

# Civil Law

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During the 2013 legislative session, the General Assembly considered a number of bills related to civil law. These bills covered issues including general civil actions, domestic relations, employment law, probate law, and real property, among others.

## Civil Actions

**Colorado Governmental Immunity Act (CGIA).** Two bills were enacted that affected the CGIA. The first, **Senate Bill 13-023**, increases the damages limitation cap under the CGIA to \$350,000 for a claim on an individual party and a total recovery of \$990,000 for any single occurrence. Prior law capped damage recoveries at \$150,000 for a claim on any individual party and a total recovery of \$600,000 for any single occurrence. State and local government agencies in Colorado may defend negligence and other tort claims on the basis of limited immunity under the CGIA. Claims are made in the areas of general liability, automobile liability, and medical liability.

The new caps represent an inflation adjustment from the last times that the amounts were adjusted in 1979 and 1992. Beginning January 1, 2018, and every four years thereafter, the Secretary of State is required to adjust the caps by an amount reflecting the percentage change in the Consumer Price Index for Denver-Boulder-Greeley. The adjusted amounts are to be published on the Secretary of State's website.

The second bill, **House Bill 13-1294**, clarifies that the definition of the term "public entity" under the CGIA includes the state's Judicial Department. The bill provides clarification after legislation passed in the 2012 session raised questions about public entities.

**False claims.** **Senate Bill 13-205** makes a number of technical changes to align the Colorado Medicaid False Claims Act with the federal False Claims Act in order to qualify for an additional share of state recoveries for false or fraudulent Medicaid claims. Among these changes, the bill requires that civil penalties be calculated in accordance with federal law and increases the range for penalties to between \$5,500 and \$11,000 from the current levels of between \$5,000 and \$10,000. Depending on the facts of the case, the bill also provides for variable time frames in the statute of limitations for a plaintiff who believes he or she was retaliated against following a *qui tam* (whistleblower) action. Under the bill, a private action for retaliation may not be brought more than three years after the date when the retaliation occurred.

## Domestic Relations

Seven bills were enacted by the General Assembly in the area of domestic relations, covering issues such as civil unions, premarital agreements and spousal maintenance, and child support and custody.

**Civil unions.** **Senate Bill 13-011** authorizes civil unions in Colorado and set forth the rights, responsibilities, and requirements of persons entering a civil union. Two persons, regardless of gender, may enter into a civil union if they are not related by blood, not married to or in a civil union with another person, and are over the age of 18. The bill sets 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) is required to create all necessary forms for civil union licenses and certificates.

The bill grants persons in civil unions the same benefits, protections, and responsibilities as spouses and specifies 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 applies the laws of domestic relations (*i.e.*, divorce, child custody, property division, child support, etc.) to persons in civil unions.

The bill applies the benefits, protections, and responsibilities of spouses to the parties to a civil union in several areas, including, among other things:

- estate law;
- workers' compensation benefits;
- unemployment benefits;
- torts and causes of action based on spousal status;
- protections from discrimination based on spousal status;
- probate law;
- adoption law;
- group benefit plans for state employees;
- emergency medical care and visitation;
- Public Employees' Retirement Association (PERA) benefits;
- access to domestic abuse programs and protections;
- victim compensation;
- visitation in correctional and other types of facilities;
- end-of-life care and other issues relating to medical care; and
- access to health, life, and property insurance policies as a dependent.

Other provisions of the bill:

- outline the privileged relationship between persons in a civil union and rules for testimony and examination of persons in a civil union against the other person;
- specify judicial jurisdiction over civil union cases and recognize same-sex unions from other states as civil unions in Colorado, regardless of the term used for the relationship in the other state (marriage, domestic partnership, etc.);
- state that persons in a civil union may not file a joint state tax return; and
- specify that the provisions of the bill shall not be construed to create a marriage between parties to a civil union or alter the policy of the state that marriage is only the union of one man and one woman.

***Marital agreements and spousal maintenance.*** Recommended by the Colorado Commission on Uniform State Laws, **House Bill 13-1204** enacts the Uniform Premarital and Marital Agreements Act. The bill standardizes and provides statutory guidance for the consideration by the courts of premarital and marital agreements signed on or after July 1, 2014. Generally, the bill describes the formation of these agreements, when they are effective, and provisions that are unenforceable under certain conditions.

**House Bill 13-1058** concerns guidelines for the determination of spousal maintenance. The bill creates a process for the determination of the award of spousal maintenance in proceedings filed on or after January 1, 2014, for dissolution of marriage, legal separation, or declaration of invalidity. It also establishes guidelines for the amount and term of spousal maintenance in cases involving marriages lasting at least three years and parties with combined incomes, in most cases, of less than \$240,000 per year.

The courts retain their discretion in domestic relations cases in determining spousal maintenance, within the process created by the bill and in consideration of the guidelines and other specified information. The bill did not create a presumption for maintenance in domestic relations cases and maintains the existing standard of need for the court to order spousal maintenance.

***Child support and custody.*** Four bills passed that focused on child support, custody, and parenting time. Broadly, **House Bill 13-1209** makes a number of changes to the requirements and calculation of child support. Specifically, the bill raises the monthly income threshold for the minimum order formula from \$850 to \$1,100. It revises the minimum monthly child support amount for low-income families, depending on the number of children and revises the formula for

calculating the low-income adjustment. Finally, the bill clarifies when certain non-salary types of income are to be including in income calculations.

**House Bill 13-1200**, also recommended by the Colorado Commission on Uniform State Laws, establishes the Uniformed Deployed Parents Custody and Visitation Act. Among other things, the bill sets forth provisions addressing custodial responsibility, caretaking, and decision-making authority when a parent is a deployed uniformed service member. Procedures for issuing and terminating temporary orders relating to custody and visitation during a deployment are also included.

**Senate Bill 13-227** establishes a process for victims who conceive a child as a result of a sexual assault to petition the court for a termination of the legal parental rights of the parent who committed the sexual assault. The petition may also ask the court to prevent all future contact between the parent who committed the sexual assault and the child.

Prior to the passage of **House Bill 13-1243**, the courts could issue an order in child custody cases to restrict the parenting time of a parent if the court found that the child's physical health would be endangered or emotional development significantly impaired by spending time with the parent. The bill requires courts to list the specific facts that support such a finding.

## **Employment Law**

Six bills were considered by the General Assembly that affect employment law in Colorado. Five of the bills passed, while the other was lost in the Senate.

***Employment discrimination.* House Bill 13-1136** establishes the Job Protection and Civil Rights Enforcement Act of 2013, along with a process for a complaining party to pursue a claim for damages in state court after pursuing administrative options through the Civil Rights Commission (commission) or the State Personnel Board (board).

The bill allows for the remedies of compensatory and punitive damages and attorney fees to be awarded in employment discrimination cases brought under state law. Compensatory and punitive damages may be awarded in addition to the remedies allowed under current law, including front pay, back pay, interest on back pay, reinstatement or hiring, and other equitable relief. Remedies that are currently allowed at the federal level for employers with 15 or more employees are extended by the bill to include employers with fewer than 15 employees and to employment discrimination on the basis of sexual orientation. The bill also allows for claims of age discrimination by persons 70 years of age and older.

Total damage awards are capped at \$10,000 for employers with 1 to 4 employees and at \$25,000 for employers with 5 to 14 employees. State and local government and school district employees may not recover punitive damages, but are allowed compensatory damages. Punitive damages cannot be charged against an employer who demonstrates good-faith efforts to prevent discriminatory and unfair employment practices or to provide reasonable workplace accommodations for an employee with a disability. Any party in a civil action where the plaintiff is seeking compensatory or punitive damages may demand a trial by jury. A plaintiff who asserts employment discrimination claims under both state and federal law is limited to recovery only once for the same injuries, damages, or losses. Because total damage awards are based on the size of the employer, the court is directed to consider the size and assets of the employer and the egregiousness of the intentional discriminatory or unfair employment practice when assigning damages.

**Limited liability.** **Senate Bill 13-080**, which was recommended by the Police Officers' and Firefighters' Pension Reform Commission, clarifies that the Fire and Police Pension Association (FPPA), a Colorado statutory public entity, is not liable to pay member benefits when a local government employer has failed to properly enroll an employee in the FPPA. Claims by both local government employers and employees are barred in this circumstance. The bill applies to claims against the FPPA, its Defined Benefit System Trust Fund, and its Death and Disability Trust Fund.

**Workers' compensation.** Under workers' compensation law, if either an injured worker or an insurer disputes a treating physician's determination of whether the worker has achieved maximum medical improvement or has a remaining impairment, either party may apply for an examination from an independent medical examiner (IME). **Senate Bill 13-249** requires the Division of Workers' Compensation in the Department of Labor and Employment to review an IME's report within five days of receipt and notify all parties of its receipt and any deficiencies. A process and timelines are established for the IME to remedy any deficiencies and resubmit the report and for the insurer or self-insured employer to file an admission of liability or request a hearing to contest the findings in the IME report if the IME fails to resubmit.

Another workers' compensation bill, **House Bill 13-1025**, increases the amount of the maximum deductible for workers' compensation insurance policies from \$5,000 to the amount of the workers' compensation insurance rate split point approved by the Commissioner of Insurance in the Department of Regulatory Agencies. The split point is the amount of each loss that an insurer may apply as the primary loss in each workers' compensation claim when calculating an employer's experience rating. The experience rating is used to determine the amount the employer pays for workers' compensation coverage. The bill clarifies that it is a violation of the Workers' Compensation Act for an employer or insurer to require an employee to pay for, or use any other type of insurance to pay for, treatment of a workplace injury. The bill prohibits a carrier from failing to offer no-deductible policies.

**Unemployment benefits.** For the purpose of facilitating contact between employers seeking to hire and individuals looking for employment, **House Bill 13-1123** allows the Division of Employment and Training in the Department of Labor and Employment to offer a waiver of confidentiality to veterans and other individuals for basic contact information obtained on unemployment benefit forms.

**House Bill 13-1304** would have allowed an employee subject to an employer-initiated lockout to receive unemployment benefits during the lockout and amended certain definitions related to lockouts; however, the bill was deemed lost in the Senate.

## **Probate Law**

Two bills affecting probate law were enacted by the General Assembly. The first, **Senate Bill 13-077**, is a probate code omnibus bill that made a number of changes to the Colorado Probate Code in the areas of testimony, personal representatives, and the roles and responsibilities of trustees. Specifically, the bill:

- clarifies circumstances under which someone can testify regarding an oral statement of a person incapable of testifying;
- clarifies who may ascertain the testator's probable intent or estate-planning purpose on issues involving the decedent's estate;

- requires a personal representative to solicit any individual who has knowledge that there is a valid, unrevoked designated beneficiary agreement in which the decedent granted the right of intestate succession to give written notice of such knowledge to the personal representative;
- adds child support claims of the decedent that were due and unpaid at death, and any future child support obligations of the decedent as determined by the court, to the classification of claims to be paid;
- adds personal property, including funds on deposit at any financial institution, to assets eligible for collection by affidavit;
- clarifies the process for preserving assets for individuals who are dependent upon the respondent while petitions for conservatorship or protective orders are pending;
- clarifies the circumstances under which a respondent's alleged impairment may be evaluated;
- clarifies the process available to a conservator when payment of claims would substantially deplete the estate and leave the estate with insufficient funds to pay the protected person's basic living and health expenses;
- gives a trustee the discretionary authority to reimburse the grantor for payment of the income taxes attributable to the trust;
- allows a trustee to acquire or retain as a trust asset a life insurance policy on the life of a person for whom the trustee has an insurable interest;
- adds a new Part 7 to Article 16 of Title 15, C.R.S., concerning revocable trusts; and
- clarifies the applicability of the effective date of the Colorado Probate Code to conform to the Uniform Probate Code.

**House Bill 13-1016** allows for the unequal distribution of funds from pay-on-death (POD) financial accounts with two or more beneficiaries following the death of the sole or last account holder. Funds may be distributed to the beneficiaries as described in the POD designation, and if no proportions are specified, the funds in the account are evenly divided between the beneficiaries. In the event that any of the beneficiaries dies prior to the death of the account holder, the account is divided among the surviving beneficiaries in proportion to their interests specified in the POD designation.

## Real Property

***Deceptive trade practices.*** **Senate Bill 13-182** adds disclosure requirements to real estate transactions involving the resale of time-share properties. Agreements to transfer time-share resale interests must include a description of any residual interests retained by the seller, a list of costs for time-share resale services, a statement regarding any other person who may use the time-share after the interest has been transferred, and various other disclosures. Time-share contracts and time-share resale services covered by the bill do not include professionals (e.g., attorneys, escrow agents) providing certain transactional services or the developer or association managing a time-share community according to an existing plan.

The bill creates a new cause of action under the Colorado Consumer Protection Act for deceptive trade practices. Deceptive trade practices occur when time-share resale entities fail to obtain a written contract for their services or to provide disclosures as required by the bill. These time-share resale entities may rely upon information provided by the owner, developer, or association managing the time-share.

***Mortgage lending.*** Under **House Bill 13-1017**, a loan modification agreement made between a borrower and the loan servicer must be honored, even if the loan is sold or transferred. In the case of a sale or transfer, the successor servicer is required to honor the loan modification

agreement. Such agreements must be disclosed by the original loan servicer to the successor servicer. The bill also establishes a cause of action, whereby the borrower whose loan modification agreement is not honored is entitled to actual damages, \$1,000 in punitive damages, and attorney fees and costs.

**Titles.** Prior to the passage of **House Bill 13-1307**, the fact that a document of title relating to real property did not contain an address, identifying number, or assessor's schedule number or parcel number did not render the document ineffective, nor render the title unmarketable, if the property's legal description appeared in the document. The Colorado Supreme Court in *In re Rivera*, 2012 CO 43 held that a recorded deed of trust that completely omits a legal description is defectively recorded.

The bill clarifies that, in spite of the holding in *In re Rivera*, the absence of a legal description in such a document may, in the totality of the circumstances, but does not necessarily:

- render the document defective or invalid, or void the recording of the document by the county clerk and recorder; or
- determine whether the document is valid against a person obtaining rights in real property.

## **Miscellaneous**

**Unclaimed property.** **House Bill 13-1102** defines a gift card for the purposes of the Unclaimed Property Act and clarifies that the act does not apply to unclaimed gift cards where the issuer is a business with annual sales of gift cards totaling \$200,000 or less.

**Uniform Commercial Code.** **House Bill 13-1284** requires that a debtor in a secured transaction be identified on the financing statement by the name on his or her state-issued driver's license or identification card. Additionally, obsolete provisions related to claims concerning inaccurate or wrongfully filed records were repealed by the bill.