

CIVIL LAW

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During the 2012 legislative session, the General Assembly considered a number of bills related to civil law. These bills covered issues including general civil actions, consumer protection, domestic relations, employment law, limitations on liability, and probate law.

Civil Actions

Landlords and tenants. **Senate Bill 12-070**, which was deemed lost in the Senate, would have established a Uniform Residential Landlord and Tenant Act, as recommended by the Colorado Commission on Uniform State Laws with some modifications. The bill described the obligations of both landlords and tenants as they related to rental property and rental property agreements. It also specified remedies for noncompliance. The bill would have limited the time period for landlord reconciliation of the security deposit to one month following termination, eliminating current law that permits a 60-day reconciliation period if so negotiated in the written rental agreement.

Civil penalties for retail food establishments. The General Assembly addressed the issue of revocation or suspension of a retail food license in **House Bill 12-1097**. Except in cases of closure due to an imminent health threat, the bill prohibits the commencement of revocation or suspension proceedings by the Colorado Department of Health and Environment until after the imposition of various monetary civil penalties allowable by law.

Human trafficking. Among other provisions, **House Bill 12-1151** entitles an individual to recover damages and to obtain injunctive relief from any person who commits trafficking in adults, trafficking in children, or coercion of involuntary servitude. A conviction for trafficking in adults, trafficking in children, or coercion of involuntary servitude is not a necessary condition for filing a civil action for damages or injunctive relief. Additionally, real property or vehicles used for the purpose of trafficking in adults, trafficking in children, or coercion of involuntary servitude are deemed a class 1 public nuisance, making them subject to seizure, confiscation, and forfeiture.

Statutory rates of interest. Under current law, when damages are awarded for a personal injury, a pre-judgment interest rate of 9.0 percent can be levied on these damages. Pre-judgment is the period of time from the injury to the judgment awarding damages. If the judgment is appealed, a post-judgment interest rate can be levied that is equal to 2 percentage points above the discount rate a commercial bank pays to the Federal Reserve Bank of Kansas City on January 1 of the year the moneys are due, rounded to the nearest full percentage. **House Bill 12-1305**, which was lost in the House, would have changed the pre-judgment interest rate for cases involving personal injury from a fixed rate to a floating rate; specifically, from 9 percent to 2 percentage points above the discount rate a commercial bank pays to the Federal Reserve Bank of Kansas City on January 2 of the year the money is awarded, rounded to the nearest full percentage.

Colorado Governmental Immunity Act (CGIA). Under current law, state and local government agencies in Colorado may defend negligence and other tort claims on the basis of limited immunity under the CGIA. The CGIA caps damages at \$150,000 for the claim on any individual party and a total recovery of \$600,000 for any single occurrence. Currently, the CGIA authorizes the General Assembly to pass a bill modifying the maximum recovery for any specific judgment or judgments that exceed the statutory maximum amounts and directs that this recovery be paid from the General Fund.

House Bill 12-1361 amends the CGIA to specifically waive sovereign immunity in legal actions against the state arising from a prescribed fire started or maintained by the state or any of its employees on or after January 1, 2012. To maintain an action against the state related to a prescribed fire, the injured party must prove negligence on the part of the state. The bill defines "state," for the purposes of the CGIA, to include every executive branch department and every state institution of higher education, excluding from the definition the judicial branch, local governments, and other political subdivisions and public corporations.

The bill expands the CGIA to allow potential recoveries from the state above the statutory limits when the State Claims Board recommends that the General Assembly adopt legislation authorizing payment above those limits. After considering the interests of fairness, the public interest, and the interests of the state, the board may recommend an additional payment for recovery above the limits established in the CGIA, to be paid from the General Fund. This recommendation may not include payment of noneconomic losses or losses covered by insurance or any other source.

Consumer Protection

Roofing contract work. **Senate Bill 12-038** requires contractors offering to perform roofing work on a residential property to sign a written contract with the property owners detailing the scope and cost of the work and contact information for the contractor. Roofing contractors are also required to permit property owners to rescind a contract and obtain a refund of any deposit paid. Finally, the bill prohibits roofing contractors from paying, waiving, rebating, or promising to pay, waive, or rebate all or any part of the property owner's insurance deductible.

Insurance fraud. **Senate Bill 12-060** requires the Colorado Departments of Health Care Policy and Financing and Law to prepare annual reports on Medicaid client and provider fraud, respectively, for certain legislative committees. Beginning on or before January 15, 2013, these reports are to detail:

- the number of Medicaid client and provider fraud investigations;
- actions undertaken to make recoveries and prosecute fraud;
- amounts recovered;
- trends in methods used to commit Medicaid fraud; and
- policies adopted by the state and county to detect and prevent Medicaid fraud, among others.

The bill also specifies that recoveries of fraudulently obtained Medicaid benefits are to be deposited in the County Social Services Cash Fund, and any amounts not required to be reimbursed to the federal government for a share proportional to the amount of federal funds initially paid may be retained by the county.

Recommended by the Joint Budget Committee, **Senate Bill 12-110** establishes a two-tier fee schedule for insurance companies based on total income received by companies in Colorado in the prior year. The fee replaces the current fee of \$561 and is capped at \$3,000. It will be set by the Commissioner of Insurance based on the direct and indirect costs of the investigation and prosecution of allegations of insurance fraud. Insurance companies with an annual income above \$1 million will pay one fee, and those with an annual income of less than \$1 million will pay a lower fee. The bill moves the Insurance Fraud Cash Fund from the Department of Regulatory Agencies to the Department of Law.

The funding increase from this change will allow for expansion of insurance fraud investigations and prosecutions in the Department of Law. The Attorney General will include in his annual report and post on his website the number of employees dedicated to insurance fraud, referrals, open investigations, and the number of restitutions, fines, costs, and forfeitures obtained by line of insurance if possible.

Resale of time-share properties. **House Bill 12-1116**, which was postponed indefinitely, would have established a number of requirements for the transfer of time-share resale interests and created a new cause of action under the Colorado Consumer Protection Act for deceptive trade practices.

Domestic Relations

Civil unions. **Senate Bill 12-002**, which was deemed lost (and postponed indefinitely in the 2012 special session), would have authorized civil unions in Colorado and set forth the rights, responsibilities, and requirements of persons entering a civil union. Two persons, regardless of gender, would have been permitted to enter into a civil union if they were not related by blood, not married to or in a civil union with another person, and were over the age of 18. The bill set the fees and procedures to obtain a civil union license from a county clerk and to petition the court for the dissolution, invalidation, and legal separation of a civil union. The Department of Public Health and Environment (DPHE) would have been required to create all necessary forms for civil union licenses and certificates. Civil union applications would have been considered public records available for inspection for 50 years.

The bill would have granted persons in civil unions the same benefits, protections, and responsibilities under law as granted to spouses and specified that persons in a civil union are covered under the statutory definitions of dependent, spouse, next of kin, heir, family, immediate family, and other terms in law indicating a familial or spousal relationship. The bill applied the laws of domestic relations (i.e., divorce, child custody, property division, child support, etc.) to persons in civil unions.

Child support. **Senate Bill 12-042** brings state child support enforcement into compliance with federal law by requiring the Department of Human Services (DHS) or its agents to locate and secure assets of persons who owe child support in another state when requested by the other state. The DHS and financial institutions are also required to conduct data matches to identify assets of persons owing child support on a quarterly basis, rather than semiannually.

Court appointments. Current law allows a court to appoint a legal representative, a child and family investigator, a parental responsibilities evaluator, a parenting coordinator, or a parental decision-maker in a domestic relations matter. **Senate Bill 12-056** requires such individuals to disclose, within seven days of being appointed, any familial, financial, or social relationship the appointed person has or has had with the child, either party, the attorneys of record, or the judicial officer. The appointed party is required to disclose the nature of such a relationship if it exists.

Legal separation and dissolution of marriage. The General Assembly considered two bills in 2012 related to the termination of legal relationships. For couples who are in a marriage with no children, who have entered into an agreement on the division of marital property, and who are seeking a legal separation, **House Bill 12-1233** allows the court to enter a degree of legal separation by affidavit with the appearance of either party. **House Bill 12-1256**, which was postponed indefinitely, would have created a presumption that maintenance will be provided to one of the parties in a dissolution of marriage action filed on or before July 1, 2012. It would have provided a formula for the presumptive award in cases where the parties met certain income and duration of marriage criteria.

Limited Liability

Three bills were considered by the General Assembly that sought to limit the liability of certain entities in particular situations. Two of the bills passed, while the other was lost in the Senate.

Spaceflight activities. Under **Senate Bill 12-035**, public and private spaceflight entities are not liable for injury to or the death of a spaceflight participant resulting from the inherent dangers of spaceflight activities, as long the participant was warned of such dangers and signed a written agreement to that effect. Spaceflight entities are, however, liable for actions arising from the gross negligence or willful or wanton disregard for the safety of the spaceflight participant. Similarly, spaceflight entities must disclose when they have actual knowledge or should reasonably know of a dangerous condition. Finally, there is no limitation on the liability for intentionally injuring a spaceflight participant.

Professional review committees. **House Bill 12-1300** implements the recommendations from the Department of Regulatory Agencies' 2011 sunset review and extends the functions of professional review committees under the Colorado Professional Review Act (CPRA) until September 1, 2019. Professional review committees evaluate the professional conduct of, and the quality and appropriateness of patient care provided by, health care providers. The CPRA provides legal privilege and immunity to individuals and groups that conduct professional review of health care providers as long as they comply with the due process provisions of CPRA.

Methamphetamine precursor drugs. Current law prohibits stores from selling and individuals from purchasing more than 3.6 grams of any methamphetamine precursor drug or combination of methamphetamine precursor drugs in a 24-hour period. **House Bill 12-1325**, which was lost in the Senate, would have altered the time periods and required store employees to check the photo identification of individuals buying nonprescription methamphetamine precursor drugs and log each sale. Beginning January 1, 2013, stores would have been required to submit the information in the log to an electronic logging system prior to making a sale of methamphetamine precursor drugs, assuming the system was available without a charge. The bill limited liability for stores using the electronic logging system to those acts that are negligent, reckless, or deliberate misconduct. Under the bill, stores that do not have more than ten methamphetamine precursor drug transactions in a seven-day period were exempt from the requirement to use the electronic logging system and could, instead, use a handwritten log.

Miscellaneous

Employment law. **Senate Bill 12-003**, which was postponed indefinitely, would have prohibited an employer from using consumer credit information for employment purposes unless the information was related to the job. Additionally, it would have required employers to disclose to an employee or an applicant for employment when the employer uses consumer credit information to take adverse action against the employee or applicant and the particular information used. Employees and applicants who were subject to violations of these provisions would have had the right to file a lawsuit for damages, injunctive relief, or both. The Department of Labor and Employment would have been required to enforce the laws related to employer use of consumer credit information.

Designated beneficiary agreements. In the area of probate law, the General Assembly enacted **Senate Bill 12-131**. The bill clarifies a personal representative's liability in probate proceedings in the event that the trustee takes any actions that conflict with a decedent's wishes as contained in a designated beneficiary agreement (DBA). Specifically, the bill protects the personal representative of an estate from being penalized (surcharged) if the estate distribution conflicts with a DBA, as long as the personal representative has not received notification of a valid DBA and has searched for, and reviewed, any existing DBAs in every county in which the personal representative has actual knowledge that the deceased party lived in the last three years of his or her life. As a result of this review, if the personal representative does not have knowledge of valid, unrevoked DBAs, then the personal representative may not be held personally liable, nor be liable to third parties, for distributions made that do not take into consideration any DBA of which the personal representative is unaware.