

CIVIL LAW

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During the 2011 legislative session, the General Assembly considered a number of bills related to civil law. These bills covered issues including consumer protection, employment law, liens, and the probate code.

Civil Actions

Debt. The General Assembly considered two bills concerning civil penalties related to debt. **House Bill 11-1206** amends the "Uniform Debt-Management Services Act" to conform to debt relief service rules promulgated by the Federal Trade Commission. The bill gives the Attorney General additional administrative and legal remedies to seek a civil penalty of up to \$10,000 per violation of the Uniform Debt-Management Services Act in district court. **Senate Bill 11-249**, which was postponed indefinitely, would have clarified that the six-year statute of limitations for liquidated or determinable damages applies to all actions in which the debt claimed is for services rendered, goods sold and delivered, and other accounting debts.

Elected officials and ballot initiatives. The legislature passed one bill creating new regulations and penalties for proponents of ballot initiatives, and postponed indefinitely two bills that would have created civil penalties for certain uses of an elected official's likeness. **House Bill 11-1072** specifies the duties and responsibilities of the designated representatives of the proponents of an initiative petition, including the reports that the representatives are required to file with the Secretary of State. Under the bill, a registered voter may file a complaint alleging violations of these reporting requirements, and may commence a civil action to recover costs and attorney fees from representatives who are found to have intentionally violated the reporting requirements.

The General Assembly postponed indefinitely two bills, **Senate Bill 11-059** and **House Bill 11-1065**, which would have prohibited the use of state money to pay for public communications in which certain elected officials appear. Both bills would have applied to the following elected officials: Governor, Lieutenant Governor, Secretary of State, State Treasurer, Attorney General, and members of the General Assembly. Senate Bill 11-059 also would have applied to members of the State Board of Education and members of the Board of Regents of the University of Colorado.

Limitations on liability. Two bills that would have limited liability in specific types of civil actions were postponed indefinitely. **Senate Bill 11-036** would have limited civil actions brought by riders against mountain bicycling area operators, mountain bicycling instructors, bicycle providers, and mountain bicycling event organizers. In cases where an injured party suffered a food-borne illness, **House Bill 11-1190** would have exempted from a product liability action any food retailers who were not manufacturers of food, but who were deemed manufacturers in instances where jurisdiction over the food manufacturer could not be obtained. The exemption in the bill would not have applied if a food retailer introduced the illness-causing contaminant into the food, if the food retailer had knowledge at the time of sale that the food contained an illness-causing containment, or if the product had been subject to a recall.

Remedies. The General Assembly postponed indefinitely two bills that would have adjusted the remedies available in certain civil cases. **Senate Bill 11-107** would have created an exception to the limits on noneconomic damages recoverable in a civil action concerning damages resulting from alcohol- or drug-related driving incidents. **House Bill 11-1106** would have clarified a "contract exception" that would have permitted Colorado courts to apply the collateral source rule in limited

circumstances. In personal injury cases where a plaintiff claims an amount in damages for medical treatment, compensatory damage awards would have been limited under the bill to the amount actually paid or owing to medical or health service providers and a reasonable amount for future health care services and treatment.

Consumer Protection

The General Assembly considered three bills addressing consumer protection; ultimately, one bill passed, one bill was postponed indefinitely, and one bill was deemed lost. **House Bill 11-1221** adds legal remedies to the consumer credit laws that are enforced by the Attorney General as the administrator of the Uniform Consumer Credit Code. Current law permits the administrator to bring a civil action and to seek appropriate relief, but does not authorize a specific civil penalty. Under House Bill 11-1221, the administrator may now assess a civil penalty of up to \$1,000 for each violation of the Refund Anticipation Loans Act, the Colorado Rental Purchase Act, or the Uniform Consumer Credit Code. The bill also allows for civil penalties of up to \$1,500 for violations of the Colorado Fair Debt Collection Practices Act or the Colorado Credit Services Organization Act.

Case law interpreting the Colorado Consumer Protection Act has resulted in a requirement that plaintiffs establish that a defendant's challenged practice caused a significant public impact. **Senate Bill 11-068**, which was postponed indefinitely, defined the elements of a private cause of action brought under the Colorado Consumer Protection Act and would have omitted the significant public impact requirement. **Senate Bill 11-271**, which was deemed lost, would have made it a deceptive trade practice to solicit retail orders for florist services without disclosing relevant information such as the amount of any fee or surcharge added by the person soliciting the order and the true name, physical address, and local telephone number of the florist who would fill the order.

Employment Law

Discrimination. The General Assembly considered but ultimately postponed indefinitely **Senate Bill 11-072**, which would have established the Job Protection and Civil Rights Enforcement Act of 2011. Due to the discrepancies between federal and state employment discrimination laws, Colorado employees who work for employers with fewer than 15 employees or who claim employment discrimination on the basis of sexual orientation are not entitled to compensatory or punitive damages or attorney fees or costs. Under Senate Bill 11-072, beginning with causes of action accruing on or after January 1, 2014, the Civil Rights Commission or a court would have been permitted to award a prevailing plaintiff compensatory and punitive damages and attorney fees for employment discrimination cases brought under state law. The bill also would have allowed any party in a proceeding before the commission or in a civil action where the plaintiff is seeking compensatory or punitive damages to demand a trial by jury. Additionally, the bill would have required a court to award attorney fees and costs to a defendant upon finding that an action was frivolous, groundless, or vexatious.

Disclosure of information. The legislature considered four bills concerning the disclosure of information about employees. Three bills granted employers immunity for disclosing certain information about past or previous employees or for relying on information in a database when making hiring decisions, provided that the information was disclosed or used in good faith. **Senate Bill 11-193** grants employers immunity from civil liability for the good faith disclosure of

information pertaining to mistreatment, exploitation, neglect, or abuse committed by a caregiver for persons with developmental disabilities, and **House Bill 11-1148** grants employers immunity from civil liability for the good faith disclosure of information concerning drug diversion or tampering, patient abuse, violation of employer drug or alcohol policies, or crimes of violence committed by a health care worker. **Senate Bill 11-171**, which was postponed indefinitely, would have created a centralized database in the Department of Human Services to track caretakers found to have mistreated at-risk adults. Employers who recommended a name for inclusion in the database or who relied on information contained in the database when making hiring decisions were granted immunity from civil liability if acting in good faith.

House Bill 11-1128, which was postponed indefinitely, would have protected from discovery or subpoena in a civil lawsuit certain documents in the possession of the Department of Regulatory Agencies resulting from a formal complaint against a state-regulated professional.

Employment verification. The General Assembly considered two bills related to employment verification. **Senate Bill 11-243** repeals an existing law providing for a civil penalty of not less than \$50,000 for forging, counterfeiting, altering, or falsifying employment verification documents. **Senate Bill 11-129**, which was postponed indefinitely, would have repealed the current requirements for employers to examine and retain records concerning the legal work status of new employees and would have required all non-governmental employers in the state to participate in the federal Department of Homeland Security's and Social Security Administration's E-Verify Program.

Liens

Foreclosure proceedings. The General Assembly postponed indefinitely two bills concerning liens involved in foreclosure proceedings. **Senate Bill 11-122** would have limited the ability of a person to purchase a junior lien with high priority on property in foreclosure and to redeem the lien from the purchaser after the foreclosure sale. **House Bill 11-1197** would have amended and clarified the rights of a homeowners' association in foreclosure proceedings as they pertain to the superpriority portion of a lien granted under the Colorado Common Interest Ownership Act.

Other. The legislature enacted two bills concerning liens. **Senate Bill 11-234** prohibits the application of new transfer fee covenants and liens on residential property transfers recorded on or after the effective date of the bill. Residential transfer fee covenants impose a fee upon the conveyance of the property involved, often for a period of 99 years. The fee can be up to one percent of the sale price, and is paid to whoever placed the covenant on the property—usually the developer or another entity working with the developer. Homeowners are required to pay the transfer fee at the time of the property sale. The bill also makes private transfer fees on residential real property non-binding and unenforceable in Colorado after the effective date of the bill. **Senate Bill 11-264** provides that a mechanic's lien or a real estate broker's lien is immediately and forever discharged after the court approval of a bond as a substitute for the property to which the lien is attached. The bill eliminates any requirement for a mechanic's lien or real estate broker's lien claimant to file a lis pendens or notice of a lis pendens when a bond has been substituted. A lis pendens is a legal document filed and recorded in county real property records to provide notice of a claim affecting a title to real property.

Miscellaneous

Campaign finance. The legislature enacted **House Bill 11-1117**, which codifies a procedure for subpoenas issued by administrative law judges in campaign finance proceedings. Under the bill, if a witness or party fails to comply with an administrative subpoena issued to address an alleged campaign finance reporting violation, the requesting or issuing party may petition a district court to order compliance. If the witness or party fails to appear at a hearing to show cause why he or she should not be ordered to comply with the subpoena, the district court may issue an arrest warrant. If the subpoenaed witness or party fails to show good cause, the district court must order compliance and may impose remedial and punitive fines.

Domestic relations. The General Assembly postponed indefinitely **Senate Bill 11-172**, which would have authorized civil unions in Colorado and would have specified the rights, responsibilities, and requirements of persons entering in a civil union.

Insurance benefits. The legislature passed **Senate Bill 11-182**, which requires purchasers of life insurance policies to have an insurable interest in the insured person. An insurable interest, which is defined in the bill, generally means a valid, determinable, and direct economic stake in the continued existence or safety of the insured person. The bill defines penalties for violations of this requirement, and specifies that parties may file a civil action against a beneficiary to recover death benefits paid out on an insurance policy that was issued in violation of the bill.

Probate

Fiduciaries and trusts. The General Assembly considered two bills related to fiduciaries and trusts. **Senate Bill 11-175** amends the Colorado Probate Code to clarify when a trustee has an insurable interest in the life of the person creating the trust or an insurable interest in the life of another person. Insurable interests are recognized under the bill only if life insurance proceeds flow to trust beneficiaries that also have an insurance benefit or to trust beneficiaries with substantial interest in the life of the insured. **House Bill 11-1232**, which was postponed indefinitely, would have required a registry of approved fiduciaries to be created and maintained by the Judicial Branch. **Senate Bill 11-083**, the Probate Code Omnibus described below, made additional changes to probate law related to fiduciaries and trusts.

Omnibus bill. The legislature passed **Senate Bill 11-083**, the Probate Code Omnibus, to amend and clarify the Colorado Probate Code to provide that:

- by following specific procedures, fiduciaries, lawyers, and third parties are entitled to reasonable costs and compensation for work performed on behalf of an estate;
- for decedents subject to probate whose death was the result of a felonious killing, the entry of a judgment, followed by the exhaustion or waiver of appeal rights, must occur in the criminal case for the killer to be conclusively established in probate manners;
- civil proceedings related to the felonious killing of a decedent subject to probate must be filed within three years of the death or within one year after the expiration of all rights to appeal in a criminal case against the decedent's killer;
- a personal representative may take notice of intention to use the genetic material of a decedent whether the person who intends to make such use of genetic material is a party to the probate case or not;

- the probate court may exercise its discretion to relieve a conservator of reporting requirements and in the administration of estates involving persons under disability;
- for parties using the statutory form power of attorney, selecting or changing a fiduciary is a power that may be delegated by the principal; and
- a family caregiver may also serve as the guardian and conservator of a person under disability.

The bill also reorganizes and clarifies provisions of the Colorado Probate Code related to the use of a will not probated in the state of Colorado as evidence of a devise, as well as clarifying the identity of governmental agencies with protective authority over individuals. Finally, the bill provides that a declaration as to medical treatment may be combined with a medical power of attorney in one document.

Property. In current Colorado probate cases, a surviving spouse, or, if there is no surviving spouse, dependent children, are entitled to an exempt property allowance for cash or other assets valued up to \$26,000. For cases involving the estates of decedents dying on or after January 1, 2012, **Senate Bill 11-016** increases the exempt property allowance to \$30,000. The bill also increases the maximum family allowance for maintenance during the administration of the estate from \$24,000 to \$30,000. Under the bill, the next regularly scheduled annual cost of living adjustment for exempt property and family allowance is suspended for one year. The annual cost of living adjustment is based on the consumer price index for the calendar year immediately preceding a decedent's death. In accordance with Senate Bill 11-016, there will be no cost of living adjustment for the estates of decedents who die in calendar year 2012; the cost of living adjustment will resume for estates of decedents who die on or after January 1, 2013. **Senate Bill 11-166** repeals the current statute defining disclaimer of property interests and describes procedures to effect a disclaimer of property interests generally. The bill also addresses partial disclaimers and disclaimers without descendants.

Senate Bill 11-165 establishes the Colorado Uniform Estate Tax Apportionment Act. The bill describes apportionment by will or other dispositive instrument; statutory apportionment of estate taxes; credits and deferrals; advancement of tax as related to insulated property; apportionment and recapture of special elective benefits; securing payment of estate tax from property in possession of a fiduciary; collection of estate tax by a fiduciary; and right of reimbursement.