

# CIVIL LAW

<b>Civil Actions</b>		
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<b>SB 10-147</b> ( <i>Enacted</i> ) <i>Exempt Life Insurance Annuity Execution</i>	<b>SB 10-199</b> ( <i>Enacted</i> ) <i>Probate Code Revisions</i>	<b>HB 10-1105</b> ( <i>Postponed Indefinitely</i> ) <i>Probate Code Compensation and Costs</i>
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<b>HB 10-1084</b> ( <i>Postponed Indefinitely</i> ) <i>Foreclosed Property Voluntary Cleanup Liability</i>	<b>HB 10-1133</b> ( <i>Enacted</i> ) <i>Amendments to the Colorado Foreclosure Protection Act</i>	<b>HB 10-1288</b> ( <i>Enacted</i> ) <i>Create Commercial Real Estate Brokers' Lien</i>

The General Assembly considered a number of bills during the 2010 legislative session related to civil law that addressed specific topics such as civil actions, employment law, insurance benefits, probate law, and real estate law.

## Civil Actions

**House Bill 10-1395** requires the Colorado Court of Appeals to assume jurisdiction (under rules promulgated by the Colorado Supreme Court) over interlocutory appeals of certified questions of law in civil cases. An interlocutory appeal is an appeal of a ruling by a trial court that is made before the trial itself has concluded. The appellate court may permit an interlocutory appeal from a district or probate court if:

- the trial court certifies that immediate review may promote a more orderly disposition or establish a final disposition of the litigation; and
- the order involves a controlling and unresolved question of law.

A majority of the judges on the Colorado Court of Appeals may order that an interlocutory appeal be heard or reheard by the Court of Appeals *en banc*, but only if such a procedure is approved by the rules promulgated by the Colorado Supreme Court. An issue is heard *en banc* when all of the judges assigned to a court, rather than just a panel, consider it.

Three other bills were considered concerning civil actions, but were postponed indefinitely. **House Bill 10-1086** would have changed the definition of an “attractive nuisance” to exclude facilities for the diversion, storage, conveyance, or use of water. The definition of “recreational purpose” would have been expanded to include certain water sports, exercising, nature study, and viewing or visiting historical, archaeological, scenic, or scientific sites. By changing these two definitions, a landowner would not have been civilly liable for injuries or damages that occurred on his or her property during recreational use unless the landowner willfully or deliberately caused the injury or damage.

**House Bill 10-1357**, which was lost in the Senate, would have created the Colorado False Claims Act. Any individual who submitted a false claim with the intention of defrauding the state or any political subdivision would have been liable for up to three times the amount of damage, the costs of the civil action, and a civil penalty of between \$5,000 and \$10,000. The bill specified certain investigative, notification, and court procedures, including allowing a private citizen to bring a civil action on behalf of the state and to share in the proceeds from the action or settlement of a false claim.

Finally, **House Bill 10-1152** would have made a number of changes in the area of civil rights law and discrimination against persons with disabilities. The bill allowed the Colorado Civil Rights Commission and Colorado courts to impose fines on persons and organizations found guilty of violating the civil rights of persons with disabilities. It would have prohibited state agencies and public entities from discriminating against persons with disabilities who are eligible to receive public benefits. The bill also created new misdemeanor offenses for violating specific rights of persons with disabilities. It would have allowed courts to award attorney fees to the prevailing party in applicable civil rights cases and allowed a person against whom retaliatory action was taken as a result of filing a state Medicaid complaint to receive damages. Finally, the bill clarified civil rights related to assistance animals.

## **Employment Law**

**House Bill 10-1023** was recommended by the Economic Opportunity Poverty Reduction Task Force. It prohibits information concerning an employee's criminal history from being introduced as evidence in a civil action against an employer in the following circumstances:

- the criminal history is not related to the facts of the case;
- the employee's record is sealed;
- the employee received a pardon;
- the employee's record is from an arrest or charge that did not result in a criminal conviction; or
- the employee received a deferred judgment that was not revoked.

It does not eliminate any statutory requirement for criminal history background checks in hiring for certain positions.

**House Bill 10-1269**, which was lost in the House, would have established the Workplace Fairness and Civil Rights and Remedies Act of 2010. The act would have allowed a capped amount of compensatory and punitive damages in employment discrimination cases brought under state law. It also would have allowed the court to award reasonable attorney fees and costs to the prevailing party.

## **Insurance Benefits**

Under current law, an insurer that pays benefits to an injured person may obtain repayment of those benefits out of the settlement money paid to the injured party, regardless of whether the injured party has been fully compensated. **House Bill 10-1168** bill limits the ability of a benefits insurer to obtain repayment of benefits in circumstances where the injured party would not be fully compensated.

In the event that an injured party is fully compensated, the bill limits the repayment amount to the amount that was actually paid by the insurer. The insurer is required to pay a proportionate share of any attorney fees and costs that are incurred by the injured party in obtaining the recovery. Any dispute that occurs about an insurer's right to reimbursement is to be settled through arbitration.

**Senate Bill 10-076** adds unfair compensation practices to the definition of unfair methods of competition and unfair or deceptive acts or practices in the business of insurance in Colorado. For the purposes of the bill, unfair compensation practices include basing the compensation of claims employees (including performance bonuses or incentives) on any of the following:

- the number of policies cancelled;
- the number of times coverage is denied;
- the use of a quota limiting the number of claims; or
- the use of a quota or cap limiting the amount of claims payments without consideration of the merits of the claim.

Under current law, a first-party claimant whose claims for benefits under an insurance policy have been delayed or denied without a reasonable basis can be awarded attorney fees, court costs, and double benefits. **House Bill 10-1234**, which was lost in the House, would have extended these remedies to third-party claimants whose claims for medical benefits, or requests for authorization for medical services against an insured under a liability policy, are denied or delayed unreasonably.

For first- and third-party claims, unreasonableness would have been presumed when an insurer denied or delayed the payment of a claim based on a decision made by a person not licensed in good standing in Colorado or in active clinical practice in the same specialty as the claim or requested medical service.

## **Probate**

Current law caps the value of a life insurance policy that is exempt from seizure by creditors at \$50,000. **Senate Bill 10-147** increases the cap to \$100,000.

**Senate Bill 10-199** makes several modifications to the Colorado Probate Code. Specifically, the bill:

- requires that cost-of-living adjustments of certain dollar amounts be rounded to one-thousand-dollar increments, rather than one-hundred-dollar increments;
- defines the word "will" to exclude designated beneficiary agreements, but clarifies the rights of a designated beneficiary to receive all or part of an intestate estate;
- clarifies that a child, who is in the process of being adopted by a second adult in a second-parent adoption when the second adult dies, shall be treated as adopted by the second adult (for the purposes of inheritance) if the child's natural or first adoptive parent survives the second adult by 120 hours;
- reduces the evidence required to overcome a presumption that a deceased spouse has a parent-child relationship with a child born using assisted reproduction technologies;
- revises the scope of the rules of construction applicable to wills and other governing instruments to specify that new class gift rules apply only to documents executed or re-published on or after the effective date of the applicable statute;
- requires that official comments to the code be published in the statute;
- removes statutory language awarding a part or all of an intestate estate to a designated beneficiary who was designated by the decedent to be his or her designated beneficiary for purposes of intestate succession;
- removes statutory language awarding a share of an intestate estate for a decedent's stepchildren when there are no blood relatives of the decedent available to receive an intestate share; and
- amends the effective date-applicability clause of House Bill 09-1287, enacted in 2009.

**House Bill 10-1105**, which was postponed indefinitely, would have created a new part of the Colorado Probate Code concerning compensation and cost recovery. It would have made fiduciaries, lawyers, and third parties eligible for reasonable costs and compensation for work performed on behalf of an estate.

## **Real Estate Law**

**House Bill 10-1133** amends the Colorado Foreclosure Act to:

- make changes to the definitions of "equity purchaser," "home owner," "foreclosure consultant," and "residence in foreclosure";
- add a new definition of "short sale" or "short sale transaction";
- change the requirements for the format of written contracts and notices;
- change the requirements about language in contracts, rental agreements, leases, options, notices, conveyances, liens, encumbrances, consents, or other documents signed by home owners; and
- add requirements about a short sale in which an equity purchaser intends to sell a residence in foreclosure to a subsequent purchaser.

**House Bill 10-1288** establishes the Commercial Real Estate Brokers Commission Security Act. The act permits real estate brokers who provide tenants for commercial property to secure payment of debts through the creation of a lien on the commercial property. Liens are permitted if the broker has a listing agreement or written compensation agreement in place with the owner and the broker has exhausted all available means to enforce collection.

Brokers are required to first seek mediation of the dispute, give notice of intent to file a lien, give notice when a lien is filed, and commence any lawsuit within six months if a debt is not paid. If a commercial property has existing liens, such encumbrances have priority over a real estate broker's lien.

Under current law, if an individual enters the abandoned or unoccupied property of another without permission for the purpose of cleaning up trash or weeds or watering the lawn, the first individual may be considered a trespasser. However, if the individual is injured while trespassing, he or she may have a claim against the landowner for negligence. **House Bill 10-1084**, which was postponed indefinitely, would have clarified that an individual cleaning or watering abandoned or unoccupied property was doing so with the implied permission of the landowner. The bill also would have amended civil and criminal trespass laws to exempt individuals engaging in such activity as long as no actual damage was done to the property.

## **Miscellaneous**

Current law allows the Executive Director of the Colorado Department of Revenue to impose a civil penalty on any entity from which unstamped packages of cigarettes have been confiscated. An unstamped package of cigarettes is one without a stamp or imprint showing that proper taxes have been paid on the cigarettes. **House Bill 10-1058** allows the imposition of a civil penalty for the purchase or possession of unstamped cigarettes, regardless of whether the cigarettes have been confiscated. The penalty does not apply to cigarettes that are in the possession of or in transit to a licensed wholesaler in the original unopened shipping package or to cigarettes purchased from a United States military exchange or commissary.

Under current law, medical doctors may create professional service corporations which permit them to practice medicine through a corporate entity. Only licensed doctors may be shareholders in the corporation. **House Bill 10-1244** allows the heir of a deceased shareholder to inherit shares regardless of whether the heir is licensed to practice medicine. The bill allows the heir to become a shareholder for up to two years, however the heir may not vote on any matter affecting the corporation.