

CHAPTER 281

HEALTH AND ENVIRONMENT

HOUSE BILL 97-1295

BY REPRESENTATIVES Udall, Clarke, Grossman, Paschall, Schwarz, Sullivan, and Tupa;
also SENATORS Hopper and Rupert.

AN ACT

CONCERNING AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT TO OBTAIN
FINANCIAL ASSURANCE WARRANTIES AS PART OF A LICENSE TO USE RADIOACTIVE MATERIAL.

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

SECTION 1. 25-11-104 (1) (a), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended, and the said 25-11-104 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH to read:

25-11-104. Rules and regulations to be adopted - fees - fund created.

(1) (a) The state board of health shall formulate, adopt, and promulgate rules and regulations as provided in subsections (2) and (2.5) of this section which shall cover subject matter relative to radioactive materials, including but not limited to naturally occurring radioactive materials, and other sources of ionizing radiation. The subject matter of such rules and regulations shall include, but not be limited to: Licenses and registration, records, permissible levels of exposure, notification and reports of accidents, technical qualifications of personnel, technical qualifications of mammographers, handling, transportation and storage, waste disposal, posting and labeling of hazardous sources and areas, surveys, ~~and~~ monitoring, AND FINANCIAL ASSURANCE WARRANTIES.

(c) NOTWITHSTANDING ANY PROVISION OF SECTION 25-11-103 (7) (h), IT IS NOT NECESSARY THAT A GOVERNMENTAL ENTITY OWN ANY SITE THAT IS USED FOR THE CONCENTRATION, STORAGE, OR DISPOSAL OF RADIOACTIVE MATERIAL THAT AT THE TIME OF ITS ACCEPTANCE FOR CONCENTRATION, STORAGE, OR DISPOSAL IS OWNED OR GENERATED BY THE UNITED STATES DEPARTMENT OF ENERGY, AND THAT IS DEFINED AS LOW-LEVEL RADIOACTIVE WASTE UNDER THE FEDERAL "LOW-LEVEL RADIOACTIVE WASTE POLICY ACT AMENDMENTS OF 1986", AS AMENDED, SO LONG AS THE OWNER OF SUCH SITE COMPLIES WITH REGULATIONS PROMULGATED BY THE BOARD IN

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

ACCORDANCE WITH THIS SECTION. SUCH REGULATIONS SHALL ENSURE THE LONG-TERM PROTECTION OF THE PUBLIC HEALTH AND SAFETY AND MAY INCLUDE, BUT ARE NOT LIMITED TO, FINANCIAL ASSURANCE WARRANTIES PURSUANT TO THIS PART 1, DEED ANNOTATIONS AND RESTRICTIONS, EASEMENT PROVISIONS, RESTRICTIVE COVENANTS, AND ADEQUATE MARKERS TO WARN OF THE PRESENCE OF RADIOACTIVE MATERIALS.

SECTION 2. Part 1 of article 11 of title 25, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

25-11-110. Financial assurance warranties - definitions. (1) AS A PART OF ANY LICENSE, CERTIFICATE, OR AUTHORIZATION ISSUED UNDER THIS ARTICLE AND PURSUANT TO REGULATIONS PROMULGATED BY THE STATE BOARD OF HEALTH, THE DEPARTMENT MAY REQUIRE FINANCIAL ASSURANCE WARRANTIES.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "DECOMMISSIONING WARRANTY" MEANS A FINANCIAL ASSURANCE ARRANGEMENT PROVIDED BY A PERSON LICENSED, CERTIFIED, OR AUTHORIZED PURSUANT TO THIS ARTICLE THAT IS REQUIRED TO ENSURE DECOMMISSIONING AND DECONTAMINATION OF A FACILITY AND PROPER DISPOSAL OF RADIOACTIVE MATERIALS TO MEET THE REQUIREMENTS OF THIS PART 1, THE REGULATIONS PROMULGATED PURSUANT THERETO, OR THE LICENSE.

(b) "FINANCIAL ASSURANCE WARRANTY" MEANS A DECOMMISSIONING WARRANTY OR A LONG-TERM CARE WARRANTY.

(c) "INDIRECT COSTS" MEANS THOSE COSTS ESTABLISHED ANNUALLY IN ACCORDANCE WITH FEDERAL CIRCULAR A-87, OR ANY APPLICABLE SUCCESSOR DOCUMENT.

(d) "LONG-TERM CARE WARRANTY" MEANS A FINANCIAL ASSURANCE ARRANGEMENT PROVIDED BY A PERSON LICENSED, CERTIFIED, OR AUTHORIZED PURSUANT TO THIS ARTICLE THAT IS REQUIRED TO COVER THE COSTS INCURRED BY THE DEPARTMENT IN CONDUCTING SURVEILLANCE OF A DISPOSAL SITE IN PERPETUITY SUBSEQUENT TO THE TERMINATION OF THE RADIOACTIVE MATERIALS LICENSE FOR THAT SITE.

(3) (a) FINANCIAL ASSURANCE WARRANTIES MAY BE PROVIDED BY THE LICENSEE OR BY A THIRD PARTY OR COMBINATION OF PERSONS.

(b) ANY FINANCIAL ASSURANCE WARRANTY REQUIRED PURSUANT TO THIS SECTION SHALL BE IN A FORM PRESCRIBED BY THE STATE BOARD OF HEALTH BY REGULATION.

(c) THE DEPARTMENT MAY REFUSE TO ACCEPT ANY FINANCIAL ASSURANCE WARRANTY IF:

(1) THE FORM, CONTENT, OR TERMS OF THE WARRANTY ARE OTHER THAN AS PRESCRIBED BY THE STATE BOARD OF HEALTH BY REGULATION;

(II) THE FINANCIAL INSTITUTION PROVIDING THE FINANCIAL ASSURANCE INSTRUMENT IS AN OFF-SHORE, NONDOMESTIC INSTITUTION OR DOES NOT HAVE A REGISTERED AGENT IN THE STATE OF COLORADO;

(III) THE VALUE OF THE FINANCIAL ASSURANCE WARRANTY OFFERED IS DEPENDENT UPON THE SUCCESS, PROFITABILITY, OR CONTINUED OPERATION OF THE LICENSED BUSINESS OR OPERATION; OR

(IV) THE DEPARTMENT DETERMINES THAT THE FINANCIAL ASSURANCE WARRANTY CANNOT BE CONVERTED TO CASH WITHIN THIRTY DAYS AFTER FORFEITURE.

(4) (a) THE DEPARTMENT SHALL DETERMINE THE AMOUNT OF FINANCIAL ASSURANCE WARRANTIES REQUIRED, TAKING INTO ACCOUNT THE NATURE, EXTENT, AND DURATION OF THE LICENSED ACTIVITIES AND THE MAGNITUDE, TYPE, AND ESTIMATED COST FOR PROPER DISPOSAL OF RADIOACTIVE MATERIALS, DECONTAMINATION, AND DECOMMISSIONING OR LONG-TERM CARE.

(b) THE AMOUNT OF A DECOMMISSIONING WARRANTY SHALL BE SUFFICIENT TO ENABLE THE DEPARTMENT TO DISPOSE OF RADIOACTIVE MATERIALS AND COMPLETE DECONTAMINATION AND DECOMMISSIONING OF AFFECTED BUILDINGS, FIXTURES, EQUIPMENT, PERSONAL PROPERTY, AND LANDS IF NECESSARY.

(c) THE AMOUNT OF THE DECOMMISSIONING WARRANTY SHALL BE BASED UPON COST ESTIMATES OF THE TOTAL COSTS THAT WOULD BE INCURRED IF AN INDEPENDENT CONTRACTOR WERE HIRED TO PERFORM THE DECOMMISSIONING, DECONTAMINATION, AND DISPOSAL WORK, AND MAY INCLUDE REASONABLE ADMINISTRATIVE COSTS, INCLUDING INDIRECT COSTS, INCURRED BY THE DEPARTMENT IN CONDUCTING OR OVERSEEING DISPOSAL, DECONTAMINATION, AND DECOMMISSIONING AND TO COVER THE DEPARTMENT'S REASONABLE ATTORNEY COSTS THAT MAY BE INCURRED IN SUCCESSFULLY REVOKING, FORECLOSING, OR REALIZING THE DECOMMISSIONING WARRANTY AS AUTHORIZED IN SECTION 25-11-111 (4).

(d) THE AMOUNT OF A LONG-TERM CARE WARRANTY SHALL BE ENOUGH THAT, WITH AN ASSUMED SIX PERCENT ANNUAL REAL INTEREST RATE, THE ANNUAL INTEREST EARNINGS WILL BE SUFFICIENT TO COVER THE ANNUAL COSTS OF SITE SURVEILLANCE BY THE DEPARTMENT, INCLUDING REASONABLE ADMINISTRATIVE COSTS INCURRED BY THE DEPARTMENT, IN PERPETUITY, SUBSEQUENT TO THE TERMINATION OF THE RADIOACTIVE MATERIALS LICENSE FOR THAT SITE.

(e) IF THE STATE OF COLORADO IS THE LONG-TERM CARETAKER FOR THE DISPOSAL FACILITY PURSUANT TO SECTION 25-11-103 (7) (h), LONG-TERM CARE MONEYS SHALL BE TRANSFERRED, PURSUANT TO SECTION 25-11-113 (3), TO THE LONG-TERM CARE FUND, CREATED IN SECTION 25-11-113, PRIOR TO LICENSE TERMINATION AND SHALL BE USED BY THE DEPARTMENT TO PERFORM SITE SURVEILLANCE AND TO COVER THE DEPARTMENT'S ADMINISTRATIVE AND REASONABLE ATTORNEY COSTS.

(f) THE DEPARTMENT IS AUTHORIZED TO TRANSFER A LONG-TERM CARE WARRANTY TO THE UNITED STATES DEPARTMENT OF ENERGY OR ANOTHER FEDERAL AGENCY IF THAT AGENCY WILL BE THE LONG-TERM CARETAKER FOR THE DISPOSAL FACILITY.

(5) THE DEPARTMENT SHALL TAKE REASONABLE MEASURES TO ASSURE THE

CONTINUED ADEQUACY OF ANY FINANCIAL ASSURANCE WARRANTY AND MAY ANNUALLY OR FOR GOOD CAUSE INCREASE OR DECREASE THE AMOUNT OF REQUIRED FINANCIAL ASSURANCE WARRANTIES OR REQUIRE PROOF OF VALUE OF EXISTING WARRANTIES. THE LICENSEE SHALL HAVE SIXTY DAYS AFTER THE DATE OF WRITTEN NOTIFICATION BY THE DEPARTMENT OF A REQUIRED ADJUSTMENT, TO ESTABLISH A WARRANTY FULFILLING ALL NEW REQUIREMENTS UNLESS GRANTED AN EXTENSION BY THE DEPARTMENT. IF THE LICENSEE DISPUTES THE AMOUNT OF THE REQUIRED FINANCIAL ASSURANCE WARRANTIES, THE LICENSEE MAY REQUEST A HEARING TO BE CONDUCTED IN ACCORDANCE WITH SECTION 24-4-105, C.R.S.

(6) (a) FINANCIAL ASSURANCE WARRANTIES SHALL BE MAINTAINED IN GOOD STANDING UNTIL THE DEPARTMENT HAS AUTHORIZED IN WRITING THE DISCONTINUANCE OF SUCH WARRANTIES.

(b) (I) IF A FINANCIAL WARRANTY IS PROVIDED BY A CORPORATE SURETY, THE DEPARTMENT SHALL REQUIRE THE SURETY TO BE A.M. BEST RATED "A-V" OR BETTER AND LISTED ON THE UNITED STATES TREASURY'S FEDERAL REGISTER OF COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE SURETIES ON FEDERAL BONDS; EXCEPT THAT, THE CORPORATE SURETY SHALL NOTIFY THE DEPARTMENT AND THE LICENSEE, IN WRITING, AS SOON AS PRACTICABLE IN THE EVENT ITS A.M.BEST, OR EQUIVALENT, RATING DETERIORATES BELOW AN "A-V" RATING OR SUCH CORPORATE SURETY IS REMOVED FROM THE DEPARTMENT OF THE TREASURY'S LIST OF COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE SURETIES ON FEDERAL BONDS.

(II) THE BOARD MAY PROMULGATE RULES AND REGULATIONS CONCERNING OTHER CIRCUMSTANCES THAT MAY CONSTITUTE AN IMPAIRMENT OF THE WARRANTIES REFERENCED IN THIS ARTICLE THAT WOULD REQUIRE REASONABLE NOTICE TO THE DEPARTMENT BY THE WARRANTOR.

(III) A FINANCIAL WARRANTOR SHALL NOTIFY THE DEPARTMENT NOT LESS THAN NINETY DAYS PRIOR TO ANY CANCELLATION, TERMINATION, OR REVOCATION OF THE WARRANTY, UNLESS THE DEPARTMENT HAS AUTHORIZED IN WRITING THE DISCONTINUANCE OF SUCH WARRANTIES.

25-11-111. Forfeiture of decommissioning warranties - use of funds. (1) A DECOMMISSIONING WARRANTY SHALL BE SUBJECT TO IMMEDIATE FORFEITURE WHENEVER THE DEPARTMENT DETERMINES THAT ANY ONE OF THE FOLLOWING CIRCUMSTANCES EXIST:

(a) THE LICENSEE HAS VIOLATED AN EMERGENCY, ABATEMENT, OR CEASE AND DESIST ORDER OR COURT-ORDERED INJUNCTION OR TEMPORARY RESTRAINING ORDER RELATED TO DECOMMISSIONING, DECONTAMINATION, OR DISPOSAL AND, IF DECOMMISSIONING, DECONTAMINATION, OR DISPOSAL WAS REQUIRED IN SUCH ORDER, HAS FAILED TO COMPLETE SUCH DECOMMISSIONING, DECONTAMINATION, OR DISPOSAL ALTHOUGH REASONABLE TIME TO HAVE DONE SO HAS ELAPSED; OR

(b) THE LICENSEE IS IN VIOLATION OF DECOMMISSIONING, DECONTAMINATION, OR DISPOSAL REQUIREMENTS AS SPECIFIED IN THE LICENSE AND THE REGULATIONS AND HAS FAILED TO CURE SUCH VIOLATION ALTHOUGH THE LICENSEE HAS BEEN GIVEN WRITTEN NOTICE THEREOF PURSUANT TO SECTION 25-11-107 (5) AND HAS HAD REASONABLE TIME TO CURE SUCH VIOLATION; OR

(c) THE LICENSEE HAS FAILED TO PROVIDE AN ACCEPTABLE REPLACEMENT WARRANTY WHEN:

(I) THE LICENSEE'S FINANCIAL WARRANTOR NO LONGER HAS THE FINANCIAL ABILITY TO CARRY OUT OBLIGATIONS UNDER THIS ARTICLE; OR

(II) THE DEPARTMENT HAS RECEIVED NOTICE OR INFORMATION THAT THE FINANCIAL WARRANTOR INTENDS TO CANCEL, TERMINATE, OR REVOKE THE WARRANTY; OR

(d) THE LICENSEE HAS FAILED TO MAINTAIN ITS FINANCIAL ASSURANCE WARRANTY IN GOOD STANDING AS REQUIRED BY SECTION 25-11-110 (6) (a); OR

(e) AN EMERGENCY ENDANGERING PUBLIC HEALTH OR SAFETY HAS BEEN CAUSED BY OR RESULTED FROM THE LICENSEE'S USE OR POSSESSION OF RADIOACTIVE MATERIALS.

(2) (a) UPON DETERMINING THAT A DECOMMISSIONING WARRANTY SHOULD BE FORFEITED UNDER SUBSECTION (1) OF THIS SECTION, THE DEPARTMENT SHALL ISSUE TO THE LICENSEE AN ORDER FORFEITING THE DECOMMISSIONING WARRANTY. THE ORDER SHALL CONTAIN WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW TO SUPPORT ITS DECISION AND SHALL DIRECT AFFECTED FINANCIAL WARRANTORS TO DELIVER TO THE DEPARTMENT THE FULL AMOUNTS WARRANTED BY APPLICABLE DECOMMISSIONING WARRANTIES WITHIN NOT MORE THAN THIRTY DAYS AFTER THE DATE OF THE ORDER.

(b) THE LICENSEE MAY REQUEST A HEARING ON THE ORDER OF FORFEITURE THAT SHALL BE CONDUCTED IN ACCORDANCE WITH SECTION 24-4-105, C.R.S., AND THAT, IF THE DEPARTMENT ALLEGES IN THE FORFEITURE ORDER A VIOLATION OF A LICENSE, REGULATION, OR ORDER, THE HEARING MAY BE CONDUCTED IN CONJUNCTION WITH A HEARING REQUESTED UNDER SECTION 25-11-107 (5). ANY REQUEST FOR A HEARING PURSUANT TO THIS PART 1 SHALL BE MADE WITHIN TWENTY DAYS AFTER THE DATE OF THE ORDER OF FORFEITURE AND SHALL NOT AFFECT THE OBLIGATION TO SUBMIT TO THE DEPARTMENT FUNDS FROM DECOMMISSIONING WARRANTIES FORFEITED BY SUCH ORDER UNLESS A STAY OF FORFEITURE IS GRANTED BY THE DEPARTMENT OR BY ADMINISTRATIVE OR JUDICIAL ORDER.

(3) THE DEPARTMENT MAY REQUEST THE ATTORNEY GENERAL, AND THE ATTORNEY GENERAL IS AUTHORIZED, TO COMMENCE LEGAL PROCEEDINGS NECESSARY TO SECURE OR RECOVER AMOUNTS WARRANTED BY DECOMMISSIONING WARRANTIES. THE ATTORNEY GENERAL SHALL HAVE THE POWER TO COLLECT, FORECLOSE UPON, PRESENT FOR PAYMENT, TAKE POSSESSION OF, OR DISPOSE OF PLEDGED PROPERTY, AND OTHERWISE REDUCE TO CASH ANY FINANCIAL ASSURANCE ARRANGEMENT REQUIRED BY THIS ARTICLE.

(4) (a) DECOMMISSIONING FUNDS RECOVERED BY THE DEPARTMENT PURSUANT TO THIS SECTION SHALL BE IMMEDIATELY DEPOSITED INTO THE DECOMMISSIONING FUND CREATED IN SECTION 25-11-113 AND SHALL BE USED SOLELY FOR THE DISPOSAL OF RADIOACTIVE MATERIALS FOR THE FACILITY COVERED BY THE FORFEITED FINANCIAL ASSURANCE WARRANTIES; THE DECOMMISSIONING AND DECONTAMINATION OF BUILDINGS, EQUIPMENT, PERSONAL PROPERTY, AND LANDS COVERED BY THE

FORFEITED FINANCIAL ASSURANCE WARRANTIES; AND TO COVER THE DEPARTMENT'S REASONABLE ATTORNEY AND ADMINISTRATIVE COSTS ASSOCIATED WITH DISPOSAL, DECOMMISSIONING, AND DECONTAMINATION FOR SUCH FACILITY.

(b) THE DEPARTMENT OR ITS AGENT SHALL HAVE A RIGHT TO ENTER PROPERTY OF THE LICENSEE TO DISPOSE OF RADIOACTIVE MATERIALS, DECOMMISSION, AND DECONTAMINATE BUILDINGS, EQUIPMENT, PERSONAL PROPERTY, AND LANDS. UPON COMPLETION OF DISPOSAL, DECOMMISSIONING, AND DECONTAMINATION ACTIVITIES, THE DEPARTMENT SHALL PRESENT TO THE LICENSEE A FULL ACCOUNTING AND SHALL REFUND ALL UNSPENT DECOMMISSIONING WARRANTY MONEYS, INCLUDING INTEREST.

(5) LICENSEES SHALL REMAIN LIABLE FOR THE TOTAL ACTUAL COST OF DISPOSAL OF, DECOMMISSIONING, AND DECONTAMINATING AFFECTED BUILDINGS, EQUIPMENT, PERSONAL PROPERTY, AND LANDS, LESS ANY AMOUNTS EXPENDED BY THE DEPARTMENT PURSUANT TO SUBSECTION (4) OF THIS SECTION, NOTWITHSTANDING ANY DISCHARGE OF APPLICABLE FINANCIAL ASSURANCE WARRANTIES.

25-11-112. Forfeiture of long-term care warranty - use of funds. (1) A LONG-TERM CARE WARRANTY SHALL BE SUBJECT TO IMMEDIATE FORFEITURE WHENEVER THE DEPARTMENT DETERMINES THAT ANY ONE OF THE FOLLOWING CIRCUMSTANCES EXIST:

(a) THE LICENSEE IS IN VIOLATION OF LONG-TERM CARE REQUIREMENTS AS SPECIFIED IN THE LICENSE AND THE REGULATIONS AND HAS FAILED TO CURE SUCH VIOLATION ALTHOUGH THE LICENSEE HAS BEEN GIVEN WRITTEN NOTICE THEREOF PURSUANT TO SECTION 25-11-107 (5) AND HAS HAD REASONABLE TIME TO CURE SUCH VIOLATION; OR

(b) THE LICENSEE HAS FAILED TO PROVIDE AN ACCEPTABLE REPLACEMENT WARRANTY WHEN:

(I) THE LICENSEE'S FINANCIAL WARRANTOR NO LONGER HAS THE FINANCIAL ABILITY TO CARRY OUT OBLIGATIONS UNDER THIS ARTICLE; OR

(II) THE DEPARTMENT HAS RECEIVED NOTICE OR INFORMATION THAT THE FINANCIAL WARRANTOR INTENDS TO CANCEL, TERMINATE, OR REVOKE THE WARRANTY; OR

(c) THE LICENSEE HAS FAILED TO MAINTAIN ITS FINANCIAL ASSURANCE WARRANTY IN GOOD STANDING AS REQUIRED BY SECTION 25-11-110 (6) (a).

(2) (a) A LONG-TERM CARE WARRANTY SHALL BE SUBJECT TO IMMEDIATE USE AND EXPENDITURE BY THE DEPARTMENT WHENEVER THE DEPARTMENT DETERMINES THAT DISPOSAL, DECOMMISSIONING, AND DECONTAMINATION REQUIREMENTS SPECIFIED IN THE LICENSE CONDITIONS AND REGULATIONS HAVE BEEN SATISFIED. THE DEPARTMENT SHALL GIVE THE LICENSEE WRITTEN NOTICE OF THE DEPARTMENT'S INTENT TO USE THE LONG-TERM CARE WARRANTY FOR LONG-TERM CARE PURPOSES. THE NOTICE SHALL CONTAIN FINDINGS OF FACT AND CONCLUSIONS OF LAW TO SUPPORT ITS DECISION AND SHALL DIRECT AFFECTED FINANCIAL WARRANTORS TO DELIVER TO THE DEPARTMENT THE FULL AMOUNTS WARRANTED BY APPLICABLE LONG-TERM CARE WARRANTIES WITHIN NOT MORE THAN THIRTY DAYS AFTER THE

DATE OF THE NOTICE.

(b) THE LICENSEE MAY REQUEST A HEARING ON A NOTICE UNDER PARAGRAPH (a) OF THIS SUBSECTION (2) THAT SHALL BE CONDUCTED IN ACCORDANCE WITH SECTION 24-4-105, C.R.S. ANY REQUEST FOR A HEARING UNDER THIS SUBSECTION (2) SHALL BE MADE WITHIN THIRTY DAYS AFTER THE DATE OF THE NOTICE AND SHALL NOT AFFECT THE OBLIGATION TO SUBMIT TO THE DEPARTMENT FUNDS FROM LONG-TERM CARE WARRANTIES UNLESS A STAY IS GRANTED BY THE DEPARTMENT OR BY ADMINISTRATIVE OR JUDICIAL ORDER.

(3) THE DEPARTMENT MAY REQUEST THE ATTORNEY GENERAL, AND THE ATTORNEY GENERAL IS AUTHORIZED, TO COMMENCE LEGAL PROCEEDINGS NECESSARY TO SECURE OR RECOVER AMOUNTS WARRANTED BY LONG-TERM CARE WARRANTIES. THE ATTORNEY GENERAL SHALL HAVE THE POWER TO COLLECT, FORECLOSE UPON, PRESENT FOR PAYMENT, TAKE POSSESSION OF, OR DISPOSE OF PLEDGED PROPERTY, AND OTHERWISE REDUCE TO CASH ANY FINANCIAL ASSURANCE ARRANGEMENT REQUIRED BY THIS ARTICLE.

(4) (a) LONG-TERM CARE FUNDS RECOVERED BY THE DEPARTMENT PURSUANT TO THIS SECTION SHALL BE IMMEDIATELY DEPOSITED INTO THE LONG-TERM CARE FUND CREATED IN SECTION 25-11-113 AND SHALL BE USED SOLELY FOR THE LONG-TERM CARE FOR THE FACILITY COVERED BY THE FINANCIAL ASSURANCE WARRANTY AND TO COVER THE DEPARTMENT'S REASONABLE ATTORNEY AND ADMINISTRATIVE COSTS ASSOCIATED WITH LONG-TERM CARE FOR SUCH FACILITY.

(b) THE DEPARTMENT OR ITS AGENT SHALL HAVE A RIGHT TO ENTER PROPERTY OF THE LICENSEE TO PERFORM LONG-TERM CARE AND MONITORING. UPON COMPLETION OF LONG-TERM CARE ACTIVITIES, THE DEPARTMENT SHALL PRESENT TO THE LICENSEE A FULL ACCOUNTING AND SHALL REFUND ALL UNSPENT WARRANTY MONEYS, INCLUDING INTEREST.

25-11-113. Forfeitures - deposit - radiation control - decommissioning fund - long-term care fund. (1) THE DEPARTMENT IS HEREBY AUTHORIZED TO COLLECT FUNDS FROM FORFEITED DECOMMISSIONING WARRANTIES AND FROM LONG-TERM CARE WARRANTIES.

(2) (a) A FUND TO BE KNOWN AS THE DECOMMISSIONING FUND IS HEREBY CREATED AND ESTABLISHED IN THE STATE TREASURY. SUCH FUND SHALL BE INTEREST-BEARING AND INVESTED TO RETURN THE MAXIMUM INCOME FEASIBLE AS DETERMINED BY THE STATE TREASURER AND CONSISTENT WITH OTHERWISE APPLICABLE STATE LAW. ALL MONEYS COLLECTED FROM DECOMMISSIONING WARRANTIES PURSUANT TO THIS SECTION SHALL BE TRANSMITTED TO THE STATE TREASURER WHO SHALL CREDIT THE SAME TO THE DECOMMISSIONING FUND. ALL MONEYS DEPOSITED IN THE FUND AND ALL INTEREST EARNED ON MONEYS IN THE FUND SHALL REMAIN IN THE FUND FOR THE PURPOSES SET FORTH IN THIS PART 1 AND NO PART THEREOF SHALL BE EXPENDED OR APPROPRIATED FOR ANY OTHER PURPOSE. NO INVESTMENT EARNINGS OR OTHER MONEYS IN THE FUND SHALL BE SUBJECT TO ANY MANAGEMENT FEE IMPOSED BY LAW FOR THE BENEFIT OF THE GENERAL FUND.

(b) THE MONEYS IN THE FUND SHALL BE CONTINUOUSLY APPROPRIATED FOR THE PURPOSES SET FORTH IN THIS PART 1 AND SHALL NOT BE TRANSFERRED TO OR REVERT

TO THE GENERAL FUND.

(3) MONEYS IN THE DECOMMISSIONING FUND SHALL BE AVAILABLE FOR USE BY THE DEPARTMENT FOR THE SOLE PURPOSE OF DISPOSING OF RADIOACTIVE MATERIALS AND COMPLETING DECONTAMINATION AND DECOMMISSIONING OF AFFECTED BUILDINGS, FIXTURES, EQUIPMENT, PERSONAL PROPERTY, AND LANDS, AND TO COVER THE DEPARTMENT'S REASONABLE ATTORNEY COSTS THAT MAY BE INCURRED IN SUCCESSFULLY REVOKING, FORECLOSING, OR REALIZING ANY DECOMMISSIONING WARRANTY, AND REASONABLE ADMINISTRATIVE COSTS, INCLUDING INDIRECT COSTS, INCURRED BY THE DEPARTMENT IN CONDUCTING DISPOSAL, DECONTAMINATION, AND DECOMMISSIONING.

(4) (a) A FUND TO BE KNOWN AS THE LONG-TERM CARE FUND IS HEREBY CREATED AND ESTABLISHED IN THE STATE TREASURY. SUCH FUND SHALL BE INTEREST-BEARING AND INVESTED TO RETURN THE MAXIMUM INCOME FEASIBLE AS DETERMINED BY THE STATE TREASURER AND CONSISTENT WITH OTHERWISE APPLICABLE STATE LAW. ALL MONEYS COLLECTED FROM LONG-TERM CARE WARRANTIES PURSUANT TO THIS SECTION SHALL BE TRANSMITTED TO THE STATE TREASURER WHO SHALL CREDIT THE SAME TO THE LONG-TERM CARE FUND. ALL MONEYS DEPOSITED IN THE FUND AND ALL INTEREST EARNED ON MONEYS IN THE FUND SHALL REMAIN IN THE FUND FOR THE PURPOSES SET FORTH IN THIS PART 1 AND NO PART THEREOF SHALL BE EXPENDED OR APPROPRIATED FOR ANY OTHER PURPOSE. NO INVESTMENT EARNINGS OR OTHER MONEYS IN THE FUND SHALL BE SUBJECT TO ANY MANAGEMENT FEE IMPOSED BY LAW FOR THE BENEFIT OF THE GENERAL FUND.

(b) MONEYS IN THE LONG-TERM CARE FUND SHALL BE ANNUALLY APPROPRIATED BY THE GENERAL ASSEMBLY TO THE DEPARTMENT IN AN AMOUNT SUFFICIENT TO IMPLEMENT THE PROVISIONS OF THIS PART 1.

(c) MONEYS IN THE LONG-TERM CARE FUND SHALL BE AVAILABLE FOR USE BY THE DEPARTMENT FOR THE SOLE PURPOSES OF:

(I) PERFORMING ANNUAL SITE INSPECTIONS TO CONFIRM THE INTEGRITY OF THE STABILIZED WASTE SYSTEM, ENVIRONMENTAL MONITORING, AND MAINTENANCE OF THE WASTE DISPOSAL SITE, INCLUDING FIXTURES, COVER, AND EQUIPMENT;

(II) COVERING THE DEPARTMENT'S REASONABLE ATTORNEY COSTS THAT MAY BE INCURRED IN SUCCESSFULLY COLLECTING OR REALIZING ANY LONG-TERM CARE WARRANTY, AND REASONABLE ADMINISTRATIVE COSTS, INCLUDING INDIRECT COSTS, INCURRED BY THE DEPARTMENT IN CONDUCTING LONG-TERM CARE OF THE DISPOSAL FACILITY.

SECTION 3. Effective date - applicability. (1) This act shall take effect on August 15, 1997; except that, if a referendum petition is filed against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to all licenses issued or renewed pursuant to part 1 of article 11 of title 25, Colorado Revised Statutes, on or after the applicable effective date of this act.

Approved: June 5, 1997