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Civil Actions

Adverse possession. House Bill 08-1148 allows an individual to acquire title to real property by adverse possession only if:

- the individual presents evidence to satisfy all elements of a claim for adverse possession under Colorado law; and
- the individual claiming adverse possession or a predecessor in interest had a good faith belief that he or she was the actual owner of the property and that belief was reasonable under the circumstances.

The individual asserting a claim of title to real property by adverse possession must prove both of the preceding elements by clear and convincing evidence.

In a situation where a claim of title to real property by adverse possession prevails, the bill authorizes the court to determine whether to award the nonprevailing party an amount equal to the actual value of the property, as well as any property taxes or other assessments levied on the property that the nonprevailing party has paid for the 18 years prior to the commencement of the adverse possession action.

If an individual claims adverse possession over a property as a defense to a claim of trespass, forcible entry, forcible detainer, or a similar claim against the adverse possessor, but not in order to gain title over the real property, the burden of proof for the defendant claiming adverse possession is by a preponderance of the evidence.

Costs in civil actions. **House Bill 08-1020** clarifies that, if a plaintiff rejects a defendant's settlement offer and subsequently recovers a final judgement that is less than the settlement offer, the plaintiff is entitled to recover actual costs that accrued prior to the time the defendant made the settlement offer.

Three other bills addressed the filing of civil actions, but were postponed indefinitely.

Statute of limitations for child sexual abuse. **House Bill 08-1011** would have removed the statute of limitations for victims of sexual assault on a child to file civil actions against either the perpetrator of the sexual assault or a third party. The bill specifically allowed victims to:

- file a civil action against an individual who is deceased or incapacitated;
- recover damages other than those for medical treatment and counseling when filing a civil action more than 15 years after turning 18 years old; and
- file a civil claim by July 1, 2010 (a two-year window from the effective date of the bill), even if they were originally barred from filing such an action by the applicable statute of limitations.

Spousal privilege in civil actions. Current law, commonly known as "spousal privilege," states that an individual may not testify for or against his or her past or present spouse regarding communication that occurred during the marriage without the consent of the past or present spouse. **House Bill 08-1211** would have amended the spousal privilege statute to prevent spouses from invoking the privilege during the course of a civil action regarding an act by one or both of the spouses that occurred prior to the marriage.

Civil action gun-free zone. **Senate Bill 08-115** attempted to waive sovereign immunity and create, for an individual who suffered an injury resulting from a criminal act perpetrated in a "gun-free zone," a new civil cause of action against a governmental entity that created the gun-free zone, by order, rule, or procedure. The plaintiff in such a civil action would have had the burden of proving that possession of a firearm would have prevented the plaintiff from sustaining an injury as a result of the criminal act.

Damages

The General Assembly considered two bills that addressed the issue of damages in civil actions, but both were postponed indefinitely.

Negligence in motor carrier agreements. **Senate Bill 08-019** stated that a provision in a motor carrier transportation agreement holding a person or the person's surety or insurer responsible for the negligence of another party was void as against public policy and unenforceable. Further, the bill would have permitted a motor carrier transportation agreement to hold a negligent party responsible for indemnifying other parties but only to the extent of the indemnifying party's

negligence. The bill would have prevented a party to a motor carrier transportation agreement from transferring financial responsibility for its own negligence to another party.

Limitation of liability in medical malpractice cases. **Senate Bill 08-164** would have changed the definition of non-economic damages with regard to medical malpractice actions to exclude physical impairment or disfigurement. The bill aligned the cap for non-economic damages in medical malpractice actions, occurring on or after February 1, 2009, with those of all other civil actions. The limit for non-economic damage awards was adjusted for inflation as of January 1, 2008, and set at \$468,010. The bill would have prohibited the court from exceeding the non-economic damages cap in medical malpractice cases. The bill specified that the limitations on damages for actions against public employees or entities would not change. The bill provided that medical malpractice insurance rates could not be held inadequate as a result of the passage of this bill unless an insurer could show just cause for doing so.

Uniform Laws

A number of bills were considered by the General Assembly that enacted uniform laws recommended by the National Conference of Commissioners on Uniform State Laws and the Colorado Commission on Uniform State Laws.

Uniform Adult Guardianship Protection Act. **Senate Bill 08-100** enacts the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. Specifically, the bill addresses the cooperation and communication between courts in Colorado and courts in other states concerning guardianship and protective proceedings. In addition, the bill specifies when courts in Colorado and courts of other states have jurisdiction in proceedings regarding guardianship and protective orders.

Uniform Athlete Agents Act. **House Bill 08-1058** specifies the general requirements of the profession and the registration process for athlete agents. It requires agents to register with the Division of Registration in the Department of Regulatory Agencies if they intend to represent a college athlete in the pursuit of commercial or professional interests. Registration must occur prior to contact with a student athlete or within seven days of such contact. Further, the act identifies the responsibilities and requirements of both the division and athlete agents.

The act contains specific requirements for contracts between agents and student athletes. An agent who violates certain requirements is guilty of a class 1 misdemeanor for a first offense and a class 6 felony for second and subsequent offenses. District attorneys or the Colorado Attorney General may assess a civil penalty against an athlete in an amount not to exceed \$25,000 for violations of the Uniform Athlete Agents Act.

Prudent management of institutional funds. **House Bill 08-1173** repeals and reenacts current statute governing the management and investment of institutional funds, setting new uniform standards for trusts. It also imposes additional responsibilities on individuals who manage and invest charitable funds and establishes stricter guidelines on spending from endowment funds. The bill amends the process for modification of restrictions on institutional funds.

Uniform interstate depositions and discovery. **House Bill 08-1174** repeals current law concerning interstate depositions. The uniform act enacted in its place sets standards for a party in one state to subpoena witnesses, discover documents, and inspect premises in another state.

Uniform money judgments recognition. **House Bill 08-1202** repeals and reenacts current law concerning the recognition by Colorado courts of judgments from other countries granting or denying the recovery of damages. Specifically, the bill:

- sets forth procedures for seeking recognition under the act and places on the party seeking recognition the burden of proof for determining whether the act applies;
- clarifies and expands the grounds for not recognizing a foreign-country money judgment and places on the party resisting recognition the burden of proof for denying recognition; and
- establishes a 15-year statute of limitations for recognition of foreign-country money judgments.

Status of members of the Colorado Commission on Uniform State Laws. **House Bill 08-1052** grants non-appointed members of the commission the same rights as appointed members to participate in the National Conference of Commissioners on Uniform State Laws. Specifically, it allows the Colorado life members of the national conference and the director of the Office of Legislative Legal Services, who is ex officio the secretary of the commission, to vote at meetings of the national conference and to hold office of the national conference.

Probate

Probate code fiduciary oversight. **House Bill 08-1153** amends the Colorado Probate Code to clarify the authority of the courts in managing individuals assigned fiduciary responsibility in the estate, guardianship, conservatorship, or trust of a decedent.

Spam Reduction

Spam Reduction Act of 2008. **House Bill 08-1178** replaces the existing Colorado junk e-mail law with provisions that are intended to be consistent with the federal Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act of 2003.

A violation of the CAN-SPAM Act would be a deceptive trade practice, and invokes the Attorney General's enforcement authority and other available remedies under the Colorado Consumer Protection Act. The bill creates a new misdemeanor criminal offense, e-mail fraud, punishing an initial violation as a class 2 misdemeanor and a second or subsequent violation as a class 1 misdemeanor.