) that extends the rules adopted or amended during the previous year (i.e., those rules scheduled to expire on May 15); except that the bill specifically allows the expiration of those rules that the committee voted not to extend beyond the May 15 expiration date. S.B. 23-102 is the committee's annual rule review bill for 2023.

Explanation of S.B. 23-102

The following is an explanation of the rules not extended by S.B. 23-102:

Rules of the Air Quality Control Commission, Department of Public Health and Environment, concerning the control of lead hazards, 5 CCR 1001-23 (LLS Docket No. 220080; SOS Tracking No. 2021-00517).

Staff: Sarah Lozano

Explanation:

Section 25-7-1102 (2), C.R.S., defines "child-occupied facility" for the purposes of part 11 of article 7 of title 25, C.R.S., which governs lead-based paint abatement in child-occupied facilities and target housing. Section 25-7-1102 (2)(a)(III), C.R.S., defines a "child-occupied facility" as buildings and portions of buildings that are visited by a child "on two or more days within any week ... with each such visit totaling **six or more hours.**" (**Emphasis added**) However, Regulation Number 19 Part A II.B.13.a.(iii) of the Air Quality Control Commission defines "child-occupied facility" as buildings and portions of buildings that are visited by a child "on two or more days within any week, with each such visit totaling **three or more hours.**" (**Emphasis added**) Because Regulation Number 19 Part A II.B.13.a.(iii) reduces the required visit time from six hours to three hours per visit in the definition of "child-occupied facility", the rule conflicts with statute.

Agency position: The agency did not contest the staff recommendation not to extend the rule.

Rules of the Administrator for the Uniform Consumer Credit Code and Commission on Consumer Credit, Department of Law, concerning the Colorado Student Loan Equity Act, 4 CCR 902-3 (LLS Docket No. 220123; SOS Tracking No. 2021-00741).

Staff: Brita Darling

Explanation:

Section 5-20-203, C.R.S., requires private education lenders to provide certain documents and information to the Administrator for the Uniform Consumer Credit Code and Commission on Consumer Credit (administrator) at the time of registration and at least once per year thereafter. However, the administrator's Rule 5.A. exempts a private education lender that is refinancing a student education loan from providing the information required pursuant to section 5-20-203 (2)(b)(I), (2)(b)(III), and (2)(b)(IV), C.R.S. Because Rule 5.A. exempts a private education provider from providing information required by statute, the rule conflicts with statute.

Agency position: The agency did not contest the staff recommendation not to extend the rule.