Decision No. R25-0127

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24M-0399TR

IN THE MATTER OF THE PETITION OF RICARDO GONZALES TO REVERSE AN INITIAL DRIVER DISQUALIFICATION DETERMINATION PURSUANT TO § 40-10.1-110, C.R.S. AND RULE 6114, AND REQUEST FOR HEARING

RECOMMENDED DECISION GRANTING MOTION FOR SUMMARY JUDGMENT AND CLOSING PROCEEDING

Mailed Date: February 24, 2025

TABLE OF CONTENTS

I. STATEMENT....1
A. Background....1
II. UNDISPUTED FACTS....4
III. SUMMARY JUDGMENT STANDARD....7
IV. PARTIES' RELEVANT ARGUMENTS....7
V. ANALYSIS....8
A. Comparable Offenses....8
B. Article II, Section II of the Colorado Constitution....10
C. §§ 40-10.1-110(4), 24-5-101(2), & 12-20-206(2), C.R.S....17
VI. PETITIONER'S REMAINING ARGUMENTS....25
VII. ORDER....26
A. The Commission Orders That:....26

I. STATEMENT

A. Background

1. On August 7, 2024, Commission Staff issued an initial determination that, under § 40-10.1-110, C.R.S. and Commission Rule 6114, Ricardo Gonzales is disqualified from

driving for a limited passenger carrier and/or taxi carrier based on Mr. Gonzales' 2003 conviction for sodomy of a child.[1]

2. On September 20, 2024, Ricardo Gonzales filed the Petition described in the caption above ("Petition").

3. On October 8, 2024, Trial Staff of the Commission ("Staff") filed a Notice of Intervention by Right.

4. On October 9, 2024, the Commission referred the proceeding by minute entry to an Administrative Law Judge ("ALJ"). The proceeding was subsequently assigned to the undersigned ALJ.

5. On October 31, 2024, the ALJ issued Decision No. R24-0797-I that ordered Staff to: (a) confer with Mr. Gonzales regarding a schedule for this proceeding (including a date for the hearing), deadlines for the filing and serving of witness and exhibit lists and exhibits, and the method by which the hearing should be conducted (in-person, remote, or hybrid hearing); and (b) file a report of the conferral on or before November 13, 2024.

6. On November 13, 2024, Staff filed the conferral report in which the parties proposed the following schedule:

Event	Date/Deadline
Prehearing Motions	November 20, 2024
Exhibit and Witness Lists and Exhibits	December 12, 2024
Evidentiary Hearing	December 19, 2024
Statements of Position (if requested)	January 10, 2025

[1] 4 *Code of Colorado Regulations* ("CCR") 723-6.

The conferral report also stated that the parties agreed to shorten response time to prehearing motions to seven days, Staff desired a remote hearing, and Mr. Gonzales did not state a position regarding the method of hearing during their conferral.

7. The ALJ sent an email to the parties on November 19, 2024 stating that the schedule proposed by the parties in the conferral report would be adopted, but that the written Interim Decision stating as much would not issue before the November 20, 2024 proposed deadline for prehearing motions.

8. On November 20, 2024, Staff filed a Motion for Summary Judgment ("Motion") and attached redacted and confidential versions of Mr. Gonzales' criminal history record.

9. On November 25, 2024, the ALJ issued Decision No. R24-0870-I that adopted the schedule proposed by the parties, shortened response time to prehearing motions to seven days, and scheduled a remote hearing for December 19, 2024.

10. On December 18, 2024, Mr. Gonzales sent an email to the ALJ requesting a continuance of the hearing. Mr. Gonzales copied counsel for Staff on the email. The ALJ responded to the email stating that the hearing would go forward as scheduled at which time Mr. Gonzales could make an oral motion to continue the hearing.

11. On December 19, 2024, the ALJ called the hearing to order. At the outset, Mr. Gonzales reiterated his request for a continuance of the hearing, which Staff did not oppose. The ALJ granted the request for a continuance. In addition, while Mr. Gonzales confirmed at the hearing that he had received a copy of Staff's Motion, he did not understand that he was required to file a written response thereto. As a result, the ALJ established a new deadline of January 10, 2025, for Mr. Gonzales to file a written response to the Motion. The ALJ also instructed the

parties that he would issue a decision on the Motion before rescheduling the evidentiary hearing in this proceeding, as necessary.

12. On December 30, 2024, the ALJ issued Decision No. R24-0945-I that memorialized the decisions made at the December 19, 2024 hearing to continue the hearing and establish the January 10, 2025 deadline for Mr. Gonzales to respond to the Motion.

13. Mr. Gonzales sent an email containing his response to the Motion on January 10, 2025 ("Response"). On January 14, 2025, Mr. Gonzales sent another email containing a document referenced in the Response. Commission Staff filed both emails and their attachments in the Commission's e-filing system.

II. UNDISPUTED FACTS

14. The following facts are undisputed.

15. Mr. Gonzales is a former member of the military who is seeking employment as a driver for zTrip, which is the trade name of WHC COS, LLC, a taxi carrier operating under a Certificate of Public Convenience and Necessity issued by the Commission.[2] As required by Rule 6114(c),[3] Mr. Gonzales submitted fingerprints for a fingerprint-based criminal history check, the results of which were provided by the Colorado Bureau of Investigation ("CBI") to Commission Staff on July 31, 2024.

16. The records supplied to Commission Staff by CBI establish that, in August 2003 in a military court-martial proceeding, Mr. Gonzales pled guilty to, and was convicted of: (a) sodomy of a child who had attained the age of 12 but was under the age of 16 in violation of

[2] Petition at pp. 1-2.
[3] 4 CCR 723-6.

Article 125 of the Uniform Code of Military Justice ("UCMJ"); and (b) indecent acts with a child in violation of Article 134 of the UCMJ.[4]

17. As to the charge for indecent acts with a child, Mr. Gonzales pled guilty to the following facts:

> [a]t or near Columbus, Georgia, on or about 13 January 2002, [Mr. Gonzales] committed indecent acts upon the body of MS. K.A.B., a female under 16 years of age, not the wife of [Mr. Gonzales], by removing her clothing, fondling her breasts and genitals, placing his fingers inside her vagina and kissing her body with intent to gratify the lust and sexual desires of [Mr. Gonzales].[5]

The facts supporting Mr. Gonzales' conviction of sodomy of a child are not specified in the documents supplied by the parties.

18. In January 2002, Mr. Gonzales was 26 years old, and the victim was 13 years old.[6]

19. Mr. Gonzales was sentenced to incarceration for 11 years and nine months on August 3, 2003.[7]

20. Mr. Gonzales took several subsequent actions to appeal his convictions and sentence through both federal and military courts, all of which were denied.[8] In 2008, the U.S. Army Court of Criminal Appeals affirmed the findings of guilt and the sentence imposed by the lower courts. In so doing, the U.S. Army Court of Criminal Appeals found "appellant's actions [on appeal] at best, misguided, and at worse, intentionally misleading and manipulative."[9]

[4] Motion, Attach. 1 at pp. 15-16, 17-18.
[5] *Id*. at p. 17.
[6] *Id*. at p. 8, 15.
[7] *Id*. at p. 21.
[8] Motion, Attach. 1 at 1. *See also Gonzales v. Cremin*, 167 Fed.Appx. 10 (10th Cir. 2006); *Gonzales v. Judge Advocate General of the U.S.*, 150 Fed. Appx. 765 (10th Cir. 2005).
[9] Motion, Attach. 2 at p. 2.

21. Mr. Gonzales was released from prison prior to 2015.[10]

22. On August 7, 2024, Commission staff issued an initial determination that, based on the foregoing facts, Mr. Gonzales is disqualified to drive for a limited passenger carrier and/or taxi carrier under § 40-10.1-110, C.R.S., and Commission Rule 6114.[11] Section 40-10.1-110(3)(b), C.R.S., states that a person convicted of a "felony or misdemeanor involving moral turpitude" "is disqualified and prohibited from driving for [a] motor carrier," regardless of when the conviction took place and/or any evidence that the driver has been rehabilitated.[12] A crime of moral turpitude "includes any unlawful sexual offense against a child, as defined in section 18-3-411, C.R.S., or a comparable offense in any other state or in the United States."[13] Section 18-3-411, C.R.S., in turn, states that each of the following qualifies as an "unlawful sexual offense against a child:" (a) "sexual assault, as described in section 18-3-402, when the victim at the time of the commission of the act is a child less than fifteen years of age;" and (b) "sexual assault on a child, as described in section 18-3-405."[14]

23. Commission Staff concluded that Mr. Gonzales' conviction for sodomy of a child who had attained the age of 12 but was under the age of 16 in violation of Article 125 of the UCMJ is comparable to sexual assault when the victim at the time of the commission of the act is a child less than 15 years of age under § 18-3-402, C.R.S.[15] For this reason, Commission Staff informed Mr. Gonzales that he is disqualified from driving for a limited passenger carrier and/or taxi carrier under § 40-10.1-110, C.R.S., and Commission Rule 6114.[16] Commission Staff

[10] Petition at p. 1.
[11] 4 CCR 723-6.
[12] § 40-10.1-110(3)(b)(I), C.R.S.
[13] § 40-10.1-110(3)(b)(II), C.R.S.
[14] § 18-3-411(1), C.R.S.
[15] Motion, Attach. 1 at p. 3.
[16] *Id*.

subsequently determined that Mr. Gonzales' conviction for indecent acts with a child in violation of Article 134 of the UCMJ is an additional reason disqualification because it is comparable to sexual assault on a child under § 18-3-405, C.R.S.[17]

III. SUMMARY JUDGMENT STANDARD

24. Colorado Rule of Civil Procedure 56 allows summary judgment to be entered before a hearing when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law."[18] The movant bears the burden of establishing the absence of any genuine issue of material fact. If the movant is successful, "the burden then shifts to the nonmoving party to establish a triable issue of fact."[19] In determining whether summary judgment is proper, the Commission must grant the nonmoving party the benefit of all favorable inferences that may reasonably be drawn from the undisputed facts and resolve all doubts against the moving party.[20] Summary judgment is a drastic remedy, and is appropriate only when the moving party carries its burden and the nonmoving party fails to establish that a hearing is necessary.[21]

IV. PARTIES' RELEVANT ARGUMENTS

25. Staff argues that Mr. Gonzales' convictions for sodomy of a child of less than 16 and indecent acts with a child are comparable to Colorado's offenses of sexual assault and sexual assault on a child, respectively. For these reasons, Staff concludes that there is no genuine issue of material fact justifying a hearing on whether Staff's conclusion that Mr. Gonzales is

[17] Motion at pp. 8, 10.
[18] Colorado Rule of Civil Procedure 56(c).
[19] *Westin Operator, LLC v. Groh*, 347 P.3d 606, 611 (Colo. 2015). *See also* C.R.C.P. 56(e) ("When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of the opposing party's pleadings, but the opposing party's response by affidavits or otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial.").
[20] *Bebo Constr. Co. v. Mattox & O'Brien, P.C.*, 990 P.2d 78, 83 (Colo. 1999).
[21] *Id*.

disqualified from driving for a taxi carrier under § 40-10.1-110(3)(b), C.R.S., and Commission Rule 6114 is supported by both fact and law.[22] Mr. Gonzales disagrees, and further argues that § 40-10.1-110, C.R.S. and Rule 6114[23] were promulgated after Mr. Gonzales' court martial and their application to Mr. Gonzales would thus violate Article II, Section II of the Colorado Constitution, which prohibits the application of *ex post facto* laws.[24]

26. In addition, it could be argued that §§ 40-10.1-110(4), 24-5-101(2), & 12-20-206(2), C.R.S. prohibit the Commission from considering Mr. Gonzales' convictions because more than three years have expired since those convictions and Mr. Gonzales' release from prison. While no party has raised this argument, the ALJ will address it out of an abundance of caution.

V. ANALYSIS

A. Comparable Offenses

27. Mr. Gonzales' argument that his convictions for sodomy of a child of less than 16 and indecent acts with a child are not comparable to Colorado's offenses of sexual assault and sexual assault on a child is unpersuasive. Section 18-3-402(1)(d), C.R.S. defines "sexual assault" as the infliction of "sexual penetration" or "sexual intrusion" on a victim if "[a]t the time of the commission of the act, the victim is less than fifteen years of age and the actor is at least four years older than the victim and is not the spouse of the victim." "Sexual penetration" means "sexual intercourse, cunnilingus, fellatio, anilingus, or anal intercourse."[25] "Sexual intrusion" means "any intrusion, however slight, by any object or any part of a person's body, except the

[22] Motion at pp. 8-10 (¶¶ 29-33). *See also* Rule 6114(k)(II)(B) ("If a Driver submitting fingerprints is disqualified to drive pursuant to subparagraph (f)(III), the Driver shall bear the burden of proving that disqualification is not supported by fact or law.").
[23] 4 CCR 723-6.
[24] Response at 1 (second and third arguments).
[25] § 18-3-401(6), C.R.S.

mouth, tongue, or penis, into the genital or anal opening of another person's body if that sexual intrusion can reasonably be construed as being for the purposes of sexual arousal, gratification, or abuse."[26]

28. Section 18-3-405(1) states that "sexual assault on a child" occurs when "[a]ny actor [] knowingly subjects another not his or her spouse to any sexual contact . . . if the victim is less than fifteen years of age and the actor is at least four years older than the victim." "Sexual contact" is defined as, among other things,

> [t]he knowing touching of the victim's intimate parts by the actor, or of the actor's intimate parts by the victim, or the knowing touching of the clothing covering the immediate area of the victim's or actor's intimate parts if that sexual contact is for the purposes of sexual arousal, gratification, or abuse.[27]

29. Finally, under the version of Article 125 of the UCMJ in force at the time of Mr. Gonzales' conviction, sodomy was defined as "engag[ing] in unnatural carnal copulation with another person of the same or opposite sex. . . . Penetration, however slight, is sufficient to complete the offense."[28] While "unnatural carnal copulation" was not defined in the UCMJ, the Manual for Courts Martial stated:

> It is unnatural carnal copulation for a person to take into that person's mouth or anus the sexual organ of another person…; or to place that person's sexual organ in the mouth or anus of another person…; or to have carnal copulation in any opening of the body, except the sexual parts, with another person.[29]

30. Here, there is no dispute that Mr. Gonzales was convicted of sodomy and indecent acts with a child when Mr. Gonzales was 26 and the victim was 13. Given the definition of sodomy at the time of his conviction, and the facts supporting the charge for indecent acts with a

[26] § 18-3-401(5), C.R.S.
[27] § 18-3-401(4)(a), C.R.S.
[28] 10 U.S.C. § 925(a) (2002).
[29] Manual for Courts – Martial at ¶ 51(c) (2000 & 2002 Editions).

child in violation of Article 134 of the UCMJ to which Mr. Gonzales pled guilty,[30] Mr. Gonzales' convictions were for comparable offenses to "unlawful sexual offense[s] against a child, as defined in section 18-3-411, C.R.S."[31] As a result, Mr. Gonzales' convictions were for crimes of moral turpitude under § 40-10.1-110(3)(a), C.R.S., and Mr. Gonzales is thus "disqualified and prohibited from driving motor vehicles for a motor carrier if § 40-10.1-110(3)(b), C.R.S. applies to his convictions."[32]

B. Article II, Section II of the Colorado Constitution

31. Mr. Gonzales' argument that application of § 40-10.1-110(3)(b), C.R.S. and Rule 6114[33] to Mr. Gonzales' court martial convictions would violate Article II, Section II of the Colorado Constitution is incorrect. Article II, Section II of the Colorado Constitution states that "[n]o ex post facto law, nor law impairing the obligation of contracts, or retrospective in operation . . . shall be passed by the general assembly." To determine whether a statute violates Article II, Section II, a two-step analysis is employed. First, it must be determined whether the legislative intent in passing the statute overcomes the presumption that the General Assembly intended the statute to operate prospectively.[34] Second, if the presumption is overcome, it must

[30] *See* supra at p. 5 (¶ 17).
[31] § 40-10.1-110(3)(b)(II), C.R.S.
[32] § 40-10.1-110(3)(b)(I), C.R.S. *See* Decision No. R12-1337 issued on November 15, 2012 in Proceeding No. 12M-990TR) (holding that individual has had been convicted of an unlawful sexual offense against a child is disqualified for life from driving for a motor carrier under § 40-10.1-110(3)(b), C.R.S., regardless of whether the individual is of good moral character at the time of the petition); Decision No. R13-0325 issued on March 15, 2013 in Proceeding No. 12M-1221TR (same).
[33] 4 CCR 723-6.
[34] § 2-4-202, C.R.S. ("A statute is presumed to be prospective in its operation.").

be determined whether the statute applies merely retroactively (which is permissible) or retrospectively (which is not).[35] Each question will be addressed in turn.

1. Presumption of Prospective Application

32. Mr. Gonzales is correct that § 40-10.1-110(3)(b), C.R.S. and Rule 6114(f)(III) were promulgated after his convictions in the court-martial proceeding. Section 40-10.1-110, C.R.S. and Rule 6114 were promulgated in 2008 and 2014, respectively, after Mr. Gonzales was convicted in 2003.[36] As a result, it must first be determined whether there is sufficient indicia of legislative intent to overcome the presumption that § 40-10.1-110(3)(b), C.R.S. is limited to prospective application.[37]

33. "Legislation is applied prospectively when it operates on transactions that occur after its effective date, and retroactively when it operates on transactions that have already occurred or rights and obligations that existed before its effective date."[38] An express statutory statement that a statute applies retroactively in unnecessary. Instead, legislative intent can be gleaned from the language and history of the subject statute and other relevant statutes.[39]

[35] *Ficarra v. DORA*, 849 P.2d 6, 11-12 (Colo. 1993) ("[U]nder our state constitution, some retroactively applied civil legislation is constitutional, and some is not, and it is helpful to mark this distinction by using the term retrospective to apply only to legislation whose retroactive effect violates the constitutional prohibition."); *Riley v. People*, 828 P.2d 254, 257 (Colo. 1992) ("Legislation is presumed to have prospective effect unless a contrary intent is expressed by the General Assembly.").

[36] *See* HB 08-1227 (adding convictions for felonies or misdemeanors involving "moral turpitude" as basis for disqualification to § 40-10-105.5, C.R.S., which was subsequently moved to § 40-10.1-110(3)(b)); Proceeding No. 13R-0009TR (adding conviction "at any time of a felony or misdemeanor unlawful sexual offense against a child, as defined in § 18-3-411, C.R.S., or of a comparable offense in any other state or in the United States at any time" as basis for disqualification to Rule 6105, which was subsequently moved to Rule 6114).

[37] The ALJ limits the analysis to § 40-10.1-110, C.R.S. because Article II, Section II forbids the General Assembly from passing ex post facto laws, the analysis focuses on the General Assembly's legislative intent, and the Commission amended then-Rule 6015(f) (now Rule 6114(f)) to implement the changes made by the General Assembly to then-§ 40-10-105.5(4)(b) (now § 40-10.1-110(3)(b)). *See* HB 08-1227; Decision No. R09-0149 issued in Proceeding No. 08R-478TR on Feb. 19, 2009.

[38] *Ficarra*, 849 P.2d at 11.

[39] *Id*.

34. Here, the ALJ concludes that the General Assembly intended for § 40-10.1-110(3)(b), C.R.S. to apply retroactively. Section 40-10.1-110(1)(a) requires everybody who wishes to drive for a limited passenger or taxi carrier to submit their fingerprints for a criminal history check. There are no exceptions. Section 40-10.1-110(3)(b), C.R.S. then states:

> An individual whose record is checked pursuant to this section is disqualified and prohibited from driving motor vehicles for the motor carrier described in subsection (1) of this section if the record check reflects that:
>
> . . . .
>
> (b)
>
> (I) The individual has been convicted of a felony or misdemeanor involving moral turpitude.
>
> (II) As used in this paragraph (b), "moral turpitude" includes any unlawful sexual offense against a child, as defined in section 18-3-411, C.R.S., or a comparable offense in any other state or in the United States.

The General Assembly included the mandatory "is disqualified," not "may be disqualified," and omitted any time limit on convictions involving moral turpitude. As a result, the plain meaning of the statutory language indicates that an individual with a conviction involving a crime of moral turpitude is mandatorily excluded from driving for a motor carrier, regardless of whether the conviction took place before or after Section 40-10.1-110(3)(b), C.R.S. was promulgated.

35. This conclusion is corroborated by the General Assembly's inclusion later in the same statute of a time limit on convictions for driving under the influence, driving with excessive alcoholic content, or driving while ability-impaired. Specifically, § 40-10.1-110(3)(c), C.R.S. only disqualifies drivers who have been convicted of those offenses "[w]ithin the two years immediately preceding the date the record check is completed." This difference in language between the two sections of § 40-10.1-110(3), C.R.S. underscores the General Assembly's intent

to exclude all individuals with a conviction involving moral turpitude from driving for a limited passenger or taxi carrier regardless of when the conviction(s) took place.[40]

36. Accordingly, based on the foregoing, the ALJ concludes that the General Assembly intended § 40-10.1-110(3)(b), C.R.S. to have retroactive effect.

2. Retroactive or Retrospective Effect

37. A legislative act is unconstitutionally retrospective if it "takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past."[41] The legislative act must do more than upset "a mere expectation based upon an anticipated continuance of the existing law."[42] Instead, an individual's expectation "must have become a title, legal or equitable, to the present or future enjoyment of property or to the present or future enjoyment of the demand, or a legal exemption from a demand made by another."[43] In determining whether a legislative act is merely retroactive or unconstitutionally retrospective, "the most important inquiries are (1) whether the public interest is advanced or retarded, (2) whether the retroactive provision gives effect to or defeats the bona fide intentions or reasonable expectations of affected persons, and (3) whether the statute surprises persons who have long relied on a contrary state of the law."[44]

[40] *Sinclair Mktg. Inc. v. City of Com. City*, 226 P.3d 1239, 1243 (Colo. App. 2009), as modified on denial of reh'g (Jan. 21, 2010) (quoting *Deutsch v. Kalcevic*, 140 P.3d 340, 342 (Colo. App. 2006)) ("[W]hen the legislature includes a provision in one statute, but omits that provision from another similar statute, the omission is evidence of its intent.").

[41] *P–W Invs., Inc. v. City of Westminster*, 655 P.2d 1365, 1371 (Colo. 1982) (quotations and citations omitted).

[42] *Ficarra*, 849 P.2d at 16 (*quoting People ex rel. Eitel v. Lindheimer*, 371 Ill. 367, 21 N.E.2d 318, 321 (1939)).

[43] *Id*.

[44] *Id*. (*quoting Southwestern Bell Tel. Co. v. Public Util. Comm'n of Tex.*, 615 S.W.2d 947, 956–57 (Tex. Civ. App. 1981)).

38. The ALJ concludes that § 40-10.1-110(3)(b), C.R.S. is not unconstitutionally retrospective. As an initial matter, Mr. Gonzales does not have a legally protectible interest in the continuation of the law as it existed prior to the promulgation in 2007 of § 40-10.1-110(3)(b), C.R.S. Mr. Gonzales does not have, and never had, a "vested right" to drive for a limited passenger or taxi carrier. Indeed, Mr. Gonzales has not identified any instance in which such a right, vested or otherwise, has been recognized in Colorado or elsewhere.

39. In addition, Mr. Gonzales does not argue and has not alleged that the addition of § 40-10.1-110, C.R.S. in 2007 "surprise[d]" him because he had "long relied on [the] contrary state of the law" that existed prior to 2007.[45] There is no evidence that Mr. Gonzales drove for a taxi carrier, or expected to drive for a taxi carrier, prior to 2007. As a result, the ALJ concludes that the passage § 40-10.1-110, C.R.S. did not "defeat[] the bona fide intentions or reasonable expectations of" Mr. Gonzales.

40. Finally, the public interest is advanced by the conclusion that § 40-10.1-110 (3)(b), C.R.S. is not unconstitutionally retrospective legislation. The Colorado Supreme Court has held that "[t]he constitutional ban of retrospective operation does not prevent a [legislature] from enacting and enforcing [laws] to protect the health and safety of the community."[46] In fact, "[i]n order for the General Assembly effectively to regulate a profession, it must have the ability to meet the needs of changing times by revising requirements for the issuance of licenses, and to update requirements in the light of additional knowledge and experience gained over time."[47]

[45] *Id*. (*quoting Southwestern Bell Tel. Co. v. Public Util. Comm'n of Tex.*, 615 S.W.2d 947, 956–57 (Tex. Civ. App. 1981)).
[46] *Van Sickle v. Boyes*, 797 P.2d 1267, 71 (Colo. 1990).
[47] *Ficarra*, 849 P.2d at 21-22.

Thus, "[t]he General Assembly has broad discretion to fashion a licensing scheme that, in its view, protects the public health, safety, welfare, and morals."[48]

41. That is precisely what the General Assembly did in passing § 40-10.1-110(3)(b), C.R.S. By entering a taxi, passengers place themselves at risk of any illicit intentions of the driver. A taxi driver can prevent a passenger from safely exiting the taxi while transporting the passenger to a location other than the passenger's requested destination for the purpose of committing crimes against the passenger. Further, taxi passengers who are children are particularly at risk because they are more susceptible to manipulation by adult drivers. The public cannot know the background of a taxi driver, and thus cannot assess the degree of risk, if any, posed by that driver. As a result, the public relies on the General Assembly to pass reasonable statutes that protect the public by excluding individuals from driving for limited passenger or taxi carriers who pose an unacceptable safety risk. In light of the strong public interest involved, and the position of trust held by taxi drivers, the General Assembly rationally concluded that implementation of § 40-10.1-110(3)(b), C.R.S. "protect[s] the health and safety of the community."[49] The ALJ concludes, therefore, that § 40-10.1-110(3)(b), C.R.S. has merely retroactive, and not retrospective, effect.

42. The Colorado Supreme Court's decision in *Ficarra* supports this conclusion. There, the Division of Regulatory Authorities ("DORA") approved the applications for bail bondsman licenses of the two Plaintiff-Appellants despite the fact that each had a felony conviction within the previous ten years. Thereafter, DORA renewed the licenses of the Plaintiffs-Appellants multiple times prior to 1989.[50]

[48] *Colorado Soc'y of Community & Institutional Psychologists, Inc. v. Lamm*, 741 P.2d 707, 712 (Colo. 1987).
[49] *Van Sickle v. Boyes*, 797 P.2d 1267, 71 (Colo. 1990).
[50] *Ficarra*, 849 P.2d at 8.

43. In 1988, the General Assembly passed a law requiring the denial of all applications for bail-bondsmen licenses if the applicant had a felony conviction in the previous ten years. When the Plaintiffs-Appellants subsequently applied to renew their licenses, DORA denied their applications based on their felony convictions that pre-dated the statutory changes.[51] The Plaintiffs-Appellants contested the non-renewals of their licenses.

44. The Supreme Court upheld DORA's decisions, holding that the General Assembly intended the 1988 statutory amendments to have retroactive effect,[52] but that the changes did not have impermissible retrospective effect.[53] As support, the Supreme Court stated that the "bail bond business is without question a matter of substantial public concern subject to reasonable regulation under the police power of the State."[54] The Supreme Court then concluded:

> In light of the strong public interest involved, and the position of trust held by professional bail bondsmen, the General Assembly could rationally conclude that those who have not served sentences upon felony convictions within the last ten years are more likely safely and honestly to carry out the duties of a professional bail bondsman. It is equally within the province of the General Assembly to conclude that the public interest at stake in the operation of the bail bond system overrides any private expectation at stake in the renewal of a professional bail bondsman license.[55]

45. Here, as in *Ficarra*, "[t]he importance to the public of the safe and honest performance of [the responsibilities of a taxi driver] can hardly be overemphasized" for the reasons stated above.[56] As a result, the taxi carrier industry "is subject to reasonable regulation under the police power of the State" and the General Assembly could rationally conclude that those who have not committed felonies involving moral turpitude are more likely to safely and

[51] *Id*. at 9-10.
[52] *Id*. at 12-15.
[53] *Id*. at 15-22.
[54] *Id*. at 21.
[55] *Id*. at 22.
[56] *Id*. at 21.

honestly carry out the duties of drivers for taxi carriers. As in *Ficarra*, therefore, the promulgation of § 40-10.1-110(3)(b), C.R.S. was a reasonable exercise of the General Assembly's authority and the ALJ concludes that the application of § 40-10.1-110(3)(b), C.R.S. to Mr. Gonzales does not violate Article II, Section II of the Colorado Constitution.

C. §§ 40-10.1-110(4), 24-5-101(2), & 12-20-206(2), C.R.S.

46. As noted above, it could be argued that §§ 40-10.1-110(4), 24-5-101(2), & 12-20-206(2), C.R.S. prohibit the Commission from considering Mr. Gonzales' convictions because more than three years have expired since those convictions and Mr. Gonzales' release from prison. Specifically, Section 40-10.1-110(4), C.R.S. states that "[t]he commission shall consider the information resulting from the record check in its determination as to whether the individual has met the standards set forth in section 24-5-101 (2)." Section 24-5-101(2)(a)(II), in turn, states that "[a] state agency making a finding pursuant to subsection (2)(a)(I) of this section may only consider convictions pursuant to section 12-20-206." Section 24-5-101(2)(a)(I), C.R.S. applies "[w]hen a state or local agency is required to make a finding regarding an applicant for a license, certification, permit, or registration as a condition of issuing the license, certification, permit, or registration, or is required to evaluate the impact of an applicant's criminal record." Finally, § 12-20-206, C.R.S. states that "a regulator" may not consider a conviction if three years have expired since the conviction or the applicant's end of incarceration," "except that the regulator may consider a conviction for a crime that is directly related to the profession or occupation for which the individual has applied for registration, certification, or licensure." "Directly related" means that the conviction "would create an unreasonable risk to public safety

because the offense directly relates to the duties and responsibilities of the profession or occupation in which the individual has applied or petitioned for determination of qualification."[57]

47. Here, the Commission applied § 40-10.1-110 in its decision to disqualify Mr. Gonzales based on the results of his fingerprint-based records check. In addition, the Commission arguably is a "state agency" under § 24-5-101(2)(a) and is a "regulator" under § 12-20-206, C.R.S.[58] On the surface, therefore, §§ 40-10.1-110(4), 24-5-101(2), & 12-20-206(2), C.R.S. appear to prohibit the Commission from considering Mr. Gonzales' convictions because more than three years have expired since those convictions and Mr. Gonzales' release from prison. As explained below, however, the ALJ concludes otherwise.

48. The goal of statutory interpretation is to give effect to the intent of the General Assembly. The language of the statute must be read and considered as a whole, and it should be construed to give consistent, harmonious, and sensible effect to all its parts.[59] Words and phrases must be given their plain and ordinary meaning.[60] Where statutory language is unambiguous, resort to other rules of statutory interpretation is unnecessary and the language is applied as written.[61]

[57] § 12-20-206(1), C.R.S.

[58] *See* § 12-20-102(14) ("'Regulator' means, within a particular part or article of this title 12, the director or a board or commission, as appropriate, that has regulatory authority concerning the practice of a profession or occupation regulated by that part or article."). *Cf.* § 24-31-111(6)(b) ("As used in this section: . . . 'State agency' means any department, division, section, unit, office, officer, commission, board, institution, institution of higher education, or other agency of the executive department and judicial department of state government. 'State agency' does not mean the legislative department except for the state auditor in accordance with section 2-3-104.5.").

[59] *Safehouse Prog. Alliance for Nonviolence, Inc. v. Qwest Corp.*, 174 P.3d 821, 826 (Colo. App. 2007).

[60] *In re Miranda*, 289 P.3d 957, 960 (Colo. 2012).

[61] *Foiles v. Whittman*, 233 P.3d 697, 699 (Colo. 2010).

49. If statutory language is ambiguous, however, additional tools of statutory construction are employed.[62] One such tool directs that:

> [i]f a general provision conflicts with a special or local provision, it shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.[63]

As the Colorado Supreme Court has stated:

> The reasoning behind this principle of statutory construction is a simple matter of logic. A general provision, by definition, covers a larger area of the law. A specific provision, on the other hand, acts as an exception to that general provision, carving out a special niche from the general rules to accommodate a specific circumstance.[64]

This principle of statutory construction is also based on the required presumption that the General Assembly intended both statutory provisions to be effective.[65]

50. The ALJ concludes that § 12-20-206(2), C.R.S. does not prohibit consideration of Mr. Gonzales' convictions for crimes constituting moral turpitude as a basis for disqualifying him. The directive in § 24-5-101(2)(a)(II), C.R.S. to "only consider convictions pursuant to section 12-20-206" applies "[w]hen a state or local agency ***is required to make a finding regarding an applicant*** for a license, certification, permit, or registration as a condition of issuing the license, certification, permit, or registration, ***or is required to evaluate the impact of an applicant's criminal record***."[66] Under § 40-10.1-110(3), C.R.S., an applicant is disqualified if the applicant: (a) has been convicted of a felony or misdemeanor involving moral turpitude,

[62] *Larrieu v. Best Buy Stores, L.P.*, 303 P.3d 558, 561 (Colo. 2013).
[63] § 2-4-205, C.R.S.
[64] *Martin v. People*, 27 P.3d 846, 852 (Colo. 2001).
[65] *Id*. at 851.
[66] § 24-5-101(2)(a)(II), C.R.S. (emphases added).

which is expressly defined as including an unlawful sexual offense against a child, as defined in § 18-3-411, C.R.S.; (b) has been convicted within the preceding two years of driving under the influence, driving with excessive alcoholic content, or driving with ability impaired; and (3) "is not of good moral character as determined by the commission based on the results of the check." Of these three bases for disqualification, only the third requires the Commission to "make a finding regarding an applicant" or "evaluate the impact of the applicant's criminal record." An applicant who has been convicted at any time of an unlawful sexual offense against a child, or who has been convicted within the preceding two years of driving under the influence, driving with excessive alcoholic content, or driving with ability impaired, is disqualified from driving for a limited passenger or taxi carrier ***as a matter of law***. No "finding regarding the applicant" or "evaluation of the impact of the applicant's criminal record" on his/her ability to perform the responsibilities of a driver for a motor carrier without endangering the public is required or, in fact, permitted.

51. In contrast, disqualification based on an applicant not being "of good moral character" requires the Commission to "make a finding regarding an applicant" or "evaluate the impact of the applicant's criminal record." Section 40-10.1-110(3), C.R.S. does not provide a definition of "good moral character" or identify any convictions that render an applicant "not of good moral character." Instead, the Commission must make one or more findings regarding an applicant's moral character based on an evaluation of the applicant's criminal record in determining whether the applicant is disqualified from driving motor vehicles for motor carriers. As a result, to the extent that the prohibition against basing disqualification determinations on convictions older than two years in §§ 24-5-101(2)(a)(II), 12-20-206, C.R.S. applies to the Commission's driver disqualification determinations, it applies to the Commission's "moral

character" determinations made under § 40-10.1-110(3)(a), C.R.S., not to the "moral turpitude" disqualification under § 40-10.1-110(3)(b), C.R.S.

52. The ALJ's conclusion is reinforced by Rule 6114(k)(II)(D), which states that "[t]he Commission will consider [a] petition [for qualification] using the standards set forth in § 24-5-101(2), C.R.S. for disqualifications based on a determination of moral character."[67] Rule 6114(k)(II)(D) limits the application of § 24-5-101(2), C.R.S. to the Commission's determinations of moral character pursuant to § 40-10.1-110(3)(a), C.R.S., and thereby excludes disqualifications based on convictions involving moral turpitude under § 40-10.1-110(3)(b), C.R.S. While Rule 6114(k)(II)(D) was promulgated in 2014, it continues to accurately reflect the law after the 2024 amendments to §§ 24-5-101(2), 12-20-206(2), C.R.S.[68] Based on the foregoing, the ALJ concludes that the directive in § 24-5-101(2)(a)(II) to "only consider convictions pursuant to section 12-20-206" does not apply to Commission decisions to disqualify applicants based on convictions involving moral turpitude under § 40-10.1-110(3)(b), C.R.S.

53. Even if § 24-5-101(2)(a)(II), C.R.S. does apply to the analysis conducted pursuant to § 40-10.1-110(3)(b), C.R.S., the ALJ concludes that Mr. Gonzales' 2002 criminal convictions are directly related to the duties and responsibilities of the profession or occupation of driving a taxi.[69] As discussed above, two of the primary duties and responsibilities of the profession or occupation of driving for a limited passenger or taxi carrier are trustworthiness and a commitment not to take advantage of the vulnerability of passengers. This is the precise reason why § 40-10.1-110(3)(b), C.R.S. disqualifies and prohibits every person who has been convicted

[67] 4 CCR 723-6.
[68] *See* Decision NO. C13-1480 issued in Proceeding No. 13R-0009TR on November 29, 2013.
[69] § 12-20-206, C.R.S. ("a regulator" may not consider a conviction if three years have expired since the conviction or the applicant's end of incarceration, "except that the regulator may consider a conviction for a crime that is directly related to the profession or occupation for which the individual has applied for registration, certification, or licensure.").

of a felony or misdemeanor involving moral turpitude, including any unlawful sexual offense against a child, from driving for a motor carrier.[70] Section 40-10.1-110(3)(b), C.R.S. thus identifies one class of convictions that are "directly related" to the "duties and responsibilities of the profession or occupation of" driving for a motor carrier because allowing a person who has been convicted of such crimes to drive for a motor carrier "would create an unreasonable risk to public safety."[71] For this additional reason, the ALJ concludes that § 12-20-206(2), C.R.S. does not prohibit the Commission from basing its decision to disqualify Mr. Gonzales from driving for a taxi carrier on his 2003 convictions.

54. Finally, to the extent there is an irreconcilable conflict between § 12-20-206(2) and § 40-10.1-110(3)(b), C.R.S., the latter statute prevails in this proceeding. Section 12-20-206(2), C.R.S. applies to all "regulator[s]" within Colorado's government.[72] Section 40-10.1-110(3) & (4), in contrast, apply solely to the Commission.[73] As a result, § 12-20-206(2), C.R.S. is the general provision because it "covers a larger area of the law," and § 40-10.1-110(3), C.R.S. is the specific provision that "acts as an exception to that general provision, carving out a special niche from the general rules to accommodate a specific circumstance," unless there is "manifest intent" to the contrary.[74]

[70] § 40-10.1-110(3)(b)(I), C.R.S.

[71] § 12-20-206(1), C.R.S.

[72] *See also* § 12-20-102(14) ("'Regulator' means, within a particular part or article of this title 12, the director or a board or commission, as appropriate, that has regulatory authority concerning the practice of a profession or occupation regulated by that part or article.").

[73] §§ 40-10.1-110(2) ("Upon the ***commission's*** receipt of the results, the individual may resume driving motor vehicles for the motor carrier described in subsection (1) of this section, so long as the driving does not violate applicable law and does not occur while the individual has a criminal conviction that disqualifies the individual from driving a motor vehicle in accordance with subsection (3) of this section."); 40-10.1-110(4) ("The ***commission*** shall consider the information resulting from the record check in its determination as to whether the individual has met the standards set forth in section 24-5-101 (2)."); 40-10.1-101(4) ("'***Commission***' means the public utilities commission of the state of Colorado.") (emphases added).

[74] *Martin*, 27 P.3d at 852.

55. The ALJ concludes that there is no such "manifest intent." The General Assembly added § 40-10.1-110(3) & (4), C.R.S. (then § 40-10-105.5(4) & (4.5), C.R.S.) in 2008 and it has remained substantively unchanged since then.[75] At that time, § 24-5-101(2), C.R.S. stated:

> Whenever any state or local agency is required to make a finding that an applicant for a license, certification, permit, or registration is a person of good moral character as a condition to the issuance thereof, the fact that such applicant has, at some time prior thereto, been convicted of a felony or other offense involving moral turpitude, and pertinent circumstances connected with such conviction, shall be given consideration in determining whether, in fact, the applicant is a person of good moral character at the time of the application. The intent of this section is to expand employment opportunities for persons who, notwithstanding that fact of conviction of an offense, have been rehabilitated and are ready to accept the responsibilities of a law-abiding and productive member of society.

This was the entirety of § 24-5-101(2) from 2008 to 2024; there were no subparts.

56. In 2024, however, the General Assembly modified § 24-5-101(2), C.R.S., by, among other things, removing the references to "good moral character" and "moral turpitude," as shown below (with strikeout showing deletions and underlining showing additions):

> ~~Whenever any~~ When a state or local agency is required to make a finding ~~that~~ regarding an applicant for a license, certification, permit, or registration ~~is a person of good moral character~~ as a condition ~~to the issuance thereof~~ of issuing the license, certification, permit, or registration, or is required to evaluate the impact of an applicant's criminal record, and ~~the fact that such~~ applicant has, at some time, ~~prior thereto,~~ been convicted of a felony or other offense, ~~involving moral turpitude, and~~ the state or local agency shall give consideration to pertinent circumstances connected with ~~such~~ the conviction ~~shall be given consideration~~ in determining whether ~~in fact,~~ the applicant is qualified. The intent of this section is to expand employment opportunities for persons who, notwithstanding that fact of conviction of an offense, have been rehabilitated and are ready to accept the responsibilities of a law-abiding and productive member of society.[76]

[75] House Bill ("HB") 11-1198 (effective Aug. 10, 2011).
[76] HB 24-1004 (effective Aug. 7, 2024).

The General Assembly also moved this modified language to § 24-5-101(2)(a)(I) and added the following as new § 24-5-101(2)(a)(II):

> A state agency making a finding pursuant to subsection (2)(a)(I) of this section may only consider convictions pursuant to section 12–20–206.[77]

In the same legislation, the General Assembly added § 12-20-206, C.R.S. prohibiting consideration by "a regulator" of convictions for "a three-year period beginning on the date of conviction or the end of incarceration" unless the crime "is directly related to the profession or occupation for which the individual has applied for registration, certification, or licensure."[78]

57. The General Assembly did not, however, amend § 40-10.1-110, C.R.S. at the same time in 2024 that it amended § 24-5-101(2) and added § 12-20-206(2), C.R.S. The General Assembly also did not make any statement in HB-2004 about the impact of the changes contained therein, if any, on § 40-10.1-110, C.R.S. and the ALJ is not aware of any legislative history containing any such statement. As a result, the ALJ concludes that there is no "manifest intent" that the legislative changes to §§ 24-5-101(2), 12-20-206(2), C.R.S. effectively amended § 40-10.1-110(3), C.R.S. by adding a three-year limit on the disqualification of an applicant from driving for a motor carrier based on a conviction involving "moral turpitude."[79] The ALJ thus concludes that § 40-10.1-110(3), C.R.S. is a "specific or local provision [that] prevails as an exception to the general provision," § 12-20-206(2), C.R.S.

58. Accordingly, based on the foregoing, the ALJ concludes that there is no genuine issue of material fact concerning whether Mr. Gonzales' convictions for sodomy of a child who

[77] *Id*.
[78] *Id*.
[79] *F.D.I.C. v. United Pac. Ins. Co.*, 20 F.3d 1070, 1078 (10th Cir. 1994) ("In *First Federal Sav. & Loan v. Transamerica Ins.*, 935 F.2d 1164, 1166 n. 3 (10th Cir. 1991), we determined that manifest intent means intent that is 'apparent or obvious.'").

had attained the age of 12 but was under the age of 16 in violation of Article 125 of the UCMJ and indecent acts with a child in violation of Article 134 of the UCMJ disqualify him from driving for a limited passenger and taxi carrier pursuant to § 40-10.1-110(3)(a), C.R.S. and Rule 6114(f)(II)(A).[80]

VI. MR. GONZALES' REMAINING ARGUMENTS

59. In his Petition, Mr. Gonzales asserted that the background check result is "not correct," stating: "All the information required to show that the highlighted charge was incorrect can be found within the rap sheet."[81] Mr. Gonzales further alleged that the Army "voided the court martial" and granted his request to upgrade his discharge to an honorable discharge.[82] In his Response, Mr. Gonzales modified the second argument, now contending that the Army is ***considering*** his request to upgrade his discharge from dishonorable to honorable discharge. However, in his Response, Mr. Gonzales did not present evidence supporting these arguments. As a result, there is no ***genuine*** issue of material fact concerning these allegations that requires denial of the Motion.

60. In his Response, Mr. Gonzales also argued that: (a) consumer reports for Uber and Lyft have cleared him to drive; (b) he "passed the background checks for all federal districts, Kentucky and Colorado;" and (c) he is "not on any states' sex offender registry, not any terrorist watch list."[83] None of these arguments, or the documents submitted with the Response, create a genuine issue of material fact that calls into question Commission Staff's decision that § 40-10.1-110, C.R.S. and Commission Rule 6114 require the disqualification of Mr. Gonzales from driving for a taxi carrier based on his 2003 convictions.

[80] 4 CCR 723-6.
[81] Petition at p. 1.
[82] *Id*. at p. 2.
[83] Response at p. 1.

VII. ORDER

A. The Commission Orders That:

1. The Motion for Summary Judgment filed by Trial Staff of the Commission on November 20, 2024 is granted.

2. The Petition to Reverse an Initial Driver Disqualification Determination Pursuant to Rule 1007(A) and Rule 1401 filed by Ricardo Gonzales on September 20, 2024 is dismissed with prejudice.

3. This Decision is effective immediately.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director