

# **TITLE 13**

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## **COURTS OF RECORD**

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### PART 1

### ADMINISTRATIVE PROVISIONS

#### **13-1-101. Clerks shall keep record books.**

The clerks of the courts of record in this state shall keep in their respective offices suitable books for indexing the records of their said offices, one to be known as the direct index and one as the inverse index.

**Source: L. 1889:** p. 107, § 1. **R.S. 08:** § 1392. **C.L.** § 5610. **CSA:** C. 46, § 1. **CRS 53:** § 37-1-1. **C.R.S. 1963:** § 37-1-1.

### ANNOTATION

**Books of court are admissible as evidence.** If the county court permits one of the books of its office to be taken into another court as evidence, the objection that

the original, and not a certified copy, is produced is not tenable. *McAllister v. People ex rel. Brisbane*, 28 Colo. 156, 63 P. 308 (1900).

### **13-1-102. Entries in records.**

In said indexes, the clerks shall properly enter the title of each cause or matter instituted in said courts and the case number references to the various orders, rulings, judgments, papers, and other proceedings of the court in such cause or matter. Any case number reference may be to a file jacket, page in a record book, microfilm record, or computer record.

**Source:** L. 1889: p. 107, § 2. R.S. 08: § 1393. C.L. § 5611. CSA: C. 46, § 2. CRS 53: § 37-1-2. C.R.S. 1963: § 37-1-2. L. 79: Entire section amended, p. 596, § 1, effective July 1.

### **13-1-103. Lost or destroyed records.**

When the record of any judgment, or decree, or other proceeding of any judicial court of this state, or any part of the record of any judicial proceeding has been lost or destroyed, any party or person interested therein, on application by complaint in writing under oath to such court and on showing to the satisfaction of such court that the same has been lost or destroyed without fault or negligence of the party or person making such application, may obtain an order from such court authorizing the defect to be supplied by a duly certified copy of the original record, where the same can be obtained, which certificate shall thereafter have the same effect as the original record would have had in all respects.

**Source:** L. 1889: p. 108, § 1. R.S. 08: § 1396. C.L. § 5614. CSA: C. 46, § 5. CRS 53: § 37-1-4. C.R.S. 1963: § 37-1-4.

### **13-1-104. Application for new order or record.**

When the loss or destruction of any record or part thereof has happened, and such defects cannot be supplied as provided in section 13-1-103, any party or person interested therein may make a written application to the court to which such record belonged, verified by affidavit, showing the loss or destruction thereof, and that certified copies thereof cannot be obtained by the party or person making such application, and the substance of the record so lost or destroyed, and that the loss or destruction occurred without the fault or negligence of the party or person making such application, and that the loss or destruction of the record, unless supplied, will or may result in damage to the party or person making such application. The court shall cause said application to be entered of record in said court, and due notice of said application shall be given by personal service of summons or by publication as in other cases; except that, in cases in which publication is required, the court may direct by order, to be entered of record, the form of the



notice, and designate the newspaper in which the same shall be published. If, upon such hearing, said court is satisfied that the statements contained in said application are true, the court shall make an order embracing the substance and effect of the lost or destroyed record, which order shall be entered of record in said court and have the same effect which the original record would have had if the same had not been lost or destroyed insofar as concerns the party or person making such application and the persons who had been notified, as provided for in this section. The record in all cases where the proceeding was in rem and no personal service was had may be supplied upon like notice, as nearly as may be, as in the original proceeding.

**Source:** L. 1889: p. 108, § 2. R.S. 08: § 1397. C.L. § 5615. CSA: C. 46, § 6. CRS 53: § 37-1-5. C.R.S. 1963: § 37-1-5.

### **13-1-105. Procedure where probate records destroyed.**

In case of the destruction by fire or otherwise of the records, or a part thereof, of any court having probate jurisdiction, the court may proceed, upon its own motion or upon the application in writing of any party in interest, to restore the records, papers, and proceedings of the court relating to the estate of deceased persons, including recorded wills and wills probated or filed for probate in said court. The power of restoration granted in this section shall also extend to the records, papers, proceedings, and documents of any previous court of probate which are or should be in the custody of a probate or district court. For the purpose of restoring said records, wills, papers, or proceedings, or any part thereof, the court may cause citations to be issued to all parties to be designated by it and may compel the attendance in court of any witness whose testimony may be necessary to establish any such record, or part thereof, and the production of any and all written and documentary evidence which it deems necessary in determining the true import and effect of the original record, will, paper, or other document belonging to the files of the court, and may make such orders and decrees establishing such original record, will, paper, document, or proceeding, or the substance thereof, as to it seems just and proper. The court may make all such rules and regulations governing the proceedings for the restoration of the record, will, paper, document, and proceeding pertaining to the court as in its judgment will best secure the rights and protect the interests of all parties concerned.

**Source:** L. 1889: p. 109, § 3. R.S. 08: § 1398. C.L. § 5616. CSA: C. 46, § 7. CRS 53: § 37-1-6. C.R.S. 1963: § 37-1-6. L. 64: p. 224, § 56.

**13-1-106. Certified copy of record in supreme court or court of appeals.**

In all causes which have been removed to the supreme court of this state or to the court of appeals, a duly certified copy of the record of such cause remaining in the supreme court or the court of appeals may be filed in the court from which said cause was removed, on motion of any party or person claiming to be interested therein, and the copy so filed shall have the same effect as the original record would have had if the same had not been lost or destroyed.

**Source:** L. 1889: p. 110, § 4. R.S. 08: § 1399. C.L. § 5617. CSA: C. 46, § 8. CRS 53: § 37-1-7. C.R.S. 1963: § 37-1-7. L. 69: p. 269, § 3.

**13-1-107. Costs of replacement.**

The person making the application for the restoration of records shall pay all the costs thereof.

**Source:** L. 1897: p. 151, § 1. R.S. 08: § 1400. C.L. § 5621. CSA: C. 46, § 9. CRS 53: § 37-1-8. C.R.S. 1963: § 37-1-8.

**13-1-108. Judge may order adjournment.**

When in the opinion of the judge of any district or county court it is unnecessary or inadvisable to hold or convene any term of court fixed by statute, he may by an order in writing signed by him and filed with the clerk of such court adjourn the same sine die, or to a day certain, and the judges of said courts respectively have power to adjourn said courts, from time to time as may seem advisable, by written order signed and filed with the clerk of the court which may be so adjourned.

**Source:** L. 1897: p. 151, § 1. R.S. 08: § 1407. C.L. § 5621. CSA: C. 46, § 12. CRS 53: § 37-1-9. C.R.S. 1963: § 37-1-9.

**13-1-109. Court may appoint trustee.**

In all actions in any court of record of this state wherein any defendant is not found within the jurisdiction of the court and constructive service alone is had, and which is brought for the enforcement of an express, implied, or resulting trust, or for the removal of cloud from title to

real estate, or for specific performance, or for the establishment of a lost or destroyed deed, conveyance, or instrument in writing, or for the establishment and proof of any conveyance, deed, or instrument in writing not properly proved and acknowledged, or in any other proceeding in rem, or affecting only specific property, where, according to the usual practice in courts of chancery, the court, if the defendant had been personally served, might direct or decree any act to be done or performed by the defendant in favor of plaintiff, the court may appoint a trustee for such defendant to do and perform in the place and stead of and for such defendant the acts required by the decree rendered in any such cause. Any act lawfully done by such trustee, under and in pursuance of any such decree, shall be as binding and effectual for all purposes as if done and performed by the defendant in pursuance of such decree.

**Source:** L. 1887: p. 254, § 1. R.S. 08: § 1408. C.L. § 5622. CSA: C. 46, § 13. CRS 53: § 37-1-10. C.R.S. 1963: § 37-1-10.

#### ANNOTATION

**Law reviews.** For note, "Decrees in Rem Under the New Rules", see 13 Rocky Mt. L. Rev. 140 (1941). For article, "A Decade of

Colorado Law: Conflict of Laws, Security, Contracts and Equity", see 23 Rocky Mt. L. Rev. 247 (1951).

#### **13-1-110. Appeal bond defective or insufficient.**

If, at any time pending an appeal in any action, suit, or other proceeding, it appears to the appellate court that the appeal bond or undertaking is defective or insufficient or that any surety thereon has died, or has removed or is about to remove from this state, or has become or is likely to become insolvent, such appellate court shall order another appeal bond or undertaking, or such other and further security as to the appellate court seems proper, if the appellant or his attorney of record has been served with at least twenty-four hours' written notice of an application of the appellee for such order. If the appellant fails to comply with said order within ten days after the making of the same, the appeal shall be dismissed.

**Source:** L. 19: p. 113, § 1. C.L. § 5623. CSA: C. 46, § 14. CRS 53: § 37-1-11. C.R.S. 1963: § 37-1-11. L. 87: Entire section amended, p. 1575, § 11, effective July 10.

#### ANNOTATION

**The appellate court has full powers of determining the sufficiency of appeal bonds.** Brown v. Ohman, 93 Colo. 561, 27 P.2d 588 (1933).

**An objection to the sufficiency of an appeal bond in a lower court cannot be raised for first time on review.** Brown v. Ohman, 93 Colo. 561, 27 P.2d 588 (1933).

**In effect this section abolishes motions to dismiss appeals for insufficient bond, and substitutes a motion for new bond,** and where no such motion is filed, a motion to dismiss for defective bond is properly overruled. Peters v. Peters, 82 Colo. 503, 261 P. 874 (1927).

**Powers of appellate court.** The appellate court can set the amount of an appeal bond, order an additional surety, or approve the signature of a new surety on an old bond. Brown v. Ohman, 93 Colo. 561, 27 P.2d 588 (1933).

Court can provide for addition of new sureties. If, after the approval of an appeal bond, it is found that a surety is insufficient, this section provides for the addition of new

sureties, even after appeal. Zimmerman v. Combs, 91 Colo. 313, 14 P.2d 693 (1932).

**The fact that a new surety signed the first bond instead of new one is immaterial.** Where on appeal the surety on the bond died and another was procured, the fact that the latter, through inadvertence, signed the first instead of the new bond, was held immaterial, where the bond signed had endorsed thereon the approval of the court clerk. Brown v. Ohman, 93 Colo. 561, 27 P.2d 588 (1933).

**Filing appeal bond without order fixing amount does not nullify appeal.** Where on appeal from county to district court, the county judge entered an order reciting the filing of an appeal bond and its approval, the mere fact that there was no order fixing the amount of the bond did not nullify the appeal. Brown v. Ohman, 93 Colo. 561, 27 P.2d 588 (1933).

**Appeal bond as used in this statute means the cost bond** described by C.A.R. 7 and not a supersedeas bond. Hart v. Schwab, 990 P. 2d 1131 (Colo. App. 1999).

### **13-1-111. Courts of record.**

(1) Each of the following courts shall have a seal and shall be a court of record:

- (a) The supreme court;
- (b) The district courts;
- (c) The county courts;
- (d) The juvenile court in the city and county of Denver;
- (e) The probate court in the city and county of Denver;
- (f) Any court established by law and expressly denominated a court of record;

- (g) Repealed.
- (h) The court of appeals.

**Source:** L. 1887: p. 212, § 412. **Code 08:** § 447. **Code 21:** § 449. **Code 35:** § 449. **CRS 53:** § 37-1-12. **C.R.S. 1963:** § 37-1-12. **L. 64:** p. 224, § 57. **L. 72:** p. 590, § 53. **L. 77:** (1)(h) added, p. 279, § 24, effective June 29. **L. 79:** IP(1) amended, p. 596, § 2, effective July 1. **L. 85:** (1)(g) repealed, p. 572, § 12, effective November 14, 1986.

### ANNOTATION

**The acts of a court of record are known by its records.** Judicial records are not only necessary but indispensable to the administration of justice. The court judgments can be evidenced only by its records. The acts of a court of record are

known by its records alone and cannot be established by parol testimony. The court speaks only through its records, and the judge speaks only through the court. *Herren v. People*, 147 Colo. 442, 363 P.2d 1044 (1961).

#### **13-1-112. Clerk to keep seal.**

The clerk of each court of record shall keep the seal thereof.

**Source:** L. 1887: p. 212, § 413. **Code 08:** § 448. **Code 21:** § 450. **Code 35:** § 450. **CRS 53:** § 37-1-13. **C.R.S. 1963:** § 37-1-13.

#### **13-1-113. Seal - how attached.**

(1) A seal of a court or public officer, when required on any writ, process, or proceeding or to authenticate a copy of any record or document, may be impressed with wax, wafer, or any other substance and then attached to the writ, process, or proceeding or to the copy of the record or document, or it may be impressed on the paper alone or electronically attached to or logically associated with an electronic record or document. When jury summonses, subpoenas, or subpoenas duces tecum are prepared by means of mechanical reproduction, the seal of the summoning court may be printed thereon instead of being impressed.

(2) A seal may also consist of a rubber stamp with a facsimile affixed thereon of the seal required to be used and may be placed or stamped upon the document requiring the seal with indelible ink.

**Source:** L. 1887: p. 198, § 362. **Code 08:** § 396. **Code 21:** § 397. **Code 35:** § 397. **CRS 53:** § 37-1-14. **C.R.S. 1963:** § 37-1-14. **L. 67:** p. 70, § 1. **L. 75:** Entire section R&RE, p. 489, § 4, effective July 14. **L. 80:** (1) amended, p. 506, § 1, effective March 25. **L. 2011:** (1) amended, (HB 11-1018), ch. 18, p. 46, § 1, effective March 11.

### **13-1-114. Powers of court.**

(1) Every court has power:

- (a) To preserve and enforce order in its immediate presence;
- (b) To enforce order in the proceedings before it or before a person empowered to conduct a judicial investigation under its authority;
- (c) To compel obedience to its lawful judgments, orders, and process and to the lawful orders of its judge out of court in action or proceeding pending therein;
- (d) To control, in furtherance of justice, the conduct of its ministerial officers; and
- (e) To preserve access to courthouses and court proceedings, prevent interruption of court proceedings, and enforce protection from civil arrest at a courthouse or on its environs pursuant to section 13-1-403.

(2) Any judge of any court, when he reasonably believes that there is a risk of violence in the court, shall immediately advise the law enforcement agency designated to provide security for the court, and the law enforcement agency shall determine and provide appropriate security measures consistent with the degree of risk present. For the purpose of this subsection (2), a district or county judge shall have the assistance of the county sheriff, and a municipal judge shall have the assistance of the municipal police department. The court shall have discretion to assess all or part of the expense incurred in implementing such security measures as costs to be paid by the party or parties or other person or persons determined by the court to have necessitated such security measures.

(2.5) A county sheriff providing security for a court shall use the recommended standards developed by the judicial security task force pursuant to section 13-3-122 to implement security measures for the court. The county sheriff shall, at a minimum and to the extent practicable:

- (a) Maintain one secure, single-point access to a court facility;

(b) Use magnetometers when the court is in session; and

(c) Verify that each individual who enters a courthouse with a firearm is authorized pursuant to section 18-12-105.3 and maintain a log of the individual's verification, employing agency or entity, and time of entry and exit from the courthouse; except that this subsection (2.5)(c) does not apply to a peace officer who is employed in the courthouse by the county sheriff that has jurisdiction over the courthouse.

(3) Any county sheriff or municipal peace officer providing security for persons involved in judicial proceedings in courts pursuant to subsection (2) of this section shall be immune from civil liability for damages except for gross negligence or reckless, wanton, or intentional misconduct.

**Source:** L. 1887: p. 216, § 428. **Code 08:** § 463. **Code 21:** § 464. **Code 35:** § 464. **CRS 53:** § 37-1-15. **C.R.S. 1963:** § 37-1-15. **L. 86:** (2) and (3) added, p. 673, § 1, effective July 1. **L. 2020:** (1)(d) amended and (1)(e) added, (SB 20-083), ch. 63, p. 218, § 2, effective March 23. **L. 2026:** (2.5) added, (HB 26-1422), ch. 331, p. 1933, § 11, effective June 2.

#### ANNOTATION

**A county's duties under subsection (2) may not be reduced or ended pursuant to art. X, § 20(9) of the state constitution.**

State v. Bd. of County Comm'rs, Mesa County, 897 P.2d 788 (Colo. 1995).

**Applied** in Campbell v. District Court, 304 Colo. 195, 577 P.2d 1096 (1978).

#### **13-1-115. Courts may issue proper writs.**

The courts have power to issue all writs necessary and proper to the complete exercise of the power conferred on them by the constitution and laws of this state. The district courts have authority in ne exeat proceedings according to the usual practice in such cases in courts of chancery.

**Source:** L. 1887: p. 217, § 434. **L. 1891:** p. 85, § 1. **Code 08:** § 469. **Code 21:** § 470. **Code 35:** § 470. **CRS 53:** § 37-1-16. **C.R.S. 1963:** § 37-1-16.

#### ANNOTATION

The court, in a civil action, has authority to issue a writ of ne exeat to protect the interests of a litigant. *Struble v. Hicks*, 123 Colo. 16, 224 P.2d 932 (1950) (decided under repealed § 31 of appendix B, R.C.P. Colo., CSA, 1935, which was similar to this section).

C.R.C.P. 106 merely abolished the form and not the substance of the remedial writs such as the writ of ne exeat. A district court still possesses the authority to issue a writ in the nature of ne exeat, which is designed to prevent a person from leaving the court's jurisdiction. *In re People ex rel. B.C.*, 981 P.2d 145 (Colo. 1999).

### **13-1-116. Courts sit at county seat.**

Every court of record shall sit at the county seat of the county in which it is held, except as may be otherwise provided by law.

**Source:** L. 1887: p. 214, § 418. **Code 08:** § 453. **Code 21:** § 455. **Code 35:** § 455. **CRS 53:** § 37-1-18. **C.R.S. 1963:** § 37-1-18.

## **ANNOTATION**

**A district court can be in session only in its own county.** *State Bank v. Plummer*, 46 Colo. 71, 102 P. 1082 (1909) (decided under repealed provisions antecedent to § 25 of appendix B, R.C.P. Colo., CSA, 1935).

**Moving trial to hospital to hear closing arguments, give instructions to jury, and allow jury to deliberate** because of a

seriously ill juror did not deprive court of jurisdiction and retrial will not constitute double jeopardy. *People v. Higa*, 735 P.2d 203 (Colo. App. 1987).

**Section 13-5-119 (2) is an exception to the county seat requirement in this section.** *City of Littleton v. County Comm'rs*, 787 P.2d 158 (Colo. 1990).

### **13-1-117. Juridical days.**

The courts of justice may be held and judicial business may be transacted on any day except as provided in section 13-1-118.

**Source:** L. 1887: p. 213, § 415. **Code 08:** § 450. **Code 21:** § 452. **Code 35:** § 452. **CRS 53:** § 37-1-19. **C.R.S. 1963:** § 37-1-19.



## ANNOTATION

**There can be no exceptions to statutory days of judicial business.** When the law has prescribed a time and place at which the judicial business of the county must be transacted, there can be no exception to the provision, unless it is expressly made by

statute. *State Bank v. Plummer*, 46 Colo. 71, 102 P. 1082 (1909); *Scott v. Stutheit*, 21 Colo. App. 28, 121 P. 151 (1912) (decided under repealed provisions antecedent to § 25 of appendix B, R.C.P. Colo., CSA, 1935).

### **13-1-118. Judicial holidays.**

(1) No court shall be opened nor shall any judicial business be transacted on Sunday or any legal holiday except for the following purposes:

- (a) To give, upon their request, instruction to a jury then deliberating on their verdict;
- (b) To receive a verdict or discharge a jury;
- (c) For the exercise of the powers of a judge in a criminal action or in a proceeding of a criminal nature;
- (d) When it appears by the affidavit of the plaintiff, or someone in his behalf, in cases for the recovery of specific personal property, that the defendant is about to conceal, dispose of, or remove such property out of the jurisdiction of the court, an order for taking possession of the same may be issued and the writ or process executed on any day;
- (e) When an application for writ of attachment is made, if it shall appear by the affidavit of the plaintiff, or someone in his behalf, that the defendant is about to dispose of, conceal, or remove property subject to execution or attachment out of the jurisdiction of the court, a writ of attachment may be issued and executed on any day.

(2) When the day fixed for the opening of a court falls on any of the days mentioned in this section, the court shall stand adjourned until the next succeeding day.

**Source: L. 1887:** p. 213, § 416. **Code 08:** § 451. **Code 21:** §§ 451, 453. **Code 35:** § 453. **CRS 53:** § 37-1-20. **C.R.S. 1963:** § 37-1-20.

## ANNOTATION

**Verdicts may be received on a judicial holiday.** Receiving a verdict is a ministerial act performed for the jury in a judicial

proceeding. The weight of authority is to the end that verdicts, the result of trials started and concluded before Sunday, may be

received on Sunday and statutory holidays. Carr v. People, 99 Colo. 477, 63 P.2d 1221 (1936) (decided under repealed § 23 of appendix B, R.C.P. Colo., CSA, 1935, which was similar to this section).

**Judgment entered on legal holiday not void** and becomes effective next business day. Subsection (1) does not provide that any judicial business transacted in violation of its provisions is void. Rather, the statute is silent as to the effect of any order entered or other judicial business transacted in

violation of its prohibitions. Subsection (2) provides that the effect of having a day fixed for the opening of a court that falls on a prohibited day is that "the court shall stand adjourned until the next succeeding day." Thus, the effect of the trial court's entry of an order reviving judgment on a legal holiday was not to invalidate the order but, rather, merely to postpone its effective date until the next day the courts were open. Arvada 1st Indus. Bank v. Hutchison, 15 P.3d 292 (Colo. App. 2000).

### **13-1-119. Judgment record and register of actions open for inspection.**

The judgment record and register of actions shall be open at all times during office hours for the inspection of the public without charge, and it is the duty of the clerk to arrange the several records kept by him in such manner as to facilitate their inspection. In addition to paper records, such information may also be presented on microfilm or computer terminal.

**Source:** L. 1887: p. 166, § 231. **Code 08:** § 250. **Code 21:** § 251. **Code 35:** § 251. **CRS 53:** § 37-1-21. **C.R.S. 1963:** § 37-1-21. **L. 79:** Entire section amended, p. 596, § 3, effective July 1.

## **ANNOTATION**

**The court did not err by taking judicial notice of defendant's probation status after determining the status from the state computer system.** Since this section and Crim. P. 55 expressly approve of records

kept and maintained in a state computer system, the court may take judicial notice of the court records contained in the system. People v. Linares-Guzman, 195 P.3d 1130 (Colo. App. 2008).

### **13-1-119.5. Electronic access to name index and register of actions.**

(1) Statewide electronic read-only access to the name index and register of actions of public case types must be made available to the following agencies or attorneys appointed by the court and their professional staff:

(a) County departments, as defined in section 19-1-103, and attorneys who represent the county departments as county attorneys, as defined in section 19-1-103, as it relates to the attorneys' work representing the county;

(b) The office of the state public defender, created in section 21-1-101, C.R.S.;

(c) Guardians ad litem or counsel for youth under contract with the office of the child's representative, created in section 13-91-104, or authorized by the office of the child's representative to act as a guardian ad litem or counsel for youth, and other professionals under contract with the office of the child's representative and authorized to work with an appointed attorney as it relates to a case in which the attorney is appointed;

(d) Attorneys under contract with the office of alternate defense counsel, created in section 21-2-101, and other professionals under contract with the office of alternate defense counsel and authorized to work with an appointed attorney as it relates to a case in which the attorney is appointed;

(e) A respondent parent's counsel under contract with the office of the respondent parents' counsel, created in section 13-92-103, or authorized by the office of the respondent parents' counsel to act as a respondent parent's counsel, and other professionals under contract with the office of the respondent parents' counsel and authorized to work with an appointed attorney, as it relates to a case in which the attorney is appointed;

(f) Criminal justice agencies as described in section 24-72-302 (3); and

(g) A licensed attorney working with a nonprofit association pursuant to the provisions of section 19-1-304 (7)(f).

(1.5) The office of the child's representative, the office of alternate defense counsel, and the office of the respondent parents' counsel shall manage user access granted to each agency pursuant to subsection (1) of this section.

(2) The supreme court may adopt rules regarding access to the name index and register of actions, including rules identifying confidential information maintained in the system and state requirements for using the confidential information. All agencies with access pursuant to subsection (1) of this section shall ensure that individuals who use the system receive training on appropriate usage and confidentiality of register of action information. Additionally, the state court administrator may monitor the use of the system and information through audits and the review of ad hoc queries or reports.

**Source: L. 2008:** Entire section added, p. 1240, § 1, effective August 5. **L. 2016:** IP(1) and (1)(e) amended, (HB 16-1193), ch. 81, p. 207, § 1, effective July 1. **L. 2017:** (1)(e) and (1)(f) amended and (1)(g) added, (HB 17-1204), ch. 206, p. 785, § 8, effective November 1. **L. 2021:**

(1)(a) amended, (SB 21-059), ch. 136, p. 708, § 5, effective October 1. **L. 2022:** (1)(c) amended, (HB 22-1038), ch. 92, p. 438, § 16, effective January 9, 2023. **L. 2025:** IP(1), (1)(c), (1)(d), and (1)(e) amended and (1.5) added, (SB 25-239), ch. 142, p. 535, § 1, effective August 6.

**Cross references:** For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022.

### **13-1-120. Proceedings in English - abbreviations.**

Every written proceeding in a court of justice in this state, or before a judicial officer, shall be in the English language, but such abbreviations as are now commonly used in that language may be used, and numbers expressed by figures or numerals in the customary manner.

**Source:** L. 1887: p. 212, § 411. **Code 08:** § 446. **Code 21:** § 448. **Code 35:** § 448. **CRS 53:** § 37-1-22. **C.R.S. 1963:** § 37-1-22.

### **ANNOTATION**

**The translation of instructions into Spanish for the use and instruction of a juror** understanding that language alone would not be inhibited by the spirit of this section. The object of the provision is to

secure a record in English, and this would in nowise be defeated. *Trinidad v. Simpson*, 5 Colo. 65 (1879) (decided under repealed provisions antecedent to § 18 of appendix B, R.C.P. Colo., CSA, 1935).

### **13-1-121. Action not affected by vacancy.**

No action or proceeding in a court of justice in this state shall be affected by a vacancy in the office of any of the judges, or by failure of a term thereof.

**Source:** L. 1887: p. 212, § 410. **Code 08:** § 445. **Code 21:** § 447. **Code 35:** § 447. **CRS 53:** § 37-1-23. **C.R.S. 1963:** § 37-1-23.

**13-1-122. When judge shall not act unless by consent.**

A judge shall not act as such in any of the following cases: In an action or proceeding to which he is a party, or in which he is interested; when he is related to either party by consanguinity or affinity in the third degree; or when he has been attorney or counsel for either party in the action or proceeding, unless by consent of all parties to the action.

**Source:** L. 1887: p. 216, § 429. **Code 08:** § 464. **Code 21:** § 465. **Code 35:** § 465. **CRS 53:** § 37-1-24. **C.R.S. 1963:** § 37-1-24.

**ANNOTATION**

**Annotator's note.** Since § 13-1-122 is similar to repealed provisions antecedent to § 28 of appendix B, R.C.P. Colo., CSA, 1935, relevant cases construing those provisions have been included in the annotations to this section.

**A judge must disqualify himself if he has a private interest.** Any personal or private interest within this statute or rule would disqualify the county judge as the trial judge, and his refusal to remove himself as the trial judge would be grounds for reversal. Any action involving a situation where the trial judge may benefit in a pecuniary way depending upon his decision would be a prime example of a situation in which a trial judge would have no alternative other than to disqualify himself. *Russell v. Wheeler*, 165 Colo. 296, 439 P.2d 43 (1968).

**Generally, a judge has a discretionary prerogative in the area of public interest.** In the area of public interest, a judge upon being challenged, may in his discretionary prerogative remove himself, but if he refuses, his decision will not be reversed

unless it is shown convincingly that his interest was so intense that a probability existed that his decision would be tainted. *Russell v. Wheeler*, 165 Colo. 296, 439 P.2d 43 (1968).

**A differentiation must be made between a judge's private and public interest.** In considering the trial court's purported interest in the subject and outcome of the school bond election contest, it is necessary to differentiate between a "private" interest and a "public" interest in the controversy and the outcome. *Russell v. Wheeler*, 165 Colo. 296, 439 P.2d 43 (1968).

**Public interest as a citizen is not grounds for disqualification.** An interest which a judge may have as a citizen in a public question or issue is no basis per se for his removal as the trial judge in an action contesting an election determinative of the public question or issue. *Russell v. Wheeler*, 165 Colo. 296, 439 P.2d 43 (1968).

**A public interest is an interest shared by citizens generally** in the affairs of local, state, or national government, and is not the

same character of interest which compels disqualification as would a private interest. *Russell v. Wheeler*, 165 Colo. 296, 439 P.2d 43 (1968).

**Interest in bond election may be so great so as to make it private interest.** The attached affidavits and exhibits are insufficient to show that the county judge who was a qualified taxpaying elector, and who voted for and publicly approved the new school and bond issue, had such an interest in the bond election contest, or that he was so prejudiced against the contest action that he should have as a matter of law disqualified himself. *Russell v. Wheeler*, 165 Colo. 296, 439 P.2d 43 (1968).

**Generally, obligations as taxpayer are not grounds for disqualification.** The personal effect upon the trial judge, who as the owner of property would be charged with the obligation of the school bonds, is a pecuniary advantage or disadvantage so contingent, speculative, and remote as to be of no consequence. Public improvements, like new school buildings, may have the effect of increasing the tax obligation on real property but they also result in increasing the value of the property so that it is therefore next to impossible to state as a matter of certainty that a public improvement will be a disadvantage or advantage to any given piece of property. *Russell v. Wheeler*, 165 Colo. 296, 439 P.2d 43 (1968).

**Whether to disqualify himself in a civil case is a question within the discretion of the trial judge,** and the judge's ruling on that issue will not be disturbed on appeal

absent a showing of an abuse of that discretion. *Colo. State Bd. of Agric. v. First Nat'l Bank*, 671 P.2d 1331 (Colo. App. 1983).

**A judge, having been of counsel for either party in the previous trial** of the action, is under this section clearly disqualified from acting as judge in the trial of the case, and, where the disqualification is not waived by consent of the party he represented as counsel, has no authority to act judicially therein. *O'Connell v. Gavett*, 7 Colo. 40, 1 P. 902 (1883).

**The fact that the presiding trial judge was statutorily disqualified from presiding because of her prior involvement** in the case as counsel for defendant, even though the judge's representation was minimal, amounts to structural error requiring reversal. *People v. Garcia*, 2022 COA 83, 519 P.3d 1064, rev'd on other grounds, 2024 CO 41M, 550 P.3d 637.

**Judge must by his own motion certify this to the district court.** Under this section, a county judge who has acted as counsel in behalf of either litigant is not only disqualified from hearing motions to set aside judgments, but it is his duty on his own motion to certify the matters to the district court. *People ex rel. Brown v. District Court*, 26 Colo. 226, 56 P. 1115 (1899).

**Even where a judge previously represented one of the parties in the proceeding, this section explicitly permits the parties to consent to the judge**

**presiding over the case.** People v. Garcia,  
2024 COA 91, 559 P.3d 255.

**Applied** in Zoline v. Telluride Lodge  
Ass'n, 732 P.2d 635 (Colo. 1987).

### **13-1-123. Transfer of civil actions.**

When in any civil action pending in any court of record, whether filed as a special statutory proceeding, or otherwise, if for any reason the proceedings could be more expeditiously continued in another county, with the express consent of all parties, the court may order the cause transferred to any other county wherein the court finds the proceedings could be more expeditiously continued. No additional docket fee shall be required. Upon such a transfer being ordered, the clerk shall transfer all files, books, and records of the cause, or, if that is not practicable, he shall make, at the expense of the parties, and send to the clerk of the court to which the cause is transferred a certified copy of all records in the cause which are necessary for the continuation of the proceedings in the court to which such cause is transferred, and the cause shall continue in the court to which it is transferred with the same effect and force as though such cause were originally docketed in such court.

**Source:** L. 59: p. 349, § 1. CRS 53: § 37-1-25. C.R.S. 1963: § 37-1-25.

**Cross references:** For venue and change of venue generally, see C.R.C.P. 98.

### **13-1-123.5. Transfer of venue - actions involving related persons.**

In addition to the authority to change venue granted by sections 19-2.5-104 and 19-3-201 for good cause shown, a court, on its own motion, on the motion of another court in this state, or on the motion of a party or guardian ad litem, may order the transfer of a pending action brought pursuant to title 14 or title 19 or rule 365 of the Colorado rules of county court civil procedure to a court in another county when there is an action pending in the other county that names the parent, guardian, or legal custodian of a child who is the subject of the action brought pursuant to title 14 or title 19. The county to which the action is being transferred must be one in which venue is proper. Upon an order for such transfer, the transferring court shall notify all parties of the transfer and transmit all documents to the receiving court. The transferred action continues in the court to which it is transferred with the same force and effect as though originally docketed in the receiving court.

**Source: L. 95:** Entire section added, p. 46, § 1, effective January 1, 1996. **L. 96:** Entire section amended, p. 1687, § 13, effective January 1, 1997. **L. 2021:** Entire section amended, (SB 21-059), ch. 136, p. 708, § 6, effective October 1.

### **13-1-124. Jurisdiction of courts.**

(1) Engaging in any act enumerated in this section by any person, whether or not a resident of the state of Colorado, either in person or by an agent, submits such person and, if a natural person, such person's personal representative to the jurisdiction of the courts of this state concerning any cause of action arising from:

- (a) The transaction of any business within this state;
- (b) The commission of a tortious act within this state;
- (c) The ownership, use, or possession of any real property situated in this state;
- (d) Contracting to insure any person, property, or risk residing or located within this state at the time of contracting;
- (e) The maintenance of a matrimonial domicile within this state with respect to all issues relating to obligations for support to children and spouse in any action for dissolution of marriage, legal separation, declaration of invalidity of marriage, or support of children if one of the parties of the marriage continues without interruption to be domiciled within the state;
- (f) The engaging of sexual intercourse in this state as to an action brought under article 4 or article 6 of title 19, C.R.S., with respect to a child who may have been conceived by that act of intercourse, as set forth in verified petition; or
- (g) The entering into of an agreement pursuant to part 2 or 5 of article 22 of this title.

**Source: L. 65:** p. 472, § 1. **C.R.S. 1963:** § 37-1-26. **L. 82:** (1)(c) and (1)(d) amended and (1)(e) added, p. 280, § 1, effective April 2. **L. 91:** (1)(f) added, p. 248, § 2, effective July 1. **L. 93:** Entire section amended, p. 359, § 1, effective July 1.

### **ANNOTATION**

III. Commission of Tort.

IV. Real Property in Colorado.

V. Contracts of Insurance.

VI. Maintenance of Matrimonial  
Domicile.



## **I. GENERAL CONSIDERATION.**

A. In General.

B. Constitutionality.

C. Procedure.

A. In General.

**Law reviews.** For note, "One Year Review of Colorado Law — 1964", see 42 Den. L. Ctr. J. 140 (1965). For comment discussing the impact of Shaffer v. Heitner, 433 U.S. 186 (1977), on state long arm statute, see 55 Den. L.J. 365 (1978). For article, "Federal Practice and Procedure", see 56 Den. L.J. 491 (1979). For article, "Jurisdiction and Service of Process Beyond Colorado Boundaries", see 11 Colo. Law. 648 (1982). For article, "Legislative Activities in Family Law", see 11 Colo. Law. 1560 (1982). For article, "Federal Practice and Procedure", which discusses a Tenth Circuit decision dealing with in personam jurisdiction, see 62 Den. U. L. Rev. 219 (1985). For article, "Where to Sue and Defend: An Update on Personal Jurisdiction Law", see 47 Colo. Law. 26 (Feb. 2018).

**This section and § 13-1-125 are sometimes referred to as the "long arm" or "single act" statute.** Hoen v. District Court, 159 Colo. 451, 412 P.2d 428 (1966); Cox v. District Court, 160 Colo. 437, 417 P.2d 792 (1966); Geer Co. v. District Court, 172 Colo. 48, 469 P.2d 734 (1970).

**Section is procedural, not substantive.** This statute, an example of "long arm" statutes, is "procedural" rather than "substantive" and may operate

retrospectively. Its effect is not to create a right or liability where none existed before; its only effect is to broaden the procedure whereby one seeking redress against an alleged tortfeasor may compel him to answer in the forum initially determined by the plaintiff to be the most convenient. Smith v. Putnam, 250 F. Supp. 1017 (D. Colo. 1965).

**Section merely establishes a new mode of obtaining jurisdiction of the person** of the defendant in order to secure existing rights. Smith v. Putnam, 250 F. Supp. 1017 (D. Colo. 1965).

**Section was passed by the general assembly in order to extend** rather than to limit the jurisdiction of the courts of the state. White-Rodgers Co. v. District Court, 160 Colo. 491, 418 P.2d 527 (1966).

**Due process inquiry is all that is necessary.** By extending jurisdiction to the maximum limits permissible under the United States and Colorado Constitutions, the general assembly obviated the need for further statutory analysis. New Frontier Media, Inc. v. Freeman, 85 P.3d 611 (Colo. App. 2003); Rome v. Reyes, 2017 COA 84, 401 P.3d 75.

**Federal court's jurisdiction in diversity cases.** In diversity cases, the federal district court's jurisdiction is coextensive with the state court's. Ruggieri v. Gen. Well Serv., Inc., 535 F. Supp. 525 (D. Colo. 1982).

**Jurisdiction based on facts at time of complaint.** An amendment of a pleading to justify long arm jurisdiction must be based on facts existing at the time the complaint

was filed. *Jenkins v. Glen & Helen Aircraft, Inc.*, 42 Colo. App. 118, 590 P.2d 983 (1979).

**Personal jurisdiction and venue distinguished.** Personal jurisdiction is a question of the court's power to exercise control over defendants while venue is primarily a matter of choosing a convenient forum. *Marquest Med. Prods., Inc. v. Emide Corp.*, 496 F. Supp. 1242 (D. Colo. 1980).

Resolution of personal jurisdiction generally takes precedence over the determination of the propriety of venue. *Marquest Med. Prods., Inc. v. Emide Corp.*, 496 F. Supp. 1242 (D. Colo. 1980).

**Resolution of jurisdictional issues under section frequently involves** an ad hoc analysis of the facts. *Waterval v. District Court*, 620 P.2d 5 (Colo. 1980).

**Privilege defenses such as lack of personal jurisdiction or improper venue may be lost by** failure to assert them seasonably, by formal submission in a cause, or by submission through conduct. *Marquest Med. Prods., Inc. v. Emide Corp.*, 496 F. Supp. 1242 (D. Colo. 1980).

**Mere filing of or participation in motion does not necessarily entail waiver to defenses** of lack of personal jurisdiction or improper venue. *Marquest Med. Prods., Inc. v. Emide Corp.*, 496 F. Supp. 1242 (D. Colo. 1980).

**Request for award of attorney fees, as part of motion to dismiss for lack of personal jurisdiction, does not constitute a general appearance and does not waive defense of lack of personal jurisdiction.**

Defendants did not seek affirmative relief; rather, they only defended against plaintiff's claims. *Gognat v. Ellsworth*, 224 P.3d 1039 (Colo. App. 2009), *aff'd* on other grounds, 259 P.3d 497 (Colo. 2011).

**For discussion of conspiracy theory of personal jurisdiction**, see *Bennett Waites Corp. v. Piedmont Aviation, Inc.*, 563 F. Supp. 810 (D. Colo. 1983).

**Section need not be relied on when service is made inside Colorado.** It is not necessary to rely on "long arm" statute to sustain jurisdiction of district court over foreign corporation where service of process was not made outside of state, but was made upon agent of foreign corporation in the state. *White-Rodgers Co. v. District Court*, 160 Colo. 491, 418 P.2d 527 (1966).

**Jurisdiction over foreign corporation where personal service effected in state.** Colorado state courts have jurisdiction over a foreign corporation qualified to do business in the state where personal service on the foreign corporation is effected within the state, regardless of the fact that the cause of action does not arise out of the foreign corporation's business activity within the state, but, to the contrary, arises out of a transaction occurring in another state. *Budde v. Kentron Hawaii, Ltd.*, 565 F.2d 1145 (10th Cir. 1977).

**Burden imposed upon one who seeks remedy under long arm statute is to allege in complaint** sufficient facts to support reasonable inference that defendants engaged in conduct described in statute which subjects them to in personam jurisdiction. *Texair Flyers, Inc. v. District*

Court, 180 Colo. 432, 506 P.2d 367 (1973); Jenkins v. Glen & Helen Aircraft, Inc., 42 Colo. App. 118, 590 P.2d 983 (1979); Shon v. District Court, 199 Colo. 90, 605 P.2d 472 (1980).

**This section requires purposeful acts performed within forum state by defendant** in relation to the contract. Weyrich v. Lively, 361 F. Supp. 1147 (D. Colo. 1973).

**Prima facie showing of threshold jurisdiction is sufficient** and may be determined from allegations of complaint. Texair Flyers, Inc. v. District Court, 180 Colo. 432, 506 P.2d 367 (1973).

A plaintiff need only make a prima facie showing of threshold jurisdiction, which may be determined from the allegations of the complaint, to withstand defendant's motion to dismiss under, C.R.C.P. 12(b)(2). Pioneer Astro Indus., Inc. v. District Court, 193 Colo. 409, 566 P.2d 1067 (1977).

In determining whether a prima facie showing has been established, it is appropriate to consider the allegations of the complaint as well as any other evidence adduced at the hearing on the motion to dismiss. Fleet Leasing, Inc. v. District Court, 649 P.2d 1074 (Colo. 1982).

A party may make the required prima facie showing of threshold jurisdiction by alleging jurisdictional facts in the complaint, by submitting affidavits, or presenting evidence at the hearing on the motion to dismiss or to quash service of process. Panos Inv. Co. v. District Court, 662 P.2d 180 (Colo. 1983).

The allegations of the complaint, as well as any evidence introduced by the parties at any hearing conducted to determine the jurisdictional issue, may be considered to determine whether the plaintiff has established such prima facie showing of jurisdiction. Scheuer v. District Court, 684 P.2d 249 (Colo. 1984).

**Prima facie showing required.** A party asserting personal jurisdiction over a defendant under the long arm statute must make a prima facie showing of threshold jurisdiction. Fleet Leasing, Inc. v. District Court, 649 P.2d 1074 (Colo. 1982).

**When defendant asserts permissive claim, long arm jurisdiction becomes general in personam.** By the assertion of a permissive counter-claim and a cross-claim, claimant was invoking of the jurisdiction of the court in its own behalf, and expanded the limited in personam jurisdiction originally acquired under the long arm statute into general in personam jurisdiction. T.L. Smith Co. v. District Court, 163 Colo. 444, 431 P.2d 454 (1967).

**Where a defendant in a civil action files various cross-claims and third-party claims,** the jurisdiction of the court is invoked and the defendant waives any objection to the issue of a personam jurisdiction. Fagerberg v. Webb, 678 P.2d 544 (Colo. App. 1983).

**Finding that long-arm statute cannot be properly invoked is a final determination** that defendants are not subject to the court's jurisdiction and an appeal can be taken therefrom. Wilbourn v. Hagan, 716 P.2d 485 (Colo. App. 1986).

**In general, the activities of a non-resident subject him to long-arm jurisdiction** if the quality, nature, and frequency of his conduct in Colorado is such that the non-resident should reasonably anticipate being haled into the Colorado courts. *Von Palffy-Erdoed v. Bugescu*, 708 P.2d 816 (Colo. App. 1985); *Pub. Warranty Corp. v. Mullins*, 757 P.2d 1140 (Colo. App. 1988); *Parocha v. Parocha*, 2018 CO 41, 418 P.3d 523.

**Trial court had personal jurisdiction over estate** after plaintiffs amended complaint to name estate and estate's special administrator as defendants instead of deceased, non-existent defendant before any answer had been filed in the case. This cured the defect in personal jurisdiction contained in the original complaint. *Currier v. Sutherland*, 218 P.3d 709 (Colo. 2009).

**Distinction between subject-matter jurisdiction and personal jurisdiction.** This section, together with defendant's note submitting to jurisdiction of Colorado courts for purposes of enforcement, conferred subject-matter jurisdiction. However, in absence of valid service of process under § 13-1-125 and C.R.C.P. 4 court lacked personal jurisdiction and judgment was void. *United Bank of Boulder, N.A. v. Buchanan*, 836 P.2d 473 (Colo. App. 1992).

**A party's lack of capacity to sue or be sued has no bearing upon a court's subject matter jurisdiction over the case.** *Currier v. Sutherland*, 218 P.3d 709 (Colo. 2009).

A deceased defendant's lack of capacity to be sued does not divest a court of subject

matter jurisdiction over the case. Subject matter jurisdiction involves a court's power to hear a particular type of case or grant a specific type of relief. *Currier v. Sutherland*, 218 P.3d 709 (Colo. 2009).

**Applied** in *Nations Enters., Inc. v. Process Equip. Co.*, 40 Colo. App. 390, 579 P.2d 655 (1978); *Adolph Coors Co. v. A. Genderson & Sons*, 486 F. Supp. 131 (D. Colo. 1980); *Goldenhersh v. Febrey*, 711 P.2d 717 (Colo. App. 1985); *Rogers v. Clipper Cruise Lines, Inc.*, 650 F. Supp. 143 (D. Colo. 1986); *In re Ness*, 759 P.2d 844 (Colo. App. 1988); *CGC Holding Co., LLC v. Hutchens*, 824 F. Supp. 2d 1193 (D. Colo. 2011).

#### B. Constitutionality.

**Jurisdiction to extend to constitutional limits.** The Colorado general assembly, in enacting this section, intended to extend the jurisdiction of the courts to the fullest extent permitted by the due process clause of the fourteenth amendment to the United States Constitution. *Jenner & Block v. District Court*, 197 Colo. 184, 590 P.2d 964 (1979); *Halliburton Co. v. Texana Oil Co.*, 471 F. Supp. 1017 (D. Colo. 1979); *Marquest Med. Prods., Inc. v. Emide Corp.*, 496 F. Supp. 1242 (D. Colo. 1980); *Waterval v. District Court*, 620 P.2d 5 (Colo. 1980); *Fleet Leasing, Inc. v. District Court*, 649 P.2d 1074 (Colo. 1982); *Panos Inv. Co. v. District Court*, 662 P.2d 180 (Colo. 1983); *Beckman v. Carlson*, 553 F. Supp. 1049 (D. Colo. 1983); *Scheuer v. District Court*, 684 P.2d 249 (Colo. 1984); *Pub. Warranty Corp. v. Mullins*, 757 P.2d 1140 (Colo. App. 1988).

This statute confers jurisdiction, limited only by the bounds of the fourteenth amendment, consistent with the standards of due process enunciated in *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945), and subsequent cases. *Cleverock Energy Corp. v. Trepel*, 609 F.2d 1358 (10th Cir. 1979).

The general assembly did not intend that this section be construed to permit jurisdiction to be asserted where to do so would violate due process of law. *Le Manufacture Francaise Des Pneumatiques Michelin v. District Court*, 620 P.2d 1040 (Colo. 1980).

**Constitutionality depends upon its application to the facts.** The constitutionality of any state long arm statute depends on the manner of its particular application to the facts presented. *Circle A Drilling Co. v. Sheehan*, 251 F. Supp. 242 (D. Colo. 1966).

**This section meets the due process test** of *Int'l Shoe Co. v. Washington*, i.e., that the activity of the defendant "establish sufficient contacts or ties with the state of the forum to make it reasonable and just according to our traditional conception of fair play and substantial justice to permit the state to enforce the obligation which appellant has incurred there". *Zerr v. Norwood*, 250 F. Supp. 1021 (D. Colo. 1966).

**It does not offend notions of fair play and substantial justice.** Due process requires only that in order to subject a defendant to a judgment in personam, if he is not present within the territory of the forum, he must have certain minimum contacts such that the maintenance of the

suit does not offend traditional notions of fair play and substantial justice. *White-Rodgers Co. v. District Court*, 160 Colo. 491, 418 P.2d 527 (1966); *Safari Outfitters, Inc. v. Superior Court*, 167 Colo. 456, 448 P.2d 783 (1968); *People ex rel. Jeffers v. Gibson*, 181 Colo. 4, 508 P.2d 374 (1973).

**Quality and nature of activity must be considered in determining jurisdiction.** In order to assure fairness and justice, the trial court must look at the quality and nature of the defendant's activity in determining whether the assertion of jurisdiction complies with due process. *Marquest Med. Prods., Inc. v. Emide Corp.*, 496 F. Supp. 1242 (D. Colo. 1980).

**The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy** the requirement of contact with a forum state. It is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws. *Safari Outfitters, Inc. v. Superior Court*, 167 Colo. 456, 448 P.2d 783 (1968).

**Convenience alone insufficient for judgment against nonresident.** Due process of law does not contemplate that a state may make a binding judgment in personam against a nonresident defendant merely out of considerations of convenience. *Fleet Leasing, Inc. v. District Court*, 649 P.2d 1074 (Colo. 1982).

**An assertion of personal jurisdiction over an out-of-state defendant** must satisfy both the requirements of the Colorado long-

arm statute and the requirements of due process of law. *Marquest Med. Prods., Inc. v. Daniel, McKee & Co.*, 791 P.2d 14 (Colo. App. 1990); *Parocha v. Parocha*, 2018 CO 41, 418 P.3d 523.

**Determination of jurisdiction involves a two-tiered inquiry.** Court must first determine whether the statute provides a basis for the exercise of jurisdiction, and then must consider whether exercise of jurisdiction would violate federal due process principles. *Schocket v. Classic Auto Sales, Inc.*, 817 P.2d 561 (Colo. App. 1991), *aff'd*, 832 P.2d 233 (Colo. 1992).

#### C. Procedure.

**When evidentiary hearing appropriate.** In its discretion, a court may address a motion to dismiss for lack of personal jurisdiction on documentary evidence alone or by holding an evidentiary hearing. An evidentiary hearing may be appropriate when the proffered evidence is conflicting or when the plaintiff's affidavits are incredible. However, if the jurisdictional facts are inextricably intertwined with the merits of the case, caution is advised to avoid endangering the substantive right to a jury trial. *Archangel Diamond Corp. v. Lukoil*, 123 P.3d 1187 (Colo. 2005); *Goettman v. N. Fork Valley Rest.*, 176 P.3d 60 (Colo. 2007).

**If the issue is to be resolved on documentary evidence alone, plaintiff needs only make a prima facie showing** of personal jurisdiction to defeat the motion to dismiss. Allegations in the complaint must be accepted as true to the extent they are not contradicted by defendant's competent

evidence. *Goettman v. N. Fork Valley Rest.*, 176 P.3d 60 (Colo. 2007).

**The court may not resolve disputed material issues of jurisdictional fact without a hearing.** *Goettman v. N. Fork Valley Rest.*, 176 P.3d 60 (Colo. 2007).

**Purpose of inquiry** is to screen out cases in which personal jurisdiction is obviously lacking and those in which the jurisdictional challenge is patently bogus. *Archangel Diamond Corp. v. Lukoil*, 123 P.3d 1187 (Colo. 2005); *Goettman v. N. Fork Valley Rest.*, 176 P.3d 60 (Colo. 2007).

## II. TRANSACTING BUSINESS.

### A. In General.

### B. Minimum Contacts Principle.

### C. What Constitutes Transacting Business.

### D. Agency Theory.

#### A. In General.

**Law reviews.** For comment on *White-Rodgers Co. v. District Court*, appearing below, see 39 U. Colo. L. Rev. 443 (1967). For note, "Doing Business in Colorado for Foreign Corporations: Service of Process, Qualification, Taxation", see 49 Den. L.J. 529 (1973). For article, "Constitutional Law", which discusses a Tenth Circuit decision dealing with minimum contacts, see 64 Den. U. L. Rev. 209 (1987). For article, "Civil Procedure", which discusses Tenth Circuit decisions dealing with jurisdiction, see 65 Den. U. L. Rev. 405 (1988).

**No jurisdiction unless defendant "present" in state.** Unless the level of a

defendant's activity is sufficient to make him "present" in the forum state, there is no jurisdiction where the cause of action is unrelated to the forum state activities. *Automated Quill, Inc. v. Chernow*, 455 F. Supp. 428 (D. Colo. 1978).

**Substantial connection rather than physical presence required.** Although it is not necessary that the defendant be physically present in the state for purposes of transacting business, there must be a substantial connection between the business transacted and the forum state. *Weyrich v. Lively*, 361 F. Supp. 1147 (D. Colo. 1973); *Custom Vinyl Compounding v. Bushart & Assoc.*, 810 F. Supp. 285 (D. Colo. 1992).

**"Substantial contacts" with Colorado held not present.** *Beckman v. Carlson*, 553 F. Supp. 1049 (D. Colo. 1983); *Vickery v. Amarillo Freightliner Sales, Inc.*, 695 P.2d 306 (Colo. App. 1984); *Behagen v. Amateur Basketball Assn. of U.S.A.*, 744 F.2d 731 (10th Cir. 1984); *Sands v. Victor Equip. Co.*, 616 F. Supp. 1532 (D. Colo. 1985); *GCI 1985 -1 LTD. v. Murray Props. P'ship*, 770 F. Supp. 585 (D. Colo. 1991).

#### B. Minimum Contacts Principle.

**Law reviews.** For article, "A New Litany of Personal Jurisdiction", see 60 U. Colo. L. Rev. 5 (1989).

**This section codifies minimum contacts principles.** The question of when a state can obtain in personam jurisdiction over a nonresident by service of process outside the state is basically governed by the "minimum contacts" test enunciated in *Int'l Shoe Co. v. Washington*.

In order for the nonresident defendant to be subject to the state's personal jurisdiction, "he has certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'". The Colorado "long arm" statute was designed to codify the "minimum contacts" principle. *Lichina v. Futura, Inc.*, 260 F. Supp. 252 (D. Colo. 1966); *Jenner & Block v. District Court*, 197 Colo. 184, 590 P.2d 964 (1979); *Premier Corp. v. Newsom*, 620 F.2d 219 (10th Cir. 1980); *Marquest Med. Prods., Inc. v. Emide Corp.*, 496 F. Supp. 1242 (D. Colo. 1980).

**Minimal contacts are necessary for the operation of this section.** *Cox v. District Court*, 160 Colo. 437, 417 P.2d 792 (1966).

**Minimal contacts are necessary to satisfy due process requirements.** It is clear that this section is based on certain minimum contacts which must satisfy requisites of due process in accord with the test of *Int'l Shoe Co. v. Washington*. *Hydraulics Unlimited Mfg. Co. v. B/J Mfg. Co.*, 323 F. Supp. 996 (D. Colo.), *aff'd*, 449 F.2d 775 (10th Cir. 1971).

For jurisdiction to attach under subsection (1)(b), certain "minimum contacts" between the forum state and the defendant are necessary in order not to offend traditional notions of due process, fair play, and substantial justice. *E.R. Callender Printing Co. v. District Court*, 182 Colo. 25, 510 P.2d 889 (1973).

**The essential requirement of the "minimum contacts" rule is that** "the defendant purposefully avails itself of the privilege of conducting activities within the

forum state, thus invoking the benefits and protections of its laws". *Lichina v. Futura, Inc.*, 260 F. Supp. 252 (D. Colo. 1966).

**The minimum amount of contacts required to exercise personal jurisdiction depends on whether the plaintiff has alleged general or specific jurisdiction.** A court has general jurisdiction over a defendant if the defendant conducted continuous and systematic activities that are of a general business nature in the forum state. A court has specific jurisdiction over a defendant if the injuries triggering the litigation arise out of and are related to activities that are significant and purposefully directed by the defendant at the residents of the forum state. *Found. for Knowledge in Dev. v. Interactive Design Consultants*, 234 P.3d 673 (Colo. 2010).

**Test for determining if courts may exercise jurisdiction over a non-resident** is whether the exercise of extra-territorial jurisdiction is authorized by statute, and, if so, whether such exercise is consistent with constitutional requirements of due process. *Vickery v. Amarillo Freightliner Sales, Inc.*, 695 P.2d 306 (Colo. App. 1984).

**The test to determine whether the exercise of personal jurisdiction over a nonresident defendant would offend traditional notions** of fair play and substantial justice requires that (1) the defendant must purposely avail himself of the privilege of acting in Colorado or of causing important consequences here; (2) the cause of action must arise from the consequences in Colorado of the defendant's activities; (3) the activities of the defendant

or the consequences of those activities must have a substantial enough connection with Colorado to make the exercise of jurisdiction over the defendant reasonable. *Duckworth v. M.M. Cole Publ'g Co.*, 38 Colo. App. 33, 552 P.2d 520 (1976); *Automated Quill, Inc. v. Chernow*, 455 F. Supp. 428 (D. Colo. 1978); *Associated Inns & Restaurant Co. of Am. v. Dev. Assocs.*, 516 F. Supp. 1023 (D. Colo. 1981); *H2O Eng'g, Inc. v. Leidy's, Inc.*, 799 P.2d 432 (Colo. App. 1990), rev'd on other grounds, 811 P.2d 38 (Colo. 1991); *RAF Fin. v. Resurgens*, 127 B.R. 458 (Bankr. D. Colo. 1991); *Alameda Nat. Bank v. Kanchanapoom*, 752 F. Supp. 367 (D. Colo. 1990); *Plus Sys., Inc. v. New England Network, Inc.*, 804 F. Supp. 111 (D. Colo. 1992); *F.D.I.C. v. First Interstate Bank of Denver, N.A.*, 937 F. Supp. 1461 (D. Colo. 1996); *Gwynn v. Transcor Am., Inc.*, 26 F. Supp. 2d 1256 (D. Colo. 1998).

**Unfairness factor in determining sufficient contacts.** While fairness is not an affirmative basis for granting jurisdiction, unfairness may become a factor in determining whether certain contacts are sufficient. *Cleverock Energy Corp. v. Trepel*, 609 F.2d 1358 (10th Cir. 1979).

**Court does not adopt a "stream of commerce plus" approach.** The proper analysis is the stream of commerce test articulated in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), and not the stream of commerce plus test. Under the stream of commerce theory, personal jurisdiction can be established if a defendant delivers its products into the stream of commerce with the expectation that they



will be purchased by consumers in the forum state. But courts have split on the proper approach to this theory, particularly on the issue of an added requirement that a plaintiff must prove additional conduct of a defendant beyond placing a product into the stream of commerce. Justice Breyer's concurrence in *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011), and Justice Brennan's concurrence in *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987), are controlling and together hold that World-Wide Volkswagen remains the prevailing decision articulating the stream of commerce theory. *Boustred v. Align Corp. Ltd.*, 2016 COA 67, 410 P.3d 640, *aff'd*, 2017 CO 103, 421 P.3d 163.

**Court applied the U.S. supreme court stream of commerce plus test articulated in *Asahi Metal Indus. Co. v. Superior Court* to conclude minimum contacts established.** *Etchieson v. Cent. Purchasing LLC*, 232 P.3d 301 (Colo. App. 2010).

**Each case must be decided on its own facts.** On the question of "doing business" every case must be decided solely on its own facts. The complete test is one of total impact. The corporation must have certain minimum contacts with the state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Elliot v. Edwards Eng'g Corp.*, 257 F. Supp. 537 (D. Colo. 1965).

Whether in a particular case a nonresident defendant, who is served outside the forum state, has sufficient minimum contacts with the forum state to warrant the latter in exercising in personam jurisdiction over the

person of such nonresident necessarily depends on the facts of the case at hand. *Premier Corp. v. Newsom*, 620 F.2d 219 (10th Cir. 1980).

**Even single contact is sufficient to sustain jurisdiction where** the cause of action arose out of that contact. *Marquest Med. Prods., Inc. v. Emide Corp.*, 496 F. Supp. 1242 (D. Colo. 1980).

**Single act does not uniformly result in the exercise of jurisdiction** when that act is not substantial enough to make the defendant "present". *Trans-Continent Refrigerator Co. v. A Little Bit of Swed., Inc.*, 658 P.2d 271 (Colo. App. 1982).

**One meeting constituting sole contact insufficient.** Where the only contact the defendant had with Colorado was an initial meeting with the plaintiff, this one meeting did not constitute the minimum contacts requirement. *Weyrich v. Lively*, 361 F. Supp. 1147 (D. Colo. 1973).

**Quantity of contact cannot be measured by dollar value alone.** *Marquest Med. Prods., Inc. v. Emide Corp.*, 496 F. Supp. 1242 (D. Colo. 1980).

**No minimal contact if cause arose outside state and no control over representative.** Plaintiff's claim did not arise out of any dealing the company had in Colorado. This important factor, combined with almost a complete absence of control over representative, requires that the motion to quash the summons be granted. *Elliott v. Edwards Eng'g Corp.*, 257 F. Supp. 537 (D. Colo. 1965).

**The unilateral activity of those who claim some relationship with a nonresident** defendant cannot satisfy the requirement of contact with the forum state. *Circle A Drilling Co. v. Sheehan*, 251 F. Supp. 242 (D. Colo. 1966); *Knight v. District Court*, 162 Colo. 14, 424 P.2d 110 (1967).

**The mere existence of a contract executed by a Colorado resident, is not sufficient** to confer personal jurisdiction over an absent nonresident defendant. To hold otherwise would offend traditional notions of fair play and substantial justice. *Hydraulics Unlimited Mfg. Co. v. B/J Mfg. Co.*, 323 F. Supp. 996 (D. Colo.), *aff'd*, 449 F.2d 775 (10th Cir. 1971).

**Nonresident attorney's relationship with client provided sufficient connection for jurisdiction.** A professional relationship of substantial duration and a client's claimed reliance upon her nonresident attorney's advice with respect to the client's financial interests, the attorney's failure to communicate with the client or to take any action in regard to the client's interests may be productive of adverse consequences to the client in this state so as to provide a sufficient connection and render reasonable the exercise of in personam jurisdiction over the nonresident. *Waterval v. District Court*, 620 P.2d 5 (Colo. 1980); *Keefe v. Kirschenbaum & Kirschenbaum, P.C.*, 40 P.3d 1267 (Colo. 2002).

Agreement by nonresident defendant attorney to represent a Colorado corporation and the attorney's subsequent conduct were acts by which the defendant purposefully

availed himself of the privilege of conducting activities in Colorado and thus was reasonably subject to Colorado's long arm statute jurisdiction. *Scheuer v. District Court*, 684 P.2d 249 (Colo. 1984).

**Sales promotion and distribution channels reveal minimal contacts.** The affidavit does reveal "minimal contact" in Colorado as required by due process because it clearly reflects that defendant set up channels of sales promotion and distribution in Colorado for the purpose of selling its products in Colorado. *Vandermee v. District Court*, 164 Colo. 117, 433 P.2d 335 (1967).

Manufacturer's promotional activities and solicitation of customers while in Colorado, together with actual sales, was sufficient to invoke long-arm jurisdiction. *Marquest Med. Prods., Inc. v. Emide Corp.*, 496 F. Supp. 1242 (D. Colo. 1980).

**Violation of the Colorado Securities Act constitutes the "transaction of business" in Colorado** for purposes of this section, as stated in § 11-51-706. *Rome v. Reyes*, 2017 COA 84, 401 P.3d 75.

**Contacts were sufficient to find jurisdiction over manufacturer of medical syringe.** *Marquest Med. Prods., Inc. v. Emide Corp.*, 496 F. Supp. 1242 (D. Colo. 1980).

**Contacts found insufficient where sale took place outside of Colorado and issues of tort concerned creation of contract and terms.** *Vickery v. Amarillo Freightliner Sales, Inc.*, 695 P.2d 306 (Colo. App. 1984).

**Jurisdiction not proper.** Jurisdiction is not proper merely because the defendants

received a check drawn on a Colorado bank or because the defendants wrote several letters regarding the contract to the plaintiff in Colorado. *Ruggieri v. Gen. Well Serv., Inc.*, 535 F. Supp. 525 (D. Colo. 1982).

Jurisdiction is not proper in Colorado merely because one of the parties to a contract is a Colorado resident. *Ruggieri v. Gen. Well Serv., Inc.*, 535 F. Supp. 525 (D. Colo. 1982); *SGI Air Holdings II LLC v. Novartis Int'l, AG*, 192 F. Supp. 2d 1195 (D. Colo. 2002).

**Minimum contacts sufficient.** In executing a contract of guarantee in another state of payment of rent and performance of lease covenants, where petitioner induced lessors to furnish their consent for the assignment of a lease of Colorado real property, the facts amply justify long-arm jurisdiction over the person of petitioner. *Giger v. District Court*, 189 Colo. 305, 540 P.2d 329 (1975).

An out-of-state bank, which issued letter of credit in connection with Colorado real estate transaction, inducing reliance by purchaser's agent, had sufficient connection with Colorado to permit exercise of jurisdiction under this section in agent's action against bank for consequences resulting from cancellation of letter. *Van Schaack & Co. v. District Court*, 189 Colo. 145, 538 P.2d 425 (1975).

Nonresident publishing company had sufficient contacts with the state of Colorado for the assumption of in personam jurisdiction where it initiated the contract with the plaintiff at his residence in Colorado and solicited the resultant contract,

and the parties intended the plaintiff prepare the manuscripts at home in Colorado and submit them to the company's offices in Chicago for publication. *Duckworth v. M.M. Cole Publ'g Co.*, 38 Colo. App. 33, 552 P.2d 520 (1976).

Where a New York resident contracted to have brochures mailed throughout the United States, including Colorado, and where said New York resident opened a checking account in Colorado to receive the money generated by the mailing, there were sufficient contacts to allow in personam jurisdiction by Colorado courts. *At Home Magazine v. District Court*, 194 Colo. 331, 572 P.2d 476 (1977).

It is not unreasonable to subject a guarantor to the jurisdiction of courts in the very state where an obligation is specifically payable when the makers fail to perform their obligations and the guarantee becomes operable. *Panos Inv. Co. v. District Court*, 662 P.2d 180 (Colo. 1983).

Negotiating and signing an agreement in this state to personally guarantee a portion of a corporation's debts constitutes sufficient contacts for a court of this state to exercise personal jurisdiction over such a person. *Mr. Steak, Inc. v. District Court*, 194 Colo. 519, 574 P.2d 95 (1978).

Execution of promissory notes, given in conjunction with and as part and parcel of the contract for purchase of Colorado real property, constituted sufficient acts to meet the minimum contacts test. *Brownlow v. Aman*, 740 F.2d 1476 (10th Cir. 1984).

Where president of defendant corporation came to Colorado and, in the course of various business negotiations, orally agreed to the terms of an oil development contract under which the defendant corporation was obligated to send payment to plaintiff corporation in Colorado for the performance of supervisory and managerial functions under the contract and defendant corporation reasonably could have anticipated that plaintiff corporation's duties under the contract would be largely performed at their headquarters in Colorado, defendant corporation had sufficient contacts with Colorado to meet the test of due process. *Cleverock Energy Corp. v. Trepel*, 609 F.2d 1358 (10th Cir. 1979).

Communication with buyer, acceptance of payments, and attempted repossession in Colorado by agent constitute minimum contacts for personal jurisdiction. *Von Palffy-Erdoed v. Bugescu*, 708 P.2d 816 (Colo. App. 1985).

Phone calls, letters, facsimiles, and e-mails in addition to a contract, although unsigned, provide evidence that foreign defendant pursued a continuing business relationship sufficient to meet the minimum contacts requirement. *AST Sports Science, Inc. v. CLF Distribution Ltd.*, 514 F.3d 1054 (10th Cir. 2008).

**For other examples of satisfaction of minimum contacts requirements,** see *Lichina v. Futura, Inc.*, 260 F. Supp. 252 (D. Colo. 1966).

**Contact with Colorado through actions of agent may be sufficient to bring defendant within jurisdiction.** *H2O Eng'g,*

*Inc. v. Leidy's, Inc.*, 799 P.2d 432 (Colo. App. 1990), rev'd on other grounds, 811 P.2d 38 (Colo. 1991).

**Minimum contacts insufficient.**

Requisite minimum contacts did not exist as between foreign manufacturer and Colorado. *Ferrari, S.p.A. SEFAC v. District Court*, 185 Colo. 136, 522 P.2d 105 (1974), overruled in part in *Classic Auto Sales, Inc. v. Schocket*, 832 P.2d 233 (Colo. 1992).

Where corporate buyer's only contact with Colorado was to place an order in Kansas City for the purchase of goods and merchandise from a Colorado seller, the minimum contacts necessary to satisfy the requirements of due process are absent, and, therefore, in personam jurisdiction over the corporate buyer cannot be obtained by means of the long-arm statute. *E.R. Callender Printing Co. v. District Court*, 185 Colo. 25, 510 P.2d 889 (1973).

Execution, in California, of contract executed in Colorado by another, by guarantor, who was California resident, does not provide that quantum of minimum contact with Colorado such that the maintenance of a suit against the guarantor to recover on the contract would not offend traditional notions of due process. *D.E.B. Adjustment Co. v. Dillard*, 32 Colo. App. 184, 508 P.2d 420 (1973).

The mere planting of fish in Utah, which fish "entered" Colorado and caused injury, did not constitute sufficient contacts with Colorado to subject those planting the fish to personal jurisdiction in Colorado. *Colo. River Water Conservation v. Andrus*, 476 F. Supp. 966 (D. Colo. 1979).

Where an out-of-state bank's only connection to Colorado was its probable knowledge that the letter of credit it issued was going to be used in the sale of Colorado property to a Colorado corporation, this slight connection does not meet the "minimum contacts" standard, and the assertion of jurisdiction in a Colorado forum violates the out-of-state bank's right to due process. *Leney v. Plum Grove Bank*, 670 F.2d 878 (10th Cir. 1982).

Since British asbestos manufacturer did not distribute or market its product in Colorado, there was not sufficient contact between the manufacturer and Colorado to establish personal jurisdiction. *Ward v. Armstrong World Indus., Inc.*, 677 F. Supp. 1092 (D. Colo. 1988).

Individuals who transported an inmate from Oregon to Colorado under a contract for extradition transportation between their employer and the Colorado department of corrections availed themselves of the privilege of acting in Colorado, committed tortious acts in Colorado, and caused important consequences in Colorado, making the exercise of jurisdiction over them reasonable, where one individual allegedly sexually assaulted the inmate and the other failed to report the assaults. *Gwynn v. Transcor Am., Inc.*, 26 F. Supp. 2d 1256 (D. Colo. 1998).

**Alleged patent infringer's activities in Colorado were too tenuous to establish that it purposely availed itself of the forum.** Although the company advertised its product in national magazines that reach Colorado, no evidence was presented

demonstrating that the company made deliberative efforts, either direct or indirect, to serve the Colorado market. The fact that the advertisements resulted in telephone inquiries about the product was insufficient to establish that the company took advantage of the Colorado market or its laws. Also, no sales of the product occurred in Colorado. Therefore, the company did not have sufficient contact with the state to justify the exercise of personal jurisdiction. *Dart Intern., Inc. v. Interactive Target Sys.*, 877 F. Supp. 541 (D. Colo. 1995).

**Defendant lacks sufficient contacts with Colorado for Colorado courts to exercise jurisdiction** over defendant where contracts regarding purchase of defendant's interest were signed out of state, defendant did not travel to Colorado regarding the purchase or the interest, and did not conduct any business in Colorado. *Sender v. Powell*, 902 P.2d 947 (Colo. App. 1995).

**Activities of the partnership satisfy the minimum-contacts test as to individual partners.** Through the instrumentality of the partnership, individual partners purposely availed themselves of the privilege of conducting business activities and invoked the benefits and protections of the law. *Intercontinental Leasing, Inc. v. Anderson*, 410 F.2d 303 (10th Cir. 1969); *Resolution Trust Corp. v. Deloitte & Touche*, 822 F. Supp. 1512 (D. Colo. 1993).

**Where damaged product was brought into Colorado by purchaser from another state, and defendant's only contact amounted to less than one-half of one percent of annual sales, (which did not**

**include this particular damaged item), there was not sufficient business contact to warrant exercise of personal jurisdiction.** Day v. Snowmass Stables, Inc., 810 F. Supp. 289 (D. Colo. 1993).

**Rigid "last event" test rejected.** While appropriate in conflict-of-laws analysis, for purposes of application of long-arm statute it is not flexible enough to give Colorado courts jurisdiction to the fullest extent permitted by the due process clause. Classic Auto Sales, Inc. v. Schocket, 832 P.2d 233 (Colo. 1992).

**A nonresident insurer's pre-approval and coverage of a nonresident's health care in the forum, through BlueCard or a similar national health insurance program, does not confer personal jurisdiction where** the insurer did not initiate the request for out-of-state health care and did not otherwise direct activities toward the forum sufficient to establish minimum contacts necessary for jurisdiction in the state. Craig Hosp. v. Blue Cross Blue Shield, 2024 COA 74, 557 P.3d 820.

#### C. What Constitutes Transacting Business.

**What constitutes doing business is a matter of state law.** So long as the dictates of federal due process are met, what constitutes doing business within a state is a matter of state law. White-Rodgers Co. v. District Court, 160 Colo. 491, 418 P.2d 527 (1966).

**Whether claim arose out of business transacted in Colorado is a factor.** While whether a claim arose out of business done in this state is one factor that may be

considered, the supreme court has, in promulgating state law on this subject, clearly indicated that this is not necessarily the controlling element in determining whether the corporation has sufficient contacts in this state to subject it to the jurisdiction of the courts of this state when service is made within the state. White-Rodgers Co. v. District Court, 160 Colo. 491, 418 P.2d 527 (1966).

**Transaction of business test is a case by case determination.** The standards for considering whether or not jurisdiction attaches under the statute on the basis of transaction of business within the state are those of a case by case analysis considering, among other things, regular and systematic activity, continuity of contacts, promotion and utilization of channels of interstate commerce, benefits and protections afforded by the state, casualness of presence, and an estimate of inconveniences. People ex rel. Jeffers v. Gibson, 181 Colo. 4, 508 P.2d 374 (1973).

**Ongoing and continuous business relationship.** Where defendants actively solicited plaintiff's business in Colorado and had an ongoing and continuous business relationship for a period of close to two years, defendants have purposely availed themselves of the privilege of conducting business in Colorado. Combs Airways, Inc. v. Trans-Air Supply Co., 560 F. Supp. 865 (D. Colo. 1983).

**Execution of contract within state.** If a nonresident comes to Colorado and, within the boundaries of this state, executes a contract and receives earnest money, the

defendant is within the purview of the Colorado long arm statute, and it does not offend traditional notions of fair play to require the defendant to appear in a federal district court in Colorado when a dispute arises over the return of the earnest money. *E. Vail Townhomes, Inc. v. Eurasian Dev. D.A., Inc.*, 716 F.2d 1346 (10th Cir. 1983).

**Contract negotiations, plus Colorado is place of "entering into", are sufficient.** Where negotiations leading to the contract upon which this action is brought were conducted in Colorado, and the contract itself provided that Colorado is the place of "entering into" the agreement, nondomiciliary defendant's contracts were constitutionally sufficient to support service under long arm statute. *Clinic Masters, Inc. v. McCollar*, 269 F. Supp. 395 (D. Colo. 1967).

**Even though the "last act", such as the signing of a contract, may have occurred outside** the geographical confines of the forum state, nevertheless, the statutory test of a claim arising out of the transaction of any business within the state may still be met by the showing of other "purposeful acts", performed within the forum state by the defendant in relation to the contract, even though such acts were preliminary, or even subsequent, to the execution of the contract itself. *Knight v. District Court*, 162 Colo. 14, 424 P.2d 110 (1967); *Classic Auto Sales, Inc. v. Schocket*, 832 P.2d 233 (Colo. 1992).

**Contract for the transport of inmates from other states to Colorado constitutes the transaction of business** within the state

and establishes the general jurisdiction requirement that contacts with the forum state are systematic and continuous. *Gwynn v. Transcor Am., Inc.*, 26 F. Supp. 2d 1256 (D. Colo. 1998).

**Activity in furtherance of a contract is sufficient to give the court long arm jurisdiction.** If the defendant purposefully avails himself of the privilege of conducting business in the forum state, this is enough to give the court jurisdiction. It is not even necessary that defendant or his agent be physically present in the state for the purpose of transacting business. *Colorado-Florida Living, Inc. v. Deltona Corp.*, 338 F. Supp. 880 (D. Colo. 1972).

**A conditional sales interest indicates business transaction.** The fact that defendant retained a conditional sale interest and could have enforced its right to repossess the ski lift in the Colorado courts was a sufficient contact. Defendant was enjoying the benefits and protections of Colorado law, and was willing to service the lift. This is a further indication of the continuing nature of the defendant's business transactions in Colorado. *Lichina v. Futura, Inc.*, 260 F. Supp. 252 (D. Colo. 1966).

**Contract negotiations by mail do not constitute transacting business.** Major negotiations and execution of the agreement were conducted by an exchange of correspondence and documents between the parties or their representatives in Kansas and Colorado respectively. None of the crucial steps took place wholly within the state of Colorado. Plaintiff's contention that a one-day trip to Colorado and defendants' tour of

its plant in Eaton, Colorado, are sufficient business contacts to confer in personam jurisdiction on this court is erroneous. Since neither defendant came to Colorado to "sell" plaintiff a license agreement and since no negotiations were conducted here, their obvious purpose was not to avail themselves of the privilege of conducting business here. In these circumstances, the minimum contacts necessary for an exercise of personal jurisdiction do not exist. *Hydraulics Unlimited Mfg. Co. v. B/J Mfg. Co.*, 323 F. Supp. 996 (D. Colo.), *aff'd*, 449 F.2d 775 (10th Cir. 1971).

**Defendants' mere execution of a contract with plaintiff**, a Colorado corporation, did not constitute doing business in Colorado for purposes of this section. *New Frontier Media, Inc. v. Freeman*, 85 P.3d 611 (Colo. App. 2003).

**Phone conversations and in-state negotiations deemed "doing business"**. Where the transaction forming the basis of the action was shaped by negotiations in Denver between defendant A and plaintiff as well as telephone conversations between defendant A in Colorado and defendant B in Texas and where an agreement to execute a note and personal guaranties was entered into in Colorado, by having engaged in these telephone conversations, defendant B transacted business within Colorado and caused important business consequences in this state, within the test set forth by the Colorado Supreme Court in *Van Schaack & Co. v. District Court*, 189 Colo. 145, 538 P.2d 425 (1975), sufficient and substantial enough so that the assertion of personal jurisdiction was both fair and reasonable.

*Halliburton Co. v. Texana Oil Co.*, 471 F. Supp. 1017 (D. Colo. 1979).

**Plaintiff established prima facie case of specific jurisdiction over defendant under subsection (1)(a)** by alleging that defendant came to Colorado to talk about forming a joint venture with plaintiff involving use of plaintiff's trade secrets and that the parties agreed to such joint venture during these meetings. *Gognat v. Ellsworth*, 224 P.3d 1039 (Colo. App. 2009), *aff'd* on other grounds, 259 P.3d 497 (Colo. 2011).

Out-of-state defendants' active solicitation of a forum resident and his services, knowing he was in this forum, is enough to establish specific jurisdiction over defendants, even if they never physically entered the state. *White v. Christian*, 474 F. Supp. 3d 1196 (D. Colo. 2020).

**Subjecting defendant to the jurisdiction of Colorado courts is consistent with due process since defendant purposefully availed himself of the privilege of conducting activities in Colorado**. Defendant allegedly negotiated and entered into a joint venture while in Colorado with a Colorado resident and regularly communicated with that resident about the joint venture while in Colorado and by telephone and email. *Gognat v. Ellsworth*, 224 P.3d 1039 (Colo. App. 2009), *aff'd* on other grounds, 259 P.3d 497 (Colo. 2011).

**The asserted sale of goods by the defendants in Colorado is too speculative** to provide the requisite jurisdictional contacts since solicitations were made from Kansas and since the defendants maintain no sales or service personnel here. There has



been no showing of the volume or extent of the defendants' sales or the relation of those sales to the license agreement. For personal jurisdiction purposes, the quality and nature of that activity is too indirect and remote from the license agreement upon which plaintiff has brought suit. *Hydraulics Unlimited Mfg. Co. v. B/J Mfg. Co.*, 323 F. Supp. 996 (D. Colo.), *aff'd*, 449 F.2d 775 (10th Cir. 1971).

**An out-of-state seller whose agents never enter Colorado is not subject to long arm jurisdiction.** If an out-of-state milk handler has no outlets in Colorado, none of his employees come into the state, and the handler is divested of ownership of the milk before it enters Colorado, then the handler is not doing business in Colorado and the Colorado courts do not have jurisdiction over the handler under the Colorado long arm statute and do not have authority to grant injunctions against him under the Colorado marketing act. *People ex rel. Jeffers v. Gibson*, 181 Colo. 4, 508 P.2d 374 (1973).

**Corporate visit plus sending sales materials is a transaction of business.** The visit of the assistant general sales manager of a Delaware corporation to Colorado in connection with franchise negotiations and the receipt of customer's lists, contracts, and other sales materials at plaintiff's offices in Denver constitute the transaction of business within the state of Colorado, which would authorize service of process upon the defendant outside the state of Colorado when the cause of action arises from that transaction and the failure to grant the franchise. *Colorado-Florida Living, Inc. v.*

*Deltona Corp.*, 338 F. Supp. 880 (D. Colo. 1972).

**Manufacturer who assembles in Colorado subject to long arm.** This section grants jurisdiction under "long arm" to Colorado courts in an action against a North Carolina manufacturer of products assembled and sold in Colorado. *Czarnick v. District Court*, 175 Colo. 482, 488 P.2d 562 (1971).

**Where the parent and its subsidiary maintain separate identities** and charge each other for service performed, as reinsurance, the corporations will be treated as separate entities for the purpose of determining personal jurisdiction. *Perlman v. Great States Life Ins. Co.*, 164 Colo. 493, 436 P.2d 124 (1968).

**A nonpresent parent corporation is not "doing business" because of mere presence of subsidiary.** Although a corporation is totally owned by another corporation, the mere presence in Colorado of the wholly-owned subsidiary, standing alone, does not in and of itself subject the nonpresent parent corporation to the state's jurisdiction where the two companies are operated as distinct entities. *Bolger v. Dial-A-Style Leasing Corp.*, 159 Colo. 44, 409 P.2d 517 (1966); *SGI Air Holdings II LLC v. Novartis Int'l, AG*, 192 F. Supp. 2d 1195 (D. Colo. 2002).

**The relationship of a holding company and the subsidiaries of which the holding company owns stock is not of a nature to support an agency relationship, or consequently, personal jurisdiction over the holding company** or its day-to-day

managing company. SGI Air Holdings II LLC v. Novartis Int'l, AG, 192 F. Supp. 2d 1195 (D. Colo. 2002).

**Stock ownership of subsidiary is not doing business.** Neither does stock ownership in a domestic company nor common directors establish that defendant was doing business in Colorado. Perlman v. Great States Life Ins. Co., 164 Colo. 493, 436 P.2d 124 (1968).

**It is essential in each case that there be some act by which the defendant purposefully** avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protection of its laws. Circle A Drilling Co. v. Sheehan, 251 F. Supp. 242 (D. Colo. 1966); Hydraulics Unlimited Mfg. Co. v. B/J Mfg. Co., 449 F.2d 775 (10th Cir.), aff'd, 323 F. Supp. 996 (D. Colo. 1971).

**Jurisdiction will attach if the defendant purposely initiates or acquiesces in activity conducted within the forum state on its behalf.** It must also avail itself of the protection of the forum state's law. Once that activity has been initiated, a single incident, substantial in nature, which gives rise to the plaintiff's claim will suffice to confer personal jurisdiction upon the courts of the forum state. Hydraulics Unlimited Mfg. Co. v. B/J Mfg. Co., 323 F. Supp. 996 (D. Colo.), aff'd, 449 F.2d 775 (10th Cir. 1971).

**Phone conversations, correspondence, and receipt of check are not purposeful acts.** The interstate telephone conversations, correspondence, and the receipt in Illinois by petitioner of checks drawn on a Denver bank by respondent do not constitute acts by

which the petitioner purposefully availed himself of the privilege of conducting activities within Colorado, thus invoking the benefits of its laws. Safari Outfitters, Inc. v. Superior Court, 167 Colo. 456, 448 P.2d 783 (1968).

**Nor does advertising in national magazines** distributed within the forum state alone constitute a transaction of business within that state. Such a contact is simply too tenuous upon which to found a claim of jurisdiction. Safari Outfitters, Inc. v. Superior Court, 167 Colo. 456, 448 P.2d 783 (1968).

An advertisement in a national magazine is not in itself sufficient to establish contacts in Colorado. Marquest Med. Prods., Inc. v. Emide Corp., 496 F. Supp. 1242 (D. Colo. 1980).

**Allegations that defendant directed its activities at the country generally are insufficient to establish** that defendant took intentional action that was expressly aimed at the state such that defendant is subject to personal jurisdiction in Colorado courts. zvelo, Inc. v. Check Point Software Techs., Ltd., 418 F. Supp. 3d 664 (D. Colo. 2020).

**Maintenance of website does not constitute an intentional act.** The complaint does not allege that the website contained Colorado-specific information or that it targeted state residents more so than residents of other states. zvelo, Inc. v. Check Point Software Techs., Ltd., 418 F. Supp. 3d 664 (D. Colo. 2020).

**Transactions carried on in a state wholly by mail may be sufficient to**

constitute a doing of business within the state sufficient to enable the state to exercise in personam jurisdiction over the corporation. *White-Rodgers Co. v. District Court*, 160 Colo. 491, 418 P.2d 527 (1966).

**Even the activities of even a single salesman certainly may be sufficient to constitute the doing of business** within a state even though those activities do not involve the actual concluding of contracts but involve only solicitation of orders and service calls. *White-Rodgers Co. v. District Court*, 160 Colo. 491, 418 P.2d 527 (1966).

**When the activities of the agent are a continuous course of dealing.** While it is clear that casual or intermittent presence of the corporation's agent within the state is not enough to support in personam jurisdiction based upon service on an agent, the United States supreme court has held that when the activities of the agent are such as to constitute a continuous course of dealings within the state, due process is not denied by the exercise of in personam jurisdiction through service on the agent in the state. *White-Rodgers Co. v. District Court*, 160 Colo. 491, 418 P.2d 527 (1966).

**Corporation's control over its representative.** The amount of control the corporation exerted over its representative in the state and the fact that the representative maintains a listing in the Denver telephone directory are factors which point toward "doing business". *Elliott v. Edwards Eng'g Corp.*, 257 F. Supp. 537 (D. Colo. 1965).

**The payment of congressional salaries by merely transferring money to banks in Colorado does not establish minimum**

**contacts with Colorado.** Thus the clerk of the U.S. house of representatives and the secretary of the U.S. senate could not be reached by Colorado's long-arm statute and the court could not exercise personal jurisdiction over them. *Shaffer v. Clinton*, 54 F. Supp. 2d 1014 (D. Colo. 1999).

**Negotiation, execution, and delivery of a note in Colorado is transacting business.** The negotiation of a loan from a Colorado bank, in Colorado, with the execution and delivery to the bank of a promissory note is transacting business within this state within the meaning of the statute. *Knight v. District Court*, 162 Colo. 14, 424 P.2d 110 (1967).

**Mere fact that part of consideration for note is Colorado contract is not sufficient.** The note was executed in Montana. Presumably all negotiations took place there. The only contact with Colorado is the fact that part of the consideration was a contract executed in Colorado. Such contact does not satisfy "traditional notions of fair play and substantial justice". *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945); *Circle A Drilling Co. v. Sheehan*, 251 F. Supp. 242 (D. Colo. 1966).

**A note is a specialty and is not to be regarded as the same transaction** as that which gave rise to the debt. The note stands alone. *Circle A Drilling Co. v. Sheehan*, 251 F. Supp. 242 (D. Colo. 1966).

**Demand for payment of note executed outside state insufficient.** Where a promissory note was executed and delivered outside of Colorado and, later, one of the parties relocated in Colorado and mailed a letter out of state demanding payment of the

note, the contacts within the state are not sufficient for in personam jurisdiction. *Associated Inns & Rest. Co. of Am. v. Dev. Assocs.*, 516 F. Supp. 1023 (D. Colo. 1981).

**Where foreign note is merely a renewal of a Colorado loan transacting of business continues.** Though the petitioners admittedly executed the renewal note in Utah, they had each nonetheless performed in Colorado several "purposeful acts" relative thereto, but for the original loan in Colorado, there never would have been a renewal note. *Knight v. District Court*, 162 Colo. 14, 424 P.2d 110 (1967).

**Actions of internal revenue officials insufficient.** Officials who were out-of-state residents and who at no time worked in, or traveled in connection with work, in this state had not transacted business for purposes of this section. *First W. Govern. Sec., Inc. v. U.S.*, 578 F. Supp. 212 (D. Colo. 1984).

**A nonresident who filed a required claim in a probate proceeding does not constitute the transaction of business by the nonresident for purposes of Colorado's long-arm statute.** *Harman v. Stillwell*, 944 P.2d 665 (Colo. App. 1997).

**Economic injury in Colorado insufficient.** Where defendant welded a pipe in Italy which was subsequently used by the plaintiff Colorado corporation in Texas, where the weld failed, allegedly causing economic injury in Colorado, the defendant is not subject to the jurisdiction of the court under this section. *Res. Inv. Corp. v. Hughes Tool Co.*, 561 F. Supp. 1236 (D. Colo. 1983).

**Plaintiff failed to make a prima facie showing of personal jurisdiction under the transaction of business subsection where** his complaint failed to allege any facts in support of his conclusory statement that "defendants transacted business" in Colorado and his affidavit and response to motion to dismiss did not contain any additional facts that would sufficiently support jurisdiction. *Wenz v. Memery Crystal*, 55 F.3d 1503 (10th Cir. 1995).

**Defendant's continuing contractual relationship with plaintiff was insufficient to allow personal jurisdiction over it in Colorado.** Trial court did not err in determining that defendant did not purposefully avail itself of the privilege of conducting business activities within Colorado. *Archangel Diamond Corp. v. Arkhangelskgeoldobycha*, 94 P.3d 1208 (Colo. App. 2004), *aff'd in part, rev'd in part on other grounds*, 123 P.3d 1187 (Colo. 2005).

**Defendant's contacts to the state were necessitated by virtue of the plaintiff's moving its principal place of business to Colorado.** Contacts that are necessitated by the plaintiff's unilateral move are given much less weight. *Archangel Diamond Corp. v. Lukoil*, 123 P.3d 1187 (Colo. 2005).

**Argument that the court has specific personal jurisdiction over defendant because defendant lists a Colorado office on its website is unavailing.** Plaintiff made no averment that defendant's alleged misappropriation of trade secrets is somehow connected to defendant's state office. *zvelo, Inc. v. Check Point Software*

Techs., Ltd., 418 F. Supp. 3d 664 (D. Colo. 2020).

**The continuous presence of four employees of the defendant non-resident corporation in Colorado** who are employed for the purpose of soliciting orders on behalf of such corporation constitutes sufficient contact in the forum for personal jurisdiction over the corporation. *Schlesinger v. Merrill Pub. Co.*, 675 F. Supp. 591 (D. Colo. 1987).

**An individual who has become an officer or a director of a Colorado corporation** has sufficiently transacted business within the state to subject himself to the jurisdiction of its courts with respect to claims made by the corporation or by others on behalf of the corporation arising out of the individual's duties as an officer or director. *Pub. Warranty Corp. v. Mullins*, 757 P.2d 1140 (Colo. App. 1988).

**Execution of note.** When a person executes a note outside of this state but the note expressly obligates him to pay money to a resident of this state, he may be properly sued in Colorado. The single act of executing the note constituted a substantial enough connection to render exercise of jurisdiction reasonable under the circumstances. *Kingston v. Brussat*, 698 F. Supp. 215 (D. Colo. 1988); *Alameda Nat. Bank v. Kanchanapoom*, 752 F. Supp. 367 (D. Colo. 1990).

**Defendants who induced plaintiff to rely on defendants' representations** resulting in extension of more than two million dollars in credit and shipment of more than two million dollars worth of

products from Colorado to defendants' clients are subject to personal jurisdiction in Colorado. Contacts which included seven face-to-face meetings in two states, one mailing, and twenty-eight phone calls over a four-month period were sufficient to satisfy both transaction-of-business standards and due process requirements. *Marquest Med. Prods., Inc. v. Daniel, McKee & Co.*, 791 P.2d 14 (Colo. App. 1990).

**Because its promotional efforts were directed towards Colorado residents through local media advertising in Colorado**, defendant purposefully availed itself of the privilege of conducting business in this state and should reasonably have anticipated being subject to the jurisdiction of the Colorado courts. *Martinez v. Farmington Motors, Inc.*, 931 P.2d 546 (Colo. App. 1996).

**Purported father found to have transacted business in state.** Purported father's sending of letter agreeing to pay support that father knew would be relied upon by Colorado authorities for purpose of determining eligibility for public assistance constituted transacting business in this state. *In re Parental Responsibilities of H.Z.G.*, 77 P.3d 848 (Colo. App. 2003).

#### D. Agency Theory.

**Agency theory explained.** Under Colorado's long-arm statute, a nonresident defendant may be subject to personal jurisdiction in Colorado based on the imputed contacts of defendant's agent. To establish this agency theory, jurisdictional facts must connect the actions of the agent to the principal by either "the transaction of

any business" or "the commission of a tortious act." Goettman v. N. Fork Valley Rest., 176 P.3d 60 (Colo. 2007).

**Jurisdiction and liability separate issues.** A court's determination of agency for the purpose of personal jurisdiction is a separate determination from, and is not dispositive of, the substantive issue of defendant's liability for the actions of the agent. For jurisdictional purposes, plaintiff needs only make a prima facie showing of the connection between the actions of the agent and the principal. Goettman v. N. Fork Valley Rest., 176 P.3d 60 (Colo. 2007).

**Due process requires** that jurisdictional facts be examined to determine whether either general or specific jurisdiction exists and, if so, whether it is reasonable for the court to exercise that jurisdiction. Archangel Diamond Corp. v. Lukoil, 123 P.3d 1187 (Colo. 2005); Goettman v. N. Fork Valley Rest., 176 P.3d 60 (Colo. 2007).

**Australian corporation was properly subject to personal jurisdiction** because, although general jurisdiction was lacking due to the corporation's absence of business contacts with Colorado, plaintiff made a prima facie showing of specific jurisdiction based on documentary evidence showing the corporation sent its agent on a business trip to various states, including Colorado, during the course of which trip the agent went to a restaurant with a coworker, became intoxicated, and caused an automobile accident that killed the coworker. Further, under the circumstances, it was held reasonable to require the corporation to defend in Colorado due to the legitimate

interests of Colorado in protecting the safety of its roads and providing a forum for the plaintiff. Goettman v. N. Fork Valley Rest., 176 P.3d 60 (Colo. 2007).

### III. COMMISSION OF TORT.

**Law reviews.** For comment on Vandermeer v. District Court, appearing below, see 40 U. Colo. L. Rev. 471 (1968).

**Section is constitutional.** The new "long arm" statute, insofar as it permits the assertion of in personam jurisdiction over nonresidents who commit a tortious act within the state of Colorado is not unconstitutional. Zerr v. Norwood, 250 F. Supp. 1021 (D. Colo. 1966).

**Where tortious act is committed within state, there need not be additional minimum contacts in state** to meet constitutional requirements of due process. Texair Flyers, Inc. v. District Court, 180 Colo. 432, 506 P.2d 367 (1973).

**An out-of-state party's harassment of, threatening of, or attempt to coerce an individual known by the non-resident to be in the state** is a tortious act sufficient to establish personal jurisdiction under the long-arm statute. Parocha v. Parocha, 2018 CO 41, 418 P.3d 523.

**Tortious act.** The noun "act" implies a single occurrence, a specific event, one happening. The adjective "tortious" implies an act with an attending injury proximately related to that act. The use of the term "tortious act" implies the total act embodying the cause and the effect through the continuum of time. Vandermeer v.

District Court, 164 Colo. 117, 433 P.2d 335 (1967).

**Our long arm statute grants Colorado courts jurisdiction over persons who commit tortious acts within this state.** Granite States Volkswagen, Inc. v. District Court, 177 Colo. 42, 492 P.2d 624 (1972).

**Colorado residents have local forum for damages inflicted on them by nonresidents.** The legislative purpose, which inspired the adoption of the long arm statute, was the expansion of our court's jurisdiction within constitutional limitations in order to provide a local forum for Colorado residents who suffer damages in Colorado as a result of tortious acts of nonresidents. Vandermeer v. District Court, 164 Colo. 117, 433 P.2d 335 (1967).

**Court has jurisdiction over nonresident motorist in Colorado accident.** A nonresident motorist who is involved in an automobile accident in a particular state has established a sufficient contact with that state to warrant its courts in asserting in personam jurisdiction over him to determine the merits of any controversy that may happen to arise out of that accident. Zerr v. Norwood, 250 F. Supp. 1021 (D. Colo. 1966).

**Foreign corporation may be summoned based on tortious act of its agent within Colorado** although "transacting business" standard may not be met. Goettman v. N. Fork Valley Rest., 176 P.3d 60 (Colo. 2007).

**"Tortious act" is to be liberally construed but not to create a new tort.** Although our supreme court has said that the

term, "tortious act", is to be liberally construed to carry out the intent of the general assembly, it cannot be so liberally construed as to create a tort. People in Interest of D.R.B., 30 Colo. App. 603, 498 P.2d 1166 (1972), aff'd sub nom. A.R.B. v. G.L.P., 180 Colo. 439, 507 P.2d 468 (1973).

**The fathering of an illegitimate child in and of itself is not a "tortious act".** People in Interest of D.R.B., 30 Colo. App. 603, 498 P.2d 1166 (1972), aff'd sub nom. A.R.B. v. G.L.P., 180 Colo. 439, 507 P.2d 468 (1973).

**Fact that person dies in Colorado does not constitute tortious act.** Ferrari, S.p.A. SEFAC v. District Court, 185 Colo. 136, 522 P.2d 105 (1974), overruled in part in Classic Auto Sales, Inc. v. Schocket, 832 P.2d 233 (Colo. 1992).

**Disclosure of internal revenue agent's report concerning Colorado resident, in place other than Colorado, did not give rise to a tort in this state.** First W. Govern. Sec., Inc. v. U.S., 578 F. Supp. 212 (D. Colo. 1984).

**Injury must result from intended or foreseeable use.** An additional requirement to be met before subjecting an alien manufacturer to personal jurisdiction is that the injury complained of must have resulted from a use intended or foreseeable by the manufacturer. Alliance Clothing, Ltd. v. District Court, 187 Colo. 400, 532 P.2d 351 (1975).

**Use of foreign product in United States or state must be foreseen.** In all the tort cases subjecting alien manufacturers to

personal jurisdiction by long-arm statutes, the courts noted that the manufacturer could reasonably foresee that his product would be used in the United States or in the state in question. *Alliance Clothing, Ltd. v. District Court*, 187 Colo. 400, 532 P.2d 351 (1975).

**Misrepresentations inducing reliance justify jurisdiction.** Where the defendants make an affirmative misrepresentation intending to induce, and actually inducing, justifiable reliance by the plaintiff in Colorado, which causes him damages in Colorado, the defendants purposefully avail themselves of Colorado by proximately causing tort damage in Colorado. *Ruggieri v. Gen. Well Serv., Inc.*, 535 F. Supp. 525 (D. Colo. 1982).

**Telephone conversations which are nothing more than informational are inadequate** to support a finding of personal jurisdiction. *Bennett Waites Corp. v. Piedmont Aviation, Inc.*, 563 F. Supp. 810 (D. Colo. 1983).

**Two letters, an electronic presentation, and a conference call were sufficient contacts** to establish prima facie showing that Colorado court has personal jurisdiction over defendant. *First Horizon Merch. Servs., Inc. v. Wellspring Capital Mgmt., LLC*, 166 P.3d 166 (Colo. App. 2007).

**Participation in conference calls and failure to correct material omissions established a prima facie case of personal jurisdiction.** Although contacts were limited, the exercise of jurisdiction would be consistent with due process. *First Horizon Merch. Servs., Inc. v. Wellspring Capital*

*Mgmt., LLC*, 166 P.3d 166 (Colo. App. 2007).

**Out-of-state repair of motor vehicle insufficient.** Where the defendant truck stop's sole contact with Colorado was its allegedly negligent repair of the brakes on the truck driven in Colorado by the plaintiff, and it could not be proven that the truck stop had conducted any other activity in the state, the district court's exercise of jurisdiction violates due process. *Fleet Leasing, Inc. v. District Court*, 649 P.2d 1074 (Colo. 1982).

**As a general proposition, if a corporation elects to sell its products for ultimate use in another state,** it is not unjust to hold it answerable there for any damage caused by defects in those products. *Vanderme v. District Court*, 164 Colo. 117, 433 P.2d 335 (1967); *Granite States Volkswagen, Inc. v. District Court*, 177 Colo. 42, 492 P.2d 624 (1972).

**Corporation must by some act avail itself of privilege of doing business in forum state.** It is essential in each case "that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state". *Granite States Volkswagen, Inc. v. District Court*, 177 Colo. 42, 492 P.2d 624 (1972).

**This test has been generalized to mean that the defendant must have taken voluntary action** calculated to have an effect in the forum state. *Granite States Volkswagen, Inc. v. District Court*, 177 Colo. 42, 492 P.2d 624 (1972).



**Statute does not apply to tortious act outside of state.** The statute clearly provides that personal jurisdiction can only be grounded on the commission of a tortious act within the state, and the general assembly did not include tortious acts committed without the state which gave rise to injuries within the state. Had that been the legislative intent it could have been accomplished by specific language to that effect. Before this statute has any effect, both the asserted negligent act or acts of the nonresident defendant, as well as the injury they produce, must occur within the state of Colorado. *Lichina v. Futura, Inc.*, 260 F. Supp. 252 (D. Colo. 1966). But see *Vandermee v. District Court*, 164 Colo. 117, 433 P.2d 335 (1967).

But a tortious act committed outside the state may come within this section once it causes injury or damage within this state. *Pace v. D & D Fuller CATV Const., Inc.*, 748 P.2d 1314 (Colo. App. 1987), *aff'd*, 780 P.2d 520 (Colo. 1989); *Schocket v. Classic Auto Sales, Inc.*, 817 P.2d 561 (Colo. App. 1991), *aff'd*, 832 P.2d 233 (Colo. 1992).

For the purposes of subsection (1)(b), allegations of tortious conduct in another state which causes injury in Colorado have been held to constitute a *prima facie* showing of a tortious act within Colorado. *Marquest Med. Prods., Inc. v. Daniel, McKee & Co.*, 791 P.2d 14 (Colo. App. 1990); *Schocket v. Classic Auto Sales, Inc.*, 817 P.2d 561 (Colo. App. 1991), *aff'd*, 832 P.2d 233 (Colo. 1992).

**Negligent conduct initiated in foreign state which proximately results in injury**

**incurred in Colorado constitutes tortious conduct** within the meaning of long arm statute. *Texair Flyers, Inc. v. District Court*, 180 Colo. 432, 506 P.2d 367 (1973); *Scheuer v. District Court*, 684 P.2d 249 (Colo. 1984); *Found. for Knowledge in Dev. v. Interactive Design Consultants*, 234 P.3d 673 (Colo. 2010).

To bring one under the jurisdiction of the Colorado court by use of the tort section of this section, sufficient facts need be alleged to support a claim that the alleged tortfeasor was negligent and that the negligent conduct proximately resulted in injury that occurred in Colorado, even if that conduct was initiated in a foreign state. *Shaw v. Aurora Mobile Homes & Real Estate, Inc.*, 36 Colo. App. 321, 539 P.2d 1366 (1975).

**Section may be relied on even if tort committed prior to effective date.** This section and § 13-1-125 may be constitutionally applied where the complaint is filed after the effective date of the statute, though the tortious act complained of occurred before the effective date of the statute. *Hoen v. District Court*, 159 Colo. 451, 412 P.2d 428 (1966).

**Retrospective application of this section is in accord with sound public policy.** At the time of the accident, the defendant was a resident of Colorado. This fact, in itself, in addition to providing a sufficient contact with the state to satisfy the requirement of due process, makes it reasonable to conclude that the defendant might have expected to be subject to suit in Colorado for torts that she may have committed here during that

period. *Smith v. Putnam*, 250 F. Supp. 1017 (D. Colo. 1965).

**Generally, courts of one state do not have jurisdiction over foreign administrator or executor** and should not interfere with administration of decedent's estate in foreign jurisdiction. However, rule must give way to legislative enactments in appropriate circumstances, such as where administrator's decedent has committed tort in state of forum. *Texair Flyers, Inc. v. District Court*, 180 Colo. 432, 506 P.2d 367 (1973).

**In personam jurisdiction may be obtained over personal representative of deceased nonresident tortfeasor.** *Texair Flyers, Inc. v. District Court*, 180 Colo. 432, 506 P.2d 367 (1973).

**Plaintiff need not prove merits of action** — commission of tort within state — to initially establish in personam jurisdiction. *Texair Flyers, Inc. v. District Court*, 180 Colo. 432, 506 P.2d 367 (1973); *Jenner & Block v. District Court*, 197 Colo. 184, 590 P.2d 964 (1979).

**Facts constituting commission of a tortious act within this state.** *Jenner & Block v. District Court*, 197 Colo. 184, 590 P.2d 964 (1979).

**Contact insufficient to justify personal jurisdiction.** *C.F.H. Enters., Inc. v. Heatcool*, 538 F. Supp. 774 (D. Colo. 1982).

**"Effects" test, as established by U.S. supreme court,** specifies that where a defendant's intentional actions, taken outside the forum, are expressly directed at causing a harmful effect within the forum state, such

actions are sufficient to satisfy due process in the context of an intentional tort. *D & D Fuller CATV Const., Inc. v. Pace*, 780 P.2d 520 (Colo. 1989).

**Defendant's alleged tortious acts that have an effect in Colorado, without other contacts with Colorado, did not support a reasonable inference that defendant engaged in conduct subjecting it to personal jurisdiction.** *Archangel Diamond Corp. v. Arkhangelskgeoldobycha*, 94 P.3d 1208 (Colo. App. 2004), *aff'd in part, rev'd in part on other grounds*, 123 P.3d 1187 (Colo. 2005).

**Jurisdiction over nonresident tortfeasor requires that the injury itself occur in Colorado, even if the negligent act occurs in another state.** *McAvoy v. District Court*, 757 P.2d 633 (Colo. 1988); *AST Sports Science, Inc. v. CLF Distribution Ltd.*, 514 F.3d 1054 (10th Cir. 2008).

Where Colorado resident was injured in an accident with a Washington resident in Washington due to alleged negligent actions which occurred in Washington, the allegations of subsequent treatment for the injury in Colorado, and effects of the accident which were manifest in Colorado, were not sufficient to confer jurisdiction on the Colorado court under the long-arm statute. *McAvoy v. District Court*, 757 P.2d 633 (Colo. 1988).

**In order to satisfy the statutory standard for assertion of long arm jurisdiction,** it is not necessary that both the tortious conduct constituting the cause and the injury constituting the effect take place in Colorado. However, the injury in the

forum state must be direct, not consequential or remote. *F.D.I.C. v. First Interstate Bank of Denver, N.A.*, 937 F. Supp. 1461 (D. Colo. 1996).

**Plaintiff's allegation of a tort caused by unauthorized disbursements from a London account failed to allege that defendants engaged in any tortious conduct in Colorado.** *Wenz v. Memery Crystal*, 55 F.3d 1503 (10th Cir. 1995).

**Plaintiff failed to allege an injury in Colorado sufficient to invoke personal jurisdiction under subsection (1)(b) where alleged unauthorized disbursements occurred in London and were from a London account.** That plaintiff may have been economically affected in Colorado simply because he lived here is insufficient to establish personal jurisdiction under subsection (1)(b). *Wenz v. Memery Crystal*, 55 F.3d 1503 (10th Cir. 1995).

**The loss of profits in the state of plaintiff's domicile is insufficient to sustain long-arm jurisdiction over a nonresident defendant.** The injury in the forum state must be direct, not consequential or remote. When both the tortious conduct and the injury occur in another state, the fact that the plaintiff resides in Colorado and experiences some economic consequences here is insufficient to confer jurisdiction on a Colorado court. *AMAX Potash Corp. v. Trans-Resources, Inc.*, 817 P.2d 598 (Colo. App. 1991); *Gognat v. Ellsworth*, 224 P.3d 1039 (Colo. App. 2009), *aff'd* on other grounds, 259 P.3d 497 (Colo. 2011).

**A person's conduct causes a minor child to leave a custodial parent, when the**

parent does not consent, or prevents a child's return to such parent, such conduct constitutes a tortious act. *D & D Fuller CATV Const., Inc. v. Pace*, 780 P.2d 520 (Colo. 1989).

**Defendant's allegedly tortious action in collecting upon a voided wage assignment was expressly directed at causing a harmful effect within the forum state and thus created a sufficient nexus between defendant and the forum state so as to satisfy due process.** *Vogan v. County of San Diego*, 193 P.3d 336 (Colo. App. 2008).

**Tortious conduct in a foreign state which causes injury in Colorado may be deemed to be an act committed in Colorado so as to satisfy the long-arm statute.** *Ranger v. Fortune Ins. Co.*, 817 P.2d 600 (Colo. App. 1991).

**Tort claims of intentional and negligent misrepresentations directed into Colorado during the course of telephone conversations from outside the state into the state are sufficient to constitute tortious acts within the state under this section.** *Broadview Fin., Inc. v. Entech Mgmt. Servs. Corp.*, 859 F. Supp. 444 (D. Colo. 1994).

**Personal jurisdiction existed over nonresident attorney and his law firm which, in addressing two letters to plaintiff in Colorado, purposely directed their activities toward Colorado and plaintiff's injuries relate to that contact with Colorado.** *First Entm't, Inc. v. Firth*, 885 F. Supp. 216 (D. Colo. 1995).

**Exercise of jurisdiction held proper** where defendants, in connection with sale of sports car through Nebraska dealership, placed ad in national magazine, made allegedly fraudulent representations via telephone to Colorado plaintiff, and knew that car would be transported to and used in Colorado. *Schocket v. Classic Auto Sales, Inc.*, 817 P.2d 561 (Colo. App. 1991), *aff'd*, 832 P.2d 233 (Colo. 1992).

**Applied** in *J.L. v. Best W. Int'l, Inc.*, 521 F. Supp. 3d 1048 (D. Colo. 2021).

#### **IV. REAL PROPERTY IN COLORADO.**

**Transaction involving Colorado property gives long arm jurisdiction.** This section commonly referred to as the long arm statute specifically provides that a person who transacts business in the state of Colorado or owns real property in the state of Colorado submits himself to the jurisdiction of the courts of Colorado in any action arising from the transaction of such business or the ownership of such property. *McHenry F.S., Inc. v. Clausen*, 30 Colo. App. 253, 491 P.2d 592 (1971).

**Being the state with greatest interest in transaction, jurisdiction in Colorado not offensive.** Where a contract to purchase land was signed by both parties outside the state of Colorado but the defendant came to Colorado to view the property and employed a Colorado firm of consulting engineers to conduct a survey of the property, and the contract to purchase the property was prepared in Colorado, and the real estate broker and the vendor of the property were both Colorado residents, and the subject matter of the contract, the real estate, was

located in Colorado thereby making Colorado the state with the greatest interest in the transaction, the defendant's purposeful acts in this state were significant, and the jurisdiction of the district court obtained through the long arm statute did not offend traditional notions of fair play and substantial justice. *Dwyer v. District Court*, 188 Colo. 41, 532 P.2d 725 (1975).

**Once defendants are personally served, court acquires in personam jurisdiction.** Where the claims asserted against the defendants arose out of their title to certain real property and their transfer of that property to a company, and the defendants were personally served with process in the state of Illinois pursuant to the provisions of this section, consequently, the trial court obtained in personam jurisdiction over them. *McHenry F.S., Inc. v. Clausen*, 30 Colo. App. 253, 491 P.2d 592 (1971).

**Nonresidency of all parties does not defeat long arm jurisdiction.** The argument that since both the plaintiff and the defendants were residents of Illinois, the long arm statute was not available is without merit. *McHenry F.S., Inc. v. Clausen*, 30 Colo. App. 253, 491 P.2d 592 (1971).

#### **V. CONTRACTS OF INSURANCE.**

**Reinsurance contract subject to law of state where made.** The negotiation and execution outside the state of a contract of reinsurance is not doing business in the state where the insured property is situated and the original risk was assumed. Reinsurance effected under a contract made in one state does not constitute doing business in another, although the risks covered by the

reinsurance agreement were in the latter state and were covered by the reinsurance contract. *Perlman v. Great States Life Ins. Co.*, 164 Colo. 493, 436 P.2d 124 (1968).

**Plaintiff must prove reinsurance treaty was executed in Colorado.** As to the reinsurance treaties, the record fails to show that these were executed in Colorado. Plaintiff has the burden of proof in regard to this essential assertion of jurisdiction. *Perlman v. Great States Life Ins. Co.*, 164 Colo. 493, 436 P.2d 124 (1968).

**Mere fact that certain individuals who live in Colorado were parties to a reinsurance contract** is insufficient to meet the minimum contacts test. *Union Pac. R.R. Co. v. Equitas Ltd.*, 987 P.2d 954 (Colo. App. 1999).

**Insurance company and liquidator subject to jurisdiction.** Where an insurance company solicited and did substantial business in Colorado, the company, and its liquidator in case the company is insolvent, is subject to jurisdiction under the provisions of this section. *Insurance Affiliates, Inc. v. O'Connor*, 522 F. Supp. 703 (D. Colo. 1981).

**A nonresident insurer's pre-approval and coverage of a nonresident's health care in the forum, through BlueCard or a similar national health insurance program, does not confer personal jurisdiction where** the insurer did not initiate the request for out-of-state health care and did not otherwise direct activities toward the forum sufficient to establish

minimum contacts necessary for jurisdiction in the state. *Craig Hosp. v. Blue Cross Blue Shield*, 2024 COA 74, 557 P.3d 820.

## **VI. MAINTENANCE OF MATRIMONIAL DOMICILE.**

**Trial court held to have acquired personal jurisdiction over husband for purposes of dividing marital property.** In *re Booker*, 833 P.2d 734 (Colo. 1992).

**A spouse's affidavit that the spouse has resided and continues to reside in Colorado is sufficient** for a Colorado court to exercise long arm jurisdiction over the husband under subsection (1)(e). In *re Akins*, 932 P.2d 863 (Colo. App. 1997).

**Entry of foreign decree that determined only the status of the marriage** without addressing the division of marital property did not deprive the Colorado court of the power to divide property exclusive of husband's military pension and to award maintenance and child support. In *re Akins*, 932 P.2d 863 (Colo. App. 1997).

**Federal act preempts state rules regarding jurisdiction over a military pension.** Under the supremacy clause, the terms of the federal Uniformed Services Former Spouse's Protection Act preempt state rules with respect to a court's jurisdiction to consider the military pension as a marital asset. In *re Akins*, 932 P.2d 863 (Colo. App. 1997).

### **13-1-125. Service of process.**

(1) Service of process upon any person subject to the jurisdiction of the courts of Colorado may be made by personally serving the summons upon the defendant or respondent outside this state, in the manner prescribed by the Colorado rules of civil procedure, with the same force and effect as if the summons had been personally served within this state.

(2) No service of any summons or other process upon any corporation shall be made outside the state in the manner provided in subsection (1) of this section when such corporation maintains an agent for process upon whom service may be made as provided in rule 4 of the Colorado rules of civil procedure.

(3) Nothing in this section shall limit or affect the right to serve any process as prescribed by the Colorado rules of civil procedure.

**Source:** L. 65: p. 472, § 2. C.R.S. 1963: § 37-1-27. L. 82: p. 280, § 2.

**Cross references:** For the manner of service, see C.R.C.P. 4.

### **ANNOTATION**

I. General Consideration.

II. Proper Service.

#### **I. GENERAL CONSIDERATION.**

**Law reviews.** For note, "One Year Review of Colorado Law — 1964", see 42 Den. L. Ctr. J. 140 (1965). For article, "Jurisdiction and Service of Process Beyond Colorado Boundaries", see 11 Colo. Law. 748 (1982). For article, "Legislative Activities in Family Law", see 11 Colo. Law. 1560 (1982).

**This section and § 13-1-124 are sometimes referred to as the "long arm" or "single act" statute.** Hoen v. District Court, 159 Colo. 451, 412 P.2d 428 (1966);

Cox v. District Court, 160 Colo. 437, 417 P.2d 792 (1966).

**Purpose of sections was to extend the court's jurisdiction.** These sections were passed by the general assembly in order to extend, rather than to limit the jurisdiction of the courts of the state. White-Rodgers Co. v. District Court, 160 Colo. 491, 418 P.2d 527 (1966).

**Section may be used even when cause arose before effective date.** This section and § 13-1-124 may be constitutionally applied where the complaint is filed after the effective date of the statute, though the tortious act complained of occurred before the effective date of the statute. Hoen v. District Court, 159 Colo. 451, 412 P.2d 428

(1966); Cox v. District Court, 160 Colo. 437, 417 P.2d 792 (1966).

**Retrospective application of this section is in accord with sound public policy.** Smith v. Putnam, 250 F. Supp. 1017 (D. Colo. 1965).

**For discussion of conspiracy theory of personal jurisdiction,** see Bennett Waites Corp. v. Piedmont Aviation, Inc., 563 F. Supp. 810 (D. Colo. 1983).

**Applied** in Nations Enters, Inc. v. Process Equip. Co., 40 Colo. App. 390, 579 P.2d 655 (1978); Adolph Coors Co. v. A. Genderson & Sons, 486 F. Supp. 131 (D. Colo. 1980); Beckman v. Carlson, 553 F. Supp. 1049 (D. Colo. 1983).

## **II. PROPER SERVICE.**

**Transacting of business may not be proved unless process is properly served.** Since respondents did not serve process on a foreign corporation by personal service as required by the "long arm" statute, its provisions concerning contacts sufficient to establish doing business are inapplicable under § 7-9-119. Geer Co. v. District Court, 172 Colo. 48, 469 P.2d 734 (1970).

**It is improper to dismiss a complaint because of improper or invalid service of process.** Hoen v. District Court, 159 Colo. 451, 412 P.2d 428 (1966).

**Quashing of process is not reviewable by writ of error.** An order quashing a purported service of process is not

tantamount to a judgment of dismissal and under our rules is not such an order as is subject to review by writ of error. Hoen v. District Court, 159 Colo. 451, 412 P.2d 428 (1966).

**Process must be served on defendant at usual place of abode.** The fact that the serviceman's usual place of abode was not the place of service is sufficient as a matter of law to overcome the prima facie showing made by the sheriff's return and that the service must therefore be set aside. Neher v. District Court, 161 Colo. 445, 422 P.2d 627 (1967).

**Term "usual place of abode" is not necessarily synonymous with domicile.** The term "usual place of abode" has generally been construed to mean the place where that person is actually living at the time service is attempted. It is not necessarily synonymous with "domicile". Neher v. District Court, 161 Colo. 445, 422 P.2d 627 (1967).

**For necessity of process being served by proper person,** see Martin v. Denver Juvenile Court, 177 Colo. 261, 493 P.2d 1093 (1972).

**Process will not be quashed for lack of jurisdiction if plaintiff makes prima facie showing.** Where plaintiff makes prima facie showing of threshold jurisdiction in complaint, process is not vulnerable to motion to quash based upon lack of jurisdiction. Texair Flyers, Inc. v. District Court, 180 Colo. 432, 506 P.2d 367 (1973).

**13-1-126. Documents in court proceedings - designation by clerk of representative to attend court proceedings.**

Documents from the office of the clerk of any court of record to be used as evidence in court proceedings shall be acknowledged, exemplified, verified, or attested to in a manner which shall make unnecessary the personal appearance of such clerk in court proceedings to acknowledge, exemplify, verify, or attest to the validity of such documents. The clerk of any court of record may designate a representative to attend court proceedings if the clerk is subpoenaed for the purpose of acknowledging, exemplifying, verifying, or attesting to the validity of documents furnished by the clerk's office.

**Source: L. 79:** Entire section added, p. 596, § 4, effective July 1.

**13-1-127. Entities - school districts - legislative declaration - representation - definitions.**

(1) As used in this section, unless the context otherwise requires:

(a) "Closely held entity" means an entity, as defined in section 7-90-102 (20), C.R.S., with no more than three owners.

(a.2) "Cooperative" shall have the same meaning as set forth in section 7-90-102 (9), C.R.S.

(a.5) "Corporate licensed child placement agency" means an entity that places, or arranges for placement of, the care of any child with any family, person, or institution other than persons related to said child and that is licensed by the department of human services pursuant to section 26-6-905 as a child placement agency.

(b) "Corporation" shall have the same meaning as set forth in section 7-90-102 (10), C.R.S.

(c) "Entity" shall have the same meaning as set forth in section 7-90-102 (20), C.R.S.

(d) "Limited liability company" shall have the same meaning as set forth in section 7-90-102 (32), C.R.S.

(e) "Limited partnership" shall have the same meaning as set forth in section 7-90-102 (34), C.R.S.

(f) "Limited partnership association" shall have the same meaning as set forth in section 7-90-102 (35), C.R.S.

(g) "Nonprofit association" shall have the same meaning as set forth in section 7-90-102 (38), C.R.S.



(h) "Nonprofit corporation" shall have the same meaning as set forth in section 7-90-102 (39), C.R.S.

(i) "Officer" means a person generally or specifically authorized by an entity to take any action contemplated by this section.

(j) "Owner" shall have the same meaning as set forth in section 7-90-102 (43), C.R.S.

(k) "School district" means a school district organized and existing pursuant to law but does not include a local college district.

(l) "Truancy proceedings" means judicial proceedings for the enforcement of the "School Attendance Law of 1963", article 33 of title 22, C.R.S., brought pursuant to section 22-33-108, C.R.S.

(2) Except as otherwise provided in section 13-6-407, a closely held entity may be represented before any court of record or any administrative agency by an officer of such closely held entity if:

(a) The amount at issue in the controversy or matter before the court or agency does not exceed fifteen thousand dollars, exclusive of costs, interest, or statutory penalties, on and after August 7, 2013; and

(b) The officer provides the court or agency, at or prior to the trial or hearing, with evidence satisfactory to the court or agency of the authority of the officer to appear on behalf of the closely held entity in all matters within the jurisdictional limits set forth in this section.

(2.3) For the purposes of this section, each of the following persons shall be presumed to have the authority to appear on behalf of the closely held entity upon providing evidence of the person's holding the specified office or status:

(a) An officer of a cooperative, corporation, or nonprofit corporation;

(b) A general partner of a partnership or of a limited partnership;

(c) A person in whom the management of a limited liability company is vested or reserved; and

(d) A member of a limited partnership association.

(2.5) (a) The general assembly hereby finds and determines that the practice of law should not include the representation of a corporation in workers' compensation proceedings by an authorized employee of such corporation. While the general assembly respectfully recognizes the jurisdiction of the supreme court with respect to the regulation of the practice of law, it hereby finds and declares that the representation of a corporation in workers' compensation cases by an authorized employee of that corporation does not constitute the unauthorized practice of law. The

general assembly has determined that the decision of a president or secretary of a corporation to have a corporate employee represent the corporation in a workers' compensation case is a business decision made voluntarily and knowingly by persons who are qualified and accustomed to making business decisions. The general assembly has further determined that allowing such representation will not hamper the orderly and proper disposition of workers' compensation cases and may expedite and facilitate such disposition. An employee of a defendant corporation with experience in the operations of such corporation and knowledge of the necessary facts and law can afford a defendant corporation with representation which is the substantial equivalent to, and may in some cases, be more effective than, a licensed attorney. The general assembly hereby declares that the protections afforded by the restrictions set forth by the supreme court with respect to the unauthorized practice of law are unnecessary for the described form of representation because the general public is not likely to be harmed by such representation. Further, the general assembly respectfully recommends that the supreme court adopt rules which permit and regulate such representation in which event the general assembly may choose to repeal this statute in deference to the supreme court's rules.

(b) Notwithstanding the provisions of paragraph (a) of subsection (2) of this section concerning the amount at issue, any corporation which is in compliance with the requirements otherwise imposed on corporations by law may be represented by any employee of the corporation who is so authorized by the president or secretary of such corporation, in proceedings authorized under the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S., exclusive of proceedings before the industrial claim appeals office under part 3 of article 43 of title 8, C.R.S., appeals to the court of appeals under section 8-43-307, C.R.S., and summary reviews by the supreme court under section 8-43-313, C.R.S.

(3) The court may rely upon a written resolution of a closely held entity that allows a named officer to appear in the closely held entity's behalf.

(4) A closely held entity's exercise of the option authorized by this section to be represented by an officer shall not alone be construed to establish personal liability of the representing officer or any other officer, director, owner, or shareholder for action taken by that closely held entity.

(5) A corporate licensed child placement agency, as defined in paragraph (a.5) of subsection (1) of this section, that is in compliance with the requirements otherwise imposed on closely held entities by law, may be represented by any named officer or designated agent of the agency in any proceeding involving the termination of the parent-child relationship pursuant to the "Colorado Children's Code", title 19, C.R.S., or in any proceeding involving a petition for adoption pursuant to section 19-5-208, C.R.S.

(6) Nothing in this section shall be interpreted to restrict the classes of persons who, or circumstances in which persons, may be represented by other persons, or may appear in person, before Colorado courts or administrative agencies.

(7) (a) A school district board of education may authorize, by resolution, one or more employees of the school district to represent the school district in truancy proceedings in any court of competent jurisdiction; except that the authorization of the board of education shall not extend to representation of the school district before a court of appeals or before the Colorado supreme court.

(b) A court may rely on the written resolution of the school district board of education that authorizes the named employee to represent the school district in truancy proceedings.

(c) An authorized employee who represents a school district in truancy proceedings pursuant to the provisions of this subsection (7) shall not be subject to the provisions of section 13-93-108.

(d) A school district board of education's exercise of the option authorized by this section to be represented in truancy proceedings by an employee shall not alone be construed to establish personal liability of the representing employee or any other employee or a school director of the school district for action taken by the school district.

**Source:** **L. 83:** Entire section added, p. 598, § 1, effective May 25. **L. 84:** (1)(c) amended, p. 450, § 1, effective March 16. **L. 90:** IP(2) and (2)(a) amended, p. 849, § 3, effective May 31; (2)(a) amended, p. 854, § 1, effective July 1. **L. 91:** (2.5) added, p. 1285, § 1, effective April 14. **L. 92:** (1)(a.5) and (5) added, pp. 179, 180, §§ 2, 3, effective March 20; (2.5) amended, p. 276, § 1, effective April 14. **L. 94:** (1)(a.5) amended, p. 2639, § 85, effective July 1. **L. 98:** (1), (2), (3), (4), and (5) amended and (2.3) and (6) added, p. 489, § 1, effective February 1, 1999. **L. 2007:** (1)(k), (1)(l), and (7) added, pp. 165, 164, §§ 2, 1, effective March 22. **L. 2013:** (2)(a) amended, (HB 13-1052), ch. 40, p. 111, § 1, effective August 7. **L. 2017:** (7)(c) amended, (SB 17-227), ch. 192, p. 704, § 4, effective August 9. **L. 2022:** (1)(a.5) amended, (HB 22-1295), ch. 123, p. 827, § 24, effective July 1.

**Cross references:** (1) For representation of corporations in the small claims division of county court, see § 13-6-407.

(2) For the legislative declaration contained in the 1990 act amending the introductory portion to subsection (2) and subsection (2)(a), see section 1 of chapter 100, Session Laws of Colorado 1990. For the legislative declaration contained in the 1994 act amending subsection (1)(a.5), see section 1 of chapter 345, Session Laws of Colorado 1994.

## ANNOTATION

**Law reviews.** For article, "The Legality of Generative AI -- Part 2", see 52 Colo. Law. 30 (Sept. 2023).

**Assuming that defendant church existed as a de facto corporation, if the pastor were recognized as a corporate officer, the pastor could represent the defendant in court.** Where there was no showing that the pastor was a corporate officer, however, the pastor could not represent the defendant church. *People v. LaPorte Church of Christ*, 830 P.2d 1150 (Colo. App. 1992).

**Trial court erred in permitting non-attorney manager to represent limited liability company (LLC) since LLC could not satisfy the amount in controversy requirement** of the statutory exception in subsection (2). *Weston v. T&T, LLC*, 271 P.3d 552 (Colo. App. 2011).

**LLC not entitled to a new trial, however, because any error in permitting non-attorney manager to represent LLC was invited by LLC.** *Weston v. T&T, LLC*, 271 P.3d 552 (Colo. App. 2011).

**Because appellate briefing was submitted before counsel was permitted to withdraw, the court could address the unrepresented corporate entities' arguments.** For the corporate entities to make additional filings or appearances, they would need to either obtain new counsel or satisfy the provisions of subsection (2). *Bertoia v. Galaxy Mgmt. Co., LLC*, 2025 COA 55, 574 P.3d 259.

**Applied in** *Keller Corp. v. Kelley*, 187 P.3d 1133 (Colo. App. 2008).

### **13-1-128. Confidentiality of decisions of courts of record - violations - penalties - repeal. (Repealed)**

**Source:** **L. 87:** Entire section added, p. 539, § 1, effective July 1. **L. 89:** (4) amended, p. 827, § 31, effective July 1. **L. 2002:** (4) amended, p. 1487, § 120, effective October 1. **L. 2021:** (5) added by revision, (SB 21-271), ch. 462, pp. 3157, 3331, §§ 154, 803.

**Editor's note:** Subsection (5) provided for the repeal of this section, effective March 1, 2022. (See L. 2021, pp. 3157, 3331.)

**Cross references:** For the legislative declaration contained in the 2002 act amending subsection (4), see section 1 of chapter 318, Session Laws of Colorado 2002.

### **13-1-129. Preferential trial dates.**

(1) In any civil action filed in any court of record in this state, the court shall grant a motion for a preferential trial date which is accompanied by clear and convincing medical evidence concluding that a party suffers from an illness or condition raising substantial medical doubt of survival of that party beyond one year and which satisfies the court that the interests of justice will be served by granting such motion for a preferential trial date.

(2) In any civil action filed in any court of record in this state, the court may grant a motion for a preferential trial date upon the motion of a party who is a natural person at least seventy years of age and a finding by the court that such claim is meritorious, unless the court finds that such party does not have a substantial interest in the case as a whole.

(3) A motion under this section may be filed and served at any time when the case is at issue and a party meets the requirements of subsection (1) or (2) of this section.

(4) Upon the granting of a motion for a preferential trial date, the court shall set the case for trial not more than one hundred nineteen days from the date the motion was filed. The court shall establish an accelerated discovery schedule in all such cases. No continuance shall be granted beyond the one-hundred-nineteen-day period except for physical or mental disability of a party or a party's attorney or upon a showing of other good cause. Any such continuance shall be for no more than one hundred nineteen days, and only one such continuance shall be granted to a party.

**Source: L. 90:** Entire section added, p. 858, § 1, effective July 1. **L. 2012:** (4) amended, (SB 12-175), ch. 208, p. 822, § 1, effective July 1.

### **13-1-130. Reports of convictions to department of education.**

When a person is convicted of, pleads nolo contendere to, or receives a deferred sentence for a felony and the court knows the person is a current or former employee of a school district or a charter school in this state or holds a license or authorization pursuant to the provisions of article 60.5 of title 22, C.R.S., the court shall report such fact to the department of education.

**Source: L. 90:** Entire section added, p. 1025, § 4, effective July 1. **L. 2000:** Entire section amended, p. 1843, § 22, effective August 2. **L. 2003:** Entire section amended, p. 2514, § 1, effective June 5.

**13-1-131. Speedy trial option in civil actions.**

If a trial date has not been fixed by the court in any civil action within ninety days from the date the case is at issue, upon agreement of all the parties, the parties may elect to have the matter heard by a master, appointed by the court in accordance with the Colorado rules of civil procedure. When such a trial is held before a master, the parties shall pay the costs of such trial, as allocated fairly among the parties by the master. The master shall have all the powers of a judge.

**Source: L. 90:** Entire section added, p. 851, § 11, effective May 31.

**Cross references:** For the legislative declaration contained in the 1990 act enacting this section, see section 1 of chapter 100, Session Laws of Colorado 1990.

**13-1-132. Use of interactive audiovisual devices and communication technology in court proceedings.**

(1) Except for trials, when the appearance of any person is required in any court of this state, such appearance may be made by the use of an interactive audiovisual device. An interactive audiovisual device shall operate so as to enable the person and the judge or magistrate to view and converse with each other simultaneously.

(2) Notwithstanding any provision of this section, a judge or magistrate may order a person to appear in court.

(3) A full record of such proceeding shall be made.

(3.5) (a) All Colorado courts, including municipal courts, shall make any criminal court proceeding conducted in open court available for remote public viewing and listening in real time, at no charge, through an online platform, which may include a participatory web conferencing platform, and post prominently on the court's website the links for remote observation, unless:

(I) The courtroom does not have sufficient technological capability, such as a participatory web conferencing platform, to make such proceedings available to the public for remote observation;

(II) Members of the public have been excluded from the criminal proceeding by order of the court;

(III) Staffing issues limit or prevent remote observation;

(III.5) Temporary or intermittent internet or technology issues limit or prevent remote observation; or

(IV) After a request by a party, witness, or victim, or on the court's own motion, the court makes findings on the record based on the particular facts and circumstances of the case that:

(A) There is a reasonable likelihood remote observation of live proceedings risks compromising the safety of any person; the defendant's right to a fair trial, including violations of sequestration orders; or the victim's rights pursuant to section 24-4.1-302.5 (1)(a); and

(B) There is no less restrictive alternative that preserves the public interest in remote observation while mitigating the identified risk. As used in this subsection (3.5)(a)(IV)(B), "less restrictive alternative" includes allowing remote audio-only observation while disabling video observation or turning off remote observation for particular witnesses or discrete portions of the proceeding.

(b) As used in this section, "risks compromising the safety" include risks to physical and emotional safety, intimidation, and harassment.

(c) When allowing remote observation, courts shall take reasonable steps to ensure there is no audio or visual recording, including photography or screenshots of the proceedings, without explicit permission of the court. As used in this subsection (3.5)(c), "reasonable steps" must include an on-screen warning that any recording of the proceedings without a court order, including any screen capture, photograph, or audiovisual recording, is prohibited. "Reasonable steps" may also include the court issuing an additional verbal or on-screen warning and prohibiting remote observation by specific individuals whom the court has reason to believe may violate this rule.

(d) When allowing remote observation, courts shall take reasonable steps to ensure no audio or visual transmission of privileged, confidential communications occurs. To help facilitate privileged, confidential communications in the courtroom, courts shall notify parties and attorneys of the location of microphones and any ability to mute microphones. If the court becomes aware that such transmissions occurred, the court shall work with the parties and attorneys to prevent reoccurrence.

(e) If a proceeding subject to a sequestration order is made available for public remote observation, the court shall take reasonable steps to ensure compliance with the sequestration order and ensure the right to a fair trial, which may include:

(I) Announcing the sequestration order as frequently as necessary in open court;

(II) Requiring observers to identify themselves to ensure none are potential witnesses and that any observers who are forbidden from discussing the case with witnesses know of that obligation;

(III) At the request of a party, allowing the court or party to inquire of any witness, while under oath and outside the presence of the jury, if the witness watched any portion of the proceeding or discussed any portion of the proceeding with anyone prior to testifying; and

(IV) Terminating remote observation to protect the parties' right to a fair trial or to ensure compliance with the sequestration order.

(f) For criminal courts that do not have sufficient existing staff or technological capabilities to make proceedings available for remote observation as of September 1, 2023, if the court subsequently obtains such staff and capabilities, the court must comply with the provisions of this section within ninety days after obtaining such staff and capabilities.

(g) This subsection (3.5) does not apply to juvenile delinquency cases pursuant to title 19 or to cases in which a juvenile has been charged by direct filing of information or an indictment in district court pursuant to section 19-2.5-801 until the completion of a preliminary hearing and completion of any hearing requesting to transfer the case to juvenile court pursuant to section 19-2.5-801 (4).

(h) The exceptions described in subsections (3.5)(a)(I) and (3.5)(a)(III) of this section do not apply to court proceedings in which the defendant is in custody and charged with a municipal violation for which the municipal code allows a possible sentence of incarceration.

(4) The requirements of this section supersede any statute, judicial guidance, or chief justice directive limiting remote public observation of criminal courts, including chief justice directive 23-02 adopted before April 27, 2026. The supreme court may prescribe rules of procedure pursuant to section 13-2-109 to implement this section, but the rules must not narrow or conflict with the requirements of this section.

**Source:** **L. 92:** Entire section added, p. 318, § 1, effective April 29. **L. 2023:** (3.5) added, (HB 23-1182), ch. 426, p. 2505, § 2, effective September 1. **L. 2026:** IP(3.5)(a), (3.5)(a)(III), and (4) amended and (3.5)(a)(III.5) and (3.5)(h) added, (HB 26-1134), ch. 77, p. 304, § 1, effective April 27.

**Cross references:** For the legislative declaration in HB 23-1182, see section 1 of chapter 426, Session Laws of Colorado 2023.

### **13-1-133. Use of recycled paper.**

(1) The general assembly finds and declares that there is a need to expand upon existing laws which foster the effective and efficient management of solid waste by requiring that certain



documents submitted by attorneys-at-law to state courts of record be submitted on recycled paper. The general assembly further finds that such expansion will protect and enhance the environment and the health and safety of the citizens of Colorado.

(2) (a) (I) Except as provided in paragraph (b) of this subsection (2), no document shall be submitted by an attorney to a court of record after January 1, 1994, unless such document is submitted on recycled paper. The provisions of this section shall apply to all papers appended to each such document.

(II) (A) Procedures adopted to implement the provisions of this section shall not impede the conduct of court business nor create grounds for an additional cause of action or sanction.

(B) No document shall be refused by a court of record solely because it was not submitted on recycled paper.

(b) Nothing in this section shall be construed to apply to:

(I) Photographs;

(II) An original document that was prepared or printed prior to January 1, 1994;

(III) A document that was not created at the direction or under the control of the submitting attorney;

(IV) Facsimile copies otherwise permitted to be filed with a court of record in lieu of the original document; however, if the original is also required to be filed, such original shall be submitted in compliance with this section;

(V) Existing stocks of nonrecycled paper and preprinted forms acquired or printed prior to January 1, 1994.

(3) The provisions of this section shall not be applicable if recycled paper is not readily available.

(4) For purposes of this section, unless the context requires otherwise:

(a) "Attorney" means an attorney-at-law admitted to practice law before any court of record in this state.

(b) "Courts of record" shall have the same meaning as set forth in section 13-1-111.

(c) "Document" means any pleading or any other paper submitted as an appendix to such pleading by an attorney, which document is required or permitted to be filed with a clerk of court concerning any action to be commenced or which is pending before a court of record.

(d) "Recycled paper" means paper with not less than fifty percent of its total weight consisting of secondary and postconsumer waste and with not less than ten percent of such total weight consisting of postconsumer waste.

**Source: L. 93:** Entire section added, p. 622, § 2, effective July 1.

**Cross references:** For further provisions concerning the purchase of recycled paper and recycled products, see §§ 24-103-207, 25-16.5-102, and 30-11-109.5.

#### **13-1-134. Court automation system - juvenile or domestic actions.**

(1) The general assembly hereby finds, determines, and declares that the accurate and efficient exchange of information between the courts and state family service agencies is beneficial in providing aid to families in need in Colorado. Further, the general assembly declares that the use of a computer automation system to link the courts with each other and with state family service agencies for the purpose of the exchange of information regarding families would aid in identifying and providing services to families in need. It is for this reason that the general assembly has adopted this section.

(2) (a) On or before January 15, 1996, the state court administrator shall establish and administer a program for automation of the court computer technology systems in order to link the juvenile courts and district courts involved in domestic actions around the state with each other and with state family service agencies, including, but not limited to, the department of human services, the juvenile probation department, law enforcement offices, and any other agency involved in the investigation, evaluation, or provision of services to families involved in domestic actions pursuant to title 19, C.R.S., and articles 4 and 10 of title 14, C.R.S. Said automation system shall provide those parties linked to the system with automatic access to information obtained by any one of the parties in regard to a family or family member involved in said domestic actions; except that said automation system shall not include information which is required to be kept confidential under any state or federal law.

(b) Repealed.

(3) The provisions of this section shall not affect the confidentiality of juvenile records.

**Source: L. 93:** Entire section added, p. 931, § 1, effective May 28. **L. 94:** (2) amended, p. 2639, § 86, effective July 1. **L. 96:** (2)(b) repealed, p. 1264, § 175, effective August 7.

**Cross references:** For the legislative declaration contained in the 1994 act amending subsection (2), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 1996 act repealing subsection (2)(b), see section 1 of chapter 237, Session Laws of Colorado 1996.

### **13-1-135. Family courts - implementation report. (Repealed)**

**Source:** **L. 93:** Entire section added, p. 1256, § 1, effective June 6. **L. 96:** (1) repealed, p. 1264, § 176, effective August 7. **L. 98:** (2) repealed, p. 818, § 13, effective August 5.

### **13-1-136. Civil protection orders - single set of forms.**

(1) The general assembly hereby finds that the statutes provide for the issuance of several types of civil protection orders to protect the public, but that many of these protection orders have many elements in common. The general assembly also finds that consolidating the various forms for issuing and verifying service of civil protection orders and creating, to the extent possible, a standardized set of forms that will be applicable to the issuance and service of civil protection orders will simplify the procedures for issuing these protection orders and enhance the efficient use of the courts' and citizens' time and resources.

(2) On or before July 1, 2003, the state court administrator, pursuant to the rule-making authority of the Colorado supreme court, shall design and make available to the courts copies of a standardized set of forms that shall be used in the issuance and verification of service of civil protection orders issued pursuant to article 14 of this title or section 14-10-108, C.R.S., or rule 365 of the Colorado rules of county court civil procedure. The state court administrator shall design the standardized set of forms in such a manner as to make the forms easy to understand and use and in such a manner as will facilitate and improve the procedure for requesting, issuing, and enforcing civil protection orders.

(3) In developing the standardized set of forms for the issuance and verification of service of civil protection orders pursuant to this section, the state court administrator shall work with representatives of municipal, county, and district court judges, law enforcement, a member of the Colorado bar association, and representatives of other interested groups.

**Source: L. 98:** Entire section added, p. 243, § 1, effective April 13. **L. 99:** (2) amended, p. 501, § 3, effective July 1. **L. 2002:** Entire section amended, p. 493, § 2, effective July 1. **L. 2003:** Entire section amended, p. 1002, § 3, effective July 1.

#### ANNOTATION

**Standard form of order not necessary under this section** in probate court guardianship case where restraining order was entered as part of a broader order concerning parenting time. People ex rel. A.R.D., 43 P.3d 632 (Colo. App. 2001).

#### **13-1-137. Reporting of data concerning juvenile proceedings.**

(1) Notwithstanding section 24-1-136 (11)(a)(I), the judicial branch shall report annually to the judiciary committees of the house of representatives and senate, or to any successor committees, information concerning:

- (a) The number of juvenile delinquency cases;
- (b) The number of juvenile delinquency cases that involved an appointment of counsel;
- (c) The number of juvenile cases that involved a waiver of counsel;
- (d) The status of recommended reviews to juvenile court rules, forms, and chief justice directives regarding the representation of children in juvenile delinquency courts;
- (e) The number of juvenile delinquency cases that involved a detention hearing, the number of juveniles who were released after the detention hearing, and the number of juveniles who remained in detention after the detention hearing; and
- (f) The process of training judicial officers and private defense attorneys concerning determinations of competency to proceed for juveniles and adults, competency evaluation reports, services to restore competency, and certification proceedings governed by article 65 of title 27.

**Source: L. 2014:** Entire section added, (HB 14-1032), ch. 247, p. 955, § 11, effective November 1. **L. 2017:** IP(1) amended, (SB 17-241), ch. 171, p. 623, § 1, effective April 28. **L. 2019:** (1)(d) and (1)(e) amended and (1)(f) added, (SB 19-223), ch. 227, p. 2291, § 14, effective July 1.

**13-1-138. Notification of court reminder program. (Repealed)**

**Source: L. 2019:** Entire section added, (SB 19-036), ch. 293, p. 2687, § 2, effective August 2.  
**L. 2022:** Entire section repealed, (SB 22-018), ch. 191, p. 1273, § 2, effective July 15.

**13-1-139. Court limitations on medication-assisted treatment - prohibited.**

A court shall not condition participation in a drug or problem-solving court or other judicial program, or enter orders relating to probation or parole or placement in community corrections, based on the requirement that a person cease participating in prescribed medication-assisted treatment for substance use disorders, as defined in section 23-21-803, unless the person or the prescriber determines that medication-assisted treatment is no longer necessary or is no longer an effective treatment for the person.

**Source: L. 2020:** Entire section added, (SB 20-007), ch. 286, p. 1390, § 5, effective July 13.

**13-1-140. Prohibition on issuing subpoena in connection with proceeding in another state.**

(1) A court, judicial officer, court employee, or attorney shall not issue a subpoena in connection with a proceeding in another state concerning an individual engaging in a legally protected health-care activity, as defined in section 12-30-121 (1)(d), or an entity that provides insurance coverage for gender-affirming health-care services, as defined in section 12-30-121 (1)(c), or reproductive health care, as defined in section 25-6-402 (4).

(2) This section does not prohibit the investigation of criminal activity that may involve a legally protected health-care activity, provided that information relating to a medical procedure performed on an individual is not shared with an agency or individual from another state for the purpose of enforcing another state's abortion law.

**Source: L. 2023:** Entire section added, (SB 23-188), ch. 68, p. 244, § 6, effective April 14.

**Cross references:** For the legislative declaration in SB 23-188, see section 1 of chapter 68, Session Laws of Colorado 2023.

**13-1-140.1. Subpoena requirements - legally protected health-care activity - enforcement.**

(1) **Affirmation required.** An individual requesting a subpoena shall affirm under penalty of perjury that the subpoena:

(a) Is not related to, and any information obtained as a result of the subpoena will not be used in, any investigation or proceeding that seeks to impose civil or criminal liability or professional sanctions against an individual or entity that engaged in or attempted or intended to engage in a legally protected health-care activity, as defined in section 12-30-121, or that provided insurance coverage for gender-affirming health-care services, as defined in section 12-30-121, or reproductive health care, as defined in section 25-6-402; or

(b) Is related to an investigation or proceeding that seeks to impose civil or criminal liability or professional sanctions against an individual or entity that engaged in or attempted or intended to engage in a legally protected health-care activity, as defined in section 12-30-121, or that provided insurance coverage for gender-affirming health-care services, as defined in section 12-30-121, or reproductive health care, as defined in section 25-6-402, but the investigation or proceeding:

(I) Is brought under tort law or contract law;

(II) Is actionable in an equivalent or similar manner under Colorado law; and

(III) Is brought by the individual, or the individual's legal representative, who received gender-affirming health-care services or reproductive health care.

(2) **Jurisdiction and penalty.** An individual who omits or submits a false affirmation pursuant to subsection (1) of this section is subject to the jurisdiction of Colorado courts for any action, penalties, or damages arising out of the omission or false affirmation. The court, upon finding the omission or false affirmation was made intentionally, knowingly, willfully, or recklessly, shall impose a civil penalty in an amount not to exceed fifteen thousand dollars for each violation, which amount is in addition to any other legal or equitable remedy lawfully available.

(3) **Enforcement.** The attorney general may bring a civil action on behalf of the state to seek the imposition of damages, penalties, and any other equitable remedies against an individual who omits or submits a false affirmation pursuant to subsection (1) of this section. The action must be filed within six years after the date of the alleged violation.

(4) This section does not prohibit the investigation of criminal activity that may involve a legally protected health-care activity if information relating to a medical procedure performed on

an individual is not shared with a federal agency or actor, or an agency or individual from another state, for the purpose of enforcing another state's abortion law.

**Source: L. 2025:** Entire section added, (SB 25-129), ch. 96, p. 437, § 3, effective April 24.

**13-1-141. Ralph L. Carr Colorado judicial center - Colorado state patrol - law enforcement services.**

The Colorado state patrol shall provide law enforcement services for the Ralph L. Carr Colorado judicial center and its grounds, subject to available appropriations.

**Source: L. 2024:** Entire section added, (SB 24-187), ch. 304, p. 2065, § 2, effective May 31.

**Cross references:** For the legislative declaration in SB 24-187, see section 1 of chapter 304, Session Laws of Colorado 2024.

**13-1-142. Probation and parole supervision fee report.**

The state court administrator shall annually report on probation supervision fees assessed in the previous year during its "SMART Act" hearing, required pursuant to section 2-7-203. The report must include information regarding probation supervision fees, the amount of the fee charged per month, how many people were assessed the fee, and the total amount collected. Probation departments shall provide the state court administrator with any information requested by the state court administrator to comply with this section. The department of corrections shall annually report on parole supervision fees assessed in the previous year during its "SMART Act" hearing required pursuant to section 2-7-203. The report must include information regarding parole supervision fees, the amount of the fee charged per month, how many people were assessed the fee, and the total amount collected.

**Source: L. 2024:** Entire section added, (HB 24-1445), ch. 353, p. 2405, § 1, effective September 1.

## PART 2

### COURT SECURITY CASH FUND COMMISSION

#### **13-1-201. Legislative declaration.**

(1) The general assembly hereby finds that:

(a) Ensuring the safety of employees and users of state court facilities is a significant component of ensuring access to justice for the people of the state of Colorado;

(b) Responsibility for providing security for state court facilities lies with the county governments; and

(c) Colorado is a geographically, demographically, and economically diverse state and this diversity affects the funding and services of individual counties. Although the provision of security for state court facilities is a county responsibility, the variation in funds available to individual counties may not allow fundamental security measures to be met in each county.

(2) The general assembly, therefore, determines and declares that:

(a) The creation of the court security cash fund commission and the court security cash fund will be beneficial to, and in the best interests of, the people of the state of Colorado; and

(b) The goals of the commission and the cash fund shall be to:

(I) Provide supplemental funding for ongoing security staffing in the counties with the most limited financial resources; and

(II) Provide moneys to counties for court security equipment costs, training of local security teams on issues of state court security, and emergency needs related to court security.

**Source: L. 2007:** Entire part added, p. 1264, § 1, effective May 25.

#### **13-1-202. Definitions.**

As used in this part 2, unless the context otherwise requires:

(1) "Commission" means the court security cash fund commission created in section 13-1-203.

(2) "Fund" means the court security cash fund created in section 13-1-204.

(3) "Local security team" means a group of individuals from a county that oversees issues of court security for the county and that includes, at a minimum, the chief judge of the district court



in the county or his or her designee, the sheriff or his or her designee, and a county commissioner or county manager or his or her designee.

**Source: L. 2007:** Entire part added, p. 1265, § 1, effective May 25.

**13-1-203. Court security cash fund commission - creation - membership.**

(1) There is created in the judicial department the court security cash fund commission to evaluate grant applications received pursuant to this part 2 and make recommendations to the state court administrator for awarding grants from the court security cash fund.

(2) (a) The commission shall be composed of seven members, as follows:

(I) Two representatives of an association that represents county commissioners who are recommended by the association and who are appointed by the governor;

(II) Two representatives of an association that represents county sheriffs who are recommended by the association and who are appointed by governor;

(III) Two members of the judicial branch who are appointed by the chief justice; and

(IV) One member of the general public who is appointed by the chief justice.

(b) The commission membership described in paragraph (a) of this subsection (2) shall include, at all times, at least one representative from a county in which the population is above the median population for the state of Colorado, as determined by the most recent data published by the department of local affairs, and at least one representative from a county in which the population is below the median population for the state of Colorado, as determined by the most recent data published by the department of local affairs.

(3) The term of office of each member of the commission is three years; except that the terms shall be staggered so that no more than four members' terms expire in the same year. A vacancy shall be filled by the respective appointing authority for the unexpired term only.

(4) Members of the commission shall serve without compensation and without reimbursement for expenses.

**Source: L. 2007:** Entire part added, p. 1265, § 1, effective May 25. **L. 2022:** (1) and (3) amended, (SB 22-013), ch. 2, p. 21, § 23, effective February 25.

**13-1-204. Court security cash fund - creation - grants - regulations.**

(1) (a) There is hereby created in the state treasury the court security cash fund. The moneys in the fund shall be subject to annual appropriation by the general assembly for the implementation of this part 2. The state court administrator is authorized to accept gifts, grants, or donations from any private or public source for the purpose of implementing this part 2. All private and public moneys received by the state court administrator from gifts, grants, or donations shall be transmitted to the state treasurer, who shall credit the same to the fund in addition to any moneys that may be appropriated to the fund directly by the general assembly.

(b) A five-dollar surcharge must be assessed and collected as provided by law on docket fees and jury fees for specified civil actions filed on and after July 1, 2007, but before July 1, 2027, on docket fees for criminal convictions entered on and after July 1, 2007, but before July 1, 2027, on filing fees for specified probate filings made on and after July 1, 2007, but before July 1, 2027, on docket fees for specified special proceeding filings made on and after July 1, 2007, but before July 1, 2027, on fees for specified filings in water matters initiated on and after July 1, 2007, but before July 1, 2027, on docket fees for specified traffic infraction penalties assessed on and after July 1, 2007, but before July 1, 2027, and on docket fees for civil infraction penalties assessed on or after March 1, 2022, but before July 1, 2027. The surcharge must be transmitted to the state treasurer, who shall credit the surcharge to the fund. A surcharge assessed before July 1, 2027, but collected on or after July 1, 2027, must be transmitted to the court security authority in the manner specified in section 13-1-505 (2).

(c) (I) All investment earnings derived from the deposit and investment of moneys in the fund shall remain in the fund and shall not be transferred or revert to the general fund at the end of any fiscal year. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

(II) Notwithstanding any provision of subparagraph (I) of this paragraph (c) to the contrary, on April 20, 2009, the state treasurer shall deduct one million five hundred thousand dollars from the court security cash fund and transfer such sum to the general fund.

(III) Notwithstanding any provision of subparagraph (I) of this paragraph (c) to the contrary, on July 1, 2009, the state treasurer shall deduct five hundred thousand dollars from the court security cash fund and transfer such sum to the general fund.

(2) Moneys from the fund that are distributed to counties pursuant to this part 2 shall be used to supplement existing county funding for purposes related to security of facilities containing a state court or probation office and shall not be used to supplant moneys already allocated by the county for such purposes.

(3) All moneys credited to the fund shall be available for grants awarded by the state court administrator, based on recommendations of the commission, to counties for the purposes described in this part 2; except that the state court administrator may use up to ten percent of the moneys annually appropriated from the fund for administrative costs incurred through the implementation of this part 2. The state court administrator, subject to annual appropriation by the general assembly, is hereby authorized to expend moneys appropriated from the fund pursuant to this part 2.

(4) In accordance with the principles set out in section 13-1-205, the commission shall adopt guidelines prescribing the procedures to be followed in making, filing, and evaluating grant applications, the criteria for evaluation, and other guidelines necessary for administering the fund.

(5) Notwithstanding any provision of this section to the contrary, on August 31, 2027, the state treasurer shall issue a warrant in an amount equal to the balance of money in the court security cash fund to the court security authority created in part 5 of this article 1.

**Source:** **L. 2007:** Entire part added, p. 1266, § 1, effective May 25. **L. 2009:** (1)(c) amended, (SB 09-208), ch. 149, p. 619, § 7, effective April 20; (1)(c)(III) added, (SB 09-279), ch. 367, p. 1925, § 3, effective June 1. **L. 2022:** (1)(b) amended, (HB 22-1229), ch. 68, p. 339, § 2, effective March 1. **L. 2026:** (1)(b) amended and (5) added, (HB 26-1422), ch. 331, p. 1933, § 12, effective June 2.

**Editor's note:** Section 47 of chapter 68 (HB 22-1229), Session Laws of Colorado 2022, provides that the act amending subsection (1)(b) is effective March 1, 2022, but the governor did not approve the act until April 7, 2022.

### **13-1-205. Grant applications - duties of counties.**

(1) To be eligible for moneys from the fund, a local security team shall apply to the commission through the state court administrator for moneys to be used as specified in this part 2 and in accordance with the timelines and guidelines adopted by the commission and using the application form provided by the commission. For the commission to consider a grant application, the application shall be signed by the administrative authority of each entity that is represented on the local security team.

(2) Grants from the fund shall be used to fund counties that meet the criteria specified in subsection (4) of this section for:

(a) The provision of court security staffing at a facility containing a state court or probation office;

(b) The purchase of security equipment or related structural improvements for a facility containing a state court or probation office;

(c) The provision of training on issues of court security; or

(d) Miscellaneous funding needs associated with issues of court security or security equipment.

(3) Moneys credited to the fund that are available for grant distribution shall be awarded based on the following priority schedule:

(a) Requests from counties that meet the criteria specified in subsection (4) of this section shall have the highest priority; and

(b) Requests for moneys for personnel costs shall be given subsequent priority.

(4) Counties that meet at least two of the following criteria shall be given the highest priority for need-based grants for court security personnel services pursuant to this part 2:

(a) Counties in which the total population is below the state median, as determined by the most recent data published by the department of local affairs;

(b) Counties in which the per capita income is below the state median, as determined by the most recent data published by the department of local affairs;

(c) Counties in which property tax revenues are below the state median, as determined by the most recent data published by the department of local affairs; or

(d) Counties in which the total county population living below the federal poverty line is greater than the state median, as determined by the most recent census published by the United States bureau of the census.

**Source: L. 2007:** Entire part added, p. 1267, § 1, effective May 25. **L. 2010:** (4)(d) amended, (HB 10-1422), ch. 419, p. 2068, § 21, effective August 11.

### **13-1-206. Repeal of part.**

This part 2 is repealed, effective September 1, 2027.

**Source: L. 2007:** Entire part added, p. 1268, § 1, effective May 25. **L. 2017:** Entire section repealed, (SB 17-221), ch. 349, p. 1832, § 1, effective June 5. **L. 2026:** Entire section RC&RE, (HB 26-1422), ch. 331, p. 1934, § 13, effective June 2.

**Editor's note:** Prior to its recreation in 2026, section 1 of Senate Bill 17-221 provided for the repeal of this section, effective June 5, 2017. (See L. 2017, p. 1832.)

## PART 3

### UNDERFUNDED COURTHOUSE FACILITIES

#### **13-1-301. Legislative declaration.**

(1) The general assembly hereby finds that:

(a) Providing access to state court facilities and ensuring the safety of employees and other users of state court facilities are fundamental components of ensuring access to justice for the people of the state of Colorado;

(b) Recent years have seen numerous occasions in which courthouse repair, renovation, improvement, and expansion needs have become important priorities for judicial districts and the counties they serve;

(c) In some cases these needs result from anticipated causes, such as expanding caseloads, the allocations of new judges to the district, or the aging of existing courtroom facilities and the attendant need to bring them up to current operational and safety standards;

(d) In other cases the needs are driven by unexpected events, such as natural disasters, accidents, or the discovery of previously unknown threats to health and safety; and

(e) While the responsibility for providing adequate courtrooms and other court facilities lies with county governments, the geographically, demographically, and economically diverse nature of our state affects the level of funding and services that each county can provide.

(2) The general assembly, therefore, determines and declares that:

(a) The creation of the underfunded courthouse facility cash fund commission and the underfunded courthouse facility cash fund is beneficial to and in the best interests of the people of the state of Colorado; and

(b) The purpose of the commission and the fund is to provide supplemental funding for courthouse facility projects in the counties with the most limited financial resources.

**Source: L. 2014:** Entire part added, (HB 14-1096), ch. 186, p. 691, § 1, effective May 14.

### **13-1-302. Definitions.**

As used in this part 3, unless the context otherwise requires:

(1) "Commission" means the underfunded courthouse facility cash fund commission created in section 13-1-303.

(2) "Court security cash fund commission" means the court security cash fund commission created in section 13-1-203.

(3) "Fund" means the underfunded courthouse facility cash fund created in section 13-1-304.

(4) "Imminent closure of a court facility" means a court facility with health, life, or safety issues that impact court employees or other court users and that is designated for imminent closure by the state court administrator in consultation with the state's risk management system or other appropriate professionals. Health, life, or safety issues include air quality issues, water intrusion problems, temperature control issues, structural conditions that cannot reasonably be mitigated, fire hazards, electrical hazards, and utility problems. Certain health, life, or safety issues may require additional third-party evaluations such as an environmental or structural engineering review.

(5) "Master planning" means entering into contracts for professional design services or engineering consulting to determine construction or remodeling options, feasibility, or cost estimates for a proposed building project.

**Source: L. 2014:** Entire part added, (HB 14-1096), ch. 186, p. 692, § 1, effective May 14.

### **13-1-303. Underfunded courthouse facility cash fund commission - creation - membership.**

(1) There is hereby created in the judicial department the underfunded courthouse facility cash fund commission to evaluate grant applications received pursuant to this part 3 and make recommendations to the state court administrator for awarding grants from the underfunded courthouse facility cash fund based on the statutory criteria set forth in section 13-1-305. The commission shall be appointed no later than July 1, 2014.

(2) (a) The commission has seven members, as follows:

(I) Two representatives of an association that represents county commissioners, appointed by the association;

(II) One member from the department of local affairs, appointed by the department of local affairs;

(III) Two members from the judicial branch, appointed by the chief justice;

(IV) One member from the court security cash fund commission, appointed by the chief justice; and

(V) A representative of the state historical society, appointed by the president of the state historical society.

(b) The commission membership described in paragraph (a) of this subsection (2) must include, at all times, at least one representative from a county in which the population is above the median population for the state, as determined by the most recent data published by the department of local affairs, and at least one representative from a county in which the population is below the median population for the state, as determined by the most recent data published by the department of local affairs.

(3) Each member of the commission serves a three-year term; except that, of those members first appointed, one member representing each entity that appoints two members is appointed for a one-year term and one member representing each entity that appoints two members is appointed for a two-year term. A vacancy must be filled by the respective appointing authority no later than thirty days after the vacating member's last day for the unexpired term only.

(4) Members of the commission serve without compensation and without reimbursement for expenses.

(5) Four member votes are required for any final commission recommendations. The commission's final recommendations are subject to final approval by the state court administrator and are not subject to any form of appeal.

(6) In accordance with the principles set out in section 13-1-305, the commission shall adopt guidelines prescribing the procedures to be followed in making, filing, and evaluating grant applications, the criteria for evaluation, and other guidelines necessary for administering the program.

**Source: L. 2014:** Entire part added, (HB 14-1096), ch. 186, p. 692, § 1, effective May 14.

**13-1-304. Underfunded courthouse facility cash fund - creation - grants - regulations.**

(1) There is hereby created in the state treasury the underfunded courthouse facility cash fund that consists of any moneys appropriated by the general assembly to the fund. The moneys in the fund are subject to annual appropriation by the general assembly for the implementation of this part 3. The state court administrator may accept gifts, grants, or donations from any private or public source for the purpose of implementing this part 3. All private and public moneys received by the state court administrator from gifts, grants, or donations must be transmitted to the state treasurer, who shall credit the same to the fund in addition to any moneys that may be appropriated to the fund directly by the general assembly. All investment earnings derived from the deposit and investment of moneys in the fund remain in the fund and may not be transferred or revert to the general fund at the end of any fiscal year. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

(2) Moneys from the fund that are distributed to counties pursuant to this part 3 may only be used for commissioning master planning services, matching funds or leveraging grant funding opportunities for construction or remodeling projects, or addressing emergency needs due to the imminent closure of a court facility. Moneys from the fund may not be allocated for the purchase of furniture, fixtures, or equipment or as the sole source of funding for new construction. Moneys from the fund may not be allocated as the sole source of funding for remodeling, unless the need for funding is associated with the imminent closure of a court facility.

(3) All moneys credited to the fund shall be available for grants awarded by the state court administrator, based on recommendations of the commission, to counties for the purposes described in this part 3; except that the state court administrator may use a portion of the moneys annually appropriated from the fund for administrative costs incurred through the implementation of this part 3. The state court administrator, subject to annual appropriation by the general assembly, may expend moneys appropriated from the fund pursuant to this part 3.

**Source: L. 2014:** Entire part added, (HB 14-1096), ch. 186, p. 694, § 1, effective May 14.

**13-1-305. Grant applications - duties of counties.**

(1) To be eligible for moneys from the fund, a county must apply to the commission through the state court administrator, using the application form provided by the commission, in accordance with the timelines and guidelines adopted by the commission. For the commission to consider a grant application, the application must first be reviewed and approved by the chief judge of the county and the board of county commissioners.



(2) (a) Grants from the fund may only be used to fund counties that meet the requirements set forth in paragraph (b) of this subsection (2) and the criteria specified in subsection (4) of this section to:

- (I) Commission master planning services;
- (II) Serve as matching funds or leverage grant funding opportunities; or
- (III) Address emergency needs due to the imminent closure of a court facility.

(b) Grants from the fund may only be awarded to a county when:

(I) The county has demonstrated good faith in attempting to resolve the issues before seeking a grant from the fund;

(II) The county has agreed to disclose pertinent financial statements to the commission or the state court administrator for review; and

(III) The state court administrator is satisfied that the county does not have significant uncommitted reserves.

(c) Grants from the fund may not supplant any county funding for a county that has the means to support its court facility.

(d) The approval of a grant shall not result in the state or commission assuming ownership or liability for a county courthouse or other county facility that houses county offices and employees. The county shall continue to have ownership and liability for all such facilities.

(e) Once a county is awarded a grant, the county shall complete the project as designated and described in the grant award.

(f) The commission shall develop a compliance review process to ensure that counties are using each grant as specified in the grant award.

(3) Counties that meet all four of the criteria specified in subsection (4) of this section must be given the highest priority for need-based grants for underfunded courthouse facilities pursuant to this part 3.

(4) Counties that meet at least two of the following criteria qualify for need-based grants for underfunded courthouse facilities pursuant to this part 3:

(a) Counties in which the total population is below the state median, as determined by the most recent data published by the department of local affairs;

(b) Counties in which the per capita income is below the state median, as determined by the most recent data published by the department of local affairs;

(c) Counties in which property tax revenues are below the state median, as determined by the most recent data published by the department of local affairs; or

(d) Counties in which the total county population living below the federal poverty line is greater than the state median, as determined by the most recent census published by the United States bureau of the census.

**Source: L. 2014:** Entire part added, (HB 14-1096), ch. 186, p. 694, § 1, effective May 14.

### **13-1-306. Legislative review - repeal.**

The underfunded courthouse facility cash fund commission repeals on September 1, 2035. Prior to repeal, the underfunded courthouse facility cash fund commission is subject to review as provided in section 24-34-104.

**Source: L. 2014:** Entire part added, (HB 14-1096), ch. 186, p. 696, § 1, effective May 14. **L. 2016:** Entire section amended, (HB 16-1192), ch. 83, p. 233, § 14, effective April 14. **L. 2024:** Entire section amended, (HB 24-1275), ch. 396, p. 2724, § 1, effective August 7.

## **PART 4**

### **PROTECT COURT ACCESS**

#### **13-1-401. Legislative declaration.**

(1) The general assembly hereby finds and declares that:

(a) Access to courts is a cornerstone of Colorado's republican form of government and is therefore a matter of statewide concern. Civil arrest of a person at a courthouse or on its environs, or while going to, attending, or coming from a court proceeding, threatens the values of public access and the core functions of courts and is considered an unreasonable and unlawful seizure whether undertaken by a local, state, or federal officer.

(b) Courts have the affirmative obligation to assert their powers to ensure order and efficient functioning in their proceedings through exercising their contempt power and issuing writs in order to protect the dignity, independence, and integrity of proceedings;

(c) There exists from English common law a privilege from civil arrest at a courthouse and on its environs, or while going to, attending, or coming from a court proceeding. The common

law of England is "the rule of decision, and shall be considered as of full force until repealed by legislative authority" pursuant to section 2-4-211, and the common law privilege from civil arrest has not been legislatively repealed.

(d) The general assembly has the power to protect Colorado's court proceedings in order to preserve Colorado's republican form of government and has previously codified the privilege from arrest in specific circumstances to protect the proper functioning of courts; and

(e) This act clarifies Colorado law with respect to court access and judicial power to enforce the protection in order to ensure court access and to prevent interruption of the administration of justice, and clarifies that the protection extends to proceedings conducted under the authority of a court, including, but not limited to, probation and pretrial services.

(2) Nothing in this part 4 narrows, or in any way lessens, any rights or protections from civil arrest at a courthouse or on its environs, or while going to, attending, or coming from a court proceeding, under common law, statute, the United States constitution, the state constitution, or the remedies available for violations of those rights or privileges.

**Source: L. 2020:** Entire part added, (SB 20-083), ch. 63, p. 215, § 1, effective March 23.

### **13-1-402. Definitions.**

As used in this part 4, unless the context otherwise requires:

(1) "Civil arrest" means an arrest that is solely or primarily in connection with a civil proceeding but does not include an arrest made in connection with a judge's contempt authority or other judicially issued process.

(2) "Court" means a court of the state of Colorado or its counties or municipalities.

(3) "Courthouse" means the entirety of a building in which a court is located including, but not limited to, a courtroom, hallway, restroom, or lobby.

(4) "Court proceeding" means a proceeding conducted by a court or under the authority of a court, including, but not limited to:

- (a) Accessing a service or conducting business with a court;
- (b) A criminal proceeding;
- (c) A civil proceeding;
- (d) A grand jury proceeding;

- (e) A civil protection order proceeding;
- (f) An arbitration;
- (g) A deposition;
- (h) A pretrial services appointment; or
- (i) A probation services appointment.

(5) "Environs" means the vicinity surrounding a courthouse, including, but not limited to, a sidewalk, driveway, entryway, green space, or parking area serving the courthouse.

(6) "Related facility" means the following facilities, facilities where the following programs or services are provided, or facilities where the following providers provide programs or services in relation to a court proceeding:

- (a) A behavioral health entity, as defined in section 27-50-101;
- (b) A behavioral health program, as defined in section 27-50-101;
- (c) A behavioral health provider, as defined in section 27-50-101;
- (d) A behavioral health safety net provider, as defined in section 27-50-101;
- (e) A behavioral health safety net service, as defined in section 27-50-101;
- (f) A comprehensive community behavioral health provider, as defined in section 27-50-101;
- (g) An essential behavioral health safety net provider, as defined in section 27-50-101;
- (h) A hospital that is operated by the department of human services;
- (i) A psychiatric hospital that is operated by the department of human services;
- (j) A detention or commitment facility that is operated by the department of human services;
- (k) A treatment provider providing services ordered pursuant to a treatment plan required pursuant to sections 19-3-507 and 19-3-508;
- (l) Any foster care, qualified residential treatment program, or other out-of-home placement defined in section 19-1-103; and
- (m) A nursing home.

**Source: L. 2020:** Entire part added, (SB 20-083), ch. 63, p. 216, § 1, effective March 23. **L. 2025:** (6) added, (SB 25-276), ch. 240, p. 1222, § 22, effective May 23.

**Cross references:** For the legislative declaration in SB 25-276, see section 1 of chapter 240, Session Laws of Colorado 2025.

**13-1-403. Prohibition of civil arrest - writ of protection - procedure.**

(1) A person is not subject to civil arrest while the person is present at a courthouse or on its environs; or while going to, attending, or coming from a court proceeding; or while the person is receiving treatment in a related facility.

(2) (a) A judge or magistrate may issue a writ of protection to prohibit a civil arrest pursuant to subsection (1) of this section. A judge or magistrate may incorporate the writ of protection in other regularly issued documents.

(b) The protection described in subsection (1) of this section applies regardless of whether a writ of protection has been issued.

(3) Nothing in this section precludes a criminal arrest or execution of a criminal arrest warrant issued by a judge or magistrate based on probable cause of a violation of criminal law.

(4) An on-duty law enforcement officer who is not employed by or contracted with courthouse security, or participating in a court proceeding, shall present credentials and state the purpose of the officer's presence to any existing courthouse security, who shall maintain a record of the information.

(5) The chief judge of any court may enter an order to ensure that arrests made while persons are present at a courthouse or on its environs, or while going to, attending, or coming from a court proceeding, comply with this section.

**Source:** L. 2020: Entire part added, (SB 20-083), ch. 63, p. 217, § 1, effective March 23. L. 2025: (1) amended, (SB 25-276), ch. 240, p. 1223, § 23, effective May 23.

**Cross references:** For the legislative declaration in SB 25-276, see section 1 of chapter 240, Session Laws of Colorado 2025.

**13-1-404. Remedies.**

(1) A person who knowingly violates section 13-1-403 (1) or a writ of protection issued pursuant to section 13-1-403 (2) is liable for damages in a civil action for false imprisonment.

(2) A person who knowingly violates section 13-1-403 (1) or a writ of protection issued pursuant to section 13-1-403 (2) is subject to contempt of court.

(3) The attorney general may bring a civil action on behalf of the people of the state for a violation of section 13-1-403 to obtain appropriate equitable or declaratory relief.

(4) A person arrested or detained in violation of section 13-1-403 may seek a writ of habeas corpus.

**Source: L. 2020:** Entire part added, (SB 20-083), ch. 63, p. 217, § 1, effective March 23.

#### **13-1-405. Severability.**

If any provision of this part 4 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of this part 4 that can be given effect without the invalid provision or application, and to this end the provisions of this part 4 are severable.

**Source: L. 2020:** Entire part added, (SB 20-083), ch. 63, p. 218, § 1, effective March 23.

## **PART 5**

### **COURT SECURITY AUTHORITY**

#### **13-1-501. Definitions.**

As used in this part 5, unless the context otherwise requires:

(1) "Authority" means the court security authority created in section 13-1-502.

(2) "Board" means the court security authority board created in section 13-1-504.

(3) "Chief justice" means the chief justice of the Colorado supreme court.

(4) "Court security surcharge" means the surcharge described in section 13-1-505 and assessed and collected pursuant to this part 5 on and after July 1, 2027.

(5) "Local security team" means a group of individuals from a county that oversees issues of court security for the county and that includes the chief judge of the district court in the county or the chief judge's designee, the sheriff or the sheriff's designee, and a county commissioner or county manager or their designee.

**Source: L. 2026:** Entire part added, (HB 26-1422), ch. 331, p. 1934, § 14, effective June 2.

**13-1-502. Creation and purpose.**

(1) There is created as a special purpose authority, as defined in section 24-77-102, the court security authority, which is a body corporate and a political subdivision of the state, which is not an agency of state government and is not subject to administrative direction by any department, commission, board, bureau, or agency of the state.

(2) The authority is responsible for distributing the court security surcharge pursuant to sections 13-1-506 and 13-1-507 to provide:

(a) Supplemental funding for ongoing security staffing in state court and probation facilities in the counties with the most limited financial resources;

(b) Supplemental funding for counties for court security equipment costs, training of local security teams on issues of state court security, and emergency needs related to court security; and

(c) Support for general system-wide court security needs, including security support for judges and judicial staff outside of court facilities when necessary.

**Source: L. 2026:** Entire part added, (HB 26-1422), ch. 331, p. 1935, § 14, effective June 2.

**13-1-503. General powers.**

(1) In addition to any other powers granted to the authority in this part 5, the authority has the following powers:

(a) To have the duties, privileges, immunities, rights, liabilities, and disabilities of a body corporate and political subdivision of the state;

(b) To have perpetual existence and succession;

(c) To adopt, have, and use a seal and to alter the same at its pleasure;

(d) To sue and be sued;

(e) To enter into any contract or agreement consistent with this part 5 and the laws of the state;

(f) To purchase, lease, lease with an option to purchase, trade, exchange, or otherwise acquire, maintain, hold, improve, mortgage, encumber, and dispose of real property and personal property, whether tangible or intangible, and any interest, including easements and rights-of-way, without restriction or limitation;

(g) To acquire office space, equipment, services, supplies, and insurance necessary to carry out the purposes of this part 5;

(h) To deposit any money of the authority in any banking institution or in any depository authorized pursuant to section 24-75-603 and to appoint, for the purpose of making such deposits, one or more persons to act as custodians of the money of the authority, who shall give surety bonds in the amounts and form and for the purposes the board requires;

(i) To contract for and to accept any gifts, grants, and loans of funds, property, or any other aid in any form from the federal government, the state, any state agency, or any other source, or any combination thereof, and to comply, subject to the provisions of this part 5, with the terms and conditions of the contracts or the acceptance of such items;

(j) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this part 5, which specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this part 5;

(k) To fix the time and place or places at which its regular and special meetings are held;

(l) To elect one member as chair and one member as vice-chair of the board, to elect one or more members as secretary and treasurer of the board, and to elect or appoint other officers as the board may determine and provide for their duties and terms of office;

(m) To appoint agents, employees, and professional and business advisers, including real estate professionals, construction companies, property managers, attorneys, accountants, and financial advisers as may be necessary in the authority's judgment to accomplish the purposes of this part 5, to fix the compensation of those agents, employees, and advisers, and to establish the powers and duties of all agents, employees, and advisers, as well as any other person contracting with the authority to provide services, including termination of employment or the contract for services;

(n) To make and execute agreements, contracts, and other instruments necessary or convenient in the exercise of the powers and functions of the authority pursuant to this part 5, including contracts with any person, firm, corporation, municipality, state agency, county, or other entity. All municipalities, counties, and state agencies may enter into and do all things necessary to perform any arrangement or contract with the authority; and



(o) Other powers necessary to accomplish the authority's specific goals as required pursuant to this part 5.

**Source: L. 2026:** Entire part added, (HB 26-1422), ch. 331, p. 1935, § 14, effective June 2.

**13-1-504. Court security authority board - membership and meetings - rules.**

(1) The authority is governed by the court security authority board, which shall evaluate grant applications received pursuant to this part 5 for awarding grants from revenue from the court security surcharge.

(2) (a) The board is composed of seven members as follows:

(I) Two representatives of a statewide association that represents county commissioners who are recommended by the association and who are appointed by the governor;

(II) Two representatives of a statewide association that represents county sheriffs who are recommended by the association and who are appointed by governor;

(III) Two members of the judicial branch, at least one of whom is a chief judge, who are appointed by the chief justice; and

(IV) One member of the general public who is appointed by the chief justice.

(b) Initial appointments to the board must be made by July 1, 2026.

(c) For the initial appointments to the board pursuant to subsection (2)(a) of this section, each appointing authority shall appoint the same individual who the appointing authority appointed to serve and who is serving as a member of the court security cash fund commission pursuant to part 2 of this article 1 at the time when the initial appointments to the board are made.

(d) Any time that an appointee to the board served as a member of the court security cash fund commission, whether or not the appointee is an initial appointment to the board, does not count toward the term limits specified in subsection (3) or (6) of this section.

(e) The board membership described in subsection (2)(a) of this section must include, at all times, at least one representative from a county in which the population is above the median county population for the state of Colorado, as determined by the most recent data published by the department of local affairs, and at least one representative from a county in which the population is below the median county population for the state of Colorado, as determined by the most recent data published by the department of local affairs.

(3) The term of office of each member of the board is three years; except that for the initial appointments to the board, the governor and the chief justice shall both appoint two board members for three-year terms, the governor shall appoint two board members for two-year terms, and the chief justice shall appoint one board member for a two-year term. A vacancy is filled by the respective appointing authority for the unexpired term only.

(4) Members of the board serve without compensation but must be reimbursed for actual and reasonable expenses incurred in the performance of their duties.

(5) Terms expire on December 31 of the final year of the term.

(6) Members may be reappointed to serve two additional terms.

(7) A member may be removed from the board by majority vote of the board for misfeasance, malfeasance, willful neglect of duty, or other cause after notice and a public hearing, unless notice and a public hearing are expressly waived in writing by the member being removed.

(8) The board shall meet at least four times per year.

(9) The board shall elect a chair and vice-chair at its first meeting of each calendar year.

(10) The board shall adopt its own rules of procedure and keep a record of all proceedings.

(11) The board shall determine a schedule for accepting applications for grants awarded from revenue from the court security surcharge and awarding grants. The board, by resolution, shall establish rules to ensure that a grant recipient uses money received from a grant for purposes specified in sections 13-1-506 and 13-1-507 and to determine the grant distribution amount for a county that has applied for a grant or for the state court administrator's office, if applicable.

(12) (a) The authority may cooperate and enter into contracts with another agency or entity for administrative or operational assistance, including for staffing.

(b) The authority shall pay the contracted entity in advance for all agreed-upon costs incurred by the contracted entity in providing staffing for the authority to carry out its mission, including compensation for employees staffing the authority and any administrative and indirect costs associated with staffing the authority.

(c) If the contracted entity expects to incur actual costs as a result of staffing the authority that exceed the amount the authority retains for direct and indirect costs pursuant to section 13-1-506, the authority shall pay the contracted entity for all costs incurred by the contracted entity in providing staffing to the authority, including, but not limited to, compensation for employees staffing the authority and administrative costs in an amount agreed upon by the authority and contracted entity.

(13) The state court administrator shall reimburse the board, from the court security cash fund created in section 13-1-204, for reasonable attorney fees for legal services provided to the board from July 1, 2026, to August 30, 2027.

**Source: L. 2026:** Entire part added, (HB 26-1422), ch. 331, p. 1936, § 14, effective June 2.

**13-1-505. Imposition and collection of the court security surcharge - repeal.**

(1) (a) Beginning July 1, 2027, the authority shall impose, and the court shall collect on behalf of the authority, a court security surcharge in the amount of ten dollars on the following:

(I) Docket fees for specified civil actions filed in district court and county court pursuant to section 13-32-101 (1);

(II) Jury fees for specified civil actions pursuant to section 13-71-144 (1);

(III) Docket fees for criminal convictions pursuant to section 13-32-105;

(IV) Filing fees for specified probate filings pursuant to section 13-32-102 (1);

(V) Docket fees for specified special proceeding filings pursuant to section 13-32-103;

(VI) Docket fees for specified traffic infraction penalties pursuant to section 42-4-1710; and

(VII) Docket fees for civil infraction penalties pursuant to section 16-2.3-102.

(b) To minimize compliance costs for court users and administrative costs for the authority, the court shall collect the court security surcharge on behalf of the authority in the same manner in which it collected the court security cash fund surcharge pursuant to section 13-1-204 (1)(b), as that section existed prior to its repeal in 2027; except that the court shall not transmit the collected court security surcharge to the state treasurer for deposit into the court security cash fund but shall instead remit the surcharges collected to the authority in accordance with the process developed pursuant to subsection (2) of this section.

(2) (a) The authority shall maintain an account in a financial institution to which all money collected for the court security surcharge is deposited. The authority shall work with the judicial department to develop a process that ensures each court is able to promptly and efficiently deposit all court security surcharges collected directly to the account or otherwise promptly and efficiently remit the surcharges to the authority.

(b) (I) The authority shall deposit any amount that the state treasurer remits to the authority on August 31, 2027, pursuant to section 13-1-204 (5), into the account created pursuant to subsection (2)(a) of this section.

(II) This subsection (2)(b) is repealed, effective June 30, 2028.

(3) Court security surcharges collected and remitted to the authority pursuant to this section are not state revenue.

**Source: L. 2026:** Entire part added, (HB 26-1422), ch. 331, p. 1939, § 14, effective June 2.

**13-1-506. Distribution of court security surcharge - grants - purposes.**

(1) The authority shall accept applications for grant awards distributed from the money deposited into the authority's account as required by section 13-1-505 (2), less the authority's direct and indirect expenses in administering the requirements of this part 5 and any other related work completed to advance the mission of the authority. The authority shall distribute the revenue to counties through grants pursuant to section 13-1-507. In addition, the authority may distribute grants to the state court administrator's office to provide support for general system-wide court security needs, including security support for judges and judicial staff outside of court facilities when necessary.

(2) The board, by resolution, shall establish guidelines to distribute grants to counties and to the state court administrator's office for the purposes described in this part 5.

(3) In accordance with the principles set out in section 13-1-507, the authority shall, by resolution, establish guidelines prescribing the procedures to be followed in making, filing, and evaluating grant applications, the criteria for evaluation, and other guidelines necessary for administering the money from the court security surcharge.

**Source: L. 2026:** Entire part added, (HB 26-1422), ch. 331, p. 1940, § 14, effective June 2.

**13-1-507. Grant applications - requirements.**

(1) (a) For a county to be eligible for money distributed by the authority, a local security team must apply to the board on behalf of the county in a form and manner to be determined by the board. For the board to consider a grant application from a county, the application must be signed by the administrative authority of each entity that is represented on the local security team.

(b) For the state court administrator's office to be eligible for money distributed by the authority, the office must apply to the board in a form and manner to be determined by the board.

For the board to consider a grant application from the office, the application must be signed by the state court administrator.

(2) (a) (I) A county that receives money from a grant must use the money to:

(A) Provide court security staffing at a facility containing a state court or probation office;

(B) Purchase security equipment or related structural improvements for a facility containing a state court or probation office;

(C) Provide training on issues of court security; or

(D) Address other funding needs associated with issues of court security or security equipment.

(II) A county that receives money from a grant shall not use the money to supplant money already allocated by the county for such purposes.

(b) If the state court administrator's office receives money from a grant, the office must use the money to provide support for general system-wide security of facilities containing a state court or probation office, including security support for judges and judicial staff outside of court facilities when necessary.

(3) The board shall award grants from money collected from the court security surcharge. The board shall prioritize requests from counties that satisfy the criteria specified in subsection (4) of this section and requests for personnel costs. The board may also consider requests from the state court administrator's office in a priority to be determined by the board.

(4) (a) The board shall give the highest priority for grants pursuant to this part 5 to counties that satisfy at least two of the following criteria:

(I) Counties in which the total population is below the median county population for the state, as determined by the most recent data published by the department of local affairs;

(II) Counties in which the per capita income is below the state median, as determined by the most recent data published by the department of local affairs;

(III) Counties in which property tax revenues are below the state median, as determined by the most recent data published by the department of local affairs; or

(IV) Counties in which the total county population living below the federal poverty line is greater than the state median population living below the federal poverty line, as determined by the most recent census published by the United States bureau of the census.

(b) After awarding grants based on the priority specified in subsection (4)(a) of this section, the board may give the next highest priority for grants to counties pursuant to this part 5 to provide security to probation offices in the county without regard to the county's total population,

per capita income, property tax revenues, or percentage of the population living below the federal poverty line.

**Source: L. 2026:** Entire part added, (HB 26-1422), ch. 331, p. 1940, § 14, effective June 2.

### **13-1-508. Report.**

(1) On or before January 31, 2028, and on or before each January 31 thereafter, the authority shall prepare and submit a report to the chief justice and the house of representatives judiciary committee and the senate judiciary committee, or their successor committees, that details the use of the court security surcharges. The report must include the following information about the court security surcharge from the preceding year:

(a) The amount of money that was collected in court security surcharges and deposited in the authority's account as required by section 13-1-505 (2);

(b) The amount of money that was awarded to each county through a grant pursuant to this part 5;

(c) The types of courthouse security measures implemented by counties that received a grant pursuant to this part 5; and

(d) The amount of money that was awarded to the state court administrator's office through a grant pursuant to this part 5 and the security measures that the office implemented using the grant money.

**Source: L. 2026:** Entire part added, (HB 26-1422), ch. 331, p. 1941, § 14, effective June 2.

## **13-1.5 ARTICLE 1.5**

### **Uniform Transboundary Pollution Reciprocal Access Act**

|             |                  |             |                                   |
|-------------|------------------|-------------|-----------------------------------|
| 13-1.5-101. | Short title.     | 13-1.5-106. | Equality of rights.               |
| 13-1.5-102. | Definitions.     | 13-1.5-107. | Right additional to other rights. |
| 13-1.5-103. | Forum.           | 13-1.5-108. | Waiver of sovereign immunity.     |
| 13-1.5-104. | Right to relief. |             |                                   |
| 13-1.5-105. | Applicable law.  |             |                                   |

13-1.5-109. Uniformity of application and construction.

**13-1.5-101. Short title.**

This article may be cited as the "Uniform Transboundary Pollution Reciprocal Access Act".

**Source: L. 84:** Entire article added, p. 451, § 1, effective July 1.

**13-1.5-102. Definitions.**

As used in this article, unless the context otherwise requires:

(1) "Reciprocating jurisdiction" means a state of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States of America, or a province or territory of Canada, which has enacted this article or provides substantially equivalent access to its courts and administrative agencies.

(2) "Person" means an individual person, a corporation, a business trust, an estate, a trust, a partnership, an association, a joint venture, a government in its private or public capacity, a governmental subdivision or agency, or any other legal entity.

**Source: L. 84:** Entire article added, p. 451, § 1, effective July 1.

**13-1.5-103. Forum.**

An action or other proceeding for injury or threatened injury to property or person in a reciprocating jurisdiction caused by pollution originating, or that may originate, in this jurisdiction may be brought in this jurisdiction.

**Source: L. 84:** Entire article added, p. 451, § 1, effective July 1.

**13-1.5-104. Right to relief.**

A person who suffers, or is threatened with, injury to his person or property in a reciprocating jurisdiction caused by pollution originating, or that may originate, in this jurisdiction has the

same rights to relief with respect to the injury or threatened injury and may enforce those rights in this jurisdiction as if the injury or threatened injury occurred in this jurisdiction.

**Source: L. 84:** Entire article added, p. 452, § 1, effective July 1.

**13-1.5-105. Applicable law.**

The law to be applied in an action or other proceeding brought pursuant to this article, including what constitutes pollution, is the law of this jurisdiction excluding choice of law rules.

**Source: L. 84:** Entire article added, p. 452, § 1, effective July 1.

**13-1.5-106. Equality of rights.**

This article does not accord a person injured or threatened with injury in another jurisdiction any rights superior to those that the person would have if injured or threatened with injury in this jurisdiction.

**Source: L. 84:** Entire article added, p. 452, § 1, effective July 1.

**13-1.5-107. Right additional to other rights.**

The right provided in this article is in addition to and not in derogation of any other rights.

**Source: L. 84:** Entire article added, p. 452, § 1, effective July 1.

**13-1.5-108. Waiver of sovereign immunity.**

The defense of sovereign immunity is applicable in any action or other proceeding brought pursuant to this article only to the extent that it would apply to a person injured or threatened with injury in this jurisdiction.



**Source: L. 84:** Entire article added, p. 452, § 1, effective July 1.

**13-1.5-109. Uniformity of application and construction.**

This article shall be applied and construed to carry out its general purpose to make uniform the law with respect to the subject of this article among jurisdictions enacting it.

**Source: L. 84:** Entire article added, p. 452, § 1, effective July 1.

## **ARTICLE 2**

### **Supreme Court**

|           |                                     |           |                                                        |
|-----------|-------------------------------------|-----------|--------------------------------------------------------|
| 13-2-101. | Terms of supreme court.             | 13-2-115. | Pensions of supreme court judges.                      |
| 13-2-102. | Special terms.                      |           |                                                        |
| 13-2-103. | Open sessions - oral arguments.     | 13-2-116. | Disposition of law books.                              |
| 13-2-104. | Quorum - adjournment.               | 13-2-117. | Librarian to have charge of library.                   |
| 13-2-105. | Continuance of causes.              | 13-2-118. | Duties of librarian.                                   |
| 13-2-106. | Process from supreme court.         | 13-2-119. | Disposition of fees.                                   |
| 13-2-107. | Judge shall not act as attorney.    | 13-2-120. | Supreme court library fund.                            |
| 13-2-108. | Rules of civil procedure.           | 13-2-121. | Manner of disbursement.                                |
| 13-2-109. | Rules of criminal procedure.        | 13-2-122. | Supreme court and court of appeals opinions published. |
| 13-2-110. | Court to prescribe rules and forms. | 13-2-123. | Duty of reporter.                                      |
| 13-2-111. | Employees - compensation.           | 13-2-124. | Publication of reports.                                |
| 13-2-112. | Duties of bailiff.                  | 13-2-125. | Purchase, distribution, and sale of reports.           |
| 13-2-113. | Fees of clerk of supreme court.     | 13-2-126. | Reports and session laws furnished.                    |
| 13-2-114. | Seal of supreme court.              | 13-2-127. | Method for review.                                     |

### **13-2-101. Terms of supreme court.**

In each year there shall be three terms of the supreme court: One beginning on the second Monday in September, another beginning on the second Monday in January, and another beginning on the second Monday in April.

**Source: L. 1889:** p. 443, § 1. **R.S. 08:** § 1409. **C.L.** § 5624. **CSA:** C. 46, § 15. **CRS 53:** § 37-2-1. **C.R.S. 1963:** § 37-2-1.

### **13-2-102. Special terms.**

Special terms of said court may be called under such general rules and regulations as may be adopted by the court.

**Source: G.L.** § 2614. **G.S.** § 3235. **R.S. 08:** § 1410. **C.L.** § 5625. **CSA:** C. 46, § 16. **CRS 53:** § 37-2-2. **C.R.S. 1963:** § 37-2-2.

### **13-2-103. Open sessions - oral arguments.**

The court shall be in open session as often as practicable during each of its terms to hear and determine matters and causes which may come before it, and, at the discretion of the court, oral arguments may be allowed on final hearing in any cause on the request of any party thereto.

**Source: L. 1889:** p. 443, § 2. **R.S. 08:** § 1411. **C.L.** § 5626. **CSA:** C. 46, § 17. **CRS 53:** § 37-2-3. **C.R.S. 1963:** § 37-2-3. **L. 85:** Entire section amended, p. 568, § 1, effective May 31.

## **ANNOTATION**

**Oral arguments in the supreme court when requested are a matter of right**, but they are subject to reasonable regulation by the court, and failure to request constitutes a waiver. In re Morrish's Estate, 105 Colo. 349, 97 P.2d 442 (1939).

**Oral arguments must be requested and may be regulated.** Oral arguments are granted only on request, and are subject to reasonable regulation by the court. Brown v. Maier, 96 Colo. 1, 38 P.2d 905 (1934).

**Failure to request privilege of oral argument on application for supersedeas is a waiver**, in case the court should render

final judgment on such application. *Brown v. Maier*, 96 Colo. 1, 38 P.2d 905 (1934).

#### **13-2-104. Quorum - adjournment.**

If a quorum of the justices of the supreme court is not present on the first day of any term, the court shall stand adjourned from day to day until a quorum attends; and said court, if a quorum is present, may adjourn to any day specified, as may be deemed advisable.

**Source:** G.L. § 2602. G.S. § 3225. R.S. 08: § 1412. C.L. § 5627. CSA: C. 46, § 18. CRS 53: § 37-2-4. C.R.S. 1963: § 37-2-4.

#### **ANNOTATION**

**Quorum means the majority of the entire body.** This section clearly determines, that which is necessarily implied in § 5 of art. VI, Colo. Const., that a quorum of the justices may transact business and decide cases. This section does not define a quorum. The word, therefore, must be held

to be used in its ordinary meaning, and that meaning is a majority of the entire body. *Snider v. Rinehart*, 18 Colo. 18, 31 P. 716 (1892); *Mtn. States Tel. & Tel. Co. v. People ex rel. Wilson*, 68 Colo. 487, 190 P. 513 (1920).

#### **13-2-105. Continuance of causes.**

All matters, suits, and causes undisposed of at any term of the supreme court shall stand continued to the next succeeding term.

**Source:** G.L. § 2607. G.S. § 3229. R.S. 08: § 1413. C.L. § 5628. CSA: C. 46, § 19. CRS 53: § 37-2-5. C.R.S. 1963: § 37-2-5.

#### **13-2-106. Process from supreme court.**

All process issued out of the supreme court shall bear teste in the name of the chief justice, be signed by the clerk of the court, sealed with its seal, and made returnable according to law or the rules and orders of the court and shall be executed by the officer to whom the same is directed.

**Source:** G.L. § 2603. G.S. § 3226. R.S. 08: § 1416. C.L. § 5629. CSA: C. 46, § 20. CRS 53: § 37-2-6. C.R.S. 1963: § 37-2-6.

#### ANNOTATION

**Scire facias must be directed to sheriff of county where defendant resides.** A scire facias or summons to hear errors issued by the clerk of the supreme court must be directed to the sheriff of the county where the defendant in error resides or may be found, and no other person than such sheriff

or his authorized deputy has authority to serve such summons. An attempted service of such summons made by a person not authorized by law to make such service is a nullity. *Wellington v. Beck*, 29 Colo. 73, 66 P. 881 (1901).

#### **13-2-107. Judge shall not act as attorney.**

No justice of the supreme court shall practice as an attorney-at-law in any of the courts of the state, nor give advice touching any cause pending or to be brought therein.

**Source:** G.L. § 2608. G.S. § 3230. R.S. 08: § 1419. C.L. § 5631. CSA: C. 46, § 22. CRS 53: § 37-2-7. C.R.S. 1963: § 37-2-7.

#### **13-2-108. Rules of civil procedure.**

The supreme court has the power to prescribe, by general rules, for the courts of record in the state of Colorado the practice and procedure in civil actions and all forms in connection therewith; except that no rules shall be made by the supreme court permitting or allowing trial judges to comment to the jury on the evidence given on the trial. Such rules shall neither abridge, enlarge, nor modify the substantive rights of any litigants. The supreme court shall fix the dates when such rules take effect and the extent to which they apply to proceedings then pending, and thereafter all laws in conflict therewith shall be of no further force or effect.

**Source:** L. 39: p. 264, § 1. CSA: omitted. CRS 53: § 37-2-8. C.R.S. 1963: § 37-2-8. L. 79: Entire section amended, p. 597, § 5, effective July 1.

## ANNOTATION

**There reposes in the supreme court the power to adopt rules** for the regulation of practice and conduct of the business of courts of record in this state. *People ex rel. Mijares v. Kniss*, 144 Colo. 551, 357 P.2d 352 (1960).

**It may not diminish federal jurisdiction.** This section authorizing the supreme court to prescribe rules of civil procedure in civil actions gave it no authority to modify, abridge, or enlarge or diminish the jurisdiction of federal courts. *People ex rel. Mijares v. Kniss*, 144 Colo. 551, 357 P.2d 352 (1960).

**Nor abridge, modify, or enlarge substantive rights.** The supreme court had no power to give legal effect to modifications which unquestionably would "abridge", "enlarge", or "modify" substantive rights of litigants. *People ex rel. Mijares v. Kniss*, 144 Colo. 551, 357 P.2d 352 (1960).

**What is procedural and what is substantive is frequently a question of great difficulty.** *People ex rel. Mijares v. Kniss*, 144 Colo. 551, 357 P.2d 352 (1960).

**The supreme court by rule cannot invest trial courts with an expanded jurisdiction.** *People ex rel. Mijares v. Kniss*, 144 Colo. 551, 357 P.2d 352 (1960).

**Where there is a conflict between a statute and a rule**, the former must govern; rules of court can neither abridge, enlarge, nor modify substantive rights of a litigant. *Sherman v. Colo. Springs Planning Comm'n*, 729 P.2d 1014 (Colo. App. 1986), *aff'd*, 763 P.2d 292 (Colo. 1988); *Herstam v. Bd. of Dirs.*, 895 P.2d 1131 (Colo. App. 1995).

**Applied** in *Inwood Indus., Inc. v. Priestley*, 37 Colo. App. 78, 545 P.2d 732 (1975); *Zimmerman v. Mozer*, 10 B.R. 1002 (Bankr. D. Colo. 1981).

### **13-2-109. Rules of criminal procedure.**

(1) The supreme court has the power to prescribe, from time to time, rules of pleading, practice, and procedure with respect to all proceedings in all criminal cases in all courts of the state of Colorado.

(2) The supreme court shall fix the dates when such rules take effect and the extent to which they apply to proceedings then pending.

**Source: L. 60:** p. 118, § 1. **CRS 53:** § 37-2-34. **C.R.S. 1963:** § 37-2-27.

**Cross references:** For the Colorado rules of criminal procedure, see chapter 29 of the Colorado court rules.

#### ANNOTATION

**Law reviews.** For article, "Colorado Criminal Procedure — Does It Meet Minimum Standards?", see 28 Dicta 14 (1951). For article, "One Year Review of Criminal Law and Procedure", see 39 Dicta

81 (1962). For article, "The Perjurious Defendant: A Proposed Solution to the Defense Lawyer's Conflicting Ethical Obligations to the Court and to His Client", see 59 Den. L.J. 75 (1981).

#### **13-2-110. Court to prescribe rules and forms.**

The supreme court from time to time may institute rules of practice, and prescribe forms of process to be used, and regulations for the keeping of the records and proceedings of the court, not inconsistent with the constitution or laws of this state.

**Source:** G.L. § 2604. G.S. § 3227. R.S. 08: § 1418. C.L. § 5630. CSA: C. 46, § 21. CRS 53: § 37-2-9. C.R.S. 1963: § 37-2-9.

#### ANNOTATION

**Power to make rules is the constitutional right of the supreme court,** aside from any common-law right or statutory grant. Kolkman v. People, 89 Colo. 8, 300 P. 575 (1931).

**The word "rules" is synonymous with practice, procedure, custom, method, and system.** Kolkman v. People, 89 Colo. 8, 300 P. 575 (1931).

**Rules must not be inconsistent with the constitution or statute laws of the state.** There is no statute giving costs to a defendant in case of a reversal of a criminal case, and the supreme court cannot award

them under the guise of a power to prescribe rules of practice. Boykin v. People, 23 Colo. 183, 46 P. 635 (1896).

**The court seriously questions the power of the general assembly to make any rules or to enact any laws relative to procedure in courts.** It is doubtful if the general assembly could have enacted any law with reference to procedure in courts of record unless that power had been expressly or tacitly surrendered to it by the judiciary. Walton v. Walton, 86 Colo. 1, 278 P. 780 (1929).

**Courts always have regulated their own practice and procedure.** The act of the

general assembly granting the supreme court the power to prescribe rules was not a delegation of legislative power, for the court has always regulated its own practice and procedure. *Ernst v. Lamb*, 73 Colo. 132, 213 P. 994 (1923).

**The general assembly may not attempt to regulate the court's discretionary** granting of a final decree in a divorce action for this is a procedural matter. *Walton v. Walton*, 86 Colo. 1, 278 P. 780 (1929).

### **13-2-111. Employees - compensation.**

(1) The supreme court may appoint one clerk, two deputy clerks, one librarian of the supreme court library, one reporter and an assistant reporter of its decisions, two bailiffs, and such additional clerical assistants as may be necessary.

(2) Each justice of the supreme court may appoint one or more law clerks and such clerical personnel as may be necessary to assist him in fulfilling the duties of his office.

(3) All employees appointed under the provisions of subsections (1) and (2) of this section shall be appointed and compensated pursuant to the provisions of section 13-3-105.

**Source:** L. 1891: p. 368, § 1. L. 05: p. 357, § 1. R.S. 08: § 1420. L. 11: p. 610, § 1. L. 17: p. 514, § 1. C.L. § 5632. L. 23: p. 614, § 2. L. 27: p. 677, § 1. CSA: C. 46, §§ 23, 24. L. 37: p. 497, § 3. L. 49: p. 402, § 1. L. 53: p. 295, § 1. CRS 53: § 37-2-10. L. 59: p. 350, § 1. C.R.S. 1963: § 37-2-10. L. 79: (1) and (3) amended, p. 597, § 6, effective July 1. L. 81: (2) R&RE, p. 874, § 1, effective June 18.

**Cross references:** For the reporter of decisions in the court of appeals, see § 13-4-111 (1).

### **13-2-112. Duties of bailiff.**

(1) The bailiff appointed shall attend upon the court and the judges thereof. It is the duty of the bailiff to assist the librarian of the supreme court, when not otherwise engaged.

(2) In case of the absence of the bailiff, the court or judges may appoint some suitable person to act in his stead, and the person so appointed shall perform like services and shall receive the same salary as the bailiff.

**Source:** L. 1891: p. 368, §§ 2, 3. R.S. 08: §§ 1423, 1424. C.L. §§ 5635, 5636. CSA: C. 46, §§ 28, 29. CRS 53: § 37-2-13. C.R.S. 1963: § 37-2-11.

### **13-2-113. Fees of clerk of supreme court.**

Except for the court of appeals docket fees, the supreme court is authorized to fix such fees for the services of the clerk of said court, in causes pending therein, as to the court seems proper, such fees to be paid by the parties to a cause pursuant to law and the order of the court.

**Source:** G.L. § 1162. G.S. § 1417. R.S. 08: § 1425. C.L. § 5637. CSA: C. 46, § 30. CRS 53: § 37-2-14. C.R.S. 1963: § 37-2-12. L. 82: Entire section amended, p. 285, § 1, effective July 1.

**Cross references:** For fees payable upon appeal and procedure for waiver thereof, see C.A.R. 12.

### **13-2-114. Seal of supreme court.**

The seal of the supreme court shall be one and three-quarter inches in diameter, with a device inscribed thereon as follows: Upon a ground of white the figure of justice sitting faced to the left, but with body and face inclined to the front, arms outstretched, and holding in her left hand the scales and in her right the sword of justice. Upon the left, and just above the ground, shall appear the rising sun, with golden rays proceeding therefrom. On the right, and resting upon the ground, a shield, having inscribed thereon the coat of arms of the state of Colorado, the upper part of the shield leaning upon the figure of justice; upon the right of the shield a vine extending from the ground to the top of the shield; above the inscription and around the edge of the seal shall be the words "supreme court"; below the inscription and around the edge of the seal shall be the words, "State of Colorado", engraved thereon.

**Source:** G.L. § 2618. G.S. § 3238. R.S. 08: § 1427. C.L. § 5639. CSA: C. 46, § 32. CRS 53: § 37-2-15. C.R.S. 1963: § 37-2-13.

### **13-2-115. Pensions of supreme court judges.**

(1) Any person who has served as a judge of the supreme court of Colorado for not less than ten years, who has ceased to hold said office, and who has reached the age of sixty-five years is



entitled to receive an annual pension during the remainder of his life in the amount of one-fourth of the annual salary of an associate judge of the supreme court. If such judge has served twenty years or more and has attained the age of seventy-two years, the annual pension shall be one-third of the annual salary of an associate judge of the supreme court. All pensions due under this section shall be paid monthly out of the general fund of this state.

(2) Upon the death of any judge, eligible to receive an annual pension pursuant to this section, who leaves a surviving spouse of at least sixty-five years of age to whom he has been married for at least twenty years, such spouse is entitled to receive a pension during the remainder of such spouse's life, or as long as such spouse remains unmarried, in the amount of seven thousand dollars per year, payable monthly from the general fund of this state.

(3) It is the intent of this section to limit the benefits payable under this section to persons, or their widows, who have terminated their service on the supreme court prior to May 16, 1974, or whose election or appointment to the supreme court took place prior to May 16, 1974. The retirement benefits payable to judges of the supreme court who are appointed subsequent to May 16, 1974, shall be as otherwise provided by law.

**Source:** L. 25: p. 504, § 1. CSA: C. 46, § 33. L. 39: p. 317, § 1. L. 53: p. 238, § 1. CRS 53: § 37-2-16. L. 55: p. 262, § 1. C.R.S. 1963: § 37-2-14. L. 67: p. 452, § 1. L. 69: p. 242, § 1. L. 74: Entire section amended, p. 233, § 1, effective May 16. L. 77: (2) amended, p. 295, § 4, effective July 1.

#### ANNOTATION

**Law reviews.** For article, "New Supreme Court Rule", see 24 Dicta 161 (1947).

**Nowhere are pensions mentioned in the constitution** of Colorado. Unless the granting of them is expressly prohibited, or language is used that by necessary implication must be construed as a prohibition, the power to grant them exists as a residual power of the state. *Bedford v. White*, 106 Colo. 439, 106 P.2d 469 (1940).

**This section is not unconstitutional.** *Bedford v. White*, 106 Colo. 439, 106 P.2d 469 (1940).

**Judges ceasing to serve prior to enactment.** Judges of the supreme court of this state are eligible to receive pensions under this section even though they have ceased to serve in that capacity when this section became law. *Bedford v. White*, 106 Colo. 439, 106 P.2d 469 (1940).

### **13-2-116. Disposition of law books.**

(1) The state librarian and all other officers who receive for public use from any other state or territory, or any officer thereof, or any other person any books of judicial reports or public statutes or any other books of law shall forthwith cause one copy of such books or statutes, and all of such books of reports, and other books of law to be deposited in the library of the supreme court, there to remain.

(2) The supreme court librarian shall furnish the supreme court annually, as the court may direct, a report designating any such copies of judicial reports, statutes, or books of law which, in the librarian's opinion, can be properly removed from the supreme court library and disposed of.

(3) The supreme court may take action pursuant to such report by ordering any copies of such judicial reports, statutes, or books of law designated therein disposed of in such manner as it shall determine.

**Source:** G.L. § 2623. G.S. § 3242. R.S. 08: § 1428. L. 11: p. 488, § 1. C.L. § 5640. CSA: C. 46, § 34. CRS 53: § 37-2-17. L. 57: p. 317, § 1. C.R.S. 1963: § 37-2-15.

### **13-2-117. Librarian to have charge of library.**

The librarian of the supreme court, under the direction of the court, shall have custody of the books pertaining to the library of the supreme court.

**Source:** G.L. § 2621. G.S. § 3240. R.S. 08: omitted. C.L. § 5641. CSA: C. 46, § 35. L. 37: p. 495, § 1. CRS 53: § 37-2-18. C.R.S. 1963: § 37-2-16.

### **13-2-118. Duties of librarian.**

It is the duty of the librarian to keep his office open every day in the year, Saturdays, Sundays, and holidays excepted, from 8:30 a.m. until 5 p.m. of each day, so that the public may have access to the library, under such rules and regulations as the supreme court may prescribe.

**Source:** G.L. § 2622. G.S. § 3241. R.S. 08: § 1429. C.L. § 5642. CSA: C. 46, § 36. CRS 53: § 37-2-19. C.R.S. 1963: § 37-2-17.

### **13-2-119. Disposition of fees.**

(1) At the end of each month, all fees collected by the clerk of the supreme court during said month, except fees for admission to the bar and attorney registration fees, shall be deposited by the clerk with the state treasurer, by whom the same shall be kept separate and apart from all other funds in the state treasurer's hands.

(2) (Deleted by amendment, L. 98, p. 685, § 1, effective July 1, 1998.)

**Source:** L. 07: p. 594, § 1. R.S. 08: § 1430. L. 19: p. 680, § 1. C.L. § 5643. CSA: C. 46, § 37. CRS 53: § 37-2-20. C.R.S. 1963: § 37-2-18. L. 79: Entire section amended, p. 597, § 7, effective July 1. L. 82: Entire section amended, p. 285, § 2, effective July 1. L. 98: Entire section amended, p. 685, § 1, effective July 1.

### **13-2-120. Supreme court library fund.**

The funds so set apart, together with the balance of the fund now in the state treasurer's hands and designated as the "supreme court library fund", shall be known as the "supreme court library fund", and the supreme court is authorized to use said fund for the purchase of books for the supreme court library, for paying the expenses of binding briefs and other documents for use in said library, for the purchase and maintenance of bookcases, catalogues, furniture, fixtures, and other equipment for said library, and for such other library service expenses as the chief justice deems necessary.

**Source:** L. 07: p. 594, § 1. R.S. 08: § 1430. L. 19: p. 680, § 2. C.L. § 5644. CSA: C. 46, § 38. CRS 53: § 37-2-21. C.R.S. 1963: § 37-2-19. L. 87: Entire section amended, p. 541, § 1, effective April 6.

### **13-2-121. Manner of disbursement.**

The state controller is authorized to draw warrants upon said fund, from time to time upon certificate, of the sums required for the purposes specified in section 13-2-120 under the signature of the chief justice or a majority of the judges of the supreme court, and the state treasurer is directed to pay the same out of said fund.

**Source:** L. 07: p. 594, § 1. R.S. 08: § 1430. L. 19: p. 680, § 3. C.L. § 5645. CSA: C. 46, § 39. CRS 53: § 37-2-22. C.R.S. 1963: § 37-2-20.

### **13-2-122. Supreme court and court of appeals opinions published.**

(1) The opinions of the supreme court of the state of Colorado and of the court of appeals must be published in volumes of the size, as nearly as may be, as present volumes of the Colorado reports, and containing not less than six hundred fifty pages each.

(2) (a) In addition to the publishing required pursuant to subsection (1) of this section, and except for unpublished opinions described in subsection (2)(b) of this section, on or before March 1, 2024, but no earlier than July 1, 2023, the judicial department shall publish online, in a searchable format, and make available free of charge, every opinion of the supreme court of the state of Colorado and of the court of appeals. The judicial department and the general assembly shall each include a link to the opinions web page in a conspicuous place on their websites.

(b) An opinion of the supreme court of the state of Colorado not published pursuant to subsection (1) of this section and any court of appeals opinion not designated for official publication pursuant to the Colorado appellate rules is not required to be published online pursuant to this subsection (2).

**Source:** L. 1891: p. 369, § 1. R.S. 08: § 1431. C.L. § 5646. CSA: C. 46, § 40. CRS 53: § 37-2-23. C.R.S. 1963: § 37-2-21. L. 69: p. 269, § 4. L. 2022: Entire section amended, (HB 22-1091), ch. 195, p. 1307, § 3, effective August 10.

**Cross references:** For the short title ("Justice Gregory Hobbs Public Access to Case Law Act") and the legislative declaration in HB 22-1091, see sections 1 and 2 of chapter 195, Session Laws of Colorado 2022.

### **ANNOTATION**

**Law reviews.** For article, "Colorado's Unpublished Opinion Database: A New Frontier of Legal Research", see 55 Colo. Law. 30 (Jan.-Feb. 2026).

**The publication of the opinions of the supreme court is not the publication of**

"department reports", within the meaning of § 29 of art. V, Colo. Const., which requires the printing, binding, and distribution of department reports to be performed under contract to be given to the lowest responsible bidder. *Gillette v. Peabody*, 19 Colo. App. 356, 75 P. 18 (1904).

### **13-2-123. Duty of reporter.**

It is the duty of the reporter of the decisions of said courts, within four months after a sufficient number of opinions to constitute a volume of the prescribed size have been delivered to him, to compile and prepare the same for publication, together with such other proceedings of the supreme court as the justices thereof may designate for insertion in such volume, with syllabi, title pages, digest, and table of cases reported.

**Source:** L. 1891: p. 370, § 2. R.S. 08: § 1434. C.L. § 5649. CSA: C. 46, § 43. CRS 53: § 37-2-26. L. 63: p. 268, § 1. C.R.S. 1963: § 37-2-22. L. 69: p. 269, § 5.

### **13-2-124. Publication of reports.**

(1) In lieu of the publication of the opinions of the supreme court and the court of appeals pursuant to section 13-2-122 (1), the supreme court may designate the published volumes of the decisions of the supreme court and the court of appeals, as the same are published by any person, firm, or corporation, to be the official reports of the decisions of the supreme court and the court of appeals. Any publication so designated as the official reports may include both the opinions of the supreme court and the court of appeals in the same volume.

(2) When any law of this state refers to the reports of the supreme court of the state of Colorado, said law shall be construed as referring to the reports in which are also contained the reported opinions of the court of appeals created pursuant to article 4 of this title.

(3) All books, both bound and unbound, and matrices covering the reports of the supreme court and the court of appeals which were published prior to July 1, 1982, and which are in the custody of the supreme court shall remain in the custody of the supreme court for the purpose of sale or replacement, and the supreme court may fix the price at which the prior official reports of the supreme court and the court of appeals are to be sold to the public. The supreme court may replace any lost or destroyed books free of cost if such books were originally distributed free of cost. The supreme court may authorize the reprinting of any prior volumes, the replacement supply of which has become exhausted or insufficient. The supreme court may also contract for the storage of such books and to sell, give away, destroy, or otherwise dispose of any excess books, bound or unbound, which it deems not needed to provide a reasonable replacement supply.

**Source:** L. 1891: p. 370, § 3. R.S. 08: § 1435. L. 19: p. 682, § 1. C.L. § 5650. L. 27: p. 678, § 1. CSA: C. 46, § 44. CRS 53: § 37-2-27. L. 57: p. 318, §§ 1, 2. L. 63: p. 268, § 2. C.R.S. 1963: § 37-2-23. L. 69: p. 269, § 6. L. 82: Entire section R&RE, p. 287, § 1, effective July 1. L. 2022: (1) amended, (HB 22-1091), ch. 195, p. 1308, § 4, effective August 10.

**Cross references:** For the short title ("Justice Gregory Hobbs Public Access to Case Law Act") and the legislative declaration in HB 22-1091, see sections 1 and 2 of chapter 195, Session Laws of Colorado 2022.

### **13-2-125. Purchase, distribution, and sale of reports.**

(1) Upon the publication of each volume of the reports of the supreme court and the court of appeals under contract with the judicial department, the publisher shall be responsible for distributing as many copies as are required to meet the needs of the state in accordance with a list provided by the librarian of the supreme court. Costs of mailing incurred in such distribution shall be borne by the state from appropriations made to the judicial department.

(2) The distribution pursuant to subsection (1) of this section shall include the following:

- (a) State and territorial libraries, as directed by the librarian of the supreme court;
- (b) The library of congress and of the United States supreme court;
- (c) The attorney general and secretary of state of Colorado, and officials of the executive branch as required;
- (d) District attorneys and judges of Colorado courts of record;
- (e) The justices and reporter of the Colorado supreme court;
- (f) The law library of the university of Colorado, and the library of any other accredited law school in Colorado;
- (g) Copies for use in the supreme court library and by the general assembly;
- (h) Copies to be used for exchange purposes in the maintenance of the supreme court library, as directed by the librarian of the supreme court;
- (i) Office of legislative legal services.

(3) All copies distributed to offices and agencies of the state of Colorado are at all times the property of the state and not the personal property of the incumbents of the respective offices and shall be so marked as the property of the state. This shall not apply to the justices and reporter of the supreme court as to volumes prepared during their tenure of office.

(4) The publisher shall sell the reports of the supreme court and the court of appeals to the public at a price which is set at the cost of the report plus a twenty percent markup for handling. The publisher shall retain the markup charges and remit to the state the costs of the reports sold as reimbursement to the general fund for payment by the state of the expenses of publication thereof. The unsold copies of all reports shall remain the property of the state and shall be returned by the publisher to the secretary of state upon the termination of the contract for publication. Until otherwise designated by law or order of the chief justice of the Colorado supreme court, the secretary of state shall be the legal custodian of the reports of the supreme court and the court of appeals. The secretary of state shall sell any remaining copies of such reports to the public at such cost plus twenty percent and transmit the sale proceeds to the state treasurer for deposit to the credit of the general fund.

**Source:** L. 1891: p. 371, § 7. R.S. 08: § 1438. C.L. § 5653. L. 27: p. 680, § 1. CSA: C. 46, § 46. L. 37: p. 495, § 2. CRS 53: § 37-2-30. L. 63: p. 269, § 3. C.R.S. 1963: § 37-2-24. L. 75: (1), IP(2), and (4) amended, p. 850, § 2, effective July 1. L. 76: (1) and (4) amended, p. 515, § 1, effective April 19. L. 88: (2)(i) amended, p. 310, § 18, effective May 23.

#### **13-2-126. Reports and session laws furnished.**

(1) The legal custodian of publications of the state of Colorado is directed to furnish to the law library of the university of Colorado free of charge from existing stocks if feasible and in any event as such publications are from time to time issued:

- (a) Thirty copies each of the reports of the supreme court of the state of Colorado; and
- (b) Fifty copies of any published regulations and decisions of the various administrative agencies of the state of Colorado; and
- (b.5) Such number of copies, not to exceed fifty, of the session laws of Colorado as the law librarian for the university of Colorado may from time to time request; and
- (c) Five copies each of the Colorado yearbook; and
- (d) Two copies each of published legislative journals, published opinions and reports of the attorney general, and printed briefs and abstracts of record of the supreme court of Colorado.

(2) The law library is authorized to exchange any or all of the above publications for like publications of other jurisdictions.

**Source:** L. 15: p. 482, § 1. C.L. § 5655. CSA: C. 46, § 48. L. 49: p. 338, § 1. CRS 53: § 37-2-32. C.R.S. 1963: § 37-2-25. L. 75: IP(1) amended, p. 851, § 3, effective July 1. L. 2015: (1)(b) amended and (1)(b.5) added, (SB 15-264), ch. 259, p. 948, § 28, effective August 5.

**13-2-127. Method for review.**

Appellate review by the supreme court of any action or proceeding of an inferior tribunal, whether such action or proceeding is civil, criminal, special, statutory, common law, or otherwise, shall be prescribed by rule of the supreme court, except as otherwise provided by law.

**Source:** L. 41: p. 369, § 1. CRS 53: § 37-2-33. C.R.S. 1963: § 37-2-26. L. 64: p. 225, § 58. L. 69: p. 269, § 7.

## **ARTICLE 3**

### **Judicial Departments**

|           |                                                                                            |           |                                                                                                                               |
|-----------|--------------------------------------------------------------------------------------------|-----------|-------------------------------------------------------------------------------------------------------------------------------|
| 13-3-101. | State court administrator -<br>duties - report -<br>definitions - repeal.                  | 13-3-107. | Consolidation of offices of<br>clerks of court in certain<br>counties.                                                        |
| 13-3-102. | Surveys - conferences -<br>reports.                                                        | 13-3-108. | Maintenance of court<br>facilities - capital<br>improvements.                                                                 |
| 13-3-103. | Nominating and discipline<br>commissions - expenses.                                       | 13-3-109. | Retirement - past service<br>benefits.                                                                                        |
| 13-3-104. | State shall fund courts.                                                                   | 13-3-110. | Expenses and compensation<br>of judges outside county<br>of residence.                                                        |
| 13-3-105. | Personnel - duties -<br>qualifications -<br>compensation -<br>conditions of<br>employment. | 13-3-111. | Appointment of retired or<br>resigned justice or judge<br>pursuant to agreement of<br>parties - appointment<br>discretionary. |
| 13-3-106. | Judicial department operating<br>budget - fiscal<br>procedures.                            | 13-3-112. | Report on increase in docket<br>fees. (Repealed)                                                                              |



|             |                                                                                                                                                                                                                                                                               |           |                                                                                                                                                                                                                          |
|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 13-3-113.   | Family-friendly courts.                                                                                                                                                                                                                                                       |           | district county assistance<br>- definition - repeal.                                                                                                                                                                     |
| 13-3-114.   | State court administrator -<br>compensation for<br>exonerated persons -<br>definitions - annual<br>payments - child support<br>payments - financial<br>literacy training -<br>qualified health plan -<br>damages awarded in civil<br>actions - reimbursement<br>to the state. | 13-3-119. | Data-sharing task force<br>between state and<br>municipal courts -<br>creation - legislative<br>declaration - repeal.<br>(Repealed)                                                                                      |
| 13-3-114.5. | State court administrator -<br>reimbursement of<br>monetary amounts paid<br>following a vacated<br>conviction or amended<br>order of restitution.                                                                                                                             | 13-3-120. | Office of the judicial<br>discipline ombudsman<br>established - judicial<br>discipline advisory board<br>- qualifications of<br>ombudsman - powers and<br>duties - confidentiality -<br>rules - definitions -<br>repeal. |
| 13-3-115.   | Diversion funding<br>committee.                                                                                                                                                                                                                                               | 13-3-121. | Jury selection working group<br>- creation - members -<br>duties - report - definition<br>- repeal.                                                                                                                      |
| 13-3-116.   | Restorative justice<br>coordinating council -<br>establishment -<br>membership.                                                                                                                                                                                               | 13-3-122. | Judicial security task force -<br>recommended standards<br>for security at<br>courthouses - court and<br>probation facilities -<br>repeal.                                                                               |
| 13-3-117.   | State court administrator -<br>automatic conviction<br>sealing.                                                                                                                                                                                                               |           |                                                                                                                                                                                                                          |
| 13-3-118.   | State court administrator -<br>twenty-third judicial                                                                                                                                                                                                                          |           |                                                                                                                                                                                                                          |

**13-3-101. State court administrator - duties - report - definitions - repeal.**

(1) There is created, pursuant to section 5 (3) of article VI of the state constitution, the position of state court administrator, who is appointed by the justices of the supreme court at such compensation as is determined by them. The state court administrator is responsible to the supreme court, and in addition to the duties described within this section, the state court

administrator shall perform the duties assigned to him or her by the chief justice and the supreme court.

(2) The state court administrator shall employ such other personnel as the supreme court deems necessary to aid the administration of the courts, as provided in section 5 (3) of article VI of the state constitution.

(3) The state court administrator shall establish standards to ensure proficiency in court reporting in the courts of this state. The state court administrator shall also develop or cause to be developed examinations no less difficult than the examinations of the national shorthand reporters association and shall qualify those individuals who successfully complete such examination.

(3.5) (a) As required by a chief justice directive, the state court administrator is responsible for accepting complaints regarding violations of a chief justice directive concerning child and family investigators appointed by the court pursuant to section 14-10-116.5 and parental responsibilities evaluators appointed by the court pursuant to section 14-10-127 in courts involved with the allocation of parental responsibilities pursuant to dissolution of marriage proceedings. The state court administrator is authorized to administer appropriate sanctions established pursuant to chief justice directive. The state court administrator is not responsible for accepting complaints regarding conduct that is regulated by a child and family investigator's or parental responsibilities evaluator's professional regulatory authority.

(b) As a part of the judicial department's "SMART Act" hearing required by section 2-7-203, during the 2025 regular legislative session, and each regular legislative session thereafter, the judicial department shall report on the total number of child and family court investigators appointed by the court pursuant to section 14-10-116.5 and parental responsibilities evaluators appointed by the court pursuant to section 14-10-127, eligibility rosters established pursuant to a chief justice directive, the number of complaints received by the state court administrator in the preceding calendar year regarding child and family court investigators and parental responsibilities evaluators, and the number of founded complaints and sanctions issued as a result of those complaints in the preceding calendar year regarding child and family court investigators and parental responsibilities evaluators.

(c) The state court administrator shall publish and annually update on the judicial department's public website a summary of the actions taken in the year preceding the first publication, or since the latest updated publication, concerning actions taken by the judicial department to comply with recommendations made by the task force to study victim and survivor awareness and responsiveness training requirements for judicial personnel, created pursuant to House Bill 23-1108.

(4) Repealed.

(5) The state court administrator shall provide to the director of research of the legislative council criminal justice information and statistics and any other related data requested by the director. The state court administrator shall provide to the state commission on judicial performance and to district commissions on judicial performance, established in section 13-5.5-104, case management statistics for justices and judges who are being evaluated.

(6) The state court administrator shall make grants from the family violence justice fund pursuant to the provisions of section 14-4-107, C.R.S.

(7) (a) The state court administrator shall make grants from the family-friendly court program cash fund pursuant to the provisions of section 13-3-113.

(b) Repealed.

(7.5) The state court administrator shall make grants from the eviction legal defense fund pursuant to the provisions of section 13-40-127.

(8) Repealed.

(9) The state court administrator is authorized to seek federal funding as it becomes available on behalf of the state court system for the establishment, maintenance, or expansion of veterans' treatment courts.

(10) Repealed.

(11) (a) There is created in the office of the state court administrator a position responsible for education and outreach regarding judicial office vacancies. The position shall create and deliver educational programming for attorneys and law students regarding judicial vacancies and the application process.

(b) (I) The position shall report on or before October 1, 2020, and on or before October 1 each year thereafter through 2030, to the chief justice of the supreme court and the judiciary committees of the house of representatives and senate, or any successor committees, concerning the background, professional history, and qualifications of judicial officers in the state. Notwithstanding the requirement in section 24-1-136 (11)(a)(I), the requirement to submit the report required in this section continues until the repeal of this subsection (11)(b) pursuant to subsection (11)(b)(II) of this section.

(II) This subsection (11)(b) is repealed, effective January 1, 2031.

(12) (a) On or before November 1, 2019, and on or before each November 1 thereafter, the state court administrator shall submit a report to the joint budget committee of the general assembly and the judiciary committees of the house of representatives and the senate, or any successor committees, on case management statistics for the prior state fiscal year that includes:

(I) The total number and types of:

- (A) New district court cases assigned;
- (B) District court cases resolved; and
- (C) District court cases remaining on the docket; and
- (II) For each judicial district and each district court judge the total number and types of:
  - (A) New district court cases assigned;
  - (B) District court cases resolved; and
  - (C) District court cases remaining on the docket.

(b) Notwithstanding section 24-1-136 (11)(a)(I), the requirement to submit the report required in subsection (12)(a) of this section continues indefinitely.

(13) The state court administrator or the administrator's designee shall present at the judicial department's hearing pursuant to section 2-7-203 statistics related to extreme risk protection orders in article 14.5 of this title 13. The statistics must include the number of petitions filed for temporary extreme risk protection orders, the number of petitions filed for extreme risk protection orders, the number of temporary extreme risk protection orders issued and denied, the number of extreme risk protection orders issued and denied, the number of temporary extreme risk protection orders terminated, the number of extreme risk protection orders terminated, and the number of extreme risk protection orders renewed. The state court administrator or the administrator's designee shall also report state court data related to all persons who are subject to any temporary emergency risk protection order or emergency risk protection order and who, within thirty days after the issuance or execution of the protection order, are charged with a criminal offense. The report must include the nature of the criminal offense, including but not limited to any offense for violation of the emergency risk protection order and the disposition or status of that criminal offense.

(13.5) Notwithstanding section 24-1-136 (11)(a)(I), during the 2026 regular session and each regular session thereafter, the state court administrator or the administrator's designee shall present at the judicial department's "SMART Act" hearing pursuant to section 2-7-203 the following statistics concerning restitution for each of the previous five state fiscal years:

- (a) For cases that were eligible for a restitution order:
  - (I) The number of cases;
  - (II) The number of cases in which restitution was requested;
  - (III) The number of cases in which restitution was ordered; and
  - (IV) The number of cases in which restitution was not requested;

- (b) The amount of restitution paid to:
  - (I) Individuals; and
  - (II) Insurance companies;
- (c) The percentage of individuals owing restitution who are:
  - (I) Asian;
  - (II) Black;
  - (III) American Indian;
  - (IV) Caucasian;
  - (V) Other race;
  - (VI) Unknown race;
  - (VII) Hispanic;
  - (VIII) Male;
  - (IX) Female;
  - (X) Under twenty-five years of age;
  - (XI) At least twenty-five years of age but under forty years of age;
  - (XII) At least forty years of age but under sixty years of age; and
  - (XIII) Sixty years of age or older;
- (d) For individuals who owe restitution, the percentage of individuals who owe restitution in each county;
- (e) For individuals who are in default on restitution payments for more than thirty days:
  - (I) The number of individuals in default;
  - (II) The percentage of individuals in default who are:
    - (A) Asian;
    - (B) Black;
    - (C) American Indian;
    - (D) Caucasian;
    - (E) Other race;

- (F) Unknown race;
- (G) Hispanic;
- (H) Male;
- (I) Female;
- (J) Under twenty-five years of age;
- (K) At least twenty-five years of age but under forty years of age;
- (L) At least forty years of age but under sixty years of age; and
- (M) Sixty years of age or older;
- (III) The total principal amount and the total interest owed by the individuals in default;
- (IV) The average length of time that the individuals have been in default; and
- (f) For individuals who are in default on restitution payments, the percentage of individuals who are in default in each county.

(14) (a) (I) On and after January 1, 2020, the state court administrator shall administer a court reminder program in at least four judicial district courts to remind criminal defendants and juvenile participants to appear at each of their scheduled court appearances and to provide reminders about an unplanned court closure. The objective of such reminders is to significantly reduce the number of criminal defendants and juvenile participants who are taken into custody solely as a result of their failure to appear in court. No later than July 1, 2020, the program must be administered in every eligible court, as defined in subsection (14)(h) of this section, in the state.

(II) The state court administrator shall issue a request for proposal to choose a third-party vendor to develop and operate the court reminder program. At the conclusion of the request for proposal process, the state court administrator may choose to develop and operate the program without utilizing a third-party vendor.

(III) Each court participating in the court reminder program shall enroll every criminal defendant and juvenile participant in the program. A criminal defendant or juvenile participant may opt out of participating in the program.

(IV) The program shall send reminders to the best contact information available to the court. Before sending reminders for the defendant's or participant's first court appearance, the program shall make all reasonable efforts to ensure that the program has the same contact information available to the court, including contact information provided by a criminal defendant or juvenile participant to a law enforcement agency on a summons or by any other means.

(b) In administering the program, the state court administrator shall use text messages to remind criminal defendants and juvenile participants who have the capacity to receive text messages of court dates and unplanned court closures. A text message reminder must be sent to the best phone number available to the court. In addition, or when a defendant or juvenile participant is unable to receive text messages, the state court administrator, at the administrator's discretion, may use other communication methods, including telephone, email, or other internet-based technology, to remind defendants and juvenile participants of court dates and unplanned court closures.

(c) The program must:

(I) (A) Provide at least three reminders for all court appearances, including the first court appearance, for criminal defendants and juvenile participants in an eligible court. One reminder must be sent the day before the court appearance. The reminders must include at least the date, location, and time of the court appearance and contact information for questions related to the court appearance.

(B) Notwithstanding the requirement in subsection (14)(c)(I)(A) of this section, the program is not required to send more than two reminders within seven days before a court appearance or more than one reminder within forty-eight hours before a court appearance.

(I.5) For court appearances that can be attended virtually, provide the link to the virtual court appearance in, at least, the final reminder sent before the appearance;

(II) Provide an alert to a defendant or juvenile participant who misses court that the defendant or juvenile has missed court and that the defendant or juvenile should immediately contact his or her attorney, if the defendant or juvenile has one, or the court to determine next steps;

(III) Identify each instance in which a criminal defendant or juvenile participant was sent a text message reminder to a working mobile telephone number;

(IV) Identify defendants and juvenile participants with upcoming court appearances who cannot be reached and, as resources allow, attempt to acquire current contact information;

(V) Collect data concerning the number of criminal defendants and juvenile participants who fail to appear at their scheduled court appearances despite having been sent one or more reminders to a working telephone number; and

(VI) Collect data concerning the number of criminal defendants and juvenile participants who opt out of the program and, if possible, their reasons for opting out.

(d) Each eligible court shall utilize the reminder services of the state court administrator described in this subsection (14) unless the court chooses to opt out and has its own procedure

for using text messaging to remind all criminal defendants and juvenile participants to appear at their scheduled court appearances and remind them of an unplanned court closure.

(e) On and after January 1, 2020, the state court administrator shall track data in each eligible court concerning the failure of criminal defendants and juvenile participants to appear for their scheduled court appearances.

(f) In its annual report to the committees of reference pursuant to section 2-7-203, the judicial department shall include information concerning the activities of the state court administrator pursuant to this subsection (14). To the extent practicable, the report must include:

(I) The number of reminders sent to a criminal defendant's or juvenile participant's working telephone number in each eligible court;

(II) The number of criminal defendants and juvenile participants in each eligible court who failed to appear for a court hearing;

(III) The number of criminal defendants and juvenile participants in each eligible court who were sent a reminder to a working telephone number from the program but who nonetheless failed to appear for a court hearing;

(IV) Any other data collected by the state court administrator that the state court administrator determines to be useful to the general assembly in assessing the effectiveness of the program at reducing the number of criminal defendants and juvenile participants who fail to appear for their court appearances and reducing the number of criminal defendants and juvenile participants who are jailed for failure to appear at a court appearance;

(V) The number of criminal defendants and juvenile participants who opt out of the program, the reasons they elected to opt out, and recommendations for changes to increase participation in the program and reduce the number of criminal defendants and juvenile participants who opt out; and

(VI) If, at the state court administrator's discretion, the program sends any reminders by communication methods other than text message, the number of criminal defendants and juvenile participants who were sent a reminder other than a text message reminder, the communication method used, and whether the defendants or participants failed to appear at their scheduled court appearance.

(g) Nothing in this subsection (14) creates a right for any criminal defendant or juvenile participant to receive a reminder from the program.

(h) As used in this subsection (14), unless the context otherwise requires:

(I) "Criminal defendant" includes a person alleged to have committed a traffic offense but does not include a person alleged to have committed a traffic infraction.



(II) "Eligible court" means a district court, county court, or municipal court that uses the integrated Colorado online network that is the judicial department's case management system.

(III) "Juvenile participant" means a juvenile who has been alleged to have committed a delinquent act, as defined in section 19-2.5-102, or a traffic offense, who is required to appear before an eligible court. "Juvenile participant" includes the juvenile's parent, guardian, or legal custodian. "Juvenile participant" does not include a juvenile alleged to have committed a traffic infraction.

(i) Repealed.

(15) The state court administrator shall administer the "Colorado Electronic Preservation of Abandoned Estate Planning Documents Act", article 23 of title 15.

(16) Repealed.

(17) The state court administrator shall have the capabilities within the existing statewide court data system to indicate court liaison appointment and actions related to the appointment in cases.

(18) Pursuant to section 16-13-318, the state court administrator shall contract with legal counsel that provides a legal defense to a civil asset forfeiture proceeding or to contract with an attorney to provide a legal defense to a civil asset forfeiture proceeding.

(19) (a) On November 1, 2027, and November 1, 2028, the state court administrator's office shall submit a report to the joint budget committee, the senate judiciary committee, and the house of representatives judiciary committee, or their successor committees, detailing the fiscal impact of House Bill 26-1100, enacted in 2026, on the judicial department. The state court administrator's office shall use existing data sources to create the report required by this section.

(b) This subsection (19) is repealed, effective January 1, 2029.

(20) (a) The state court administrator shall develop a process for evaluating bond hearing officers appointed pursuant to section 16-4-116. The annual evaluations must include the opportunity for input from attorneys, court staff, and other interested court users.

(b) In each annual evaluation, input must be given by:

(I) The elected district attorney, or the district attorney's designee, for each judicial district in which the bond hearing officer presided during the evaluation period; and

(II) The regional public defender, or the public defender's designee, for each judicial district in which the bond hearing officer presided during the evaluation period.

(c) The evaluation process must ensure that input is solicited from each judicial district in which a weekend bond hearing officer presides, recognizing that practices, resources, and conditions may vary significantly across judicial districts.

**Source:** **L. 53:** p. 236, § 1. **CRS 53:** § 37-10-1. **L. 59:** p. 356, § 1. **L. 67:** p. 453, § 5. **C.R.S. 1963:** § 37-11-1. **L. 77:** (3) added, p. 779, § 1, effective June 19; (4) added, p. 861, § 1, effective July 1, 1979. **L. 79:** (4)(a)(III) amended, p. 1663, § 130, effective July 1. **L. 84:** (4) repealed, p. 453, § 1, effective March 26. **L. 94:** (5) added, p. 1098, § 11, effective May 9. **L. 99:** (6) added, p. 1180, § 6, effective June 2. **L. 2002:** (7) added, p. 631, § 2, effective July 1. **L. 2005:** (7)(b) repealed, p. 1004, § 2, effective June 2. **L. 2006:** (8) added, p. 1590, § 1, effective June 2. **L. 2008:** (5) amended, p. 1284, § 13, effective July 1. **L. 2010:** (9) added, (HB 10-1104), ch. 139, p. 465, § 2, effective April 16. **L. 2017:** (5) amended, (HB 17-1303), ch. 331, p. 1780, § 2, effective August 9. **L. 2018:** (10) added, (SB 18-056), ch. 298, p. 1820, § 4, effective August 8. **L. 2019:** (11) and (12) added, (SB 19-043), ch. 41, p. 142, § 11, effective March 21; (13) added, (HB 19-1177), ch. 108, p. 399, § 2, effective April 12; (7.5) added, (SB 19-180), ch. 372, p. 3391, § 3, effective May 30; (1) amended and (14) added, (SB 19-036), ch. 293, p. 2684, § 1, effective August 2; (15) added, (HB 19-1229), ch. 252, p. 2446, § 2, effective January 1, 2023 (see editor's note). **L. 2021:** (16) added, (HB 21-1106), ch. 39, p. 148, § 6, effective July 1; (14)(h)(II) amended, (SB 21-059), ch. 136, p. 709, § 7, effective October 1. **L. 2022:** (14)(a)(III), (14)(b), (14)(c)(I), (14)(c)(IV), (14)(c)(V), (14)(f)(III), and (14)(h) amended and (14)(a)(IV), (14)(c)(VI), (14)(f)(V), (14)(f)(VI), and (14)(i) added, (SB 22-018), ch. 191, p. 1270, § 1, effective July 15; (14)(c)(I.5) added (SB 22-018), ch. 191, p. 1270, § 1, effective October 15. **L. 2023:** (17) added, (SB 23-229), ch. 119, p. 442, § 3, effective April 27; (13) R&RE, (SB 23-170), ch. 124, p. 481, § 4, effective April 28. **L. 2024:** (3.5) added, (HB 24-1350), ch. 344, p. 2345, § 8, effective August 7. **L. 2025:** (13.5) added, (HB 25-1081), ch. 33, p. 171, § 1, effective August 6. **L. 2026:** (18) added, (SB 26-037), ch. 32, p. 141, § 1, effective April 2; (18) added, (HB 26-1250), ch. 381, p. 2372, § 6, effective July 1; (19) added, (SB 26-1100), ch. 227, p. 1320, § 2, effective August 12.

**Editor's note:** (1) The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See *People v. McKenna*, 199 Colo. 452, 611 P.2d 574 (1980).

(2) Subsection (8)(b) provided for the repeal of subsection (8), effective January 1, 2007. (See L. 2006, p. 1590.)

(3) Subsection (15) was numbered as (14) in HB 19-1229 but was renumbered on revision for ease of location.

(4) Subsection (10)(c) provided for the repeal of subsection (10), effective June 30, 2019. (See L. 2018, p. 1820.)

(5) Subsection (15) was added by HB 19-1229, effective January 1, 2021, but the effective date was subsequently amended to January 1, 2023, in section 2 of HB 20-1368. (See L. 2020, p. 1441.)

(6) Subsection (16)(b) provided for the repeal of subsection (16), effective December 31, 2024. (See L. 2021, p. 148.)

(7) Subsection (14)(i)(VII) provided for the repeal of subsection (14)(i), effective June 30, 2025. (See L. 2022, p. 1270.)

(8) Section 8 of chapter 381 (HB 26-1250), Session Laws of Colorado 2026, provides that the act changing this section applies to forfeiture actions commenced on or after July 1, 2026.

(9) Subsection (20) was numbered as (18) in SB 26-037 but was renumbered on revision for ease of location.

**Cross references:** (1) For the legislative declaration in the 2010 act adding subsection (9), see section 1 of chapter 139, Session Laws of Colorado 2010. For the legislative declaration in SB 19-180, see section 1 of chapter 372, Session Laws of Colorado 2019. For the legislative declaration in HB 24-1350, see section 1 of chapter 344, Session Laws of Colorado 2024.

(2) For the short title ("Promoting Child Safety Through Responsible Firearm Storage Act") and the legislative declaration in HB 21-1106, see sections 1 and 2 of chapter 39, Session Laws of Colorado 2021.

## ANNOTATION

**Law reviews.** For article, "The System for Administration of Justice in Colorado", see 28 Rocky Mt. L. Rev. 299 (1956). For article, "Colorado's Program to Improve Court Administration", see 38 Dicta 1 (1961).

### 13-3-102. Surveys - conferences - reports.

(1) The state court administrator under the direction of the chief justice shall make a continuous survey of the conditions of the dockets and the business of the courts of record and shall make reports and recommendations thereon to the chief justice.

(2) The chief justice shall assemble the judges of the courts of record at least once yearly to discuss such recommendations and such other business as will benefit the judiciary and the expedition of the business of the several courts. When so summoned, the judges of the courts of record shall attend such conferences at the expense of the state of Colorado. Each judge shall file a verified itemized statement of the mileage and all moneys actually paid out for personal maintenance expenses in attending such conferences with the court administrator, who shall audit the same and submit it to the state controller. The state controller shall draw a warrant therefor, which warrant shall be paid by the state treasurer out of the appropriate fund. Unless excused by illness, such judges are required to attend the conferences unless excused by the chief justice.

(3) Repealed.

**Source:** L. 53: p. 236, § 2. CRS 53: § 37-10-2. L. 59: p. 357, § 1. C.R.S. 1963: § 37-11-2. L. 67: p. 453, § 6. L. 97: (3) repealed, p. 1482, § 37, effective June 3.

### **13-3-103. Nominating and discipline commissions - expenses.**

(1) Members of judicial nominating commissions appointed pursuant to section 24 of article VI of the state constitution and members of the commission on judicial discipline appointed pursuant to section 23 of article VI of the state constitution shall be reimbursed for actual and necessary personal maintenance expenses while performing official duties, together with mileage at the rate prescribed for state officers and employees in section 24-9-104, C.R.S., for each mile actually and necessarily traveled in going to and returning from the place where official duties are performed.

(2) The mileage and expenses incurred by members of judicial nominating commissions and members of the commission on judicial discipline shall be paid from funds appropriated to the judicial department of the state. Each commission member shall keep an account of the mileage and all moneys actually paid out for personal maintenance expenses and shall file a verified itemized statement thereof with the court administrator, who shall audit the same and submit it to the state controller. The state controller shall draw a warrant therefor, which warrant shall be paid by the state treasurer out of the appropriate fund.

**Source:** L. 53: p. 237, § 3. CRS 53: § 37-10-3. L. 59: p. 358, § 1. L. 67: p. 454, § 7. C.R.S. 1963: § 37-11-3. L. 72: p. 590, § 55. L. 79: (1) amended, p. 597, § 8, effective July 1. L. 87: Entire section amended, p. 1576, § 12, effective July 10.

**13-3-104. State shall fund courts.**

(1) The state of Colorado shall provide funds by annual appropriation for the operations, salaries, and other expenses of all courts of record within the state, except for county courts in the city and county of Denver and municipal courts.

(2) When a board of county commissioners determines that any furniture or equipment transferred to the judicial department as of January 1, 1970, has historic value, it shall remain in the county courthouse and revert to the county when no longer used by the judicial department.

**Source:** L. 69: p. 246, § 4. C.R.S. 1963: § 37-11-6. L. 77: Entire section amended, p. 780, § 1, effective May 24. L. 2006: (1) amended, p. 141, § 6, effective August 7.

**13-3-105. Personnel - duties - qualifications - compensation - conditions of employment.**

(1) The supreme court, pursuant to section 5 (3) of article VI of the state constitution, shall prescribe, by rule, a personnel classification plan for all courts of record to be funded by the state, as provided in section 13-3-104.

(2) Such personnel classification and compensation plan shall include:

(a) A basic compensation plan of pay ranges to which classes of positions are assigned and may be reassigned;

(b) The qualifications for each position or class of positions, including education, experience, special skills, and legal knowledge;

(c) An outline of the duties to be performed in each position or class of positions;

(d) The classification of all positions based on the required qualifications and the duties to be performed, taking into account, where applicable, the amount and kinds of judicial business in each court of record subject to the provisions of this section;

(e) The number of full-time and part-time positions, by position title and classification, in each court of record subject to the provisions of this section;

(f) The procedures for and the regulations governing the appointment and removal of court personnel; and

(g) The procedures for and regulations governing the promotion or transfer of court personnel.

(3) The supreme court shall also prescribe by rule:

(a) The amount, terms, and conditions of sick leave and vacation time for court personnel, including annual allowance and accumulation thereof; and

(b) Hours of work and other conditions of employment.

(4) To the end that all state employees are treated generally in a similar manner, the supreme court, in promulgating rules as set forth in this section, shall take into consideration the compensation and classification plans, vacation and sick leave provisions, and other conditions of employment applicable to employees of the executive and legislative departments.

**Source:** L. 69: p. 246, § 4. C.R.S. 1963: § 37-11-7.

#### ANNOTATION

**The Colorado judicial system personnel rules do not create an objective expectation of tenure** which should be characterized as a property interest subject to due process protection. Hamm v. Scott, 426 F. Supp. 950 (D. Colo. 1977).

**Contractual right of certified employee to continued employment would violate state policy.** Even if the language of Colorado judicial system personnel rules 25 and 26, which relate to the dismissal of certified employees, could be read to create a contractual right to continued employment, a certified employee could not prevail because the recognition of such a contract would violate the expressed public policy of the state of Colorado. Hamm v. Scott, 426 F. Supp. 950 (D. Colo. 1977).

**The fourteenth amendment affords no extraordinary protection.** Even if it were assumed that a certified employee had a recognizable property interest which would not be contrary to express public policy, the fourteenth amendment affords him no protection other than the ordinary protections that would be afforded in a court of law on a breach of contract suit. Hamm v. Scott, 426 F. Supp. 950 (D. Colo. 1977).

**Requirements for protection of certified employee.** The minimum opportunity to learn of the reasons for the action terminating employment and a chance to address the decision-maker is all that would be required as protection to a certified employee. Hamm v. Scott, 426 F. Supp. 950 (D. Colo. 1977).

#### **13-3-106. Judicial department operating budget - fiscal procedures.**

(1) (a) The court administrator, subject to the approval of the chief justice, shall prepare annually a consolidated operating budget for all courts of record subject to the provisions of section 13-3-104, such budget to be known as the judicial department operating budget.

(b) The court administrator, subject to the approval of the chief justice, shall prepare an annual budget request upon forms and according to procedures agreed to by the executive director of the department of personnel and the joint budget committee of the general assembly. The budget request documents and such additional information as may be requested shall be submitted to the department of personnel and the joint budget committee according to the same time schedule for budgetary review and analysis required of all executive agencies. The governor shall include recommendations for court appropriations as part of his or her regular budget message and according to section 24-37-301, C.R.S. The general assembly, upon recommendation of the joint budget committee, shall make appropriations to courts based on an evaluation of the budget request and the availability of state funds.

(2) The court administrator, subject to the approval of the chief justice, shall prescribe the procedures to be used by the judicial department and each court of record subject to the provisions of section 13-3-104, with respect to:

- (a) The preparation of budget requests;
- (b) The disbursement of funds appropriated to the judicial department by the general assembly;
- (c) The purchase of forms, supplies, equipment, and other items as authorized in the judicial department operating budget; and
- (d) Any other matter relating to fiscal administration.

(3) The court administrator shall consult with the state controller in the preparation of regulations pertaining to budgetary and fiscal procedures and forms and the disbursement of funds.

**Source:** L. 69: p. 246, § 4. C.R.S. 1963: § 37-11-8. L. 72: p. 590, § 56. L. 76: (1)(b) amended, p. 301, § 28, effective May 20. L. 83: (1)(b) amended, p. 971, § 27, effective July 1, 1984. L. 95: (1)(b) amended, p. 638, § 24, effective July 1.

**Cross references:** For the legislative declaration contained in the 1995 act amending subsection (1)(b), see section 112 of chapter 167, Session Laws of Colorado 1995.

### **13-3-107. Consolidation of offices of clerks of court in certain counties.**

(1) The chief justice, pursuant to his authority under section 5 of article VI of the state constitution, may consolidate the offices of the clerks of the district and county courts in any

county when he finds that there is insufficient judicial business to warrant the maintenance of separate offices.

(2) When the offices of the clerk of the district and county courts are so consolidated, the consolidated office shall be under a single clerk, who shall be both the clerk of the district court and the clerk of the county court; except that all functions, operations, and records required to be kept separate shall be so kept.

**Source:** L. 69: p. 247, § 4. C.R.S. 1963: § 37-11-9. L. 79: (1) amended, p. 598, § 9, effective July 1.

### **13-3-108. Maintenance of court facilities - capital improvements.**

(1) The board of county commissioners in each county shall continue to have the responsibility of providing and maintaining adequate courtrooms and other court facilities including janitorial service, except as otherwise provided in this section.

(2) The court administrator, subject to the approval of the chief justice, shall prepare annually a capital construction budget. The capital construction budget shall specify: The additional court housing facilities required for each court; the estimated cost of such additional structures or facilities and whether such additional court structures or facilities will include space used by other governmental units for nonjudicial purposes; and a detailed report on the present court facilities currently in use and the reasons for their inadequacy.

(3) (Deleted by amendment, L. 97, p. 1482, § 38, effective June 3, 1997.)

(4) (a) The chief justice is authorized to approve payment of state funds for the construction of any capital improvement facilities to be used for judicial purposes authorized and approved by the general assembly.

(b) The court administrator, with the approval of the chief justice, shall enter into leasing agreements with the governing body of the appropriate local unit of government when joint construction is authorized, or when the approved facilities are also to be used for nonjudicial purposes. The leasing agreement shall provide for the payment of state funds for that portion of the construction costs related to the operation of the courts.

(5) Construction or remodeling of any court or court-related facility shall be commenced only with prior approval of the chief justice of the Colorado supreme court after consultation with the board of county commissioners; except that a board of county commissioners, at its discretion, may take such actions.



**Source:** L. 69: p. 247, § 4. C.R.S. 1963: § 37-11-10. L. 72: p. 591, § 57. L. 75: (5) added, p. 565, § 1, effective July 1; (5) added, p. 558, § 9, effective July 1. L. 78: (2) and (3) amended, p. 261, § 43, effective May 23. L. 97: (2) and (3) amended, p. 1482, § 38, effective June 3. L. 2006: (5) amended, p. 142, § 7, effective August 7.

**Editor's note:** Amendments to subsection (5) by House Bill 75-1049 and House Bill 75-1055 were harmonized.

## ANNOTATION

**Historically, Colorado law has placed the duty of providing a suitable courthouse upon the county commissioners** of each county. *Lawson v. Pueblo County*, 36 Colo. App. 370, 540 P.2d 1136 (1975).

**Even though the general assembly indicated its intention to take over from the counties the financial burden of providing judicial facilities**, the general assembly has not provided funds for the construction of court facilities in the various counties of the state, and the burden of providing courtroom space and facilities remains with the counties. *Lawson v. Pueblo County*, 36 Colo. App. 370, 540 P.2d 1136 (1975).

**Mandamus appropriate.** The language of subsection (1) meets the test for mandamus relief, and thus, an action in the nature of mandamus is available as a proper means of enforcing the statute. *Lawson v. Pueblo County*, 36 Colo. App. 370, 540 P.2d 1136 (1975); *State v. Bd. of County Comm'rs, Mesa County*, 897 P.2d 788 (Colo. 1995).

**Judicial guidelines.** To achieve compliance with subsection (1) requiring county commissioners to provide adequate court facilities, without undue encroachment upon the prerogatives of the county commissioners, a judgment should give reasonable guidelines delineating what would constitute "adequate" space and then should direct that the space and related facilities be provided within a specific time. Included among the guidelines should be such physical requirements as dimensions, partitions, ventilation, security of prisoners, etc., as well as other details which would lead to creation of courtroom facilities of a character and quality commensurate with the proper and effective administration of justice. *Lawson v. Pueblo County*, 36 Colo. App. 370, 540 P.2d 1136 (1975).

**Court exceeded its authority in issuing order requiring the board of county commissioners to provide a new judicial facility.** While court does have the inherent authority to order the board to provide a new courthouse, the record does not demonstrate that the chief justice approved the initiation of the proceeding as required by subsection (5). *In re Court Facilities for the Routt*

County Combined Ct., 107 P.3d 981 (Colo. App. 2004).

**Mandamus order containing only one alternative unacceptable.** While an action in the nature of mandamus will lie to enforce subsection (1), a judgment designating one alternative course of action that the county commissioners must follow in meeting the requirements of the subsection constitutes an unacceptable intrusion into the exclusive province of the executive branch of government, and, accordingly, the specific course of action to be followed by the

county commissioners in complying with the subsection and with a mandamus judgment must be one of their choosing. *Lawson v. Pueblo County*, 36 Colo. App. 370, 540 P.2d 1136 (1975).

**Subsection (5) is applied** in *Pena v. District Court*, 681 P.2d 953 (Colo. 1984).

**A county's duties under this section may not be reduced or ended pursuant to art. X, § 20(9) of the state constitution.** *State v. Bd. of County Comm'rs, Mesa County*, 897 P.2d 788 (Colo. 1995).

### **13-3-109. Retirement - past service benefits.**

(1) Past service benefits in the public employees' retirement association shall be purchased for each employee covered under sections 13-3-104 and 13-3-105 who, on January 1, 1970, meets all of the following conditions:

- (a) Is sixty years of age or older;
- (b) Was not a member of a county or a city and county retirement plan, or, if a member, is not eligible to receive a deferred annuity;
- (c) If a member of a county or a city and county retirement plan, has withdrawn the funds credited to his account with the county or city and county retirement fund, and paid the full amount thereof, exclusive of any voluntary contributions to such county or city and county retirement plan, into the public employees' retirement association, or who withdraws such funds and deposits them with the public employees' retirement association no later than March 31, 1970.

(2) (a) When an employee meets all of the conditions in subsection (1) of this section, the public employees' retirement association shall grant him prior service credit based on length of service in a court, or department thereof, covered under sections 13-3-104 and 13-3-105, up to a maximum of five years.

(b) The public employees' retirement association shall calculate the cost of granting such prior service credit to each employee, after giving credit for the amount paid, if any, by the employee, and shall bill the judicial department for such cost. In the event that the cost for an employee is less than the amount paid in by him pursuant to subsection (1)(c) of this section, the

treasurer of the public employees' retirement association shall instead refund the difference to the employee.

(c) The judicial department shall include the total of such billings in its appropriation request. The grant of prior service credits provided in paragraph (a) of this subsection (2) shall be made only if an appropriation therefor is made by the general assembly.

(3) (a) Any employee under the age of sixty years covered under sections 13-3-104 and 13-3-105 who has been a member of a county or city and county retirement plan may purchase prior service credit by withdrawing the funds credited to his account with the county or city and county retirement fund and paying the full amount thereof into the public employees' retirement fund.

(b) The public employees' retirement association shall calculate the amount of prior service credit purchased by an employee as provided in paragraph (a) of this subsection (3) and shall so notify him.

(c) An employee covered under sections 13-3-104 and 13-3-105 may also purchase prior service credit, not to exceed the actual number of years of employment in a court of record, or department thereof, by making a direct payment to the public employees' retirement association in an amount determined by the public employees' retirement association to be actuarially sound and without expense to the state.

(4) For the purposes set forth in article 51 of title 24, C.R.S., the employees for whom prior service credit is granted under this section shall be considered to have been employees of the state for the period of such prior service.

**Source:** L. 69: p. 248, § 4. C.R.S. 1963: § 37-11-11. L. 79: (3)(c) amended, p. 603, § 1, effective June 19. L. 87: (1)(c), (2)(b), (3)(c), and (4) amended, p. 1091, § 5, effective July 1.

### **13-3-110. Expenses and compensation of judges outside county of residence.**

(1) When it is necessary for any district court judge, in the discharge of his duties, to hold court or transact judicial business outside the county of his residence, whether within or without the judicial district in which he resides, he shall be reimbursed for his actual and necessary expenses in the manner prescribed by rule of the supreme court, together with mileage at the rate prescribed for state officers and employees in section 24-9-104, C.R.S., for each mile actually and necessarily traveled going to and returning from the place where he is engaged in judicial duties.

(2) When any county judge, juvenile court judge, or probate court judge is assigned to perform judicial duties in a court outside of his county of residence pursuant to section 5 (3) of article VI of the state constitution, he shall be reimbursed for his actual and necessary expenses in the manner prescribed by rule of the supreme court, together with mileage at the rate prescribed for state officers and employees in section 24-9-104, C.R.S., for each mile actually and necessarily traveled going to and returning from the place where he is engaged in judicial duties.

(3) (a) When any county judge is assigned to perform judicial duties in a district, probate, or juvenile court outside of the judicial district in which he resides, as provided in section 13-6-218, he shall be paid for each day of such judicial duty, in addition to reimbursement for expenses and mileage as provided in this section, an amount equal to the difference between his per diem salary and the per diem salary of the judge of the court to which he is assigned.

(b) (I) When any county judge from a county of Class C or Class D is assigned to perform judicial duties in any district court pursuant to section 5 (3) of article VI of the state constitution, and when the duties the county judge performs increase the county judge's workload beyond the percentage of workload for which he or she is paid pursuant to section 13-30-103 (1)(I), the county judge shall be paid for each day of such judicial duty, in addition to the county judge's normal part-time salary and to reimbursement for expenses and mileage as provided in this section, an amount equal to the per diem salary of the judge of the district court to which the county judge is assigned.

(II) When any county judge from a county of Class C or Class D is assigned to perform judicial duties in any other county court pursuant to section 5 (3) of article VI of the state constitution, and when the duties the county judge performs increase the county judge's workload beyond the percentage of workload for which he or she is paid pursuant to section 13-30-103 (1)(I), the county judge shall be paid for each day of such judicial duty, in addition to the county judge's normal part-time salary and to reimbursement for expenses and mileage as provided in this section, an amount equal to the per diem salary of a full-time county judge.

(c) For the purposes of this subsection (3), the per diem salary of a judge shall be computed by dividing his annual salary by the figure two hundred forty.

(4) When a retired justice of the supreme court or retired judge of any other court of record is assigned to judicial duties pursuant to section 5 (3) of article VI of the state constitution, he shall be compensated as provided in said section and be reimbursed for his actual and necessary expenses in the manner prescribed by rule of the supreme court, together with mileage at the rate prescribed for state officers and employees in section 24-9-104, C.R.S., for each mile actually and necessarily traveled in going to and returning from the place where he is engaged in judicial duties.

(5) Any mileage and expenses incurred by a judge or a retired justice or judge pursuant to this section, except judges assigned to the county court of the city and county of Denver, shall be paid by the state pursuant to section 13-3-104. The records and procedures for such payment shall be prescribed by the state court administrator pursuant to section 13-3-106.

(6) Any per diem salary pursuant to subsection (3) or (4) of this section shall be paid by the state pursuant to section 13-3-104. The records and procedures for such payments shall be prescribed by the state court administrator pursuant to section 13-3-106.

**Source:** L. 71: p. 366, § 1. C.R.S. 1963: § 37-11-12. L. 72: p. 187, § 1. L. 79: (1), (2), and (4) amended, p. 598, § 10, effective July 1. L. 82: (3)(b) amended, p. 289, § 1, effective March 17. L. 85: (2) and (3)(a) amended, p. 569, § 2, effective November 14, 1986. L. 89: (1), (2), and (4) amended, p. 747, § 1, effective July 1. L. 97: (3)(b) amended, p. 768, § 3, effective July 1, 1998.

**Cross references:** For compensation of justices and judges, see § 13-30-103.

**13-3-111. Appointment of retired or resigned justice or judge pursuant to agreement of parties - appointment discretionary.**

(1) Upon agreement of all appearing parties to a civil action that a specific retired or resigned justice of the supreme court or a retired or resigned judge of any other court be assigned to hear the action and upon agreement that one or more of the parties shall pay the agreed upon salary of the selected justice or judge, together with all other salaries and expenses incurred, the chief justice may assign any retired or resigned justice or retired or resigned intermediate appellate, district, county, probate, or juvenile court judge who consents temporarily to perform judicial duties for such action.

(2) The decision as to whether a retired or resigned justice or judge shall be assigned to judicial duties, pursuant to subsection (1) of this section, shall be entirely within the discretion of the chief justice. The chief justice may require such undertakings as in his or her opinion may be necessary to ensure that proceedings held pursuant to this section shall be without expense to the state.

(3) Such appointment may be made at any time after the action is at issue.

(4) Orders, decrees, verdicts, and judgments resulting from hearings or trials presided over by a judge appointed pursuant to this section shall have the same force and effect as orders, decrees, verdicts, or judgments resulting from a hearing or trial presided over by a regularly serving judge.

(5) Orders, decrees, verdicts, and judgments resulting from hearings or trials presided over by a judge appointed pursuant to this section may be enforced or appealed in the same manner as orders, decrees, verdicts, or judgments resulting from a hearing or trial presided over by a regularly sitting judge.

(6) The salaries and expenses paid to judges appointed pursuant to this section shall be at the rate agreed upon by the parties and the judge.

(7) The supreme court may promulgate such rules as may be necessary to implement this section.

**Source:** **L. 81:** Entire section added, p. 875, § 1, effective May 26. **L. 96:** (1) to (3) and (6) amended, p. 128, § 1, effective August 7. **L. 98:** Entire section amended, p. 92, § 1, effective March 23.

#### ANNOTATION

**Law reviews.** For article, "A Practical Guide to Trials by 'Appointment' Under C.R.S. § 13-3-111", see 26 Colo. Law. 69 (Nov. 1997). For article, "Privatizing Family Law Adjudications: Issues and Procedures",

see 34 Colo. Law. 95 (Aug. 2005). For article, "Appointed Judges Under New C.R.C.P. 122: A Significant Opportunity for Litigants", see 34 Colo. Law. 37 (Sept. 2005).

#### **13-3-112. Report on increase in docket fees. (Repealed)**

**Source:** **L. 90:** Entire section added, p. 851, § 10, effective May 31. **L. 96:** Entire section repealed, p. 1267, § 187, effective August 7.

#### **13-3-113. Family-friendly courts.**

(1) **Short title.** This section shall be known and may be cited as the "Family-friendly Courts Act".

##### **(2) Legislative declaration.**

(a) The general assembly hereby finds and declares that many families experience challenges and transitions with legal ramifications that often necessitate court involvement. Frequently individuals and family members attend court or visit other governmental offices for juvenile

delinquency proceedings, domestic relations proceedings, protective proceedings related to domestic abuse or domestic violence, child protection proceedings, meetings with probation officers, and other matters. Many persons who attend court proceedings are responsible for the care of young children. For many such individuals, child care issues can distract from, if not present obstacles or even barriers to, effective and complete participation in ongoing court proceedings. The general assembly finds that these issues were acknowledged and addressed in the 1999 report entitled "Creating Family Friendly Courts in Colorado: Children's Centers for the Courthouse", which report was submitted by the Colorado supreme court family friendly facilities task force and which report recommended the establishment of children's centers in courthouses.

(b) The general assembly further finds that the same individuals who are in need of child care services when they are participating in court proceedings may also benefit from the availability of information and resource referrals relating to certain types of services within the community, including services addressing at-risk youth, employment counseling, employment training and placement, health education and counseling, financial management, education, legal counseling and referral, mediation, domestic abuse and domestic violence, fatherhood programs, and substance abuse.

(c) The general assembly further finds that individuals who are involved in court proceedings may have additional court-ordered service needs involving their children, including, but not limited to, supervised parenting time and the transfer of the physical custody of a child from one parent to the other.

(d) The general assembly therefore determines and declares that the creation of family-friendly court programs is beneficial to and in the best interests of the citizens of Colorado. The general assembly further finds that the goal of such programs shall primarily be providing quality child care in or near courthouses to the children of individuals and families who attend court-related proceedings but that such programs may also provide additional court-related family services at the facility and serve as a clearinghouse of information and resource referrals for program patrons concerning the wide variety of available services in the community, including services that provide help to at-risk youth; educational services; health services; behavioral, mental health, and substance use disorder services; legal services; and domestic abuse information.

(3) **Definitions.** For purposes of this section:

(a) "At-risk youth" means a person who is five years of age or older but under twenty-five years of age and who is experiencing poverty, exposure to substance use, family conflict, association with peers who are justice-involved, disciplinary issues, or child abuse or neglect.

(b) "Domestic abuse" shall have the same meaning as set forth in section 13-14-101 (2).

(c) "Domestic violence" shall have the same meaning as set forth in section 18-6-800.3 (1), C.R.S.

(d) "Family-friendly court services" means child care and court-related family services provided in the courthouse or courthouse complex or in reasonable proximity to the courthouse.

(e) "Program" means the family-friendly court program established pursuant to this section.

(4) **Provision of family-friendly court services.** There is hereby created the family-friendly court program. The purpose of the program shall be to provide quality family-friendly court services to families and the children of individuals who are attending court proceedings or related matters and to serve as a central location for the dissemination of information to families about resources and services relating to at-risk youth, employment counseling, employment training and placement, health education and counseling, financial management, education, legal counseling and referral, mediation, domestic abuse and domestic violence, fatherhood programs, and substance abuse. Grants awarded pursuant to this section shall be used to establish and maintain new family-friendly court programs in judicial districts throughout the state that do not have comparable existing programs, as well as to enhance existing family-friendly court programs.

(5) **Grant applications - duties of judicial districts.**

(a) To be eligible for moneys from the family-friendly court program cash fund, created in subsection (6) of this section, for the provision of family-friendly court services, a judicial district shall apply to the state court administrator in accordance with the timelines and guidelines adopted by the state court administrator, using an application form provided by the state court administrator.

(b) The state court administrator, in determining which judicial districts may receive grant money pursuant to this section, shall consider the extent that a judicial district is responsible for:

(I) Actively recruiting qualified and skilled child care providers to provide quality child care services to families and children of individuals who are attending court proceedings or related matters;

(II) Conducting the necessary criminal history checks through the Colorado bureau of investigation and hiring qualified and appropriate child care providers;

(III) Selecting and establishing a safe physical location in the courthouse or in the courthouse complex or in reasonable proximity to the courthouse, for the provision of child care services;

(IV) When reasonably practicable in consideration of funding, staffing, and assistance from other public and private organizations, providing additional court-related family services to families and children experiencing the challenges and transitions that necessitate court



involvement, including, but not limited to, supervised parenting time and transfer of the physical custody of a child from one parent to the other;

(V) Soliciting information from community-based organizations, faith communities, governmental entities, schools, community mental health centers, local nonprofit or not-for-profit agencies, local law enforcement agencies, businesses, and other community service providers about the following services and resources for the purpose of providing such information to patrons of the family-friendly court services:

(A) Youth services, including but not limited to youth mentoring services, services to prevent or reduce youth crime and violence, student dropout prevention and intervention services, and any other services that may be available in the community, the goal and purpose of which are to assist at-risk youth;

(B) Multipurpose service centers for displaced homemakers pursuant to article 15.5 of title 8, C.R.S., and other information to assist displaced homemakers, which information shall relate to employment counseling, employment training, employment placement, health education and counseling services, financial management services, educational services, and legal counseling and services;

(C) Information related to health insurance and health-care coverage, including but not limited to the children's basic health plan and dental health plan, established pursuant to article 8 of title 25.5, C.R.S., and children eligible for the medical assistance program pursuant to article 5 of title 25.5, C.R.S.;

(D) Substance use disorder programs that are available in the community;

(E) Services and potential financial resources that may be available for victims of domestic abuse or domestic violence, including but not limited to counseling for persons who are victims of domestic abuse and their dependents, advocacy programs that assist victims in obtaining services and information, and educational services for victims of domestic violence;

(F) Fatherhood programs that are available in the community; and

(G) Any other services that would be beneficial to families experiencing challenges and transition necessitating court involvement, including but not limited to family stabilization services as provided in section 19-1-125, C.R.S., and mediation services; and

(VI) Providing to persons staffing the program training and ongoing support with regard to the available resources and additional referrals provided through the program at each court location.

(c) The judicial districts that are selected by the state court administrator to provide family-friendly court services shall be responsible for:

(I) Implementing a method of evaluating the effectiveness of the family-friendly court program and assessing the impact of the child care and informational services provided through the program; and

(II) Reporting annually to the state court administrator concerning the results of the judicial district's evaluation of the family-friendly court program as well as an accounting of fiscal contributions received and expenditures made by the judicial district for the implementation, administration, and maintenance of the program and such other information that the state court administrator may require or that the judicial district determines to be relevant and informative.

(d) The judicial districts that are selected by the state court administrator to provide family-friendly court services that provide child care services shall meet the licensing requirements for child care facilities set forth in part 3 of article 5 of title 26.5, and all child care licensing rules promulgated by the executive director of the department of early childhood.

(e) In addition to grants received from the state court administrator pursuant to this section, judicial districts implementing or enhancing existing family-friendly court programs pursuant to this section are authorized to accept any funds, grants, gifts, or donations from any private or public source for the purpose of implementing this section; except that no grant or donation shall be accepted if the conditions attached to the grant or donation require the expenditure thereof in a manner contrary to law. Any such moneys received by a judicial district shall be credited to the family-friendly court program cash fund created in subsection (6) of this section for grants awarded by the board pursuant to this section.

**(6) Family-friendly court program cash fund.**

(a) There is hereby created in the state treasury the family-friendly court program cash fund. The moneys in the family-friendly court program cash fund shall be subject to annual appropriation by the general assembly for the implementation of this section. The state court administrator is authorized to accept on behalf of the state any grants, gifts, or donations from any private or public source for the purpose of this section. All private and public funds received through grants, gifts, or donations shall be transmitted to the state treasurer, who shall credit the same to the family-friendly court program cash fund in addition to any moneys that may be appropriated to the cash fund directly by the general assembly. In addition, commencing July 1, 2002, the one-dollar surcharge set forth in section 42-4-1701 (4)(a)(VI), C.R.S., shall be transmitted to the state treasurer who shall credit the same to the family-friendly court program cash fund created in this subsection (6). All investment earnings derived from the deposit and investment of moneys in the fund shall remain in the fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year.

(b) All moneys in the family-friendly court program cash fund, created in paragraph (a) of this subsection (6), shall be available for grants awarded by the state court administrator to judicial districts seeking to implement or enhance existing family-friendly court programs and

administrative costs associated with the implementation and administration of this section. The state court administrator, subject to annual appropriation by the general assembly, is hereby authorized to expend moneys appropriated to the judicial department from the family-friendly court program cash fund to judicial districts seeking to establish or enhance family-friendly court programs pursuant to this section.

(6.5) Notwithstanding any provision of subsection (6) of this section to the contrary, on April 20, 2009, the state treasurer shall deduct two hundred thousand dollars from the family-friendly court program cash fund and transfer such sum to the general fund.

(7) The state court administrator shall announce to all judicial districts the availability of grants pursuant to this section for the establishment and maintenance or enhancement of family-friendly court services programs in the judicial districts.

(8) (Deleted by amendment, L. 2005, p. 1000, § 1, effective June 2, 2005.)

**Source:** **L. 2002:** Entire section added, p. 627, § 1, effective July 1. **L. 2004:** (3)(b) amended, p. 554, § 6, effective July 1. **L. 2005:** (5)(b)(V)(C) amended, p. 764, § 19, effective June 1; (2), (3)(d), (4), (5), and (8) amended, p. 1000, § 1, effective June 2. **L. 2006:** (5)(b)(V)(C) amended, p. 2001, § 45, effective July 1. **L. 2009:** (6.5) added, (SB 09-208), ch. 149, p. 620, § 8, effective April 20. **L. 2013:** (3)(a) amended, (HB 13-1117), ch. 169, p. 588, § 18, effective July 1. **L. 2014:** (5)(b)(V)(C) amended, (SB 14-067), ch. 12, p. 115, § 9, effective February 27. **L. 2017:** (2)(d), IP(5)(b), and (5)(b)(V)(D) amended, (SB 17-242), ch. 263, p. 1292, § 104, effective May 25. **L. 2022:** (3)(a) amended, (SB 22-037), ch. 23, p. 155, § 7, effective March 17; (5)(d) amended, (HB 22-1295), ch. 123, p. 827, § 25, effective July 1. **L. 2025:** (3)(a) amended, (SB 25-197), ch. 256, p. 1287, § 8, effective August 6.

**Editor's note:** Amendments to subsection (5)(b)(V)(C) by House Bill 05-1337 and Senate Bill 05-030 were harmonized.

**Cross references:** For the legislative declaration in the 2013 act amending subsection (3)(a), see section 1 of chapter 169, Session Laws of Colorado 2013. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in SB 25-197, see section 1 of chapter 256, Session Laws of Colorado 2025.

**13-3-114. State court administrator - compensation for exonerated persons - definitions - annual payments - child support payments - financial literacy training - qualified health plan - damages awarded in civil actions - reimbursement to the state.**

(1) As used in this section, unless the context otherwise requires:

(a) "Annual payment" means a payment of monetary compensation made by the state court administrator or his or her designee to an exonerated person pursuant to this section. An annual payment shall be in the amount of one hundred thousand dollars, which amount shall be adjusted annually by the state auditor to account for inflation; except that:

(I) If the remaining amount of the state's duty of monetary compensation owed to the exonerated person is less than one hundred thousand dollars, the amount of the annual payment shall be equal to the remaining amount; and

(II) The amount of an annual payment may be reduced as described in subsection (5) of this section.

(b) "Exonerated person" means a person who has been determined by a district court pursuant to section 13-65-102 to be actually innocent, as defined in section 13-65-101 (1).

(c) "Incarceration" means a person's custody in a county jail or a correctional facility while he or she serves a sentence issued pursuant to the person's conviction of a felony or pursuant to the person's adjudication as a juvenile delinquent for the commission of one or more offenses that would be felonies if committed by a person eighteen years of age or older. For the purposes of this section, "incarceration" includes placement as a juvenile to the custody of the state department of human services or a county department of human or social services.

(d) "Personal financial management instruction course" means a personal financial management instruction course that has been approved by the United States trustee's office pursuant to 11 U.S.C. sec. 111.

(e) "State's duty of monetary compensation" means the total amount of monetary compensation owed by the state to an exonerated person.

(2) Not more than fourteen days after the state court administrator receives directions from a district court pursuant to section 13-65-103 to compensate an exonerated person, the state court administrator shall:

(a) Issue an annual payment to the exonerated person. Annually thereafter, on or before the date that such payment was made, until the state's duty of monetary compensation is satisfied, the state court administrator or his or her designee shall issue an annual payment to the exonerated person.

(b) Pay on the exonerated person's behalf any amount of compensation for child support payments owed by the exonerated person that became due during his or her incarceration, or any amount of interest on child support arrearages that accrued during his or her incarceration but which have not been paid, as described in section 13-65-103 (2)(e)(III). The state court administrator, or his or her designee, shall make such payment in a lump sum to the appropriate county department of human or social services or other agency responsible for receiving such payments not more than thirty days after the state court administrator receives directions from a district court to compensate an exonerated person pursuant to section 13-65-103.

(c) Pay on the exonerated person's behalf the amount of reasonable attorney fees awarded to the exonerated person pursuant to section 13-65-103 (2)(e)(IV).

(3) The amount of any payment made to, or on behalf of, an exonerated person pursuant to this section shall be deducted from the state's duty of monetary compensation to the exonerated person.

(4) Notwithstanding the provisions of paragraph (a) of subsection (2) of this section, after the state court administrator has issued one annual payment to an exonerated person, the state court administrator shall not issue another annual payment to the exonerated person until the exonerated person has completed a personal financial management instruction course.

(5) In each year in which the state court administrator issues an annual payment to an exonerated person, the person's annual payment shall be reduced by ten thousand dollars if the person fails to present to the state court administrator a policy or certificate showing that the person has purchased or otherwise acquired a qualified health plan for himself or herself and his or her dependents that is valid for at least six months. Such amount shall be deducted from the state's duty of monetary compensation to the exonerated person as if such amount had been issued to the exonerated person.

(6) (a) An exonerated person who receives monetary compensation pursuant to this section shall reimburse the state for the total amount of annual payments made to the exonerated person pursuant to this section if:

(I) The exonerated person prevails in or settles a civil action against the state or against any other government body in a civil action concerning the same acts that are the bases for the petition for compensation; and

(II) The judgment rendered in the civil action or the settlement of the civil action includes an award of monetary damages to the exonerated person.

(b) For the purposes of paragraph (a) of this subsection (6), in any proceeding that satisfies the description set forth in said paragraph (a), upon a satisfactory showing by the state that the exonerated person has received monetary compensation pursuant to this section, the court shall offset a sufficient amount of moneys from the exonerated person's award of monetary damages

to reimburse the state for such monetary compensation. The court shall transfer such moneys to the state treasurer, who shall credit the moneys to the general fund.

(7) Notwithstanding any provision of this section, the state court administrator shall not issue an annual payment to an exonerated person if:

(a) (I) The exonerated person has prevailed in or settled a civil action for monetary damages as described in subsection (6) of this section; and

(II) The amount of the monetary damages awarded by the court in the civil action, or stipulated in the settlement of the action, and collected by the exonerated person equals or exceeds the remaining amount of the state's duty of monetary compensation to the exonerated person;

(b) The exonerated person is convicted of a class 1 or class 2 felony, or of an offense that would be considered a class 1 or class 2 felony in Colorado, after the date upon which a court issues an order of compensation on the person's behalf; or

(c) The person has not yet completed a personal financial management instruction course, as required by subsection (4) of this section.

(8) (a) At any point after the state court administrator makes an annual payment to an exonerated person pursuant to subsection (2) of this section, the exonerated person may elect to receive the remaining balance of the state's duty of monetary compensation in a lump sum by:

(I) Notifying the state court administrator, the governor, and the general assembly of such election, which notification must be provided in writing;

(II) Completing a personal financial management instruction course; and

(III) Acquiring and committing to maintain a qualified health insurance plan.

(b) Upon receiving written documentation that an exonerated person has satisfied the requirements described in subsection (8)(a) of this section, the state court administrator shall pay to the exonerated person the balance of the state's duty of monetary compensation not later than one year after receiving such written documentation.

**Source: L. 2013:** Entire section added, (HB 13-1230), ch. 409, p. 2423, § 3, effective June 5. **L. 2017:** (8) added, (SB 17-125), ch. 109, p. 395, § 1, effective April 4. **L. 2018:** (1)(c) and (2)(b) amended, (SB 18-092), ch. 38, p. 398, § 6, effective August 8.

**Cross references:** For the legislative declaration in the 2013 act adding this section, see section 1 of chapter 409, Session Laws of Colorado 2013. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

**13-3-114.5. State court administrator - reimbursement of monetary amounts paid following a vacated conviction or amended order of restitution.**

Within twenty-eight days after receipt of an order from a district or county court for payment of a refund of monetary amounts paid, the state court administrator shall issue a refund payment to the person who established eligibility under section 18-1.3-703.

**Source: L. 2017:** Entire section added, (HB 17-1071), ch. 70, p. 220, § 2, effective September 1.

**13-3-115. Diversion funding committee.**

(1) The state court administrator shall establish a diversion funding committee, referred to in this section as the "committee". The committee shall consist of:

- (a) The attorney general or his or her designee;
- (b) The executive director of a statewide organization representing district attorneys or his or her designee;
- (c) The state public defender or his or her designee;
- (d) The director of the division of criminal justice in the department of public safety; and
- (e) The state court administrator or his or her designee;

(2) (a) The committee shall develop funding guidelines, including permissible uses for the funding, and an application process for elected district attorneys to request funds appropriated by the general assembly in order to operate an adult diversion program consistent with section 18-1.3-101, C.R.S.

(b) The committee shall also develop an application that includes but is not limited to:

(I) A description of the adult pretrial diversion program, including the project's goals, objective, and timeline for implementation;

(II) The number of adults that could be enrolled in a pretrial diversion program using the funds requested and a description of the eligibility criteria developed by the district attorney;

(III) The process and method by which a participant's treatment or services needs will be assessed;

(IV) Outcomes and performance measures that the program will use in its evaluation;

(V) Itemized expenses for the amount of the funding request and whether the funding request is for a new adult pretrial diversion program or funding to continue or expand an existing adult pretrial diversion program;

(VI) The diversion supervision fees, if any, that the district attorney will require as a condition of participation in a pretrial diversion program; and

(VII) A list of any other agencies, organizations, service providers, or planning groups that would be involved in the planning and implementation of the project.

(3) The committee must review all funding requests submitted by a district attorney to support an adult pretrial diversion program. By majority vote, the committee may approve all or a portion of a funding request that meets the guidelines established pursuant to paragraph (a) of subsection (2) of this section or deny a request.

(4) The judicial department shall execute the contract and allocate the funding requests approved by the committee.

(5) A district attorney who receives funding pursuant to this section shall collect data and provide a status report to the judicial department by a date prescribed by the committee that includes but is not limited to:

(a) The number of people screened and the number of people who met the diversion program criteria;

(b) The number of people enrolled in the adult pretrial diversion program;

(c) Demographic information on those enrolled in the adult pretrial diversion program including age, gender, and ethnicity;

(d) Participant status, including the number of people who have successfully completed the diversion program, the number of people still under active supervision in the diversion program, the number of people terminated from the diversion program, and the reason for their termination;

(e) The accounting of the funds expended and the amount of any funds unexpended and unencumbered at the end of the funding period;

(f) The number of people screened for behavioral health treatment; and

(g) The number of people referred to behavioral health treatment.



(6) Notwithstanding section 24-1-136 (11)(a)(I), by January 31, 2015, and each January 31 thereafter, the judicial department shall provide to the joint budget committee a status report that includes the information required by subsection (5) of this section.

(7) Any funds provided to a district attorney for purposes of operating an adult pretrial diversion program pursuant to this section shall not be reverted to the general fund if unexpended by the end of the fiscal year in which the funds were received.

**Source:** **L. 2013:** Entire section added, (HB 13-1156), ch. 336, p. 1961, § 15, effective August 7. **L. 2017:** (6) amended, (SB 17-241), ch. 171, p. 623, § 2, effective April 28. **L. 2022:** (5)(d) amended and (5)(f) and (5)(g) added, (SB 22-196), ch. 193, p. 1290, § 5, effective May 19.

**Cross references:** For the legislative declaration in SB 22-196, see section 1 of chapter 193, Session Laws of Colorado 2022.

### **13-3-116. Restorative justice coordinating council - establishment - membership.**

(1) (a) A council to provide assistance and education related to restorative justice programs is hereby established. The council shall be known as the "restorative justice coordinating council" and shall be established in the state judicial department within the office of the state court administrator. To the extent that resources permit, the restorative justice coordinating council shall support the development of restorative justice programs, serve as a central repository for information, assist in the development and provision of related education and training, and provide technical assistance to entities engaged in or wishing to develop restorative justice programs.

(b) In order to assess the efficacy of restorative justice practices in providing satisfaction to participants, the council shall develop a uniform restorative justice satisfaction evaluation by September 1, 2013. The evaluation must be based on research principles. The evaluation must include a preconference questionnaire for the offender and participating victims, if practicable, to establish a baseline and a postconference questionnaire that is suitable to administer to restorative justice participants, including community members, participating victims, and offenders.

(c) (I) The council shall develop a database of existing restorative justice programs in the state by December 31, 2013, and update it annually by December 31 of each year.

(II) The database must consist of the following information:

(A) The location of the restorative justice program;

(B) The types of restorative justice practices used in the program and the costs and fees associated with the practices; and

(C) The background, training, and restorative justice experience of the facilitators in the restorative justice program.

(d) Repealed.

(2) The restorative justice coordinating council includes, at a minimum, the following:

(a) A member who represents a statewide juvenile justice council who shall be appointed by the executive director of the department of public safety;

(b) A representative from the division of youth services in the department of human services who is appointed by the executive director of the department of human services;

(c) A representative from the department of public safety who shall be appointed by the executive director of the department of public safety;

(d) A representative from the judicial department who shall be appointed by the state court administrator;

(e) Two representatives from a statewide organization or organizations whose primary purpose is related to the development and implementation of restorative justice programs and who shall be appointed by the executive director of the department of public safety;

(f) A district attorney with juvenile justice experience who shall be appointed by the executive director of the Colorado district attorneys' council;

(g) A victim's representative within the judicial department with restorative justice experience who shall be appointed by the state court administrator;

(h) A representative from the department of education who shall be appointed by the commissioner of education;

(i) A representative from the state board of parole appointed by the chair of the parole board;

(j) A representative from the department of corrections appointed by the executive director of the department of corrections;

(k) A representative from a nongovernment statewide organization representing victims appointed by the executive director of the department of public safety;

(l) Three restorative justice practitioners appointed by the state court administrator;

(m) A representative of the juvenile parole board appointed by the chair of the juvenile parole board;

- (n) The state public defender or his or her designee;
  - (o) A judge appointed by the chief justice of the Colorado supreme court; and
  - (p) A representative of law enforcement appointed by the state court administrator based upon a recommendation from the restorative justice coordinating council.
- (3) The restorative justice coordinating council shall select a chairperson from among the members of the council who shall serve a term to be determined by the council. The chairperson shall be responsible for convening the council at a frequency that shall be determined by the council.
- (4) Members of the restorative justice coordinating council serve without compensation but may be reimbursed for expenses incurred while serving on the council.
- (4.5) The restorative justice coordinating council may accept money from trainings and conferences and gifts, grants, or donations from any private or public source for the purpose of supporting restorative justice practices. All private and public money received by the restorative justice coordinating council from gifts, grants, or donations or any other source must be transmitted to the state treasurer, who shall credit the same to the restorative justice surcharge fund created pursuant to section 18-25-101, in addition to any money that may be appropriated to the fund directly by the general assembly.
- (5) (Deleted by amendment, L. 2017.)

**Source: L. 2017:** Entire section added with relocations, (SB 17-220), ch. 173, p. 629, § 1, effective April 28; (2)(b) amended, (HB 17-1329), ch. 381, p. 1973, § 31, effective June 6. **L. 2019:** (4) amended, (HB 19-1205), ch. 292, p. 2683, § 1, effective August 2.

**Editor's note:** (1) This section is similar to former § 19-2-213 as it existed prior to 2017.

(2) Changes to § 19-2-213 (2)(b) by HB 17-1329 were harmonized with SB 17-220 and relocated to subsection (2)(b).

### **13-3-117. State court administrator - automatic conviction sealing.**

- (1) (a) The state court administrator shall compile a list of drug convictions pursuant to article 18 of title 18:
- (I) That are eligible for sealing pursuant to sections 24-72-703 and 24-72-706; and

(II) (A) If the drug conviction is for a petty offense or misdemeanor, that seven years have passed since the disposition of the case; or

(B) If the drug conviction is for a felony, that at least ten years have passed since the disposition of the case.

(a.5) The state court administrator shall compile a list of eligible convictions, excluding crimes pursuant to section 24-4.1-302 (1):

(I) That are eligible for sealing pursuant to sections 24-72-703 and 24-72-706; and

(II) (A) If the judgment is for a civil infraction, that four years have passed since the final disposition of the case;

(B) If the conviction is for a petty offense or misdemeanor, that at least seven years have passed since the final disposition of the case; and

(C) If the conviction is for an eligible felony, that at least ten years have passed since the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction, whichever is later.

(b) The state court administrator shall use the state conviction database and the conviction databases of entities that do not report convictions to the state database to compile the list. The state court administrator shall compile the list based on a name-based review with sufficient points of reference for identification validation as determined by the state court administrator. The state court administrator must only include convictions on the list if sufficient points of validation, as determined by the state court administrator, are present. The state court administrator shall not include any case in which there is no final disposition on all charges in the case. The state court administrator shall not include any judgments for which the defendant has an intervening judgment during the four-year waiting period if the judgement is for a civil infraction and shall not include any convictions for which the defendant has an intervening conviction during the seven-year waiting period if the conviction is for a petty offense or misdemeanor or during the ten-year waiting period if the conviction is for a felony. The state court administrator shall sort the list by judicial district of conviction.

(c) The state court administrator shall compile the initial list pursuant to this subsection (1) by February 1, 2024, and the court shall seal all conviction records eligible for sealing pursuant to the final list compiled pursuant to subsection (3)(a) of this section based on the initial list by July 1, 2024.

(d) Beginning July 1, 2024, the state court administrator shall compile a list of drug convictions, misdemeanors, and petty offenses that are eligible pursuant to this subsection (1) on a quarterly basis. The state court administrator shall include the eligible felony convictions not

found in article 18 of title 18 pursuant to subsection (1)(a.5) of this section beginning on July 1, 2025.

(2) The state court administrator shall forward the list compiled pursuant to subsection (1) of this section to each district attorney, except for civil infractions. The state court administrator shall send the list of civil infractions to be sealed with the final list pursuant to subsection (3)(b) of this section to the chief judge for each judicial district.

(3) (a) (I) Upon receipt of the list from the state court administrator, each elected district attorney, or his or her designee, may, within forty-five days, object to the inclusion of a conviction on the list for circumstances in which a condition of the plea was that the defendant agreed to not have the conviction record sealed, convictions in which the defendant has a pending criminal charge, an intervening conviction, or convictions that are ineligible for sealing.

(II) For a felony conviction for an offense not in article 18 of title 18, in addition to the objections in subsection (3)(a)(I) of this section, each district attorney may, within forty-five days, object when the district attorney has a reasonable belief, grounded in supporting facts, that the public interest and public safety in retaining public access to the current record or case outweighs the privacy interest of, or adverse consequences to, the defendant.

(III) Each district attorney shall file a notice with the court in the criminal case that is the subject of the record without the need for additional service on any party, noting the basis of the objection.

(IV) For objections pursuant to subsection (3)(a)(II) of this section, the notice must explain the basis for the objection and include any available supporting documents. In such cases, the court shall serve notice on the defendant at the defendant's last-known address and explain in plain language that the defendant may request a hearing on the matter. If the defendant requests a hearing, the court shall proceed pursuant to section 24-72-706.

(V) The state court administrator shall remove the convictions objected to by the district attorneys from the list, if any, and then compile each of the lists into one final list and sort the convictions by judicial district. All convictions from the initial lists shall be included unless objected to within the forty-five-day period as ineligible under subsection (3)(a)(I), (3)(a)(II), or (3)(a)(III) of this section.

(b) (I) The state court administrator shall send the final list compiled pursuant to subsection (3)(a)(V) of this section to the chief judge for the judicial district. The courts of that judicial district shall enter sealing orders based on the list received within fourteen days after receipt of the amended list from the state court administrator.

(II) The district court shall send a copy of the sealing order to the district attorney's office that prosecuted the case to facilitate sealing of the records held by the district attorney's offices. The court shall also send a copy to the state court administrator for purposes of subsections

(3)(b)(III) and (3)(c) of this section. To protect defendant confidentiality, a copy shall not be mailed to the defendant, notwithstanding any Colorado criminal rule of procedure to the contrary.

(III) The state court administrator shall electronically send all orders sealing records pursuant to this subsection (3)(b) to the Colorado bureau of investigation using an information-sharing data transfer to facilitate sealing of the records held by the Colorado bureau of investigation.

(IV) The defendant may obtain a copy of the sealing order pursuant to section 24-72-703 (2)(c) and serve the sealing order on any custodian of the records pursuant to section 24-72-703 (8), including the law enforcement agency that investigated the case.

(c) On or before July 1, 2024, the state court administrator shall develop a website that allows a defendant to confidentially determine whether the defendant's conviction has been sealed pursuant to this section and information about how to receive a copy of the sealing order.

(4) (a) On or before February 1, 2024, and on or before January 1 each year thereafter, the state court administrator shall report to the judiciary committees of the senate and the house of representatives, or their successor committees, by judicial district and, to the extent possible, with data disaggregated by race and sex and by offense level, the number of conviction records in the prior calendar year that:

(I) Were considered for automatic record sealing;

(II) The state court administrator sent to the chief judges for each judicial district; and

(III) The district attorneys objected to due to:

(A) Intervening convictions;

(B) The ineligibility of the offense;

(C) Pending charges;

(D) Plea agreements waiving the right to record sealing; and

(E) Objections pursuant to subsection (3)(a)(II) of this section.

(b) Notwithstanding section 24-1-136 (11)(a)(I), the report required in this subsection (4) continues indefinitely.

(c) During the 2023 and 2024 legislative sessions, the judicial department shall report on the progress of its implementation of this section, including the creation of the website pursuant to subsection (3)(c) of this section, as part of the department's "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act" hearing required by section 2-7-203.

(5) (a) On or before July 1, 2025, the state court administrator shall compile a list of all criminal justice records of deferred judgments that have been successfully completed and the charges have been dismissed, acquittals, and diversion cases pursuant to section 24-72-705 (1)(a) with dispositions prior to August 2022. The state court administrator shall sort those criminal justice records by judicial district and send the final list to the chief judge of each judicial district.

(b) (I) The state court administrator shall send the final list compiled pursuant to subsection (5)(a) of this section to the chief judge for the judicial district. The courts of that judicial district shall enter sealing orders based on the list received within fourteen days after receipt of the final list from the state court administrator.

(II) The district court shall send a copy of the sealing order to the district attorney's office that prosecuted the case, and upon receipt of the order the district attorney's office shall seal the records held by it. The court shall also send a copy to the state court administrator for purposes of subsection (5)(b)(III) of this section. To protect defendant confidentiality, a copy shall not be mailed to the defendant, notwithstanding any Colorado criminal rule of procedure to the contrary.

(III) The state court administrator shall electronically send all orders sealing records pursuant to this subsection (5)(b) to the Colorado bureau of investigation using an information-sharing data transfer. Upon receipt of the orders, the Colorado bureau of investigation shall seal all records held by the orders.

(IV) The defendant may obtain a copy of the sealing order pursuant to section 24-72-703 (2)(c) and serve the sealing order on any custodian of the records pursuant to section 24-72-703 (8), including the law enforcement agency that investigated the case.

**Source:** **L. 2021:** Entire section added, (HB 21-1214), ch. 455, p. 3037, § 11, effective September 7. **L. 2022:** (1)(a.5) and (4) added and (1)(b), (1)(d), (2), and (3) amended, (SB 22-099), ch. 276, p. 1981, § 3, effective August 10. **L. 2024:** (3)(b)(II) amended and (5) added, (HB 24-1133), ch. 384, p. 2621, § 8, effective July 1, 2025.

## ANNOTATION

**Law reviews.** For article, "Automatic Record Sealing in Colorado", see 54 Colo. Law. 26 (Dec. 2025).

**13-3-118. State court administrator - twenty-third judicial district county assistance - definition - repeal. (Repealed)**

**Source: L. 2023:** Entire section added, (SB 23-230), ch. 78, p. 281, § 1, effective April 17.

**Editor's note:** Subsection (3) provided for the repeal of this section, effective July 1, 2026. (See L. 2023, p. 281.)

**13-3-119. Data-sharing task force between state and municipal courts - creation - legislative declaration - repeal. (Repealed)**

**Source: L. 2023:** Entire section added, (HB 23-1132), ch. 420, p. 2473, § 1, effective June 7.

**Editor's note:** Subsection (7) provided for the repeal of this section, effective July 1, 2024. (See L. 2023, p. 2473.)

**13-3-120. Office of the judicial discipline ombudsman established - judicial discipline advisory board - qualifications of ombudsman - powers and duties - confidentiality - rules - definitions - repeal.**

(1) As used in this section, unless the context otherwise requires:

(a) "Board" means the judicial discipline ombudsman selection board, established in subsection (6) of this section.

(b) "Commission" means the commission on judicial discipline created in section 13-5.3-102.

(c) "Complainant" means current and former employees of the judicial department, judges, judicial department staff, and persons who work with judicial employees and staff, and includes, but is not limited to, bailiffs, litigating attorneys, interns, and volunteers.

(d) "Department" means the judicial department established in this article 3.

(e) "Office of the ombudsman" means the office of the judicial discipline ombudsman, created in subsection (2) of this section.



(f) "Ombudsman" means the person who serves as both the judicial discipline ombudsman and the director of the office of the ombudsman.

(2) The independent office of the judicial discipline ombudsman is established in the judicial department as an independent agency for the purpose of ensuring the greatest protections for a complainant. The purpose of the office of the ombudsman is to act as an independent, confidential, informal, impartial, neutral, and nonpartisan office that responds to questions or concerns from a complainant about misconduct that occurs within the department, to support a complainant in filing formal and informal complaints and grievances against members of the department, and to analyze data from the office of the ombudsman in order to report complaint and grievance trends, systemic problems, and organizational issues to the commission, the department, and the general assembly. The office of the ombudsman shall help a complainant understand how to safely navigate the complaint process. The ombudsman shall consider the standards of practice and code of ethics established by the International Ombuds Association for an organizational ombudsman, to the extent practicable. The ombudsman shall not be adversarial to the department or the commission. The ombudsman shall not request records from the department or the commission related to specific employees, judges, or justices, except at the discretion of the complainant.

(3) The office of the ombudsman and the department shall operate pursuant to a memorandum of understanding between the two entities to further the purposes of this section. The memorandum of understanding must contain, at a minimum:

- (a) A requirement that the office of the ombudsman have its own personnel rules;
- (b) A requirement that the ombudsman have independent hiring and termination authority over office of the ombudsman employees;
- (c) A requirement that the office of the ombudsman follow judicial fiscal rules;
- (d) A requirement that the department offer the office of the ombudsman limited support with respect to:
  - (I) Personnel matters;
  - (II) Recruitment;
  - (III) Payroll;
  - (IV) Benefits;
  - (V) Budget submissions, as needed; and
  - (VI) Accounting; and

(e) Any other provisions regarding administrative support that will help maintain the independence of the office of the ombudsman.

(4) The office of the ombudsman shall maintain office space that is not physically located in any building that is maintained by the judicial department.

(5) The office of the ombudsman and the board established in subsection (6) of this section shall operate with autonomy, control, and authority over operations, budget, and personnel decisions related to the office of the ombudsman, board, and ombudsman.

(6) (a) There is established an independent, nonpartisan judicial discipline ombudsman selection board. The board consists of five members and must include lawyers, and people with a professional background in human resources or personnel management, financial management, or experience with employee harassment or discrimination cases or as a victims' rights advocate, and professional ombudsman experience. To the extent practicable, the board should be made up of persons from different judicial districts, persons with disabilities, and persons with experience in culturally relevant practices, and reflect the geographic, ethnic, and gender diversity of the state.

(b) Board members must be appointed on or before January 1, 2024, as follows:

(I) The governor shall appoint one individual who is either a retired Colorado judge in good standing or a former Colorado judge in good standing;

(II) The president of the Colorado senate and the minority leader of the Colorado senate shall each appoint one member with experience listed in subsections (6)(c) and (6)(d) of this section; and

(III) The speaker of the Colorado house of representatives and the minority leader of the Colorado house of representatives shall each appoint one member with experience listed in subsections (6)(c) and (6)(d) of this section.

(c) Board members must have experience in at least one of the following:

(I) Personnel management;

(II) Human resources;

(III) Financial management;

(IV) Experience as a professional ombudsman;

(V) Experience with employee harassment or discrimination as an employment law attorney;  
or

(VI) Experience as a victims' rights advocate.

(d) In appointing board members pursuant to subsections (6)(b)(II) and (6)(b)(III) of this section, at least one appointee from the Colorado house of representatives and one appointee from the Colorado senate must be licensed Colorado attorneys in good standing.

(e) Board members serve terms of four years; except that initial terms must be staggered so that no more than three members' terms expire in the same year. Three of the initial appointments will have four-year terms, and two initial appointments will have two-year terms. The appointing authority shall designate the initial terms. The appointing official shall fill any vacancies on the board for the remainder of any unexpired term.

(f) The board shall meet a minimum of two times per year and additionally as needed.

(g) Board members serve without compensation but may be reimbursed for actual and reasonable expenses incurred in the performance of their duties.

(h) Board members may be reappointed to serve one additional term.

(7) Expenses incurred for the board must be paid from the general operating budget of the office of the ombudsman.

(8) The board has the following duties and responsibilities:

(a) To oversee the following personnel decisions related to the ombudsman:

(I) On or before March 1, 2024, and as necessary thereafter, appointing a person to serve as the ombudsman. The ombudsman appointed by the board on or before March 1, 2024, shall assume the ombudsman's position on the effective date of the memorandum of understanding between the department and the office of the ombudsman. The board may discharge an ombudsman for cause. A two-thirds majority vote of the board is required to hire or discharge the ombudsman. The general assembly shall set the ombudsman's compensation, and the compensation must not be reduced during the term of the ombudsman's appointment.

(II) Filling a vacancy in the ombudsman position;

(III) Evaluating the ombudsman's performance as necessary based on feedback received from complainants about the ombudsman; and

(IV) Developing a complaint process related to the ombudsman's performance;

(b) To oversee and advise the ombudsman on the strategic direction of the office of the ombudsman and its mission and to help promote the use of, engagement with, and access to the office of the ombudsman;

(c) To work cooperatively with the ombudsman to provide fiscal oversight of the general operating budget of the office of the ombudsman and ensure that the office of the ombudsman

operates in compliance with the provisions of this section, the memorandum of understanding, and state and federal laws;

(d) To promote the mission of the office of the ombudsman to the public; and

(e) To provide assistance, as practicable and as requested by the ombudsman, to facilitate the statutory intent of this section.

(9) Meetings of the board are subject to the provisions of section 24-6-402, except for executive personnel actions or meetings that require the protection of confidentiality and compliance with state privacy laws.

(10) The ombudsman has the following duties and functions:

(a) Create and maintain an anonymous reporting system and hotline for complainants to submit complaints. The reporting system must be equipped to retain and collect aggregated and disaggregated data regarding the reported complaints that includes the following:

(I) The number of allegations of judicial misconduct received, regardless of form;

(II) The types of judicial misconduct complaints received by the office of the ombudsman and to what entity the complaint was forwarded, if applicable; and

(III) The demographics, including the gender, age, race, ethnicity, or disability, of judges who are the subject of the complaint and those directly affected by the claimed judicial misconduct.

(b) Help a complainant understand the complainant's rights and options in reporting and filing a complaint with the commission and any other appropriate authority. This assistance must:

(I) Include an explanation of the judicial discipline process, including the steps in the process, the availability of confidential reporting, and confidentiality requirements during each step of the process; and

(II) Be available throughout the entire complaint process, if requested by the complainant.

(c) Provide the complainant with referrals to physical and mental health-care resources, community-based advocacy services, pro bono or low-cost legal assistance or representation, or any other resource, as necessary or requested;

(d) Receive complaints from complainants, and facilitate communication with a complainant and the appropriate party. This subsection (10)(d) does not prevent the commission from also receiving complaints.

(e) Facilitate submission of complaints to the appropriate entity or party, only at the discretion and consent of the complainant;

(f) Gather and evaluate data received by the office of the ombudsman through the reporting system and hotline, created in subsection (10)(a) of this section, to provide insights into work environment trends of the judicial department on an annual basis. To the extent possible, data must be disaggregated by gender, ethnicity, and judicial district while maintaining the confidentiality of those involved in the complaint. Findings from the data must be reported to the department, commission, and general assembly as part of the judicial department's "SMART Act" presentation required by section 2-7-203. The data must be presented in a manner that protects the confidentiality of everyone involved. The report outlined in this subsection (10)(f) shall not include personal identifying information, including gender, race, or ethnicity data, if that could potentially identify the complainant, the subject of the complaint, or any other people involved in the complaint. During the first two years of operation of the office of the ombudsman, the report must include information and feedback from the office of the ombudsman on the efficacy of the office of the ombudsman and provide recommendations for improvements or adjustments. The report must be made public on the office of the ombudsman's website.

(g) Serve in an advisory capacity to the commission and the department on rule-making and provide insights and recommendations to the commission and department on changes to their respective rules and human resource policies. This information must be made public on the office of the ombudsman's website.

(h) Comply with all confidentiality provisions set by the commission;

(i) Ensure accountability and consistency in the operating policies and procedures of the office of the ombudsman, including reasonable rules related to the administration of the provisions of this section and any other standards of conduct and reporting requirements as provided by law; and

(j) Serve as a liaison for communications between a complainant and the commission or the department and, if requested by the complainant, ensure the complainant's anonymity.

(11) The ombudsman has discretion over whether or how to engage regarding individual, group, or systematic concerns and may bring a concern to the attention of appropriate individuals as the ombudsman deems appropriate.

(12) The ombudsman shall be available to a complainant to discuss complaints related to the conduct of any judicial personnel.

(13) To be appointed as the ombudsman, a person must possess the following qualities and qualifications:

(a) Prior experience serving as an ombudsman or in an ombudsman capacity;

(b) A deep understanding of and expertise in organizational culture and diversity, equity, and inclusion;

(c) At least two years of professional experience working with human resources;

(d) At least two years of victim advocacy experience or completion of substantial victim advocacy training; and

(e) The ability to act in a nonpartisan manner.

(14) All conversations and information disclosed to the ombudsman by a complainant are confidential, unless the complainant gives the ombudsman permission to disclose the information to a third party. If the complainant has not consented to disclosure, the ombudsman shall forgo confidentiality when the disclosure involves an imminent threat of bodily harm to the complainant or another person. Information is not discoverable if received during and within the scope of the ombudsman's duties and responsibilities. The ombudsman is exempt from mandatory reporting rules, statutes, including section 13-5.3-106, or as permitted by subsection (11) of this section, and policies and shall not report an incident made known to the ombudsman by a complainant unless the complainant provides consent.

(15) Records related to complaints received by the office of the ombudsman, and all other communications between the ombudsman and a complainant, are not subject to public disclosure as required by article 72 of title 24, and are not subject to the judicial department's rules regarding public record disclosure.

(16) The office of the ombudsman is authorized to promulgate rules necessary to implement the requirements of this section and to ensure confidentiality of the disclosures made to the office of the ombudsman by complainants.

(17) In the performance of the ombudsman's duties, the ombudsman shall act independently of the department and commission. Any recommendations made or positions taken by the ombudsman or the office of the ombudsman do not reflect those of the department or the commission.

(18) This section is repealed, effective July 1, 2027.

**Source: L. 2023:** Entire section added, (HB 23-1205), ch. 430, p. 2525, § 2, effective June 7.  
**L. 2026:** (18) added, (HB 26-1380), ch. 394, p. 2476, § 1, effective June 4.

**Cross references:** For the legislative declaration in HB 23-1205, see section 1 of chapter 430, Session Laws of Colorado 2023.

**13-3-121. Jury selection working group - creation - members - duties - report - definition - repeal.**

(1) As used in this section, unless the context otherwise requires, "working group" means the jury selection working group created in subsection (2) of this section.

(2) There is created in the judicial department the jury selection working group to make findings and recommendations concerning jury selection.

(3) (a) The working group consists of:

(I) The state public defender, or their designee;

(II) The attorney general, or their designee;

(III) The following members, who are appointed by the association that they represent, which association is chosen by the chief justice of the Colorado supreme court:

(A) One member who represents a statewide association of district attorneys;

(B) One member who represents a statewide association of municipal judges;

(C) One member who represents a statewide association of civil trial lawyers;

(D) One member who represents a statewide association of civil defense lawyers;

(E) One member who represents a statewide association of criminal defense lawyers;

(F) One member who is a member of a statewide association of lawyers and who has experience with representing clients in complex commercial litigation involving private parties; and

(G) One member who is an instructor at an institution of higher education and has expert knowledge of, and research experience with, jury selection; and

(IV) The following members, appointed by the chief justice of the Colorado supreme court:

(A) A justice or judge;

(B) The chair of the rules of criminal procedure committee;

(C) The chair of the civil rules committee;

(D) Four judges, who in full represent district court, county court, rural jurisdiction, and urban jurisdiction;

(E) One jury commissioner who represents an urban judicial district; and

(F) One jury commissioner who represents a rural judicial district.

(b) To the extent practicable, the appointing authorities shall attempt to appoint working group members who reflect the diversity of the state with regard to geography, race, ethnicity, gender, and areas of practice.

(c) The appointing authorities shall make appointments to the working group no later than June 15, 2026.

(d) (I) The justice or judge appointed pursuant to subsection (3)(a)(IV)(A) of this section serves as a co-chair of the working group.

(II) The working group shall select a member described in subsection (3)(a)(I), (3)(a)(II), or (3)(a)(III) of this section to serve as a co-chair of the working group.

(e) Members serve without compensation but may be reimbursed for expenses directly relating to their service to the working group.

(4) The working group shall:

(a) Solicit input from relevant communities and stakeholders to assist the working group with the performance of its duties pursuant to subsection (4)(b) of this section;

(b) Identify best practices concerning:

(I) The amount of time provided to attorneys to perform voir dire;

(II) The use of case-specific or model questionnaires for potential jurors;

(III) The use of rules for the process and effectiveness of rehabilitating jurors;

(IV) The use of model bench book scripts for jury selection;

(V) Training for judges and lawyers regarding jury selection; and

(VI) Any other matter related to jury selection deemed appropriate by the working group; and

(c) Consider making recommendations for statutory or rule changes to improve jury selection.

(5) (a) On or before December 1, 2026, the working group shall submit a progress report of its identified best practices pursuant to subsection (4)(b) of this section, and recommendations for statutory or rule changes pursuant to subsection (4)(c) of this section, if any, to the judiciary committees of the house of representatives and the senate, or any successor committees, and each Colorado supreme court justice.



(b) On or before December 1, 2026, the judicial department shall post the report described in subsection (5)(a) of this section on its website for public access.

(6) (a) On or before a date determined by the working group's co-chairs that is sufficient to allow the Colorado supreme court to respond pursuant to subsection (7) of this section, the working group shall submit a final report of its identified best practices pursuant to subsection (4)(b) of this section, and recommendations for statutory or rule changes pursuant to subsection (4)(c) of this section, if any, to the judiciary committees of the house of representatives and the senate, or any successor committees, and each Colorado supreme court justice.

(b) Within one week of receiving the final report described in subsection (6)(a) of this section, the judicial department shall post the report described in subsection (6)(a) of this section on its website for public access.

(7) (a) If any recommendations for rule changes are made, then on or before June 15, 2027, the Colorado supreme court shall respond to the working group's recommendations for rule changes to improve jury selection.

(b) On or before June 15, 2027, the judicial department shall post the response described in subsection (7)(a) of this section on its website for public access.

(8) This section is repealed, effective July 1, 2027.

**Source: L. 2026:** Entire section added, (HB 26-1288), ch. 189, p. 1104, § 1, effective May 28.

**13-3-122. Judicial security task force - recommended standards for security at courthouses - court and probation facilities - repeal.**

(1) (a) The state court administrator shall convene a judicial security task force to develop recommendations for improving security at courthouses and other court and probation facilities. The task force must include, at a minimum, representatives of associations that represent county commissioners and sheriffs.

(b) The task force shall convene at least one public hearing, which may be conducted virtually.

(c) The task force shall submit a written report on its progress to the judiciary committees of the house of representatives and the senate, or any successor committees, and the joint budget committee no later than January 1, 2027.

(2) The task force shall develop recommended standards for:

(a) Secure public access points to facilities containing a state court or probation office;

(b) Secure access to facilities containing a state court or probation office for judges, staff, attorneys, and law enforcement;

(c) Security for facilities and personnel during high-profile trials;

(d) Secure parking facilities;

(e) Secure public spaces;

(f) Access for non-court offices housed within courthouses; and

(g) Qualifications for security staff.

(3) (a) The task force shall develop a recommended process for incident reporting at courthouses and other court and probation facilities and shall make recommendations regarding the creation, composition, and practices of local security committees.

(b) The task force shall define the membership, structure, and role of the local security committees in its recommendations. The task force may also identify in its recommendations the most appropriate name for the local security committees.

(4) In developing the recommended standards, the task force shall consider the size and resources of counties. The task force may develop varying standards depending on the size of counties.

(5) The task force may continue to meet after January 1, 2027, as the state court administrator and the task force deem appropriate.

(6) This section is repealed, effective December 31, 2028.

**Source: L. 2026:** Entire section added, (HB 26-1422), ch. 331, p. 1942, § 15, effective June 2.

## **ARTICLE 4**

### **Court of Appeals**

|             |                                                                             |             |                                                                                      |
|-------------|-----------------------------------------------------------------------------|-------------|--------------------------------------------------------------------------------------|
| 13-4-101.   | Establishment.                                                              | 13-4-102.2. | Interlocutory appeals of motions to dismiss actions involving constitutional rights. |
| 13-4-102.   | Jurisdiction.                                                               |             |                                                                                      |
| 13-4-102.1. | Interlocutory appeals of determinations of questions of law in civil cases. | 13-4-103.   | Number of judges - qualifications.                                                   |

|             |                                                 |           |                                                                             |
|-------------|-------------------------------------------------|-----------|-----------------------------------------------------------------------------|
| 13-4-104.   | Term of office - selection.                     | 13-4-110. | Determination of jurisdiction<br>- transfer of cases.                       |
| 13-4-104.5. | Temporary judicial duties.                      |           |                                                                             |
| 13-4-105.   | Chief judge.                                    | 13-4-111. | Employees - compensation.                                                   |
| 13-4-106.   | Divisions.                                      | 13-4-112. | Fees of the clerk of court of<br>appeals - equal justice fee<br>collection. |
| 13-4-107.   | Place of court.                                 |           |                                                                             |
| 13-4-108.   | Supreme court review.                           | 13-4-113. | Publication of decisions.                                                   |
| 13-4-109.   | Certification of cases to the<br>supreme court. |           |                                                                             |

#### **13-4-101. Establishment.**

There is hereby created the court of appeals, pursuant to section 1 of article VI of the state constitution. The court of appeals shall be a court of record. Judges of the court of appeals may serve in any state court with full authority as provided by law, when called upon to do so by the chief justice of the supreme court.

**Source:** L. 69: p. 265, § 1. C.R.S. 1963: § 37-21-1. L. 90: Entire section amended, p. 1247, § 1, effective April 5.

#### **ANNOTATION**

**Court of appeals created to relieve appellate backlog.** Colorado has now provided for an intermediate court of appeals, which will relieve the appellate

backlogs caused by the press of court business in recent years. Tanksley v. Warden State Penitentiary, 429 F.2d 1308 (10th Cir. 1970).

#### **13-4-102. Jurisdiction.**

(1) Any provision of law to the contrary notwithstanding, the court of appeals shall have initial jurisdiction over appeals from final judgments of, and interlocutory appeals of certified questions of law in civil cases pursuant to section 13-4-102.1 from, the district courts, the probate court of the city and county of Denver, and the juvenile court of the city and county of Denver, except in:

(a) Repealed.

- (b) Cases in which a statute, a municipal charter provision, or an ordinance has been declared unconstitutional;
  - (c) Cases concerned with decisions or actions of the public utilities commission;
  - (d) Water cases involving priorities or adjudications;
  - (e) Writs of habeas corpus;
  - (f) Cases appealed from the county court to the district court, as provided in section 13-6-310;
  - (g) Review actions of the Colorado dental board in refusing to issue or renew or in suspending or revoking a license to practice dentistry, dental therapy, or dental hygiene, as provided in section 12-220-208;
  - (h) Cases appealed from the district court granting or denying postconviction relief in a case in which a sentence of death has been imposed for an offense charged prior to July 1, 2020.
- (2) The court of appeals has initial jurisdiction to:
- (a) Review awards or actions of the industrial claim appeals office, as provided in articles 43 and 74 of title 8, C.R.S.;
  - (b) Review orders of the banking board granting or denying charters for new state banks, as provided in article 102 of title 11, C.R.S.;
  - (c) (Deleted by amendment, L. 2006, p. 761, § 19, effective July 1, 2006.)
  - (d) Review all final actions and orders appropriate for judicial review of the Colorado podiatry board, as provided in section 12-290-115;
  - (e) Review all final actions and orders appropriate for judicial review of the Colorado state board of chiropractic examiners, as provided in section 12-215-122;
  - (f) Review actions of the Colorado medical board in refusing to grant or in revoking or suspending a license or in placing the holder thereof on probation, as provided in section 12-240-127;
  - (g) Review actions of the Colorado dental board in refusing to issue or renew or in suspending or revoking a license to practice dentistry, dental therapy, or dental hygiene, as provided in section 12-220-208;
  - (h) Review all final actions and orders appropriate for judicial review of the state board of nursing, as provided in articles 255 and 295 of title 12;

- (i) Review actions of the state board of optometry in refusing to grant or renew, revoking, or suspending a license, issuing a letter of admonition, or placing a licensee on probation or under supervision, as provided by section 12-275-122 (2);
- (j) Review all final actions and orders appropriate for judicial review of the director of the division of professions and occupations, as provided in article 285 of title 12;
- (k) Review all final actions and orders appropriate for judicial review of the state board of pharmacy, as provided in section 12-280-128;
- (l) Review decisions of the board of education of a school district in proceedings for the dismissal of a teacher, as provided in section 22-63-302 (10), C.R.S.;
- (m) Review final decisions or orders of the Colorado real estate commission, as provided in parts 2 and 5 of article 10 of title 12;
- (m.5) Repealed.
- (n) Review final decisions and orders of the Colorado civil rights commission, as provided in parts 3, 4, and 7 of article 34 of title 24, C.R.S.;
- (o) Repealed.
- (p) Review decisions of the state personnel board, as provided in section 24-50-125.4, C.R.S.;
- (q) Review final actions and orders appropriate for judicial review of the state electrical board, as provided in article 115 of title 12;
- (r) Review all final actions and orders appropriate for judicial review of the state board of licensure for architects, professional engineers, and professional land surveyors, as provided in section 12-120-407 (4);
- (s) Review final actions and orders of the boards, as defined in section 12-245-202 (1), that are appropriate for judicial review and final actions;
- (t) (Deleted by amendment, L. 2008, p. 426, § 25, effective August 5, 2008.)
- (u) Review all final actions and orders appropriate for judicial review of the coal mine board of examiners, as provided in section 34-22-107 (8), C.R.S.;
- (v) Review final actions and orders of the director of the division of professions and occupations appropriate for judicial review, as provided in section 12-145-116;
- (w) Review final actions and orders appropriate for judicial review of the examining board of plumbers;

(x) Review decisions of the board of assessment appeals, as provided in section 39-8-108 (2), C.R.S.;

(y) and (z) Repealed.

(aa) (Deleted by amendment, L. 98, p. 818, § 14, effective August 5, 1998.)

(bb) Repealed.

(cc) Review final actions and orders appropriate for judicial review of the securities commissioner, as provided in section 11-59-117, C.R.S.;

(dd) Review final actions and orders appropriate for judicial review of the commissioner of insurance, pursuant to title 10, C.R.S.;

(ee) Review final actions and orders appropriate for judicial review of the Colorado racing commission, as provided in section 44-32-507 (4);

(ff) Review final actions and orders appropriate for judicial review of the Colorado passenger tramway safety board, as provided in section 12-150-109;

(gg) Repealed.

(hh) Review final actions and orders appropriate for judicial review of the state board of veterinary medicine, as provided in section 12-315-113;

(ii) Review all final actions and orders appropriate for judicial review of the director of the division of professions and occupations, as provided in section 12-225-109 (4);

(jj) Review all final actions and orders appropriate for judicial review of the executive director of the department of labor and employment, as provided in section 8-20-104, C.R.S.;

(kk) Review all final actions and orders appropriate for judicial review of the director of the division of professions and occupations in the department of regulatory agencies, as provided in section 12-270-114 (8);

(ll) Repealed.

(mm) Review final decisions or orders of the administrator as provided in article 20 of title 5; and

(nn) Review final decisions or orders of the administrator as provided in article 21 of title 5.

(3) The court of appeals shall have authority to issue any writs, directives, orders, and mandates necessary to the determination of cases within its jurisdiction.

(4) (Deleted by amendment, L. 95, p. 235, § 4, effective April 17, 1995.)

**Source:** **L. 69:** p. 265, § 1. **C.R.S. 1963:** § 37-21-2. **L. 73:** p. 358, § 2. **L. 74:** (1)(a) repealed, p. 236, § 4, effective July 1. **L. 75:** (2) amended, p. 555, § 2, effective April 9; (2) amended, p. 459, § 9, effective July 1. **L. 77:** (2) amended, p. 717, § 2, effective July 1. **L. 78:** (2) amended, p. 302, § 4, effective July 1. **L. 79:** (2) amended, p. 919, § 1, effective July 1; (2) amended, p. 803, § 5, effective July 1; (2) amended, p. 553, § 1, effective March 1, 1980. **L. 80:** (1)(g) amended, p. 438, § 2, effective January 1, 1981. **L. 83:** (2) amended, p. 473, § 4, effective April 5. **L. 85:** (2) amended, p. 566, § 12, effective July 1; (2) amended, p. 484, § 2, effective July 1; (2) amended, p. 532, § 12, effective July 1; (2) amended, p. 505, § 21, effective July 1; (2) amended, p. 510, § 8, effective July 1; (2) amended, p. 538, § 13, effective July 1; IP(1) and (1)(f) amended, p. 570, § 3, effective November 14, 1986. **L. 86:** (2) amended, p. 978, § 9, effective April 3; (2) amended, p. 653, § 31, effective July 1; (2) amended, p. 498, § 116, effective July 1; (2) amended, p. 621, § 34, effective July 1; (2) amended, p. 1217, § 14, effective July 1. **L. 88:** (2)(x) added, p. 1305, § 14, effective April 29; (2)(o) and (2)(p) amended and (2)(u) added, p. 1199, § 9, effective May 3; (2)(o) and (2)(p) amended and (2)(r) added, p. 470, § 12, effective July 1; (2)(o) amended and (2)(s) and (2)(t) added, p. 568, § 6, effective July 1; (2)(o) and (2)(p) amended and (2)(v) added, p. 582, § 2, effective July 1; (2)(q) added, p. 502, § 22, effective July 1; (2)(w) added, p. 593, § 19, effective July 1. **L. 89:** (2)(m) amended, p. 744, § 23, effective April 3; (2)(y), (2)(z), and (2)(aa) added, pp. 728, 747, 406, §§ 31, 4, 6, effective July 1. **L. 89, 1st Ex. Sess.:** (2)(bb) added, p. 13, § 3, effective July 7. **L. 90:** (2)(l) amended, p. 1128, § 2, effective July 1. **L. 91:** (2)(cc) added, p. 2425, § 4, effective June 8; (2)(a) amended and (4) added, p. 1337, § 54, effective July 1. **L. 92:** (2)(dd) added, p. 1613, § 167, effective May 20; (1)(b) amended, p. 271, § 1, effective July 1. **L. 93:** (2)(ee) added, p. 1235, § 2, effective July 1; (2)(ee) added, p. 1033, § 14, effective July 1; (2)(ff) added, p. 1532, § 1, effective July 1. **L. 94:** (2)(y) repealed, p. 705, § 7, effective April 19; (1)(h) added, p. 1474, § 3, effective July 1. **L. 95:** (2)(a) and (4) amended, p. 235, § 4, effective April 17; (2)(f) amended, p. 1072, § 24, effective July 1; (2)(aa) amended, p. 419, § 6, effective July 1. **L. 98:** (2)(s) amended, p. 1158, § 28, effective July 1; (2)(gg) added, p. 1186, § 4, effective July 1; (2)(o) and (2)(aa) amended, p. 818, § 14, effective August 5. **L. 2001:** (2)(ii) added, p. 1260, § 8, effective June 5; (2)(hh) added, p. 480, § 13, effective July 1. **L. 2003:** (2)(jj) added, p. 1828, § 21, effective May 21; (2)(b) amended, p. 1209, § 18, effective July 1. **L. 2004:** (2)(c) amended, p. 1310, § 52, effective May 28; (2)(g) amended, p. 857, § 2, effective July 1. **L. 2006:** (2)(c) and (2)(r) amended, p. 761, § 19, effective July 1. **L. 2008:** (2)(kk) added, p. 830, § 3, effective July 1; (2)(s) and (2)(t) amended, p. 426, § 25, effective August 5. **L. 2010:** (2)(f) amended, (HB 10-1260), ch. 403, p. 1985, § 70, effective July 1; IP(1) amended, (HB 10-1395), ch. 364, p. 1719, § 1, effective August 11. **L. 2011:** IP(2) and (2)(i) amended, (SB 11-094), ch. 129, p. 451, § 29, effective April 22; IP(2) and (2)(s) amended, (SB 11-187), ch. 285, p. 1326, § 66, effective July 1. **L. 2012:** (2)(z) amended, (HB 12-1297), ch. 139, p. 506, § 4, effective April 26; (2)(k) amended, (HB 12-1311), ch. 281, p. 1617, § 33, effective July 1. **L. 2013:** (2)(m.5) added, (HB 13-1277), ch. 352, p. 2054, § 4, effective January 1, 2015. **L. 2014:** (2)(kk) amended and (2)(ll) added, (HB 14-1398), ch. 353, p. 1646, § 3, effective June 6; (2)(g) amended, (HB 14-1227), ch. 363, p. 1736, §

41, effective July 1. **L. 2016:** (1)(g) amended, (SB 16-189), ch. 210, p. 758, § 22, effective June 6. **L. 2018:** (2)(gg) amended, (SB 18-1375), ch. 274, p. 1696, § 9, effective May 29; (2)(ee) amended, (HB 18-1024), ch. 26, p. 321, § 8, effective October 1; (2)(gg) amended, (SB 18-036), ch. 34, p. 377, § 4, effective October 1. **L. 2019:** (2)(o) repealed, (SB 19-241), ch. 390, p. 3463, § 6, effective August 2; (2)(mm) added, (SB 19-002), ch. 157, p. 1872, § 4, effective August 2; (2)(d), (2)(e), (2)(f), (2)(g), (2)(h), (2)(i), (2)(j), (2)(k), (2)(m), (2)(o), (2)(q), (2)(r), (2)(s), (2)(v), (2)(bb), (2)(ff), (2)(hh), (2)(ii), and (2)(kk) amended, (HB 19-1172), ch. 136, p. 1661, § 66, effective October 1. **L. 2020:** (1)(h) amended, (SB 20-100), ch. 61, p. 204, § 2, effective March 23; (2)(m.5) repealed, (HB 20-1402), ch. 216, p. 1045, § 23, effective June 30; (2)(bb) repealed, (HB 20-1183), ch. 157, p. 699, § 49, effective July 1; (2)(gg) repealed, (HB 20-1001), ch. 302, p. 1516, § 13, effective July 14; (1)(g) amended, (HB 20-1056), ch. 64, p. 262, § 4, effective September 14; (2)(kk) amended and (2)(ll) repealed, (HB 20-1217), ch. 93, p. 369, § 3, effective September 14. **L. 2021:** (2)(kk) amended, (SB 21-003), ch. 4, p. 29, § 6, effective January 21; (2)(nn) added, (HB 21-1282), ch. 482, p. 3444, § 2, effective January 1, 2022. **L. 2022:** (1)(g) and (2)(g) amended, (SB 22-219), ch. 381, p. 2724, § 32, effective January 1, 2023.

**Editor's note:** (1) Amendments to subsection (2) by House Bill 79-1234 and Senate Bill 79-038 were harmonized with Senate Bill 79-099, effective March 1, 1980.

(2) Amendments to subsection (2) by Senate Bill 85-013, Senate Bill 85-049, House Bill 85-1030, House Bill 85-1031, House Bill 85-1032, and House Bill 85-1209 were harmonized.

(3) Amendments to subsection (2) by Senate Bill 86-011, Senate Bill 86-012, Senate Bill 86-165, House Bill 86-1029, and House Bill 86-1268 were harmonized.

(4) Amendments to subsection (2)(ee) by House Bill 93-1034 and House Bill 93-1268 were harmonized.

(5) Amendments to subsection (2)(gg) by HB 18-1375 and SB 18-036 were harmonized.

(6) Subsection (2)(o) was amended in HB 19-1172, effective October 1, 2019. However, those amendments were superseded by the repeal of subsection (2)(o) in SB 19-241, effective August 2, 2019.

**Cross references:** For the legislative declaration contained in the 2003 act enacting subsection (2)(jj), see section 1 of chapter 279, Session Laws of Colorado 2003. For the legislative declaration in SB 19-002, see section 1 of chapter 157, Session Laws of Colorado 2019. For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of Colorado 2022.



## ANNOTATION

**Law reviews.** For article, "The Problem of Delay in the Colorado Court of Appeals", see 58 Den. L.J. 1 (1980). For article, "Knowing When to Change Trains: The Ins and Outs of Interlocutory Appeals", see 41 Colo. Law. 31 (June 2012). For article, "In 'Case' You Missed It—2020-21: Real Estate Case Law Highlights", see 51 Colo. Law. 44 (Jan. 2022).

**General assembly may change appellate subject matter jurisdiction.** The changes brought about by this section, § 13-4-108, and § 13-4-110 pertain to the subject matter, i.e., jurisdiction of the supreme court and court of appeals and, as such, the changes are within the authority of the general assembly. *Bill Dreiling Motor Co. v. Court of Appeals*, 171 Colo. 448, 468 P.2d 37 (1970).

**Statutes pertaining to the creation of appellate remedies take precedence over judicial rules of procedure.** *Bill Dreiling Motor Co. v. Court of Appeals*, 171 Colo. 448, 468 P.2d 37 (1970).

**A court cannot adopt a rule that changes jurisdiction.** The supreme court has authority to adopt rules for the regulation of the business of the courts and the procedure to be followed by litigants in doing that business. Nonetheless, absent constitutional authority, it is equally clear that this court cannot adopt a rule that changes jurisdiction of a court contrary to a provision of a statute. *Bill Dreiling Motor Co. v. Court of Appeals*, 171 Colo. 448, 468 P.2d 37 (1970).

Where the general assembly has enacted statutes prescribing appellate procedure, this court may not modify the jurisdiction granted it by statute. *People v. Meyers*, 43 Colo. App. 63, 598 P.2d 526 (1979).

**The manner in which subject matter jurisdiction is exercised** is properly within the scope of the supreme court's rule-making powers vested by § 2(1) of art. VI, Colo. Const. This procedure has been established and is set forth in C.A.R. 50-57. *Bill Dreiling Motor Co. v. Court of Appeals*, 171 Colo. 448, 468 P.2d 37 (1970).

**Court of appeals has no jurisdiction over constitutionality of a city charter.** Where claimant contends that a city charter provision is unconstitutional, the Colorado court of appeals does not have jurisdiction to decide the issue. *McCamant v. City & County of Denver*, 31 Colo. App. 287, 501 P.2d 142 (1972).

**Jurisdiction of court of appeals to hear appeal.** Whether the court of appeals has jurisdiction to hear an appeal from the district court, or any part thereof, depends upon whether the matters presented were properly before the district court. *Zaharia v. County Court ex rel. County of Jefferson*, 673 P.2d 378 (Colo. App. 1983).

**An appeal that is filed before the entry of final judgment** does not remove jurisdiction from the trial court. *People v. Rosales*, 134 P.3d 429 (Colo. App. 2005).

**The final judgment of the district court, following a trial de novo, is subject to review by the court of appeals under both**

§ 13-6-310 and this section. *Bovard v. People*, 99 P.3d 585 (Colo. 2004).

**This section provides that court of appeals does not have initial jurisdiction over appeals from summary proceeding under certain election statutes**, but statute does not bar court of appeals' jurisdiction after the supreme court has declined to exercise its initial jurisdiction. *Zivian v. Brooke-Hitching*, 28 P.3d 970 (Colo. App. 2001).

**Right to appeal to courts from special assessment for public improvements** does not exist except by statute. *Orchard Court Dev. Co. v. City of Boulder*, 182 Colo. 361, 513 P.2d 199 (1973).

**Subsection (1)(h) expressly divests the court of appeals of jurisdiction over appeals from postconviction proceedings in cases in which the death penalty has been imposed.** When this provision is combined with § 16-12-101.5 and §§ 16-12-201 to 16-12-210, the legislature has made plain that it does not want the court of appeals to resolve issues arising from cases in which the death penalty has been imposed. *People v. Owens*, 219 P.3d 379 (Colo. App. 2009).

**Subsection (2)(x) does not, by its language, limit the court of appeals' jurisdiction to review board of assessment appeals decisions** that are not related to property valuation. *Prop. Tax Adjustment Specialists, Inc. v. Mesa County Bd. of Comm'rs*, 956 P.2d 1277 (Colo. App. 1998).

**Final judgment defined.** A final judgment is defined as one which ends the

particular action in which it is entered, leaving nothing further for the court pronouncing it to do in order to completely determine the rights of the parties involved in the proceeding. *D.H. v. People*, 192 Colo. 542, 561 P.2d 5 (1977); *Harding Glass Co. v. Jones*, 640 P.2d 1123 (Colo. 1982); *People in Interest of S.M.O.*, 931 P.2d 572 (Colo. App. 1996).

A decision on the merits is a final judgment for appeal purposes despite any outstanding issue of attorney fees and certification pursuant to C.R.C.P. 54 (b) is not a prerequisite to appellate review of the merits of a case if a judgment has been entered and only the issue of attorney fees remains to be determined. *Baldwin v. Bright Mortg. Co.*, 757 P.2d 1072 (Colo. 1988); *LHM Corp., TCD v. Martinez*, 2021 CO 78, 499 P.3d 1050 (overruling *Ferrell v. Glenwood Brokers, Ltd.*, 848 P.2d 936 (Colo. 1993)), to the extent it suggests appealability of a judgment hinges on the fact-specific determination of whether the attorney fees at issue are best classified as costs or damages).

However, a judgment under § 10-3-1116 (1) is not final until a determination of attorney fees and costs is made because attorney fees and costs are components of damages under the statute. *Hall v. Am. Standard Ins. Co. of Wis.*, 2012 COA 201, 292 P.3d 1196.

An arbitrator's award is not a "final judgment" within the meaning of this section. *S. Wash. Assoc. v. Flanagan*, 859 P.2d 217 (Colo. 1992).

Order granting a stay in action pending resolution of case involving similar issues in another state was not a final appealable order where the issues and parties were not identical in the two proceedings and the order did not preclude plaintiff from seeking to lift the stay based upon a showing of prejudice. *Things Remembered v. Fireman's Ins. Co.*, 924 P.2d 1089 (Colo. App. 1996).

**Court of appeals jurisdiction is limited to review of final orders**, and the parties cannot confer subject matter jurisdiction upon the court by consent. *Arevalo v. Colo. Dept. of Human Servs.*, 72 P.3d 436 (Colo. App. 2003).

Court of appeals does not have jurisdiction to review the trial court's interpretation and enforcement of a settlement agreement until the trial court either certifies its orders as final pursuant to C.R.C.P. 54(b) or issues an order that outlines the parties' exact responsibilities pursuant to the settlement agreement and services plan and does not allow the trial court to further modify or vacate these responsibilities. *Arevalo v. Colo. Dept. of Human Servs.*, 72 P.3d 436 (Colo. App. 2003).

**A judgment of conviction is not final until sentence is imposed.** Absent a specific finding that the victim did not suffer a pecuniary loss, restitution is a mandatory part of the sentence. Thus, absent such a finding, sentencing is not final until restitution is ordered. *People v. Rosales*, 134 P.3d 429 (Colo. App. 2005).

**Order of dismissal without prejudice is a final judgment when the applicable**

**statute of limitations period has expired.** *SMLL, L.L.C. v. Daly*, 128 P.3d 266 (Colo. App. 2005).

**A transfer order from juvenile to district court** is not a final judgment from which appeal lies because it is interlocutory in nature and in no sense completely determines the rights of the parties. *D.H. v. People*, 192 Colo. 542, 561 P.2d 5 (1977).

**Juvenile court's order denying a tribe's request to transfer jurisdiction to a tribal court is a final, appealable order** based on the collateral order doctrine. *People in Interest of L.R.B.*, 2019 COA 85, 487 P.3d 1058 (decided prior to 2019 amendment to § 19-1-126).

**Remand for further proceedings before city council of case against ordinance was final appealable order.** Where the city council in enacting a special assessment ordinance had made all the required findings and in an action to enjoin the assessment, the district court, without explicitly stating whether it was affirming or reversing the council's action, remanded the case to the council for further proceedings, such action by the district court constituted final judgment and the court of appeals had jurisdiction to consider any appeal from the district court's order. *Cline v. City of Boulder*, 35 Colo. App. 349, 532 P.2d 770 (1975).

**Trial court's order on attorney fees** was a final judgment and could have been reviewed by the court of appeals if a party had appealed some other aspect of the case and the matter was otherwise properly

before the court. *Bye v. District Court*, 701 P.2d 56 (Colo. 1985).

**However, court of appeals has initial jurisdiction to review an order regarding attorney fees that has been certified as final by the trial court**, even though other claims in the underlying action are pending before the trial court. *Steven A. Gall, P.C. v. District Court*, 965 P.2d 1268 (Colo. 1998).

**A postjudgment collection order is final if** the order ends the particular part of the action in which it is entered, leaves nothing further for the court pronouncing it to do in order to completely determine the rights of the parties as to that part of the proceeding, and is more than a ministerial or administrative determination. *Luster v. Brinkman*, 250 P.3d 664 (Colo. App. 2010).

**An order dismissing a plaintiff's complaint based on C.R.C.P. 12(b)(5) resolved the rights of the parties** as to the claims in the complaint and left nothing for the court to do, so it was a final and appealable order. *Scott v. Scott*, 2018 COA 25, 428 P.3d 626.

**A plaintiff cannot create final action for purposes of appeal by dismissing without prejudice** the case's remaining claims after the trial court dismissed with prejudice the case's other claims via a partial motion to dismiss. *Wilson v. Kennedy*, 2020 COA 122, 490 P.3d 855.

**No review of issue raised first time on appeal.** Questioning the constitutionality of a statute for the first time in an appellate brief will not successfully raise the issue for review by Colorado supreme court on

appeal. *Manka v. Martin*, 200 Colo. 260, 614 P.2d 875 (1980).

**"Cases in which a statute . . . has been declared unconstitutional" in subsection (1)(b) applies to situations in which a district court has declared a statute to be facially unconstitutional.** *People v. Hernandez*, 2025 CO 13, 566 P.3d 995.

**No jurisdiction over constitutionality of statute.** Court of appeals did not have jurisdiction to consider the constitutionality of a statute, despite a supreme court order stating that jurisdiction of the case "shall be retained by the court of appeals" because the general assembly did not intend to confer upon the supreme court the power to expand and contract the jurisdictional authority of the court of appeals. *People v. Salazar*, 715 P.2d 1265 (Colo. App. 1985); *Kollodge v. Charnes*, 741 P.2d 1260 (Colo. App. 1987); *People v. Woertman*, 786 P.2d 443 (Colo. App. 1989); *Flores v. Dept. of Rev.*, 802 P.2d 1175 (Colo. App. 1990); *People v. Truesdale*, 804 P.2d 287 (Colo. App. 1990); *Lucchesi v. State*, 807 P.2d 1185 (Colo. App. 1990); *People v. Merrill*, 816 P.2d 958 (Colo. App. 1991); *People v. Robinson*, 833 P.2d 832 (Colo. App. 1992).

**Court of appeals has jurisdiction over constitutionality of a statute when issue raised in appeal of decisions of statutorily created tribunals under subsection (2).** *Indus. Comm'n v. Bd. of County Comm'rs*, 690 P.2d 839 (Colo. 1984).

**Statute does not otherwise limit court of appeals authority to address constitutional issues raised in a Colorado appellate rule promulgated by the**

**Colorado supreme court.** Refusal to address the constitutional issues raised over C.A.R. 3.4 may mean that appellants would have no forum for their arguments, thus court of appeals concluded it had jurisdiction to address appellant's challenges to constitutionality of the rule. *People ex rel. T.D.*, 140 P.3d 205 (Colo. App. 2006).

**Constitutional challenges to sales and use tax provisions of municipal code** made to an administrative agency but were not made in declaratory judgment action in district court are not properly preserved for appellate review. *Arapahoe Roofing & Sheet Metal v. Denver*, 831 P.2d 451 (Colo. 1992).

**Jurisdiction of the court of appeals was not precluded by subsection (1)(b)** since the court was being asked to determine the facial constitutionality of an executive order of the mayor of the city and county of Denver rather than a statute, charter provision, or ordinance. *Casados v. City & County of Denver*, 832 P.2d 1048 (Colo. App. 1992) (decided prior to 1992 amendment to subsection (1)(b)), rev'd on other grounds, 862 P.2d 908 (Colo. 1993).

**General assembly's authority to determine the jurisdiction of the court of appeals is exclusive.** *S. Wash. Assoc. v. Flanagan*, 859 P.2d 217 (Colo. 1992).

**Parties to an arbitration agreement cannot define and prescribe the powers of a court of law.** Where a contract term purported to allow an appellate court to conduct a substantive review of the arbitration panel's award, contrary to the controlling statutes, clause was void and

unenforceable. *S. Wash. Assoc. v. Flanagan*, 859 P.2d 217 (Colo. 1992).

**Court of appeals has jurisdiction to address facial constitutionality challenge to a municipal executive order.** *Casados v. City & County of Denver*, 832 P.2d 1048 (Colo. App. 1992), rev'd on other grounds, 862 P.2d 908 (Colo. 1993).

**However, where the court of appeals refers a question of its jurisdiction to the supreme court**, which then determined the case properly within the court of appeal's jurisdiction, that ruling is conclusive. *Barela v. Beye*, 916 P.2d 668 (Colo. App. 1996).

**Court of appeals lacks jurisdiction to review an arbitration award;** jurisdiction extends only to orders and judgments entered by statutorily specified courts. *Thomas v. Farmers Ins. Exch.*, 857 P.2d 532 (Colo. App. 1993).

**Court of appeals does not possess general powers of supervision over lower courts or attorneys appearing therein.** Rather, such powers are vested in the supreme court. *People v. Bergen*, 883 P.2d 532 (Colo. App. 1994).

**Defendant's assertion that Colorado's homicide statutes violate principles of equal protection** brings into question the constitutionality of a statute and is therefore outside the jurisdiction of the court. *People v. Seigler*, 832 P.2d 980 (Colo. App. 1991).

**Notwithstanding the provisions of this section, the supreme court may retain and review an appeal** of a declaratory order of the state personnel board that should have been filed with the court of appeals. The

court's authority rests in its power under C.A.R. 50(b) to review cases pending in the court of appeals prior to judgment and under C.A.R. 2 to suspend the rules of appellate procedure. *Colo. Ass'n of Pub. Emp. v. Dept. of Hwys.*, 809 P.2d 988 (Colo. 1991).

**Court of appeals does not have jurisdiction over writs of habeas corpus.** All district courts have jurisdiction in habeas corpus proceedings and one seeking habeas corpus may select his forum. *Duran v. Price*, 868 P.2d 375 (Colo. 1994).

**Crim. P. 35(c) motion is properly vested in the court of appeals.** *Duran v. Price*, 868 P.2d 375 (Colo. 1994).

**Under this section, the court of appeals does not have jurisdiction over an appeal of a district court's decision modifying a county court decision,** regardless of whether a district court judgment which modifies a county court judgment is a final judgment of the district court under rule 37 of the Colorado rules of criminal procedure. *People v. Smith*, 874 P.2d 452 (Colo. App. 1993).

**The final judgment of the district court, following a trial de novo, is subject to review by the court of appeals under both § 13-6-310 and this section.** *Bovard v. People*, 99 P.3d 585 (Colo. 2004).

**The dismissal of a claim without prejudice is generally not appealable unless** such dismissal prohibits further proceedings, such as an applicable statute of limitations. *Golden Lodge No. 13, I.O.O.F. v. Easley*, 916 P.2d 666 (Colo. App. 1996).

The dismissal of a claim without prejudice for failure to exhaust the administrative remedies provided by the laws and regulations of the Sovereign Lodge was not appealable because the defendant Golden Lodge could at any time file an internal appeal protesting the actions of the Grand Lodge with the supreme governing body, the Sovereign Grand Lodge. *Golden Lodge No. 13, I.O.O.F. v. Easley*, 916 P.2d 666 (Colo. App. 1996).

**A denial of a summary judgment motion is not generally considered a final decision that is immediately appealable under this section.** *City of Lakewood v. Brace*, 919 P.2d 231 (Colo. 1996).

**An appeal may be taken from an interlocutory order** denying a motion to dismiss based on tribal sovereign immunity when the issue presented is one of law not of fact. *Rush Creek Solutions, Inc. v. Ute Mtn. Ute Tribe*, 107 P.3d 402 (Colo. App. 2004).

**Trial court's order reserving ruling on a summary judgment motion and allowing full discovery to proceed** is a final judgment for purposes of conferring appellate jurisdiction. *Furlong v. Gardner*, 956 P.2d 545 (Colo. 1998).

**Trial court's direction regarding how the proceeds of moneys recovered by defendants should be applied as a result of other related judgments does not alter the finality of the underlying judgment.** *BDG Int'l, Inc. v. Bowers*, 2013 COA 52, 303 P.3d 140.

**The same rules of finality apply in probate cases as in other civil cases.** An

order of the probate court is final if it ends the particular action in which it is entered and leaves nothing further for the court pronouncing it to do in order to completely determine the rights of the parties as to that proceeding. In re Estate of Scott, 119 P.3d 511 (Colo. App. 2004), aff'd, 136 P.3d 892 (Colo. 2006).

**C.R.C.P. 54(b) governs the interlocutory appeal of a probate court order.** In re Estate of Scott, 119 P.3d 511 (Colo. App. 2004), aff'd, 136 P.3d 892 (Colo. 2006).

**Where probate court's order of partial summary judgment adjudicated fewer than all of the parties' claims, it was not a final judgment,** and party could not appeal the order without C.R.C.P. 54(b) certification. In re Estate of Scott, 119 P.3d 511 (Colo. App. 2004), aff'd, 136 P.3d 892 (Colo. 2006).

**As reenacted, § 22-63-302 authorizes teachers to appeal only school board decisions of dismissal.** Under § 22-63-302, the court does not have jurisdiction to consider appeals of school board decisions placing a teacher on probation. Holdridge v. Bd. of Educ., 881 P.2d 448 (Colo. App. 1994).

**Because an order directing a new trial is not a final judgment,** the court of appeals has no jurisdiction over such an appeal, even if the defendant assert that a new trial would violate his or her rights. People v. Jones, 942 P.2d 1258 (Colo. App. 1996).

**Trial court retains jurisdiction to determine substantive matters when a**

**party files a premature notice of appeal of a nonfinal judgment.** Barring extraordinary circumstances, a judgment subject to C.R.C.P. 54(b) certification must be so certified in order to be considered final and sufficient to transfer jurisdiction to the court of appeals. Musick v. Woznicki, 136 P.3d 244 (Colo. 2006).

**A trial court's ruling on a question of sovereign immunity** under the CGIA raised by a public entity or public employee is a final, appealable judgment. However, when a trial court refuses to dismiss on the basis of allegations of willful and wanton conduct that would eliminate the employee's immunity, its order is not immediately appealable. Carothers v. Archuleta County Sheriff, 159 P.3d 647 (Colo. App. 2006).

**Court of appeals has jurisdiction to address an appeal of a trial court's Foreign Sovereign Immunities Act (FSIA) immunity ruling on interlocutory appeal.** Absent any Colorado appellate decision addressing whether the court may review an interlocutory appeal as a final judgment, the court may look to federal authority interpreting the federal appellate jurisdiction statute. Considering federal appellate practice and Colorado case law, the FSIA immunity rulings are immediately appealable as final judgments within the meaning of this section and, based on principles of neutrality and sound appellate practice, the court of appeals had jurisdiction to immediately review a trial court's FSIA immunity ruling. United States Taekwondo v. Kukkiwon, 2013 COA 105, 411 P.3d 782.

**Trial court's act of state ruling is not immediately appealable as a final judgment within the meaning of this section.** Based on federal appellate practice and Colorado case law, the act of state rulings are not immediately appealable pursuant to this section. Addressing act of state doctrine issues on interlocutory appeal would require appellate courts to attempt to predict not only when and on what basis the trial court will render its final decision on the merits, but what the foreign policy implications of the act of state ruling will be at that time. The more sound appellate practice is to wait to address act of state issues on appeal from final judgment, when an appellate court can more easily assess the foreign policy implications of its ruling. *United States Taekwondo v. Kukkiwon*, 2013 COA 105, 411 P.3d 782.

**The court of appeals has jurisdiction to review a district court decision regarding matters within the water courts' exclusive jurisdiction only insofar as is necessary to determine its own and the district court's jurisdiction.** Although the water courts do not, in general, have exclusive jurisdiction to determine the ownership of a water right as opposed to the use of the right under the rule of priority of appropriation, the rule is otherwise when the ownership claims are based on adverse possession and abandonment. In this case, the district court has jurisdiction only with regard to a damages claim, necessitating reversal of the holdings regarding ownership. *Archuleta v. Gomez*, 140 P.3d 281 (Colo. App. 2006).

**Appellate relief must be available to review whether a district court has**

**overstepped its jurisdiction** when it transfers a county court case to the district court in violation of a chief judge's order setting forth the proper procedure. *People v. Maser*, 2012 CO 41, 278 P.3d 361.

**Appellate court may consider claims for prosecutorial misconduct when defendant seeks reversal of the conviction and a new trial.** *People v. Clark*, 2015 COA 44, 370 P.3d 197.

**The court of appeals can order a limited remand to the district court for restoration proceedings pursuant to § 16-8.5-111** for future determination of motions to dismiss counsel and dismiss the appeal. *People v. Liggett*, 2018 COA 94M, 490 P.3d 405.

**Applied** in *Evans v. Simpson*, 190 Colo. 426, 547 P.2d 931 (1976); *In re Petrafeck v. Indus. Comm'n*, 191 Colo. 566, 554 P.2d 1097 (1976); *Kelce v. Touche Ross & Co.*, 37 Colo. App. 352, 549 P.2d 415 (1976); *Mizel v. Banking Bd.*, 196 Colo. 98, 581 P.2d 306 (1978); *Thomas v. County Court*, 198 Colo. 87, 596 P.2d 768 (1979); *People v. Malacara*, 199 Colo. 243, 606 P.2d 1300 (Colo. 1980); *People v. Scott*, 630 P.2d 615 (Colo. 1981); *In re W.D.A. v. City & County of Denver*, 632 P.2d 582 (Colo. 1981); *People v. Thatcher*, 638 P.2d 760 (Colo. 1981); *People v. Abbott*, 638 P.2d 781 (Colo. 1981); *Riley v. Indus. Comm'n*, 628 P.2d 147 (Colo. App. 1981); *People v. Boyd*, 642 P.2d 1 (Colo. 1982); *People v. Mason*, 642 P.2d 8 (Colo. 1982); *In re P.F. v. Walsh*, 648 P.2d 1067 (Colo. 1982); *People v. Wieder*, 693 P.2d 1006 (Colo. App. 1984), *aff'd*, 722 P.2d 396 (Colo. 1986); *People v. Fields*, 697



P.2d 749 (Colo. App. 1984); Leske v. Golder, 124 P.3d 863 (Colo. App. 2005).

### **13-4-102.1. Interlocutory appeals of determinations of questions of law in civil cases.**

(1) The court of appeals, under rules promulgated by the Colorado supreme court, may permit an interlocutory appeal of a certified question of law in a civil matter from a district court or the probate court of the city and county of Denver if:

(a) The trial court certifies that immediate review may promote a more orderly disposition or establish a final disposition of the litigation; and

(b) The order involves a controlling and unresolved question of law.

(2) A majority of the judges who are in regular active service on the court of appeals and who are not disqualified may, if approved by rules promulgated by the Colorado supreme court, order that an interlocutory appeal permitted by the court of appeals be heard or reheard by the court of appeals en banc.

**Source: L. 2010:** Entire section added, (HB 10-1395), ch. 364, p. 1719, § 2, effective August 11.

**Cross references:** For interlocutory appeals in civil cases, see C.A.R. 4.2.

### **ANNOTATION**

**Law reviews.** For article, "Interlocutory Appeals in Civil Cases Under C.A.R. 4.2", see 41 Colo. Law. 67 (Apr. 2012). For article, "Knowing When to Change Trains: The Ins and Outs of Interlocutory Appeals", see 41 Colo. Law. 31 (June 2012).

**Interlocutory resolution would not promote a more orderly disposition.** Where plaintiff petitioned for interlocutory review of district court's order that economic loss rule barred plaintiff's other claims against defendants, immediate review would not have avoided a trial. Therefore,

interlocutory resolution of the economic loss question would not promote a more orderly disposition of the litigation. *Wahrman v. Golden W. Realty*, 313 P.3d 674 (Colo. App. 2011).

**Motion to trial court to reconsider disqualification order did not toll the provisions of C.A.R. 4.2(c) requiring the filing of a motion or stipulation for certification by the trial court within 14 days after the date of the disqualification order.** The trial court does not have authority pursuant to C.R.C.P. 6(b) to extend

the 14-day deadline for filing a motion for certification of issues in the trial court. The department of human services' motion for reconsideration was not a C.R.C.P. 59 motion. Further, C.A.R. 26(b) does not apply because the failure to timely file was not the result of excusable neglect. *People in Interest of A.M.C.*, 2014 COA 31, 411 P.3d 90.

**Generally, an issue of contract interpretation that applies well-settled principles is not a "question of law"** for purposes of this section. *Rich v. Ball Ranch P'ship*, 2015 COA 6, 345 P.3d 980.

**Interlocutory review was appropriate under this section and C.A.R. 4.2(b) in**

**case involving the enforceability of a contract provision extending the time for accrual of construction defect claims beyond that identified in § 13-80-104 (1)(b).** The district court certified and the court of appeals agreed that the issue was controlling and may promote a more orderly disposition of the construction defect action. In addition, no state case has addressed the issue. *S. Conejos Sch. v. Wold Architects Inc.*, 2023 COA 85, 541 P.3d 17.

**Applied** in *Kowalchik v. Brohl*, 2012 COA 25, 277 P.3d 885; *Triple Crown v. Vill. Homes of Colo.*, 2013 COA 144, 389 P.3d 888; *Roane v. Elizabeth Sch. Dist.*, 2024 COA 59, 555 P.3d 69; *Bennett v. Colo. Dept. of Rev.*, 2024 COA 97, 559 P.3d 690.

#### **13-4-102.2. Interlocutory appeals of motions to dismiss actions involving constitutional rights.**

The court of appeals has initial jurisdiction over appeals from motions to dismiss actions involving constitutional rights pursuant to section 13-20-1101.

**Source: L. 2019:** Entire section added, (HB 19-1324), ch. 414, p. 3650, § 2, effective July 1.

**Editor's note:** In *Hinds v. Foreman*, 2026 CO 9, 583 P.3d 118, the Colorado Supreme Court held that this section and section 13-20-1101 (7) are unconstitutional to the extent that they authorize the court of appeals to review final judgments, which conflicts with article VI, section 17, of the state constitution, and with section 13-6-310 (1).

#### **13-4-103. Number of judges - qualifications.**

(1) The number of judges of the court of appeals shall be sixteen. Effective July 1, 2006, the number of judges of the court of appeals shall be nineteen. Subject to available appropriations, effective July 1, 2008, the number of judges of the court of appeals shall be twenty-two.

(2) Judges of the court of appeals shall have the same qualifications as justices of the Colorado supreme court.

**Source:** L. 69: p. 266, § 1. C.R.S. 1963: § 37-21-3. L. 74: (1) amended, p. 236, § 2, effective July 1. L. 87: (1) amended, p. 560, § 1, effective July 1. L. 2006: (1) amended, p. 22, § 1, effective July 1; (1) amended, p. 142, § 8, effective August 7. L. 2007: (1) amended, p. 1530, § 17, effective May 31.

**Editor's note:** Amendments to subsection (1) by Senate Bill 06-033 and House Bill 06-1028 were harmonized.

#### **13-4-104. Term of office - selection.**

(1) The term of office for a judge of the court of appeals is eight years.

(2) Judicial appointments to the court of appeals shall be made pursuant to section 20 of article VI of the state constitution.

**Source:** L. 69: p. 266, § 1. C.R.S. 1963: § 37-21-4. L. 72: p. 592, § 65.

#### **13-4-104.5. Temporary judicial duties.**

Whenever the chief justice of the supreme court deems assignment of a judge necessary to the prompt disposition of judicial business, the chief justice may assign any judge of the court of appeals, or any retired judge of the court of appeals who consents, to temporarily perform judicial duties in any court of record. For each day of such temporary service a retired judge shall receive compensation as provided by law.

**Source:** L. 90: Entire section added, p. 1247, § 2, effective April 5.

**13-4-105. Chief judge.**

The chief justice of the supreme court shall appoint a judge of the court of appeals to serve as chief judge at the pleasure of the chief justice. The chief judge shall exercise such administrative powers as may be delegated to him by the chief justice.

**Source:** L. 69: p. 266, § 1. C.R.S. 1963: § 37-21-5.

**13-4-106. Divisions.**

(1) The court of appeals shall sit in divisions of three judges each to hear and determine all matters before the court.

(2) The chief judge, with the approval of the chief justice, shall assign judges to each division. Such assignments shall be changed from time to time as determined by the chief judge, with the approval of the chief justice.

(3) Cases shall be assigned to the divisions of the court of appeals in rotation according to the order in which they are filed with the clerk of the court of appeals or transferred by the supreme court, except that the chief judge has the authority to transfer cases from one division to another to maintain approximately equal case loads or for any other appropriate reason.

**Source:** L. 69: p. 266, § 1. C.R.S. 1963: § 37-21-6.

**13-4-107. Place of court.**

The court of appeals shall be located in the city and county of Denver, but any division of the court of appeals may sit in any county seat for the purpose of hearing oral argument in cases before the division.

**Source:** L. 69: p. 266, § 1. C.R.S. 1963: § 37-21-7.

### **13-4-108. Supreme court review.**

(1) Before application may be made for writ of certiorari, as provided in this section, application shall be made to the court of appeals for a rehearing if required by supreme court rule.

(2) Within twenty-eight days after a rehearing has been refused by the court of appeals, any party in interest who is aggrieved by the judgment of the court of appeals may appeal by application to the supreme court for a writ of certiorari.

(3) Procedures on writs of certiorari, including procedures for rehearings, shall be as prescribed by rule of the supreme court.

**Source:** L. 69: p. 266, § 1. C.R.S. 1963: § 37-21-8. L. 98: Entire section amended, p. 949, § 11, effective May 27. L. 2013: (2) amended, (HB 13-1126), ch. 58, p. 191, §2, effective July 1.

**Cross references:** For review on certiorari, see C.A.R. 49.

### **ANNOTATION**

**This section, § 13-4-110, and § 2(2) of art. VI, Colo. Const., are not in conflict.** Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

**The procedure established in this section and § 13-4-110 and in C.R.C.P. 50-57 clearly provides for appellate review in the supreme court.** Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

**This section establishes certiorari as the form of review from the court of appeals.** Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

**Certiorari is presently recognized as a form of appellate review.** Bill Dreiling

Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

**General assembly may legislate appellate subject matter jurisdiction.** The changes brought about by this section, § 13-4-102, and § 13-4-110 pertain to the subject matter, i.e., jurisdiction of the supreme court and court of appeals and, as such, the changes are within the authority of the general assembly. Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

**Statutes pertaining to the creation of appellate remedies take precedence over judicial rules of procedure.** Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

**Applied** in Honey v. Ranchers & Farmers  
Livestock Auction Co., 191 Colo. 503, 553  
P.2d 799 (1976); Wiggins v. People, 199

Colo. 341, 608 P.2d 348 (1980); Nat'l  
Wildlife Fed'n v. Cotter Corp., 665 P.2d 598  
(Colo. 1983).

#### **13-4-109. Certification of cases to the supreme court.**

(1) The court of appeals, prior to final determination, may certify any case before it to the supreme court for its review and final determination, if the court of appeals finds:

- (a) The subject matter of the appeal has significant public interest;
- (b) The case involves legal principles of major significance; or
- (c) The case load of the court of appeals is such that the expeditious administration of justice requires certification.

(2) The supreme court shall consider such certification and may accept the case for final determination or remand it for determination by the court of appeals.

(3) The supreme court may order the court of appeals to certify any case before the court of appeals to the supreme court for final determination.

**Source: L. 69:** p. 267, § 1. **C.R.S. 1963:** § 37-21-9.

#### **ANNOTATION**

**Applied** in Fritz v. Regents of Univ. of  
Colo., 196 Colo. 335, 586 P.2d 23 (1978);  
Coquina Oil Corp. v. Harry Kourlis Ranch,

643 P.2d 519 (Colo. 1982); Fort Collins v.  
Colo. Oil & Gas Ass'n, 2016 CO 28, 369  
P.3d 586.

#### **13-4-110. Determination of jurisdiction - transfer of cases.**

(1) (a) When a party in interest alleges, or the court is of the opinion, that a case before the court of appeals is not properly within the jurisdiction of the court of appeals, the court of appeals shall refer the case to the supreme court. The supreme court shall decide the question of jurisdiction in a summary manner, and its determination shall be conclusive.

(b) A party in interest shall allege that a case is not properly within the jurisdiction of the court of appeals by motion filed with the court of appeals within twenty-one days after the date the record is filed with the clerk of the court of appeals, failing which any objection to jurisdiction by a party in interest shall be waived.

(2) Any case within the jurisdiction of the court of appeals which is filed erroneously in the supreme court shall be transferred to the court of appeals by the supreme court.

(3) No case filed either in the supreme court or the court of appeals shall be dismissed for having been filed in the wrong court but shall be transferred and considered properly filed in the court which the supreme court determines has jurisdiction.

**Source:** L. 69: p. 267, § 1. C.R.S. 1963: § 37-21-10. L. 71: p. 372, § 1. L. 2012: (1)(b) amended, (SB 12-175), ch. 208, p. 822, § 2, effective July 1.

### ANNOTATION

**Law reviews.** For article, "Civil Interlocutory Appeals in Colorado State Courts", 49 Colo. Law. 38 (Oct. 2020).

**Section is not in conflict with the constitution.** This section and § 13-4-108, and § 2(2) of art. VI, Colo. Const., are not in conflict. Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

**General assembly may legislate appellate subject matter jurisdiction.** The changes brought about by this section, § 13-4-102, and § 13-4-108 pertain to the subject matter, i.e., jurisdiction of the supreme court and court of appeals and, as such, the changes are within the authority of the general assembly. Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

**Statutes pertaining to the creation of appellate remedies take precedence over judicial rules of procedure.** Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

**Procedure is established for final review in the supreme court.** The

procedure established in this section and § 13-4-108 and in C.A.R. 50-57 clearly provides for appellate review in the supreme court. Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

**This section permits transfer to the court of appeals of certain cases** filed in the supreme court prior to January 1, 1970. Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

**Because the substance of the complaint addressed primarily the use of water rights rather than their ownership, the complaint related to a water matter and should have been filed in a water court.** However, the appeal was properly transferred from the supreme court to the court of appeals because the appeal was from a district court judgment. City of Sterling v. Sterling Irrig. Co., 42 P.3d 72 (Colo. App. 2002).

**Although subsection (3) provides that cases filed in wrong appellate court shall not be dismissed,** where appeal will not lie in either court, the only review being by

certiorari, the case must be dismissed for failure to comply with the statutory procedure. *People v. Meyers*, 43 Colo. App. 63, 598 P.2d 526 (1979).

**Notwithstanding the provisions of this section, the supreme court may retain and review an appeal** of a declaratory order of the state personnel board that should have been filed with the court of appeals. The court's authority rests in its power under C.A.R. 50(b) to review cases pending in the court of appeals prior to judgment and under C.A.R. 2 to suspend the rules of appellate procedure. *Colorado Ass'n of Pub. Emp. v. Dept. of Highways*, 809 P.2d 988 (Colo. 1991).

**Court of appeals has jurisdiction over interlocutory ruling in injunction proceeding when the supreme court declined to exercise jurisdiction.** *Joel L. Schaffer v. C. M. Sullivan, P.C.*, 844 P.2d 1327 (Colo. App. 1992).

**Trial court had jurisdiction as a matter of law to waive bond requirement for indigent taxpayer and proceed to adjudicate merits of appeal concerning**

**use tax deficiency** where undisputed evidence in affidavit form was proffered to the trial court reciting taxpayer's inability to post bond or make deposit required by statute. *AF Prop. v. Dept. of Rev.*, 852 P.2d 1267 (Colo. App. 1992).

**Where the court of appeals refers a question of its jurisdiction to the supreme court**, which then determined the case properly within the court of appeal's jurisdiction, that ruling is conclusive. *Barela v. Beye*, 916 P.2d 668 (Colo. App. 1996).

**Applied** in *Thomas v. County Court*, 198 Colo. 87, 596 P.2d 768 (1979); *People v. White*, 199 Colo. 82, 606 P.2d 847 (1980); *People v. Dooley*, 630 P.2d 608 (Colo. 1981); *People v. Scott*, 630 P.2d 615 (Colo. 1981); *People v. Thatcher*, 638 P.2d 760 (Colo. 1981); *People v. Abbott*, 638 P.2d 781 (Colo. 1981); *Federal Lumber Co. v. Wheeler*, 643 P.2d 31 (Colo. 1981); *People v. Mason*, 642 P.2d 8 (Colo. 1982); *Coquina Oil Corp. v. Harry Kourlis Ranch*, 643 P.2d 519 (Colo. 1982); *In re P.F. v. Walsh*, 648 P.2d 1067 (Colo. 1982).

#### **13-4-111. Employees - compensation.**

(1) Subject to the rules and regulations of the supreme court, the court of appeals shall appoint a clerk, a reporter of decisions, deputy clerks, and such other assistants as may be necessary.

(2) Each judge of the court of appeals may appoint a law clerk who shall be learned in the law and one secretary or stenographer. The persons so employed may be discharged or removed at the pleasure of the judge employing them.

(3) All employees appointed under subsections (1) and (2) of this section shall be paid such compensation as shall be prescribed by the rules and regulations of the supreme court.



**Source:** L. 69: p. 267, § 1. C.R.S. 1963: § 37-21-11. L. 74: (1) amended, p. 236, § 3, effective July 1.

**13-4-112. Fees of the clerk of court of appeals - equal justice fee collection.**

(1) (a) Within the time allowed or fixed for transmission of the record, the appellant shall pay to the clerk of the court of appeals a docket fee of two hundred twenty-three dollars.

(b) The docket fee for the appellee shall be one hundred forty-eight dollars to be paid upon the entry of appearance of the appellee.

(2) (a) Each fee collected pursuant to paragraph (a) of subsection (1) of this section shall be transmitted to the state treasurer and divided as follows:

(I) One hundred fifty dollars shall be deposited in the supreme court library fund created pursuant to section 13-2-120;

(II) Five dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6); and

(III) Sixty-eight dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(b) Each fee collected pursuant to paragraph (b) of subsection (1) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Seventy-five dollars shall be deposited in the supreme court library fund created pursuant to section 13-2-120;

(II) Five dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6); and

(III) Sixty-eight dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(3) Beginning January 1, 2025, the clerk of the court of appeals shall collect the equal justice fee on filings specified in subsections (1)(a) and (1)(b) of this section on behalf of the equal justice authority and transmit the equal justice fee in the amount of thirty dollars in the manner specified in section 13-5.7-205 (2).

**Source:** L. 69: p. 268, § 1. C.R.S. 1963: § 37-21-12. L. 82: Entire section R&RE, p. 285, § 3, effective July 1. L. 98: (2) amended, p. 685, § 2, effective July 1. L. 2007: Entire section

amended, p. 1530, § 18, effective May 31. **L. 2008:** Entire section amended, p. 2114, § 6, effective June 4. **L. 2024:** (3) added, (HB 24-1286), ch. 339, p. 2297, § 3, effective June 3.

**Cross references:** For the legislative declaration contained in the 2008 act amending this section, see section 1 of chapter 417, Session Laws of Colorado 2008. For the legislative declaration in HB 24-1286, see section 1 of chapter 339, Session Laws of Colorado 2024.

### **13-4-113. Publication of decisions.**

- (1) Repealed.
- (2) Those court of appeals opinions to be published in full shall be selected as prescribed by supreme court rule.

**Source:** **L. 69:** p. 268, § 1. **C.R.S. 1963:** § 37-21-13. **L. 74:** (1) repealed, p. 236, § 4, effective July 1.

**Cross references:** For the duty of reporter to compile and publish decisions, see § 13-2-123.

## **ARTICLE 5**

### **Judicial Districts**

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| 13-5-126.   | Duties of bailiff.                                                     |             |                                                                                                                                                 |
| 13-5-127.   | Duties of reporters.                                                   | 13-5-142.5. | National instant criminal background check system - judicial process for awarding relief from federal prohibitions - legislative declaration.   |
| 13-5-128.   | Compensation of reporter.                                              |             |                                                                                                                                                 |
| 13-5-129.   | Reporters' expenses. (Repealed)                                        |             |                                                                                                                                                 |
| 13-5-130.   | Reporters to file verified statements. (Repealed)                      | 13-5-142.8. | Notice by professional persons.                                                                                                                 |
| 13-5-131.   | Multiple-judge districts.                                              |             |                                                                                                                                                 |
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| 13-5-133.   | Judges may sit en banc - purpose - rules.                              | 13-5-144.   | Chief judge - veterans treatment court authority.                                                                                               |
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| 13-5-136.   | Forfeit of salary.                                                     |             |                                                                                                                                                 |

PART 2  
DISTRICT COURT MAGISTRATES

13-5-201. District court magistrates.

PART 3  
FAMILY LAW MAGISTRATES

13-5-301 to

13-5-305. (Repealed)

PART 1  
JUDGES - TERMS

**13-5-101. Judicial districts and terms.**

The state is divided into twenty-three judicial districts as prescribed by this part 1. Terms of court shall be fixed by rules adopted by the district court in each district; except that at least one term of court shall be held each calendar year in each county within the district, at the county seat of such county.

**Source:** L. 64: p. 398, § 1. C.R.S. 1963: § 37-12-1. L. 83: Entire section amended, p. 600, § 2, effective May 20. L. 2020: Entire section amended, (HB 20-1026), ch. 40, p. 136, § 2, effective January 7, 2025.

**Cross references:** (1) For the constitutional authority for general assembly's changing of boundaries of judicial districts by a two-thirds vote of each house, see § 10(1) of art. VI, Colo. Const.

(2) For the legislative declaration in HB 20-1026, see section 1 of chapter 40, Session Laws of Colorado 2020.

ANNOTATION

**Law reviews.** For article, "Colorado's New Court System", see 41 Den. L. Ctr. J. 140 (1964).

**This statute is irreconcilable with § 13-5-119 (2); however, under rules of**

**statutory construction § 13-5-119 (2) controls since it was enacted later.** City of Littleton v. County Comm'rs, 787 P.2d 158 (Colo. 1990).

**13-5-102. First district.**

- (1) The first judicial district shall be composed of the counties of Gilpin and Jefferson.
- (2) (a) The number of judges for the first judicial district shall be eleven.
  - (b) Subject to available appropriations, effective July 1, 2004, the number of judges for the first judicial district shall be twelve.
  - (c) Subject to available appropriations, effective July 1, 2008, the number of judges for the first judicial district shall be thirteen.
  - (d) (Deleted by amendment, L. 2011, (SB 11-028), ch. 21, p. 52, § 1, effective March 11, 2011.)
  - (e) Repealed.
  - (f) Notwithstanding the provisions of paragraph (a) of this subsection (2), subject to available appropriations, effective July 1, 2012, the number of judges for the first judicial district shall be thirteen.
  - (g) Subject to available appropriations, effective January 1, 2020, the number of judges for the first judicial district is fourteen.
- (3) (a) Notwithstanding any provision of law to the contrary, the district and county judges regularly assigned to Gilpin county may sit and maintain their official chambers at a single location anywhere within such county, and any related office may also be maintained at such location.
  - (b) As used in this subsection (3), "related office" includes but need not be limited to the offices of the sheriff, county clerk and recorder, county treasurer, clerk of district court, and clerk of county court.

**Source:** L. 64: p. 398, § 2. C.R.S. 1963: § 37-12-2. L. 75: (1) amended, p. 559, § 1, effective July 1; (2) amended, p. 557, § 1, effective July 1. L. 77: (2) amended, p. 781, § 1, effective July 1. L. 89, 1st Ex. Sess.: (2) amended, p. 16, § 1, effective January 1, 1991. L. 93: (3) added, p. 91, § 1, effective July 1. L. 99: (2) amended, p. 557, § 1, effective July 1. L. 2001: (1) and (2) amended, p. 141, § 1, effective July 1. L. 2007: (2) amended, p. 1525, § 1, effective May 31. L. 2011: (2) amended, (SB 11-028), ch. 21, p. 52, § 1, effective March 11. L. 2012: (2)(e) repealed and (2)(f) added, (HB 12-1073), ch. 11, p. 28, § 1, effective July 1. L. 2019: (2)(g) added, (SB 19-043), ch. 41, p. 140, § 1, effective March 21.

**13-5-103. Second district.**

- (1) The second judicial district shall be composed of the city and county of Denver.
- (2) (a) The number of judges for the second judicial district shall be nineteen. Effective January 1, 1978, the number of judges shall be twenty.
- (b) Subject to available appropriations, effective July 1, 2008, the number of judges for the second judicial district shall be twenty-one.
- (c) Subject to available appropriations, effective July 1, 2009, the number of judges for the second judicial district shall be twenty-three.
- (d) Subject to available appropriations, effective July 1, 2019, the number of judges for the second judicial district is twenty-five.
- (e) Subject to available appropriations, effective January 1, 2020, the number of judges for the second judicial district is twenty-seven.

**Source:** L. 64: p. 398, § 3. C.R.S. 1963: § 37-12-3. L. 71: p. 368, § 1. L. 75: (2) amended, p. 557, § 2, effective January 1, 1976. L. 77: (2) amended, p. 781, § 2, effective July 1. L. 2007: (2) amended, p. 1525, § 2, effective May 31. L. 2019: (2)(d) and (2)(e) added, (SB 19-043), ch. 41, p. 140, § 2, effective March 21.

**13-5-104. Third district.**

- (1) The third judicial district shall be composed of the counties of Las Animas and Huerfano.
- (2) The number of judges for the third judicial district shall be two.
- (3) The third judicial district shall be divided into two divisions. The northern division shall consist of the county of Huerfano, and the southern division shall consist of the county of Las Animas. One judge of the district shall maintain his official residence and chambers in the northern division of the district, and one judge shall maintain his official residence and chambers in the southern division of the district. Travel and maintenance expenses shall be allowed a judge of the district only when he is outside the county of his official residence. For all other purposes, the district shall be considered as a single entity. The allocation of judges to the northern and southern divisions shall be made by court rule. In the event that the judges of the district are unable to agree upon an allocation by rule, the matter shall be determined by the chief justice of the supreme court.

**Source:** L. 64: p. 398, § 4. C.R.S. 1963: § 37-12-4. L. 81: (3) amended, p. 2024, § 12, effective July 14.

**13-5-105. Fourth district.**

- (1) The fourth judicial district shall be composed of the counties of El Paso and Teller.
- (2) (a) The number of judges for the fourth judicial district shall be fifteen.
- (b) Subject to available appropriations, effective July 1, 2002, the number of judges for the fourth judicial district shall be sixteen.
- (c) Subject to available appropriations, effective July 1, 2003, the number of judges for the fourth judicial district shall be seventeen.
- (d) Subject to available appropriations, effective July 1, 2004, the number of judges for the fourth judicial district shall be nineteen.
- (e) Subject to available appropriations, effective July 1, 2008, the number of judges for the fourth judicial district shall be twenty.
- (f) Subject to available appropriations, effective July 1, 2009, the number of judges for the fourth judicial district shall be twenty-two.
- (g) Subject to available appropriations, effective July 1, 2019, the number of judges for the fourth judicial district is twenty-three.
- (h) Subject to available appropriations, effective January 1, 2020, the number of judges for the fourth judicial district is twenty-four.
- (i) Subject to available appropriations, effective July 1, 2025, the number of judges for the fourth judicial district is twenty-five.
- (j) Subject to available appropriations, effective July 1, 2026, the number of judges for the fourth judicial district is twenty-six.

**Source:** L. 64: pp. 399, 405, 407, §§ 5, 1, 1. C.R.S. 1963: § 37-12-5. L. 67: p. 258, § 1. L. 69: p. 261, § 1. L. 71: p. 369, § 1. L. 75: (2) amended, p. 557, § 3, effective January 1, 1976. L. 89, 1st Ex. Sess.: (2) amended, p. 16, § 2, effective January 1, 1991. L. 91: (2) amended, p. 349, § 1, effective July 1. L. 97: (2) amended, p. 939, § 1, effective July 1, 1998. L. 2000: Entire section amended, p. 71, § 1, effective July 1. L. 2001: Entire section amended, p. 141, § 2, effective July 1. L. 2007: (2) amended, p. 1526, § 3, effective May 31. L. 2019: (2)(g) and (2)(h) added, (SB

19-043), ch. 41, p. 140, § 3, effective March 21. **L. 2025:** (2)(i) and (2)(j) added, (SB 25-024), ch. 23, p. 86, § 1, effective March 24.

**13-5-106. Fifth district.**

(1) The fifth judicial district shall be composed of the counties of Clear Creek, Eagle, Lake, and Summit.

(2) (a) The number of judges for the fifth judicial district shall be six.

(b) and (c) Repealed.

(d) At least one of the judges for the fifth judicial district shall maintain his or her official chambers and residence in the county of Eagle, Lake, or Summit.

**Source:** **L. 64:** p. 399, § 6. **C.R.S. 1963:** § 37-12-6. **L. 75:** Entire section amended, p. 559, § 2, effective July 1. **L. 84:** (2) amended, p. 454, § 1, effective September 1. **L. 2001:** Entire section amended, p. 142, § 3, effective July 1. **L. 2013:** (2)(a) amended and (2)(b) and (2)(c) repealed, (HB 13-1035), ch. 13, p. 35, § 1, effective July 1.

**13-5-107. Sixth district.**

(1) The sixth judicial district shall be composed of the counties of Archuleta, La Plata, and San Juan.

(2) (a) The number of judges for the sixth judicial district shall be two.

(b) (Deleted by amendment, L. 2012.)

(c) Notwithstanding the provisions of paragraph (a) of this subsection (2), subject to available appropriations, effective July 1, 2012, the number of judges for the sixth judicial district shall be four.

**Source:** **L. 64:** p. 399, § 7. **C.R.S. 1963:** § 37-12-7. **L. 2001:** Entire section amended, p. 142, § 4, effective July 1. **L. 2012:** (2) amended, (HB 12-1073), ch. 11, p. 28, § 2, effective July 1.



**13-5-108. Seventh district.**

(1) The seventh judicial district shall be composed of the counties of Delta, Gunnison, Hinsdale, Montrose, Ouray, and San Miguel.

(2) (a) The number of judges for the seventh judicial district shall be three.

(b) Subject to available appropriations, effective July 1, 2003, the number of judges for the seventh judicial district shall be four.

(c) Subject to available appropriations, effective July 1, 2011, the number of judges for the seventh judicial district is five.

(d) Subject to available appropriations, effective July 1, 2026, the number of judges for the seventh judicial district is six.

**Source:** L. 64: p. 400, § 8. C.R.S. 1963: § 37-12-8. L. 84: (2) amended, p. 454, § 2, effective September 1. L. 2001: Entire section amended, p. 142, § 5, effective July 1. L. 2011: (2) amended, (SB 11-028), ch. 21, p. 52, § 2, effective March 11. L. 2025: (2)(c) amended and (2)(d) added, (SB 25-024), ch. 23, p. 86, § 2, effective March 24.

**13-5-109. Eighth district.**

(1) The eighth judicial district shall be composed of the counties of Larimer and Jackson.

(2) (a) The number of judges for the eighth judicial district shall be five.

(b) Subject to available appropriations, effective July 1, 2007, the number of judges for the eighth judicial district shall be six.

(c) Subject to available appropriations, effective July 1, 2008, the number of judges for the eighth judicial district shall be seven.

(d) Subject to available appropriations, effective July 1, 2009, the number of judges for the eighth judicial district shall be eight.

(e) Subject to available appropriations, effective January 1, 2020, the number of judges for the eighth judicial district is nine.

**Source:** L. 64: p. 400, § 9. C.R.S. 1963: § 37-12-9. L. 75: (2) amended, p. 557, § 4, effective July 1. L. 2001: Entire section amended, p. 142, § 6, effective July 1. L. 2007: (2) amended, p.

1526, § 4, effective May 31. **L. 2019:** (2)(e) added, (SB 19-043), ch. 41, p. 141, § 4, effective March 21.

#### ANNOTATION

**Applied** in Jeffrey v. District Court, 626 P.2d 631 (Colo. 1981); Corr v. District Court, 661 P.2d 668 (Colo. 1983).

#### **13-5-110. Ninth district.**

(1) The ninth judicial district shall be composed of the counties of Garfield, Pitkin, and Rio Blanco.

(2) (a) The number of judges for the ninth judicial district shall be five.

(b) (Deleted by amendment, L. 2013.)

**Source:** **L. 64:** p. 400, § 10. **C.R.S. 1963:** § 37-12-10. **L. 72:** p. 188, § 1. **L. 2007:** (2) amended, p. 1526, § 5, effective May 31. **L. 2013:** (2) amended, (HB 13-1035), ch. 13, p. 35, § 2, effective July 1.

#### **13-5-111. Tenth district.**

(1) The tenth judicial district shall be composed of the county of Pueblo.

(2) (a) The number of judges for the tenth judicial district shall be six.

(b) Subject to available appropriations, effective July 1, 2008, the number of judges for the tenth judicial district shall be seven.

(c) Subject to available appropriations, effective July 1, 2019, the number of judges for the tenth judicial district is eight.

**Source:** **L. 64:** p. 400, § 11. **C.R.S. 1963:** § 37-12-11. **L. 73:** p. 493, § 1. **L. 75:** (2) amended, p. 558, § 5, effective July 1. **L. 2007:** (2) amended, p. 1526, § 6, effective May 31. **L. 2019:** (2)(c) added, (SB 19-043), ch. 41, p. 141, § 5, effective March 21.

**13-5-112. Eleventh district.**

(1) The eleventh judicial district shall be composed of the counties of Chaffee, Custer, Fremont, and Park.

(2) (a) The number of judges for the eleventh judicial district shall be three.

(b) Subject to available appropriations, effective July 1, 2007, the number of judges for the eleventh judicial district shall be four.

(3) The eleventh judicial district shall be divided into two divisions. The northern division shall consist of the counties of Chaffee and Park, and the southern division shall consist of the counties of Fremont and Custer. One judge of the district shall maintain his official residence and chambers in the northern division of the district, one judge shall maintain his official residence and chambers in the southern division of the district, and one judge shall sit in both divisions as assigned by the chief judge. Travel and maintenance expenses shall be allowed a judge of the district only when he is outside the county of his official residence. For all other purposes the district shall be considered as a single entity. The allocation of judges to the northern and southern divisions shall be made by court rule. In the event that the judges of the district are unable to agree upon an allocation by rule, the matter shall be determined by the chief justice of the supreme court.

**Source:** L. 64: p. 400, § 12. C.R.S. 1963: § 37-12-12. L. 80: (2) and (3) amended, p. 507, § 1, effective July 1. L. 81: (3) amended, p. 204, § 13, effective July 14. L. 2007: (2) amended, p. 1527, § 7, effective May 31.

**13-5-113. Twelfth district.**

(1) The twelfth judicial district shall be composed of the counties of Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache.

(2) (a) The number of judges for the twelfth judicial district shall be two.

(b) Subject to available appropriations, effective July 1, 2007, the number of judges for the twelfth judicial district shall be three.

(c) Subject to available appropriations, effective July 1, 2015, the number of judges for the twelfth judicial district shall be four.

**Source:** L. 64: p. 401, § 13. C.R.S. 1963: § 37-12-13. L. 2007: (2) amended, p. 1527, § 8, effective May 31. L. 2015: (2)(c) added, (HB 15-1034), ch. 39, p. 98, § 1, effective March 20.

**13-5-114. Thirteenth district.**

(1) The thirteenth judicial district shall be composed of the counties of Kit Carson, Logan, Morgan, Phillips, Sedgwick, Washington, and Yuma.

(2) (a) The number of judges for the thirteenth judicial district shall be four.

(b) Subject to available appropriations, effective July 1, 2019, the number of judges for the thirteenth judicial district is five.

(c) Subject to available appropriations, effective July 1, 2026, the number of judges for the thirteenth judicial district is six.

**Source:** L. 64: p. 401, § 14. C.R.S. 1963: § 37-12-14. L. 69: p. 261, § 2. L. 2019: (2) amended, (SB 19-043), ch. 41, p. 141, § 6, effective March 21. L. 2025: (2)(c) added, (SB 25-024), ch. 23, p. 86, § 3, effective March 24.

**13-5-115. Fourteenth district.**

(1) The fourteenth judicial district shall be composed of the counties of Grand, Moffat, and Routt.

(2) (a) The number of judges for the fourteenth judicial district shall be two.

(b) Subject to available appropriations, effective July 1, 2007, the number of judges for the fourteenth judicial district shall be three.

**Source:** L. 64: p. 401, § 15. C.R.S. 1963: § 37-12-15. L. 74: (2) amended, p. 235, § 1, effective July 1. L. 2007: (2) amended, p. 1527, § 9, effective May 31.

**13-5-116. Fifteenth district.**

(1) The fifteenth judicial district shall be composed of the counties of Baca, Cheyenne, Kiowa, and Prowers.

(2) The number of judges for the fifteenth judicial district shall be two.

**Source: L. 64:** p. 401, § 16. **C.R.S. 1963:** § 37-12-16.

**13-5-117. Sixteenth district.**

- (1) The sixteenth judicial district shall be composed of the counties of Bent, Crowley, and Otero.
- (2) The number of judges for the sixteenth judicial district shall be two.

**Source: L. 64:** p. 401, § 17. **C.R.S. 1963:** § 37-12-17.

**13-5-118. Seventeenth district.**

- (1) The seventeenth judicial district shall be composed of the county of Adams and the city and county of Broomfield.
- (2)
  - (a) The number of judges for the seventeenth judicial district shall be eight.
  - (b) Subject to available appropriations, effective July 1, 2002, the number of judges for the seventeenth judicial district shall be nine.
  - (c) Subject to available appropriations, effective July 1, 2003, the number of judges for the seventeenth judicial district shall be ten.
  - (d) Subject to available appropriations, effective July 1, 2007, the number of judges for the seventeenth judicial district shall be eleven.
  - (e) Subject to available appropriations, effective July 1, 2008, the number of judges for the seventeenth judicial district shall be thirteen.
  - (f) Subject to available appropriations, effective July 1, 2009, the number of judges for the seventeenth judicial district shall be fifteen.
  - (g) Subject to available appropriations, effective January 1, 2020, the number of judges for the seventeenth judicial district is sixteen.
  - (h) Subject to available appropriations, effective July 1, 2025, the number of judges for the seventeenth judicial district is seventeen.
  - (i) Subject to available appropriations, effective July 1, 2026, the number of judges for the seventeenth judicial district is eighteen.

(3) The seventeenth judicial district shall have jurisdiction over all causes of action accruing and all crimes committed within the city and county of Broomfield on or after November 15, 2001. Prior to November 15, 2001, the judicial districts for the counties, as they existed prior to November 15, 2001, shall have jurisdiction over all causes of action accruing and crimes committed within such counties.

**Source:** L. 64: p. 401, § 18. C.R.S. 1963: § 37-12-18. L. 67: p. 229, § 1. L. 77: (2) amended, p. 781, § 3, effective July 1. L. 84: (2) amended, p. 454, § 3, effective September 1. L. 2000: (1) amended and (3) added, p. 251, § 1, effective August 2. L. 2001: Entire section amended, p. 143, § 7, effective July 1. L. 2007: (2) amended, p. 1527, § 10, effective May 31. L. 2019: (2)(g) added, (SB 19-043), ch. 41, p. 141, § 7, effective March 21. L. 2025: (2)(h) and (2)(i) added, (SB 25-024), ch. 23, p. 87, § 4, effective March 24.

### **13-5-119. Eighteenth district.**

- (1) The eighteenth judicial district shall be composed of Arapahoe county.
- (2) (a) The number of judges for the eighteenth judicial district shall be fourteen.  
(b) Subject to available appropriations, effective July 1, 2002, the number of judges for the eighteenth judicial district shall be fifteen.  
(c) Subject to available appropriations, effective July 1, 2003, the number of judges for the eighteenth judicial district shall be sixteen.  
(d) (I) Subject to available appropriations, effective July 1, 2004, the number of judges for the eighteenth judicial district shall be seventeen.  
(II) Subject to available appropriations, effective July 1, 2007, the number of judges for the eighteenth judicial district shall be eighteen.  
(III) Subject to available appropriations, effective July 1, 2008, the number of judges for the eighteenth judicial district shall be twenty.  
(IV) Subject to available appropriations, effective July 1, 2009, the number of judges for the eighteenth judicial district shall be twenty-one.  
(V) Subject to available appropriations, effective July 1, 2014, the number of judges for the eighteenth judicial district is twenty-three.  
(VI) Subject to available appropriations, effective January 1, 2020, the number of judges for the eighteenth judicial district is twenty-four.

(VII) Subject to available appropriations, effective January 1, 2025, the number of judges for the eighteenth judicial district is seventeen.

(VIII) Subject to available appropriations, effective July 1, 2025, the number of judges for the eighteenth judicial district is eighteen.

(IX) Subject to available appropriations, effective July 1, 2026, the number of judges for the eighteenth judicial district is nineteen.

(e) The district judges regularly assigned to Arapahoe county may maintain offices outside of the county seat.

(3) Repealed.

**Source:** L. 64: pp. 401, 405, §§ 19, 2. C.R.S. 1963: § 37-12-19. L. 67: p. 229, § 2. L. 69: p. 261, § 3. L. 75: (2) amended and (3) added, p. 558, § 6, effective January 1, 1976. L. 77: (2) amended, p. 781, § 4, effective July 1. L. 79: (2) amended, p. 604, § 1, effective June 19. L. 81: (3) repealed, p. 2025, § 14, effective July 14. L. 85: (2) amended, p. 569, § 1, effective November 14, 1986. L. 86: (2) amended, p. 674, § 1, effective November 14. L. 93, 1st Ex. Sess.: (2) amended, p. 33, § 1, effective September 13. L. 97: (2) amended, p. 939, § 2, effective July 1, 1998. L. 2000: Entire section amended, p. 71, § 2, effective July 1. L. 2001: Entire section amended, p. 143, § 8, effective July 1. L. 2007: (2)(d) amended, p. 1527, § 11, effective May 31. L. 2014: (2)(d)(V) added, (HB 14-1050), ch. 36, p. 192, § 1, effective March 14. L. 2019: (2)(d)(VI) added, (SB 19-043), ch. 41, p. 141, § 8, effective March 21. L. 2020: (1) amended and (2)(d)(VII) added, (HB 20-1026), ch. 40, p. 136, § 3, effective January 7, 2025. L. 2025: (2)(d)(VIII) and (2)(d)(IX) added and (2)(e) amended, (SB 25-024), ch. 23, p. 87, § 5, effective March 24.

**Cross references:** For the legislative declaration in HB 20-1026, see section 1 of chapter 40, Session Laws of Colorado 2020.

#### ANNOTATION

**This section was intended to be an exception to the county seat requirement in § 13-1-116** and authorizes district judges assigned to Arapahoe county to sit at a single location anywhere in that county. City

of Littleton v. County Comm'rs, 787 P.2d 158 (Colo. 1990).

**This statute is irreconcilable with § 13-5-101; however, under rules of statutory construction subsection (2) controls since it was enacted later.** City of Littleton v.

**13-5-120. Nineteenth district.**

- (1) The nineteenth judicial district shall be composed of the county of Weld.
- (2) (a) The number of judges for the nineteenth judicial district shall be four.
  - (b) Subject to available appropriations, effective July 1, 2002, the number of judges for the nineteenth judicial district shall be five.
  - (c) Subject to available appropriations, effective July 1, 2003, the number of judges for the nineteenth judicial district shall be six.
  - (d) Subject to available appropriations, effective July 1, 2007, the number of judges for the nineteenth judicial district shall be seven.
  - (e) Subject to available appropriations, effective July 1, 2008, the number of judges for the nineteenth judicial district shall be eight.
  - (f) Subject to available appropriations, effective July 1, 2009, the number of judges for the nineteenth judicial district shall be nine.
  - (g) Subject to available appropriations, effective July 1, 2019, the number of judges for the nineteenth judicial district is ten.
  - (h) Subject to available appropriations, effective January 1, 2020, the number of judges for the nineteenth judicial district is eleven.
  - (i) Subject to available appropriations, effective July 1, 2026, the number of judges for the nineteenth judicial district is twelve.

**Source:** L. 64: p. 402, § 20. C.R.S. 1963: § 37-12-20. L. 68: p. 48, § 1. L. 75: (2) amended, p. 558, § 7, effective July 1. L. 2001: Entire section amended, p. 143, § 9, effective July 1. L. 2007: (2) amended, p. 1528, § 12, effective May 31. L. 2019: (2)(g) and (2)(h) added, (SB 19-043), ch. 41, p. 141, § 9, effective March 21. L. 2025: (2)(i) added, (SB 25-024), ch. 23, p. 87, § 6, effective March 24.

**13-5-121. Twentieth district.**

- (1) The twentieth judicial district shall be composed of the county of Boulder.
- (2) (a) The number of judges for the twentieth judicial district shall be six.



(b) Subject to available appropriations, effective July 1, 2003, the number of judges for the twentieth judicial district shall be seven.

(c) Subject to available appropriations, effective July 1, 2004, the number of judges for the twentieth judicial district shall be eight.

(d) Subject to available appropriations, effective June 30, 2010, the number of judges for the twentieth judicial district shall be nine.

**Source:** L. 64: p. 402, § 21. C.R.S. 1963: § 37-12-21. L. 69: p. 262, § 1. L. 77: (2) amended, p. 782, § 5, effective July 1. L. 2001: Entire section amended, p. 144, § 10, effective July 1. L. 2007: (2) amended, p. 1528, § 13, effective May 31.

#### **13-5-122. Twenty-first district.**

(1) The twenty-first judicial district shall be composed of the county of Mesa.

(2) (a) The number of judges for the twenty-first judicial district shall be four.

(b) Subject to available appropriations, effective July 1, 2007, the number of judges for the twenty-first judicial district shall be five.

(c) Subject to available appropriations, effective July 1, 2019, the number of judges for the twenty-first judicial district is six.

**Source:** L. 64: p. 402, § 22. C.R.S. 1963: § 37-12-22. L. 77: (2) amended, p. 782, § 6, effective July 1. L. 89, 1st Ex. Sess.: (2) amended, p. 16, § 3, effective January 1, 1991. L. 2007: (2) amended, p. 1528, § 14, effective May 31. L. 2019: (2)(c) added, (SB 19-043), ch. 41, p. 141, § 10, effective March 21.

#### **13-5-123. Twenty-second district.**

(1) The twenty-second judicial district shall be composed of the counties of Dolores and Montezuma.

(2) (a) The number of judges for the twenty-second judicial district shall be one.

(b) Subject to available appropriations, effective July 1, 2007, the number of judges for the twenty-second judicial district shall be two.

**Source:** L. 64: p. 402, § 23. C.R.S. 1963: § 37-12-23. L. 2007: (2) amended, p. 1529, § 15, effective May 31.

**13-5-123.1. Twenty-third district.**

(1) The twenty-third judicial district shall be composed of the counties of Douglas, Elbert, and Lincoln.

(2) Subject to available appropriations, the number of judges for the twenty-third judicial district is eight.

(3) Subject to available appropriations, effective July 1, 2025, the number of judges for the twenty-third judicial district is nine.

**Source:** L. 2020: Entire section added, (HB 20-1026), ch. 40, p. 136, § 4, effective January 7, 2025. L. 2025: (3) added, (SB 25-024), ch. 23, p. 87, § 7, effective March 24.

**Cross references:** For the legislative declaration in HB 20-1026, see section 1 of chapter 40, Session Laws of Colorado 2020.

**13-5-123.2. Twenty-third judicial district - elections in 2024 - reports - repeal.**

(1) (a) Notwithstanding section 24-1-136 (11)(a)(I), commencing with the presentation in 2021 and each presentation thereafter to and including the presentation in 2025, at the joint hearings conducted pursuant to the "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act", part 2 of article 7 of title 2, the judicial department shall report on its progress toward making the system changes and other steps necessary for the creation of the twenty-third judicial district. Prior to these presentations, the judicial department shall request input from each of the counties in the then-existing eighteenth judicial district and include their input in the presentation.

(b) For state fiscal years 2020-21 to 2024-25, as part of its annual budget requests to the joint budget committee of the general assembly, the judicial department shall include details about any budget requests related to the preparation for and creation of the twenty-third judicial district.

(c) At its presentation in 2026, at the joint hearings conducted pursuant to the "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act", part 2

of article 7 of title 2, the judicial department shall prepare a final report detailing the entire transition process from the enactment of House Bill 20-1026, enacted in 2020, to the effective date of the creation of the twenty-third judicial district, detailing what aspects went relatively smoothly, what aspects created issues, and any recommendations to the general assembly concerning how any future revision of judicial district lines might be made easier.

(1.5) To facilitate the establishment of the twenty-third judicial district and the revision of the eighteenth judicial district, prior to January 14, 2025, the operations and employees of the eighteenth judicial district may be divided into two distinct units.

(2) Due to the creation of the twenty-third judicial district in 2025, at the general election in November of 2024:

(a) A question shall be presented to the electors of Arapahoe county concerning the election of the district attorney for the eighteenth judicial district who will take office in January of 2025;

(b) A question shall be presented to the electors of the counties of Douglas, Elbert, and Lincoln concerning the election of the district attorney for the twenty-third judicial district who will take office in January of 2025; and

(c) Any district court judge of the eighteenth judicial district who is eligible for retention at the November 2024 election may stand for a retention election from the electors of the eighteenth judicial district.

(3) (a) Effective January 14, 2025, any district court judge who on that date was serving as a district court judge in the eighteenth judicial district and who lives within the boundaries of the new twenty-third judicial district shall, pursuant to section 10 of article VI of the state constitution, complete the term for which the judge was last elected or appointed as a district court judge in the twenty-third judicial district. Such district court judges are eligible for a retention election in the twenty-third judicial district in the same year that they would have been eligible for a retention election in the eighteenth judicial district but for the creation of the twenty-third judicial district.

(b) On and after January 14, 2025, assignment of judges shall be pursuant to sections 10 and 11 of article VI of the state constitution.

(4) This section is repealed, effective July 7, 2027.

**Source: L. 2020:** Entire section added, (HB 20-1026), ch. 40, p. 136, § 5, effective September 14. **L. 2024:** (1.5) added and (3) amended, (HB 24-1455), ch. 256, pp. 1679, 1678, §§ 3, 1, effective May 24.

**Cross references:** For the legislative declaration in HB 20-1026, see section 1 of chapter 40, Session Laws of Colorado 2020.

**13-5-124. Appointment of clerk and employees.**

District court personnel shall be appointed pursuant to the provisions of section 13-3-105.

**Source:** L. 64: p. 403, § 27. C.R.S. 1963: § 37-12-27. L. 69: p. 249, § 5. L. 79: Entire section R&RE, p. 598, § 11, effective July 1.

**ANNOTATION**

**Law reviews.** For note, "One Year New Court System", see 41 Den. L. Ctr. J. Review of Constitutional Law", see 41 Den. 140 (1964). L. Ctr. J. 77 (1964). For article, "Colorado's

**13-5-125. Clerks to keep records.**

The clerks of district courts shall keep the financial records prescribed by the state court administrator under the provisions of section 13-3-106.

**Source:** L. 67: p. 454, § 8. C.R.S. 1963: § 37-12-30. L. 73: p. 1402, § 29.

**13-5-126. Duties of bailiff.**

It is the duty of every bailiff to preserve order in the court to which he may be appointed; to attend upon the jury; to open and close the court; and to perform such other duties as may be required of him by the judge of the court.

**Source:** L. 67: p. 454, § 8. C.R.S. 1963: § 37-12-31.

### **13-5-127. Duties of reporters.**

The shorthand reporter, on the direction of the court, shall take down in shorthand all the testimony, rulings of the court, exceptions taken, oral instructions given, and other proceedings had during the trial of any cause, and in such causes as the court may designate.

**Source:** L. 67: p. 454, § 8. C.R.S. 1963: § 37-12-32.

### **ANNOTATION**

**Annotator's note.** Since § 13-5-127 is similar to repealed laws antecedent to CSA, C. 46, § 91, a relevant case construing those provisions has been included in the annotations to this section.

**From whom a defendant can obtain the testimony for his bill of exceptions.** The defendant had the right to assume that he would obtain the testimony from the stenographer for his bill of exceptions. He was not called upon to make any other arrangements nor to anticipate that he would be called upon to procure that testimony from any other source, nor compelled to depend upon the uncertain memory of those present as to what the testimony was. *King v. People*, 54 Colo. 122, 129 P. 235 (1912)(special concurring opinion by J. Musser).

**It has been the invariable custom for district judges to appoint stenographers** for their respective districts to appear at every criminal trial, and under the court's direction, take down the testimony and other matters, and when a defendant wanted a bill of exceptions, containing all of the testimony in a case, if desired, it has been the custom invariably to obtain it from the stenographer. *King v. People*, 54 Colo. 122, 129 P. 235 (1912)(special concurring opinion by J. Musser).

**Court of record has an affirmative duty to contemporaneously record all proceedings.** Reconstruction of the record at a later time is not an adequate substitute for a contemporaneous record. *Jones v. District Court*, 780 P.2d 526 (Colo. 1989).

### **13-5-128. Compensation of reporter.**

The shorthand reporter of a court of record shall be compensated for preparation of the original and any copies of the typewritten transcript of his shorthand notes at such rates as from time to time may be established and promulgated by the supreme court of the state of Colorado. Where, in a court of record, no shorthand reporter is employed and trial transcripts are prepared by other court personnel, such personnel shall be similarly compensated for any transcript preparation required to be accomplished in other than normal working hours.

**Source:** L. 67: p. 455, § 8. C.R.S. 1963: § 37-12-33. L. 69: p. 1085, § 1. L. 73: p. 494, § 1. L. 79: Entire section R&RE, p. 605, § 1, effective May 22.

### **13-5-129. Reporters' expenses. (Repealed)**

**Source:** L. 67: p. 455, § 8. C.R.S. 1963: § 37-12-34. L. 69: p. 249, § 6. L. 79: Entire section repealed, p. 602, § 30, effective July 1.

### **13-5-130. Reporters to file verified statements. (Repealed)**

**Source:** L. 67: p. 455, § 8. C.R.S. 1963: § 37-12-35. L. 72: p. 591, § 58. L. 79: Entire section repealed, p. 602, § 30, effective July 1.

### **13-5-131. Multiple-judge districts.**

In any district court composed of more than one judge, each of the judges shall sit separately for the trial of causes and the transaction of business and shall have and exercise all the powers and functions, as well in vacation of court as in term time, which he might have and exercise if he were the sole judge of said court.

**Source:** L. 67: p. 456, § 8. C.R.S. 1963: § 37-12-38.

## **ANNOTATION**

**Law reviews.** For article, "Expediting Court Procedure", see 10 Dicta 113 (1933).

**Annotator's note.** Since § 13-5-131 is similar to repealed laws antecedent to CSA, C. 46, § 107, relevant cases construing those provisions have been included in the annotations to this section.

**This section is constitutional.** Jordan v. People, 19 Colo. 417, 36 P. 218 (1894).

**Intent of section is** to empower each district court judge to rule on matters challenging the constitutionality of the death penalty and procedures for qualifying a jury for a death penalty case only when sitting

separately. Tolerton v. District Court, 625 P.2d 1020 (Colo. 1981).

**District court has no authority to set motions challenging constitutionality of death penalty** and procedures for qualifying a jury for a death penalty case for a hearing or for determination by a multi-judge panel. Tolerton v. District Court, 625 P.2d 1020 (Colo. 1981).

**Each of the judges herein provided for is authorized to exercise the powers of a district court.** Jordan v. People, 19 Colo. 417, 36 P. 218 (1894).

**Each judge must exercise all the powers and functions of the court.** In the trial of causes, and in the hearing and determination of any matter of purely judicial cognizance pending in the district court, each judge

must sit and act alone. He must exercise all the powers and functions of the court and assume the full responsibility in the decision of each and every cause, demurrer, motion, and the like, coming before him for adjudication, as if he were the sole judge of said court. Two or more judges, by sitting together, cannot share or divide such responsibility. They cannot thus jointly hear and determine, and render a valid and binding judgment or order in any cause. People ex rel. Rucker v. District Court, 14 Colo. 396, 24 P. 260 (1890).

**Purposes set forth in § 13-5-133 (3) do not include** the hearing or determination of motions or the making of decisions, orders, decrees, or judgments in criminal or civil cases filed in the district court. Tolerton v. District Court, 625 P.2d 1020 (Colo. 1981).

### **13-5-132. Powers of judges sitting separately.**

Each court held by the several judges, while sitting separately, shall be known as the district court in and for the county where such court is held and shall have the same power to vacate or modify its own judgments, decrees, or orders rendered or made while so held as if the said court were composed of a single judge.

**Source: L. 67: p. 456, § 8. C.R.S. 1963: § 37-12-39.**

## **ANNOTATION**

**Law reviews.** For article, "Expediting Court Procedure", see 10 Dicta 113 (1933). For article, "Supplementary Rules to Rules of the District Court", see 17 Dicta 107 (1940).

**Section has same meaning as its predecessor statute** and therefore the same interpretation for them is adopted. Tolerton v. District Court, 625 P.2d 1020 (Colo. 1981).

**This section relates to the powers of the several district judges** sitting as the district court of a county. *Lenich v. Lenich*, 138 Colo. 251, 331 P.2d 498 (1958) (decided under repealed § 37-4-18, CRS 53).

**Intent of section is** to empower each district court judge to rule on matters challenging the constitutionality of the death penalty and procedures for qualifying a jury for a death penalty case only when sitting separately. *Tolerton v. District Court*, 625 P.2d 1020 (Colo. 1981).

**District court has no authority to set motions challenging constitutionality of death penalty** and procedures for qualifying a jury for a death penalty case for a hearing or for determination by a multi-judge panel. *Tolerton v. District Court*, 625 P.2d 1020 (Colo. 1981).

**A second judge may correct error of a judge no longer on the bench.** It makes little sense to hold that if a palpable error were committed by one judge in refusing the continuance, it cannot be corrected by a second judge since the judge first presiding is no longer on the bench. *Sunshine v. Robinson*, 168 Colo. 409, 451 P.2d 757 (1969).

**Purposes set forth in § 13-5-133 (3) do not include** the hearing or determination of motions or the making of decisions, orders, decrees, or judgments in criminal or civil cases filed in the district court. *Tolerton v. District Court*, 625 P.2d 1020 (Colo. 1981).

**Applied** in *K-R Funds, Inc. v. Fox*, 640 P.2d 257 (Colo. App. 1981).

### **13-5-133. Judges may sit en banc - purpose - rules.**

(1) In any district court composed of more than one judge, the judges may sit en banc at such times as they may determine, for the purpose of making rules of court, the appointment of a clerk and other employees, subject to the provisions of section 13-3-105, and other ministerial duties, subject to the administrative powers delegated to the chief judge by the chief justice of the supreme court pursuant to section 5 (4) of article VI of the state constitution.

(2) Subject to the approval of the chief justice of the supreme court, a district court sitting en banc may make rules:

(a) To facilitate the transaction of business in the courts held by the judges sitting separately; and

(b) To provide for the classification, arrangement, and distribution of the business of the court among the several judges thereof.

(3) Judges of a district court in districts having more than one judge may sit en banc only for the purposes enumerated in this section, and the court so sitting en banc shall have no power to review any order, decision, or proceeding of the court held by any judge sitting separately.



Source: L. 67: p. 456, § 8. C.R.S. 1963: § 37-12-40. L. 69: p. 250, § 9.

#### ANNOTATION

**Law reviews.** For article, "Expediting Court Procedure", see 10 Dicta 113 (1933).

**Section has same meaning as its predecessor statute** and therefore the same interpretation for them is adopted. Tolerton v. District Court, 625 P.2d 1020 (Colo. 1981).

**Intent of section is** to empower each district court judge to rule on matters challenging the constitutionality of the death penalty and procedures for qualifying a jury for a death penalty case only when sitting separately. Tolerton v. District Court, 625 P.2d 1020 (Colo. 1981).

**District court has no authority to set motions challenging constitutionality of death penalty** and procedures for qualifying

a jury for a death penalty case for a hearing or for a determination by a multi-judge panel. Tolerton v. District Court, 625 P.2d 1020 (Colo. 1981).

**In this state two or more district judges cannot lawfully sit and act together** as a district court except as they sit en banc for the purposes specified in this section. People ex rel. Rucker v. District Court, 14 Colo. 396, 24 P. 260 (1890) (decided under repealed laws antecedent to CSA, C. 46, § 109).

**Purposes set forth in subsection (3) do not include** the hearing or determination of motions or the making of decisions, orders, decrees, or judgments in criminal or civil cases filed in the district court. Tolerton v. District Court, 625 P.2d 1020 (Colo. 1981).

#### 13-5-134. Juries.

Jurors may be summoned and empaneled for each of the judges sitting separately as though each were the sole court.

Source: L. 67: p. 457, § 8. C.R.S. 1963: § 37-12-41. L. 84: Entire section amended, p. 476, § 1, effective February 6.

#### 13-5-135. Time limit on judgment.

Every motion, issue, or other matter arising in any cause pending or to be brought in any district court of this state, and which is submitted to any such court for judgment or decision

thereof, shall be determined by the court within ninety days after the adjournment of court. This section shall not be so construed as to prohibit a decision after the expiration of the time limited, but only as working a forfeiture as provided in section 13-5-136.

**Source:** L. 67: p. 457, § 8. C.R.S. 1963: § 37-12-42.

#### ANNOTATION

**Neither this section nor § 13-5-136 is an authority for the entry of a judgment in vacation or at chambers.** A judgment appearing upon the records of the district court of one county, but which by the same record appears to have been rendered by the judge while at his chambers, in a different county, will be reversed on appeal. *Scott v. Stutheit*, 21 Colo. App. 28, 121 P. 151 (1912).

**This section does not divest jurisdiction or affect the validity of a judgment.** Neither the statute nor the constitution in any way divests the trial court of jurisdiction

to render a decision or affects the validity of the judgment rendered solely because of the lengthy delay between trial and judgment. *Uptime Corp. v. Colo. Research Corp.*, 161 Colo. 87, 420 P.2d 232 (1966).

**The bare fact of the delay is not sufficient to warrant reversal of the judgment.** Since no transcript of the evidence has been presented to this court, it appears that the findings of fact and conclusions of law are fully supported by the evidence. *Uptime Corp. v. Colo. Research Corp.*, 161 Colo. 87, 420 P.2d 232 (1966).

#### **13-5-136. Forfeit of salary.**

(1) If any judge of any district court, to whom any motion, issue, or other matter, arising in any cause, is submitted for judgment or decision, fails or neglects to decide or give judgment upon the same within the time limited by section 13-5-135, such judge shall not receive from the state treasury any salary for the quarter in which such failure occurred, when the following requirements are satisfied:

(a) The party aggrieved by the failure of such judge to rule in a timely manner files a complaint demanding the withholding of the salary of such judge with the commission on judicial discipline established in section 23 (3) of article VI of the state constitution;

(b) The commission on judicial discipline, in accordance with rule 4 of the Colorado rules of judicial discipline, investigates the judge's alleged violation of section 13-5-135;

(c) After such investigation the commission on judicial discipline, in accordance with rule 4 of the Colorado rules of judicial discipline, makes a recommendation concerning the allegation to the Colorado supreme court; and

(d) If deemed appropriate, the Colorado supreme court issues an order directing the department of the treasury to withhold the judge's salary.

(2) This section shall not apply in case of the sickness or death of a judge.

**Source: L. 67:** p. 457, § 8. **C.R.S. 1963:** § 37-12-43. **L. 2000:** Entire section amended, p. 153, § 1, effective March 17.

### **13-5-137. Judges seeking retention in office. (Repealed)**

**Source: L. 79:** Entire section added, p. 606, § 1, effective April 25; entire section repealed, p. 606, § 1, effective June 30, 1980.

### **13-5-138. Appeals to district court.**

If a statute provides for review of the acts of any court, board, commission, or officer by certiorari or other writ and if no time within which review may be sought is provided by statute, a petition to review such acts shall be filed in the district court not later than thirty days from the final action taken by said court, board, commission, or officer.

**Source: L. 81:** Entire section added, p. 877, § 1, effective April 24.

### **13-5-139. Transfer of information from orders for child support and maintenance to child support enforcement agency - payment of support and maintenance.**

(1) On and after July 1, 1991, and contingent upon the executive director of the department of human services notifying the state court administrator that a particular county or judicial district is ready to implement and participate in the family support registry created in section 26-13-114, C.R.S., the clerk of the court of every judicial district in the state shall transfer the information described in section 26-13-114 (7), C.R.S., to the delegate child support enforcement

unit within five working days after entry or modification of a court order or filing of an administrative order in any IV-D case, as defined in section 26-13-102.5 (2), C.R.S.

(2) to (4) Repealed.

**Source:** **L. 85:** Entire section added, p. 588, § 3, effective July 1. **L. 87:** (1) amended, p. 591, § 12, effective July 10. **L. 88:** (4) amended, p. 635, § 15, effective July 1. **L. 90:** (1) amended and (2) to (4) repealed, pp. 1412, 1416, §§ 6, 17, effective June 8. **L. 94:** (1) amended, p. 2640, § 87, effective July 1.

**Cross references:** For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

#### **13-5-140. Transfer of certain registry functions - cooperation between departments.**

The judicial department and the department of human services shall cooperate in the transfer of the functions relating to the collection of child support from the courts to the child support enforcement agency specified in article 13 of title 26, C.R.S. In order to implement such transfer, which shall be completed on or after July 1, 1991, and upon notification to the state court administrator by the executive director of the department of human services that a particular county or judicial district is ready to implement and participate in the family support registry, the judicial department shall transfer to the state child support enforcement agency all necessary data, computer programs, technical written material, and budgetary information and shall provide such technical assistance as may be required. The judicial department shall retain payment records relating to child support orders until the executive director of the department of human services notifies the state court administrator that retention of the records is no longer necessary.

**Source:** **L. 85:** Entire section added, p. 588, § 3, effective July 1. **L. 88:** Entire section amended, p. 636, § 16, effective July 1. **L. 90:** Entire section amended, p. 1412, § 7, effective June 8. **L. 94:** Entire section amended, p. 2640, § 88, effective July 1.

**Cross references:** For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

**13-5-141. Compilation - sentences received upon conviction of felony.**

(1) The state court administrator's office shall, by March 1 and by September 1 of each year, prepare and make available to the public at each district court, for a reasonable charge, a compilation of the sentences imposed in felony cases by each judge in each district court. Such compilation shall include:

- (a) The name of each judge;
- (b) The name of each offender and a description of the crime for which he was convicted;
- (c) The sentence imposed by each such judge for each such felony case; and
- (d) A statement that complete information concerning aggravating and mitigating factors, plea and sentence concessions, and other sentencing considerations is available in the court file. As soon as practical, such information shall be included in the compilation.

**Source: L. 87:** Entire section added, p. 542, § 1, effective July 1.

**13-5-142. National instant criminal background check system - reporting.**

(1) On and after March 20, 2013, the state court administrator shall send electronically the following information to the Colorado bureau of investigation created pursuant to section 24-33.5-401, referred to in this section as the "bureau":

(a) The name of each person who has been found to be incapacitated by order of the court pursuant to part 3 of article 14 of title 15, C.R.S.;

(b) The name of each person who has been committed by order of the court to the custody of the behavioral health administration in the department of human services pursuant to section 27-81-112; and

(c) The name of each person with respect to whom the court has entered an order for certification for short-term treatment of a mental health disorder pursuant to section 27-65-108.5, 27-65-109, or 27-65-109.5; for extended certification for treatment of a mental health disorder pursuant to section 27-65-109 (10); or for long-term care and treatment of a mental health disorder pursuant to section 27-65-110.

(1.5) Not more than forty-eight hours after receiving notification of a person who satisfies the description in paragraph (a), (b), or (c) of subsection (1) of this section, the state court administrator shall report such fact to the bureau.

(2) Any report made by the state court administrator pursuant to this section shall describe the reason for the report and indicate that the report is made in accordance with 18 U.S.C. sec. 922 (g)(4).

(3) The state court administrator shall take all necessary steps to cancel a record made by the state court administrator in the national instant criminal background check system if:

(a) The person to whom the record pertains makes a written request to the state court administrator; and

(b) No less than three years before the date of the written request:

(I) The court entered an order pursuant to section 15-14-318, C.R.S., terminating a guardianship on a finding that the person is no longer an incapacitated person, if the record in the national instant criminal background check system is based on a finding of incapacity;

(II) The period of certification or commitment of the most recent order of certification, commitment, recertification, or recommitment expired, or a court entered an order terminating the person's incapacity or discharging the person from certification or commitment in the nature of habeas corpus, if the record in the national instant criminal background check system is based on an order of certification or commitment to the custody of the behavioral health administration in the department of human services; except that the state court administrator shall not cancel any record pertaining to a person with respect to whom two recommitment orders have been entered pursuant to section 27-81-112 (7) and (8), or who was discharged from treatment pursuant to section 27-81-112 (11) on the grounds that further treatment is not likely to bring about significant improvement in the person's condition; or

(III) The record in the case was sealed pursuant to section 27-65-123 (7) or 25.5-10-515 (4), or the court entered an order discharging the person from certification in the nature of habeas corpus pursuant to section 27-65-115, if the record in the national instant criminal background check system is based on a court order for involuntary certification for short-term treatment of a mental health disorder.

(4) Pursuant to section 102 (c) of the federal "NICS Improvement Amendments Act of 2007" (Pub.L. 110-180), a court, upon becoming aware that the basis upon which a record reported by the state court administrator pursuant to subsection (1) of this section does not apply or no longer applies, shall:

(a) Update, correct, modify, or remove the record from any database that the federal or state government maintains and makes available to the national instant criminal background check system, consistent with the rules pertaining to the database; and

(b) Notify the attorney general that such basis does not apply or no longer applies.

**Source:** **L. 2002:** Entire section added, p. 753, § 1, effective January 1, 2003. **L. 2010:** (1)(b), (1)(c), (3)(b)(II), and (3)(b)(III) amended, (SB 10-175), ch. 188, p. 780, § 15, effective April 29. **L. 2013:** IP(1), (2), IP(3), (3)(a), and (3)(b)(II) amended and (1.5) and (4) added, (HB 13-1229), ch. 47, p. 131, § 2, effective March 20. **L. 2017:** IP(1), (1)(b), and (3)(b)(II) amended, (SB 17-242), ch. 263, p. 1251, § 5, effective May 25. **L. 2018:** (1)(c) and (3)(b)(III) amended, (SB 18-091), ch. 35, p. 382, § 8, effective August 8. **L. 2020:** (1)(b) amended, (SB 20-007), ch. 286, p. 1414, § 42, effective July 13; (3)(b)(II) and (3)(b)(III) amended, (SB 20-136), ch. 70, p. 281, § 2, effective September 14. **L. 2022:** (1)(b) and (3)(b)(II) amended, (HB 22-1278), ch. 222, p. 1490, § 9, effective July 1; (1)(c) and (3)(b)(III) amended, (HB 22-1256), ch. 451, p. 3224, § 14, effective August 10. **L. 2023:** (1)(c) amended, (HB 23-1138), ch. 423, p. 2488, § 6, effective July 1, 2024. **L. 2026:** (1)(c) and (3)(b)(III) amended, (SB 26-149), ch. 142, p. 791, § 33, effective May 21.

**Cross references:** For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in SB 18-091, see section 1 of chapter 35, Session Laws of Colorado 2018. For the legislative declaration in SB 20-136, see section 1 of chapter 70, Session Laws of Colorado 2020.

## ANNOTATION

**Certification for involuntary short-term mental health treatment entered by a professional person under § 27-65-107 is not a court order under subsection (1)(c) of this section** and a person's information should not be sent to the bureau for

forwarding on to the National Instant Criminal Background Check System, which would subject the person to federal firearms prohibitions. *Ray v. People*, 2019 COA 24, 456 P.3d 54.

### **13-5-142.5. National instant criminal background check system - judicial process for awarding relief from federal prohibitions - legislative declaration.**

(1) **Legislative declaration.** The purpose of this section is to set forth a judicial process whereby a person may apply or petition for relief from federal firearms prohibitions imposed pursuant to 18 U.S.C. sec. 922 (d)(4) and (g)(4), as permitted by the federal "NICS Improvement Amendments Act of 2007" (Pub.L. 110-180, sec. 105).

(2) **Eligibility.** A person may petition for relief pursuant to this section if:

(a) (I) He or she has been found to be incapacitated by order of the court pursuant to part 3 of article 14 of title 15, C.R.S.;

(II) The person has been committed by order of the court to the custody of the behavioral health administration in the department of human services pursuant to section 27-81-112; or

(III) The court has entered an order for the person's certification for short-term treatment of a mental health disorder pursuant to section 27-65-108.5, 27-65-109, or 27-65-109.5; for extended certification for treatment of a mental health disorder pursuant to section 27-65-109 (10); or for long-term care and treatment of a mental health disorder pursuant to section 27-65-110; and

(b) He or she is a person to whom the sale or transfer of a firearm or ammunition is prohibited by 18 U.S.C. sec. 922 (d)(4), or who is prohibited from shipping, transporting, possessing, or receiving a firearm or ammunition pursuant to 18 U.S.C. sec. 922 (g)(4).

(3) **Due process.** In a court proceeding pursuant to this section:

(a) The petitioner shall have an opportunity to submit his or her own evidence to the court concerning his or her petition;

(b) The court shall review the evidence; and

(c) The court shall create and thereafter maintain a record of the proceeding.

(4) **Proper record.** In determining whether to grant relief to a petitioner pursuant to this section, the court shall receive evidence concerning, and shall consider:

(a) The circumstances regarding the firearms prohibitions imposed by 18 U.S.C. sec. 922 (g)(4);

(b) The petitioner's record, which must include, at a minimum, the petitioner's mental health records and criminal history records; and

(c) The petitioner's reputation, which the court shall develop, at a minimum, through character witness statements, testimony, or other character evidence.

(5) **Proper findings.**

(a) Before granting relief to a petitioner pursuant to this section, the court shall issue findings that:

(I) The petitioner is not likely to act in a manner that is dangerous to public safety; and

(II) Granting relief to the petitioner is not contrary to the public interest.

(b) (I) If the court denies relief to a petitioner pursuant to this section, the petitioner may petition the court of appeals to review the denial, including the record of the denying court.

(II) A review of a denial shall be de novo in that the court of appeals may, but is not required to, give deference to the decision of the denying court.



(III) In reviewing a denial, the court of appeals has discretion, but is not required, to receive additional evidence necessary to conduct an adequate review.

**Source:** **L. 2013:** Entire section added, (HB 13-1229), ch. 47, p. 132, § 3, effective March 20. **L. 2017:** (2)(a)(II) amended, (SB 17-242), ch. 263, p. 1251, § 6, effective May 25. **L. 2018:** (2)(a)(III) amended, (SB 18-091), ch. 35, p. 383, § 9, effective August 8. **L. 2020:** (2)(a)(II) amended, (SB 20-007), ch. 286, p. 1414, § 43, effective July 13. **L. 2022:** (2)(a)(II) amended, (HB 22-1278), ch. 222, p. 1491, § 10, effective July 1; (2)(a)(III) amended, (HB 22-1256), ch. 451, p. 3225, § 15, effective August 10. **L. 2023:** (2)(a)(III) amended, (HB 23-1138), ch. 423, p. 2488, § 7, effective July 1, 2024. **L. 2026:** (2)(a)(III) amended, (SB 26-149), ch. 142, p. 791, § 34, effective May 21.

**Cross references:** For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in SB 18-091, see section 1 of chapter 35, Session Laws of Colorado 2018.

#### **13-5-142.8. Notice by professional persons.**

Under sections 13-9-123 (1), 13-9-124 (2), 13-5-142 (1), and 13-5-142.5 (2), an order for certification for short-term treatment of a mental health disorder pursuant to section 27-65-108.5, 27-65-109, or 27-65-109.5 must also include a notice filed by a professional person pursuant to section 27-65-108.5, 27-65-109, or 27-65-109.5, and an order for extended certification for treatment of a mental health disorder pursuant to section 27-65-109 (10) must also include a notice filed by a professional person pursuant to section 27-65-109 (10).

**Source:** **L. 2019:** Entire section added, (SB 19-177), ch. 311, p. 2812, § 3, effective August 2. **L. 2022:** Entire section amended, (HB 22-1256), ch. 451, p. 3225, § 16, effective August 10. **L. 2023:** Entire section amended, (HB 23-1138), ch. 423, p. 2488, § 8, effective July 1, 2024. **L. 2026:** Entire section amended, (SB 26-149), ch. 142, p. 792, § 35, effective May 21.

#### **13-5-143. Judge as party to a case - recusal of judge upon motion.**

(1) If a judge or former judge of a district court is a party in his or her individual and private capacity in a case that is to be tried within any district court in the same judicial district in which the judge or former judge is or was a judge of a district court, any party to the case may file a

timely motion requesting that the judge who is appointed to preside over the case recuse himself or herself from the case.

(2) If a district court receives a motion filed by a party pursuant to subsection (1) of this section, the judge who is appointed to preside over the case shall recuse himself or herself if he or she is a judge of a district court in the same judicial district in which the judge or former judge who is a party to the case in his or her individual and private capacity is or was a judge of a district court.

(3) If a judge recuses himself or herself pursuant to subsection (2) of this section, the chief justice of the Colorado supreme court or his or her designee shall appoint a judge from outside the judicial district to preside over the case.

(4) The provisions of this section shall not apply to a water judge or referee when he or she is acting within his or her exclusive jurisdiction over water matters pursuant to section 37-92-203, C.R.S.

**Source: L. 2008:** Entire section added, p. 435, § 1, effective August 5.

#### **13-5-144. Chief judge - veterans treatment court authority.**

The chief judge of a judicial district may establish an appropriate program for the treatment of veterans and members of the military. In establishing any such program, the chief judge, in collaboration with the probation department, the district attorney, and the state public defender, shall establish program guidelines and eligibility criteria.

**Source: L. 2010:** Entire section added, (HB 10-1104), ch. 139, p. 465, § 3, effective April 16.  
**L. 2018:** Entire section amended, (HB 18-1078), ch. 135, p. 890, § 2, effective August 8.

**Cross references:** For the legislative declaration in the 2010 act adding this section, see section 1 of chapter 139, Session Laws of Colorado 2010.

#### **ANNOTATION**

**Law reviews.** For comment, "Colorado's in Colorado", see 88 U. Colo. L. Rev. 385 About Face: Mechanics, Progress, and (2017). Challenges Facing Veterans Trauma Courts

**13-5-145. Truancy detention reduction policy - legislative declaration.**

(1) The general assembly finds that:

(a) Imposing a sentence of detention on a juvenile who violates a court order to attend school does not improve the likelihood that the juvenile will attend school and does not address the underlying causes of the juvenile's truancy;

(b) The best methods to address truancy and its underlying causes and the resources needed to implement those methods are different in each community;

(c) Since 2014, the juvenile courts in many judicial districts around the state have successfully reduced the use of detention for juveniles who are truant by implementing pilot projects through which the juvenile court imposes reasonable sanctions and, where possible, provides incentives to attend school, reserving detention as a sanction of last resort; and

(d) These pilot projects need additional time to produce meaningful data regarding the effectiveness of the alternate sanctions and incentives and to determine whether they result in improved outcomes for juveniles and their families.

(2) The chief judge in each judicial district, or his or her designee, shall convene a meeting of community stakeholders to create a policy for addressing truancy cases that seeks alternatives to the use of detention as a sanction for truancy. Community stakeholders may include, but need not be limited to:

(a) Parents;

(b) Representatives from school districts;

(c) Representatives from county departments of human or social services;

(d) Guardians ad litem;

(e) Court-appointed special advocates;

(f) Juvenile court judges;

(g) Respondent counsel;

(h) Representatives from law enforcement agencies;

(i) Mental health-care providers;

(j) Substance use disorder treatment providers;

(k) Representatives from the division of criminal justice in the department of public safety;

- (l) Representatives from the state department of human services; and
  - (m) Representatives from the department of education.
- (3) The chief judge in each judicial district shall adopt a policy for addressing truancy cases no later than March 15, 2016. In developing the policy for addressing truancy cases, the chief judge and the community stakeholders shall consider, at a minimum:
- (a) Best practices for addressing truancy that are used in other judicial districts and in other states;
  - (b) Evidence-based practices to address and reduce truancy;
  - (c) Using a wide array of reasonable sanctions and reasonable incentives to address and reduce truancy;
  - (d) Using detention only as a last resort after exhausting all other reasonable sanctions and, when imposing detention, appropriately reducing the number of days served; and
  - (e) Research regarding the effect of detention on juveniles.
- (4) Repealed.

**Source:** **L. 2015:** Entire section added, (SB 15-184), ch. 286, p. 1172, § 1, effective August 5. **L. 2017:** (2)(j) amended, (SB 17-242), ch. 263, p. 1292, § 105, effective May 25. **L. 2018:** (2)(c) amended, (SB 18-092), ch. 38, p. 398, § 7, effective August 8. **L. 2026:** (4) repealed, (HB 26-1295), ch. 121, p. 515, § 1, effective August 12.

**Cross references:** For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

## PART 2

### DISTRICT COURT MAGISTRATES

#### **13-5-201. District court magistrates.**

(1) District court magistrates may be appointed, subject to available appropriations, pursuant to section 13-3-105, if approved by the chief justice of the supreme court.

(2) A district court magistrate shall be a qualified attorney-at-law admitted to practice in this state and in good standing. Nothing in this part 2 shall affect the qualifications of water referees appointed pursuant to section 37-92-203 (6), C.R.S.

(2.5) District court magistrates shall have the power to solemnize marriages pursuant to the procedures in section 14-2-109, C.R.S.

(3) District court magistrates may hear such matters as are determined by rule of the supreme court, subject to the provision that no magistrate may preside in any trial by jury.

(3.5) District court magistrates shall have the power to preside over matters specified in section 13-17.5-105.

(4) For purposes of this part 2, the Denver probate court shall be regarded as a district court.

**Source:** **L. 83:** Entire part added, p. 600, § 1, effective May 20. **L. 89:** (2.5) added, p. 781, § 2, effective April 4. **L. 91:** Entire section amended, p. 354, § 2, effective April 9. **L. 93:** (2) amended, p. 1774, § 30, effective June 6. **L. 95:** (3.5) added, p. 480, § 2, effective July 1.

**Cross references:** For magistrates in the small claims division of county courts, see § 13-6-405; for magistrates in county courts, see part 5 of article 6 of this title.

#### ANNOTATION

**A district court magistrate must receive the consent of a party to have the authority to hear a habeas corpus case.**

Medina v. Williams, 2021 CO 24, 484 P.3d 709.

### PART 3

#### FAMILY LAW MAGISTRATES

**13-5-301 to 13-5-305. (Repealed)**

**Source:** **L. 2004:** Entire part repealed, p. 224, § 1, effective July 1.

**Editor's note:** This part 3 was added in 1985. For amendments to this part 3 prior to its repeal in 2004, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

## **13-5.3 ARTICLE 5.3**

### **Commission on Judicial Discipline**

|             |                                                                                                                      |             |                                                                                                                 |
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| 13-5.3-101. | Definitions.                                                                                                         | 13-5.3-108. | Reporting requirements -                                                                                        |
| 13-5.3-102. | Commission on judicial discipline - powers and duties.                                                               |             | "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act" report - annual report. |
| 13-5.3-103. | Office of judicial discipline - created - executive director - duties - oversight.                                   | 13-5.3-109. | Representation by attorney general.                                                                             |
| 13-5.3-104. | Commission on judicial discipline special cash fund - acceptance of federal funds - general appropriations - repeal. | 13-5.3-110. | Legislative interim committee on judicial discipline - creation. (Repealed)                                     |
| 13-5.3-105. | Information-sharing with judicial oversight entities - legislative declaration.                                      | 13-5.3-111. | Requests for evaluation - manner - confidential requests.                                                       |
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#### **13-5.3-101. Definitions.**

As used in this article 5.3, unless the context otherwise requires:

- (1) "Attorney" means a person admitted to practice law before the courts of this state.
- (2) "Code" means the Colorado code of judicial conduct.

(3) "Commission" means the commission on judicial discipline, established pursuant to section 23 (3) of article VI of the Colorado constitution.

(4) "Commissioner" means an appointed member of the commission on judicial discipline or a special member appointed pursuant to section 23 (3)(a) of article VI of the Colorado constitution.

(5) "Complaint" means information in any form from any source that alleges or from which a reasonable inference can be drawn that a judge committed misconduct or is incapacitated.

(6) "Department" means the Colorado state judicial department and all its subparts, such as the office of the state court administrator; the office of the chief justice of the supreme court; the judicial districts and their administrations, including chief judges and district administrators; the human resources department; and other administrative subparts.

(7) "Executive director" means the executive director of the office of judicial discipline appointed pursuant to section 13-5.3-103.

(8) "Fund" means the commission on judicial discipline special cash fund, created in section 13-5.3-104.

(9) (a) "Judge" means any justice or judge of any court of record of this state serving on a full-time, part-time, or senior basis.

(b) "Judge" also includes any justice or judge who has retired within the jurisdictional limits for disciplinary proceedings established by this article 5.3, the commission, or the Colorado supreme court.

(c) "Judge" does not include municipal judges or magistrates, administrative law judges, or Denver county court judges, who are subject to different disciplinary authorities.

(9.5) "Judicial discipline adjudicative board" means the judicial discipline adjudicative board created pursuant to section 23 (3) of article VI of the Colorado constitution to conduct formal judicial disciplinary proceedings.

(10) "Justice" means a justice serving on the supreme court of Colorado on either a full-time or senior basis.

(11) "Misconduct" means conduct by a judge that may reasonably constitute grounds for discipline under the code, the Colorado rules of judicial discipline, or section 23 (3) of article VI of the Colorado constitution.

(12) "Office" means the office of judicial discipline established in section 13-5.3-103.

(13) "Office of the state court administrator" means the office created pursuant to section 13-3-101 (1).

(13.5) "Panel" means a three-member panel of the judicial discipline adjudicative board consisting of one judge, one attorney licensed to practice in Colorado, and one citizen, convened pursuant to section 23 (3) of article VI of the Colorado constitution upon an order of a formal hearing or to hear an appeal of an order of informal remedial action.

(14) "Rules" means the Colorado rules of judicial discipline.

(15) "Supreme court" means the supreme court of the state of Colorado established pursuant to article VI of the Colorado constitution.

**Source:** **L. 2022:** Entire article added, (SB 22-201), ch. 201, p. 1345, § 2, effective May 20. **L. 2023:** (9.5) and (13.5) added, (HB 23-1019), ch. 366, p. 2198, § 1, effective December 17, 2024 (see editor's note).

**Editor's note:** Section 14 of chapter 366, Session Laws of Colorado 2023, provides that subsections (9.5) and (13.5) are effective upon proclamation of the vote by the governor only if, at the November 2024 statewide election, a majority of voters approve the ballot issue referred in accordance with section 2 of House Concurrent Resolution 23-1001. The ballot issue, referred to voters as Amendment H, was approved on November 5, 2024, and was proclaimed by the governor on December 17, 2024, see L. 2025, p. 3632. The vote count for the measure was as follows:

FOR: 2,150,820

AGAINST: 793,642

**Cross references:** For the legislative declaration in SB 22-201, see section 1 of chapter 201, Session Laws of Colorado 2022.

### **13-5.3-102. Commission on judicial discipline - powers and duties.**

(1) Pursuant to section 23 (3) of article VI of the Colorado constitution, the Colorado commission on judicial discipline is established as an independent commission housed within the department.

(2) (a) Members of the commission are appointed and serve pursuant to section 23 (3)(a) and (3)(b) of article VI of the Colorado constitution.



(b) (I) The supreme court shall select the members of the commission who are judges of the district courts and judges of county courts from among the nominee pools created by the state court administrator pursuant to subsection (2)(b)(II) of this section; except that when making its selections, the supreme court shall ensure that the commission does not include more than one district judge from any one judicial district and not more than one county judge from any one county.

(II) (A) Upon a vacancy of a district judge member of the commission, the state court administrator shall create a district judge nominee pool that consists of ten district judges randomly selected by the state court administrator, or the administrator's designee, from among all district judges of the state not currently a member of the commission.

(B) Upon a vacancy of a county judge member of the commission, the state court administrator shall create a county judge nominee pool that consists of ten county judges randomly selected by the state court administrator, or the administrator's designee, from among all county judges of the state not currently a member of the commission.

(C) When creating the nominee pool, the state court administrator or the administrator's designee shall only include judges who do not have a current disciplinary investigation or proceeding pending before the commission or judicial discipline adjudicative board; have not received a disciplinary sanction from the commission, judicial discipline adjudicative board, or supreme court; and are not otherwise required by law, court rule, or judicial canon to recuse themselves from the commission. The random selection of judges to a nominee pool is a purely administrative function.

(3) The commission shall:

(a) Investigate and resolve requests for evaluation of potential judicial misconduct in accordance with the Colorado constitution, the rules, and this article 5.3;

(b) Appoint an executive director of the office of judicial discipline;

(c) Establish positions, roles, and minimum starting salaries for employees of the office;

(d) Hire employees of the office who serve at the pleasure of the commission. Employees of the office may include clerical assistants; attorneys who serve as special counsel; and investigators.

(e) Employ attorneys or appoint outside special counsel pursuant to sections 24-31-101 (1)(g) and 24-31-111 who serve at the pleasure of the commission; assign duties to special counsel at the discretion of the commission, which may include serving as representatives of the people of the state of Colorado in formal proceedings; and determine the compensation of special counsel; and

(f) Approve a budget for the commission and the office and assist the executive director in managing the office and providing fiscal oversight of the office's operating budget.

(4) Commissioners are immune from suit in any action, civil or criminal, based upon official acts performed in good faith as commissioners consistent with the "Colorado Governmental Immunity Act", article 10 of title 24.

**Source:** **L. 2022:** Entire article added, (SB 22-201), ch. 201, p. 1347, § 2, effective May 20. **L. 2023:** (2) amended, (HB 23-1019), ch. 366, p. 2198, § 2, effective December 17, 2024 (see editor's note).

**Editor's note:** Section 14 of chapter 366, Session Laws of Colorado 2023, provides that amendments to subsection (2) are effective upon proclamation of the vote by the governor only if, at the November 2024 statewide election, a majority of voters approve the ballot issue referred in accordance with section 2 of House Concurrent Resolution 23-1001. The ballot issue, referred to voters as Amendment H, was approved on November 5, 2024, and was proclaimed by the governor on December 17, 2024, see L. 2025, p. 3632. The vote count for the measure was as follows:

FOR: 2,150,820

AGAINST: 793,642

**Cross references:** For the legislative declaration in SB 22-201, see section 1 of chapter 201, Session Laws of Colorado 2022.

### **13-5.3-103. Office of judicial discipline - created - executive director - duties - oversight.**

(1) (a) The office of judicial discipline is established as an independent office housed within the department. The commission shall oversee the office.

(b) Subject to the commission's supervision, the office shall:

(I) Staff and support the commission's operations. The initial staffing includes the executive director, a full-time administrative support person, an attorney, and an investigator.

(II) Receive requests for evaluation involving justices and judges;

(III) Conduct public education efforts concerning the judicial discipline process and the recommendations made by the commission;

(IV) Engage in and provide educational background to the public, the department, judicial nominating commissions, and judicial performance commissions regarding the requirements of the code and the commission; and

(V) Complete any other duties as assigned by the commission.

(2) (a) The commission shall appoint an executive director of the office. The executive director:

(I) Shall be admitted to practice law in the courts of this state and have practiced law in this state for at least ten years;

(II) Shall not be involved in the private practice of law while serving as the executive director; and

(III) Shall not appear as an attorney before the commission for a period of five years following service as the executive director.

(b) The executive director serves at the pleasure of the commission. The executive director's compensation is the same as the compensation the general assembly establishes for district court judges. The executive director shall hire additional staff for the office as necessary and as approved by the commission.

(c) The executive director has the following duties:

(I) Establish and maintain a permanent office;

(II) Respond to inquiries about the commission or the code;

(III) Advise the commission on the application and interpretation of the code and the rules;

(IV) Process requests for evaluation of judicial conduct;

(V) Conduct or supervise evaluations and investigations as directed by the commission;

(VI) Advise the commission as to potential dispositional recommendations as may be requested by the commission;

(VII) Maintain commission records;

(VIII) Maintain statistics concerning the operation of the commission and make them available to the commission;

(IX) Prepare the commission's budget and, once approved by the commission, submit it to the joint budget committee of the general assembly;

(X) Administer commission money and resources, including money in the commission on judicial discipline special cash fund;

- (XI) Supervise commission staff;
  - (XII) Notify the appropriate appointing authority of vacancies on the commission;
  - (XIII) Assist the commission in preparing an annual report of the commission's activities for presentation to the commission, the supreme court, and the public;
  - (XIV) Supervise special counsel, investigators, other experts, or personnel as directed by the commission, as they investigate and process matters before the commission and before the supreme court; and
  - (XV) Perform such other duties as required by the rules, this article 5.3, the rules promulgated by the commission, or the commission.
- (3) The department shall provide the commission and the office with office space in the Ralph L. Carr Colorado judicial center.
- (4) Repealed.

**Source: L. 2022:** Entire article added, (SB 22-201), ch. 201, p. 1347, § 2, effective May 20. **L. 2023:** (3) amended and (4) added, (SB 23-228), ch. 96, p. 361, § 2, effective April 20.

**Editor's note:** Subsection (4)(b) provided for the repeal of subsection (4), effective July 1, 2024. (See L. 2023, p. 361.)

**Cross references:** For the legislative declaration in SB 22-201, see section 1 of chapter 201, Session Laws of Colorado 2022.

**13-5.3-104. Commission on judicial discipline special cash fund - acceptance of federal funds - general appropriations - repeal.**

- (1) The commission is authorized to accept any federal funds made available for any purpose consistent with the provisions of this article 5.3.
- (2) Any money received pursuant to this section must be transmitted to the state treasurer, who shall credit the same to the commission on judicial discipline special cash fund, which is created in the state treasury.
- (3) Any expenses, attorney fees, or costs recovered pursuant to this article 5.3 must be transmitted to the state treasurer, who shall credit the same to the fund.

(4) Money in the fund is continuously appropriated to the commission for the purposes specified in subsection (6) of this section.

(5) Any interest derived from the deposit and investment of money in the fund is credited to the fund. Any unexpended and unencumbered money remaining in the fund at the end of any fiscal year remains in the fund and is not credited or transferred to the general fund or another fund.

(6) Money in the fund may be used for payment of the expenses for evaluations, investigations, formal proceedings, or special projects that the commission has determined are to be undertaken by personnel other than or in addition to those employed by the office.

(7) Repealed.

(8) (a) On June 30, 2026, the state treasurer shall transfer four hundred thousand dollars from the fund to the general fund.

(b) This subsection (8) is repealed, effective June 30, 2027.

**Source:** **L. 2022:** Entire article added, (SB 22-201), ch. 201, p. 1349, § 2, effective May 20. **L. 2026:** (7) repealed and (8) added, (HB 26-1381), ch. 174, p. 1014, § 1, effective May 27.

**Cross references:** For the legislative declaration in SB 22-201, see section 1 of chapter 201, Session Laws of Colorado 2022.

### **13-5.3-105. Information-sharing with judicial oversight entities - legislative declaration.**

(1) The general assembly finds and declares that:

(a) Several entities within the department share a role in the oversight of the judiciary and, as a result, often become aware of and involved in investigations that relate to matters that may come before the commission, including the office of judicial performance evaluation, the judicial nominating commissions, the office of the presiding disciplinary judge, and the office of attorney regulation counsel, collectively referred to in this section as "judicial oversight entities"; and

(b) In order for the commission and the judicial oversight entities to properly perform their functions, they need to be able to share relevant information and documents while maintaining their respective rules of confidentiality.

(2) When requested by a judicial oversight entity, the commission may provide the disciplinary record of a judge or justice to the requesting entity. The judicial oversight entity

shall keep the information confidential to the same extent that the commission is required to do so pursuant to the state constitution and the rules.

(3) (a) When a judicial oversight entity receives information indicating or alleging potential judicial misconduct, the entity shall share the portion of the complaint alleging judicial misconduct with the commission within a reasonable time. Thereafter, the commission may request further material or information that the oversight entity holds relating to the allegation of judicial misconduct. The judicial oversight entity shall provide the requested material or information to the commission within fourteen calendar days after the commission's request. A judicial oversight entity may not withhold requested material or information through a claim of privilege or confidentiality that it holds. Any information or materials received from the entity are subject to the commission's rules of confidentiality.

(b) A provision in a contract, including in a nondisclosure agreement, entered into after August 7, 2023, that prohibits a judicial oversight entity from disclosing to the commission information described in this subsection (3) is void as against public policy and is unenforceable.

**Source: L. 2022:** Entire article added, (SB 22-201), ch. 201, p. 1350, § 2, effective May 20. **L. 2023:** (3) amended, (HB 23-1019), ch. 366, p. 2199, § 3, effective August 7.

**Cross references:** For the legislative declaration in SB 22-201, see section 1 of chapter 201, Session Laws of Colorado 2022.

#### **13-5.3-106. Information-sharing within the judicial department - legislative declaration.**

(1) The general assembly finds and declares that:

(a) Offices or personnel within the department are often the first to receive complaints;

(b) The department often holds evidentiary materials relating to potential misconduct and often develops evidence, through investigations or otherwise, relating to such potential misconduct;

(c) The commission cannot fully pursue its constitutional mandate unless all information relevant to a complaint available to the department is freely and promptly shared with the commission; and

(d) The credibility of the judiciary and judicial discipline are best served by the department promptly sharing with the commission all information and materials available to the department relevant to a complaint or potential misconduct.

(2) The department shall ensure that if any member of the department, including members of the office of the state court administrator, the office of the chief justice, chief judges, district administrators, the human resources department, administrative personnel, judicial districts, clerks of court, and others, receives a complaint from an employee, volunteer, or contractor for the department, the department shall:

(a) Document both the receipt of the complaint and the department's handling of the complaint, including any investigation that may be conducted, and maintain such documentation for as long as the subject of the complaint is a judge, plus three calendar years;

(b) Within not more than thirty-five days after receipt of the complaint, notify the office of the complaint and provide the office with all information within the custody or control of the department related to the complaint, including:

(I) Identification of potential witnesses;

(II) A list of any evidence held or known;

(III) Access to all evidence, including administrative files, digital data, digital or paper case files, recordings and transcripts, communications, and metadata, without charge; and

(IV) Any department investigative materials that may exist, including any investigative or action plans; and

(c) Notify any person supplying any information concerning a complaint, and any witness interviewed, of the following:

(I) The existence, role, independence from the department, and process of communicating with the commission;

(II) That information given to the commission is confidential unless and until a recommendation is made to the supreme court;

(III) Rule 2.16 (B) of the code prohibiting retaliation against any person assisting the commission;

(IV) That the department has a duty to disclose all information related to potential judicial misconduct to the commission; and

(V) That the department is prohibited from discouraging a person from sharing information with the commission, including entering into a nondisclosure agreement that would have that effect.

(3) The department's duties of disclosure arise when the department receives a complaint.

(4) If the department receives a complaint alleging judicial misconduct from an individual or entity that is not an employee, volunteer, or contractor for the department, the department shall notify the complainant of the role of the commission and provide the complainant with the commission's contact information. If the complainant submits written or electronic materials in connection with a complaint, the department shall forward those materials to the commission. Each judicial district, the appellate courts, and the state court administrator's office shall adopt a written policy to implement this provision.

(5) The duties to document and disclose potential judicial misconduct and related information continue when the department receives additional information.

(6) (a) The department shall:

(I) Adopt procedures and policies to implement the duties stated in this section and to educate department personnel about these duties; and

(II) Cooperate with any request from the commission for information related to evaluating a complaint and supply requested information or materials within a reasonable time of not more than thirty-five days after the date of request.

(b) The department shall not:

(I) Adopt any policy or enter into any contract that purports to impede disclosure of information related to potential judicial misconduct to the commission. The department shall not discourage any person or entity from cooperating with the commission or disclosing information to the commission.

(II) Withhold from the commission disclosure of materials or information for any of the following reasons:

(A) A claim of privilege held by the department, including attorney-client, attorney work product, judicial deliberation, or other claim of privilege;

(B) A claim of confidentiality;

(C) A claim of contractual right or obligation arising after May 20, 2022, not to disclose information, including a nondisclosure agreement; or

(D) A claim that any records are part of a state auditor fraud hotline investigation or report; and

(III) Retaliate, directly or indirectly, against any person communicating with the commission regarding potential judicial misconduct or its examination, any person seeking to comply with the documentation and disclosure obligations of this section, or any person otherwise assisting or



suspected of assisting the commission to fulfill its constitutional mandate or its role in judicial oversight.

(c) The department and the office of attorney regulation counsel will respect the confidentiality of the commission's communications and records.

(d) Notwithstanding subsection (6)(b)(II) of this section, the department may withhold from disclosure to the commission materials and information whose disclosure is prohibited by federal law, information covered by judicial deliberation privilege, and materials and information in the department's custody or control through an established and confidentiality-based mental health or professional development program. For any materials or information withheld by the department under this subsection (6)(d), the department shall disclose to the commission the nature of the materials withheld, the reason the items are withheld, and, if requested by the commission, a privilege or confidentiality log compliant with the standards governing civil litigation discovery.

(e) The timely disclosure to the commission of information or materials pursuant to this section by the department does not, by itself, waive any otherwise valid claim of privilege or confidentiality held by the department. When the department discloses materials or information it asserts is privileged or confidential, the department and the commission shall enter an agreement under Rule 502 of the Colorado rules of evidence implementing this subsection (6)(e), in which the department and the commission agree that the disclosure does not waive, by itself, any otherwise valid claim of privilege or confidentiality held by the department, and that the commission shall hold the materials and information as confidential under the commission's procedures and not disclose privileged or confidential information to a third party except as may be required through the investigative and disciplinary process. The department and the commission may add further terms to address the individual circumstances of the matter if they agree.

**Source: L. 2022:** Entire article added, (SB 22-201), ch. 201, p. 1351, § 2, effective May 20.

**Cross references:** For the legislative declaration in SB 22-201, see section 1 of chapter 201, Session Laws of Colorado 2022.

### **13-5.3-107. Rule-making.**

(1) Section 23 (3) of article VI of the Colorado constitution establishes a rule-making committee to propose rules for the commission and the judicial discipline adjudicative board. In exercising its authority, the rule-making committee shall provide the commission and the judicial discipline adjudicative board reasonable notice before proposing any new rule or amendment.

(2) Whenever the rule-making committee proposes a rule, the committee shall post notice of the proposed rule, allow for a period for public comment, and give the public an opportunity to address the committee concerning the proposed rule at a public hearing.

**Source: L. 2022:** Entire article added, (SB 22-201), ch. 201, p. 1354, § 2, effective May 20. **L. 2023:** Entire section amended, (HB 23-1019), ch. 366, p. 2200, § 4, effective December 17, 2024 (see editor's note).

**Editor's note:** Section 14 of chapter 366, Session Laws of Colorado 2023, provides that amendments to this section are effective upon proclamation of the vote by the governor only if, at the November 2024 statewide election, a majority of voters approve the ballot issue referred in accordance with section 2 of House Concurrent Resolution 23-1001. The ballot issue, referred to voters as Amendment H, was approved on November 5, 2024, and was proclaimed by the governor on December 17, 2024, see L. 2025, p. 3632. The vote count for the measure was as follows:

FOR: 2,150,820

AGAINST: 793,642

**Cross references:** For the legislative declaration in SB 22-201, see section 1 of chapter 201, Session Laws of Colorado 2022.

**13-5.3-108. Reporting requirements - "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act" report - annual report.**

(1) The commission shall gather and maintain annual data and statistics on the following information:

(a) The number of requests for evaluation received, the number of other allegations of judicial misconduct received regardless of form, and the number of requests for evaluation that the commission dismissed because it lacks jurisdiction over the judge or conduct that is the subject of the complaint;

(b) The number of judicial misconduct investigations performed, the types of complaints investigated, and the results of the investigations;

(c) The types of judicial misconduct complaints reviewed by the commission following an investigation, the number of reviewed complaints that were substantiated, and the number of reviewed complaints that were not substantiated;

(d) The number of formal proceedings pursued;

(e) The number and types of dispositions entered, including the type of any discipline imposed or recommended; and

(f) The demographics, including the gender, age, race, ethnicity, or disability, of judges under discipline or investigation and those directly affected by the potential misconduct.

(2) Beginning January 2023, and every January thereafter, the commission shall report on the activities of the commissioners to the committees of reference of the general assembly as part of its "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act" presentation required by section 2-7-203.

(3) (a) The commission shall make the information described in subsection (1) of this section available online in a searchable format and include the information in its annual report. The commission shall report and make the information available in aggregate form and without individually identifiable information concerning a judge, complainant, or witness.

(b) Nothing in this subsection (3) requires the commission to make publicly available any information it is required to keep confidential pursuant to the Colorado constitution or law.

**Source: L. 2022:** Entire article added, (SB 22-201), ch. 201, p. 1354, § 2, effective May 20. **L. 2023:** (1) amended and (3) added, (HB 23-1019), ch. 366, p. 2200, § 5, effective August 7.

**Cross references:** For the legislative declaration in SB 22-201, see section 1 of chapter 201, Session Laws of Colorado 2022.

### **13-5.3-109. Representation by attorney general.**

(1) Pursuant to section 24-31-111, the attorney general shall provide legal services, as defined in section 24-31-111 (6)(a), to the commission and the office. The attorney general shall designate one or more assistant attorneys general to provide such legal services. Any assistant attorneys general shall not be within the same unit, section, or division of the Colorado department of law that provides legal services to the judicial department.

(2) This section does not limit the commission's or office's authority to hire attorneys to serve as special counsel pursuant to section 13-5.3-102 (3)(d).

**Source: L. 2022:** Entire article added, (SB 22-201), ch. 201, p. 1354, § 2, effective May 20.

**Cross references:** For the legislative declaration in SB 22-201, see section 1 of chapter 201, Session Laws of Colorado 2022.

### **13-5.3-110. Legislative interim committee on judicial discipline - creation. (Repealed)**

**Source: L. 2022:** Entire article added, (SB 22-201), ch. 201, p. 1355, § 2, effective May 20. **L. 2023:** Entire section repealed, (HB 23-1019), ch. 366, p. 2201, § 6, effective August 7.

**Cross references:** For the legislative declaration in SB 22-201, see section 1 of chapter 201, Session Laws of Colorado 2022.

### **13-5.3-111. Requests for evaluation - manner - confidential requests.**

(1) In addition to any other method permitted by the commission or office, a person may submit a request for evaluation by mail or online. The office shall develop an online request for evaluation form that is accessible from the commission's public website.

(2) The commission and office shall permit a person to submit a confidential or anonymous request for evaluation.

**Source: L. 2023:** Entire section added, (HB 23-1019), ch. 366, p. 2201, § 7, effective August 7.

### **13-5.3-112. Complainant notification - point of contact.**

(1) Upon receipt of a complaint, the office shall explain to the complainant the judicial discipline process, including the steps in the process, the availability of confidential reporting, and confidentiality requirements during each step of the process.

(2) The office shall designate a point of contact to keep complainants apprised of the status of the complainant's complaint, including periodic updates related to the complaint and timely

notice of the outcome of the investigation of the complaint and the disciplinary or adjudicative process. Updates must include, but are not limited to, information about the following:

- (a) Dismissal of a complaint;
- (b) Completion of an investigation;
- (c) Scheduling of any hearings;
- (d) Results of any hearings;
- (e) Imposition of any remedial measures or sanctions; and
- (f) Appeal of any remedial measures or sanctions.

(3) If a complaint is dismissed because it is outside the commission's jurisdiction, the office shall provide an explanation of the dismissal to the complainant.

**Source: L. 2023:** Entire section added, (HB 23-1019), ch. 366, p. 2201, § 8, effective August 7.

#### **13-5.3-113. Judicial discipline adjudicative board - administrative support.**

When a panel of the judicial discipline adjudicative board convenes pursuant to section 23 (3) of article VI of the Colorado constitution, the judge member of the panel is responsible for providing administrative support necessary to facilitate the panel's hearings. With any necessary approval from the chief judge of a district court, the panel judge may use the judge's own staff to provide the administrative support or, if necessary, staff of other judges in the judge's district or another district may provide the support. Staff from the same district as the respondent judge in the proceeding shall not provide administrative support to the panel.

**Source: L. 2023:** Entire section added, (HB 23-1019), ch. 366, p. 2201, § 9, effective December 17, 2024 (see editor's note).

**Editor's note:** Section 14 of chapter 366, Session Laws of Colorado 2023, provides that this section is effective upon proclamation of the vote by the governor only if, at the November 2024 statewide election, a majority of voters approve the ballot issue referred in accordance with section 2 of House Concurrent Resolution 23-1001. The ballot issue, referred to voters as Amendment H, was approved on November 5, 2024, and was proclaimed by the governor on December 17, 2024, see L. 2025, p. 3632. The vote count for the measure was as follows:

FOR: 2,150,820

AGAINST: 793,642

## **13-5.5 ARTICLE 5.5**

### **Commissions on Judicial Performance**

|             |                                                                                                                                                             |             |                                                                                                                          |
|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|--------------------------------------------------------------------------------------------------------------------------|
| 13-5.5-101. | Legislative declaration.                                                                                                                                    | 13-5.5-109. | Judicial performance evaluations in interim years between elections - procedure.                                         |
| 13-5.5-102. | Definitions.                                                                                                                                                |             |                                                                                                                          |
| 13-5.5-103. | Office on judicial performance evaluation - executive director - duties - oversight.                                                                        | 13-5.5-110. | Individual judicial improvement plans.                                                                                   |
| 13-5.5-104. | State commission on judicial performance - district commissions on judicial performance - established - membership - terms - immunity - conflicts - repeal. | 13-5.5-111. | Judicial performance evaluations - senior judges. (Repealed)                                                             |
|             |                                                                                                                                                             | 13-5.5-112. | Recusal.                                                                                                                 |
|             |                                                                                                                                                             | 13-5.5-113. | Confidentiality.                                                                                                         |
|             |                                                                                                                                                             | 13-5.5-114. | Reporting requirements - "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act" report. |
| 13-5.5-105. | Powers and duties of the state and district commissions - rules.                                                                                            |             |                                                                                                                          |
| 13-5.5-106. | Rules, guidelines, and procedures.                                                                                                                          | 13-5.5-115. | State commission on judicial performance cash fund - acceptance of private or federal grants - general appropriations.   |
| 13-5.5-107. | Judicial performance evaluation criteria.                                                                                                                   |             |                                                                                                                          |
| 13-5.5-108. | Judicial performance evaluations in retention election years - procedure - recommendations.                                                                 | 13-5.5-116. | Private right of action - definition.                                                                                    |

#### **13-5.5-101. Legislative declaration.**

(1) It is the intent of the general assembly to provide:

- (a) A comprehensive evaluation system of judicial performance;
  - (b) Information to the people of Colorado regarding the performance of judges and justices throughout the state; and
  - (c) Transparency and accountability for judges and justices throughout the state of Colorado.
- (2) Therefore, the general assembly finds and declares that it is in the public interest and is a matter of statewide concern to:
- (a) Provide judges and justices with useful information concerning their own performances, along with training resources to improve judicial performance as necessary;
  - (b) Establish a comprehensive system of evaluating judicial performance to provide persons voting on the retention of judges and justices with fair, responsible, and constructive information about individual judicial performance;
  - (c) Establish an independent office on judicial performance evaluation with full authority to implement the provisions of this article 5.5; and
  - (d) Conduct statewide judicial performance evaluations, as well as judicial performance evaluations within each judicial district, using uniform criteria and procedures pursuant to the provisions of this article 5.5.

**Source: L. 2017:** Entire article R&RE, (HB 17-1303), ch. 331, p. 1765, § 1, effective August 9. **L. 2019:** (1)(b), (1)(c), (2)(a), and (2)(b) amended, (SB 19-187), ch. 374, p. 3396, § 1, effective May 30.

**Editor's note:** This section is similar to former § 13-5.5-101 as it existed prior to 2017.

### **13-5.5-102. Definitions.**

As used in this article 5.5, unless the context otherwise requires:

- (1) "Attorney" means a person admitted to practice law before the courts of this state.
- (2) "Commission" means both the state and district commissions on judicial performance, established in section 13-5.5-104, unless the usage otherwise specifies the state commission or a district commission.
- (3) "Commissioner" means an appointed member of the state commission or one of the district commissions on judicial performance established in section 13-5.5-104.

- (4) "Department" means the state judicial department.
- (5) "Executive director" means the executive director of the office on judicial performance evaluation created in section 13-5.5-103.
- (6) "Fund" means the state commission on judicial performance cash fund, created in section 13-5.5-115.
- (7) "Improvement plan" means an individual judicial improvement plan developed and implemented pursuant to section 13-5.5-110.
- (8) "Interim evaluation" means an interim evaluation conducted by a commission pursuant to section 13-5.5-109 during a full term of office of a justice or judge.
- (9) "Judge" includes all active judges.
- (10) "Justice" means a justice serving on the supreme court of Colorado.
- (11) "Office" means the office on judicial performance evaluation created in section 13-5.5-103.
- (12) "Retention year evaluation" means a judicial performance evaluation conducted by a commission pursuant to section 13-5.5-108 of a justice or judge whose term is to expire and who must stand for retention election.
- (13) Repealed.
- (14) "Volunteer courtroom observer program" means a systemwide program comprised of volunteers who provide courtroom observation reports for use by state and district commissions in judicial performance evaluations. The state commission shall develop rules, guidelines, and procedures for the volunteer courtroom observer program pursuant to section 13-5.5-105 (2)(i).

**Source: L. 2017:** Entire article R&RE, (HB 17-1303), ch. 331, p. 1766, § 1, effective August 9. **L. 2019:** (9) amended and (13) repealed, (SB 19-187), ch. 374, p. 3397, § 2, effective May 30.

**13-5.5-103. Office on judicial performance evaluation - executive director - duties - oversight.**

- (1) The office on judicial performance evaluation is established in the judicial department. The state commission on judicial performance, established pursuant to section 13-5.5-104, shall oversee the office.
- (2) The state commission shall appoint an executive director of the office. The executive director serves at the pleasure of the state commission. The executive director's compensation is



the same as that which the general assembly establishes for a judge of the district court. The state commission shall not reduce the executive director's compensation during the time that he or she serves as executive director. The executive director shall hire additional staff for the office as necessary and as approved by the state commission.

- (3) Subject to the state commission's supervision, the office shall:
  - (a) Staff the state and district commissions when directed to do so by the state commission;
  - (b) Train state and district commissioners as needed and requested;
  - (c) Collect and disseminate data on judicial performance evaluations, including judicial performance surveys developed, collected, and distributed, pursuant to section 13-5.5-105 (2);
  - (d) Conduct public education efforts concerning the judicial performance evaluation process and the recommendations made by the state and district commissions;
  - (e) Measure public awareness of the judicial performance evaluation process through regular polling; and
  - (f) Complete any other duties as assigned by the state commission.
- (4) Office expenses are paid for from the state commission on judicial performance cash fund created pursuant to section 13-5.5-115.

**Source: L. 2017:** Entire article R&RE, (HB 17-1303), ch. 331, p. 1767, § 1, effective August 9.

**Editor's note:** This section is similar to former § 13-5.5-101.5 as it existed prior to 2017.

**13-5.5-104. State commission on judicial performance - district commissions on judicial performance - established - membership - terms - immunity - conflicts - repeal.**

(1) The state commission on judicial performance is established, and a district commission on judicial performance is established in each judicial district of the state. In appointing the membership of each commission, the appointing entities must, to the extent practicable, include persons from throughout the state or judicial district and persons with disabilities and take into consideration race, gender, and the ethnic diversity of the state or district. Justices and judges actively performing judicial duties may not be appointed to serve on a commission. Former justices and judges are eligible to be appointed as attorney commissioners; except that a former

justice or judge may not be assigned or appointed to perform judicial duties while serving on a commission.

(2) Repealed.

(3) (a) The state commission consists of eleven members appointed as follows:

(I) The speaker of the house of representatives shall appoint one attorney and one nonattorney;

(II) The minority leader of the house of representatives shall appoint one nonattorney;

(III) The president of the senate shall appoint one attorney and one nonattorney;

(IV) The minority leader of the senate shall appoint one nonattorney;

(V) The chief justice of the supreme court shall appoint two attorneys; and

(VI) The governor shall appoint two nonattorneys and one attorney.

(b) and (c) Repealed.

(4) (a) Each district commission consists of ten members appointed as follows:

(I) The speaker of the house of representatives shall appoint one attorney and one nonattorney;

(II) The president of the senate shall appoint one attorney and one nonattorney;

(III) The minority leader of the house of representatives shall appoint one nonattorney;

(IV) The minority leader of the senate shall appoint one nonattorney;

(V) The chief justice of the supreme court shall appoint two attorneys; and

(VI) The governor shall appoint two nonattorneys.

(b) and (c) Repealed.

(4.5) (a) The twenty-third judicial district commission on judicial performance, referred to in this subsection (4.5) as the "twenty-third judicial district commission", is established on December 1, 2025. Members of the twenty-third judicial district commission are appointed pursuant to subsection (4)(a) of this section; except that a person serving as a member of the eighteenth judicial district commission on judicial performance during 2025 who resides within the twenty-third judicial district may be appointed to serve on the twenty-third judicial district commission, and if such a person is appointed, the person's term on the twenty-third judicial district commission continues for the remainder of the term to which the person was originally appointed for the eighteenth judicial district commission on judicial performance.

(b) Notwithstanding subsection (5)(a) of this section, the initial terms of the following members of the twenty-third judicial district commission expire on November 30, 2027:

(I) The nonattorney appointed by the speaker of the house of representatives pursuant to subsection (4)(a)(I) of this section;

(II) The nonattorney appointed by the minority leader of the house of representatives pursuant to subsection (4)(a)(III) of this section;

(III) The nonattorney appointed by the president of the senate pursuant to subsection (4)(a)(II) of this section;

(IV) One of the attorneys appointed by the chief justice of the supreme court pursuant to subsection (4)(a)(V) of this section as designated by the chief justice; and

(V) One of the nonattorneys appointed by the governor pursuant to subsection (4)(a)(VI) of this section as designated by the governor.

(c) The initial terms of the following members of the twenty-third judicial district commission expire on November 30, 2029:

(I) The attorney appointed by the speaker of the house of representatives pursuant to subsection (4)(a)(I) of this section;

(II) The attorney appointed by the president of the senate pursuant to subsection (4)(a)(II) of this section;

(III) The nonattorney appointed by the minority leader of the senate pursuant to subsection (4)(a)(IV) of this section;

(IV) One of the attorneys appointed by the chief justice of the supreme court pursuant to subsection (4)(a)(V) of this section as designated by the chief justice; and

(V) One of the nonattorneys appointed by the governor pursuant to subsection (4)(a)(VI) of this section as designated by the governor.

(d) During 2025, members of the eighteenth judicial district commission on judicial performance serving on June 2, 2025, shall conduct the interim evaluations pursuant to section 13-5.5-109 for judges of both the eighteenth judicial district and the twenty-third judicial district.

(e) This subsection (4.5) is repealed, effective July 1, 2030.

(5) (a) The term for a commissioner is four years and expires on November 30 of an odd-numbered year. The term of a commissioner appointed to replace a member at the end of the commissioner's term begins on December 1 of the same year.

(b) The original appointing authority shall fill any vacancy on a commission, but a commissioner shall not serve more than two full terms including any balance remaining on an unexpired term if the initial appointment was to fill a vacancy. Within five days after a vacancy arises on a commission, the commission with the vacancy shall notify the original appointing authority of the vacancy. The original appointing authority shall make an appointment within forty-five days after the date of the vacancy. If the original appointing authority fails to make the appointment within forty-five days after the date of the vacancy, the state commission shall make the appointment.

(c) The appointing authority may remove a commissioner whom he or she appointed for cause.

(6) Each commission shall elect a chair every two years by a vote of the membership.

(7) State and district commissioners and employees of the state or a district commission are immune from suit in any action, civil or criminal, based upon official acts performed in good faith as commissioners and employees of the state or a district commission.

(8) A commissioner shall recuse himself or herself from an evaluation of the person who appointed the commissioner to the commission.

**Source:** L. 2017: Entire article R&RE, (HB 17-1303), ch. 331, p. 1768, § 1, effective August 9. L. 2019: (5)(b) amended, (SB 19-187), ch. 374, p. 3397, § 3, effective May 30. L. 2025: IP(3)(a) and IP(4)(a) amended, (3)(b), (3)(c), (4)(b), and (4)(c) repealed, and (4.5) added, (HB 25-1298), ch. 354, p. 1910, § 1, effective June 2. L. 2026: (4.5)(e) amended, (SB 26-169), ch. 311, p. 1800, § 12, effective August 12.

**Editor's note:** (1) This section is similar to former §§ 13-5.5-102 and 13-5.5-104 as they existed prior to 2017.

(2) Subsection (2)(c) provided for the repeal of subsection (2), effective January 31, 2019. (See L. 2017, p. 1768.)

#### ANNOTATION

**Annotator's note.** Since § 13-5.5-104 is similar to former § 13-5.5-102 as it existed in 2005, a relevant case construing that provision has been included in the annotations to this section.

**Effect of 1997 amendment was to establish that terms of all members expire on November 30 of even-numbered years.** Romanoff v. State Comm'n on Judicial Performance, 126 P.3d 182 (Colo. 2006).

**A member may serve past the expiration of the member's term until a successor is appointed.** Romanoff v. State Comm'n on Judicial Performance, 126 P.3d 182 (Colo. 2006).

**Original appointing official may not appoint a successor more than 45 days**

**after the expiration of a member's term.**

The state commission is authorized to appoint a successor when the original appointing official fails to make the appointment within 45 days after the expiration of a member's term. Romanoff v. State Comm'n on Judicial Performance, 126 P.3d 182 (Colo. 2006).

### **13-5.5-105. Powers and duties of the state and district commissions - rules.**

(1) In addition to any other powers conferred or duties assigned upon the separate commissions by this article 5.5, all commissions have the following powers and duties:

(a) To review any available case management data and statistics provided by the state court administrator, the state commission, and district commissions related to individual justices and judges. A district commission may ask the state court administrator to provide supplemental information and assistance in assessing a judge's overall case management.

(b) To review written judicial opinions and orders authorized by justices and judges under the commission's oversight;

(c) To collect information from courtroom observation by commissioners of justices and judges, as well as information provided to the commissions by the volunteer courtroom observer program;

(d) To interview justices and judges under the commission's oversight and to accept information and documentation from interested persons as necessary, including judicial performance surveys;

(e) To make recommendations and prepare narratives that reflect the results of performance evaluations of justices and judges; and

(f) At an individual commission's discretion after it completes an interim evaluation of a justice or judge pursuant to section 13-5.5-109, to recommend that the chief justice or appropriate chief judge develop an individual judicial improvement plan pursuant to section 13-5.5-110.

(2) In addition to other powers conferred and duties imposed upon the state commission by this article 5.5 and section 13-5.5-106, the state commission has the following powers and duties:

(a) To appoint and supervise the executive director of the office on judicial performance evaluation;

(b) To assist the executive director in managing the office and providing fiscal oversight of the office's operating budget;

(c) To review data, prepare narratives, and make recommendations related to individual supreme court justices and judges of the court of appeals in accordance with sections 13-5.5-108 and 13-5.5-109;

(d) (I) To develop surveys to evaluate the performance of justices and judges, which surveys are completed by individuals who interact with the court, including but not limited to attorneys, jurors, represented and unrepresented litigants; law enforcement personnel; attorneys within the district attorneys' and public defenders' offices, employees of the court, court interpreters, employees of probation offices, and employees of county departments of human or social services; and victims of crimes, as defined in section 24-4.1-302 (5);

(I.5) The surveys developed pursuant to subsection (2)(d)(I) of this section are to be distributed primarily through electronic means, and the state commission shall make efforts to locate electronic mail addresses for the parties identified in said subsection.

(II) To develop rules, guidelines, and procedures to make the results of surveys developed pursuant to this subsection (2)(d) readily available to all parties set forth in subsection (2)(d)(I) of this section;

(III) To develop rules, guidelines, and procedures to provide interested parties with accessible and timely opportunities to review the surveys developed pursuant to this subsection (2)(d); and

(IV) To develop rules, guidelines, and procedures to make the surveys developed pursuant to this subsection (2)(d) and any available survey reports available to the public;

(e) To determine the validity of completed surveys developed pursuant to this subsection (2), report to the district commissions on the validity of the surveys for their districts, and prepare alternatives to surveys where sample populations are inadequate to produce valid results;

(f) To produce and distribute survey reports and public narratives that reflect the results of each judicial performance evaluation;

(g) To develop rules, guidelines, and procedures for the review of the deliberation procedures established by the district commissions; except that the state commission does not have the power or duty to review actual determinations made by a district commission;

(h) To promulgate rules pursuant to section 13-5.5-106 concerning:

(I) The evaluation of justices and judges based on performance evaluation criteria set forth in section 13-5.5-107;

(II) The creation of a standards matrix or scorecard related to the performance evaluation criteria set forth in section 13-5.5-107; and

(III) The continuous collection of data for use in the evaluation process, including surveys developed pursuant to subsection (2)(d) of this section;

(i) To develop rules, guidelines, and procedures concerning a systemwide judicial training program and a systemwide volunteer courtroom observer program; and

(j) To prepare a report pursuant to section 13-5.5-114.

(3) In addition to other powers conferred and duties imposed upon a district commission by this article 5.5, in conformity with the rules, guidelines, and procedures adopted by the state commission pursuant to section 13-5.5-106 and the state commission's review of the deliberation procedures pursuant to subsection (2) of this section, each district commission has the following powers and duties:

(a) To obtain information from parties and attorneys regarding judges' handling of cases with respect to the judges' fairness, patience with pro se parties, gender neutrality, racial disparity, and handling of emotional parties;

(b) To review data, prepare narratives, and make evaluations related to judges pursuant to the provisions of sections 13-5.5-108 and 13-5.5-109; and

(c) Upon completing the required recommendations and narratives pursuant to subsection (1) of this section, to collect all documents and other information, including all surveys and copies, received regarding each judge who was evaluated and forward such documents and information to the state commission within thirty days.

(4) Unless recused pursuant to a provision of this article 5.5, each commissioner of the state and district commissions has the discretion to evaluate the performance of a justice or judge under the commission's oversight and vote as to whether the justice or judge meets the performance standard based upon the commissioner's review of all of the information available to the commission.

**Source:** **L. 2017:** Entire article R&RE, (HB 17-1303), ch. 331, p. 1770, § 1, effective August 9. **L. 2019:** (2)(d)(I), (2)(d)(III), and (2)(h)(II) amended and (2)(d)(I.5) added, (SB 19-187), ch. 374, p. 3397, § 4, effective May 30. **L. 2024:** (2)(d)(I) amended, (HB 24-1222), ch. 155, p. 686, § 1, effective August 7.

**Editor's note:** This section is similar to former §§ 13-5.5-103 and 13-5.5-105 as they existed prior to 2017.

### **13-5.5-106. Rules, guidelines, and procedures.**

(1) The state commission shall adopt rules, guidelines, and procedures as necessary to implement and effectuate the provisions of this article 5.5, including rules, guidelines, and procedures governing the district commissions.

(2) The state commission shall consider proposed rules, guidelines, or procedures from the judicial department; except that nothing in this section requires the state commission to seek approval from the judicial department. The state commission retains the authority for the adoption of final rules, guidelines, or procedures. The state commission may, at its discretion and within existing appropriations and resources, retain independent legal counsel to review any rules, guidelines, or procedures adopted pursuant to this section or section 13-5.5-105.

(3) The state commission may adopt rules, guidelines, or procedures that provide guidance to commissioners regarding the review or interpretation of information obtained as a result of the evaluation process and the criteria contained in section 13-5.5-107. Any such rules, guidelines, or procedures must:

(a) Take into consideration the reliability of survey data and be consistent with section 13-5.5-105; and

(b) Not divest any commissioner of his or her ultimate authority to decide whether a justice or judge meets the minimum performance standards, as established by the state and district commissions.

(4) The state commission shall post a notice of the proposed rule, guideline, or procedure; allow for a period for public comment; and give the public an opportunity to address the state commission concerning the proposed rule, guideline, or procedure at a public hearing.

**Source: L. 2017:** Entire article R&RE, (HB 17-1303), ch. 331, p. 1773, § 1, effective August 9.

### **13-5.5-107. Judicial performance evaluation criteria.**

(1) The state commission and each district commission shall evaluate each justice and judge in Colorado utilizing the powers and duties conferred upon each commission in section 13-5.5-105. The evaluations must only include the following performance evaluation criteria:

(a) Integrity, including but not limited to whether the justice or judge:

(I) Avoids impropriety or the appearance of impropriety;



- (II) Displays fairness and impartiality toward all participants; and
- (III) Avoids ex parte communications;
- (b) Legal knowledge, including but not limited to whether the justice or judge:
  - (I) Demonstrates, through well-reasoned opinions and courtroom conduct, an understanding of substantive law and relevant rules of procedure and evidence;
  - (II) Demonstrates, through well-reasoned opinions and courtroom conduct, attentiveness to factual and legal issues before the court; and
  - (III) Adheres to precedent or clearly explains the legal basis for departure from precedent and appropriately applies statutes or other sources of legal authority;
- (c) Communication skills, including but not limited to whether the justice or judge:
  - (I) Presents clearly written and understandable opinions, findings of fact, conclusions of law, and orders;
  - (II) Presents clearly stated and understandable questions or statements during oral arguments or presentations, and, for trial judges, clearly explains all oral decisions; and
  - (III) Clearly presents information to the jury, as necessary;
- (d) Judicial temperament, including but not limited to whether the justice or judge:
  - (I) Demonstrates courtesy toward attorneys, litigants, court staff, and others in the courtroom; and
  - (II) Maintains and requires order, punctuality, and appropriate decorum in the courtroom;
- (e) Administrative performance, including but not limited to whether the justice or judge:
  - (I) Demonstrates preparation for oral arguments, trials, and hearings, as well as attentiveness to and appropriate control over judicial proceedings;
  - (II) Manages workload and court time effectively and efficiently;
  - (III) Issues opinions, findings of fact, conclusions of law, and orders in a timely manner and without unnecessary delay;
  - (IV) Participates in a proportionate share of the court's workload, takes responsibility for more than his or her own caseload, and is willing to assist other justices or judges; and
  - (V) Understands and complies, as necessary, with directives of the Colorado supreme court; and

(f) Service to the legal profession and the public by participating in service-oriented efforts designed to educate the public about the legal system and improve the legal system.

**Source: L. 2017:** Entire article R&RE, (HB 17-1303), ch. 331, p. 1773, § 1, effective August 9.

**Editor's note:** This section is similar to former § 13-5.5-105.5 as it existed prior to 2017.

**13-5.5-108. Judicial performance evaluations in retention election years - procedure - recommendations.**

(1) Judicial performance evaluations for justices or judges whose terms are to expire and who must stand for retention election are conducted as follows:

(a) The state commission shall conduct a judicial performance evaluation of each such justice of the supreme court and judge of the court of appeals; and

(b) The district commission shall conduct a judicial performance evaluation for each district judge and county judge.

(2) (a) The applicable commission shall complete a retention year evaluation and related narrative to be communicated to the justice or judge no later than forty-five days prior to the last day available for the justice or judge to declare his or her intent to stand for retention.

(b) The narrative prepared for a retention year evaluation must include an assessment of the justice's or judge's strengths and weaknesses with respect to the judicial performance criteria contained in section 13-5.5-107, a discussion regarding any deficiency identified in an interim evaluation prepared pursuant to section 13-5.5-109, a review of any improvement plan developed pursuant to section 13-5.5-110, and a statement of whether the applicable commission concludes that any deficiency identified has been satisfactorily addressed, or a statement from the chief justice or appropriate chief judge that an improvement plan, if any, was satisfactorily followed by the justice or judge.

(c) The applicable commission shall grant each justice or judge who receives a retention year evaluation the opportunity to meet with the commission or otherwise respond to the evaluation no later than ten days following his or her receipt of the evaluation. If the meeting is held or a response is made, the applicable commission may revise its evaluation.

(3) After the requirements of subsection (2) of this section are met, the applicable commission shall make a recommendation regarding the performance of each justice or judge

who declares his or her intent to stand for retention. The recommendations must be stated as "meets performance standard" or "does not meet performance standard". For a justice or judge to receive a designation of "does not meet performance standard", there must be a majority vote by the commission members that the particular justice or judge should receive such a recommendation.

(4) District commissions shall forward recommendations, narratives, and any other relevant information, including any completed judicial surveys, to the state commission according to the provisions of section 13-5.5-105.

(5) The state commission shall release the narrative, the recommendation, and any other relevant information related to a retention year evaluation, including the information forwarded pursuant to section 13-5.5-105, to the public no later than two months prior to the retention election. The state commission shall arrange to have the narrative and recommendation for each justice and judge standing for retention printed in the ballot information booklet prepared pursuant to section 1-40-124.5 and mailed to electors pursuant to section 1-40-125.

**Source: L. 2017:** Entire article R&RE, (HB 17-1303), ch. 331, p. 1775, § 1, effective August 9.

**Editor's note:** This section is similar to former § 13-5.5-106 as it existed prior to 2017.

**13-5.5-109. Judicial performance evaluations in interim years between elections - procedure.**

(1) Within the first two years of a justice's or judge's appointment to the bench, the appropriate commission shall conduct an initial evaluation of each justice and each judge. The appropriate commission shall complete and communicate its judicial performance interim evaluations as follows:

(a) The state commission shall communicate its findings, including any recommendations for improvement plans, to the chief justice of the supreme court or the chief judge of the court of appeals and the appellate justice or judge who was evaluated; and

(b) The applicable district commission shall communicate its findings, including any recommendations for improvement plans, to the chief judge of the district and the judge who was evaluated.

(2) If a commission recommends an improvement plan, the procedure development and implementation for such a plan will follow the guidelines set forth in section 13-5.5-110.

(3) The appropriate commission, at its discretion, may conduct a subsequent interim evaluation of each justice and each judge during the years between when the justice or judge stands for retention, if applicable.

(4) The appropriate commission shall grant each justice or judge who receives an initial or interim evaluation the opportunity to meet with the commission or otherwise respond to the initial or interim evaluation no later than ten days following the justice's or judge's receipt of the initial or interim evaluation. If a meeting is held or a response is made, the appropriate commission may revise its initial or interim evaluation.

**Source: L. 2017:** Entire article R&RE, (HB 17-1303), ch. 331, p. 1776, § 1, effective August 9.

**Editor's note:** This section is similar to former § 13-5.5-106.3 as it existed prior to 2017.

#### **13-5.5-110. Individual judicial improvement plans.**

(1) (a) If the state commission or a district commission recommends, pursuant to section 13-5.5-109 (1), that a justice or judge receive an individual judicial improvement plan, the commission shall communicate such recommendation to the chief justice or appropriate chief judge. The chief justice or chief judge shall then develop an improvement plan for such judge and shall send the improvement plan to the state commission for review. After the state commission reviews and approves the improvement plan, the chief justice or chief judge shall have the responsibility for implementing and overseeing the improvement plan.

(b) Once the justice or judge has completed the improvement plan, the chief justice or chief judge shall convey the results of the improvement plan activities to the appropriate commission, which will then maintain a copy of the improvement plan and the statement of results in its files.

(2) If a justice or judge is required to complete an improvement plan pursuant to this section, and he or she fails to satisfactorily complete the requirements of such improvement plan, the appropriate commission shall automatically issue a "does not meet performance standard" designation on his or her performance evaluation summary.

**Source: L. 2017:** Entire article R&RE, (HB 17-1303), ch. 331, p. 1777, § 1, effective August 9.

### **13-5.5-111. Judicial performance evaluations - senior judges. (Repealed)**

**Source: L. 2017:** Entire article R&RE, (HB 17-1303), ch. 331, p. 1777, § 1, effective August 9. **L. 2019:** Entire section repealed, (SB 19-187), ch. 374, p. 3398, § 5, effective May 30.

### **13-5.5-112. Recusal.**

(1) A commissioner shall disclose to his or her commission any professional or personal relationship with a justice or judge that may affect an unbiased evaluation of the justice or judge, including involvement with any litigation involving the justice or judge and the commissioner, the commissioner's family, or the commissioner's financial interests. A commission may require, upon a two-thirds vote of the other commissioners, the recusal of one of its commissioners because of a relationship with a justice or judge.

(2) A justice or judge who is being evaluated by a state or district commission may not recuse himself or herself from a case solely on the basis that an attorney, party, or witness in the case is a commissioner on the evaluating commission.

**Source: L. 2017:** Entire article R&RE, (HB 17-1303), ch. 331, p. 1777, § 1, effective August 9.

**Editor's note:** This section is similar to former § 13-5.5-106.4 as it existed prior to 2017.

### **13-5.5-113. Confidentiality.**

(1) Except as provided in subsection (3) of this section, all self-evaluations, personal information protected under section 24-72-204 (3)(a)(II), additional oral or written information, content of any judicial improvement plans, and any matter discussed in executive session is confidential except as otherwise specifically provided by rule. All surveys must allow for the participant's name to remain confidential. Comments in surveys are confidential but may be summarized in aggregate for use in judicial performance evaluation narratives. A commissioner shall not publicly discuss the evaluation of a particular justice or judge.

(2) Except as provided in subsection (3) of this section, all recommendations and narratives are confidential until released to the public on the first day following the deadline for justices and judges to declare their intent to stand for retention.

(3) Information required to be kept confidential pursuant to this article 5.5 may be released only under the following circumstances:

- (a) To the supreme court attorney regulation committee, as provided by rule of the state commission;
- (b) To the commission on judicial discipline, as provided by rule of the state commission; or
- (c) With the consent of the justice or judge being evaluated.

**Source: L. 2017:** Entire article R&RE, (HB 17-1303), ch. 331, p. 1778, § 1, effective August 9.

**Editor's note:** This section is similar to former § 13-5.5-106.5 as it existed prior to 2017.

**13-5.5-114. Reporting requirements - "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act" report.**

(1) The state commission shall gather and maintain statewide data and post a statistical report of the statewide data on its website no later than thirty days prior to each retention election. The report must specify, at a minimum:

- (a) The total number of justices and judges who were eligible to stand for retention and the number who declared their intent to stand for reelection;
- (b) The total number of judicial performance evaluations of justices and judges performed by the state and district commissions;
- (c) The total number of justices and judges who were evaluated but did not stand for retention; and
- (d) The total number of justices and judges who received a "meets performance standard" or "does not meet performance standard" recommendation, respectively.

(2) Beginning in January 2019, and every two years thereafter, the state commission shall report on the activities of the commissioners to the joint judiciary committee of the general assembly as part of its "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act" presentation required by section 2-7-203.

**Source: L. 2017:** Entire article R&RE, (HB 17-1303), ch. 331, p. 1778, § 1, effective August 9.

**13-5.5-115. State commission on judicial performance cash fund - acceptance of private or federal grants - general appropriations.**

The state commission is authorized to accept any grants of federal or private funds made available for any purpose consistent with the provisions of this article 5.5. Any money received pursuant to this section must be transmitted to the state treasurer, who shall credit the same to the state commission on judicial performance cash fund, which is hereby created. The fund also includes the amount of the increases in docket fees collected pursuant to sections 13-32-105 (1) and 42-4-1710 (4)(a). Any interest derived from the deposit and investment of money in the fund is credited to the fund. Any unexpended and unencumbered money remaining in the fund at the end of any fiscal year remains in the fund and shall not be credited or transferred to the general fund or another fund. Money in the fund may be expended by the state commission, subject to annual appropriation by the general assembly, for the purposes of this article 5.5. In addition, the general assembly may make annual appropriations from the general fund for the purposes of this article 5.5.

**Source: L. 2017:** Entire article R&RE, (HB 17-1303), ch. 331, p. 1779, § 1, effective August 9.

**Editor's note:** This section is similar to former § 13-5.5-107 as it existed prior to 2017.

**13-5.5-116. Private right of action - definition.**

(1) Final actions of the state commission are subject to judicial review as provided for in this section. For purposes of this section, "final action" means a rule, guideline, or procedure adopted by the state commission pursuant to this article 5.5. A "final action" does not include a final recommendation regarding a justice or a judge that is made by the state commission or a district commission pursuant to section 13-5.5-108 or 13-5.5-109, an improvement plan developed pursuant to section 13-5.5-110, surveys developed pursuant to section 13-5.5-105 (2)(d), or any aspect of an individual justice's or judge's individual judicial performance evaluation.

(2) A person adversely affected or aggrieved by a final action of the state commission may commence an action for judicial review in the Denver district court within thirty-five days after such action becomes effective. Upon a finding by the court that irreparable injury would

otherwise result, the reviewing court shall postpone the effective date of the state commission's action to preserve the rights of the parties, pending conclusion of the review proceedings.

(3) If the court finds no error, it shall affirm the state commission's final action. If the court finds that the state commission's action is arbitrary or capricious; a denial of a statutory right; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, purposes, or limitations; not in accord with the procedures or procedural limitations set forth in this article 5.5 or as otherwise required by law; an abuse or clearly unwarranted exercise of discretion; based upon findings of fact that are clearly erroneous on the whole record; unsupported by substantial evidence when the record is considered as a whole; or otherwise contrary to law, then the court shall hold the action unlawful, set it aside, restrain enforcement, and afford such other relief as may be appropriate. In all cases under review, the court shall determine all questions of law, interpret the statutory and constitutional provisions involved, and apply the interpretation to the facts duly found or established.

**Source: L. 2017:** Entire article R&RE, (HB 17-1303), ch. 331, p. 1779, § 1, effective August 9.

## **13-5.7 ARTICLE 5.7**

### **Access to Justice**

| PART 1                                |                                                                                  | PART 2                  |                                                                  |
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| 13-5.7-104.                           | Duties of commission - mission - staffing - report.                              | 13-5.7-205.             | Imposition and collection of the equal justice fee.              |
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## PART 1

### COLORADO ACCESS TO JUSTICE COMMISSION

#### **13-5.7-101. Legislative declaration.**

(1) The general assembly finds and declares that:

(a) Access to justice is a basic principle of the rule of law, and it ensures that all persons, institutions, and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated. In the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination, or hold decision makers accountable.

(b) Lack of access to justice is a problem that has serious social, legal, economic, and political consequences;

(c) Since 2003, the Colorado access to justice commission has collaborated with organizations concerned about the gap in access to justice in Colorado to develop and support a range of tools, policies, and services to address this gap. The commission has served as a hub for the many stakeholders working on access to the civil legal process without statutory acknowledgment.

(d) From 2003 to the present, the need for access to justice and the importance of improving access have grown, but the challenges of access to justice in Colorado and around the nation have become more acute;

(e) A study by the Institute for the Advancement of the American Legal System at the university of Denver found that access to justice is a broad societal problem, with sixty-six percent of the American population experiencing at least one legal problem in the past four years and with less than half of those problems being completely resolved;

(f) People with fewer economic resources are a vulnerable population due to lack of access to justice, and Black, Indigenous, and other people of color are particularly vulnerable as they encounter legal issues at a higher rate and of greater seriousness than other populations, according to the Institute for the Advancement of the American Legal System at the university of Denver. A 2022 study by the Legal Services Corporation found that low-income Americans do not receive any or enough legal help for ninety-two percent of their legal problems.

(g) In response to these trends, in 2021, the commission undertook a systematic statewide study to better understand the challenges facing those trying to resolve civil legal problems. The commission conducted a total of forty-one different listen and learn sessions, meeting virtually with legal and community service providers in each of Colorado's twenty-two judicial districts.

The study revealed that, due to the complexity of legal matters and the prohibitive cost of legal help, barriers to access impact Coloradans of all backgrounds and from all walks of life.

(h) The COVID-19 pandemic required experimentation and innovation in Colorado's court system and elsewhere, uncovering ways that the legal system can work better for people and organizations with legal needs; and

(i) There is an intersection of need and opportunity with respect to access to civil justice for all Coloradans, such that the commission's ongoing work merits statutory recognition, informing the governor and general assembly through regular, systematic input from the commission.

(2) Therefore, the general assembly recognizes that access to civil courts is a pillar of democracy and enacts this article 5.7 to codify the Colorado access to justice commission and affirm its commitment to equitable access to the civil legal process.

**Source: L. 2023:** Entire article added, (HB 23-1280), ch. 308, p. 1879, § 1, effective August 7.

#### **13-5.7-102. Definitions.**

As used in this article 5.7, unless the context otherwise requires:

(1) "Commission" means the Colorado access to justice commission established pursuant to section 13-5.7-103.

(2) "Fund" means the Colorado access to justice cash fund created in section 13-5.7-105.

**Source: L. 2023:** Entire article added, (HB 23-1280), ch. 308, p. 1880, § 1, effective August 7.

#### **13-5.7-103. Colorado access to justice commission - creation - membership - operation.**

(1) There is created the Colorado access to justice commission, which has the powers and duties specified in this article 5.7.

(2) (a) The commission consists of:

(I) At least seventeen but no more than twenty voting members, as follows:

(A) At least eight but no more than ten members appointed by the Colorado bar association;

(B) At least three but no more than four members appointed by the chief justice of the supreme court of Colorado;

- (C) One member appointed by the governor;
  - (D) One member appointed by the president of the Colorado senate;
  - (E) One member appointed by the speaker of the Colorado house of representatives;
  - (F) One member appointed by Colorado Legal Services, a nonprofit agency, or its successor agency;
  - (G) One member appointed by the Colorado Lawyer Trust Account Foundation, or its successor agency; and
  - (H) One member appointed by the Legal Aid Foundation of Colorado, or its successor agency; and
- (II) At least four nonvoting, ex officio members, including:
    - (A) The Colorado supreme court justice liaison;
    - (B) The executive director of Colorado Legal Services, or its successor agency;
    - (C) The executive director of the Legal Aid Foundation of Colorado, or its successor agency; and
    - (D) A representative of the Colorado attorney general appointed by the chair of the commission.
- (b) Nothing in this subsection (2) prevents the chair of the commission from creating nonvoting emeritus positions for long-serving, retiring commissioners.
  - (c) The appointing authorities shall name the initial members to the commission by September 1, 2023. Members of the commission serve three-year terms and may be reappointed by their appointing authority for an additional two terms. Members of the commission may be removed by their respective appointing authorities for cause. If a vacancy occurs on the commission, the appointing authority for the member whose position is vacated shall appoint a member to fill the vacant position.
  - (d) The commission shall select a chair and vice-chair of the commission from its membership.
- (3) Members of the commission serve without compensation but may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the commission.
  - (4) The commission may establish bylaws as appropriate for its effective operation.
  - (5) The chair of the commission shall establish a schedule for commission meetings. The commission shall meet at least once every three months.

(6) Members of the commission, staff, and consultants are not liable for any act or omission in their official capacity performed in good faith in accordance with this article 5.7.

**Source: L. 2023:** Entire article added, (HB 23-1280), ch. 308, p. 1881, § 1, effective August 7.

**13-5.7-104. Duties of commission - mission - staffing - report.**

(1) The mission of the commission is to expand access, quality, and fairness in the justice system for all Coloradans.

(2) The commission has the following powers and duties:

(a) To identify, examine, and report on the impediments to accessing Colorado's civil justice system and how to mitigate or eliminate such impediments;

(b) To examine specific problems in the civil justice system, qualitatively and quantitatively, and how to solve them, including consideration of the experiences of individuals and organizations who use the system;

(c) To bring leaders from diverse sectors together to implement solutions to address statewide issues that impede access to justice, thereby supporting an ecosystem of access to justice work being done statewide;

(d) To create practical solutions for those who lack the information, tools, and services necessary to resolve their civil legal problems fairly, quickly, and economically;

(e) To act as a leader to inform, engage, and inspire lawyers, advocates, community members, and other stakeholders to improve access to justice;

(f) To use its platform to elevate understanding of and commitment to access to justice in Colorado;

(g) To advocate for needed changes to laws, practices, rules, and policies in Colorado; and

(h) To form advisory committees as necessary to gain input and expertise for the commission in an effort to further the duties and responsibilities set forth in this subsection (2).

(3) (a) Commission advisory committees focus on specific subject matters and may make recommendations to the full commission. The chair of the commission shall appoint members of the commission to serve on the advisory committees and shall appoint a commission member to serve as chair of each advisory committee formed pursuant to this subsection (3).

(b) The chair of an advisory committee may select interested members of the community who are not members of the commission to serve on the advisory committee. Noncommission members of an advisory committee serve without compensation or reimbursement for expenses.

(4) The commission may respond to inquiries from the general assembly, the governor, businesses, or individuals, as resources allow.

(5) (a) The commission may hire staff to facilitate its work, including an executive director and other staff as necessary.

(b) As funds allow, the commission may also contract with independent contractors to provide resources for data collection, research, analysis, publication of the commission's findings and reports, and other necessary services in furtherance of the commission's purpose.

(6) (a) Notwithstanding section 24-1-136 (11)(a)(I), the commission shall prepare and submit an annual report on its work, including findings and recommendations approved by at least two-thirds of the voting members of the commission, to the governor and the judiciary committees of the senate and the house of representatives, or their successor committees. The legislative committees of reference shall consider the commission's recommendations for legislation, and the governor shall consider the commission's recommendations for regulatory action. The commission shall present its report to the legislative committees of reference during the committees' hearings held pursuant to the "SMART Act", part 2 of article 7 of title 2.

(b) With regard to any legislative recommendations contained in its report, the commission shall specify the laws that need to be created, amended, or repealed to ensure access to justice for all Coloradans.

**Source: L. 2023:** Entire article added, (HB 23-1280), ch. 308, p. 1882, § 1, effective August 7.

**13-5.7-105. Colorado access to justice cash fund - creation - funding sources - use of fund.**

(1) (a) There is created in the state treasury the Colorado access to justice cash fund. The fund consists of money appropriated or transferred by the general assembly to the fund and any gifts, grants, or donations from private or public sources made to the commission for the purpose of this article 5.7.

(b) Money in the fund is continuously appropriated to the commission for the purposes of this article 5.7. The state treasurer shall credit to the fund all interest and income derived from the investment and deposit of money in the fund. Any unexpended and unencumbered money

remaining in the fund at the end of any fiscal year shall remain in the fund and must not be credited or transferred to the general fund or any other fund.

(c) The commission may solicit, accept, and expend gifts, grants, or donations, including in-kind donations, from any source for the purposes of this article 5.7, and nothing in this title 13 prevents the commission from maintaining as a subsidiary or in other appropriate form an organization exempt from federal income tax under 26 U.S.C. sec. 501(c)(3).

(2) The commission may use money in the fund for the implementation of this article 5.7 and in furtherance of the commission's mission, including:

- (a) To compensate the commission's staff and independent contractors;
- (b) To pay the costs of obtaining data and analyses from organizations and entities; and
- (c) To pay the commission members' necessary expenses in performance of their duties.

**Source: L. 2023:** Entire article added, (HB 23-1280), ch. 308, p. 1884, § 1, effective August 7.

## PART 2

### EQUAL JUSTICE AUTHORITY

**Cross references:** For the legislative declaration in HB 24-1286, see section 1 of chapter 339, Session Laws of Colorado 2024.

#### **13-5.7-201. Definitions.**

As used in this part 2, unless the context otherwise requires:

- (1) "Authority" means the equal justice authority created in section 13-5.7-202.
- (2) "Board" means the equal justice authority board created in section 13-5.7-204.
- (3) "Equal justice fee" means the fee collected on civil actions as set forth in sections 13-4-112 (3)(a), 13-32-101 (9)(a), and 13-32-102 (7)(a) pursuant to this part 2.
- (4) "Qualified civil legal aid provider" means a 501 (c)(3) nonprofit organization other than the Colorado recipient of a federal legal services corporation field grant that provides legal representation and advice to people in Colorado who are at or below two hundred fifty percent of the federal poverty guideline to support their access to basic needs such as housing, employment, health services, education, and assistance with family matters and immigration status issues.

**Source: L. 2024:** Entire part added, (HB 24-1286), ch. 339, p. 2291, § 2, effective June 3.

### **13-5.7-202. Creation and purpose.**

There is created as a special purpose authority, as defined in section 24-77-102, the equal justice authority, which is a body corporate and a political subdivision of the state, which shall not be an agency of state government and shall not be subject to administrative direction by any department, commission, board, bureau, or agency of the state. The authority is responsible for distributing the equal justice fee pursuant to section 13-5.7-206 for the purpose of providing equal access to legal aid services and to increase efficiency of the court system for all court users.

**Source: L. 2024:** Entire part added, (HB 24-1286), ch. 339, p. 2292, § 2, effective June 3.

### **13-5.7-203. General powers.**

(1) In addition to any other powers granted to the authority in this part 2, the authority has the following powers:

(a) To have the duties, privileges, immunities, rights, liabilities, and disabilities of a body corporate and political subdivision of the state;

(b) To have perpetual existence and succession;

(c) To adopt, have, and use a seal and to alter the same at its pleasure;

(d) To sue and be sued;

(e) To enter into any contract or agreement not inconsistent with this part 2 or the laws of the state;

(f) To purchase, lease, lease with an option to purchase, trade, exchange, or otherwise acquire, maintain, hold, improve, mortgage, encumber, and dispose of real property and personal property, whether tangible or intangible, and any interest, including easements and rights-of-way, without restriction or limitation;

(g) To acquire office space, equipment, services, supplies, and insurance necessary to carry out the purposes of this part 2;

(h) To deposit any money of the authority in any banking institution or in any depository authorized pursuant to section 24-75-603, and to appoint, for the purpose of making such deposits, one or more persons to act as custodians of the money of the authority, who shall give surety bonds in such amounts and form and for such purposes as the board requires;

(i) To contract for and to accept any gifts, grants, and loans of funds, property, or any other aid in any form from the federal government, the state, any state agency, or any other source, or any combination thereof, and to comply, subject to the provisions of this part 2, with the terms and conditions of such contracts or the acceptance of such items;

(j) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this part 2, which specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this part 2;

(k) To fix the time and place or places at which its regular and special meetings are to be held;

(l) To elect one member as chairperson of the board and another member as vice-chairperson of the board and to elect one or more members as secretary and treasurer of the board and elect or appoint such other officers as the board may determine and provide for their duties and terms of office;

(m) To appoint agents, employees, and professional and business advisers, including real estate professionals, construction companies, property managers, attorneys, accountants, and financial advisers as may from time to time be necessary in the authority's judgment to accomplish the purposes of this part 2, and to fix the compensation of such agents, employees, and advisers, and to establish the powers and duties of all agents, employees, and advisers, as well as any other person contracting with the authority to provide services, including termination of employment or the contract for services;

(n) To make and execute agreements, contracts, and other instruments necessary or convenient in the exercise of the powers and functions of the authority pursuant to this part 2, including, but not limited to, contracts with any person, firm, corporation, municipality, state agency, county, or other entity. All municipalities, counties, and state agencies may enter into and do all things necessary to perform any such arrangement or contract with the authority.

(o) Other powers necessary to accomplish the authority's specific goals as required pursuant to this part 2.

**Source: L. 2024:** Entire part added, (HB 24-1286), ch. 339, p. 2292, § 2, effective June 3.



**13-5.7-204. Equal justice authority board - membership and meetings - rules.**

(1) The authority is governed by the equal justice authority board, which is made up of seven members who are residents of this state and have a demonstrated commitment to providing civil legal aid through current or prior employment with a qualified civil legal aid provider, or through substantial volunteer service with a similar organization.

(2) Members of the board must be appointed as follows:

(a) One member appointed by the chief justice of the Colorado supreme court;

(b) One member appointed by the attorney general;

(c) One member appointed by the Colorado bar association;

(d) One member appointed by the Colorado lawyer trust account foundation; and

(e) Three members appointed by the Colorado access to justice commission, at least two of whom are employed by a qualified civil legal aid provider, and at least one of whom is employed by a qualified civil legal aid provider that employs ten or fewer full-time attorneys.

(3) The appointing authorities shall make reasonable efforts to appoint board members that reflect the geographic and demographic diversity of the state, including members from both rural and urban parts of the state, and members of diverse political, racial, ability, cultural group, and socioeconomic status.

(4) Members serve terms of three years; except that initial terms of the members appointed by the Colorado access to justice commission are two-year terms in order to stagger the terms so that no more than four members' terms expire in the same year. The appointing authorities shall designate the initial terms and fill any vacancies on the board.

(5) Terms expire on December 31 of the final year of the term.

(6) Members may be reappointed to serve two additional terms.

(7) A member may be removed from the board by majority vote of the board for misfeasance, malfeasance, willful neglect of duty, or other cause after notice and a public hearing, unless notice and a public hearing are expressly waived in writing by the member being removed.

(8) The board shall meet at least four times per year.

(9) The board shall elect a chair and a vice-chair at its first meeting of each calendar year.

(10) Members serve without compensation but must be reimbursed for actual and reasonable expenses incurred in the performance of their duties.

(11) The board shall adopt its own rules of procedure and keep a record of all proceedings.

(12) The board, by resolution, shall establish rules to ensure money received from a grant is used for purposes specified in section 13-5.7-206 and to establish a funding formula to use to determine the grant distribution amount for each qualified civil legal aid provider.

(13) (a) The authority may cooperate and enter into contracts with the commission or another agency or entity, for administrative or operational assistance, including for staffing.

(b) The authority shall pay the contracted entity in advance for all agreed upon costs incurred by the contracted entity in providing staffing for the authority to carry out its mission, including compensation for employees staffing the authority and any administration and indirect costs associated with staffing the authority.

(14) If the contracted entity expects to incur actual costs as a result of staffing the authority that exceed the amount provided by the authority pursuant to section 13-5.7-206, the authority shall pay the contracted entity for all costs incurred by the contracted entity in providing staffing to the authority, including, but limited to, compensation for employees staffing the authority and administrative costs in an amount agreed upon by the authority and contracted entity.

(15) The attorney general shall represent the authority in a cause of action.

**Source: L. 2024:** Entire part added, (HB 24-1286), ch. 339, p. 2293, § 2, effective June 3.

### **13-5.7-205. Imposition and collection of the equal justice fee.**

(1) Beginning January 1, 2025, the authority shall impose, and the court shall collect on behalf of the authority, an equal justice fee in the amount specified in sections 13-4-112 (3), 13-32-101 (9), and 13-32-102 (7) on the court filings specified in sections 13-4-112 (1)(a) and (1)(b); 13-32-101 (1), except filings in small claims court; and 13-32-102 (1)(a), (1)(b), and (1)(f). For the purpose of minimizing compliance costs for court users and administrative costs for the authority, the court shall collect the equal justice fee on behalf of the authority in the same manner in which it collects court filing fees imposed by sections 13-4-112, 13-32-101, and 13-32-102; except that the court shall not transmit the collected equal justice fees to the state treasurer for deposit to any state fund but shall instead remit the fees collected to the authority in accordance with the process developed pursuant to subsection (2) of this section.

(2) The authority shall maintain an account in a financial institution to which all money collected for the equal justice fee is deposited. The authority shall work with the judicial department to develop a process that ensures that each court is able to promptly and efficiently deposit all equal justice fees collected directly into the account or otherwise promptly and efficiently remit such fees to the authority.

(3) Equal justice fees collected and remitted to the authority pursuant to this section are not state revenue.

**Source: L. 2024:** Entire part added, (HB 24-1286), ch. 339, p. 2295, § 2, effective June 3.

**13-5.7-206. Distribution of equal justice fees - purpose.**

(1) On July 1, 2025, and each July 1 thereafter, the authority shall annually distribute all money deposited into the authority's account as required by section 13-5.7-205 (2), less the authority's direct and indirect expenses in administering the requirements of this part 2 and any other related work completed to advance the mission of the authority. The authority shall distribute sixty-seven percent of the remaining revenue to the Colorado recipient of a federal legal services corporation field grant and thirty-three percent to qualified civil legal aid providers.

(2) The board, by resolution, shall establish a funding formula to use to determine the distribution amount for each qualified civil legal aid provider. In developing the formula, the board shall consider the following factors:

(a) The number of attorney hours spent serving people in Colorado in poverty in the previous year;

(b) The number of full-time attorneys employed by the qualified civil legal aid provider;

(c) The number of individuals living in poverty who receive legal representation or legal advice from the qualified civil legal aid provider;

(d) Geographic reach of services; and

(e) Ability and experience serving populations with barriers to legal assistance, including people with disabilities and people with limited English proficiency.

(3) In establishing the funding formula pursuant to subsection (2) of this section, the board shall consider the vital importance of the work of qualified civil legal aid providers that employ ten or fewer full-time attorneys to low-income Colorado communities.

(4) Money received from a grant must be used for the following purposes:

(a) To provide access to legal representation to indigent persons by providing annual grants to the Colorado recipient of a federal legal services corporation field grant and other qualified civil legal aid providers pursuant to this section;

(b) To increase the efficiency of Colorado courts for all court users by reducing slowdowns caused by self-representation; and

(c) To pay the direct and indirect costs of administering the requirements of this part 2, including payment for costs associated with staffing the authority and reimbursement of the actual and necessary expenses of board members as required by section 13-5.7-204.

**Source: L. 2024:** Entire part added, (HB 24-1286), ch. 339, p. 2295, § 2, effective June 3.

### **13-5.7-207. Report.**

(1) On or before January 1, 2026, and each January 1 thereafter, the authority shall prepare and submit a report to the house of representatives judiciary committee and the senate judiciary committee, or their successor committees, that details the use of the equal justice fees. At a minimum, the report must include:

(a) How much money was collected in equal justice fees and deposited in the authority's account as required by section 13-5.7-205 (2) in the preceding year;

(b) How much money the Colorado recipient of a federal legal services corporation field grant and other qualified civil legal aid providers received from the collected equal justice fees in the preceding year;

(c) The amount of money received from the collected equal justice fees that remained unused by the Colorado recipient of a federal legal services corporation field grant and the qualified civil legal aid providers at the conclusion of the preceding year; and

(d) The types of legal services provided to individuals who received legal services from the Colorado recipient of a federal legal services corporation field grant and other qualified civil legal aid providers that received money from the collected equal justice fees.

**Source: L. 2024:** Entire part added, (HB 24-1286), ch. 339, p. 2296, § 2, effective June 3.

## **ARTICLE 6**

### **County Courts**

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## PART 1

### ESTABLISHMENT AND JURISDICTION

#### **13-6-101. Establishment.**

Pursuant to the provisions of section 1 of article VI of the Colorado constitution, there is hereby established in each county of the state of Colorado a county court.

**Source: L. 64:** p. 409, § 1. **C.R.S. 1963:** § 37-13-1.

#### ANNOTATION

**Law reviews.** For article, "Colorado's New Court System", see 41 Den. L. Ctr. J. 140 (1964).

**For the general assembly using its constitutional power to create county courts,** see Rowland v. Theobald, 159 Colo. 1, 409 P.2d 272 (1965).

#### **13-6-102. Court of record.**

Each county court shall be a court of record, with such powers as are inherent in constitutionally created courts.

**Source: L. 64:** p. 409, § 2. **C.R.S. 1963:** § 37-13-2.

#### ANNOTATION

**County court records are entitled to the same presumptions as those of district courts.** The county courts are courts of record, and as to matters within their jurisdiction under the constitution and laws of this state, their records are supported by the same presumptions and intendments of law as the records of district courts. Fletcher

v. Stowell, 17 Colo. 94, 28 P. 326 (1891), citing Hughes v. Cummings, 7 Colo. 138, 2 P. 289 (1883); Dusing v. Nelson, 7 Colo. 184, 2 P. 922 (1883); Behymer v. Nordloh, 12 Colo. 352, 21 P. 37 (1888); In re Rogers, 14 Colo. 18, 22 P. 1053 (1890)(cases decided under repealed laws antecedent to CSA, C. 46, § 156).

#### **13-6-103. Statewide jurisdiction.**

The jurisdiction of the county court shall extend to all cases which arise within the boundaries of this state or are subject to its judicial power and which are within the limitations imposed by this article, but the exercise of this jurisdiction is subject to restrictions of venue as established by this article or, if there are none, by rule of the Colorado supreme court.

**Source: L. 64:** p. 409, § 3. **C.R.S. 1963:** § 37-13-3. **L. 79:** Entire section amended, p. 598, § 12, effective July 1.

### **13-6-104. Original civil jurisdiction.**

(1) On and after January 1, 2019, the county court shall have concurrent original jurisdiction with the district court in civil actions, suits, and proceedings in which the debt, damage, or value of the personal property claimed does not exceed twenty-five thousand dollars, including by way of further example, and not limitation, jurisdiction to hear and determine actions in tort and assess damages therein not to exceed twenty-five thousand dollars. The county court shall also have jurisdiction of counterclaims in all such actions when the counterclaim does not exceed twenty-five thousand dollars.

(2) The county court shall have concurrent original jurisdiction with the district court in actions to foreclose liens pursuant to article 20 of title 38 and in cases of forcible entry, forcible detainer, or unlawful detainer, except when such cases involve the boundary or title to real property and except as provided in section 13-40-109. Judgment in the county court for rent, damages on account of unlawful detention, damages for injury to property, and damages incurred under article 20 of title 38 pursuant to this subsection (2) shall not exceed a total of twenty-five thousand dollars, exclusive of costs and attorney fees, nor shall the county court on and after January 1, 2019, have jurisdiction if the monthly rental value of the property exceeds twenty-five thousand dollars.

(3) The county court shall have concurrent original jurisdiction with the district court in petitions for change of name.

(4) Repealed.

(5) The county court shall have concurrent original jurisdiction with the district court to issue temporary and permanent civil restraining orders as provided in article 14 of this title.

(6) (Deleted by amendment, L. 99, p. 501, § 5, effective July 1, 1999.)

(7) The county court shall have concurrent original jurisdiction with the district court to hear actions brought pursuant to section 25-8-607, C.R.S.

(8) The county court shall have original jurisdiction in hearings concerning the impoundment of motor vehicles pursuant to section 42-13-106, C.R.S.

(9) (Deleted by amendment, L. 99, p. 501, § 5, effective July 1, 1999.)

**Source:** L. 64: p. 409, § 4. C.R.S. 1963: § 37-13-4. L. 67: p. 1063, § 2. L. 75: (2) amended, p. 1419, § 8, effective April 24; (1) and (2) amended, p. 561, § 1, effective October 1. L. 78: (5) added, p. 352, § 1, effective April 21. L. 79: (6) added, p. 599, § 13, effective July 1. L. 81: (1) and (2) amended, p. 879, § 1, effective July 1; (7) added, p. 1338, § 2, effective July 1. L. 82: (5)



R&RE and (6) amended, p. 301, §§ 2, 3, effective April 23. **L. 86:** (8) added, p. 924, § 2, effective April 3. **L. 87:** (2) amended, p. 1576, § 13, effective July 10. **L. 90:** (1) and (2) amended, p. 848, § 2, effective May 31; (1) and (2) amended, p. 854, § 2, effective July 1. **L. 92:** (9) added, p. 292, § 2, effective April 23. **L. 94:** (4) repealed, p. 2031, § 6, effective July 1; (8) amended, p. 2548, § 29, effective January 1, 1995. **L. 99:** (5), (6), and (9) amended, p. 501, § 5, effective July 1. **L. 2001:** (1) and (2) amended, p. 1517, § 11, effective September 1. **L. 2018:** (1) and (2) amended, (SB 18-056), ch. 298, p. 1816, § 1, effective January 1, 2019.

**Cross references:** (1) For treatment by county court of restraining orders issued in restraint of persons threatening assaults and bodily harm, see C.R.C.P. 365(b); for civil protection orders, see article 14 of this title; for provisions relating to domestic abuse programs, see article 7.5 of title 26.

(2) For the legislative declaration contained in the 1990 act amending subsections (1) and (2), see section 1 of chapter 100, Session Laws of Colorado 1990.

## ANNOTATION

I. General Consideration.

Ohmie v. Martinez, 141 Colo. 480, 349 P.2d 131 (1960).

II. Subject Matter Jurisdiction.

III. Jurisdictional Amount.

**County court may enforce a state agency's imposition of a monetary penalty.** Gibbs v. Colo. Mined Land Reclamation Bd., 883 P.2d 592 (Colo. App. 1994).

### I. GENERAL CONSIDERATION.

**Law reviews.** For comment on Ohmie v. Martinez, appearing below, see 38 Dicta 123 (1961). For note, "Rural Poverty and the Law in Southern Colorado", see 47 Den. L.J. 82 (1970).

**Annotator's note.** Since § 13-6-104 is similar to repealed laws antecedent to CSA, C. 46, § 156, relevant cases construing those provisions have been included in the annotations to this section.

**The jurisdiction of district and county courts is concurrent** with respect to matters which fall within the jurisdiction of both.

### II. SUBJECT MATTER JURISDICTION.

**County courts have general subject matter jurisdiction.** Jurisdiction of the subject matter is the power to deal with the general abstract question, to hear the particular facts in any case relating to this question, and to determine whether or not they are sufficient to invoke the exercise of that power. Camplin v. Jackson, 34 Colo. 447, 83 P. 1017 (1905).

**County court has jurisdiction in all civil matters, both in law and in equity, except as expressly limited.** Flynn v. Casper, 26 Colo. App. 344, 144 P. 1137 (1914), citing Sievers v. Garfield County Court, 11 Colo. App. 147, 52 P. 634 (1898); Arnett v. Berg, 18 Colo. App. 341, 71 P. 636 (1903).

**County court has jurisdiction in habeas corpus proceedings.** Habeas corpus by a parent, demanding the custody of his infant child, is, under this section, within the jurisdiction of the county court. Flynn v. Casper, 26 Colo. App. 344, 144 P. 1137 (1914).

**This section does not apply to proceedings under the eminent domain act.** Bd. of County Comm'rs v. Poundstone, 74 Colo. 191, 220 P. 234 (1923).

**Nor does it apply in proceedings for injunction against city or town ordinance.** County courts have no jurisdiction to control, by injunction, proceedings before police magistrates or justices of the peace acting as such in the enforcement of the ordinances of cities and towns. Hart v. Dana, 12 Colo. App. 499, 55 P. 958 (1889).

### **III. JURISDICTIONAL AMOUNT.**

**Annotator's note.** The jurisdictional amount in repealed laws antecedent to CSA, C. 46, § 156, was \$2,000.

**The purpose behind regulating the jurisdiction of the county court as to the amount** in controversy is to expedite the handling of small claims. This purpose must be considered in the light of the policy that a person cannot be allowed to invoke the

jurisdiction of a court, acquiesce in the decree thus obtained, and later question the validity of the judgment when it is enforced against him. Under the circumstances, the petitioner is estopped by his acquiescence and conduct from asserting the invalidity of the judgment in the county court. In re Estate of Lee v. Graber, 170 Colo. 419, 462 P.2d 492 (1969).

**Jurisdictional allegation is an essential prerequisite.** Jurisdictional allegation in the complaint that the relief sought does not exceed the jurisdictional sum is an essential prerequisite to the exercise of jurisdiction by the court. Myers v. Myers, 110 Colo. 412, 135 P.2d 235 (1943).

**This section does not prescribe a form for the jurisdictional averment.** There is nothing in this section that indicates an intention to require the jurisdictional averment to be in a prescribed form. The import of the language employed therein is, that it must affirmatively appear from the complaint that the value of the property in controversy, or the amount involved, for which relief is sought, does not exceed the jurisdictional sum. Hughes v. Brewer, 7 Colo. 583, 4 P. 1115 (1884); Bloomer v. Jones, 22 Colo. App. 404, 125 P. 541 (1912).

**Complaint may be amended to show jurisdiction.** A complaint in a county court which is insufficient by reason of the omission of a jurisdictional averment may be amended so as to give the court jurisdiction. Myers v. Myers, 110 Colo. 412, 135 P.2d 235 (1943).

**Amendment may be allowed to include averment.** In condemnation proceedings in

the county courts under this section the complaint, if lacking the requisite jurisdictional allegations, is not entirely void but amendable, and when a complaint is amended, it stands as though it had originally read as amended. *Goodman v. City of Ft. Collins*, 164 F. 970 (8th Cir. 1908).

**A defect in this respect may be aided by the answer.** A complaint in an action in the county court which did not allege that the value of the property involved was less than \$2,000, if defective in that respect, was aided by the answer, which alleged it was not worth \$1,500. *Petri v. Doughty*, 75 Colo. 551, 227 P. 388 (1924).

**In a bill to quiet title to lands, an averment** that "the value of the property involved does not exceed or equal two thousand dollars", suffices to support the jurisdiction of the county court. *Green v. Gibson*, 53 Colo. 346, 127 P. 239 (1912).

**Complaint must indicate value of land.** In a complaint, in an action to quiet the title to lands, no money judgment being demanded, an averment that "the amount herein involved and sued for does not equal \$2,000", gives no indication of the value of the land, and is not a compliance with this section. A decree given upon such complaint is void, and may be collaterally assailed. *Bloomer v. Jones*, 22 Colo. App. 404, 125 P. 541 (1912).

**On error defendant will not be heard to question the jurisdiction of the court for want of the averment** as to the amount in controversy required by this section. To permit the jurisdiction to be thus questioned

for the first time in the court of review would deprive plaintiff of the right to amend granted by the code of civil procedure. *Nelson v. Chittenden*, 53 Colo. 30, 123 P. 656 (1912).

**Uncertainties in the record will be resolved in favor of the party successful below;** e.g., as to whether an averment essential to the jurisdiction of the court below, appearing by interlineation in the complaint, was therein, when it was originally filed. *Dunkle v. French*, 51 Colo. 170, 116 P. 1039 (1911).

**Determination of jurisdictional amount.** The amount fixed as the statutory limitation of the jurisdiction must be taken to mean the amount due the plaintiff, or the value or amount of his claim, or the value of the property sought to be recovered at the time of bringing the action, and in an action for the recovery of money, where the principal sum draws interest, if the amount due at the time of the commencement of the action, including interest, does not exceed the jurisdictional amount, the county court, under the constitution and this section, has jurisdiction, and the accumulation of interest pendente lite will not oust such jurisdiction. *Denver Brick Mfg. Co. v. McAllister*, 6 Colo. 326 (1882).

**Jurisdictional limit applies to the total amount to be paid,** and not to each monthly payment of child support. *Mathews v. Urban*, 645 P.2d 290 (Colo. App. 1982).

**For when averments are sufficient,** see *Hughes v. Brewer*, 7 Colo. 583, 4 P. 1115 (1884).

**Once a court has jurisdiction over a case because the total sum sought is within the jurisdictional limit,** the court does not lose jurisdiction simply because the case is litigated, and attorney fees incurred and awarded exceed the jurisdictional amount. *Ferrell v. Glenwood Brokers, Ltd.*,

848 P.2d 936 (Colo. 1993), overruled in *LHM Corp. v. Martinez*, 2021 CO 78, 499 P.3d 1050, to the extent *Ferrell* suggests appealability of a judgment hinges on the fact-specific determination of whether the attorney fees at issue are best classified as costs or damages.

### **13-6-105. Specific limits on civil jurisdiction.**

(1) The county court has no civil jurisdiction except the jurisdiction that is specifically conferred upon it by law. In particular, the county court has no jurisdiction over the following matters:

- (a) Matters of probate;
- (b) Matters of mental health, including certification, restoration to competence, and the appointment of conservators;
- (c) Matters of dissolution of marriage, declaration of invalidity of marriage, and legal separation;
- (d) Matters affecting children, including the allocation of parental responsibilities, support, guardianship, adoption, dependency, or delinquency;
- (e) Matters affecting boundaries or title to real property;
- (f) Original proceedings for the issuance of injunctions, except:
  - (I) As provided in sections 13-6-104 (5), 38-12-507, and 38-12-510;
  - (II) As required to enforce restrictive covenants on residential property and to enforce section 6-1-702.5;
  - (II.5) As provided in sections 30-15-401, 30-28-124, and 30-28-209; and
  - (III) As otherwise specifically authorized in this article 6 or, if there is no authorization, by rule of the Colorado supreme court.

(2) Any powers or duties previously placed in the county court by law in connection with any of the matters excluded from the jurisdiction of the county court by this section are transferred to the district court or, if within their jurisdiction, to the probate court of the city and county of Denver or the juvenile court of the city and county of Denver, and the statutes relating thereto shall be so construed.

(3) Nothing in this section shall be deemed to prevent the appointment of county judges as magistrates in juvenile matters or as magistrates in mental health and other matters. Appointments of county judges as magistrates in mental health and other matters are authorized, and, when so appointed by the district judge, the county judge shall serve as a district court officer for the designated purposes.

**Source:** L. 64: p. 410, § 5. C.R.S. 1963: § 37-13-5. L. 78: (1)(f) amended, p. 353, § 2, effective April 21. L. 79: (1)(f) amended, p. 599, § 14, effective July 1; (3) amended, p. 963, § 12, effective July 1. L. 88: (1)(f) amended, p. 601, § 1, effective July 1. L. 91: (3) amended, p. 356, § 8, effective April 9. L. 98: (1)(d) amended, p. 1392, § 24, effective February 1, 1999. L. 2000: (1)(f) amended, p. 2034, § 2, effective August 2. L. 2008: (1)(f) amended, p. 596, § 4, effective August 5. L. 2019: IP(1) and (1)(f) amended, (HB 19-1170), ch. 229, p. 2305, § 1, effective August 2. L. 2020: (1)(b) amended, (SB 20-136), ch. 70, p. 282, § 3, effective September 14. L. 2024: (1)(f)(I) amended, (SB 24-094), ch. 158, p. 729, § 13, effective May 3. L. 2026: IP(1) and (1)(f)(II) amended and (1)(f)(II.5) added, (HB 26-1239), ch. 207, p. 1175, § 1, effective August 12.

**Cross references:** For the legislative declaration in SB 20-136, see section 1 of chapter 70, Session Laws of Colorado 2020.

## ANNOTATION

**Specific exclusions to county court jurisdiction are found in this section.** The jurisdiction of the newly created county courts was defined and specific exclusions were mentioned in this section. Rowland v. Theobald, 159 Colo. 1, 409 P.2d 272 (1965).

**Election disputes are not withdrawn from county court jurisdiction.** Six classifications of legal matters are expressly mentioned with reference to which the county court shall have no jurisdiction. Nothing concerning election disputes is withdrawn from consideration by the county courts by these expressed exclusions.

Rowland v. Theobald, 159 Colo. 1, 409 P.2d 272 (1965).

**County court forced entry and detainer judgment not dispositive of subsequent property ownership question.** Because county courts are specifically precluded from deciding any matters affecting title to real property, judgment entered in a county court forced entry and detainer action cannot be dispositive of the property ownership question in a subsequent quiet title action. Gore Trading Co. v. Alice, 35 Colo. App. 97, 529 P.2d 324 (1974).

**Section not applicable to decrees of specific performance.** In interpreting the reference in this section to "injunctions", presumption is that the general assembly was aware of the legal distinction between injunctions and specific performance decrees. Therefore, subsection (1)(f), which limits a county court's power to issue

injunctions, does not limit the court's power to issue decrees of specific performance, and C.R.C.P. 370 properly may be read with the understanding that county courts have jurisdiction to issue decrees of specific performance. *Snyder v. Sullivan*, 705 P.2d 510 (Colo. 1985).

### **13-6-106. Original criminal jurisdiction.**

(1) The county court shall have concurrent original jurisdiction with the district court in the following criminal matters:

(a) Criminal actions for the violation of state laws which constitute misdemeanors or petty offenses, except those actions involving children over which the juvenile court of the city and county of Denver or the district courts of the state, other than in Denver, have exclusive jurisdiction;

(b) The issuance of warrants, the conduct of preliminary examinations, the conduct of dispositional hearings pursuant to section 16-5-301 (1), C.R.S., and section 18-1-404 (1), C.R.S., the issuance of bindover orders, and the admission to bail in felonies and misdemeanors.

(2) The provisions of subsection (1)(b) of this section shall not apply to any child under the age of eighteen years alleged to have committed a felony, except a crime of violence punishable by death or life imprisonment where the accused is sixteen years of age or older.

**Source:** L. 64: p. 411, § 6. C.R.S. 1963: § 37-13-6. L. 67: p. 1051, § 6. L. 79: (1)(a) amended, p. 599, § 15, effective July 1. L. 98: (1)(b) amended, p. 1274, § 4, July 1.

### **ANNOTATION**

**Law reviews.** For article, "Commitment of Misdemeanants to the Colorado State Reformatory", see 29 Dicta 294 (1952).

**Annotator's note.** Since § 13-6-106 is similar to repealed § 37-7-1, CRS 53, relevant cases construing that provision have

been included in the annotations to this section.

**Under this section, the jurisdiction of county courts in criminal cases is limited to misdemeanors;** hence a conviction of grand larceny in the county court and a sentence to the state penitentiary is void.

Latham v. People, 136 Colo. 252, 317 P.2d 894 (1957).

The jurisdiction conferred by the general assembly in § 42-4-1504 for misdemeanors involving the operation of motor vehicles did not intend to impliedly repeal this section conferring original jurisdiction upon the county courts in misdemeanor cases. People v. Griffith, 130 Colo. 475, 276 P.2d 559 (1954).

**Jurisdiction extends to offenses under § 42-4-1501.** Jurisdiction of the county courts includes those offenses reclassified as

misdemeanor traffic offenses under § 42-4-1501. Phillips v. County Court, 42 Colo. App. 187, 591 P.2d 600 (1979).

**Since a person under age 18 can only be charged with an offense in the manner permitted by the Children's Code,** the county court had no jurisdiction to entertain or to dispose of the merits of the proceeding involving an offense alleged against a juvenile and was without authority to go further than merely dismissing the case without prejudice for lack of jurisdiction. People in Interest of C.O., 870 P.2d 1266 (Colo. App. 1994).

### **13-6-107. Restraining orders to prevent emotional abuse of the elderly. (Repealed)**

**Source: L. 92:** Entire section added, p. 290, § 1, effective April 23. **L. 94:** (5), (9), (10), and (11) amended and (13) added, p. 2005, § 1, effective January 1, 1995. **L. 98:** (1) and (5) amended, p. 244, § 2, effective April 13. **L. 99:** Entire section repealed, p. 501, § 6, effective July 1.

## **PART 2**

### **JUDGES AND OTHER PERSONNEL**

#### **13-6-201. Classification of counties.**

(1) For such organizational and administrative purposes concerning county courts as are specified in this part 2, counties shall be classified as provided in subsection (2) of this section. The classifications established in this section shall not have any effect upon any classifications now provided by law for any other purpose and specifically shall have no effect upon the existing classification of counties for the purpose of fixing judicial salaries for county judges as provided by section 13-30-103.

(2) Classes of counties for this part 2 are:

(a) **Class A.** Class A shall consist of the city and county of Denver.

(b) **Class B.** Class B consists of the counties of Adams, Arapahoe, Boulder, Douglas, Eagle, El Paso, Fremont, Garfield, Jefferson, La Plata, Larimer, Mesa, Montezuma, Montrose, Pueblo, Summit, Weld, and the city and county of Broomfield.

(c) **Class C.** Class C consists of the counties of Alamosa, Delta, Las Animas, Logan, Morgan, Otero, Prowers, and Rio Grande.

(d) **Class D.** Class D shall consist of the counties of Archuleta, Baca, Bent, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Dolores, Elbert, Gilpin, Grand, Gunnison, Jackson, Hinsdale, Huerfano, Kiowa, Kit Carson, Lake, Lincoln, Mineral, Moffat, Ouray, Park, Phillips, Pitkin, Saguache, San Juan, San Miguel, Sedgwick, Rio Blanco, Routt, Teller, Washington, and Yuma.

**Source:** L. 64: p. 411, § 7. C.R.S. 1963: § 37-14-1. L. 72: p. 591, § 59. L. 75: (2)(b) and (2)(d) amended, p. 563, § 1, effective July 1. L. 77: (2)(b) R&RE and (2)(c) amended, p. 783, §§ 1, 2, effective July 1, 1978. L. 81: (1) amended, p. 2025, § 15, effective July 14. L. 92: (2)(b) and (2)(d) amended, p. 274, § 1, effective February 12. L. 93: (2)(b) and (2)(d) amended, p. 1774, § 31, effective June 6. L. 97: (2)(b) and (2)(d) amended, p. 984, § 1, effective July 1, 1998. L. 2001: (2)(b) amended, p. 56, § 1, effective July 1. L. 2007: (1), (2)(b), and (2)(c) amended, p. 363, § 1, effective April 2. L. 2009: (2)(b) and (2)(c) amended, (HB 09-1037), ch. 18, p. 95, § 1, effective March 18. L. 2022: (2)(b) and (2)(c) amended, (HB 22-1237), ch. 113, p. 510, § 1, effective April 21.

### **13-6-202. Number of judges.**

(1) There is one county judge in each county, except that:

(a) Subject to available appropriations, the number of county judges in the county of Jefferson is nine;

(b) Subject to available appropriations, the number of county judges in the county of El Paso is ten;

(c) Subject to available appropriations, the number of county judges in the county of Adams is eight;

(d) Subject to available appropriations, the number of county judges in the county of Arapahoe is eight;

(e) Subject to available appropriations, the number of county judges in the county of Boulder is five;



(f) Subject to available appropriations, the number of county judges in the county of Pueblo is three;

(g) Subject to available appropriations, the number of county judges in the city and county of Denver is the number of county judges provided by the charter and ordinances thereof;

(h) (I) Subject to available appropriations, the number of county judges in the county of Larimer is five; and

(II) Subject to available appropriations, effective July 1, 2026, the number of county judges in the county of Larimer is six;

(i) (I) Subject to available appropriations, the number of county judges in the county of Douglas is three; and

(II) Subject to available appropriations, effective July 1, 2026, the number of county judges in the county of Douglas is four;

(j) Subject to available appropriations, effective July 1, 2025, the number of county judges in the county of La Plata is two;

(k) (I) Subject to available appropriations, the number of county judges in the county of Mesa is three; and

(II) Subject to available appropriations, effective July 1, 2026, the number of county judges in the county of Mesa is four;

(l) Subject to available appropriations, the number of county judges in the county of Weld is four; and

(m) Subject to available appropriations, effective July 1, 2026, the number of county judges in the county of Eagle is two.

(2) (a) One of the county judges in Boulder county shall maintain a courtroom in the city of Longmont at least three days per week.

(b) A judge of the Eagle county court shall conduct court business in that portion of Eagle county lying in the Roaring Fork river drainage area in a manner sufficient to deal with the business before the court.

**Source:** L. 64: p. 412, § 8. L. 65: p. 476, §§ 1, 2. C.R.S. 1963: § 37-14-2. L. 67: p. 485, § 1. L. 68: p. 38, § 1. L. 72: pp. 189, 592, §§ 1, 60. L. 73: p. 495, § 1. L. 75: Entire section amended, p. 565, § 2, effective October 1. L. 77: Entire section amended, p. 785, § 1, effective July 1. L. 80: Entire section amended, p. 509, § 1, effective July 1. L. 84: Entire section amended, p. 454, § 4, effective September 1. L. 89: Entire section amended, p. 749, § 1, effective April 1, 1990. L.

**92:** Entire section amended, p. 275, § 2, effective February 12. **L. 95:** Entire section amended, p. 452, § 1, effective May 16. **L. 99:** Entire section amended, p. 668, § 1, effective May 18. **L. 2001:** Entire section amended, p. 56, § 2, effective July 1. **L. 2006:** Entire section amended, p. 22, § 2, effective July 1. **L. 2007:** Entire section amended, p. 1529, § 16, effective May 31. **L. 2025:** Entire section R&RE, (SB 25-024), ch. 23, p. 87, § 8, effective March 24.

### **13-6-203. Qualifications of judges.**

(1) The county judge shall be a qualified elector of the county for which he is elected or appointed and shall reside there so long as he serves as county judge.

(2) In counties of Class A and B, no person shall be eligible for election or appointment to the office of county judge unless he has been admitted to the practice of law in Colorado.

(3) In counties of Class C and Class D, a person is not eligible for appointment to the office of county judge unless he or she has graduated from high school or has successfully completed a high school equivalency examination, as defined in section 22-33-102 (8.5), C.R.S.

(4) Repealed.

(5) Judges-elect who have not been admitted to the practice of law shall not take office for the first time as county judge until they have attended an institute on the duties and functioning of the county court to be held under the supervision of the supreme court, unless such attendance is waived by the supreme court. Judges who are attorneys and who are taking office for the first time as county judge may attend this institute if they wish. All judges are entitled to their actual and necessary expenses while attending this institute. The supreme court shall establish the institute to which this subsection (5) refers and shall provide that it be held when the appointment of a sufficient number of nonlawyer county judges warrants, as determined by the chief justice.

**Source:** **L. 64:** p. 412, § 9. **C.R.S. 1963:** § 37-14-3. **L. 67:** p. 457, § 9. **L. 69:** p. 250, § 10. **L. 72:** p. 592, § 61. **L. 73:** p. 1402, § 30. **L. 79:** (3) amended and (4) repealed, pp. 599, 602, §§ 16, 30, effective July 1. **L. 2014:** (3) amended, (SB 14-058), ch. 102, p. 377, § 2, effective April 7.

### **13-6-204. Activities of judges.**

(1) In counties of Class A and B, county judges shall devote their full time to judicial duties and shall not engage in the private practice of law. They may also serve as municipal judges in counties of Class A but may not do so in counties of Class B.

(2) In counties of Class C and D, county judges, if admitted to the bar, may engage in the private practice of law in courts other than the county court and in matters which have not and will not come before the county court and may serve as municipal judges.

(3) County judges of any class county may be appointed as magistrates in juvenile matters and as magistrates for the district court in mental health matters and shall receive no additional compensation for such service. County judges may accept appointment as magistrates in any other matter, and for such service a county judge is entitled to such compensation as the appointing district judge may allow, payable from funds provided under sections 13-3-104 and 13-3-106.

**Source:** L. 64: p. 413, § 10. C.R.S. 1963: § 37-14-4. L. 79: (3) amended, p. 764, § 13, effective July 1. L. 91: (3) amended, p. 356, § 9, effective April 9.

#### **13-6-205. Term and appointment of judges.**

The term of office of county judges shall be four years. County judge appointments shall be made pursuant to section 20 of article VI of the state constitution. This section shall not apply to the city and county of Denver, and the term of office and manner of selection of county judges therein shall be determined by the charter and ordinances thereof.

**Source:** L. 64: p. 413, § 11. C.R.S. 1963: § 37-14-5. L. 72: p. 592, § 62.

#### **13-6-206. Vacancies.**

(1) If the office of a county judge, except in the city and county of Denver, becomes vacant because of death, resignation, failure to be retained in office pursuant to section 25 of article VI of the state constitution, or other cause, the governor, as provided in section 20 of article VI of the state constitution, shall appoint an individual possessing the qualifications specified in section 13-6-203.

(2) If the office of a county judge becomes vacant, the general assembly encourages the judicial district nominating commission in certifying the names of the nominees to the governor to give preference to persons who:

- (a) Reside within the county in which the vacancy occurs; and
- (b) Have been admitted to practice law in the state.

**Source: L. 64:** p. 413, § 12. **C.R.S. 1963:** § 37-14-6. **L. 67:** p. 457, § 10. **L. 2016:** Entire section amended, (SB 16-153), ch. 194, p. 684, § 1, effective August 10.

#### ANNOTATION

**Vacancy exists if newly elected judge dies before possessing office.** People v. Boughton, 5 Colo. 487 (1880) (decided under repealed laws antecedent to CSA, C. 46, § 122).

#### **13-6-207. Bond. (Repealed)**

**Source: L. 64:** p. 413, § 13. **C.R.S. 1963:** § 37-14-7. **L. 69:** p. 250, § 11. **L. 79:** Entire section repealed, p. 602, § 30, effective July 1.

#### **13-6-208. Special associate, associate, and assistant county judges.**

(1) In order to provide for the expeditious handling of county court business and for county court sessions in population centers which are not county seats, there may be created in counties designated by law the positions of special associate county judge, associate county judge, and assistant county judge.

(2) Special associate, associate, and assistant county judges, when so provided by law, except in the city and county of Denver, shall be elected or appointed at the same time, in the same manner, and for the same term, and shall possess the same qualifications, as the county judges of their respective counties. Vacancies in positions for special associate, associate, and assistant county judges shall be filled in the same manner as a vacancy in the office of county judge.

(3) The location of the official residence and court chambers for the purpose of holding court of special associate, associate, and assistant county judges shall be as prescribed by law. Travel and maintenance expenses shall be allowed special associate, associate, and assistant county judges only when they are performing official duties outside of their official places of residence.

(4) Special associate, associate, and assistant county judges when actually performing judicial duties shall have all the jurisdiction and power of a county judge, and their orders and judgments shall be those of the county court.

(5) Repealed.

(6) Special associate, associate, and assistant county judges in counties of Classes B, C, and D, if admitted to the bar, may engage in the private practice of law in courts other than the county court and in matters which have not and will not come before the county court, and may serve as municipal judges.

**Source:** L. 64: p. 414, § 14. C.R.S. 1963: § 37-14-8. L. 67: p. 457, § 11. L. 71: p. 370, § 1. L. 80: (5) repealed, p. 578, § 8, effective July 1.

#### ANNOTATION

**This statute does not purport to create a new court.** Rather, it creates two new judicial positions, namely, that of associate county judge and assistant county judge. *Sanders v. District Court*, 166 Colo. 455, 444 P.2d 645 (1968).

**The only difference between an associate or assistant county judge and a county judge** relates to the emoluments which go with the respective judicial offices. *Sanders v. District Court*, 166 Colo. 455, 444 P.2d 645 (1968).

**The jurisdiction and power of an associate or an assistant county judge is coequal** with that of a full-fledged county judge. *Sanders v. District Court*, 166 Colo. 455, 444 P.2d 645 (1968).

**Associate and assistant judges are part-time.** Though the statute is silent on the matter, the general assembly must have intended that an associate county judge would perform, volumewise at least, about one-half the amount of work customarily

performed by the county judge and the assistant county judge about one-fourth. Associate and assistant county judges are "part-time" — not "full-time" — county judges, even though under the statute they have all of the jurisdiction and power of a county judge. *Sanders v. District Court*, 166 Colo. 455, 444 P.2d 645 (1968).

**Judge may sit in population centers other than the county seat.** One purpose of the statute creating associate county judges is to locate judicial officers with the power and jurisdiction of a county judge in population centers which are not county seats. This is not special or local legislation of the type prohibited by our constitution, which prohibitions relate essentially to the organization, jurisdiction and practice of and in a given court, and not to the number or titles of judicial officers, who are authorized to preside in a particular court. *Sanders v. District Court*, 166 Colo. 455, 444 P.2d 645 (1968).

**13-6-209. Special associate and associate county judges - designated counties.**

(1) In the county of Montrose there shall be an associate county judge who shall maintain his or her official residence in Montrose county and court chambers in that portion of Montrose county that is included in the southwestern water conservation district as set forth and described in section 37-47-103, C.R.S.

(2) In the county of Garfield there shall be a special associate county judge who shall maintain an official residence in Garfield county and court chambers in the city of Rifle.

(3) In the county of Rio Blanco there must be an associate county judge who shall maintain an official residence in Rio Blanco County and court chambers in the city of Rangely.

(4) Repealed.

**Source:** L. 64: p. 414, § 15. C.R.S. 1963: § 37-14-9. L. 67: p. 485, § 2. L. 71: p. 371, § 2. L. 75: (4) repealed, p. 564, § 3, effective January 1, 1979. L. 2012: (1) amended, (HB 12-1323), ch. 105, p. 358, § 1, effective April 13. L. 2022: (2) and (3) amended, (HB 22-1237), ch. 113, p. 510, § 2, effective April 21.

**ANNOTATION**

**Section is constitutional.** Subsection (2) of this section does not violate § 25 of art. V, or § 19 of art. VI, Colo. Const., for there is no dispute that the general assembly has the

power to determine the number of judges in each district. *Sanders v. District Court*, 166 Colo. 455, 444 P.2d 645 (1968).

**13-6-210. Assistant county judges - designated counties. (Repealed)**

**Source:** L. 64: p. 415, § 16. L. 65: p. 477, §§ 1, 2. C.R.S. 1963: § 37-14-10. L. 67: p. 304, § 1. L. 69: p. 263, § 1. L. 72: p. 592, § 63. L. 77: (1) repealed, p. 785, § 2, effective July 1. L. 79: (3) amended, p. 607, § 1, effective May 18. L. 90: (2) repealed, p. 861, § 1, effective March 22. L. 92: (3) repealed, p. 275, § 3, effective February 12.

**13-6-211. Appointment of clerk.**

(1) (a) The position of clerk of the county court is established in counties of Classes A, B, C, and D, except as otherwise provided in this section and in section 13-3-107.

(b) In counties of Class A, the appointment of the clerk shall be made and his salary fixed as prescribed in the charter and ordinances of such county.

(c) In counties of Classes B, C, and D, the appointment and salary of the clerk shall be in accordance with the provisions of section 13-3-105.

(2) In such counties as may be determined by the chief justice, the functions of the office of the clerk of the county court may be performed by a consolidated office serving both the district and county courts, as provided in section 13-3-107.

(3) In any county in which there is no clerk of the county court provided pursuant to the provisions of section 13-3-105, the judge of the county court shall act as ex officio clerk without further compensation and have all the duties and powers of the clerk.

**Source:** L. 64: p. 416, § 20. C.R.S. 1963: § 37-14-14. L. 69: p. 251, § 14. L. 79: (2) amended, p. 599, § 17, effective July 1.

#### ANNOTATION

**Annotator's note.** Since § 13-6-211 is similar to repealed laws antecedent to CSA, C. 46, § 191, relevant cases construing those provisions have been included in the annotations to this section.

**A county judge may elect to perform the duties of clerk of his court** and when he does so elect is authorized to issue and sign all processes from his court. But when a clerk has been appointed by a county judge, so long as the appointment is not revoked, the clerk or his deputy alone has power to

discharge the clerical duties of the office, and a summons issued and signed by the judge is void notwithstanding the disqualification of the clerk to act on account of absence or sickness. *McNevins v. McNevins*, 28 Colo. 245, 64 P. 199 (1901).

**A clerk may also be probation officer.** There is no statutory inhibition against one person holding the offices of clerk of the county court and probation officer. *Bd. of County Comm'rs v. Wharton*, 82 Colo. 466, 261 P. 4 (1927).

#### **13-6-212. Duties of clerk.**

(1) The powers and duties of the clerk of the county court shall be similar to the powers and duties of the clerk of the district court exclusive of the powers of the district court clerk in probate and shall include such duties as may be assigned to him by law, by court rules, and by the county judge.

(2) Upon approval by the chief justice of the supreme court, the chief judge of a judicial district may authorize, either generally or in specific cases, the clerk of the county court to do the following:

- (a) Issue bench warrants, misdemeanor or felony warrants, and writs of restitution upon written or oral order of a judge;
- (b) Advise defendants in criminal cases of their procedural and constitutional rights;
- (c) Accept pleas of not guilty in all criminal cases and set dates for hearings or trials in such cases;
- (d) Subject to the requirements of the Colorado rules of civil procedure, enter default and default judgments and issue process for the enforcement of said judgments;
- (e) Under the direction of a judge, grant continuances, set motions for hearing, and set cases for trial; and
- (f) With the consent of the defendant, accept pleas of guilty and admissions of liability and impose penalties pursuant to a schedule approved by the presiding judge in misdemeanor cases involving violations of wildlife and parks and outdoor recreation laws for which the maximum penalty in each case is a fine of not more than one thousand dollars; and in misdemeanor traffic and traffic infraction cases involving the regulation of vehicles and traffic for which the penalty specified in section 42-4-1701, or elsewhere in articles 2 to 4 of title 42, in each case is less than three hundred dollars; and in civil infraction cases. A clerk shall not levy a fine greater than these amounts nor sentence any person to jail. If, in the judgment of the clerk, a fine greater than these amounts or a jail sentence is justified, the case must be certified to the judge of the county court for arraignment and trial de novo.

**Source:** L. 64: p. 417, § 21. C.R.S. 1963: § 37-14-15. L. 79: Entire section amended, p. 608, § 1, effective April 25. L. 83: (2)(f) amended, p. 602, § 1, effective July 1. L. 84: (2)(f) amended, p. 921, § 7, effective January 1, 1985. L. 94: (2)(f) amended, p. 2549, § 30, effective January 1, 1995. L. 2022: (2)(f) amended, (HB 22-1229), ch. 68, p. 339, § 3, effective March 1.

**Editor's note:** Section 47 of chapter 68 (HB 22-1229), Session Laws of Colorado 2022, provides that the act amending subsection (2)(f) is effective March 1, 2022, but the governor did not approve the act until April 7, 2022.



**Cross references:** For court clerk's duties, see article 1 of this title and § 13-5-125; for law enforcement and penalties relating to wildlife and parks and outdoor recreation, see articles 6 and 15 of title 33.

**13-6-213. Bond of clerk. (Repealed)**

**Source:** L. 64: p. 417, § 22. C.R.S. 1963: § 37-14-16. L. 69: p. 251, § 15. L. 79: Entire section repealed, p. 602, § 30, effective July 1.

**13-6-214. Other employees.**

(1) In counties of Class A, such deputy clerks, assistants, reporters, stenographers, and bailiffs as shall be necessary for the transaction of the business of the county court may be appointed and their compensation fixed in the manner provided in the charter and ordinances thereof.

(2) In counties of Classes B, C, and D, there shall be appointed such deputy clerks, assistants, reporters, stenographers, and bailiffs as are necessary, in accordance with the provisions of section 13-3-105.

**Source:** L. 64: p. 417, § 23. C.R.S. 1963: § 37-14-17. L. 69: p. 252, § 16.

**13-6-215. Presiding judges.**

In each county court which has more than one county judge, the court, by rule, shall provide for the designation of a presiding judge. If there is a failure to select a presiding judge by rule, the chief justice shall designate a presiding judge.

**Source:** L. 64: p. 418, § 24. C.R.S. 1963: § 37-14-18. L. 79: Entire section amended, p. 599, § 18, effective July 1.

**13-6-216. Judges to sit separately.**

In each county court which has more than one county judge, each judge shall sit separately for the trial of cases and the transaction of judicial business, and each court so held shall be known as the county court of the county wherein held. Each judge shall have all of the powers which he might have if he were the sole judge of the court, including the power to vacate his own judgments, decrees, or orders, or those of a predecessor when permitted by law, but not county court orders of another judge of the same county court who is still in office.

**Source: L. 64:** p. 418, § 25. **C.R.S. 1963:** § 37-14-19.

**13-6-217. Judges may sit en banc.**

In each county court which has more than one judge, the court may sit en banc for the purpose of making rules of court, the appointment of a clerk and other employees, pursuant to section 13-3-105, and the conduct of other business relating to the administration of the court, as authorized by and subject to the approval of the chief justice of the supreme court.

**Source: L. 64:** p. 418, § 26. **C.R.S. 1963:** § 37-14-20. **L. 67:** p. 458, § 14. **L. 69:** p. 252, § 17.

**13-6-218. Assignment of county judges and retired county judges to other courts authorized.**

Any county judge or retired county judge who has been licensed to practice law in this state for five years may be assigned by the chief justice of the supreme court, pursuant to section 5 (3) of article VI of the state constitution, to perform judicial duties in any district court, the probate court of the city and county of Denver, or the juvenile court of the city and county of Denver.

**Source: L. 67:** p. 458, § 15. **C.R.S. 1963:** § 37-14-21. **L. 85:** Entire section amended, p. 570, § 4, effective November 14, 1986.

**ANNOTATION**

**Chief justice of supreme court can properly delegate appointment powers to another judicial officer, and appointments by chief district judges are not limited to**

**specific cases.** There is no statutory basis for requiring the chief justice of the supreme court to personally make each temporary appointment. Furthermore, reading the statute to preclude delegation would bring it

into conflict with art. VI, § 5(4), the constitutional provision expressly allowing the chief justice to delegate administrative powers. *People v. McCulloch*, 198 P.3d 1264 (Colo. App. 2008).

### **13-6-219. Judge as party to a case - recusal of judge upon motion.**

(1) If a judge or former judge of a county court is a party in his or her individual and private capacity in a case that is to be tried within any county court in the same judicial district in which the judge or former judge is or was a judge of a county court, any party to the case may file a timely motion requesting that the judge who is appointed to preside over the case recuse himself or herself from the case.

(2) If a county court receives a motion filed by a party pursuant to subsection (1) of this section, the judge who is appointed to preside over the case shall recuse himself or herself if he or she is a judge of a county court in the same judicial district in which the judge or former judge who is a party to the case in his or her individual and private capacity is or was a judge of a county court.

(3) If a judge recuses himself or herself pursuant to subsection (2) of this section, the chief justice of the Colorado supreme court or his or her designee shall appoint a judge from outside the judicial district to preside over the case.

**Source: L. 2008:** Entire section added, p. 436, § 2, effective August 5.

## **PART 3**

### **GENERAL PROCEDURAL PROVISIONS**

#### **13-6-301. Court rules.**

Each county court possesses the power to make rules for the conduct of its business to the extent that such rules are not in conflict with the rules of the supreme court or the laws of the state, but are supplementary thereto. In each county court which has more than one judge, or has an associate judge sitting regularly, the court shall make such rules as it deems necessary for the classification, arrangement, and distribution of the business of the court among the several judges thereof. All county court rules are subject to review by the supreme court.

**Source: L. 64:** p. 418, § 27. **C.R.S. 1963:** § 37-15-1.

**13-6-302. Terms of court.**

Terms of the county court shall be fixed by rule of the court in each county; except that at least one term shall be held in each county in each year.

**Source: L. 64:** p. 419, § 28. **C.R.S. 1963:** § 37-15-2.

**13-6-303. Place of holding court.**

In each county, the county court shall sit at the county seat, and the county court by rule or order also may provide for hearing and trials to be held in locations other than the county seat. In particular, if the corporate limits of a municipality extend into two counties, the county court of either county, for the hearing of matters for which venue is properly laid before them or the requirements thereof are waived, may sit at any place within such municipality without regard to the location of the county line. Where the county court sits regularly at locations other than the county seat, proper venue within the county shall be fixed by court rule.

**Source: L. 64:** p. 419, § 29. **C.R.S. 1963:** § 37-15-3.

**13-6-304. Court facilities.**

The county commissioners shall provide court facilities at the county seat and are authorized to do so elsewhere. Such facilities may be provided by arrangement with municipal authorities, by rental, or by other appropriate means.

**Source: L. 64:** p. 419, § 30. **C.R.S. 1963:** § 37-15-4.

**ANNOTATION**

**A county's duties under this section may not be reduced or ended pursuant to art. X, § 20(9) of the state constitution.**

State v. Bd. of County Comm'rs, Mesa County, 897 P.2d 788 (Colo. 1995).

### **13-6-305. Maintenance of records.**

(1) Permanent records of the county court shall be maintained at the office of the clerk of the court at the county seat.

(2) (a) If the county court sits regularly at a location other than the county seat, and the court so provides by rule, cases may be docketed at such locations, and thereafter all pleadings, writs, judgments, and other documents in the case shall be filed at such other location.

(b) Repealed.

(c) In criminal cases, a single copy of items filed is sufficient. A notice of docketing of criminal cases with sufficient information to identify the defendant and the offense charged shall be forwarded forthwith to the clerk of the court at the county seat. After termination of the case, all records on file and a transcript of the judgment shall be forwarded to the county seat.

**Source:** L. 64: p. 419, § 31. C.R.S. 1963: § 37-15-5. L. 79: (2)(b) repealed, p. 602, § 30, effective July 1.

### **13-6-306. Seal.**

The county court of each county shall have an appropriate seal.

**Source:** L. 64: p. 420, § 32. C.R.S. 1963: § 37-15-6.

### **13-6-307. Process.**

(1) Each county court shall have the power to issue process necessary to acquire jurisdiction, to require attendance, and to enforce all orders, decrees, and judgments. Such process runs to any county within the state and, when authorized by the Colorado rules of civil procedure, may be served outside the state. Any sheriff to whom process is directed is authorized and required to execute the same, and he is entitled to the same fees as are allowed for serving like process from the district courts. Persons other than the sheriff or his deputies may also serve process from the county court when permitted by the Colorado rules of civil procedure or by law.

(2) Upon request of the court, the prosecuting county, or the defendant, the clerk of the county court shall issue a subpoena for the appearance, at any and all stages of the court's

proceedings, of the parent, guardian, or lawful custodian of any child under eighteen years of age who is charged with the violation of a county ordinance. Whenever a person who is issued a subpoena pursuant to this subsection (2) fails, without good cause, to appear, the court may issue an order for the person to show cause to the court as to why the person should not be held in contempt. Following a show cause hearing, the court may make findings of fact and conclusions of law and may enter an appropriate order, which may include finding the person in contempt.

**Source:** L. 64: p. 420, § 33. C.R.S. 1963: § 37-15-7. L. 94: Entire section amended, p. 908, § 1, effective April 28.

**Cross references:** For persons authorized to serve process, see C.R.C.P. 4(d); for personal and other service of process outside the state, see C.R.C.P. 4(e) and (g).

### **13-6-308. Juries.**

(1) When required, juries shall be selected and summoned as provided for courts of record in articles 71 to 74 of this title, with such exceptions as are provided in this section. With the consent of the district court and the jury commissioners, the county court may, if feasible, use the same panel of jurors summoned for the district court. Jurors selected and summoned for the county court may also be used in municipal court in counties of Class A, as defined in section 13-6-201.

(2) If a county court sits regularly in a location other than the county seat and if jury trials are held at that location as well as at the county seat, the jury commissioner may establish jury districts within the county for the selection of county court jurors. The county shall be divided into as many such districts as there are locations in which the county court regularly holds jury trials, and each district shall include one such location as well as appropriate contiguous territory. In counties so divided, the jury commissioner shall select separate lists of persons from each jury district to serve as county court jurors within their respective districts. Such lists shall contain not less than one hundred names. When jurors are to be summoned for county court service within such districts, names shall be drawn from the list by the jury commissioner. In all other respects, the provisions of articles 71 to 74 of this title shall be followed in selecting, drawing, and summoning jurors in counties divided into county court jury districts.

**Source:** L. 64: p. 420, § 34. C.R.S. 1963: § 37-15-8. L. 71: p. 875, § 2. L. 81: (2) amended, p. 881, § 1, effective April 24. L. 2001: Entire section amended, p. 1269, § 15, effective June 5.

### **13-6-309. Verbatim record of proceedings.**

A verbatim record of the proceedings and evidence at trials in the county court shall be maintained by electronic devices or by stenographic means, as the judge of the court may direct, except when such record may be unnecessary in certain proceedings pursuant to specific provisions of law.

**Source:** L. 64: p. 421, § 35. C.R.S. 1963: § 37-15-9. L. 79: Entire section amended, p. 600, § 19, effective July 1.

### **ANNOTATION**

**Judge's discretion to employ court reporters** instead of electronic recording devices is subject to availability of funds in judicial department's consolidated operating

budget and approval of chief justice acting as executive head of judicial system. Yeager v. Quinn, 767 P.2d 766 (Colo. App. 1988).

### **13-6-309.5. Traffic violations bureau - schedule of traffic offenses and fines or penalties - method of payment - effect of payment. (Repealed)**

**Source:** L. 77: Entire section added, p. 787, § 1, effective January 10, 1978. L. 91: Entire section repealed, p. 1404, § 2, effective July 1.

### **13-6-310. Appeals from county court.**

(1) Appeals from final judgments and decrees of the county courts shall be taken to the district court for the judicial district in which the county court entering such judgment is located. Appeals shall be based upon the record made in the county court.

(2) The district court shall review the case on the record on appeal and affirm, reverse, remand, or modify the judgment; except that the district court, in its discretion, may remand the case for a new trial with such instructions as it may deem necessary, or it may direct that the case be tried de novo before the district court.

(3) Repealed.

(4) Further appeal to the supreme court from a determination of the district court in a matter appealed to such court from the county court may be made only upon writ of certiorari issued in the discretion of the supreme court and pursuant to such rules as that court may promulgate.

**Source:** L. 64: p. 421, § 36. C.R.S. 1963: § 37-15-10. L. 85: (3) repealed and (4) amended, pp. 572, 570, §§ 12, 5, effective November 14, 1986.

**Editor's note:** In *Hinds v. Foreman*, 2026 CO 9, 583 P.3d 118, the Colorado Supreme Court held that sections 13-20-1101 (7) and 13-4-102.2 are unconstitutional to the extent that they authorize the court of appeals to review final judgments, which conflicts with article VI, section 17, of the state constitution, and with subsection (1) of this section.

**Cross references:** For review on certiorari from a county court as authorized by this section, see C.A.R. 49.

## ANNOTATION

I. General Consideration.

II. Statutory Right of Appeal.

III. Action of the District Court.

IV. Appeals to Supreme Court.

1963, § 37-6-101, CRS 53, CSA, C. 46, § 165, and laws antecedent thereto, relevant cases construing those sections have been included in the annotations to this section.

### I. GENERAL CONSIDERATION.

**Law reviews.** For article, "Criminal Law", see 32 Dicta 409 (1955). For article, "One Year Review of Contracts", see 39 Dicta 161 (1962). For article, "One Year Review of Civil Procedure and Appeals", see 40 Den. L. Ctr. J. 66 (1963). For article, "Appeals of County Court, Municipal Court, and Magistrate Rulings", see 47 Colo. Law. 32 (Oct. 2018).

**Annotator's note.** Since § 13-6-310 is similar to repealed § 37-15-101, C.R.S.

**Although § 13-4-110 (3) provides that cases filed in wrong appellate court shall not be dismissed**, where appeal will not lie in either court, the only review being by certiorari, the case must be dismissed for failure to comply with the statutory procedure. *People v. Meyers*, 43 Colo. App. 63, 598 P.2d 526 (1979).

**Applied** in *Chavez v. People*, 193 Colo. 50, 561 P.2d 1270 (1977); *People v. Gonzales*, 198 Colo. 546, 603 P.2d 139 (1979); *People v. Malacara*, 199 Colo. 243, 606 P.2d 1300 (1980); *Garcia v. People*, 200



Colo. 413, 615 P.2d 698 (1980); *People v. Luna*, 648 P.2d 624 (Colo. 1982).

## **II. STATUTORY RIGHT OF APPEAL.**

**This section gives a statutory right of appeal.** There is no constitutional right to an appeal from the county court to the district court; such right exists only when the general assembly has expressly or by clear implication declared in its favor. *Callahan v. Jennings*, 16 Colo. 471, 27 P. 1055 (1891); *Shapter v. Arapahoe County Court*, 13 Colo. App. 484, 59 P. 59 (1892); *Andrews v. Lull*, 139 Colo. 536, 341 P.2d 475 (1959).

**This section provides that appeals from county courts shall be taken to the district courts.** This is a statute general in nature. *Russell v. Wheeler*, 159 Colo. 588, 413 P.2d 700 (1966).

**Appeals of final judgments.** This statute provides that appeals from final judgments and decrees of the county court "shall be" taken to the district court. *People ex rel. City of Aurora v. Smith*, 162 Colo. 72, 424 P.2d 772 (1967).

**An order vacating a previous order setting aside a judgment is not a final judgment from which an appeal will lie.** *Hayhurst v. Hayhurst*, 91 Colo. 58, 11 P.2d 804 (1932).

**This section applies only to ordinary civil actions.** *Andrews v. Lull*, 139 Colo. 536, 341 P.2d 475 (1959).

**Therefore, no appellate jurisdiction exists in district court in special statutory proceedings.** The appellate jurisdiction of district courts from final judgments of

county courts applies only to judgments rendered in ordinary civil actions. No such jurisdiction exists in special statutory proceedings. *Bd. of Comm'rs v. Poundstone*, 74 Colo. 191, 220 P. 234 (1923); *Selk v. Ramsey*, 110 Colo. 223, 132 P.2d 454 (1942); *Andrews v. Lull*, 139 Colo. 536, 341 P.2d 475 (1959); *Council of City of Englewood v. Nat'l Tea Co.*, 147 Colo. 96, 362 P.2d 1048 (1961).

**The section does not except from its operation those cases which are commenced in the municipal court** and thereafter appealed to the county court. Appeal from all final judgments of the county court is now to be made to the district court. *People ex rel. City of Aurora v. Smith*, 162 Colo. 72, 424 P.2d 772 (1967); *People v. Anderson*, 177 Colo. 84, 492 P.2d 844 (1972).

**Allowance of appeal from judgment by default.** An appeal is allowable from the county court to the district court from a judgment by default on two conditions: First, that the party aggrieved make application to have the judgment by default set aside within 10 days after its rendition; and, second, that the appeal be taken within 10 days, or the time allowed by the court, after the refusal of the court to set aside the default. *Johnson v. Lawson*, 9 Colo. App. 128, 50 P. 1087 (1897); *County Court v. Eagle Rock Gold Mining & Reduction Co.*, 50 Colo. 365, 115 P. 706 (1911).

**Appeal from part of judgment permissible.** Where a personal judgment was rendered in the county court against the lessees of a mining claim which was

declared to be a lien against the mine, the owners of the mine could appeal to the district court from that part of the judgment declaring the lien without appealing from the entire judgment and without making the defendants, against whom personal judgment was rendered, parties to the appeal. *Davidson v. Jennings*, 27 Colo. 187, 60 P. 354 (1900).

**Objection to jurisdiction of district court on appeal may be waived.** Plaintiff was nonsuited in the county court, and, without making a motion to set aside the nonsuit according to this section, he appealed to the district court. The defendant's motion to dismiss the appeal being there denied, he appeared as though there were no irregularities in the proceedings, and, without taking an exception to the ruling, renewing his objection or standing upon his motion, introduced witnesses, etc. It was held that he waived objection to the jurisdiction of the district court. *Norton v. Young*, 6 Colo. App. 187, 40 P. 156 (1895).

**When a felony case starts in county court pursuant to § 16-5-101 (1)(c) and is resolved by a plea to only misdemeanor charges, it is a county court matter and an appeal must be made to the district court.** *People v. Vargas-Reyes*, 2018 COA 181, 434 P.3d 1198.

### **III. ACTION OF THE DISTRICT COURT.**

**Under the statute, the district court, upon appeal of the case to it, has three threshold alternatives:** (1) It may review the case on the record; (2) it may remand the

case for a new trial with instructions to the court from which appealed, or (3) it may direct that the case be tried de novo before it. *People v. Williams*, 172 Colo. 434, 473 P.2d 982 (1970).

**The general assembly, having provided for both review on the record and for trial de novo,** recognized the historical differences between the two both procedurally and in substance, so it is incumbent on the courts to make the same differentiation in carrying out their functions under the statute. *People v. Williams*, 172 Colo. 434, 473 P.2d 982 (1970).

**A trial de novo conducted by the district court is not a review of the county court judgment;** it is an entirely new proceeding. *Bovard v. People*, 99 P.3d 585 (Colo. 2004).

**A trial de novo in a court of general jurisdiction,** in the absence of statutory language restricting its scope, means a trial in the commonly accepted sense of that term in such court. Any court conducting such a trial may make its own findings and judgment. *People v. Williams*, 172 Colo. 434, 473 P.2d 982 (1970).

**The district court would have the power to make new and independent findings** of fact if it were acting as a trial court. The statute provides a procedure whereby the district court can act as a trial court rather than as a court of review, if it directs the case be tried de novo before it. *People v. Williams*, 172 Colo. 434, 473 P.2d 982 (1970).

**Only in cases tried de novo by the district court will the district court judgment be subject to direct appeal.** Justifiably, then, the defendant may seek direct appeal when the district court enters its judgment from a de novo trial. *Bovard v. People*, 99 P.3d 585 (Colo. 2004).

**The final judgment of the district court, following a trial de novo, thus, is subject to review by the court of appeals under both § 13-4-102 and this section.** *Bovard v. People*, 99 P.3d 585 (Colo. 2004).

**Where the district court does not direct that the case be tried de novo before the district court,** as it might do pursuant to subsection (2), the appeal is limited to review of the record on appeal and a consideration of the accompanying briefs and arguments. *People v. Brown*, 174 Colo. 513, 485 P.2d 500 (1971).

**It is bound by the findings of the trial court.** The district court is reviewing the record on appeal from the county court and is bound by the findings of the trial court which have been determined on disputed evidence. *People v. Brown*, 174 Colo. 513, 485 P.2d 500 (1971).

**The function of the reviewing court is to correct any errors of law committed by the trial court** and not to try, nor retry, issues of fact. The lack of sufficient competent evidence to support a finding of a material fact, however, would be a matter of law and fall within the court's powers on review. *People v. Williams*, 172 Colo. 434, 473 P.2d 982 (1970).

**It cannot act as a fact finder.** Where the district court is exercising its powers of review rather than conducting a trial de novo, it cannot act as a fact finder. *People v. Williams*, 172 Colo. 434, 473 P.2d 982 (1970).

**Proper appeal from district court action is by writ of certiorari to the supreme court,** and not by appeal to the court of appeals. *Gallagher v. Ingram*, 32 P.3d 50 (Colo. App. 2001).

#### **IV. APPEALS TO SUPREME COURT.**

**Certiorari review does not suffice as an appellate review from a final judgment of the district court.** *Bovard v. People*, 99 P.3d 585 (Colo. 2004).

**Subsequent appeal to the supreme court only on certiorari.** Appeal to the supreme court from a determination of the district court in a matter appealed to such court from the county court may be made only on a writ of certiorari issued in the discretion of the supreme court. *People ex rel. City of Aurora v. Smith*, 162 Colo. 72, 424 P.2d 772 (1967); *People ex rel. Union Trust Co. v. Superior Court*, 175 Colo. 391, 488 P.2d 66 (1971).

**It must be distinguished from constitutional certiorari.** The writ of certiorari mentioned in § 3 of art. VI, Colo. Const., is to be distinguished from, and not to be confused with, the statutory writ of certiorari provided for in this section. *Bill Dreiling Motor Co. v. Court of Appeals*, 171 Colo. 448, 468 P.2d 37 (1970).

**"Further appeal" not limited to review of affirmances.** The legislative

authorization for "further appeal" is not limited to cases where the superior court's determination would otherwise end the matter, as in an affirmance of the trial court's judgment. *People v. Dee*, 638 P.2d 749 (Colo. 1981).

**Review of superior court's reversal permitted.** The state supreme court may review by certiorari a superior court's

reversal of a county court judgment. *People v. Dee*, 638 P.2d 749 (Colo. 1981) (decided prior to abolition of superior courts in 1986).

**For the supreme court granting certiorari**, see *Eyrich v. People*, 161 Colo. 554, 423 P.2d 582 (1967).

**Applied** in *Lucero v. Goldberger*, 804 P.2d 206 (Colo. App. 1990); *Byrd v. People*, 58 P.3d 50 (Colo. 2002).

### **13-6-311. Appeals from county court - simplified procedure.**

(1) (a) If either party in a civil action believes that the judgment of the county court is in error, he or she may appeal to the district court by filing notice of appeal in the county court within fourteen days after the date of entry of judgment and by filing within the said fourteen days an appeal bond with the clerk of the county court. The bond shall be furnished by a corporate surety authorized and licensed to do business in this state as surety, or one or more sufficient private sureties, or may be a cash deposit by the appellant and, if the appeal is taken by the plaintiff, shall be conditioned to pay the costs of the appeal and the counterclaim, if any, and, if the appeal is taken by the defendant, shall be conditioned to pay the costs and judgment if the appealing party fails. The bond shall be approved by the judge or the clerk.

(b) Upon filing of the notice of appeal, the posting and approval of the bond, and the deposit by the appellant of an estimated fee in advance for preparing the record, the county court shall discontinue all further proceedings and recall any execution issued. The appellant shall then docket his or her appeal in the district court. A motion for new trial is not required as a condition of appeal. If a motion for new trial is made within fourteen days, the time for appeal shall be extended until fourteen days after disposition of the motion, but only matters raised on the motion for new trial shall be considered on an appeal thereafter.

(2) (a) Upon the deposit of the estimated record fee, the clerk of the court shall prepare and issue as soon as possible a record of the proceedings in the county court, including the summons, the complaint, proof of service, and the judgment. The record shall also include a transcription of such part of the actual evidence and other proceedings as the parties may designate or, in lieu of transcription, to which they may stipulate. If a stenographic record has been maintained or the parties agree to stipulate, the party appealing shall lodge with the clerk of the court the reporter's transcript of the designated evidence or proceedings or a stipulation covering such items within forty-two days after the filing of the notice of appeal. If the proceedings have been recorded electronically, the transcription of designated evidence and proceedings shall be prepared in the

office of the clerk of the county court, either by him or her or under his or her supervision, within forty-two days after the filing of the notice of appeal.

(b) The clerk shall notify, in writing, the opposing parties of the completion of the record, and the parties have fourteen days within which to file objections. If none are received, the record shall be certified forthwith by the clerk. If objections are made, the parties shall be called for hearing and the objections settled by the county judge as soon as possible and the record then certified.

(3) When the record has been duly certified and any additional fees therefor paid, it shall be filed with the clerk of the district court by the clerk of the county court, and the opposing parties shall be notified of such filing by the clerk of the county court.

(4) A written brief setting out matters relied upon as constituting error and outlining any arguments to be made shall be filed in the district court by the appellant within twenty-one days after filing of the record therein. A copy of the brief shall be served on the appellee. The appellee may file an answering brief within twenty-one days after such service. In the discretion of the district court, time for filing of briefs and answers may be extended.

(5) Unless there is further review by the supreme court upon writ of certiorari and pursuant to the rules of that court, after final disposition of the appeal by the district court, the judgment on appeal therein shall be certified to the county court for action as directed by the district court, except upon trials de novo held in the district court or in cases in which the judgment is modified, in which cases the judgment shall be that of the district court and enforced therefrom.

(6) Repealed.

**Source:** L. 64: p. 428, § 54. C.R.S. 1963: § 37-16-18. L. 80: (1) and (2)(b) amended, p. 511, § 1, effective April 6. L. 85: (6) repealed, p. 572, § 12, effective November 14, 1986. L. 2012: (1), (2), and (4) amended, (SB 12-175), ch. 208, p. 822, § 3, effective July 1. L. 2013: (1) and (2)(b) amended, (HB 13-1126), ch. 58, p. 192, § 3, effective July 1; (2) amended, (HB 13-1086), ch. 32, p. 77, § 1, effective July 1.

**Editor's note:** Amendments to subsection (2)(b) by House Bill 13-1086 and House Bill 13-1126 were harmonized.

## ANNOTATION

I. General Consideration.

II. Appeal Bond.

## **I. GENERAL CONSIDERATION.**

**Law reviews.** For comment on *Miller v. Miller*, appearing below, see 31 Dicta 160 (1954). For article, "Appeals of County Court, Municipal Court, and Magistrate Rulings", see 47 Colo. Law. 32 (Oct. 2018).

**Annotator's note.** Since § 13-6-311 is similar to repealed § 37-6-11, CRS 53, CSA, C. 46, §§ 167, 168, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

**This section is mandatory;** and, although appellant, after the expiration of the prescribed time, docket his appeal by paying his docket fee, the transcript should be remitted to the lower court on appellee's motion, so that the latter might proceed as though no appeal had been taken. *Tierney v. Campbell*, 7 Colo. App. 299, 44 P. 948 (1896); *Thomas v. Beattie*, 42 Colo. 235, 93 P. 1093 (1908).

**Good faith and reasonable promptness are sufficient.** On appeal from county to district court, when appellant has acted in good faith, with reasonable promptness, and no one has suffered, this section ought not to be so strictly construed as to deny the right of appeal. *Markey v. People*, 73 Colo. 466, 216 P. 526 (1923).

**This section requires that after taking an appeal there shall be filed** in the district court the record, including original process, pleadings, and other papers relating to the suit, and filed in the county court. *Miller v. Miller*, 129 Colo. 462, 271 P.2d 411 (1954).

**If appeal is not filed in time, district court lacks jurisdiction.** Where a party does not lodge her appeal in a district court within the time required by this section, the court acquires no jurisdiction in the matter and has no authority to proceed in any manner in that action. *McKelvey v. District Court*, 140 Colo. 557, 345 P.2d 726 (1959).

**A motion to dismiss will be sustained after that time.** Where an appeal from the county to the district court was not made within 10 days after the judgment, and no order extending the time in which to perfect an appeal was obtained, a motion to dismiss it should be sustained. *Grove v. Foutch*, 6 Colo. App. 357, 40 P. 852 (1895); *Slattery v. Robinson*, 7 Colo. App. 22, 42 P. 179 (1895).

**This section provides for the filing of the original process, pleadings, and other papers** with the clerk of a district court and for the docketing of the action in that court in appeals. *Andrews v. Lull*, 139 Colo. 536, 341 P.2d 475 (1959).

**A motion for new trial filed in apt time** suspends a judgment so that it becomes final only when the motion is overruled. *Kinney v. Yoelin Bros. Mercantile Co.*, 74 Colo. 295, 220 P. 998 (1923); *Charles v. Sprott*, 75 Colo. 90, 224 P. 222 (1924), citing *Bates v. Woodward*, 66 Colo. 555, 185 P. 351 (1919).

**Time for docketing.** Subsection (1)(b) and rule 411(a)(1) of the county court rules clearly provide that the docketing must take place no later than the time allowed for completing and lodging the record. *Tumbarello v. Superior Court*, 195 Colo. 83, 575 P.2d 431 (1978).

**Section applies only to civil actions.** Where an information filed against defendant charges him with misdemeanors, the action is not a civil suit; hence is not governed by this section. *Naranjo v. People*, 130 Colo. 236, 274 P.2d 607 (1954).

**Appeal to superior court.** The district court has no jurisdiction to interfere with the appeal process between the county and superior courts. *Petry v. County Court*, 666 P.2d 1125 (Colo. App. 1983) (decided prior to abolition of superior courts in 1986).

**Fact that district court may enforce its order in the event that there is no appeal does not impact the appellate process:** Proper appeal from district court action is by writ of certiorari to the supreme court. *Gallagher v. Ingram*, 32 P.3d 50 (Colo. App. 2001).

## **II. APPEAL BOND.**

**The essential step in the perfection of an appeal is the filing of a bond;** even though the party had given a notice of appeal, or had in some other manner manifested intent to appeal, the judicial requirement of a bond filed within 10 days would still remain. *Wellmuth v. Rogers*, 25 Colo. App. 386, 138 P. 69 (1914); *Swingle v. Estate of Pollo*, 145 Colo. 591, 360 P.2d 808 (1961).

**The filing of bond is a condition precedent to appeal.** The filing of the bond required by this section, in the county court, "and its approval by the judge or clerk of said court", is a condition precedent to the appeal, and unless such steps are taken the district court is without jurisdiction. *Fuller v.*

*Fuller's Estate*, 7 Colo. App. 555, 44 P. 72 (1896).

**An appeal is not made until the bond is approved.** This clause requires appeals to the district court to be "made" within 10 days after judgment is rendered. An appeal is not "made" until the appeal bond is approved. *Zimmerman v. Combs*, 91 Colo. 313, 14 P.2d 693 (1932).

**Giving appeal bond is not equivalent to a general appearance in the district court.** This section clearly contemplates that in an appeal from the county to the district court, the appellant, if he has not entered his appearance in the county court, may be heard upon his appeal to object to the form of the summons, or the manner of serving the same, if he made that objection in the county court. Necessarily, therefore, giving of the appeal bond is not equivalent to a general appearance in the district court. *White House Mt. Gold Mining Co. v. Powell*, 30 Colo. 397, 70 P. 679 (1902).

**Section does not prescribe any particular manner or form** in which the appeal bond on appeal from a county court to a district court must be approved. *Stephens v. Wheeler*, 60 Colo. 351, 153 P. 444 (1915); *Zimmerman v. Combs*, 91 Colo. 313, 14 P.2d 693 (1932), citing *Adams v. Decker*, 50 Colo. 326, 114 P. 654 (1911).

**A county court party found to be indigent and allowed to proceed in forma pauperis is not required to post a judgment bond before appealing to district court.** *O'Donnell v. State Farm Mut. Auto. Ins. Co.*, 186 P.3d 46 (Colo. 2008).

**However, as with appeals from the district court to the court of appeals, the prevailing party in the county court would be able to execute the judgment while the appeal is still pending** because the judgment would not have been stayed by a judgment bond. *O'Donnell v. State Farm Mut. Auto. Ins. Co.*, 186 P.3d 46 (Colo. 2008).

**Judgment against sureties on appeal bond.** On an appeal from the county to the district court from a judgment against the appellant where judgment in the district court is in favor of appellee, the court in entering up an absolute and unconditional judgment against the sureties on the appeal bond does simply what it is required to do by this section. By serving a scire facias upon the sureties they are given an opportunity to show cause why the judgment should not be enforced against them. *Gutheil Suburban Inv. Co. v. Fahey*, 12 Colo. App. 487, 55 P. 946 (1899).

**Bond not containing proper statutory conditions.** Where on appeal from the county court to the district court the appeal bond was conditioned to pay all costs and

damages adjudged to the appellee on appeal and to satisfy the judgment appealed from instead of the statutory condition to pay any judgment the district court should render, and the district court rendered a judgment against appellant in a greater amount than that of the county court, the measure of the liability of the sureties on the appeal bond was the original judgment of the county court with interest and costs. *Barela v. Tootle*, 29 Colo. 52, 66 P. 899 (1901).

**This section is not to be regarded as providing another mode of commencing civil actions;** it does not provide for introducing a new cause of action into the suit in which the undertaking is given; but the true construction of the section is that by executing the undertaking the sureties are deemed to consent that they shall, under the contingencies specified in the undertaking, be considered parties to the original suit, and liable to judgment for the original cause of action against their principal. *Shannon v. Dodge*, 18 Colo. 164, 32 P. 61 (1893).

**For the sufficiency of the bond,** see *Swingle v. Estate of Pollo*, 145 Colo. 591, 360 P.2d 808 (1961).

## PART 4

### COUNTY COURT - SMALL CLAIMS DIVISION

**Law reviews:** For article, "Changes to the Statutes and Rules Governing Procedures in Colorado Small Claims Courts", see 31 Colo. Law. 29 (Feb. 2002).



### **13-6-401. Legislative declaration.**

The general assembly hereby finds and declares that individuals, partnerships, corporations, and associations frequently do not pursue meritorious small civil claims because of the disproportion between the expense and time of counsel and litigation and the amount of money or property involved; that the law and procedures of civil litigation are technical and frequently unknown to persons who are representing themselves; that procedures for the inexpensive, speedy, and informal resolution of small claims in a forum where the rules of substantive law apply, but the rules of procedure and pleading and the technical rules of evidence do not apply, are desirable; that such procedures should be conducted at times convenient to the persons using them, including evening and Saturday sessions; that the personnel implementing and conducting such procedures should be trained and equipped to assist anyone with a small claim in a friendly, efficient, and courteous manner; and that, therefore, the establishment of a small claims division of the county court as provided in this part 4 is in the public interest.

**Source:** L. 76: Entire part added, p. 517, § 1, effective October 1. L. 77: Entire section amended, p. 789, § 1, effective June 19. L. 2001: Entire section amended, p. 1512, § 1, effective September 1.

### **ANNOTATION**

**The rules of substantive law apply in small claims actions.** Hamilton v. Thompson, 23 P.3d 114 (Colo. 2001).

### **13-6-402. Establishment of small claims division.**

There is hereby established in each county court a division designated as the small claims court.

**Source:** L. 76: Entire part added, p. 517, § 1, effective October 1.

### **13-6-403. Jurisdiction of small claims court - limitations.**

(1) (a) The small claims court has concurrent original jurisdiction with the county and district courts in all civil actions in which the debt, damage, or value of the personal property claimed by either the plaintiff or the defendant, exclusive of interest and costs, does not exceed

seven thousand five hundred dollars, including such civil penalties as may be provided by law. By way of further example, and not limitation, the small claims court has jurisdiction to hear and determine actions in tort and assess damages in tort actions not to exceed seven thousand five hundred dollars.

(b) The small claims court division also has concurrent original jurisdiction with the county and district courts in actions where a party seeks:

(I) To enforce rights and responsibilities arising under the declaration, bylaws, covenants, or other governing documents of a unit owners' association, as defined in section 38-33.3-103 (3), in relation to disputes arising from assessments, fines, or fees owed to the unit owners' association and for which the amount at issue does not exceed seven thousand five hundred dollars, exclusive of interest and costs.

(II) To enforce a restrictive covenant on residential property and the amount required to comply with the covenant does not exceed seven thousand five hundred dollars, exclusive of interest and costs;

(III) Replevin if the value of the property sought does not exceed seven thousand five hundred dollars; and

(IV) To enforce a contract by specific performance or to disaffirm, avoid, or rescind a contract and the amount at issue does not exceed seven thousand five hundred dollars.

(2) The small claims court has only that jurisdiction specifically conferred upon it by law, as provided in subsection (1) of this section. In particular, it does not have jurisdiction over the following matters:

(a) Those matters excluded from county court jurisdiction under section 13-6-105 (1);

(b) Actions involving claims of defamation by libel or slander;

(c) Actions of forcible entry, forcible detainer, or unlawful detainer;

(d) and (e) (Deleted by amendment, L. 2001, p. 1512, § 2, effective September 1, 2001.)

(f) Actions brought or defended on behalf of a class;

(g) Actions requesting or involving prejudgment remedies;

(h) Actions involving injunctive relief, except as required to:

(I) Enforce rights or responsibilities arising under the declaration, bylaws, covenants, or other governing documents of a unit owners' association, as defined in section 38-33.3-103 (3), and including actions seeking declaratory relief;

(II) Enforce restrictive covenants on residential property;

- (III) Enforce the provisions of section 6-1-702.5;
- (IV) Accomplish replevin; and
- (V) Enter judgments in actions where a party seeks to enforce a contract by specific performance or to disaffirm, avoid, or rescind a contract;
  - (i) Traffic violations and other criminal matters; or
  - (j) Awards of body executions.

**Source:** **L. 76:** Entire part added, p. 518, § 1, effective October 1. **L. 81:** (1) amended, p. 879, § 2, effective July 1. **L. 87:** (1) amended, p. 544, § 1, effective July 1. **L. 88:** (1), (2)(e), and (2)(h) amended, p. 601, § 2, effective July 1. **L. 90:** (1) amended, p. 849, § 4, effective May 31; (1) amended, p. 855, § 4, effective July 1. **L. 95:** (1) amended, p. 728, § 1, effective January 1, 1996. **L. 2000:** (2)(h) amended, p. 2034, § 3, effective August 2. **L. 2001:** Entire section amended, p. 1512, § 2, effective September 1. **L. 2008:** (2)(h)(II) amended, p. 596, § 5, effective August 5. **L. 2022:** (1), IP(2), and (2)(h) amended, (HB 22-1137), ch. 367, p. 2618, § 6, effective August 10.

**Cross references:** For the legislative declaration contained in the 1990 act amending subsection (1), see section 1 of chapter 100, Session Laws of Colorado 1990.

## ANNOTATION

|                                                                                                                                                                  |                                                                                                            |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|
| <p><b>Small claims court actions for monetary damages do not bar on the basis of res judicata subsequent 42 U.S.C. § 1983 claims for equitable relief in</b></p> | <p><b>federal court.</b> Ortiz v. Costilla County Bd. of Comm'rs, 11 F. Supp. 2d 1254 (D. Colo. 1998).</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|

### **13-6-404. Clerk of the small claims court.**

The clerk of the county court or a deputy designated by said clerk shall act as the clerk of the small claims court. The clerk of the small claims court shall provide such assistance as may be requested by any person regarding the jurisdiction, operations, and procedures of the small claims court; however, the clerk shall not engage in the practice of law. All necessary forms shall be available from the clerk.

**Source: L. 76:** Entire part added, p. 518, § 1, effective October 1.

**13-6-405. Magistrate in small claims court.**

(1) In the following circumstances, a magistrate may hear and decide claims in a small claims court:

(a) In Class A counties, as defined in section 13-6-201, magistrates for small claims may be appointed by the presiding judge.

(b) In Class B counties, as defined in section 13-6-201, magistrates for small claims may be appointed, pursuant to section 13-3-105, if approved by the chief justice.

(2) A magistrate shall be a qualified attorney-at-law admitted to practice in the state of Colorado or a nonattorney if the nonattorney is serving as a county judge pursuant to section 13-6-203.

(3) While acting as a magistrate for small claims, a magistrate shall have the same powers as a judge.

(3.5) A magistrate shall have the power to solemnize marriages pursuant to the procedures in section 14-2-109, C.R.S.

(4) If any party files a timely written objection, pursuant to rule of the supreme court, with the magistrate conducting the hearing, that party's case shall be rereferred to a judge.

**Source: L. 76:** Entire part added, p. 518, § 1, effective October 1. **L. 84:** (2) amended, p. 459, § 1, effective April 5. **L. 89:** (3.5) added, p. 782, § 4, effective April 4. **L. 91:** Entire section amended, p. 356, § 10, effective April 9. **L. 2001:** (2) and (4) amended, p. 1513, § 3, effective September 1.

**Cross references:** For magistrates in county courts, see part 5 of this article; for magistrates in district courts, see § 13-5-201.

**13-6-406. Schedule of hearings.**

The small claims court shall conduct hearings at such times as the judge or magistrate may determine or as the supreme court may order.

**Source:** L. 76: Entire part added, p. 518, § 1, effective October 1. L. 91: Entire section amended, p. 356, § 11, effective April 9.

**13-6-407. Parties - representation.**

(1) Any natural person, corporation, partnership, association, or other organization may commence or defend an action in the small claims court, but no assignee or other person not a real party to the transaction which is the subject of the action may commence an action therein, except as a court-appointed personal representative, conservator, or guardian of the real party in interest.

(2) (a) (I) Notwithstanding the provisions of article 93 of this title 13, in the small claims court, an individual shall represent himself or herself; a partnership shall be represented by an active general partner or an authorized full-time employee; a union shall be represented by an authorized active union member or full-time employee; a for-profit corporation shall be represented by one of its full-time officers or full-time employees; an association shall be represented by one of its active members or by a full-time employee of the association; and any other kind of organization or entity shall be represented by one of its active members or full-time employees or, in the case of a nonprofit corporation, a duly elected nonattorney officer or an employee.

(II) It is the intent of this section that no attorney, except pro se or as an authorized full-time employee or active general partner of a partnership, an authorized active member or full-time employee of a union, a full-time officer or full-time employee of a for-profit corporation, or a full-time employee or active member of an association, which partnership, union, corporation, or association is a party, shall appear or take any part in the filing or prosecution or defense of any matter in the small claims court, except as permitted by supreme court rule.

(b) In actions arising under part 1 of article 12 of title 38, C.R.S., including, but not limited to, actions involving claims for the recovery of a security deposit or for damage to property arising from a landlord-tenant relationship, a property manager who has received security deposits, rents, or both, or who has signed a lease agreement on behalf of the owner of the real property that is the subject of the small claims action, shall be permitted to represent the owner of the property in such action.

(3) In any action to which the federal "Soldiers' and Sailors' Civil Relief Act of 1940", as amended, 50 App. U.S.C. sec. 521, is applicable, the court may enter a default against a defendant who is in the military without entering judgment, and the court shall appoint an attorney to represent the interests of the defendant prior to the entry of judgment against the defendant.

(4) If an attorney appears, as permitted in subsection (2) or (3) of this section, the other party or parties in the case may be represented by counsel, if such party or parties so choose.

(5) Nothing contained in this section is intended to limit or otherwise interfere with a party's right to assign, or to employ counsel to pursue that party's rights and remedies subsequent to the entry of judgment by a small claims court.

(6) Any small claims court action in which an attorney appears shall be processed and tried pursuant to the statutes and court rules governing small claims court actions.

**Source:** L. 76: Entire part added, p. 519, § 1, effective October 1. L. 88: (2) amended, pp. 602, 1438, §§ 3, 43, effective July 1. L. 2001: Entire section amended, p. 1514, § 4, effective September 1. L. 2007: (3) amended, p. 2024, § 23, effective June 1. L. 2017: (2)(a)(I) amended, (SB 17-227), ch. 192, p. 704, § 5, effective August 9.

**Cross references:** For representation of closely held corporations before courts or administrative agencies, see § 13-1-127.

#### ANNOTATION

**Law reviews.** For article, "What Is a Lawyer Doing in Small Claims Court?", see 13 Colo. Law. 430 (1984).

**This section contains the only exception to the principle that a partnership is an**

**entity separate and apart from its general partners and may be represented in court only by a licensed attorney.** E & A Assoc. v. First Nat. Bank of Denver, 899 P.2d 243 (Colo. App. 1994).

#### **13-6-408. Counterclaims exceeding jurisdiction of small claims court - procedures - sanctions for improper assertion.**

Counterclaims exceeding the jurisdiction of the small claims court shall be removed to the county or district court of appropriate jurisdiction pursuant to rule of the supreme court. If a county or district court determines that a plaintiff who originally filed a claim in the small claims court is entitled to judgment and also that a counterclaim against the same plaintiff in the small claims action was filed solely to defeat the jurisdiction of the small claims court and was without merit, the county or district court may also award the plaintiff costs, including reasonable attorney fees, incurred in prosecuting the action in the county or district court.

**Source:** L. 76: Entire part added, p. 519, § 1, effective October 1. L. 87: Entire section amended, p. 1576, § 14, effective July 10. L. 2001: Entire section amended, p. 1515, § 5, effective September 1.

#### **13-6-409. Trial procedure.**

The judge or magistrate shall conduct the trial in such manner as to do justice between the parties and shall not be bound by formal rules or statutes of procedure or pleading or the technical rules of evidence, except for rules promulgated by the supreme court controlling the conduct of proceedings in the small claims court.

**Source:** L. 76: Entire part added, p. 519, § 1, effective October 1. L. 77: Entire section amended, p. 789, § 2, effective June 19. L. 91: Entire section amended, p. 356, § 12, effective April 9.

#### **13-6-410. Appeal of a claim.**

A record shall be made of all small claims court proceedings, and either the plaintiff or the defendant may appeal pursuant to county court rules. Upon appeal, all provisions of law and rules concerning appeals from the county court shall apply, including right to counsel. A tape recording of the trial proceedings shall satisfy any requirements of a transcript for appeal, upon the payment of a nominal fee by the appellant.

**Source:** L. 76: Entire part added, p. 519, § 1, effective October 1. L. 93: Entire section amended, p. 1775, § 32, effective June 6. L. 2001: Entire section amended, p. 1515, § 6, effective September 1.

#### **13-6-411. Limitation on number of claims filed.**

(1) No plaintiff may file more than two claims per month, eighteen claims per year, in the small claims court of any county. Each claim filed in any small claims court shall contain a certification by the plaintiff that the plaintiff has not filed any more than two claims during that month and eighteen claims in that year in the small claims court of that county.

(2) The limitation imposed by subsection (1) of this section shall not apply to a state-supported institution of higher education which files claims to recover loans or other outstanding

obligations due to such institution; except that no such state-supported institution of higher education shall file more than a total of thirty such claims per month in all small claims courts in Colorado.

**Source:** **L. 76:** Entire part added, p. 520, § 1, effective October 1. **L. 81:** Entire section amended, p. 880, § 3, effective July 1. **L. 83:** Entire section amended, p. 792, § 1, effective June 3. **L. 87:** (1) amended, p. 544, § 2, effective July 1. **L. 92:** Entire section amended, p. 289, § 1, effective July 1. **L. 2001:** (1) amended, p. 1515, § 7, effective September 1.

#### **13-6-411.5. Place of trial.**

(1) Except as provided in subsection (2) of this section, all actions in the small claims court shall be brought in the county in which any defendant at the time of filing of the claim resides, is regularly employed, is a student at an institution of higher education, or has an office for the transaction of business.

(2) Actions to enforce restrictive covenants and actions arising under part 1 of article 12 of title 38, C.R.S., including, but not limited to, actions involving claims for the recovery of a security deposit or for damage to property arising from a landlord-tenant relationship, may be brought in the county in which the defendant's property that is the subject of the action is situated.

(3) If a defendant appears and defends a small claims action on the merits at trial, such defendant shall be deemed to have waived any objection to the place of trial permitted under this section.

**Source:** **L. 90:** Entire section added, p. 850, § 5, effective May 31. **L. 2001:** Entire section amended, p. 1515, § 8, effective September 1.

**Cross references:** For the legislative declaration contained in the 1990 act enacting this section, see section 1 of chapter 100, Session Laws of Colorado 1990.

#### **13-6-412. Notice to public.**

The clerk of the small claims court shall publicize in an appropriate manner the existence of the small claims court, its procedures, and its hours of operation. Such publication shall be made



so as to bring the court's existence to the attention of the entire community. The state court administrator shall publish a small claims court handbook outlining the procedures of the court in layman's language.

**Source: L. 76:** Entire part added, p. 520, § 1, effective October 1.

**13-6-413. Supreme court shall promulgate rules.**

The supreme court shall implement this part 4 by appropriate rules of procedure for the small claims court.

**Source: L. 76:** Entire part added, p. 520, § 1, effective October 1.

**13-6-414. No jury trial.**

There shall be no right to a trial by jury in the small claims court.

**Source: L. 76:** Entire part added, p. 520, § 1, effective October 1.

**13-6-415. Service of process.**

Every defendant shall be notified that an action has been filed against that defendant in the small claims court either by certified mail, return receipt requested, or by personal service of process, as provided by the rules of procedure for the small claims court. The clerk of the small claims court shall collect, in advance, the fee provided for in section 13-32-104 (1)(i) for each service of process attempted by certified mail.

**Source: L. 76:** Entire part added, p. 520, § 1, effective October 1. **L. 90:** Entire section amended, p. 850, § 7, effective May 31. **L. 2001:** Entire section amended, p. 1516, § 9, effective September 1.

**Cross references:** For the legislative declaration contained in the 1990 act amending this section, see section 1 of chapter 100, Session Laws of Colorado 1990.

**13-6-416. Facilities.**

No county shall be required to furnish new facilities pursuant to this part 4.

**Source: L. 76:** Entire part added, p. 520, § 3, effective October 1.

**13-6-417. Execution and proceedings subsequent to judgment.**

Execution and proceedings subsequent to judgment entered in the small claims division may be processed in the small claims division and shall be the same as in a civil action in the county court as provided by law.

**Source: L. 90:** Entire section added, p. 850, § 5, effective May 31.

**Cross references:** For the legislative declaration contained in the 1990 act enacting this section, see section 1 of chapter 100, Session Laws of Colorado 1990.

## PART 5

### MAGISTRATE ADJUDICATION SYSTEM

**Cross references:** For magistrates in the small claims division of county courts, see § 13-6-405; for magistrates in district courts, see § 13-5-201.

**13-6-501. County court magistrates - qualifications - duties.**

(1) In Class A counties, as defined in section 13-6-201, county court magistrates may be appointed by the presiding judge.

(2) In Class B counties, as defined in section 13-6-201, county court magistrates may be appointed pursuant to section 13-3-105, if approved by the chief justice.

(3) Any county court magistrate shall be a qualified attorney-at-law admitted to practice in the state of Colorado and in good standing; except that a county court magistrate who hears only class A and class B traffic infraction matters need not be an attorney-at-law and except that any

duly appointed county judge may act as a traffic magistrate regardless of whether he is an attorney-at-law.

(4) Subject to the provision that no magistrate may preside in any trial by jury, county court magistrates have power to hear the following matters:

(a) Class 2 misdemeanor traffic offenses and class A and class B traffic infractions, as defined in section 42-4-1701, C.R.S.;

(a.5) Civil infractions, as described in section 16-2.3-101;

(b) Such other matters as determined by rule of the supreme court.

(4.5) County court magistrates shall have the power to solemnize marriages pursuant to the procedures in section 14-2-109, C.R.S.

(4.7) County court magistrates shall have the power to preside over matters specified in section 13-17.5-105.

(5) Except in class A and class B traffic infraction matters and civil infraction matters, before a county court magistrate may hear any matter, all parties shall have waived, on the record, their right to proceed before a county judge. If any party fails to waive such right, or objects to the magistrate, that party's case must be rereferred to a county judge.

(6) Magistrates, when handling county court matters, class A and class B traffic infraction matters, and civil infraction matters, and where the parties to such proceedings, other than traffic infraction matters, have waived their right to proceed before a county judge, have all the jurisdiction and power of a county judge, and their orders and judgments are those of the county court.

(7) Procedure in matters heard by a county court magistrate shall be determined by statute and by rules promulgated by the supreme court and by local rules.

(8) The duties, qualifications, compensation, conditions of employment, and other administrative details concerning magistrates who hear traffic infraction matters and civil infraction matters not set forth in this part 5 are established pursuant to section 13-3-105.

(9) The supreme court shall adopt such rules and regulations as it deems necessary or proper to carry out the provisions of this part 5 relating to traffic infraction matters and civil infraction matters, including, but not limited to, procedural matters.

(10) Existing space provided by a county, including already existing courtroom and administrative space, shall be used to the maximum extent possible for hearings on traffic infraction matters.

(11) Before any county court magistrate is appointed pursuant to the provisions of this part 5, the judicial department shall consult with the board of county commissioners of the affected county or counties regarding any additional space or facilities that may be required. All feasible alternatives shall be considered and the least costly alternative shall be accepted by the department whenever practicable.

**Source:** **L. 77:** Entire part added, p. 791, § 1, effective January 1, 1978. **L. 82:** (3), (4)(a), (5), and (6) amended and (8) to (11) added, p. 653, § 1, effective January 1, 1983. **L. 83:** (3) amended, p. 602, § 2, effective July 1. **L. 87:** (4)(a) amended, p. 1495, § 1, effective July 1. **L. 89:** (4.5) added, p. 782, § 5, effective April 4. **L. 91:** Entire section amended, p. 357, § 13, effective April 9. **L. 94:** (4)(a) amended, p. 2549, § 31, effective January 1, 1995. **L. 95:** (4.7) added, p. 480, § 3, effective July 1. **L. 2022:** IP(4), (5), (6), (8) and (9) amended and (4)(a.5) added, (HB 22-1229), ch. 68, p. 339, § 4, effective March 1.

**Editor's note:** Section 47 of chapter 68 (HB 22-1229), Session Laws of Colorado 2022, provides that the act amending subsections IP(4), (5), (6), (8), and (9) and adding subsection (4)(a.5) is effective March 1, 2022, but the governor did not approve the act until April 7, 2022.

## ANNOTATION

**Salutary purposes of informal traffic infraction hearings would be frustrated if collateral estoppel** were to be applied so as to limit a full and fair consideration of the issue in a criminal trial. *Williamsen v. People*, 735 P.2d 176 (Colo. 1987).

them. Therefore no impropriety in the provision of a court memorandum prohibiting magistrates from conducting bond hearings. *Wiegand v. Larimer County Court Magistrate*, 937 P.2d 880 (Colo. App. 1996).

**Magistrates exercise authority** only at the discretion of the judges who appoint

### **13-6-502. Jury trials.**

Notwithstanding section 16-10-109 or any other provision of law, the right to a jury trial is not available at a hearing before a magistrate when the cited person is charged with a class A or a class B traffic infraction or civil infraction.

**Source:** **L. 82:** Entire section added, p. 654, § 2, effective January 1, 1983. **L. 93:** Entire section amended, p. 1775, § 33, effective June 6. **L. 2022:** Entire section amended, (HB 22-1229), ch. 68, p. 340, § 5, effective March 1.

**Editor's note:** Section 47 of chapter 68 (HB 22-1229), Session Laws of Colorado 2022, provides that the act amending this section is effective March 1, 2022, but the governor did not approve the act until April 7, 2022.

### **13-6-503. Evidence offered by officer.**

At any hearing on a class A or class B traffic infraction or civil infraction, the officer who issued the citation or penalty assessment notice shall offer evidence of the facts concerning the alleged infraction either in person or by affidavit, as such affidavit may be established by rules adopted by the supreme court pursuant to section 13-6-501 (9). If the officer appears personally, the magistrate and the cited person may then examine the officer. The cited party has the right to call the officer by subpoena as in the case of other civil matters.

**Source:** **L. 82:** Entire section added, p. 654, § 2, effective January 1, 1983. **L. 91:** Entire section amended, p. 358, § 14, effective April 9. **L. 2022:** Entire section amended, (HB 22-1229), ch. 68, p. 340, § 6, effective March 1.

**Editor's note:** Section 47 of chapter 68 (HB 22-1229), Session Laws of Colorado 2022, provides that the act amending this section is effective March 1, 2022, but the governor did not approve the act until April 7, 2022.

### **13-6-504. Appeals procedure.**

(1) Any appeal, either by the state or the cited person, from a judgment entered pursuant to this part 5 shall be processed as an appeal from the county court.

(2) The district attorney or deputy district attorney shall represent the state on the appeal.

(3) The state may appeal only a ruling by a magistrate that declares a state statute unconstitutional or unenforceable. Whether or not to appeal shall be in the discretion of the district attorney.

**Source: L. 82:** Entire section added, p. 654, § 2, effective January 1, 1983. **L. 91:** (3) amended, p. 358, § 15, effective April 9.

## **ARTICLE 7**

### **Superior Courts**

#### **13-7-101 to 13-7-112. (Repealed)**

**Source: L. 85:** Entire article repealed, p. 572, § 12, effective November 14, 1986.

**Editor's note:** This article was numbered as article 10 of chapter 37, C.R.S. 1963. For amendments to this article prior to its repeal in 1986, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

## **ARTICLE 8**

### **Juvenile Court of Denver**

|           |                           |           |                                                       |
|-----------|---------------------------|-----------|-------------------------------------------------------|
| 13-8-101. | Establishment.            | 13-8-112. | Judges may sit en banc -<br>presiding judge.          |
| 13-8-102. | Court of record - powers. | 13-8-113. | Judges to sit separately.                             |
| 13-8-103. | Jurisdiction.             | 13-8-114. | Practice and procedure.                               |
| 13-8-104. | Number of judges.         | 13-8-115. | Rules of court.                                       |
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| 13-8-108. | Vacancies.                | 13-8-119. | Venue.                                                |
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| 13-8-111. | Other employees.          |           |                                                       |

|           |                   |           |                               |
|-----------|-------------------|-----------|-------------------------------|
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| 13-8-123. | Judgments.        | 13-8-126. | Supervision by supreme court. |
| 13-8-124. | Appellate review. |           |                               |

### **13-8-101. Establishment.**

Pursuant to the provisions of section 1 of article VI of the Colorado constitution, there is hereby established the juvenile court of the city and county of Denver.

**Source:** L. 64: p. 437, § 1. C.R.S. 1963: § 37-19-1.

### **ANNOTATION**

**Law reviews.** For article, "The Denver Juvenile Court", see Den. B. Ass'n R. 1 (May 1928). For article, "Colorado's New Court System", see 41 Den. L. Ctr. J. 140 (1964).

### **13-8-102. Court of record - powers.**

The juvenile court shall be a court of record with such powers as are inherent in constitutionally created courts and with such legal and equitable powers to effectuate its jurisdiction and carry out its orders, judgments, and decrees as are possessed by the district courts.

**Source:** L. 64: p. 437, § 2. C.R.S. 1963: § 37-19-2.

### **ANNOTATION**

**Jurisdiction to enter money judgment against Denver department of social services.** It is within the jurisdiction of the Denver juvenile court to enter a money judgment against the Denver department of social services to require payment for the costs of the care and maintenance of a minor

found to be a child in need of supervision. City & County of Denver v. Brockhurst Boys Ranch, Inc., 195 Colo. 22, 575 P.2d 843 (1978).

Enforcement of a money judgment against the Denver department of social services for payments that should have gone

to party is within the juvenile court's jurisdiction. *People in Interest of D.C.*, 797 P.2d 840 (Colo. App. 1990).

**Applied** in *People in Interest of R.J.G.*, 38 Colo. App. 148, 557 P.2d 1214 (1976).

### **13-8-103. Jurisdiction.**

The jurisdiction of the juvenile court of the city and county of Denver is as set forth in sections 19-1-104, 19-2.5-103, and 19-4-109 for juvenile courts, as defined in section 19-1-103.

**Source:** **L. 64:** p. 437, § 3. **C.R.S. 1963:** § 37-19-3. **L. 67:** p. 1051, § 7. **L. 78:** (1)(h) amended, p. 262, § 44, effective May 23; (1)(b) amended, p. 367, § 13, effective July 1, 1979. **L. 84:** (2) amended, p. 560, § 8, effective April 5. **L. 85:** (1)(d)(I) amended, p. 688, § 7, effective March 1; entire section R&RE, p. 690, § 1, effective July 1. **L. 87:** Entire section amended, p. 813, § 6, effective October 1. **L. 96:** Entire section amended, p. 1688, § 14, effective January 1, 1997. **L. 2021:** Entire section amended, (SB 21-059), ch. 136, p. 709, § 8, effective October 1.

### **ANNOTATION**

**The juvenile court is a statutory court with no jurisdiction beyond that expressly given by statute.** *Maniatis v. Karakitsios*, 161 Colo. 378, 422 P.2d 52 (1967) (decided under repealed § 37-9-2, C.R.S. 1963).

**No general jurisdiction to litigate controversies arising outside jurisdictional areas encompassed within this section.** *City & County of Denver v. Brockhurst Boys Ranch, Inc.*, 195 Colo. 22, 575 P.2d 843 (1978).

**Order to Denver department of welfare within court's jurisdiction.** The juvenile court did not exceed its jurisdiction, or lack jurisdiction, to order the Denver department of welfare to return a child who was adjudicated in need of supervision to a group care facility. *City & County of Denver*

*v. Juvenile Court*, 182 Colo. 157, 511 P.2d 898 (1973).

**Denver juvenile court was within its jurisdiction in ordering the Denver department of social services to refund respondent's federal tax refund** which had been obtained through a federal income tax refund intercept program designed to collect delinquent child support payment. *People in Interest of G.S.*, 678 P.2d 1033 (Colo. App. 1983).

**The juvenile court had jurisdiction over the subject matter of the petition to determine the paternity of an unborn child.** The juvenile court may, in its discretion in a proper case, issue temporary orders providing for protection, support, or medical or surgical treatment as it deems in the best interest of the child prior to



adjudication or disposition of the petition to determine paternity. People in Interest of an

Unborn Child v. Estergard, 169 Colo. 445, 457 P.2d 698 (1969).

**13-8-104. Number of judges.**

There shall be three judges of the juvenile court of the city and county of Denver.

**Source:** L. 64: p. 438, § 4. C.R.S. 1963: § 37-19-4. L. 73: p. 496, § 1.

**13-8-105. Qualifications of judges.**

A judge of the juvenile court shall be a qualified elector of the city and county of Denver at the time of his election or selection and shall have been licensed to practice law in the state of Colorado for five years at such time. He shall be a resident of the city and county of Denver during his term of office.

**Source:** L. 64: p. 438, § 5. C.R.S. 1963: § 37-19-5.

**13-8-106. Activities of judge.**

A judge of the juvenile court shall devote his full time to judicial duties and shall not engage in the private practice of law while serving in office.

**Source:** L. 64: p. 438, § 6. C.R.S. 1963: § 37-19-6.

**ANNOTATION**

**License of attorney revoked for violating this section.** An attorney who, while occupying the position of juvenile judge, practiced his profession for compensation in violation of this section, held guilty of unprofessional conduct, his

license revoked, and his name stricken from the roll of attorneys and counselors at law in this state. People ex rel. Colo. Bar Ass'n v. Lindsey, 86 Colo. 458, 283 P. 539 (1929) (decided under repealed CSA, C. 46, § 205).

**13-8-107. Term of office.**

The term of office of a judge of the juvenile court of the city and county of Denver shall be six years.

**Source:** L. 64: p. 439, § 8. C.R.S. 1963: § 37-19-8. L. 67: p.459, § 16. L. 73: p. 496, § 2.

**13-8-108. Vacancies.**

If the office of juvenile court judge becomes vacant because of death, resignation, failure to be retained in office pursuant to section 25 of article VI of the state constitution, or other cause, the vacancy shall be filled by the governor as provided in section 20 of article VI of the state constitution.

**Source:** L. 64: p. 439, § 9. C.R.S. 1963: § 37-19-9. L. 67: p. 459, § 17.

**13-8-109. Magistrates.**

The judges of the juvenile court of the city and county of Denver may appoint magistrates, as provided in section 19-1-108, C.R.S.

**Source:** L. 64: p. 440, § 11. C.R.S. 1963: § 37-19-11. L. 67: p. 1052, § 8. L. 79: Entire section amended, p. 764, § 14, effective July 1. L. 87: Entire section amended, p. 813, § 7, effective October 1. L. 95: Entire section amended, p. 1109, § 60, effective May 31.

**13-8-110. Clerk.**

(1) The judges of the juvenile court shall appoint a clerk of the juvenile court pursuant to the provisions of section 13-3-105.

(2) Repealed.

(3) The powers and duties of the clerk of the juvenile court shall be similar to the powers and duties of the clerk of the district court. The duties of the clerk of the juvenile court shall also include such matters as may be assigned to him by law, by court rules, and by the juvenile judges.

**Source:** L. 64: p. 440, § 12. C.R.S. 1963: § 37-19-12. L. 69: p. 252, § 20. L. 79: (2) amended, p. 602, § 30, effective July 1; (2) repealed, p. 602, § 30, effective July 1.

#### **13-8-111. Other employees.**

The judges of the juvenile court shall also appoint, pursuant to the provisions of section 13-3-105, probation officers and such other employees as may be necessary to carry out the functions and duties of the juvenile court, including the clerk's office thereof.

**Source:** L. 64: p. 441, § 13. C.R.S. 1963: § 37-19-13. L. 69: p. 252, § 21. L. 79: Entire section amended, p. 600, § 20, effective July 1.

#### **13-8-112. Judges may sit en banc - presiding judge.**

The judges of the juvenile court may sit en banc for the purpose of making rules of court, the appointment of a clerk and other employees pursuant to section 13-3-105, and the conduct of other business relating to the administration of the court, including the selection of a presiding judge, as authorized by and subject to the approval of the chief justice of the supreme court.

**Source:** L. 64: p. 441, § 14. C.R.S. 1963: § 37-19-14. L. 67: p. 460, § 19. L. 69: p. 253, § 22.

#### **13-8-113. Judges to sit separately.**

In the juvenile court, each of the judges shall sit separately for the trial of cases and the transaction of judicial business, and each of the courts so held shall be known as the juvenile court. Each judge shall have all of the powers which he might have if he were the sole judge of the court, including the power to vacate his own judgments, decrees, or orders, or those of a predecessor when permitted by law, but not juvenile court orders of another judge of the juvenile court who is still in office.

**Source:** L. 64: p. 441, § 15. C.R.S. 1963: § 37-19-15.

**13-8-114. Practice and procedure.**

Practice and procedure in the juvenile court shall be conducted in accordance with the provisions of this article and title 19, C.R.S.

**Source:** L. 64: p. 441, § 16. C.R.S. 1963: § 37-19-16. L. 67: p. 1052, § 9.

**13-8-115. Rules of court.**

The juvenile court has the power to make rules for the conduct of its business to the extent that such rules are not in conflict with the rules of the supreme court or the laws of the state but are supplementary thereto. Juvenile court rules are subject to review by the supreme court.

**Source:** L. 64: p. 442, § 17. C.R.S. 1963: § 37-19-17.

**ANNOTATION**

**A local rule of court is reviewable pursuant to this statute.** In re Rules by Juvenile Court, 178 Colo. 268, 496 P.2d 1014 (1972).

**A memorandum opinion is not reviewable under this section.** To the

extent that a memorandum opinion is or may be construed by some as a local rule, it is not, in the manner and under the circumstances under which it is rendered, reviewable under this section. In re Rules by Juvenile Court, 178 Colo. 268, 496 P.2d 1014 (1972).

**13-8-116. Terms.**

Terms of the juvenile court shall be fixed by rule of court; but at least one term shall be held each year.

**Source:** L. 64: p. 442, § 18. C.R.S. 1963: § 37-19-18.

**13-8-117. Seal.**

The juvenile court shall have a seal, bearing upon the face thereof the words "The Juvenile Court of the City and County of Denver, Colorado".

**Source:** L. 64: p. 442, § 19. C.R.S. 1963: § 37-19-19.

**13-8-118. Process.**

The juvenile court has the power to issue process necessary to acquire jurisdiction, to require attendance, and to enforce all orders, decrees, and judgments. Such process runs to any county within the state and, when authorized by law in special proceedings or, in the absence thereof, by the Colorado rules of civil procedure in civil cases, or the Colorado rules of criminal procedure in criminal cases, may be served outside of the state. Any sheriff to whom process is directed is authorized and required to execute the same and shall be entitled to the same fees as are allowed by law for serving like process from the district court. Persons other than the sheriff or his deputies also may serve process from the juvenile court when permitted by law in special proceedings or, in the absence thereof, by the Colorado rules of civil procedure in civil cases or the Colorado rules of criminal procedure in criminal cases.

**Source:** L. 64: p. 442, § 20. C.R.S. 1963: § 37-19-20.

**13-8-119. Venue.**

Venue in the juvenile court is described in sections 19-2.5-104, 19-3-201, 19-4-109, 19-5-102, 19-5-204, and 19-6-102.

**Source:** L. 64: p. 442, § 21. C.R.S. 1963: § 37-19-21. L. 67: p. 1053, § 10. L. 87: Entire section amended, p. 813, § 8, effective October 1. L. 96: Entire section amended, p. 1688, § 15, effective January 1, 1997. L. 2021: Entire section amended, (SB 21-059), ch. 136, p. 709, § 9, effective October 1.

**13-8-120. Sheriff to attend.**

It is the duty of the sheriff of the city and county of Denver to attend in the juvenile court.

**Source:** L. 64: p. 442, § 22. C.R.S. 1963: § 37-19-22.

**13-8-121. Appearance by district attorney and city attorney.**

Upon the request of the court, the district attorney shall represent the state in the interest of the child in any proceedings brought under section 19-1-104 (1)(a), C.R.S., and the city attorney shall represent the state in the interest of the child in any other proceedings.

**Source:** L. 64: p. 442, § 23. C.R.S. 1963: § 37-19-23. L. 67: p. 1053, § 11.

**13-8-122. Juries.**

When required, juries may be selected and summoned as provided for courts of record in articles 71 to 74 of this title. With the permission of the district court, the juvenile court may use the panel of jurors summoned for the district court of the second judicial district.

**Source:** L. 64: p. 442, § 24. C.R.S. 1963: § 37-19-24. L. 2001: Entire section amended, p. 1270, § 16, effective June 5.

**13-8-123. Judgments.**

The judgments of the juvenile court shall be enforceable in the same manner as judgments of the district court and, when appropriate, may be made liens upon real estate or other property in the manner provided by law for judgments of the district court.

**Source:** L. 64: p. 443, § 25. C.R.S. 1963: § 37-19-25.

**Cross references:** For procedures for attachment and duration of a judgment lien, see § 13-52-102.

**ANNOTATION**

**Jurisdiction to enter money judgment against Denver department of social services.** It is within the jurisdiction of the Denver juvenile court to enter a money judgment against the Denver department of social services to require payment for the costs of the care and maintenance of a minor

found to be a child in need of supervision. *City & County of Denver v. Brockhurst Boys Ranch, Inc.*, 195 Colo. 22, 575 P.2d 843 (1978).

**Applied** in *People in Interest of R.J.G.*, 38 Colo. App. 148, 557 P.2d 1214 (1976).

#### **13-8-124. Appellate review.**

Appellate review of any order, decree, or judgment may be taken to the supreme court or the court of appeals, as provided by law and the Colorado appellate rules. Initials shall appear on the record on appeal in place of the name of the child. Appeals from orders or decrees concerning legal custody, the allocation of parental responsibilities, termination of parent-child legal relationships, and adoptions shall be advanced upon the calendar of the supreme court or of the court of appeals and shall be decided at the earliest practicable time.

**Source:** L. 64: p. 443, § 26. C.R.S. 1963: § 37-19-26. L. 67: p.1053, § 12. L. 69: p. 270, § 9. L. 77: Entire section amended, p. 1029, § 2, effective July 1. L. 87: Entire section amended, p. 813, § 9, effective October 1. L. 98: Entire section amended, p. 1392, § 25, effective February 1, 1999.

#### **13-8-125. Fees.**

The fees charged by the juvenile court and the clerk thereof shall be those provided in article 32 of this title.

**Source:** L. 64: p. 443, § 27. C.R.S. 1963: § 37-19-27.

#### **13-8-126. Supervision by supreme court.**

The supervisory powers of the supreme court established by article 3 of this title shall extend to the juvenile court.

**Source:** L. 64: p. 444, § 30. C.R.S. 1963: § 37-19-30.

## ARTICLE 9

### Probate Court of Denver

|           |                                    |           |                                                                                                                                                              |
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#### **13-9-101. Establishment.**

Pursuant to the provisions of section 1 of article VI of the Colorado constitution, there is hereby established the probate court of the city and county of Denver.

**Source: L. 64:** p. 445, § 1. **C.R.S. 1963:** § 37-20-1.



### **13-9-102. Court of record - powers.**

The probate court shall be a court of record with such powers as are inherent in constitutionally created courts and with such legal and equitable powers to effectuate its jurisdiction and carry out its orders, judgments, and decrees as are possessed by the district courts.

**Source: L. 64:** p. 445, § 2. **C.R.S. 1963:** § 37-20-2.

### **13-9-103. Jurisdiction.**

(1) The probate court of the city and county of Denver has original and exclusive jurisdiction in said city and county of:

(a) The administration, settlement, and distribution of estates of decedents, wards, and absentees;

(b) Property vested in any person under a legal disability but paid to or held by another for such person's use or benefit as authorized by court order or as authorized by a power contained in a will or trust instrument;

(c) Property vested in any minor pursuant to the "Colorado Uniform Transfers to Minors Act", or any predecessor act thereto, or any act having a substantially similar legal effect;

(d) The probate of wills;

(e) The granting of letters testamentary, of administration, of guardianship, and of conservatorship;

(f) The administration of guardianships of minors and of persons declared mentally incompetent and of conservatorships of persons with mental health disorders or persons with an intellectual and developmental disability and of absentees;

(g) Proceedings under article 23 of title 17 and articles 10 to 15 of title 27, C.R.S.;

(h) The determination of heirship in probate proceedings and the devolution of title to property in probate proceedings;

(i) Actions on the official bonds of fiduciaries appointed by it;

(j) The construction of wills;

(k) The administration of testamentary trusts, except as provided in subsection (2) of this section; and

(1) All other probate matters.

(2) If a testamentary trust is established by the will of the decedent and if it appears that it was not the intention of the testator that the court should continue the administration of the estate after the payment in full of all debts and legacies except the trust property, the court shall proceed to final settlement of such estate as in other cases, order the trust fund or property to be turned over to the trustee as such, and shall not require the filing of inventories and accounts, or supervise the administration of the trust; except that any party in interest of such trust, including the trustee thereof, may invoke the jurisdiction of the probate court with respect to any matters pertaining to the administration or distribution of such trust or to construe the will under which it was established.

(3) The court has jurisdiction to determine every legal and equitable question arising in connection with decedents', wards', and absentees' estates, so far as the question concerns any person who is before the court by reason of any asserted right in any of the property of the estate or by reason of any asserted obligation to the estate, including, without limiting the generality of the foregoing, the jurisdiction:

(a) To give full and complete legal and equitable relief in any case in which it is alleged that the decedent breached an agreement to make or not to make a will;

(b) In any case in which a district court could grant such relief in a separate action brought therein, to impose or raise a trust with respect to any of the property of the decedent or any property in the name of the decedent, individually or in any other capacity, in any case in which the demand for such relief arises in connection with the administration of the estate of a decedent;

(c) To partition any of the real or personal property of any estate in connection with the settlement thereof.

(4) Nothing in this article shall prevent any district court sitting in law or equity from construing a will which is not before the probate court or from determining questions arising in connection with trusts which are not under the jurisdiction of the probate court.

(5) The court has jurisdiction to determine every legal and equitable question arising out of or in connection with express trusts.

(6) The provisions of articles 10 to 20 of title 15, article 23 of title 17, and articles 10 to 15 of title 27, C.R.S., shall govern the issuance and service and proof of service of any process, notice, citation, writ, or order of court and shall govern all other proceedings had pursuant to the powers of the court recited in subsections (1) and (2) of this section. The Colorado rules of civil procedure shall govern such matters when the proceedings are had pursuant to the powers granted to the court under any of the other provisions of this section.

(7) With respect to any trust established by or for an individual with his or her assets, income, or property of any kind, notwithstanding any statutory provision to the contrary, the court shall not authorize, direct, or ratify any trust that either has the effect of qualifying or purports to qualify the trust beneficiary for federal supplemental security income, or public or medical assistance pursuant to title 26, C.R.S., unless the trust meets the criteria set forth in sections 15-14-412.6 to 15-14-412.9, C.R.S., and any rule adopted by the medical services board pursuant to section 25.5-6-103, C.R.S.

**Source:** **L. 64:** p. 445, § 3. **L. 65:** pp. 483, 484, §§ 1, 2. **C.R.S. 1963:** § 37-20-3. **L. 67:** p. 103, § 1. **L. 79:** (1)(g) and (6) amended, p. 1634, § 22, effective July 19. **L. 84:** (1)(c) amended, p. 394, § 4, effective July 1. **L. 94:** (7) added, p. 1604, § 13, effective July 1. **L. 2000:** (7) amended, p. 1832, § 3, effective January 1, 2001. **L. 2006:** (7) amended, p. 2001, § 46, effective July 1; (1)(f) amended, p. 1395, § 35, effective August 7. **L. 2017:** (1)(f) amended, (HB 17-1046), ch. 50, p. 156, § 3, effective March 16; (1)(f) amended, (SB 17-242), ch. 263, p. 1292, § 106, effective May 25.

**Cross references:** (1) For the "Colorado Uniform Transfers to Minors Act", see article 50 of title 11.

(2) For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

## ANNOTATION

**Law reviews.** For article, "Civil Commitment of the Mentally Ill in the Denver Probate Court", see 46 Den. L.J. 496 (1969). For article, "Will Contests — Some Procedural Aspects", see 15 Colo. Law. 787 (1986). For article, "Probate Jurisdiction for Creditors' Claims", see 29 Colo. Law. 57 (May 2000). For article, "Sitting Pretty in Probate: What Sandstead Means for Probate Jurisdiction", see 48 Colo. Law. 50 (Jan. 2019).

**Specific enumeration of court's subject-matter jurisdiction is applicable to all**

**district courts sitting in probate matters** since all probate courts may exercise subject-matter jurisdiction vested by this title. *Lembach v. Lembach*, 622 P.2d 606 (Colo. App. 1980).

**In determining proper jurisdiction as between district court and probate court,** the court must look at the facts alleged, the claims asserted, and the relief requested. Here, where the complaints were premised upon defendant's alleged legal malpractice in the drafting of the estate instruments, the estate planning, and the implementation of

the estate plan, the complaints were not considered probate claims, and, therefore, jurisdiction lay with the district court not the probate court. *Levine v. Katz*, 192 P.3d 1008 (Colo. App. 2006).

**Probate court lacks subject matter jurisdiction over claims of legal malpractice** where plaintiff does not seek to recover assets of the estate. *Levine v. Katz*, 167 P.3d 141 (Colo. App. 2006).

**The phrase "in connection with" in subsection (3)(a) is a grant of authority to resolve disputes logically relating to an estate.** This grant of jurisdiction presupposes, by necessary implication, the possibility that a person may have a valid claim to property claimed by an estate, and therefore contemplates that such property, while claimed by the estate, does not belong to the estate. *In re Estate of Murphy*, 195 P.3d 1147 (Colo. App. 2008); *In Interest of Black*, 2018 COA 7, 422 P.3d 592.

**In evaluating the child's best interests, the probate court did not exceed its jurisdiction by directing the GAL to find a permanent guardian or by considering the potential for a future adoption.** Nothing in this section deprives the district court of the authority to appoint a guardian for a child. *In re J.C.T.*, 176 P.3d 726 (Colo. 2007).

**When extrinsic fraud is shown to exist, a judgment may be collaterally attacked,** for such fraud renders the judgment not merely irregular, but void. As such, the judgment has neither life nor incipience and as a nullity it may be attacked directly or

collaterally at any time. *In re Estate of Bonfils*, 190 Colo. 70, 543 P.2d 701 (1975).

**Intrinsic frauds, however, cannot give rise to collateral attack,** though they may create voidable judgments, be the basis of a successful direct appeal, or be the subject of a motion for relief from judgment. *In re Estate of Bonfils*, 190 Colo. 70, 543 P.2d 701 (1975).

**Probate court had jurisdiction** to order cancellation of bonds and release of security held by trustee pursuant to municipal revenue bond trust indenture. *Petition of First Interstate Bank*, 767 P.2d 792 (Colo. App. 1988).

**Trial court sitting in probate had jurisdiction under subsection (3)(b) to resolve dispute** because the dispute presented a question as to whether multiple-party account funds that one daughter moved to another bank account that her sister could not access were part of mother's probate estate. *Sandstead-Corona v. Sandstead*, 2018 CO 26, 415 P.3d 310.

**The probate court has the authority, in the appropriate circumstances, to instruct trustee to act or not act to carry out the court's goal in the administration of such trust without relying on C.R.C.P. 65.** When a trustee's administration of a trust is challenged, the probate court has the authority to issue an injunction against the trustee without establishing grounds for a preliminary injunction to prevent further depletion of the trust while proper distribution of the trust is determined. *In re Estate of Scott*, 77 P.3d 906 (Colo. App. 2003).

**13-9-104. Number of judges.**

There shall be one judge of the probate court of the city and county of Denver.

**Source: L. 64:** p. 446, § 4. **C.R.S. 1963:** § 37-20-4.

**13-9-105. Qualifications of judges.**

A judge of the probate court shall be a qualified elector of the city and county of Denver at the time of his selection and shall have been licensed to practice law in the state of Colorado for five years at such time. He shall be a resident of the city and county of Denver during his term of office. He shall not engage in the private practice of law while serving in office.

**Source: L. 64:** p. 446, § 5. **C.R.S. 1963:** § 37-20-5.

**13-9-106. Compensation of judges.**

A probate judge shall receive an annual salary as provided by law.

**Source: L. 64:** p. 446, § 6. **C.R.S. 1963:** § 37-20-6.

**Cross references:** For salaries of probate judges, see § 13-30-103.

**13-9-107. Appointment and term of office.**

- (1) The term of office of a probate judge shall be six years.
- (2) A probate judge shall be appointed for the probate court of the city and county of Denver in the same manner provided for the appointment of district judges.

**Source: L. 64:** p. 446, § 7. **C.R.S. 1963:** § 37-20-7. **L. 67:** p. 460, § 20.

### **13-9-108. Vacancies.**

If the office of probate court judge becomes vacant because of death, resignation, failure to be retained in office pursuant to section 25 of article VI of the state constitution, or other cause, the vacancy shall be filled by the governor as provided in section 20 of article VI of the state constitution.

**Source:** L. 64: p. 446, § 8. C.R.S. 1963: § 37-20-8. L. 67: p. 460, § 21.

### **13-9-109. Clerk.**

(1) The judge of the probate court shall appoint a clerk of the probate court pursuant to section 13-3-105.

(2) Repealed.

(3) The powers and duties of the clerk of the probate court shall be similar to the powers and duties of the clerk of the district court including such powers as may be delegated to the clerk of the district court in probate matters. The duties of the clerk of the probate court shall also include such matters as may be assigned to him by law, by court rules, and by the probate judge.

**Source:** L. 64: p. 448, § 10. C.R.S. 1963: § 37-20-10. L. 69: p. 253, § 25. L. 79: (2) amended, p. 424, § 15, effective July 1; (2) repealed, p. 602, § 30, effective July 1.

### **ANNOTATION**

**No authority to set aside divorce decree.** Constitutional and statutory provisions vest in the probate court the authority to decide, inter alia, matters relating to the probate of wills. They do not, however, confer authority upon the probate

court to disregard the rules relating to collateral attacks on judgments and to set aside a divorce decree of a district court which has jurisdiction of the parties and of the subject matter. In re Estate of Bonfils, 190 Colo. 70, 543 P.2d 701 (1975).

### **13-9-110. Other employees.**

The judge of the probate court shall appoint pursuant to section 13-3-105 such deputy clerks, assistants, reporters, stenographers, and bailiffs as may be necessary for the transaction of the business of the court.

**Source: L. 64:** p. 448, § 11. **C.R.S. 1963:** § 37-20-11. **L. 69:** p. 253, § 26.

**13-9-111. Practice and procedure.**

Practice and procedure in the probate court shall be conducted in accordance with laws providing special proceedings for matters within its jurisdiction and with the Colorado rules of civil procedure.

**Source: L. 64:** p. 448, § 12. **C.R.S. 1963:** § 37-20-12.

**13-9-112. Rules of court.**

The probate court has the power to make rules for the conduct of its business to the extent that such rules are not in conflict with the rules of the supreme court or the laws of the state but are supplementary thereto. Probate court rules are subject to review by the supreme court.

**Source: L. 64:** p. 448, § 13. **C.R.S. 1963:** § 37-20-13.

**13-9-113. Terms.**

Terms of the probate court shall be fixed by rule of court, but at least one term shall be held each year.

**Source: L. 64:** p. 448, § 14. **C.R.S. 1963:** § 37-20-14.

**13-9-114. Seal.**

The probate court shall have a seal, bearing upon the face thereof the words: "The Probate Court of the City and County of Denver, Colorado".

**Source: L. 64:** p. 448, § 15. **C.R.S. 1963:** § 37-20-15.

### **13-9-115. Process.**

The probate court has the power to issue process necessary to acquire jurisdiction, to require attendance, and to enforce all its orders, decrees, and judgments. Such process runs to any county within the state and, when authorized by law in special proceedings or, in the absence thereof, by the Colorado rules of civil procedure, may be served outside the state. Any sheriff to whom process is directed is authorized and required to execute the same and shall be entitled to the same fees as are allowed by law for serving like process from the district court. Persons other than the sheriff or his deputies also may serve process from the probate court when permitted by law in special proceedings or, in the absence thereof, by the Colorado rules of civil procedure.

**Source: L. 64:** p. 448, § 16. **C.R.S. 1963:** § 37-20-16.

**Cross references:** For procedures and persons authorized to serve process of the district court, see C.R.C.P. 4.

### **13-9-116. Venue.**

Venue in the probate court shall be determined as provided in articles 10 to 20 of title 15, C.R.S., or by other applicable statutes prescribing special proceedings or, in the absence thereof, by the Colorado rules of civil procedure.

**Source: L. 64:** p. 449, § 17. **C.R.S. 1963:** § 37-20-17.

### **13-9-117. Juries.**

When required, juries may be selected and summoned as provided for courts of record in articles 71 to 74 of this title. With the permission of the district court, the probate court may use the panel of jurors summoned for the district court of the second judicial district.

**Source: L. 64:** p. 449, § 18. **C.R.S. 1963:** § 37-20-18. **L. 2001:** Entire section amended, p. 1270, § 17, effective June 5.



### **13-9-118. Judgments.**

The judgments of the probate court shall be enforceable in the same manner as judgments of the district court and may be made liens upon real estate or other property in the manner provided by law for judgments of the district court.

**Source:** L. 64: p. 449, § 19. C.R.S. 1963: § 37-20-19.

**Cross references:** For procedures for attachment and duration of a judgment lien, see § 13-52-102.

### **13-9-119. Appeals.**

Appellate review of final judgments of the probate court shall be by the supreme court or by the court of appeals, as provided by law, and shall be conducted in the same manner as prescribed by the Colorado appellate rules for review by the court of appeals and the supreme court of final judgments of the district courts.

**Source:** L. 64: p. 449, § 20. C.R.S. 1963: § 37-20-20. L. 69: p. 270, § 10.

### **13-9-120. Fees.**

The fees charged by the probate court and the clerk thereof shall be those provided in article 32 of this title.

**Source:** L. 64: p. 449, § 21. C.R.S. 1963: § 37-20-21.

### **13-9-121. Funds.**

Funds for the operation of the probate court, including the salaries of the employees thereof, shall be provided in the same manner as funds are provided for the establishment and operation of the district courts for the second judicial district.

**Source: L. 64:** p. 449, § 22. **C.R.S. 1963:** § 37-20-22. **L. 69:** p. 254, § 27.

**13-9-122. Supervision by supreme court.**

The supervisory powers of the supreme court established by article 3 of this title extend to the probate court.

**Source: L. 64:** p. 450, § 23. **C.R.S. 1963:** § 37-20-23.

**13-9-123. National instant criminal background check system - reporting.**

(1) On and after March 20, 2013, the state court administrator shall send electronically the following information to the Colorado bureau of investigation created pursuant to section 24-33.5-401, referred to in this section as the "bureau":

(a) The name of each person who has been found to be incapacitated by order of the court pursuant to part 3 of article 14 of title 15, C.R.S.;

(b) The name of each person who has been committed by order of the court to the custody of the behavioral health administration in the department of human services pursuant to section 27-81-112; and

(c) The name of each person with respect to whom the court has entered an order for certification for short-term treatment of a mental health disorder pursuant to section 27-65-108.5, 27-65-109, or 27-65-109.5; for extended certification for treatment of a mental health disorder pursuant to section 27-65-109 (10); or for long-term care and treatment of a mental health disorder pursuant to section 27-65-110.

(1.5) Not more than forty-eight hours after receiving notification of a person who satisfies the description in paragraph (a), (b), or (c) of subsection (1) of this section, the state court administrator shall report such fact to the bureau.

(2) Any report made by the state court administrator pursuant to this section shall describe the reason for the report and indicate that the report is made in accordance with 18 U.S.C. sec. 922 (g)(4).

(3) The state court administrator shall take all necessary steps to cancel a record made by the state court administrator in the national instant criminal background check system if:

(a) The person to whom the record pertains makes a written request to the state court administrator; and

(b) No less than three years before the date of the written request:

(I) The court entered an order pursuant to section 15-14-318, C.R.S., terminating a guardianship on a finding that the person is no longer an incapacitated person, if the record in the national instant criminal background check system is based on a finding of incapacity;

(II) The period of certification or commitment of the most recent order of certification, commitment, recertification, or recommitment expired, or the court entered an order terminating the person's incapacity or discharging the person from certification or commitment in the nature of habeas corpus, if the record in the national instant criminal background check system is based on an order of certification or commitment to the custody of the behavioral health administration in the department of human services; except that the state court administrator shall not cancel any record pertaining to a person with respect to whom two recommitment orders have been entered pursuant to section 27-81-112 (7) and (8), or who was discharged from treatment pursuant to section 27-81-112 (11), on the grounds that further treatment is not likely to bring about significant improvement in the person's condition; or

(III) The record in the case was sealed pursuant to section 27-65-123 (7), or the court entered an order discharging the person from certification in the nature of habeas corpus pursuant to section 27-65-115, if the record in the national instant criminal background check system is based on a court order for involuntary certification for short-term treatment of a mental health disorder.

(4) Pursuant to section 102 (c) of the federal "NICS Improvement Amendments Act of 2007" (Pub.L. 110-180), a court, upon becoming aware that the basis upon which a record reported by the state court administrator pursuant to subsection (1) of this section does not apply or no longer applies, shall:

(a) Update, correct, modify, or remove the record from any database that the federal or state government maintains and makes available to the national instant criminal background check system, consistent with the rules pertaining to the database; and

(b) Notify the attorney general that such basis does not apply or no longer applies.

**Source: L. 2002:** Entire section added, p. 754, § 2, effective January 1, 2003. **L. 2010:** (1)(b), (1)(c), (3)(b)(II), and (3)(b)(III) amended, (SB 10-175), ch. 188, p. 781, § 16, effective April 29. **L. 2013:** IP(1), (2), IP(3), (3)(a), and (3)(b)(II) amended and (1.5) and (4) added, (HB 13-1229), ch. 47, p. 134, § 4, effective March 20. **L. 2017:** IP(1), (1)(b), and (3)(b)(II) amended, (SB 17-242), ch. 263, p. 1252, § 7, effective May 25. **L. 2018:** (1)(c) and (3)(b)(III) amended, (SB 18-091), ch. 35, p. 383, § 10, effective August 8. **L. 2020:** (1)(b) amended, (SB 20-007), ch. 286, p. 1414, § 44, effective July 13; (3)(b)(II) and (3)(b)(III) amended, (SB 20-136), ch. 70, p. 282, § 4, effective September 14. **L. 2022:** (1)(b) and (3)(b)(II) amended, (HB 22-1278), ch. 222, p. 1491,

§ 11, effective July 1; (1)(c) and (3)(b)(III) amended, (HB 22-1256), ch. 451, p. 3225, § 17, effective August 10. **L. 2023:** (1)(c) amended, (HB 23-1138), ch. 423, p. 2489, § 9, effective July 1, 2024. **L. 2026:** (1)(c) and (3)(b)(III) amended, (SB 26-149), ch. 142, p. 792, § 36, effective May 21.

**Cross references:** For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in SB 18-091, see section 1 of chapter 35, Session Laws of Colorado 2018. For the legislative declaration in SB 20-136, see section 1 of chapter 70, Session Laws of Colorado 2020.

## ANNOTATION

**Certification for involuntary short-term mental health treatment entered by a professional person under § 27-65-107 is not a court order under subsection (1)(c) of this section** and a person's information should not be sent to the bureau for forwarding on to the national instant criminal background check system (NICS), which would subject the person to federal

firearms prohibitions. *Ray v. People*, 2019 COA 24, 456 P.3d 54.

**A court does not need to conduct an evidentiary hearing under § 27-65-109 (6)** before it is authorized to enter an order causing an individual's name to be added to the NICS. *People in Interest of R.Z.*, 2025 COA 58, 574 P.3d 747.

### **13-9-124. National instant criminal background check system - judicial process for awarding relief from federal prohibitions - legislative declaration.**

(1) **Legislative declaration.** The purpose of this section is to set forth a judicial process whereby a person may apply or petition for relief from federal firearms prohibitions imposed pursuant to 18 U.S.C. sec. 922 (d)(4) and (g)(4), as permitted by the federal "NICS Improvement Amendments Act of 2007" (Pub.L. 110-180, sec. 105).

(2) **Eligibility.** A person may petition for relief pursuant to this section if:

(a) (I) He or she has been found to be incapacitated by order of the court pursuant to part 3 of article 14 of title 15, C.R.S.;

(II) The person has been committed by order of the court to the custody of the behavioral health administration in the department of human services pursuant to section 27-81-112; or

(III) The court has entered an order for the person's certification for short-term treatment of a mental health disorder pursuant to section 27-65-108.5, 27-65-109, or 27-65-109.5; for extended

certification for treatment of a mental health disorder pursuant to section 27-65-109 (10); or for long-term care and treatment of a mental health disorder pursuant to section 27-65-110; and

(b) He or she is a person to whom the sale or transfer of a firearm or ammunition is prohibited by 18 U.S.C. sec. 922 (d)(4), or who is prohibited from shipping, transporting, possessing, or receiving a firearm or ammunition pursuant to 18 U.S.C. sec. 922 (g)(4).

(3) **Due process.** In a court proceeding pursuant to this section:

(a) The petitioner shall have an opportunity to submit his or her own evidence to the court concerning his or her petition;

(b) The court shall review the evidence; and

(c) The court shall create and thereafter maintain a record of the proceeding.

(4) **Proper record.** In determining whether to grant relief to a petitioner pursuant to this section, the court shall receive evidence concerning, and shall consider:

(a) The circumstances regarding the firearms prohibitions imposed by 18 U.S.C. sec. 922 (g)(4);

(b) The petitioner's record, which must include, at a minimum, the petitioner's mental health records and criminal history records; and

(c) The petitioner's reputation, which the court shall develop, at a minimum, through character witness statements, testimony, or other character evidence.

(5) **Proper findings.**

(a) Before granting relief to a petitioner pursuant to this section, the court shall issue findings that:

(I) The petitioner is not likely to act in a manner that is dangerous to public safety; and

(II) Granting relief to the petitioner is not contrary to the public interest.

(b) (I) If the court denies relief to a petitioner pursuant to this section, the petitioner may petition the court of appeals to review the denial, including the record of the denying court.

(II) A review of a denial shall be de novo in that the court of appeals may, but is not required to, give deference to the decision of the denying court.

(III) In reviewing a denial, the court of appeals has discretion, but is not required, to receive additional evidence necessary to conduct an adequate review.

**Source: L. 2013:** Entire section added, (HB 13-1229), ch. 47, p. 135, § 5, effective March 20. **L. 2017:** (2)(a)(II) amended, (SB 17-242), ch. 263, p. 1252, § 8, effective May 25. **L. 2018:** (2)(a)(III) amended, (SB 18-091), ch. 35, p. 384, § 11, effective August 8. **L. 2020:** (2)(a)(II) amended, (SB 20-007), ch. 286, p. 1414, § 45, effective July 13. **L. 2022:** (2)(a)(II) amended, (HB 22-1278), ch. 222, p. 1492, § 12, effective July 1; (2)(a)(III) amended, (HB 22-1256), ch. 451, p. 3226, § 18, effective August 10. **L. 2023:** (2)(a)(III) amended, (HB 23-1138), ch. 423, p. 2489, § 10, effective July 1, 2024. **L. 2026:** (2)(a)(III) amended, (SB 26-149), ch. 142, p. 792, § 37, effective May 21.

**Cross references:** For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in SB 18-091, see section 1 of chapter 35, Session Laws of Colorado 2018.

## MUNICIPAL COURTS

### ARTICLE 10

#### Municipal Courts

|              |                                                                                     |              |                                                                         |
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#### **13-10-101. Legislative declaration.**

The general assembly finds that the right to a trial by jury for petty offenses, as defined in section 16-10-109, C.R.S., is of vital concern to all of the people of the state of Colorado and that the interests of the state as a whole are so great that the general assembly shall retain sole legislative jurisdiction over the matter, which is hereby declared to be of statewide concern.

**Source:** L. 69: p. 273, § 1. **C.R.S. 1963:** § 37-22-1. **L. 70:** p. 150, § 2. **L. 72:** p. 266, § 2. **L. 82:** Entire section amended, p. 654, § 3, effective January 1, 1983.

#### **13-10-102. Definitions.**

As used in this article, unless the context otherwise requires:

(1) "Municipal court" includes police courts and police magistrate courts created or existing under previous laws or under a municipal charter and ordinances.

(2) "Municipal judges" includes police magistrates as defined and used in previous laws.

(3) "Qualified municipal court of record" means a municipal court established by, and operating in conformity with, either local charter or ordinances containing provisions requiring the keeping of a verbatim record of the proceedings and evidence at trials by either electric devices or stenographic means, and requiring as a qualification for the office of judge of such court that he has been admitted to, and is currently licensed in, the practice of law in Colorado.

**Source:** L. 69: p. 273, § 1. C.R.S. 1963: § 37-22-1. L. 70: p. 150, § 2. L. 72: p. 266, § 2.

### **13-10-103. Applicability.**

This article 10 applies to and governs the operation of municipal courts in the cities and towns of this state. Except for the provisions relating to the method of salary payment for municipal judges; the incarceration of children pursuant to sections 19-2.5-305 and 19-2.5-1511; the appearance of the parent, guardian, or lawful custodian of any child under eighteen years of age who is charged with a municipal offense as required by section 13-10-111; the failure to appear pursuant to section 13-10-127; the right to a trial by jury for petty offenses pursuant to section 16-10-109; relief from improperly entered guilty pleas pursuant to section 18-1-410.6; the prosecution of an alleged act of domestic violence, as defined in section 18-6-800.3; making a criminal court proceeding conducted in open court available for remote public viewing and listening in real time; rules of procedure adopted by the supreme court; appellate procedure; the sentencing limitation in section 13-10-113 (1.5); and the right to counsel for certain indigent defendants pursuant to section 13-10-114.5, this article 10 may be superseded by charter or ordinance enacted by a home rule city.

**Source:** L. 69: p. 273, § 1. C.R.S. 1963: § 37-22-1. L. 70: p. 150, § 2. L. 72: p. 266, § 2. L. 81: Entire section amended, p. 1041, § 1, effective July 1. L. 87: Entire section amended, p. 813, § 10, effective October 1. L. 94: Entire section amended, p. 909, § 2, effective April 28. L. 96: Entire section amended, p. 1688, § 16, effective January 1, 1997. L. 2021: Entire section amended, (SB 21-271), ch. 462, p. 3208, § 338, effective March 1, 2022. L. 2021: Entire section amended, (SB 21-059), ch. 136, p. 709, § 10, effective October 1. L. 2022: Entire section amended, (SB 22-103), ch. 105, p. 489, § 2, effective April 18. L. 2023: Entire section amended, (HB 23-1182), ch. 426, p. 2507, § 3, effective September 1; Entire section amended, (HB 23-1222), ch. 267, p. 1585, § 1, effective January 1, 2024. L. 2025: Entire section amended, (SB 25-062), ch. 82, p. 341, § 1, effective April 17. L. 2026: Entire section amended, (HB 26-1134), ch. 77, p. 305, § 2, effective April 27.

**Editor's note:** Amendments to this section by HB 23-1222 and HB 23-1182 were harmonized.

**Cross references:** For the legislative declaration in HB 23-1182, see section 1 of chapter 426, Session Laws of Colorado 2023.



## ANNOTATION

**Right to trial by jury even if city charter denies it.** In cases involving petty offenses, there is a right to a jury trial, even in a municipal court of a home rule city whose city charter has expressly denied such right. *Hardamon v. Municipal Court*, 178 Colo. 271, 497 P.2d 1000 (1972).

**Right to jury trial not abridged by forum for trial.** The statutory right to a jury trial cannot be abridged on account of the forum in which the petty offense is tried. *City of Aurora ex rel. People v. Erwin*, 706 F.2d 295 (10th Cir. 1983).

**Courts of home-rule cities are not excepted from the purview of municipal court rules of procedure** issued by the supreme court. *Alessi v. Municipal Court*, 38 Colo. App. 153, 556 P.2d 87 (1976); *Christie v. People*, 837 P.2d 1237 (Colo. 1992).

The general assembly has made it clear that the power of home-rule cities over the operation of their municipal courts has some limitations, specifically in relation to rules of procedure. *Alessi v. Municipal Court*, 38 Colo. App. 153, 556 P.2d 87 (1976).

**There is no violation of the due process clause in a trial before a nontenured judge.** *People ex rel. People of City of Thornton v. Horan*, 192 Colo. 144, 556 P.2d 1217 (1976).

There is nothing to show that a trial before a nontenured judge in and of itself is sufficient to taint the fairness of the trial, thereby denying due process or equal protection. *People ex rel. People of City of Thornton v. Horan*, 192 Colo. 144, 556 P.2d 1217 (1976).

**Tenure decision lies in hands of citizens of home-rule cities.** The fact that the term of office for municipal judges is not included in the exceptions in this section clearly indicates the general assembly's recognition that the tenure decision lies in the hands of the citizens of home-rule cities. *People ex rel. People of City of Thornton v. Horan*, 192 Colo. 144, 556 P.2d 1217 (1976); *Artes-Roy v. City of Aspen*, 856 P.2d 823 (Colo. 1993).

### **13-10-104. Municipal court created - jurisdiction.**

The municipal governing body of each city or town shall create a municipal court to hear and try all alleged violations of ordinance provisions of such city or town.

**Source: L. 69: p. 273, § 1. C.R.S. 1963: § 37-22-2.**

## ANNOTATION

**Limitation on power of courts.** This section does not give municipal courts the power to provide relief similar to that provided by remedial or original writs. *City of Englewood v. Parkinson*, 703 P.2d 626 (Colo. App. 1985).

**C.R.M.P. 223 and this section do not violate defendant's right to a jury trial or deprive him of equal protection of the laws under the federal constitution.** *Christie v. People*, 837 P.2d 1237 (Colo. 1992).

**Prerequisites of a written demand and \$25 fee for a jury trial pursuant to**

**13-10-104.5. Municipal court - municipal ordinance - act of domestic violence - report - repeal.**

(1) If a municipality has a municipal ordinance that criminalizes an act of domestic violence, as defined in section 18-6-800.3, the municipality shall adopt an ordinance establishing:

(a) That victims, victims' families, and witnesses of a violation of an act of domestic violence receive protections and rights equivalent to those afforded to victims, victims' families, and witnesses pursuant to the "Victim Rights Act", part 3 of article 4.1 of title 24, as it relates to an act of domestic violence, by establishing that:

(I) The law enforcement agency within the municipality is responsible for providing equivalent rights afforded to victims pursuant to section 24-4.1-303 (2), (5), (7), (9), (10), and (14.9);

(II) The city attorney within the municipality is responsible for providing the equivalent rights afforded to victims pursuant to section 24-4.1-303 (3), (3.5), (4), (5), (6), (7), (9), (11), (12), and (13);

(III) The municipal court is responsible for providing the equivalent rights afforded to victims pursuant to section 24-4.1-303 (3.5), (6), (14.4), (14.5), and (14.7);

(IV) The municipal court probation office is responsible for providing the equivalent rights afforded to victims pursuant to section 24-4.1-303 (13.5); and

(V) The law enforcement agency within the municipality, the city attorney within the municipality, the municipal court, and the municipal court probation office are responsible for ensuring victims are afforded equivalent rights to those described in section 24-4.1-302.5.

(b) Sentencing for violations that are equivalent to the domestic violence sentences described in section 18-6-801 (1), (3), (4), (5), (6), and (8), to the extent consistent with the jurisdiction of the municipal court;

(c) Conditions of probation that the court may impose consistent with the conditions described in section 18-1.3-204 (2);

(d) Conditions of release on bond that are consistent with the conditions described in section 16-4-105 (4) and (4.1);

(e) Guidelines and standards that are consistent with the guidelines and standards adopted by the domestic violence offender management board pursuant to section 16-11.8-103 (4); and

(f) A requirement that the prosecuting attorney who initially meets with the victim after the charges are filed make a reasonable effort to remain as the prosecuting attorney throughout the proceeding.

(2) In a case involving an alleged violation of a municipal ordinance that criminalizes an act of domestic violence, as defined in section 18-6-800.3, the municipal court shall:

(a) Issue a protection order that meets the minimum standards required pursuant to sections 18-1-1001 (3) and 18-1-1001 (5), to the extent consistent with the jurisdiction of the municipal court;

(b) Report or cause to be reported the alleged violation to the Colorado bureau of investigation created in section 24-33.5-401, and enter the information into the Colorado crime information center database and the national crime information center database; and

(c) Search the Colorado bureau of investigation created in section 24-33.5-401, the Colorado crime information center database, and the national crime information center system database to determine if the respondent has a history of domestic violence.

(3) Any case involving an alleged violation of a municipal ordinance that criminalizes an act of domestic violence, as defined in section 18-6-800.3, is a misdemeanor for purposes of complying with 18 U.S.C. sec. 921.

(4) Any affected person may enforce compliance with this section by notifying the crime victim services advisory board created in section 24-4.1-117.3 (1) of any noncompliance with this section. The crime victim services advisory board shall review any report of noncompliance, and, if the board determines that the report of noncompliance has a basis in fact and cannot be resolved, the board shall refer the report of noncompliance to the governor, who shall request that the attorney general file suit to enforce compliance with this section. A person, corporation, or other legal entity is not entitled to claim or to receive any damages or other financial redress for any failure to comply with this section.

(5) (a) Beginning January 2025 and each year until January 2029, the department of public safety shall report to the house of representatives judiciary committee and the senate judiciary committee, or their successor committees, during the department's "SMART Act" hearing the total number of reports and inquiries submitted to the Colorado bureau of investigation, the

Colorado crime information center database, and the national crime information center database pursuant to subsections (2)(b) and (2)(c) of this section, aggregated by municipality.

(b) This subsection (5) is repealed, effective July 1, 2029.

**Source: L. 2023:** Entire section added, (HB 23-1222), ch. 267, p. 1585, § 2, effective January 1, 2024.

### **13-10-105. Municipal judge - appointment - removal.**

(1) (a) Unless otherwise provided in the charter of a home rule city, the municipal court shall be presided over by a municipal judge who shall be appointed by the municipal governing body for a specified term of not less than two years and who may be reappointed for a subsequent term; except that the initial appointment under this section may be for a term of office which expires on the date of the next election of the municipal governing body. Any vacancy in the office of municipal judge shall be filled by appointment of the municipal governing body for the remainder of the unexpired term.

(b) The municipal governing body may appoint such assistant judges as may be necessary to act or such substitute judges as circumstances may require in case of temporary absence, sickness, disqualification, or other inability of the presiding or assistant municipal judges to act.

(c) In the event that more than one municipal judge is appointed, the municipal governing body shall designate a presiding municipal judge, who shall serve in this capacity during the term for which he was appointed.

(2) A municipal judge may be removed during his or her term of office only for cause. A judge may be removed for cause if:

- (a) He is found guilty of a felony or any other crime involving moral turpitude;
- (b) He has a disability which interferes with the performance of his duties and which is or is likely to become of a permanent character;
- (c) He has willfully or persistently failed to perform his duties;
- (d) He or she has a substance use disorder that is not in remission; or
- (e) The municipality required the judge, at the time of appointment, to be a resident of the municipality, or county in which the municipality is located, and he subsequently becomes a nonresident of the municipality or the county during his term of office.

**Source:** L. 69: p. 273, § 1. C.R.S. 1963: § 37-22-3. L. 77: (2)(c) and (2)(d) amended and (2)(e) added, p. 793, § 1, effective June 3. L. 91: (1)(b) amended, p. 742, § 1, effective April 4. L. 2017: IP(2) and (2)(d) amended, (SB 17-242), ch. 263, p. 1293, § 107, effective May 25.

**Cross references:** For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

## ANNOTATION

**There is no violation of the due process clause in a trial before a nontenured judge.** People ex rel. People of City of Thornton v. Horan, 192 Colo. 144, 556 P.2d 1217 (1976).

There is nothing to show that a trial before a nontenured judge in and of itself is sufficient to taint the fairness of the trial, thereby denying due process or equal protection. People ex rel. People of City of Thornton v. Horan, 192 Colo. 144, 556 P.2d 1217 (1976).

The fact that the term of office for municipal judges is not included in the exceptions in § 13-10-103 clearly indicates the general assembly's recognition that the tenure decision lies in the hands of the citizens of home-rule cities. People ex rel. People of City of Thornton v. Horan, 192 Colo. 144, 556 P.2d 1217 (1976).

**Home-rule cities to specify terms of tenure.** Subsection (1)(a), read in context with § 6 of art. XX, Colo. Const., makes it clear that the statute's unambiguous language offers home-rule cities the opportunity to specify the terms under which a municipal judge holds his office. People ex rel. People of City of Thornton v. Horan, 192 Colo. 144, 556 P.2d 1217 (1976).

The decision of a home-rule city to appoint judges removable at the will of the city council is consistent with this section. People ex rel. People of City of Thornton v. Horan, 192 Colo. 144, 556 P.2d 1217 (1976).

Likewise, a city charter that provides for the appointment of a municipal judge by the city council for a fixed term and that limits the removal of a judge only for cause does not violate this section. Artes-Roy v. City of Aspen, 856 P.2d 823 (Colo. 1993).

### **13-10-106. Qualifications of municipal judges.**

(1) A municipal judge shall have the same qualifications as a county judge in a Class D county, as set forth in section 13-6-203 (3).

(2) Preference shall be given by the municipal governing body, when possible, to the appointment of a municipal judge who is licensed to practice law in Colorado or who is trained in the law.

(3) The municipal governing body may appoint a county judge in a Class C or D county, as defined in section 13-6-203, to serve as a municipal judge.

(4) The municipal governing body may require that the municipal judge be a qualified elector of the municipality or the county in which the municipality is located.

**Source:** L. 69: p. 274, § 1. C.R.S. 1963: § 37-22-4. L. 77: (1) amended and (4) added, p. 793, § 2, effective June 3.

#### **13-10-107. Compensation of municipal judges.**

(1) The municipal governing body shall provide by ordinance for the salary of the municipal and assistant judges. Such salary shall be a fixed annual compensation and payable on a monthly or other periodic basis. The municipal governing body may pay any substitute judge appointed pursuant to section 13-10-105 (1)(b) based upon the number of court sessions served by such judge.

(2) (Deleted by amendment, L. 91, p. 742, § 2, effective April 4, 1991.)

**Source:** L. 69: p. 274, § 1. C.R.S. 1963: § 37-22-5. L. 91: Entire section amended, p. 742, § 2, effective April 4.

#### **13-10-108. Clerk of the municipal court.**

(1) The municipal governing body shall establish the position of clerk of the municipal court, except that the municipal judge shall serve as ex officio clerk if the business of the court is insufficient to warrant a separate full-time or part-time clerk.

(2) The clerk of the municipal court shall be appointed by the presiding municipal judge and shall have such duties as are delegated to him by law, court rule, or the presiding municipal judge.

(3) The municipal governing body shall provide for the salary of the clerk of the municipal court in the same manner as specified in section 13-10-107; except that if the municipal judge serves as ex officio clerk, he shall not receive any additional compensation.

**Source: L. 69:** p. 274, § 1. **C.R.S. 1963:** § 37-22-6.

**13-10-109. Bond.**

(1) The clerk of the municipal court shall give a performance bond in the sum of two thousand dollars, or in such amount as may be set by ordinance, to the city or town for which he is appointed.

(2) The performance bond shall be approved by the municipal governing body and be conditioned upon the faithful performance of his duties, and for the faithful accounting for, and payment of, all funds deposited with or received by the court.

(3) When the municipal judge serves as clerk of the municipal court, as provided in section 13-10-108 (3), he shall execute the performance bond required by this section.

(4) The governing body of the city or town may waive the bond required by this section.

**Source: L. 69:** p. 275, § 1. **C.R.S. 1963:** § 37-22-7. **L. 89:** (4) added, p. 1287, § 1, effective April 6.

**13-10-110. Court facilities and supplies.**

(1) The municipal governing body shall furnish the municipal court with suitable courtroom facilities and sufficient funds for the acquisition of all necessary books, supplies, and furniture for the proper conduct of the business of the court.

(2) In order to carry out the provisions of subsection (1) of this section, the municipal governing body may locate court facilities outside of the municipality or county in which the municipality is located, if such facilities are in reasonable proximity to the municipality and the governing body determines that suitable facilities cannot be provided within the municipality.

(3) Any two or more governments may cooperate or contract, pursuant to part 2 of article 1 of title 29, C.R.S., to provide joint court facilities and supplies. Such joint facilities may be located outside of any or all of the cooperating or contracting governments but shall be located within reasonable proximity to each of the cooperating or contracting governments.

(4) Where, pursuant to this section, a municipality locates its court facilities outside of its boundaries, any reference in this article to the municipality in which the court is located shall mean the municipality creating the municipal court, and any reference in this article to the county

in which the municipal court is located shall mean the county in which the municipality creating the court is located.

**Source:** L. 69: p. 275, § 1. C.R.S. 1963: § 37-22-8. L. 75: Entire section amended, p. 567, § 1, effective June 13.

### **13-10-111. Commencement of actions - process.**

(1) Any action or summons brought in any municipal court to recover any fine or enforce any penalty or forfeiture under any ordinance shall be filed in the corporate name of the municipality in which the court is located by and on behalf of the people of the state of Colorado.

(2) Any process issued from a municipal court runs in the corporate name of the municipality by and on behalf of the people of the state of Colorado. Processes from any municipal court shall be executed by any authorized law enforcement officer from the municipality in which the court is located.

(3) Any authorized law enforcement officer may execute within such officer's jurisdiction any summons, process, writ, or warrant issued by a municipal court from another jurisdiction arising under the ordinances of such municipality for an offense which is criminal or quasi-criminal. For the purposes of this subsection (3), traffic offenses shall not be considered criminal or quasi-criminal offenses unless penalty points may be assessed under section 42-2-127 (5)(a) to (5)(cc), C.R.S. The issuing municipality shall be liable for and pay all costs, including costs of service or incarceration incurred in connection with such service or execution.

(4) The clerk of the municipal court shall issue a subpoena for the appearance of any witness in municipal court upon the request of either the prosecuting municipality or the defendant. The subpoena may be served upon any person within the jurisdiction of the court in the manner prescribed by the rules of procedure applicable to municipal courts. Any person subpoenaed to appear as a witness in municipal court shall be paid a witness fee in the amount of five dollars.

(5) Upon the request of the municipal court, the prosecuting municipality, or the defendant, the clerk of the municipal court shall issue a subpoena for the appearance, at any and all stages of the court's proceedings, of the parent, guardian, or lawful custodian of any child under eighteen years of age who is charged with a municipal offense. Whenever a person who is issued a subpoena pursuant to this subsection (5) fails, without good cause, to appear, the court may issue an order for the person to show cause to the court as to why the person should not be held in contempt. Following a show cause hearing, the court may make findings of fact and conclusions of law and may enter an appropriate order, which may include finding the person in contempt.



**Source:** L. 69: p. 275, § 1. C.R.S. 1963: § 37-22-9. L. 77: (3) amended, p. 793, § 3, effective June 3. L. 78: (3) amended, p. 262, § 45, effective May 23. L. 81: (5) added, p. 882, § 1, effective April 30. L. 94: (5) amended, p. 909, § 3, effective April 28; (3) amended, p. 2549, § 32, effective January 1, 1995.

### **13-10-111.5. Notice to municipal courts of municipal holds.**

(1) If a person is detained in a jail on a municipal hold and does not immediately receive a personal recognizance bond, the jail shall promptly notify the municipal court of any municipal hold; except that, if the municipal hold is the sole basis to detain the person, the jail shall notify the municipal court of the municipal hold within four hours. All municipal courts shall establish an email address, if internet service is available, whereby the municipal court can receive notifications from jails. If internet service is not available, the municipal court shall establish a telephone line with voicemail for the same purpose. All jails shall be deemed to have met this notice requirement by sending an email, fax, or teletype to the municipal court or, if these options are unavailable, leaving a voicemail with the municipal court, relaying the notice required in this section.

(2) Once a municipal court receives notice that a defendant is being held solely on the basis of a municipal hold, the municipal court shall hold a hearing within forty-eight hours after the receipt of the notice. The county sheriff or municipal jail administrator shall make the in-custody defendant available to appear in a timely manner before a municipal judge for a hearing required by this subsection (2) at the date and time mutually agreed to by the county sheriff and municipal court. This subsection (2) does not require the county sheriff or municipal jail administrator to transport the in-custody defendant to the municipal court. It is not a violation of this section if a bond hearing is not held within forty-eight hours when the delay is caused by circumstances in which the defendant refuses to attend court, is unable to attend court due to drug or alcohol use, a serious medical or behavioral health emergency, or when the delay is caused by an emergency that requires the court to close. When a defendant is unable to attend court, the sheriff or municipal jail administrator shall provide the court and municipal public defender's office, if one exists, with a list of people subject to this section who did not timely attend court, the date of the person's arrest, and the location where the person is in custody. The sheriff or municipal jail administrator shall document the length of the delay, the reason for the delay, and the efforts to abate the emergency. As soon as the emergency has sufficiently abated, the sheriff or municipal jail administrator shall make the in-custody defendant available to appear before the municipal court at the next scheduled bond hearing. Use of audiovisual conferencing technology is permissible to expedite the hearing. When high-speed internet access is unavailable, making audiovisual conferencing impossible, the court may conduct the hearing telephonically.

(3) (a) At the hearing required pursuant to subsection (2) of this section, the municipal court shall either:

(I) Arraign the defendant, including advisement, bond setting, and plea, unless the defendant seeks a plea continuance; or

(II) If the defendant was arrested for failure to appear, conduct the proceedings for which the defendant failed to appear, unless that proceeding is a trial or an evidentiary hearing or requires the presence of a witness.

(b) If the case is not resolved at this hearing, the municipal court shall immediately conduct a bond hearing to consider and set the least restrictive conditions, if any, for the defendant's release on bond.

(c) (I) At the hearing required pursuant to subsection (2) of this section, the defendant has the right to be represented by court-appointed indigent defense counsel pursuant to section 13-10-114.5.

(II) (A) Before the hearing required pursuant to subsection (2) of this section, the court shall notify indigent defense counsel of each person in custody and provide indigent defense counsel sufficient time to prepare for and present at the hearing an individualized argument regarding the type of bond and conditions of release, consistent with the court's docket and scheduling priorities.

(B) Before the hearing required pursuant to subsection (2) of this section, the sheriff and jail personnel shall provide indigent defense counsel access to the defendant who will be appearing at the hearing and shall allow indigent defense counsel sufficient time with the defendant prior to the hearing in order to prepare for the hearing.

(III) The municipal court shall notify the prosecuting attorney of each person whose matter is set for a hearing required pursuant to subsection (2) of this section. The prosecuting attorney may appear at all initial hearings to provide the prosecuting attorney's position regarding the type of bond and conditions of release, and the court shall provide the prosecuting attorney sufficient time to prepare for and present any relevant argument, consistent with the court's docket and scheduling priorities.

(IV) Prior to the hearing required pursuant to subsection (2) of this section, any pretrial services agency operating in that municipality, or any other agency that reports to the court, that has conducted a pretrial release assessment or gathered information for the court's consideration at the hearing shall provide the prosecuting attorney and the defendant's attorney all information provided to the court regarding the defendant in custody, which must include, if provided to the court, the arrest warrant, the probable cause statement, and the defendant's criminal history.

(4) If the defendant does not appear before the municipal court for a hearing within the time frames required by subsection (2) of this section, the jail holding the defendant shall release the defendant on an unsecured personal recognizance bond with no other conditions returnable to the municipal court. This subsection (4) does not apply if the defendant refused to cooperate with the court's attempts to hold the hearing in compliance with subsection (2) of this section.

(5) Each municipal court shall adopt standing orders to implement subsection (4) of this section and shall provide the orders to each jail in the county where the municipal court is located. In every arrest warrant issued by a municipal court, the municipal court shall order that the defendant be released on a personal recognizance bond with no other conditions if the defendant does not appear before the municipal court for a hearing within the time frames required by subsection (2) of this section.

**Source:** **L. 2017:** Entire section added, (HB 17-1338), ch. 375, p. 1939, § 2, effective January 1, 2018. **L. 2022:** (2) amended, (HB 22-1067), ch. 264, p. 1930, § 1, effective January 1, 2023. **L. 2023:** (2) amended, (HB 23-1151), ch. 92, p. 347, § 2, effective October 1. **L. 2026:** (2), IP(3)(a), and (3)(a)(I) amended and (3)(c) added, (HB 26-1134), ch. 77, p. 305, § 3, effective April 27.

**Cross references:** For the legislative declaration in HB 17-1338, see section 1 of chapter 375, Session Laws of Colorado 2017. For the legislative declaration in HB 23-1151, see section 1 of chapter 92, Session Laws of Colorado 2023.

### **13-10-112. Powers and procedures.**

(1) The municipal judge of any municipal court has all judicial powers relating to the operation of his court, subject to any rules of procedure governing the operation and conduct of municipal courts promulgated by the Colorado supreme court. The presiding municipal judge of any municipal court has authority to issue local rules of procedure consistent with any rules of procedure adopted by the Colorado supreme court.

(2) The judicial powers of any municipal judge shall include the power to enforce subpoenas issued by any board, commission, hearing officer, or other body or officer of the municipality authorized by law or ordinance to issue subpoenas.

(3) Absent the findings required pursuant to Colorado law, each municipal court shall ensure all court proceedings, including court proceedings for defendants in custody, are accessible to any member of the public for public observation.

(4) If a municipal court receives notice that a defendant who has a criminal or traffic matter pending before the court is in custody in Colorado for any reason, the municipal court shall make diligent efforts to timely resolve the municipal matter. Diligent efforts include taking reasonable steps to promptly bring the defendant before the court when the municipal code allows for a possible sentence of incarceration in the pending matter. The court shall assign indigent defense counsel in the same manner as required by section 13-10-114.5. A municipal court shall not deny a defendant the ability to appear before the municipal court because the defendant is in custody for another, non-municipal matter. For a hearing other than a trial, the court may permit counsel to appear on behalf of the defendant pursuant to the Colorado municipal court rules of procedure and permit appearance through audiovisual or telephonic means, if available. This subsection (4) does not preclude a defendant from expressly agreeing to delay a matter once the defendant appears before the municipal court.

**Source:** L. 69: p. 275, § 1. C.R.S. 1963: § 37-22-10. L. 91: Entire section amended, p. 742, § 3, effective April 4. L. 2026: (3) and (4) added, (HB 26-1134), ch. 77, p. 307, § 4, effective April 27.

## ANNOTATION

**Contempt power is implied** by need to maintain order and decorum indispensable to judicial proceedings. *Thrap v. People*, 192 Colo. 341, 558 P.2d 576 (1977).

**Determination whether or not certain conduct constitutes contempt** is within the trial court's sound discretion, and it is not reviewable on appeal absent an abuse of discretion. *Tipton v. City of Lakewood ex rel. People*, 198 Colo. 18, 595 P.2d 689 (1979).

**It is not designed to protect judge's dignity or person.** A judge's power to punish contempt committed in his presence is not designed to protect his own dignity or person, but to protect the rights of litigants and the public by ensuring that the administration of justice shall not be

thwarted or obstructed. *Thrap v. People*, 192 Colo. 341, 558 P.2d 576 (1977).

**Contempt power must be exercised with self-restraint.** Like other inherent judicial powers, the contempt power must be exercised with patience and self-restraint. *Thrap v. People*, 192 Colo. 341, 558 P.2d 576 (1977).

**While a court may have inherent power to perform its judicial functions effectively,** the method a court chooses to use in exercising its inherent power must be one which the court has jurisdiction to utilize. *City of Englewood v. Parkinson*, 703 P.2d 626 (Colo. App. 1985).

**Judges must be cautious to avoid overreacting** when persons not familiar with court procedures, through ignorance or

frustration, unintentionally cause minor commotions. *Thrap v. People*, 192 Colo. 341, 558 P.2d 576 (1977).

**When contempt power should be invoked.** Since the contempt power is rooted in the necessity to maintain the respectful atmosphere appropriate to efficient administration of justice, it should be invoked only when the judicial process has been seriously affronted or disrupted. Only then is there a need to vindicate the dignity and authority of the court or to reestablish the respect owed to it. *Thrap v. People*, 192 Colo. 341, 558 P.2d 576 (1977).

**One cannot be convicted of contempt for respectfully declining to comply with an order which is beyond the court's authority.** *Thrap v. People*, 192 Colo. 341, 558 P.2d 576 (1977).

**Invocation of contempt power to punish valid exercise of constitutional right** is an abuse of discretion by the court.

*Tipton v. City of Lakewood ex rel. People*, 198 Colo. 18, 595 P.2d 689 (1979).

**Ordering husband to reveal remarks to wife.** A municipal judge had no authority, without the consent of the defendant or his wife, to order him to reveal what he had told her. *Thrap v. People*, 192 Colo. 341, 558 P.2d 576 (1977).

**Evidence insufficient to support contempt conviction.** *Thrap v. People*, 192 Colo. 341, 558 P.2d 576 (1977).

Where the record indicates that the only substantial delay or disruption in court proceedings occurred after the judge required the defendant to return to the courtroom, sought to force him to divulge his prior remarks to his wife, and had him handcuffed in open court, that disruption cannot be attributed to the defendant's conduct. *Thrap v. People*, 192 Colo. 341, 558 P.2d 576 (1977).

### **13-10-113. Fines and penalties.**

(1) (a) Except as provided in subsection (1)(b) of this section, any person convicted of violating a municipal ordinance in a municipal court of record may be incarcerated for a period not to exceed three hundred sixty-four days or fined an amount not to exceed two thousand six hundred fifty dollars, or both.

(b) (I) The limitation on municipal court fines set forth in paragraph (a) of this subsection (1) shall be adjusted for inflation on January 1, 2014, and on January 1 of each year thereafter.

(II) As used in this paragraph (b), "inflation" means the annual percentage change in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Boulder, all items, all urban consumers, or its successor index.

(1.5) A municipal court shall not sentence to incarceration a person convicted of violating a municipal ordinance in a municipal court that is not of record or fine the person in an amount that exceeds three hundred dollars.

(2) In sentencing or fining a violator, the municipal judge shall not exceed the sentence or fine limitations established by ordinance. Any other provision of the law to the contrary notwithstanding, the municipal judge may suspend the sentence or fine of any violator and place him on probation for a period not to exceed one year.

(3) The municipal judge is empowered in his discretion to assess costs, as established by the municipal governing body by ordinance, against any defendant who pleads guilty or nolo contendere or who enters into a plea agreement or who, after trial, is found guilty of an ordinance violation.

(4) Notwithstanding any provision of law to the contrary, a municipal court has the authority to order a child under eighteen years of age confined in a juvenile detention facility operated or contracted by the department of human services or a temporary holding facility operated by or under contract with a municipal government for failure to comply with a lawful order of the court, including an order to pay a fine. Any confinement of a child for contempt of municipal court shall not exceed forty-eight hours.

(5) Notwithstanding any other provision of law, a juvenile, as defined in section 19-2.5-102, arrested for an alleged violation of a municipal ordinance, convicted of violating a municipal ordinance or probation conditions imposed by a municipal court, or found in contempt of court in connection with a violation or alleged violation of a municipal ordinance must not be confined in a jail, lockup, or other place used for the confinement of adult offenders but may be held in a juvenile detention facility operated by or under contract with the department of human services or a temporary holding facility operated by or under contract with a municipal government that shall receive and provide care for the juvenile. A municipal court imposing penalties for violation of probation conditions imposed by such court or for contempt of court in connection with a violation or alleged violation of a municipal ordinance may confine a juvenile pursuant to section 19-2.5-305 for up to forty-eight hours in a juvenile detention facility operated by or under contract with the department of human services. In imposing any jail sentence upon a juvenile for violating any municipal ordinance when the municipal court has jurisdiction over the juvenile pursuant to section 19-2.5-103 (1)(a)(II), a municipal court does not have the authority to order a juvenile under eighteen years of age to a juvenile detention facility operated or contracted by the department of human services.

(6) Whenever the judge in a municipal court of record imposes a fine for a nonviolent municipal ordinance or code offense, if the person who committed the offense is unable to pay the fine at the time of the court hearing or if he or she fails to pay any fine imposed for the commission of such offense, in order to guarantee the payment of such fine, the municipal judge may compel collection of the fine in the manner provided in section 18-1.3-506, C.R.S. For purposes of this subsection (6), "nonviolent municipal ordinance or code offense" means a municipal ordinance or code offense which does not involve the use or threat of physical force on or to a person in the commission of the offense.

(7) Notwithstanding subsections (1) and (1.5) of this section, the municipal judge of each municipality which implements an industrial wastewater pretreatment program pursuant to the federal act, as defined in section 25-8-103 (8), C.R.S., may provide such relief and impose such penalties as are required by such federal act and its implementing regulations for such programs.

(8) If, as a condition of or in connection with any sentence imposed pursuant to this section, a municipal court judge requires a juvenile who is younger than eighteen years of age to attend school, the municipal court shall notify the school district in which the juvenile is enrolled of such requirement.

**Source:** **L. 69:** p. 275, § 1. **C.R.S. 1963:** § 37-22-11. **L. 81:** (4) added, p. 882, § 2, effective April 30; (5) added, p. 1041, § 2, effective July 1. **L. 87:** (2) and (3) amended, p. 546, § 1, effective April 23; (4) and (5) amended, p. 814, § 11, effective October 1. **L. 89:** (6) added, p. 887, § 3, effective April 6. **L. 90:** (4) and (5) amended, p. 1016, § 1, effective April 20; (7) added, p. 1345, § 6, effective July 1. **L. 91:** (1) and (3) amended and (1.5) added, p. 743, § 4, effective April 4. **L. 92:** (7) amended, p. 2183, § 59, effective June 2. **L. 94:** (4) and (5) amended, pp. 2641, 2615, §§ 90, 23, effective July 1; (5) amended, p. 1462, § 1, effective July 1. **L. 96:** (5) amended, p. 1679, § 2, effective January 1, 1997. **L. 2000:** (8) added, p. 320, § 8, effective April 7. **L. 2002:** (6) amended, p. 1487, § 121, effective October 1. **L. 2013:** (1) amended, (HB 13-1060), ch. 121, p. 411, § 1, effective April 18. **L. 2019:** (1)(a) amended, (HB 19-1148), ch. 59, p. 201, § 1, effective August 2. **L. 2021:** (5) amended, (SB 21-059), ch. 136, p. 710, § 11, effective October 1. **L. 2026:** (1.5) amended, (HB 26-1134), ch. 77, p. 307, § 5, effective April 27.

**Editor's note:** Amendments to subsection (5) by Senate Bill 94-089 and House Bill 94-1029 were harmonized.

**Cross references:** (1) For municipal ordinances and penalties relating thereto, see §§ 31-15-103 and 31-16-101.

(2) For the legislative declaration contained in the 1994 act amending subsections (4) and (5), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 2002 act amending subsection (6), see section 1 of chapter 318, Session Laws of Colorado 2002.

### **13-10-114. Trial by jury.**

(1) In any action before municipal court in which the defendant is entitled to a jury trial by the constitution or the general laws of the state, such party shall have a jury upon request. The jury shall consist of three jurors unless, in the case of a trial for a petty offense, a greater number, not to exceed six, is requested by the defendant.

(2) In municipalities having less than five thousand population, juries may be summoned by the issuance of venire to a police officer or marshal. In municipalities having a population of five thousand or more, juries shall be selected from a jury list as is provided for courts of record.

(3) Jurors shall be paid the sum of six dollars per day for actual jury service and three dollars for each day of service on the jury panel alone; except that the governing body of a municipality may, by resolution or ordinance, set higher or lower fees for attending its municipal court.

(4) For the purposes of this section, a defendant waives his or her right to a jury trial under subsection (1) of this section unless, within twenty-one days after entry of a plea, the defendant makes a request to the court for a jury trial, in writing, and tenders to the court a fee of twenty-five dollars, unless the fee is waived by the judge because of the indigence of the defendant. If the action is dismissed or the defendant is acquitted of the charge, or if the defendant having paid the jury fee files with the court at least seven days before the scheduled trial date a written waiver of jury trial, the jury fee shall be refunded.

(5) At the time of arraignment for any petty offense in this state, the judge shall advise any defendant not represented by counsel of the defendant's right to trial by jury; of the requirement that the defendant, if he or she desires to invoke his or her right to trial by jury, request such trial by jury within twenty-one days after entry of a plea, in writing; of the number of jurors allowed by law; and of the requirement that the defendant, if he or she desires to invoke his or her right to trial by jury, tender to the court within twenty-one days after entry of a plea a jury fee of twenty-five dollars, unless the fee is waived by the judge because of the indigence of the defendant.

**Source:** L. 69: p. 276, § 1. C.R.S. 1963: § 37-22-12. L. 70: p. 150, § 3. L. 83: (4) amended, p. 615, § 1, effective July 1. L. 88: (3) amended, p. 1124, § 1, effective April 4. L. 2005: (4) and (5) amended, p. 428, § 10, effective July 28. L. 2012: (4) and (5) amended, (SB 12-175), ch. 208, p. 823, § 4, effective July 1.

### **ANNOTATION**

**Applicability of the Uniform Jury Selection and Service Act.** Although the act is not applicable to municipal courts, the

statutory disqualifications in § 13-71-109 (2) should be applied to trials in municipal



courts of record. *City of Aurora v. Rhodes*, 689 P.2d 603 (Colo. 1984).

For purposes of § 13-71-109, a prospective juror summoned to a municipal court qualifies as a "resident of the county" as long as he resides in that part of the county located within the territorial limits of the municipality. *City of Aurora v. Rhodes*, 689 P.2d 603 (Colo. 1984).

**A defendant has the right to a jury in municipal court if charged with the commission of a petty offense**, as defined under §16-10-109, C.R.S. *Bradford v. Longmont Mun. Court*, 830 P.2d 1135 (Colo. App. 1992).

**The rule proscribing a child's right to a jury trial is limited to delinquency proceedings.** *Bradford v. Longmont Mun. Court*, 830 P.2d 1135 (Colo. App. 1992).

**Prerequisites of a written demand and \$25 fee for a jury trial pursuant to C.R.M.P. 223 and this section do not violate defendant's right to a jury trial or deprive him of equal protection of the laws under the federal constitution.** *Christie v. People*, 837 P.2d 1237 (Colo. 1992).

**Applied** in *Lininger v. City of Sheridan*, 648 P.2d 1097 (Colo. App. 1982).

#### **13-10-114.5. Representation by counsel - independent indigent defense - definitions.**

(1) At the time of a defendant's first out-of-custody appearance in municipal court for a violation for which the municipal code allows for a possible sentence of incarceration in the pending matter, the court shall advise the defendant of the defendant's right to court-appointed indigent defense counsel. The court may inquire and make a determination as to indigence immediately upon request or shall advise the defendant of the procedure to apply for court-appointed indigent defense counsel if the court does not make a determination as to indigence. If the court determines the defendant is indigent, the court shall appoint indigent defense counsel in the municipal case unless, after being fully advised pursuant to rule 210 of the Colorado municipal court rules of procedure and section 16-7-207, the defendant makes a knowing, intelligent, and voluntary waiver of the right to court-appointed indigent defense counsel. This section does not prevent the court from making a determination of indigence in advance of an out-of-custody hearing or at the same hearing when the defendant requests appointment of indigent defense counsel.

(2) An in-custody defendant is presumed indigent, and the municipal court shall automatically appoint indigent defense counsel to represent the defendant at and during every in-custody court appearance for cases in which the municipal code allows for a possible sentence of incarceration, regardless of whether the defendant is being held on the municipal charge. The municipal court shall appoint indigent defense counsel pursuant to this section unless, after being fully advised pursuant to rule 210 of the Colorado municipal court rules of procedure and section 16-7-207, the defendant makes a knowing, intelligent, and voluntary waiver of the right to court-

appointed indigent defense counsel. A municipality that authorizes law enforcement to arrest an individual for an alleged municipal code violation shall ensure court-appointed indigent defense counsel is present and available to represent an in-custody defendant at all court appearances consistent with this section and at all court appearances that must occur within the time frames established in section 13-10-111.5 (2). The right to court-appointed indigent defense counsel at the hearing and the requirement that the court conduct proceedings before setting bond as required by section 13-10-111.5 (3) apply to court appearances at which the municipal court is required to set a personal recognizance bond.

(3) If a defendant remains in custody, the appointment of indigent defense counsel continues at least until the defendant is released from custody. If a defendant is released from custody, the defendant may apply for court-appointed indigent defense counsel, and the court shall appoint indigent defense counsel pursuant to subsection (1) of this section if the court determines the defendant is indigent and the municipal code allows for a possible sentence of incarceration.

(3.5) If a defendant is in custody, cannot post bail or is not allowed to post bail, and has a municipal hold but has not yet appeared before the municipal court, indigent defense counsel for the holding municipality may automatically elect to represent the defendant in the municipal case and shall notify the municipal court either verbally or in writing of the representation. If a municipal court receives notice, including from an incarcerated defendant, jail, or correctional facility, that a defendant is in custody who cannot post bail or is not allowed to post bail and who has a municipal hold, the holding municipal court shall appoint indigent defense counsel to represent the defendant while the defendant is in custody.

(4) (a) On and after January 1, 2020, each municipality shall provide independent indigent defense for each indigent defendant charged with a municipal code violation for which there is a possible sentence of incarceration. Independent indigent defense requires, at minimum, that a nonpartisan entity independent of the municipal court and municipal officials oversee or evaluate indigent defense counsel.

(b) (I) Because the office of alternate defense counsel created in section 21-2-101 is an independent system of indigent defense overseen by an independent commission, provision of indigent defense by lawyers evaluated or overseen by the office of alternate defense counsel satisfies the requirement described in subsection (4)(a) of this section.

(II) Because a legal aid clinic at any Colorado law school accredited by the American bar association is an independent system of indigent defense overseen by the dean of the law school with which it is affiliated, the provision or oversight of indigent defense through a legal aid clinic associated with any Colorado law school accredited by the American bar association satisfies the requirement described in subsection (4)(a) of this section.

(c) To satisfy the requirement described in subsection (4)(a) of this section, a municipality that contracts directly with one or more defense attorneys to provide counsel to indigent defendants shall ensure that:

(I) The process to select indigent defense attorneys is transparent and based on merit;

(II) Each contracted indigent defense attorney is periodically evaluated by an independent entity for competency and independence. The municipality shall evaluate each newly hired defense attorney as soon as practicable but no later than one year after the defense attorney is hired. Otherwise, the municipality shall evaluate each defense attorney at least every three years. An independent entity that evaluates defense attorneys pursuant to this subsection (4)(c)(II) shall provide evaluation results and any recommendations for corrective action in writing to the municipality. For the purpose of this subsection (4), "independent entity" means:

(A) The office of alternate defense counsel;

(B) An attorney or a group of attorneys, each of whom has substantial experience practicing criminal defense in Colorado within the preceding five years, so long as the attorney or group of attorneys is not affiliated with the municipality receiving the services, including a municipal judge, prosecutor, or indigent defense attorney; or

(C) A local or regional independent indigent defense commission, as described in subsection (4)(d) of this section.

(III) (A) The contract does not use a fixed or flat-fee payment structure for indigent defense services but instead uses the same payment structure and the same or higher rates that are paid by the state of Colorado to attorneys and other interdisciplinary team members under contract with the office of alternate defense counsel created in section 21-2-101 and that are consistent with chief justice directive 04-04, or any successor chief justice directive.

(B) (Deleted by amendment, L. 2026.)

(C) For the purposes of this subsection (4)(c), "fixed or flat-fee payment structure" means a fee paid as a maximum fixed amount for specified legal services, regardless of the time or effort involved, but does not include an amount paid as a salary or on a salary basis.

(D) Notwithstanding the provisions of this subsection (4)(c)(III), this subsection (4)(c)(III) does not prohibit a contract that provides a flat fee for initial in-custody appearances, so long as the fee results in the same or higher hourly compensation than would be paid by the state of Colorado to attorneys and other interdisciplinary team members under contract with the office of alternate defense counsel created in section 21-2-101.

(d) (I) To satisfy the requirement described in subsection (4)(a) of this section, a municipality may establish a local independent indigent defense commission or coordinate with one or more other municipalities to establish a regional independent indigent defense commission. A local or

regional independent indigent defense commission in existence as of January 1, 2018, is deemed to be in compliance with this subsection (4)(d) and may continue as established.

(II) Each local or regional independent indigent defense commission established pursuant to this subsection (4)(d) must include at least three members, each of whom is selected by the chief municipal judge in consultation with the Colorado criminal defense bar, the office of alternate defense counsel, or the office of the state public defender. Prior to serving on a commission, any commission member who is selected by a chief municipal judge must be approved by the office of alternate defense counsel. The office of alternate defense counsel shall approve such appointed commission members whom the office, in its discretion, deems likely to promote the provision of competent and independent indigent defense.

(III) The terms and procedures for the members of a local or regional independent indigent defense commission established pursuant to this subsection (4)(d) are determined by the municipality or municipalities that established the independent indigent defense commission.

(IV) A local or regional independent indigent defense commission established pursuant to this subsection (4)(d) has the responsibility and exclusive authority to appoint indigent defense counsel for a term of at least one year or more to be served until a successor is appointed. The independent indigent defense commission retains sole authority to supervise the indigent defense counsel and discharge them for cause.

(V) A local or regional independent indigent defense commission established pursuant to this subsection (4)(d), through its ability to supervise, appoint, and discharge the indigent defense counsel pursuant to subsection (4)(d)(IV) of this section, shall ensure that indigent defendants accused of violations of municipal ordinances for which there is a possible sentence of incarceration are represented independently of any political considerations or private interests, that such indigent defendants receive legal services that are commensurate with those available to nonindigent defendants, and that municipal indigent defense attorneys provide representation in accordance with the Colorado rules of professional conduct and the American bar association standards relating to the administration of criminal justice.

(VI) A local or regional independent indigent defense commission established pursuant to this subsection (4)(d) shall not interfere with the discretion, judgment, and zealous advocacy of indigent defense attorneys in specific cases.

(VII) A local or regional independent indigent defense commission established pursuant to this subsection (4)(d) shall make recommendations to its municipality or municipalities regarding the provision of adequate monetary resources to provide legal services to indigent defendants accused of violations of such municipal ordinances.

(VIII) The members of an independent indigent defense commission established pursuant to this subsection (4)(d) shall serve without compensation; except that a municipality that

establishes a local independent indigent defense commission or that coordinates with one or more other municipalities to establish a regional independent indigent defense commission shall reimburse the members of the commission for actual and reasonable expenses incurred in the performance of their duties.

**Source:** **L. 2016:** Entire section added, (HB 16-1309), ch. 366, p. 1540, § 2, effective July 1, 2018. **L. 2018:** (3) added, (SB 18-203), ch. 354, p. 2110, § 1, effective August 8. **L. 2024:** (3)(c)(I) amended and (3)(c)(III) added, (HB 24-1437), ch. 465, p. 3228, § 2, effective July 1, 2025. **L. 2026:** Entire section amended, (HB 26-1134), ch. 77, p. 307, § 6, effective April 27.

**Editor's note:** Section 1 of House Bill 17-1316 changed the effective date of this section from May 1, 2017, to July 1, 2018. (See L. 2017, p. 607).

**Cross references:** For the legislative declaration in HB 16-1309, see section 1 of chapter 366, Session Laws of Colorado 2016. For the legislative declaration in HB 24-1437, see section 1 of chapter 465, Session Laws of Colorado 2024.

### **13-10-115. Fines and costs.**

All fines and costs collected or received by the municipal court shall be reported and paid monthly, or at such other intervals as may be provided by an ordinance of the municipality, to the treasurer of the municipality and deposited in the general fund of the municipality.

**Source:** **L. 69:** p. 276, § 1. **C.R.S. 1963:** § 37-22-13.

### **13-10-115.5. Expungement of juvenile delinquent records - definition.**

(1) (a) For the purposes of this section, "expungement" is defined in section 19-1-103. Upon the entry of an expungement order by a municipal court, the person who is the subject of the expunged record may assert that he or she has no juvenile municipal court record. The person who is the subject of the expunged record may lawfully deny that he or she has ever been arrested, charged, adjudicated, convicted, or sentenced in regard to the expunged case, matter, or charge.

(b) The court, law enforcement agency, and all other agencies shall reply to any inquiry regarding an expunged record that no record exists with respect to the person named in the record, unless information may be shared with the inquiring party pursuant to subsection (3) of this section.

(2) (a) If a juvenile is sentenced by a municipal court, the municipal court, at sentencing, shall provide the juvenile and any respondent parent or guardian with a written advisement of the right to expungement and the time period and process for expunging the record. The municipal court may provide the notice through a municipal diversion program, the city attorney, or a municipal probation program.

(b) Expungement must be effectuated by physically sealing or conspicuously indicating on the face of the record or at the beginning of the computerized file of the record that the record has been designated as expunged.

(c) A prosecuting attorney shall not require as a condition of a plea agreement that a juvenile waive his or her right to expungement pursuant to this section upon the completion of the juvenile's sentence.

(d) Prior to the court ordering any records expunged, the court shall determine whether the juvenile has any actions pending before the municipal court, and, if the court determines that there is an action pending against the juvenile, the court shall stay the petition for expungement proceedings until the resolution of the pending case.

(3) (a) After expungement, basic identification information on the juvenile and a list of any state and local agencies and officials having contact with the juvenile, as they appear in the records, are not open to the public but are available to a prosecuting attorney, local law enforcement agency, the department of human services, the state and municipal judicial departments, and the victim, as defined in section 24-4.1-302 (5); except that such information is not available to an agency of the military forces of the United States.

(b) Notwithstanding any order for expungement pursuant to this section, any record that is ordered expunged is available to any judge and the probation department for use in any future proceeding in which the person whose record was expunged is charged with an offense as either a juvenile or as an adult. A new criminal, delinquency, or municipal charge may not be brought against the juvenile based upon information gained initially or solely from examination of the expunged records.

(c) Notwithstanding an order for expungement pursuant to this section, any criminal justice record of a juvenile who has been charged, adjudicated, or convicted of any offense must be available for use by the juvenile, the juvenile's attorney, a prosecuting attorney, any law enforcement agency, or any agency of the state or municipal judicial departments in any

subsequent criminal investigation or prosecution as a substantive predicate offense conviction or adjudication of record.

(d) Notwithstanding any order for expungement issued pursuant to this section, nothing prevents the prosecuting attorney, including the staff of a prosecuting attorney's office, a victim or witness assistance program, a law enforcement agency, or law enforcement victim assistance program, from discussing with the victim the case, the results of any expungement proceedings, information regarding restitution, and information related to any victim services available to the victim as defined in section 24-4.1-302 (5), but copies of expunged records must not be provided to the victim. The victim may petition the court and request that a copy of the expunged records be provided to the victim. If the court finds that there are compelling reasons for the release, a copy of the expunged records may be released to the victim. If the court orders the release of a copy of the expunged records to the victim, the court must issue a protective order regarding the use of the expunged records.

(e) Notwithstanding any order for expungement issued pursuant to this section, any information, including police affidavits and reports and records related to any prior conviction or adjudication, are available without court order to the persons, government agencies, or entities allowed access to or allowed to exchange such information pursuant to section 19-1-303 for the purposes described therein. Any person who knowingly violates the confidentiality provisions of section 19-1-303 is subject to the penalty in section 19-1-303 (4.7).

(4) (a) In a juvenile municipal case where no natural person is listed as a victim, the municipal court shall order all records in the juvenile municipal case in the custody of the court, and any records related to the case and charges in the custody of any other agency, person, company, or organization, expunged within forty-two days after the conclusion of the case.

(b) In a juvenile municipal case where a natural person is listed as a victim, the municipal court shall send notice on the date the sentence is completed to the prosecuting attorney that all records in a case charging a juvenile with a violation of a municipal code or ordinance, excluding offenses charged pursuant to title 42, all records of the case in the custody of the court, and any records related to the case or charges in the custody of any other agency, person, company, or organization will be expunged forty-two days after completion of the municipal sentence.

(c) If the prosecuting attorney does not file an objection within forty-two days after receipt of the notice from the court pursuant to subsection (4)(b) of this section, the municipal court shall order all records related to the case and charges in the custody of any other agency, person, company, or organization expunged.

(d) If the prosecuting attorney files an objection within forty-two days after receipt of the notice by the court pursuant to subsection (4)(b) of this section, the court shall schedule a hearing on the issue of expungement. The court shall notify the prosecuting attorney of the hearing date.

(e) If a hearing is scheduled pursuant to subsection (4)(d) of this section, the court shall send notice to the last-known address of the juvenile notifying the juvenile of the date of the hearing and of the juvenile's right to appear at the hearing and to present evidence to the court in writing prior to the hearing and in person at the hearing. The notice must indicate that, at the hearing, the court will consider whether the juvenile has been rehabilitated and whether the expungement is in the best interests of the juvenile and the community. The juvenile is not required to appear at the hearing.

(f) At a hearing held pursuant to this subsection (4), the court shall order all records of the case in the custody of the court, and any records related to the case or charges in the custody of any other agency, person, company, or organization, expunged if the juvenile has successfully completed the sentence, or the municipal court case is closed, unless the court finds, by clear and convincing evidence, that the juvenile has not been rehabilitated and that expungement is not in the best interests of the juvenile or the community. If the court enters an order denying expungement of the records, the juvenile shall have the right to appeal to the district court, and all fees related to the appeal must be waived.

(g) The municipal court shall, on the first day of every month, review all juvenile municipal court files for that same month for the previous two years that resulted in a finding of not guilty or guilty or resulted in diversion, deferred adjudication, dismissal, or other disposition or resolution, and enter an expungement order for all juveniles eligible for expungement pursuant to this subsection (4) if the expungement order was not previously made.

(h) Unless a hearing has taken place and findings made pursuant to subsection (4)(f) of this section, the court shall order all records related to the municipal case in the custody of the court, and any records related to the case and charges in the custody of any other agency, person, company, or organization, expunged pursuant to this subsection (4) if the court finds that the sentence has been completed or the municipal court case is closed.

(i) With the victim's consent, or if there is no named victim, the prosecuting attorney may agree at the time of a plea that there will be no objection to expungement upon the completion of the juvenile's sentence. In such a case, the court shall order all records of the case in the custody of the court, and any records related to the case or charges in the custody of any other agency, person, company, or organization, expunged upon completion of the juvenile's sentence. A hearing is not required.

(5) Notwithstanding the provisions of subsection (4) of this section, a municipal court shall not expunge the record of a person who is charged, adjudicated, or convicted of any traffic offense or traffic infraction pursuant to title 42 or a corresponding municipal traffic code.

(6) Upon the entry of an order expunging a record pursuant to this section, the court shall order, in writing, the expungement of all case records in the custody of the court and any records related to the case and charges in the custody of any other agency, person, company, or



organization. The court may order expunged any records, but, at a minimum, the following records must be expunged pursuant to every expungement order:

- (a) All court records;
- (b) All records retained within the office of the prosecuting attorney;
- (c) All probation and parole records;
- (d) All law enforcement records;
- (e) All division of youth services records and jail records if the juvenile was detained in a division of youth services facility or in a jail;
- (f) All department of human services records; and
- (g) References to the municipal case or charge contained in the school records.

(7) (a) When an expungement order is issued pursuant to this section, the court shall send a copy of the order to the juvenile, the juvenile's last attorney of record, the prosecuting attorney, the law enforcement agency or agencies that investigated the case, and the Colorado bureau of investigation directing the entity to expunge its records within thirty-five days after the receipt of the order.

(b) The court shall also send a copy of the order to the municipal probation department if the juvenile was placed on municipal probation at any point during the case, the division of youth services if the juvenile was sentenced or ordered to any period of detention in a division of youth services facility by the municipal court, and the jail if the juvenile was held in or sentenced to time in a jail by the municipal court, directing the entity to expunge the records in its custody as soon as practicable but no later than ninety days after the receipt of the order.

(c) The juvenile, the juvenile's attorney, or the juvenile's parent or legal guardian may provide to the court, within seven days after the completion of the sentence or the case being closed, a list of all agency custodians that may have custody of any records subject to the expungement order. At no cost to the juvenile, the court shall send a copy of the expungement order to the agency, person, company, or organization, as requested, directing the entity to expunge its records within thirty-five days. Additionally, the juvenile or his or her parent or guardian may also provide a copy of the order to any other custodian of records subject to the order.

(d) Each entity described in this subsection (7) that is in possession of such records shall expunge the records in its custody as directed by the order.

(e) The person who is the subject of records expunged pursuant to this section may petition the court to permit inspection of the records held by persons named in the order, and the court may so order.

(8) Any agency, person, company, or organization that violates this section and knew that the records in question were subject to an expungement order may be subject to criminal and civil contempt of court and may be punished by a fine.

(9) Employers; educational institutions; landlords; and state and local government agencies, officials, and employees shall not, in any application or interview or in any other way, require an applicant to disclose any information contained in expunged records. In answer to any question concerning arrest or juvenile and criminal records information that has been expunged, an applicant need not include a reference to or information concerning the expunged information and may state that no record exists. An application may not be denied solely because of the applicant's refusal to disclose records or information that has been expunged.

(10) Nothing in this section authorizes the physical destruction of any juvenile or criminal justice record.

**Source: L. 2019:** Entire section added, (HB 19-1335), ch. 304, p. 2785, § 2, effective May 28.  
**L. 2021:** (1)(a) amended, (SB 21-059), ch. 136, p. 710, § 12, effective October 1.

### **13-10-116. Appeals.**

(1) Appeals may be taken by any defendant from any judgment of a municipal court which is not a qualified municipal court of record to the county court of the county in which such municipal court is located, and the cause shall be tried de novo in the appellate court.

(2) Appeals taken from judgments of a qualified municipal court of record shall be made to the district court of the county in which the qualified municipal court of record is located. The practice and procedure in such case shall be the same as provided by section 13-6-310 and applicable rules of procedure for the appeal of misdemeanor convictions from the county court to the district court, and the appeal procedures set forth in this article shall not apply to such case.

(3) No municipality shall have any right to appeal from any judgment of a municipal court, not of record, concerning a violation of any charter provision or ordinance, but this subsection (3) shall not be construed to prevent a municipality from maintaining any action to construe, interpret, or determine the validity of any ordinance or charter provision involved in such proceeding. Nothing in this subsection (3) shall be construed to prevent a municipality from appealing any question of law arising from a proceeding in a qualified municipal court of record.

(4) If, in any municipal court, a defendant is denied a jury trial to which he is entitled under section 13-10-114, he is entitled to a trial by jury under section 16-10-109, C.R.S., and to a trial de novo upon application therefor on appeal.

(5) Notwithstanding any provision of law to the contrary, if confinement of a child is ordered pursuant to a contempt conviction as set forth in section 13-10-113 (4), appeal shall be to the juvenile court for the county in which the municipal court is located. Such appeals shall be advanced on the juvenile court's docket to the earliest possible date. Procedures applicable to such appeals shall be in the same manner as provided in subsections (1) and (2) of this section for appeals to the county court.

**Source:** L. 69: p. 276, § 1. C.R.S. 1963: § 37-22-14. L. 70: p. 151, § 4. L. 72: p. 267, § 3. L. 77: (3) amended, p. 794, § 4, effective June 3. L. 81: (5) added, p. 882, § 3, effective July 1. L. 85: (1), (2), and (5) amended, p. 570, § 6, effective November 14, 1986.

## ANNOTATION

I. General Consideration.

II. Appeals From Municipal Courts.

III. Appeals From Municipal Courts of Record.

### I. GENERAL CONSIDERATION.

**Law reviews.** For note, "Colorado Appellate Procedure", see 40 U. Colo. L. Rev. 551 (1968).

**Annotator's note.** Since § 13-10-116 is similar to repealed § 139-36-2, CRS 53 and § 139-36-2, C.R.S. 1963, relevant cases construing those provisions have been included in the annotations to this section.

**Municipal courts may take judicial notice of the municipal ordinances that fall within their jurisdiction.** City of Pueblo v. Murphy, 189 Colo. 559, 542 P.2d 1288 (1975).

A court which assumes the trial duties of the municipal court in a trial de novo appeal may take judicial notice of the same ordinances which the lower court does. City

of Pueblo v. Murphy, 189 Colo. 559, 542 P.2d 1288 (1975).

**A county court may take judicial notice of municipal ordinances** when an appeal is taken from the municipal court to the county court for a trial de novo. City of Pueblo v. Murphy, 189 Colo. 559, 542 P.2d 1288 (1975).

The appellate court in such a circumstance stands in the same position and has the same duties as the trial court. As a result, the county court may take judicial notice of the ordinances which were before the municipal court. City of Pueblo v. Murphy, 189 Colo. 559, 542 P.2d 1288 (1975).

**Courts of general jurisdiction may not take judicial notice of the ordinances of municipal corporations in civil or criminal cases.** City of Pueblo v. Murphy, 189 Colo. 559, 542 P.2d 1288 (1975).

**When district court may take judicial notice of municipal ordinance.** Where a

municipal ordinance was properly the subject of judicial notice in the municipal court, and the case is then before a district court on appeal on the record, the district court may also take judicial notice of the municipal ordinance. *Chavez v. People*, 193 Colo. 50, 561 P.2d 1270 (1977).

**An executed sentence in municipal court does not necessarily constitute a waiver of the right of review** to have the taint cleared on the name of the person. Where he has involuntarily complied with the sanction imposed by the trial court, he nevertheless has the opportunity to have undone the dishonor and discredit of a conviction. *City of Pueblo v. Clemmer*, 150 Colo. 546, 375 P.2d 99 (1962).

**A municipality cannot appeal acquittal of a violation of an ordinance.** Under this section a judgment finding accused not guilty of a traffic violation is a judgment on the merits and concludes the litigation between the parties, there being no right in the municipality to appeal from such judgment. *People ex rel. Town of Cherry Hills Vill. v. Cervi*, 144 Colo. 338, 356 P.2d 241 (1960).

**Appellate procedure must be followed before defendant can seek habeas corpus.** Defendant, a 14 year old, who was found guilty of reckless driving and sentenced to 90 days in jail, was not entitled to habeas corpus relief on the ground of alleged violation of his right to counsel where he did not appeal to county court where adequate remedy of trial de novo was available, but instead proceeded immediately by way of

habeas corpus. *Garrett v. Knight*, 173 Colo. 419, 480 P.2d 569 (1971).

**Applied** in *Fuller v. Colo. Dept. of Rev.*, 43 Colo. App. 404, 610 P.2d 1078 (1979); *People v. Malacara*, 199 Colo. 243, 606 P.2d 1300 (1980).

## **II. APPEALS FROM MUNICIPAL COURTS.**

**This section provides that appeals from a municipal or police court may be taken to the county court** of the county where the municipal or police court is located. *City of Central v. Axton*, 159 Colo. 69, 410 P.2d 173 (1966).

**County court sitting as appellate court in trial de novo has same duties as trial court.** *Rainwater v. County Court*, 43 Colo. App. 477, 604 P.2d 1195 (1979).

**Trial de novo is not an entirely new trial**, but is, instead, a continuation of the original trial in the form of an appeal. *Rainwater v. County Court*, 43 Colo. App. 477, 604 P.2d 1195 (1979).

**"Any defendant" may appeal "any judgment"**. When he does appeal in compliance with the procedure set forth in this article, he is entitled to a trial de novo. *City of Pueblo v. Trujillo*, 150 Colo. 549, 374 P.2d 863 (1962).

**This section means that a defendant starts afresh in the county court**, i.e., if he resolves to contest the charge against him in the county court, he may have a trial de novo there without regard to what took place in the municipal court. *City of Pueblo v.*

Trujillo, 150 Colo. 549, 374 P.2d 863 (1962).

**Generally, municipal judges are untrained in the law.** The general assembly and the courts recognize the fact that the judges and magistrates who preside over inferior tribunals are frequently untrained and unskilled in the law, and that they conduct courts not of record, in which the proceedings are apt to be summary in nature. They also recognize that, because of frequent shortcomings in training in the law, safeguards afforded defendants may be curtailed and, by reason thereof, defendants may not be properly advised of their rights in the premises or adequately warned of the consequences of a plea. City of Pueblo v. Trujillo, 150 Colo. 549, 374 P.2d 863 (1962).

### **III. APPEALS FROM MUNICIPAL COURTS OF RECORD.**

**If a municipal court is a court of record, the cause is heard on the record,** and the practice and procedure is to be the same as provided for in regard to the appeal of misdemeanor convictions from county courts. Hylton v. City of Colo. Springs, 32 Colo. App. 9, 505 P.2d 26 (1973).

**Remanded or tried de novo by the district court.** These sections require a

district court either to review a decision of a municipal court of record on the record, to remand the case for a new trial with instructions, or to direct that trial de novo be had before the district court. In the instant case, the district court adopted the first alternative, and therefore, the question is whether the court properly exercised the appellate jurisdiction granted to it under the sections noted above. People v. Anderson, 177 Colo. 84, 492 P.2d 844 (1972).

**The function of a district court in acting as an appellate court is the same** whether the case originates in a municipal court of record or a county court. People v. Anderson, 177 Colo. 84, 492 P.2d 844 (1972).

**Party seeking review of a municipal court judgment is entitled to file a petition for rehearing** unless the district court by express order dispenses with the filing of the petition. City of Aurora v. Rhodes, 689 P.2d 603 (Colo. 1984).

**Because appellant's conviction originated in a municipal court of record,** appellant had 30 days following the judgment of conviction to file the notice of appeal pursuant to this section and its implementing rules. Normandin v. Town of Parachute, 91 P.3d 383 (Colo. 2004).

#### **13-10-117. Time - docket fee - bond.**

Appeals may be taken within fourteen days after entry of any judgment of a municipal court. No appeal shall be allowed until the appellant has paid to the clerk of the municipal court one dollar and fifty cents as a fee for preparing the transcript of record on appeal. If the municipal court is a court of record, the clerk of the municipal court is entitled to the same additional fees for preparing the record, or portions thereof designated, as is the clerk of the county court on the

appeal of misdemeanors, but said fees shall be refunded to the defendant if the judgment is set aside on appeal. No stay of execution shall be granted until the appellant has executed an approved bond as provided in sections 13-10-120 and 13-10-121.

**Source:** L. 69: p. 276, § 1. C.R.S. 1963: § 37-22-15. L. 2012: Entire section amended, (SB 12-175), ch. 208, p. 824, § 5, effective July 1.

#### ANNOTATION

**One appealing from a judgment of a municipal court must file an appeal bond as directed by this section.** City of Pueblo

v. Trujillo, 150 Colo. 549, 374 P.2d 863 (1962) (decided under repealed § 139-36-4, CRS 53).

#### **13-10-118. Notice - scope.**

(1) Appeals may be taken by filing with the clerk of the municipal court a notice of appeal, in duplicate. The notice of appeal shall set forth the title of the case; the name and address of the appellant and appellant's attorney, if any; identification of the offense or violation of which the appellant was convicted; a statement of the judgment, including its date and any fines or sentences imposed; and a statement that the appellant appeals from the judgment. The notice of appeal shall be signed by the appellant or his attorney.

(2) The taking of an appeal shall not permit the retrial of any matter of which the appellant has been acquitted, or any conjoined charge from the conviction of which he does not seek to appeal.

**Source:** L. 69: p. 277, § 1. C.R.S. 1963: § 37-22-16.

#### ANNOTATION

**Substantial compliance is appropriate standard for notice of appeal.** Pueblo v.

County Court, 761 P.2d 275 (Colo. App. 1988).

**13-10-119. Certification to appellate court.**

Upon payment of the fee provided in section 13-10-117, and filing of notice as provided in section 13-10-118, the original papers in the municipal court file, together with a transcript of the record of the municipal court, and a duplicate notice of appeal shall be certified to the appropriate appellate court pursuant to section 13-10-116 by the municipal court.

**Source:** L. 69: p. 277, § 1. C.R.S. 1963: § 37-22-17. L. 81: Entire section amended, p. 883, § 4, effective July 1.

**13-10-120. Bond - approval of sureties - forfeitures.**

(1) When an appellant desires to stay the judgment of the municipal court, he shall execute a bond to the municipality in which the municipal court is located, in such penal sum as may be fixed by the municipal court, and in such form and with sureties qualified as the municipality may, by ordinance, designate.

(2) Sureties shall be approved by a judge of the municipal court from which the appeal is taken.

(3) The amount of bond shall not exceed double the amount of the judgment for fines and costs, plus an amount commensurate with any jail sentence, which latter amount shall be not less than fifty dollars nor more than a sum equal to two dollars for each day of jail sentence imposed.

**Source:** L. 69: p. 277, § 1. C.R.S. 1963: § 37-22-18.

**13-10-121. Conditions of bond - forfeiture - release.**

(1) The bond shall be conditioned that the appellant will duly prosecute such appeal and satisfy any judgment that may be rendered upon trial of the case in the appropriate appellate court to which appeal is taken pursuant to section 13-10-116 and that the appellant will surrender himself in satisfaction of such judgment if that is required.

(2) If the bond is forfeited, the appellate court, upon motion of the municipality, shall enter judgment against the appellant and sureties on the bond for the amount of such bond. The appellate court, with the consent of the municipality, shall enter judgment against the appellant and sureties on the bond for the amount of such bond. The appellate court, with the consent of the municipality, may set aside or modify the judgment.

(3) Any municipality may provide by ordinance such other bond terms and conditions as are not inconsistent with the provisions of this article. The filing of such bond or any notice thereof of record shall not constitute any lien against any property of the sureties.

(4) When the condition of the bond has been satisfied or the forfeiture thereof set aside or remitted, the municipal court shall exonerate the obligors and release the bond. At any time before final judgment in the appellate court, a surety may be exonerated by a deposit of cash in the amount of the bond or by timely surrender of the appellant into custody.

**Source:** L. 69: p. 277, § 1. C.R.S. 1963: § 37-22-19. L. 81: (1), (2), and (4) amended, p. 883, § 5, effective July 1.

#### **13-10-122. Docket fee - dismissal.**

The appellant shall pay a docket fee as provided by law to the clerk of the appellate court, within fourteen days from the date he or she ordered the transcript of record. If he or she does not do so, his or her appeal may be dismissed on motion of the municipality.

**Source:** L. 69: p. 278, § 1. C.R.S. 1963: § 37-22-20. L. 81: Entire section amended, p. 883, § 6, effective July 1. L. 2012: Entire section amended, (SB 12-175), ch. 208, p. 824, § 6, effective July 1.

#### **13-10-123. Procedendo on dismissal.**

Upon dismissal of an appeal, the clerk of the appellate court shall at once issue a procedendo to the municipal court from the judgment on which appeal was taken, to the amount of the judgment and all costs incurred before the municipal court.

**Source:** L. 69: p. 278, § 1. C.R.S. 1963: § 37-22-21. L. 81: Entire section amended, p. 883, § 7, effective July 1.

#### **13-10-124. Action on bond in name of municipality.**

Action may be instituted upon any bond under this article in the name of the municipality in whose favor it is executed.



**Source: L. 69:** p. 278, § 1. **C.R.S. 1963:** § 37-22-22.

### **13-10-125. Judgment.**

Upon trial de novo of the case on appeal to the appellate court, if a jury has been demanded, the duties of the jurors shall be to determine only whether the appellant has violated the ordinance charged. Upon a verdict of guilty, the judge shall then hear and consider any material facts in mitigation or aggravation of the offense and shall impose a penalty as provided by ordinance.

**Source: L. 69:** p. 278, § 1. **C.R.S. 1963:** § 37-22-23. **L. 81:** Entire section amended, p. 884, § 8, effective July 1.

### **ANNOTATION**

**County judge imposes penalty as required by law.** Since on appeal to county court, if a jury sits, this section requires that the jury determine only whether the ordinance has been violated, the trial judge has the responsibility of imposing "a penalty as provided by law". *Hylton v. City of Colo. Springs*, 32 Colo. App. 9, 505 P.2d 26 (1973) (decided under repealed § 139-36-17, C.R.S. 1963).

**Under this section, "law" can be none other than municipal ordinance.** *Hylton v. City of Colo. Springs*, 32 Colo. App. 9, 505 P.2d 26 (1973).

**Judgment is a county court judgment.** Whether action and penalties are characterized as criminal, quasi-criminal, or civil, a county court is empowered by statute to impose a sentence within the limits provided by the municipal ordinance, but it is nevertheless a county court judgment. *Hylton v. City of Colo. Springs*, 32 Colo. App. 9, 505 P.2d 26 (1973).

**Municipal court has no power to issue execution on a county court judgment,** as the county court must issue execution on its own judgment. *Hylton v. City of Colo. Springs*, 32 Colo. App. 9, 505 P.2d 26 (1973).

### **13-10-126. Prostitution offender program authorized - reports.**

(1) Subject to the provisions of this section, a municipal or county court, or multiple municipal or county courts, may create and administer a program for certain persons who are

charged with soliciting for prostitution, as described in section 18-7-202, C.R.S., patronizing a prostitute, as described in section 18-7-205, C.R.S., or any corresponding municipal code or ordinance.

(2) A program created and administered by a municipal or county court or multiple municipal or county courts pursuant to subsection (1) of this section must:

(a) Permit enrollment in the program only by an offender who either:

(I) (A) Has no prior convictions or any charges pending for any felony; for any offense described in section 18-3-305 or 18-3-306, in part 4 or 5 of article 3 of title 18, in part 3, 4, 6, 7, or 8 of article 6 of title 18, in section 18-7-203 or 18-7-206, or in part 3, 4, or 5 of article 7 of title 18; or for any offense committed in another state that would constitute such an offense if committed in this state; and

(B) Has been offered and has agreed to a deferred sentencing arrangement as described in subsection (3) of this section; or

(II) (A) Has at least one prior conviction for any offense described in section 18-7-201, 18-7-202, 18-7-204, 18-7-205, or 18-7-207, C.R.S.; or for any offense committed in another state that would constitute such an offense if committed in this state; and

(B) Has been sentenced by a court to complete the program as part of the penalty imposed for a subsequent conviction for soliciting for prostitution, as described in section 18-7-202, C.R.S., patronizing a prostitute, as described in section 18-7-205, C.R.S., or any corresponding municipal code or ordinance.

(b) Permit the court or courts to require each offender who enrolls in the program to pay an administration fee, which fee the court or courts shall use to pay the costs of administering the program;

(c) To the extent practicable, be available to offenders, courts, and prosecutors of other jurisdictions; and

(d) Be administered by the court or courts with assistance from one or more municipal prosecutor's offices, one or more district attorney's offices, one or more state or local law enforcement agencies, and one or more nonprofit corporations, as defined in section 7-121-401, C.R.S., which nonprofit corporations have a stated mission to reduce human trafficking or prostitution. The court or courts are encouraged to consult, in addition to the aforementioned entities, recognized criminology experts and mental health professionals.

(3) (a) Enrollment in the program shall be offered to each offender at the sole discretion of the prosecuting attorney in each offender's case.

(b) If the prosecuting attorney offers enrollment in the program to an offender as a condition of a plea bargain agreement as described in subparagraph (I) of paragraph (a) of subsection (2) of this section, the agreement shall include at a minimum the following stipulations:

(I) The offender shall enter a plea of guilty to the prostitution-related offense or offenses with which he or she is charged;

(II) The court shall defer judgment and sentencing of the offender for a period not to exceed two years, as described in section 18-1.3-102 (1), C.R.S., during which time the offender shall enroll in and complete the program and may be required to pay an administration fee, as described in paragraph (b) of subsection (2) of this section;

(III) Upon the offender's satisfactory completion of the program, the court shall dismiss with prejudice the prostitution-related charge or charges;

(IV) The offender shall waive his or her right to a speedy trial; and

(V) If the offender fails to complete the program or fails to satisfy any other condition of the plea bargain agreement, he or she shall be sentenced for the offenses to which he or she has pleaded guilty and shall be required to pay a fine of not less than two thousand five hundred dollars and not more than five thousand dollars, or the maximum amount available to a municipal or county court, in the discretion of the court, in addition to any other sentence imposed by the court.

(c) If the prosecuting attorney offers enrollment in the program to an offender pursuant to subparagraph (II) of paragraph (a) of subsection (2) of this section and the offender fails to complete the program, the offender shall be required to pay a fine of not less than two thousand five hundred dollars and not more than five thousand dollars, or the maximum amount available to the municipal or county court, in the discretion of the court, in addition to any other sentence imposed by the court.

(4) If a municipal or county court or multiple municipal or county courts create and administer a program pursuant to subsection (1) of this section, the court or courts shall prepare and submit a report to the judiciary committees of the house of representatives and senate, or any successor committees, concerning the effectiveness of the program. The court or courts shall submit the report not less than two years nor more than three years after the creation of the program. The report shall include information concerning:

(a) The cost of the program and the extent to which the cost is mitigated by the imposition of the fees described in paragraph (b) of subsection (2) of this section; and

(b) The effectiveness of the program in reducing recidivism among persons who commit prostitution-related offenses.

**Source: L. 2011:** Entire section added, (SB 11-085), ch. 257, p. 1126, § 2, effective August 10. **L. 2013:** (2)(a)(II)(A) amended, (HB 13-1166), ch. 59, p. 195, § 3, effective August 7. **L. 2016:** IP(2) and (2)(a)(I)(A) amended, (SB 16-146), ch. 230, p. 914, § 5, effective July 1. **L. 2023:** (2)(a)(I)(A) amended, (HB 23-1293), ch. 298, p. 1782, § 2, effective October 1.

**Cross references:** For the legislative declaration in the 2011 act adding this section, see section 1 of chapter 257, Session Laws of Colorado 2011.

### **13-10-127. Failure to appear.**

(1) A person's failure to appear in person or by counsel at the place and time specified in the summons or summons and complaint, or failure to appear in person or by counsel on any subsequent date, served upon the person must not form the basis of a municipal criminal charge against the person.

(2) This section applies to any municipal ordinance premised on a person's failure to appear, regardless of whether a municipality refers to this situation as a failure to appear, contempt of court for a failure to appear, or by any other name.

(3) Nothing in this section limits a municipal court's inherent judicial contempt power or prohibits a municipal judge from issuing a bench warrant upon a person's failure to appear or from considering a person's failure to appear for the purpose of setting an appropriate bond at a subsequent bond hearing.

**Source: L. 2025:** Entire section added, (SB 25-062), ch. 82, p. 341, § 2, effective April 17.

## **CIVIL PROTECTION ORDERS**

### **ARTICLE 14**

#### **Civil Protection Orders**

|              |                                                                     |              |                                                    |
|--------------|---------------------------------------------------------------------|--------------|----------------------------------------------------|
| 13-14-100.2. | Legislative declaration.                                            | 13-14-103.   | Emergency protection orders.                       |
| 13-14-101.   | Definitions.                                                        | 13-14-104.   | Foreign protection orders.<br>(Repealed)           |
| 13-14-102.   | Civil protection orders -<br>legislative declaration.<br>(Repealed) | 13-14-104.5. | Procedure for temporary civil<br>protection order. |

|              |                                                                              |            |                                                                               |
|--------------|------------------------------------------------------------------------------|------------|-------------------------------------------------------------------------------|
| 13-14-105.   | Provisions relating to civil protection orders.                              | 13-14-108. | Modification and termination of civil protection orders.                      |
| 13-14-105.5. | Civil protection orders - prohibition on possessing or purchasing a firearm. | 13-14-109. | Fees and costs.                                                               |
| 13-14-106.   | Procedure for permanent civil protection orders.                             | 13-14-110. | Foreign protection orders.                                                    |
| 13-14-107.   | Enforcement of protection order - duties of peace officer.                   | 13-14-111. | Transfer of wireless telephone service in domestic abuse cases - definitions. |

### **13-14-100.2. Legislative declaration.**

(1) The general assembly hereby finds that the issuance and enforcement of protection orders are of paramount importance in the state of Colorado because protection orders promote safety, reduce violence and other types of abuse, and prevent serious harm and death. In order to improve the public's access to protection orders and to ensure careful judicial consideration of requests and effective law enforcement, there shall be two processes for obtaining protection orders within the state of Colorado, a simplified civil process and a mandatory criminal process.

(2) The general assembly further finds and declares that domestic abuse is not limited to physical threats of violence and harm but also includes domestic violence, mental and emotional abuse, financial control, document control, property control, and other types of control that make a victim more likely to return to an abuser due to fear of retaliation or inability to meet basic needs. Many victims of domestic abuse, particularly victims of domestic violence, are unable to access the resources necessary to seek lasting safety options. Victims need additional provisions in protection orders so that they can meet their immediate needs of food, shelter, transportation, medical care, and childcare for their appearance at protection order hearings. These needs may exist not only in cases that may end in dissolution of marriage but also in other circumstances, including cases in which reconciliation may occur.

(3) Additionally, the general assembly finds and declares that sexual violence affects Coloradans of all ages, backgrounds, and circumstances and is one of the most underreported of all crimes. Sexual violence may occur in any type of relationship; however, the majority of sexual violence is perpetrated by someone whom the victim knows. Sexual violence can occur in person, online, or through technology and may be physical, verbal, written, pictorial, or visual. Victims of sexual violence who do not report the crime, as well as victims who do report but whose case is not prosecuted, still need and deserve protection from future interactions with the

perpetrator, as many victims experience long-lasting physical and emotional trauma from unwanted contact with the perpetrator.

(4) Finally, the general assembly finds and declares that stalking is a dangerous, high-risk crime that can exist in the context of domestic violence and may escalate over time, and that sometimes leads to sexual violence or homicide. Countless youth and adults in Colorado have faced the fear, isolation, and danger of being victims of stalking, and many of these incidents go unreported and are not prosecuted. While stalking behaviors may appear innocuous to outside observers, the victims often endure intense physical and emotional distress that affects all aspects of their lives and are more likely than others to express anxiety, depression, and social dysfunction.

**Source: L. 2013:** Entire section added with relocations, (HB 13-1259), ch. 218, p. 1001, § 5, effective July 1. **L. 2024:** (2) to (4) amended, (HB 24-1122), ch. 330, p. 2229, § 1, effective January 1, 2025.

**Editor's note:** This section is similar to former § 13-14-102 (1) as it existed prior to 2013.

### **13-14-101. Definitions.**

For purposes of this article 14, unless the context otherwise requires:

(1) "Abuse of the elderly or of an at-risk adult" means mistreatment of a person who is sixty years of age or older or who is an at-risk adult as defined in section 26-3.1-101 (1.5), including but not limited to repeated acts that:

- (a) Constitute verbal threats or assaults;
- (b) Constitute verbal harassment;
- (c) Result in the inappropriate use or the threat of inappropriate use of medications;
- (d) Result in the inappropriate use of physical or chemical restraints;
- (e) Result in the misuse of power or authority granted to a person through a power of attorney or by a court in a guardianship or conservatorship proceeding that results in unreasonable confinement or restriction of liberty; or
- (f) Constitute threats or acts of violence against, or the taking, transferring, concealing, harming, or disposing of, an animal owned, possessed, leased, kept, or held by the elderly or at-

risk adult, which threats or acts are intended to coerce, control, punish, intimidate, or exact revenge upon the elderly or at-risk adult.

(1.5) "Adult" means a person eighteen years of age or older.

(1.6) "Coercion" means compelling a person by force, threat of force, or intimidation to engage in conduct from which the person has the right or privilege to abstain, or to abstain from conduct in which the person has the right or privilege to engage.

(1.7) "Contact" or "contacting" means any interaction or communication with another person, directly or indirectly through a third party, and electronic and digital forms of communication, including but not limited to interaction or communication through social media.

(2) "Domestic abuse" means an act, attempted act, or threatened act of violence, stalking, harassment, or coercion that is committed by a person against another person to whom the actor is currently or was formerly related or with whom the actor is living or has lived in the same domicile. "Domestic abuse" may also include an act, attempted act, or threatened act of violence against:

(a) The minor children of either of the parties; or

(b) An animal owned, possessed, leased, kept, or held by either of the parties or by a minor child of either of the parties, which threat, act, or attempted act is intended to coerce, control, punish, intimidate, or exact revenge upon either of the parties or a minor child of either of the parties.

(2.1) "Domestic violence", commonly known as "intimate partner violence", means a pattern of violent behavior or an act, attempted act, or threat of violence, stalking, harassment, or coercion that is committed by a person against another person with whom the actor is involved or has been involved in an intimate relationship. A sexual relationship may be an indicator of an intimate relationship but is never a necessary condition for finding an intimate relationship.

(2.2) "Minor child" means a person under eighteen years of age.

(2.3) "Protected person" means the person or persons identified in a protection order as the person or persons for whose benefit the protection order was issued.

(2.4) (a) "Protection order" means an order that prohibits the restrained person from contacting, harassing, injuring, intimidating, molesting, threatening, touching, stalking, or committing sexual violence through sexually assaulting or abusing a protected person or from entering or remaining on premises, or from coming within a specified distance of a protected person or premises, or from taking, transferring, concealing, harming, disposing of or threatening harm to an animal owned, possessed, leased, kept, or held by a protected person, or any other provision to protect the protected person from the risk or threat of physical harm or the threat of

psychological or emotional harm that is issued by a court of this state or a municipal court and that is issued pursuant to:

(I) This article 14, section 18-1-1001, 19-2.5-607, or 19-4-111, or rule 365 of the Colorado rules of county court civil procedure;

(II) Sections 14-4-101 to 14-4-105, C.R.S., section 14-10-107, C.R.S., section 14-10-108, C.R.S., or section 19-3-316, C.R.S., as those sections existed prior to July 1, 2004;

(III) An order issued as part of the proceedings concerning a criminal municipal ordinance violation; or

(IV) Any other order of a court that prohibits a person from contacting, harassing, injuring, intimidating, molesting, threatening, touching, stalking, or sexually assaulting or abusing a person, or from entering or remaining on premises, or from coming within a specified distance of a protected person or premises, or from taking, transferring, concealing, harming, disposing of or threatening to harm an animal owned, possessed, leased, kept, or held by a person, or from entering or remaining on premises, or from coming within a specified distance of a protected person or premises.

(b) For purposes of this article only, "protection order" includes any order that amends, modifies, supplements, or supersedes the initial protection order. "Protection order" also includes any emergency protection order, as described in section 13-14-103, any restraining order entered prior to July 1, 2003, and any foreign protection order as defined in section 13-14-110.

(2.8) "Restrained person" means a person identified in a protection order as a person prohibited from doing a specified act or acts.

(2.9) "Sexual violence" means an unwanted or nonconsensual sexual behavior, act or attempted act, or threatened act, including, but not limited to, unlawful sexual behavior, as described in section 16-11.7-102 (3), by a person against another person, regardless of the relationship between the actor and the petitioner.

(3) "Stalking" means any act, attempted act, or threatened act of stalking as described in section 18-3-602, C.R.S.

**Source: L. 99:** Entire article added, p. 495, § 1, effective July 1. **L. 2000:** (3) amended, p. 1012, § 3, effective July 1. **L. 2003:** IP(1) amended and (2.3), (2.4), and (2.8) added, p. 995, § 1, effective July 1. **L. 2004:** (1.5) and (2.2) added and (2.4) amended, p. 544, § 1, effective July 1. **L. 2010:** (1)(e), (2), IP(2.4)(a), and (2.4)(a)(IV) amended and (1)(f) added, (SB 10-080), ch. 78, p. 264, § 1, effective July 1; (3) amended, (HB 10-1233), ch. 88, p. 295, § 3, effective August 11. **L. 2013:** (1.7) and (2.9) added and (2), IP(2.4)(a), (2.4)(a)(IV), (2.4)(b), and (3) amended, (HB 13-1259), ch. 218, p. 1002, § 6, effective July 1. **L. 2020:** IP and IP(1) amended, (HB 20-1302),



ch. 265, p. 1274, § 7, effective September 14. **L. 2021:** (2.4)(a)(I) amended, (SB 21-059), ch. 136, p. 710, § 13, effective October 1. **L. 2024:** (1.6) and (2.1) added and IP(2), IP(2.4)(a), and (2.9) amended, (HB 24-1122), ch. 330, p. 2230, § 2, effective January 1, 2025.

## ANNOTATION

**Law reviews.** For article, "Statutes Consolidate Civil Restraining Orders", see 28 Colo. Law. 39 (Oct. 1999). For article, "Crisis Intervention to Prevent Elder Abuse: Emergency Guardianships and Other Legal Procedures", see 33 Colo. Law. 91 (July

2004). For article, "Practical Solutions to Elder Financial Abuse and Fiduciary Theft", see 41 Colo. Law. 61 (Dec. 2012). For article, "Animal-Related Legal Disputes: Litigation, ADR, and Court Appointments", see 42 Colo. Law. 43 (Dec. 2013).

### 13-14-102. Civil protection orders - legislative declaration. (Repealed)

**Source:** **L. 99:** Entire article added, p. 496, § 1, effective July 1. **L. 2000:** IP(1), (5), and (6) amended, (2.5) added, and (19) repealed, pp. 1012, 1013, §§ 4, 5, 6, effective July 1; (16) and (17) amended, p. 1538, § 5, effective July 1. **L. 2002:** (4) amended, p. 323, § 1, effective April 19; (9)(b) amended and (17.5) added, p. 491, § 1, effective July 1; (11) amended and (21) added, p. 1143, § 1, effective July 1. **L. 2003:** IP(1), (1)(c), (2), (3) to (9), (12), (13), (14), IP(15), (17.5), (18), and (21) amended, p. 996, § 2, effective July 1. **L. 2004:** (1), (5), (7), (8)(b), (8)(c), (9), (10), IP(15), (15)(e), and (20) amended and (1.5), (3.3), and (3.7) added, p. 545, § 2, effective July 1; (17.5)(b)(II) amended, p. 74, § 1, effective September 1. **L. 2007:** (1) amended and (15)(g) added, pp. 940, 941, §§ 1, 2, effective July 1. **L. 2010:** (15)(f.2) and (15)(f.4) added, (SB 10-080), ch. 78, p. 265, § 2, effective July 1; (17.5)(e)(III) amended, (HB 10-1422), ch. 419, p. 2068, § 22, effective August 11; (21)(a) and (21)(b) amended, (HB 10-1233), ch. 88, p. 296, § 4, effective August 11. **L. 2013:** (22) added, (SB 13-197), ch. 366, p. 2130, § 3, effective June 5; entire section repealed, (HB 13-1259), ch. 218, p. 1004, § 7, effective July 1.

### 13-14-103. Emergency protection orders.

(1) (a) Any county or district court shall have the authority to enter an emergency protection order pursuant to the provisions of this subsection (1).

(b) An emergency protection order issued pursuant to this subsection (1) may include:

(I) Restraining a party from contacting, harassing, injuring, intimidating, threatening, molesting, touching, stalking, sexually assaulting or abusing any other party, a minor child of

either of the parties, or a minor child who is in danger in the reasonably foreseeable future of being a victim of an unlawful sexual offense or domestic abuse;

(II) Excluding a party from the family home or from the home of another party upon a showing that physical or emotional harm would otherwise result;

(III) Awarding temporary care and control of any minor child of a party involved;

(IV) Enjoining an individual from contacting a minor child at school, at work, or wherever he or she may be found;

(V) Restraining a party from molesting, injuring, killing, taking, transferring, encumbering, concealing, disposing of or threatening harm to an animal owned, possessed, leased, kept, or held by any other party, a minor child of either of the parties, or an elderly or at-risk adult; or

(VI) Specifying arrangements for possession and care of an animal owned, possessed, leased, kept, or held by any other party, a minor child of either of the parties, or an elderly or at-risk adult.

(c) In cases involving a minor child, the juvenile court and the district court have the authority to issue emergency protection orders to prevent an unlawful sexual offense, as defined in section 18-3-411 (1), or to prevent domestic abuse, as defined in section 13-14-101 (2), when requested by the local law enforcement agency, the county department of human or social services, or a responsible person who asserts, in a verified petition supported by affidavit, that there are reasonable grounds to believe that a minor child is in danger in the reasonably foreseeable future of being the victim of an unlawful sexual offense or domestic abuse, based upon an allegation of a recent actual unlawful sexual offense or domestic abuse or threat of the same. Any emergency protection order issued pursuant to this subsection (1) must be on a standardized form prescribed by the judicial department, and a copy must be provided to the protected person.

(d) The chief judge in each judicial district shall be responsible for making available in each judicial district a judge to issue, by telephone, emergency protection orders at all times when the county and district courts are otherwise closed for judicial business. Such judge may be a district court or county court judge or a special associate, an associate, an assistant county judge, or a magistrate.

(e) When the county, district, and juvenile courts are unavailable from the close of business at the end of the day or week to the resumption of business at the beginning of the day or week and a peace officer asserts reasonable grounds to believe that an adult is in immediate and present danger of domestic abuse, assault, stalking, sexual violence, or that a minor child is in immediate and present danger of an unlawful sexual offense, as defined in section 18-3-411 (1), or of domestic abuse, as defined in section 13-14-101 (2), a judge made available pursuant to subsection (1)(d) of this section may issue a written or verbal ex parte emergency protection

order. Any written emergency protection order issued pursuant to this subsection (1) must be on a standardized form prescribed by the judicial department, and a copy shall be provided to the protected person.

(f) An emergency protection order issued pursuant to this subsection (1) shall expire not later than the close of judicial business on the next day of judicial business following the day of issue, unless otherwise continued by the court. The court may continue an emergency protection order filed to prevent abuse pursuant to this subsection (1) only if the judge is unable to set a hearing on plaintiff's request for a temporary protection order on the day the complaint was filed pursuant to section 13-14-104.5; except that this limitation on a court's power to continue an emergency protection order shall not apply to an emergency protection order filed to protect a minor child from an unlawful sexual offense or domestic abuse. For any emergency protection order continued pursuant to the provisions of this paragraph (f), following two days' notice to the party who obtained the emergency protection order or on such shorter notice to said party as the court may prescribe, the adverse party may appear and move its dissolution or modification. The motion to dissolve or modify the emergency protection order shall be set down for hearing at the earliest possible time and shall take precedence over all matters except older matters of the same character, and the court shall determine such motions as expeditiously as the ends of justice require.

(2) (a) A verbal emergency protection order may be issued pursuant to subsection (1) of this section only if the issuing judge finds that the risk or threat of physical harm or the threat of psychological or emotional harm exists in close proximity to one or more persons or that the risk or threat of physical harm or the threat of psychological or emotional harm exists to the life or health of the minor child in the reasonably foreseeable future.

(b) Any verbal emergency protection order shall be reduced to writing and signed by the officer or other person asserting the grounds for the order and shall include a statement of the grounds for the order asserted by the officer or person. The officer or person shall not be subject to civil liability for any statement made or act performed in good faith. The emergency protection order shall be served upon the respondent with a copy given to the protected party and filed with the county or district court as soon as practicable after issuance. Any written emergency protection order issued pursuant to this subsection (2) shall be on a standardized form prescribed by the judicial department, and a copy shall be provided to the protected person.

(3) The court shall electronically transfer into the central registry of protection orders established pursuant to section 18-6-803.7, C.R.S., a copy of any order issued pursuant to this section and shall deliver a copy of such order to the protected party or his or her parent or an individual acting in the place of a parent who is not the respondent.

(4) If any person named in an order issued pursuant to this section has not been served personally with such order but has received actual notice of the existence and substance of such

order from any person, any act in violation of such order may be deemed sufficient to subject the person named in such order to any penalty for such violation.

(5) Venue for filing a complaint pursuant to this section is proper in any county where the acts that are the subject of the complaint occur, in any county where one of the parties resides, or in any county where one of the parties is employed. This requirement for venue does not prohibit the change of venue to any other county appropriate under applicable law.

(6) A person failing to comply with any order of the court issued pursuant to this section shall be found in contempt of court and, in addition, may be punished as provided in section 18-6-803.5, C.R.S.

(7) At any time that the law enforcement agency having jurisdiction to enforce the emergency protection order has cause to believe that a violation of the order has occurred, it shall enforce the order. If the order is written and has not been personally served, a member of the law enforcement agency shall serve a copy of said order on the person named respondent therein. If the order is verbal, a member of the law enforcement agency shall notify the respondent of the existence and substance thereof.

(8) The availability of an emergency protection order shall not be affected by the person seeking protection leaving his or her residence to avoid harm.

(9) The issuance of an emergency protection order shall not be considered evidence of any wrongdoing.

(10) If three emergency protection orders are issued within a one-year period involving the same parties within the same jurisdiction, the court shall summon the parties to appear before the court at a hearing to review the circumstances giving rise to such emergency protection orders.

(11) The duties of peace officers enforcing orders issued pursuant to this section shall be in accordance with section 18-6-803.5, C.R.S., and any rules adopted by the Colorado supreme court pursuant to said section.

**Source:** **L. 2004:** Entire section added, p. 549, § 3, effective July 1. **L. 2010:** (1)(b)(III) amended and (1)(b)(V) and (1)(b)(VI) added, (SB 10-080), ch. 78, p. 266, § 3, effective July 1. **L. 2013:** (1)(b)(I), (1)(b)(V), (1)(e), (1)(f), (5), and (8) amended, (HB 13-1259), ch. 218, p. 1004, § 8, effective July 1. **L. 2018:** (1)(c) amended, (SB 18-092), ch. 38, p. 398, § 8, effective August 8. **L. 2024:** (1)(e) and (2)(a) amended, (HB 24-1122), ch. 330, p. 2231, § 3, effective January 1, 2025.

**Cross references:** For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

**13-14-104. Foreign protection orders. (Repealed)**

**Source:** **L. 2004:** Entire section added, p. 549, § 3, effective July 1. **L. 2013:** Entire section repealed, (HB 13-1259), ch. 218, p. 1005, § 9, effective July 1.

**13-14-104.5. Procedure for temporary civil protection order.**

(1) (a) Any municipal court of record, if authorized by the municipal governing body; any county court; and any district, probate, or juvenile court has original concurrent jurisdiction to issue a temporary or permanent civil protection order against an adult or against a juvenile who is ten years of age or older for any of the following purposes:

- (I) To prevent assaults and threatened bodily harm;
- (II) To prevent domestic abuse;
- (III) To prevent emotional abuse of the elderly or of an at-risk adult;
- (IV) To prevent sexual violence; and
- (V) To prevent stalking.

(b) To be eligible for a protection order, the petitioner does not need to show that he or she has reported the act that is the subject of the complaint to law enforcement, that charges have been filed, or that the petitioner is participating in the prosecution of a criminal matter.

(2) Any civil protection order issued pursuant to this section shall be issued using the standardized set of forms developed by the state court administrator pursuant to section 13-1-136.

(3) Venue for filing a motion or complaint pursuant to this section is proper in any county where any one of the acts or behaviors that are the subject of the motion or complaint occurred, in any county where one of the parties resides, or in any county where one of the parties is employed. This requirement for venue does not prohibit the change of venue to any other county appropriate under applicable law.

(4) A motion for a temporary civil protection order shall be set for hearing at the earliest possible time, which hearing may be ex parte, and shall take precedence over all matters, except

those matters of the same character that have been on the court docket for a longer period of time. The court shall hear all such motions as expeditiously as possible.

(5) Any district court, in an action commenced under the "Uniform Dissolution of Marriage Act", article 10 of title 14, C.R.S., shall have authority to issue temporary and permanent protection orders pursuant to the provisions of subsection (1) of this section. Such protection order may be as a part of a motion for a protection order accompanied by an affidavit filed in an action brought under article 10 of title 14, C.R.S. Either party may request the court to issue a protection order consistent with any other provision of this article.

(6) At the time a protection order is requested pursuant to this section, the court shall inquire about, and the requesting party and the party's attorney or licensed legal paraprofessional have an independent duty to disclose, knowledge the party and the party's attorney or licensed legal paraprofessional may have concerning the existence of any prior protection or restraining order of any court addressing in whole or in part the subject matter of the requested protection order. In the event there are conflicting restraining or protection orders, the court shall consider, as its first priority, issues of public safety. An order that prevents assaults, threats of assault, or other harm must be given precedence over an order that deals with the disposition of property or other tangible assets. Every effort must be made by judicial officers to clarify conflicting orders.

(7) (a) A temporary civil protection order may be issued if the issuing judge or magistrate finds that a risk or threat of physical harm or the threat of psychological or emotional harm exists to the person or persons seeking protection under the civil protection order. In determining whether a risk or threat of physical harm or the threat of psychological or emotional harm exists to one or more persons, the court shall consider all relevant evidence concerning the safety and protection of the persons seeking the protection order, regardless of when an incident occurred, or the existence of a protection order issued pursuant to section 18-1-1001 or 18-1-1001.5. The existence of a military protection order, as defined in section 18-6-806, is relevant evidence that the court shall consider when determining whether there is a risk or threat of harm.

(b) If the judge or magistrate finds that a risk or threat of physical harm or the threat of psychological or emotional harm exists to the employees of a business entity, the judge or magistrate may issue a civil protection order in the name of the business for the protection of the employees. An employer is not liable for failing to obtain a civil protection order in the name of the business for the protection of the employees and patrons.

(8) (a) Upon the filing of a complaint, duly verified, alleging that the respondent has committed acts that would constitute grounds for a civil protection order, any judge or magistrate, after hearing the evidence and being fully satisfied that sufficient cause exists, may issue a temporary civil protection order to prevent the actions complained of and a citation directed to the respondent commanding the respondent to appear before the court at a specific time and date and to show cause, if any, why the temporary civil protection order should not be

made permanent. In addition, the court may order any other relief that the court deems appropriate. Complaints may be filed by persons seeking protection for themselves or for others as provided in section 26-3.1-102 (1)(b) and (1)(c).

(b) The judge or magistrate may continue the temporary protection order for a period of not more than one year after the date when the permanent protection order hearing takes place. If the temporary protection order is continued for one year and the petitioner seeks a permanent protection order, the petitioner shall file a motion at least fourteen days before the scheduled hearing notifying the court and the respondent of the petitioner's intent to pursue a permanent protection order on the date of the scheduled hearing.

(9) Upon the issuance of a temporary civil protection order, a copy of the complaint, a copy of the temporary civil protection order, and a copy of the citation must be served upon the respondent and upon the person to be protected, if the complaint was filed by another person, in accordance with the rules for service of process as provided in rule 304 of the rules of county court civil procedure or rule 4 of the Colorado rules of civil procedure. Service upon the respondent and upon the person to be protected is prohibited if the temporary protection order is denied or if the petitioner moves to vacate the temporary protection order prior to the court receiving confirmation that the respondent was personally served or had actual knowledge of the request for a civil protection order. The citation must inform the respondent that, if the respondent fails to appear in court in accordance with the terms of the citation, a bench warrant may be issued for the arrest of the respondent and the temporary protection order previously entered by the court made permanent without further notice or service upon the respondent. If the temporary protection order is based in whole or in part on an act of domestic violence, as defined in section 18-6-800.3, and the act of domestic violence involved the threat of use of physical force, use of physical force, or attempted use of physical force, the citation must also inform the respondent that the respondent must comply with section 13-14-105.5 by refraining from possessing or purchasing any firearm or ammunition for the duration of the order and relinquishing for the duration of the order any firearm or ammunition in the respondent's immediate possession or control or subject to the respondent's immediate possession or control.

(10) The hearing for a permanent protection order must be set not more than fourteen days after the issuance of the temporary civil protection order and citation. If the petitioner is unable to serve the respondent in that period, the court must extend the temporary protection order previously issued, continue the permanent protection order hearing, and issue an alias citation stating the date and time to which the hearing is continued. The petitioner may thereafter request, and the court must grant, additional continuances as needed if the petitioner has still been unable to serve the respondent if the petitioner is able to show the petitioner has made reasonable efforts to serve the respondent or that the respondent is evading service.

(11) (a) Any person against whom a temporary protection order is issued pursuant to this section, which temporary protection order excludes the person from a shared residence, is

permitted to return to the shared residence one time to obtain sufficient undisputed personal effects as are necessary for the person to maintain a normal standard of living during any period prior to a hearing concerning the order. The person against whom a temporary protection order is issued is permitted to return to the shared residence only if the person is accompanied at all times by a peace officer while the person is at or in the shared residence.

(b) When any person is served with a temporary protection order issued against the person excluding the person from a shared residence, the temporary protection order must contain a notification in writing to the person of the person's ability to return to the shared residence pursuant to paragraph (a) of this subsection (11). The written notification shall be in bold print and conspicuously placed in the temporary protection order. A judge, magistrate, or other judicial officer shall not issue a temporary protection order that does not comply with this section.

(c) Any person against whom a temporary protection order is issued pursuant to this section, which temporary protection order excludes the person from a shared residence, may avail himself or herself of the forcible entry and detainer remedies available pursuant to article 40 of this title. However, such person is not entitled to return to the residence until such time as a valid writ of restitution is executed and filed with the court issuing the protection order and, if necessary, the protection order is modified accordingly. A landlord whose lessee has been excluded from a residence pursuant to the terms of a protection order may also avail himself or herself of the remedies available pursuant to article 40 of this title.

**Source: L. 2013:** Entire section added with relocations, (HB 13-1259), ch. 218, p. 1005, § 10, effective July 1. **L. 2018:** (7)(a) amended, (SB 18-060), ch. 50, p. 489, § 3, effective November 1. **L. 2024:** (6) amended, (HB 24-1291), ch. 131, p. 465, § 2, effective August 7; IP(1)(a), (1)(a)(IV), (3), and (7) to (10) amended, (HB 24-1122), ch. 330, p. 2231, § 4, effective January 1, 2025. **L. 2026:** (7)(a) amended, (SB 26-085), ch. 107, p. 436, § 2, effective August 12.

**Editor's note:** This section is similar to former § 13-14-102 (1.5) to (8) as they existed prior to 2013.

#### ANNOTATION

**Temporary civil protection orders issued under this section are not reviewable under C.R.C.P. 106(a)(4)**

because they are not final decisions. *Martin v. Arapahoe County Court*, 2016 COA 154, 405 P.3d 356.



**13-14-105. Provisions relating to civil protection orders.**

(1) A municipal court of record that is authorized by its municipal governing body to issue protection or restraining orders and any county court, in connection with issuing a civil protection order, has original concurrent jurisdiction with the district court to include any provisions in the order that the municipal or county court deems necessary for the protection of persons, including but not limited to orders:

(a) Restraining a party from threatening, molesting, or injuring any other party or the minor child of either of the parties;

(b) Restraining a party from contacting any other party or the minor child of either of the parties;

(c) Excluding a party from the family home upon a showing that physical or emotional harm would otherwise result;

(d) Excluding a party from the home of another party upon a showing that physical or emotional harm would otherwise result;

(e) Repealed.

(f) Restraining a party from interfering with a protected person at the person's place of employment or place of education or from engaging in conduct that impairs the protected person's employment, educational relationships, or environment;

(g) Restraining a party from molesting, injuring, killing, taking, transferring, encumbering, concealing, disposing of or threatening harm to an animal owned, possessed, leased, kept, or held by any other party or a minor child of any other party;

(h) Specifying arrangements for possession and care of an animal owned, possessed, leased, kept, or held by any other party or a minor child of any other party;

(i) Granting such other relief as the court deems appropriate;

(j) (I) Entering a temporary injunction restraining the respondent from ceasing to make payments for mortgage or rent, insurance, utilities or related services, transportation, medical care, or child care when the respondent has a prior existing duty or legal obligation or from transferring, encumbering, concealing, or in any way disposing of personal effects or real property, except in the usual course of business or for the necessities of life and requiring the restrained party to account to the court for all extraordinary expenditures made after the injunction is in effect.

(II) Any injunction issued pursuant to this paragraph (j) is effective upon personal service or upon waiver and acceptance of service by the respondent for a period of time determined

appropriate by the court not to exceed one year after the issuance of the permanent civil protection order.

(III) The provisions of the injunction must be printed on the summons, and the petition and the injunction become an order of the court upon fulfillment of the requirements of subparagraph (I) of this paragraph (j).

(IV) Nothing in this paragraph (j) precludes either party from applying to the district court for further temporary orders, an expanded temporary injunction, or modification or revocation. Any subsequent order issued by the district court as part of a domestic matter involving the parties supersedes an injunction made pursuant to this paragraph (j).

(1.5) (a) A municipal court of record that is authorized by its municipal governing body to issue civil protection or restraining orders and any county court, in connection with issuing a civil protection order, has original concurrent jurisdiction with the district court and shall include in the order, at the request of the petitioner or respondent, a provision awarding temporary care and control of any joint or shared minor children of the parties involved for a period of not more than one year after the date on which the temporary care and control is awarded in the temporary protection order; except that, this subsection (1.5)(a) does not apply when the district court maintains exclusive original jurisdiction in proceedings to determine the legal custody of a child who comes within the juvenile court's jurisdiction pursuant to section 19-1-104.

(b) The order for temporary care and control described in subsection (1.5)(a) of this section may include parenting time responsibilities for both parties involved and any conditions of parenting time, including supervised parenting time by a third party who agrees to the terms of the supervised parenting time, and any costs associated with supervised parenting time, if necessary. If the restrained party is unable to pay the ordered costs, the court shall not impose the cost on a publicly funded agency or the petitioner. If the court finds that the safety of any child or the protected party cannot be ensured with any form of parenting time reasonably available, the court may deny parenting time.

(c) The court shall award interim decision-making responsibility of a child to a person entitled to bring an action for the allocation of parental responsibilities pursuant to section 14-10-123 when interim decision-making responsibility is reasonably related to preventing domestic violence or preventing the child from witnessing domestic violence.

(d) Temporary care and control and interim decision-making responsibility must be determined in accordance with the standard contained in section 14-10-124.

(2) Any order for temporary care and control issued pursuant to subsection (1) of this section is governed by the "Uniform Child-custody Jurisdiction and Enforcement Act", article 13 of title 14, C.R.S.

(3) If there is no pending or existing domestic relations or juvenile case in district court involving joint or shared children, the petitioner is not required and must not be instructed to file a complaint for a protection order in district court when the petitioner is otherwise eligible to file for a civil protection order in county court.

(4) A temporary protection order or permanent protection order issued pursuant to this article 14 must be written and communicated in simple and plain language.

**Source: L. 2013:** Entire section added with relocations, (HB 13-1259), ch. 218, p. 1008, § 11, effective July 1. **L. 2024:** (1)(e) repealed and (1.5), (3), and (4) added, (HB 24-1122), ch. 330, p. 2233, § 5, effective January 1, 2025.

**Editor's note:** This section is similar to former § 13-14-102 (15) and (16) as they existed prior to 2013.

#### **13-14-105.5. Civil protection orders - prohibition on possessing or purchasing a firearm.**

(1) **Order requirements.** If the court subjects a respondent to a temporary or permanent civil protection order and the court determines on the record after reviewing the petition for the protection order that the protection order includes an act of domestic violence, as defined in section 18-6-800.3 (1), and the act of domestic violence involved the threat of use, use of, or attempted use of physical force, the court, as part of such order:

(a) Shall order the respondent to:

(I) Refrain from possessing or purchasing any firearm or ammunition for the duration of the order; and

(II) Relinquish, for the duration of the order, any firearm or ammunition in the respondent's immediate possession or control or subject to the respondent's immediate possession or control; and

(b) May require that before the respondent is released from custody on bond, the respondent relinquish, for the duration of the order, any firearm or ammunition in the respondent's immediate possession or control or subject to the respondent's immediate possession or control; and

(c) Shall schedule a compliance hearing pursuant to subsection (5)(a) of this section and notify the respondent of the hearing date and that the respondent shall appear at the hearing in person unless the hearing is vacated pursuant to subsection (5)(a) of this section.

**(2) Time period to relinquish.**

(a) Except as described in subsection (2)(b) of this section, upon issuance of an order pursuant to subsection (1) of this section, the respondent shall relinquish, in accordance with subsection (4) of this section, any firearm or ammunition:

(I) Not more than twenty-four hours, excluding legal holidays and weekends, after being served with the order in open court; or

(II) Not more than forty-eight hours, excluding legal holidays and weekends, after being served with the order outside of the court.

(b) Notwithstanding subsection (2)(a) of this section, a court may allow a respondent up to an additional twenty-four hours to relinquish a firearm if the respondent demonstrates to the satisfaction of the court that the respondent is unable to comply within the time frame set forth in subsection (2)(a) of this section.

**(3) Additional time to comply if respondent in custody.** If a respondent is unable to satisfy the provisions of this section because the respondent is incarcerated or otherwise held in the custody of a law enforcement agency, the court shall require the respondent to satisfy the provisions of this section not more than twenty-four hours, excluding legal holidays and weekends, after the respondent's release from incarceration or custody, or be held in contempt of court. Notwithstanding any provision of this subsection (3), the court may, in its discretion, require the respondent to relinquish any firearm or ammunition in the respondent's immediate possession or control or subject to the respondent's immediate possession or control before the end of the respondent's incarceration. In such a case, a respondent's failure to relinquish a firearm or ammunition as required constitutes contempt of court.

**(4) Relinquishment options.** To satisfy the requirement in subsection (2) of this section, the respondent shall either:

(a) Sell or transfer possession of the firearm or ammunition to a federally licensed firearms dealer described in 18 U.S.C. sec. 923, as amended; except that this provision must not be interpreted to require any federally licensed firearms dealer to purchase or accept possession of any firearm or ammunition; or

(b) Arrange for the storage of the firearm or ammunition by a law enforcement agency or by a storage facility with which the sheriff has contracted for the storage of transferred firearms or ammunition, pursuant to subsection (7)(a) of this section; except that this provision must not be

interpreted to require any law enforcement agency to provide storage of firearms or ammunition for any person; or

(c) Sell or otherwise transfer the firearm or ammunition to a private party who may legally possess the firearm or ammunition; except that a respondent who sells or transfers a firearm pursuant to this subsection (4)(c) shall satisfy all of the provisions of section 18-12-112 concerning private firearms transfers, including but not limited to the performance of a criminal background check of the transferee.

**(5) Compliance hearing and affidavit.**

(a) The court shall conduct a compliance hearing not less than eight but not more than twelve business days after the order is issued to ensure the respondent has complied with subsection (5)(b) of this section. The court may vacate the hearing if the court determines the respondent has completed the affidavit described in subsection (5)(b) of this section. Failure to appear at a hearing described in this subsection (5)(a) constitutes contempt of court.

(b) The respondent shall complete an affidavit, which must be filed in the court record within seven business days after the order is issued, stating the number of firearms in the respondent's immediate possession or control or subject to the respondent's immediate possession or control, the make and model of each firearm, any reason the respondent is still in immediate possession or control of such firearm, and the location of each firearm. If the respondent does not possess a firearm at the time the order is issued pursuant to subsection (1) of this section, the respondent shall indicate such nonpossession in the affidavit.

(c) If the respondent possessed a firearm at the time of the qualifying incident giving rise to the duty to relinquish the firearm pursuant to this section but transferred or sold the firearm to a private party prior to the court's issuance of the order, the respondent shall disclose the sale or transfer of the firearm to the private party in the affidavit described in subsection (5)(b) of this section. The respondent, within seven business days after the order is issued, shall acquire a written receipt and signed declaration that complies with subsection (8)(a)(I) of this section, and the respondent shall file the signed declaration at the same time the respondent files the affidavit pursuant to subsection (5)(b) of this section.

(d) The state court administrator shall develop the affidavit described in subsection (5)(b) of this section and all other forms necessary to implement this section no later than January 1, 2022. State courts may use the forms developed by the state court administrator pursuant to this subsection (5)(d) or another form of the court's choosing, so long as the forms comply with the requirements of this subsection (5).

(e) Upon the sworn statement or testimony of the petitioner or of any law enforcement officer alleging there is probable cause to believe the respondent has failed to comply with the provisions of this section, the court shall determine whether probable cause exists to believe that

the respondent has failed to relinquish all firearms or a concealed carry permit in the respondent's custody, control, or possession. If probable cause exists, the court shall issue a search warrant that states with particularity the places to be searched and the items to be taken into custody.

(6) **Relinquishment to a federally licensed firearms dealer.** A federally licensed firearms dealer who takes possession of a firearm or ammunition pursuant to this section shall issue a written receipt and signed declaration to the respondent at the time of relinquishment. The declaration must memorialize the sale or transfer of the firearm. The federally licensed firearms dealer shall not return the firearm or ammunition to the respondent unless the dealer:

(a) Contacts the Colorado bureau of investigation, referred to in this section as the "bureau", to request that a criminal background check of the respondent be performed; and

(b) Obtains approval of the transfer from the bureau after the performance of the criminal background check.

(7) **Storage by a law enforcement agency or storage facility.**

(a) A local law enforcement agency may elect to store firearms or ammunition for a respondent pursuant to this section. The law enforcement agency may enter into an agreement with any other law enforcement agency or storage facility for the storage of transferred firearms or ammunition. If a law enforcement agency elects to store firearms or ammunition for a respondent:

(I) The law enforcement agency may charge a fee for the storage, the amount of which must not exceed the direct and indirect costs incurred by the law enforcement agency in providing the storage;

(II) The law enforcement agency shall establish policies for disposal of abandoned or stolen firearms or ammunition; and

(III) The law enforcement agency shall issue a written receipt and signed declaration to the respondent at the time of relinquishment. The declaration must memorialize the transfer of the firearm.

(b) If a local law enforcement agency elects to store firearms or ammunition for a respondent pursuant to this subsection (7), the law enforcement agency shall not return the firearm or ammunition to the respondent unless the law enforcement agency:

(I) Contacts the bureau to request that a criminal background check of the respondent be performed; and

(II) Obtains approval of the transfer from the bureau after the performance of the criminal background check.

(c) (I) A law enforcement agency that elects to store a firearm or ammunition for a respondent pursuant to this section may elect to cease storing the firearm or ammunition. A law enforcement agency that elects to cease storing a firearm or ammunition for a respondent shall notify the respondent of the decision and request that the respondent immediately make arrangements for the transfer of the possession of the firearm or ammunition to the respondent or, if the respondent is prohibited from possessing a firearm, to another person who is legally permitted to possess a firearm.

(II) If a law enforcement agency elects to cease storing a firearm or ammunition for a respondent and notifies the respondent as described in subsection (7)(c)(I) of this section, the law enforcement agency may dispose of the firearm or ammunition if the respondent fails to make arrangements for the transfer of the firearm or ammunition and complete the transfer within ninety days after receiving the notification.

(d) A law enforcement agency that elects to store a firearm or ammunition shall obtain a search warrant to examine or test the firearm or ammunition or facilitate a criminal investigation if a law enforcement agency has probable cause to believe the firearm or ammunition has been used in the commission of a crime, is stolen, or is contraband. This subsection (7)(d) does not preclude a law enforcement agency from conducting a routine inspection of the firearm or ammunition prior to accepting the firearm for storage.

**(8) Relinquishment to a private party.**

(a) If a respondent sells or otherwise transfers a firearm or ammunition to a private party who may legally possess the firearm or ammunition, as described in subsection (4)(c) of this section, the respondent shall acquire:

(I) From the federally licensed firearms dealer, a written receipt and signed declaration memorializing the transfer, which receipt must be dated and signed by the respondent, the transferee, and the federally licensed firearms dealer; and

(II) From the federally licensed firearms dealer who requests from the bureau a criminal background check of the transferee, as described in section 18-12-112, a written statement of the results of the criminal background check.

(b) The respondent shall not transfer the firearm to a private party living in the same residence as the defendant at the time of the transfer.

(c) Notwithstanding section 18-12-112, if a private party elects to store a firearm for a respondent pursuant to this section, the private party shall not return the firearm to the respondent unless the private party acquires from the federally licensed firearms dealer who requests from the bureau a background check of the respondent, a written statement of the results of the background check authorizing the return of the firearm to the respondent.

**(9) Requirement to file signed declaration.**

(a) The respondent shall file a copy of the signed declaration issued pursuant to subsection (6), (7)(a)(III), or (8)(a)(I) of this section, and, if applicable, the written statement of the results of a criminal background check performed on the respondent, as described in subsection (8)(a)(II) of this section, with the court as proof of the relinquishment at the same time the respondent files the signed affidavit pursuant to subsection (5)(b) of this section. The signed declaration and written statement filed pursuant to this subsection (9) are only available for inspection by the court and the parties to the proceeding. If a respondent fails to timely transfer or sell a firearm or file the signed declaration or written statement as described in this subsection (9):

(I) The failure constitutes a violation of the protection order pursuant to section 18-6-803.5 (1)(c); and

(II) The court shall issue a warrant for the respondent's arrest.

(b) In any subsequent prosecution for a violation of a protection order described in this subsection (9), the court shall take judicial notice of the respondent's failure to transfer or sell a firearm, or file the signed declaration or written statement, which constitutes prima facie evidence of a violation of the protection order pursuant to section 18-6-803.5 (1)(c), and testimony of the clerk of the court or the clerk of the court's deputy is not required.

(10) Nothing in this section limits a respondent's right to petition the court for dismissal of a protection order.

(11) A respondent subject to a civil protection order issued pursuant to section 13-14-104.5 (1)(a) who possesses or attempts to purchase or receive a firearm or ammunition while the protection order is in effect violates the order pursuant to section 18-6-803.5 (1)(c).

(12) (a) A law enforcement agency that elects in good faith to not store a firearm or ammunition for a respondent pursuant to subsection (7)(a) of this section is not criminally or civilly liable for such inaction.

(b) A law enforcement agency that returns possession of a firearm or ammunition to a respondent in good faith as permitted by subsection (7) of this section is not criminally or civilly liable for such action.

(13) **Immunity.** A federally licensed firearms dealer, law enforcement agency, storage facility, or private party that elects to store a firearm pursuant to this section is not civilly liable for any resulting damages to the firearm, as long as such damage did not result from the willful and wrongful act or gross negligence of the federally licensed firearms dealer, law enforcement agency, storage facility, or private party.



**Source: L. 2013:** Entire section added, (SB 13-197), ch. 366, p. 2140, § 6, effective July 1. **L. 2021:** Entire section amended with relocations, (HB 21-1255), ch. 293, p. 1736, § 1, effective June 22. **L. 2024:** IP(1) amended, (HB 24-1122), ch. 330, p. 2235, § 6, effective January 1, 2025.

**Editor's note:** Subsection (4) is similar to former § 13-14-105.5 (2)(c) as it existed prior to 2021.

**Cross references:** For the legislative declaration in the 2013 act adding this section, see section 1 of chapter 366, Session Laws of Colorado 2013.

### **13-14-106. Procedure for permanent civil protection orders.**

(1) (a) On the date of the permanent protection order hearing, or on the day to which the hearing has been continued, the judge or magistrate shall examine the record and the evidence. In all cases except those involving sexual violence, if upon the examination the judge or magistrate finds by a preponderance of the evidence that the respondent has committed acts constituting grounds for the issuance of a civil protection order and that unless restrained the respondent will continue to commit the acts or acts designed to intimidate or retaliate against the protected person, the judge or magistrate shall order the temporary civil protection order to be made permanent or enter a permanent civil protection order with provisions different from the temporary civil protection order. If upon the examination the judge or magistrate finds by a preponderance of the evidence that the respondent has engaged in a behavior constituting grounds for the issuance of a civil protection order on the basis of sexual violence and that a risk or threat of physical harm or the threat of psychological or emotional harm exists to the petitioner, the judge or magistrate shall order the temporary civil protection order to be made permanent or enter a permanent civil protection order with provisions different from the temporary civil protection order. The court shall not deny a petitioner the relief requested because a protection order has been issued pursuant to section 18-1-1001 or 18-1-1001.5. The court shall encourage the petitioner to notify the respondent if the petitioner intends not to appear at the permanent protection order hearing, but the court shall neither require the petitioner to attend nor assess attorney fees or costs against the petitioner for choosing not to attend the hearing, except as provided in section 13-17-102 (2), (4), and (6). The judge or magistrate shall inform the respondent that a violation of the civil permanent protection order constitutes a criminal offense pursuant to section 18-6-803.5 or constitutes contempt of court and subjects the respondent to such punishment as may be provided by law. If the respondent fails to appear before the court for the permanent protection order hearing at the time and on the date identified in the citation issued by the court and the court finds that the respondent was properly served

with the temporary protection order and the citation, it is not necessary to re-serve the respondent and the court must issue a permanent protection order by default without requiring additional evidence or testimony. However, if the court modifies the protection order on the motion of the protected party, the modified protection order must be served upon the respondent, and if the temporary protection order includes an act of domestic violence, as defined in section 18-6-800.3, and the act of domestic violence involved the threat of use of physical force, use of physical force, or attempted use of physical force, the temporary protection order must also inform the respondent that the respondent must comply with section 13-14-105.5 by refraining from possessing or purchasing a firearm or ammunition for the duration of the order and relinquishing for the duration of the order a firearm or ammunition in the respondent's immediate possession or control or subject to the respondent's immediate possession or control.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (1), the judge or magistrate, after examining the record and the evidence, for good cause shown, may continue the temporary protection order and the show cause hearing to a date certain not to exceed one year after the date of the hearing if he or she determines such continuance would be in the best interests of the parties and if both parties are present at the hearing and agree to the continuance. In addition, each party may request one continuance for a period not to exceed fourteen days, which the judge or magistrate, after examining the record and the evidence, may grant upon a finding of good cause. The judge or magistrate shall inform the respondent that a violation of the temporary civil protection order constitutes a criminal offense pursuant to section 18-6-803.5, C.R.S., or constitutes contempt of court and subjects the respondent to such punishment as may be provided by law.

(c) Notwithstanding the provisions of paragraph (b) of this subsection (1), for a protection order filed in a proceeding commenced under the "Uniform Dissolution of Marriage Act", article 10 of title 14, C.R.S., the court may, on the motion of either party if both parties agree to the continuance, continue the temporary protection order until the time of the final decree or final disposition of the action.

(2) The court shall electronically transfer into the central registry of protection orders established pursuant to section 18-6-803.7, C.R.S., a copy of any order issued pursuant to this section and shall deliver a copy of such order to the protected party.

(3) A court shall not grant a mutual protection order to prevent domestic abuse for the protection of opposing parties unless each party has met his or her burden of proof as described in section 13-14-104.5 (7) and the court makes separate and sufficient findings of fact to support the issuance of the mutual protection order to prevent domestic abuse for the protection of opposing parties. A party may not waive the requirements set forth in this subsection (3).

**Source: L. 2013:** Entire section added with relocations, (HB 13-1259), ch. 218, p. 1010, § 12, effective July 1. **L. 2018:** (1)(a) amended, (SB 18-060), ch. 50, p. 490, § 4, effective November 1. **L. 2024:** (1)(a) amended, (HB 24-1122), ch. 330, p. 2235, § 7, effective January 1, 2025.

**Editor's note:** This section is similar to former § 13-14-102 (9), (10), and (18) as they existed prior to 2013.

#### ANNOTATION

**The affirmative defense of consent of the victim is not available to a defendant who is charged pursuant to § 18-6-803.5 (1)(a) with violating a protection order.** A civil protection order is an order of the court and not an order issued by the protected person, and the protected person's consent cannot, as a matter of law, constitute a

restrained party's defense to the crime for violation of a protection order. *Hotsenpiller v. Morris*, 2017 COA 95, 488 P.3d 219.

**A permanent protection order issued during an ongoing dissolution of marriage proceeding is a final and appealable order.** *In re Wiggs*, 2025 COA 10, \_\_ P.3d \_\_.

#### **13-14-107. Enforcement of protection order - duties of peace officer.**

(1) A person failing to comply with any order of the court issued pursuant to this article is in contempt of court or may be prosecuted for violation of a civil protection order pursuant to section 18-6-803.5, C.R.S.

(2) The duties of peace officers enforcing a civil protection order shall be in accordance with section 18-6-803.5, C.R.S., and any rules adopted by the Colorado supreme court pursuant to that section.

(3) If a respondent has not been personally served with a protection order, a peace officer responding to a call for assistance shall serve a copy of the protection order on the respondent named in the protection order, shall write the time, date, and manner of service on the protected person's copy of the order, and shall sign the statement.

**Source: L. 2013:** Entire section added with relocations, (HB 13-1259), ch. 218, p. 1011, § 13, effective July 1.

**Editor's note:** This section is similar to former § 13-14-102 (11), (12), and (13) as they existed prior to 2013.

**13-14-108. Modification and termination of civil protection orders.**

(1) Any order granted pursuant to section 13-14-105 (1)(c) or (1.5) terminates whenever a subsequent order regarding the same subject matter is granted pursuant to the "Uniform Dissolution of Marriage Act", article 10 of title 14; the "Uniform Child-custody Jurisdiction and Enforcement Act", article 13 of title 14; or the "Colorado Children's Code", title 19.

(2) (a) Nothing in this article precludes the protected party from applying to the court at any time for modification, including but not limited to a modification of the duration of a protection order or dismissal of a temporary or permanent protection order issued pursuant to this section.

(b) The restrained party may apply to the court for modification, including, but not limited to, a modification of the duration of the protection order or dismissal of a permanent protection order pursuant to this section. However, if a permanent protection order has been issued or if a motion for modification or dismissal of a permanent protection order has been filed by the restrained party, whether or not the motion was granted, a motion to modify or dismiss may not be filed by the restrained party within two years after issuance of the permanent order or after disposition of the prior motion.

(3) (a) (I) Notwithstanding any provision of subsection (2) of this section to the contrary, after issuance of the permanent protection order, if the restrained party has been convicted of or pled guilty to any misdemeanor or any felony against the protected person, other than the original offense, if any, that formed the basis for the issuance of the protection order, then the protection order remains permanent and must not be modified or dismissed by the court.

(II) Notwithstanding the prohibition in subsection (3)(a)(I) of this section, a protection order may be modified or dismissed on the motion of the protected person, or the person's attorney, licensed legal paraprofessional, parent or legal guardian of a minor, or conservator or legal guardian if one has been appointed; except that this subsection (3)(a) does not apply if the parent, legal guardian, or conservator is the restrained person.

(b) A court shall not consider a motion to modify a protection order filed by a restrained party pursuant to paragraph (a) of this subsection (3) unless the court receives the results of a fingerprint-based criminal history record check of the restrained party that is conducted within ninety days prior to the filing of the motion. The fingerprint-based criminal history record check must include a review of the state and federal criminal history records maintained by the Colorado bureau of investigation and federal bureau of investigation. The restrained party shall be responsible for supplying fingerprints to the Colorado bureau of investigation and to the federal bureau of investigation and paying the costs of the record checks. The restrained party

may be required by the court to provide certified copies of any criminal dispositions that are not reflected in the state or federal records and any other dispositions that are unknown.

(4) Except as otherwise provided in this article, the issuing court retains jurisdiction to enforce, modify, or dismiss a temporary or permanent protection order.

(5) The court shall hear any motion filed pursuant to subsection (2) of this section, except for a motion that does not comply with subsection (3)(b) of this section. The party moving for a modification or dismissal of a temporary or permanent protection order pursuant to subsection (2) of this section shall affect personal service on the other party with a copy of the motion and notice of the hearing on the motion, as provided by rule 4 (e) of the Colorado rules of civil procedure. The moving party bears the burden of proof to show, by a preponderance of the evidence, that the modification is appropriate or that a dismissal is appropriate because the protection order is no longer necessary. If the protected party has requested that the protected party's address be kept confidential, the court shall not disclose such information to the restrained party or any other person, except as otherwise authorized by law.

(6) In considering whether to modify or dismiss a protection order issued pursuant to this section, the court shall consider all relevant factors, including but not limited to:

- (a) Whether the restrained party has complied with the terms of the protection order;
- (b) Whether the restrained party has met the conditions associated with the protection order, if any;
- (c) Whether the restrained party has been ordered to participate in and has completed a domestic violence offender treatment program provided by an entity approved pursuant to section 16-11.8-103, C.R.S., or has been ordered to participate in and has either successfully completed a sex offender treatment program provided by an entity approved pursuant to section 16-11.7-103, C.R.S., or has made significant progress in a sex offender treatment program as reported by the sex offender treatment provider;
- (d) Whether the restrained party has voluntarily participated in any domestic violence offender treatment program provided by an entity approved pursuant to section 16-11.8-103, C.R.S., or any sex offender treatment program provided by an entity approved pursuant to section 16-11.7-103, C.R.S.;
- (e) The time that has lapsed since the protection order was issued;
- (f) When the last incident of abuse or threat of harm occurred or other relevant information concerning the safety and protection of the protected person;
- (g) Whether, since the issuance of the protection order, the restrained person has been convicted of or pled guilty to any misdemeanor or any felony against the protected person, other than the original offense, if any, that formed the basis for the issuance of the protection order;

(h) Whether any other restraining orders, protective orders, or protection orders have been subsequently issued against the restrained person pursuant to this section or any other law of this state or any other state;

(i) The circumstances of the parties, including the relative proximity of the parties' residences and schools or work places and whether the parties have minor children together; and

(j) Whether the continued safety of the protected person depends upon the protection order remaining in place because the order has been successful in preventing further harm to the protected person.

**Source: L. 2013:** Entire section added with relocations, (HB 13-1259), ch. 218, p. 1011, § 14, effective July 1. **L. 2024:** (3)(a)(II) amended, (HB 24-1291), ch. 131, p. 465, § 3, effective August 7; (1), (2)(b), and (5) amended, (HB 24-1122), ch. 330, p. 2236, § 8, effective January 1, 2025.

**Editor's note:** This section is similar to former § 13-14-102 (17) and (17.5) as they existed prior to 2013.

#### **13-14-109. Fees and costs.**

(1) (a) The court may assess a filing fee against a petitioner seeking relief pursuant to this article 14; except that the court may not assess a filing fee against a petitioner if the court determines the petitioner is seeking the protection order as a victim of domestic violence, stalking, or sexual violence. The court shall provide the necessary number of certified copies at no cost to petitioners.

(b) The court shall neither award any costs nor assess any fees, including attorney fees, against a petitioner seeking relief pursuant to this article 14, except as provided in subsection (1)(a) of this section and section 13-17-102 (2), (4), and (6).

(2) A state or public agency shall not assess fees for service of process against a petitioner seeking relief pursuant to this article 14 as a victim of domestic violence as defined in section 18-6-800.3 (1), stalking, or sexual violence.

(3) At the permanent protection order hearing, the court may require the respondent to pay the filing fee and service-of-process fees, as established by the state agency, political subdivision, or public agency pursuant to a fee schedule, and to reimburse the petitioner for costs incurred in bringing the action.

**Source: L. 2013:** Entire section added with relocations, (HB 13-1259), ch. 218, p. 1014, § 15, effective July 1. **L. 2024:** (1) and (2) amended, (HB 24-1122), ch. 330, p. 2237, § 9, effective January 1, 2025.

**Editor's note:** This section is similar to former § 13-14-102 (21) as it existed prior to 2013.

### **13-14-110. Foreign protection orders.**

(1) **Definitions.** As used in this section, "foreign protection order" means any protection or restraining order, injunction, or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary or final orders, other than child support or custody orders, issued by a civil or criminal court of another state, an Indian tribe, or a United States territory or commonwealth.

(2) **Full faith and credit.** Courts of this state shall accord full faith and credit to a foreign protection order as if the order were an order of this state, notwithstanding section 14-11-101, C.R.S., and article 53 of this title, if the order meets all of the following conditions:

(a) The foreign protection order was obtained after providing the person against whom the protection order was sought reasonable notice and an opportunity to be heard sufficient to protect his or her due process rights. If the foreign protection order is an ex parte injunction or order, the person against whom it was obtained must have been given notice and an opportunity to be heard within a reasonable time after the order was issued sufficient to protect his or her due process rights.

(b) The court that issued the order had jurisdiction over the parties and over the subject matter; and

(c) The order complies with section 13-14-106 (3).

(3) **Process.** A person entitled to protection under a foreign protection order may, but is not required to, file such order in the district or county court by filing with such court a certified copy of such order, which must be entered into the central registry of protection orders created in section 18-6-803.7, C.R.S. The certified order must be accompanied by an affidavit in which the protected person affirms to the best of his or her knowledge that the order has not been changed or modified since it was issued. There shall be no filing fee charged. It is the responsibility of the protected person to notify the court if the protection order is subsequently modified.

(4) **Enforcement.** Filing of the foreign protection order in the central registry or otherwise domesticating or registering the order pursuant to article 53 of this title or section 14-11-101, C.R.S., is not a prerequisite to enforcement of the foreign protection order. A peace officer shall presume the validity of, and enforce in accordance with the provisions of this article, a foreign protection order that appears to be an authentic court order that has been provided to the peace officer by any source. If the protected party does not have a copy of the foreign protection order on his or her person and the peace officer determines that a protection order exists through the central registry, the national crime information center as described in 28 U.S.C. sec. 534, or through communication with appropriate authorities, the peace officer shall enforce the order. A peace officer may rely upon the statement of any person protected by a foreign protection order that it remains in effect. A peace officer who is acting in good faith when enforcing a foreign protection order is not civilly liable or criminally liable pursuant to section 18-6-803.5 (5), C.R.S.

**Source: L. 2013:** Entire section added with relocations, (HB 13-1259), ch. 218, p. 1015, § 16, effective July 1.

**Editor's note:** This section is similar to former § 13-14-104 as it existed prior to 2013.

#### **13-14-111. Transfer of wireless telephone service in domestic abuse cases - definitions.**

(1) In addition to the options described in section 13-14-103 (1)(b), as part of a request for a temporary or permanent protection order in a case involving domestic violence, sexual violence, or stalking, the court may enter an order directing a wireless telephone service provider to transfer the financial responsibility for and rights to a wireless telephone number or numbers to the petitioner if the petitioner:

- (a) Is not the account holder; and
- (b) Proves by a preponderance of the evidence that the petitioner and any minor children in the petitioner's care are the primary users of each wireless telephone number that the petitioner requested be transferred pursuant to this section.

(2) (a) An order transferring the financial responsibility for and rights to a wireless telephone number or numbers to a petitioner pursuant to this section must be a separate written order that is directed to the wireless telephone service provider.



(b) The order must list the name and billing telephone number of the account holder, the name and contact information of the petitioner to whom the telephone number or numbers will be transferred, and each telephone number to be transferred to the petitioner.

(c) The court shall ensure that the petitioner's contact information is not provided to the account holder in proceedings held pursuant to this article 14.

(d) The order must be sent or delivered in person or electronically by the petitioner to the wireless telephone service provider's registered agent.

(e) A wireless telephone service provider must terminate the account holder's use of a telephone number that the court has ordered to be transferred to the petitioner pursuant to this section unless the wireless telephone service provider notifies the petitioner and the court within five business days after the wireless telephone service provider receives the order either that an account holder named in the order has terminated the account or that the requested transfer cannot be effectuated due to differences in network technology that prevent functionality of a device on the network or due to geographic limitations on network or service availability.

(3) A transfer ordered pursuant to this section does not preclude a wireless telephone service provider from applying any routine and customary requirements for account establishment to the petitioner as part of the transfer of financial responsibility for a wireless telephone number or numbers and any devices attached to the number or numbers, including, without limitation, identification, financial information, and customer preferences.

(4) A wireless telephone service provider is immune from civil liability for complying with an order to transfer a telephone number pursuant to this section.

(5) For purposes of this section:

(a) "Account holder" means a respondent who has a civil protection order issued against them, the underlying basis of which includes an act of domestic violence, sexual violence, or stalking, and maintains an account with a wireless telephone service provider.

(b) "Financial responsibility" means an obligation to pay service fees and other costs and charges associated with a telephone number.

(c) "Wireless telephone service provider" means a person or entity that provides or resells commercial mobile service, as defined in section 47 U.S.C. sec. 332 (d)(1).

**Source: L. 2024:** Entire section added, (HB 24-1122), ch. 330, p. 2237, § 10, effective January 1, 2025.

## 13-14.5 ARTICLE 14.5

### Extreme Risk Protection Orders

- |                                                                 |                                                                     |
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#### **13-14.5-101. Short title.**

The short title of this article 14.5 is the "Deputy Zackari Parrish III Violence Prevention Act".

**Source: L. 2023:** Entire article R&RE, (SB 23-170), ch. 124, p. 461, § 1, effective April 28.

#### **13-14.5-102. Definitions.**

As used in this article 14.5, unless the context otherwise clearly requires:

(1) "Community member" means:

(a) A licensed health-care professional or mental health professional who, through a direct professional relationship, provided care to the respondent or the respondent's child within six months before requesting the protection order;

(b) An educator who, through a direct professional relationship, interacted with the respondent or the respondent's child within six months before requesting the protection order; or

(c) A co-responder who is part of a co-responder community response, as defined in section 24-32-3501 (8)(d), who, in their capacity as a co-responder, or a community member, as defined in this section, who, as part of a law enforcement agency or emergency response team, provides on-site crisis assessment, de-escalation, or intervention services to individuals in crisis, who interacted with the respondent or the respondent's child within six months before requesting the protection order but who is not a law enforcement officer who responded to a behavioral health-related call involving the respondent.

(2) "Educator" means a teacher employed to instruct students or a school administrator in a school district, private school, charter school institute, or an individual charter school; or a faculty member at an institution of higher education, including a community college, a local district college, or an area technical college.

(3) "Extreme risk protection order" means either a temporary order or a continuing order granted pursuant to this article 14.5.

(4) "Faculty member" means a president, dean, professor, administrator, instructor, or research worker at an institution of higher education.

(5) "Family or household member" means, with respect to a respondent, any:

(a) Person related by blood, marriage, or adoption to the respondent;

(b) Person who has a child in common with the respondent, regardless of whether such person has been married to the respondent or has lived together with the respondent at any time;

(c) Person who regularly resides or regularly resided with the respondent within the last six months;

(d) Domestic partner of the respondent;

(e) Person who has a biological or legal parent-child relationship with the respondent, including stepparents and stepchildren and grandparents and grandchildren;

(f) Person who is acting or has acted as the respondent's legal guardian; and

(g) Person in any other relationship described in section 18-6-800.3 (2) with the respondent.

(6) "Firearm" has the same meaning as in section 18-1-901 (3)(h).

(6.5) "Institutional petitioner" means an entity that employs or contracts with a community member as defined in this section, including, but not limited to:

(a) A school district;

(b) A private school;

(c) The state charter school institute created in section 22-30.5-503;

- (d) An individual district charter school or institute charter school;
  - (e) An institution of higher education, including a community college, a local district college, or an area technical college;
  - (f) A hospital or health-care facility licensed in accordance with the requirements of part 1 of article 3 of title 25; or
  - (g) A behavioral health or substance use disorder treatment facility, behavioral health entities, or other facility where behavioral health crisis services are offered.
- (7) "Law enforcement officer" means a peace officer that is:
- (a) Employed by a political subdivision of the state and certified by the P.O.S.T. board pursuant to section 16-2.5-102;
  - (b) Authorized by section 16-2.5-113 when assistance is requested by an individual or entity pursuant to section 24-33.5-412;
  - (c) Authorized by section 16-2.5-114 and who interacted with the respondent in the scope of the law enforcement officer's official duties;
  - (d) Employed by a district attorney, designated by a district attorney, and authorized by section 16-2.5-132 or 16-2.5-133;
  - (e) Employed by the department of law, designated by the attorney general, and authorized by section 16-2.5-128, 16-2.5-129, or 16-2.5-130;
  - (f) Authorized by section 16-2.5-136, 16-2.5-137, or 16-2.5-138;
  - (g) Authorized by section 16-2.5-120; or
  - (h) Authorized by section 16-2.5-149.
- (8) "Licensed health-care professional" means a school nurse who holds a current nursing license through the department of regulatory agencies and who has applied for or holds a special services license from the department of education pursuant to article 60.5 of title 22 or a physician, physician assistant, or advanced practice registered nurse who is a primary provider of health services to a respondent; a psychiatrist; or a licensed emergency room medical care provider, licensed pursuant to title 12.
- (9) "Mental health professional" means a psychologist, licensed professional social worker, marriage and family therapist, licensed professional counselor, or addiction counselor licensed, registered, or certified pursuant to article 245 of title 12; a psychologist candidate, clinical social worker candidate, marriage and family therapist candidate, licensed professional counselor candidate, or addiction counselor candidate registered pursuant to section 12-245-304 (3), 12-245-404 (4), 12-245-504 (4), 12-245-604 (4), or 12-245-804 (3.7), respectively; a school

counselor who holds a special services provider license with a school counselor endorsement issued pursuant to article 60.5 of title 22 or who is otherwise endorsed or accredited by a national association to provide school counseling services; school psychologist licensed pursuant to section 22-60.5-210; school social worker who has obtained the special services license with social work endorsement issued pursuant to article 60.5 of title 22; or an unlicensed psychotherapist registered pursuant to section 12-245-703.

(10) "Petitioner" means the person who petitions for an extreme risk protection order pursuant to this article 14.5.

(11) "Respondent" means the person, including a person under eighteen years old, who is identified as the respondent in a petition filed pursuant to this article 14.5.

**Source: L. 2023:** Entire article R&RE, (SB 23-170), ch. 124, p. 461, § 1, effective April 28. **L. 2026:** (1), (2), and (11) amended and (6.5) added, (SB 26-004), ch. 36, p. 152, § 1, effective April 6.

### **13-14.5-103. Temporary extreme risk protection orders.**

(1) (a) A family or household member of the respondent, a community member, an institutional petitioner, or a law enforcement officer or agency may request a temporary extreme risk protection order without notice to the respondent by including in the petition for the extreme risk protection order an affidavit, signed under oath and penalty of perjury, supporting the issuance of a temporary extreme risk protection order that sets forth the facts tending to establish the grounds of the petition or the reason for believing they exist and, if the petitioner is a family or household member or community member, attesting that the petitioner is a family or household member or community member. The petition must comply with the requirements of section 13-14.5-104 (3). If the petitioner is a law enforcement officer or law enforcement agency, and if the law enforcement officer or law enforcement agency has probable cause to believe the respondent has firearms within their custody, control, or possession, the law enforcement officer or law enforcement agency shall concurrently file a sworn affidavit for a court to issue a search warrant pursuant to section 16-3-301.5 to search for any firearms in the possession, custody, or control of the respondent at a location or locations to be named in the warrant. If a petition filed pursuant to section 27-65-106 is also filed against the respondent, a court of competent jurisdiction may hear that petition at the same time as the hearing for a temporary extreme risk protection order or the hearing for a continuing extreme risk protection order.

(b) Notwithstanding any provision of law to the contrary, a community member or institutional petitioner authorized to file a petition for a temporary extreme risk protection order, upon filing the petition for a temporary extreme risk protection order, is authorized to disclose

protected health information of the respondent as necessary for the full investigation and disposition of the request for a temporary extreme risk protection order. When disclosing protected health information, the community member or institutional petitioner shall make reasonable efforts to limit protected health information to the minimum necessary to accomplish the filing of the petition. Upon receipt of a petition by a community member or institutional petitioner, and for good cause shown, the court may issue orders to obtain any records or documents relating to diagnosis, prognosis, or treatment, and clinical records, of the respondent as necessary for the full investigation and disposition of the petition for a temporary extreme risk protection order. When protected health information is disclosed or when the court receives any records or documents related to diagnosis, prognosis, or treatment or clinical records, the court shall order that the parties are prohibited from using or disclosing the protected health information for any purpose other than the proceedings for a petition for a temporary extreme risk protection order and shall order the return to the covered entity or destroy the protected health information, including all copies made, at the end of the litigation or proceeding. The court shall seal all records and other health information received that contain protected health information. The decision of a community member or institutional petitioner to disclose or not to disclose records or documents relating to the diagnosis, prognosis, or treatment, and clinical records of a respondent, when made reasonably and in good faith, shall not be the basis for any civil, administrative, or criminal liability with respect to the community member or institutional petitioner.

(c) (I) Venue for filing a petition pursuant to this section if the petitioner is a family or household member is proper in any county where the acts that are the subject of the petition occur, in any county where one of the parties resides, or in any county where one of the parties is employed. This requirement for venue does not prohibit the change of venue to any other county appropriate under applicable law.

(II) A petition for an extreme risk protection order by a petitioner who is not a family or household member must be filed in the county where the respondent resides.

(2) In considering whether to issue a temporary extreme risk protection order pursuant to this section, the court shall consider all relevant evidence, including the evidence described in section 13-14.5-105 (3).

(3) If a court finds by a preponderance of the evidence that, based on the evidence presented pursuant to section 13-14.5-105 (3), the respondent poses a significant risk of causing personal injury to self or others in the near future by having in the respondent's custody or control a firearm or by purchasing, possessing, or receiving a firearm, the court shall issue a temporary extreme risk protection order.

(4) The court shall hold a temporary extreme risk protection order hearing in person or by telephone on the day the petition is filed or on the court day immediately following the day the

petition is filed. The court may schedule a hearing by telephone pursuant to local court rule to reasonably accommodate a disability or, in exceptional circumstances, to protect a petitioner from potential harm. The court shall require assurances of the petitioner's identity before conducting a telephonic hearing. A copy of the telephone hearing must be provided to the respondent prior to the hearing for an extreme risk protection order.

(5) (a) In accordance with section 13-14.5-105 (1), the court shall schedule a hearing within fourteen days after the issuance of a temporary extreme risk protection order to determine if a three-hundred-sixty-four-day extreme risk protection order should be issued pursuant to this article 14.5. Notice of that hearing date must be included with the temporary extreme risk protection order that is served on the respondent. The court shall provide notice of the hearing date to the petitioner.

(b) Any temporary extreme risk protection order issued expires on the date and time of the hearing on the extreme risk protection order petition or the withdrawal of the petition.

(6) A temporary extreme risk protection order must include:

- (a) A statement of the grounds asserted for the order;
- (b) The date and time the order was issued;
- (c) The date and time the order expires;
- (d) The address of the court in which any responsive pleading should be filed;
- (e) The date and time of the scheduled hearing;
- (f) The requirements for surrender of firearms pursuant to section 13-14.5-108; and
- (g) The following statement:

To the subject of this temporary extreme risk protection order: This order is valid until the date and time noted above. You may not have in your custody or control a firearm or purchase, possess, receive, or attempt to purchase or receive a firearm while this order is in effect. You must immediately surrender to the (insert name of law enforcement agency in the jurisdiction where the respondent resides) all firearms in your custody or possession, and any concealed carry permit issued to you. A hearing will be held on the date and at the time noted above to determine if an extreme risk protection order should be issued. Failure to appear at that hearing may result in a court entering an order against you that is valid for three hundred sixty four days. An attorney will be appointed to represent you, or you may seek the advice of your own attorney at your own expense as to any matter connected with this order.

(7) A law enforcement officer shall serve a temporary extreme risk protection order concurrently with the notice of hearing and petition and a notice that includes referrals to appropriate resources, including domestic violence, behavioral health, and counseling resources, in the same manner as provided for in section 13-14.5-105 for service of the notice of hearing where the respondent resides.

(8) (a) If the court issues a temporary extreme risk protection order, the court shall state the particular reasons for the court's issuance.

(b) If the court declines to issue a temporary extreme risk protection order, the court shall state the particular reasons for the court's denial.

**Source: L. 2023:** Entire article R&RE, (SB 23-170), ch. 124, p. 463, § 1, effective April 28. **L. 2026:** (1)(a) and (1)(b) amended, (SB 26-004), ch. 36, p. 153, § 2, effective April 6.

#### **13-14.5-104. Petition for extreme risk protection order.**

(1) (a) A petition for an extreme risk protection order may be filed by a family or household member of the respondent, a community member, an institutional petitioner, or a law enforcement officer or agency. If the petition is filed by a law enforcement officer or agency, a county or city attorney shall represent the officer or agency in any judicial proceeding upon request. If the petition is filed by a family or household member or community member, the petitioner, to the best of the petitioner's ability, shall notify the law enforcement agency in the jurisdiction where the respondent resides of the petition and the hearing date with enough advance notice to allow for participation or attendance. Upon the filing of a petition, the court shall appoint an attorney to represent the respondent, and the court shall include the appointment in the notice of hearing provided to the respondent pursuant to section 13-14.5-105 (1)(a). The respondent may replace the attorney with an attorney of the respondent's own selection at any time at the respondent's own expense. The court shall pay the attorney fees for an attorney appointed for the respondent.

(b) Notwithstanding any provision of law to the contrary, a community member or institutional petitioner authorized to file a petition for an extreme risk protection order, upon filing the petition for an extreme risk protection order, is authorized to disclose protected health information of the respondent as necessary for the full investigation and disposition of the petition for an extreme risk protection order. When disclosing protected health information, the community member or institutional petitioner shall make reasonable efforts to limit protected



health information to the minimum necessary to accomplish the filing of the request. Upon receipt of a petition by a community member or institutional petitioner, and for good cause shown, the court may issue orders to obtain any records or documents relating to diagnosis, prognosis, or treatment, and clinical records of the respondent as necessary for the full investigation and disposition of the petition for an extreme risk protection order. When protected health information is disclosed or when the court receives any records or documents related to diagnosis, prognosis, or treatment or clinical records, the court shall order that the parties are prohibited from using or disclosing the protected health information for any purpose other than the proceedings for a petition for an extreme risk protection order and shall order the return to the covered entity or destroy the protected health information, including all copies made, at the end of the litigation or proceeding. The court shall seal all records and other health information received that contain protected health information. The decision of a community member or institutional petitioner to disclose or not to disclose records or documents relating to the diagnosis, prognosis, or treatment, and clinical records of a respondent, when made reasonably and in good faith, must not be the basis for any civil, administrative, or criminal liability with respect to the community member or institutional petitioner.

(2) (a) Venue for filing a petition pursuant to this section if the petitioner is a family or household member is proper in any county where the acts that are the subject of the petition occur, in any county where one of the parties resides, or in any county where one of the parties is employed. This requirement for venue does not prohibit the change of venue to any other county appropriate under applicable law.

(b) A petition for an extreme risk protection order by a petitioner who is not a family or household member must be filed in the county where the respondent resides.

(3) A petition must:

(a) Allege that the respondent poses a significant risk of causing personal injury to self or others by having in the respondent's custody or control a firearm or by purchasing, possessing, or receiving a firearm and must be accompanied by an affidavit, signed under oath and penalty of perjury, stating the specific statements, actions, or facts that give rise to a reasonable fear of future dangerous acts by the respondent;

(b) Identify the number, types, and locations of any firearms the petitioner believes to be in the respondent's current ownership, possession, custody, or control;

(c) Identify whether the respondent is required to possess, carry, or use a firearm as a condition of the respondent's current employment;

(d) Identify whether there is a known existing domestic abuse protection order or emergency protection order governing the petitioner or respondent;

(e) Identify whether there is a pending lawsuit, complaint, petition, or other action between the parties to the petition; and

(f) If the petitioner is not a law enforcement agency, identify whether the petitioner informed a local law enforcement agency regarding the respondent.

(4) The court shall verify the terms of any existing order identified pursuant to subsection (3)(d) of this section governing the parties. The court may not delay granting relief because of the existence of a pending action between the parties. A petition for an extreme risk protection order may be granted whether or not there is a pending action between the parties.

(5) If the petition states that disclosure of the petitioner's address would risk harm to the petitioner or any member of the petitioner's family or household, the petitioner's address may be omitted from all documents filed with the court. If the petitioner has not disclosed an address pursuant to this section, the petitioner must designate an alternative address at which the respondent may serve notice of any motions. If the petitioner is a law enforcement officer or agency, the address of record must be that of the law enforcement agency.

(6) A court or public agency shall not charge a fee for filing or service of process to a petitioner seeking relief pursuant to this article 14.5. A petitioner or respondent must be provided the necessary number of certified copies, forms, and instructional brochures free of charge.

(7) A person is not required to post a bond to obtain relief in any proceeding pursuant to this section.

(8) The district and county courts of the state of Colorado have jurisdiction over proceedings pursuant to this article 14.5.

**Source: L. 2023:** Entire article R&RE, (SB 23-170), ch. 124, p. 466, § 1, effective April 28. **L. 2026:** (1)(a) and (1)(b) amended, (SB 26-004), ch. 36, p. 154, § 3, effective April 6.

### **13-14.5-105. Hearings on petition - grounds for order issuance.**

(1) (a) Upon filing of the petition, the court shall order a hearing to be held and provide a notice of hearing to the respondent. The court must provide the notice of the hearing no later than one court day after the date of the extreme risk protection order petition. The court may schedule a hearing by telephone pursuant to local court rule to reasonably accommodate a disability or, in exceptional circumstances, to protect a petitioner from potential harm. The court shall require assurances of the petitioner's identity before conducting a telephonic hearing.

(b) Before the next court day, the court clerk shall forward a copy of the notice of hearing and petition to the law enforcement agency in the jurisdiction where the respondent resides for service upon the respondent.

(c) A copy of the notice of hearing and petition must be served upon the respondent in accordance with the rules for service of process as provided in rule 4 of the Colorado rules of civil procedure or rule 304 of the Colorado rules of county court civil procedure. Service issued pursuant to this section takes precedence over the service of other documents, unless the other documents are of a similar emergency nature.

(d) The court may, as provided in section 13-14.5-103, issue a temporary extreme risk protection order pending the hearing ordered pursuant to subsection (1)(a) of this section. The temporary extreme risk protection order must be served concurrently with the notice of hearing and petition.

(2) Upon hearing the matter, if the court finds by clear and convincing evidence, based on the evidence presented pursuant to subsection (3) of this section, that the respondent poses a significant risk of causing personal injury to self or others by having in the respondent's custody or control a firearm or by purchasing, possessing, or receiving a firearm, the court shall issue an extreme risk protection order for a period of three hundred sixty-four days.

(3) In determining whether grounds for an extreme risk protection order exist, the court may consider any relevant evidence, including but not limited to any of the following:

(a) A recent act or credible threat of violence by the respondent against self or others, whether or not such violence or credible threat of violence involves a firearm;

(b) A pattern of acts or credible threats of violence by the respondent within the past year, including but not limited to acts or credible threats of violence by the respondent against self or others;

(c) A violation by the respondent of a civil protection order issued pursuant to article 14 of this title 13;

(d) A previous or existing extreme risk protection order issued against the respondent and a violation of a previous or existing extreme risk protection order;

(e) A conviction of the respondent for a crime that included an underlying factual basis of domestic violence as defined in section 18-6-800.3 (1);

(f) The respondent's ownership, access to, or intent to possess a firearm;

(g) A credible threat of or the unlawful or reckless use of a firearm by the respondent;

(h) The history of use, attempted use, or threatened use of unlawful physical force by the respondent against another person, or the respondent's history of stalking another person, as described in section 18-3-602;

(i) Any prior arrest of the respondent for a crime listed in section 24-4.1-302 (1) or section 18-9-202;

(j) Evidence of the respondent's abuse of controlled substances or alcohol;

(k) Whether the respondent is required to possess, carry, or use a firearm as a condition of the respondent's current employment; and

(l) Evidence of recent acquisition of a firearm or ammunition by the respondent.

(4) The court may:

(a) Examine under oath the petitioner, the respondent, and any witnesses they may produce, or, in lieu of examination, consider sworn affidavits of the petitioner, the respondent, and any witnesses they may produce; and

(b) Request that the Colorado bureau of investigation conduct a criminal history record check related to the respondent and provide the results to the court under seal.

(5) The court shall allow the petitioner and respondent to present evidence and cross-examine witnesses and be represented by an attorney at the hearing.

(6) In a hearing pursuant to this article 14.5, the rules of evidence apply to the same extent as in a civil protection order proceeding pursuant to article 14 of this title 13.

(7) During the hearing, the court shall consider any available mental health evaluation or chemical dependency evaluation provided to the court.

(8) (a) Before issuing an extreme risk protection order, the court shall consider whether the respondent meets the standard for a court-ordered evaluation for persons with mental health disorders pursuant to section 27-65-106. If the court determines that the respondent meets the standard, then, in addition to issuing an extreme risk protection order, the court shall order mental health treatment and evaluation authorized pursuant to section 27-65-106 (4)(d).

(b) Before issuing an extreme risk protection order, the court shall consider whether the respondent meets the standard for an emergency commitment pursuant to section 27-81-111. If the court determines that the respondent meets the standard, then, in addition to issuing an extreme risk protection order, the court shall order an emergency commitment pursuant to section 27-81-111.

(9) An extreme risk protection order must include:

(a) A statement of the grounds supporting the issuance of the order;

- (b) The date and time the order was issued;
- (c) The date and time the order expires;
- (d) The address of the court in which any responsive pleading should be filed;
- (e) The requirements for relinquishment of a firearm and concealed carry permit pursuant to section 13-14.5-108; and
- (f) The following statement:

To the subject of this extreme risk protection order: This order will last until the date and time noted above. If you have not done so already, you must immediately surrender any firearms in your custody, control, or possession and any concealed carry permit issued to you. You may not have in your custody or control a firearm or purchase, possess, receive, or attempt to purchase or receive a firearm while this order is in effect. You have the right to request one hearing to terminate this order during the period that this order is in effect, starting from the date of this order and continuing through any renewals. You may seek the advice of an attorney as to any matter connected with this order.

(10) When the court issues an extreme risk protection order, the court shall inform the respondent that the respondent is entitled to request termination of the order in the manner prescribed by section 13-14.5-107. The court shall provide the respondent with a form to request a termination hearing.

(11) (a) If the court issues an extreme risk protection order, the court shall state the particular reasons for the court's issuance.

(b) If the court denies the issuance of an extreme risk protection order, the court shall state the particular reasons for the court's denial.

(12) If the court denies the issuance of an extreme risk protection order but ordered a temporary extreme risk protection order and a law enforcement agency took custody of the respondent's concealed carry permit or the respondent surrendered the respondent's concealed carry permit as a result of the temporary extreme risk protection order, the sheriff who issued the concealed carry permit shall reissue the concealed carry permit to the respondent within three days, at no charge to the respondent.

(13) If the court issues an extreme risk protection order and the petitioner is a law enforcement officer or agency or community member, the petitioner shall make a good-faith effort to provide notice of the order to a family or household member of the respondent and to any known third party who may be at direct risk of violence. The notice must include referrals to appropriate resources, including domestic violence, behavioral health, and counseling resources.

**Source: L. 2023:** Entire article R&RE, (SB 23-170), ch. 124, p. 468, § 1, effective April 28.

### **13-14.5-106. Service of protection orders.**

(1) An extreme risk protection order issued pursuant to section 13-14.5-105 must be served personally upon the respondent, except as otherwise provided in this article 14.5.

(2) The law enforcement agency in the jurisdiction where the respondent resides shall serve the respondent personally.

(3) The court clerk shall forward a copy of the extreme risk protection order issued pursuant to this article 14.5 on or before the next court day to the law enforcement agency specified in the order for service. Service of an order issued pursuant to this article 14.5 takes precedence over the service of other documents, unless the other documents are of a similar emergency nature.

(4) If the law enforcement agency cannot complete service upon the respondent within five days, the law enforcement agency shall notify the petitioner. The petitioner shall then provide any additional information regarding the respondent's whereabouts to the law enforcement agency to effect service. The law enforcement agency may request additional time to allow for the proper and safe planning and execution of the court order.

(5) If an extreme risk protection order entered by the court states that the respondent appeared in person before the court, the necessity for further service is waived, and proof of service of that order is not necessary.

(6) Returns of service pursuant to this article 14.5 must be made in accordance with the applicable court rules.

(7) If the respondent is a veteran and there are any criminal charges against the respondent that result from the service or enforcement of the extreme risk protection order, the judge shall refer the case to a veterans court if the jurisdiction has a veterans court and the charges are veterans court eligible.

**Source: L. 2023:** Entire article R&RE, (SB 23-170), ch. 124, p. 472, § 1, effective April 28.

### **13-14.5-107. Termination or renewal of protection orders.**

#### **(1) Termination.**

(a) The respondent may submit one written request for a hearing to terminate an extreme risk protection order issued pursuant to this article 14.5 for the period that the order is in effect. Upon receipt of the request for a hearing to terminate an extreme risk protection order, the court shall set a date for a hearing. Notice of the request and date of hearing must be served on the petitioner in accordance with the Colorado rules of civil procedure or Colorado rules of county court civil procedure. The court shall set the hearing fourteen days after the filing of the request for a hearing to terminate an extreme risk protection order. The court shall terminate the extreme risk protection order if the respondent establishes by clear and convincing evidence that the respondent no longer poses a significant risk of causing personal injury to self or others by having in the respondent's custody or control a firearm or by purchasing, possessing, or receiving a firearm. The court may consider any relevant evidence, including evidence of the considerations listed in section 13-14.5-105 (3).

(b) The court may continue the hearing if the court determines that it cannot enter a termination order at the hearing but determines that there is a strong possibility that the court could enter a termination order at a future date before the expiration of the extreme risk protection order. If the court continues the hearing, the court shall set the date for the next hearing prior to the date for the expiration of the extreme risk protection order.

#### **(2) Renewal.**

(a) The court shall notify the petitioner of the impending expiration of an extreme risk protection order sixty-three calendar days before the date that the order expires.

(b) A petitioner, a family or household member of a respondent, a community member, an institutional petitioner, or a law enforcement officer or agency may, by motion, request a renewal of an extreme risk protection order at any time within sixty-three calendar days before the expiration of the order.

(c) Upon receipt of the motion to renew, the court shall order that a hearing be held not later than fourteen days after the filing of the motion to renew. The court may schedule a hearing by telephone in the manner prescribed by section 13-14.5-105 (1)(a). The respondent must be personally served in the same manner prescribed by section 13-14.5-105 (1)(b) and (1)(c).

(d) In determining whether to renew an extreme risk protection order issued pursuant to this section, the court shall consider all relevant evidence and follow the same procedure as provided in section 13-14.5-105.

(e) If the court finds by clear and convincing evidence that, based on the evidence presented pursuant to section 13-14.5-105 (3), the respondent continues to pose a significant risk of causing personal injury to self or others by having in the respondent's custody or control a firearm or by purchasing, possessing, or receiving a firearm, the court shall renew the order for a period of time the court deems appropriate, not to exceed one year. In the order, the court shall set a return date to review the order no later than thirty-five days prior to the expiration of the order. However, if, after notice, the motion for renewal is uncontested and the petitioner seeks no modification of the order, the order may be renewed on the basis of the petitioner's motion or affidavit, signed under oath and penalty of perjury, stating that there has been no material change in relevant circumstances since the entry of the order and stating the reason for the requested renewal.

(3) If an extreme risk protection order is terminated or not renewed for any reason, the law enforcement agency storing the respondent's firearms shall provide notice to the respondent regarding the process for the return of the firearms.

**Source: L. 2023:** Entire article R&RE, (SB 23-170), ch. 124, p. 473, § 1, effective April 28. **L. 2026:** (2)(b) amended, (SB 26-004), ch. 36, p. 155, § 4, effective April 6.

### **13-14.5-108. Surrender of a firearm.**

(1) (a) Upon issuance of an extreme risk protection order pursuant to this article 14.5, including a temporary extreme risk protection order, the court shall order the respondent to surrender all firearms by:

(I) Selling or transferring possession of the firearm to a federally licensed firearms dealer described in 18 U.S.C. sec. 923, as amended; except that this provision must not be interpreted to require any federally licensed firearms dealer to purchase or accept possession of any firearm;

(II) Arranging for the storage of the firearm by a law enforcement agency. The law enforcement agency shall preserve the firearm in a substantially similar condition that the firearm was in when it was surrendered. If the respondent does not choose the option in subsection (1)(a)(I) of this section, a local law enforcement agency shall store the firearm.

(III) Only for either an antique firearm, as defined in 18 U.S.C. sec. 921 (a)(16), as amended, or a curio or relic, as defined in 27 CFR 478.11, as amended, transferring possession of the antique firearm or curio or relic to a relative who does not live with the respondent after confirming, through a criminal history record check, the relative is currently eligible to own or possess a firearm under federal and state law.



(b) The court shall order the respondent to surrender any concealed carry permit to the law enforcement officer serving the extreme risk protection order.

(2) (a) The law enforcement agency serving any extreme risk protection order pursuant to this article 14.5, including a temporary extreme risk protection order in which the petitioner was not a law enforcement agency or officer, shall request that the respondent immediately surrender all firearms in the respondent's custody, control, or possession and any concealed carry permit issued to the respondent and conduct any search permitted by law for such firearms or permit. After the law enforcement agency or officer has custody of the firearms, the respondent may inform the law enforcement officer of the respondent's preference for sale, transfer, or storage of the firearms as specified in subsection (1) of this section. If the respondent elects to sell or transfer the firearms to a federally licensed firearms dealer described in 18 U.S.C. sec. 923, as amended, the law enforcement officer or agency shall maintain custody of the firearms until they are sold or transferred pursuant to subsection (1)(a)(I) of this section. The law enforcement officer shall take possession of all firearms and any such permit belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search. Alternatively, if personal service by the law enforcement agency is not possible, or not required because the respondent was present at the extreme risk protection order hearing, the respondent shall surrender the firearms and any concealed carry permit within twenty-four hours after being served with the order by alternate service or within twenty-four hours after the hearing at which the respondent was present.

(b) If the petitioner for an extreme risk protection order is a law enforcement agency or officer, the law enforcement officer serving the extreme risk protection order shall take custody of the respondent's firearms pursuant to the search warrant for firearms possessed by a respondent in an extreme risk protection order, as described in section 16-3-301.5, if a warrant was obtained. After the law enforcement agency or officer has custody of the firearms, the respondent may inform the law enforcement officer of the respondent's preference for sale, transfer, or storage of the firearms as specified in section 13-14-105.5 (4). The law enforcement officer shall request that the respondent immediately surrender any concealed carry permit issued to the respondent and conduct any search permitted by law for the permit.

(3) At the time of surrender or taking custody pursuant to section 16-3-301.5, a law enforcement officer taking possession of a firearm or a concealed carry permit shall issue a receipt identifying all firearms and any permit that have been surrendered or taken custody of and provide a copy of the receipt to the respondent. Within seventy-two hours after service of the order, the officer serving the order shall file the original receipt with the court and shall ensure that the officer's law enforcement agency retains a copy of the receipt, or, if the officer did not take custody of any firearms, shall file a statement to that effect with the court.

(4) Upon the sworn statement or testimony of the petitioner or of any law enforcement officer alleging that there is probable cause to believe the respondent has failed to comply with

the surrender of firearms or a concealed carry permit as required by an order issued pursuant to this article 14.5, the court shall determine whether probable cause exists to believe that the respondent has failed to surrender all firearms or a concealed carry permit in his or her custody, the respondent's control, or possession. If probable cause exists, the court shall issue a search warrant that states with particularity the places to be searched and the items to be taken into custody.

(5) If a person other than the respondent claims title to any firearms surrendered or taken custody of pursuant to section 16-3-301.5 pursuant to this section and the law enforcement agency determines that he or she is the lawful owner of the firearm, the firearm shall be returned to him or her if:

(a) The firearm is removed from the respondent's custody, control, or possession, and the lawful owner agrees to store the firearm so that the respondent does not have access to or control of the firearm; and

(b) The firearm is not otherwise unlawfully possessed by the lawful owner.

(6) (a) Within forty-eight hours after the issuance of an extreme risk protection order, a respondent subject to the order may either:

(I) File with the court that issued the order one or more proofs of relinquishment or removal showing that all firearms previously in the respondent's custody, control, or possession, and any concealed carry permit issued to the respondent, were relinquished to or removed by a law enforcement agency, and attest to the court that the respondent does not currently have any firearms in the respondent's custody, control, or possession, and does not currently have a concealed carry permit; or

(II) Attest to the court that:

(A) At the time the order was issued, the respondent did not have any firearms in the respondent's custody, control, or possession and did not have a concealed carry permit; and

(B) The respondent does not currently have any firearms in the respondent's custody, control, or possession and does not currently have a concealed carry permit.

(b) If two full court days have elapsed since the issuance of an extreme risk protection order and the respondent has made neither the filing and attestation pursuant to subsection (6)(a)(I) of this section nor the attestations pursuant to subsection (6)(a)(II) of this section, the clerk of the court for the court that issued the order shall inform the local law enforcement agency in the county in which the court is located that the respondent has not filed the filing and attestation pursuant to subsection (6)(a)(I) of this section or the attestations pursuant to subsection (6)(a)(II) of this section.

(c) A local law enforcement agency that receives a notification pursuant to subsection (6)(b) of this section shall make a good faith effort to determine whether there is evidence that the respondent has failed to relinquish any firearm in the respondent's custody, control, or possession or a concealed carry permit issued to the respondent.

(7) The peace officers standards and training board shall develop model policies and procedures by December 1, 2019, regarding the acceptance, storage, and return of firearms required to be surrendered pursuant to this article 14.5 or taken custody of pursuant to section 16-3-301.5 and shall provide those model policies and procedures to all law enforcement agencies. Each law enforcement agency shall adopt the model policies and procedures or adopt their own policies and procedures by January 1, 2020.

**Source: L. 2023:** Entire article R&RE, (SB 23-170), ch. 124, p. 474, § 1, effective April 28.

#### **13-14.5-109. Firearms - return - disposal.**

(1) If an extreme risk protection order or temporary extreme risk protection order is terminated or expires without renewal, a law enforcement agency holding any firearm that has been surrendered pursuant to section 13-14.5-108 or taken custody of pursuant to section 16-3-301.5, or a federally licensed firearms dealer described in 18 U.S.C. sec. 923, as amended, with custody of a firearm, or a relative with custody of an antique firearm or curio or relic pursuant to section 13-14.5-108 (1)(a)(III), must return the firearm requested by a respondent within three days only after confirming, through a criminal history record check performed pursuant to section 24-33.5-424, that the respondent is currently eligible to own or possess a firearm under federal and state law and after confirming with the court that the extreme risk protection order has terminated or has expired without renewal.

(2) Any firearm surrendered by a respondent pursuant to section 13-14.5-108 or taken custody of pursuant to section 16-3-301.5 that remains unclaimed by the lawful owner for at least one year from the date the temporary extreme risk protection order or extreme risk protection order expired, whichever is later, shall be disposed of in accordance with the law enforcement agency's policies and procedures for the disposal of firearms in police custody.

**Source: L. 2023:** Entire article R&RE, (SB 23-170), ch. 124, p. 477, § 1, effective April 28.

### **13-14.5-110. Reporting of extreme risk protection orders.**

(1) The court clerk shall enter any extreme risk protection order or temporary extreme risk protection order issued pursuant to this article 14.5 into a statewide judicial information system on the same day the order is issued.

(2) The court clerk shall forward a copy of an extreme risk protection order or temporary extreme risk protection order issued pursuant to this article 14.5 the same day the order is issued to the Colorado bureau of investigation and the law enforcement agency specified in the order. Upon receipt of the copy of the order, the Colorado bureau of investigation shall enter the order into the national instant criminal background check system, any other federal or state computer-based systems used by law enforcement agencies or others to identify prohibited purchasers of firearms, and any computer-based criminal intelligence information system available in this state used by law enforcement agencies. The order must remain in each system for the period stated in the order, and the law enforcement agency shall only expunge orders from the systems that have expired or terminated and shall promptly remove the expired or terminated orders. Entry into the computer-based criminal intelligence information system is notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

(3) The issuing court shall, within three court days after issuance of an extreme risk protection order or a temporary extreme risk protection order, forward all identifying information the court has regarding the respondent, along with the date the order is issued, to the county sheriff in the jurisdiction where the respondent resides. Upon receipt of the information, the county sheriff shall determine if the respondent has a concealed carry permit. If the respondent does have a concealed carry permit, the issuing county sheriff shall immediately revoke the permit. The respondent may reapply for a concealed carry permit after the temporary extreme risk protection order and extreme risk protection order, if ordered, are no longer in effect.

(4) If an extreme risk protection order is terminated before its expiration date, the court clerk shall forward, on the same day as the termination order, a copy of the termination order to the Colorado bureau of investigation and the appropriate law enforcement agency specified in the termination order. Upon receipt of the order, the Colorado bureau of investigation and the law enforcement agency shall promptly remove the order from any computer-based system in which it was entered pursuant to subsection (2) of this section.

(5) Upon the expiration of a temporary extreme risk protection order or extreme risk protection order, the Colorado bureau of investigation and the law enforcement agency specified in the order shall promptly remove the order from any computer-based system in which it was entered pursuant to subsection (2) of this section.

(6) An extreme risk protection order does not constitute a finding that a respondent is a prohibited person pursuant to 18 U.S.C. sec. 922 (d)(4) or (g)(4). This subsection (6) does not alter a temporary extreme risk protection order or an extreme risk protection order, and a

respondent subject to a temporary extreme risk protection order or an extreme risk protection order is prohibited from possessing a firearm under state law. This subsection (6) does not change the duty to enter a temporary extreme risk protection order or extreme risk protection order into the appropriate databases pursuant to this section.

**Source: L. 2023:** Entire article R&RE, (SB 23-170), ch. 124, p. 477, § 1, effective April 28.

#### **13-14.5-111. Penalties.**

Any person who has in the person's custody, possession, or control a firearm, or purchases, possesses, or receives a firearm with knowledge that the person is prohibited from doing so by an extreme risk protection order or temporary extreme risk protection order issued pursuant to this article 14.5 is guilty of a class 2 misdemeanor.

**Source: L. 2023:** Entire article R&RE, (SB 23-170), ch. 124, p. 478, § 1, effective April 28.

#### **13-14.5-112. Other authority retained.**

This article 14.5 does not affect the ability of a law enforcement officer to remove a firearm or concealed carry permit from a person or conduct a search and seizure for any firearm pursuant to other lawful authority.

**Source: L. 2023:** Entire article R&RE, (SB 23-170), ch. 124, p. 479, § 1, effective April 28.

#### **13-14.5-113. Liability.**

(1) Except as provided in section 13-14.5-111, this article 14.5 does not impose criminal, administrative, or civil liability on any person, including a community member, an institutional petitioner, or entity for acts or omissions made in good faith related to obtaining an extreme risk protection order or a temporary extreme risk protection order, including but not limited to reporting, declining to report, investigating, declining to investigate, filing, or declining to file a petition pursuant to this article 14.5. This article 14.5 does not impose criminal or civil liability on a peace officer lawfully enforcing an order pursuant to this article 14.5.

(2) A person who files a malicious or knowingly false petition for a temporary extreme risk protection order or an extreme risk protection order may be subject to criminal prosecution or civil liability for those acts.

(3) A federally licensed firearms dealer or law enforcement agency that stores a firearm as permitted by this article 14.5 is not civilly liable for any resulting damages to the firearm, as long as such damage did not result from the willful and wrongful act or gross negligence of the person or law enforcement agency storing the firearm.

(4) This article 14.5 does not require a family or household member of the respondent, a community member, an institutional petitioner, or a law enforcement officer or agency to file a petition for a temporary emergency extreme risk protection order or petition for an extreme risk protection order.

(5) A community member's employer shall not use a community member's acts or omissions made in good faith related to obtaining an extreme risk protection order or a temporary extreme risk protection order, including but not limited to reporting, declining to report, investigating, declining to investigate, filing, or declining to file a petition pursuant to this article 14.5 as a basis for discipline or termination.

**Source: L. 2023:** Entire article R&RE, (SB 23-170), ch. 124, p. 479, § 1, effective April 28. **L. 2026:** (1) and (4) amended, (SB 26-004), ch. 36, p. 156, § 5, effective April 6.

#### **13-14.5-114. Instructional and informational material - definition.**

(1) (a) The state court administrator shall develop standard petitions and extreme risk protection order forms and temporary extreme risk protection order forms in more than one language consistent with state judicial department practices. The standard petition and order forms must be used after January 1, 2020, for all petitions filed and orders issued pursuant to this article 14.5. The state court administrator may consult with interested parties in developing the petitions and forms. The materials must be available online consistent with state judicial department practices.

(b) The extreme risk protection order form must include, in a conspicuous location, notice of criminal penalties resulting from violation of the order and the following statement:

You have the sole responsibility to avoid or refrain from violating this extreme risk protection order's provisions. Only the court can change the order and only upon written motion.

(2) A court clerk for each judicial district shall create a community resource list of crisis intervention, mental health, substance abuse, interpreter, counseling, and other relevant resources serving the county in which the court is located. The court shall make the community resource list available as part of or in addition to the informational brochures described in subsection (1) of this section.

(3) The state court administrator shall distribute a master copy of the standard petition and extreme risk protection order forms to all court clerks and all district and county courts.

(4) Courts shall accept petitions pursuant to sections 13-14.5-103 and 13-14.5-104 beginning on January 1, 2020.

**Source: L. 2023:** Entire article R&RE, (SB 23-170), ch. 124, p. 479, § 1, effective April 28.

#### **13-14.5-115. Effect of previous issued orders.**

The enactment of SB 23-170 and the provisions of this article 14.5 authorizing the court to enter an order pursuant to section 13-14.5-103 or 13-14.5-104 do not limit, change, void, or otherwise impact an extreme risk protection order entered by the court pursuant to this article 14.5 prior to the effective date of SB 23-170. Any such order remains in effect until it expires by its own terms or is terminated by the court.

**Source: L. 2023:** Entire article R&RE, (SB 23-170), ch. 124, p. 480, § 1, effective April 28.

#### **13-14.5-116. Severability.**

If any provision of this article 14.5 or the application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of this article 14.5 that can be given effect without the invalid provision or application, and to this end the provisions of this article 14.5 are declared to be severable.

**Source: L. 2023:** Entire article R&RE, (SB 23-170), ch. 124, p. 480, § 1, effective April 28.

## **CHANGE OF NAME**

### **ARTICLE 15**

#### **Change of Name**

13-15-101. Petition - proceedings - applicability - definition. 13-15-102. Publication of change.

#### **13-15-101. Petition - proceedings - applicability - definition.**

(1) (a) (I) Every person desiring to change the person's own name may present a petition to that effect, verified by affidavit, to the district or county court in the county of the petitioner's residence, except as otherwise provided in subsection (1)(a.5) of this section. The petition must include:

- (A) The petitioner's full name;
- (B) The new name desired; and
- (C) A concise statement of the reason for the name change.

(II) If the petitioner is over fourteen years of age, the petition shall also include the results of a certified, fingerprint-based criminal history record check conducted pursuant to paragraph (c) of this subsection (1) within ninety days prior to the date of the filing of the petition.

(III) If the petitioner is under nineteen years of age, the petition shall also include the caption of any proceeding in which a court has ordered child support, allocation of parental responsibilities, or parenting time regarding the petitioner.

(a.5) If the petitioner is under nineteen years of age and is the subject of an action concerning child support, allocation of parental responsibilities, parenting time, or dependency and neglect, then the petition for name change must be filed in the court having jurisdiction over the action concerning child support, allocation of parental responsibilities, parenting time, or dependency and neglect. If the petitioner is under twenty-one years of age and a participating youth in Colorado's foster youth in transition program pursuant to part 3 of article 7 of title 19, then the petition for name change may be filed in the court having jurisdiction over the action concerning the foster youth in transition case.

(b) The fingerprint-based criminal history check shall include arrests, conviction records, any criminal dispositions reflected in the Colorado bureau of investigation and federal bureau of



investigation records, and fingerprint processing by the federal bureau of investigation and the Colorado bureau of investigation. The petitioner shall be responsible for providing certified copies of any criminal dispositions that are not reflected in the Colorado bureau of investigation or federal bureau of investigation records and any other dispositions which are unknown.

(c) The petitioner shall be responsible for supplying fingerprints to the Colorado bureau of investigation and to the federal bureau of investigation and for obtaining the fingerprint-based criminal history record checks. The petitioner shall also be responsible for the cost of such checks.

(1.5) Unless the petitioner has shown good cause why the publication provisions of section 13-15-102 should not apply, the court shall order the petitioner to publish notice as provided in section 13-15-102 and file proof of the publication with the court.

(2) (a) Upon receipt of proof of publication or upon an order of the court stating that publication is not required, the court, except as otherwise provided in paragraphs (b) and (c) of this subsection (2), shall order the name change to be made and spread upon the records of the court in proper form if the court is satisfied that the desired change would be proper and not detrimental to the interests of any other person.

(b) The court shall not grant a petition for a name change if the court finds the petitioner was previously convicted of a felony or adjudicated a juvenile delinquent for an offense that would constitute a felony if committed by an adult in this state or any other state or under federal law. If the certified, fingerprint-based criminal history check filed with the petition reflects a criminal charge for which there is no disposition shown, the court may grant the name change after affirmation in open court by the petitioner, or submission of a signed affidavit by the petitioner, stating he or she has not been convicted of a felony in this state or any other state or under federal law.

(c) (Deleted by amendment, L. 2005, p. 20, § 1, effective February 23, 2005.)

(3) Notwithstanding subsection (2)(b) of this section, the court may grant a petition for a change of name for a petitioner who was previously convicted of a felony in this state or any other state, or adjudicated a juvenile delinquent for an offense that would constitute a felony if committed by an adult in this state or any other state or under federal law, if the court finds that the petitioner must have a legal name change in order for the department of revenue to issue a driver's license or identification card in that name and if all of the following requirements are met:

(a) The petitioner meets all of the requirements of subsections (1) and (1.5) of this section and paragraph (a) of subsection (2) of this section;

(b) (I) The proposed name change is to a name under which the petitioner was convicted or adjudicated; except that, for good cause, the court may allow a change of name other than the name under which the petitioner was convicted or adjudicated;

(II) For the purposes of this subsection (3)(b), good cause includes changing the petitioner's name to conform with the petitioner's gender identity.

(c) Prior to filing the petition, the name change applicant:

(I) (A) Submits his or her fingerprints to the Colorado bureau of investigation and the federal bureau of investigation for purposes of obtaining a fingerprint-based criminal history records check along with a written request to add his or her proposed name as an alias to the name change applicant's criminal history record.

(B) The Colorado bureau of investigation is authorized to add an alias to a name change applicant's criminal history record upon request.

(II) (A) Notifies the district attorney's office in any district in which the applicant was convicted of a felony that he or she is requesting a name change pursuant to this subsection (3).

(B) If the district attorney's office has a record of any victim of the applicant's crime, the district attorney's office shall send notice of the proposed name change to the victim.

(III) If, at the time the petition is filed, the applicant is in custody of the department of corrections, under an order for probation or community corrections, or incarcerated in a county jail, the applicant provides written notice to the supervising agency that he or she is requesting a change of name under this section; and

(IV) Provides the court with a copy of his or her criminal history record from both the Colorado bureau of investigation and the federal bureau of investigation and the criminal history report from the Colorado bureau of investigation reflects the addition of the proposed changed name as an alias; and

(d) The court finds that:

(I) The name change is not for the purpose of fraud, to avoid the consequences of a criminal conviction, or to facilitate a criminal activity; and

(II) The desired name change would be proper and not detrimental to the interests of any other person.

(4) The department of revenue shall not issue a driver's license or an identification card in the new name of a name change applicant unless the name change applicant submits a court order changing the applicant's name pursuant to this section.

(5) (a) If a petitioner is seeking a name change to harmonize name discrepancies necessary to be issued an identification card, the petitioner:

(I) If the petitioner attempted to obtain a fingerprint-based criminal history record check and results were inconclusive or unreadable, may submit, in lieu of a fingerprint-based criminal history record check, a name-based criminal history record check with all previously used names using the records of both the federal and Colorado bureaus of investigation and an attestation under penalty of perjury that the petitioner has not been convicted of a felony; and

(II) Need not publish the name change under section 13-15-102.

(b) To qualify for the simplified name change process in this subsection (5), the petitioner must:

(I) Sign an affidavit that the purpose of the name change is to obtain an identification card issued by the department of revenue and that the desired name change would be proper and not detrimental to the interests of any other person; and

(II) Be at least seventy years of age.

(6) The provisions of this section do not apply to a motion filed pursuant to section 14-10-120.2, C.R.S., requesting restoration of a prior full name after entry of a decree of dissolution or legal separation.

(7) (a) As used in this subsection (7), "suppressed court record" means a court record that is only accessible to judges; court staff; a party to the case, including a party's attorney; authorized judicial department staff; and an individual with a valid court order or affidavit authorizing access to the court record.

(b) (I) Beginning July 1, 2026, if a petitioner is under eighteen years old at the time of filing the petition, a court record associated with a petition seeking to change the petitioner's name is a suppressed court record. Notwithstanding section 13-15-102, the suppressed court record may be used by the court for administrative purposes, but the court shall not under any circumstance publish the petitioner's name or the petitioner's new name online.

(II) This subsection (7)(b) does not apply if the name change is granted pursuant to subsection (3) of this section and the good cause described in subsection (3)(b)(II) of this section applies.

(III) Notwithstanding subsection (7)(b)(I) of this section, if a person petitions the court to suppress a court record associated with a petition to change the petitioner's name that is filed before July 1, 2026, the court shall grant the request and order the records suppressed.

(c) A court shall grant an individual access to a suppressed court record if the individual obtains verbal consent from a party to the case and submits an affidavit to the court, under penalty of perjury, that the individual has obtained the verbal consent.

**Source:** G.L. § 1850. G.S. § 2452. R.S. 08: § 4348. C.L. § 6484. CSA: C. 30, § 1. CRS 53: § 19-1-1. C.R.S. 1963: § 20-1-1. L. 65: p. 425, § 1. L. 87: Entire section amended, p. 1576, § 15, effective July 10. L. 2002: Entire section amended, p. 1141, § 1, effective June 3. L. 2004: (1)(a) and (1)(c) amended, p. 75, § 2, effective September 1; (1)(a) and (2) amended and (1.5) added, p. 119, § 1, effective September 1. L. 2005: (1)(a) and (2)(c) amended and (1)(a.5) added, p. 20, § 1, effective February 23. L. 2010: (3) and (4) added, (SB 10-006), ch. 341, p. 1579, § 5, effective June 5. L. 2014: (5) added, (SB 14-087), ch. 306, p. 1298, § 3, effective August 6. L. 2016: (6) added, (HB 16-1085), ch. 55, p. 134, § 2, effective September 1. L. 2023: IP(1)(a)(I) and (1)(a.5) amended, (HB 23-1172), ch. 67, p. 238, § 2, effective August 7. L. 2024: IP(3) and (3)(b) amended, (HB 24-1071), ch. 111, p. 348, § 1, effective April 19. L. 2026: (7) added, (SB 26-018), ch. 55, p. 233, § 1, effective April 20.

**Editor's note:** Amendments to subsection (1)(a) by House Bill 04-1052 and House Bill 04-1195 were harmonized.

**Cross references:** For the legislative declaration in the 2010 act adding subsections (3) and (4), see section 1 of chapter 341, Session Laws of Colorado 2010.

## ANNOTATION

**At common law a person could adopt another name at will.** In re Knight, 36 Colo. App. 187, 537 P.2d 1085 (1975).

**Statutes setting forth procedures to be followed in changing a name merely provide an additional method** beyond the common law for making the change. In re Knight, 36 Colo. App. 187, 537 P.2d 1085 (1975); In re Nguyen, 684 P.2d 258 (Colo. App. 1983).

**Trial court has the power, founded in common law, to order a change of name of a minor child** in a dissolution of marriage action but court should consider those factors applicable to a statutory name change in determining whether to grant a parent's request. In re Nguyen, 684 P.2d 258 (Colo. App. 1983).

**Statutory change encouraged.** It is more advantageous to the state to have a statutory method of changing names followed, and for that reason applications under the statute

should be encouraged, and generally should be granted unless made for a wrongful or fraudulent purpose. *In re Knight*, 36 Colo. App. 187, 537 P.2d 1085 (1975).

**Basis for denial.** While a court has wide discretion in matters of a name change, it should not deny the application for a change of name as being improper unless special circumstances or facts are found to exist. Included in these would be unworthy motive, the possibility of fraud on the public, the choice of a name that is bizarre, unduly lengthy, ridiculous, or offensive to common decency and good taste, or if the interests of a wife or child of the applicant would be adversely affected thereby. *In re Knight*, 36 Colo. App. 187, 537 P.2d 1085 (1975).

**Hearing prior to denial.** Before a court denies a request for a change of name under the statute, it should conduct an evidentiary hearing to determine if good and sufficient cause exists to deny the application. *In re Knight*, 36 Colo. App. 187, 537 P.2d 1085 (1975).

**When a child was given the noncustodial parent's surname** prior to the dissolution of the parent's marriage, the noncustodial parent has a continuing interest in the minor child's use of that surname. *Hamman v. County Court*, 753 P.2d 743 (Colo. 1988).

But, the noncustodial parent does not necessarily have the power to prevent a name change merely by making known his objections. *Hamman v. County Court*, 753 P.2d 743 (Colo. 1988).

**Notice requirement.** Noncustodial parent, as an interested party, is entitled to reasonable notice of the filing of a petition requesting name change by the custodial parent. *Hamman v. County Court*, 753 P.2d 743 (Colo. 1988).

Such notice should be reasonably calculated to notify the noncustodial parent of the pending action in a time and manner which allows participation in the proceeding if the noncustodial parent wishes. *Hamman v. County Court*, 753 P.2d 743 (Colo. 1988).

### **13-15-102. Publication of change.**

(1) Public notice of a change of name shall be given at least three times within twenty-one days after the court orders publication pursuant to section 13-15-101 (1.5). The person changing his or her name shall cause such public notice to be given in a newspaper published in the county in which the person resides. If no newspaper is published in that county, such notice shall be published in a newspaper in such county as the court directs.

(2) Public notice of such name change through publication as required in subsection (1) of this section is not required if the petitioner has been:

(a) The victim of a crime, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3 (1), C.R.S.;

- (b) The victim of child abuse, as defined in section 18-6-401, C.R.S.;
  - (c) The victim of domestic abuse as that term is defined in section 13-14-101 (2); or
  - (d) A child or youth adjudicated dependent or neglected pursuant to article 3 of title 19 or subject to a continued adjudication pursuant to section 19-3-505 (4).
- (3) A petitioner need not give public notice of a name change as required by subsection (1) of this section if the petitioner qualifies for the simplified process under section 13-15-101 (5).
- (3.5) A petitioner is not required to give public notice of a name change as required by subsection (1) of this section if the petition is being filed by, or on behalf of, a person who is under eighteen years old.
- (4) (a) A petitioner need not give public notice of a name change as required by subsection (1) of this section if the petitioner is changing the petitioner's name to conform with the petitioner's gender identity.
- (b) Notwithstanding subsection (4)(a) of this section, the court may require a petitioner to give public notice of a name change pursuant to subsection (1) of this section if the name change is requested pursuant to section 13-15-101 (3)(b) and is for the purpose of changing the petitioner's name to conform with the petitioner's gender identity.

**Source:** G.L. § 1851. G.S. § 2453. R.S. 08: § 4349. C.L. § 6485. CSA: C. 30, § 2. CRS 53: § 19-1-2. C.R.S. 1963: § 20-1-2. L. 99: Entire section amended, p. 1178, § 4, effective June 2. L. 2004: (2)(c) amended, p. 554, § 7, effective July 1; (1) amended, p. 120, § 2, effective September 1. L. 2005: (1) amended, p. 21, § 2, effective February 23. L. 2014: (3) added, (SB 14-087), ch. 306, p. 1298, § 4, effective August 6. L. 2019: (4) added, (HB 19-1039), ch. 377, p. 3408, § 6, effective January 1, 2020. L. 2023: IP(2) amended and (2)(d) added, (HB 23-1172), ch. 67, p. 238, § 3, effective August 7. L. 2024: (4) amended, (HB 24-1071), ch. 111, p. 349, § 2, effective April 19. L. 2026: (3.5) added, (SB 26-018), ch. 55, p. 234, § 2, effective April 20.

**Cross references:** For the number of publications required, see § 24-70-106.

## COSTS

### ARTICLE 16

#### Costs - Civil Actions

13-16-101. Security for costs. 13-16-102. Motion to require cost bond.

|            |                                           |            |                                                                                                                                   |
|------------|-------------------------------------------|------------|-----------------------------------------------------------------------------------------------------------------------------------|
| 13-16-103. | Costs of poor person.                     | 13-16-118. | Clerk to tax costs.                                                                                                               |
| 13-16-104. | When plaintiff recovers costs.            | 13-16-119. | Costs retaxed - forfeit by clerk.                                                                                                 |
| 13-16-105. | When defendant recovers costs.            | 13-16-120. | Fee bill - precept - levy and return.                                                                                             |
| 13-16-106. | Costs in replevin.                        | 13-16-121. | Costs allowed to defendants who prevail against public entities.<br>(Repealed)                                                    |
| 13-16-107. | Costs on motion to dismiss.               | 13-16-122. | Items includable as costs.                                                                                                        |
| 13-16-108. | When several matters pleaded.             | 13-16-123. | Award of fees and costs to garnishee.                                                                                             |
| 13-16-109. | Costs on several counts.                  | 13-16-124. | Sheriff's fees charged to judicial department.                                                                                    |
| 13-16-110. | When several defendants.                  | 13-16-125. | Limit on supersedeas bond.                                                                                                        |
| 13-16-111. | Recovery of costs of suit.                | 13-16-126. | Transparency and limitations on third-party litigation funding - unfair or deceptive trade practices - enforcement - definitions. |
| 13-16-112. | Number of witness fees taxed.             |            |                                                                                                                                   |
| 13-16-113. | Costs upon dismissal or summary judgment. |            |                                                                                                                                   |
| 13-16-114. | Costs in equity.                          |            |                                                                                                                                   |
| 13-16-115. | In suit for use of another.               |            |                                                                                                                                   |
| 13-16-116. | Costs in adverse suit.                    |            |                                                                                                                                   |
| 13-16-117. | On appeal from decisions in probate.      |            |                                                                                                                                   |

### **13-16-101. Security for costs.**

(1) In all actions on official bonds for the use of any persons, actions on the bonds of executors, administrators, or guardians, and qui tam actions on any penal statute, the person or plaintiff for whose use the action is to be commenced, before he or she institutes such suit, shall file or cause to be filed with the clerk of the court in which the action is to be commenced an instrument in writing as described in subsection (3) of this section for security for the payment of costs of suit.

(2) In all cases in law and equity where the plaintiff, or the person for whose use an action is to be commenced, is not a resident of this state, upon motion of the defendant or any officer of the court pursuant to section 13-16-102, the court may require the nonresident plaintiff to give an

(3) As used in this section and section 13-16-102, "instrument in writing" means an instrument in writing of some responsible person, being a resident of this state, to be approved by the clerk, whereby such person shall acknowledge himself or herself bound to pay, or cause to be paid, all costs which may accrue in such action either to the opposite party or to any of the officers of such courts, which instrument may be in form as follows:

I do hereby enter myself security for costs in this case, and acknowledge myself bound to pay, or cause to be paid, all costs which may accrue in this action, either to the opposite party or to any of the officers of this court pursuant to the laws of this state.

Dated this ..... day of ....., 20.. .

## ANNOTATION

fails to do so, he has no standing in court; his case cannot be heard on the merits, if objection be made. *W. Union Tel. Co. v. Graham*, 1 Colo. 182 (1870); *Talpey v. Doane*, 2 Colo. 298 (1874).

**The filing of a bond for a supersedeas cannot accomplish that purpose,** or in any sense waive the necessity of filing security for costs. *Filley v. Cody*, 3 Colo. 221 (1877); *Fifer v. Fifer*, 120 Colo. 10, 206 P.2d 336 (1949).



**Despite plaintiff's non-citizen status, the proper determination of her residence, which is necessary for purposes of this section, was not dependent on her immigration status** but, instead, on the evaluation of her place of domicile and her subjective intent to remain in the state. *Munoz-Hoyos v. de Cortez*, 207 P.3d 951 (Colo. App. 2009).

Trial court erred in ruling that plaintiff's non-citizen status alone precluded her from qualifying as a resident for purposes of this section and in requiring her to post a cost bond on that basis. *Munoz-Hoyos v. de Cortez*, 207 P.3d 951 (Colo. App. 2009).

**In absence of judgment for costs, surety would not be liable.** The payment of all costs occasioned by the plaintiff in error without regard to the ultimate judgment of the court is secured by the cost bond. The officers of the court are protected. If there were no cost bond and the officers of the court had to rely upon the supersedeas bond for the costs made by the plaintiff in error, then in the absence of a judgment against him for cost, his security would not be liable for any. *Filley v. Cody*, 3 Colo. 221 (1877).

**Court may order that cost bond be filed within thirty days.** *Ferrara v. Auric Mining Co.*, 20 Colo. App. 411, 79 P. 302 (1905).

**Where a writ was dismissed for want of a cost bond, a new writ may be prosecuted in the same cause.** *W. Union Tel. Co. v. Graham*, 1 Colo. 182 (1870).

**A bond of a corporation which is executed by an attorney in fact, appointed**

by the president, is well executed. *W. Union Tel. Co. v. Graham*, 1 Colo. 182 (1870).

**There is no statutory authority to enter a summary judgment against the surety** upon a cost bond, and in the absence of such statutory authority, before any judgment could be taken against a surety upon such a bond, an opportunity must be provided said surety to assert any defense which he might have to an action seeking to enforce his liability as surety. *Fifer v. Fifer*, 120 Colo. 10, 206 P.2d 336 (1949).

**Section does not apply to actions brought in federal court.** In an action in the United States district court, defendant's motion, grounded upon this section, that plaintiff, a nonresident, be required to furnish a cost bond was denied, for the federal rules of civil procedure have repealed the conformity act, and state practice in this connection may no longer be invoked under its terms. *Nat'l Distillers Prods. Corp. v. Hindech*, 10 F.R.D. 229 (D. Colo. 1950).

**Court has no discretion under this section,** but must require security from a nonresident plaintiff. *Lewis v. Keim*, 883 P.2d 610 (Colo. App. 1994).

**Section 13-16-103 provides judges with the authority to waive cost requirements under this section and § 13-16-102** and, therefore, provides sufficient authority to permit a plaintiff to proceed when the plaintiff is a poor person and unable to pay costs and expenses. *Walcott v. District Ct., 2nd Jud. Dist.*, 924 P.2d 163 (Colo. 1996).

**Husband who sought modification of prior dissolution decree was person for whose use the action was commenced** and, because he was a nonresident, trial court

properly required him to post bond. In re Kronbach, 757 P.2d 175 (Colo. App. 1988).

**Applied** in Glickman v. Mesigh, 200 Colo. 320, 615 P.2d 23 (1980).

### **13-16-102. Motion to require cost bond.**

If an action described in section 13-16-101 (2) is commenced by a nonresident of this state without filing an instrument in writing, or if at any time after the commencement of any suit by a resident of this state he or she shall become nonresident, and the court is satisfied that the nonresident plaintiff is unable to pay the costs of suit, the court may, on motion of the defendant or any officer of the court, order the nonresident plaintiff, on or before the day in such order named, to give an instrument in writing for the payment of costs in the suit. To ensure that access to the courts is not unreasonably denied, a court shall not require an instrument in writing for the payment of costs of suit in excess of five thousand dollars. If the nonresident plaintiff neglects or refuses, on or before the day in such rule named, to file such instrument, the court, on motion, shall dismiss the suit.

**Source:** R.S. p. 154, § 2. G.L. § 324. G.S. § 398. L. 1885: p. 156, § 1. R.S. 08: § 1065. C.L. § 6581. CSA: C. 43, § 11. CRS 53: § 33-1-2. C.R.S. 1963: § 33-1-2. L. 2009: Entire section amended, (HB 09-1305), ch. 311, p. 1691, § 2, effective September 1.

### **ANNOTATION**

**Law reviews.** For article, "Bonds in Colorado Courts: A Primer for Practitioners", see 34 Colo. Law. 59 (Mar. 2005). For article, "Shifting Fees for Copyright Trolls", see 50 Colo. Law. 45 (Jan. 2021).

**Dismissals under this section are reviewed under an abuse of discretion standard.** Hytken v. Wake, 68 P.3d 508 (Colo. App. 2002).

**The filing of a motion for a cost bond preserves defendant's rights to answer**

and prevents plaintiff from seeking default judgment. McDermett v. Rosenbaum, 13 Colo. App. 444, 58 P. 880 (1899).

**Requirement of cost bond is a matter of judicial discretion as to residents.** Whether or not a resident plaintiff shall be required to give security for costs is a matter in the sound discretion of the court. Knight v. Fisher, 15 Colo. 176, 25 P. 78 (1890); Ward v. Williams, 16 Colo. 86, 27 P. 247 (1891); Fleming v. Breitner, 73 Colo. 250, 215 P. 133 (1923).

**Court has no discretion as to nonresidents.** If any action shall be commenced by a nonresident without filing the cost bond required by § 13-6-101, the court, on motion, shall dismiss the same. This court has repeatedly held that this language is unequivocal and leaves nothing to the discretion of the court. *Edgar Gold & Silver Mining Co. v. Taylor*, 10 Colo. 110, 14 P. 113 (1887); *Lewis v. Keim*, 883 P.2d 610 (Colo. App. 1994).

**The filing of a bond by a nonresident, after commencement of suit comes too late.** Filing the bond subsequently to the commencement of the suit, and whether before or after the motion to dismiss is interposed, cannot avail the nonresident plaintiff. *Sutro v. Simpson*, 14 F. 370 (D. Colo. 1882); *Edgar Gold & Silver Mining Co. v. Taylor*, 10 Colo. 110, 14 P. 113 (1887).

**Defendant waives right to cost bond when no motion made in trial court.** When no motion for a cost bond is made in the trial court, the defendant's right to a cost bond is waived. *Payton v. Spiesberger & Son Co.*, 40 Colo. 289, 90 P. 605 (1907).

**For the lack of authority for clerk to demand a bond for accrued costs,** see *Teller v. Sievers*, 20 Colo. App. 109, 77 P. 261 (1904).

**Security required under this section may not be excused or deferred under § 13-16-103.** *Lewis v. Keim*, 883 P.2d 610 (Colo. App. 1994) (disapproved of by supreme court in *Walcott v. District Ct.*, 2nd Jud. Dist., 924 P.2d 163 (Colo. 1996)).

**Inability to obtain cost bond does not equate to the neglect or refusal to pay such a bond.** *Lewis v. Keim*, 883 P.2d 610 (Colo. App. 1994); *Walcott v. District Ct.*, 2nd Jud. Dist., 924 P.2d 163 (Colo. 1996).

**The burden is on the plaintiff to file a cost bond and failure to do so for any reason other than indigency or defendant's waiver mandates dismissal.** *Hytken v. Wake*, 68 P.3d 508 (Colo. App. 2002).

**Dismissal not mandated** when plaintiff's failure to obtain cost bond by date ordered is not due to neglect or refusal to obtain the bond. The expiration of the time period ordered does not deprive the court of jurisdiction. *Rotz v. Hyatt Corp.*, 2012 COA 29, 296 P.3d 164.

**Court has discretion in determining whether a nonresident plaintiff's delay in filing a cost bond is the result of neglect, as opposed to the party's inability to timely comply.** In exercising its discretion, the court shall consider whether: (1) plaintiff ultimately filed a cost bond that complies with the statute; (2) the court afforded plaintiff sufficient time to acquire the cost bond; and (3) failure to file the bond was the result of inability to comply within the time provided in the order after considering the circumstances surrounding plaintiff's late filing. *Rotz v. Hyatt Corp.*, 2012 COA 29, 296 P.3d 164.

**Section 13-16-103 provides judges with the authority to waive cost requirements under this section and § 13-16-101 and, therefore, provides sufficient authority to permit a plaintiff to proceed when the**

plaintiff is a poor person and unable to pay costs and expenses. *Walcott v. District Ct.*, 2nd Jud. Dist., 924 P.2d 163 (Colo. 1996).

**Although court improperly denied defendant's motion for filing of cost bond,** order appointing receiver need not be vacated. *Bank of Am. Nat. Trust & Sav. Ass'n v. Denver Hotel Ass'n Ltd. P'ship*, 830 P.2d 1138 (Colo. App. 1992).

**Although district court erred in denying cost bond for nonresident plaintiff, such error did not require that an order for appointment of receiver be vacated;** under such circumstances, remand of cause with directions to set date for the filing of cost bond was appropriate remedy. *Bank of Am. Nat. Trust & Sav. Ass'n v. Denver Hotel Ass'n Ltd. P'ship*, 830 P.2d 1138 (Colo. App. 1992).

### **13-16-103. Costs of poor person.**

(1) If the judge or justice of any court, including the supreme court, is at any time satisfied that any person is unable to prosecute or defend any civil action or special proceeding because he is a poor person and unable to pay the costs and expenses thereof, the judge or justice, in his discretion, may permit such person to commence and prosecute or defend an action or proceeding without the payment of costs; but, in the event such person prosecutes or defends an action or proceeding successfully, there shall be a judgment entered in his favor for the amount of court costs which he would have incurred except for the provision of this section, and this judgment shall be first satisfied out of any money paid into court, and such costs shall be paid to the court before any such judgment is satisfied of record.

(2) In determining whether a plaintiff in an action brought pursuant to article 4 of title 14, C.R.S., may be permitted to proceed without the payment of costs, the court shall take into account only those assets to which the plaintiff has direct access. The court shall not consider assets which the plaintiff is unable to directly access even though the plaintiff may have an ownership interest in those assets.

**Source:** R.S. p. 154, § 3. G.L. § 325. G.S. § 399. R.S. 08: § 1076. C.L. § 6592. CSA: C. 43, § 22. L. 47: p. 458, § 5. CRS 53: § 33-1-3. C.R.S. 1963: § 33-1-3. L. 64: p. 220, § 44. L. 79: Entire section amended, p. 600, § 21, effective July 1. L. 91: Entire section amended, p. 239, § 3, effective July 1.

## **ANNOTATION**

I. General Consideration.

III. Reporter's Transcript.

II. Habeas Corpus Proceedings.

## **I. GENERAL CONSIDERATION.**

**Law reviews.** For article, "Motions in Forma Pauperis: The First Step in Access to Justice", see 28 Colo. Law. 29 (Apr. 1999).

**This section requires a judicial officer of any court, trial or appellate, to permit an indigent plaintiff to exercise the statutory right to appeal without the payment of costs.** Bell v. Simpson, 918 P.2d 1123 (Colo. 1996).

**The plain language of subsection (1) requires a judicial officer of any court, trial or appellate, to permit an indigent plaintiff to exercise the right of appeal without payment of costs, and district court erred in dismissing plaintiff's appeal for failure to post an appeal bond in the amount of \$250 ordered by the county court at the same time it found that he was indigent.** Rodden v. Colo. State Penitentiary, 52 P.3d 223 (Colo. 2002).

**The sole and only purpose of this section is to aid the indigent litigant in getting into court** in effect, opening the courts of justice to the poor person. Almarez v. Carpenter, 173 Colo. 284, 477 P.2d 792 (1970).

**This section aids in administering justice "without sale".** Almarez v. Carpenter, 173 Colo. 284, 477 P.2d 792 (1970).

**To be entitled to a waiver of "costs", the litigant must** not only be "a poor person" who is not able to pay the costs, but also is unable to pay the expenses of the civil action or proceeding. Almarez v.

Carpenter, 173 Colo. 284, 477 P.2d 792 (1970).

**The inability to pay expenses is, in effect, a test of indigency** under this section. Almarez v. Carpenter, 173 Colo. 284, 477 P.2d 792 (1970).

**"In forma pauperis".** Although this section does not use the term "in forma pauperis", this phrase is commonly employed to describe the petition for waiver of costs authorized by this section. Cook v. District Court ex rel. County of Weld, 670 P.2d 758 (Colo. 1983).

**Whether payment of costs may be deferred is a matter of judicial discretion.** From an analysis of this section it appears that, in the first instance, whether a litigant may commence or defend an action or proceeding without the payment of costs rests within the sound judicial discretion of the judge. Almarez v. Carpenter, 173 Colo. 284, 477 P.2d 792 (1970); Medina v. District Court, 177 Colo. 185, 493 P.2d 367 (1972); Collins v. Jaquez, 15 P.3d 299 (Colo. App. 2000).

**Judge's discretion in reviewing petition to commence without payment of costs.** In the absence of factors such as bad faith or a plainly frivolous claim, the general assembly intended that the judge's discretion in reviewing a petition to commence and prosecute an action without payment of costs be limited to determining whether the petitioning party has the financial resources to pay the costs and expenses incident to the litigation. Cook v. District Court ex rel. County of Weld, 670 P.2d 758 (Colo. 1983).

**Where plaintiff acted promptly to submit his amended in forma pauperis (IFP) motion, the granting of the amended motion should relate back to the filing of the original IFP motion.** *Fraser v. Colo. Bd. of Parole*, 931 P.2d 560 (Colo. App. 1996).

**In determining whether a prisoner may proceed under this section without payment of costs,** the court may consider the person's complete financial condition, including the timing and nature of the prisoner's spending in the weeks immediately preceding commencement of the action. *Vance v. District Ct. of Fremont County*, 908 P.2d 1189 (Colo. App. 1995).

**But a prisoner need not be destitute to proceed without payment of costs, nor must a prisoner develop a savings plan to provide for the possibility that he or she may want to file an action while incarcerated.** Prisoners need not deprive themselves of the small amenities that they are allowed to acquire in order to qualify to proceed without payment of costs. *Vance v. District Ct. of Fremont County*, 908 P.2d 1189 (Colo. App. 1995).

**Court must abuse discretion to reverse its order.** To reverse an order denying such a request to proceed in forma pauperis, the court must have "abused its discretion". *Medina v. District Court*, 177 Colo. 185, 493 P.2d 367 (1972).

**Finding by trial court of nonindigency not supported by record.** *Medina v. District Court*, 177 Colo. 185, 493 P.2d 367 (1972).

**This section does not apply to appeals from justice to county courts.** *Spain v. Murry*, 77 Colo. 197, 235 P. 338 (1925).

**Nor does it apply to the prosecution of writs of error.** In *Ferrara v. Auric Mining Co.* (20 Colo. App. 411, 79 P. 302 (1905)) it is stated that the rulings of the supreme court are to the effect that this section does not apply to the prosecution of writs of error. *Spain v. Murry*, 77 Colo. 197, 235 P. 338 (1925).

**The court is not confined to any particular stage in the progress of a case,** after it is instituted, either before or after the trial is begun, in granting this permission; and certainly in the absence of any showing of an abuse by the trial court of its discretion under this section, or of injury or prejudice to the defendant, neither of which is made to appear in this case, a court of review will not interfere. *Peck v. Farnham*, 24 Colo. 141, 49 P. 364 (1897).

**Security required under § 13-16-102 may not be excused or deferred under this section.** *Lewis v. Keim*, 883 P.2d 610 (Colo. App. 1994) (disapproved of by supreme court in *Walcott v. District Ct., 2nd Jud. Dist.*, 924 P.2d 163 (Colo. 1996)).

**This section provides judges with the authority to waive cost requirements under §§ 13-16-101 and 13-16-102 and,** therefore, provides sufficient authority to permit a plaintiff to proceed when the plaintiff is a poor person and unable to pay costs and expenses. *Walcott v. District Ct., 2nd Jud. Dist.*, 924 P.2d 163 (Colo. 1996).

## **II. HABEAS CORPUS PROCEEDINGS.**

**While habeas corpus may, of course, be found to be a civil action** for procedural purposes, it does not follow that its availability in testing the state's right to detain any indigent prisoner may be subject to the payment of a filing fee. *Williams v. District Court*, 160 Colo. 348, 417 P.2d 496 (1966).

**This section guarantees it to poor persons.** The legal device existing in the state which provides this equal protection in the postconviction civil remedy of habeas corpus is contained in and governed by this section, which allows a poor person to proceed without the payment of costs in a civil action on his making a showing of poverty. *Williams v. District Court*, 160 Colo. 348, 417 P.2d 496 (1966).

**In the administration of criminal justice the indigent must be afforded access to established channels of appellate review** in such manner that he is freed from the "invidious discriminations" which attach when proceeding in penury. *Williams v. District Court*, 160 Colo. 348, 417 P.2d 496 (1966).

**There is no higher duty than to maintain the federal writ of habeas corpus unimpaired** and unsuspended save only in the cases specified in the federal constitution. When an equivalent right is granted by a state, financial hurdles must not be permitted to condition its exercise. *Williams v. District Court*, 160 Colo. 348, 417 P.2d 496 (1966).

**Judges have restricted discretion when habeas corpus is sought.** Federal constitutional standards require consideration of the "freedom writ" in a quasi-criminal light when state procedures are tested for equal protection, and the discretion normally allowed the court under this section is restricted by very tangible federal limitations. *Williams v. District Court*, 160 Colo. 348, 417 P.2d 496 (1966).

**Courts cannot saddle defendant with costs even when habeas petition is denied.** The supreme court sees no difference of substance save subtlety between the "invidious discrimination" worked by a fee imposed upon an indigent before he is allowed to petition, which he cannot pay, and a fee saddled upon him after dismissal, which he also cannot pay. Both practices are effective deterrents. *Williams v. District Court*, 160 Colo. 348, 417 P.2d 496 (1966).

**Invidious discrimination.** To fasten a financial burden only upon those unsuccessful appellants who are confined in state institutions is to make an invidious discrimination. *Williams v. District Court*, 160 Colo. 348, 417 P.2d 496 (1966).

## **III. REPORTER'S TRANSCRIPT.**

**Section does not give a right to a free transcript.** This section does not give an individual, found to be a pauper within the meaning of the statute, a right to a trial transcript without cost in order to prosecute an appeal. *Alvarez v. Carpenter*, 173 Colo. 284, 477 P.2d 792 (1970).

**Transcript is not, by definition, a writ, process, or proceeding.** *Alvarez v.*

Carpenter, 173 Colo. 284, 477 P.2d 792 (1970).

**The fees for the preparation of a transcript by a reporter are not payable to the court** and the court cannot waive them. *Alvarez v. Carpenter*, 173 Colo. 284, 477 P.2d 792 (1970).

**This section only permits the waiver by the judge of costs chargeable by the court.** *Alvarez v. Carpenter*, 173 Colo. 284, 477 P.2d 792 (1970).

**The supreme court may find other means of affording adequate and effective appellate review** to indigent defendants than through a reporter's transcript. *Alvarez v. Carpenter*, 173 Colo. 284, 477 P.2d 792 (1970).

**Section does not violate § 6 of art. II, Colo. Const.** Although this section does not

require that a trial transcript without cost be provided, § 13-16-103 is not violative of § 6 of art. II, Colo. Const. *Alvarez v. Carpenter*, 173 Colo. 284, 477 P.2d 792 (1970).

**A transcript is not an absolute necessity in the reviewing court.** *Alvarez v. Carpenter*, 173 Colo. 284, 477 P.2d 792 (1970).

**Colorado, under its rule-making power, has augmented the waiver of costs by simplifying the requirements for a record.** The supreme court, consonant with the spirit of this section to ease the burden on litigants, adopted C.A.R. 10. A discussion of this rule should dispel any implications that Colorado denies an effective review of trial court judgments by not providing free reporters' transcripts. *Alvarez v. Carpenter*, 173 Colo. 284, 477 P.2d 792 (1970).

#### **13-16-104. When plaintiff recovers costs.**

If any person sues in any court of this state in any action, real, personal, or mixed, or upon any statute for any offense or wrong immediately personal to the plaintiff and recovers any debt or damages in such action, then the plaintiff or demandant shall have judgment to recover against the defendant his costs to be taxed; and the same shall be recovered, together with the debt or damages, by execution, except in the cases mentioned in this article.

**Source:** R.S. p. 154, § 4. G.L. § 326. G.S. § 400. R.S. 08: § 1055. C.L. § 6571. CSA: C. 43, § 1. CRS 53: § 33-1-4. C.R.S. 1963: § 33-1-4.

#### **ANNOTATION**

**The successful plaintiff is entitled to recover all costs.** *Wallace Plumbing Co. v. Dillon*, 73 Colo. 10, 213 P. 130 (1922).

**The party to be taxed must be interested in suit and before court.** This section does not authorize the court to



render judgment against one not interested in the litigation or the subject matter thereof, not a party to the suit and not before the court. *Downs v. Reno*, 53 Colo. 217, 124 P. 582 (1912).

**A party who challenges the necessity and reasonableness of expert witness fees and expenses is entitled to an evidentiary hearing.** *Fed. Ins. Co. v. Ferrellgas, Inc.*, 961 P.2d 511 (Colo. App. 1997).

**A party is entitled to have the trial court make findings sufficient to disclose the basis for its decision to award costs and to support the amount awarded.** *Fed. Ins. Co. v. Ferrellgas, Inc.*, 961 P.2d 511 (Colo. App. 1997).

**Where there is more than one trial, he is entitled to recover costs for all the trials.** *Wallace Plumbing Co. v. Dillon*, 73 Colo. 10, 213 P. 130 (1922).

**Costs of a prior mistrial.** The provisions of this section, that the prevailing party shall recover his costs to be taxed, authorize him to recover all his costs in the action, including those of a prior mistrial, as well as those of the last trial; and a defeated party who would obtain a new trial must first pay the costs of the prevailing party at a mistrial, as well as all other necessary costs he has incurred in the action. *Shreve v. Cheesman*, 69 F. 785 (8th Cir. 1895).

**If the defendant prevails, costs in one court may be set off against those in the other.** Where a judgment is reversed on review and the cause remanded for a new trial, the plaintiff in error is entitled to costs in the appellate court; and where the

defendant in error thereafter prevails in the trial court, the costs in one court may be set off against those in the other. *Wallace Plumbing Co. v. Dillon*, 73 Colo. 10, 213 P. 130 (1922).

**Plaintiff properly charged with costs where cross-complainant recovers judgment.** Where a complaint was dismissed and the plaintiff objected to the dismissal of the case, but insisted on a trial on the defendant's cross-complaint and the replication, and the cross-complainant recovered judgment, the plaintiff was properly charged with the costs. *Cone v. Montgomery*, 25 Colo. 277, 53 P. 1052 (1898).

**Successful plaintiff in error may recover cost of transcript of record.** The long practice of the supreme court should not lightly be changed, and amounts to a construction of the statutes, and that thereunder the successful plaintiff in error may recover any costs properly taxable. It is claimed that the transcript of record is not a proper matter to be taxed, but what has been said above shows that we must regard it as proper. It has always been customary to tax it. *Antero & Lost Park Reservoir Co. v. Lowe*, 70 Colo. 467, 203 P. 265 (1921).

**The bill of exceptions.** For some years the bill of exceptions was not separately taxed but was included with the transcript of record, and in *Phillips v. Corbin* (25 Colo. 567, 56 P. 180 (1898)) a bill of costs including the costs for the transcript of the bill of exceptions, the original of which bill and not a transcript was sent to this court, was expressly approved. We cannot sustain

this practice, since it is supported by no statute or rule and cannot, therefore, allow the costs of the bill of exceptions. *Antero & Lost Park Reservoir Co. v. Lowe*, 70 Colo. 467, 203 P. 265 (1921).

**Costs in annexation proceedings in the lower court are not allowed under this section.** *Phillips v. Corbin*, 25 Colo. 567, 56 P. 180 (1898).

**This section is expressly limited to costs arising out of court actions**, and it has no application to special proceedings before any boards, bureaus, or commissions unless expressly authorized by the creative act. *Md. Cas. Co. v. Indus. Comm'n*, 116 Colo. 58, 178 P.2d 426 (1947).

**Costs rarely taxed against a public officer.** In the discharge of a duty imposed upon him by law, costs are rarely, if ever, taxed against a public officer. *Witter v. Whipple*, 26 Colo. 1, 55 P. 1081 (1899).

**No costs can be taxed in the lower court against the secretary of state** in a proceeding to require him to publish a list of nominees on the official ballot, and the same applies to the cost of proceeding in the supreme court where the secretary of state acted in good faith. *Witter v. Whipple*, 26 Colo. 1, 55 P. 1081 (1899).

**An award of costs is proper against a municipal corporation.** *Kussman v. City & County of Denver*, 671 P.2d 1000 (Colo. App. 1983).

**Right of a plaintiff to select the forum for a claim less than \$5,000** is not conditioned by constitution or by statute; rather, the general assembly has seen fit to

permit a claimant to file such actions in district court unconstrained by considerations of whether the county court is an adequate forum for just resolution of the complaint and of any increased costs to the public incident to the district court adjudicative process. *Cook v. District Court ex rel. County of Weld*, 670 P.2d 758 (Colo. 1983).

**Expert witness fees are recoverable as costs to prevailing parties.** *Graefe & Graefe v. Beaver Mesa Exploration*, 695 P.2d 767 (Colo. App. 1984).

**Plaintiff not entitled to costs against state** pursuant to this section because there is no express authorization allowing costs to be assessed against the state. *McFarland v. Gunter*, 829 P.2d 510 (Colo. App. 1992); *Smith v. Furlong*, 976 P.2d 889 (Colo. App. 1999); *Rocky Mtn. Animal Def. v. Div. of Wildlife*, 100 P.3d 508 (Colo. App. 2004).

**The language of § 13-16-122 describing allowable costs does not negate the mandatory provisions of this section** by allowing the court to refuse all costs. *Nat'l Canada Corp. v. Dikeou*, 868 P.2d 1131 (Colo. App. 1993).

**A prevailing party entitled to costs should be identified by focusing** on the countervailing claims and defenses asserted by the litigants and not on incidental independent factors that may affect the ultimate monetary judgement. The trial court erred by considering non-collateral source receipts in determining if real estate purchasers were prevailing parties entitled to costs. *Frost v. Schroeder & Co., Inc.*, 876 P.2d 126 (Colo. App. 1994).

**Determining a plaintiff to be a prevailing party on the basis of nominal damages when the defendant recovers more in damages than the nominal damages would be abuse of discretion.** Plaintiff sought nominal damages and subsequent determination as the prevailing party, which carries with it an entitlement to costs. However, such determination on the basis of nominal damages would be an abuse of discretion by the court, since the nominal damages of one dollar would have been less than the \$966,178 awarded to the defendant on a counterclaim, and thus the defendant would be determined the prevailing party using a "net judgment" analysis. *City of Westminster v. Centric-Jones Constructors*, 100 P.3d 472 (Colo. App. 2003).

**The trial court's right to allocate costs between defendants is discretionary.** The trial court did not abuse its discretion in making the award of costs against the defendants joint and several where one of the defendants is an individual and the other is a conference of churches. *Winkler v. Rocky Mtn. Conference*, 923 P.2d 152 (Colo. App. 1995).

**Even though the imposition of costs is required by this section,** the apportionment of costs among multiple defendants is not prescribed. It remains at the discretion of the court. *Bohrer v. DeHart*, 943 P.2d 1220 (Colo. App. 1996), rev'd on other grounds, 961 P.2d 472 (Colo. 1998).

**An award of costs is not prohibited under C.R.C.P. 54(d),** even if a plaintiff is not entitled to costs under this section.

*Weeks v. City of Colo. Springs*, 928 P.2d 1346 (Colo. App. 1996).

**This statute and C.R.C.P. 54(d) are modified by § 13-17-202 (1)(a)(II),** which does not allow a party who rejects a settlement offer and recovers less at trial to recover his or her costs, even though that party is determined to be the prevailing party. *Bennett v. Hickman*, 992 P.2d 670 (Colo. App. 1999).

**A federal court exercising diversity jurisdiction has no power to award costs under this section or § 13-16-105** because Fed. R. Civ. P. 54(d), which limits the costs that may be awarded, falls well within the statutory authorization of the federal Rules Enabling Act, 28 U.S.C. § 2072, and its displacement of state law would not impair any state substantive right. *Stender v. Archstone-Smith Operating Trust*, 958 F.3d 938 (10th Cir. 2020).

**Plaintiff entitled to recover costs for settlement conference and trial transcript if the court made either necessary for litigation.** *Parker v. USAA*, 216 P.3d 7 (Colo. App. 2007), aff'd on other grounds, 200 P.3d 350 (Colo. 2009).

**Offer of settlement as to "all claims"** unambiguously includes attorney fees and costs if the only claim for attorney fees and costs appears in the complaint. The offer of settlement need not explicitly reference attorney fees or costs. *Bumbal v. Smith*, 165 P.3d 844 (Colo. App. 2007).

**A party who prevails in an action to pierce the corporate veil of a corporation may recover the costs incurred in that**

**action if** (1) the action was brought to enforce a breach of contract judgment against the corporation and (2) the contract underlying the judgment authorized an

award of costs for enforcing the judgment against the corporation. *Swinerton Builders v. Nassi*, 2012 COA 17, 272 P.3d 1174.

### **13-16-105. When defendant recovers costs.**

If any person sues in any court of record in this state in any action wherein the plaintiff or demandant might have costs in case judgment is given for him and he is nonprossed, suffers a discontinuance, is nonsuited after appearance of the defendant, or a verdict is passed against him, then the defendant shall have judgment to recover his costs against the plaintiff, except against executors or administrators prosecuting in the right of their testator or intestate, or demandant, to be taxed; and the same shall be recovered of the plaintiff or demandant, by like process as the plaintiff or demandant might have had against the defendant, in case judgment has been given for the plaintiff or demandant.

**Source:** R.S. p. 154, § 5. G.L. § 327. G.S. § 401. **R.S. 08:** § 1058. C.L. § 6574. **CSA:** C. 43, § 4. **CRS 53:** § 33-1-5. **C.R.S. 1963:** § 33-1-5.

### **ANNOTATION**

**Section 13-64-205 (1)(b) does not preclude or affect a prevailing defendant's right to recover costs** and does not imply a repeal of this section. *Mullins v. Kessler*, 83 P.3d 1203 (Colo. App. 2003).

**A party challenging the reasonableness of expert fees** is entitled to a hearing on the issue. *Dunlap v. Long*, 902 P.2d 446 (Colo. App. 1995).

**Whether to award costs and what amount to award are decisions within the sound discretion of the trial court.** Its ruling will not be reversed on appeal without clear abuse of discretion. *Wark v. McClellan*, 68 P.3d 574 (Colo. App. 2003).

**This section expressly mandates an award of costs to prevailing defendant.** Trial court erred in denying defendant's request for costs. However, court has considerable discretion in determining which costs to award and what amounts are reasonable. *Acierno by & through Acierno v. Garyfallou*, 2016 COA 91, 409 P.3d 464.

**Costs of third-party defendant properly divided between plaintiff and defendant or borne by two defendants when both had claims against third-party defendant** since dismissal of the claims made third-party defendant the prevailing party against both. *Cobai v. Young*, 679 P.2d 121 (Colo. App. 1984); *Poole v. Estate of Collins*, 728 P.2d 741 (Colo. App. 1986).

**Court construed the Health Care Availability Act in harmony with** this section and C.R.C.P. 54(d) to allow a prevailing defendant to recover costs in a medical negligence action. *Mullins v. Kessler*, 83 P.3d 1203 (Colo. App. 2003).

**A federal court exercising diversity jurisdiction has no power to award costs under this section or § 13-16-104** because Fed. R. Civ. P. 54(d), which limits the costs that may be awarded, falls well within the statutory authorization of the federal Rules

Enabling Act, 28 U.S.C. § 2072, and its displacement of state law would not impair any state substantive right. *Stender v. Archstone-Smith Operating Trust*, 958 F.3d 938 (10th Cir. 2020).

**Applied** in *Survey Eng'rs, Inc. v. Zoline Found.*, 193 Colo. 488, 568 P.2d 436 (1977); *Romero v. Rossmiller*, 43 Colo. App. 215, 603 P.2d 964 (1979); *Gilmore v. Rubeck*, 708 P.2d 486 (Colo. App. 1985); *Bowers v. Loveland Pub. Co.*, 773 P.2d 595 (Colo. App. 1988).

#### **13-16-106. Costs in replevin.**

Any person making justification or cognizance in replevin, if the same is found for him, or the plaintiff is nonsuited or nonprossed, suffers discontinuance, or is otherwise barred, then such person shall recover his damages and costs against the plaintiff.

**Source:** R.S. p. 155, § 6. G.L. § 328. G.S. § 402. R.S. 08: § 1066. C.L. § 6582. CSA: C. 43, § 12. CRS 53: § 33-1-6. C.R.S. 1963: § 33-1-6.

#### **13-16-107. Costs on motion to dismiss.**

If, in any action, judgment upon motion to dismiss by either party to the action is given against the plaintiff, the defendant shall recover costs against the plaintiff; if such judgment is given for the plaintiff, he shall recover costs against the defendant.

**Source:** R.S. p. 155, § 7. G.L. § 329. G.S. § 403. R.S. 08: § 1056. C.L. § 6572. CSA: C. 43, § 2. CRS 53: § 33-1-7. C.R.S. 1963: § 33-1-7.

### **ANNOTATION**

**Where a case is remanded for further proceedings** by the Colorado Court of Appeals, an award of costs pursuant to this

section is inappropriate. *Dalton v. Miller*, 984 P.2d 666 (Colo. App. 1999).

**A court that grants a motion to dismiss but does not enter judgment thereon lacks authority to award costs under this**

**section.** Sotelo v. Hutchens Trucking Co., 166 P.3d 285 (Colo. App. 2007).

**13-16-108. When several matters pleaded.**

When any defendant in any action, or plaintiff in replevin, pleads several matters, and any of such matters upon demurrer joined are adjudged insufficient, or if a verdict is found in any issue of the cause for the plaintiff, costs shall be given at the discretion of the court.

**Source:** R.S. p. 155, § 8. G.L. § 330. G.S. § 404. R.S. 08: § 1067. C.L. § 6583. CSA: C. 43, § 13. CRS 53: § 33-1-8. C.R.S. 1963: § 33-1-8.

**ANNOTATION**

**For trial court's ruling that each party pay his own cost not being an abuse of discretion,** see Livingston v. Utah-Colorado Land & Live Stock Co., 106 Colo. 278, 103 P.2d 684 (1940); W. H. Woolley & Co. v. Bear Creek Manor, 735 P.2d 910 (Colo. App. 1986).

**Where each party prevails in part an award of costs is committed to sole discretion of trial court** and court's discretion remains unaffected by fact that judgment awarded to one party is larger than

judgment awarded to the other. Husband v. Colo. Mtn. Cellars, 867 P.2d 57 (Colo. App. 1993); Archer v. Farmer Bros., 70 P.3d 495 (Colo. App. 2002), aff'd, 90 P.3d 228 (Colo. 2004).

**When a case involves many claims,** some of which are successful and some of which are not, it is left to the sole discretion of the trial court to determine which party, if any, is the prevailing party and whether costs should be awarded. Archer v. Farmer Bros. Co., 90 P.3d 228 (Colo. 2004).

**13-16-109. Costs on several counts.**

Where there are several counts in any declaration, and any of them are adjudged insufficient, or a verdict on any issue joined thereon is found for the defendant, costs shall be awarded in the discretion of the court.

**Source:** R.S. p. 155, § 9. G.L. § 331. G.S. § 405. R.S. 08: § 1063. C.L. § 6579. CSA: C. 43, § 9. CRS 53: § 33-1-9. C.R.S. 1963: § 33-1-9.

## ANNOTATION

**Where each party prevails in part an award of costs is committed to sole discretion of trial court** and court's discretion remains unaffected by fact that judgment awarded to one party is larger than judgment awarded to the other. *Husband v. Colo. Mtn. Cellars*, 867 P.2d 57 (Colo. App. 1993).

**When a case involves many claims,** some of which are successful and some of which are not, it is left to the sole discretion of the trial court to determine which party, if any, is the prevailing party and whether costs should be awarded. *Archer v. Farmer Bros. Co.*, 90 P.3d 228 (Colo. 2004).

### **13-16-110. When several defendants.**

Where several persons are made defendants to any action of trespass, assault, false imprisonment, detinue, replevin, trover, or ejectment, and any one or more of them are upon trial acquitted by verdict, every person so acquitted shall recover his costs of suit in like manner as if such verdict or acquittal had been given in favor of the defendant.

**Source:** R.S. p. 155, § 10. G.L. § 332. G.S. § 406. R.S. 08: § 1068. C.L. § 6584. CSA: C. 43, § 14. CRS 53: § 33-1-10. C.R.S. 1963: § 33-1-10.

### **13-16-111. Recovery of costs of suit.**

A plaintiff who obtains judgment or an award of execution in an action brought under subsection (4) or (5) of rule 106 (a), C.R.C.P., shall recover his costs of suit. The defendant shall recover his costs if the action brought under subsection (4) or (5) of rule 106 (a), C.R.C.P., is dismissed pursuant to rule 41, C.R.C.P.

**Source:** R.S. p. 155, § 11. G.L. § 333. G.S. § 407. R.S. 08: § 1069. C.L. § 6585. CSA: C. 43, § 15. CRS 53: § 33-1-11. C.R.S. 1963: § 33-1-11.

## ANNOTATION

**The word "shall" in this section evinces a legislative intent that the prevailing**

**party in a C.R.C.P. 106(a)(4) action must be awarded reasonable costs.** *Carney v.*

Civil Serv. Comm'n, 30 P.3d 861 (Colo. App. 2001).

**Section allows a prevailing plaintiff in a C.R.C.P. 106(a)(4) action to recover costs against the state, its officers, or agencies.** Branch v. Colo. Dept. of Corr., 89 P.3d 496 (Colo. App. 2003).

**This section does not require an award of costs if a party achieves mixed success in a C.R.C.P. 106(a)(4) action involving**

**multiple claims or issues.** Any other reading would require a court to ignore §§ 13-16-108 and 13-16-109 and established case law that provides the court discretion to award costs if a party achieves some success when several matters are pleaded. Phillips v. Watkins, 166 P.3d 197 (Colo. App. 2007).

**Applied** in Romero v. Rossmiller, 43 Colo. App. 215, 603 P.2d 964 (1979); Rossmiller v. Romero, 625 P.2d 1029 (Colo. 1981).

### **13-16-112. Number of witness fees taxed.**

In no case in the district court shall the fees of more than four witnesses be taxed against the party against whom judgment is given for costs, unless the court certifies on its minutes that more than four witnesses were really necessary, in which case the clerk shall tax the costs of as many witnesses as the court so certifies.

**Source:** R.S. p. 155, § 12. G.L. § 334. G.S. § 408. R.S. 08: § 1062. C.L. § 6578. CSA: C. 43, § 8. CRS 53: § 33-1-12. C.R.S. 1963: § 33-1-12.

### **ANNOTATION**

**The section is confined to civil cases,** and it is not the intention of the general assembly to extend it to criminal proceedings. Had it been thought necessary and proper, it would have been embraced in the criminal code. Parker v. People, 7 Colo. App. 56, 42 P. 172 (1895).

**Hearing upon remand considered separate hearing.** Under this section, a hearing held after remand was a separate hearing, and plaintiff would be entitled to use such witnesses as may be considered necessary by him to present his evidence,

subject to the restriction contained in this section. Yeager Garden Acres, Inc. v. Summit Constr. Co., 32 Colo. App. 242, 513 P.2d 458 (1973).

**Award for fees of eight witnesses without specific finding for their necessity held to be error** in child custody hearing. Weber v. Wallace, 789 P.2d 427 (Colo. App. 1989).

**Record of trial court was not sufficient** to determine which costs were allowed and whether they were reasonable and permitted by statute, thereby requiring a remand to the



trial court to make findings under this section and § 13-16-112. *Fenton v. Fibreboard Corp.*, 827 P.2d 564 (Colo. App. 1991).

**Applied** in *Denver Urban Renewal Auth. v. Hayutin*, 40 Colo. App. 559, 583 P.2d 296 (1978).

### **13-16-113. Costs upon dismissal or summary judgment.**

(1) In all cases where any action is dismissed for irregularity, or is nonprossed or nonsuited by reason that the plaintiff neglects to prosecute the same, the defendant shall have judgment for his costs.

(2) In all actions brought as a result of a death or an injury to person or property occasioned by the tort of any other person, where any such action is dismissed prior to trial under rule 12 (b) of the Colorado rules of civil procedure, the defendant shall have judgment for his costs. This subsection (2) shall not apply if a motion under rule 12 (b)(5) of the Colorado rules of civil procedure is treated as a motion for summary judgment and disposed of as provided in rule 56 of the Colorado rules of civil procedure.

**Source:** R.S. p. 155, § 13. G.L. § 335. G.S. § 409. R.S. 08: § 1059. C.L. § 6575. CSA: C. 43, § 5. CRS 53: § 33-1-13. C.R.S. 1963: § 33-1-13. L. 87: Entire section amended, p. 547, § 1, effective July 1.

### **ANNOTATION**

**Law reviews.** For article, "1988 Update on Colorado Tort Reform Legislation — Part II", see 17 Colo. Law. 1949 (1988).

**Award of costs for claims dismissed because of failure to prosecute is mandatory.** *Munoz v. Measner*, 214 P.3d 510 (Colo. App. 2009), rev'd on other grounds, 247 P.3d 1031 (Colo. 2011).

**The specific limitation in the second sentence of subsection (2) cannot reasonably be interpreted as a general prohibition** extending to all motions for

summary judgment brought under C.R.C.P. 56, and the defendant's entitlement to an award of costs was properly considered under C.R.C.P. 54(d). *Spencer v. United Mortg. Co.*, 857 P.2d 1342 (Colo. App. 1993).

**This section and § 13-17-201 mandate awards of attorney fees and costs and do not permit a reduction** for work that may be used in companion litigation. *Crandall v. City & County of Denver*, 238 P.3d 659 (Colo. 2010).

### **13-16-114. Costs in equity.**

Upon the complainant dismissing his bill in equity or the defendant dismissing the same for want of prosecution, the defendant shall recover against the complainant full costs; and, in all other cases in equity not otherwise directed by law, it is in the discretion of the court to award costs or not.

**Source:** R.S. p. 155, § 14. G.L. § 336. G.S. § 410. R.S. 08: § 1060. C.L. § 6576. CSA: C. 43, § 6. CRS 53: § 33-1-14. C.R.S. 1963: § 33-1-14.

### **ANNOTATION**

**In an equity case the taxation of costs ordinarily rests in the sound discretion of the court,** and its action in assessing the fees of expert witnesses as a part of the costs will not be disturbed on review where no abuse of discretion appears. Union Exploration Co. v. Moffat Tunnel Imp. Dist., 104 Colo. 109, 89 P.2d 257 (1939).

**For a court of equity charging costs of surveyor to losing party,** see Moore v.

Burritt, 106 Colo. 413, 105 P.2d 1084 (1940).

**C.R.C.P. 68 applies only to actions at law which seek a money judgment.** Court held to be correct in refusing to apply said rule to dissolution of marriage proceeding which is an action in equity that does not seek a money judgment at law. Such cases are governed by this section which authorizes court to award costs or not. In re Marshall, 781 P.2d 177 (Colo. App. 1989).

### **13-16-115. In suit for use of another.**

When any suit is commenced in the name of one person to the use of another, the person to whose use the action is brought shall be held liable and bound for the payment of all costs which the plaintiff may be adjudged or bound to pay, to be recovered by civil action.

**Source:** R.S. p. 156, § 15. G.L. § 337. G.S. § 411. R.S. 08: § 1057. C.L. § 6573. CSA: C. 43, § 3. CRS 53: § 33-1-15. C.R.S. 1963: § 33-1-15.

### **13-16-116. Costs in adverse suit.**

In all cases where any person makes an application for a patent to any lode, claim, placer claim, millsite, or other mining property under the mining laws of the United States, and any other person claiming adversely to such applicant files an adverse claim in the proper land office or brings a suit for the purpose of determining the title, or right of possession, to such mining property, or any part thereof, if such adverse claimant, being plaintiff in such suit, prevails, so as to recover costs therein, he shall also recover and be entitled to tax as a part of his said costs all disbursements and expense necessarily incurred and paid by him for plats, abstracts, and copies of papers filed in said land office with his adverse claim, and also a reasonable counsel fee, not exceeding fifty dollars in any case, for the expense of preparing his said adverse claim.

**Source:** L. 1876: p. 54, § 1. G.L. § 349. G.S. § 423. R.S. 08: § 1061. C.L. § 6577. CSA: C. 43, § 7. CRS 53: § 33-1-16. C.R.S. 1963: § 33-1-16.

### **ANNOTATION**

**Attorney fees are not recoverable as costs under this section.** In an adverse suit between the owners of two conflicting mining claims, where after judgment was entered it was on motion of the successful party amended so as to include an attorney fee and the expense of adverse, in

accordance with a stipulation between the parties made before trial, the sums thus included in the judgment were a part of the judgment and not costs. Hiwassee Gold Mining Co. v. Hotchkiss Mt. Mining & Reduction Co., 16 Colo. App. 22, 63 P. 708 (1901).

### **13-16-117. On appeal from decisions in probate.**

In all cases of appeal from the decision of a court of probate, the assessment of costs shall be in the discretion of the court in which such appeal is heard.

**Source:** R.S. p. 156, § 17. G.L. § 339. G.S. § 413. R.S. 08: § 1070. C.L. § 6586. CSA: C. 43, § 16. CRS 53: § 33-1-17. C.R.S. 1963: § 33-1-17.

**13-16-118. Clerk to tax costs.**

The clerk of any court in the state is authorized and required to tax and subscribe all bills of costs arising in any cause or proceeding in the court of which he is clerk, agreeable to the rates which are allowed or specified by law.

**Source:** R.S. p. 156, § 19. G.L. § 341. G.S. § 415. R.S. 08: § 1073. C.L. § 6589. CSA: C. 43, § 19. CRS 53: § 33-1-18. C.R.S. 1963: § 33-1-18.

**Cross references:** For the fees of the clerk of court, see article 32 of this title.

**ANNOTATION**

|                                                                                                                         |                                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| <b>No discretionary authority in clerk to determine attorney fees and expert witness fees.</b> Discretion is a judicial | function not properly delegable to the clerk of court. Davis v. Bruton, 797 P.2d 830 (Colo. App. 1990). |
|-------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|

**13-16-119. Costs retaxed - forfeit by clerk.**

If any person feels aggrieved by the taxation of any bill of costs, he may apply to the court to have the same retaxed, and, if it appears that the party aggrieved has paid any higher charge than by law is allowed, the court may order that the clerk forfeit all fees allowed to him for taxation and pay to the party aggrieved the whole amount which he has paid by reason of the allowing of any unlawful charge.

**Source:** R.S. p. 156, § 20. G.L. § 342. G.S. § 416. R.S. 08: § 1074. C.L. § 6590. CSA: C. 43, § 20. CRS 53: § 33-1-19. C.R.S. 1963: § 33-1-19.

**13-16-120. Fee bill - precept - levy and return.**

The clerk shall make out a bill of costs as the same have been taxed in any cause against the party liable to pay the same and his security for costs, if any, together with his precept, directed to the sheriff of the proper county, commanding that, if the costs in the said bill of costs mentioned are not paid within thirty days after demand made therefor, he shall cause the same to be levied on the goods and chattels, lands and tenements, of the party so liable therefor, and his security, if any, named therein. Every such fee bill shall run in the name of the people, shall be

under the seal of the court, and shall be returnable within ninety days from the date thereof, and the sheriff shall proceed to collect the same.

**Source:** R.S. p. 156, § 21. G.L. § 343. G.S. § 417. R.S. 08: § 1075. C.L. § 6591. CSA: C. 43, § 21. CRS 53: § 33-1-20. C.R.S. 1963: § 33-1-20.

#### ANNOTATION

**A fee bill for costs runs against the party liable to pay the same and his security** for costs. Shannon v. Dodge, 18 Colo. 164, 32 P. 61 (1893); Staples v. Barclay, 30 Colo. 428, 71 P. 374 (1902).

**Any review must be an appeal from the judgment.** The liability of the sureties was

fixed by the judgment against their principal and any review of such liability must be had by an appeal from or error to such judgment, and could not be had by a motion to quash the fee bill and retax the costs and an appeal from the order denying the motion. Staples v. Barclay, 30 Colo. 428, 71 P. 374 (1902).

#### **13-16-121. Costs allowed to defendants who prevail against public entities. (Repealed)**

**Source:** L. 77: Entire section added, p. 796, § 1, effective July 1. L. 84: Entire section repealed, p. 462, § 6, effective July 1.

#### **13-16-122. Items includable as costs.**

(1) Whenever any court of this state assesses costs pursuant to any provision of this article, such costs may include:

(a) Any docket fee required by article 32 of this title or any other fee or tax required by statute to be paid to the clerk of the court;

(b) The jury fees and expenses provided for in article 71 of this title;

(c) Any fees required to be paid to sheriffs pursuant to section 30-1-104, C.R.S.;

(d) Any fees of the court reporter for all or any part of a transcript necessarily obtained for use in this case;

(e) The witness fees, including subsistence payments, mileage at the rate authorized by section 13-33-103, and charges for expert witnesses approved pursuant to section 13-33-102 (4);

- (f) Any fees for exemplification and copies of papers necessarily obtained for use in the case;
- (g) Any costs of taking depositions for the perpetuation of testimony, including reporters' fees, witness fees, expert witness fees, mileage for witnesses, and sheriff fees for service of subpoenas;
- (h) Any attorney fees, when authorized by statute or court rule;
- (i) Any fees for service of process or fees for any required publications;
- (j) Any item specifically authorized by statute to be included as part of the costs.

**Source:** L. 81: Entire section added, p. 947, § 2, effective July 1. L. 2001: (1)(b) amended, p. 1270, § 18, effective June 5.

**Cross references:** For items includable as costs in criminal actions, see § 18-1.3-701.

#### ANNOTATION

**Law reviews.** For article, "The Bill of Costs", see 25 Colo. Law. 71 (Nov. 1996).

**The awarding of costs is at the discretion of the trial court.** Mem'l Gardens, Inc. v. Olympian Sales & Mgt. Consultants, Inc., 661 P.2d 296 (Colo. App. 1982).

**An award of costs lies within the discretion of the trial court,** subject to the parameters of this section; however, the awarding of expert witness fees is not without limits but is circumscribed by the rule of reason, viz., sound judicial discretion. Fenton v. Fibreboard Corp., 827 P.2d 564 (Colo. App. 1991).

**Whether to award expert witness fees** and the amount, if any, to be awarded are matters within the sound discretion of the trial court. Only reasonable expert witness

fees may be awarded. Steele v. Law, 78 P.3d 1124 (Colo. App. 2003).

**Subject to the limitations set forth in this section, an award of costs lies within the sound discretion of the trial court.** Rossmiller v. Romero, 625 P.2d 1029 (Colo. 1981); Spencer v. United Mortg. Co., 857 P.2d 1342 (Colo. App. 1993).

**As long as the costs incurred are incurred solely for the benefit of the litigation and are not commingled** with any of the general costs of doing business or the costs of other litigation, they cannot properly be termed overhead and may be included as costs under this section. Harvey v. Farmers Ins. Exch., 983 P.2d 34 (Colo. App. 1998), aff'd on other grounds sub nom. Slack v. Farmers Ins. Exch., 5 P.3d 280 (Colo. 2000).

Trial court abused its discretion in awarding plaintiff costs for a client fee related to contempt order because the affidavit submitted for recovery of the fee failed to establish that it was incurred solely for the related litigation. At least some portion of the fee was for general business costs; therefore, the fee is not recoverable. *Madison Capital Co., LLC v. Star Acquisition VIII*, 214 P.3d 557 (Colo. App. 2009). But see *In re January, 2019 COA 87*, 446 P.3d 954.

**Cost of preparing trial transcript recoverable under subsection (1)(d)** where transcript was obtained for use in the case. By stipulating that the court determine liability based upon the trial transcripts, the parties reduced the costs of litigation by avoiding a retrial. The court needed the trial transcript, however, to consider all the testimony. *Parker v. USAA*, 216 P.3d 7 (Colo. App. 2007), *aff'd* on other grounds, 200 P.3d 350 (Colo. 2009).

**Although the expenses of taking a deposition are generally not allowed as items of costs**, subsection (1)(g) permits the award of the "costs of taking depositions for the perpetuation of testimony". Since the deposition transcript was used in lieu of testimony at trial to resolve the disputed claims, there was no abuse of the trial court's discretion in its inclusion of the costs of the deposition in defendant's bill of costs. *Spencer v. United Mortg. Co.*, 857 P.2d 1342 (Colo. App. 1993).

**Record of trial court was not sufficient** to determine which costs were allowed and whether they were reasonable and permitted

by statute, thereby requiring a remand to the trial court to make findings under this section and § 13-16-112. *Fenton v. Fibreboard Corp.*, 827 P.2d 564 (Colo. App. 1991).

**The determination of whether attorney fees are costs or damages in a particular case** is, by its very nature, a fact- and context-sensitive one, which rests within the sound discretion of the trial court. *Ferrell v. Glenwood Brokers, Ltd.*, 848 P.2d 936 (Colo. 1993), overruled in *LHM Corp. v. Martinez*, 2021 CO 78, 499 P.3d 1050, to the extent *Ferrell* suggests appealability of a judgment hinges on the fact-specific determination of whether the attorney fees at issue are best classified as costs or damages; *Double Oak Constr., L.L.C. v. Cornerstone Dev. Int'l, L.L.C.*, 97 P.3d 140 (Colo. App. 2003).

**The list of items awardable as costs in this section is illustrative rather than exclusive.** The use of the word "includes" rather than the word "means" in a regulatory definition indicates a nonexclusive list which may be enlarged upon. *Cherry Creek Sch. Dist. v. Voelker*, 859 P.2d 805 (Colo. 1993); *Am. Water Dev., Inc. v. City of Alamosa*, 874 P.2d 352 (Colo. 1994).

**While deposition costs for ordinary discovery purposes are not allowable**, if witness dies and his deposition is listed on the trial data certificate in lieu of his testimony, this constitutes perpetuation of testimony, and costs are allowable. *Schultz v. Linden-Alimak, Inc.*, 734 P.2d 146 (Colo. App. 1986); *Frontier Expl. v. Am. Nat.*, 849 P.2d 887 (Colo. App. 1992).

**Allowance of expenses in taking discovery deposition proper** where the taking of the deposition and its general content are reasonably necessary for the development of the case in light of facts known to counsel at the time it was taken. *Cherry Creek Sch. Dist. v. Voelker*, 859 P.2d 805 (Colo. 1993); *Harvey v. Farmers Ins. Exch.*, 983 P.2d 34 (Colo. App. 1998), *aff'd* on other grounds *sub nom. Slack v. Farmers Ins. Exch.*, 5 P.3d 280 (Colo. 2000).

**Including costs of medical reports was not abuse of discretion.** Absent specific prohibition, trial court has discretion in awarding costs since the list of expenses that may be awarded as costs under this section is not exclusive. *Church v. Am. Standard Ins. Co.*, 764 P.2d 405 (Colo. App. 1988).

**Accrued interest on loans taken out by prevailing parties to finance their cases is not a recoverable cost as a matter of law.** *Catlin v. Tormey Bewley Corp.*, 219 P.3d 407 (Colo. App. 2009).

**Denial of costs for videotaping deposition was not abuse of discretion by court.** *Dorrance v. Family Athletic Club*, 772 P.2d 667 (Colo. App. 1989).

**No abuse of discretion** in the trial court's denial of plaintiff's request for expert witness fees when plaintiff failed to provide sufficient documentation and itemization to establish her entitlement to expert witness fees since the court was under no obligation to order a costs hearing and plaintiff expressly requested the court not hold such a hearing. *Steele v. Law*, 78 P.3d 1124 (Colo. App. 2003).

**Trial court has discretion to award costs**, subject to this section, and award of deposition costs is within the court's discretion. *Terry v. Sullivan*, 58 P.3d 1098 (Colo. App. 2002).

**C.R.C.P. 103 (8)(b)(5) provides authority to make an award of attorney fees.** *United Bank v. State Treasurer*, 797 P.2d 851 (Colo. App. 1990).

**Witness fees incurred for expert whose testimony on steps taken by reasonably prudent applicant in Torrens action on which court relied in reaching its conclusions on due process issues properly included in cost award under subsection (1)(g).** *Lobato v. Taylor*, 13 P.3d 821 (Colo. App. 2000), *rev'd* on other grounds, 71 P.3d 938 (Colo. 2002).

**Costs attributable to expert witness fees for expert witnesses that did not testify at trial were properly awarded.** These costs were valuation expenses necessarily incurred by reason of the litigation and were necessary for the proper preparation for trial. *Fowler Irrevocable Trust 1992-1 v. City of Boulder*, 992 P.2d 1188 (Colo. App. 1999), *aff'd* in part, *rev'd* in part on other grounds, 17 P.3d 797 (Colo. 2001).

**When an expert witness for the prevailing party does not testify because his or her testimony is ruled unnecessary**, and such ruling does not change the posture of the case, the prevailing party is not entitled to costs for the expert witness's fees. *Catlin v. Tormey Bewley Corp.*, 219 P.3d 407 (Colo. App. 2009).



**Costs were properly awarded for an engineer despite the fact that the engineer's license had expired,** because litigation consultation and testimony do not require a license. *In re Water Rights of Park County Sportsmen's Ranch*, 105 P.3d 595 (Colo. 2005).

**Costs of deposition not permitted** where deposition taken for purposes of ordinary discovery and not to perpetuate testimony. *Weber v. Wallace*, 789 P.2d 427 (Colo. App. 1989).

**This section was not intended to repeal the requirement of § 13-33-103** that mileage fees may be awarded only to subpoenaed witnesses. *Welch v. George*, 19 P.3d 675 (Colo. 2000).

**The language of this section describing allowable costs does not negate the mandatory nature of § 13-16-104** which requires the court to award costs to a successful plaintiff. *Nat'l Canada Corp. v. Dikeou*, 868 P.2d 1131 (Colo. App. 1993).

**This section does not prohibit an award of costs that includes the expenses associated with computerized legal research,** but the costs must be billed separately from attorney fees, such research must have been necessary for trial preparation, and the costs requested for such research must be reasonable. *Roget v. Grand Pontiac, Inc.*, 5 P.3d 341 (Colo. App. 1999).

**District court abused its discretion in awarding full in-house photocopying expenses, all costs billed by mediator and special master, and mileage and meal expenses.** There was no evidence supporting the reasonableness or necessity of the in-house photocopying or the mileage expenses; the award of the mediator's and the special master's costs contravened an agreement between the parties; and the cost of counsel's meals was not attributable to litigation — counsel would need to eat regardless of any litigation. *Valentine v. Mtn. States Mut. Cas. Co.*, 252 P.3d 1182 (Colo. App. 2011).

**While a mandatory settlement conference is not specifically enumerated as an awardable cost in this section, plaintiff was entitled to recover the costs** of the conference because the court made the cost necessary for the litigation of the case. The court required the parties to participate in a settlement conference prior to proceeding to trial. *Parker v. USAA*, 216 P.3d 7 (Colo. App. 2007), *aff'd* on other grounds, 200 P.3d 350 (Colo. 2009).

**Applied** in *Songer v. Bowman*, 804 P.2d 261 (Colo. App. 1990); *Barnes v. Winford*, 833 P.2d 756 (Colo. App. 1992); *Carruthers v. Carrier Access Corp.*, 251 P.3d 1199 (Colo. App. 2010).

### **13-16-123. Award of fees and costs to garnishee.**

In any action before the court in which a garnishee incurs attorney fees in excess of the cost of preparing and filing his answer, the court may order that the costs of the proceeding, mileage

fees as a witness, and reasonable attorney fees be paid to the garnishee when the court finds that the bringing, maintaining, or defense of the action involving the garnishee was frivolous, groundless, or without reasonable basis. The award of costs and fees may be allocated among the parties as the court deems just.

**Source: L. 83:** Entire section added, p. 616, § 1, effective May 20.

#### ANNOTATION

**Attorney fees may be awarded under either this section** or C.R.C.P. 103 or C.R.C.P. 8 without a finding that the actions of the party against whom the award is

entered were frivolous or groundless. Law Offices of Quiat v. Ellithorpe, 917 P.2d 300 (Colo. App. 1995).

#### **13-16-124. Sheriff's fees charged to judicial department.**

Except as provided for by section 13-16-103, in any civil action in which civil process is delivered to a county or city and county sheriff by the judicial department for service of process, the court in which the civil action is pending shall assess as costs against the party or parties requesting such service to be paid to the court the fees charged by the sheriff pursuant to section 30-1-104 (1), C.R.S. No civil action may be dismissed until such costs have been paid to the court.

**Source: L. 96:** Entire section added, p. 751, § 2, effective July 1.

#### **13-16-125. Limit on supersedeas bond.**

(1) In any civil action brought under any legal theory, the amount of a supersedeas bond necessary to stay execution of a judgment granting legal, equitable, or any other relief during the entire course of all appeals or discretionary reviews of the judgment by all appellate courts shall be set in accordance with applicable law; except that the total amount of the supersedeas bonds that are required collectively of all appellants during the appeal of a civil action may not exceed twenty-five million dollars in the aggregate, regardless of the amount of the judgment that is appealed.

(2) Notwithstanding the provisions of subsection (1) of this section, if an appellee proves by a preponderance of the evidence that an appellant who has posted a supersedeas bond is

intentionally dissipating or diverting assets outside the ordinary course of its business for the purpose of avoiding payment of the judgment, a court may enter orders that are necessary to protect the appellee or that require the appellant to post a supersedeas bond in an amount up to and including the total amount of the judgment that is appealed.

**Source: L. 2003:** Entire section added, p. 1871, § 1, effective May 20.

#### ANNOTATION

**Law reviews.** For article, "Bonds in Colorado Courts: A Primer for Practitioners", see 34 Colo. Law. 59 (Mar. 2005). For article, "How (Not) to Mess Up an Appeal", see 54 Colo. Law. 22 (Nov. 2025).

**The twenty-five million dollar supersedeas bond cap is constitutional because setting the amount of a supersedeas bond cap is a substantive matter of public policy.** Defendant appealed the trial court decision awarding plaintiff \$280 million. To stay execution of

the judgment while defendant appealed, defendant filed a twenty-five million dollar bond with the trial court. Plaintiff asserted that C.R.C.P. 121 required defendant to post a bond of 125 percent of the judgment and that the statutory twenty-five million dollar cap conflicts with the court rule and is a procedural matter that the judiciary controls. The statute and rule do not conflict and setting a supersedeas bond cap is a matter of public policy, which makes it a substantive matter for the legislature to determine. *Antero Treatment v. Veolia Water Techs.*, 2023 CO 59, 546 P.3d 1140.

#### **13-16-126. Transparency and limitations on third-party litigation funding - unfair or deceptive trade practices - enforcement - definitions.**

(1) As used in this section, unless the context otherwise requires:

(a) "Attorney" means an attorney, group of attorneys, or law firm that represents a party in a civil action in this state.

(b) "Foreign country of concern" means a foreign government listed in 15 CFR 7.4 and includes an agency of, or any other entity with significant control of, the foreign country of concern.

(c) "Foreign entity" means an entity that is either owned or controlled by the government of a foreign country of concern or a partnership, association, corporation, or organization under the law of, or having its principal place of business in, a foreign country of concern or a subsidiary thereof.

(d) "Foreign third-party litigation funder" means a foreign entity that is a third-party litigation funder.

(e) "Litigation expenses" means costs typically incurred in the course of civil litigation, including filing fees, expert witness fees, transcript fees, court costs, travel expenses, and office overhead. "Litigation expenses" does not include funds intended for use by a party for personal or familial expenses such as food, rent, mortgage payments, car payments, or medical bills.

(f) "Litigation financing" means the financing, funding, advancing, or lending of money to pay for litigation expenses or an agreement to pay litigation expenses directly related to pursuing a legal claim, administrative proceeding, or cause of action if the financing, funding, advancing, or lending of money is provided by a person other than the person who is:

(I) A party to the civil action, administrative proceeding, claim, or cause of action;

(II) An attorney engaged directly or indirectly through another legal representative to represent a party in the civil action; or

(III) An entity or insurer with a preexisting contractual obligation to indemnify or defend a party to the civil action.

(g) "Litigation financing agreement" means a transaction that provides litigation financing to a party or a party's attorney in return for assigning the third-party litigation funder a right to receive an amount that includes the payment of interest, fees, or any other consideration contingent on the outcome of the claim or action. "Litigation financing agreement" does not include:

(I) Legal services provided to a party by an attorney on a contingency fee basis or legal costs advanced by an attorney when the services or costs are provided to or on behalf of a party by an attorney in the dispute and in accordance with the rules of professional conduct;

(II) Bills, receivables, or liens held by a health-care provider or their assignee;

(III) Loans made directly to a party or a party's attorney when repayment of the loan is not contingent upon the judgment, award, settlement, or verdict in a claim or action; or

(IV) Funding provided by a nonprofit organization exempt from federal income taxation under section 501 (c)(3) of the federal "Internal Revenue Code of 1986".

(h) "National security interest" means interests relating to the national defense, foreign intelligence and counterintelligence, international and domestic security, and foreign relations.

(i) "Party" means a person or entity in a civil action.

(j) "Proprietary information" means information developed, created, or discovered by a person, or that became known by or was conveyed to the person, that has a commercial value in

the person's business and includes domain names, trade secrets, copyrights, ideas, techniques, inventions, and other information relating to designs, configurations, documentation, recorded data, schematics, circuits, mask works, layouts, source code, object code, master works, master databases, algorithms, flow charts, formulas, works of authorship, mechanisms, research, manufacture, improvements, assembly, installation, intellectual property including patents and patent applications, and information concerning a person's actual or anticipated business, research, or development.

(k) "Third-party litigation funder" means a person or entity that provides litigation financing to a party or attorney in a civil action and has the contractual right to receive or make a payment that is contingent on the outcome of an identified civil action by settlement, judgment, or otherwise on the outcome of a matter within a portfolio that includes the civil action. This term does not apply to:

(I) The named parties or attorneys who provide funding for litigation expenses related to the civil action;

(II) A person or entity providing funding solely intended to pay costs of living or other personal or familial expenses during the pendency of the civil action;

(III) The named parties or attorneys who provide funding, including on a contingency fee basis or to advance the named parties' legal expenses related to the civil action;

(IV) A health insurer, medical provider, or assignee that has paid, is obligated to pay, or is owed money for health-care services rendered to an injured person who is a party to the civil action pursuant to the terms of a health insurance plan or other agreement;

(V) A financial institution providing loans made directly to a party or attorney when repayment of the loan is not contingent upon the outcome of the civil action or on the outcome of a matter within a portfolio that includes the civil action and involves the same attorney; or

(VI) A nonprofit legal organization exempt from federal income taxation under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", or a person providing funding to a nonprofit legal organization that represents clients on a pro bono basis. This subsection (1)(k)(VI) does not affect the award of costs or attorney fees to a nonprofit legal organization or related attorney.

(2) A foreign third-party litigation funder shall:

(a) Disclose in writing to the attorney general the name, address, and citizenship or country of incorporation or registration of the foreign entity that has a financial stake in the outcome of the civil action or portfolio that includes the civil action; and

(b) Submit to the attorney general a copy of the litigation financing agreement creating the contingent right to receive payment described in subsection (2)(a) of this section.

(3) The disclosure and certification required by subsection (2) of this section must be made upon filing the civil action or, if the civil action is filed prior to the execution of a litigation financing agreement, within thirty-five days after the execution of the litigation financing agreement.

(4) The declarant shall make the disclosure and certification required by subsection (2) of this section under penalty of perjury based on actual knowledge of the declarant formed after reasonable inquiry. The foreign third-party litigation funder shall provide the disclosure and certification to the attorney general, and the attorney general shall maintain the disclosure to preserve the confidentiality of the parties and attorneys.

(5) If, after submitting the disclosure and certification required by subsection (2) of this section, the foreign third-party litigation funder learns that the information disclosed is incomplete or inaccurate, the foreign third-party litigation funder must supplement or correct the incomplete or inaccurate disclosure or certification within thirty-five days after learning of the incomplete or inaccurate information.

(6) A foreign third-party litigation funder shall not:

(a) Utilize a domestic entity as a means of providing litigation financing to a party or attorney in a civil action;

(b) Decide, influence, or direct an attorney with respect to the conduct of the civil action or any settlement or resolution of the civil action. The right to decide, influence, or direct matters related to a case belongs solely to the parties and attorneys.

(c) Be assigned rights to profits other than the right to receive a share of the proceeds awarded in the civil action as outlined in the litigation financing agreement; or

(d) Share proprietary information, or information affecting national security interests obtained as a result of the litigation financing agreement for the civil action, with anyone who is not a party or an attorney.

(7) The existence of a litigation financing agreement is subject to discovery pursuant to the Colorado rules of civil procedure and Colorado rules of evidence in the civil action to which the litigation financing agreement pertains.

(8) A litigation financing agreement that does not comply with the requirements of this section is void.

(9) A violation of this section constitutes a deceptive or unfair trade practice pursuant to section 6-1-105.

(10) The attorney general may institute a legal action in a court of competent jurisdiction to enforce compliance with this section, impose fines, prohibit a foreign third-party litigation funder

from operating within this state, or impose any other sanction the attorney general deems appropriate for a violation of this section.

(11) (a) Beginning January 2026, and in January every year thereafter, the department of law shall include as part of its presentation during its "SMART Act" hearing required by section 2-7-203 information concerning the administration of this section and must include the following:

(I) The name, citizenship, or country of incorporation or registration of the foreign entity and whether the foreign entity provided funds for a purpose other than to defray litigation expenses or the financial impact of a negative judgement; and

(II) Whether a foreign third-party litigation funder violated the provisions of this section, and if so, what the violations were and whether the attorney general took enforcement action against the foreign third-party litigation funder.

(b) The information described in subsection (11)(a) of this section must not identify the parties involved in a civil action or the attorney representing the parties in the civil action.

(12) This section does not apply to a nonprofit organization funded by private donors that represents clients on a pro bono basis.

**Source: L. 2025:** Entire section added, (HB 25-1329), ch. 407, p. 2317, § 1, effective August 6.

## ARTICLE 17

### Attorney Fees

|                                                          |                                                                 |                                                        |                                                                                  |
|----------------------------------------------------------|-----------------------------------------------------------------|--------------------------------------------------------|----------------------------------------------------------------------------------|
| PART 1<br>FRIVOLOUS, GROUNDLESS, OR<br>VEXATIOUS ACTIONS |                                                                 | 13-17-104.                                             | Fee arrangements between attorney or licensed legal paraprofessional and client. |
| 13-17-101.                                               | Legislative declaration.                                        |                                                        |                                                                                  |
| 13-17-101.5.                                             | Definitions.                                                    | 13-17-105.                                             | Stipulation as to fees.                                                          |
| 13-17-102.                                               | Attorney fees - licensed legal paraprofessional.                | 13-17-106.                                             | Applicability.                                                                   |
| 13-17-103.                                               | Procedure for determining reasonable fee - judicial discretion. | PART 2<br>ATTORNEY FEES IN CIVIL ACTIONS IN<br>GENERAL |                                                                                  |
|                                                          |                                                                 | 13-17-201.                                             | Award of reasonable attorney fees in certain cases.                              |

|            |                                                                                 |                                        |                                                |
|------------|---------------------------------------------------------------------------------|----------------------------------------|------------------------------------------------|
| 13-17-202. | Award of actual costs and fees when offer of settlement was made.               | LIMITATION ON CONTINGENT FEE CONTRACTS |                                                |
| 13-17-203. | Limitation on attorney fees in class action litigation against public entities. | 13-17-301.                             | Short title.                                   |
|            |                                                                                 | 13-17-302.                             | Legislative declaration.                       |
|            |                                                                                 | 13-17-303.                             | Definitions.                                   |
|            | PART 3                                                                          | 13-17-304.                             | Limitation on contingent fees - applicability. |
|            | RETENTION OF ATTORNEYS BY GOVERNMENTAL ENTITIES -                               |                                        |                                                |

## PART 1

### FRIVOLOUS, GROUNDLESS, OR VEXATIOUS ACTIONS

#### 13-17-101. Legislative declaration.

The general assembly recognizes that courts of record of this state have become increasingly burdened with litigation which is straining the judicial system and interfering with the effective administration of civil justice. In response to this problem, the general assembly hereby sets forth provisions for the recovery of attorney fees or licensed legal paraprofessional fees in courts of record when the bringing or defense of an action, or part thereof (including any claim for exemplary damages), is determined to have been substantially frivolous, substantially groundless, or substantially vexatious. All courts shall liberally construe the provisions of this article 17 to effectuate substantial justice and comply with the intent set forth in this section.

**Source:** **L. 77:** Entire article added, p. 796, § 2, effective July 1. **L. 84:** Entire section R&RE, p. 460, § 1, effective July 1. **L. 2024:** Entire section amended, (HB 24-1291), ch. 131, p. 465, § 4, effective August 7.

### ANNOTATION

**Law reviews.** For article, "Recovery of Attorney Fees and Costs in Colorado", see 23 Colo. Law. 2041 (1994). For comment, "Dazed and Confused in Colorado: The Relationship Among Malicious Prosecution, Abuse of Process, and the Noerr-Pennington

Doctrine", see 67 U. Colo. L. Rev. 675 (1996).

**Suit involving money damages.** Although the primary relief sought by the plaintiff was for specific performance of a contract of purchase, the defendant's



counterclaim sought damages for breach of contract. Thus, even though the plaintiff's claim alone would not have supported an award for attorney fees, the defendant's counterclaim for damages clearly brought the suit within the ambit of the statute. *Ault Aerial Applicators, Inc. v. Irvine*, 684 P.2d 949 (Colo. App. 1984).

**Post-dissolution decree proceedings were groundless for lack of jurisdiction.** It would be inequitable to require divorced husband to pay wife's fees for legal services when such services should not have been performed for lack of jurisdiction over the defendants against whom relief was sought. *In re Noon*, 735 P.2d 884 (Colo. App. 1986).

**A trial court retains jurisdiction over a motion for sanctions,** even if jurisdiction has not been reserved in a stipulated motion for dismissal, because such jurisdiction is incorporated by statute in this section. *Buckhannon v. U.S. West Commc'ns*, 928 P.2d 1331 (Colo. App. 1996).

**A good faith presentation of a legal theory which is arguably meritorious is sufficient to avoid an award of attorney fees.** *SaBell's, Inc. v. City of Golden*, 832 P.2d 974 (Colo. App. 1991).

**Applied** in *Am. Web Press, Inc. v. Harris Corp.*, 596 F. Supp. 1089 (D. Colo. 1983); *Cooper v. Peoples Bank & Trust Co.*, 725 P.2d 78 (Colo. App. 1986); *In re Custody of C.J.S.*, 37 P.3d 479 (Colo. App. 2001).

### **13-17-101.5. Definitions.**

As used in this article 17, unless the context otherwise requires:

(1) "Lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

(2) "Licensed legal paraprofessional" means an individual licensed by the Colorado supreme court pursuant to Colorado rules of civil procedure and article 93 of this title 13 to perform certain types of legal services. A "licensed legal paraprofessional" does not include an individual with a general license to practice law in Colorado.

**Source: L. 2025:** Entire section added with relocations, (SB 25-275), ch. 377, p. 2042, § 61, effective August 6.

**Editor's note:** This section is similar to former § 13-17-102 (9) as it existed prior to 2025.

**13-17-102. Attorney fees - licensed legal paraprofessional.**

(1) Subject to the provisions of this section, in any civil action of any nature commenced or appealed in any court of record in this state, the court may award, except as this article otherwise provides, as part of its judgment and in addition to any costs otherwise assessed, reasonable attorney fees.

(1.5) Subject to the provisions of this section, in any civil action, as described in section 13-93-302, commenced or appealed in any court of record in this state, the court may award, except as provided in this article 17, as part of its judgment and in addition to any costs otherwise assessed, reasonable licensed legal paraprofessional fees.

(2) Subject to the limitations set forth elsewhere in this article, in any civil action of any nature commenced or appealed in any court of record in this state, the court shall award, by way of judgment or separate order, reasonable attorney fees against any attorney or party who has brought or defended a civil action, either in whole or in part, that the court determines lacked substantial justification.

(2.1) Notwithstanding any other provision of this part 1, the filing of a certificate of review pursuant to section 13-20-602 related to any licensed health-care professional creates a rebuttable presumption that the claim or action is not frivolous or groundless, but it does not relieve the plaintiff or the plaintiff's attorney or licensed legal paraprofessional from ongoing obligations under rule 11 of Colorado rules of civil procedure.

(2.5) Subject to the limitations set forth elsewhere in this article 17, in any civil action, as described in section 13-93-302, commenced or appealed in any court of record in this state, the court shall award, by way of judgment or separate order, reasonable licensed legal paraprofessional fees against any attorney, licensed legal paraprofessional, or party who has brought or defended a civil action, either in whole or in part, that the court determines lacked substantial justification.

(3) When a court determines that reasonable attorney fees or reasonable licensed legal paraprofessional fees should be assessed, the court shall allocate the payment of the fees among the offending attorneys, licensed legal paraprofessionals, and parties, jointly or severally, as the court deems most just, and may charge an amount or portion to any offending attorney, licensed legal paraprofessional, or party.

(4) The court shall assess attorney fees or licensed legal paraprofessional fees if, upon the motion of any party or the court itself, the court finds that an attorney, licensed legal paraprofessional, or party brought or defended an action, or any part of an action, that lacked substantial justification or that the action, or any part of the action, was interposed for delay or harassment or if the court finds that an attorney, licensed legal paraprofessional, or party unnecessarily expanded the proceeding by other improper conduct, including, but not limited to,

abuses of discovery procedures available under the Colorado rules of civil procedure or a designation by a defending party pursuant to section 13-21-111.5 (3) that lacked substantial justification.

(5) Attorney fees or licensed legal paraprofessional fees shall not be assessed if, after filing suit, a voluntary dismissal is filed as to any claim or action within a reasonable time after the attorney, licensed legal paraprofessional, or party filing the dismissal knew, or reasonably should have known, that the attorney, licensed legal paraprofessional, or party would not prevail on the claim or action.

(6) A party who is appearing without an attorney or licensed legal paraprofessional shall not be assessed attorney fees or licensed legal paraprofessional fees unless the court finds that the party clearly knew or reasonably should have known that the party's action or defense, or any part of the action or defense, was substantially frivolous, substantially groundless, or substantially vexatious; except that this subsection (6) does not apply to situations in which an attorney or legal paraprofessional licensed to practice law in this state is appearing without an attorney or a licensed legal paraprofessional, in which case, the attorney or licensed legal paraprofessional is held to the standards established for attorneys or licensed legal paraprofessionals elsewhere in this article 17.

(7) No attorney, licensed legal paraprofessional, or party shall be assessed attorney fees or licensed legal paraprofessional fees for any claim or defense that the court determines was asserted by the attorney, licensed legal paraprofessional, or party in a good faith attempt to establish a new theory of law in Colorado.

(8) This section shall not apply to traffic offenses, matters brought under the provisions of the "Colorado Children's Code", title 19, C.R.S., or related juvenile matters, or matters involving violations of municipal ordinances.

(9) Repealed.

**Source:** **L. 77:** Entire article added, p. 797, § 2, effective July 1. **L. 84:** Entire section R&RE, p. 460, § 2, effective July 1. **L. 86:** (4) amended, p. 681, § 4, effective July 1. **L. 90:** (2.1) added, p. 862, § 1, effective July 1. **L. 2006:** (8) amended, p. 237, § 6, effective July 1. **L. 2009:** (8) amended, (HB 09-1248), ch. 252, p. 1136, § 24, effective May 14. **L. 2024:** (1.5), (2.5), and (9) added and (2.1) and (3) to (7) amended, (HB 24-1291), ch. 131, p. 466, § 5, effective August 7. **L. 2025:** (9) repealed, (SB 25-275), ch. 377, p. 2109, § 336, effective August 6.

**Editor's note:** Subsection (9) was relocated to § 13-17-101.5 in 2025.

**Cross references:** For award of attorney fees and other costs in actions involving garnishees, see § 13-16-123.

## ANNOTATION

**Law reviews.** For article, "Malicious Prosecution of Civil Proceedings", see 11 Colo. Law. 2388 (1982). For article, "Attorneys' Fees Awarded to the Prevailing Party: The Ghost of S.B. 258 Revisited", see 11 Colo. Law 3003 (1982). For article, "Rule 11, C.R.C.P. as a Litigation Tool", see 12 Colo. Law. 1242 (1983). For article, "Lawyers' Liability for Attorney's Fees Awarded Against Clients", see 12 Colo. Law. 1638 (1983). For article, "Attorney Fees: The English Rule in Colorado", see 13 Colo. Law. 1642 (1984). For article, "Civil Rights", which discusses the attorney fees in *Ramos v. Lamm*, see 62 Den. U. L. Rev. 71 (1985). For article, "1986 Colorado Tort Reform Legislation", see 15 Colo. Law. 1363 (1986). For article, "New Role for Nonparties in Tort Actions — The Empty Chair", see 15 Colo. Law. 1650 (1986). For article, "A Trial Lawyer's View of Attorney's Fees Awards", see 17 Colo. Law. 465 (1988). For article, "1988 Update on Colorado Tort Reform Legislation — Part I", see 17 Colo. Law. 1790 (1988). For article, "The Final Judgement Rule And Attorney Fees", see 17 Colo. Law. 2139 (1988). For a discussion of Tenth Circuit decisions dealing with attorney fees, see 66 Den. U. L. Rev. 677 (1989). For a discussion of Tenth Circuit decisions dealing with attorney fees, see 67 Den. U. L. Rev. 625 (1990). For article, "1990 Update on Colorado Tort Reform Legislation", see 19

Colo. Law. 1529 (1990). For article, "The Past, Present, and Future of Residential Construction Defect Action Reform in Colorado", see 54 Colo. Law. 28 (Jan.-Feb. 2025).

**Annotator's note.** Annotations appearing below from cases decided through 1985 were decided under former § 13-17-101 relating to frivolous or groundless suits involving money damages claims.

**"Frivolous" defined.** A claim or defense is frivolous if the proponent can present no rational argument based on the evidence or law in support of that claim or defense. *W. United Realty, Inc. v. Isaacs*, 679 P.2d 1063 (Colo. 1984); *Hart & Trinen v. Surplus Elecs. Corp.*, 712 P.2d 491 (Colo. App. 1985); *Merrill Chadwick Co. v. October Oil Co.*, 725 P.2d 17 (Colo. App. 1986); *Fox v. Div. Eng. For Water Div. 5*, 810 P.2d 644 (Colo. 1991); *SaBell's, Inc. v. City of Golden*, 832 P.2d 974 (Colo. App. 1991); *Little v. Fellman*, 837 P.2d 197 (Colo. App. 1991); *Fowler Irrevocable Trust 1992-1 v. City of Boulder*, 992 P.2d 1188 (Colo. App. 1999), *aff'd in part, rev'd in part on other grounds*, 17 P.3d 797 (Colo. 2001); *E-470 Pub. Hwy. Auth. v. Jagow*, 30 P.3d 798 (Colo. App. 2001), *aff'd on other grounds*, 49 P.3d 1151 (Colo. 2002); *Collins v. Colo. Mtn. Coll.*, 56 P.3d 1132 (Colo. App. 2002); *Wheeler v. T.L. Roofing, Inc.*, 74 P.3d 499 (Colo. App. 2003); *Double Oak Constr.*,

L.L.C. v. Cornerstone Dev. Int'l, L.L.C., 97 P.3d 140 (Colo. App. 2003).

But this test does not apply to meritorious actions that prove unsuccessful, legitimate attempts to establish a new theory of law, or good-faith efforts to extend, modify, or reverse existing law. *W. United Realty, Inc. v. Isaacs*, 679 P.2d 1063 (Colo. 1984); *Covert v. Allen Grp., Inc.*, 597 F. Supp. 1268 (D. Colo. 1984); *Hart & Trinen v. Surplus Elecs. Corp.*, 712 P.2d 491 (Colo. App. 1985); *Buttermore v. Firestone Tire & Rubber Co.*, 721 P.2d 701 (Colo. App. 1986); *Norton v. Sch. Dist. No. 1*, 807 P.2d 1160 (Colo. App. 1990); *Wheeler v. T.L. Roofing, Inc.*, 74 P.3d 499 (Colo. App. 2003).

**"Groundless" defined.** A claim or defense is groundless if the allegations of the complaint, while sufficient to survive a motion to dismiss for failure to state a claim, are not supported by any credible evidence at trial. *W. United Realty, Inc. v. Isaacs*, 679 P.2d 1063 (Colo. 1984); *Alt Aerial Applicators, Inc. v. Irvine*, 684 P.2d 949 (Colo. App. 1984); *Merrill Chadwick Co. v. Oct. Oil Co.*, 725 P.2d 17 (Colo. App. 1986); *In re Marshall*, 781 P.2d 177 (Colo. App. 1989); *Little v. Fellman*, 837 P.2d 197 (Colo. App. 1991); *Zick v. Krob*, 872 P.2d 1290 (Colo. App. 1993); *Travers v. Rainey*, 888 P.2d 372 (Colo. App. 1994); *Engel v. Engel*, 902 P.2d 442 (Colo. App. 1995); *Fowler Irrevocable Trust 1992-1 v. City of Boulder*, 992 P.2d 1188 (Colo. App. 1999), *aff'd in part, rev'd in part on other grounds*, 17 P.3d 797 (Colo. 2001); *E-470 Pub. Hwy. Auth. v. Jagow*, 30 P.3d 798 (Colo. App. 2001), *aff'd on other grounds*, 49 P.3d 1151 (Colo.

2002); *Collins v. Colo. Mtn. Coll.*, 56 P.3d 1132 (Colo. App. 2002); *Wheeler v. T.L. Roofing, Inc.*, 74 P.3d 499 (Colo. App. 2003); *In re Estate of Shimizu*, 2016 COA 163, 411 P.3d 211.

Test for "groundlessness" assumes that the proponent has a valid legal theory but can offer little or nothing in the way of evidence to support the claim. *Bilawsky v. Faseehudin*, 916 P.2d 586 (Colo. App. 1995).

**"Groundless and frivolous" is applied** in *Int'l Tech. Instruments, Inc. v. Eng'g Measurements, Inc.*, 678 P.2d 558 (Colo. App. 1983); *Chappele v. Bonds*, 677 P.2d 955 (Colo. App. 1983); *E.B. Jones Constr. Co. v. City & County of Denver*, 717 P.2d 1009 (Colo. App. 1986); *Merrill Chadwick Co. v. Oct. Oil Co.*, 725 P.2d 17 (Colo. App. 1986); *Ace Title Co. v. Carson Const. Co. Inc.*, 755 P.2d 457 (Colo. App. 1988); *People in Interest of Lamb v. Large*, 761 P.2d 294 (Colo. App. 1988); *Foley v. Phase One Dev. of Colo.*, 775 P.2d 86 (Colo. App. 1989); *Haney v. City Court for City of Empire*, 779 P.2d 1312 (Colo. 1989); *Harrison v. Luse*, 760 F. Supp. 1394 (D. Colo. 1991); *Platte Valley Sav. v. Crall*, 821 P.2d 305 (Colo. App. 1991); *Nienke v. Naiman Grp., Ltd.*, 857 P.2d 446 (Colo. App. 1992); *Sundheim v. Bd. of County Comm'rs of Douglas County*, 904 P.2d 1337 (Colo. App. 1995), *aff'd*, 926 P.2d 545 (Colo. 1996); *Lobato v. Taylor*, 13 P.3d 821 (Colo. App. 2000), *rev'd on other grounds*, 71 P.3d 938 (Colo. 2002); *E-470 Pub. Hwy. Auth. v. Jagow*, 30 P.3d 798 (Colo. App. 2001), *aff'd on other grounds* 49 P.3d 1151 (Colo. 2002); *Remote*

Switch Sys., Inc. v. Delangis, 126 P.3d 269 (Colo. App. 2005).

Where there is a rational basis grounded in law and evidence for plaintiff's claim, the trial court's finding that these claims were frivolous is not sustainable. *Hart & Trinen v. Surplus Elecs. Corp.*, 712 P.2d 491 (Colo. App. 1985).

Where plaintiffs admit they have no administrative remedy because they are not taxpayers and only taxpayers have available to them the remedies provided by the tax code, they demonstrate knowledge that the bringing of the action and appeal have no rational basis in fact or law and, thus, are groundless and frivolous. *Fair v. Wise*, 753 P.2d 780 (Colo. App. 1987).

**"Vexatious" claim** is one brought or maintained in bad faith to annoy or harass and may include conduct that is arbitrary, abusive, stubbornly litigious or disrespectful of truth. *Bockar v. Patterson*, 899 P.2d 233 (Colo. App. 1994); *Engel v. Engel*, 902 P.2d 442 (Colo. App. 1995); *O'Neill v. Simpson*, 958 P.2d 1121 (Colo. 1998); *Fowler Irrevocable Trust 1992-1 v. City of Boulder*, 992 P.2d 1188 (Colo. App. 1999), *aff'd in part, rev'd in part on other grounds*, 17 P.3d 797 (Colo. 2001); *City of Holyoke v. Schlachter Farms R.L.L.P.*, 22 P.3d 960 (Colo. App. 2001); *E-470 Pub. Hwy. Auth. v. Jagow*, 30 P.3d 798 (Colo. App. 2001), *aff'd on other grounds* 49 P.3d 1151 (Colo. 2002); *Mitchell v. Ryder*, 104 P.3d 316 (Colo. App. 2004).

**Award of attorney fees upheld despite trial court not explicitly characterizing appellee's actions as "vexatious".** The trial

court entered findings relating to all but one of the factors described in § 13-17-103 (1). In light of these findings and under the circumstances, it could not be concluded that the court abused its discretion. In re *Estate of Shimizu*, 2016 COA 163, 411 P.3d 211.

**An appeal "lacks substantial justification" and is "substantially frivolous"** when the appellant's brief fails to set forth, in a manner consistent with C.A.R. 28, a coherent assertion of error supported by legal authority. As a result, it is appropriate to assess attorney fees against the attorney prosecuting the appeal in this case. *Castillo v. Koppes-Conway*, 148 P.3d 289 (Colo. App. 2006).

**Determination that an award of attorney fees** based upon bringing and maintaining a frivolous or groundless claim is warranted is discretionary with the trial court, and such decision shall be upheld upon appeal if supported by the evidence. *Schoonover v. Hedlund Abstract Co., Inc.*, 727 P.2d 408 (Colo. App. 1986); *Romberg v. Slemon*, 778 P.2d 315 (Colo. App. 1989); *City of Littleton v. State*, 832 P.2d 985 (Colo. App. 1991); *Behr v. Burge*, 940 P.2d 1084 (Colo. App. 1996); *M Life Ins. Co. v. Sapers & Wallack Ins. Agency, Inc.*, 962 P.2d 335 (Colo. App. 1998); *Lockett v. Garrett*, 1 P.3d 206 (Colo. App. 1999); *Crissey Fowler Lumber v. FCIB*, 8 P.3d 531 (Colo. App. 2000); *Nielson v. Scott*, 53 P.3d 777 (Colo. App. 2002); *Wheeler v. T.L. Roofing, Inc.*, 74 P.3d 499 (Colo. App. 2003).

**Court is not required to impose liability but is required to consider liability of former counsel.** *Wesley v. Newland*, 2021 COA 142, 505 P.3d 318.

**Losing argument not necessarily groundless.** A treble damages action under § 38-12-103 (3)(a) could not be characterized as "frivolous" or "groundless", as used in subsection (3) of former § 13-17-101, merely because the landlord prevailed on the merits of his defense. *Torres v. Portillos*, 638 P.2d 274 (Colo. 1981).

Although attorney fees may be awarded in the discretion of the court, they should not be awarded merely because a party does not prevail. *Torres v. Portillos*, 638 P.2d 274 (Colo. 1981); *State Farm Mut. Auto Ins. Co. v. Sanditen*, 701 P.2d 876 (Colo. App. 1985); *Romberg v. Slemon*, 778 P.2d 315 (Colo. App. 1989).

Mere fact that appeal was taken as a matter of right, or that appellees found it necessary to cite legal authority in their answer brief, did not save an otherwise frivolous and groundless appeal. *Flexisystems, Inc. v. Am. Standards Testing Bureau, Inc.*, 847 P.2d 207 (Colo. App. 1992).

A determination that plaintiffs are not entitled to relief does not make their claims frivolous. *Lobato v. Taylor*, 13 P.3d 821 (Colo. App. 2000), rev'd on other grounds, 71 P.3d 938 (Colo. 2002); *Remote Switch Sys., Inc. v. Delangis*, 126 P.3d 269 (Colo. App. 2005).

**Losing position is not necessarily groundless.** *Fed. Land Bank of Wichita v. Jost*, 761 P.2d 270 (Colo. App. 1988).

**Merely because husband was ultimately unsuccessful does not support the conclusion that his claims were frivolous or otherwise lacking substantial justification** and therefore the law does not support the granting of attorney fees to wife. *Fritsche v. Thoreson*, 2015 COA 163, 410 P.3d 630.

**A claim is not frivolous, groundless, or vexatious simply because it fails to survive summary judgment.** The plaintiffs attempted to present evidence in good faith in support of their claims, but simply fell short of what was required to create an issue of material fact. Court did not abuse its discretion by failing to award fees. *Munoz v. Measner*, 247 P.3d 1031 (Colo. 2011).

**Bad faith** may include conduct which is arbitrary, vexatious, abusive, or stubbornly litigious and conduct aimed at unwarranted delay or disrespectful of truth and accuracy. *W. United Realty, Inc. v. Isaacs*, 679 P.2d 1063 (Colo. 1984); *Fowler Irrevocable Trust 1992-1 v. City of Boulder*, 992 P.2d 1188 (Colo. App. 1999), aff'd in part, rev'd in part on other grounds, 17 P.3d 797 (Colo. 2001).

**Section is a fee-shifting statute** that authorizes the recovery of attorney fees from an opposing party when that party has pursued a substantially frivolous claim, defense, or position. *E-470 Pub. Hwy. Auth. v. Revenig*, 140 P.3d 227 (Colo. App. 2006).

**It is well established that a federal court may consider collateral issues after**

**an action is no longer pending, including an award of attorney fees.** Although party voluntarily dismissed its case, federal district court still had jurisdiction to consider collateral issues, including an award of counsel fees. *Lorillard Tobacco Co. v. Engida*, 611 F.3d 1209 (10th Cir. 2010).

**Award of attorney fees not mandated.** Because the statute, while allowing an award of attorney fees upon a finding of frivolous claims, also grants the trial court discretion in determining whether such fees are to be awarded, the statute cannot be said to mandate an award of attorney fees. *Hart & Trinen v. Surplus Elecs. Corp.*, 712 P.2d 491 (Colo. App. 1985).

**Award of attorney fees in criminal cases not provided for.** Neither former § 13-17-101 nor § 13-16-121 provides for an award of attorney fees in a criminal case. *People v. Freeman*, 196 Colo. 238, 583 P.2d 921 (1978).

**Nor in garnishment.** Neither former § 13-17-101 nor any other section or rule permits award of attorney fees for the garnishee in a garnishment. *Commercial Claims, Ltd. v. First Nat'l Bank*, 649 P.2d 736 (Colo. App. 1982).

**Attorney fee requests with contingent fee arrangements** should not be denied merely because such an arrangement is used. Rather, plaintiff must demonstrate the reasonableness of the fee requested, and the contingent fee arrangement is but one factor to consider in that determination. *Bakehouse & Assocs., Inc. v. Wilkins*, 689 P.2d 1166 (Colo. App. 1984).

**Defendant entitled to attorney fees incurred in appealing denial of attorney fees** by trial court where defendant had prevailed in trial court against plaintiff who asserted frivolous and groundless claim. *Carnal v. Dan Coleman, Inc.*, 727 P.2d 412 (Colo. App. 1986).

**Failure to appeal denial of fees.** Where the appellee, in the trial court, moved for and was denied an award of his attorney fees, but he did not file a notice of cross-appeal, the appellate court has no jurisdiction to consider his application for affirmative relief in excess of that afforded him by the trial court. *Rocky Mt. Sales & Serv., Inc. v. Havana RV, Inc.*, 635 P.2d 935 (Colo. App. 1981).

**Timeliness of request for attorney fees.** A request is best presented to the trial court before judgment, but the request should not be denied merely because presented after judgment. *Bakehouse & Assocs., Inc. v. Wilkins*, 689 P.2d 1166 (Colo. App. 1984).

**Duty of trial court.** When a party places a claim for attorney fees in issue, the trial court has a duty to conduct a hearing upon that claim. *Zarlengo v. Farrer*, 683 P.2d 1208 (Colo. App. 1984); *Alessi v. Hogue*, 689 P.2d 649 (Colo. App. 1984).

Defendant in legal malpractice action entitled to hearing on his or her claim for sanctions under this section and C.R.C.P. 11. When a party requests a hearing regarding the award of attorney fees and costs under this section, the trial court must conduct an evidentiary hearing. Because the trial court denied the motion without conducting a hearing on defendant's motion for sanctions,



remand is required for a hearing. *Brown v. Silvern*, 141 P.3d 871 (Colo. App. 2005).

Determination of entitlement to attorney fees cannot be made without adequate findings of fact and conclusions of law on the issue by the trial court. *Bd. of County Comm'rs v. Auslaender*, 745 P.2d 999 (Colo. 1987); *Pedlow v. Stamp*, 776 P.2d 382 (Colo. 1989).

But a court need not conduct a hearing sua sponte if a hearing is not timely requested by a party. *In re Aldrich*, 945 P.2d 1370 (Colo. 1997).

**Trial court is not duty-bound to conduct a separate hearing on the issue of attorney fees before it may deny a request therefor.** *Hunter v. Colo. Mtn. Jr. Coll.*, 804 P.2d 277 (Colo. App. 1990).

**This section does not require redundant hearings.** It simply prohibits a trial court from awarding attorney fees in the absence of a hearing, if requested, and detailed findings of fact. *Padilla v. Ghuman*, 183 P.3d 653 (Colo. App. 2007).

**When a trial court is requested to evaluate each claim or defense individually as substantially frivolous or groundless, it is required to do so.** It cannot deny the claim "under the totality of the circumstances". *Munoz v. Measner*, 214 P.3d 510 (Colo. App. 2009), rev'd on other grounds, 247 P.3d 1031 (Colo. 2011).

**Interrelationship of claims or defenses alone will not suffice to deny an award of attorney fees incurred relative to defense of a frivolous or groundless claim.** *Alessi v. Hogue*, 689 P.2d 649 (Colo. App. 1984);

*Fountain v. Mojo*, 687 P.2d 496 (Colo. App. 1984); *Carnal v. Dan Coleman, Inc.*, 727 P.2d 412 (Colo. App. 1986).

**For discussion of amount of attorney fee award,** see *Ramos v. Lamm*, 539 F. Supp. 730 (D. Colo. 1982).

**Trial court was without authority to award attorney fees for plaintiff's initial appeal, absent direction to do so by the appellate court,** since subsection (1), consistent with C.A.R. 38(d), indicates that attorney fees incurred in an appeal may be awarded only by the court in which the appeal is brought. *Sullivan v. Lutz*, 827 P.2d 626 (Colo. App. 1992).

**In appeals of groundless-frivolous attorney fee awards under subsection (4),** the appropriate standard is to award appellate attorney fees only if that aspect of the appeal itself is frivolous. *Front Range Home Enhancements, Inc. v. Stowell*, 172 P.3d 973 (Colo. App. 2007); *Padilla v. Ghuman*, 183 P.3d 653 (Colo. App. 2007).

**Under subsection (4), no award of attorney fees may be made based upon the motion of a nonparty.** *Roberts-Henry v. Richter*, 802 P.2d 1159 (Colo. App. 1990).

**Subsection (4) provides for an assessment of attorney fees in favor of an improperly subpoenaed nonparty** where the court finds that, with respect to the nonparty, the attorney or party had unnecessarily expanded the proceedings by abusing discovery procedures. *In re Ensminger*, 209 P.3d 1163 (Colo. App. 2008).

**Subsection (4) does not require a party to invoke the statute on behalf of a nonparty.** An improperly subpoenaed nonparty may be awarded attorney fees pursuant to this section. *In re Ensminger*, 209 P.3d 1163 (Colo. App. 2008) (holding contrary to *Roberts-Henry v. Richter* annotated above).

**Subsection (4) does not grant authority to assess attorney fees in a foreign court that could not be awarded under subsections (1) and (2).** Subsections (1) and (2) provide general authority to award attorney fees, while subsection (4) specifies the process and conduct for which a court may assess fees. This section does not authorize a state court to award attorney fees incurred in an action in a foreign court unless work product created for use in that court is also used in the state court. *Bruce v. Roberts*, 2016 COA 182, 421 P.3d 1199, *aff'd*, 2018 CO 58, 420 P.3d 284.

**A request for attorney fees as a sanction for assertion of a frivolous claim may be requested by motion following entry of judgment and may even be awarded on the court's own motion.** *Colo. City Metro. Dist. v. Graber & Son's, Inc.*, 897 P.2d 874 (Colo. App. 1995).

**In light of holding that the trial court erred in dismissing stepfather's petition and to the extent the award of fees was entered as a sanction, it must be set aside.** *In re K.M.B.*, 80 P.3d 914 (Colo. App. 2003).

**To justify an award of attorney fees under subsection (4),** a trial court must make a finding that a claim "lacked

substantial justification", i.e., was substantially frivolous, substantially groundless, or substantially vexatious, and must state its reason for the finding. *In re Gomez*, 728 P.2d 747 (Colo. App. 1986); *In re Estate of Finkelstein*, 817 P.2d 617 (Colo. App. 1991); *Fowler Irrevocable Trust 1992-1 v. City of Boulder*, 992 P.2d 1188 (Colo. App. 1999), *aff'd in part, rev'd in part on other grounds*, 17 P.3d 797 (Colo. 2001); *Double Oak Constr., L.L.C. v. Cornerstone Dev. Int'l, L.L.C.*, 97 P.3d 140 (Colo. App. 2003).

**"Substantially frivolous" or "substantially groundless"** are no more demanding standards than "groundless" or "frivolous". *In re Application of Talco, Ltd.*, 769 P.2d 468 (Colo. 1989); *Little v. Fellman*, 837 P.2d 197 (Colo. App. 1991).

The "no rational argument" test of *W. United Realty v. Isaacs* (679 P.2d 1063 (Colo. 1984)) will be followed in determining whether the standard has been met. *Little v. Fellman*, 837 P.2d 197 (Colo. App. 1991).

A vexatious claim is one brought or maintained in bad faith to annoy or harass. A vexatious claim includes conduct that is arbitrary, stubbornly litigious, or disrespectful of truth. *Bockar v. Patterson*, 899 P.2d 233 (Colo. App. 1994).

**Trial court erred in ruling that plaintiff was stubbornly litigious** merely because plaintiff disagreed with trial court's earlier rulings as to plaintiff's claims against two of three defendants in the case and where plaintiff refused to voluntarily dismiss similarly premised claims against third

defendant. Plaintiff cannot be faulted for attempting to convince court to reconsider its view of the applicable law. *Hamon Contractors, Inc. v. Carter & Burgess, Inc.*, 229 P.3d 282 (Colo. App. 2009).

**The exclusion of an expert's testimony due to lack of reliability does not subject a party to attorney fees for a groundless claim if the party reasonably relied on the expert;** courts must allow parties to reasonably rely on their experts without fear of punishment for the experts' errors in judgment. *In re Water Rights of Park County Sportsmen's Ranch*, 105 P.3d 595 (Colo. 2005).

**Aquifer storage and augmentation claims based on the natural percolation of irrigation run-off and precipitation are frivolous** under § 37-92-103, because the water has not been placed in the aquifer by other than natural means. *In re Water Rights of Park County Sportsmen's Ranch*, 105 P.3d 595 (Colo. 2005).

**The purpose of awarding attorney fees is to deter egregious conduct,** and not to discourage legal theories that, while having no support in case law, nevertheless may be persuasive because of the unique character of the case. *Wood Bros. Homes, Inc. v. Howard*, 862 P.2d 925 (Colo. 1993); *Bd. of County Comm'rs v. Colo.*, 888 P.2d 352 (Colo. App. 1994).

**When a party consistently ignored the court's admonition to not relitigate settled matters,** the court was justified in finding that the party's attorney was being stubbornly litigious and the action thus lacked substantial justification. *Spring Creek*

*Ranchers Ass'n v. McNichols*, 165 P.3d 244 (Colo. 2007).

**Trial court may determine action was "brought or defended" in a substantially groundless manner even if dismissed** on the morning of trial before the trial actually commences. *Engel v. Engel*, 902 P.2d 442 (Colo. App. 1995).

**Claims involving novel questions of law** for which no determinative authority existed at time complaint was filed were not frivolous, groundless, or vexatious. *Montoya by Montoya v. Bebensee*, 761 P.2d 285 (Colo. App. 1988); *Colo. Supply Co., Inc. v. Stewart*, 797 P.2d 1303 (Colo. App. 1990); *Bd. of County Comm'rs v. Colo.*, 888 P.2d 352 (Colo. App. 1994); *Fowler Irrevocable Trust 1992-1 v. City of Boulder*, 992 P.2d 1188 (Colo. App. 1999), *aff'd in part, rev'd in part on other grounds*, 17 P.3d 797 (Colo. 2001).

Trial court erred in awarding attorney fees where municipality's defense to takings claim involved a novel question of law and municipality's conduct presented factual issues upon which reasonable triers of fact might have drawn differing inferences. The fact that the municipality did not prevail in its assertions did not make them frivolous. *Fowler Irrevocable Trust 1992-1 v. City of Boulder*, 992 P.2d 1188 (Colo. App. 1999), *aff'd in part, rev'd in part on other grounds*, 17 P.3d 797 (Colo. 2001).

Trial court erred in awarding attorney fees where plaintiff's claims were based largely upon federal case law and involved novel questions of law upon which there was no determinative law in this state and where the

evidence presented by the plaintiff arguably supported the plaintiff's claims. *Kemp v. State Bd. of Agric.*, 790 P.2d 870 (Colo. App. 1989); *Pedlow v. Stamp*, 819 P.2d 1110 (Colo. App. 1991).

Issue of what constitutes receipt of a demand notice under § 7-113-209 (2) was a question of first impression; therefore the plaintiff's action was not "frivolous and without merit". *M Life Ins. Co. v. S & W*, 962 P.2d 335 (Colo. App. 1998).

**A good faith presentation of a legal theory which is arguably meritorious is sufficient to avoid an award of attorney fees.** *SaBell's, Inc. v. City of Golden*, 832 P.2d 974 (Colo. App. 1991).

**In a condemnation action, good faith negotiations do not necessarily require the condemning authority to increase its offer** whenever the landowner makes a counteroffer. Therefore, plaintiff failed to show bad faith and vexatious conduct on the part of the defendant and was not entitled to an award of fees under this section. *City of Holyoke v. Schlachter Farms R.L.L.P.*, 22 P.3d 960 (Colo. App. 2001).

**To the extent the provisions of subsection (7) are in conflict with the provisions of § 13-17-201 concerning a good faith tort action that is dismissed under C.R.C.P. 12(b), mandatory attorney fees award provision of § 13-17-201 controls** as it is specific to such action and was enacted later in time than this section. *Houdek v. Mobil Oil Corp.*, 879 P.2d 417 (Colo. App. 1994).

**A party seeking attorney fees bears the burden of proving**, by a preponderance of the evidence, his entitlement to the award. *Bd. of County Comm'rs v. Auslaender*, 745 P.2d 999 (Colo. 1987); *Little v. Fellman*, 837 P.2d 197 (Colo. App. 1991); *Am. Water Dev., Inc. v. City of Alamosa*, 874 P.2d 352 (Colo. 1994); *City of Holyoke v. Schlachter Farms R.L.L.P.*, 22 P.3d 960 (Colo. App. 2001).

**Award of attorney fees** must be made after trial court determines that all factors prove by a preponderance of the evidence that a defense was frivolous or groundless. *Marinez v. Indus. Comm'n*, 746 P.2d 552 (Colo. 1987).

**In deciding whether to award attorney fees**, a court must consider the factors set forth in § 13-17-103 (1). *In re Aldrich*, 945 P.2d 1370 (Colo. 1997); *Remote Switch Sys., Inc. v. Delangis*, 126 P.3d 269 (Colo. App. 2005).

When awarding attorney fees, a court must make findings explaining why a party's conduct was unjustified and discussing the means by which the court determined the amount of the award. Conclusory statements that a claim is frivolous, groundless, or vexatious are insufficient. *In re Aldrich*, 945 P.2d 1370 (Colo. 1997).

**Court must hold hearing and make findings on the factors prior to awarding attorney fees if requested by the party against whom fees are sought.** The court erred in granting summary judgment on wife's motion for attorney fees without giving husband the opportunity to respond to wife's allegation that his position lacked

substantial justification. In re Tognoni, 313 P.3d 655 (Colo. App. 2011).

**Award of attorney fees discretionary with trial court, and its decision will not be disturbed on appeal if supported by the evidence.** Weber v. Wallace, 789 P.2d 427 (Colo. App. 1989); Lobato v. Taylor, 13 P.3d 821 (Colo. App. 2000), rev'd on other grounds, 71 P.3d 938 (Colo. 2002); Remote Switch Sys., Inc. v. Delangis, 126 P.3d 269 (Colo. App. 2005).

Award upheld where evidence presented to trial court with respect to father's defense against motion to change custody included findings that the mother had misled expert witnesses, that such witnesses had failed to investigate the child's circumstances with the father, that the mother had not properly assisted the child to recover from the impact of the dissolution, and that she had a scheme for obtaining custody of the child which involved actions not in the best interest of the child. Weber v. Wallace, 789 P.2d 427 (Colo. App. 1989).

Award upheld where there was record support for the trial court's determination that plaintiff's silence or refusal to properly clarify and communicate its position was "without substantial justification" and needlessly caused defendant to incur attorney fees. Front Range Home Enhancements, Inc. v. Stowell, 172 P.3d 973 (Colo. App. 2007).

Whether to award attorneys fees under this section is a matter ultimately committed to the discretion of the trial court. City of Holyoke v. Schlachter Farms R.L.L.P., 22 P.3d 960 (Colo. App. 2001).

**Trial court did not abuse its discretion in denying award of attorney fees** where claims made by the county did not lack substantial justification in law or in fact and were based on a rational legal argument. Bd. of County Comm'rs v. Colo., 888 P.2d 352 (Colo. App. 1994).

Findings of trial court that the plaintiff bank's claims of fraud were not groundless or frivolous were supported by the record, and the trial court did not abuse its discretion in denying the motion for sanctions. First Interstate Bank v. Berenbaum, 872 P.2d 1297 (Colo. App. 1993); Fowler Irrevocable Trust 1992-1 v. City of Boulder, 992 P.2d 1188 (Colo. App. 1999), aff'd in part, rev'd in part on other grounds, 17 P.3d 797 (Colo. 2001).

Findings of trial court that issues had been "fairly and vigorously litigated", together with record demonstrating at least some evidence to support the challenged defenses, supported trial court's denial of motion for sanctions under this section. Webster v. Boone, 992 P.2d 1183 (Colo. App. 1999).

The plaintiff's unsuccessful claim that it was not time barred from filing a claim relied on language from the statutes as well as prior cases, and the trial court considered and denied the defendant's motion for summary judgment three times before trial. Therefore, the trial court did not abuse its discretion in denying defendant attorney fees. Pat's Constr. Serv., Inc. v. Ins. Co. of the W., 141 P.3d 885 (Colo. App. 2005).

**Plaintiff's action was not substantially frivolous**, and the record provided support for trial court's implicit determination that

the action was not maintained in bad faith, therefore, the trial court's order denying attorney fees was upheld. *Berenergy Corp. v. Zab, Inc.*, 94 P.3d 1232 (Colo. App. 2004), *aff'd* on other grounds, 136 P.3d 252 (Colo. 2006).

**Trial court abused discretion in finding plaintiff's claims frivolous where plaintiff was not successful on claims but claims were based on rational arguments.** *Hamon Contractors, Inc. v. Carter & Burgess, Inc.*, 229 P.3d 282 (Colo. App. 2009).

**The party requesting attorney fees under this section must prove by a preponderance of the evidence** that the claim was without substantial justification. *Bd. of Comm'rs, County of Boulder v. Eason*, 976 P.2d 271 (Colo. App. 1998); *Remote Switch Sys., Inc. v. Delangis*, 126 P.3d 269 (Colo. App. 2005).

**Decision to award attorney fees on the ground that a claim lacks substantial justification** is soundly within the discretion of the trial court. *Engel v. Engel*, 902 P.2d 442 (Colo. App. 1995); *Bd. of Comm'rs, County of Boulder v. Eason*, 976 P.2d 271 (Colo. App. 1998); *Fowler Irrevocable Trust 1992-1 v. City of Boulder*, 992 P.2d 1188 (Colo. App. 1999), *aff'd* in part, *rev'd* in part on other grounds, 17 P.3d 797 (Colo. 2001).

**If a trial court's award of attorney fees is supported by the evidence, it will not be disturbed on review.** *Lyons v. Teamsters Local Union No. 961*, 903 P.2d 1214 (Colo. App. 1995); *Bd. of Comm'rs, County of Boulder v. Eason*, 976 P.2d 271 (Colo. App. 1998); *In re Eggert*, 53 P.3d 794 (Colo. App. 2002).

Trial court finding that union pursued its claims "because [union president] agreed to testify", that there was "animosity" between the parties, and that the union's claims were "vexatious" was sufficient to award attorney fees. *Lyons v. Teamsters Local Union No. 961*, 903 P.2d 1214 (Colo. App. 1995).

**An award of attorney fees is supported by the record** when the attorneys reviewed their records and testified, subject to cross examination, that the claimed allocations of time were fair and reasonable. *Farmers Reservoir & Irrigation Co. v. City of Golden*, 113 P.3d 119 (Colo. 2005).

**Trial court's award of attorney fees cannot stand** where the court failed to hold an evidentiary hearing after a party made a claim for attorney fees and a hearing was requested, because a determination of entitlement to attorney fees cannot be made without adequate findings of fact and conclusions of law. *Rogers v. Westerman Farm Co.*, 986 P.2d 967 (Colo. App. 1998), *rev'd* on other grounds, 29 P.3d 887 (Colo. 2001).

**The court "shall" assess attorney fees** if a claim lacks substantial justification. *Montrose Valley Funeral Home v. Crippin*, 835 P.2d 596 (Colo. App. 1992).

**Limitations on award of attorney fee.** A trial court has the discretion to limit its award based on a finding that a party did not take all reasonable measures to extricate himself from a frivolous or groundless lawsuit at the earliest possible time. *Ruffing v. Lincicome*, 737 P.2d 440 (Colo. App. 1987).

**Victim of a frivolous lawsuit has a duty to mitigate attorney fees incurred in defending the lawsuit** by taking reasonable measures to extricate himself or herself from the lawsuit at the earliest possible time. Consequently, trial court should not have awarded attorney fees incurred in pursuing defendant's counterclaims after plaintiff dismissed its original complaint against defendants. *Boulder County Bd. of County Comm'rs v. Kraft Bldg. Contractors*, 122 P.3d 1019 (Colo. App. 2005).

**Award of attorney fees and costs held excessive** where court found that use of two attorneys was justifiable but that the trial court had awarded fees based on hours in excess of those reported in their affidavits and where court had awarded costs for depositions taken for ordinary discovery purposes rather than perpetuation of testimony. *Weber v. Wallace*, 789 P.2d 427 (Colo. App. 1989); *Schmidt Const. Co. v. Becker-Johnson Corp.*, 817 P.2d 625 (Colo. App. 1991).

**Trial court properly concluded that claim lacked substantial justification** where court's detailed findings established that it considered the factors set forth in this section and § 13-17-103, and where court found the constitution, statutes, and case law clearly established the claims lacked "any legal foundation", that a good faith argument had not been advanced, and that the same arguments had been advanced and rejected in prior case. *City of Littleton v. State*, 832 P.2d 985 (Colo. App. 1991).

**Award of attorney fees to the plaintiff was appropriate** where the court found that

the defense employed by the defendant lacked substantial merit and was used to delay and harass the plaintiff. *Metro Nat. Bank v. Parker*, 773 P.2d 633 (Colo. App. 1989).

Plaintiff's argument was not frivolous where she alleged the existence of an agency relationship based on a business relationship between the defendant, who was a private mortgage investor, and certain mortgage brokers. However, the argument was groundless where the only evidence of the agency was a number of similar transactions between the defendant and the brokers. *Nienke v. Naiman Grp., Ltd.*, 857 P.2d 446 (Colo. App. 1992).

Plaintiff's argument that her loan was a consumer loan was frivolous where a consumer loan must be incurred for a personal debt and the loan was incurred to pay taxes and expenses on an auto repair garage. Plaintiff's argument that the loan was personal because it was necessary to preserve the business for her son lacked a rational basis. *Nienke v. Naiman Grp., Ltd.*, 857 P.2d 446 (Colo. App. 1992).

**Award of attorney fees proper** where defendant has opportunity to challenge reasonableness of the amount of award. Trial court may not base award on affidavit submitted after trial. *Kinsey v. Preeson*, 746 P.2d 542 (Colo. 1987).

**Probate court order that administrative expenses and attorney fees be paid from petitioner's distributive share upheld.** The court so held because of petitioner's "relentless pursuit" of the same issues in three separate trial courts and in three

appeals to this court. In re Estate of Leslie, 886 P.2d 284 (Colo. App. 1994).

**Award of attorney fees based upon a groundless claim was appropriate** where there was a lack of credible evidence presented on the essential issues of damages in negligent misrepresentation claim. Harrison v. Smith, 821 P.2d 832 (Colo. App. 1991).

**Award of attorney fees appropriate** where trial court properly determined that counterclaim for deficiency under a foreclosure lacked substantial justification because a review of the plain language of the contract would have revealed lack of support for the claim. Bernhardt v. Hemphill, 878 P.2d 107 (Colo. App. 1994).

**Attorney fees and costs associated with motion to enforce injunction proper.** Where injunction was no longer binding, motion to enforce injunction was substantially frivolous. Anderson v. Pursell, 244 P.3d 1188 (Colo. 2010).

**Record supported trial court's award of attorney fees** where the court found the defenses were substantially frivolous, groundless, and vexatious, that certain defenses were interposed for the sole purposes of delay, harassment, and to cause plaintiffs to incur legal expenses, and where defendant, even when proceeding without an attorney, clearly knew or should have known that the defenses asserted were substantially frivolous, groundless, or vexatious. Behr v. Burge, 940 P.2d 1084 (Colo. App. 1996).

**Colorado Governmental Immunity Act does not shield public entities from an**

**award for attorney fees for the filing of a frivolous claim by such entities.** Colo. City Metro. Dist. v. Graber & Son's, Inc., 897 P.2d 874 (Colo. App. 1995).

**County attorney is entitled to absolute immunity when filing guardianship petitions.** It is illogical that an attorney could be immune from suit if brought separately under 42 U.S.C. § 1983, but not immune when fees are required in the same action under this section. In re Matter of Stepanek, 924 P.2d 1142 (Colo. App. 1996), aff'd, 940 P.2d 364 (Colo. 1997).

**The constitution, statutes, and case law clearly establish** that the city's claims lacked any legal foundation, therefore, the trial court did not err in finding that the city had not advanced a good faith argument. City of Littleton v. State, 832 P.2d 985 (Colo. App. 1991).

**Where city discovered mining waste on property during eminent domain proceeding but failed to disclose the presence of the waste or the potential remediation cost,** court did not abuse discretion by finding bad faith and awarding respondent attorney fees incurred after city learned of the mining waste. City of Black Hawk v. Ficke, 215 P.3d 1129 (Colo. App. 2008).

**The denial of an award of attorney fees may be grounded upon the evidence admitted at trial upon the merits** absent a specific request by one of the parties for the opportunity to present further evidence on the issue. No fees may be awarded, however, without providing the party against whom such an award is sought an



opportunity to present such further evidence upon the issue as such party desires. *Christian v. Westmoreland*, 809 P.2d 1105 (Colo. App. 1991).

**Award of attorney fees is not authorized unless** the claim or defense was substantially frivolous, substantially groundless, or substantially vexatious. Although this restriction is not explicitly provided for in the statute, the title, purpose, and subsequent provisions of the statute indicate the intent that it apply only to frivolous, groundless, or vexatious actions. *Shaw v. Baesemann*, 773 P.2d 609 (Colo. App. 1988).

**Awarding attorney fees and costs pursuant to a unilateral fee-shifting contract provision in favor of a nonprevailing party that itself was sanctioned under this section for frivolous and vexatious conduct violates public policy.** *Klein v. Tiburon Dev. LLC*, 2017 COA 109, 405 P.3d 470.

**Trial court erred when it refused to award the prevailing party attorney fees for costs incurred attempting to enforce the original attorney fee award, known as "fees on fees".** The contractual fee-shifting provisions stipulated that the prevailing party could seek attorney fees and costs incurred in pursuing "any action or proceeding . . . to enforce or interpret the [lease's] provisions." *1046 Munras Props. v. Kabod Coffee*, 2025 COA 71, 577 P.3d 1033.

**Arbitrary, vexatious, abusive, or stubbornly litigious conduct by a pro se litigant may serve as the basis for**

**awarding attorney fees** although the action or defense is not itself frivolous or groundless. *Bockar v. Patterson*, 899 P.2d 233 (Colo. App. 1994).

**Filing of certificate of review does not preclude an attorney fee award for a vexatious claim.** *Mitchell v. Ryder*, 104 P.3d 316 (Colo. App. 2004).

**Where trial court awarded attorney fees solely because party prevailed,** the award was without a proper basis, and, since the legal issues involved had not been previously determined by binding precedent, the claims were not frivolous. *Cohen v. Empire Cas. Co.*, 771 P.2d 29 (Colo. App. 1989).

**The prevailing party for purposes of awarding attorney fees when a claim exists for a violation of a contractual obligation** is the party in whose favor the decision or verdict on liability is rendered. *Travers v. Rainey*, 888 P.2d 372 (Colo. App. 1994).

**Trial court erred in awarding fees against surety for assertion of its claim that bonds were void** where such contention was a good faith presentation of a legal theory which was arguably meritorious. *SaBell's, Inc. v. City of Golden*, 832 P.2d 974 (Colo. App. 1991).

**Pro se litigants are entitled to protection of subsection (6)** unless trial court makes an express finding that such litigants knew or reasonably should have known that their claims lacked substantial justification. Failure to respond to a motion for fees does not obviate the need for such a

finding. *Artes-Roy v. Lyman*, 833 P.2d 62 (Colo. App. 1992).

**A party who successfully seeks summary judgment** is not necessarily entitled to attorney fees. *Little v. Fellman*, 837 P.2d 197 (Colo. App. 1991).

**The fact that a claim is dismissed on summary judgment** does not preclude a finding that it was substantially groundless. A claim is groundless if there is no credible evidence to support it. *Hamon Contractors, Inc. v. Carter & Burgess, Inc.*, 229 P.3d 282 (Colo. App. 2009).

**Where dismissal is reversed on appeal**, award of attorney fees under this section is not appropriate. *Bear Creek Dev. Corp. v. Dyer*, 790 P.2d 897 (Colo. App. 1990).

**Trial court determination of attorney fees will not be disturbed on appeal if the ruling is supported by the evidence.** *Nagy v. Landau*, 807 P.2d 1227 (Colo. App. 1990).

**The determination whether a claim or defense is groundless under this section is within the discretion of the trial court** and its decision will not be disturbed on appeal if supported by the record. *Travers v. Rainey*, 888 P.2d 372 (Colo. App. 1994).

Trial court must make sufficient findings to permit meaningful appellate review of the attorney fees award. *Bilawsky v. Faseehudin*, 916 P.2d 586 (Colo. App. 1995).

**Award of attorney fees is appropriate** after the trial court renders a decision on the merits of the case. *Forness v. Blum*, 796 P.2d 496 (Colo. App. 1990).

**Fees may be awarded even when the case is dismissed shortly before trial.** *Bilawsky v. Faseehudin*, 916 P.2d 586 (Colo. App. 1995).

**Fees may be awarded even when the trial court lacks subject matter jurisdiction.** Here, the plaintiff not only lacked standing but also persisted in pursuing the claim despite knowing that it lacked admissible evidence to support the claim. *Consumer Crusade, Inc. v. Clarion Mortgage Capital, Inc.*, 197 P.3d 285 (Colo. App. 2008).

**Section effective in civil action commenced prior to effective date.** Though dissolution of marriage proceeding was filed prior to effective date of this section, a subsequent motion to change custody of a child filed after such date which raised separate and distinct issues will be interpreted as a new civil action for the purposes of implementing the legislative intent of this section, and an award of attorney fees for costs incurred in defending the motion is proper. *Weber v. Wallace*, 789 P.2d 427 (Colo. App. 1989).

**Section effective in any "part" of a civil action, including garnishment proceedings.** *Anderson Boneless Beef, Inc. v. Sunshine Health Care Ctr., Inc.*, 878 P.2d 98 (Colo. App. 1994).

**Court should allocate sanctions between attorney and client according to their relative degrees of responsibility.** *Anderson Boneless Beef, Inc. v. Sunshine Health Care Ctr., Inc.*, 878 P.2d 98 (Colo. App. 1994); *Patterson v. James*, 2018 COA 173, 454 P.3d 345.

Where attorney accepted "full responsibility" for decision to proceed with second writ of garnishment, after hearing on first such writ established the absence of a legal basis to do so, award against party jointly with attorney was erroneous. *Anderson Boneless Beef, Inc. v. Sunshine Health Care Ctr., Inc.*, 878 P.2d 98 (Colo. App. 1994).

**A principal may be liable for attorney fees based on its agent's litigation of a frivolous claim** pursuant to the express terms of a contract. In re Water Rights of Park County Sportsmen's Ranch, 105 P.3d 595 (Colo. 2005).

**Award of attorney fees was proper** where party's attorney was on notice that garnishee did not hold any property of judgment debtor, although clerical error had made it appear so in a prior attempt to garnish the same account. *Anderson Boneless Beef, Inc. v. Sunshine Health Care Ctr., Inc.*, 878 P.2d 98 (Colo. App. 1994).

**Award of attorney fees improper** where rational argument in support of the contention that exemplary damages may be awarded for bad faith breach of contract was made. *William H. White Co. v. B&A Mfg. Co.*, 794 P.2d 1099 (Colo. App. 1990).

Where plaintiffs' counsel offered substantial legal arguments in favor of application of "discovery rule" to overcome statutory limitation of claims of sexual abuse of minors and where some of defendant's alleged acts of abuse occurred within the applicable limitation period, award of fees improper. *Cassidy v. Smith*, 817 P.2d 555 (Colo. App. 1991).

Award of attorney fees improper in abuse of process action where plaintiffs were not represented by an attorney and trial court did not make a finding that the plaintiffs knew or reasonably should have known that filing of the suit lacked substantial justification. *Artes-Roy v. Lyman*, 833 P.2d 62 (Colo. App. 1992).

Where defendant made rational arguments on the law in support of its position, trial court noted that legal issue was one of first impression in Colorado, and defendant was able to cite legal authority from other jurisdictions in support of its position, award of attorney fees was improper. *Eurpac Serv., Inc. v. Republic Acceptance Corp.*, 37 P.3d 447 (Colo. App. 2000).

Trial court abused its discretion in awarding attorney fees based largely on evidence presented in a hearing to determine whether a governmental agency or employee had immunity. Such a hearing is not a substitute trial on the merits and the claimant is not required to prove the merits of its claim at such a hearing. *Hamon Contractors, Inc. v. Carter & Burgess, Inc.*, 229 P.3d 282 (Colo. App. 2009).

**Award of attorney fees incurred in pursuing motions for sanctions improper** where the defense to the motions, while ultimately unsuccessful, had a rational basis in fact and law and did not lack substantial justification. *Boulder County Bd. of County Comm'rs v. Kraft Bldg. Contractors*, 122 P.3d 1019 (Colo. App. 2005).

**Award of attorney fees and costs incurred in defending abandoned appeal of motion to enforce injunction improper.**

Anderson v. Pursell, 244 P.3d 1188 (Colo. 2010).

**Award of attorney fees incurred in responding to C.R.C.P. 59 motion not an abuse of discretion.** The movants' requested remedies and the motion's reference to "defendants" instead of merely one defendant in the framing of the disputed issues were such that it was not unreasonable for the other defendant to respond to the motion. Klein v. Tiburon Dev. LLC, 2017 COA 109, 405 P.3d 470.

**Award of attorney fees was an abuse of the trial court's discretion** where the plaintiff's issue was one of first impression in Colorado, the plaintiff made a legitimate and reasoned attempt to extend the law, and the plaintiff presented some credible evidence to support her argument, even though the trial court found it was not sufficient to establish a prima facie case. Nienke v. Naiman Grp., Ltd., 857 P.2d 446 (Colo. App. 1992).

**An award of attorney fees under this section cannot be held to be confessed by failure to respond to a motion pursuant to C.R.C.P. 121.** Artes-Roy v. Lyman, 833 P.2d 62 (Colo. App. 1992).

**Active relitigation of settled issue that was clearly the law of the case is presumed to be frivolous** and, thus, plaintiffs were entitled to attorney fees for frivolous second appeal of statute of limitations issue. Howard v. Wood Bros. Homes, Inc., 835 P.2d 556 (Colo. App. 1992).

When fees are awarded, the court is required to make evidentiary findings and must provide the opportunity for a hearing. Pedlow v. Stamp, 776 P.2d 382 (Colo. 1989); Little v. Fellman, 837 P.2d 197 (Colo. App. 1991).

**If plaintiff's only reference to attorney fees is in the prayer, he or she has not alleged a claim for such fees under § 13-17-101.** At most, the language provides notice that such fees may be requested. Township Homeowners Ass'n v. Arapahoe Roofing, 844 P.2d 1316 (Colo. App. 1992).

**The trial court did not abuse its discretion in finding that residents' claims against a charter city were frivolous and in awarding attorney fees to the city.** The trial court properly awarded attorney fees for a frivolous action where residents had no basis for a claim that the charter city's method for appointing municipal judges violated the state constitution and state statutes and no basis for a claim that the charter city violated state statutes in adopting ordinances that were of purely local concern. Artes-Roy v. City of Aspen, 856 P.2d 823 (Colo. 1993).

**Trial court did not err in failing to apportion some of the fault to the attorney's clients** where motion requested that sanctions be imposed only against the attorney, the attorney raised the defense that his clients should bear some of the responsibility for the plaintiffs' attorney fees, and the court implicitly rejected this argument by concluding that the attorney should be held fully accountable for his decision to ignore his obligations to

opposing counsel. Parker v. Davis, 888 P.2d 324 (Colo. App. 1994).

**The trial court erred by not addressing, and thus implicitly denying without explanation, lessee's request for attorney fees under this section.** Mulberry Frontage Metro. v. Sunstate Equip., 2023 COA 66, 537 P.3d 391.

**A party is not automatically entitled to recover the expenses incurred in successfully pursuing a motion for sanctions** since such fees may be awarded only if the trial court determines that the defense to the motion lacked substantial justification; however, the need for any further proof on that issue was dispensed with by defendant's judicial admissions. Parker v. Davis, 888 P.2d 324 (Colo. App. 1994).

**To have standing to appeal an award of attorney fees only against a party's attorney,** the attorney must file a separate appeal or be added as an appellant to the party's appeal. Anglum v. USAA Cas. Ins. Co., 166 P.3d 191 (Colo. App. 2007).

**The absence of a cash outlay is insufficient cause for denying fees to an attorney simply because there has been self-representation.** Reversing such an award would frustrate the intent of the general assembly in enacting this law to address the problem of increasing litigation which burdens the judicial system and interferes with the effective administration of justice and would reward plaintiffs who have filed frivolous or groundless actions. Zick v. Krob, 872 P.2d 1290 (Colo. App. 1993).

**It is not appropriate for a court to award a grant of attorney fees to a pro se litigant.** While there is an exception for pro se litigants who are attorneys under the appropriate circumstances, a pro se litigant who is not a licensed attorney has no "attorney fees". Smith v. Furlong, 976 P.2d 889 (Colo. App. 1999).

**A pro se attorney litigant is not necessarily precluded from an attorney fee award under either this section or C.R.C.P. 107(d)(2) in a contempt proceeding.** Thus, a pro se attorney litigant may be entitled to attorney fees in a contempt proceeding if the trial court determines that an opposing party's conduct meets the requirements of the statutes in this part 1. Wimmershoff v. Finger, 74 P.3d 529 (Colo. App. 2003).

**A pro se attorney may recover attorney fees.** Giguere v. SJS Family Enters., 155 P.3d 462 (Colo. App. 2006).

**The court is required to award attorney fees only if it finds** that an attorney or party brought or defended an action that lacked substantial justification. United Guar. Residential Ins. Co. v. Dimmick, 916 P.2d 638 (Colo. App. 1996).

**Absent a finding that the defense to a motion for fees lacks substantial justification, fees and costs may not be awarded for challenging that defense.** Foxley v. Foxley, 939 P.2d 455 (Colo. App. 1996); Boulder County Bd. of County Comm'rs v. Kraft Bldg. Contractors, 122 P.3d 1019 (Colo. App. 2005); Klein v. Tiburon Dev. LLC, 2017 COA 109, 405 P.3d 470.

**To the extent § 13-17-101 et seq. is inconsistent with the procedural safe-harbor provisions of Fed. R. Civ. P. 11, it is preempted.** McCoy v. West, 965 F. Supp. 34 (D. Colo. 1997).

**This section is preempted by Fed. R. Bankr. P. 9011.** This section and Fed. R. Bankr. P. 9011 target the same persons (litigants and attorneys in civil actions) and the same conduct (claims or defenses not grounded in law or evidence), and the two provisions cannot operate side by side without conflict because rule 9011 contains a safe-harbor requirement that this section lacks. In re Johnson, 485 B.R. 642 (Bankr. D. Colo. 2013).

**This section is preempted in a § 1983 claim brought in state court.** A claim brought pursuant to 42 U.S.C. § 1983 in state court is governed by the federal standards contained in 42 U.S.C. § 1988. State v. Golden's Concrete Co., 962 P.2d 919 (Colo. 1998).

**Where plaintiff seeks attorney fees under this section and 42 U.S.C. § 1983 in a declaratory judgment action** the trial court's findings of due process violations as a matter of fact and as a matter of law are an insufficient basis to trigger a 42 U.S.C. § 1988 award of fees because the 42 U.S.C. § 1983 claim was not properly raised or litigated during the declaratory judgment action. Bd. of Comm'rs, County of Boulder v. Eason, 976 P.2d 271 (Colo. App. 1998).

**If a frivolous lawsuit includes both state law claims heard in state court proceedings and federal claims removed for federal court proceedings,** a state court

may award attorney fees incurred in producing work product for the federal court proceedings only to the extent that the work product was also used in the state court proceedings. Boulder County Bd. of County Comm'rs v. Kraft Bldg. Contractors, 122 P.3d 1019 (Colo. App. 2005).

**Lack of an express grant of authority in the Colorado rules for magistrates to award attorney fees** on review does not divest or otherwise curtail the district court's already existing authority to make such an award under this section. In re Naekel, 181 P.3d 1177 (Colo. App. 2008).

**Applied** in Moore v. DeBruine, 631 P.2d 1194 (Colo. App. 1981); Gaddis v. McDonald, 633 P.2d 1102 (Colo. App. 1981); Herman v. Steamboat Springs Super 8 Motel, Inc., 634 P.2d 1005 (Colo. App. 1981); Hargreaves v. Skrbina, 635 P.2d 221 (Colo. App. 1981); Wyatt v. United Airlines, 638 P.2d 812 (Colo. App. 1981); Turley v. Ball Assocs., 641 P.2d 286 (Colo. App. 1981); People in Interest of W.M., 643 P.2d 794 (Colo. App. 1982); Schlosky v. Mobile Premix Concrete, Inc., 656 P.2d 1321 (Colo. App. 1982); Ortega v. Bd. of County Comm'rs, 657 P.2d 989 (Colo. App. 1982); Walters v. Linhof, 559 F. Supp. 1231 (D. Colo. 1983); Mission Denver Co. v. Pierson, 674 P.2d 363 (Colo. 1984); Montgomery Ward & Co. v. State, Dept of Rev., 675 P.2d 318 (Colo. App. 1983); Citizens Bank v. Kruse, 691 P.2d 1143 (Colo. App. 1984); Meyer v. Landmark Universal, Inc., 692 P.2d 1129 (Colo. App. 1984); Bill Manning, Inc. v. Denver W. Bank & Trust, 697 P.2d 403 (Colo. App. 1984); Schoonover v. Hedlund Abstract Co., Inc., 727 P.2d 408

(Colo. App. 1986); Seismic Int'l Research Corp. v. S. Ranch Oil Co., Inc., 793 F.2d 227 (10th Cir. 1986); Tripp v. Shelter Research Inc., 729 P.2d 1024 (Colo. App. 1986); Martinez v. Cont'l Enter., 730 P.2d 308 (Colo. 1986); Anderson v. Rosebrook, 737 P.2d 417 (Colo. 1987); Pietrafesa v. D.P.I., Inc., 757 P.2d 1113 (Colo. App. 1988); Swanson v. Precision Sales & Serv., 832 P.2d 1109 (Colo. App. 1992); Rael v. Taylor, 876 P.2d 1210 (Colo. 1994); Langseth v. County of Elbert, 916 P.2d 655 (Colo. App. 1996); Van Steenhouse v. Jacor Broad., 935 P.2d 49 (Colo. App. 1996), *aff'd in part*,

*rev'd in part* on other grounds, 958 P.2d 464 (Colo. 1998); Giguere v. SJS Family Enters., 155 P.3d 462 (Colo. App. 2006); *In re Ward*, 183 P.3d 707 (Colo. App. 2008); Anderson v. Pursell, 244 P.3d 1188 (Colo. 2010); Vinton v. Virzi, 2012 CO 10, 269 P.3d 1242; Rose L. Watson Rev. Trust v. BP Am., 2014 COA 11, 410 P.3d 507; Water Rights v. Cherokee Metro. Dist., 2015 CO 47, 351 P.3d 408; Laleh v. Johnson, 2016 COA 4, 405 P.3d 286, *aff'd*, 2017 CO 93, 403 P.3d 207; Black v. Black, 2020 COA 64M, 482 P.3d 460.

### **13-17-103. Procedure for determining reasonable fee - judicial discretion.**

(1) In determining the amount of an attorney fee or licensed legal paraprofessional fee award, the court shall exercise sound discretion. When granting an award of attorney fees or licensed legal paraprofessional fees, the court shall specifically set forth the reasons for the award and must consider the following factors, among others, in determining whether to assess attorney fees or licensed legal paraprofessional fees and the amount of fees to be assessed against any offending attorney, licensed legal paraprofessional, or party:

(a) The extent of any effort made to determine the validity of any action or claim before said action or claim was asserted;

(b) The extent of any effort made after the commencement of an action to reduce the number of claims or defenses being asserted or to dismiss claims or defenses found not to be valid within an action;

(c) The availability of facts to assist a party in determining the validity of a claim or defense;

(d) The relative financial positions of the parties involved;

(e) Whether or not the action was prosecuted or defended, in whole or in part, in bad faith;

(f) Whether or not issues of fact determinative of the validity of a party's claim or defense were reasonably in conflict;

(g) The extent to which the party prevailed with respect to the amount of and number of claims in controversy;

(h) The amount and conditions of any offer of judgment or settlement as related to the amount and conditions of the ultimate relief granted by the court.

**Source:** **L. 77:** Entire article added, p. 797, § 2, effective July 1. **L. 84:** Entire section R&RE, p. 461, § 3, effective July 1. **L. 2024:** IP(1) amended, (HB 24-1291), ch. 131, p. 467, § 6, effective August 7.

## ANNOTATION

**Law reviews.** For article, "Civil Rights", which discusses the attorney fees in *Ramos v. Lamm*, see 62 Den. U. L. Rev. 71 (1985).

**For discussion of amount of attorney fee award,** see *Ramos v. Lamm*, 539 F. Supp. 730 (D. Colo. 1982) (decided under similar provisions of former § 13-17-102).

**Trial court properly concluded that claim lacked substantial justification** where court's detailed findings established that it considered the factors set forth in this section and § 13-17-102, and where court found the constitution, statutes, and case law clearly established the claims lacked "any legal foundation", that a good faith argument had not been advanced, and that the same arguments had been advanced and rejected in prior case. *City of Littleton v. State*, 832 P.2d 985 (Colo. App. 1991).

**Attorney fees awarded from assertion of affirmative defense. Attorney fees cannot be assessed against attorney from the beginning of action solely because attorney filed the action after the expiration of the statute of limitations** because statute of limitations is an affirmative defense which attorney is not

required to anticipate. *MacMillian v. Bruce*, 900 P.2d 131 (Colo. 1995).

**The requirement of this section that the court consider specified factors** in determining whether to award attorney fees necessarily requires that a hearing be provided for the parties to address such factors and for the court to make an informed decision. *Irwin v. Elam Const., Inc.*, 793 P.2d 609 (Colo. 1990).

**The court is not required to make specific findings** as to the factors to be determined in an order denying, rather than awarding, attorney fees. *E-470 Pub. Hwy. Auth. v. Jagow*, 30 P.3d 798 (Colo. App. 2001), *aff'd* on other grounds, 49 P.3d 1151 (Colo. 2002).

**Findings not necessary when request for fees is denied.** *Webster v. Boone*, 992 P.2d 1183 (Colo. App. 1999).

**Although this section does not require a court to make a finding of fact** when attorney fees are denied under § 13-17-102, C.R.C.P. 121 § 1-22 does. *Stearns Mgmt. Co. v. Mo. River Servs., Inc.*, 70 P.3d 629 (Colo. App. 2003).



**Specific factual findings on enumerated factors required only when granting an award of fees, not when denying an award.** *Munoz v. Measner*, 247 P.3d 1031 (Colo. 2011).

**Reference in subsection (7) to "a good faith attempt to establish a new theory of law" presumes that, in addition to filing a novel claim,** the party will attempt to advance a plausible theory and argument for the adoption of the new legal principle; however, if a party fails to present plausible arguments in support of a novel claim, sanctions may be imposed under the statute, irrespective of the subjective state of mind of the party or the attorney at the time the claim was asserted. *Sullivan v. Lutz*, 827 P.2d 626 (Colo. App. 1992).

**Trial court did not err in imposing sanctions under this section** for fees incurred in defending plaintiff's claim where there was no legal or equitable principle that would rationally support plaintiff's claim that the law of constructive trusts should be extended to incorporate his claim. *Sullivan v. Lutz*, 827 P.2d 626 (Colo. App. 1992).

**Award of attorney fees without a hearing is not proper** if the reasonableness of the attorney fee award is placed in issue. *City of Littleton v. State*, 832 P.2d 985 (Colo. App. 1991).

**Award of attorney fees under § 13-17-102 is discretionary with trial court, and its decision will not be disturbed on appeal if supported by the evidence.** Award upheld where evidence presented to trial court with respect to father's defense against motion to change custody included

findings that the mother had misled expert witnesses, that they had failed to investigate the child's circumstances with the father, that the mother had not properly assisted the child to recover from the impact of the dissolution, and that she had a scheme for obtaining custody of the child which involved actions not in the best interest of the child. *Weber v. Wallace*, 789 P.2d 427 (Colo. App. 1989).

**Where credible evidence existed to support plaintiff's claims but was not presented** due to counsel's failure to obtain and designate witnesses upon issue of damages, court erred in including in attorney fee award those amounts attributable to the time when evidence could have been presented through proper designation of witnesses because during this interval plaintiff's claims were not groundless. *Harrison v. Smith*, 821 P.2d 832 (Colo. App. 1991).

**Trial court's findings were adequate where order indicated it properly considered evidence as to the pertinent factors under this section** and findings were sufficiently explicit to permit review of its determination. *Sullivan v. Lutz*, 827 P.2d 626 (Colo. App. 1992).

**Court's statement that injunction was no longer valid was sufficient** for a finding that motion to enforce it was without merit and to meet requirements of this section. *Anderson v. Pursell*, 244 P.3d 1188 (Colo. 2010).

**Attorney fee award reversed when the requisite findings required by the statute were not made.** In addition, a hearing was

not conducted despite the objections of the plaintiffs to the fee award. *Maul v. Shaw*, 843 P.2d 139 (Colo. App. 1992).

**Award of reasonable attorney fees under "no fault" law.** Since § 10-4-708 (1) does not provide a specific definition of "reasonable", such compensation should be determined in light of all circumstances for the time and effort reasonably expended by the prevailing party's attorney. If trial court does not make initial determination as to reasonableness of hours expended by plaintiff's counsel, the record will be insufficient for reviewing court to resolve issue of reasonableness of fees on appeal. *Spensieri v. Farmers Alliance Mut. Ins.*, 804 P.2d 268 (Colo. App. 1990).

**In determining whether a claim or defense is substantially frivolous or groundless,** a trial court must consider the factors set forth in subsection (1) and it must specify the reasons for the award. *Pedlow v. Stamp*, 776 P.2d 382 (Colo. 1989); *Haney v. City Court*, 779 P.2d 1312 (Colo. 1989); *Sullivan v. Lutz*, 827 P.2d 626 (Colo. App. 1992).

**Order imposing sanctions was not deficient for failure to address the factors set forth in subsection (1) and to specify the reasons for the award** since none of the factors listed were placed in issue during the

sanctions hearing and, consequently, the trial court was under no obligation to issue specific findings and since the order was sufficiently explicit to permit appellate review of the justification for the award. *Parker v. Davis*, 888 P.2d 324 (Colo. App. 1994).

**Doctrine of res ipsa loquitur cannot be used to avoid the requirements of this section,** at least when there is no evidence or inference that the defendant had any control over the instrumentality causing the injury. *Bilawsky v. Faseehudin*, 916 P.2d 586 (Colo. App. 1995).

**Effectively abandoning a claim by not pursuing it through trial is insufficient** to constitute an effort to reduce the number of claims being asserted under subsection (1)(b). *Ranta Constr., Inc. v. Anderson*, 190 P.3d 835 (Colo. App. 2008).

**Plaintiffs did not have standing to challenge an award of attorney fees entered pursuant to this section against plaintiffs' counsel.** Appeal properly dismissed where counsel had not filed a separate notice of appeal or added his name as an appellant to the appeal. *Henderson v. Bear*, 968 P.2d 144 (Colo. App. 1998).

**Applied** in *Application of Talco, Ltd.*, 769 P.2d 468 (Colo. 1989); *In re Ward*, 183 P.3d 707 (Colo. App. 2008).

#### **13-17-104. Fee arrangements between attorney or licensed legal paraprofessional and client.**

The attorney or licensed legal paraprofessional and the client are free to negotiate in private the actual fee that the client is to pay the client's attorney or licensed legal paraprofessional.

**Source: L. 77:** Entire article added, p. 798, § 2, effective July 1. **L. 2024:** Entire section amended, (HB 24-1291), ch. 131, p. 467, § 7, effective August 7.

**13-17-105. Stipulation as to fees.**

With the approval of the court, two or more parties to an action may agree, by written stipulation filed with the court or by oral stipulation in open court, to no award of attorney fees or licensed legal paraprofessional fees or an award of attorney fees or licensed legal paraprofessional fees in a manner different from that provided in this article 17.

**Source: L. 77:** Entire article added, p. 798, § 2, effective July 1. **L. 84:** Entire section R&RE, p. 462, § 4, effective July 1. **L. 2024:** Entire section amended, (HB 24-1291), ch. 131, p. 468, § 8, effective August 7.

**13-17-106. Applicability.**

This article 17 applies in all cases covered by this article 17 unless attorney fees or licensed legal paraprofessional fees are otherwise specifically provided by statute, in which case the provision allowing the greater award prevails.

**Source: L. 77:** Entire article added, p. 798, § 2, effective July 1. **L. 84:** Entire section amended, p. 462, § 5, effective July 1. **L. 2024:** Entire section amended, (HB 24-1291), ch. 131, p. 468, § 9, effective August 7.

## PART 2

### ATTORNEY FEES IN CIVIL ACTIONS IN GENERAL

**13-17-201. Award of reasonable attorney fees in certain cases.**

(1) In all actions brought as a result of a death or an injury to person or property occasioned by the tort of any other persons, where any such action is dismissed on motion of the defendant prior to trial under rule 12 (b) of the Colorado rules of civil procedure, such defendant shall have judgment for his reasonable attorney fees in defending the action. This subsection (1) does not apply if a motion under rule 12 (b) of the Colorado rules of civil procedure is treated as a motion

for summary judgment and disposed of as provided in rule 56 of the Colorado rules of civil procedure.

(2) Subsection (1) of this section does not apply to any claim that is a good faith, non-frivolous claim filed for the express purpose of extending, limiting, modifying, or reversing existing precedent, law, or regulation; or for the express purpose of establishing the meaning, lawfulness, or constitutionality of a law, regulation, or United States or state constitutional right and the meaning, lawfulness, or constitutionality has not been determined by the Colorado supreme court, or for cases presenting questions under the United States constitution, to the Supreme Court of the United States. This subsection (2) applies so long as the party that brought the dismissed claim has pleaded, in its complaint, counterclaim, or cross claim, that the dismissed claim was made for one of the express purposes stated in this subsection (2) and identified the precedent, law, or regulation the party seeks to extend, limit, modify, or reverse, or whether the issue to be decided is a matter of first impression.

**Source:** L. 87: Entire part added, p. 547, § 2, effective July 1. L. 2022: Entire section amended, (HB 22-1272), ch. 445, p. 3131, § 1, effective June 8.

#### ANNOTATION

**Law reviews.** For article, "1988 Update on Colorado Tort Reform Legislation — Part II", see 17 Colo. Law. 1949 (1988). For article, "Recent Developments in Governmental Immunity: Post-Trinity Broadcasting", see 25 Colo. Law. 43 (June 1996). For article, "The Past, Present, and Future of Residential Construction Defect Action Reform in Colorado", see 54 Colo. Law. 28 (Jan.-Feb. 2025).

**Purpose of section.** In enacting this section, the general assembly sought to discourage and deter the institution or maintenance of unnecessary litigation involving tort claims. *Emp'rs Ins. v. RREEF USA FUND-II*, 805 P.2d 1186 (Colo. App. 1991); *Monell v. Cherokee River, Inc.*, 2015 COA 21, 347 P.3d 1179.

**Whether a plaintiff is penalized by having to pay a fee award to a defendant or a third party, such as an insurer, who actually paid the fees is irrelevant to the statute's purpose.** *Monell v. Cherokee River, Inc.*, 2015 COA 21, 347 P.3d 1179.

**Section applies only to dismissal of an entire tort action, not to dismissal of a single claim.** *First Interstate Bank v. Berenbaum*, 872 P.2d 1297 (Colo. App. 1993); *Holland v. Bd. of County Comm'rs*, 883 P.2d 500 (Colo. App. 1994); *Jaffe v. City & County of Denver*, 15 P.3d 806 (Colo. App. 2000); *Barton v. Law Offices of John W. McKendree*, 126 P.3d 313 (Colo. App. 2005).

**Section applies when a tort action is dismissed pursuant to C.R.C.P. 12(b).**

Statute neither explicitly nor implicitly contemplates the existence of physical harm to a person or property. *Houdek v. Mobil Oil Corp.*, 879 P.2d 417 (Colo. App. 1994).

**Section applies when an action is dismissed pursuant to C.R.C.P. 12(b)(1) for lack of subject matter jurisdiction under the Colorado Governmental Immunity Act (CGIA).** *Smith v. Town of Snowmass Vill.*, 919 P.2d 868 (Colo. App. 1996).

**Section applies not only to "baseless" tort claims that are dismissed under C.R.C.P. 12(b)(5), but also to any tort claim dismissed under the auspices of any provision of C.R.C.P. 12.** *Crow v. Penrose-St. Francis Healthcare Sys.*, 262 P.3d 991 (Colo. App. 2011).

**Section does not apply to claims that are pleaded in contract, but are dismissed pursuant to the CGIA because they lie in tort or could lie in tort.** Courts will not read the CGIA's concern for claims that "lie or could lie in tort" into the plain language of this section. *Robinson v. Colo. State Lottery Div.*, 179 P.3d 998 (Colo. 2008).

**For purposes of applying this section,** the court relies on plaintiff's characterization of the claims in the complaint and does not consider what should or might have been pled. Although the case was dismissed based on preemption after a determination that the action was grounded on federal laws, the dismissal of plaintiff's case triggered application of this section, because plaintiff's claims were pled as torts. *Kennedy v. King Soopers Inc.*, 148 P.3d 385 (Colo. App. 2006).

**Under this section, an award of attorney fees is mandatory when a trial court dismisses an action under C.R.C.P. 12(b).** *Barnett v. Denver Publ'g Co.*, 36 P.3d 145 (Colo. App. 2001); *Wark v. Bd. of County Comm'rs*, 47 P.3d 711 (Colo. App. 2002); *Wilson v. Meyer*, 126 P.3d 276 (Colo. App. 2005); *Kreft v. Adolph Coors Co.*, 170 P.3d 854 (Colo. App. 2007); *Falcon Broadband v. Banning Lewis Ranch*, 2018 COA 92, 474 P.3d 1231.

A party who successfully defends a dismissal order under C.R.C.P. 12(b) is also entitled to recover reasonable attorney fees incurred on appeal. *Henderson v. Bear*, 968 P.2d 144 (Colo. App. 1998); *Wark v. Bd. of County Comm'rs*, 47 P.3d 711 (Colo. App. 2002); *Wilson v. Meyer*, 126 P.3d 276 (Colo. App. 2005); *Estate of Harper ex rel. Al-Hamim v. Denver Health & Hosp. Auth.*, 140 P.3d 273 (Colo. App. 2006); *Kreft v. Adolph Coors Co.*, 170 P.3d 854 (Colo. App. 2007); *Ferrel v. Colo. Dept. of Corr.*, 179 P.3d 178 (Colo. App. 2007).

**This section and § 13-16-113 mandate awards of attorney fees and costs and do not permit a reduction** for work that may be used in companion litigation. *Crandall v. City & County of Denver*, 238 P.3d 659 (Colo. 2010).

**This section is applicable where both tort and non-tort claims are pled and dismissed under Fed. R. Civ. P. 12.** This section applies in cases where all claims, both tort and non-tort, have been dismissed on Fed. R. Civ. P. 12 grounds. *Torres v. Am. Family Mut. Ins. Co.*, 606 F. Supp. 2d 1286 (D. Colo. 2009).

**But this section does not apply** if a court does not dismiss all of the tort claims against a defendant or if an action contains both tort and non-tort claims and only the tort claims are dismissed. For this section to apply, a court must dismiss the entire action pursuant to a C.R.C.P. 12(b) motion and the action must be a tort action. *Falcon Broadband v. Banning Lewis Ranch*, 2018 COA 92, 474 P.3d 1231.

**Award of attorney fees is mandatory** when trial court dismisses an action under the CGIA for lack of subject matter jurisdiction. *Ferrel v. Colo. Dept. of Corr.*, 179 P.3d 178 (Colo. App. 2007).

**A "defendant" entitled to an award of attorney fees under this section includes a person sued via a counterclaim.** Thus, a person can be both a plaintiff and a defendant simultaneously, as, for example, when a defendant asserts a cause of action as a third-party plaintiff. *Gagne v. Gagne*, 2014 COA 127, 338 P.3d 1152.

**Trial court may award attorney fees and costs to a defendant when claims are still pending as to other defendants at the time of dismissal** and, thus, the entire lawsuit has not been dismissed. By using the term "defendant" in the singular, this section necessarily applies to each defendant who has an action against it dismissed pursuant to C.R.C.P. 12(b)(1). *Stauffer v. Stegemann*, 165 P.3d 713 (Colo. App. 2006).

**An award for fees under this section is appropriate where the entire action, not just some of the claims, is dismissed.** *State v. Golden's Concrete Co.*, 962 P.2d 919 (Colo. 1998); *Dubray v. Intertribal Bison*

*Coop.*, 192 P.3d 604 (Colo. App. 2008); *Semler v. Hellerstein*, 2016 COA 143, 428 P.3d 555, rev'd on other grounds sub nom. *Bewley v. Semler*, 2018 CO 79, 432 P.3d 582; *Dorsey v. Pueblo Sch. Dist.* 60, 215 F. Supp. 3d 1092 (D. Colo. 2016).

**The court's general authority to make awards joint and several granted by § 13-17-102 (3) applies to cases governed by this section.** *Patterson v. James*, 2018 COA 173, 454 P.3d 345.

**This section applies separately to each defendant.** *Smith v. Town of Snowmass Vill.*, 919 P.2d 868 (Colo. App. 1996).

Thus, so long as all claims against a single defendant are dismissed, even though claims against other defendants may survive C.R.C.P. 12(b) motions, that defendant may recover under the statute. *Smith v. Town of Snowmass Vill.*, 919 P.2d 868 (Colo. App. 1996); *Semler v. Hellerstein*, 2016 COA 143, 428 P.3d 555, rev'd on other grounds sub nom. *Bewley v. Semler*, 2018 CO 79, 432 P.3d 582.

**This section applies to claims under the federal Lanham Act.** *Advanced Career Techs., Inc. v. Does*, 100 F. Supp. 3d 1105 (D. Colo. 2015).

**This section does not authorize recovery of attorney fees if a defendant obtains dismissal of some, but not all, of a plaintiff's tort claims.** *Sotelo v. Hutchens Trucking Co.*, 166 P.3d 285 (Colo. App. 2007); *Colo. Special Dists. v. Lyons*, 2012 COA 18, 277 P.3d 874.

**Defendant may not recover attorney fees under this section when** (1) the action

includes both tort and nontort claims and (2) defendant has obtained dismissal of the tort claims, but not of the nontort claims, under C.R.C.P. 12. *Sotelo v. Hutchens Trucking Co.*, 166 P.3d 285 (Colo. App. 2007).

**Defendant is not entitled to recover attorney fees when** the defendant successfully moves to dismiss all of the plaintiff's claims against it, the plaintiff later amends the complaint to assert a new claim against the defendant, and that new claim is not dismissed on the defendant's motion to dismiss. *Schulz v. Laszlo & Assocs.*, 2025 COA 24, 568 P.3d 458.

**Section does not apply to a § 1983 claim.** Instead, 42 U.S.C. § 1988 applies, and that section does not authorize an award of fees and costs unless the claim is properly characterized as frivolous, vexatious, unreasonable, groundless, or made in bad faith. *State v. Golden's Concrete Co.*, 962 P.2d 919 (Colo. 1998); *Berg v. Shapiro*, 36 P.3d 109 (Colo. App. 2001).

**Although plaintiff's action should properly have been founded in tort** under § 13-21-115, plaintiff's claim was, nevertheless, framed as a contract claim, and it was the purported contract claim that was dismissed. Hence, this section, which authorizes attorney fee awards when a tort claim is dismissed prior to trial, is inapplicable. *Sweeney v. United Artists Theater Circuit*, 119 P.3d 538 (Colo. App. 2005).

**Contrary to plaintiff's assertion that his action was primarily a contract action**, six of eight claims against defendants, and eight of 10 claims asserted, were pleaded as tort

claims within the meaning of this section. *Dubray v. Intertribal Bison Coop.*, 192 P.3d 604 (Colo. App. 2008).

**In determining whether section applies, the court should focus on the manner in which claims are pled.** Where plaintiff pled four contract claims and four tort claims, which all arose from the same nucleus of facts, and plaintiff chose to include the tort claims to obtain relief beyond what was available solely under a breach of contract theory, court did not err in determining that the section applied. *Crow v. Penrose-St. Francis Healthcare Sys.*, 262 P.3d 991 (Colo. App. 2011).

**A two-step analysis should be used.** First, the court should apply the predominance test, assessing whether the essence of the action is tortious in nature. Then, if the predominance test fails to yield a clear answer, the court should determine whether tort claims were asserted to unlock additional remedies. *Gagne v. Gagne*, 2014 COA 127, 338 P.3d 1152.

**When a plaintiff has pleaded both tort and nontort claims, the court must determine, as a matter of law, whether the essence of the action was one in tort in determining whether section applies.** Where a third-party defendant facially alleged a tort counterclaim, the defendant was not entitled to application of this section because the overall action was more accurately characterized as a contract action in that all of the counterclaims were based on acts or omissions related to an alleged breach of contract. *Liberty Bankers Life v. First Citizens*, 2014 COA 151, 411 P.3d 111.

**In determining whether this section applies, the court must decide whether the essence of the entire action was primarily a tort action.** Because the claim for breach of duty to a creditor did not seek to obtain additional tort remedies and the overall purpose of all the claims was to collect workers' compensation awards and judgments already obtained, the essence of the action was not one sounding in tort, therefore this section does not apply. *Castro v. Lintz*, 2014 COA 91, 338 P.3d 1063.

**The claim to pierce the corporate veil to enforce an underlying judgment for a workers' compensation claim is not a tort claim** contemplated by the general assembly to be encompassed under this section. *Castro v. Lintz*, 2014 COA 91, 338 P.3d 1063.

**Section does not apply to a § 24-34-402.5 claim** because, for purposes of this section, a claim for unlawful prohibition of legal activities as a condition of employment is not a tort. The primary purpose of a tort law is to compensate plaintiffs for injuries wrongfully suffered at the hands of others. The purpose of a § 24-34-402.5 claim is to eliminate workplace discrimination based on lawful, off-the-job activity. *Coats v. Dish Network, L.L.C.*, 2013 COA 62, 303 P.3d 147, *aff'd* on other grounds, 2015 CO 44, 350 P.3d 849.

**Trial court did not err in failing to apportion attorney fees requested based on tort versus nontort claims.** Even if defendants were entitled to recover fees and costs associated with dismissal of only the tort claims, apportionment would be unwarranted because the entire action was

dismissed for the same reason (lack of personal jurisdiction) and defendants would have incurred the same, or nearly the same, fees had the case involved only the tort claims. *Dubray v. Intertribal Bison Coop.*, 192 P.3d 604 (Colo. App. 2008).

**Mandatory attorney fees award provision of this section contains no express exclusion for claims brought in a good faith attempt to establish a new rule of law.** *Houdek v. Mobile Oil Corp.*, 879 P.2d 417 (Colo. App. 1994); *Tunget v. Bd. of County Comm'rs*, 992 P.2d 650 (Colo. App. 1999).

**Attorney fees mandatory when motion to dismiss for failure to join an indispensable party granted;** consideration of evidentiary matters did not convert motion to a motion for summary judgment. *Lyon v. Amoco Prod. Co.*, 923 P.2d 350 (Colo. App. 1996).

**To the extent this section and § 13-17-102 (7) are in conflict concerning a good faith tort action that is dismissed pursuant to C.R.C.P. 12(b),** this section controls as it is more specific to such action and was enacted later in time than § 13-17-102 (7). *Houdek v. Mobil Oil Corp.*, 879 P.2d 417 (Colo. App. 1994); *Hewitt v. Rice*, 119 P.3d 541 (Colo. App. 2004), *aff'd* on other grounds, 154 P.3d 408 (Colo. 2007).

**By implication, this section allows a plaintiff to escape liability for attorney fees by seeking a voluntary dismissal, filing a stipulation of dismissal, or confessing to a defense motion to dismiss under C.R.C.P. 12(b);** however, section is not applicable when plaintiffs seek to



maintain state law claims unless and until federal court determines that a federal cause of action exists. *Houdek v. Mobil Oil Corp.*, 879 P.2d 417 (Colo. App. 1994).

**Trial court is not duty-bound to conduct a separate hearing on the issue of attorney fees before it may deny a request therefor.** *Hunter v. Colo. Mtn. Jr. Coll.*, 804 P.2d 277 (Colo. App. 1990).

When fees are awarded, the court is required to make evidentiary findings and must provide the opportunity for a hearing. *Pedlow v. Stamp*, 776 P.2d 382 (Colo. 1989); *Little v. Fellman*, 837 P.2d 197 (Colo. App. 1991); *Walker v. Women's Prof'l Rodeo Ass'n*, 2021 COA 105M, 498 P.3d 648.

**Trial court did not err in treating motion to dismiss as a C.R.C.P. 56 motion for summary judgment**, despite fact that no affidavits or documents outside the pleadings were presented; thus, statute permitting award of attorney fees in actions brought as a result of death or injury to person or property, where the action is dismissed on motion of the defendant prior to trial, did not apply. *Willer v. City of Thornton*, 817 P.2d 514 (Colo. 1991).

**When a defendant has two valid defenses to a tort claim and one meets the statutory requirements for the granting of attorney fees under this section, such fees should be awarded.** Because this section precludes the recovery of attorney fees whenever a motion is converted to summary judgment, a defendant who prevails on a motion to dismiss based on first amendment immunity generally may not recover

attorney fees. Here, however, because there is an alternative, independent ground upon which respondent's claim may be dismissed that comes within this section, petitioner can recover his or her attorney fees. Petitioner may recover his or her attorney fees because his or her motion to dismiss respondent's claim succeeds not only on the basis of his or her first amendment defense, but also on the independent, alternative basis under C.R.C.P. 12(b)(5) that respondent failed to state a claim upon which relief could be granted. *Krystkowiak v. W.O. Brisben Cos.*, 90 P.3d 859 (Colo. 2004).

**Defendant not entitled to attorney fees where court converted C.R.C.P. 12(b)(1) motion to dismiss to a motion for summary judgment under C.R.C.P. 56.** The fact that the court found plaintiff's allegations of willfulness and wantonness insufficient on their face to support subject matter jurisdiction under the Governmental Immunity Act does not render the dismissal one under C.R.C.P. 12(b). In deciding the question of sovereign immunity, the court necessarily construed the act and issued a legal finding that disposed of the case. That the trial court considered no matters outside the pleadings in doing so was deemed inconsequential. *Zerr v. Johnson*, 905 F. Supp. 872 (D. Colo. 1995).

**The exception to this section's general applicability is applicable only in the case of a C.R.C.P. 12(b)(5) motion** and not in the case of a C.R.C.P. 12(b)(1) motion challenging the court's subject matter jurisdiction. *Crow v. Penrose-St. Francis Healthcare Sys.*, 262 P.3d 991 (Colo. App. 2011).

**C.R.C.P. 12(b) authorizes the court to consider evidence outside the pleadings without converting the motion into a summary judgment motion** for motions under subsection C.R.C.P. 12(b) other than C.R.C.P. 12(b)(5). *Aztec Minerals Corp. v. State*, 987 P.2d 895 (Colo. App. 1999).

**Trial court erred** in refusing to award a defendant attorney fees because facts had to be presented and determined by the court. Under the plain language of this section, an award of attorney fees is mandatory when a trial court dismisses an action under the Colorado Governmental Immunity Act for lack of subject matter jurisdiction. *Smith v. Town of Snowmass Vill.*, 919 P.2d 868 (Colo. App. 1996); *Villalpando v. Denver Health & Hosp. Auth.*, 181 P.3d 357 (Colo. App. 2007).

**Since the court declined to grant the defendant's motion to dismiss until it heard the evidence presented at trial**, this is not a situation in which a defendant delayed seeking dismissal and incurred attorney fees that a timely motion to dismiss could have avoided. Therefore, the court is right in awarding attorney fees pursuant to this section. *Abrahamson v. City of Montrose*, 77 P.3d 819 (Colo. App. 2003).

**This section not in conflict with § 6-1-113 of the Colorado Consumer Protection Act.** This section applies to a motion pursuant to C.R.C.P. 12(b) while § 6-1-113 allows attorney fees when claims are groundless and in bad faith or for the purpose of harassment. The provisions can stand side by side because they mandate awards in different circumstances. *US Fax*

*Law Ctr., Inc. v. Henry Schein, Inc.*, 205 P.3d 512 (Colo. App. 2009).

**This section applies** only when an action is dismissed and does not apply when only a single claim is dismissed. *First Interstate Bank v. Berenbaum*, 872 P.2d 1297 (Colo. App. 1993); *Sundheim v. Bd. of County Comm'rs of Douglas County*, 904 P.2d 1337 (Colo. App. 1995), *aff'd*, 926 P.2d 545 (Colo. 1996); *Berg v. Shapiro*, 36 P.3d 109 (Colo. App. 2001); *U.S. Fax Law Ctr., Inc. v. T2 Techs., Inc.*, 183 P.3d 626 (Colo. App. 2007); *Hamon Contractors, Inc. v. Carter & Burgess, Inc.*, 229 P.3d 282 (Colo. App. 2009).

The defendant is not entitled to attorney fees when only a single fraud claim was dismissed under a motion to dismiss for failure to state a claim of relief. *First Interstate Bank v. Berenbaum*, 872 P.2d 1297 (Colo. App. 1993).

**Recovery of attorney fees not limited only to fees incurred in preparing motion to dismiss.** This section does not so limit an award and instead expressly authorizes "attorney fees in defending the action". *Dubray v. Intertribal Bison Coop.*, 192 P.3d 604 (Colo. App. 2008).

**Absent a finding that the defense to a motion for fees lacks substantial justification, fees and costs may not be awarded for challenging that defense.** *Foxley v. Foxley*, 939 P.2d 455 (Colo. App. 1996).

**Plaintiffs did not have standing to challenge an award of attorney fees entered pursuant to this section against**

**plaintiffs' counsel.** Appeal properly dismissed where counsel had not filed a separate notice of appeal or added his name as an appellant to the appeal. *Henderson v. Bear*, 968 P.2d 144 (Colo. App. 1998).

**Defamation is "an injury to person or property occasioned by the tort of any other person"** and therefore an award of attorney fees is appropriate under this section upon a dismissal pursuant to C.R.C.P. 12(b). *Barnett v. Denver Publ'g Co., Inc.*, 36 P.3d 145 (Colo. App. 2001).

**A party who prevails in an action to pierce the corporate veil of a corporation**

**may recover the attorney fees incurred in that action if** (1) the action was brought to enforce a breach of contract judgment against the corporation and (2) the contract underlying the judgment authorized an award of fees for enforcing the judgment against the corporation. *Swinerton Builders v. Nassi*, 2012 COA 17, 272 P.3d 1174.

**Applied** in *Giduck v. Niblett*, 2014 COA 86, 408 P.3d 856; *Falcon Broadband v. Banning Lewis Ranch*, 2018 COA 92, 474 P.3d 1231; *Duke v. Gunnison County*, 2019 COA 170, 456 P.3d 38.

### **13-17-202. Award of actual costs and fees when offer of settlement was made.**

(1) (a) Notwithstanding any other statute to the contrary, except as provided in section 24-10-106.3, C.R.S., in any civil action of any nature commenced or appealed in any court of record in this state:

(I) If the plaintiff serves an offer of settlement in writing at any time more than fourteen days before the commencement of the trial that is rejected by the defendant, and the plaintiff recovers a final judgment in excess of the amount offered, then the plaintiff shall be awarded actual costs accruing after the offer of settlement to be paid by the defendant.

(II) If the defendant serves an offer of settlement in writing at any time more than fourteen days before the commencement of the trial that is rejected by the plaintiff, and the plaintiff does not recover a final judgment in excess of the amount offered, then the defendant shall be awarded actual costs accruing after the offer of settlement to be paid by the plaintiff. However, as provided in section 13-16-104, if the plaintiff is the prevailing party in the action, the plaintiff's final judgment shall include the amount of the plaintiff's actual costs that accrued prior to the offer of settlement.

(III) If an offer of settlement is not accepted in writing within fourteen days after service of the offer, the offer shall be deemed rejected, and the party who made the offer is not precluded from making a subsequent offer. Evidence thereof is not admissible except in a proceeding to determine costs.

(IV) If an offer of settlement is accepted in writing within fourteen days after service of the offer, the offer of settlement shall constitute a binding settlement agreement, fully enforceable by the court in which the civil action is pending.

(V) An offer of settlement under this section shall remain open for at least fourteen days from the date of service unless withdrawn by service of withdrawal of the offer of settlement.

(VI) An offer of settlement served at any time fourteen days or less before the commencement of the trial shall not be subject to this section, and evidence thereof is not admissible for any purpose.

(b) For purposes of this section, "actual costs" shall not include attorney fees but shall mean costs actually paid or owed by the party, or his or her attorneys or agents, in connection with the case, including but not limited to filing fees, subpoena fees, reasonable expert witness fees, copying costs, court reporter fees, reasonable investigative expenses and fees, reasonable travel expenses, exhibit or visual aid preparation or presentation expenses, legal research expenses, and all other similar fees and expenses.

(2) When comparing the amount of any offer of settlement to the amount of a final judgment actually awarded, any amount of the final judgment representing interest subsequent to the date of the offer in settlement shall not be considered.

(3) When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of settlement, which shall have the same effect as an offer made before trial (except with respect to costs already incurred) if it is served pursuant to subsection (1) of this section.

**Source:** **L. 90:** Entire section added, p. 852, § 14, effective May 31. **L. 95:** Entire section amended, p. 1194, § 1, effective July 1. **L. 2003:** (1) amended, p. 1359, § 1, effective July 1. **L. 2008:** (1)(a)(II) amended, p. 8, § 1, effective July 1. **L. 2015:** IP(1)(a) amended, (SB 15-213), ch. 266, p. 1039, § 5, effective June 3.

**Cross references:** (1) For the legislative declaration contained in the 1990 act enacting this section, see section 1 of chapter 100, Session Laws of Colorado 1990.

(2) For the legislative declaration in SB 15-213, see section 1 of chapter 266, Session Laws of Colorado 2015.

## ANNOTATION

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**Law reviews.** For article, "Application of the 'Offer of Settlement' Statute: Less Than Legislative Intent?", see 24 Colo. Law. 2557 (1995).

**This section does not violate equal protection principles since it provides equal opportunity to plaintiffs and defendants alike.** Rubio v. Farris, 51 P.3d 992 (Colo. App. 2002).

**Subsection (1)(a)(I) conflicts with and is preempted by Fed. R. Civ. P. 54(d)(1).** Sheldon v. Golden Bell Retreat, 640 F. Supp. 3d 1002 (D. Colo. 2022).

Fed. R. Civ. P. 54(d) and subsection (1)(a)(I) both address the availability of costs, and the scope of costs available is the same regardless of whether an offer of judgment has been made. Rule 54(d) provides the answer as to all costs, those that are available and those that are not. There thus is no room for the state law to operate. Sheldon v. Golden Bell Retreat, 640 F. Supp. 3d 1002 (D. Colo. 2022).

Although subsection (1)(a)(I) is broader in scope than Fed. R. Civ. P. 54(d), both address the availability of costs to a prevailing party. The federal rule prescribes the species of costs available to a successful litigant in all circumstances, not only when the litigant prevails after making an offer of judgment. That prescription trumps the state's determination that a broader class of costs should be available in the circumstances described in subsection (1)(a)(I). Sheldon v. Golden Bell Retreat, 640 F. Supp. 3d 1002 (D. Colo. 2022).

**The 2008 amendment to subsection (1)(a)(II) effected a change to, rather than merely a clarification of, the law.** Novak v. Craven, 195 P.3d 1115 (Colo. App. 2008).

**The general assembly intended the 2008 amendment to subsection (1)(a)(II) to operate only prospectively.** Novak v. Craven, 195 P.3d 1115 (Colo. App. 2008).

**The court's general authority to make awards joint and several granted by § 13-17-102 (3) applies to cases governed by this section.** Patterson v. James, 2018 COA 173, 454 P.3d 345.

**To award costs under this section,** the costs must have accrued after the settlement offer, they must be actual costs, excluding attorney fees, and the costs must be reasonable. Mallon Oil Co. v. Bowen/Edwards Assoc., 940 P.2d 1055 (Colo. App. 1996), aff'd on other grounds, 965 P.2d 105 (Colo. 1998).

**The nonclaim statute, § 15-12-803 (3)(b), precludes a jury award in excess of a statutory settlement offer for liability insurance policy limits.** White v. Estate of Soto-Lerma, 2018 COA 35, 425 P.3d 1183.

**This section does not impose a necessity requirement on recovery of actual costs accruing after the offer.** And while reasonableness has been implied as a precondition to recovery, reasonableness is a lower standard than necessity. Danko v. Conyers, 2018 COA 14, 432 P.3d 958.

**The phrase "and all other similar fees and expenses" at the end of subsection (1)(b) suggests a limitation to the categories of items that may be recovered as**

actual costs. *Catlin v. Tormey Bewley Corp.*, 219 P.3d 407 (Colo. App. 2009).

**A party challenging the reasonableness of expert fees** is entitled to a hearing on the issue. *Dunlap v. Long*, 902 P.2d 446 (Colo. App. 1995); *Harvey v. Farmers Ins. Exch.*, 983 P.2d 34 (Colo. App. 1998), *aff'd* on other grounds *sub nom. Slack v. Farmers Ins. Exch.*, 5 P.3d 280 (Colo. 2000); *Dillen v. HealthOne, L.L.C.*, 108 P.3d 297 (Colo. App. 2004); *Kim v. Grover C. Coors Trust*, 179 P.3d 86 (Colo. App. 2007).

The party must request a hearing, however. *Dillen v. HealthOne, L.L.C.*, 108 P.3d 297 (Colo. App. 2004).

**The plain language of subsection (1)(a) does not require an offer of settlement to contain a reference to this section and use of the term "offer of settlement"**, although the better practice might be to include such terms in such an offer. *Dillen v. HealthOne, L.L.C.*, 108 P.3d 297 (Colo. App. 2004).

**Subsection (1)(a)(III) does not require an offer to be "final"** and specifically provides that an offeror is not precluded from making subsequent offers. *Dillen v. HealthOne, L.L.C.*, 108 P.3d 297 (Colo. App. 2004).

**A subsequent settlement offer does not extinguish a previous offer or limit the costs the defendant is otherwise entitled to recover based on the earlier offer.** Rather, if a defendant extends multiple offers of settlement that comply with this section and they are rejected by the plaintiff, each offer must be separately analyzed to determine whether the defendant is entitled to an award

of costs based on that offer. *McLellan v. Weiss*, 2024 COA 114, 562 P.3d 915.

**If the plaintiff's final judgment, as calculated under subsection (2), fails to exceed any statutorily compliant offer, the defendant is entitled to costs accrued after the date of that offer** through trial -- regardless of whether the defendant made subsequent offers that would not entitle them to costs. *McLellan v. Weiss*, 2024 COA 114, 562 P.3d 915.

**Plaintiff entitled to award of actual costs under subsection (1)(a)(I) to the extent they constitute "costs other than attorneys' fees" under Fed. R. Civ. P. 54(d)(1) and are not preempted by a federal statute** such as 28 U.S.C. § 1821 and to the extent, if at all, they constitute "related non-taxable expenses" under Fed. R. Civ. P. 54(d)(2). *Garcia v. Wal-Mart Stores, Inc.*, 209 F.3d 1170 (10th Cir. 2000).

**Court may not deny costs for expert witness fees under subsection (1)(a)(II) on the basis of the credibility of the witness, but rather must evaluate the costs based on the reasonableness of the fees.** *Bennett v. Hickman*, 992 P.2d 670 (Colo. App. 1999); *Paratransit Risk Retention Grp. Ins. Co. v. Kamins*, 160 P.3d 307 (Colo. App. 2007).

**The provisions of this section are mandatory** and a trial court does not have discretion to refuse to award actual costs due to a party. *Graven v. Vail Assocs., Inc.*, 888 P.2d 310 (Colo. App. 1994).

**A determination under this section that the defendant is entitled to costs does not**

**preclude an attorney fees award to plaintiff as the prevailing party.** Chartier v. Weinland Homes, Inc., 25 P.3d 1279 (Colo. App. 2001).

**Prevailing party is allowed to recover costs in cases where the costs are paid or advanced by an insurance company.** Hale v. Erickson, 23 P.3d 1255 (Colo. App. 2001).

**Subsection (1)(a)(II) does not apply to condemnation proceedings.** City of Westminster v. Jefferson Ctr. Ass'n, 958 P.2d 495 (Colo. App. 1997).

**Section does not address a prevailing party who received less than its rejected offer of settlement but never rejected an offer under the statute.** Therefore, plaintiff is not barred from an award of costs under this section and is entitled to an award of reasonable costs as a prevailing party pursuant to § 13-16-104 and C.R.C.P. 54(d). Hall v. Frankel, 190 P.3d 852 (Colo. App. 2008).

**Recovery pursuant to this section available to extent maximum recovery allowed under § 24-10-114 not reached.** Since plaintiff had recovered maximum allowable under § 24-10-114 for injury caused to child by negligence of pharmacy at state hospital, additional recovery for costs not available under this section. DeCordova v. State, 878 P.2d 73 (Colo. App. 1994).

**Offer, which did not unequivocally exclude costs but which was "exclusive of costs", was an offer for settlement apart or separate from costs mandated by this section.** Carpentier v. Berg, 829 P.2d 507

(Colo. App. 1992); Aberle v. Clark, 916 P.2d 564 (Colo. App. 1995).

**Offer of a total amount "inclusive of all costs and interest to date" was valid under this section.** Aberle v. Clark, 916 P.2d 564 (Colo. App. 1995).

Subsection (3) does not require an offer of settlement to itemize separately the respective amounts being tendered for settlement of the underlying substantive claim and for costs. Aberle v. Clark, 916 P.2d 564 (Colo. App. 1995).

**In an offer inclusive of "all costs and interest", trial court must consider plaintiff's asserted preoffer costs,** and the reasonableness thereof in assessing an award of costs. Rubio v. Farris, 51 P.3d 992 (Colo. App. 2002); Far Horizons Farm v. Flying Dutchman Condo., 2023 COA 99, 542 P.3d 700.

**Ordinarily, a "final judgment" includes prejudgment interest but not costs.** Where settlement offer did not reference, much less explicitly include, costs, the trial court erred in including plaintiff's costs as part of the "final judgment". Novak v. Craven, 195 P.3d 1115 (Colo. App. 2008) (decided under law in effect prior to 2008 amendment).

**A "final judgment" is the amount that disposes of the entire litigation** and must include the plaintiff's actual costs accrued before the settlement offer. Mitchell v. Chengbo Xu, 2021 COA 39, 488 P.3d 1200.

**Offer of settlement as to "all claims"** unambiguously includes attorney fees if the only claim for attorney fees appears in the complaint. The offer of settlement need not

explicitly reference attorney fees. *Bumbal v. Smith*, 165 P.3d 844 (Colo. App. 2007); *Far Horizons Farm v. Flying Dutchman Condo.*, 2023 COA 99, 542 P.3d 700.

**In calculating whether a final judgment exceeds the amount of a settlement offer that did not specifically exclude costs**, a trial court is to exclude post-offer attorney fees awarded as costs, but include pre-offer fees awarded as costs. *Chartier v. Weinland Homes, Inc.*, 25 P.3d 1279 (Colo. App. 2001).

**A settlement offer should be presumed to impliedly include the amount of any post-verdict subrogation setoff.** *Ferrellgas, Inc. v. Yeiser*, 247 P.3d 1022 (Colo. 2011).

**Trial court need only award actual costs that are reasonably incurred after rejection of settlement offer.** Prior to such award, trial court must make specific finding of reasonableness of costs. *Evanson v. Colo. Farm Bur. Mut. Ins. Co.*, 879 P.2d 402 (Colo. App. 1993).

**Unreasonable costs may be disallowed by the court** under subsection (1)(a)(II). *Jorgensen v. Heinz*, 847 P.2d 181 (Colo. App. 1992); *Cedar Lane Invs. v. St. Paul Fire & Marine Ins. Co.*, 883 P.2d 600 (Colo. App. 1994); *Underwood v. Dillon Co.*, 936 P.2d 612 (Colo. App. 1997); *Salazar v. Am. Sterilizer Co.*, 5 P.3d 357 (Colo. App. 2000).

When an expert is hired to testify but is precluded from doing so because his or her testimony is ruled inadmissible, the expert's services are not reasonably necessary to the disposition of the case, and expert fees

should not be awarded. *Clayton v. Snow*, 131 P.3d 1202 (Colo. App. 2006).

**No requirement that costs awarded relate to any particular phase of a lawsuit** so long as they are incurred after the offer of settlement. Reasonable costs may include answer and jury fees and trial preparation fees of expert witnesses, even when some work of expert witnesses is performed after entry of summary judgment but before experts can be notified to stop work. *Cedar Lane Invs. v. St. Paul Fire & Marine Ins. Co.*, 883 P.2d 600 (Colo. App. 1994).

**The costs for a witness's airfare could be "reasonable travel expenses" under subsection (1)(b) of this section**, even if the airfare exceeds the mileage reimbursement rate provided in § 13-33-103, depending on the circumstances that led the witness to travel by air and the type of arrangements chosen. The same would be true of "gasoline money", even if it exceeded the mileage fees provided in § 13-33-103. The trial court should make findings on the reasonableness of such costs claimed by plaintiff. *Catlin v. Tormey Bewley Corp.*, 219 P.3d 407 (Colo. App. 2009).

**Under unusual circumstances, traveling companion expenses could be awarded under this section** because the expenses of a traveling companion are "similar" to "reasonable travel expenses", and this phrase in subsection (1)(b) is not limited to such expenses of a witness. In considering such an award, a trial court should make findings regarding the need for the traveling companion's presence, as well as the reasonableness of his or her travel



arrangements. *Catlin v. Tormey Bewley Corp.*, 219 P.3d 407 (Colo. App. 2009).

**Jury consulting and related travel expenses are recoverable** as costs accruing after the offer. *Danko v. Conyers*, 2018 COA 14, 432 P.3d 958.

**Trial court did not abuse its discretion** in awarding a defendant only a portion of the actual costs incurred where such costs could have been avoided if defendant had availed itself of the procedures that would have limited the action to the resolution of a jurisdictional issue. *Smith v. Town of Snowmass Vill.*, 919 P.2d 868 (Colo. App. 1996) (decided under former law).

**Court may tax costs jointly and severally.** It is within the court's discretion to decide how to tax the costs. *Hale v. Erickson*, 23 P.3d 1255 (Colo. App. 2001).

**Because the court considered the plaintiff's bill of costs and amended bill of costs in awarding minimal costs, even though both the bill and amended bill were filed more than 15 days after the entry of judgment,** the trial court was required to award the plaintiff reasonable costs incurred after the offer of settlement. *Borquez v. Robert C. Ozer, P.C.*, 923 P.2d 166 (Colo. App. 1995), *aff'd in part, rev'd in part* on other grounds, 940 P.2d 371 (Colo. 1997).

**Offers of judgment are not revocable by the offeror for the statutory period of 10 days.** *Centric-Jones Co. v. Hufnagel*, 848 P.2d 942 (Colo. 1993); *Rost v. Atkinson*, 2012 COA 74, 292 P.3d 1041.

**A summary judgment order resolving all issues in a case does not terminate a valid settlement offer.** Only two conditions terminate a valid settlement offer under subsection (1)(a): the offer's withdrawal or the expiration of the 14-day period. *Rost v. Atkinson*, 2012 COA 74, 292 P.3d 1041.

**Relief under C.R.C.P. 60(b) is available for judgments entered pursuant to this section.** *Domenico v. Sw. Props. Venture*, 914 P.2d 390 (Colo. App. 1995).

**A court has authority to recognize, and take action with respect to, an alleged mistake in a statutory offer of settlement after the offer has been accepted but before a judgment has been entered.** *Hale v. Se. Colo. Power Ass'n*, 2022 COA 36, 512 P.3d 1068.

**Courts are free to apply common law contract principles when determining whether an accepted statutory offer is enforceable.** *Hale v. Se. Colo. Power Ass'n*, 2022 COA 36, 512 P.3d 1068.

**As a settlement agreement, an accepted offer under this section may be avoided or modified under ordinary principles of contract law.** *Hale v. Se. Colo. Power Ass'n*, 2022 COA 36, 512 P.3d 1068.

**An offer of settlement made to multiple plaintiffs must be apportioned among the parties** to allow each to decide independently whether to settle and avoid a potential award of costs pursuant to this section. *Weeks v. City of Colo. Springs*, 928 P.2d 1346 (Colo. App. 1996); *Antolovich v. Brown Grp. Retail, Inc.*, 183 P.3d 582 (Colo. App. 2007).

**This section does not apply where an offer of settlement was made in a previous action,** involving at least some claims that are different from those asserted in the later case, and where a timely statutory offer of settlement was not made in the action in which the judgment was obtained. *Huffman v. Westmoreland Coal Co.*, 205 P.3d 501 (Colo. App. 2009).

**Subsection (3) does not apply to an unapportioned offer to multiple plaintiffs.** *Taylor by and through Taylor v. Clark*, 883 P.2d 569 (Colo. App. 1994).

**Trial court erred as a matter of law in holding that the entry of summary judgment for one of two offerors of an offer of judgment voided the offer of judgment.** An offer of judgment is both irrevocable and absolute for the 10-day statutory period. *Centric-Jones Co. v. Hufnagel*, 848 P.2d 942 (Colo. 1993).

**Statutory period for accepting an offer of settlement cannot be extended by rule.** The additional three-day period established in C.R.C.P. 6(e) for service by e-filing does not apply to statutorily established time periods. *Montoya v. Connolly's Towing, Inc.*, 216 P.3d 98 (Colo. App. 2008).

**Offer made to husband and wife could only be accepted by both parties and attempt by wife to accept half constituted a material change to the terms of the offer and was therefore a rejection of the offer.** Since husband did not recover more from the jury than was offered by defendant he is not entitled to recover costs. *Askew v. Gerace*, 851 P.2d 199 (Colo. App. 1992).

**Nothing in the statute permits one to condition an offer of settlement upon dismissal of claims against a third party whose claims would not be resolved in the settlement.** Because the settlement offer required defendant to dismiss all counterclaims against plaintiffs but all plaintiffs did not join in the offer to dismiss their claims, plaintiffs did not comply with this section. *Lawry v. Palm*, 192 P.3d 550 (Colo. App. 2008).

**A deposit of money into the court registry under C.R.C.P. 67(a) was not an offer of settlement triggering an award of costs under this section.** First, the amount was based on the defendant's asserted maximum liability, an issue not yet decided, rather than as the result of any communication with the plaintiff. Second, the plaintiff had no opportunity to reject it. Therefore two of the key requirements of subsection (1)(a)(II), i.e., an offer and a rejection, were lacking. *Taylor Morrison of Colo., Inc. v. Terracon Consultants, Inc.*, 2017 COA 64, 410 P.3d 767.

**Offer served less than ten days before trial** was not within statutory period and the trial court was correct in not entering judgment on such offer. *Larson v. A.T.S.I.*, 859 P.2d 273 (Colo. App. 1993).

**Defendant's offer of \$1.00 in settlement did not violate the spirit of this section and was both permissible and within the purpose of this section** since this section is designed not only to encourage settlement but also to discourage unnecessary litigation and reduce the attendant costs. *Graven v.*

Vail Assocs., Inc., 888 P.2d 310 (Colo. App. 1994).

**It is contrary to the purpose of this section to allow non-monetary conditions to be imposed as part of a settlement offer.** Therefore, any provisions extending the scope of the offer beyond the claims at issue remove the offer from the scope of the statute. *Martin v. Minnard*, 862 P.2d 1014 (Colo. App. 1993); *Tallitsch v. Child Support Servs., Inc.*, 926 P.2d 143 (Colo. App. 1996); *URS Grp., Inc. v. Tetra Tech FW, Inc.*, 181 P.3d 380 (Colo. App. 2008).

A written proposal that included nonmonetary conditions, such as "mutual dismissal" and "full releases" where other potential claims existed between the parties, extended the offer beyond the claims at issue and therefore did not qualify under this section. *Taylor Morrison of Colo., Inc. v. Terracon Consultants, Inc.*, 2017 COA 64, 410 P.3d 767.

By requiring a release of all "future claims" relating to the project that was the subject of litigation, defendant imposed a nonmonetary condition that took its offer outside the scope of this section. *URS Grp., Inc. v. Tetra Tech FW, Inc.*, 181 P.3d 380 (Colo. App. 2008).

**Inclusion of subrogation interests and putative liens in a settlement offer did not create a nonmonetary condition.** Rather, by including those factors, defendant explained the value of the settlement offer. Thus, the settlement offer was covered by the language of this section. *Strunk v. Goldberg*, 258 P.3d 334 (Colo. App. 2011).

**A settlement offer conditioned upon confidentiality cannot be used as a basis for seeking costs because either party has the right to make an offer and acceptance part of the public records.** *Martin v. Minnard*, 862 P.2d 1014 (Colo. App. 1993).

**Settlement offer provision inapplicable to condemnation proceedings** in which the final judgment is less than the amount of the offer of settlement. *City of Westminster v. Hart*, 928 P.2d 758 (Colo. App. 1996).

**Defendant failed to establish basis for relief under C.R.C.P. 60(b)** where offer of settlement made by defendant's insurance attorney failed to specify whether the offer addressed fewer than all of the claims between the parties. *Guevara v. Foxhoven*, 928 P.2d 793 (Colo. App. 1996).

**The intent of subsection (1)(a)(II) is to encourage the settlement of litigation** by imposing upon a party who rejects a reasonable offer of settlement but recovers less than the amount of the offer, all of the post-offer costs of the offeror. *Bennett v. Hickman*, 992 P.2d 670 (Colo. App. 1999); *Rubio v. Farris*, 51 P.3d 992 (Colo. App. 2002).

**This section modifies § 13-16-104 and C.R.C.P. 54(d) by not allowing a party who rejects a settlement offer and recovers less at trial to recover his or her costs, even though that party is determined to be the prevailing party.** *Bennett v. Hickman*, 992 P.2d 670 (Colo. App. 1999); (decided under law in effect prior to 2008 amendment) (but see *Miller v. Hancock*, 2017 COA 141, 410 P.3d 819,

annotated below); *Rubio v. Farris*, 51 P.3d 992 (Colo. App. 2002).

**The 2008 amendment abrogated *Bennet v. Hickman*, 992 P.2d 670 (Colo. 1999), annotated above.** It entitles a plaintiff to recover pre-offer costs if he or she prevails at trial, but has no bearing on how a final judgment is compared to a settlement offer. *Miller v. Hancock*, 2017 COA 141, 410 P.3d 819.

**"Actual costs accruing after the offer of settlement" means due and payable or vested** and thus costs that were paid prior to making an offer of settlement to plaintiff did not accrue or become due until after the settlement date and, therefore, fall within the scope of subsection (1)(a)(II). *Bennett v. Hickman*, 992 P.2d 670 (Colo. App. 1999).

**A cost judgment under this section is to be offset from a jury award only after the prejudgment interest has been added.** *Bennett v. Hickman*, 992 P.2d 670 (Colo. App. 1999).

**This section details the steps a party must take in regard to offers of settlement.** C.R.C.P. 26(a)(1)(C) and C.R.C.P. 26(e) exist, in part, to promote the exchange of sufficient information in order to encourage settlement. By binding plaintiff

to the damage computations listed in plaintiff's initial disclosure statement merely because plaintiff did not designate the computations as estimates, the trial court effectively imposed a settlement on plaintiff and improperly involved the court in the settlement process. The trial court overemphasized plaintiff's failure to state that the initial disclosure of damages was an estimate, neglected to view the initial disclosures in the context of being information "now known and reasonably available," and was insufficiently attentive to the importance of an early exchange of information and the resulting need to update information under C.R.C.P. 26(a)(1)(C) and 26(e). Absent some indication plaintiff tried to mislead the defendants or the court in plaintiff's initial disclosure or tried to frustrate the settlement process, plaintiff not required to accept an offer limited to plaintiff's initial disclosures. By granting the defendants' joint motion for judgment for a specific amount of damages over the objection of plaintiff, the court abused its discretion. *Morgan v. Genesee Co.*, 86 P.3d 388 (Colo. 2004).

**Applied** in *Lasher v. Paxton*, 956 P. 2d 647 (Colo. App. 1998); *Goodwin v. Homeland Cent. Ins. Co.*, 172 P.3d 938 (Colo. App. 2007).

### **13-17-203. Limitation on attorney fees in class action litigation against public entities.**

If the plaintiffs prevail in any class action litigation brought against any public entity, as defined in section 24-10-103 (5), C.R.S., the amount of attorney fees which the plaintiffs' attorney is entitled to receive out of any award to the plaintiffs shall be determined by the court; except that such amount shall not exceed two hundred fifty thousand dollars. Such limitation shall apply where the public entity pays the attorney fees directly to the plaintiffs' attorneys or

where the public entity is required to pay the attorney fees indirectly through any program it administers by reducing the benefits or amounts due to the individual plaintiffs.

**Source: L. 92:** Entire section added, p. 272, § 1, effective April 28.

**Cross references:** For provisions relating to limitations on attorney fees in class action litigation against public entities under the "Colorado Governmental Immunity Act", see § 24-10-114.5.

#### ANNOTATION

**Where attorneys' right to fee award out of common fund established in class action vested before the enactment of this section,** the state constitution prohibits the retrospective application of this section to defeat class counsel's right to the court-ordered fee. *Kuhn v. State*, 924 P.2d 1053 (Colo. 1996).

**This section does not violate the equal protection guarantees of the U.S. or Colorado Constitutions** because it is rationally related to the legitimate state interest of protecting class members'

recovery for unlawful governmental action. A statute does not necessarily violate the equal protection guarantee because its classifications are imperfect. *Buckley Powder Co. v. Colo.*, 70 P.3d 547 (Colo. App. 2002).

**This section does not deny equal access to the courts.** Aggrieved individuals may sue as individuals or as a class; therefore, the statutory cap does not place an unreasonable burden on class claimants. *Buckley Powder Co. v. Colo.*, 70 P.3d 547 (Colo. App. 2002).

#### PART 3

##### RETENTION OF ATTORNEYS BY GOVERNMENTAL ENTITIES - LIMITATION ON CONTINGENT FEE CONTRACTS

###### **13-17-301. Short title.**

This part 3 shall be known and may be cited as the "Government Attorney Ethics Act".

**Source: L. 2003:** Entire part added, p. 924, § 1, effective August 6.

### **13-17-302. Legislative declaration.**

(1) The general assembly hereby finds, determines, and declares that:

(a) In recent years, it has become increasingly common for governmental entities to retain attorneys pursuant to contingent fee contracts and disputes have arisen in several states regarding the amount and propriety of contingent fees;

(b) Contingent fees are intended to enable persons of modest means to obtain legal representation that they might not otherwise be able to afford but governmental entities have resources that are unavailable to individual citizens;

(c) Governmental entities should be required to fully consider the costs and risks of litigation before retaining an attorney pursuant to a contingent fee contract;

(d) The department of law ordinarily represents the interests of the state of Colorado;

(e) Governmental officials, including attorneys who represent governmental entities on a contractual basis, are entrusted to protect the health, safety, and well-being of citizens and it is the policy of the state that a person who exercises authority on behalf of a governmental entity generally should not have a personal financial stake in the outcome of litigation initiated on behalf of the governmental entity;

(f) A contingent fee contract that gives an attorney who is retained to represent a governmental entity a direct personal stake in the outcome of legal proceedings is potentially unfair to the citizens or businesses against whom the governmental entity has filed suit and may not serve the best interests of the citizens or businesses on whose behalf the governmental entity initiates legal proceedings;

(g) Because contingent fee contracts do not require the appropriation of moneys, such contracts circumvent the system of checks and balances that ordinarily provides accountability for decisions of governmental entities and it is appropriate to limit contingent fee contracts to ensure that the decision-making process is protected;

(h) A contingent fee contract may result in the payment of excessive attorney fees by a governmental entity, thereby denying citizens represented by government the full measure of justice awarded by the courts;

(i) It is in the best interest of the people of Colorado to limit the circumstances in which governmental entities may retain private attorneys pursuant to contingent fee contracts.

**Source: L. 2003:** Entire part added, p. 924, § 1, effective August 6.

### **13-17-303. Definitions.**

As used in this article, unless the context otherwise requires:

(1) "Contingent fee" means a fee for legal services that is contingent in whole or in part upon the successful outcome of the matter for which the legal services were retained.

(2) "Contingent fee contract" or "contract" means a contract for legal services in which the amount of the fee to be paid for the legal services depends in whole or in part upon the successful outcome of the matter for which the services were obtained. The term also includes any contract that specifies that fees for legal services will be determined by a court or an arbitrator or any provision of a settlement agreement that requires the opposing party to pay fees for legal services directly to a private attorney retained by a governmental entity pursuant to a contingent fee contract.

(3) "Governmental entity" means the state, any department or agency of the state, and any state-sponsored institution of higher education.

**Source: L. 2003:** Entire part added, p. 925, § 1, effective August 6.

### **13-17-304. Limitation on contingent fees - applicability.**

(1) (a) Except as otherwise provided in subsections (2) and (3) of this section, and notwithstanding any other provision of law, a contingent fee contract between a governmental entity and a private attorney shall:

(I) Require the private attorney to maintain and provide to the governmental entity on a monthly basis a contemporaneous record of the hours of legal services provided by individual attorneys, the nature of such services, and any court costs incurred during each month and in the aggregate from the effective date of the contingent fee contract;

(II) Require the private attorney, upon the successful resolution of the matter for which the private attorney was retained, to provide to the governmental entity a statement of the hours of legal services provided by attorneys, the nature of such services, the amount of court costs incurred, the total amount of the contingent fee, and the average hourly rate for legal services provided by attorneys; and

(III) Specify an alternative hourly rate, not to exceed one thousand dollars per hour, at which the attorney shall be compensated in the event that the statement provided by the attorney

indicates an average hourly rate for legal services provided by attorneys of more than one thousand dollars per hour.

(b) The average hourly rate for legal services provided by attorneys shall be determined by dividing the amount of the contingent fee, less the amount of court costs incurred if said amount is part of the contingent fee, by the number of hours of legal services provided by attorneys. Clerical work, including but not limited to transcription, photocopying, and document filing and organization, shall not be considered legal services provided by attorneys even if an attorney performs such work.

(2) The limitations and requirements of subsection (1) of this section shall not apply to any contingent fee contract entered into by a governmental entity prior to August 6, 2003.

(3) The limitations and requirements of subsection (1) of this section shall not apply to any contingent fee contract entered into by a governmental entity if the contract is for legal services performed by an attorney in connection with the collection of debts or taxes owed to a governmental entity and was entered into pursuant to section 23-3.1-104 (1)(f) or (2)(i), 23-5-113 (1), 24-30-202.4, or 39-21-114, C.R.S., or any other statutory provision that expressly authorizes or requires the payment of a portion of the moneys collected to an attorney retained to collect such debts or taxes.

(4) Compliance with this part 3 does not relieve a contracting attorney of any obligation or legal responsibility imposed by the Colorado rules of professional conduct or any provision of law.

**Source: L. 2003:** Entire part added, p. 926, § 1, effective August 6.

## **13-17.5 ARTICLE 17.5**

### **Costs - Attorney Fees - Inmate Lawsuits**

13-17.5-101. Legislative declaration.

13-17.5-102. Definitions.

13-17.5-102.3. Exhaustion of remedies.

13-17.5-102.7. Successive claims.

13-17.5-103. Filing fees.

13-17.5-104. Stay of state judicial proceedings.

13-17.5-105. Proceedings before magistrate.

13-17.5-106. Assessment of costs and attorney fees - review of inmate spending from account - recovery of costs from inmate accounts - alternative



sanctions - continuing  
garnishment authorized.

13-17.5-107. Construction of article -  
severability.

13-17.5-106.5. Court-ordered payment.

13-17.5-108. Teleconferenced hearings.

### **13-17.5-101. Legislative declaration.**

(1) The general assembly declares that the state has a strong interest in limiting substantially frivolous, groundless, or vexatious inmate lawsuits that impose an undue burden on the state judicial system. While recognizing an inmate's right to access the courts for relief from unlawful state actions, the general assembly finds that a significant number of inmates file substantially frivolous, groundless, or vexatious lawsuits.

(2) The general assembly, therefore, determines that it is necessary to enact legislation that promotes efficiency in the disposition of inmate lawsuits by providing for preliminary matters to be determined by magistrates and to provide for sanctions against inmates who are allowed to file claims against public defendants and whose claims are dismissed as frivolous.

**Source: L. 95:** Entire article added, p. 478, § 1, effective July 1.

### **13-17.5-102. Definitions.**

As used in this article only:

(1) "Civil action" means the filing of a complaint, petition, writ, or motion with any court within the state, including any appellate court; except that "civil action" does not include any criminal action or an action for habeas corpus under article 45 of this title.

(1.5) "Detaining facility" means any state correctional facility, as defined in section 17-1-102 (1.7), C.R.S., including the youthful offender system, any private correctional facility housing state prisoners pursuant to part 2 of article 1 of title 17, C.R.S., any local jail, as defined in section 16-11-308.5 (1.5), C.R.S., or any community corrections program, established in article 27 of title 17, C.R.S. A detaining facility shall not include any juvenile detention facility that detains only juveniles.

(2) "Inmate" means a person who is sentenced or is awaiting sentencing to any detaining facility.

(3) "Public defendant" means any state, county, or municipal agency, any state, county, or municipal official or employee acting within the scope of his or her authority, or any agent acting on behalf of any state, county, or municipal agency.

**Source: L. 95:** Entire article added, p. 478, § 1, effective July 1. **L. 98:** (1) amended and (1.5) added, p. 246, § 1, effective April 13.

### **13-17.5-102.3. Exhaustion of remedies.**

(1) No inmate shall bring a civil action based upon prison conditions under any statute or constitutional provision until all available administrative remedies have been exhausted in a timely fashion by the entity operating the detaining facility and inmate. For purposes of this subsection (1), an inmate shall be considered to have exhausted all available administrative remedies when the inmate has completed the last step in the inmate grievance process as set forth in the regulations promulgated by the entity operating the detaining facility. Failure to allege in the civil action that all available administrative remedies have been exhausted in accordance with this subsection (1) shall result in dismissal of the civil action.

(2) Notwithstanding subsection (1) of this section, if a court finds that a claim filed by an inmate is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from monetary relief, a court may dismiss the claim without first requiring exhaustion of administrative remedies.

**Source: L. 98:** Entire section added, p. 247, § 2, effective April 13. **L. 2001:** (1) amended, p. 289, § 1, effective July 1.

### **ANNOTATION**

**This section requires an inmate to exhaust the last step in the inmate grievance process before proceeding to court.** *Glover v. State*, 129 P.3d 1083 (Colo. App. 2005).

This section requires an inmate seeking access to his or her mental health records to first exhaust all available administrative remedies. *Kopec v. Clements*, 271 P.3d 607 (Colo. App. 2011).

An inmate's action seeking access to such records under § 24-72-305 of the Colorado

Criminal Justice Records Act (CCJRA) is not exempt from this requirement. *Kopec v. Clements*, 271 P.3d 607 (Colo. App. 2011).

**However, section does not require exhaustion of administrative remedies before bringing a civil action based on prison conditions when the action consists only of claims brought under the common law.** *Adams v. Corr. Corp. of Am.*, 187 P.3d 1190 (Colo. App. 2008).

**Section neither precludes plaintiffs from bringing an action in common law**

**nor bars them from subsequently renewing a request for punitive damages** if the prerequisites for such a request are met. *Adams v. Corr. Corp. of Am.*, 187 P.3d 1190 (Colo. App. 2008).

**Subsection (1) requires dismissal of the action for failure to allege the exhaustion**

**of all administrative remedies**, even if the relief sought may not be available through the administrative process. *Glover v. State*, 129 P.3d 1083 (Colo. App. 2005).

**Applied** in *Graham v. Maketa*, 227 P.3d 516 (Colo. App. 2010).

### **13-17.5-102.7. Successive claims.**

(1) No inmate who on three or more occasions has brought a civil action based upon prison conditions that has been dismissed on the grounds that it was frivolous, groundless, or malicious or failed to state a claim upon which relief may be granted or sought monetary relief from a defendant who is immune from such relief, shall be permitted to proceed as a poor person in a civil action based upon prison conditions under any statute or constitutional provision.

(2) Notwithstanding the provisions of subsection (1) of this section, an inmate may proceed as a poor person in a civil action if the judge finds that the action alleges sufficient facts which, if assumed to be true, would demonstrate that the inmate is in imminent danger of serious physical injury.

(3) (a) A copy of any court order that dismisses an inmate's civil action on the grounds that it is frivolous, groundless, or malicious or fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief shall be mailed by the court clerk to the Colorado attorney general, whether or not the attorney general entered an appearance in the civil action, and whether or not the civil action involved a state correctional facility or state defendant. The attorney general shall monitor the dismissals described in this paragraph (a).

(b) The attorney general shall inform the state judicial department or the chief judge of each judicial district whenever the attorney general becomes aware that an inmate has been assessed three or more dismissals as described in paragraph (a) of this subsection (3). Each judicial district shall maintain a registry of such information. An inmate listed in the registry who brings a civil action shall be subject to the provisions of subsections (1) and (2) of this section.

**Source: L. 98:** Entire section added, p. 247, § 2, effective April 13. **L. 2001:** Entire section amended, p. 289, § 2, effective July 1.

## **ANNOTATION**

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**This section does not violate an inmate's right to access the courts as guaranteed by the United States Constitution.** Farmer v. Raemisch, 2014 COA 3, 320 P.3d 394.

Proceeding in forma pauperis in a civil case is a privilege, not a right, fundamental or otherwise. Farmer v. Raemisch, 2014 COA 3, 320 P.3d 394.

The three-strike rule does not prohibit an inmate from filing suit; it merely prohibits an inmate from doing so without paying the filing fee that all civil plaintiffs must pay. Farmer v. Raemisch, 2014 COA 3, 320 P.3d 394.

The right of access to the courts does not guarantee anyone a right of access in all circumstances. Farmer v. Raemisch, 2014 COA 3, 320 P.3d 394.

Congress is no more compelled to guarantee free access to federal courts than it is to provide unlimited access to them; thus, imposition of a modest filing fee on prisoners is reasonable. Farmer v. Raemisch, 2014 COA 3, 320 P.3d 394.

**A district court reviewing a motion and complaint under this section and § 13-17.5-103 must determine whether the imminent danger exception applies.** The court should review the initial filings for assertions that, if taken as true, would demonstrate the inmate is in imminent danger of serious physical injury and would thus trigger the exception in subsection (2). Johnson v. McGrath, 2024 COA 5, 546 P.3d 1199.

**The plain language of this section demonstrates that the district court is not required to make specific factual findings regarding the imminent danger exception in every case.** However, if the district court determines that the exception applies, then it should make whatever findings are appropriate under the facts of the case. Johnson v. McGrath, 2024 COA 5, 546 P.3d 1199.

**To successfully allege subsection (2)'s imminent danger exception,** (1) the allegation of serious physical injury must be specific; (2) the specifically alleged danger must be imminent; and (3) there must be allegations showing a nexus between the claims for relief and the allegation of imminent serious physical injury. Johnson v. McGrath, 2024 COA 5, 546 P.3d 1199.

**Dismissal of a complaint for at least one reason expressly identified by this section qualifies as a dismissal under this section.** Farmer v. Raemisch, 2014 COA 3, 320 P.3d 394.

**The avenue for challenging dismissals under this section is direct appeal, not collateral attack.** Allowing collateral attacks would greatly expand the litigation, in direct contravention of the general assembly's stated goal to reduce prisoner litigation. Farmer v. Raemisch, 2014 COA 3, 320 P.3d 394.

**A lawsuit brought and subject to the "three strikes" provision of this section does not have to be based solely on prison conditions.** It is enough that the civil action is based in part on prison conditions for the three strikes provision to apply. Rueb v.

**13-17.5-103. Filing fees.**

(1) An inmate who seeks to proceed in any civil action without prepayment of fees, in addition to filing any required affidavit, shall submit a copy of the inmate's account statement for the six-month period immediately preceding the filing of the civil action, certified by an appropriate official at the detaining facility. If the inmate account demonstrates that the inmate has sufficient funds to pay the filing fee, or if the action on its face is frivolous, groundless, or malicious, or fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief, the motion to proceed as a poor person shall be denied.

(2) Any inmate who is allowed to proceed in the civil action as a poor person shall be required to pay the full amount of the filing fee and service of process fees previously paid by the court in the following installments:

(a) If the inmate has ten dollars or more in his or her inmate account, make an initial partial payment in accordance with the order of the court; and

(b) Regardless if the inmate has ten dollars in his or her inmate account at the time of the filing of the civil action, make continuing monthly payments to the court equal to twenty percent of the preceding month's deposits in the inmate's account until the filing fee and service of process fees previously paid by the court are paid in full.

(2.5) The court shall include in its order granting permission to proceed as a poor person the requirement that the inmate comply with the provisions of subsection (2) of this section.

(2.7) A copy of any order granting an inmate's motion to proceed in a civil action as a poor person shall be forwarded by the court to the detaining facility that has custody of the inmate. Upon receipt of the order, the detaining facility shall forward payments from the inmate's account to the court in accordance with the order granting leave to proceed as a poor person.

(3) In no event shall an inmate be prohibited from filing a civil action or appealing a civil or criminal judgment because the inmate has no assets and no means by which to pay the initial partial payment.

**Source:** L. 95: Entire article added, p. 479, § 1, effective July 1. L. 98: Entire section amended, p. 248, § 4, effective April 13. L. 2001: Entire section amended, p. 290, § 3, effective July 1.

## ANNOTATION

**Statutory section not void for vagueness** since there are no words or phrases in this section that are not readily comprehensible to persons of ordinary intelligence without further definition. *Collins v. Jaquez*, 15 P.3d 299 (Colo. App. 2000).

**Nor does statutory section violate inmate's right to have access to the courts**, since inmate has opportunity to demonstrate insufficient funds to pay filing fees in order to be permitted access to the courts without incurring those fees. *Collins v. Jaquez*, 15 P.3d 299 (Colo. App. 2000).

**In addition, section does not violate constitutional rights to due process or equal protection** under a rational basis test. *Collins v. Jaquez*, 15 P.3d 299 (Colo. App. 2000).

**Being granted the ability to proceed as a poor person under this section, without prepayment of fees, does not relieve an inmate from liability for the filing fee.** Indigent inmates are not excused from paying the filing fee. The payment of the fee is merely placed on an installment schedule. *Schwartz v. Owens*, 134 P.3d 455 (Colo. App. 2005).

**Section requires simultaneous, not sequential, recoupment of multiple filing fees from state inmates who owe multiple in-forma-pauperis-based state court filing fees.** *Robledo v. Exec. Dir. of Dept. Corr.*, 2020 COA 135, 475 P.3d 617.

**A district court reviewing a motion and complaint under this section and § 13-17.5-102.7 must determine whether the imminent danger exception applies.** The court should review the initial filings for assertions that, if taken as true, would demonstrate the inmate is in imminent danger of serious physical injury and would thus trigger the exception in § 13-17.5-102.7 (2). *Johnson v. McGrath*, 2024 COA 5, 546 P.3d 1199.

**Trial court was required to give copies of summons and complaint to sheriff for service of process**, unless the court concluded that the claims were frivolous or filed in bad faith. It was improper for the trial court to dismiss the action for failure to prosecute. *Edmond v. City of Colo. Springs*, 226 P.3d 1248 (Colo. App. 2010).

**Applied** in *Harrison v. Wilson*, 998 P.2d 1110 (Colo. App. 2000).

### **13-17.5-104. Stay of state judicial proceedings.**

If the court determines, during the course of a state civil action by an inmate against any public defendant, that a federal civil action or grievance procedure is pending that involves the inmate and any of the same issues raised in the state civil action, the court shall stay the state civil action until the federal civil action or the grievance procedure is completed and all rights of appeal have been exhausted.

**Source: L. 95:** Entire article added, p. 479, § 1, effective July 1.

**13-17.5-105. Proceedings before magistrate.**

As provided by sections 13-5-201 and 13-6-501, district and county court magistrates may preside over inmate motions filed pursuant to section 13-16-103 and motions filed pursuant to the Colorado rules of civil procedure to dispose of the inmate's action without the necessity of trial.

**Source: L. 95:** Entire article added, p. 479, § 1, effective July 1.

**ANNOTATION**

**A magistrate may, without the consent of the parties,** act upon an inmate's in forma pauperis request and dispose of the case in accordance with its ruling thereon. Therefore, it is appropriate for such action to

be governed by C.R.M. 7(a), which sets out procedures for review of a magistrate's orders and judgments that have been entered without consent of the parties. *Bryan v. Neet*, 85 P.3d 556 (Colo. App. 2003).

**13-17.5-106. Assessment of costs and attorney fees - review of inmate spending from account - recovery of costs from inmate accounts - alternative sanctions - continuing garnishment authorized.**

(1) (a) In any action based upon prison conditions brought under any statute or constitutional provision, if attorney fees are recoverable pursuant to any state or federal statute, no attorney fees shall be awarded to an inmate, except to the extent that:

(I) The fees were directly and reasonably incurred in proving an actual violation of the inmate's rights protected by the constitution or statute; and

(II) (A) The amount of the fees is proportionately related to the court-ordered relief for the violation; or

(B) The fees were directly and reasonably incurred in enforcing the relief ordered for the violation.

(b) No award of attorney fees under paragraph (a) of this subsection (1) shall be based on an hourly rate in excess of one hundred fifty percent of the hourly rate paid to court-appointed counsel in the district in which the action was filed.

(c) Whenever a separate monetary judgment is awarded in an action in which attorney fees are awarded under paragraph (a) of this subsection (1), a portion of the judgment not to exceed twenty-five percent shall be applied to reduce the amount of attorney fees awarded against the defendant.

(d) Nothing in this subsection (1) shall prohibit an inmate from entering into an agreement to pay an attorney fee in excess of the amount authorized in this subsection (1), if the fee is paid by the individual rather than by a defendant.

(2) The court may also enter judgment against an inmate who has been allowed to proceed as a poor person pursuant to section 13-16-103 for the amount of court costs and fees that the inmate would have incurred except for the provisions of that section, if the court awards attorney fees pursuant to subsection (1) of this section. The judgment entered by the court shall be collected and applied in accordance with subsection (3) of this section.

(3) If judgment for costs and attorney fees is awarded to a public defendant or to the court, pursuant to subsection (1) or (2) of this section, the court, pursuant to section 13-54.5-102, shall issue a writ of continuing garnishment of the inmate's account with the detaining facility, which garnishment shall continue until the judgment is paid in full, notwithstanding the requirement set forth in section 13-54.5-103 that the garnishment be renewed.

**Source:** L. 95: Entire article added, p. 479, § 1, effective July 1. L. 98: (1) amended, p. 247, § 3, effective April 13.

#### **13-17.5-106.5. Court-ordered payment.**

Any compensatory damages awarded to an inmate in connection with a civil action brought against any federal, state, or local jail, prison, or facility or against any official or agent of a jail, prison, or facility, after deduction for any award of attorney fees pursuant to section 13-17.5-106 (1)(c), shall be paid directly to satisfy any outstanding court-ordered payments pending against the inmate, including but not limited to restitution or child support. The remainder of the award after full payment of all pending court orders shall be forwarded to the inmate.

**Source:** L. 98: Entire section added, p. 247, § 2, effective April 13.



**13-17.5-107. Construction of article - severability.**

Nothing in this article shall be construed to impede an inmate's constitutional right of access to the courts. If any provision of this section or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this section which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this section are declared to be severable.

**Source: L. 95:** Entire article added, p. 480, § 1, effective July 1.

**13-17.5-108. Teleconferenced hearings.**

The department of law, the department of corrections, and the state judicial department shall cooperate to determine the cost of and actively pursue federal funding and contributions from any public or private entity for the purpose of developing, implementing, and maintaining a teleconferencing system for conducting proceedings in connection with state or federal civil actions filed by an inmate against a public defendant. On or before December 1, 1996, the state judicial department shall inform the judiciary committees of the general assembly of the progress made in pursuing funds for the development of the system. On or before March 1, 1996, the state judicial department shall submit a detailed plan to implement the use of a teleconferencing system for all proceedings in which an inmate is a witness or a party.

**Source: L. 95:** Entire article added, p. 480, § 1, effective July 1.

**REGULATION OF ACTIONS AND PROCEEDINGS**

**ARTICLE 20**

**Actions**

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## PART 1

### SURVIVAL OF ACTIONS

#### **13-20-101. What actions survive.**

(1) All causes of action, except actions for slander or libel, shall survive and may be brought or continued notwithstanding the death of the person in favor of or against whom such action has accrued, but punitive damages shall not be awarded nor penalties adjudged after the death of the person against whom such punitive damages or penalties are claimed; and, in tort actions based upon personal injury, the damages recoverable after the death of the person in whose favor such action has accrued shall be limited to loss of earnings and expenses sustained or incurred prior to death and shall not include damages for pain, suffering, or disfigurement, nor prospective profits or earnings after date of death. An action under this section shall not preclude an action for wrongful death under part 2 of article 21 of this title.

(2) Any action under this section may be brought or the court on motion may allow the action to be continued by or against the personal representative of the deceased. Such action shall be deemed a continuing one and to have accrued to or against such personal representative at the time it would have accrued to or against the deceased if he had survived. If such action is continued against the personal representative of the deceased, a notice shall be served on him as in cases of original process, but no judgment shall be collectible against a deceased person's estate or personal representative unless a claim, for the amount of such judgment as may be recovered in such continuing action, has been presented within the time and in the manner required for other claims against an estate.

**Source:** L. 73: p. 1646, § 5. C.R.S. 1963: § 41-5-1. L. 75: (2) amended, p. 587, § 4, effective July 1.

#### ANNOTATION

I. General Consideration.

II. Damages.

##### **I. GENERAL CONSIDERATION.**

**Law reviews.** For article, "The Survival of Actions in Colorado", see 12 Dicta 45 (1934). For note, "The Effect of the Wrongdoer's Death Upon an Action for

Wrongful Death", see 22 Rocky Mt. L. Rev. 99 (1949). For article, "Family Law, Probate Law, and Constitutional Law", see 31 Dicta 471 (1954). For article, "Highlights of the 1955 Colorado Legislative Session — Wills and Decedents' Estates", see 28 Rocky Mt. L. Rev. 83 (1955). For comment on Kling v. Phayer, appearing below, see 29 Rocky Mt. L. Rev. 245 (1955). For comment on Publix

Cab Co. v. Colorado Nat'l Bank, appearing below, see 36 Dicta 371 (1959). For article, "One Year Review of Wills, Estates and Trusts", see 38 Dicta 115 (1960). For note, "Wrongful Death in Colorado", see 33 Rocky Mt. L. Rev. 393 (1961). For review, "Right-to-Die Damage Actions: Developments in the Law", see 65 Den. U. L. Rev. 181 (1988). For article, "Claims Against Decedents' Estates", see 27 Colo. Law. 45 (May 1998).

**Actions of law generally do not die with the person.** Publix Cab Co. v. Colo. Nat'l Bank, 139 Colo. 205, 338 P.2d 702 (1959); Olmstead v. Allstate Ins. Co., 320 F. Supp. 1076 (D. Colo. 1971).

**Those mentioned in this section do die with the person.** All actions in law whatsoever shall survive except those specifically mentioned in the exceptions contained in the statute. Kling v. Phayer, 130 Colo. 158, 274 P.2d 97 (1954); People in Interest of M.E.W.F., 42 Colo. App. 495, 600 P.2d 108 (1979).

**It prevents abatement of actions and causes of action.** The so-called survival statute is to prevent certain actions or causes of action already accrued from abating by reason of the death of either of the parties. Micheletti v. Moidel, 94 Colo. 587, 32 P.2d 266 (1934); Brown v. Stookey, 134 Colo. 11, 298 P.2d 955 (1956); Espinoza v. O'Dell, 633 P.2d 455 (Colo. 1981).

**Claims of plaintiffs and defendants.** It is inconsistent that one rule should be adopted in determining the survivability of a claim as to a plaintiff and apply an opposite rule as to

the defendant. Brown v. Stookey, 134 Colo. 11, 298 P.2d 955 (1956).

**The coincidence of death of both parties is immaterial.** Since the medieval notion that tort actions are punitive has long been abandoned, the wrongdoer's death should not end liability, and his distributees should be made to satisfy claims against him. Since conversely, compensation is the purpose of modern tort recovery, it should accrue not only to a living person but also to his estate. On this analysis, the coincidence of the deaths of both parties is immaterial. Kling v. Phayer, 130 Colo. 158, 274 P.2d 97 (1954).

**A right to damages under this section survives.** Nemer v. Anderson, 151 Colo. 411, 378 P.2d 841 (1963).

**This section was intended to create remedies.** This section's form indicates an intention to create remedies rather than to kill or suppress them. Publix Cab Co. v. Colo. Nat'l Bank, 139 Colo. 205, 338 P.2d 702 (1959).

**This section modifies common law.** This section was intended to modify the common law and to declare that all actions survive except those excluded. Publix Cab Co. v. Colo. Nat'l Bank, 139 Colo. 205, 338 P.2d 702 (1959).

**Section to be strictly construed.** Since at common law there was no survival of personal injury actions, this section is in derogation of the common law and thus must be strictly construed. Estate of Burron v. Edwards, 42 Colo. App. 141, 594 P.2d 1064 (1979).

**This section does not authorize the continuance of an action against the heirs of decedent after his death.** Mills v. Saunders, 30 Colo. App. 462, 494 P.2d 1309 (1972).

**Where no action accrued during lifetime of decedent,** no action may be brought. Dohaish v. Tooley, 670 F.2d 934 (10th Cir. 1982).

**Tort claim need not relate to decedent's death.** A surviving tort claim under subsection (1) need not bear a causal relation to the decedent's death. Espinoza v. O'Dell, 633 P.2d 455 (Colo. 1981).

**Of necessity, an executor stands in the old shoes of a decedent** and his right exists only if the survival statute authorizes its continued existence. This is due to the fact that at common law all injury actions died with the tortfeasor or the victim of the tort. Statutes in all of the states have modified this rule. However, if it does not embrace the action, it is not possible to avoid the provisions of a survival statute by opening an estate and allowing claims. This expedient does not operate to transform personal damage items into property damages. Publix Cab Co. v. Colo. Nat'l Bank, 139 Colo. 205, 338 P.2d 702 (1959).

**Recovery under survival statute requires suit be brought on behalf of decedent's estate.** Hernandez v. United States, 383 F. Supp. 168 (D. Colo. 1974).

**Estate is beneficiary of surviving cause of action.** The estate, not the deceased himself, is the real beneficiary of the surviving cause of action, which serves to

compensate the estate for actual property losses it has incurred. Espinoza v. O'Dell, 633 P.2d 455 (Colo. 1981).

**Personal representative stands in decedent's stead.** The personal representative of the decedent's estate, by necessity, stands in the decedent's shoes in a survival action. Espinoza v. O'Dell, 633 P.2d 455 (Colo. 1981).

**Children or heirs of a deceased do not have standing to bring survival actions.** A.B. v. City of Woodland Park, 174 F. Supp. 3d 1238 (D. Colo. 2016).

**This section and § 13-21-201 et seq. are not in pari materia,** but relate to distinct causes of action, and provide distinct remedies. Kelley v. Union Pac. Ry., 16 Colo. 455, 27 P. 1058 (1891); Letson v. Brown, 11 Colo. App. 11, 52 P. 287 (1898); Publix Cab Co. v. Colo. Nat'l Bank, 139 Colo. 205, 338 P.2d 702 (1959).

**If action survives, it is assignable.** The test of assignability is whether or not the cause of action would survive to the executors or administrators of the party in case of his death. If it would, then the claim would be assignable; if not, the converse would be true. This is the general rule, but not universally nor strictly true, because by statute some causes of action are made to survive which are not assignable. The general rule is that assignability and descendability go hand in hand. Olmstead v. Allstate Ins. Co., 320 F. Supp. 1076 (D. Colo. 1971).

**This section is inapplicable to workers' compensation claims.** Estate of Huey v.

J.C. Trucking Co., 824 P.2d 89 (Colo. App. 1991).

**If a final dissolution decree affecting property rights was entered, a spouse's subsequent death during the pendency of an appeal does not abate the appeal and the court may review a property division.** In re Piper, 820 P.2d 1198 (Colo. App. 1991).

**The survival statute is applicable to claims filed under the Workers' Compensation Act.** The conditions of recovery under the Act were fulfilled on the date that the injury was incurred and are dependent only on whether claimant's claim is timely filed. Claimant's death by unrelated causes prior to final adjudication has no effect on the claim. Estate of Huey v. J.C. Trucking, 837 P.2d 1218 (Colo. 1992).

**This section does not preempt the traditional rule of abatement in divorce actions in the absence of a survivability provision under the marriage dissolution statutes.** In re Connell, 870 P.2d 632 (Colo. App. 1994).

**Applied** in Sanchez v. Marquez, 457 F. Supp. 359 (D. Colo. 1978); In re Dick v. Indus. Comm'n, 197 Colo. 71, 589 P.2d 950 (1979); Pedreyra v. Cornell Prescription Pharmacies, Inc., 465 F. Supp. 936 (D. Colo. 1979); Healy v. Counts, 536 F. Supp. 600 (D. Colo. 1982); Jackson v. Marsh, 551 F. Supp. 1091 (D. Colo. 1982).

## **II. DAMAGES.**

**Executor may sue for funeral expenses under the survival statute.** An executor may recover funeral expenses apart from a

death claim, such claim being a property claim which comes into existence after the death, it being proper to claim such expenses in an action other than for the wrongful death. Publix Cab Co. v. Colo. Nat'l Bank, 139 Colo. 205, 338 P.2d 702 (1959).

Funeral expenses, though incurred after death, can be recovered under the survival statute, and are, therefore, not included in damages under the wrongful death statute. Hernandez v. United States, 383 F. Supp. 168 (D. Colo. 1974).

**Death resulting from defendant's negligence.** In an action for damages resulting from an automobile accident, the trial court properly included in a judgment for plaintiff funeral expenses of the party whose death resulted from the accident and was due to the alleged negligence of defendant. Kling v. Phayer, 130 Colo. 158, 274 P.2d 97 (1954).

**Medical expenses of decedent also recoverable.** An action, being a claim based on negligence, survives the death of a victim; therefore, medical, nursing, hospital expenses and the other damages which accrue during his lifetime and which would have been recoverable by him had he lived are recoverable by the executor of the estate. Publix Cab Co. v. Colo. Nat'l Bank, 139 Colo. 205, 338 P.2d 702 (1959).

**Loss of earning capacity.** A claimant under this section would be entitled to reimbursement for loss of time or for loss of capacity to earn, whether or not he was receiving any salary. Nemer v. Anderson, 151 Colo. 411, 378 P.2d 841 (1963).

Compensation for any "loss of time", as usually measured by "loss of earnings", sustained by decedent prior to his death, to the extent caused by defendant's negligence, is recoverable under the survival statute and is not subject to death statute's limits. *Hernandez v. United States*, 383 F. Supp. 168 (D. Colo. 1974).

**When the original plaintiff died after receiving a favorable jury verdict, but before that verdict had been reduced to a written and signed entry of final judgment,** the plaintiff recovered his damages for bad-faith breach of insurance contract within the meaning of the survival statute when the jury returned its verdict on that claim. Because the plaintiff was still alive when he recovered his damages under his claim for bad-faith breach of insurance contract under § 10-3-1116, those damages were no longer "recoverable", and the personal-injury limitation does not act to reduce the damages awarded by the jury pursuant to that claim. *Guarantee Trust Life v. Estate of Casper*, 2018 CO 43, 418 P.3d 1163.

**Decedent's estate or representative cannot recover damages for pain, suffering, or disfigurement when decedent brought personal injury action and recovered noneconomic damages but died while the action was on appeal and the judgment was later reversed.** Decedent's negligence claim survived his death, but upon reversal and remand, the judgment for noneconomic damages no longer exists. This section bars the estate's or representative's recovery of noneconomic damages in a new trial on behalf of the decedent. *Sharon v.*

*SCC Pueblo Belmont Operating Co.*, 2019 COA 178, 467 P.3d 1245.

**The plain language of the survival statute limits punitive damages and penalties awarded and adjudged only after the death of the person against whom the punitive damages or penalties are claimed.** If a cause of action is punitive in nature and the defendant who was due to face some punishment (presumably to encourage a change in future behavior) dies, the social utility of the punishment is eliminated. However, if the plaintiff is the deceased party, the social utility of punishing the defendant remains. *Guarantee Trust Life v. Estate of Casper*, 2018 CO 43, 418 P.3d 1163 (overruling *Kruse v. McKenna*, 178 P.3d 1198 (Colo. 2008), to the extent that it failed to give meaning to the plain language of the survival statute).

**Damages which are too speculative are not recoverable.** In an action for damages resulting from automobile collision, a claim for loss of a wheat crop resulting from the plaintiff's inability to plant the crop in proper time due to injuries received in accident, the failure to make an effort to mitigate damages by the use of available help to plant such crop, together with variable factors affecting the yield, rendered the claim too speculative for allowance as an item of damage proximately caused by negligence of the defendant. *Nemer v. Anderson*, 151 Colo. 411, 378 P.2d 841 (1963).

**Attorney fees of conservator not recoverable.** Attorney fees incurred by a conservator in connection with the



commencing of an action are not recoverable as expenses of litigation in an action by the executor of a deceased party, such executor being limited to elements of damage which could have been asserted by the deceased had he lived. *Publix Cab Co. v. Colo. Nat'l Bank*, 139 Colo. 205, 338 P.2d 702 (1959).

**This section prohibits survival of claim for exemplary damages.** *Estate of Burron*

*v. Edwards*, 42 Colo. App. 141, 594 P.2d 1064 (1979).

**A federal civil rights claim for damages under 42 U.S.C. § 1983 cannot be limited** by this section or Colorado's wrongful death statute, § 13-21-201. *White v. Talboys*, 573 F. Supp. 49 (D. Colo. 1983); *Myres v. Rask*, 602 F. Supp. 210 (D. Colo. 1985).

### **13-20-102. Effect of repeal.**

The repeal of part 3 of this article concerning informed consent to medical procedures shall not have the effect of invalidating any previous judicial decision relating to requirements for informed consent or liability imposed for the lack thereof.

**Source: L. 77:** Entire section added, p. 799, § 2, effective May 27.

## **PART 2**

### **ACTIONS ABOLISHED - MARITAL**

**Cross references:** For assumption of risk and fellow servant rule and the abolition thereof, see §§ 8-2-201, 8-2-205, and 8-42-101.

### **13-20-201. Legislative declaration.**

The remedies provided by law on or before April 27, 1937, for the enforcement of actions based upon alleged alienation of affections, criminal conversation, seduction, and breach of contract to marry have been subjected to grave abuses, caused extreme annoyance, embarrassment, humiliation, and pecuniary damage to many persons wholly innocent and free of any wrongdoing who were merely the victims of circumstances, and have been exercised by unscrupulous persons for their unjust enrichment, and have furnished vehicles for the commission or attempted commission of crime and in many cases have resulted in the perpetration of frauds, it is hereby declared as the public policy of the state that the best interests of the people of the state will be served by the abolition thereof. Consequently, in the public

interest, the necessity for the enactment of this part 2 is hereby declared as a matter of legislative determination.

**Source:** L. 37: p. 404, § 4. CSA: C. 24A, § 4. CRS 53: § 41-3-3. C.R.S. 1963: § 41-3-3.

### **13-20-202. Civil causes abolished.**

All civil causes of action for breach of promise to marry, alienation of affections, criminal conversation, and seduction are hereby abolished.

**Source:** L. 37: p. 403, § 1. CSA: C. 24A, § 1. CRS 53: § 41-3-1. C.R.S. 1963: § 41-3-1.

### **ANNOTATION**

**The general assembly has abolished the legal duties and rights of actions for alienation of affection** even though they were recognized at common law. *Goldberg v. Musim*, 162 Colo. 461, 427 P.2d 698 (1967).

**It can do so under inherent police power.** The general assembly had the power to abolish causes of action under the inherent police power of the state. *Goldberg v. Musim*, 162 Colo. 461, 427 P.2d 698 (1967).

**This section does not violate § 6 of art. II, Colo. Const.,** for the general assembly has the power to abolish substantive rights in order to attain a permissible legislative object. *Goldberg v. Musim*, 162 Colo. 461, 427 P.2d 698 (1967).

**Heart balm statute precludes only those causes of action,** such as claims for criminal conversation, alienation of affections or

seduction, that are specifically listed in the statute; thus, wife's claim against Catholic clergyman with whom she and husband had met for marriage counseling, for fiduciary breach and extreme and outrageous conduct in inducing wife to engage in sexual relationship with him, was not barred by heart balm statute. *Destefano v. Grabrian*, 763 P. 2d 275 (Colo. 1988).

**Limitation on application of section.** This section should be applied no further than to bar actions for damages suffered from loss of marriage, humiliation, and other direct consequences of the breach, and should not affect rights and duties determinable by common-law principles. In *re Heinzman*, 40 Colo. App. 262, 579 P.2d 638 (1977), *aff'd*, 198 Colo. 36, 596 P.2d 61 (1979).

**This section cannot be relied upon to disallow recovery of conditional gift,** particularly when the donee breaks the

engagement to be married. In re Heinzman,                      aff'd, 198 Colo. 36, 596 P.2d 61 (1979).  
40 Colo. App. 262, 579 P.2d 638 (1977),

**13-20-203. Breach of contract to marry not actionable.**

No act done within this state shall operate to give rise, either within or without this state, to any of the rights of action abolished by this part 2. No contract to marry made or entered into in this state shall operate to give rise, either within or without this state, to any cause or right of action for the breach thereof, nor shall any contract to marry made in any other state give rise to any cause of action within this state for the breach thereof.

**Source:** L. 37: p. 404, § 3. CSA: C. 24A, § 3. CRS 53: § 41-3-2. C.R.S. 1963: § 41-3-2.

**ANNOTATION**

**Section not applicable to recovery of gift made on condition of marriage.** This section bars actions for damages suffered from breach of promise to marry and other direct consequences of the breach, such as humiliation, but it should not be extended to

affect common-law principles governing a gift to a fiancée made on condition of marriage, where the condition was broken by the donee. In re Heinzman, 198 Colo. 36, 596 P.2d 61 (1979).

**13-20-204. Certain contracts made in settlement of claims void.**

(1) All contracts and instruments of every kind, name, nature, or description which may be executed within this state in payment, satisfaction, settlement, or compromise of any claim or cause of action abolished or barred by this part 2, whether such claim or cause of action arose within or without this state, are declared to be contrary to the public policy of this state and absolutely void. It is unlawful to cause, induce, or procure any person to execute such a contract or instrument; or cause, induce, or procure any person to give, pay, transfer, or deliver any money or thing of value in payment, satisfaction, settlement, or compromise of any such claim or cause of action; or to receive, take, or accept any such money or thing of value as such payment, satisfaction, settlement, or compromise. It is unlawful to commence or cause to be commenced, either as party, attorney, or agent or otherwise in behalf of either, in any court of this state any proceeding or action seeking to enforce or recover upon any such contract or instrument, knowing it to be such, whether the same was executed within or without this state.

(2) This section shall not apply to the payment, satisfaction, settlement, or compromise of any causes of action which are not abolished or barred by this part 2, or any contracts or

instruments executed on or before April 27, 1937, or to the bona fide holder in due course of any negotiable instrument which may be executed in pursuance of this statute.

**Source:** L. 37: p. 405, § 5. CSA: C. 24A, § 5. CRS 53: § 41-3-4. C.R.S. 1963: § 41-3-4.

#### **13-20-205. Unlawful to file pleading.**

It is unlawful for any person, either as litigant or attorney, to file, cause to be filed, threaten to file, or threaten to cause to be filed in any court of this state any pleading or paper setting forth or seeking to recover upon any cause of action abolished or barred by this part 2, whether such cause of action arose within or without this state.

**Source:** L. 37: p. 405, § 6. CSA: C. 24A, § 6. CRS 53: § 41-3-5. C.R.S. 1963: § 41-3-5.

#### **13-20-206. Unlawful to name correspondent.**

It is unlawful for any person, either as litigant or attorney, to file, cause to be filed, threaten to file, or threaten to cause to be filed in any court of this state any pleading or paper naming or describing in such manner as to identify any person as correspondent or participant in misconduct of the adverse party in any action for dissolution of marriage, legal separation, declaration of invalidity of marriage, or the allocation of parental responsibilities or support of children, or in any citation or proceeding ancillary or subsequent to such action. In all such cases it is sufficient for such pleader to designate any such correspondent or third party in general language that is not sufficient for identification, and such general language shall operate with the same legal effect as complete naming and identification of the person would do; except that the adverse party may file a motion for a bill of particulars to secure such name, identity, or other facts. The granting of such motion, in whole or in part, rests in the sound discretion of the court; and, if ordered granted, the bill of particulars shall set forth the information specifically required by said order, but no further, and when filed the same shall be sealed, not to be opened without an order of the court. If the motion for a bill of particulars is granted, the party named in said bill of particulars shall be given five days' notice in writing prior to the filing of the same, said notice to be given either by personal service or by registered mail addressed to his last-known address.

**Source:** L. 37: p. 406, § 7. CSA: C. 24A, § 7. CRS 53: § 41-3-6. C.R.S. 1963: § 41-3-6. L. 98: Entire section amended, p. 1392, § 26, effective February 1, 1999.

**13-20-207. Correspondent not to be disclosed - cross-examination - effect.**

(1) No attorney appearing in any of the proceedings mentioned in section 13-20-206 on behalf of a party thereto asserting misconduct by the adverse party shall ask of any witness any question intended or calculated to disclose the name or identity of any third person charged as correspondent or participant in any such misconduct, nor shall any party or witness testifying on behalf of a party asserting misconduct by the adverse party name or identify any third person charged as a correspondent or participant in any such misconduct; except that, if the court in the exercise of sound discretion so orders, counsel for any party charged with any act of misconduct with a third person may be permitted to cross-examine a witness who has testified to any such act of misconduct concerning the identity of any such third person and, within such limits as the court may prescribe, such witness may make answer to questions so asked.

(2) In all testimony in such actions, proceedings, and citations, designation of such correspondent or other alleged participant in misconduct by general language not sufficient for identification operates with the same legal effect as complete identification. The discretion vested in the court by this section shall be exercised in such manner as to avoid injustice to litigants, while at the same time avoiding so far as possible the public revelation of the name or identity of such third person, and to this end the court, in all such cases, may impound pleadings or other documents in the case and hear such testimony in chambers. This section shall not be construed to change the grounds for dissolution of marriage or impair the substantive rights of parties in those cases, but to regulate pleading, practice, and testimony therein so as to eliminate criminal intimidation and public scandal. The provisions of this section apply as well to the taking of testimony by deposition as to proceedings before the court. The deposition of any correspondent or participant in misconduct shall be taken behind closed doors and, when filed in court, shall be sealed, not to be opened without the order of the court. Any willful violation of any provision of this section by any attorney, party, or witness constitutes a direct contempt of the court having jurisdiction of the proceedings in which the same occurs and may be punished by the court with a fine not exceeding five hundred dollars as the court deems proper.

**Source:** L. 37: p. 407, § 8. **CSA:** C. 24A, § 8. **CRS 53:** § 41-3-7. **C.R.S. 1963:** § 41-3-7. **L. 72:** p. 558, § 13.

**13-20-208. Penalty for violations.**

Any person who violates any provision of sections 13-20-204 to 13-20-206 commits a petty offense.

**Source:** L. 37: p. 408, § 9. CSA: C. 24A, § 9. CRS 53: § 41-3-8. C.R.S. 1963: § 41-3-8. L. 2021: Entire section amended, (SB 21-271), ch. 462, p. 3158, § 155, effective March 1, 2022.

## PART 3

### INFORMED CONSENT TO MEDICAL PROCEDURES

#### 13-20-301 to 13-20-305. (Repealed)

**Source:** L. 77: Entire part repealed, p. 799, § 1, effective May 27.

**Editor's note:** This part 3 was added in 1976 and was not amended prior to its repeal in 1977. For the text of this part 3 prior to 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

**Cross references:** For the effect of the repeal of this part 3, see § 13-20-102.

## PART 4

### WRITTEN INFORMED CONSENT TO ELECTROCONVULSIVE TREATMENTS

**Editor's note:** This part 4 was added in 1977. This part 4 was repealed and reenacted in 1979, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 4 prior to 1979, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated.

#### 13-20-401. Definitions.

As used in this part 4, unless the context otherwise requires:

(1) "Electroconvulsive treatment" means electroshock therapy, shock treatment, shock therapy, ECT, or EST and is the passage of electrical current through a patient's head in a voltage sufficient to induce a seizure.

(2) "Patient" means the person upon whom a proposed electroconvulsive treatment is to be performed; except that nothing in this part 4 supersedes the provisions of article 65 of title 27 or any rule adopted by the behavioral health administration in the department of human services pursuant to section 27-65-118 (2) with regard to the care and treatment of any person unable to exercise written informed consent or of a person with a mental health disorder.

(3) "Physician" means a person licensed to practice medicine or osteopathy.

(4) "Sufficient information relating to the proposed electroconvulsive treatment" means information provided to the patient including, but not limited to, the following:

(a) The reason for such treatment;

(b) The nature of the procedures to be used in such treatment, including its probable frequency and duration;

(c) The probable degree and duration of improvement or remission expected with or without such treatment;

(d) The nature, degree, duration, and probability of the side effects and significant risks of such treatment commonly known by the medical profession, especially noting the possible degree and duration of memory loss, the possibility of permanent irrevocable memory loss, and the remote possibility of death;

(e) The reasonable alternative treatments and why the physician is recommending electroconvulsive treatment;

(f) That the patient has the right to refuse or accept the proposed treatment and has the right to revoke his consent for any reason at any time, either orally or in writing;

(g) That there is a difference of opinion within the medical profession on the use of electroconvulsive treatment.

(5) "Written informed consent" means consent to the proposed electroconvulsive treatment which a person knowingly and intelligently, without duress of any sort, clearly and explicitly manifests to the treating physician in writing and which is otherwise given in compliance with the provisions of this part 4.

**Source:** L. 79: Entire part R&RE, p. 611, § 1, effective July 1. L. 94: (2) amended, p. 2641, § 91, effective July 1. L. 2006: (2) amended, p. 1395, § 36, effective August 7. L. 2010: (2)

amended, (SB 10-175), ch. 188, p. 782, § 17, effective April 29. **L. 2017:** (2) amended, (SB 17-242), ch. 263, p. 1293, § 108, effective May 25. **L. 2022:** (2) amended (HB 22-1278), ch. 222, p. 1492, § 13, effective July 1; (2) amended, (HB 22-1278), ch. 222, p. 1600, § 248, effective August 10; (2) amended, (HB 22-1256), ch. 451, p. 3226, § 20, effective August 10.

**Editor's note:** (1) This section is similar to former § 13-20-401 as it existed prior to 1979.

(2) Amendments to subsection (2) by HB 22-1256 and HB 22-1278 were harmonized.

**Cross references:** For the legislative declaration contained in the 1994 act amending subsection (2), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

#### ANNOTATION

**The need for electroconvulsive therapy for a person involuntarily committed** must be established by clear and convincing

evidence. People in Interest of M.K.M., 765 P.2d 1075 (Colo. App. 1988).

#### **13-20-402. Physician to provide information for written informed consent.**

At any time prior to performance of electroconvulsive treatment, a physician shall provide his patient with sufficient information relating to the proposed electroconvulsive treatment to enable said patient to give written informed consent to the proposed electroconvulsive treatment. The written informed consent shall be given by such patient on a standard written consent form to be prepared by the department of human services and shall be for a maximum number of treatments over a specified period of time.

**Source:** **L. 79:** Entire part R&RE, p. 612, § 1, effective July 1. **L. 94:** Entire section amended, p. 2641, § 92, effective July 1.

**Editor's note:** This section is similar to former § 13-20-402 as it existed prior to 1979.



**Cross references:** For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

**13-20-403. Restrictions on electroconvulsive treatment - rights of minors.**

(1) (Deleted by amendment, L. 2024).

(2) Electroconvulsive treatment may be performed on a minor who is sixteen years of age or older but under eighteen years of age only if two individuals licensed to practice medicine in Colorado and specializing in psychiatry approve the treatment, and the minor's parent, legal custodian, or legal guardian consents to the treatment.

(3) Electroconvulsive treatment may be performed on a minor who is fifteen years of age or younger only if:

(a) Two individuals licensed to practice medicine in Colorado and specializing in psychiatry approve the electroconvulsive treatment. One of the individuals must also specialize in child and adolescent psychiatry.

(b) Other less-invasive treatments have failed;

(c) (Deleted by amendment, L. 2025).

(d) Electroconvulsive treatment is performed by at least one physician, or the physician's designee, who is trained and credentialed in electroconvulsive treatment; and

(e) The minor's parent, legal custodian, or legal guardian consents to electroconvulsive treatment.

(4) Electroconvulsive treatment may be performed on an individual who is eighteen years of age or older only in cases when two or more individuals licensed to practice medicine and specializing in psychiatry determine that electroconvulsive treatment is the most preferred form of treatment.

**Source:** L. 79: Entire part R&RE, p. 612, § 1, effective July 1. L. 2024: Entire section amended, (HB 24-1471), ch. 360, p. 2443, § 1, effective June 3. L. 2025: (2) and (3) amended, (HB 25-1070), ch. 47, p. 214, § 1, effective March 31.

**Editor's note:** Subsection (4) was numbered as (3) in HB 24-1471 but has been renumbered on revision for ease of location.

## PART 5

### ACTIONS AGAINST ARCHITECTS, ENGINEERS, AND LAND SURVEYORS

#### **13-20-501. (Repealed)**

**Source: L. 87:** Entire part repealed, p. 550, § 2, effective July 1.

**Editor's note:** This part 5 was added in 1986 and was not amended prior to its repeal in 1987. For the text of this part 5 prior to 1987, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

## PART 6

### ACTIONS AGAINST LICENSED PROFESSIONALS

#### **13-20-601. Legislative declaration.**

The general assembly hereby declares that, in enacting this part 6, the general assembly has determined that the certificate of review requirement should be utilized in civil actions for negligence brought against those professionals who are licensed by this state to practice a particular profession and regarding whom expert testimony would be necessary to establish a prima facie case.

**Source: L. 87:** Entire part added, p. 549, § 1, effective July 1.

## ANNOTATION

**Law reviews.** For article, "Negligence: The Construction Claim Panacea", see 15 Colo. Law. 1992 (1986). For article, "1986 Colorado Tort Reform Legislation", see 15 Colo. Law. 1363 (1986).

**Expert testimony necessary to establish standard of professional conduct unless**

there is a simple factual circumstance or dereliction of duty so palpable as to be apparent without the presentation of such testimony. Where the claim involved review of attorney's efforts to negotiate a financial transaction, the ordinary knowledge of a layperson could not be relied upon to

establish standard of care. *Boigegrain v. Gilbert*, 784 P.2d 849 (Colo. App. 1989).

**No exemption for pro se litigants.** The policy expressed in this section applies

equally whether or not a party is represented by an attorney. *Yadon v. Southward*, 64 P.3d 909 (Colo. App. 2002).

**13-20-602. Actions against licensed professionals and acupuncturists - certificate of review required.**

(1) (a) In every action for damages or indemnity based upon the alleged professional negligence of an acupuncturist regulated pursuant to article 200 of title 12 or a licensed professional, the plaintiff's or complainant's attorney shall file with the court a certificate of review for each acupuncturist or licensed professional named as a party, as specified in subsection (3) of this section, within sixty days after the service of the complaint, counterclaim, or cross claim against such person unless the court determines that a longer period is necessary for good cause shown.

(b) A certificate of review shall be filed with respect to every action described in paragraph (a) of this subsection (1) against a company or firm that employed a person specified in such paragraph (a) at the time of the alleged negligence, even if such person is not named as a party in such action.

(2) In the event of failure to file a certificate of review in accordance with this section and if the acupuncturist or licensed professional defending the claim believes that an expert is necessary to prove the claim of professional negligence, the defense may move the court for an order requiring filing of such a certificate. The court shall give priority to deciding such a motion, and in no event shall the court allow the case to be set for trial without a decision on such motion.

(3) (a) A certificate of review shall be executed by the attorney for the plaintiff or complainant declaring:

(I) That the attorney has consulted a person who has expertise in the area of the alleged negligent conduct; and

(II) That the professional who has been consulted pursuant to subparagraph (I) of this paragraph (a) has reviewed the known facts, including such records, documents, and other materials which the professional has found to be relevant to the allegations of negligent conduct and, based on the review of such facts, has concluded that the filing of the claim, counterclaim, or cross claim does not lack substantial justification within the meaning of section 13-17-102 (4).

(b) The court, in its discretion, may require the identity of the acupuncturist or licensed professional who was consulted pursuant to subparagraph (I) of paragraph (a) of this subsection

(3) to be disclosed to the court and may verify the content of such certificate of review. The identity of the professional need not be identified to the opposing party or parties in the civil action.

(c) In an action alleging professional negligence of a physician, the certificate of review shall declare that the person consulted meets the requirements of section 13-64-401; or in any action against any other professional, that the person consulted can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience, the consultant is competent to express an opinion as to the negligent conduct alleged.

(4) The failure to file a certificate of review in accordance with this section shall result in the dismissal of the complaint, counterclaim, or cross claim.

(5) These provisions shall not affect the rights and obligations under section 13-17-102.

**Source:** **L. 87:** Entire part added, p. 549, § 1, effective July 1. **L. 89:** (1), (3)(a)(II), and (4) amended and (3)(c) added, p. 750, § 1, effective April 12. **L. 95:** (1), (2), and (3)(b) amended, p. 485, § 6, effective January 1, 1996. **L. 98:** (1) amended, p. 487, § 1, effective February 1, 1999. **L. 2019:** (1)(a) amended, (HB 19-1172), ch. 136, p. 1663, § 67, effective October 1.

## ANNOTATION

**Law reviews.** For article, "Colorado's Certificate of Review Statute: Considerations in Professional Negligence Cases", see 33 Colo. Law. 11 (Feb. 2004). For article, "Legal Malpractice Under Colorado Law", see 52 Colo. Law. 26 (Apr. 2023). For article, "Disclosure of Adverse Material Facts and Latent Defects in Real Estate Transactions", see 53 Colo. Law. 40 (July-Aug. 2024).

**Certificate of review requirement does not violate constitutional guarantees of due process or equal protection.** The general assembly's stated intent to limit lawsuits that impose an undue burden on the state judicial system because they are frivolous is a legitimate state interest.

Requiring a plaintiff who brings claims based on professional negligence to find an expert to substantiate those claims early in the case is rationally related to furthering that interest. *Woo v. Baez*, 2022 COA 113, 522 P.3d 739.

**Certificate of review requirement is applicable to medical malpractice claims brought under the Federal Tort Claims Act.** *Hill v. U.S.*, 751 F. Supp. 909 (D. Colo. 1990).

**Certificate of review requirement is applicable to claims brought under the Consumer Protection Act.** *Teiken v. Reynolds*, 904 P.2d 1387 (Colo. App. 1995).

**Certificate of review requirement is applicable in federal diversity cases.** Trierweiler v. Croxton & Trench Holding Corp., 90 F.3d 1523 (10th Cir. 1996) (decided under former law).

**Certificate of review requirement is applicable to professional negligence claims brought against the United States under the Federal Tort Claims Act.** Kikumura v. Osagie, 461 F.3d 1269 (10th Cir. 2006).

**No exemption for pro se litigants.** Although some provisions of this section refer to conduct by attorneys, the underlying policy applies equally to a person who is not represented by an attorney. Yadon v. Southward, 64 P.3d 909 (Colo. App. 2002).

**The provision in this section that a plaintiff file a certificate of review is not a jurisdictional requirement.** Rather, the court has discretion to determine if a certificate of review is required. Miller v. Rowtech, LLC, 3 P.3d 492 (Colo. App. 2000).

**Certificate of review requirement applies to claims based on the negligence of licensed professionals.** Legislative purpose and legislative history of this section establish that plaintiff was required to file a certificate of review in order to hold state liable for malpractice of employees that are licensed professionals. State v. Nieto, 993 P.2d 493 (Colo. 2000); Hamilton v. Thompson, 23 P.3d 114 (Colo. 2001).

**Certificate of review requirement is independent** of the requirement to file initial disclosures under C.R.C.P. 26(a).

Williams v. Boyle, 72 P.3d 392 (Colo. App. 2003).

**Single certificate of review was permissible for two defendants.** Claims against law firm defendant depended entirely on the alleged negligence of the lawyer defendant, and an expert qualified to evaluate the claims against one defendant would also be qualified to evaluate the claims against the other defendant. RMB Servs., Inc. v. Truhlar, 151 P.3d 673 (Colo. App. 2006).

**Dismissal of a case is authorized under either subsection (1) or (2),** but the court must determine whether expert testimony is required to establish a prima facie case of negligence before ordering dismissal. Badis v. Martinez, 819 P.2d 551 (Colo. App. 1991), aff'd in part, rev'd in part on other grounds, 842 P.2d 245 (Colo. 1992).

**Failure to file a certificate of review** stating that the plaintiff has consulted with a person with expertise in the area of the alleged negligent conduct and that an expert has concluded the claim does not lack substantial justification results in dismissal of plaintiff's complaint. Kelton v. Ramsey, 961 P.2d 569 (Colo. App. 1998).

**Dismissal of complaint proper** where plaintiff failed to file certificate of review in compliance with statute after having been granted an extended time for compliance. Rosenberg v. Grady, 843 P.2d 25 (Colo. App. 1992).

**Certificate of review is deficient as a matter of law when it alleges only causation and not all of the elements of**

**negligence sufficient to establish legal responsibility.** A party must allege the basis for believing the non-party legally liable to the extent that the non-party's acts or omissions would satisfy all of the elements of a negligence claim. *Redden v. SCI Colo. Funeral Servs., Inc.*, 38 P.3d 75 (Colo. 2001).

**The supreme court's opinion in Redden does not impose on a party filing a certificate of review any obligations in addition to those prescribed in this section.** *Hunter v. SCL Health-Front Range, Inc.*, 2022 COA 41, 514 P.3d 322.

**Although this section provides a defense, the defense is waived if not timely asserted since the certificate is not a jurisdictional requirement.** *Miller v. Rowtech, LLC*, 3 P.3d 492 (Colo. App. 2000).

**Denial of plaintiff's motion to compel discovery until plaintiff complied with order to file certificate of review held proper.** *Rosenberg v. Grady*, 843 P.2d 25 (Colo. App. 1992).

**Plaintiff may file a motion for an order determining the necessity of a certificate under this section** and requesting an extended time frame in which to file such certificate, if necessary. *Badis v. Martinez*, 819 P.2d 551 (Colo. App. 1991), *aff'd in part, rev'd in part on other grounds*, 842 P.2d 245 (Colo. 1992).

**The language of the statute is broad enough to include every claim that requires proof of professional negligence as a predicate to recovery, whatever the**

formal designation of the claim might be. *Martinez v. Badis*, 842 P.2d 245 (Colo. 1992); *Espander v. Cramer*, 903 P.2d 1171 (Colo. App. 1995); *Baumgarten v. Coppage*, 15 P.3d 304 (Colo. App. 2000).

A certificate of review is required for a claim of negligent misrepresentation when the allegations reflect an underlying theory of professional negligence. *RMB Servs., Inc. v. Truhlar*, 151 P.3d 673 (Colo. App. 2006).

**Doctrine of res ipsa loquitur cannot be used to avoid the requirements of this section**, at least when there is no evidence or inference that the defendant had any control over the instrumentality causing the injury. *Bilawsky v. Faseehudin*, 916 P.2d 586 (Colo. App. 1995).

**The statute applies to all claims against licensed professionals wherein expert testimony is required** to establish the scope of the professional's duty or the failure of the professional to reasonably conduct himself or herself in compliance with the responsibilities inherent in the assumption of the duty. *Martinez v. Badis*, 842 P.2d 245 (Colo. 1992); *Tracz v. Centennial Peaks*, 9 P.3d 1168 (Colo. App. 2000); *Ehrlich Feedlot, Inc. v. Oldenburg*, 140 P.3d 265 (Colo. App. 2006).

A plaintiff claiming breach of fiduciary duty arising from the attorney-client relationship must establish the applicable standard of care and the defendant's failure to adhere to that standard through expert testimony. Therefore, a certificate of review is required to support a claim of breach of fiduciary duty against an attorney. *Ehrlich*

Feedlot, Inc. v. Oldenburg, 140 P.3d 265 (Colo. App. 2006).

**However, no certificate of review was required where expert testimony would not be necessary** to establish claims that licensed real estate brokers failed to disclose hidden damage to a home's foundation walls of which they had actual knowledge. Baumgarten v. Coppage, 15 P.3d 304 (Colo. App. 2000).

**No certificate of review was required to establish standard of care regarding an attorney's failure to file a case within the applicable statute of limitation or to show that a particular attorney was representing a client at a specified time.** Giron v. Koktavy, 124 P.3d 821 (Colo. App. 2005).

**Bankruptcy court did not err in failing to require a certificate of review** because claim of fraud did not require proof of professional negligence as a predicate to recovery. In re Donnell, 479 B.R. 592 (D. Colo. 2012).

**Unless the court requests supplemental information, the plaintiff is not required to describe the expert's qualifications.** RMB Servs., Inc. v. Truhlar, 151 P.3d 673 (Colo. App. 2006).

**Plaintiff is not required to present expert testimony if allegations against professionals do not involve claims related to their professional activities.** Claims against hospital employees for assault, false imprisonment, etc. are the types of claims where the subject matter is within the common knowledge and experience of an

ordinary person. Siepierski v. Catholic Health Initiative Mtn. Region, 37 P.3d 537 (Colo. App. 2001).

**The fact that some consideration of the reasonableness of a principal's actions may be necessary in order to define the contours of an agent's apparent authority** and/or whether the estoppel doctrine should come into play does not make an imputed liability claim an "action for damages or indemnity based upon . . . alleged professional negligence", within the meaning of this section. Stat-Tech Liquidating Trust v. Fenster, 981 F. Supp. 1325 (D. Colo. 1997).

**The purpose of this section is** to provide an initial screening procedure for lawsuits founded upon professional negligence in an effort to eliminate, at the outset, meritless claims and the expense associated with those claims. State v. Nieto, 993 P.2d 493 (Colo. 2000).

**"Good cause" construed.** Lacking a specific statutory definition of "good cause" for which the 60-day time limit set forth in this section may be extended, the trial court acted properly in relying upon decisional law interpreting that phrase in the context of default judgment cases. Hane by and through Jabalera v. Tubman, 899 P.2d 332 (Colo. App. 1995); Williams v. Boyle, 72 P.3d 392 (Colo. App. 2003).

Good cause shown where: (1) Physician who initially provided a certificate of review later declined to verify it; (2) plaintiff made a timely request for an extension of time; and (3) no prejudice would have resulted.

Yadon v. Southward, 64 P.3d 909 (Colo. App. 2002).

To determine whether good cause exists, the court must consider whether: (1) The neglect causing the late filing was excusable; (2) the moving party has alleged a meritorious claim or defense; and (3) permitting the late filing would be consistent with equitable considerations, including any prejudice to the nonmoving party. RMB Servs., Inc. v. Truhlar, 151 P.3d 673 (Colo. App. 2006).

**Trial court determination that the plaintiff could establish a prima facie case without the use of expert testimony, and therefore need not submit a certificate of review, is not an abuse of discretion because the position of the plaintiff had arguable merit.** Shelton v. Penrose/St.

Francis Healthcare Sys., 984 P.2d 623 (Colo. 1999).

**Trial court should not accept plaintiff's expert reports in lieu of a certificate of review, but court will not disturb verdict where such acceptance had no impact on the defendant.** Shelton v. Penrose/St. Francis Healthcare Sys., 984 P.2d 623 (Colo. 1999).

**Where the "statement of review" was prepared and offered in the course of, and directly related to, a judicial proceeding, the preparer of the statement is entitled to immunity from civil liability.** The doctrine of absolute immunity was applicable to the "statement of review" prepared by defendant. Merrick v. Burns, Wall, Smith & Mueller, P.C., 43 P.3d 712 (Colo. App. 2001).

## PART 7

### ACTIONS BASED ON ENVIRONMENTAL LIABILITY

**Law reviews:** For comment, "Stemming the Tide of Lender Liability: Judicial and Legislative Reactions", see 67 Den. U. L. Rev. 453 (1990).

#### **13-20-701. Legislative declaration.**

Federal and state environmental laws provide that the owner of real property is liable for cleanup of property contamination and define who is the owner of such property. If a borrower defaults on a loan, a lender must decide whether to foreclose and potentially become the owner. For fear of becoming liable for conditions they did not create, lenders are showing a reluctance to foreclose, thus leaving no one responsible for the cleanup. So that lenders can predict with more certainty what their costs will be when they foreclose, it is the intent of the general assembly to limit third-party liability for lenders who comply with certain conditions to the cost of cleaning up contaminants or pollution pursuant to federal, state, and local laws. In addition such limitations may also make lenders more willing to lend to certain types of businesses.



**Source: L. 90:** Entire part added, p. 865, § 2, effective July 1.

### **13-20-702. Definitions.**

As used in this part 7, unless the context otherwise requires:

(1) "Contaminate or pollute", "contaminating or polluting", or "contamination or pollution" means contamination or pollution of air, water, real or personal property, animals, or human beings from a location in the state of Colorado, including, without limitation, contamination or pollution from hazardous waste and substances.

(2) "Lender-owner" means any person or entity which has a bona fide security interest in or mortgage or lien on, and which forecloses on or receives an assignment or deed in lieu of foreclosure and becomes the owner of, real or personal property and the foreclosure, deed in lieu, or assignment is not primarily for the purposes of avoiding third-party liability.

(3) "Representative" means any person or entity acting in the capacity of a receiver, conservator, guardian ad litem, personal representative of a deceased person, or trustee or fiduciary of real or personal property; except that the terms trustee and fiduciary shall be limited to entities acting as trustee or fiduciary and which are chartered by the division of banking or division of financial services, the office of the United States comptroller of the currency, or the office of thrift supervision.

(4) "Third parties" means persons or entities other than governmental entities seeking to enforce federal, state, or local environmental statutes, ordinances, regulations, permits, or orders.

(5) "Third-party liability" means liability to third parties for any claims arising out of or resulting from contamination or pollution, including, without limitation, claims for personal injury, consequential damages, lost profits, exemplary damages, or property damages, but does not include liability for the cost of cleaning up contamination or pollution.

**Source: L. 90:** Entire part added, p. 865, § 2, effective July 1.

### **13-20-703. Environmental third-party liability - ownership.**

(1) Except as preempted by federal law, no person or entity shall be deemed to be an owner or operator of real or personal property who, without participating in the management of the subject real or personal property, holds indicia of ownership primarily to protect a security or

lienhold interest in the subject real or personal property or in the property in which the subject real or personal property is located.

(2) No lender-owner or representative shall, by virtue of becoming the owner of real or personal property, be liable for any third-party liability arising from contamination or pollution emanating from said property prior to the date that title vests in the lender-owner or representative.

(3) No lender-owner or representative shall, by virtue of becoming the owner of real or personal property, be liable for any third-party liability arising from contamination or pollution emanating from said property during the period of ownership so long as, and to the extent that, it does not knowingly or recklessly cause new contamination or pollution or does not knowingly or recklessly allow others to cause new contamination or pollution if lender-owner has caused an environmental professional to conduct a visual inspection of the property and a record search of the recorded chain of title documents regarding the real property for the prior fifty years to determine the presence and condition of hazardous waste or substances, obvious contamination, or pollution and, if found by the enforcing agency to be in noncompliance with federal or state laws, takes steps to assure compliance with applicable laws. This subsection (3) shall apply to the lender-owner as long as it makes reasonable efforts to resell the property.

(4) This section shall not affect any liability expressly created under federal or state health or environmental statutes, regulations, permits, or orders.

**Source: L. 90:** Entire part added, p. 865, § 2, effective July 1.

## PART 8

### CONSTRUCTION DEFECT ACTIONS FOR PROPERTY LOSS AND DAMAGE

**Law reviews:** For article, "The Construction Defect Action Reform Act of 2003", see 32 Colo. Law. 89 (July 2003); for article, "The Homeowner Protection Act of 2007", see 36 Colo. Law. 79 (July 2007); for article, "Construction Defects: A New Kind of Lender Liability", see 39 Colo. Law. 51 (June 2010); for article, "Unique Construction Defect Damages Mitigation Issues", see 44 Colo. Law. 33 (Feb. 2015); for article, "Construction Defect Municipal Ordinances: The Balkanization of Tort and Contract Law (Part 3)", see 46 Colo. Law. 27 (Apr. 2017); for article, "Determining Damages under CDARA: Actual Status and Intended Use Trump Zoning Designations", see 48 Colo. Law. 27 (Feb. 2019); for article, "Mitigating Potential Condo Conversion and Renovation Construction Defect Liabilities: Part 1", see 48 Colo. Law. 28 (Apr. 2019); for article, "Mitigating Potential Condo Conversion and Renovation Construction Defect Liabilities: Part 2", see 48 Colo. Law. 40 (May 2019); for article, "The Scope of CDARA --

Potential Time and Place Limitations", see 50 Colo. Law. 30 (Mar. 2021); for article, "A Deeper Look at CDARA's Scope", see 51 Colo. Law. 32 (Aug.-Sept. 2022); for article, "Making Up Your Own Rules for Resolving Residential Construction Defect Disputes", see 52 Colo. Law. 36 (May 2023); for article, "The Past, Present, and Future of Residential Construction Defect Action Reform in Colorado", see 54 Colo. Law. 28 (Jan.-Feb. 2025).

**13-20-801. Short title.**

This part 8 shall be known and may be cited as the "Construction Defect Action Reform Act".

**Source: L. 2001:** Entire part added, p. 388, § 1, effective August 8.

**ANNOTATION**

**Law reviews.** For article, "The Organization Exemption", see 53 Colo. Law. Homeowner Protection Act Charitable 20 (Nov. 2024).

**13-20-802. Legislative declaration.**

The general assembly hereby finds, declares, and determines that changes in the law are necessary and appropriate concerning actions claiming damages, indemnity, or contribution in connection with alleged construction defects. It is the intent of the general assembly that this part 8 apply to these types of civil actions while preserving adequate rights and remedies for property owners who bring and maintain such actions.

**Source: L. 2001:** Entire part added, p. 388, § 1, effective August 8. **L. 2003:** Entire section amended, p. 1361, § 1, effective April 25.

**ANNOTATION**

**Law reviews.** For article, "The Organization Exemption", see 53 Colo. Law. Homeowner Protection Act Charitable 20 (Nov. 2024).

### **13-20-802.5. Definitions.**

As used in this part 8, unless the context otherwise requires:

(1) "Action" means a civil action or an arbitration proceeding for damages, indemnity, or contribution brought against a construction professional to assert a claim, counterclaim, cross-claim, or third party claim for damages or loss to, or the loss of use of, real or personal property or personal injury caused by a defect in the design or construction of an improvement to real property.

(2) "Actual damages" means the fair market value of the real property without the alleged construction defect, the replacement cost of the real property, or the reasonable cost to repair the alleged construction defect, whichever is less, together with relocation costs, and, with respect to residential property, other direct economic costs related to loss of use, if any, interest as provided by law, and such costs of suit and reasonable attorney fees as may be awardable pursuant to contract or applicable law. "Actual damages" as to personal injury means those damages recoverable by law, except as limited by the provisions of section 13-20-806 (4).

(3) "Claimant" means a person other than the attorney general or the district attorneys of the several judicial districts of the state who asserts a claim against a construction professional that alleges a defect in the construction of an improvement to real property.

(4) "Construction professional" means an architect, contractor, subcontractor, developer, builder, builder vendor, engineer, or inspector performing or furnishing the design, supervision, inspection, construction, or observation of the construction of any improvement to real property. If the improvement to real property is to a commercial property, the term "construction professional" shall also include any prior owner of the commercial property, other than the claimant, at the time the work was performed. As used in this subsection (4), "commercial property" means property that is zoned to permit commercial, industrial, or office types of use.

(4.5) "Multifamily construction incentive program" or "program" means the program created in section 13-20-803.3 (1).

(5) "Notice of claim" means a written notice sent by a claimant to the last-known address of a construction professional against whom the claimant asserts a construction defect claim that describes the claim in reasonable detail sufficient to determine the general nature of the defect, including a general description of the type and location of the construction that the claimant alleges to be defective and any damages claimed to have been caused by the defect.

(6) "Program claim" means all actions for damages, indemnity, or contribution brought against a construction professional to assert a claim, counterclaim, cross-claim, or third-party claim for damages or loss to, or the loss of use of, real or personal property for which the builder is a participant in the program or for personal injury caused by a defect in the design or

construction of an improvement to real property for which the builder is a participant in the program.

(7) "Third-party inspection" means a program of inspections of a residential housing unit performed over the course of construction on the unit and designed to assist the construction professional performing the construction on the unit in identifying and rectifying any instances in which the work being performed by the construction professional deviates from applicable building codes or construction standards. The construction professional who signs the building permit application shall, subsequent to filing the permit application and prior to the issuance of a certificate of occupancy, certify in writing filed with the building department that the third-party inspector was qualified and the inspection complies with the following requirements for any component, system, or improvement alleged to be defective:

(a) The inspection was performed by either a licensed construction professional or a building code inspector, electrical inspector, energy conservation code inspector, fire code inspector, or mechanical code inspector, if such inspector provides evidence of successful completion of the most recent version of the commercial building inspector examination by the International Code Council or its successor organization:

(I) Who has expertise designing, constructing, or inspecting the component, system, or improvement being inspected;

(II) (A) Who is an independent third party not otherwise employed by or affiliated with the construction professional who was involved in the development, design, or construction of the component, system, or improvement; or

(B) Who is an inspector acting under the direction of an insurer providing a commercial general liability policy of insurance purchased to insure the subject residential housing unit against property damage resulting from defects in the design or construction of the unit;

(III) Who is responsible for performing the inspection duties with a reasonable degree of care; and

(IV) Who is not designated as a nonparty at fault pursuant to section 13-21-111.5 (3)(b); and

(b) The inspection includes, for each component, system, or improvement, a signed certification that, for each component, system, or improvement, verifies that:

(I) The component, system, or improvement was included in approved construction documents and specifications, including addendums issued during construction, under the valid seal of an architect or engineer licensed in Colorado;

(II) (A) Prior to inspection by the building department, the component, system, or improvement was subject to a field inspection and approval by the third-party inspector who certifies that, at the time of inspection, the component, system, or improvement was sufficiently

accessible to determine compliance with and did comply with applicable manufacturer's instructions or recommendations, approved construction documents and specifications, including addendums issued during construction, and the applicable building codes.

(B) If the field inspection does not include every location where the component, system, or improvement is constructed, the signed certification must include the permit number; the date of inspection; the type of inspection; the contractor's name and license number; the street address of the job location; the name, address, and telephone number of the inspector who performed the inspection; and a statement that the inspector inspected a sufficient number of locations to conclude with a reasonable degree of certainty that every location of the component, system, or improvement complies with the applicable manufacturer's instructions or recommendations, approved construction documents and specifications, including addendums issued during construction, and the applicable building codes.

(III) The construction professional successfully repaired or resolved any instance of noncompliant design or construction identified during an inspection and that the component, system, or improvement complies with the applicable manufacturer's instructions or recommendations and approved construction documents and specifications, including addendums issued during construction; and

(c) The inspection is not an inspection performed by or on behalf of a governmental authority having jurisdiction over the residential housing unit as a condition of any permitting or the issuance of a certificate of occupancy.

**Source:** **L. 2003:** Entire section added, p. 1361, § 2, effective April 25. **L. 2025:** (4.5), (5.5), and (6) added, (HB 25-1272), ch. 183, p. 783, § 2, effective August 6.

**Editor's note:** Subsections (6) and (7) were numbered as subsections (5.5) and (6), respectively, in HB 25-1272 but were renumbered on revision for ease of location.

**Cross references:** For the short title ("Colorado American Dream Act") and the legislative declaration in HB 25-1272, see section 1 of chapter 183, Session Laws of Colorado 2025.

## ANNOTATION

**Law reviews.** For article, "Recovering Actual Damages Under Colorado's Construction Defect Action Reform Act — Part I", see 38 Colo. Law. 41 (May 2009). For article, "Recovering Actual Damages Under Colorado's Construction Defect

Action Reform Act — Part II", see 38 Colo. Law. 25 (June 2009). For article, "The Homeowner Protection Act Charitable Organization Exemption", see 53 Colo. Law. 20 (Nov. 2024).

**Subsection (5) does not require the claimant sending the written notice to be the property owner or the ultimate claimant.** Auto-Owners Ins. Co. v. High Country Coatings, Inc., 388 F. Supp. 3d 1328 (D. Colo. 2019).

### **13-20-803. List of defects required.**

(1) In addition to the notice of claim required by section 13-20-803.5, in every action brought against a construction professional, the claimant shall file with the court or arbitrator and serve on the construction professional an initial list of construction defects in accordance with this section.

(2) The initial list of construction defects shall contain a description of the construction that the claimant alleges to be defective. The initial list of construction defects shall be filed with the court and served on the defendant within sixty days after the commencement of the action or within such longer period as the court in its discretion may allow.

(3) The initial list of construction defects may be amended by the claimant to identify additional construction defects as they become known to the claimant. In no event shall the court allow the case to be set for trial before the initial list of construction defects is filed and served.

(4) If a subcontractor or supplier is added as a party to an action under this section, the claimant making the claim against such subcontractor or supplier shall file with the court and serve on the defendant an initial list of construction defects in accordance with this section within sixty days after service of the complaint against the subcontractor or supplier or within such longer period as the court in its discretion may allow. In no event shall the filing of a defect list under this subsection (4) delay the setting of the trial.

**Source: L. 2001:** Entire part added, p. 389, § 1, effective August 8. **L. 2003:** (1) amended, p. 1362, § 3, effective April 25.

### **ANNOTATION**

**Law reviews.** For article, "The Construction Defect Action Reform Act", see 30 Colo. Law. 121 (Oct. 2001).

**13-20-803.3. Multifamily construction incentive program - created - construction defect claims against architects and engineers - statute of limitations - affirmative defenses.**

(1) The multifamily construction incentive program is created. On and after January 1, 2026, a builder of multifamily, attached housing of two or more units may participate in the program by:

(a) Providing a warranty that covers any defect and damage at no cost to the homeowner for a minimum period of:

- (I) One year for workmanship and materials;
- (II) Two years for plumbing, electrical, and materials; and
- (III) Six years for major structural components;

(b) Having a third-party inspection performed; and

(c) Recording a notice of election to participate in the multifamily construction incentive program in the real property records of the county in which the property is located for the project intended to be covered before the unit is offered for sale. After recording a notice of election to participate, a builder may withdraw from the program only before the issuance of the last certificate of occupancy for the project.

(2) (a) Except as provided in subsection (3) of this section, a person must file with a complaint a certificate of review in compliance with section 13-20-602 for a construction defect action that is:

- (I) Against a construction professional who is an architect or engineer; and
- (II) For a program claim.

(b) The certificate of review filed in accordance with subsection (2)(a) of this section must, based on facts known to the party filing the certificate of review:

(I) Set forth the architect's or engineer's negligence, including any act or omission in providing advice, exercising judgment, giving an opinion, or exercising a similar professional skill; and

(II) Declare that the individual consulted can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience, the consultant is competent to express an opinion as to the negligence, including an act or omission, alleged.

(c) If a claimant fails to file the certificate of review required in this subsection (2), the court shall dismiss the complaint against the defendant unless the claimant shows good cause for the failure.



(3) A claimant is not required to comply with the certificate of review requirements of subsection (2) of this section if:

(a) A claim is for construction in which a governmental entity contracted with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility, a building or an associated structure, a civil works project, or a highway project; or

(b) The period of limitation or repose could reasonably expire within ten days after the date of filing and, because of the time constraint, the claimant has alleged that a certificate of review by a third-party architect or engineer could not be prepared. A claimant that does not file a certificate of review under this section shall supplement the complaint with a certificate of review within twenty-eight days after the filing of the complaint; except that a court may, on motion and for good cause, grant a claimant additional time to file the certificate of review.

(4) A defendant that designates an architect or engineer as a nonparty at fault in accordance with section 13-21-111.5 (3)(b) must file a subsequent certificate of review that complies with subsection (2) of this section and section 13-20-602. The defendant shall file a certificate of review at least forty-five days prior to any trial or proceeding on the claim. If the defendant fails to file the certificate of review as required in this subsection (4), a court shall not consider the negligence or fault of the nonparty.

(5) Subsections (2) to (4) of this section do not:

(a) Extend the applicable period of limitation or repose; or

(b) Apply to a suit or action for the payment of fees arising out of the provision of professional services.

(6) A person shall not assert a program claim unless the defect has resulted in one or more of the following:

(a) Actual damage to real or personal property;

(b) Actual loss of the use of real or personal property;

(c) Actual bodily injury or wrongful death;

(d) An unreasonable reduction in the capability of, or an actual failure of, a building component to perform an intended function or purpose; or

(e) An unreasonable risk of bodily injury or death to, or a threat to the life, health, or safety of, the occupants of the residential property.

(7) (a) (I) If the defendant is a construction professional who is not an architect or engineer and who has provided the claimant a written warranty for the residence that complies with

subsection (1)(a) of this section, and if the claimant discovered or should have discovered the alleged defect or damage within the longest applicable warranty period, the claimant must bring the suit not later than six years after the substantial completion of the improvement.

(II) If the defendant is a construction professional who is an architect or engineer, and the construction professional performed in a manner consistent with the degree of skill and care ordinarily exercised by members of the same profession currently practicing under the same or similar circumstances, the claimant must bring the suit not later than six years after the substantial completion of the improvement.

(b) If a claim involves a defect or damage that is covered by the warranty described in subsection (7)(a) of this section, the claimant shall pursue all reasonable remedies available under the warranty process before bringing an action for damages. The statute of limitations and repose shall be tolled from the date the claimant first pursued a remedy available under the warranty for no more than one year or until the completion of the warranty process, whichever is longer.

(c) Section 13-80-104 (2) and (3) applies to the limitation of claims in this subsection (7).

(8) (a) For program claims, a construction professional who makes a reasonable offer pursuant to subsection (9) of this section may be immune, in whole or in part, from an obligation, damage, loss, or liability under this part 8 related to or arising out of the construction defect, but only with respect to the portion of the claimant's damages, if any, the construction professional can demonstrate by a preponderance of the evidence were proximately caused or increased by an affirmative defense specified in subsections (8)(b) and (8)(c) of this section and not by the construction defect.

(b) A construction professional is not liable for a damage or defect to the extent the professional can prove, as an affirmative defense, that the damage or defect was caused:

(I) By a weather condition, earthquake, or other natural phenomenon in excess of the design criteria expressed by the applicable building codes, regulations, and ordinances in effect at the time of original construction;

(II) By a human-caused event, such as war, terrorism, or vandalism;

(III) By a homeowner's unreasonable failure to timely mitigate damages as required in section 13-20-803.5 (1);

(IV) By the homeowner or the homeowner's agent, employee, or construction professional by virtue of their failure to follow the builder's or manufacturer's maintenance recommendations or to do commonly accepted homeowner maintenance obligations. In order to rely upon this defense as it relates to a construction professional's recommended maintenance schedule, the construction professional must show that the homeowner had written notice of these maintenance

schedules and recommendations and that the maintenance recommendations and schedules were reasonable at the time they were issued and that the damage or defect did not directly prevent the homeowner from performing the recommended maintenance.

(V) After sale or transfer of ownership to the claimant, by:

(A) The homeowner's or homeowner's agent's alterations;

(B) Ordinary wear and tear;

(C) Misuse of the structure or component;

(D) Abuse of the structure or component;

(E) Neglect of the structure or component; or

(F) The use of the structure or component for something other than the structure's or component's intended purpose.

(c) A construction professional may assert an affirmative defense to the extent that:

(I) The damage was caused by a particular violation covered by a valid release obtained by the construction professional, if the release is enforceable against the claimant, was executed with knowledge of the particular violation, and does not violate section 13-20-806 (7); or

(II) The construction professional's repair completed pursuant to section 13-20-803.5 (3) was successful in correcting the particular violation and any damage resulting from the violation of the applicable standard.

(d) The affirmative defenses set forth in this subsection (8) are in addition to, and shall not limit, impair, replace, or otherwise affect, any other defense available to a construction professional under statute or common law.

(9) (a) For program claims, a construction professional and the insurer, as defined in section 10-1-102 (13), providing coverage related to the claim shall send or deliver to the claimant, by certified mail, return receipt requested, or by personal service:

(I) An offer to settle the claim by:

(A) Payment of a sum certain; or

(B) Agreeing to remedy the claimed defect described in the notice of claim;

(II) A written response that:

(A) Identifies the standards that apply to the claimed defect's construction or performance; and

(B) Explains why the claimed defect does not require repair; or

(III) A written response that explains the construction professional's scope of work and why the claimed defect is not within the work and responsibility of the construction professional.

(b) A written offer to remedy a construction defect must include a report of the scope of the inspection, the findings and results of the inspection, a description of the additional construction work necessary to remedy the defect described in the notice of claim and all damage to the improvement to real property caused by the defect, and a timetable for the completion of the remedial construction work.

(c) The construction professional shall provide an offer pursuant to subsection (9)(a)(I) of this section within ninety days after the deadline to inspect the property and claimed defect pursuant to section 13-20-803.5 or a written response pursuant to subsection (9)(a)(II) or (9)(a)(III) of this section within thirty days after the deadline to inspect the property and claimed defect pursuant to section 13-20-803.5. Notwithstanding any provision in a contract or any requirement in the governing documents, if a construction professional requests an extension to provide an offer pursuant to subsection (9)(a)(I) of this section and the claimant does not agree to the requested extension, the parties shall designate a mutually agreeable third party in writing to determine whether the requested extension is reasonable. Notwithstanding any other provision in this section, the total time to provide an offer must not exceed two hundred ten days after the date of the notice of claim by the construction professional providing an offer pursuant to subsection (9)(a)(I) of this section.

(d) If a claimant unreasonably rejects a reasonable written offer of settlement made pursuant to this subsection (9) and subsequently commences an action against the construction professional, the court may award attorney fees and costs to the construction professional.

(e) If a construction professional fails to make a reasonable written offer of settlement pursuant to this subsection (9), the limitations on damages and defenses to liability provided in subsections (2), (5), (6), (7), and (8) of this section do not apply, and the court may award attorney fees and costs to the claimant.

(f) (I) A construction professional's written offer of settlement is reasonable, and a claimant's rejection of the offer is unreasonable, if the claimant recovers a final judgment in an amount that is less than the amount offered or the reasonable value of the repair offered by the construction professional.

(II) A construction professional's written offer of settlement is unreasonable, and a claimant's rejection of the offer is reasonable, if the claimant recovers a final judgment in an amount that exceeds the amount offered or the reasonable value of the repair offered by the construction professional.

(10) (a) Within thirty days after the rejection of an offer made pursuant to subsection (9) of this section, a claimant shall provide a construction professional with a written proposal to have the construction defect repaired at the construction professional's expense or to settle the claim.

(b) If the construction professional does not accept the proposal provided by the claimant pursuant to subsection (10)(a) of this section in writing within fifteen days after delivery of the proposal, the proposal is deemed to have been rejected.

(c) If the construction professional accepts the proposal provided by the claimant pursuant to subsection (10)(a) of this section, the construction professional shall pay the claimant's reasonable attorney fees and costs incurred in investigating the defect and proposing the repair.

(11) Nothing in this section:

(a) Affects the "Colorado Governmental Immunity Act", article 10 of title 24, or section 13-20-806 (7); or

(b) Prohibits, limits, or impairs a contractual claim or expands the definition of "action" in section 13-20-802.5 (1).

**Source: L. 2025:** Entire section added, (HB 25-1272), ch. 183, p. 785, § 3, effective August 6.

**Cross references:** For the short title ("Colorado American Dream Act") and the legislative declaration in HB 25-1272, see section 1 of chapter 183, Session Laws of Colorado 2025.

### **13-20-803.5. Notice of claim process - duty to mitigate.**

(1) (a) No later than seventy-five days before filing an action against a construction professional, or no later than ninety days before filing the action in the case of a commercial property, a claimant shall send or deliver a written notice of claim to the construction professional by certified mail, return receipt requested, or by personal service.

(b) Before filing a claim pursuant to this subsection (1) for program claims, a claimant shall mitigate the damage caused by the alleged construction defect. A claimant satisfies the duty to mitigate by taking reasonable action to prevent further damage from the construction defect. A claimant must certify in the complaint that the claimant has satisfied the duty to mitigate.

(c) If the claimant and construction professional dispute whether the claimant has satisfied the duty to mitigate described in subsection (1)(b) of this section, the claimant may proceed with the action but does not recover any damages that the construction professional proves were caused by the claimant's unreasonable failure to mitigate.

(d) A claimant does not breach the duty to mitigate if the cost to mitigate is unreasonable under the circumstances or was beyond the claimant's financial ability to perform.

(2) Following the mailing or delivery of the notice of claim, at the written request of the construction professional, the claimant shall provide the construction professional and its contractors or other agents reasonable access to the claimant's property during normal working hours to inspect the property and the claimed defect. The inspection shall be completed within thirty days of service of the notice of claim.

(3) Except as provided in section 13-20-803.3 (9), within thirty days after the completion of the inspection process conducted pursuant to subsection (2) of this section, or within forty-five days after the completion of the inspection process in the case of a commercial property, a construction professional may send or deliver to the claimant, by certified mail, return receipt requested, or personal service, an offer to settle the claim by payment of a sum certain or by agreeing to remedy the claimed defect described in the notice of claim. A written offer to remedy the construction defect shall include a report of the scope of the inspection, the findings and results of the inspection, a description of the additional construction work necessary to remedy the defect described in the notice of claim and all damage to the improvement to real property caused by the defect, and a timetable for the completion of the remedial construction work.

(3.5) (a) By the earlier of when a construction professional, other than an architect or engineer, offers to settle a claim or sixty days after a construction professional receives actual notice of claim, the construction professional shall provide the claimant with the following documents and information, to the extent the documents and information are within the construction professional's possession, custody, or control:

- (I) Copies of all plans, specifications, and soil reports related to the claim;
- (II) Maintenance and preventive maintenance recommendations related to the claim;
- (III) The name, last-known address, and scope of work of each construction professional who contracted to perform work or provide services and did perform work or provide services related to the claim;
- (IV) All documents related to the third-party inspection of the property and the name and last-known address of the inspector who performed the third-party inspection; and
- (V) Copies of each insurance policy purchased by the construction professional and related to the claim through the date of the notice of claim and from the earlier start date of:
  - (A) The date the construction of the alleged defect was substantially completed; or
  - (B) The date the construction professional substantially completed work on the alleged defect.

(b) A construction professional may charge reasonable copying costs for the documents described in subsections (3.5)(a)(I), (3.5)(a)(II), (3.5)(a)(IV), and (3.5)(a)(V) of this section.

(c) Failure to provide the identifying information required in subsection (3.5)(a)(III) of this section by the applicable deadline for designating a nonparty at fault bars the construction professional from designating the unidentified construction professional as a nonparty at fault under section 13-21-111.5 (3)(b) in a subsequent action. If the construction professional fails to provide the information required in subsection (3.5)(a)(I) of this section, the claimant need not comply with the certificate of review requirement in section 13-20-803.3 (2).

(3.7) (a) By the earlier of when a construction professional who is an architect or engineer offers to settle a claim or sixty days after a construction professional receives actual notice of claim, the architect or engineer shall provide the claimant with the following documents and information, to the extent the documents and information are within the architect's or engineer's possession, custody, or control:

(I) Copies of all approved construction documents and specifications, including addendums issued during construction, prepared by the architect, engineer, or consultants;

(II) The name, last-known address, and scope of work of each architect or engineer who performed work or provided services as a consultant related to the claim and on the claimant's property; and

(III) Copies of each insurance policy purchased by the architect or engineer and related to the claim through the date of the notice of claim and from the earlier start date of:

(A) The date the construction of the alleged defect was substantially completed; or

(B) The date the architects and engineers substantially completed work related to the alleged defect.

(b) An architect or engineer may charge reasonable copying costs for the documents described in subsection (3.7)(a) of this section.

(4) Unless a claimant accepts an offer made pursuant to subsection (3) of this section in writing within fifteen days of the delivery of the offer, the offer shall be deemed to have been rejected.

(5) A claimant who accepts a construction professional's offer to remedy or settle by payment of a sum certain a construction defect claim shall do so by sending the construction professional a written notice of acceptance no later than fifteen days after receipt of the offer. If an offer to settle is accepted, then the monetary settlement shall be paid in accordance with the offer. If an offer to remedy is accepted by the claimant, the remedial construction work shall be completed in accordance with the timetable set forth in the offer unless the delay is caused by events beyond the reasonable control of the construction professional.

(6) If no offer is made by the construction professional or if the claimant rejects an offer, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim, unless the parties have contractually agreed to a mediation procedure, in which case the mediation procedure shall be satisfied prior to bringing an action.

(7) If an offer by a construction professional is made and accepted or if a proposal made by a claimant is accepted, and if thereafter the construction professional does not comply with the offer to remedy or settle a claim for a construction defect or with the claimant's proposal, the claimant may file an action against the construction professional for claims arising out of the defect or damage described in the notice of claim without further notice.

(8) After the sending of a notice of claim, a claimant and a construction professional may, by written mutual agreement, alter the procedure for the notice of claim process described in this section.

(9) Any action commenced by a claimant who fails to comply with the requirements of this section shall be stayed, which stay shall remain in effect until the claimant has complied with the requirements of this section.

(10) A claimant may amend a notice of claim to include construction defects discovered after the service of the original notice of claim. However, the claimant must otherwise comply with the requirements of this section for the additional claims.

(11) For purposes of this section, actual receipt by any means of a written notice, offer, or response prepared pursuant to this section within the time prescribed for delivery or service of the notice, offer, or response shall be deemed to be sufficient delivery or service.

(12) Except as provided in this section and section 13-20-806, a claimant shall not recover more than actual damages in an action.

(13) An insurer, as defined in section 10-1-102 (13), shall not cancel, deny, or reduce coverage based on any claim for benefits covered by an existing liability insurance policy issued to a construction professional based on the construction professional making an offer to repair or settle a construction defect claim pursuant to this section. Any settlement or repair agreement that affects coverage is subject to insurer approval.

**Source: L. 2003:** Entire section added, p. 1363, § 5, effective April 25. **L. 2025:** (1), (3), (7), and (12) amended and (3.5), (3.7), and (13) added, (HB 25-1272), ch. 183, p. 791, § 4, effective August 6.



**Cross references:** For the short title ("Colorado American Dream Act") and the legislative declaration in HB 25-1272, see section 1 of chapter 183, Session Laws of Colorado 2025.

#### ANNOTATION

**Law reviews.** For note, "Restore Colorado's Repair Doctrine for Construction-Defect Claims", see 83 U. Colo. L. Rev. 875 (2012).

**As a matter of law, the notice of claim process outlined in the Construction Defect Action Reform Act constitutes an alternative dispute resolution proceeding.** Melssen v. Auto-Owners Ins. Co., 2012 COA 102, 285 P.3d 328.

**Plaintiff is not required to plead or prove that plaintiff complied with the notice process or that claim arose from a "construction defect".** Act requires only that the plaintiff prove the elements of his or

her common law negligence claim. Land-Wells v. Rain Way Sprinkler & Lands., 187 P.3d 1152 (Colo. App. 2008).

**Subsection (9) contemplates the situation in which a plaintiff may file a claim in court before sending a notice of claim to a prospective defendant.** Curry v. Zag Built LLC, 2018 COA 66, 433 P.3d 125.

**A case commences for purposes of subsection (9) when the plaintiff files a complaint in court.** Curry v. Zag Built LLC, 2018 COA 66, 433 P.3d 125.

**The stay required by subsection (9) is mandatory.** Curry v. Zag Built LLC, 2018 COA 66, 433 P.3d 125.

#### **13-20-804. Restriction on construction defect negligence claims.**

(1) No negligence claim seeking damages for a construction defect may be asserted in an action if such claim arises from the failure to construct an improvement to real property in substantial compliance with an applicable building code or industry standard; except that such claim may be asserted if such failure results in one or more of the following:

- (a) Actual damage to real or personal property;
- (b) Actual loss of the use of real or personal property;
- (c) Bodily injury or wrongful death; or
- (d) A risk of bodily injury or death to, or a threat to the life, health, or safety of, the occupants of the residential real property.

(2) Nothing in this section shall be construed to prohibit, limit, or impair the following:

- (a) The assertion of tort claims other than claims for negligence;

- (b) The assertion of contract or warranty claims; or
- (c) The assertion of claims that arise from the violation of any statute or ordinance other than claims for violation of a building code.

**Source: L. 2001:** Entire part added, p. 389, § 1, effective August 8. **L. 2003:** IP(1), (1)(a), and (1)(b) amended, p. 1362, § 4, effective April 25.

#### ANNOTATION

**Law reviews.** For article, "The Construction Defect Action Reform Act", see 30 Colo. Law. 121 (Oct. 2001).

her common law negligence claim. *Land-Wells v. Rain Way Sprinkler & Lands.*, 187 P.3d 1152 (Colo. App. 2008).

**Plaintiff is not required to plead or prove that plaintiff complied with the notice process or that claim arose from a "construction defect".** Act requires only that the plaintiff prove the elements of his or

**An "improvement" may be a discrete component of an entire project,** such as the last of multiple residential buildings. *Shaw Constr., LLC v. United Builder Servs.*, 2012 COA 24, 296 P.3d 145.

#### **13-20-805. Tolling of statutes of limitation.**

(1) If a notice of claim is sent to a construction professional in accordance with section 13-20-803.5 within the time prescribed for the filing of an action under the applicable statute of limitations or repose, then the statute of limitations or repose is tolled until sixty days after the completion of the notice of claim process described in section 13-20-803.5.

(2) If an alleged construction defect is being mitigated pursuant to section 13-20-803.5, the statute of limitations or repose is tolled for the duration of the mitigation; except that the maximum length of tolling under this subsection (2) cannot exceed one year.

(3) The tolling of the statute of limitations or repose under subsection (1) or (2) of this section does not preclude the tolling of the statute of limitations or repose under the other subsection of this section.

**Source: L. 2003:** Entire section added, p. 1363, § 5, effective April 25. **L. 2025:** Entire section amended, (HB 25-1272), ch. 183, p. 794, § 5, effective August 6.

**Cross references:** For the short title ("Colorado American Dream Act") and the legislative declaration in HB 25-1272, see section 1 of chapter 183, Session Laws of Colorado 2025.

## ANNOTATION

**Effectuating the legislative intent of the Construction Defect Action Reform Act (CDARA) does not require reading this section as tolling claims against parties who lack notice.** Without notice, participants in the project would not take the steps set forth in § 13-20-803.5. *Shaw Constr., LLC v. United Builder Servs.*, 2012 COA 24, 296 P.3d 145.

**This section does not require a plaintiff to complete the notice-of-claim process described in § 13-20-803.5 before filing a claim.** CDARA contemplates the situation in which a plaintiff may file a claim in court before sending a notice of claim to a prospective defendant; in that situation the action is stayed pending compliance with § 13-20-803.5. *Curry v. Zag Built LLC*, 2018 COA 66, 433 P.3d 125.

### **13-20-806. Limitation of damages.**

(1) A construction professional otherwise liable shall not be liable for more than actual damages, unless and only if the claimant otherwise prevails on the claim that a violation of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S., has occurred; and if:

(a) The construction professional's monetary offer, made pursuant to section 13-20-803.5 (3), to settle for a sum certain a construction defect claim described in a notice of claim is less than eighty-five percent of the amount awarded to the claimant as actual damages sustained exclusive of costs, interest, and attorney fees; or

(b) The reasonable cost, as determined by the trier of fact, to complete the construction professional's offer, made pursuant to section 13-20-803.5, to remedy the construction defect described in the notice of claim is less than eighty-five percent of the amount awarded to the claimant as actual damages sustained exclusive of costs, interest, and attorney fees.

(2) If a construction professional does not substantially comply with the terms of an accepted offer to remedy or an accepted offer to settle a claim for a construction defect made pursuant to section 13-20-803.5 or if a construction professional fails to respond to a notice of claim, the construction professional shall be subject to the treble damages provision of section 6-1-113 (2)(a)(III), C.R.S.; except that a construction professional shall be subject to the treble damages provision only if the claimant otherwise prevails on the claim that a violation of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S., has occurred.

(3) Notwithstanding any other provision of law, the aggregate amount of treble damages awarded in an action under section 6-1-113 (2)(a)(III), C.R.S., and attorney fees awarded to a claimant under section 6-1-113 (2)(b), C.R.S., shall not exceed two hundred fifty thousand dollars in any action against a construction professional.

(4) (a) In an action asserting personal injury or bodily injury as a result of a construction defect in which damages for noneconomic loss or injury or derivative noneconomic loss or injury may be awarded, such damages shall not exceed the sum of two hundred fifty thousand dollars. As used in this subsection (4), "noneconomic loss or injury" has the same meaning as set forth in section 13-21-102.5 (2)(b), and "derivative noneconomic loss or injury" has the same meaning as set forth in section 13-21-102.5 (2)(a).

(b) The limitations on noneconomic damages set forth in this subsection (4) shall be adjusted for inflation as of July 1, 2003, and as of July 1 of each year thereafter until and including July 1, 2008. The adjustment made pursuant to this paragraph (b) shall be rounded upward or downward to the nearest ten dollar increment.

(c) As used in paragraph (b) of this subsection (4), "inflation" means the annual percentage change in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Boulder, all items, all urban consumers, or its successor index.

(d) The secretary of state shall certify the adjusted limitation on damages within fourteen days after the appropriate information is available, and such adjusted limitation on damages shall be the limitation applicable to all claims for relief that accrue on or after July 1, 2003.

(5) Claims for personal injury or bodily injury as a result of a construction defect shall not be subject to the treble damages provisions of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.

(6) In any case in which the court determines that the issue of a violation of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S., will be submitted to a jury, the court shall not disclose nor allow disclosure to the jury of an offer of settlement or offer to remedy made under section 13-20-803.5 that was not accepted by the claimant.

(7) (a) In order to preserve Colorado residential property owners' legal rights and remedies, in any civil action or arbitration proceeding described in section 13-20-802.5 (1), any express waiver of, or limitation on, the legal rights, remedies, or damages provided by the "Construction Defect Action Reform Act", this part 8, or provided by the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S., as described in this section, or on the ability to enforce such legal rights, remedies, or damages within the time provided by applicable statutes of limitation or repose are void as against public policy.

(b) A waiver, limitation, or release contained in a written settlement of claims, and any recorded notice of such settlement, between a residential property owner and a construction professional after such a claim has accrued shall not be rendered void by this subsection (7).

(c) This subsection (7) applies only to the legal rights, remedies, or damages of claimants asserting claims arising out of residential property and shall not apply to sales or donations of property or services by a bona fide charitable organization that is in compliance with the registration and reporting requirements of article 16 of title 6, C.R.S.

(d) Notwithstanding any provision of this subsection (7) to the contrary, this subsection (7) shall apply only to actions that are governed by the provisions of this part 8, also known as the "Construction Defect Action Reform Act", and shall not be deemed to alter or amend the limitations on damages contained in this part 8, including the limitations on treble damages and attorney fees set forth in this section.

(e) Nothing contained in this section shall be deemed to render void any requirement to participate in mediation prior to filing a suit or arbitration proceeding.

**Source:** **L. 2003:** Entire section added, p. 1363, § 5, effective April 25. **L. 2007:** (7) added, p. 610, § 2, effective April 20.

**Cross references:** In 2007, subsection (7) was added by the "Homeowner Protection Act of 2007". For the short title, see section 1 of chapter 164, Session Laws of Colorado 2007.

## ANNOTATION

**Law reviews.** For article, "Claim and Issue Preclusion Arising from Residential Construction and Other Arbitrations — Part 2", see 51 Colo. Law. 18 (Mar. 2022). For article, "The Homeowner Protection Act Charitable Organization Exemption", see 53 Colo. Law. 20 (Nov. 2024).

**Plain language of subsection (4) permits recovery of damages for inconvenience.** Trial court did not err by allowing inconvenience damages to go to

the jury. *Hildebrand v. New Vista Homes II, LLC*, 252 P.3d 1159 (Colo. App. 2010).

**This section's invalidation of limitation of liability clauses in residential construction defect contracts cannot be applied retroactively to invalidate a contract regarding a residential development project between two commercial entities** because doing so would impair vested property rights, upset reasonable expectations, surprise the parties, and have only a speculative and incidental

impact on the public policy of protecting homeowners and, therefore, would have an unconstitutional retrospective effect. *Taylor Morrison of Colo., Inc. v. Bemas Constr., Inc.*, 2014 COA 10, 411 P.3d 72.

**Corporate owner of a multi-unit senior living center was a "residential property owner" entitled to the benefit of subsection (7).** Nothing in the plain language of the statute nor the legislative history clearly evinces a contrary intent, although portions of the legislative history indicate that it was primarily intended to benefit natural persons. *Broomfield Senior Living v. R.G. Brinkmann*, 2017 COA 31, 413 P.3d 219.

**Failure to define "residential property" in subsection (7) does not render the term ambiguous.** *Broomfield Senior Living v. R.G. Brinkmann*, 2017 COA 31, 413 P.3d 219.

**Subsection (7)(a)'s invalidation of limitation of liability clauses applies to a contract for work at a residential living facility despite the facility's "commercial" zoning designation.** As it is undisputed that the facility is used as a home by its residents, it is a "residential property". *Heights Healthcare Co. v. BCER Eng'g*, 2023 COA 44, 534 P.3d 939.

### **13-20-807. Express warranty - not affected.**

The provisions of this part 8 are not intended to abrogate or limit the provisions of any express warranty or the obligations of the provider of such warranty. The provisions of this part 8 shall apply to those circumstances where an action is filed asserting one or more claims for relief including a claim for breach of warranty; except that, in any such action, section 13-20-806 (7) shall not apply to breach of express warranty claims except to the extent that provisions of the express warranty purport to waive or limit claims for relief other than the breach of express warranty claim. The provisions of this part 8 shall not be deemed to require a claimant who is the beneficiary of an express warranty to comply with the notice provisions of section 13-20-803.5 to request ordinary warranty service in accordance with the terms of such warranty. A claimant who requires warranty service shall comply with the provisions of such warranty.

**Source: L. 2003:** Entire section added, p. 1363, § 5, effective April 25. **L. 2007:** Entire section amended, p. 611, § 3, effective April 20.

**Cross references:** In 2007, this section was amended by the "Homeowner Protection Act of 2007". For the short title, see section 1 of chapter 164, Session Laws of Colorado 2007.

## ANNOTATION

**Law reviews.** For article, "Claim and Construction and Other Arbitrations — Part Issue Preclusion Arising from Residential 2", see 51 Colo. Law. 18 (Mar. 2022).

### **13-20-808. Insurance policies issued to construction professionals.**

(1) (a) The general assembly finds and determines that:

(I) The interpretation of insurance policies issued to construction professionals is of vital importance to the economic and social welfare of the citizens of Colorado and in furthering the purposes of this part 8.

(II) Insurance policies issued to construction professionals have become increasingly complex, often containing multiple, lengthy endorsements and exclusions conflicting with the reasonable expectations of the insured.

(III) The correct interpretation of coverage for damages arising out of construction defects is in the best interest of insurers, construction professionals, and property owners.

(b) The general assembly declares that:

(I) The policy of Colorado favors the interpretation of insurance coverage broadly for the insured.

(II) The long-standing and continuing policy of Colorado favors a broad interpretation of an insurer's duty to defend the insured under liability insurance policies and that this duty is a first-party benefit to and claim on behalf of the insured.

(III) The decision of the Colorado court of appeals in *General Security Indemnity Company of Arizona v. Mountain States Mutual Casualty Company*, 205 P.3d 529 (Colo. App. 2009) does not properly consider a construction professional's reasonable expectation that an insurer would defend the construction professional against an action or notice of claim contemplated by this part 8.

(IV) For the purposes of guiding pending and future actions interpreting liability insurance policies issued to construction professionals, what has been and continues to be the policy of Colorado is hereby clarified and confirmed in the interpretation of insurance policies that have been and may be issued to construction professionals.

(2) For the purposes of this section:

(a) "Insurance" has the same meaning as set forth in section 10-1-102, C.R.S.

(b) "Insurance policy" means a contract of insurance.

(c) "Insurer" has the same meaning as set forth in section 10-1-102, C.R.S.

(d) "Liability insurance policy" means a contract of insurance that covers occurrences of damage or injury during the policy period and insures a construction professional for liability arising from construction-related work.

(3) In interpreting a liability insurance policy issued to a construction professional, a court shall presume that the work of a construction professional that results in property damage, including damage to the work itself or other work, is an accident unless the property damage is intended and expected by the insured. Nothing in this subsection (3):

(a) Requires coverage for damage to an insured's own work unless otherwise provided in the insurance policy; or

(b) Creates insurance coverage that is not included in the insurance policy.

(4) (a) Upon a finding of ambiguity in an insurance policy, a court may consider a construction professional's objective, reasonable expectations in the interpretation of an insurance policy issued to a construction professional.

(b) In construing an insurance policy to meet a construction professional's objective, reasonable expectations, the court may consider the following:

(I) The object sought to be obtained by the construction professional in the purchase of the insurance policy; and

(II) Whether a construction defect has resulted, directly or indirectly, in bodily injury, property damage, or loss of the use of property.

(c) In construing an insurance policy to meet a construction professional's objective, reasonable expectations, a court may consider and give weight to any writing concerning the insurance policy provision in dispute that is not protected from disclosure by the attorney-client privilege, work-product privilege, or article 72 of title 24, C.R.S., and that is generated, approved, adopted, or relied on by the insurer or its parent or subsidiary company; or an insurance rating or policy drafting organization, such as the insurance services office, inc., or its predecessor or successor organization; except that such writing shall not be used to restrict, limit, exclude, or condition coverage or the insurer's obligation beyond that which is reasonably inferred from the words used in the insurance policy.

(5) If an insurance policy provision that appears to grant or restore coverage conflicts with an insurance policy provision that appears to exclude or limit coverage, the court shall construe the insurance policy to favor coverage if reasonably and objectively possible.



(6) If an insurer disclaims or limits coverage under a liability insurance policy issued to a construction professional, the insurer shall bear the burden of proving by a preponderance of the evidence that:

(a) Any policy's limitation, exclusion, or condition in the insurance policy bars or limits coverage for the insured's legal liability in an action or notice of claim made pursuant to section 13-20-803.5 concerning a construction defect; and

(b) Any exception to the limitation, exclusion, or condition in the insurance policy does not restore coverage under the policy.

(7) (a) An insurer's duty to defend a construction professional or other insured under a liability insurance policy issued to a construction professional shall be triggered by a potentially covered liability described in:

(I) A notice of claim made pursuant to section 13-20-803.5; or

(II) A complaint, cross-claim, counterclaim, or third-party claim filed in an action against the construction professional concerning a construction defect.

(b) (I) An insurer shall defend a construction professional who has received a notice of claim made pursuant to section 13-20-803.5 regardless of whether another insurer may also owe the insured a duty to defend the notice of claim unless authorized by law. In defending the claim, the insurer shall:

(A) Reasonably investigate the claim; and

(B) Reasonably cooperate with the insured in the notice of claims process.

(II) This paragraph (b) does not require the insurer to retain legal counsel for the insured or to pay any sums toward settlement of the notice of claim that are not covered by the insurance policy.

(III) An insurer shall not withdraw its defense of an insured construction professional or commence an action seeking reimbursement from an insured for expended defense cost unless authorized by law and unless the insurer has reserved such right in writing when accepting or assuming the defense obligation.

**Source: L. 2010:** Entire section added, (HB 10-1394), ch. 253, p. 1125, § 1, effective May 21.

**Editor's note:** Subsection (2)(b), enacted as subsection (2)(c) in House Bill 10-1394, and subsection (2)(c), enacted as subsection (2)(b) in House Bill 10-1394, were relettered on revision so that defined terms appear in alphabetical order.

## ANNOTATION

**Law reviews.** For article, "H.B. 10-1394: New Law Governing Insurance Coverage for Construction Defect Claims", see 39 Colo. Law. 89 (Aug. 2010). For article, "Greystone and Insurance Coverage for 'Get To' and 'Rip and Tear' Expenses", see 41 Colo. Law. 69 (Mar. 2012). For article, "Insuring the Risk of Construction Defects in Colorado: The Tenth Circuit's Greystone Decision", see 90 Denv. U.L. Rev. 621 (2013). For article, "TCD and Colorado Pool The Bogeyman Lurks", see 43 Colo. Law. 43 (Apr. 2014). For article, "Condominium Obsolescence: The Final Act or a New Beginning?", see 49 Colo. Law. 42 (Jan. 2020). For article, "Applying Waiver and Estoppel Principles to Insurance Contracts", see 49 Colo. Law. 50 (Jan. 2020). For article, "Your First Insurance Policy Coverage Dispute", see 49 Colo. Law. 42 (Feb. 2020). For article, "Colorado CGL Coverage A Demystified", see 54 Colo. Law. 38 (Aug. 2025).

**Because damage to property caused by poor workmanship is generally neither expected nor intended, it may qualify under state law as an occurrence, and liability coverage should apply.** Greystone Constr., Inc. v. Nat'l Fire & Marine Ins. Co., 661 F.3d 1272 (10th Cir. 2011).

**The definition of accident in subsection (3) does not apply retroactively to expired insurance policies that may still be subject to claims** for occurrences within the policy period. Greystone Constr., Inc. v. Nat'l Fire & Marine Ins. Co., 661 F.3d 1272 (10th Cir. 2011).

This section does not apply, therefore, to homeowners' claims because the policy periods of their insurance policies had already expired. Greystone Constr., Inc. v. Nat'l Fire & Marine Ins. Co., 661 F.3d 1272 (10th Cir. 2011).

**Statute is not retroactive and applies only** to policies for which the policy period had not yet expired on May 21, 2010. TCD, Inc. v. Am. Family Mut. Ins. Co., 2012 COA 65, 296 P.3d 255.

**Section cannot be applied retrospectively** when all pertinent transactions occurred and the policy period expired prior to the effective date of the section. Colo. Pool Sys. v. Scottsdale Ins. Co., 2012 COA 178, 317 P.3d 1262.

**According to subsection (7), the notice of claim that triggers the duty to defend is a notice made to the construction professional rather than the insurer.** Auto-Owners Ins. Co. v. High Country Coatings, Inc., 388 F. Supp. 3d 1328 (D. Colo. 2019).

## PART 9

### CLASS ACTIONS

#### **13-20-901. Class actions - appellate review.**

(1) A court of appeals may, in its discretion, permit an interlocutory appeal of a district court's order that grants or denies class action certification under court rule so long as application is made to the court of appeals within fourteen days after entry of the district court's order.

(2) An appeal that is allowed under subsection (1) of this section shall not stay proceedings in the district court unless the district court or the court of appeals so orders. If a stay is ordered, all discovery and other proceedings shall be stayed during the pendency of an appeal taken pursuant to this section unless the court ordering the stay finds upon the motion of any party that specific discovery is necessary to preserve evidence or to prevent undue prejudice to such party.

**Source:** **L. 2003:** Entire part added, p. 845, § 1, effective July 1. **L. 2014:** (1) amended, (HB 14-1347), ch. 208, p. 768, § 2, effective July 1.

#### **ANNOTATION**

**This section is substantially similar to Fed. R. Civ. P. 23(f) and cases applying the federal rule are instructive.** The five-factor test outlined in *Prado-Steiman ex rel. Prado v. Bush*, 221 F.3d 1266 (11th Cir. 2000), is the most inclusive and helpful in determining how the court should exercise its discretion. *Clark v. Farmers Ins. Exch.*, 117 P.3d 26 (Colo. App. 2004).

**The five-factor test includes:** (1) The "death knell" factor — is the trial court's ruling dispositive of the litigation because either it effectively prevents the plaintiff from continuing to pursue the matter in that the stakes are too low or it places the defendant in such a position that it would experience irresistible pressure to settle; (2) the substantial weakness factor — has the

appellant shown that the trial court's class certification decision likely constitutes an abuse of discretion; (3) will allowing the appeal permit resolution of an unsettled legal issue important to the particular litigation as well as important in itself; (4) the nature and status of the litigation before the trial court, including the status of discovery, the pendency of relevant motions, and the length of time the matter already has been pending; (5) the likelihood that future events could make immediate appellate review more or less appropriate as well as whether the court views its class certification decision as conditional or subject to revision. *Clark v. Farmers Ins. Exch.*, 117 P.3d 26 (Colo. App. 2004).

Test applied in *Clark v. Farmers Ins. Exch.*, 117 P.3d 26 (Colo. App. 2004).

**"[U]nder court rule" in subsection (1) applies not just to C.R.C.P. 23** but also to court rules that prescribe the method of computing the time limit to appeal the grant or denial of class certification. *Garcia v. Medved Chevrolet, Inc.*, 240 P.3d 371 (Colo. App. 2009), *aff'd*, 263 P.3d 92 (Colo. 2011).

**Plaintiff does not waive right to appeal by requesting and obtaining a certification of final judgment pursuant to C.R.C.P. 54(b)** if plaintiff chooses not to file an interlocutory appeal of an order denying class certification pursuant to this section. It was the legislature's intent in enacting this section to add to existing appellate remedies rather than create an exclusive remedy. *Devora v. Strodman*, 2012 COA 87, 282 P.3d 528.

## PART 10

### INJURIES OCCURRING OUT OF STATE

**Law reviews:** For article, "Limited Availability of the Forum Non Conveniens Defense in Colorado State Courts", see 33 Colo. Law. 83 (Nov. 2004).

#### **13-20-1001. Short title.**

This part 10 shall be known and may be cited as the "Colorado Citizens' Access to Colorado Courts Act".

**Source: L. 2004:** Entire part added, p. 401, § 1, effective August 4.

#### **13-20-1002. Legislative declaration.**

- (1) The general assembly finds and declares:
  - (a) The courts of this state are overworked and subject to overloaded dockets;
  - (b) Section 6 of article II of the Colorado constitution guarantees citizens of this state access to the courts of this state; and
  - (c) Cases filed by nonresidents of Colorado and having no meaningful relationship to this state are clogging the dockets of the courts and causing delays in cases filed by residents of Colorado.

- (2) The general assembly finds that the purposes of this part 10 are:
  - (a) To ensure access of Colorado citizens to the courts of Colorado; and
  - (b) To avoid burdening the courts of this state with cases involving injuries suffered outside of the state that may be resolved elsewhere.

**Source: L. 2004:** Entire part added, p. 401, § 1, effective August 4.

### **13-20-1003. Definitions.**

As used in this part 10, unless the context otherwise requires:

- (1) (a) "Alternative forum" means a functioning governmental division with judicial powers that may provide redress for a claim, without regard to whether the redress provided is equivalent to the redress provided under Colorado law, and that may exercise jurisdiction over the parties.
  - (b) An alternative forum shall still be an alternative forum if the statute of limitations for that forum has expired.
- (2) "Discovery" means the procedures described in chapter 4 of the Colorado rules of civil procedure.
- (3) "Resident" means a resident of the state of Colorado or a person who intends to return to Colorado despite establishing temporary residency elsewhere or despite a temporary absence from Colorado, without regard to the person's country of citizenship or national origin. "Resident" does not mean a person who adopts a residence in Colorado in whole or in part to avoid the application of this part 10.

**Source: L. 2004:** Entire part added, p. 402, § 1, effective August 4.

### **13-20-1004. Forum non conveniens.**

- (1) In any action otherwise properly filed in a court of this state, a motion to dismiss without prejudice under the doctrine of forum non conveniens shall be granted if:
  - (a) The claimant or claimants named in the motion are not residents of the state of Colorado;
  - (b) An alternative forum exists;

(c) The injury or damage alleged to have been suffered occurred outside of the state of Colorado;

(d) A substantial portion of the witnesses and evidence is outside of the state of Colorado; and

(e) There is a significant possibility that Colorado law will not apply to some or all of the claims.

(2) In any action otherwise properly filed in a court of this state, a motion to dismiss without prejudice under the doctrine of forum non conveniens may be granted if the court finds that the factor specified in paragraph (a) of subsection (1) of this section is present and that at least one or more but fewer than all of the factors specified in paragraphs (b) to (e) of subsection (1) of this section are present, and based upon such factors, the court finds that in the interest of judicial economy or for the convenience of the parties, a party's claim or action should be heard in a forum outside of Colorado.

(3) In determining whether the factors specified in subsection (1) of this section are present, the court may consider evidence outside of the pleadings, but no formal discovery shall be permitted.

(4) (a) The court may set conditions for dismissing a claim or action under this section as the interests of justice may require.

(b) If the statute of limitations in the alternative forum expires while the claim is pending in a court in Colorado, the court shall grant a dismissal under this section only if each defendant waives all defenses that the statute of limitation in the alternative forum has expired.

**Source: L. 2004:** Entire part added, p. 402, § 1, effective August 4.

#### ANNOTATION

**Except in most unusual circumstances, the choice of a Colorado forum by a resident plaintiff will not be disturbed.** Judicial economy and the risk of double

recovery are not sufficient grounds to dismiss a case based on forum non conveniens. Cox v. Sage Hospitality Res., LLC, 2017 COA 59, 413 P.3d 302.

## PART 11

### ACTIONS INVOLVING THE EXERCISE OF CERTAIN CONSTITUTIONAL RIGHTS

#### **13-20-1101. Action involving exercise of constitutional rights - motion to dismiss - appeal - legislative declaration - definitions.**

(1) (a) The general assembly finds and declares that it is in the public interest to encourage continued participation in matters of public significance and that this participation should not be chilled through abuse of the judicial process.

(b) The general assembly finds that the purpose of this part 11 is to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law and, at the same time, to protect the rights of persons to file meritorious lawsuits for demonstrable injury.

(2) As used in this section, unless the context otherwise requires:

(a) "Act in furtherance of a person's right of petition or free speech under the United States constitution or the state constitution in connection with a public issue" includes:

(I) Any written or oral statement or writing made before a legislative, executive, or judicial proceeding or any other official proceeding authorized by law;

(II) Any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body or any other official proceeding authorized by law;

(III) Any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; or

(IV) Any other conduct or communication in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(b) "Complaint" includes a cross-complaint or a petition.

(c) "Defendant" includes a cross-defendant or a respondent.

(d) "Plaintiff" includes a cross-complainant or petitioner.

(3) (a) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States constitution or the state constitution in connection with a public issue is subject to a special motion to dismiss unless the

court determines that the plaintiff has established that there is a reasonable likelihood that the plaintiff will prevail on the claim.

(b) In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(c) If the court determines that the plaintiff has established a reasonable likelihood that the plaintiff will prevail on the claim, neither that determination nor the fact of that determination is admissible in evidence at any later stage of the case or in any subsequent proceeding, and no burden of proof or degree of proof otherwise applicable is affected by that determination in any later stage of the case or in any subsequent proceeding.

(4) (a) Except as provided in subsection (4)(b) of this section, in any action subject to subsection (3) of this section, a prevailing defendant on a special motion to dismiss is entitled to recover the defendant's attorney fees and costs. If the court finds that a special motion to dismiss is frivolous or is solely intended to cause unnecessary delay, pursuant to part 1 of article 17 of this title 13, the court shall award costs and reasonable attorney fees to a plaintiff prevailing on the motion.

(b) A defendant who prevails on a special motion to dismiss in an action subject to subsection (4)(a) of this section is not entitled to attorney fees and costs if that cause of action is brought pursuant to part 4 of article 6 of title 24 or the "Colorado Open Records Act", part 2 of article 72 of title 24; except that nothing in this subsection (4)(b) prevents a prevailing defendant from recovering attorney fees and costs pursuant to section 24-6-402 (9)(b) or 24-72-204.

(5) The special motion must be filed within sixty-three days after the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion must be scheduled for a hearing not more than twenty-eight days after the service of the motion unless the docket conditions of the court require a later hearing.

(6) All discovery proceedings in the action are stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery remains in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subsection (6).

(7) Except as provided in subsection (9) of this section, an order granting or denying a special motion to dismiss is appealable to the Colorado court of appeals pursuant to section 13-4-102.2.

(8) (a) This section does not apply to:

(I) An action brought by or on behalf of the state or any subdivision of the state enforcing a law or rule or seeking to protect against an imminent threat to health or public safety;



(II) Any action brought solely in the public interest or on behalf of the general public if all of the following conditions exist:

(A) The plaintiff does not seek any relief greater than or different from the relief sought for the general public or a class of which the plaintiff is a member. A claim for attorney fees, costs, or penalties does not constitute greater or different relief for purposes of this subsection (8)(a)(II)(A).

(B) The action, if successful, would enforce an important right affecting the public interest and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons; and

(C) Private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter; or

(III) Any cause of action brought against a person primarily engaged in the business of selling or leasing goods or services, including but not limited to insurance, securities, or financial instruments, arising from any statement or conduct by that person if both of the following conditions exist:

(A) The statement or conduct consists of representations of fact about that person's or a business competitor's business operations, goods, or services that are made for the purpose of obtaining approval for, promoting, or securing sales or leases of, or commercial transactions in, the person's goods or services, or the statement or conduct was made in the course of delivering the person's goods or services; and

(B) The intended audience is an actual or potential buyer or customer, or a person likely to repeat the statement to, or otherwise influence, an actual or potential buyer or customer, or the statement or conduct arose out of or within the context of a regulatory approval process, proceeding, or investigation, except when the statement or conduct was made by a telephone corporation in the course of a proceeding before the public utilities commission and is the subject of a lawsuit brought by a competitor, notwithstanding that the conduct or statement concerns an important public issue.

(b) Subsections (8)(a)(II) and (8)(a)(III) of this section do not apply to any of the following:

(I) Any publisher, editor, reporter, or other person connected with or employed by a newspaper, magazine, or other periodical publication, or by a press association or wire service, or any person who has been so connected or employed; or a radio or television news reporter or other person connected with or employed by a radio or television station, or any person who has been so connected or employed; or any person engaged in the dissemination of ideas or expression in any book or academic journal while engaged in the gathering, receiving, or processing of information for communication to the public; or

(II) Any action against any person or entity based upon the creation, dissemination, exhibition, advertisement, or other similar promotion of any dramatic, literary, musical, political, or artistic work, including but not limited to a motion picture, television program, or an article published in a newspaper or magazine of general circulation.

(9) If any trial court denies a special motion to dismiss on the grounds that the action or cause of action is exempt pursuant to subsection (8) of this section, the appeal provisions in subsection (7) of this section do not apply.

**Source: L. 2019:** Entire part added, (HB 19-1324), ch. 414, p. 3647, § 1, effective July 1.

**Editor's note:** In *Hinds v. Foreman*, 2026 CO 9, 583 P.3d 118, the Colorado Supreme Court held that subsection (7) of this section and section 13-4-102.2 are unconstitutional to the extent that they authorize the court of appeals to review final judgments, which conflicts with article VI, section 17, of the state constitution, and with section 13-6-310 (1).

#### ANNOTATION

**Except for the exemptions in subsection (8),** all appeals of orders on a special motion to dismiss must be filed with the court of appeals pursuant to subsection (7). *VOA Sunset Hous. LP v. D'Angelo*, 2024 COA 61, 555 P.3d 635.

**Appellate review of ruling on special motion to dismiss** under this section is de novo. *Salazar v. Pub. Trust Inst.*, 2022 COA 109M, 522 P.3d 242; *Rosenblum v. Budd*, 2023 COA 72, 538 P.3d 354.

A timely motion for reconsideration of an order denying a special motion to dismiss tolls the time for filing a notice of appeal under C.R.C.P. 59, because the trial court's order, though not final, is nevertheless appealable. *Said v. Magdy*, 2024 COA 109, 562 P.3d 123.

**This section allows parties to file special motions to dismiss in county courts.** *VOA Sunset Hous. LP v. D'Angelo*, 2024 COA 61, 555 P.3d 635.

**This statute applies in federal court.** *Moreau v. U.S. Olympic & Paralympic Comm.*, 641 F. Supp. 3d 1122 (D. Colo. 2022); *Coomer v. Make Your Life Epic LLC*, 659 F. Supp. 3d 1189 (D. Colo. 2023), appeal dismissed for lack of appellate jurisdiction, 98 F.4th 1320 (10th Cir. 2024).

**In federal cases applying this statute, courts must determine whether the basis of a special motion is legal or factual.** If the special motion mounts a legal challenge, courts assess the motion under Fed. R. Civ. P. 12(b)(6). If the motion mounts a factual challenge, courts assess the motion under Fed. R. Civ. P. 56. *Moreau v. U.S. Olympic*

& Paralympic Comm., 641 F. Supp. 3d 1122 (D. Colo. 2022); *Coomer v. Make Your Life Epic LLC*, 659 F. Supp. 3d 1189 (D. Colo. 2023), appeal dismissed for lack of appellate jurisdiction, 98 F.4th 1320 (10th Cir. 2024).

**Where there are both legal and factual challenges, the court's analysis proceeds in two stages.** First, the court applies the statute's two-step framework to the legal challenge; if any of the counterclaims do not survive that analysis, they are dismissed as under Fed. R. Civ. P. 12. Second, after any allowed amendments to the counterclaims and after discovery has been conducted, the court would then address factual challenges to the subject claims. *Moreau v. U.S. Olympic & Paralympic Comm.*, 641 F. Supp. 3d 1122 (D. Colo. 2022).

**When ruling on a special motion predicated on a factual challenge, federal courts apply the standards set forth in Fed. R. Civ. P. 56.** Rule 56(c)(2) provides that a party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence. Under this standard, plaintiffs need not produce evidence in a form that would be admissible at trial, but the content or substance of the evidence must be admissible. *Coomer v. Make Your Life Epic LLC*, 659 F. Supp. 3d 1189 (D. Colo. 2023), appeal dismissed for lack of appellate jurisdiction, 98 F.4th 1320 (10th Cir. 2024).

**In reviewing a special motion to dismiss,** a court considers whether the motion and supporting affidavits establish a prima facie case that the plaintiff's claim arises from an act in furtherance of

defendant's right to petition or right to free speech in connection with a public issue. If so, the court then considers whether the pleadings and supporting affidavits establish that the nonmoving party has a reasonable likelihood of success on the merits. *Salazar v. Pub. Trust Inst.*, 2022 COA 109M, 522 P.3d 242; *L.S.S. v. S.A.P.*, 2022 COA 123, 523 P.3d 1280; *Rosenblum v. Budd*, 2023 COA 72, 538 P.3d 354; *Anderson v. Senthilnathan*, 2023 COA 88, 540 P.3d 1248; *Moreau v. U.S. Olympic & Paralympic Comm.*, 641 F. Supp. 3d 1122 (D. Colo. 2022); *Coomer v. Make Your Life Epic LLC*, 659 F. Supp. 3d 1189 (D. Colo. 2023), appeal dismissed for lack of appellate jurisdiction, 98 F.4th 1320 (10th Cir. 2024); *Jogan Health, LLC v. Scripps Media, Inc.*, 2025 COA 4, 565 P.3d 1160.

In determining whether the burden under the first step has been met, the court examines the principal thrust or gravamen of the counterclaims. Where a "mixed" claim is based on allegedly protected and unprotected activity under the statute, courts must determine whether the allegedly protected activity is merely incidental to the unprotected conduct. When allegations referring to arguably protected activity are only incidental to a claim based essentially on nonprotected activity, these incidental allegations are insufficient to subject the claim to the statute. This does not suggest, however, that courts need only make a quantitative comparison of allegations of protected versus nonprotected activity. At step one of the inquiry, a court's task is solely to determine whether any portion of a claim has even minimal merit within the

meaning of the statute. *Moreau v. U.S. Olympic & Paralympic Comm.*, 641 F. Supp. 3d 1122 (D. Colo. 2022).

The court assesses whether the allegations and defenses raised in the pleadings and supporting affidavits establish that it is reasonably likely that a jury would find for the plaintiff. The court neither accepts the truth of the plaintiff's allegations nor makes an ultimate determination whether the allegations are true. *Salazar v. Pub. Trust Inst.*, 2022 COA 109M, 522 P.3d 242.

**To defeat a special motion to dismiss**, a plaintiff must present evidence establishing a reasonable likelihood of prevailing on the claim. While the court does not necessarily accept the plaintiff's allegations as true, the court must accept the plaintiff's evidence as true. The court assesses the defendant's evidence only to determine if it defeats the plaintiff's claim as a matter of law. *Coomer v. Donald J. Trump for President, Inc.*, 2024 COA 35, 552 P.3d 562.

**A plaintiff need not support every allegation of the complaint by affidavit or admissible evidence to establish a reasonable likelihood that the plaintiff will prevail on the claim.** However, if a defendant refutes mere allegations in a complaint with affidavits or other evidence, the defendant will generally prevail unless the plaintiff responds with other evidence. *Wright v. TEGNA Inc.*, 2024 COA 64M, 556 P.3d 333.

**A court cannot weigh the evidence nor make credibility determinations at the special motion to dismiss juncture.** *L.S.S. v. S.A.P.*, 2022 COA 123, 523 P.3d 1280;

*Coomer v. Salem Media of Colo., Inc.*, 2025 COA 2, 565 P.3d 1133.

Where plaintiff and defendant presented competing narratives, the plaintiff's allegations were sufficient to create a factual issue despite plaintiff's evidence of actual malice not being particularly compelling. *L.S.S. v. S.A.P.*, 2022 COA 123, 523 P.3d 1280.

Where parties argued over whether social media account impersonating a candidate constituted an invasion of privacy by appropriation of name and likeness or was protected by a first amendment privilege, plaintiff candidate established a reasonable likelihood of success on the misappropriation claim. *Rosenblum v. Budd*, 2023 COA 72, 538 P.3d 354.

**Where the defendant concedes, or the evidence conclusively establishes, that the defendant's asserted protected activity was illegal as a matter of law**, the defendant is precluded from using this section to strike the plaintiff's action. But where allegations that the defendant made false reports are controverted, the evidence is insufficient to render the asserted protected activity unlawful as a matter of law. *L.S.S. v. S.A.P.*, 2022 COA 123, 523 P.3d 1280; *Anderson v. Senthilnathan*, 2023 COA 88, 540 P.3d 1248.

**Orders denying special motions to dismiss necessarily involve fact weighing** and thus cannot be completely separate from the merits. Thus, the collateral-order doctrine does not allow appeals from orders denying special motions to dismiss under

this section. *Coomer v. Make Your Life Epic LLC*, 98 F.4th 1320 (10th Cir. 2024).

**"Reasonable likelihood" means "reasonable probability"** for purposes of this section. *Salazar v. Pub. Trust Inst.*, 2022 COA 109M, 522 P.3d 242; *Rosenblum v. Budd*, 2023 COA 72, 538 P.3d 354; *Coomer v. Make Your Life Epic LLC*, 659 F. Supp. 3d 1189 (D. Colo. 2023), appeal dismissed for lack of appellate jurisdiction, 98 F.4th 1320 (10th Cir. 2024).

**Where a defendant files a special motion to dismiss a claim that is based on the defendant's alleged misuse of the judicial process** in connection with the defendant's challenging governmental activity, the court considers the standard articulated in *Protect Our Mountain Environment, Inc. v. District Court*, 677 P.2d 1361 (Colo. 1984), in determining whether the plaintiff has a reasonable likelihood of succeeding on the claim. *Salazar v. Pub. Trust Inst.*, 2022 COA 109M, 522 P.3d 242.

**In order to withstand a special motion to dismiss where actual malice will have to be proven by clear and convincing evidence at trial**, a plaintiff must establish a probability that they will be able to produce clear and convincing evidence of actual malice at trial. *L.S.S. v. S.A.P.*, 2022 COA 123, 523 P.3d 1280; *Rosenblum v. Budd*, 2023 COA 72, 538 P.3d 354; *Anderson v. Senthilnathan*, 2023 COA 88, 540 P.3d 1248; *Coomer v. Donald. J. Trump for President, Inc.*, 2024 COA 35, 552 P.3d 562; *Coomer v. Salem Media of Colo., Inc.*, 2025 COA 2, 565 P.3d 1133.

**Although a court may not make credibility determinations as to the evidence submitted, that does not mean that a court cannot make determinations as to the reliability of the defendant's account at the time of defendant's statements**, based upon the evidence presented by the parties. Evidence bearing on the reliability of a defendant's source of information, known to the defendant at the time of the statement, may be relevant to actual malice. Such determinations are part of the substantive legal analysis as to whether the plaintiff has established a reasonable likelihood of prevailing on their claims. *Coomer v. Salem Media of Colo., Inc.*, 2025 COA 2, 565 P.3d 1133.

Defendant's argument that he believed his statements to be true, while certainly an argument for the jury, is not enough to prevail at the special motion to dismiss juncture because the plaintiff's evidence, taken as true, shows a reasonable likelihood of being able to present clear and convincing evidence that the defendant, a radio talk show host, had reason to doubt the veracity of his guest because the talk show host knew that his guest's account was based on a wholly anonymous and unsubstantiated speaker. *Coomer v. Salem Media of Colo., Inc.*, 2025 COA 2, 565 P.3d 1133.

**This section applies to a forcible entry and detainer proceeding** so long as the conduct underlying the forcible entry and detainer claim falls within the scope of this section. *VOA Sunset Hous. LP v. D'Angelo*, 2024 COA 61, 555 P.3d 635.

**On its own, an injunction is not subject to a special motion to dismiss** because an injunction is a remedy, not an independent cause of action. An injunction flows from the substantive claim to which it is attached. *Coomer v. Donald J. Trump for President, Inc.*, 2024 COA 35, 552 P.3d 562.

**Two-step test to determine if particular speech or conduct concerns a public issue or an issue of public interest.** First, the court must determine whether an objective observer could reasonably understand that the challenged speech or conduct, considered in light of its content and context, was made in connection with a public issue or an issue of public interest, even if it also implicates a private dispute. Second, the court must examine the relationship between the challenged speech or conduct and the public issue or issue of public interest identified, and whether the challenged activity contributed to public discussion or debate regarding that issue. *Lind-Barnett v. Tender Care Vet. Ctr.*, 2025 CO 62, 580 P.3d 573.

**A speaker's motive is irrelevant** in determining whether the challenged speech or conduct is made in connection with a public issue or an issue of public interest. *Lind-Barnett v. Tender Care Vet. Ctr.*, 2025 CO 62, 580 P.3d 573.

**Statements made on social media and before the legislature were statements "made in . . . a public forum"** under subsection (2)(a)(III). *Anderson v. Senthilnathan*, 2023 COA 88, 540 P.3d 1248.

**Allegations of sexual assault against an elected official were statements "in connection with an issue of public interest"** under subsection (2)(a)(III). *Anderson v. Senthilnathan*, 2023 COA 88, 540 P.3d 1248.

**No reasonable likelihood of success on civil conspiracy claim** where plaintiff candidate failed to present indicia of a collective agreement among defendants apart from shared political ideology, which is insufficient to demonstrate the necessary meeting of the minds. *Rosenblum v. Budd*, 2023 COA 72, 538 P.3d 354.

**Creation of a social media account impersonating a city council candidate was a "statement"**, and, because the medium for the statement was a public Twitter account, the statement was made in a "public forum" under subsection (2)(a)(III). *Rosenblum v. Budd*, 2023 COA 72, 538 P.3d 354.

**Creation of social media account impersonating city council candidate and containing a link to public discourse about the candidate's fitness for office** was a statement made "in connection with an issue of public interest" under subsection (2)(a)(III). *Rosenblum v. Budd*, 2023 COA 72, 538 P.3d 354.

**Partially prevailing defendant on a motion filed under subsection (3)(a) is considered a prevailing party for purposes of attorney fees and costs under subsection (4)(a)** unless the results of the partially successful motion were so insignificant that the defendant did not achieve any practical benefit from bringing

the motion. Determination of whether a party prevailed and to what extent a partial success warrants an award of attorney fees lies within district court's broad discretion. *Rosenblum v. Budd*, 2023 COA 72, 538 P.3d 354.

Partially prevailing defendant may be entitled to attorney fees on appeal. *Rosenblum v. Budd*, 2023 COA 72, 538 P.3d 354.

**Partially prevailing defendant who does not make a specific request that explains the legal and factual basis for an award of attorney fees**, as required by C.A.R. 39.1, is not entitled to an award of attorney fees on appeal. *Coomer v. Salem Media of Colo., Inc.*, 2025 COA 2, 565 P.3d 1133.

**Allegations related to initiation of a lawsuit are protected under this statute.** The constitutional right to petition reaches communications preparatory to or in anticipation of filing a lawsuit. *Moreau v. U.S. Olympic & Paralympic Comm.*, 641 F. Supp. 3d 1122 (D. Colo. 2022).

First, in the context of special motions, whether documents are privileged or confidential is irrelevant at the first step of the inquiry. Second, that courts have held that the use of certain documents for pre-litigation purposes is improper in other contexts does not mean that the conduct falls outside this statute's ambit. In the context of this statute, a party's use of allegedly confidential information for pre-litigation purposes is only fatal at step one where the use of that information is conclusively demonstrated to have been illegal as a matter of law. *Moreau v. U.S. Olympic &*

*Paralympic Comm.*, 641 F. Supp. 3d 1122 (D. Colo. 2022).

In this case, there were no allegations that conclusively establish that the alleged retention and disclosure of confidential documents was illegal or not in furtherance of the preparation of the lawsuit. *Moreau v. U.S. Olympic & Paralympic Comm.*, 641 F. Supp. 3d 1122 (D. Colo. 2022).

**Even a defendant who only partially prevails on a special motion to dismiss is generally considered a "prevailing defendant" for purposes of determining whether the defendant is entitled to recovery of attorney fees and costs**, unless the results of the motion were so insignificant that the party did not achieve any practical benefit from bringing the motion. *Wright v. TEGNA Inc.*, 2024 COA 64M, 556 P.3d 333.

**To establish good cause to lift a discovery stay under subsection (6), the requesting party is required to show that discovery is necessary and tailored to oppose the special motion.** *Jogan Health, LLC v. Scripps Media, Inc.*, 2025 COA 4, 565 P.3d 1160.

**The trial court erred by denying the special motion to dismiss where the plaintiff did not provide any evidence showing that the defendants agreed to defame him or inflict emotional distress upon him.** It is not enough for the plaintiff to argue that the defendants' actions constituted part of a greater political scheme to undermine the 2020 election generally; plaintiff's claim of conspiracy must be

dismissed. *Coomer v. Salem Media of Colo., Inc.*, 2025 COA 2, 565 P.3d 1133.

**A proceeding is quasi-judicial if it involves a determination of the interests, rights, or duties of specific individuals and the application of current law or**

**policy to present or past facts.** Therefore, any statements made during the proceeding are protected by absolute privilege and cannot be used as the basis for a civil lawsuit against the participant who made those statements. *Hushen v. Gonzales*, 2025 CO 37, 570 P.3d 473.

### **13-20-1102. Motion to dismiss - appeal - definitions.**

(1) As used in this section, unless the context otherwise requires:

(a) "Complaint" means a petition or cross-complaint.

(b) "Defendant" means a respondent or cross-defendant.

(c) "Plaintiff" means a petitioner or cross-complainant.

(d) "Protected statement by a victim-survivor" means:

(I) Any written or oral statement or writing made in connection with any phase of a criminal investigation or proceeding;

(II) Any written or oral statement or writing made in connection with an investigation conducted pursuant to Title IX of the federal "Education Amendments of 1972", 20 U.S.C. sec. 1681;

(III) Any written or oral statement or writing made in connection with a child welfare investigation;

(IV) Any written or oral statement or writing made in connection with a petition for civil protection order pursuant to article 14 of this title 13 or an extreme risk protection order pursuant to article 14.5 of this title 13;

(V) Any written or oral statement or writing to any person required to report suspected child abuse or neglect pursuant to section 19-3-304; and

(VI) Any written or oral statement or writing made in connection with any other quasi-judicial proceeding.

(e) "Victim-survivor" means an individual who is alleged to be a victim of a crime charged in the present case which involves domestic violence, as defined in section 18-6-800.3; unlawful sexual behavior, as described in part 4 of article 3 of title 18; stalking, as defined in section 18-3-602; human trafficking for involuntary servitude, as defined in section 18-3-503; or human trafficking for sexual servitude, as defined in section 18-3-504.



(2) (a) A cause of action against a person arising from any protected statement by a victim-survivor is subject to a special motion to dismiss unless the court determines that the plaintiff has established that there is a reasonable likelihood that the plaintiff will prevail on the claim.

(b) In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(c) If the court determines that the plaintiff has established a reasonable likelihood that the plaintiff will prevail on the claim, the court's determination is not admissible as evidence at any later stage of the case or at any subsequent proceeding, and no burden of proof or degree of proof otherwise applicable is affected by the court's determination at any later stage of the case or at any subsequent proceeding.

(3) The special motion must be filed within sixty-three days after the service of the complaint or, in the court's discretion, at a later time upon terms it deems proper. The court shall schedule the motion for a hearing not more than twenty-eight days after the service of the motion unless the docket conditions of the court require a later hearing.

(4) All discovery proceedings in the action are stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery remains in effect until notice of entry of the order ruling on the motion. Notwithstanding this subsection (4), the court may, on noticed motion and for good cause shown, order that specified discovery be conducted.

(5) In any action subject to subsection (2) of this section, a prevailing defendant on a special motion to dismiss is entitled to recover the defendant's attorney fees and costs. If the court finds that a special motion to dismiss is frivolous or is solely intended to cause unnecessary delay, pursuant to part 1 of article 17 of this title 13, the court shall award costs and reasonable attorney fees to a plaintiff prevailing on the motion.

(6) In the case of an order granting or denying a special motion to dismiss in county court, the order is immediately appealable to the district court. In the case of an order granting or denying a special motion to dismiss in district court, the order is immediately appealable to the court of appeals.

**Source: L. 2026:** Entire section added, (SB 26-095), ch. 133, p. 590, § 3, effective May 19.

## PART 12

### ACTIONS FOR SEXUAL MISCONDUCT AGAINST MINORS

**Editor's note:** In *Aurora Public Schools v. A.S.*, 2023 CO 39, 531 P.3d 1036, the Colorado supreme court held that a cause of action brought under this part 12 for conduct committed before its enactment and for which any previously available claims would be time-barred is retrospective in violation of article II, section 11, of the Colorado constitution.

**Cross references:** For the legislative declaration in SB 21-088, see section 1 of chapter 442, Session Laws of Colorado 2021.

#### **13-20-1201. Definitions.**

As used in this part 12, unless the context otherwise requires:

- (1) "Actor" means a person accused of committing sexual misconduct.
- (2) "Agent" means a person who, subject to the control of another person or organization, acts for, or on behalf of, the other person or organization.
- (3) "Educational entity" has the same meaning set forth in section 22-12-103.
- (4) "Managing organization" means a public entity or an entity, as defined in section 7-90-102, that operates or manages a youth-related activity or program, and as part of operating or managing the youth-related activity or program:
  - (a) Hires adults as employees or agents or retains adults as volunteers of the youth-related activity or program;
  - (b) Sets standards for adult employee, agent, and volunteer participation in the youth-related activity or program and controls the conduct of the employees, agents, and volunteers; or
  - (c) Represents that the adults involved in the youth-related activity or program are screened by the managing organization.
- (5) "Minor" means a person younger than eighteen years of age.
- (6) "Public employee" has the same meaning set forth in section 24-10-103 (4) and includes an employee as defined in section 22-12-103.
- (7) "Public entity" has the same meaning set forth in section 24-10-103 (5) and includes an educational entity.

(8) "Sexual misconduct" means any conduct that is engaged in for the purpose of the sexual arousal, gratification, or abuse of any person, and that constitutes any of the following:

(a) A first degree misdemeanor or a felony offense described in part 3 or 4 of article 3 of title 18 or a felony offense described in article 6 or 7 of title 18;

(b) Human trafficking for sexual servitude, as described in section 18-3-504;

(c) A federal sex offense as defined in the federal "Sex Offender Registration and Notification Act", 34 U.S.C. sec. 20911 (5)(A)(iii);

(d) Obscene visual representations of the sexual abuse of children, as described in 18 U.S.C. sec. 1466A;

(e) Transfer of obscene material to minors, as described in 18 U.S.C. sec. 1470; or

(f) Attempt or conspiracy to commit sex trafficking of children or by force, fraud, or coercion, as described in 18 U.S.C. sec. 1594.

(9) "Youth-related activity or program" means an event, program, service, or any other enterprise that involves participation by a minor, including but not limited to youth programs, educational programs, and religious activities operated by an individual or organization that provides activities, services, trips, or events for minors with adults who are placed in positions of responsibility, trust, or supervision over the participating minors, regardless of the particular location, length, goals, or format of the activities, services, trips, or events. "Youth-related activity or program" includes transportation, lodging, and unscheduled activities provided in relation to any activities, services, trips, or events when a youth-related activity or program employee, agent, or volunteer is responsible for the supervision of the participating minors. "Youth-related activity or program" also includes an educational program operated by an educational entity for students in kindergarten through twelfth grade, or any portion thereof; a district preschool program under the supervision of the educational entity or its employees or agents; or before- and after-school activities conducted under the supervision of the educational entity or its employees or agents.

**Source: L. 2021:** Entire part added, (SB 21-088), ch. 442, p. 2924, § 2, effective January 1, 2022. **L. 2022:** (9) amended, (HB 22-1295), ch. 123, p. 827, § 26, effective July 1.

### **13-20-1202. Civil cause of action for sexual misconduct against a minor - exceptions.**

(1) A person who is a victim of sexual misconduct that occurred when the victim was a minor may bring a civil action for damages against:

- (a) An actor who committed the sexual misconduct; and
  - (b) A managing organization that knew or should have known that an actor or youth-related activity or program posed a risk of sexual misconduct against a minor and the sexual misconduct occurred while the victim was participating in the youth-related activity or program operated or managed by the organization.
- (2) The civil action described in this section is in addition to, and does not limit or affect, other actions available by statute or common law, before or after January 1, 2022, and must be pleaded as a separate claim for relief if a complaint also asserts a common law claim for relief.

**Source: L. 2021:** Entire part added, (SB 21-088), ch. 442, p. 2925, § 2, effective January 1, 2022.

### **13-20-1203. Limitation on action - retroactive application.**

- (1) Notwithstanding any other provision of law, a person who was the victim of sexual misconduct that occurred when the victim was a minor and that occurred on or after January 1, 2022, may bring an action pursuant to this part 12 at any time without limitation.
- (2) A person who was the victim of sexual misconduct that occurred when the victim was a minor and that occurred on or after January 1, 1960, but before January 1, 2022, may bring an action pursuant to this part 12. An action described in this subsection (2) must be commenced before January 1, 2025.

**Source: L. 2021:** Entire part added, (SB 21-088), ch. 442, p. 2925, § 2, effective January 1, 2022.

### **ANNOTATION**

**This part 12 is unconstitutionally retrospective** to the extent that it permits a victim to bring a claim for sexual misconduct based on conduct that predates

the enactment of this part 12 and for which previously available causes of action were time-barred. *Aurora Public Schools v. A.S.*, 2023 CO 39, 531 P.3d 1036.

**13-20-1204. Waiver of liability void.**

Any pre-incident waiver, either for consideration or gratuitously, of a person's right to bring an action pursuant to this part 12 is void as against public policy.

**Source: L. 2021:** Entire part added, (SB 21-088), ch. 442, p. 2926, § 2, effective January 1, 2022.

**13-20-1205. No contributory negligence - interest on damages - limitation on damages.**

(1) Notwithstanding sections 13-21-111 and 13-21-111.5, a court or jury shall not allocate any damages awarded in an action brought pursuant to this part 12 in any proportion against a victim of sexual misconduct.

(2) Notwithstanding section 13-21-101, prejudgment interest on a claim brought pursuant to this part 12 does not begin to accrue until the plaintiff files the claim pursuant to section 13-20-1202.

(3) The maximum amount that may be recovered in a claim brought pursuant to this part 12 is:

(a) For a claim brought against a public employee or public entity, as provided in section 13-20-1207; and

(b) For any other claim, five hundred thousand dollars; except that if the court finds by clear and convincing evidence that the defendant failed to take remedial action against a person or persons the defendant knew or should have known, based on information that, at the time of the incident, was in the defendant's possession or was publicly or readily available through commonly used practices, posed a risk of sexual misconduct to a minor and that the application of such limitation would be unfair, the court may award in excess of the limitation up to the amount of damages awarded by the jury. In no case shall the total amount awarded to a plaintiff exceed one million dollars.

**Source:** Entire part added, (SB 21-088), ch. 442, p. 2926, § 2, effective January 1, 2022.

**13-20-1206. Attorney fees.**

Section 13-17-201, which requires an award of attorney fees to defendants in certain actions dismissed prior to trial, does not apply to an action brought pursuant to this part 12.

**Source:** Entire part added, (SB 21-088), ch. 442, p. 2926, § 2, effective January 1, 2022.

**13-20-1207. Applicability of part to public entities and public employees - damages - no duty to indemnify.**

(1) (a) Notwithstanding sections 22-12-104, 24-10-105, 24-10-106, 24-10-108, and 24-10-118, or any other state law that prohibits civil actions against a public employee or public entity, a person may bring a claim alleging liability for injuries arising from sexual misconduct pursuant to this part 12 against a public employee or public entity.

(b) Notwithstanding sections 22-12-104 (3), 24-10-109 (1), and 24-10-118 (1)(a), requiring the filing of a written notice, a person who brings an action pursuant to this part 12 is not required to file written notice as a jurisdictional prerequisite to the action.

(c) The maximum amount that may be recovered from a public employee or public entity as set forth in section 24-10-114 applies to a claim brought against a public employee or public entity pursuant to this part 12.

(2) Notwithstanding any provision of this part 12 or any other provision of law, the state, as defined in section 24-10-103 (7), and a public entity do not have a duty to defend or indemnify a public employee for a claim alleging sexual misconduct pursuant to this part 12, if the employee's conduct is willful or wanton.

**Source:** Entire part added, (SB 21-088), ch. 442, p. 2926, § 2, effective January 1, 2022.

## PART 13

### MISCELLANEOUS ACTIONS

**Cross references:** For the legislative declaration in SB 24-011, see section 1 of chapter 402, Session Laws of Colorado 2024.

**13-20-1301. Actions for tracking a person without consent - definitions.**

(1) As used in this section, unless the context otherwise requires:

(a) "Actor" means a person who tracks another person through the use of a tracking application or tracking device.

(b) "Tracking application" means any software program that permits an actor to remotely determine or track the position or movement of another person or another person's property.

(c) "Tracking device" means an electronic or mechanical device that permits an actor to remotely determine or track the position or movement of another person or another person's personal property.

(2) (a) A person who was tracked by means of a tracking device or tracking application may bring a claim for damages, including noneconomic loss or injury, against the actor who installed a tracking device on the person's personal property without the person's consent or who caused a tracking device or tracking application to track the position or movement of the person or person's personal property without the person's consent. An actor is liable to the extent the actor's conduct was the proximate cause of the harm caused by the tracking device or tracking application.

(b) A person who has given consent for an actor to install a tracking device or tracking application on the consenting person's personal property may revoke the consent at any time and may bring a claim pursuant to this section for tracking that occurred after the person revoked consent.

(3) Notwithstanding subsection (2) of this section, a person shall not bring a claim against a law enforcement agency or peace officer for actions taken as part of a criminal investigation; a peace officer acting within the scope of the peace officer's official duties; a public highway authority, created pursuant to part 5 of article 4 of title 43, acting within the scope of its authority to collect tolls; the high performance transportation enterprise created in section 43-4-806 acting within the scope of its authority to collect tolls and enforce toll and safety violations; or a parent or legal guardian of a minor child for tracking the minor child.

**Source: L. 2024:** Entire part added, (SB 24-011), ch. 402, p. 2767, § 4, effective August 7.

**13-20-1302. Actions based on sexual orientation or gender identity change efforts - limitation - damages - legislative intent - definitions.**

(1) As used in this section, unless the context otherwise requires:

(a) "Licensed mental health professional" means a mental health provider who holds or held a valid license, certification, or registration issued pursuant to article 245 of title 12 at the time the sexual orientation or gender identity change efforts occurred.

(b) (I) "Sexual orientation or gender identity change efforts" means any practice by a licensed mental health professional that seeks to direct a patient toward a predetermined sexual

orientation or gender identity outcome, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of a particular sex or gender, regardless of the sexual orientation or gender identity the patient is directed toward.

(II) "Sexual orientation or gender identity change efforts" does not include:

(A) Counseling or therapy that provides acceptance, support, and understanding of a patient or facilitates a patient's coping, social support, and identity exploration and development, without seeking to direct the patient toward a predetermined sexual orientation or gender identity outcome;

(B) Counseling or therapy that is neutral with respect to sexual orientation and gender identity and that does not seek to direct the patient toward a predetermined sexual orientation or gender identity outcome; or

(C) Counseling or therapy related to a patient's sexual behaviors, practices, or relationships, provided that the counseling or therapy does not seek to direct the patient toward a predetermined sexual orientation or gender identity.

(2) (a) A person who suffered an injury as a result of sexual orientation or gender identity change efforts may bring a civil action for damages.

(b) Notwithstanding any other statute of limitations specified in article 80 of this title 13 or any other provision of law that can be construed to limit the time period to commence an action described in this section, a civil action to recover damages for the provision of sexual orientation or gender identity change efforts may be commenced at any time without limitation.

(3) In an action brought pursuant to this section, the plaintiff may recover damages that include:

(a) Economic damages;

(b) Noneconomic damages;

(c) Exemplary damages if the conduct of the defendant was willful or wanton, as provided in section 13-21-102; and

(d) Any other damages deemed appropriate by the court.

(4) In an action brought pursuant to this section, the trier of fact may consider the nature, duration, and intensity of the sexual orientation or gender identity change efforts, the age and vulnerability of the plaintiff at the time the sexual orientation or gender identity change efforts took place, the relationship between the plaintiff and the mental health professional, the temporal relationship between the sexual orientation or gender identity change efforts and the onset or exacerbation of symptoms, and any other relevant factors.



(5) (a) The cause of action described in this section survives the death of the person who underwent sexual orientation or gender identity change efforts and may be brought or maintained by the person's personal representative or estate.

(b) Notwithstanding the statute of limitations described in section 13-80-112, an action brought as a survival action pursuant to subsection (5)(a) of this section must be brought within five years after the person's death.

(c) Notwithstanding the limitation on damages in section 13-20-101 (1), the person's personal representative or estate may recover all damages available pursuant to subsection (3) of this section in an action brought or maintained pursuant to this subsection (5).

(6) This section does not create a new cause of action.

(7) It is the intent of the general assembly that this section be interpreted broadly to effectuate its remedial purpose of providing civil remedies to persons harmed by sexual orientation or gender identity change efforts.

(8) This section applies to causes of action accruing on or after July 1, 2026, and to causes of action accruing before July 1, 2026, if the applicable statute of limitations, as it existed prior to July 1, 2026, has not yet run on July 1, 2026.

**Source: L. 2026:** Entire section added, (HB 26-1322), ch. 260, p. 1437, § 2, effective July 1.

**Editor's note:** Section 4 of chapter 260 (HB 26-1322), Session Laws of Colorado 2026, provides that the act adding this section applies to a cause of action filed on or after July 1, 2026.

**Cross references:** For the legislative declaration in HB 26-1322, see section 1 of chapter 260, Session Laws of Colorado 2026.

**13-20-1303. Action for access to adjoining property to accomplish repairs or maintenance - applicability - definitions.**

(1) As used in this section, unless the context otherwise requires:

(a) "Adjoining owner" means the owner of real property that adjoins a requesting owner's property and onto which a requesting owner seeks entry.

(b) "Refuse" means an adjoining owner's:

(I) Denial to the requesting owner, verbally or in writing, of access to the adjoining property for the purpose of accomplishing repairs or maintenance of the requesting owner's property; or

(II) Failure to respond within sixty days of receipt of written notice sent via certified mail from the requesting owner to the adjoining owner regarding access to the adjoining property for the purpose of accomplishing repairs or maintenance of the requesting owner's property.

(c) "Requesting owner" means the owner of a single-family residence who seeks entry onto an adjoining property for the purpose of accomplishing repairs or maintenance of the requesting owner's property.

(d) "Single-family residence" means a private residence that is a separate building or an individual residence that is part of a row of residences joined by common sidewalks.

(2) If a requesting owner seeks to make repairs to or complete maintenance on the requesting owner's property, the repairs or maintenance cannot reasonably be accomplished without entering onto an adjoining owner's property, and the adjoining owner refuses to permit entry onto the adjoining owner's property for the purpose of the repair or maintenance, the requesting owner may petition the district court of the county in which the properties are located to permit the requesting owner to enter onto the adjoining owner's property for the purpose of the repair or maintenance of the requesting owner's property.

(3) Before bringing an action pursuant to subsection (2) of this section, the requesting owner is encouraged to engage in alternative dispute resolution, such as mediation, with the adjoining property owner, to access the adjoining property to make repairs or maintenance.

(4) In an action brought pursuant to subsection (2) of this section:

(a) The requesting owner must specify the nature of the repairs or maintenance they seek to complete and describe why the repairs or maintenance cannot be made without accessing the adjoining owner's property;

(b) The requesting owner must demonstrate that they have made reasonable efforts to obtain permission from the adjoining owner to access the adjoining owner's property and that the adjoining owner has refused such access; and

(c) The adjoining owner may present evidence that access to the adjoining owner's property is not necessary to complete the repairs or maintenance.

(5) If the court determines that access to the adjoining owner's property is necessary to allow repair to or maintenance on the requesting owner's property and will not negatively affect any easement on the adjoining owner's property, the court shall grant access as the court deems necessary to allow completion of the repair or maintenance. The court shall prescribe the conditions and duration of the requesting owner's access to the adjoining owner's property and may require:

- (a) Reasonable notice to the adjoining owner in advance of the access;
  - (b) Reasonable compensation to the adjoining owner;
  - (c) That the requesting owner purchase insurance or post bond to cover any damage to property, personal injury, or loss of life, that may occur because of the repair or maintenance; or
  - (d) Any other condition deemed necessary by the court.
- (6) This section does not apply if the adjoining property is owned or controlled by the federal government, the state, or a political subdivision of the state.

**Source: L. 2026:** Entire section added, (SB 26-177), ch. 188, p. 1101, § 1, effective August 12.

**Editor's note:** This section was numbered as § 13-20-1304 in SB 26-177 but was renumbered on revision for ease of location.

## DAMAGES AND LIMITATIONS ON ACTIONS

### ARTICLE 21

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PART 15  
PREVENTING UNAUTHORIZED  
DISCLOSURE OF INTIMATE DIGITAL  
DEPICTIONS ACT

- 13-21-1501. Short title.
- 13-21-1502. Definitions.
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PART 1

GENERAL PROVISIONS

**Editor's note:** Colorado recognizes "wrongful birth" claims but not "wrongful life" claims. For discussion of such claims, see *Lininger v. Eisenbaum*, 764 P.2d 1202 (Colo. 1988) and *Empire Cas. v. St. Paul Fire and Marine*, 764 P.2d 1191 (Colo. 1988).

**Cross references:** For damages recoverable for failure to comply with excavation requirements, see § 9-1.5-104.5; for the admissibility of evidence of failure to wear a safety belt system to mitigate damages resulting from a motor vehicle accident, see § 42-4-237 (7).

**Law reviews:** For article, "Using Mental Health Professionals to Maximize Damages in Personal Injury Cases", see 15 Colo. Law. 2009 (1986); for article, "1986 Colorado Tort Reform Legislation", see 15 Colo. Law. 1363 (1986); for article, "Introduction to the Tort Reform Symposium: Some Cautioning Implications of Legislative Tort Reform", see 64 Den. U. L. Rev. 613 (1988); for article, "The Assault on Injured Victims' Rights", see 64 Den. U. L. Rev. 625 (1988); for article, "The Insurance 'Crisis': Reality or Myth? A Plaintiffs' Lawyer's Perspective",

see 64 Den. U. L. Rev. 641 (1988); for article, "Constitutional Challenges to Tort Reform: Equal Protection and State Constitutions", see 64 Den. U. L. Rev. 719 (1988); for article, "The Failed Tubal Ligation: Bringing a Wrongful Birth Case to Trial", see 17 Colo. Law. 849 (1988); for article, "Limiting Lender Liability through the Statute of Frauds", see 18 Colo. Law. 1725 (1989); for comment, "Stemming the Tide of Lender Liability: Judicial and Legislative Reactions", see 67 Den. U. L. Rev. 453 (1990); for comment, "Comprehensive General Liability Insurance Coverage for CERCLA Liabilities: A Recommendation for Judicial Adherence to State Canons of Insurance Contract Construction", see 61 U. Colo. L. Rev. 407 (1990); for article, "A Federal Genie from a State Bottle: § 1983 in the Colorado State Courts", see 19 Colo. Law. 617 (1990); for article, "1990 Update on Colorado Tort Reform Legislation", see 19 Colo. Law. 1529 (1990).

### **13-21-101. Interest on damages.**

(1) In all actions brought to recover damages for personal injuries sustained by any person resulting from or occasioned by the tort of any other person, corporation, association, or partnership, whether by negligence or by willful intent of the other person, corporation, association, or partnership and whether the injury has resulted fatally or otherwise, it is lawful for the plaintiff in the complaint to claim interest on the damages alleged from the date the suit is filed; and, on and after July 1, 1979, it is lawful for the plaintiff in the complaint to claim interest on the damages claimed from the date the action accrued. When such interest is claimed, it is the duty of the court in entering judgment for the plaintiff in the action to add to the amount of damages assessed by the verdict of the jury, or found by the court, interest on the amount calculated at the rate of nine percent per annum on actions filed on or after July 1, 1975, and at the legal rate on actions filed prior to such date, and calculated from the date the suit was filed to the date of satisfying the judgment and to include the same in the judgment. On actions filed on or after July 1, 1979, the calculation must include compounding of interest annually from the date the suit was filed. On and after January 1, 1983, if a judgment for money in an action brought to recover damages for personal injuries is appealed by the judgment debtor, postjudgment interest must be calculated on the sum at the rate set forth in subsections (3) and (4) of this section from the date of judgment through the date of satisfying the judgment and must include compounding of interest annually.

(2) (a) If a judgment for money in an action brought to recover damages for personal injuries is appealed by a judgment debtor and the judgment is affirmed, postjudgment interest, as set out in subsections (3) and (4) of this section, is payable from the date of judgment through the date of satisfying the judgment.

(b) If a judgment for money in an action to recover damages for personal injuries is appealed by a judgment debtor and the judgment is modified or reversed with a direction that a judgment

for money be entered in the trial court, postjudgment interest, as set out in subsections (3) and (4) of this section, is payable from the date of judgment through the date of satisfying the judgment. This postjudgment interest is payable on the amount of the final judgment.

(3) The rate of postjudgment interest must be certified on each January 1 by the secretary of state to be two percentage points above the discount rate, which discount rate must be the rate of interest a commercial bank pays to the federal reserve bank of Kansas City using a government bond or other eligible paper as security, and rounded to the nearest full percent. Such annual rate of interest must be established as of December 31, 1982, to become effective January 1, 1983. Thereafter, as of December 31 of each year, the annual rate of interest must be established in the same manner, effective on January 1 of the following year.

(4) The rate at which postjudgment interest accrues during each year is the rate which the secretary of state has certified as the annual interest rate pursuant to subsection (3) of this section.

**Source:** L. 11: p. 296, § 1. C.L. § 6306. CSA: C. 50, § 5. CRS 53: § 41-2-1. C.R.S. 1963: § 41-2-1. L. 75: Entire section amended, p. 569, § 1, effective July 1. L. 79: Entire section amended, p. 316, § 3, effective July 1. L. 82: Entire section amended, p. 227, § 3, effective January 1, 1983. L. 2018: Entire section amended, (SB 18-098), ch. 99, p. 772, § 2, effective August 8.

**Cross references:** (1) For rate of interest authorized upon a judgment for damages, see § 5-12-102; for general provisions on interest, see article 12 of title 5.

(2) For the legislative declaration in SB 18-098, see section 1 of chapter 99, Session Laws of Colorado 2018.

## ANNOTATION

I. General Consideration.

II. Request in Complaint.

III. Inapplicable Actions.

### I. GENERAL CONSIDERATION.

**Law reviews.** For note, "Interest as Damages in Colorado", see 16 Rocky Mt. L. Rev. 162 (1944). For note, "Interest as

Damages in Colorado", see 28 Dicta 285 (1951). For note, "Notes and Comments: What is a Life Worth", see 34 Dicta 41 (1957). For note, "Colorado Interest Law", see 34 Dicta 398 (1957). For case note, "Pre-Judgment Interest as an Element of Damages", see 49 U. Colo. L. Rev. 335 (1978). For article, "Rates of Interest on State and Federal Court Judgments: An

Update", see 12 Colo. Law. 446 (1983). For article, "Collecting Pre- and Post-Judgment Interest in Colorado: A Primer", see 15 Colo. Law. 753 (1986). For article, "An Update of Appendices from Collecting Pre- and Post-Judgment Interest in Colorado," see 15 Colo. Law. 990 (1986). For article, "Recovery of Interest: Parts I and II", see 18 Colo. Law. 1063 and 1307 (1989). For article, "Immunities from Liability for Colorado Nonprofit Organization," see 25 Colo. Law. 37 (May 1996).

**Plain language of section** requires a nine-percent interest rate for personal injury money judgments that the judgment debtor does not appeal and a market-determined interest rate for both pre- and post-judgment interest for judgments that the judgment debtor does appeal. *Rodriguez v. Schutt*, 914 P.2d 921 (Colo. 1996).

**The receipt of interest is not a fundamental right** and this section does not affect or create a suspect class. Therefore disparate treatment of similarly situated individuals will be upheld if it has a "rational basis." *Rodriguez v. Schutt*, 914 P.2d 921 (Colo. 1996).

**For prejudgment interest, there is no rational basis in fact** to distinguish between judgment creditors and debtors depending on whether judgment debtors later appeal. Therefore, section is unconstitutional to the extent that it changes the rate of interest on prejudgment interest if the judgment debtor appeals. *Rodriguez v. Schutt*, 914 P.2d 921 (Colo. 1996).

**This section does not result in a deprivation of due process** when the trial

court based its award of prejudgment interest on future damages on this section. This section does not distinguish between past and future damage awards to calculate prejudgment interest. Prejudgment interest is to compensate the injured party for loss of use of money and to encourage settlement. Therefore, there is a rational basis for awarding prejudgment interest on future damages. *Scott v. Matlack, Inc.*, 1 P.3d 185 (Colo. App. 1999), rev'd on other grounds, 39 P.3d 1160 (Colo. 2002).

**There is a rational basis for treating postjudgment interest differently depending on whether the judgment debtor appeals.** The elimination of financial incentives or disincentives to appeal is a reasonable legislative purpose. *Rodriguez v. Schutt*, 914 P.2d 921 (Colo. 1996).

**There is a rational basis for the difference in treatment between this section and § 5-12-102.** *Colwell v. Mentzer Invs, Inc.*, 973 P.2d 631 (Colo. App. 1998).

**Exception in subsection (2) only applies if the judgment debtor, normally the defendant, appeals the money judgment.** The rate in subsection (1) applies when the judgment creditor, normally the plaintiff, appeals. *Averyt v. Wal-Mart Stores, Inc.*, 2013 COA 10, 302 P.3d 321.

**Where plaintiff is not entitled to prejudgment interest and the judgment debtor appeals the judgment,** plaintiff is entitled to an award of postjudgment interest calculated from the date judgment was entered to the date of satisfaction, and not from the date upon which the action accrued. *Sperry v. Field*, 133 P.3d 141 (Colo.

App. 2008), aff'd, 205 P.3d 365 (Colo. 2009).

**Interest in Colorado is a creature of statute** and regulated thereby. *Denver Horse Importing Co. v. Schafer*, 58 Colo. 376, 147 P. 367 (1915); *Clark v. Hicks*, 127 Colo. 25, 252 P.2d 1067 (1953).

**Section must be strictly construed.** "Interest statutes, being in derogation of the common law, must be strictly construed". *City of Boulder v. Stewardson*, 67 Colo. 582, 189 P. 1 (1920); *Dobbs v. Sugioka*, 117 Colo. 218, 185 P.2d 784 (1947); *Clark v. Hicks*, 127 Colo. 25, 252 P.2d 1067 (1953).

**This provision imparts no discretion to the trial court;** it must be applied to any judgment resulting from an action for personal injuries. *Stemple v. Phillips Petroleum Co.*, 430 F.2d 178 (10th Cir. 1970); *Huffman v. Caterpillar Tractor Co.*, 645 F. Supp. 909 (D. Colo. 1986); *Todd v. Bear Valley Vill. Apts.*, 980 P.2d 973 (Colo. 1999).

**A judgment may be composed of both principal and interest.** *Sec. Ins. Co. v. Houser*, 191 Colo. 189, 552 P.2d 308 (1976).

**Court may correct judgment when requested interest is omitted.** It is mandatory on a trial court to include interest pursuant thereto when properly claimed upon entering judgment, and it is not error for a court to correct a judgment by including interest when the omission is called to its attention. *Crosby v. Kroeger*, 138 Colo. 55, 330 P.2d 958 (1958).

**Under C.R.C.P. 60(a), a failure to include interest when entering judgment is**

an oversight or omission within the terms of the rule. *Crosby v. Kroeger*, 138 Colo. 55, 330 P.2d 958 (1958).

Since the statute required an award of prejudgment interest and failure to include such interest was merely a ministerial oversight, passage of five years since entry of the award would not prevent the addition of prejudgment interest, even though the original amount of the award had been satisfied. *Brooks v. Jackson*, 813 P.2d 847 (Colo. App. 1991).

**Interest may be assessed in tort action under Governmental Immunity Act.** *Lee v. Colo. Dept. of Health*, 718 P.2d 221 (Colo. 1986).

**Interest recoverable in action for death caused by injuries.** Under the provisions of this section, a party seeking damages for the death of his wife alleged to have been occasioned by the tort of another, is entitled to interest on any amount he may recover, the section being sufficiently comprehensive to include all actions of tort founded on injuries to the person, whether nonfatal or fatal. *Am. Ins. Co. v. Naylor*, 103 Colo. 461, 87 P.2d 260 (1939).

**When injury is personal.** An injury is personal when it impairs the well-being or the mental or physical health of the victim. *Miller v. Carnation Co.*, 39 Colo. App. 1, 564 P.2d 127 (1977); *McCafferty v. Musat*, 817 P.2d 1039 (Colo. App. 1990); *Herod v. Colo. Farm Bureau Mut. Ins.*, 928 P.2d 834 (Colo. App. 1996).

**Interest is awarded from filing of first complaint when there are two trials.**

Where judgment in favor of a person who had suffered personal injuries was reversed and a second docket fee had been paid and a second trial had resulted in a verdict for the injured party, he might recover interest from the time the complaint was filed for the first trial, interest having been asked for from the date of the filing of the suit. *Am. Ins. Co. v. Naylor*, 103 Colo. 461, 87 P.2d 260 (1939); *Parrish v. Smith*, 109 Colo. 132, 123 P.2d 406 (1942).

**Subsection (1) requires interest to be calculated** from date action accrued and to be compounded annually from date suit is filed. *Smith v. JBJ Ltd.*, 694 P.2d 352 (Colo. App. 1984).

**Simple interest from accrual of cause of action until filing of complaint must be included in initial base amount** on which annual compounding is calculated. To do otherwise is to deprive the plaintiff of one year's worth of compounding. *Francis v. Dahl*, 107 P.3d 1171 (Colo. App. 2005).

**Interest on an award for annoyance and discomfort** is recoverable from the date of the filing of the complaint. *Miller v. Carnation Co.*, 39 Colo. App. 1, 564 P.2d 127 (1977) (decided prior to 1979 amendment).

**Prejudgment interest is in the nature of another item of damages.** *Houser v. Eckhardt*, 35 Colo. App. 155, 532 P.2d 54 (1974), *aff'd sub nom. Sec. Ins. Co. v. Houser*, 191 Colo. 189, 552 P.2d 308 (1976); *Heid v. Destefano*, 41 Colo. App. 436, 586 P.2d 246 (1978); *Allstate Ins. Co. v. Starke*, 797 P.2d 14 (Colo. 1990).

**The legislative purpose behind awarding interest under this section is to compensate the plaintiff for the time value of the amount of his or her judgment.** An award of any additional interest above the amount of the final judgment is thus inconsistent with the compensatory purpose of the statute. *Morris v. Goodwin*, 185 P.3d 777 (Colo. 2008).

**This section must be interpreted to provide interest on the amount awarded by the final judgment, regardless of the jury's determination.** *Morris v. Goodwin*, 185 P.3d 777 (Colo. 2008).

**Interest payable only to extent of insurer's liability.** This section does not obligate an insurer to pay prejudgment interest on the judgment where it would increase the liability of the insurer to an amount over that for which it had contracted. *Houser v. Eckhardt*, 35 Colo. App. 155, 532 P.2d 54 (1974), *aff'd sub nom. Sec. Ins. Co. v. Houser*, 191 Colo. 189, 552 P.2d 308 (1976); *Allstate Ins. Co. v. Starke*, 797 P.2d 14 (Colo. 1990); *Old Republic Ins. Co. v. Ross*, 180 P.3d 427 (Colo. 2008).

**This section applies to actions** which accrue before the effective date of this section but which are filed after such effective date. *Briggs v. Cornwell*, 676 P.2d 1252 (Colo. App. 1983); *Martinez v. Jesik*, 703 P.2d 638 (Colo. App. 1985); *McCafferty v. Musat*, 817 P.2d 1039 (Colo. App. 1990).

**An injury is not personal when inflicted on property.** *Miller v. Carnation Co.*, 39 Colo. App. 1, 564 P.2d 127 (1977).

**Injuries properly determined as "personal" and not "property"** in case where toxic contamination to property caused homeowners inconvenience and loss of peace of mind based on their fear that contaminants could be present in portions of their homes and the perceived stigma attached to homes in the neighborhood. Therefore, the trial court was correct in awarding prejudgment interest on damages at the rate allowed for cases involving "personal injuries". *Antolovich v. Brown Grp. Retail, Inc.*, 183 P.3d 582 (Colo. App. 2007).

**Plaintiff entitled to prejudgment interest on awarded damages in economic losses or injuries for negligent misrepresentation claim.** Plaintiff brought suit seeking damages for a misrepresentation made to her, not for any damage to property personal or real. Nothing in this section's terms seems to require an inquiry into the particular type of compensatory damages (economic or noneconomic) the jury eventually awards. *David v. Sirius Computer Sols., Inc.*, 779 F.3d 1209 (10th Cir. 2015).

**Statute applies to claims accruing before the effective date of statute.** *Briggs v. Cornwell*, 676 P.2d 1252 (Colo. App. 1983).

**Plaintiff entitled to interest on damages from date of accident** even though it occurred prior to July 1, 1979. Application of the 1979 amendments does not violate the constitutional ban on retroactive laws. *Meller v. Heil Co.*, 745 F.2d 1297 (10th Cir. 1984).

**Plaintiff entitled to prefiling, prejudgment interest on pre-majority medical expenses from the date of accident, which was the date of plaintiff's birth**, even though the common law rule precluding such recovery for minors had not been abolished at the time of plaintiff's birth. *Rudnicki v. Bianco*, 2023 COA 103, 542 P.3d 1198, *aff'd*, 2025 CO 49, 576 P.3d 160.

**Interest on damages were properly found to begin accruing from the date defendant discovered that contamination had crossed its property boundary and not from the date plaintiff learned of the contamination.** The court found that a holding to the contrary would only encourage wrongdoers to stall or hide important information in order to avoid prejudgment interest. *Antolovich v. Brown Grp. Retail, Inc.*, 183 P.3d 582 (Colo. App. 2007).

**The award of prejudgment interest serves not only the purpose of compensating a party for the loss of use of money** but is also used to encourage the settlement of cases both pre- and post-trial. *Stevens v. Humana of Del., Inc.*, 832 P.2d 1076 (Colo. App. 1992).

**Statute applies to action for strict liability in tort.** *Huffman v. Caterpillar Tractor Co.*, 645 F. Supp. 909 (D. Colo. 1986).

**Subsection (1) does not distinguish for the purpose of awarding interest between future and past damage awards.** Because the statute itself does not distinguish between future and past damage awards, the general assembly did not intend that these

concepts be applied. *Stevens v. Humana of Del., Inc.*, 832 P.2d 1076 (Colo. App. 1992); *Scholz v. Metro. Pathologists, P.C.*, 851 P.2d 901 (Colo. 1993).

The fact that past and future damages awards are based on separate findings under § 13-64-204 does not affect the plain language of subsection (1), which requires the court to add prejudgment interest to any personal injury verdict. *Mumford v. Hughes*, 852 P.2d 1289 (Colo. App. 1992).

**Subsection (1) does not differentiate for the purpose of awarding interest between an award of past and future damages.** The language of subsection (1) requires the court to add nine percent interest to any personal injury verdict. *Stevens v. Humana of Del., Inc.*, 832 P.2d 1076 (Colo. App. 1992).

**Since the interest statute does not distinguish between future and past damage awards,** and damages for past and future losses were routinely awarded at the time of its enactment, it must be assumed that the general assembly intended to award prejudgment interest in all cases in which a jury verdict award was made. *Stevens v. Humana of Del., Inc.*, 832 P.2d 1076 (Colo. App. 1992); *Mumford v. Hughes*, 852 P.2d 1289 (Colo. App. 1992).

Award of prejudgment interest on wrongful death damages from time of death is appropriate. *Combined Com. Corp. v. Pub. Serv. Co.*, 865 P.2d 893 (Colo. App. 1993).

**Subsection (1) does not apply to damages resulting from a breach of**

**contract.** *Shannon v. Colo. Sch. of Mines*, 847 P.2d 210 (Colo. App. 1992).

**Even though an underinsured motorist policy is a contract and therefore would not fall under this section,** the claim under that policy may be premised upon a tort claim for bodily injury and therefore accrue interest at the nine percent interest rate dictated by this section. Here, plaintiff's underinsured motorist claim was for damages resulting from the tort of another person, even though it also involved the contract with his insurer; therefore, he was entitled to the higher interest rate set in this section rather than that for contractual claims under § 5-12-102. *Parker v. USAA*, 216 P.3d 7 (Colo. App. 2007), *aff'd*, 200 P.3d 350 (Colo. 2009).

**Section applies to judgments based on claims for underinsured motorist benefits resulting from personal injuries.** *Parker v. USAA*, 216 P.3d 7 (Colo. App. 2007), *aff'd*, 200 P.3d 350 (Colo. 2009).

**This section unambiguously requires recalculation of interest at the variable rate set under subsections (3) and (4) if the verdict is appealed,** even though the variable rate may be less than the nine percent statutory rate. *Ackerman v. Power Equip. Co.*, 881 P.2d 451 (Colo. App. 1994).

**This section, as amended, is clear and unambiguous** in its requirement that personal injury judgment interest is to be recalculated at the variable interest rate set by the secretary of state in the event of an appeal. *Ackerman v. Power Equip. Co.*, 881 P.2d 451 (Colo. App. 1994); *Rodriguez v. Schutt*, 896 P.2d 881 (Colo. App. 1994),



rev'd on other grounds, 914 P.2d 921 (Colo. 1996).

**The award of prejudgment interest** serves not only the purpose of compensating a party for the loss of use of money but is also used to encourage the settlement of cases both pre- and post-trial. *Stevens v. Humana of Del., Inc.*, 832 P.2d 1076 (Colo. App. 1992).

**Prejudgment interest is an element of damages compensating the personal injury plaintiff for all injuries caused by defendant's tortious conduct, including the lost time value of his damages award.** It is not "interest" as that term is defined and generally understood. *Brabson v. United States*, 859 F. Supp. 1360 (D. Colo. 1994), rev'd on other grounds, 73 F.3d 1040 (10th Cir. 1996).

**Plaintiffs gave up their right to interest** against tortfeasor when they voluntarily settled with that tortfeasor and thereby avoided a double award of interest. *McKown-Katy v. Rego Co.*, 776 P.2d 1130 (Colo. App. 1989), rev'd in part on other grounds, 801 P.2d 536 (Colo. 1990); *Gutierrez v. Bussey*, 837 P.2d 272 (Colo. App. 1992).

**"Willful intent" standard of subsection (1)** is met upon a showing of "wanton" conduct, as specified in § 13-21-102, entitling the plaintiff to prejudgment interest on exemplary damages. *Bradley v. Guess*, 797 P.2d 749 (Colo. App. 1989), rev'd on other grounds, 817 P.2d 971 (Colo. 1991).

**Court erred in denying motion for prejudgment interest** as of date of accident

where plaintiff's underlying injury was personal in nature and plaintiff would have been entitled to prejudgment interest absent attorney's malpractice. *McCafferty v. Musat*, 817 P.2d 1039 (Colo. App. 1990).

**Defamation is a personal injury and not an injury to property;** therefore prejudgment interest shall be automatically added to an award of damages for defamation. *Brooks v. Jackson*, 813 P.2d 847 (Colo. App. 1991).

**This section authorizes interest to be compounded only on an annual basis.** *Combined Com. Corp. v. Pub. Serv. Co.*, 865 P.2d 893 (Colo. App. 1993).

**Interest on a damage award shall be calculated** at a nine percent fixed rate per annum until the judgment is satisfied except in cases of an appeal in which case subsections (3) and (4) provide for a variable rate of interest. *Evinger v. Greeley Gas Co.*, 902 P.2d 941 (Colo. App. 1995).

**When court enters an order on the amount of a judgment following a jury verdict,** the court should enter the order nunc pro tunc to the date of the jury verdict. *Scholle v. Ehrichs*, 2022 COA 87M, 519 P.3d 1093, aff'd in part, rev'd in part on other grounds, 2024 CO 22, 546 P.3d 1170.

When a defendant appeals a judgment following a jury verdict, prejudgment interest is accrued at the rate of nine percent through the date of the jury verdict, not the date that an order is signed. *Scholle v. Ehrichs*, 2022 COA 87M, 519 P.3d 1093, aff'd in part, rev'd in part on other grounds, 2024 CO 22, 546 P.3d 1170.

**Under subsection (1), when a judgment debtor appeals a judgment and the judgment is reversed, postjudgment interest on a later judgment accrues from the date of the first judgment** at the rate set forth in subsections (3) and (4) rather than at the statutory rate of nine percent. *Ford Motor Co. v. Walker*, 2022 CO 32, 517 P.3d 653.

**Costs not award of damages** within the meaning of this section. *Steele v. Law*, 78 P.3d 1124 (Colo. App. 2003).

**Applied** in *DeLong v. City & County of Denver*, 195 Colo. 27, 576 P.2d 537 (1978); *Equal Emp. Opportunity Comm'n v. Safeway Stores, Inc.*, 634 F.2d 1273 (10th Cir. 1980); *People v. Kluver*, 199 Colo. 511, 611 P.2d 971 (Colo. App. 1980); *Martin v. Porak*, 638 P.2d 853 (Colo. App. 1981); *Jackson v. Marsh*, 551 F. Supp. 1091 (D. Colo. 1982); *Teran v. Reg'l Transp. Dist.*, 2020 COA 151, 477 P.3d 799.

## II. REQUEST IN COMPLAINT.

**Interest will be awarded from filing of complaint if requested.** This section expressly provides for the awarding of interest from the date of the filing of the complaint in a personal injury action if requested in the complaint. *Callaham v. Slavsky*, 153 Colo. 291, 385 P.2d 674 (1963).

**If not requested in the complaint interest is waived.** Plaintiffs not having demanded interest prior to the entry of judgment, waived this demand which the section provides must be made in the

complaint. *Clark v. Hicks*, 127 Colo. 25, 252 P.2d 1067 (1953).

**It is sufficient to demand interest in the prayer for relief.** A prayer is a necessary part of a claim for relief under C.R.C.P. 8 and where the prayer is for "interest and costs of suit", it is sufficient to meet the requirements of this section entitling a plaintiff to interest on the verdict from the date of filing a complaint. *Jacobson v. Doan*, 136 Colo. 496, 319 P.2d 975 (1957).

**To permit an amendment of the complaint to add interest** more than 10 days after the judgment had been entered was error. *Green v. Hoffman*, 126 Colo. 104, 251 P.2d 933 (1952); *Clark v. Hicks*, 127 Colo. 25, 252 P.2d 1067 (1953).

**To permit amendment of the complaint after the verdict** but before judgment was entered was error. *Clark v. Buhning*, 761 P.2d 266 (Colo. App. 1988).

**This section does not dictate the date to which future losses must be discounted.** *Four Corners Helicopters, Inc. v. Turboneca, S.A.*, 979 F.2d 1434 (10th Cir. 1992).

## III. INAPPLICABLE ACTIONS.

**This section does not apply to property or contractual damage.** The Colorado statute distinguishes between damages arising from personal injury and contractual or property damages. Interest is not permitted from the date of filing of the complaint where property damages are involved. *Stemple v. Phillips Petroleum Co.*, 430 F.2d 178 (10th Cir. 1970).

**Under the plain language of this section, prejudgment interest can be awarded only after a judgment, based upon a damage award determined by a trier of fact, has been entered.** An uninsured motorist is not entitled to prejudgment interest in a settlement reached with the motorist's insurance carrier prior to litigation. *Munoz v. Am. Family Mut. Ins. Co.*, 2017 COA 25, 428 P.3d 599, *aff'd*, 2018 CO 68, 425 P.3d 1128.

**Even though an underinsured motorist policy is a contract and therefore would not fall under this section,** the claim under that policy may be premised upon a tort claim for bodily injury and therefore accrue interest at the nine percent interest rate dictated by this section. Here, plaintiff's underinsured motorist claim was for damages resulting from the tort of another person, even though it also involved the contract with his insurer; therefore, he was entitled to the higher interest rate set in this section rather than that for contractual claims under § 5-12-102. *Parker v. USAA*, 216 P.3d 7 (Colo. App. 2007), *aff'd*, 200 P.3d 350 (Colo. 2009).

**Court may not add prejudgment interest to accepted offer of judgment.** When, in a personal injury action, a plaintiff accepts an offer of judgment, the court is precluded from adding prejudgment interest to the amount agreed upon by the parties. *Heid v. Destefano*, 41 Colo. App. 436, 586 P.2d 246 (1978).

**When a party accepts a settlement, trial court is precluded from adding prejudgment interest** to the amount agreed

upon by the parties. *Parker v. USAA*, 216 P.3d 7 (Colo. App. 2007), *aff'd* on other grounds, 200 P.3d 350 (Colo. 2009).

**Interest is not recoverable in an action for damages occasioned by fraud and deceit.** *Moreland v. Austin*, 138 Colo. 78, 330 P.2d 136 (1958); *Holland Furnace Co. v. Robson*, 157 Colo. 347, 402 P.2d 628 (1965).

**Nor in action for breach of warranty.** Interest is only recoverable in the absence of contract, in the cases enumerated in this section. An action in damage for a breach of warranty is not one of the enumerated cases. *Denver Horse Importing Co. v. Schafer*, 58 Colo. 376, 147 P. 367 (1915).

**Nor in an action for false representations.** Interest is a creature of statute, and this section makes no provision for interest on unliquidated damages which may be awarded in actions for false representations. *Moreland v. Austin*, 138 Colo. 78, 330 P.2d 136 (1958).

**Interest will not be awarded against a municipal corporation.** The word "corporation" as used in this section does not include a municipal corporation. *City of Boulder v. Stewardson*, 67 Colo. 582, 189 P. 1 (1920).

**For inapplicability to nonresident injured in his own state with Colorado merely as forum,** see *Stemple v. Phillips Petroleum Co.*, 430 F.2d 178 (10th Cir. 1970).

**This section does not apply to punitive (exemplary) component of damage award, but only to such damages as are**

**properly deemed compensatory.** Seward Const. Co., Inc. v. Bradley, 817 P.2d 971 (Colo. 1991); Burgess v. Mid-Century Ins. Co., 841 P.2d 325 (Colo. App. 1992).

**A limited exception to the interest formula** determining the accumulation of

prefiling and prejudgment interest on an award, which formula is created in this section, can be found in § 13-64-302 (2) and applies to certain rulings under the Colorado Health Care Availability Act. Ochoa v. Vered, 212 P.3d 963 (Colo. App. 2009).

### **13-21-102. Exemplary damages.**

(1) (a) In all civil actions in which damages are assessed by a jury for a wrong done to the person or to personal or real property, and the injury complained of is attended by circumstances of fraud, malice, or willful and wanton conduct, the jury, in addition to the actual damages sustained by such party, may award him reasonable exemplary damages. The amount of such reasonable exemplary damages shall not exceed an amount which is equal to the amount of the actual damages awarded to the injured party.

(b) As used in this section, "willful and wanton conduct" means conduct purposefully committed which the actor must have realized as dangerous, done heedlessly and recklessly, without regard to consequences, or of the rights and safety of others, particularly the plaintiff.

(1.5) (a) A claim for exemplary damages in an action governed by this section may not be included in any initial claim for relief. A claim for exemplary damages in an action governed by this section may be allowed by amendment to the pleadings only after the exchange of initial disclosures pursuant to rule 26 of the Colorado rules of civil procedure and the plaintiff establishes prima facie proof of a triable issue. After the plaintiff establishes the existence of a triable issue of exemplary damages, the court may, in its discretion, allow additional discovery on the issue of exemplary damages as the court deems appropriate.

(b) The provisions of paragraph (a) of this subsection (1.5) shall not apply to any civil action or arbitration proceeding described in section 13-21-203 (3)(c) or 13-64-302.5 (3).

(2) Notwithstanding the provisions of subsection (1) of this section, the court may reduce or disallow the award of exemplary damages to the extent that:

- (a) The deterrent effect of the damages has been accomplished; or
- (b) The conduct which resulted in the award has ceased; or
- (c) The purpose of such damages has otherwise been served.

(3) Notwithstanding the provisions of subsection (1) of this section, the court may increase any award of exemplary damages, to a sum not to exceed three times the amount of actual damages, if it is shown that:

(a) The defendant has continued the behavior or repeated the action which is the subject of the claim against the defendant in a willful and wanton manner, either against the plaintiff or another person or persons, during the pendency of the case; or

(b) The defendant has acted in a willful and wanton manner during the pendency of the action in a manner which has further aggravated the damages of the plaintiff when the defendant knew or should have known such action would produce aggravation.

(4) Repealed.

(5) Unless otherwise provided by law, exemplary damages shall not be awarded in administrative or arbitration proceedings, even if the award or decision is enforced or approved in an action commenced in a court.

(6) In any civil action in which exemplary damages may be awarded, evidence of the income or net worth of a party shall not be considered in determining the appropriateness or amount of such damages.

**Source:** L. 1889: p. 64, § 1. R.S. 08: § 2067. C.L. § 6307. CSA: C. 50, § 6. CRS 53: § 41-2-2. C.R.S. 1963: § 41-2-2. L. 86: Entire section amended, p. 675, § 1, effective July 1. L. 95: (4) repealed, p. 14, § 1, effective March 9. L. 2003: (1.5) added, p. 1044, § 1, effective August 6.

## ANNOTATION

I. General Consideration.

II. Essential Elements.

III. Amount.

IV. Pleading and Practice.

V. Against Whom Awarded.

### I. GENERAL CONSIDERATION.

**Law reviews.** For comment on Starkey v. Dameron, appearing below, see 6 Rocky Mt. L. Rev. 81 (1933). For note, "Need Punitive Damages Be Proportionate to Compensatory Damages?", see 23 Rocky Mt. L. Rev. 206 (1950). For note, "Exemplary Damages in Colorado — Punitive or Puny?", see 35 U.

Colo. L. Rev. 394 (1963). For comment on Kohl v. Graham, appearing below, see 36 U. Colo. L. Rev. 283 (1964). For article, "Trade Secret Litigation: Injunctions and Other Equitable Remedies", see 48 U. Colo. L. Rev. 189 (1977). For casenote, "Palmer v. A.H. Robins Co.: Problems with Punitive Damages in Products Liability Actions", see 57 U. Colo. L. Rev. 135 (1985). For article, "Help for Colorado Trade Secret Owners", see 15 Colo. Law, 1993 (1986). For article, "Tort Reform's Impact on Contract Law", see 15 Colo. Law. 2206 (1986). For article, "Let the Builder-Vendor Beware: Defenses and Damages in Home Builder Litigation — Part II", see 16 Colo. Law. 629 (1987). For

article, "Introduction to the Tort Reform Symposium: Some Cautioning Implications of Legislative Tort Reform", see 64 Den. U. L. Rev. 613 (1988). For article, "The Assault on Injured Victims' Rights", see 64 Den. U. L. Rev. 625 (1988). For article, "The Impact of Tort Reform on Product Liability Litigation in Colorado", see 30 Colo. Law. 91 (Nov. 2001). For article, "New Statutes Change Civil Litigation in Colorado", see 33 Colo. Law. 65 (May 2004).

**Subsection (4) held unconstitutional.** An exemplary damages award is a private property right, and the requirements of subsection (4) constitute a taking of a judgment creditor's private property without just compensation in violation of the fifth and fourteenth amendments to the United States Constitution and article II, section 15 of the Colorado Constitution. *Kirk v. Denver Pub. Co.*, 818 P.2d 262 (Colo. 1991).

**Section does not violate due process clauses of the federal or state constitutions.** *Malandris v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 703 F.2d 1152 (10th Cir. 1981); *Post Office v. Portec, Inc.*, 913 F.2d 802 (10th Cir. 1990); *Estate of Korf v. A.O. Smith Harvestore Prods.*, 917 F.2d 480 (10th Cir. 1990) (all cases decided under section in effect prior to 1986 amendment).

**Legislative purpose behind this section is to avoid purely punitive civil awards.** *Wagner v. Dan Unfug Motors, Inc.*, 35 Colo. App. 102, 529 P.2d 656 (1974).

**It is evident from the plain language of subsection (1)(a) that the general assembly intended to limit the punitive**

**damages awarded on a particular tort claim to the amount of actual damages awarded on that same claim.** *Hensley v. Tri-QSI Denver Corp.*, 98 P.3d 965 (Colo. App. 2004).

**Legislative purpose behind subsection (6),** as part of 1986 "tort reform" package, included mitigating and alleviating the need for parties to bring financial records into court for review by the opposing side. *Corbetta v. Albertson's, Inc.*, 975 P.2d 718 (Colo. 1999).

**Discovery of defendant's financial records not permitted.** *Corbetta v. Albertson's, Inc.*, 975 P.2d 718 (Colo. 1999).

**Punitive damages in civil action not double punishment.** Although punitive damages are awarded in civil cases in order to punish the defendant, an award of punitive damages in a civil action does not constitute a prohibited "double punishment", as the double punishment prohibition applies only to criminal actions. *E. F. Hutton & Co. v. Anderson*, 42 Colo. App. 497, 596 P.2d 413 (1979).

**Nor violative of equal protection.** Allowing punitive damages in a civil action does not violate one's right to equal protection of the law. *E. F. Hutton & Co. v. Anderson*, 42 Colo. App. 497, 596 P.2d 413 (1979).

**Section not void for vagueness.** Statutory terms "circumstances of fraud" and "a wanton and reckless disregard" are sufficiently clear to persons of ordinary intelligence to afford a practical guide for behavior and are capable of application in an

even-handed manner. *Palmer v. A.H. Robins Co., Inc.*, 684 P.2d 187 (Colo. 1984).

**Federal constitutional proscription against cruel and unusual punishment** not applicable to a civil proceeding involving a punitive damages claim ancillary to a civil cause of action. *Palmer v. A.H. Robins Co., Inc.*, 684 P.2d 187 (Colo. 1984).

**Exemplary damages are allowed, not as compensation to the injured party** for the wrong done, but as a punishment of the wrongdoer as an example to others. *Ark Valley Alfalfa Mills, Inc. v. Day*, 128 Colo. 436, 263 P.2d 815 (1953); *Frick v. Abell*, 198 Colo. 508, 602 P.2d 852 (1979); *Seward Const. Co., Inc. v. Bradley*, 817 P.2d 971 (Colo. 1991).

The purpose of punitive damages is not to compensate an injured plaintiff, but to punish the defendant and to deter others from similar conduct in the future. *Leidholt v. District Court*, 619 P.2d 768 (Colo. 1980).

**Exemplary damages are awarded for the purpose of punishing persons who have inflicted injuries with malice.** *French v. Deane*, 19 Colo. 504, 36 P. 609 (1894); *Starkey v. Dameron*, 92 Colo. 420, 21 P.2d 1112 (1933); *Barnes v. Lehman*, 118 Colo. 161, 193 P.2d 273 (1948); *Wegner v. Rodeo Cowboys Ass'n*, 290 F. Supp. 369 (D. Colo. 1968), *aff'd and reh'g denied*, 417 F.2d 881 (10th Cir. 1969).

**Purpose of entering judgment for exemplary damages** against a defendant in a civil action is to punish and penalize him for certain wrongful and aggravated conduct and to serve as a warning to other possible

offenders. *Beebe v. Pierce*, 185 Colo. 34, 521 P.2d 1263 (1974).

The general purposes of exemplary damages are punishment of the defendant and deterrence against the commission of similar offenses by the defendant or others in the future. *Mince v. Butters*, 200 Colo. 501, 616 P.2d 127 (1980); *Lexton-Ancira Real Estate Fund v. Heller*, 826 P.2d 819 (Colo. 1992).

This section appears to be the general assembly's means of requiring a minimum degree of civility which is necessary for a civilized society to ensure, in some small measure, that the recourse to more violent methods is not taken by its inhabitants who feel defrauded or, in a sense, destroyed by another. *Mailloux v. Bradley*, 643 P.2d 797 (Colo. App. 1982).

**The nature and purposes of punitive damages** are sufficiently removed from the criminal process as to render inapplicable the traditional procedural safeguards provided to one accused of crime. Furthermore, § 13-25-127 provides an additional safeguard by requiring that the statutory elements of a punitive damages claim be proven beyond a reasonable doubt. *Palmer v. A.H. Robins Co., Inc.*, 684 P.2d 187 (Colo. 1984).

**Colorado law allows, but does not compel, an award of punitive damages** under certain circumstances. *King v. Horizon Corp.*, 701 F.2d 1313 (10th Cir. 1983); *Vickery v. Vickery*, 271 P.3d 516 (Colo. App. 2010), *rev'd on other grounds*, 266 P.3d 390 (Colo. 2011).

**Exemplary damages are available in Colorado only pursuant to statute.** Kaitz v. District Court, 650 P.2d 553 (Colo. 1982); Bennett v. Greeley Gas Co., 969 P.2d 754 (Colo. App. 1998).

**Reasonable exemplary damages may be awarded injured party in addition to actual damages.** Kresse v. Bennett, 151 Colo. 549, 379 P.2d 807 (1963).

**In order to recover exemplary damages** a plaintiff must make out a case under this section. Ark Valley Alfalfa Mills, Inc. v. Day, 128 Colo. 436, 263 P.2d 815 (1953).

**Award of exemplary damages is discretionary.** The award of exemplary damages is optional and rests in the discretion of the trier of fact. A judge or jury may find fraud, malice, insult or wanton and reckless disregard of the injured party's rights and feelings and still not award exemplary damages. Torrez v. Rizo, 34 B.R. 886 (Bankr. D. Colo. 1983).

In a trial to the court, the allowance or denial of exemplary damages is for the court's determination as the trier of fact. Sanders v. Knapp, 674 P.2d 385 (Colo. App. 1983).

Plaintiff has no right to any exemplary damages and award is in the discretion of the trier of fact. Montgomery Ward & Co. v. Andrews, 736 P.2d 40 (Colo. App. 1987); Cook v. Rockwell Intern. Corp., 755 F. Supp. 1468 (D. Colo. 1991).

Subsection (2) does not direct a court to reduce a punitive damages award if the conduct has ceased, the deterrent effect has been accomplished, or the purpose of

punitive damages has been otherwise served. Instead it grants the district court discretion. If a punitive damages award is supported by sufficient evidence and not grossly excessive under the due process clause of the fourteenth amendment to the federal constitution, the decision to let the award stand is a matter within the discretion of the district court. United Int'l Holdings, Inc. v. Wharf (Holdings) Ltd., 210 F.3d 1207 (D. Colo. 2000), aff'd, 532 U.S. 588 (2001).

There is record support for court's findings that landlord acted with wanton and reckless disregard. Accordingly, no abuse of discretion in court's award of punitive damages. Boulder Meadows v. Saville, 2 P.3d 131 (Colo. App. 2000).

**One-to-one limitation in subsection (1)(a) of exemplary damages to actual damages applies equally to bench and jury trials.** No language in relevant statutory provision compels construction that only a jury may try the issue of exemplary damages. Sky Fun 1 v. Schuttloffel, 27 P.3d 361 (Colo. 2001).

**Plaintiff must show actual damages.** What are reasonable exemplary damages in Colorado is determined by reference to the actual damages awarded. In order to be entitled to exemplary damages, it is necessary for plaintiffs to prove that the defendant's misconduct caused them to suffer actual damages to their person or property. Failure to prove the existence of actual damages means that no exemplary damages may be recovered. Leo Payne Pontiac, Inc. v. Ratliff, 29 Colo. App. 386, 486 P.2d 477 (1971); W. Cities Broad. v.



Schueller, 830 P.2d 1074 (Colo. App. 1991), aff'd in part, rev'd in part on other grounds, 849 P.2d 44 (Colo. 1993).

An award of exemplary damages cannot stand unless there has been an award of "actual damages". *Wagner v. Dan Unfug Motors, Inc.*, 35 Colo. App. 102, 529 P.2d 656 (1974).

Punitive damages may not be awarded absent an award of actual damages. *Defeyter v. Riley*, 671 P.2d 995 (Colo. App. 1983); *Kimmey v. Peek*, 678 P.2d 1021 (Colo. App. 1983).

This section permits an award for punitive damages only in conjunction with an underlying and independent civil action in which actual damages are assessed for some legal wrong to the injured party. *Palmer v. A.H. Robins, Co., Inc.*, 684 P.2d 187 (Colo. 1984); *Vogel v. Carolina Int'l, Inc.*, 711 P.2d 708 (Colo. App. 1985); *Denman v. Burlington N. R. Co.*, 761 P.2d 244 (Colo. App. 1988); *Bradley v. Guess*, 797 P.2d 749 (Colo. App. 1989), rev'd on other grounds, 817 P.2d 971 (Colo. 1991); *Ferrer v. Okbamicael*, 2017 CO 14M, 390 P.3d 836.

**Actual damages normally contemplated both general and special damages.** *Wagner v. Dan Unfug Motors, Inc.*, 35 Colo. App. 102, 529 P.2d 656 (1974).

**Exemplary damages predicated upon either special or general damages.** Purpose of this section is as well fulfilled when exemplary damages are predicated upon special damages as it is when they are awarded in conjunction with general damages. *Wagner v. Dan Unfug Motors,*

*Inc.*, 35 Colo. App. 102, 529 P.2d 656 (1974).

**Section applies only when a civil wrong has been attended by aggravating circumstances.** By its own terms, it has no application in the absence of a successful underlying claim for actual damages. *Harding Glass Co. v. Jones*, 44 Colo. 437, 640 P.2d 1123 (1982); *Adams v. Paine, Webber, Jackson & Curtis, Inc.*, 686 P.2d 797 (Colo. App. 1983); *Moe v. Avions Marcel Dassault-Breguet Aviation*, 727 F.2d 917 (1984).

**Not every action entitling a plaintiff to actual damages gives rise** to a claim for exemplary damages. *Ristine v. Blocker*, 15 Colo. App. 224, 61 P. 486 (1900); *Ark Valley Alfalfa Mills, Inc. v. Day*, 128 Colo. 436, 263 P.2d 815 (1953).

**Where an action is not an action in damages, exemplary damages cannot be recovered.** *Aaberg v. H.A. Harman Co.*, 144 Colo. 579, 358 P.2d 601 (1960).

**An action of a successor trustee against a former trustee for misappropriation of trust funds is suit in law that permits exemplary damages.** The former trustee is under a duty to pay money immediately and unconditionally, which is one of the instances where a trust action is an action in law, not equity. Since the suit is in law, the plaintiff may recover exemplary damages. *Peterson v. McMahon*, 99 P.3d 594 (Colo. 2004).

**Strict liability in tort.** Punitive damages are recoverable in connection with a strict liability claim founded on the Restatement

(Second) of Torts § 402A where an injury results from the marketing of a product in flagrant disregard of consumer safety. *Palmer v. A.H. Robins Co., Inc.*, 684 P.2d 187 (Colo. 1984).

**Trademark infringement.** The jury finding of punitive damages on claim of trademark infringement is supported if the evidence is sufficient to warrant a determination beyond a reasonable doubt that the infringer acted with a wanton and reckless disregard of the rights of the plaintiff. *Big O Tire Dealers, Inc. v. Goodyear Tire & Rubber Co.*, 408 F. Supp. 1219 (D. Colo. 1976), modified on other grounds and aff'd, 561 F.2d 1365 (10th Cir. 1977).

**The Ski Safety Act of 1979** does not preclude exemplary damages in civil actions arising out of skiing injuries. *Pizza v. Wolf Creek Ski Dev. Corp.*, 711 P.2d 671 (Colo. 1985).

**The cap on damages cap in the Ski Safety Act of 1979** does not apply to exemplary damages awarded under this section in skiing-related wrongful death actions. *Stamp v. Vail Corp.*, 172 P.3d 437 (Colo. 2007).

**In an action in contract exemplary damages are not allowable.** *Westesen v. Olathe State Bank*, 75 Colo. 340, 225 P. 837 (1924); *Williams v. Speedster, Inc.*, 175 Colo. 73, 485 P.2d 728 (1971); *Postal Instant Press v. Jackson*, 658 F. Supp. 739 (D. Colo. 1987) (federal district court disagreeing with Colorado court of appeals decision allowing such damages in contract actions in *Davies v. Bradley*, 676 P.2d 1242

(1983); *Collister v. Ashland Oil Co., Inc.*, 687 P.2d 525 (1984); *Podleski v. Mortgage Fin., Inc.*, 709 P.2d 18 (1985); *Denver Publ'g Co. v. Kirk*, 729 P.2d 1004 (1986); and *Cox v. Bertsch*, 730 P.2d 889 (1986)); *Mortgage Fin., Inc. v. Podleski*, 742 P.2d 900 (Colo. 1987).

**No exemplary damages in rescission action based on fraud.** Under this section, the recovery of exemplary damages is limited to civil actions in which damages shall be assessed, hence an action for rescission of a contract on the ground of fraud and for return of the consideration paid is not an action in damages and exemplary damages cannot be recovered. *Aaberg v. H.A. Harman Co.*, 144 Colo. 579, 358 P.2d 601 (1960).

**Exemplary damages may be awarded though the action sounds in contract.** *Davies v. Bradley*, 676 P.2d 1242 (Colo. App. 1983); *Riva Ridge Apts. v. Robert G. Fisher Co.*, 745 P.2d 1034 (Colo. App. 1987).

**The economic loss rule may apply to bar a claim** if the tort duty that is allegedly breached arises from the parties' contract. Alternatively, the economic loss rule does not apply if the tort duty allegedly breached arises independently of the parties' contract. *Mid-Century Ins. v. HIVE Constr.*, 2023 COA 25, 531 P.3d 427, aff'd, 2025 CO 17, 567 P.3d 153.

**Tort claims asserting willful and wanton conduct are not excepted from the economic loss rule.** *Mid-Century Ins. v. HIVE Constr.*, 2025 CO 17, 567 P.3d 153.

**Plaintiff's claim transcended the contract, and was not precluded by the economic loss rule,** where a triable issue of fact existed regarding alarm company's willful and wanton failure to respond to a burglary and fire. *U.S. Fire Ins. Co. v. Sonitrol Mgmt. Corp.*, 192 P.3d 543 (Colo. App. 2008).

**Exemplary damages awarded in breach of contract action** where defendant's actions constituted a wrongful act in reckless disregard of plaintiff's rights and feelings. *Collister v. Ashland Oil Co., Inc.*, 687 P.2d 525 (Colo. App. 1984).

**Taking property under claim of right will not justify exemplary damages.** The mere taking of property under a claim of right over the protest of one in possession is not sufficient to establish grounds for exemplary damages in a conversion action. *Am. Nat'l Bank v. Etter*, 28 Colo. App. 511, 476 P.2d 287 (1970).

**But refusal of insurer to return stolen automobile does.** Where, upon the recovery of a stolen automobile, the insurer against loss by theft refused to deliver it to the owner unless the latter accepted its terms of settlement, it was held that this constituted "a wanton and reckless disregard of the injured party's rights" as those words are used in this section. *Pa. Fire Ins. Co. v. Levy*, 85 Colo. 565, 277 P. 779 (1929).

**Exemplary damage award upheld in a conversion action** where the taking constituted a wrongful act in reckless disregard of the injured party's rights. *Clark v. Morris*, 710 P.2d 1130 (Colo. App. 1985).

**Since eminent domain statute nowhere provides for exemplary damages, such damages are not to be allowed** in a special statutory proceeding for condemnation. *Ossman v. Mtn. States Tel. & Tel. Co.*, 184 Colo. 360, 520 P.2d 738 (1974).

**Nor are they allowed in inverse condemnation action.** An inverse condemnation action is in the nature of a special statutory proceeding and is to be tried as if it were an eminent domain proceeding. Thus, the exemplary damages statute, which authorizes the award of exemplary damages in "all civil actions", is not applicable to an inverse condemnation action. *Ossman v. Mtn. States Tel. & Tel. Co.*, 184 Colo. 360, 520 P.2d 738 (1974).

**Exemplary damages are available in a suit for loss of consortium.** The words, "wrong done to the person, or to personal or real property" were unquestionably intended to apply to any type of tort, and no reason is apparent why such damages should not be recoverable where the injury complained of is loss of consortium. *Kohl v. Graham*, 202 F. Supp. 895 (D. Colo. 1962).

**The wrong done need not be a physical injury.** Any one who wrongfully induces a husband to desert and abandon his wife commits an actionable injury against the wife. Such injury is a wrong done to the wife as an individual — as a person. This section does not specify that the wrong shall be a physical or bodily injury. On the contrary, it allows exemplary damages when "the injury complained of shall be attended by circumstances of fraud, malice or insult, or a wanton and reckless disregard of the

injured party's rights and feelings". These words clearly import wrongs and injuries other than mere bodily wounds or pecuniary losses. They include as well injuries affecting the mind and sensibilities of the individual which are often more grievous and painful than mere material injuries. The whole language of this section, construed together, forbids that the words "wrong done to the person", should be restricted to physical or bodily injuries. *Williams v. Williams*, 20 Colo. 51, 37 P. 614 (1894).

**Exemplary damages not available in an equitable action.** The award of exemplary damages in equity actions, or incidental equitable relief, is generally not allowable. *Miller v. Kaiser*, 164 Colo. 206, 433 P.2d 772 (1967).

**Punitive damages are not recoverable in actions in equity.** *Kaitz v. District Court*, 650 P.2d 553 (Colo. 1982).

**Plaintiff could not recover damages under this section and also recover damages under § 6-1-113 (2)(a),** where purposes of both statutes are to punish and deter. *Lexton-Ancira Real Estate Fund v. Heller*, 826 P.2d 819 (Colo. 1992).

**Exemplary damages recoverable where conduct constituting breach of contract is also a tort for which exemplary damages are recoverable.** *McCrea & Co. Auctioneers, Inc. v. Dwyer Auto Body*, 799 P.2d 394 (Colo. App. 1989).

**The standard for awarding punitive damages is not the same as that for the tort of outrageous conduct,** therefore, the court did not err in granting a motion to

dismiss the outrageous conduct claim while denying the motion to dismiss the punitive damage claim. *Orjias v. Stevenson*, 31 F.3d 995 (10th Cir. 1994) (decided under law in effect prior to the 1986 amendment).

**No question but that an invasion of privacy claim is for "a wrong done to the person",** and exemplary damages were properly awarded. *Borquez v. Robert C. Ozer, P.C.*, 923 P.2d 166 (Colo. App. 1995), *aff'd in part, rev'd in part on other grounds*, 940 P.2d 371 (Colo. 1997).

Exemplary damages may be awarded on civil conspiracy claim, an independent tort that seeks actual damages. *Double Oak Constr., L.L.C. v. Cornerstone Dev. Int'l, L.L.C.*, 97 P.3d 140 (Colo. App. 2003).

**Exemplary damages may be awarded if** the injury is attended by circumstances of fraud, malice, or willful and wanton conduct. Where plaintiff testified that she believed the defendant was holding her money and that it would be available for her future medical and burial expenses and her other daughter's medical expenses, but where defendant put plaintiff's money into her own account and then used it to buy an annuity in her own name and to make a loan to a third party, the court properly awarded exemplary damages. *Eads v. Dearing*, 874 P.2d 474 (Colo. App. 1993).

**Evidence supports jury's finding that manufacturer acted with wanton and reckless disregard of injured plaintiff's rights.** *Gruntmeir v. Mayrath Indus., Inc.*, 841 F.2d 1037 (10th Cir. 1988) (decided prior to 1986 amendment).

**Disallowance of punitive damages under the theory that the award would serve no purpose cannot take place until such damages have actually been awarded.** *Cook v. Rockwell Intern. Corp.*, 755 F. Supp. 1468 (D. Colo. 1991).

**Portion of exemplary damage award from malicious prosecution suit that was awarded to state pursuant to subsection (4) was not subject to attorney fee claim under equitable common fund doctrine.** Since state had no legal interest in award until after judgment, it was not afforded any opportunity to intervene before judgment. *Schenck v. Minolta Office Sys., Inc.*, 873 P.2d 18 (Colo. App. 1993).

**Employer waived statutory right to be free from arbitral award of punitive damages.** Employer sought order compelling arbitration under rules of national association of security dealers, which permitted arbitrator to award damages and other relief, and did not challenge employee's right to recover punitive damages through the arbitration proceedings. *Padilla v. D.E. Frey & Co., Inc.*, 939 P.2d 475 (Colo. App. 1997).

**Court is given authority to increase the award if defendant is shown to have continued the behavior or repeated the action which is the subject of the claim against the defendant in a willful and wanton manner during the pendency of the case,** thus the court may consider actions of the defendant after the alleged negligence, but only actions that occurred during the pendency of the case. *Bennett v.*

*Greeley Gas Co.*, 969 P.2d 754 (Colo. App. 1998).

To increase an award of exemplary damages under subsection (3)(b), the actions of defendant need not relate to "the action which is the subject of the claim". *Martin v. Union Pac. R.R.*, 186 P.3d 61 (Colo. App. 2007), rev'd on other grounds, 209 P.3d 185 (Colo. 2009).

**Despite supreme court decision that subsection (4) was unconstitutional, plaintiff's attorney, who failed to cross-appeal the award, was not entitled to claim a right to attorney fees payable from award granted to state.** *Schenck v. Minolta Office Sys., Inc.*, 873 P.2d 18 (Colo. App. 1993).

**This section does not preclude an award against one who has also been charged with criminal misconduct.** Moreover, because an exemplary damages award is authorized in order to serve as an example to others, a finding by the trial court that the defendant will not repeat the conduct does not preclude the trial court from exercising its discretion to award exemplary damages. *Razi v. Schmitt*, 36 P.3d 102 (Colo. App. 2001).

**Applied** in *Miller v. Carnation Co.*, 33 Colo. App. 62, 516 P.2d 661 (1973); *Butler v. Behaeghe*, 37 Colo. App. 282, 548 P.2d 934 (1976); *Roberts v. Bucher*, 41 Colo. App. 138, 584 P.2d 97 (1978); *Campbell v. Jenkins*, 43 Colo. App. 458, 608 P.2d 363 (1979); *Dorney v. Harris*, 482 F. Supp. 323 (D. Colo. 1980); *Rodriguez v. Bar-S Food Co.*, 539 F. Supp. 710 (D. Colo. 1982); *Winters v. City of Commerce City*, 648 P.2d

175 (Colo. App. 1982); *Shriver v. Carter*, 651 P.2d 436 (Colo. App. 1982); *H & K Auto. Supply Co. v. Moore & Co.*, 657 P.2d 986 (Colo. App. 1982); *Sunward Corp. v. Dun & Bradstreet, Inc.*, 568 F. Supp. 602 (D. Colo. 1983); *Asplin v. Mueller*, 34 B.R. 869 (Bankr. D. Colo. 1983); *Dodds v. Frontier Chevrolet Sales & Serv. Inc.*, 676 P.2d 1237 (Colo. App. 1983); *Holter v. Moore & Co.*, 681 P.2d 962 (Colo. App. 1983); *Bill Manning, Inc. v. Denver W. Bank & Trust*, 697 P.2d 403 (Colo. App. 1984); *Florey v. District Court*, 713 P.2d 840 (Colo. 1985); *Francis v. Steve Johnson Pontiac-GMC-Jeep*, 724 P.2d 84 (Colo. App. 1986); *Padilla v. Ghuman*, 183 P.3d 653 (Colo. App. 2007).

## II. ESSENTIAL ELEMENTS.

**To justify exemplary damages there must be some wrong motive accompanying the wrongful act, or a reckless disregard of plaintiff's rights.** *Eisenhart v. Ordean*, 3 Colo. App. 162, 32 P. 495 (1893); *French v. Deane*, 19 Colo. 504, 36 P. 609 (1894); *Republican Publ'g Co. v. Conroy*, 5 Colo. App. 262, 38 P. 423 (1894); *Gray v. Linton*, 38 Colo. 175, 88 P. 749 (1906); *Carlson v. McNeil*, 114 Colo. 78, 162 P.2d 226 (1945); *Ellis v. Buckley*, 790 P.2d 875 (Colo. App. 1989).

The act causing the injuries must be done with an evil intent and with the purpose of injuring the plaintiff, or with such a wanton and reckless disregard of his rights as evidences a wrongful motive. *Frick v. Abell*, 198 Colo. 508, 602 P.2d 852 (1979); *Mari v. Wagner Equip. Co., Inc.*, 721 P.2d 1208 (Colo. App. 1986).

**Unreasonable delay or denial is not a wrong done to the person or to personal or real property, and so it may not be the basis for punitive or exemplary damages.**

A claim premised on recovering "reasonable attorney fees and court costs and two times the covered benefit" under subsection (1) is not a claim for "a wrong done to the person or to personal or real property" under § 13-21-102 (1)(a). Or, at the very least, it is no more a claim for "a wrong done to the person or to personal or real property" than the underlying claim for breach of insurance contract—and the law is settled that punitive damages are unavailable for breach of contract. *Residences at Olde Town Square Ass'n v. Travelers Cas. Ins. Co. of Am.*, 413 F. Supp. 3d 1070 (D. Colo. 2020).

**The phrase "attended by" not interpreted as "caused by".** The plain language of this section does not support the interpretation that the conduct set forth in this section must be the sole cause of a plaintiff's injuries. Had the general assembly intended to limit exemplary damages to situations where aggravating circumstances are the sole cause of a plaintiff's injuries, the general assembly could have expressed such an intent directly. *Heinrich v. Master Craft Eng'g, Inc.*, 131 F. Supp. 3d 1137 (D. Colo. 2015).

**Malice may be inferred from reckless and wanton acts.** Malice, as used in this section, may be found by the jury or the court from the reckless and wanton acts of the injuring party, such as disclose an utter disregard of consequences, aside from any intentional malice in its odious or

malevolent sense. *Cohen v. Fox*, 26 Colo. App. 55, 141 P. 504 (1914).

**Or willful misconduct or an entire want of care.** Willful misconduct or that entire want of care which would raise the presumption of a conscious indifference to consequences is necessary to support a claim for punitive damages. *Kan. Pac. Ry. v. Lundin*, 3 Colo. 94 (1876) (decided prior to the earliest source of § 13-21-102, L. 1899, p. 64, § 1).

**Malice may be actual or implied**, and in general it may be implied whenever there is a deliberate intention to do a grievous wrong without legal justification or excuse. *Williams v. Williams*, 20 Colo. 51, 37 P. 614 (1894).

Where the defendant was conscious of his conduct and the existing conditions, and knew or should have known that injury would result, the statutory requirements of this section are met. *Coors v. Sec. Life of Denver Ins. Co.*, 112 P.3d 59 (Colo. 2005).

**Conduct which is merely negligent cannot serve as basis for exemplary damages.** *Frick v. Abell*, 198 Colo. 508, 602 P.2d 852 (1979).

**An assumption that malice is an essential element in a finding of exemplary damages is incorrect.** *Clark v. Small*, 80 Colo. 227, 250 P. 385 (1926).

**It is sufficient if defendant knew or should have known injury would probably result.** "If, conscious of his conduct and existing conditions, defendant knew, or should have known, that the injury would probably result, the requirements of

this section (wanton and reckless disregard) are met". *Clark v. Small*, 80 Colo. 227, 250 P. 385 (1926); *Foster v. Redding*, 97 Colo. 4, 45 P.2d 940 (1935); *Frick v. Abell*, 198 Colo. 508, 602 P.2d 852 (1979); *Bodah v. Montgomery Ward & Co., Inc.*, 724 P.2d 102 (Colo. App. 1986).

**Evidence showing a reckless disregard for plaintiff's rights and feelings.** From the language of this section it will be seen that that part of the verdict assessing exemplary damages could be upheld if malice, fraud, or insult were entirely wanting. It would be sufficient if the jury believed that the injury inflicted on defendant was attended by circumstances showing a wanton and reckless disregard of his rights and feelings. *Coryell v. Lawson*, 25 Colo. App. 432, 139 P. 25 (1914).

**Evidence of conduct occurring after the event creating liability is material to the jury's assessment of punitive damages** if the entire course of conduct, including the portion that occurred after the accident, tended to show that the defendant had acted heedlessly, recklessly, and without regard to the consequences or the safety of others. *Jones v. Cruzan*, 33 P.3d 1262 (Colo. App. 2001).

**The feelings mentioned in this section may be physical as well as mental, and "wanton" means wilful and intentional.** *Clark v. Small*, 80 Colo. 227, 250 P. 385 (1926).

**"Wanton and reckless" disregard** as used in this statute means conduct that creates a substantial risk of harm to another and is purposefully performed with an

awareness of the risk in disregard of the consequences. *Tri-Aspen Constr. Co. v. Johnson*, 714 P.2d 484 (Colo. 1986); *Juarez v. United States*, 798 F.2d 1341 (10th Cir. 1986); *Miller v. Solaglas Cal., Inc.*, 870 P.2d 559 (Colo. App. 1993); *Archer v. Farmer Bros. Co.*, 70 P.3d 495 (Colo. App. 2002), *aff'd* on other grounds, 90 P.3d 228 (Colo. 2004).

Employer's act of sending supervisors to deliver employee's notice of termination at home where he was recovering from an apparent heart attack, of which the employer knew and stated that he did not care, and without prior warning to or discussion with the employee, supported an award of exemplary damages. *Archer v. Farmer Bros. Co.*, 70 P.3d 495 (Colo. App. 2002), *aff'd* on other grounds, 90 P.3d 228 (Colo. 2004).

**"Wanton and reckless disregard" question for jury.** Whether a defendant's intoxication constitutes wanton and reckless disregard for the rights and safety of others is generally a question of fact for the jury, and, where there is supportive evidence, the court should instruct the jury on this issue. *Butters v. Mince*, 43 Colo. App. 89, 605 P.2d 922 (1979), *rev'd* on other grounds, 200 Colo. 501, 616 P.2d 127 (1980); *Coors v. Sec. Life of Denver Ins. Co.*, 112 P.3d 59 (Colo. 2005).

The sufficiency of evidence to justify an award of punitive damage is a question of law, in which the totality of the evidence should be viewed in the light most supportive of the verdict. *Coors v. Sec. Life of Denver Ins. Co.*, 112 P.3d 59 (Colo. 2005).

**Malice not element of trademark infringement claim.** Viewing the award of punitive damages as relating to a trademark infringement claim, it is not necessary that there be proof of "evil intent" because malice is not an element of that claim. *Big O Tire Dealers, Inc. v. Goodyear Tire & Rubber Co.*, 408 F. Supp. 1219 (D. Colo. 1976), *modified* on other grounds and *aff'd*, 561 F.2d 1365 (10th Cir. 1977).

**Prima facie proof of triable issue on liability for punitive damages is necessary** to discover information relating to the defendant's financial status, and it may be established through discovery, by evidentiary means, or by an offer of proof. *Leidholt v. District Court*, 619 P.2d 768 (Colo. 1980).

**Relevancy threshold for evidence in punitive damages claim.** In the context of a punitive damages claim, the relevancy threshold is satisfied if the offered evidence tends to make more probable than not the existence of any of the statutory elements. *Palmer v. A.H. Robins Co., Inc.*, 684 P.2d 187 (Colo. 1984).

Evidence that manufacturer hired an advertising agency to encourage media publicity favorable to all of its products, including its intrauterine device, demonstrated a motive on the part of the manufacturer to profit by making exaggerated statements regarding the safety and efficacy of its product and therefore such evidence of the lay publicity campaign was relevant in establishing the statutory predicate for an award of punitive damages.



Palmer v. A.H. Robins Co., Inc., 684 P.2d 187 (Colo. 1984).

**Standard of proof.** Evidence in consolidated actions for injuries arising from the use of intrauterine contraceptive devices manufactured and marketed by the defendant supported findings that the devices were defective and were misrepresented with respect to safety and efficacy and that the defendant was negligent, but did not support a finding beyond a reasonable doubt, as required by § 13-25-127 (2), that the defendant caused injury to plaintiffs by fraud, malice or insult, or wanton and reckless disregard of their rights and feelings so as to award exemplary damages to the plaintiffs. Hawkinson v. A.H. Robins Co., Inc., 595 F. Supp. 1290 (D. Colo. 1984).

**Allowance or denial of exemplary damages rests in discretion of trier of fact.** While the question of the sufficiency of evidence to justify an award of exemplary damages is a question of law, the allowance or denial of such damages rests in the discretion of the trier of fact. Mince v. Butters, 200 Colo. 501, 616 P.2d 127 (1980).

**While mere negligence cannot support an award of exemplary damages,** repeated failure to correct a known dangerous condition may convert mere negligence into wanton and reckless disregard. Jacob v. Commonwealth Highland Theatres, Inc., 738 P.2d 6 (Colo. App. 1986); Concord Realty v. Cont'l Funding, 776 P.2d 1114 (Colo. 1989).

This is so if the failure to act creates a substantial risk of harm to another and

purposefully occurs with awareness of the risk in disregard of consequences or if the defendant, while conscious of its conduct and cognizant of existing conditions, knew or should have known that injury would probably result from its omission. Jacob v. Commonwealth Highland Theatres, Inc., 738 P.2d 6 (Colo. App. 1986).

**Evidence regarding a defendant's economic status is not an essential element of proof for an award of exemplary damages.** Evans v. Thompson, 762 P.2d 754 (Colo. App. 1988).

**Court shall submit the question of punitive damages to the jury** where the plaintiff has shown evidence of fraud, malice, or wanton and reckless conduct on the part of the defendant. There is no need to show proof of the defendant's financial condition to make out a claim for punitive damages. Amber Props. v. Howard Elec. & Mech., 775 P.2d 43 (Colo. App. 1988).

Evidence held sufficient to support finding of "willful and wanton" misconduct. Hence, directed verdict for defendant was improper. Miller v. Byrne, 916 P.2d 566 (Colo. App. 1995).

**Wrongful motive was shown,** in case alleging bad-faith breach of insurance contract, by evidence that defendant insurer knew or should have known that injury would result from its actions. S. Park Aggregates, Inc. v. Nw. Nat. Ins. Co., 847 P.2d 218 (Colo. App. 1992).

**The "circumstances of fraud" required for punitive damages under subsection (1)(a) are established** if, in a fraudulent

concealment case, a jury finds that the elements of fraud are established. *Berger v. Sec. Pac. Info. Sys., Inc.*, 795 P.2d 1380 (Colo. App. 1990).

**Willful and wanton conduct includes conduct that creates a substantial risk of harm to another and is purposefully performed with an awareness of the risk in disregard of the consequences.** *Messler v. Phillips*, 867 P.2d 128 (Colo. App. 1993).

**"Willful and wanton" standard held satisfied** where evidence supported a finding that defendant negotiated liability releases for himself to the detriment of a corporation of which he was a director, and disregarded the corporation's solvency on the date of a distribution of assets. *Ajay Sports, Inc. v. Casazza*, 1 P.3d 267 (Colo. App. 2000).

**"Wanton and reckless" standard held satisfied** by defendants' conduct in supervision (or lack of supervision) of company-sponsored Christmas party at which plaintiff was injured in a fight. *Bradley v. Guess*, 797 P.2d 749 (Colo. App. 1989).

Wanton and reckless disregard of tenant's rights and feelings shown where mobile park owner continued to request tenant to perform maintenance it knew she was unable to perform and made no attempt to accommodate her before posting notice to quit. Punitive damages award necessary to deter landlord and other landlords from discriminating against persons with disabilities. *Boulder Meadows v. Saville*, 2 P.3d 131 (Colo. App. 2000).

**Award of exemplary damages against defendant cannot stand since verdict was for defendant** based on the jury's finding that plaintiff was more than fifty percent negligent. *White v. Hansen*, 837 P.2d 1229 (Colo. 1992).

An award of exemplary damages rests in the discretion of the trier of fact, be that the jury or the trial court. *Messler v. Phillips*, 867 P.2d 128 (Colo. App. 1993).

**In an action based upon the unintentional conduct of the defendant, it is not relevant that the trier of fact decides that the defendant engaged in willful and wanton conduct for purposes of awarding exemplary damages under this section.** If the trier of fact determines the plaintiff's negligence is greater or equal to defendant's negligence, judgment must be entered in favor of the defendant. *White v. Hansen*, 837 P.2d 1229 (Colo. 1992).

**The statutory reference to damages assessed is synonymous with the total compensatory amount prior to adjustments for any negligence of the plaintiff** and the reference to damages awarded equates to the reduced compensatory amount. *Lira v. Davis*, 832 P.2d 240 (Colo. 1992).

**Exemplary damages are limited to damages recovered in accordance with an order for judgment, or the reduced compensatory amount.** *Lira v. Davis*, 832 P.2d 240 (Colo. 1992).

**Subsection (1) mandates a one-to-one limitation of exemplary damages to "actual damages awarded",** measured by

the amount of compensatory damages after reduction for comparative negligence and pro rata liability by the court. Sprung v. Adcock, 903 P.2d 1224 (Colo. App. 1995).

**While evidence of a continuing course of conduct** may buttress a claim for exemplary damages, the absence of such evidence does not preclude such an award if the statutory elements are met by other sufficient proof. Bonidy v. Vail Valley Ctr. for Aesthetic Dentistry, P.C., 186 P.3d 80 (Colo. App. 2008).

### III. AMOUNT.

**Exemplary damages cannot be accurately measured.** Carlson v. McNeil, 114 Colo. 78, 162 P.2d 226 (1945).

**There is no definite, precise ratio** governing the relationship of actual damages to exemplary damages. Mailloux v. Bradley, 643 P.2d 797 (Colo. App. 1982).

**Jury may apportion exemplary damages** among multiple defendants, recognizing the differing degree of culpability or the existence or nonexistence of malice on an individual basis. The amounts need not be identical. Ajay Sports, Inc. v. Casazza, 1 P.3d 267 (Colo. App. 2000).

**Exemplary damages must bear some relation to the compensatory damages awarded.** Starkey v. Dameron, 92 Colo. 420, 22 P.2d 640 (1933); Barnes v. Lehman, 118 Colo. 161, 193 P.2d 273 (1948); Ark Valley Alfalfa Mills, Inc v. Day, 128 Colo. 436, 263 P.2d 815 (1953); Montgomery v. Tufford, 165 Colo. 18, 437 P.2d 36 (1968); Wegner v. Rodeo Cowboys Ass'n, 290 F.

Supp. 369 (D. Colo. 1968), aff'd and reh'g denied, 417 F.2d 881 (10th Cir. 1969); Big O Tire Dealers, Inc. v. Goodyear Tire & Rubber Co., 561 F.2d 1365 (10th Cir. 1977); Frick v. Abell, 198 Colo. 508, 602 P.2d 852 (1979).

**Nominal damages alone are sufficient to support an award of exemplary damages.** Carey v. After the Gold Rush, 715 P.2d 803 (Colo. App. 1986).

**Factors which guide determination of reasonable award.** Although no precise formula can be utilized in the determination of the reasonableness of an award of exemplary damages the factors which guide the determination are: (1) The nature of the act which caused the injury; (2) the economic status of the defendant; and (3) the deterrent effect of the award on others. Frick v. Abell, 198 Colo. 508, 602 P.2d 852 (1979); Mailloux v. Bradley, 643 P.2d 797 (Colo. App. 1982); Vogel v. Carolina Int'l, Inc., 711 P.2d 708 (Colo. App. 1985).

In determining the amount which should be awarded as punitive damages, the severity of the defendant's wrong, as well as the extent of the defendant's assets, must be considered to ensure that the award will punish the defendant. Leidholt v. District Court, 619 P.2d 768 (Colo. 1980); Mailloux v. Bradley, 643 P.2d 797 (Colo. App. 1982).

Reasonableness of the award must be ascertained by examining the facts of the case to discover if the jury was impermissibly motivated by prejudice or properly guided by the purposes for exemplary damages, namely to defer and punish wrongful conduct. Palmer v. A.H.

Robins Co., 684 P.2d 187 (Colo. 1984); Vogel v. Carolina Int'l, Inc., 711 P.2d 708 (Colo. App. 1985).

**Test for excessiveness of award.** The crucial question is whether the punitive award is so excessive that it shocks the judicial conscience or leads to an inescapable inference that it resulted from improper passion or prejudice on the part of the jury. Malandris v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 703 F.2d 1152 (10th Cir. 1981).

Test applied in Post Office v. Portec, Inc., 913 F.2d 802 (10th Cir. 1990); Estate of Korf v. A.O. Smith Harvestore Prods., 917 F.2d 480 (10th Cir. 1990) (both cases decided under section in effect prior to 1986 amendment).

**Costs of litigation and attorney fees** which were the consequence of the aggravated nature of the offense may under certain circumstances be considered in setting the amount of exemplary damages. Beebe v. Pierce, 185 Colo. 34, 521 P.2d 1263 (1974); Davies v. Bradley, 676 P.2d 1242 (Colo. App. 1983).

**Behavior during the pendency of the case may be considered.** Coors v. Sec. Life of Denver Ins. Co., 112 P.3d 59 (Colo. 2005).

**Widely disproportionate exemplary damages indicate jury prejudice.** Exemplary damages must be fairly proportionate to actual damages and if there is a wide disproportion, it shows that the jury was motivated by prejudice. Wegner v. Rodeo Cowboys Ass'n, 290 F. Supp. 369 (D.

Colo. 1968), aff'd and reh'g denied, 417 F.2d 881 (10th Cir. 1969).

**This rule requires that a verdict for exemplary damages be separately stated,** in order to provide a basis for determining its reasonableness. Montgomery v. Tufford, 165 Colo. 18, 437 P.2d 36 (1968).

**In most jurisdictions the requirement that there be proportion between the general award and the exemplary award is used as a test** so as to allow the court to set aside verdicts which it regards as excessive under the facts and the evidence presented. Wegner v. Rodeo Cowboys Ass'n, 290 F. Supp. 369 (D. Colo. 1968), aff'd and reh'g denied, 417 F.2d 881 (10th Cir. 1969).

**The proportion must be substantially equal but it does not have to be a fixed or definite mathematical ratio.** The courts invariably examine and use the ratio, together with the particular facts presented, in order to ascertain whether the exemplary damage award seems unreasonable. Wegner v. Rodeo Cowboys Ass'n, 290 F. Supp. 369 (D. Colo. 1968), aff'd and reh'g denied, 417 F.2d 881 (10th Cir. 1969).

**Generally greater exemplary damages are allowed in defamation cases.** There is no definitive Colorado case dealing with defamation. Other jurisdictions which generally require a reasonable relationship between exemplary and general damages have upheld exemplary award in libel cases in much higher proportion than the 4 to 1 ratio awarded. The Colorado court has not laid down a hard and fast rule which requires that the present verdict be upset. The jury was at liberty to conclude that the

defendants deliberately and premeditatedly set out to discredit the plaintiff so as to deter him in his effort to establish a competing organization. There is no basis for concluding that the jury verdict resulted from passion or prejudice, and the disproportion in the award does not by itself or in conjunction with the other evidence raise any such inference. *Wegner v. Rodeo Cowboys Ass'n*, 290 F. Supp. 369 (D. Colo. 1968), *aff'd and reh'g denied*, 417 F.2d 881 (10th Cir. 1969).

**Defendant's financial status inadmissible in assessing compensating damages.** In suits involving the assessment of compensatory damages, evidence of a defendant's financial status is inadmissible. *Leidholt v. District Court*, 619 P.2d 768 (Colo. 1980).

**Discovery of defendant's financial records not permitted.** In view of legislative intent to end practice of requiring parties to bring financial records into court for review by the opposing side, in connection with punitive damages as well as with compensatory damages, discovery of the defendant's tax returns could not have led to admissible evidence and should not have been allowed. *Corbetta v. Albertson's, Inc.*, 975 P.2d 718 (Colo. 1999).

**New trial warranted where verdict manifestly inadequate.** If the verdict is manifestly inadequate, or so small in amount as to clearly and definitely indicate that the jury neglected to take into consideration evidence of the plaintiff's injuries, pain and suffering, and resulting disability, if any; or if the record indicates that the jury was

influenced by prejudice, passion, or other improper considerations; or if the jury was improperly instructed on the elements of compensatory damages, then a new trial on the issue of damages would be warranted. *Mince v. Butters*, 200 Colo. 501, 616 P.2d 127 (1980).

**If damages are excessive plaintiff may consent to reduction and avoid reversal.** It is not error in such a case to rule that a judgment be reversed and the cause remanded for a new trial; provided, however, that if plaintiff so elect he may consent to the reduction of said damages and final amended judgment will then be entered accordingly. *Barnes v. Lehman*, 118 Colo. 161, 193 P.2d 273 (1948).

**For when unreasonable exemplary damages will not be sustained;** see *Starkey v. Dameron*, 92 Colo. 420, 21 P.2d 1112 (1933); *Kresse v. Bennett*, 151 Colo. 549, 379 P.2d 807 (1963); *Leo Payne Pontiac, Inc. v. Ratliff*, 29 Colo. App. 386, 486 P.2d 477 (1971); *W. Cities Broad. v. Schueller*, 830 P.2d 1074 (Colo. App. 1991), *aff'd in part, rev'd in part on other grounds*, 849 P.2d 44 (Colo. 1993).

**Evidence regarding a defendant's economic status is not an essential element of proof for an award of exemplary damages** but merely a factor to be considered. *Evans v. Thompson*, 762 P.2d 754 (Colo. App. 1988).

**"Wanton" conduct under subsection (1)(a) is equivalent to "willful" conduct under § 13-21-101 (1).** *Bradley v. Guess*, 797 P.2d 749 (Colo. App. 1989), *rev'd on other grounds*, 817 P.2d 971 (Colo. 1991).

**But prejudgment interest may not be added to exemplary component of damage award.** The victim's right to compensation for an injury suffered accrues before judgment, making prejudgment interest appropriate; however, the right to an award of punitive damages, which serves an entirely different purpose, does not exist until time of judgment. The fact that both components are part of a single claim tied to a single act of the defendant does not alter their separate character. *Seward Const. Co., Inc. v. Bradley*, 817 P.2d 971 (Colo. 1991); *Lira v. Davis*, 832 P.2d 240 (Colo. 1992).

**Exemplary damages are not directly subject to reduction under comparative negligence statute.** Reduction of award under § 13-21-111 is based on plaintiff's own conduct, whereas an award of exemplary damages under this section is based on the defendant's misconduct and different principles apply. However, interplay among this section, § 13-21-111, and § 13-21-111.5 may produce a similar result. *Lira v. Davis*, 832 P.2d 240 (Colo. 1992).

**The plaintiff's comparative negligence should not be directly applied to reduce exemplary damages.** *Lira v. Davis*, 832 P.2d 240 (Colo. 1992).

**The amount of reasonable exemplary damages may not exceed the amount of the actual damages awarded.** *Graphic Directions, Inc. v. Bush*, 862 P.2d 1020 (Colo. App. 1993).

**The amount of exemplary damages — statutorily limited to the amount of "actual damages awarded" — should not**

**exceed the amount of compensatory damages** after such damages have been reduced by judicial application of the comparative negligence and pro rata damages statutes. *Lira v. Davis*, 832 P.2d 240 (Colo. 1992).

**Exemplary damages are not subject to prejudgment interest.** *Lira v. Davis*, 832 P.2d 240 (Colo. 1992).

**Amount of actual damages awarded includes prejudgment interest.** The award of compensatory damages includes the application of statutorily mandated additions and reductions to the jury's assessment of total damages. *Vickery v. Evans*, 266 P.3d 390 (Colo. 2011).

**Trial court erred by increasing exemplary damages award without granting a hearing to defendant.** Under subsection (3)(a), exemplary damages can be increased only if defendant continued the behavior in a willful and wanton manner. Without a hearing concerning conduct during the pendency of the case, the trial court could not have determined whether "willful and wanton manner" had been proven beyond a reasonable doubt. *Blood v. Qwest Servs. Corp.*, 224 P.3d 301 (Colo. App. 2009), *aff'd*, 252 P.3d 1071 (Colo. 2011).

**Trial court committed error when it considered, over defendant's objections, evidence of defendant's income and net worth in its determination of punitive damages.** This section expressly prohibits consideration of a party's net worth or income in deciding whether exemplary damages are appropriate. Accordingly, upon

remand, such evidence may not be considered. *Razi v. Schmitt*, 36 P.3d 102 (Colo. App. 2001).

**Trial court did not abuse its discretion by trebling the exemplary damages award** when the record supported a finding that defendants acted willfully and wantonly during the pendency of the case, further aggravating plaintiff's damages. *Gen. Steel Domestic Sales v. Bacheller*, 2012 CO 68M, 291 P.3d 1.

#### IV. PLEADING AND PRACTICE.

**The one-year limitation of former § 13-80-104 applied** to prayers for punitive damages. *Sherwood v. Graco, Inc.*, 427 F. Supp. 155 (D. Colo. 1977).

**Punitive damages can only be obtained in action for wrongful death upon proper averment and proof under this section.** *Hayes v. Williams*, 17 Colo. 465, 30 P. 352 (1892).

**The jury is charged with the responsibility of determining the proper amount of exemplary damages.** *Leo Payne Pontiac, Inc. v. Ratliff*, 29 Colo. App. 386, 486 P.2d 477 (1971).

**The award of exemplary damages may be excessive or unreasonable as a matter of law.** *Leo Payne Pontiac, Inc. v. Ratliff*, 29 Colo. App. 386, 480 P.2d 477 (1971).

**Whether there is any evidence to justify the finding of exemplary damages, is a question for the court.** If there is none, it is error to submit the question to the jury. *Eisenhart v. Ordean*, 3 Colo. App. 162, 32 P. 495 (1893); *Moody v. Sindlinger*, 27 Colo.

App. 290, 149 P. 263 (1915); *Reyher v. Mayne*, 90 Colo. 586, 10 P.2d 1109 (1932).

Where record demonstrated sufficient evidence from which a juror could conclude, beyond a reasonable doubt, that insurer's actions were willful and wanton, decision of trial court to submit question of punitive damages to jury would be upheld. *Surdyka v. DeWitt*, 784 P.2d 819 (Colo. App. 1989).

**Because reliance on advice of counsel or consultants was only relevant to, not dispositive of, the element of intent in engaging in the acts that led to damages,** and proof of such reliance would not require that defendant prevail on, or the court dismiss, plaintiffs' claim, it was not an affirmative defense. Trial court did not err, therefore, in admitting the reliance evidence and instructing the jury that it could consider that evidence in regard to punitive damages. *Antolovich v. Brown Grp. Retail, Inc.*, 183 P.3d 582 (Colo. App. 2007).

**It is error to submit the question of punitive damages to the determination of the jury in the absence** of evidence of any requisite element for the application of the rule. *Reyher v. Mayne*, 90 Colo. 586, 10 P.2d 1109 (1932).

**Bifurcated trial on issue of liability for punitive damages in products liability suit.** In products liability claim, defendant did not make an adequate showing of past punitive damages awards arising out of the same course of conduct to warrant granting a bifurcated trial on the issue of punitive damages in order to avoid any prejudice to the defendant on the issue of liability.

Palmer v. A.H. Robins Co., Inc., 684 P.2d 187 (Colo. 1984).

**Court's following instruction to jury approved:** "Malice may be implied when there is a deliberate intention to do a grievous wrong without legal justification or excuse". McAllister v. McAllister, 72 Colo. 28, 209 P. 788 (1922).

**Erroneous instruction.** An instruction that "in law a wrongful act done intentionally, without a legal justification, is done maliciously", is erroneous. To justify exemplary damages there must be some wrong motive accompanying the wrongful act, or a reckless disregard of plaintiff's rights. French v. Deane, 19 Colo. 504, 36 P. 609 (1894).

**When an action for damages is tried to the court without a jury** by consent of the parties, the court may, in a proper case, award exemplary damages under this section. Calvat v. Franklin, 90 Colo. 444, 9 P.2d 1061 (1932).

**Evidence of malice met the requirement of this section** in an action for injuries allegedly sustained in an assault upon plaintiff by defendant. Minowitz v. Failing, 109 Colo. 182, 123 P.2d 417 (1942).

**Evidence held insufficient.** Evidence of "fraud, malice or insult, or a wanton and reckless disregard of the injured party's rights and feelings", held insufficient to support a judgment for exemplary damages under this section. Rosenbaum v. Mathews, 113 Colo. 307, 156 P.2d 843 (1945); Spurlock v. United Airlines, 330 F. Supp. 228 (D. Colo. 1971).

**Admissibility of evidence in libel action to mitigate exemplary damages.** Where the plaintiff in a libel action seeks exemplary damages he can recover such damages only upon proof of actual malice upon the part of the defendant, or a reckless disregard by him of the plaintiff's rights and feelings and in such case, the defendant, not as a justification, but for the sole purpose of mitigating exemplary damages, may introduce evidence to the contrary. Bearman v. People, 91 Colo. 486, 16 P.2d 425 (1932).

**Evidence of potential nonparty harm may be considered in a reprehensibility analysis** as part of a due process test for exemplary damages awards, as set forth in BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996). The decision of the U.S. supreme court in Philip Morris USA v. Williams, 549 U.S. 346 (2007), does not preclude such use of potential nonparty harm evidence. Blood v. Qwest Servs. Corp., 224 P.3d 301 (Colo. App. 2009), aff'd, 252 P.3d 1071 (Colo. 2011).

**Right to damages under this section must be proved beyond a reasonable doubt.** S. Park Aggregates, Inc. v. Nw. Nat. Ins. Co., 847 P.2d 218 (Colo. App. 1992); Sky Fun 1, Inc. v. Schuttloffel, 8 P.3d 570 (Colo. App. 2000), rev'd on other grounds, 27 P.3d 361 (Colo. 2001).

**Failure of trial court to specifically state that the evidence supported findings leading to imposition of punitive damages beyond a reasonable doubt was not fatal,** where the findings otherwise led inexorably to that conclusion. Coors v. Sec. Life of Denver Ins. Co., 112 P.3d 59 (Colo. 2005).



**Where evidence supported findings leading to imposition of punitive damages under this section, as well as under another statute,** the fact that the other statute was held not to apply did not affect the validity of the award. *Coors v. Sec. Life of Denver Ins. Co.*, 112 P.3d 59 (Colo. 2005).

**Award of punitive damages was proper,** and punitive damages were not impermissibly awarded on a breach-of-contract claim, where the complaint alleged not only breach of a contract of sale but also conversion of the property subject to the contract and where the trial court specifically found that the defendants had acted willfully and wantonly in connection with the conversion claim. *Flexisystems, Inc. v. Am. Standards Testing Bureau, Inc.*, 847 P.2d 207 (Colo. App. 1992).

**Sufficient evidence was shown to uphold the award of exemplary damages** where there was evidence that defendant, a nursing home administration firm, actively sought to recruit its clients' patients for defendants' own facility. *Life Care Ctrs. v. E. Hampden Assoc.*, 903 P.2d 1180 (Colo. App. 1995).

**Evidence of prior offenses may be admissible to support an award of exemplary damages.** The trial court did not err by allowing evidence of prior alcohol offenses to show that defendant acted with willful and wanton conduct. *Alhilo v. Kliem*, 2016 COA 142, 412 P.3d 902.

**Evidence was sufficient to uphold jury award of exemplary damages** against creditor to company whose goods were

held in debtor's warehouse for sale on consignment where: Creditor who had seized and sold all goods in the warehouse had not relied on the consigned goods in extending credit to debtor; creditor knew of debtor's consignment business and required debtor to keep separate inventories of owned goods and consignment goods; creditor knew that goods seized included consigned goods; creditor kept no records of seized goods it sold despite actual knowledge that others claimed ownership of such goods; creditor had sent letters containing false and misleading information to consigners; and creditor had withheld information from its own attorneys when seeking advice on how to proceed. However, trebling of exemplary damages was improper because creditor's retention of sale proceeds under a claim of right was not a continuation of objectionable behavior during the pendency of the lawsuit. *Eurpac Serv. Inc. v. Republic Acceptance Corp.*, 37 P.3d 447 (Colo. App. 2000).

**No abuse of discretion** where trial court denied a motion for a mistrial made on the ground of references to insurer's assets where jury did not award exemplary damages, the statement was made on cross examination, the question was not repeated, and the court directed the jury to disregard the question. *Lunsford v. W. States Life Ins.*, 919 P.2d 899 (Colo. App. 1996).

**Trial court abused its discretion** when it denied plaintiffs' motion to amend their complaint to add a claim for exemplary damages where amended complaint satisfied the burden of proof set forth in § 13-21-203 (3)(c)(I). *Stamp v. Vail Corp.*, 172 P.3d 437 (Colo. 2007).

**Trial court did not abuse its discretion by permitting plaintiff to amend the complaint after the close of evidence to include a punitive damages claim** because defendant failed to demonstrate any prejudice arising from the late amendment where both plaintiff and defendant presented evidence on the issue of whether defendant engaged in willful and wanton conduct generally. *Davis v. GuideOne Mut. Ins. Co.*, 2012 COA 70M, 297 P.3d 950.

**Summary judgment was improper** where a triable issue of fact existed on alarm company's willful and wanton failure to respond to burglary and fire, notwithstanding contractual limitation of liability that precluded a claim based on simple negligence. *U.S. Fire Ins. Co. v. Sonitrol Mgmt. Corp.*, 192 P.3d 543 (Colo. App. 2008).

#### **V. AGAINST WHOM AWARDED.**

**Exemplary damages cannot be awarded against one who has not participated** in the offense. *Ristine v. Blocker*, 15 Colo. App. 224, 61 P. 486 (1900).

**There cannot be a freestanding claim for exemplary damages against an employer when the employer acknowledges respondeat superior liability** for its employee's negligence. *Ferrer v. Okbamical*, 2017 CO 14M, 390 P.3d 836.

**A principal is not liable for such damages because of the acts of his agent.** All the cases discussing the question proceed on the hypothesis that punitive

damages are not awarded by way of compensation to the sufferer, but are visited as a punishment on the offender and to serve as a warning to subsequent wrongdoers. Such being the fundamental basis of the doctrine it has always been adjudged and we have been cited to no case, and know of none, wherein a principal has been held liable for exemplary damages because of the wanton and oppressive act or of the malicious intent of his agent. *Ristine v. Blocker*, 15 Colo. App. 224, 61 P. 486 (1900); *Holland Furnace Co. v. Robson*, 157 Colo. 347, 402 P.2d 628 (1965).

**Unless such acts are authorized or ratified.** The general assembly did not intend to enact that in all civil actions for wrongs done to the person or to property, exemplary damages might be assessed, but only in those cases where the circumstances show fraud, malice, insult or a wanton reckless disregard of the injured party's rights or feelings. On well settled principles, this can only occur where the suit is brought directly against the wrongdoer who alone can exhibit the intent, and to whom alone can be imputed, and against whom only can be proved the fraud, the malice, the insult or the wantonness which is a condition precedent to the assessment of such damages. This section therefore, does not extend to actions brought against a principal for wrongs committed by his servant unless the record exhibits a mandate from which the authority to thus act can be deduced or the principal afterwards confirms what has been done. *Ristine v. Blocker*, 15 Colo. App. 224, 61 P. 486 (1900).

**When principal may be liable for act of agent.** A principal cannot be held liable in exemplary damages for the act of an agent unless it is shown that it (a) authorized or approved the servant's tortious act; or (b) approved of or participated in the act; or (c) failed to exercise proper care in the selection of its servant. *Malandris v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 703 F.2d 1152 (10th Cir. 1981).

**This rule applies to actions against railroads.** This section neither directs nor permits the assessment of exemplary damages against a principal for the wrong done by his agent, and it follows the same rule should be applied, the same principle invoked, and the same result reached in an action brought against a railroad company when the basis for the assessment of

exemplary damages is to be found only in circumstances showing fraud, malice, insult or reckless disregard of consequences by the agent in which the employer, the railroad company, could not participate. Admitting always the exception unless there be some order, direction or affirmance which is a prerequisite in the case of a suit against an individual principal, the rule must be the same in both cases. *Ristine v. Blocker*, 15 Colo. App. 224, 61 P. 486 (1900).

**Absent an agreement by the parties that state arbitration law should govern, subsection (5) restricting an arbitrator's power to award punitive damages does not apply to an action under the Federal Arbitration Act.** *Pyle v. Sec. U.S.A., Inc.*, 758 F. Supp. 638 (D. Colo. 1990).

### **13-21-102.5. Limitations on damages for noneconomic loss or injury - definitions.**

(1) The general assembly finds, determines, and declares that awards in civil actions for noneconomic losses or injuries often unduly burden the economic, commercial, and personal welfare of persons in this state; therefore, for the protection of the public peace, health, and welfare, the general assembly enacts this section placing monetary limitations on such damages for noneconomic losses or injuries.

(2) As used in this section:

(a) "Derivative noneconomic loss or injury" means nonpecuniary harm or emotional stress to persons other than the person suffering the direct or primary loss or injury.

(a.5) "Inflation" means the annual percentage change in the United States department of labor's bureau of labor statistics consumer price index for Denver-Aurora-Lakewood for all items paid by all urban consumers, or its successor index.

(b) "Noneconomic loss or injury" means nonpecuniary harm for which damages are recoverable by the person suffering the direct or primary loss or injury, including pain and suffering, inconvenience, emotional stress, and impairment of the quality of life. "Noneconomic

loss or injury" includes a damage recovery for nonpecuniary harm for actions brought under section 13-21-201 or 13-21-202.

(3) (a) (I) In any civil action filed before January 1, 2025, other than any civil action or binding arbitration for damages in tort brought against a health-care professional, as defined in section 13-64-202 (4), or a health-care institution, as defined in section 13-64-202 (3), in which damages for noneconomic loss or injury may be awarded, the total of such damages shall not exceed the sum of two hundred fifty thousand dollars, unless the court finds justification by clear and convincing evidence therefor. In no case shall the amount of noneconomic loss or injury damages in an action filed before January 1, 2025, exceed five hundred thousand dollars.

(II) In any civil action filed on or after January 1, 2025, and before January 1, 2026, or any claim for relief that accrues on or after January 1, 2025, other than any civil action or binding arbitration for damages in tort brought against a health-care professional, as defined in section 13-64-202 (4), or a health-care institution, as defined in section 13-64-202 (3), or wrongful death action, in which damages for derivative or direct noneconomic loss or injury may be awarded, the total amount of such damages that may be awarded must not exceed the sum of one million five hundred thousand dollars.

(III) The damages for noneconomic loss or injury in any civil action or binding arbitration for damages in tort brought against a health-care professional, as defined in section 13-64-202 (4), or a health-care institution, as defined in section 13-64-202 (3), shall be governed by section 13-64-302.

(IV) The damages for noneconomic loss or injury in a wrongful death action shall be governed by section 13-21-203.

(b) In any civil action, no damages for derivative noneconomic loss or injury may be awarded unless the court finds justification by clear and convincing evidence therefor.

(c) (I) (A) The limitations on damages set forth in subsection (3)(a)(I) of this section must be adjusted for inflation as of January 1, 1998, January 1, 2008, January 1, 2020, and on January 1 every two years thereafter until January 1, 2024. The adjustments made on January 1, 1998, January 1, 2008, January 1, 2020, and on January 1 every two years thereafter until January 1, 2024, must be based on the cumulative annual adjustment for inflation for each year since the effective date of the damages limitations in subsection (3)(a)(I) of this section.

(B) The limitations on damages set forth in subsection (3)(a)(II) of this section must be adjusted for inflation on January 1, 2028, and on January 1 every two years thereafter. The adjustments made on January 1, 2028, and on January 1 every two years thereafter must be based on the cumulative annual adjustment for inflation for each year since the effective date of the damages limitations in subsection (3)(a)(II) of this section.

(C) The inflation adjustments made pursuant to this subsection (3)(c)(I) must be rounded upward or downward to the nearest ten-dollar increment.

(II) Repealed.

(III) The secretary of state shall certify the adjusted limitation on damages within fourteen days after the appropriate information is available, and, for purposes of the limitation on damages specified in subsections (3)(a)(I) and (3)(b) of this section:

(A) The adjusted limitation on damages is applicable to all claims for relief that accrue on or after January 1, 1998, and before January 1, 2008;

(B) The adjusted limitation on damages as of January 1, 2008, is applicable to all claims for relief that accrue on and after January 1, 2008, and before January 1, 2020; and

(C) The adjusted limitation on damages as of January 1, 2020, and each January 1 every two years thereafter is applicable to all claims for relief that accrue on and after the specified January 1 and before the January 1 two years thereafter.

(III.5) For purposes of the limitation on damages specified in subsection (3)(a)(II) of this section, the secretary of state shall certify the adjusted limitation on damages within fourteen days after the appropriate information is available. The adjusted limitation on damages as of January 1, 2028, and as of each January 1 every two years thereafter, is applicable to all claims for relief that accrue on or after the specified January 1 and before the January 1 two years thereafter.

(IV) Nothing in this subsection (3) shall change the limitations on damages set forth in section 13-64-302, or the limitation on damages set forth in section 33-44-113, C.R.S.

(4) The limitations specified in subsection (3) of this section shall not be disclosed to a jury in any such action, but shall be imposed by the court before judgment.

(5) Nothing in this section shall be construed to limit the recovery of compensatory damages for physical impairment or disfigurement.

(6) (a) (I) In any claim for breach of contract, damages for noneconomic loss or injury or for derivative noneconomic loss or injury are recoverable only if:

(A) The recovery for such damages is specifically authorized in the contract that is the subject of the claim; or

(B) In any first-party claim brought against an insurer for breach of an insurance contract, the plaintiff demonstrates by clear and convincing evidence that the defendant committed willful and wanton breach of contract.

(II) For purposes of this paragraph (a), "willful and wanton breach of contract" means that:

- (A) The defendant intended to breach the contract;
  - (B) The defendant breached the contract without any reasonable justification; and
  - (C) The contract clearly indicated that damages for noneconomic loss or injury or for derivative noneconomic damages or loss were within the contemplation or expectation of the parties.
- (b) Except for the breach of contract damages that are permitted pursuant to sub-subparagraph (B) of subparagraph (I) of paragraph (a) of this subsection (6), nothing in this subsection (6) shall be construed to prohibit one or more parties from waiving the recovery of damages for noneconomic loss or injury or for derivative noneconomic loss or injury on a breach of contract claim so long as the waiver is explicit and in writing.
- (c) The limitations on damages set forth in subsection (3) of this section shall apply in any civil action to the aggregate sum of any noneconomic damages awarded under this section for breach of contract including but not limited to bad faith breach of contract.
- (d) In any civil action in which an award of damages for noneconomic loss or injury or for derivative noneconomic loss or injury is made on a breach of contract claim, the court shall state such award in the judgment separately from any other damages award.
- (e) Except as otherwise provided in paragraph (c) of this subsection (6), nothing in this subsection (6) shall be construed to govern the recovery of noneconomic damages on a tort claim for bad faith breach of contract.

**Source:** **L. 86:** Entire section added, p. 677, § 1, effective July 1. **L. 89:** (2)(b) amended, p. 752, § 1, effective July 1. **L. 97:** (3)(c) added, p. 923, § 4, effective August 6. **L. 2003:** (3)(a) amended, p. 1787, § 1, effective July 1. **L. 2004:** (6) added, p. 770, § 2, effective July 1. **L. 2007:** (3)(c)(I) and (3)(c)(III) amended, p. 329, § 3, effective July 1. **L. 2019:** (3)(c)(I) and (3)(c)(III) amended, (SB 19-109), ch. 83, p. 296, § 2, effective August 2. **L. 2024:** (2)(a.5) and (3)(c)(III.5) added, (3)(a), (3)(b), (3)(c)(I), and IP(3)(c)(III) amended, and (3)(c)(II) repealed, (HB 24-1472), ch. 325, p. 2170, § 2, effective January 1, 2025.

**Cross references:** For the legislative declaration contained in the 1997 act enacting subsection (3)(c), see section 1 of chapter 172, Session Laws of Colorado 1997. For the legislative declaration contained in the 2004 act enacting subsection (6), see section 1 of chapter 232, Session Laws of Colorado 2004. For the legislative declaration contained in the 2007 act amending subsections (3)(c)(I) and (3)(c)(III), see section 1 of chapter 83, Session Laws of Colorado 2007. For the legislative declaration in HB 24-1472, see section 1 of chapter 325, Session Laws of Colorado 2024.

## ANNOTATION

**Law reviews.** For article, "Legal Aspects of Health and Fitness Clubs: A Healthy and Dangerous Industry", see 15 Colo. Law. 1787 (1986). For article, "Introduction to the Tort Reform Symposium: Some Cautioning Implications of Legislative Tort Reform", see 64 Den. U. L. Rev. 613 (1988). For article, "Emotional Distress, The First Amendment, and 'This kind of speech': A Heretical Perspective on Hustler Magazine v. Falwell", see 50 U. Colo. L. Rev. 315 (1989). For article, "Recovery of Interest: Part I — Personal Injury", see 18 Colo. Law. 1063 (1989). For article, "Physical Impairment and Disfigurement Under the Health Care Availability Act", see 28 Colo. Law. 65 (May 1999). For article, "The Impact of Tort Reform on Product Liability Litigation in Colorado", see 30 Colo. Law. 91 (Nov. 2001). For article, "Measuring Damages for Tortious Injury to Companion Animals", see 42 Colo. Law. 21 (Feb. 2013). For article, "A Deeper Look at CDARA's Scope", see 51 Colo. Law. 32 (Aug.-Sept. 2022).

**Constitutionality of limitation.** The provisions of subsection (3) limiting the amount recoverable for noneconomic damages does not violate equal protection or due process under either the state or federal constitutions or access to the courts under the state constitution. *Scharrel v. Wal-Mart Stores, Inc.*, 949 P.2d 89 (Colo. App. 1997); *Stewart v. Rice*, 25 P.3d 1233 (Colo. App. 2000), rev'd on other grounds, 47 P.3d 316 (Colo. 2002).

The provisions of subsection (3) limiting the amount recoverable for noneconomic damages does not violate the seventh amendment to the federal constitution, which establishes the right to a jury trial in civil cases, because the seventh amendment does not apply to the states. Further, federal courts have upheld damage caps under the federal constitution. *Gebert v. Sears, Roebuck & Co.*, 2023 COA 107, 543 P.3d 409.

**Limitation in this section is subject to waiver.** Where defendant insurance company did not argue for applicability of this section at trial, did not object to a jury instruction on special damages, and made no significant argument concerning the issue on appeal, the issue was deemed waived and the jury's award of \$900,000 in special damages was allowed to stand. *Giampapa v. Am. Family Mut. Ins. Co.*, 64 P.3d 230 (Colo. 2003).

**Cap on noneconomic damages imposed by this section applies to the liability share of each defendant** and does not act as cap on the total amount a plaintiff may recover. *Gen. Elec. Co. v. Niemet*, 866 P.2d 1361 (Colo. 1994).

**Defendant cannot be held liable for more than its pro rata share of damages even where it is permissible to exceed the damages cap.** *Hoffman v. Ford Motor Co.*, 690 F. Supp. 2d 1179 (D. Colo. 2010).

**In cases involving multiple defendants or where plaintiff is partly at fault pro rata**

liability of defendants and plaintiff must be ascertained before applying statutory cap on noneconomic damages. *Gen. Elec. Co. v. Niemet*, 866 P.2d 1361 (Colo. 1994).

**The intent of this section is to limit the amount of damages for which each party must account,** not to allow persons to escape accountability. *Niemet v. Gen. Elec. Co.*, 843 P.2d 87 (Colo. App. 1992).

**Section does not limit a defendant's liability based upon the number of plaintiffs.** Several claimants, each of whom suffered separate and distinct injuries caused by the same tortious conduct of the same liable party, may each recover noneconomic damages up to the statutory cap. *Palmer v. Diaz*, 214 P.3d 546 (Colo. App. 2009).

**In order to exceed the damage cap for noneconomic loss or injury, a court must find justification by clear and convincing evidence.** Merely finding damages by clear and convincing evidence is insufficient. The court has discretion to determine what constitutes justification. *Pisano v. Manning*, 2022 COA 22, 510 P.3d 572.

**In order to harmonize subsections (2)(b) and (3)(a) with (5), it is necessary to determine separately damages of a noneconomic nature for physical impairment and disfigurement from the noneconomic loss or injury defined in subsection (2)(b).** By such means, the limitation on recoverable damages contained in subsection (3)(a) and the unlimited recovery for physical impairment and disfigurement as provided for in subsection (5) can be harmonized. *Herrera v. Gene's Towing*, 827 P.2d 619 (Colo. App. 1992);

*Ledstrom by and through Ledstrom v. Keeling*, 10 F. Supp. 2d 1195 (D. Colo. 1998).

**"Thin-skulled plaintiff" rule applies to damages under this section.** Award of damages for non-economic loss should not have been reduced because of the plaintiff's unique psychological makeup or preexisting degenerative bone condition. *Giampapa v. Am. Family Mut. Ins. Co.*, 12 P.3d 839 (Colo. App. 2000), rev'd on other grounds, 64 P.3d 230 (Colo. 2003).

"Thin skull" instruction is appropriate in a breach of insurance contract action. *Giampapa v. Am. Family Mut. Ins. Co.*, 12 P.3d 839 (Colo. App. 2000), rev'd on other grounds, 64 P.3d 230 (Colo. 2003).

**The Health Care Availability Act, §§ 13-64-101 to 13-64-503, limits the total recovery for all noneconomic loss or injury to \$250,000, including any such loss or injury resulting from physical impairment or disfigurement.** Plaintiffs may not recover for a separate category of damages for physical impairment and disfigurement in addition to the statutory categories set forth in § 13-64-204. *Ledstrom by and through Ledstrom v. Keeling*, 10 F. Supp. 2d 1195 (D. Colo. 1998) (disagreed in *Preston v. Dupont*, 35 P.3d 433 (Colo. 2001), where Colorado supreme court disagreed with federal court).

**However, damages for physical impairment and disfigurement are subject to the Health Care Availability Act's one million dollar damages limitation.** *Wallbank v. Rothenberg*, 74 P.3d 413 (Colo. App. 2003).



**Noneconomic damages in the Health Care Availability Act in § 13-64-302 are not limited by the general damages cap in this section nor by the damages cap in § 13-64-302.** Damages for physical impairment and disfigurement in a medical malpractice action are not limited and properly constitute a separate category for the jury's deliberation. *Preston v. Dupont*, 35 P.3d 433 (Colo. 2001).

**Enhanced award not available in wrongful death actions** pursuant to § 13-21-203 (1). *Aiken v. Peters*, 899 P.2d 382 (Colo. App. 1995).

**Pro rata liability, provided for in § 13-21-111.5, should be apportioned before damages are capped as required by this section.** A construction of this section that caps each separate noneconomic award, rather than awards for entire actions, averts subversion of the intended effect of § 13-21-111.5 (2). *Niemet v. Gen. Elec. Co.*, 843 P.2d 87 (Colo. App. 1992).

**Where award for noneconomic loss exceeded total allowable by subsection (3) but a reduction of the award was to be calculated to allow for the negligence of persons other than defendant, proper method of calculation of award was to reduce award by negligence attributed to others first without regard to total allowable in subsection (3).** *Cooley v. Paraho Dev. Corp.*, 851 P.2d 207 (Colo. App. 1992).

**Neither this section nor C.R.C.P. 52 required the trial court to make specific**

**findings of clear and convincing evidence** for not reducing the award of noneconomic damages. *Herrera v. Gene's Towing*, 827 P.2d 619 (Colo. App. 1992).

**The fact that a plaintiff may or should be able to prove noneconomic losses in many or most cases in which the threshold for medical expenses under the no fault law has been reached does not mean that the plaintiff actually will prove or has proven noneconomic damages in any particular case** since circumstances vary as does the proof presented in each case and to hold otherwise is likely to have the unintended consequence of encouraging needless litigation. *Lee's Mobile Wash v. Campbell*, 853 P.2d 1140 (Colo. 1993) (disagreeing with *Villandry v. Gregerson*, 824 P.2d 829 (Colo. App. 1991)).

**There was evidence in the record to support the jury award of zero noneconomic damages,** and the fact that the jury instruction mandated that the jury "shall determine" the amount of noneconomic damages did not necessarily require an affirmative award of damages since an award of such damages was required only if the damages were caused by the petitioners' negligence. *Lee's Mobile Wash v. Campbell*, 853 P.2d 1140 (Colo. 1993).

**Personal representative cannot recover noneconomic damages** such as emotional stress or loss of enjoyment of life. *Hill v. Boatright*, 890 P.2d 180 (Colo. App. 1994), *aff'd sub nom. Boatright v. Derr*, 919 P.2d 221 (Colo. 1996).

### **13-21-103. Damages for selling liquor to an intoxicated person.**

Every husband, wife, child, parent, guardian, employer, or other person who is injured in person, or property, or means of support by any intoxicated person, or in consequence of the intoxication of any person, has a right of action, in his or her name, against any person who, by selling or giving away intoxicating liquors to any habitually intoxicated person or person with an alcohol use disorder, causes the intoxication, in whole or in part, of such habitually intoxicated person or person with an alcohol use disorder; and all damages recovered by a minor pursuant to this section must be paid either to the minor or to his or her parent, guardian, or next friend, as the court directs. The unlawful sale or giving away of intoxicating liquors works a forfeiture of all rights of the lessee or tenant under any lease or contract of rent upon the premises. Liability must not accrue against any such person as provided unless the husband, wife, child, parent, guardian, or employer first, by written or printed notice, has notified such person, or his or her agents or employees, not to sell or give away any intoxicating liquors to any habitually intoxicated person or person with an alcohol use disorder.

**Source:** L. 1879: p. 92, § 1. G.S. § 1034. R.S. 08: § 2068. C.L. § 6308. CSA: C. 50, § 7. CRS 53: § 41-2-3. C.R.S. 1963: § 41-2-3. L. 2018: Entire section amended, (SB 18-091), ch. 35, p. 384, § 12, effective August 8.

**Cross references:** (1) For provisions concerning the liability of persons who sell or serve alcoholic beverages to intoxicated persons or minors, see § 44-3-801.

(2) For the legislative declaration in SB 18-091, see section 1 of chapter 35, Session Laws of Colorado 2018.

### **ANNOTATION**

**Law reviews.** For comment, "Crespin v. Largo Corporation and the Legislative Response: The Turbulent State of Dram Shop Liability in Colorado", see 57 U. Colo. L. Rev. 419 (1986). For article, "What's in the Package: Food, Beverage, and Dietary Supplement Law and Litigation Part I", see 43 Colo. Law. 77 (July 2014).

**This section does not supersede common law actions.** The statutory "dram

shop" or civil damage act contained in this section does not preclude a common law dram shop action. Crespin v. Largo Corp., 698 P.2d 826 (Colo. App. 1984), aff'd, 727 P.2d 1098 (Colo. 1986).

**The right of recovery under this section is not limited to only victims who had a personal or employment relationship with the drunk driver before he injured them.**

Espadero v. Feld, 649 F. Supp. 1480 (D. Colo. 1986).

**13-21-104. Damages for using animal left for keeping.**

If any person keeping a public ranch or stable uses or allows to be used, without the consent of the owner, any horse, ox, mule, or ass that may have been left with him to be ranched or fed, he shall forfeit to the owner all ranch or stable fees that may be due upon such animal used and the additional sum of five dollars for each day such animal has been used, to be collected in the same manner as other debts.

**Source:** R.S. p. 234, § 175. G.L. § 775. G.S. § 1035. **R.S. 08:** § 2069. C.L. § 6309. **CSA:** C. 50, § 8. **CRS 53:** § 41-2-4. **C.R.S. 1963:** § 41-2-4.

**ANNOTATION**

**Law reviews.** For article, "Measuring Damages for Tortious Injury to Companion Animals", see 42 Colo. Law. 21 (Feb. 2013).

**This section evidently aims at people who keep public places.** Its specific language is "a public ranch or stable". This language can only be taken as intended by the general assembly to apply to those who keep stables or ranches for general use, and take, the contract being otherwise acceptable, whatever stock may be offered and by whomsoever it may be offered, so long as the parties are unobjectionable and willing to pay. Manifestly, it does not include all ranchmen nor all stable keepers. Harper v. Lockhart, 9 Colo. App. 430, 48 P. 901 (1897).

**A keeper who has used some of the animals entrusted to him** may nevertheless retain a lien upon those not used. Harper v. Lockart, 9 Colo. App. 430, 43 P. 901 (1897).

**Burden of proving reduction in amount of lien is on plaintiff in replevin.** A plaintiff in replevin, to recover animals from an agister, who desires to rely on the provision of this section, is bound to state the number of animals used, and to offer his proof for the definite purpose of reducing the amount of the lien which the defendant would be entitled to insist on. Harper v. Lockhart, 9 Colo. App. 430, 48 P. 901 (1897).

**13-21-105. Damages from fire set in woods or prairie - treble damages during drought conditions.**

(1) If any person sets fire to any woods or prairie so as to damage any other person, such person shall make satisfaction for the damage to the party injured, to be recovered in an action before any court of competent jurisdiction.

(2) (a) If a state of emergency or disaster due to drought has been declared by the governor at the time a person knowingly sets fire to any woods or prairie as described in subsection (1) of this section, such person may be held liable for treble damages to any injured party.

(b) (I) The provisions of paragraph (a) of this subsection (2) shall not apply to any open burning conducted in the course of agricultural operations or to any state, municipal, or county fire management operations.

(II) Paragraph (a) of this subsection (2) does not apply to any other person seeking to conduct other prescribed or controlled fires such as grassland, forest, or habitat management activities, if such person has first obtained written authority from the director of the division of fire prevention and control in the department of public safety.

**Source:** G.L. § 2150. G.S. § 1036. R.S. 08: § 2070. C.L. § 6310. CSA: C. 50, § 9. CRS 53: § 41-2-5. C.R.S. 1963: § 41-2-5. L. 2002, 3rd Ex. Sess.: Entire section amended, p. 45, § 2, effective July 18. L. 2013: (2)(b)(II) amended, (SB 13-083), ch. 249, p.1308, § 8, effective May 23.

**Cross references:** (1) For the criminal penalty for setting fire to woods or prairie, see § 18-13-109.

(2) In 2013, subsection (2)(b)(II) was amended by the "Colorado Prescribed Burning Act". For the short title and the legislative declaration, see sections 1 and 2 of chapter 249, Session Laws of Colorado 2013.

**ANNOTATION**

**Statutory interpretation.** "Sets fire to" may be words of strict liability, but the phrase refers to setting fire as an act whose purpose is to start a fire, not to an act whose purpose is otherwise. This section contains no language indicating that the general

assembly intended to impose liability on those who do not seek to start a fire. *Minto v. Sprague*, 124 P.3d 881 (Colo. App. 2005).

**Section available to United States as landowner.** No reason appears why the

United States as a landowner should not avail itself of Colorado statutory provisions which are available to other landowners under like circumstances, including this section. *United States v. Boone*, 476 F.2d 276 (10th Cir. 1973).

**In cases of this character exemplary or punitive damages have no place.** Recovery can only be had for damages actually sustained. *Spencer v. Murphy*, 6 Colo. App. 453, 41 P. 841 (1895).

**Attorney fees and compensation for plaintiff's services in fighting fire are not recoverable.** The damage must be confined to loss by fire, and could not include compensation for services. In regard to the second, attorney's fees are no part of the damage. There is no law for such allowance. They are only given when provided for by statute, and courts are averse to extending the rule, even legally permissible. *Spencer v. Murphy*, 6 Colo. App. 453, 41 P. 841 (1895).

**13-21-105.5. Infant crib safety act - legislative declaration - definitions - safety standards - exemptions - action for damages.**

(1) This section shall be known and may be cited as the "Infant Used Crib Safety Act of 1998".

(2) The general assembly hereby finds that parents' use of used infant cribs occasionally results in crib accidents that may lead to infants' injuries or deaths, and therefore such used cribs pose a serious threat to the public health, safety, and welfare. The general assembly further finds that the majority of parents use secondhand, hand-me-down, or heirloom cribs for their infants and therefore it is especially important to raise public awareness of the dangers of used cribs in order to prevent the injuries or deaths that may result from their use. The general assembly finds that the design and construction of infant cribs must ensure that they are safe for an infant's use, thereby providing the infant's parent or other caregiver some degree of confidence in using the crib. The general assembly therefore concludes that discouraging the sale, lease, or subletting of unsafe used cribs will significantly reduce the number of injuries and deaths caused by used infant cribs.

(3) As used in this section, unless the context otherwise requires:

(a) "Commercial dealer" means any person or entity who:

(I) Regularly deals in used full-size or nonfull-size cribs; or

(II) Regularly sells, leases, sublets, or otherwise places in the stream of commerce used full-size or nonfull-size cribs; or

(III) Purchases one or more used full-size or nonfull-size cribs for the purpose of resale.

(b) "Crib" means a bed or containment designed to accommodate an infant.

(c) "Full-size crib" means a full-size crib as defined in 16 CFR sec. 1508.1 (a), regarding the requirements for full-size cribs.

(d) "Infant" means any person less than thirty-five inches tall and less than three years of age.

(e) "Nonfull-size crib" means a nonfull-size crib as defined in 16 CFR sec. 1509.2 (b), regarding the requirements for nonfull-size cribs.

(f) "Used" means previously owned by a consumer.

(4) No commercial dealer may sell, contract to sell or resell, lease, sublet, or otherwise place in the stream of commerce a used full-size or nonfull-size crib that is unsafe at the time of sale or lease, as provided in subsection (6) of this section.

(5) (a) The consumer protection division of the Colorado department of public health and environment shall make available to the public a copy of the federal standards and a copy of the voluntary standards of the American society for testing materials as specified in paragraph (b) of this subsection (5). One copy shall also be provided to the state publications depository and distribution center. The state librarian shall retain a copy of the material and shall make a copy available for interlibrary loans.

(b) The provisions of this subsection (5) apply to the following materials:

(I) 16 CFR sec. 1508 et seq., and any subsequent amendments or additions to said sections;

(II) 16 CFR sec. 1509 et seq., and any subsequent amendments or additions to said sections;

(III) 16 CFR sec. 1303 et seq., and any subsequent amendments or additions to said sections;  
and

(IV) The voluntary standards of the American society for testing materials or any successor organization.

(6) Any used crib that has any of the following dangerous features or characteristics at the time of sale or lease shall be presumed to be unsafe pursuant to this section:

(a) Corner posts that extend more than one-sixteenth of an inch;

(b) Spaces between side slats that are wider than two and three-eighths inches;

(c) Mattress supports that may be easily dislodged from any point of the crib. A mattress segment may be easily dislodged if it cannot withstand at least a twenty-five pound upward force from underneath the crib.

(d) Cutout designs on the end panels of the crib;

(e) Rail height dimensions that do not conform to the following:

(I) The height of the rail and end panel as measured from the top of the rail or panel in its lowest position to the top of the mattress support in its highest position is at least twenty-two and eight tenths centimeters or nine inches;

(II) The height of the rail and end panel as measured from the top of the rail or panel in its highest position to the top of the mattress support in its lowest position is at least sixty-six centimeters or twenty-six inches;

(f) Any screws, bolts, or hardware that are loose and not secured;

(g) Sharp edges, points, or rough surfaces or any wood surfaces that are not smooth and free from splinters, splits, or cracks;

(h) Nonfull-size cribs with tears in mesh or fabric sides.

(7) A crib is exempt from the provisions of this section if:

(a) It is not intended for use by an infant; and

(b) At the time of selling, reselling, leasing, or subletting the crib or otherwise placing the crib in the stream of commerce, the commercial dealer attaches a written notice to the crib declaring that it is not intended to be used for an infant and is unsafe for use by an infant.

(8) (a) A person who is a parent or guardian of an infant and who purchases a used crib on or after July 1, 1998, that, at the time of sale or lease, is presumed to be unsafe as provided in subsection (6) of this section may bring an action, on the parent's or guardian's own behalf and on behalf of the infant, against the commercial dealer from whom the parent or guardian purchased the used crib. In such action, the parent or guardian may seek to enjoin the commercial dealer from selling, contracting to sell, contracting to resell, leasing, or subletting any used full-size or nonfull-size crib that, at the time of sale or lease, is presumed to be unsafe as provided in subsection (6) of this section.

(b) In addition to an injunction, the parent or guardian may seek return of the purchase price of the crib, reasonable attorney fees and costs, and, if the infant has sustained injury or death as a result of using the crib, such additional damages as are provided by law.

**Source: L. 98:** Entire section added, p. 1366, § 1, effective July 1.

### **13-21-106. Broadcasting defamatory statements.**

The owner, licensee, or operator of a visual or sound radio broadcasting station or network of stations and the agent or employees of any such owner, licensee, or operator shall not be liable for any damages for any defamatory statement published or uttered in or as a part of a visual or

sound radio broadcast by one other than such owner, licensee, or operator, or agent or employee thereof, if, in any action brought to recover such damages, such owner, licensee, or operator, or agent or employee thereof, alleges and proves that he exercised due care to prevent the publication or utterance of such statement in such broadcast; except that, in no event shall any owner, licensee, or operator, or the agents or employees thereof, be held liable for any damages for any defamatory statement uttered over the facilities of such station or network of stations by any candidate for public office or by any other person speaking for, or on behalf of, any candidate for public office where, by any federal law, rule, or regulation censorship of such political statements in advance of such utterance or publication is prohibited.

**Source:** L. 47: p. 718, § 1. CSA: C. 138B, § 1. CRS 53: § 41-2-6. C.R.S. 1963: § 41-2-6.

#### ANNOTATION

**Law reviews.** For article, "The Law of Libel in Colorado", see 28 Dicta 121 (1951).

**Annotator's note.** For political speeches, compare Farmer's Educ. & Coop. Union v. WDAY, Inc., 360 U.S. 525 (1959).

#### **13-21-106.5. Civil damages for destruction or bodily injury caused by a bias-motivated crime.**

(1) The victim, or a member of the victim's immediate family, is entitled to recover damages from any person, organization, or association that commits or incites others to commit the offense of a bias-motivated crime as described in section 18-9-121 (2), C.R.S. Such person, organization, or association shall be civilly liable to the victim or a member of the victim's immediate family for the actual damages, costs, and expenses incurred in connection with said action. For purposes of this section, "immediate family" includes the victim's spouse and the victim's parent, sibling, or child who is living with the victim.

(2) A conviction for a criminal bias-motivated crime pursuant to section 18-9-121, C.R.S., shall not be a condition precedent to maintaining a civil action pursuant to the provisions of this section.

(3) In any civil action brought pursuant to this section in which damages are assessed by a jury, upon proof of the knowledge and intent described in section 18-9-121 (2), C.R.S., in addition to the actual damages, the jury may award punitive damages. Said punitive damages shall not be subject to the limitations in section 13-21-102 or section 13-21-102.5.



**Source: L. 91:** Entire section added, p. 350, § 1, effective April 19. **L. 2006:** Entire section amended, p. 1492, § 20, effective June 1.

**13-21-106.7. Civil damages for preventing passage to and from a health-care facility and engaging in prohibited activity near facility.**

(1) A person is entitled to recover damages and to obtain injunctive relief from any person who commits or incites others to commit the offense of preventing passage to or from a health-care facility or engaging in prohibited activity near a health-care facility, as defined in section 18-9-122 (2), C.R.S.

(2) A conviction for criminal obstruction of passage to or from a health-care facility pursuant to section 18-9-122, C.R.S., shall not be a condition precedent to maintaining a civil action pursuant to the provisions of this section.

**Source: L. 93:** Entire section added, p. 401, § 2, effective April 19.

**13-21-107. Damages for destruction or bodily injury caused by minors.**

(1) The state or any county, city, town, school district, or other political subdivision of the state, or any person, partnership, corporation, association, or religious organization, whether incorporated or unincorporated, is entitled to recover damages in an amount not to exceed three thousand five hundred dollars in a court of competent jurisdiction from the parents of each minor under the age of eighteen years, living with such parents, who maliciously or willfully damages or destroys property, real, personal, or mixed, belonging to the state, or to any such county, city, town, or other political subdivision of the state, or to any such person, partnership, corporation, association, or religious organization or who maliciously or willfully damages or destroys any such property belonging to or used by such school district. The recovery shall be the actual damages in an amount not to exceed three thousand five hundred dollars, in addition to court costs and reasonable attorney fees.

(2) Any person is entitled to recover damages in an amount not to exceed three thousand five hundred dollars in a court of competent jurisdiction from the parents of each minor under the age of eighteen years, living with such parents, who knowingly causes bodily injury to that person, including bodily injury occurring on property belonging to or used by a school district. The recovery shall be the actual damages in an amount not to exceed three thousand five hundred dollars, in addition to court costs and reasonable attorney fees.

**Source:** **L. 59:** p. 376, § 1. **CRS 53:** § 41-2-7. **C.R.S. 1963:** § 41-2-7. **L. 69:** p. 331, § 1. **L. 77:** Entire section amended, p. 802, § 1, effective July 1. **L. 79:** Entire section amended, p. 766, § 1, effective July 1. **L. 83:** Entire section amended, p. 617, § 1, effective April 12; entire section amended, p. 618, § 1, effective July 1. **L. 84:** (1) amended, p. 1117, § 7, effective June 7.

**Cross references:** For restitution by delinquent children under the "Colorado Children's Code", see § 19-2-918.

## ANNOTATION

**Law reviews.** For article, "The Enterprise Liability Theory of Torts", see 47 U. Colo. L. Rev. 153 (1976). For article, "Recovery of Interest: Part I — Personal Injury", see 18 Colo. Law. 1063 (1989). For article, "Parental Financial Liability for Juvenile Delinquents", see 37 Colo. Law. 49 (Nov. 2008).

**When willful destruction of property results.** In the context of this section a willful destruction of property results from an action done for the purpose of causing such injury or with knowledge that the injury is substantially certain to follow.

Crum v. Groce, 192 Colo. 185, 556 P.2d 1223 (1976).

**Subsection (2) and § 19-2-703 (4) do not limit a parent's restitution obligation to \$3,500 per delinquent act;** rather, the "one delinquent act" limitation in that statute, when read in conjunction with the "any person" language in subsection (2) provides that parental restitution payments cannot exceed \$3,500 to each person entitled to restitution as a result of each delinquent act. People in Interest of J.L.R., 895 P.2d 1151 (Colo. App. 1995).

### **13-21-107.5. Civil damages for loss caused by theft.**

(1) As used in this section, unless the context otherwise requires:

(a) "Emancipated minor" means an individual under the age of eighteen years whose parents or guardian have surrendered parental responsibilities or custody, the right to the care, and earnings of such individual and are no longer under a duty to support or maintain such individual.

(b) "Mercantile establishment" means any place where merchandise is displayed, held, or offered for sale either at retail or at wholesale.

(c) "Merchandise" means all things movable and capable of manual delivery and offered for sale either at retail or wholesale.

(2) An adult or an emancipated minor who takes possession of any merchandise from any mercantile establishment without the consent of the owner, without paying the purchase price, and with the intention of converting such merchandise to his own use or who alters the price indicia of any merchandise shall be civilly liable to the owner for actual damages plus a penalty payable to the owner of not less than one hundred dollars nor more than two hundred fifty dollars.

(3) The parents or guardian having custody of or parental responsibilities with respect to an unemancipated minor who takes possession of any merchandise from any mercantile establishment without the consent of the owner, without paying the purchase price, and with the intention of converting such merchandise to his own use or who alters the price indicia of any merchandise shall be civilly liable to the owner for actual damages plus a penalty payable to the owner of not less than one hundred dollars nor more than two hundred fifty dollars.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section, any person who, without the consent of the owner, takes possession of a shopping cart from any mercantile establishment with the intent to convert such shopping cart to his own use or the use of another shall be civilly liable to the owner for actual damages plus a penalty payable to the owner of one hundred dollars.

(5) A conviction for theft pursuant to part 4 of article 4 of title 18, C.R.S., shall not be a condition precedent to maintaining a civil action pursuant to the provisions of this section.

(6) Civil liability pursuant to the provisions of this section shall not be subject to the limitations on liability in section 13-21-107 or any other law that limits the liability of parents of an unemancipated minor for damages caused by such unemancipated minor.

**Source:** L. 85: Entire section added, p. 573, § 1, effective July 1. L. 98: (1)(a) and (3) amended, p. 1393, § 27, effective February 1, 1999.

#### **13-21-108. Persons rendering emergency assistance exempt from civil liability.**

(1) Any person licensed as a physician and surgeon under the laws of the state of Colorado, or any other person, who in good faith renders emergency care or emergency assistance to a person not presently his patient without compensation at the place of an emergency or accident, including a health-care institution as defined in section 13-64-202 (3), shall not be liable for any civil damages for acts or omissions made in good faith as a result of the rendering of such emergency care or emergency assistance during the emergency, unless the acts or omissions were grossly negligent or willful and wanton. This section shall not apply to any person who renders such emergency care or emergency assistance to a patient he is otherwise obligated to cover.

(2) Any person while acting as a volunteer member of a rescue unit, as defined in section 25-3.5-103 (11), C.R.S., notwithstanding the fact that such organization may recover actual costs incurred in the rendering of emergency care or assistance to a person, who in good faith renders emergency care or assistance without compensation at the place of an emergency or accident shall not be liable for any civil damages for acts or omissions in good faith.

(3) Any person, including a licensed physician, surgeon, or other medical personnel, while acting as a volunteer member of a ski patrol or ski area rescue unit, notwithstanding the fact that such person may receive free skiing privileges or other benefits as a result of his volunteer status, who in good faith renders emergency care or assistance without other compensation at the place of an emergency or accident shall not be liable for any civil damages for acts or omissions in good faith.

(4) (a) Notwithstanding the fact that the person may be reimbursed for the person's costs or that the nonprofit organization may receive a grant or other funding, any person who, while acting as a volunteer for any nonprofit organization operating a telephone hotline, answers questions of or provides counseling to members of the public in crisis situations shall not be liable for any civil damages for acts or omissions made in good faith as a result of discussions or counseling provided on the hotline.

(b) As used in this subsection (4), unless the context otherwise requires, "hotline" means a telephone line staffed by individuals who provide immediate assistance to callers in emergency or crisis situations.

(5) An employer shall not be liable for any civil damages for acts or omissions made by an employee while rendering emergency care or emergency assistance if the employee:

(a) Renders the emergency care or emergency assistance in the course of his or her employment for the employer; and

(b) Is personally exempt from liability for civil damages for the acts or omissions under subsection (1) of this section.

**Source:** L. 65: p. 527, § 1. C.R.S. 1963: § 41-2-8. L. 75: Entire section amended, p. 285, § 21, effective July 25. L. 77: Entire section R&RE, p. 1278, § 1, effective January 1, 1978. L. 83: Entire section amended, p. 621, § 1, effective May 26. L. 90: (1) amended and (3) added, pp. 862, 1544, §§ 2, 8, effective July 1. L. 2004: (4) added, p. 115, § 1, effective August 4. L. 2005: (5) added, p. 204, § 1, effective August 8.

**Cross references:** (1) For the exemption from civil liability for veterinarians providing emergency care or treatment to an animal, see § 12-315-117; for the exemption from civil

liability for persons administering tests to persons suspected of drunken or drugged driving, see § 42-4-1301.1 (6)(b); for the exemption from civil or criminal liability for physicians examining or treating minor victims of sexual assault, see § 13-22-106 (4); for the exemption from civil or criminal liability for physicians acting pursuant to a declaration under the "Colorado Medical Treatment Decision Act", see § 15-18-110 (1)(b).

(2) For the legislative declaration contained in the 1990 act amending subsection (1) and enacting subsection (3), see section 1 of chapter 256, Session Laws of Colorado 1990.

#### ANNOTATION

**Law reviews.** For article, "Colorado's Good Samaritan Laws", see 53 Colo. Law. 42 (Apr. 2024).

#### **13-21-108.1. Persons rendering emergency assistance through the use of automated external defibrillators - limited immunity - definition.**

(1) The general assembly hereby declares that it is the intent of the general assembly to encourage the use of automated external defibrillators for the purpose of saving the lives of people in cardiac arrest.

(2) As used in this section, unless the context otherwise requires, "AED" or "defibrillator" means an automated external defibrillator that:

(a) Has received approval of its premarket notification filed pursuant to 21 U.S.C. sec. 360 (k) from the federal food and drug administration;

(b) Is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia, and is capable of determining, without intervention by an operator, whether defibrillation should be performed; and

(c) Upon determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual's heart.

(3) (a) In order to ensure public health and safety, a person or entity who acquires an AED shall ensure that:

(I) Expected AED users receive training in cardiopulmonary resuscitation (CPR) and AED use through a course that meets nationally recognized standards and is approved by the department of public health and environment;

(II) The defibrillator is maintained and tested according to the manufacturer's operational guidelines and that written records are maintained of this maintenance and testing;

(III) (Deleted by amendment, L. 2009, (SB 09-010), ch. 52, p. 186, § 1, effective March 25, 2009.)

(IV) Written plans are in place concerning the placement of AEDs, training of personnel, preplanned coordination with the emergency medical services system, medical oversight, AED maintenance, and reporting of AED utilization; and

(V) Any person who renders emergency care or treatment to a person in cardiac arrest by using an AED activates the emergency medical services system as soon as possible.

(b) Any person or entity that acquires an AED shall notify an agent of the applicable emergency communications or vehicle dispatch center of the existence, location, and type of AED.

(4) (a) Any person or entity whose primary duties do not include the provision of health care and who, in good faith and without compensation, renders emergency care or treatment by the use of an AED shall not be liable for any civil damages for acts or omissions made in good faith as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment, unless the acts or omissions were grossly negligent or willful and wanton.

(b) The limited immunity provided in subsection (4)(a) of this section extends to:

(I) Repealed.

(II) The person or entity who provides the CPR and AED site placement;

(III) Any person or entity that provides teaching or training programs for CPR to the site at which the AED is placed, which programs include training in the use of an AED; and

(IV) The person or entity responsible for the site where the AED is located.

(c) The limited immunity provided in this subsection (4) applies regardless of whether the requirements of subsection (3) of this section are met; except that the person or entity responsible for the site where the AED is located shall receive the limited immunity only if the requirements of subparagraph (II) of paragraph (a) of subsection (3) of this section are met.

(5) The requirements of subsection (3) of this section shall not apply to any individual using an AED during a medical emergency if that individual is acting as a good samaritan under section 13-21-108.

**Source:** **L. 99:** Entire section added, p. 349, § 1, effective April 16. **L. 2005:** (3)(a)(I) amended, p. 384, § 2, effective August 8. **L. 2009:** (3)(a)(III), (3)(a)(IV), (3)(a)(V), (4)(b), and (4)(c) amended, (SB 09-010), ch. 52, p. 186, § 1, effective March 25. **L. 2025:** (2), (3)(a)(IV), and IP(4)(b) amended and (4)(b)(I) repealed, (SB 25-191), ch. 164, p. 664, § 1, effective May 5.

## ANNOTATION

**Law reviews.** For article, "Colorado's Good Samaritan Laws", see 53 Colo. Law. 42 (Apr. 2024).

### **13-21-108.2. Persons rendering emergency assistance - competitive sports - exemption from civil liability.**

(1) (a) Except as provided in subsection (2) of this section, a person licensed as a physician, osteopath, chiropractor, nurse, physical therapist, podiatrist, dentist, or optometrist or certified or licensed as an emergency medical service provider under part 2 of article 3.5 of title 25, who, in good faith and without compensation, renders emergency care or emergency assistance, including sideline or on-field care as a team health-care provider, to an individual requiring emergency care or emergency assistance as a result of having engaged in a competitive sport is not liable for civil damages as a result of acts or omissions by the physician, osteopath, chiropractor, nurse, physical therapist, podiatrist, dentist, or optometrist, or person certified or licensed as an emergency medical service provider under part 2 of article 3.5 of title 25.

(b) The provisions of this subsection (1) apply to the rendering of emergency care or emergency assistance to a minor even if the physician, osteopath, chiropractor, nurse, physical therapist, podiatrist, dentist, emergency medical service provider, or optometrist does not obtain permission from the parent or legal guardian of the minor before rendering the care or assistance; except that, if a parent or guardian refuses the rendering of emergency care, this subsection (1) does not apply.

(2) The exemption from civil liability described in subsection (1) of this section does not apply to:

(a) Acts or omissions that constitute gross negligence or willful and wanton conduct; or

(b) Acts or omissions that are outside the scope of the license held by the physician, osteopath, chiropractor, nurse, physical therapist, podiatrist, dentist, or optometrist or outside the scope of the certificate or license held by an emergency medical service provider under part 2 of article 3.5 of title 25.

(3) As used in this section, "competitive sport" means a sport conducted as part of a program sponsored by a public or private school that provides instruction in any grade from kindergarten through twelfth grade or sponsored by a public or private college or university or by any league, club, or organization that promotes sporting events.

(4) The general assembly declares that the intent of this section is to clarify and not to expand or limit the scope of section 13-21-108.

**Source:** **L. 2007:** Entire section added, p. 321, § 1, effective July 1; (1) and (2)(b) amended, p. 2024, § 24, effective July 1. **L. 2012:** (1), IP(2), and (2)(b) amended, (HB 12-1059), ch. 271, p. 1432, § 8, effective July 1. **L. 2019:** (1) and (2)(b) amended, (SB 19-242), ch. 396, p. 3525, § 7, effective May 31.

#### ANNOTATION

**Law reviews.** For article, "Colorado's Good Samaritan Laws", see 53 Colo. Law. 42 (Apr. 2024).

#### **13-21-108.3. Architects, building code officials, professional engineers, and professional land surveyors rendering assistance during emergency or disaster - qualified immunity from civil liability.**

(1) An architect licensed pursuant to part 4 of article 120 of title 12, a building code official, a professional engineer licensed pursuant to part 2 of article 120 of title 12, or a professional land surveyor licensed pursuant to part 3 of article 120 of title 12 who voluntarily and without compensation provides architectural, damage assessment, engineering, or surveying services, respectively, at the scene of an emergency shall not be liable for any personal injury, wrongful death, property damage, or other loss caused by an act or omission of the architect, building code official, engineer, or surveyor in performing such services.

(2) As used in this section, unless the context otherwise requires:

(a) "Building code official" means an individual maintaining a building inspector, building code official, or certified building official certification in good standing by the international code council or similar association of building code officials.

(b) "Emergency" means a disaster emergency declared by executive order or proclamation of the governor pursuant to section 24-33.5-704 (4), C.R.S.



(3) The immunity provided in subsection (1) of this section applies only to an architectural, damage assessment, or engineering service that:

(a) Concerns an identified building, structure, or other architectural or engineering system, whether publicly or privately owned;

(b) Relates to the structural integrity of the building, structure, or system or to a nonstructural element thereof affecting life safety; and

(c) Is rendered during the time in which a state of disaster emergency exists, as provided in section 24-33.5-704 (4), C.R.S.

(4) Nothing in this section shall provide immunity for gross negligence or willful misconduct.

(5) Nothing in this section shall be construed to abrogate any provision of the "Colorado Governmental Immunity Act", provided in article 10 of title 24, C.R.S.

**Source:** **L. 98:** Entire section added, p. 236, § 1, effective July 1. **L. 2006:** (1) amended, p. 762, § 20, effective July 1. **L. 2009:** Entire section amended, (HB 09-1080), ch. 37, p. 149, § 1, effective March 20. **L. 2013:** (2)(b) and (3)(c) amended, (HB 13-1300), ch. 316, p. 1674, § 32, effective August 7. **L. 2019:** (1) amended, (HB 19-1172), ch. 136, p. 1663, § 68, effective October 1.

## ANNOTATION

**Law reviews.** For article, "Colorado's Good Samaritan Laws", see 53 Colo. Law. 42 (Apr. 2024).

### **13-21-108.4. Persons rendering emergency assistance from a locked vehicle - exempt from criminal and civil liability - definitions.**

(1) For purposes of this section, unless the context otherwise requires:

(a) "Animal" means a dog or cat. The term "animal" does not include livestock, as defined in subsection (1)(c) of this section.

(b) "At-risk person" means an at-risk adult, an at-risk adult with IDD, an at-risk elder, or an at-risk juvenile, as those terms are defined in section 18-6.5-102.

(c) "Livestock" means cattle, horses, mules, burros, sheep, poultry, swine, llamas, and goats.

(2) A person is immune from civil and criminal liability for property damage resulting from his or her forcible entry into a locked vehicle if:

- (a) The vehicle is not a law enforcement vehicle; and
- (b) An at-risk person or animal is present in the vehicle and the person rendering assistance has a reasonable belief that the at-risk person or animal is in imminent danger of death or suffering serious bodily injury; and
- (c) The person determines that the vehicle is locked and that forcible entry is necessary; and
- (d) The person makes a reasonable effort to locate the owner or operator of the vehicle and documents the color, make, model, license plate number, and location of the vehicle; and
- (e) The person contacts a local law enforcement agency, the fire department, animal control, or a 911 operator prior to forcibly entering the vehicle, and the person does not interfere with, hinder, or fail to obey a lawful order of any person duly empowered with police authority or other first responder duties who is discharging or apparently discharging his or her duties; and
- (f) The person uses no more force than he or she believes is reasonably necessary; and
- (g) (I) The person rendering assistance remains with the at-risk person or animal, reasonably close to the vehicle, until a law enforcement officer, emergency medical service provider, animal control officer, or other first responder arrives at the scene.  
  
(II) If it is necessary for the person rendering assistance to leave the scene before the owner or operator of the vehicle returns to the scene, or before a law enforcement officer, emergency medical service provider, animal control officer, or other first responder arrives at the scene, and regardless of whether or not the person rendering assistance took the at-risk person or animal to a hospital, an appropriate law enforcement, animal control, or veterinary facility, prior to leaving the scene the person rendering assistance shall:
  - (A) Place a notice on the windshield of the vehicle that includes his or her name and contact information and the name and contact information of the location, if any, to which the person rendering assistance took the at-risk person or animal when he or she left the scene; and
  - (B) Contact law enforcement, animal control, or other first responder to advise them of his or her name and contact information, that he or she is leaving the scene, and the name and contact information of the location, if any, to which the person rendering assistance is taking the at-risk person or animal.

**Source: L. 2017:** Entire section added, (HB 17-1179), ch. 127, p. 435, § 1, effective August 9.

## ANNOTATION

**Law reviews.** For article, "Colorado's Good Samaritan Laws", see 53 Colo. Law. 42 (Apr. 2024).

### **13-21-108.5. Persons rendering assistance relating to discharges of hazardous materials - legislative declaration - exemption from civil liability.**

(1) The general assembly hereby finds and declares that knowledgeable individuals and organizations should be encouraged to lend expert assistance in the event of accidental or threatened discharges of hazardous materials. The purpose of this section is to so encourage such individuals and organizations to lend assistance by providing them with limited immunity from civil liability.

(2) As used in this section:

(a) "Discharge" includes any spill, leakage, seepage, or other release.

(b) "Hazardous material" includes any material or substance which is designated or defined as hazardous by state or federal law or regulation.

(c) "Person" means individual, government or governmental subdivision or agency, corporation, partnership, or association or any other legal entity.

(3) (a) Notwithstanding any provision of law to the contrary, any person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge of hazardous material, or in preventing, cleaning up, or disposing of or in attempting to prevent, clean up, or dispose of any such discharge, shall not be subject to civil liability for such assistance or advice, except as provided in subsection (4) of this section.

(b) Notwithstanding any provision of law to the contrary, any person who provides assistance upon request of any police agency, fire department, rescue or emergency squad, or governmental agency in the event of an accident or other emergency involving the use, handling, transportation, transmission, or storage of hazardous material, when the reasonably apparent circumstances require prompt decisions and actions, shall not be liable for any civil damages resulting from any act of commission or omission on his part in the course of his rendering such assistance, except as provided in subsection (4) of this section.

(4) The exemption from civil liability provided for in this section shall not apply to:

(a) Any person whose act or omission caused in whole or in part such discharge and who would otherwise be liable therefor;

(b) Any person other than the employee of a governmental subdivision or agency who receives compensation other than reimbursement for out-of-pocket expenses for his assistance or advice;

(c) Any person's gross negligence or reckless, wanton, or intentional misconduct.

(5) Nothing in this section shall be construed to abrogate or limit the sovereign immunity granted to public entities pursuant to article 10 of title 24, C.R.S., the "Colorado Governmental Immunity Act".

**Source: L. 83:** Entire section added, p. 622, § 1, effective June 1.

## ANNOTATION

**Law reviews.** For article, "Colorado's Good Samaritan Laws", see 53 Colo. Law. 42 (Apr. 2024).

### **13-21-108.7. Persons rendering emergency assistance through the administration of an opioid antagonist - limited immunity - legislative declaration - definitions.**

(1) **Legislative declaration.** The general assembly encourages the administration and distribution of opioid antagonists, including expired opioid antagonists, by persons and entities, including law enforcement personnel, school district personnel, and health-care providers, for the purpose of saving the lives of people who suffer opioid-related drug overdose events. The general assembly also encourages each person who administers an opioid antagonist to another person to call for emergency medical services immediately.

(2) **Definitions.** As used in this section, unless the context otherwise requires:

(a) Repealed.

(b) (I) "Health-care provider" means:

(A) A licensed physician, an advanced practice registered nurse, or a certified midwife who has prescriptive authority pursuant to section 12-255-112; a physician assistant; or a pharmacist; or

(B) A health maintenance organization licensed and conducting business in this state.

(II) "Health-care provider" does not include a podiatrist, optometrist, dentist, or veterinarian.

- (c) "Opioid" has the same meaning as "opiate", as set forth in section 18-18-102 (21).
- (d) "Opioid antagonist" has the same meaning as set forth in section 12-30-110 (7)(d).
- (e) "Opioid-related drug overdose event" means an acute condition, including a decreased level of consciousness or respiratory depression, that:
  - (I) Results from the consumption or use of a controlled substance or another substance with which a controlled substance was combined;
  - (II) A layperson would reasonably believe to be an opioid-related drug overdose event; and
  - (III) Requires medical assistance.
- (3) **General immunity.**
  - (a) A person, other than a health-care provider, is not liable for any civil damages if the person acts in good faith to:
    - (I) Furnish or administer an opioid antagonist to an individual the person believes to be suffering an opioid-related drug overdose event or to an individual who is in a position to assist the individual at risk of experiencing an opioid-related drug overdose event; or
    - (II) Distribute the opioid antagonist.
  - (b) This subsection (3) also applies to:
    - (I) An eligible entity described in section 25-1.5-115.1 (1); except that an employee or agent of a school, or an employee or agent of a school district, a district school, the charter school institute, an institute charter school, or a nonpublic school who operates or is on a school bus, must be acting in accordance with section 12-30-110 (1)(b), (2)(b), and (4)(b), and, as applicable, section 22-1-119.1; and
    - (II) A person who acts in good faith to furnish or administer an opioid antagonist in accordance with section 25-20.5-1001.
- (4) **Licensed prescribers and dispensers.**
  - (a) An individual who is licensed by the state under title 12 and is permitted by section 12-30-110 or by other applicable law to prescribe or dispense an opioid antagonist is not liable for any civil damages resulting from:
    - (I) Prescribing or dispensing an opioid antagonist in accordance with the applicable law; or
    - (II) Any outcomes resulting from the eventual administration of the opioid antagonist by a layperson.
  - (b) Repealed.

(5) The provisions of this section shall not be interpreted to establish any duty or standard of care in the prescribing, dispensing, or administration of an opioid antagonist.

**Source:** **L. 2013:** Entire section added, (SB 13-014), ch. 178, p. 658, § 3, effective May 10. **L. 2015:** (2)(b)(I)(A), (2)(e), (3), IP(4)(a), and (4)(a)(I) amended and (4)(b) repealed, (SB 15-053), ch. 78, p. 215, § 8, effective April 3. **L. 2019:** (3) amended, (SB 19-227), ch. 273, p. 2579, § 6, effective May 23; (2)(b)(I)(A), (3), and IP(4)(a) amended, (HB 19-1172), ch. 136, p. 1663, § 69, effective October 1. **L. 2020:** (3)(b)(I) amended, (HB 20-1206), ch. 304, p. 1526, § 6, effective July 14; (3)(a) amended, (HB 20-1065), ch. 287, p. 1420, § 4, effective September 14. **L. 2021:** (3)(b)(I) amended, (SB 21-122), ch. 33, p. 136, § 2, effective April 15. **L. 2022:** (3)(a) and (3)(b)(I) amended, (HB 22-1326), ch. 225, p. 1641, § 13, effective July 1. **L. 2023:** (2)(b)(I)(A) amended, (SB 23-167), ch. 261, p. 1547, § 53, effective May 25. **L. 2024:** (1), (2)(c), (2)(d), IP(2)(e), (2)(e)(II), (3)(a), (3)(b)(II), (4)(a), and (5) amended and (2)(a) repealed, (HB 24-1037), ch. 458, p. 3161, § 2, effective June 6; (3)(b)(I) amended, (HB 24-1003), ch. 121, p. 396, § 6, effective August 7. **L. 2025:** (3)(b)(I) amended, (SB 25-164), ch. 168, p. 684, § 7, effective August 6.

**Editor's note:** Amendments to subsection (3) by SB 19-227 and HB 19-1172 were harmonized.

**Cross references:** For the legislative declaration in the 2013 act adding this section, see section 1 of chapter 178, Session Laws of Colorado 2013. For the legislative declaration in HB 22-1326 stating the purpose of, and the provision directing legislative staff agencies to conduct, a post-enactment review pursuant to § 2-2-1201 scheduled in 2024, 2025, and 2027, see sections 1 and 55 of chapter 225, Session Laws of Colorado 2022. To obtain a copy of the review, once completed, go to "Legislative Resources and Requirements" on the Colorado General Assembly's website. For the legislative declaration in HB 24-1003, see section 1 of chapter 121, Session Laws of Colorado 2024.

## ANNOTATION

**Law reviews.** For article, "Colorado's Good Samaritan Laws", see 53 Colo. Law. 42 (Apr. 2024).

**13-21-108.8. Persons furnishing a non-laboratory synthetic opiate detection test or a non-laboratory additive detection test - limited immunity - definitions.**

(1) Except as provided in subsection (2) of this section, a person who or entity that acts in good faith to furnish a non-laboratory synthetic opiate detection test or a non-laboratory additive detection test, including an expired non-laboratory synthetic opiate detection test or non-laboratory additive detection test, to another person is not liable for any civil damages for acts, omissions made as a result of the act, or for any act or omission made if the non-laboratory synthetic opiate detection test or non-laboratory additive detection test is stolen, defective, or produces an inaccurate result.

(2) A manufacturer, as defined in section 13-21-401 (1), of non-laboratory synthetic opiate detection tests or non-laboratory additive detection tests is not immune from liability as described in subsection (1) of this section.

(3) For purposes of this section, unless the context otherwise requires:

(a) "Non-laboratory additive detection test" means a product that is intended or designed to detect the presence of an additive to a synthetic opiate or an immediate precursor to a synthetic opiate.

(b) "Non-laboratory synthetic opiate detection test" means a product that is intended or designed to detect the presence of a synthetic opiate.

**Source: L. 2022:** Entire section added, (HB 22-1326), ch. 225, p. 1641, § 14, effective July 1.  
**L. 2024:** Entire section amended, (HB 24-1003), ch. 121, p. 396, § 7, effective August 7.

**Cross references:** For the legislative declaration in HB 22-1326 stating the purpose of, and the provision directing legislative staff agencies to conduct, a post-enactment review pursuant to § 2-2-1201 scheduled in 2024, 2025, and 2027, see sections 1 and 55 of chapter 225, Session Laws of Colorado 2022. To obtain a copy of the review, once completed, go to "Legislative Resources and Requirements" on the Colorado General Assembly's website. For the legislative declaration in HB 24-1003, see section 1 of chapter 121, Session Laws of Colorado 2024.

**ANNOTATION**

**Law reviews.** For article, "Colorado's Good Samaritan Laws", see 53 Colo. Law. 42 (Apr. 2024).

**13-21-108.9. Landowner allowing access to property during emergency - limited immunity - definitions.**

- (1) As used in this section, unless the context otherwise requires:
  - (a) "Emergency" means:
    - (I) A fire, rescue call, or hazardous materials incident;
    - (II) A natural or human-caused disaster such as an earthquake, wildfire, flood, or severe weather event; or
    - (III) An incident reasonably determined to be an emergency by a first responder.
  - (b) "First responder" means:
    - (I) A peace officer, as described in section 16-2.5-101;
    - (II) A firefighter, as defined in section 29-5-203 (10);
    - (III) A volunteer firefighter, as defined in section 31-30-1102 (9)(a);
    - (IV) An emergency medical service provider, as defined in section 25-3.5-103 (8); or
    - (V) Any other individual who responds in a professional capacity to an incident that threatens public safety.
  - (c) "Landowner" has the same meaning set forth in section 13-21-115 (7)(b).
- (2) (a) A landowner who, in good faith and without compensation, allows access to the landowner's property for entry and exit in connection with an emergency is immune from civil liability for damage or injury to persons or property as a result of allowing such access. This immunity does not apply to acts or omissions that are grossly negligent or willful and wanton.
- (b) The act of allowing access to a landowner's property for entry and exit in connection with an emergency is not a guarantee that the property is maintained or in a passable condition.
- (3) Nothing in this section:
  - (a) Abrogates or limits the sovereign immunity granted to public entities pursuant to the "Colorado Governmental Immunity Act", article 10 of title 24;
  - (b) Requires or imposes a duty on a landowner to maintain the landowner's property in a specific condition;
  - (c) Authorizes trespass onto private property; or



(d) Precludes a landowner from negotiating additional agreements governing access to the landowner's property.

**Source: L. 2025:** Entire section added, (HB 25-1053), ch. 17, p. 68, § 1, effective August 6.

**13-21-109. Recovery of damages for checks, drafts, or orders not paid upon presentment.**

(1) Any person who obtains money, merchandise, property, or other thing of value, or who makes any payment of any obligation other than an obligation on a consumer credit transaction as defined in section 5-1-301 by means of making any check, draft, or order for the payment of money upon any bank, depository, person, firm, or corporation that is not paid upon its presentment, is liable to the holder of the check, draft, or order or any assignee for collection for one of the following amounts, at the option of the holder or assignee:

(a) The face amount of the check, draft, or order plus actual damages determined in accordance with the provisions of the "Uniform Commercial Code", title 4, C.R.S.; or

(b) An amount equal to the face amount of the check, draft, or order and:

(I) The amount of any reasonable posted or contractual charge not exceeding twenty dollars; and

(II) If the check, draft, or order has been assigned for collection to a person licensed as a collection agency pursuant to article 16 of title 5 as costs of collection, twenty percent of the face amount of the check, draft, or order but not less than twenty dollars; or

(c) An amount as provided in subsection (2) of this section.

(2) (a) If notice of nonpayment on presentment of the check, draft, or order has been given in accordance with subsections (3) and (4) of this section and the total amount due as set forth in the notice has not been paid within fifteen days after such notice is given, instead of the amounts set forth in paragraph (a) or (b) of subsection (1) of this section, the person shall be liable to the holder or any assignee for collection for three times the face amount of the check but not less than one hundred dollars and, with regard to a paycheck, actual damages caused by the nonpayment, including associated late fees.

(b) The person, also referred to in this section as the "maker", shall not be liable in accordance with the provisions of paragraph (a) of this subsection (2) if he establishes any one of the following:

(I) That the account contained sufficient funds or credit to cover the check, draft, or order at the time the check, draft, or order was made, plus all other checks, drafts, and orders on the account then outstanding and unpaid;

(II) That the check, draft, or order was not paid because a paycheck, deposited in the account in an amount sufficient to cover the check, draft, or order, was not paid upon presentment;

(III) That funds sufficient to cover the check, draft, or order were garnished, attached, or set off and the maker had no notice of such garnishment, attachment, or setoff at the time the check, draft, or order was made;

(IV) That the maker of the check, draft, or order was not competent or of full age to enter into a legal contractual obligation at the time the check, draft, or order was made;

(V) That the making of the check, draft, or order was induced by fraud or duress;

(VI) That the transaction which gave rise to the obligation for which the check, draft, or order was given lacked consideration or was illegal.

(3) Notice that a check, draft, or order has not been paid upon presentment shall be in writing and given in person and receipted for, or by personal service, or by depositing the notice by certified mail, return receipt requested and postage prepaid, or by regular mail supported by an affidavit of mailing sworn and retained by the sender, in the United States mail and addressed to the recipient's most recent address known to the sender. If the notice is mailed and not returned as undeliverable by the United States postal service, notice shall be conclusively presumed to have been given on the date of mailing. For the purpose of this subsection (3), "undeliverable" does not include unclaimed or refused.

(4) The notice given pursuant to subsection (3) of this section shall include the following information regarding the unpaid check, draft, or order:

(a) The date the check, draft, or order was issued;

(b) The name of the bank, depository, person, firm, or corporation on which it was drawn;

(c) The name of the payee;

(d) The face amount;

(e) A statement of the total amount due, which shall be itemized and shall not exceed the amount permitted under paragraph (a) or (b) of subsection (1) of this section;

(f) A statement that the maker has fifteen days from the date notice was given to make payment in full of the total amount due; and

(g) A statement that, if the total amount due is not paid within fifteen days after the date notice was given, the maker may be liable in a civil action for three times the face amount of the

check but not less than one hundred dollars and that, in such civil action, the court may award court costs and reasonable attorney fees to the prevailing party.

(5) No holder or assignee for collection shall assert that any maker has liability for any amount set forth under subsection (2) of this section unless such liability has been determined by entry of a final judgment by a court of competent jurisdiction.

(6) In any civil action brought under this section, the prevailing party may recover court costs and reasonable attorney fees. In addition, in an action brought under paragraph (b) of subsection (1) of this section, if the holder or assignee for collection prevails, actual costs of collection may be recovered by the holder or assignee for collection if such actual costs of collection are greater than the costs of collection provided under such paragraph (b).

(7) Nothing in this section shall be deemed to apply to any check, draft, or order on which payment has been stopped by the maker by reason of a dispute relating to the money, merchandise, property, or other thing of value obtained by the maker.

(8) Nothing in this section applies to any criminal case or affects eligibility or terms of probation.

(9) Any limitation on a cause of action under this section, except a cause of action under subsection (2) of this section, shall be governed by the provisions of section 13-80-103.5. Any limitation on a cause of action under subsection (2) of this section shall be governed by the provisions of section 13-80-102.

**Source:** L. 67: pp. 827, 828, §§ 1, 3. C.R.S. 1963: § 41-2-9. L. 84: (1) amended, p. 463, § 1, effective July 1. L. 89: Entire section R&RE, p. 754, § 1, effective July 1. L. 2002: (3) amended, p. 310, § 1, effective August 7. L. 2009: (2)(a) amended, (HB 09-1108), ch. 161, p. 696, § 2, effective August 5. L. 2017: IP(1) and (1)(b)(II) amended, (HB 17-1238), ch. 260, p. 1173, § 18, effective August 9.

#### ANNOTATION

**The commonly understood meaning of the term "any person",** which is not defined in this section, could include either an individual or a corporation, as well as a person signing on behalf of a corporation. Mtn. States Commercial v. 99 Liquid., 940 P.2d 934 (Colo. App. 1996).

**If the general assembly had intended to limit the liability of a person signing a check in a representative capacity, it could have so stated.** This section provides no such exception, however. Thus, a corporate officer could be found individually liable under this section. Mtn. States Commercial v. 99 Liquid., 940 P.2d

934 (Colo. App. 1996) (decided under § 13-21-109 prior to enactment of § 4-3-402 (c)).

**The general assembly's enactment of § 4-3-402 (c) directs that an authorized corporate officer who signs his or her name to a check issued on an account of a corporation is not liable for that check so long as the corporation is identified as the owner of the account on the check,** and it would be incongruous for a corporate officer to be relieved of personal liability on a check pursuant to § 4-3-402 (c), but still be liable for three times the face amount of the check pursuant to subsection (2) of this section. *Kunz v. Cycles W., Inc.*, 969 P.2d 781 (Colo. App. 1998).

**The general assembly intended the phrases "any person", "the person", and "the maker" in this section to refer to the corporation** when the owner of the account is a corporation and the signature on the check is that of an authorized corporate officer. *Kunz v. Cycles W., Inc.*, 969 P.2d 781 (Colo. App. 1998).

**The general assembly intended the word "made"** to mean when a check is written, not when the check was delivered, mailed, or drawn. *Suncor Energy (USA) v. Aspen Petroleum*, 178 P.3d 1263 (Colo. App. 2007).

**The maker's liability for damages under subsection (2) is not affected by subsection (5) nor by the doctrine of**

**election of remedies.** Where the maker satisfies the underlying debt after the 15-day deadline, liability for the statutory penalty is partially offset but is not negated. *Singer v. Strauss*, 851 P.2d 256 (Colo. App. 1993).

Trial court erred in finding that a letter returned as "unknown" was not "returned as undeliverable" under subsection (3). *Stadler v. DeVito*, 931 P.2d 573 (Colo. App. 1996).

**Even assuming that markings of "attempted, unknown" and "moved" on notice of presentment means that notice was undeliverable, the only consequence of assumption** is that assignee of debt cannot avail itself of conclusive presumption under subsection (3) that notice was given on the date of mailing. *Mtn. States Commercial v. 99 Liquid.*, 940 P.2d 934 (Colo. App. 1996).

**Strict compliance with notice requirements in this section is necessary.** *Group, Inc. v. Spanier*, 940 P.2d 1120 (Colo. App. 1997).

**Failure to comply with notice provisions precludes the collection of treble damages.** *Group, Inc. v. Spanier*, 940 P.2d 1120 (Colo. App. 1997).

**Attorney fees are not "collection costs"** under this section. *Group, Inc. v. Spanier*, 940 P.2d 1120 (Colo. App. 1997).

**Applied** in *Berckefeldt v. Hammer*, 44 Colo. App. 320, 616 P.2d 183 (1980).

### **13-21-109.5. Recovery of damages for fraudulent use of social security numbers.**

(1) No person shall buy or otherwise obtain or sell, offer for sale, take or give in exchange, pledge or give in pledge, or use any individual's social security account number, or any

derivative of such number, for the purpose of committing fraud or fraudulently using or assuming said individual's identity.

(2) Any individual aggrieved by the act of any person in violation of subsection (1) of this section may bring a civil action in a court of competent jurisdiction to recover:

(a) Such preliminary and equitable relief as the court determines to be appropriate; and

(b) The greater of:

(I) Actual damages; or

(II) Liquidated damages of up to ten thousand dollars.

(3) In addition to any damages and other relief awarded pursuant to subsection (2) of this section, if the aggrieved individual prevails, the court may assess against the defendant reasonable attorney fees and any other litigation costs and expenses, including expert fees, reasonably incurred by the aggrieved individual.

(4) Any action brought pursuant to this section shall be in addition to, and not in lieu of, any criminal prosecution that may be brought under any state or federal law.

**Source: L. 98:** Entire section added, p. 134, § 1, effective August 5.

**13-21-110. Medical committee - privileged communication - limitation on liability.**

(1) Any information, data, reports, or records made available to a utilization review committee of a hospital or other health-care facility, as required by state or federal law, is confidential and shall be used by such committee and the members thereof only in the exercise of the proper functions of the committee. It shall not be a violation of a privileged communication for any physician, dentist, podiatrist, hospital, or other health-care facility or person to furnish information, data, reports, or records to any such utilization review committee concerning any patient examined or treated by the same or confined in such hospital or facility, which information, data, reports, or records relate to the proper functions of the utilization review committee. No member of such a committee shall be liable for damages to or for any such patient by reason of recommendations made by the committee in the exercise of the proper function of the committee, except for willful or reckless disregard of the patient's safety.

(2) As used in this section, "utilization review committee" means a committee established for the purpose of evaluating the quantity, quality, and timeliness of health-care services rendered under the "Colorado Medical Assistance Act" and in compliance with Titles XVIII and XIX of the federal "Social Security Act", as amended.

(3) The privilege created by subsection (1) of this section shall not prevent any such information, data, reports, or records which have been made available to a utilization review committee from being admitted in evidence or otherwise made available for use in the review process referred to in section 13-90-107 (1)(d)(III) and (1)(d)(IV).

**Source:** L. 70: p. 161, § 1. C.R.S. 1963: § 41-2-10. L. 76: (3) added, p. 525, § 1, effective July 1. L. 2007: (2) amended, p. 2025, § 25, effective June 1.

**Cross references:** For the Colorado Medical Assistance Act, see article 4 of title 25.5.

#### ANNOTATION

**Requirements for privilege.** To be privileged under this section the information sought must meet two requirements: (1) It must be furnished to a utilization review committee, defined as a committee formed for the purpose of evaluating the quantity, quality and timeliness of services rendered under the Colorado medical assistance act

and Titles XVIII and XIX of the federal Social Security Act; and (2) it must be information provided to that utilization review committee in order to satisfy requirements of state or federal law. *Sherman v. District Court*, 637 P.2d 378 (Colo. 1981).

#### **13-21-111. Negligence cases - comparative negligence as measure of damages.**

(1) Contributory negligence shall not bar recovery in any action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person for whose injury, damage, or death recovery is made.

(2) In any action to which subsection (1) of this section applies, the court, in a nonjury trial, shall make findings of fact or, in a jury trial, the jury shall return a special verdict which shall state:

(a) The amount of the damages which would have been recoverable if there had been no contributory negligence; and

(b) The degree of negligence of each party, expressed as a percentage.

(3) Upon the making of the finding of fact or the return of a special verdict, as is required by subsection (2) of this section, the court shall reduce the amount of the verdict in proportion to the amount of negligence attributable to the person for whose injury, damage, or death recovery is made; but, if the said proportion is equal to or greater than the negligence of the person against whom recovery is sought, then, in such event, the court shall enter a judgment for the defendant.

(3.5) and (4) Repealed.

**Source:** L. 71: p. 496, § 1. C.R.S. 1963: § 41-2-14. L. 75: (4) added, p. 570, § 1, effective July 1. L. 85: (3.5) added, p. 575, § 1, effective July 1. L. 86: (3.5) repealed, p. 682, § 6, effective July 1; (4) repealed, p. 679, § 5, effective July 1.

## ANNOTATION

I. General Consideration.

II. Applicability.

III. Degree of Negligence.

IV. Award.

V. Procedure.

VI. Scope of Review.

### I. GENERAL CONSIDERATION.

**Law reviews.** For article, "Colorado Comparative Negligence and Assumption of Risk", see 46 U. Colo. L. Rev. 509 (1974-75). For note, "The Seat Belt Defense: Should Coloradans Buckle up for Safety?", see 50 U. Colo. L. Rev. 375 (1979). For article, "Immunity to Direct Action: Is it a Defense to a Contribution Claim?", see 52 U. Colo. L. Rev. 151 (1980). For note, "Res Ipsa Loquitur — The Effect of Comparative Negligence", see 53 U. Colo. L. Rev. 777 (1982). For article, "Application of Comparative Negligence and Contribution Statutes to Third-Party Defendants", see 13

Colo. Law. 626 (1984). For article, "Indemnification or Contribution Among Counsel in Legal Malpractice Actions", see 14 Colo. Law. 563 (1985). For article, "The Apportionment of Tort Responsibility", see 14 Colo. Law. 741 (1985). For comment, "Multiple Defendants in Negligence Actions: Mountain Mobile Mix, Inc. v. Gifford", see 56 U. Colo. L. Rev. 303 (1985). For article, "Colorado Mandatory Seatbelt Act Revives the Seatbelt Defense", see 16 Colo. Law. 1210 (1987). For article, "Joint and Several Liability: A Case for Reform", see 64 Den. U. L. Rev. 651 (1988). For article, "Allocation of the Risks of Skiing: A Call for the Reapplication of Fundamental Common Law Principles", see 67 Den. U. L. Rev. 165 (1990). For article, "Application of the Pro Rata Liability, Comparative Negligence and Contribution Statutes", see 23 Colo. Law. 1717 (1994). For article, "Overview of Comparative Fault", see 29 Colo. Law. 95 (July 2000). For article, "Application of the Pro Rata Liability Statute to Tort Claims in a

Contractual Wrapper'", see 45 Colo. Law. 37 (June 2016).

**Traditional theories of loss allocation in tort altered.** The general assembly has altered traditional theories of loss allocation in tort with the passage of the uniform contribution among tortfeasors act, §§ 13-50.5-101 to 13-50.5-106, and with the introduction of a comparative negligence scheme into Colorado law by this section. *Pub. Serv. Co. v. District Court*, 638 P.2d 772 (Colo. 1981).

**General assembly has decided that comparative negligence rule is more just.** By the enactment of this act, the general assembly has given legislative recognition to the argument that the comparative negligence rule is superior to the contributory negligence rule in tending to effect more just results in negligence actions. *Heafer v. Denver-Boulder Bus Co.*, 176 Colo. 157, 489 P.2d 315 (1971).

**Ameliorates harsh results of contributory negligence doctrine.** Comparative negligence statutes have been enacted to ameliorate the harsh results which sometimes occur under the doctrine of contributory negligence. *Darnell Photographs, Inc. v. Great Am. Ins. Co.*, 33 Colo. App. 256, 519 P.2d 1225 (1974).

This section eliminates the requirement that the plaintiff be free from contributory negligence in a suit based on *res ipsa loquitur*. *Montgomery Elevator Co. v. Gordon*, 619 P.2d 66 (Colo. 1980).

**This section precludes the plaintiff's recovery if his negligence was as great as**

**or greater** than the defendant's. *Graf v. Tracy*, 194 Colo. 1, 568 P.2d 467 (1977).

**Applicability to *res ipsa* doctrine.** Even if the jury were to find that plaintiff was negligent and that his negligence contributed to his injury, plaintiff's negligence does not preclude the operation of the *res ipsa* doctrine because, under the comparative negligence system, the jury could infer from the circumstances that the defendant's negligence exceeded the plaintiff's negligence, thus permitting plaintiff to recover in spite of his contributing negligence. *Gordon v. Westinghouse Elec. Corp.*, 42 Colo. App. 426, 599 P.2d 953 (1979), *aff'd sub nom. Montgomery Elevator Co. v. Gordon*, 619 P.2d 66 (Colo. 1980).

This section eliminates the requirements that the plaintiff be free from contributory negligence in a suit based on *res ipsa loquitur*. *Montgomery Elevator Co. v. Gordon*, 619 P.2d 66 (Colo. 1980).

**Choice of laws analysis.** In applying the particular interests and policies of Colorado to comparative negligence controversies, and in endeavoring to minimize a case-by-case, *ad hoc*, approach for the solution of comparative negligence conflicts questions, the specific approach to applying the choice of law rule should be that the domicile, residence, nationality, place of incorporation and place of business of the parties, and the place where the relationship, if any, between the parties is centered, are to be weighed more heavily and are to be given more importance in such a choice of law determination, than the contacts of the place where the injury occurred, and the place



where the conduct causing the injury occurred. *Sabell v. Pacific Intermountain Express Co.*, 36 Colo. App. 60, 536 P.2d 1160 (1975).

Although there are no Colorado cases holding that the comparative negligence statute is applicable to accidents occurring outside of the state of Colorado, neither are there any cases requiring the Colorado courts to follow the public policy of another state in determining the relative quantum of negligent conduct between the parties as it relates to the recovery of damages. *Sabell v. Pacific Intermountain Express Co.*, 36 Colo. App. 60, 536 P.2d 1160 (1975).

**Imputed comparative negligence is based upon a legal fiction in direct opposition to valid policy considerations.** Comparative negligence applies to an owner-passenger of a vehicle only when the owner-passenger is negligent and such negligence is the proximate cause of owner-passenger's injuries. *Watson v. Reg'l Transp. Dist.*, 762 P.2d 133 (Colo. 1988) (overruling *Moore v. Skiles*, 130 Colo. 191, 274 P.2d 311 (1954), and the cases following the *Moore* holding).

**Doctrine of momentary forgetfulness or justifiable distraction no longer applicable.** Comparative negligence statute did away with need for doctrine that was used under former contributory negligence law. *Rodriguez v. Morgan County R.E.A., Inc.*, 878 P.2d 77 (Colo. App. 1994).

**Doctrine of sudden emergency abolished.** The doctrine is minimally useful because it is duplicative and adds virtually nothing to the corpus of negligence jury

instructions. Additionally, the doctrine could seriously mislead the jury because it: (1) fails to instruct the jury to find two important facts before applying the doctrine; (2) does not define the term "sudden emergency"; (3) implies that sudden emergency situations require a reduced standard of care; and (4) focuses the jury's attention on events that transpired during and after the emergency rather than the totality of the circumstances. *Bedor v. Johnson*, 2013 CO 4, 292 P.3d 924.

**Applied** in *Hover v. Clamp*, 40 Colo. App. 410, 579 P.2d 1181 (1978); *Bloxson v. San Luis Valley Crop Care, Inc.*, 198 Colo. 113, 596 P.2d 1189 (1979); *Rael v. Motor Vehicle Div.*, 42 Colo. App. 66, 589 P.2d 515 (1979); *Huydts v. Dixon*, 199 Colo. 260, 606 P.2d 1303 (1980); *Padilla v. Warren*, 44 Colo. App. 189, 610 P.2d 1352 (1980); *Fay v. Kroblin Refrigerated Xpress, Inc.*, 644 P.2d 68 (Colo. App. 1981); *Welch v. F.R. Stokes, Inc.*, 555 F. Supp. 1054 (D. Colo. 1983); *Conlin v. Hutcheon*, 560 F. Supp. 934 (D. Colo. 1983); *Colo. Flying Acad., Inc. v. United States*, 724 F.2d 871 (10th Cir. 1984); *Cruz v. Union Pacific R. Co.*, 707 P.2d 360 (Colo. App. 1985); *Tex-Ark Joist Co. v. Derr & Gruenewald Const.*, 719 P.2d 384 (Colo. App. 1986); *Williams v. White Mtn. Const. Co.*, 749 P.2d 423 (Colo. 1988); *Inland/Riggle Oil Co. v. Painter*, 925 P.2d 1083 (Colo. 1996); *Huntoon v. TCI Cablevision of Colo.*, 969 P.2d 681 (Colo. 1998); *McCall v. Meyers*, 94 P.3d 1271 (Colo. App. 2004).

## II. APPLICABILITY.

**Law reviews.** For article, "Health Care Litigation in Colorado: A Survey of Recent Decisions", see 30 Colo. Law. 91 (Aug. 2001).

**Evidence must substantiate that both parties are at fault before comparative negligence rule is used.** Comparative negligence rules are applicable only where there is evidence presented which would substantiate a finding that both parties are at fault, and the inability to prove any negligence on the part of plaintiff eliminates the operation of the rule. *Powell v. City of Ouray*, 32 Colo. App. 44, 507 P.2d 1101 (1973); *Gordon v. Benson*, 925 P.2d 775 (Colo. 1996).

**Contributory negligence principles apply to the recipient of a negligent misrepresentation.** *Robinson v. Poudre Valley Fed. Credit Union*, 654 P.2d 861 (Colo. App. 1982).

**And to negligence resulting in pecuniary loss.** Comparative negligence principles set forth in this section also apply to negligence which results in pecuniary loss. *Robinson v. Poudre Valley Fed. Credit Union*, 654 P.2d 861 (Colo. App. 1982).

**In an action arising out of a rear-end automobile collision,** evidence that the plaintiff negligently backed her car into defendant's vehicle was sufficient to entitle defendant to an instruction on comparative negligence. *Gordon v. Benson*, 925 P.2d 775 (Colo. 1996).

**The comparative negligence statute is inapplicable where no negligence on the**

**part of the plaintiff can be proven.** *Dunham v. Kampman*, 37 Colo. App. 233, 547 P.2d 263 (1975), *aff'd*, 192 Colo. 448, 560 P.2d 91 (1977).

This section has no application where an innocent party seeks recovery from a party adjudged negligent. *Kampman v. Dunham*, 192 Colo. 448, 560 P.2d 91 (1977).

**Section inapplicable to products liability cases.** Comparative negligence as embodied in this section has no application to products liability cases under restatement (second) of torts § 402A. *Kinard v. Coats Co.*, 37 Colo. App. 555, 553 P.2d 835 (1976).

**Section inapplicable to exemplary damages.** *Bodah v. Montgomery Ward & Co., Inc.*, 724 P.2d 102 (Colo. App. 1986).

**And finding of intentional wrongdoing on part of defendant renders statute inapplicable.** *Carman v. Heber*, 43 Colo. App. 5, 601 P.2d 646 (1979).

This section does not apply to a claim for breach of contract even when the claim is for a willful and wanton breach of contract. *Core-Mark Midcontinent v. Sonitrol Corp.*, 2012 COA 120, 300 P.3d 963.

**This section does not deal with relationship between tortfeasors** but only provides for the reduction of the amount of damages owed by the tortfeasor to the injured party in proportion to the percentage of fault attributed to the injured party by the jury. *Bass v. United States*, 379 F. Supp. 1208 (D. Colo. 1974).

This section has no relation to the apportionment of damages among joint tortfeasors. *Bass v. United States*, 379 F. Supp. 1208 (D. Colo. 1974).

**Joint and several liability still viable.**

The common-law doctrine of joint and several liability is not inconsistent with this section's system of comparative negligence, but rather, the doctrine of joint and several liability in the context of comparative negligence continues to ensure that negligently injured persons will be able to obtain adequate compensation for their injuries from those tortfeasors who have negligently inflicted the harm. *Martinez v. Stefanich*, 195 Colo. 341, 577 P.2d 1099 (1978).

**Liability of joint tortfeasors remains joint and several with respect to a third party** injured by their actions. *Kampman v. Dunham*, 192 Colo. 448, 560 P.2d 91 (1977).

**Judgment against joint tortfeasors is enforced jointly and severally**, rather than apportioned according to percentage of fault attributed to each tortfeasor. *Nat'l Farmers Union Prop. & Cas. Co. v. Frackelton*, 645 P.2d 1321 (Colo. App. 1981).

**An innocent plaintiff can recover the entirety of the damages** suffered from any of the individuals whose negligent acts resulted in a single indivisible injury. *Dunham v. Kampman*, 37 Colo. App. 233, 547 P.2d 263 (1975), *aff'd*, 192 Colo. 448, 560 P.2d 91 (1977).

**Comparative negligence rule inapplicable where plaintiff is not negligent.** Issue of minor counselee's

comparative negligence as a defense to claim that church was negligent in hiring and supervising church counselor should not have been submitted to the jury because the evidence failed to establish, as a matter of law, any negligence on the minor's part. *DeBose v. Bear Valley Church of Christ*, 890 P.2d 214 (Colo. App. 1994), *rev'd on other grounds*, 928 P.2d 1315 (Colo. 1996).

**When the evidence would support a finding that both parties are at fault, the court must instruct the jury on comparative negligence** and allow the jury to assess the relative degrees of the parties' fault. *Gordon v. Benson*, 925 P.2d 775 (Colo. 1996).

**Patient who is treated by health-care providers for suicidal ideations, and who commits suicide after being discharged, may be found comparatively negligent or at fault** in a subsequent wrongful death action based upon that treatment. *Sheron v. Lutheran Med. Ctr.*, 18 P.3d 796 (Colo. App. 2000).

**As a matter of law, if a hospital assumes a duty to protect and treat a patient for a specific condition and the patient is injured by a foreseeable event directly related to that condition while in the hospital's custody, then the hospital cannot assert a comparative negligence defense.** *P.W. v. Children's Hosp. Colo.*, 2016 CO 6, 364 P.3d 891.

Defendant hospital admitted patient with a specific duty to protect him from self-destructive acts. The hospital's assumed duty to use reasonable care in preventing the patient from harming himself while in the

hospital's custody subsumes, as a matter of law, any fault attributable to the patient for any harm suffered as a result of those self-destructive acts. *P.W. v. Children's Hosp. Colo.*, 2016 CO 6, 364 P.3d 891.

**Where common-law claim was permitted against tavern owner for serving intoxicated person who injures himself**, comparative negligence principles may be asserted as a defense by tavern owner, and the issue of comparative negligence should, absent extraordinary circumstances, be submitted to a jury. *Lyons v. Nasby*, 770 P.2d 1250 (Colo. 1989).

**The degree of the parties' fault is to be determined by the fact-finder** and only in the clearest of cases, when the facts are undisputed and reasonable minds can draw but one inference, should relative degrees of fault be determined as a matter of law. *Bennett v. Greeley Gas Co.*, 969 P.2d 754 (Colo. App. 1998).

**A passenger in an automobile driven by an intoxicated person may be negligent for having entered the automobile** in the first place. Thus, an instruction on comparative negligence is proper when a plaintiff is injured while a passenger in an automobile driven by someone who the plaintiff has reason to know is intoxicated. *Wark v. McClellan*, 68 P.3d 574 (Colo. App. 2003).

**This section applies to tort actions based on all forms of negligent conduct.** Failure of the general assembly to preclude application of this section in cases involving willful and wanton negligence leads to the conclusion that this section requires the

comparison of each party's fault irrespective of whether such fault is attributable to simple negligence, gross negligence, or willful and reckless negligence. *G.E.C. Minerals v. Harrison Western*, 781 P.2d 115 (Colo. App. 1989); *White v. Hansen*, 813 P.2d 750 (Colo. App. 1990).

**Exemplary damages are not directly subject to reduction under this section.** Reduction of award under this section is based on plaintiff's own conduct, whereas an award of exemplary damages under § 13-21-102 is based on the defendant's misconduct and different principles apply. However, interplay among this section, § 13-21-102, and § 13-21-111.5 may produce a similar result. *Lira v. Davis*, 832 P.2d 240 (Colo. 1992).

**Exemplary damages are not subject to reduction by application of the comparative negligence statute.** *Lira v. Davis*, 832 P.2d 240 (Colo. 1992).

**The solatium award of \$50,000 pursuant to § 13-21-203.5 is exempt from reduction** by operation of the comparative fault statute. *Dewey v. Hardy*, 917 P.2d 305 (Colo. App. 1995); *B.G.'s Inc. v. Gross*, 23 P.3d 691 (Colo. 2001).

### **III. DEGREE OF NEGLIGENCE.**

**"Negligence" construed.** Negligence is a deviation by the defendant from the reasonable standards of care owed to the plaintiff, which naturally and foreseeably results in injury to the plaintiff; it is failure to act as a reasonably prudent person would under the same or similar circumstances.

McCormick v. United States, 539 F. Supp. 1179 (D. Colo. 1982).

**Violation of statute is negligence as matter of law.** The violation of a statute or ordinance regulating the use of roadways, proximately resulting in injury to one for whom the statute was designed to protect, is negligence as a matter of law. McCormick v. United States, 539 F. Supp. 1179 (D. Colo. 1982).

**Injury to property defined.** "Injury to property" in this section is not necessarily limited to a physical injury to tangible property, but rather includes any damage resulting from invasion of one's property rights by actionable negligence. Darnell Photographs, Inc. v. Great Am. Ins. Co., 33 Colo. App. 256, 519 P.2d 1225 (1974).

Where a landlord has actual knowledge of the vicious actions of a tenant's animal prior to entering into a rental agreement, and where the animal's vicious actions have created a clear potential for injury, the landlord has a duty to take reasonable precautions to protect third persons from the animal. Vigil v. Payne, 725 P.2d 1155 (Colo. App. 1986).

**The negligence of multiple defendants or designated nonparties must be combined and compared with the plaintiff's negligence.** Painter v. Inland/Riggle Oil Co., 911 P.2d 716 (Colo. App. 1995).

**Comparison of negligence only between parties.** Colorado's comparative negligence statute contemplates that the comparison of negligence be made only between parties to

the tort action. Nat'l Farmers Union Prop. & Cas. Co. v. Frackelton, 645 P.2d 1321 (Colo. App. 1981); Nat'l Farmers Union Prop. & Cas. Co. v. Frackelton, 650 P.2d 571 (Colo. App. 1981), aff'd, 662 P.2d 1056 (Colo. 1983).

The interrelation of this section and § 13-50.5-101 et seq., does not allow an insurer of a tortfeasor found liable in a prior action to recover contribution from a nonparty to that prior action. Nat'l Farmers Union Prop. & Cas. Co. v. Frackelton, 650 P.2d 571 (Colo. App. 1981), aff'd, 662 P.2d 1056 (Colo. 1983).

This section precludes consideration of the negligence of absent tortfeasors by the trier of fact. Nat'l Farmers Union Prop. & Cas. Co. v. Frackelton, 662 P.2d 1056 (Colo. 1983).

**Degree of fault of multiple defendants combined for comparison with plaintiff's negligence.** In cases where there are multiple defendants who proximately cause the injury, the degree of fault of each defendant will be combined and compared with the degree of fault of the plaintiff. If the plaintiff is less than 50 percent at fault, each defendant will be jointly and severally liable for the plaintiff's damages even if the degree of fault of a particular defendant is less than that of the plaintiff. Mtn. Mobile Mix, Inc. v. Gifford, 660 P.2d 883 (Colo. 1983).

**Seat belt defense is not available for purposes of determining degree of plaintiff's negligence** under this section. Churning v. Staples, 628 P.2d 180 (Colo. App. 1981).

**Evidence of motorcyclist's failure to wear helmet inadmissible.** In a wrongful death suit, evidence of plaintiff's failure to wear a protective helmet while riding a motorcycle is inadmissible to show negligence on the part of the injured party or to mitigate damages. *Dare v. Sobule*, 674 P.2d 960 (Colo. 1984).

**This section applies only to the degree of negligence of the parties to the suit,** and therefore it does not require allocation of negligence to nonparties not properly designated. *Thompson v. Colo. and E. R.R. Co.*, 852 P.2d 1328 (Colo. App. 1993).

#### **IV. AWARD.**

**An award of zero damages** is consistent with the view that the jury intended that plaintiffs recover no award because jury found that plaintiff's negligence was at least equal to that of the defendant. *Lonardo v. Litvak Meat Co.*, 676 P.2d 1229 (Colo. App. 1983).

**Trial court's failure to determine degree of negligence of parties not error** where trial court concluded that plaintiff's negligence was equal to that of defendant. *Comcast v. Express Concrete, Inc.*, 196 P.3d 269 (Colo. App. 2007).

**Fact that jury found plaintiff 70 percent at fault would have precluded his recovery under this section.** *Graf v. Tracy*, 194 Colo. 1, 568 P.2d 467 (1977).

**Verdict held inadequate.** Where the damages set by the jury were no greater than the special damages, in light of the undisputed evidence of pain, suffering, and permanent disability, the verdict was

manifestly inadequate and indicates that the jury disregarded the court's instruction on damages. *Reynolds v. Farber*, 40 Colo. App. 467, 577 P.2d 318 (1978).

**Consortium claim is derivative for purposes of determining recovery under comparative negligence.** *Lee v. Colo. Dept. of Health*, 718 P.2d 221 (Colo. 1986).

**Juries are required to fix the precise, mathematical degree of fault** under this comparative negligence statute. *Zimmerman v. Baca*, 346 F. Supp. 172 (D. Colo. 1972).

**"Person against whom recovery is sought" includes** a settling non-party defendant. *Wong v. Sharp*, 734 F. Supp. 943 (D. Colo. 1990).

#### **V. PROCEDURE.**

**Responsibility for result divided between jury and judge.** The general assembly, when it enacted this section, intended to establish a system in negligence cases which divides the responsibility for a fair and good result between the jury and the judge. *Avery v. Wadlington*, 186 Colo. 158, 526 P.2d 295 (1974).

**Percentage of negligence issue for jury, usually.** The issue of percentage of negligence is one for the jury, and only in the clearest of cases where the facts are undisputed and reasonable minds can draw but one inference from them should such issues be determined as a matter of law. *Transamerica Ins. Co. v. Pueblo Gas & Fuel Co.*, 33 Colo. App. 92, 519 P.2d 1201 (1973).

Once the trial court rules that the doctrine is of *res ipsa loquitur* is applicable, the jury must then compare any evidence of negligence of the plaintiff with the inferred negligence of the defendant and decide what percentage of negligence is attributable to each party. *Montgomery Elevator Co. v. Gordon*, 619 P.2d 66 (Colo. 1980).

**The issue of relative fault is one for the jury** and only in the clearest of cases where the facts are undisputed and reasonable minds can draw only one inference from them should relative fault be determined as a matter of law. *Whitlock v. Univ. of Denver*, 712 P.2d 1072 (Colo. App. 1985), *rev'd on other grounds in Univ. of Denver v. Whitlock*, 744 P.2d 54 (Colo. 1987); *Gordon v. Benson*, 925 P.2d 775 (Colo. 1996).

**Stipulation of total damages substitute for jury determination.** Where the total damages are stipulated, the stipulation operates as a substitute for the jury's determination of damages under subsection (2)(b). *Darnell Photographs, Inc. v. Great Am. Ins. Co.*, 33 Colo. App. 256, 519 P.2d 1225 (1974).

**Effect of 1975 amendment.** The 1975 amendment, which added subsection (4), imposes an independent duty upon the court to instruct the jury on the statute's effect. Use of the word "shall" is mandatory in effect. *Appelgren v. Agri Chem, Inc.*, 39 Colo. App. 158, 562 P.2d 766 (1977).

It is now incumbent upon the trial court in a comparative negligence case to give instructions that apprise the jury on the effects of its findings. *Loup-Miller v. Brauer*

& Associates-Rocky Mt., 40 Colo. App. 67, 572 P.2d 845 (1977).

**The failure of a party's attorney to request an instruction on the effects** of the comparative negligence statute does not waive this right which the statute requires the court to protect — the right to an informed jury. *Appelgren v. Agri Chem, Inc.*, 39 Colo. App. 158, 562 P.2d 766 (1977).

**Defendant's failure to assert a contributory negligence defense in the theory of the case instruction and his failure to object to the theory of the case instruction did not constitute a waiver of his contributory negligence defense** where defendant properly requested the trial court to submit a contributory negligence instruction to the jury. *Gordon v. Benson*, 925 P.2d 775 (Colo. 1996).

**It is improper to instruct the jury on assumption of risk** in a case tried under this section. *Loup-Miller v. Brauer & Associates-Rocky Mt.*, 40 Colo. App. 67, 572 P.2d 845 (1977).

**Special verdict form not required in FELA cases.** In Federal Employers Liability Act cases brought in Colorado, a special verdict form is not required by either statute or necessity. *Felder v. Union Pac. R.R.*, 660 P.2d 911 (Colo. App. 1982).

**Defendant is not required to present evidence of his or her own negligence or to argue that he or she was negligent** in order to avoid a finding of abandonment of a comparative negligence defense. *Gordon v. Benson*, 925 P.2d 775 (Colo. 1996).

## VI. SCOPE OF REVIEW.

**Scope of review.** The scope of review is limited to a determination as to whether the jury acted capriciously or arbitrarily, or was swayed by emotion in assessing the damages incurred. *Dunham v. Kampman*, 37 Colo. App. 233, 547 P.2d 263 (1975), *aff'd*, 192 Colo. 448, 560 P.2d 91 (1977); *Robinson v. Poudre Valley Fed. Credit Union*, 680 P.2d 241 (Colo. App. 1984).

**Jury determination on appeal.** An appeal court may only overturn the jury's allocation where reasonable minds could not have apportioned the negligence of the parties in the manner in which it was done.

*Dunham v. Kampman*, 37 Colo. App. 233, 547 P.2d 263 (1975), *aff'd*, 192 Colo. 448, 560 P.2d 91 (1977).

The issue of the percentage of negligence is for the jury's determination and is not to be disturbed in the absence of a clear showing of passion or prejudice. *Dunham v. Kampman*, 37 Colo. App. 233, 547 P.2d 263 (1975), *aff'd*, 192 Colo. 448, 560 P.2d 91 (1977).

**In comparative negligence cases, a jury's verdict can be set aside on the ground of inadequate damages.** *Reynolds v. Farber*, 40 Colo. App. 467, 577 P.2d 318 (1978).

### **13-21-111.5. Civil liability cases - pro rata liability of defendants - respondeat superior - shifting financial responsibility for negligence in construction agreements - legislative declaration.**

(1) In an action brought as a result of a death or an injury to person or property, no defendant shall be liable for an amount greater than that represented by the degree or percentage of the negligence or fault attributable to such defendant that produced the claimed injury, death, damage, or loss, except as provided in subsection (4) of this section.

(1.5) (a) Notwithstanding any provision of subsection (1) of this section to the contrary, when an employer or principal acknowledges vicarious liability for an employee's or agent's negligence, a plaintiff's direct negligence claims against the employer or principal are not barred. A plaintiff may bring such claims, and conduct associated discovery, in addition to claims and discovery based on respondeat superior.

(b) Consistent with current law, nothing in this subsection (1.5) permits a plaintiff to recover compensatory and exemplary damages more than once for the same injury.

(c) In enacting this subsection (1.5), it is the intent of the general assembly to reverse the holding in *Ferrer v. Okbamicael*, 390 P.3d 836 (Colo. 2017), that an employer's admission of vicarious liability for any negligence of its employees bars a plaintiff's direct negligence claims against the employer.



(2) The jury shall return a special verdict, or, in the absence of a jury, the court shall make special findings determining the percentage of negligence or fault attributable to each of the parties and any persons not parties to the action of whom notice has been given pursuant to paragraph (b) of subsection (3) of this section to whom some negligence or fault is found and determining the total amount of damages sustained by each claimant. The entry of judgment shall be made by the court based on the special findings, and no general verdict shall be returned by the jury.

(3) (a) Any provision of the law to the contrary notwithstanding, the finder of fact in a civil action may consider the degree or percentage of negligence or fault of a person not a party to the action, based upon evidence thereof, which shall be admissible, in determining the degree or percentage of negligence or fault of those persons who are parties to such action. Any finding of a degree or percentage of fault or negligence of a nonparty shall not constitute a presumptive or conclusive finding as to such nonparty for the purposes of a prior or subsequent action involving that nonparty.

(b) Negligence or fault of a nonparty may be considered if the claimant entered into a settlement agreement with the nonparty or if the defending party gives notice that a nonparty was wholly or partially at fault within ninety days following commencement of the action unless the court determines that a longer period is necessary. The notice shall be given by filing a pleading in the action designating such nonparty and setting forth such nonparty's name and last-known address, or the best identification of such nonparty which is possible under the circumstances, together with a brief statement of the basis for believing such nonparty to be at fault. Designation of a nonparty shall be subject to the provisions of section 13-17-102. If the designated nonparty is a licensed health-care professional and the defendant designating such nonparty alleges professional negligence by such nonparty, the requirements and procedures of section 13-20-602 shall apply.

(4) Joint liability shall be imposed on two or more persons who consciously conspire and deliberately pursue a common plan or design to commit a tortious act. Any person held jointly liable under this subsection (4) shall have a right of contribution from his fellow defendants acting in concert. A defendant shall be held responsible under this subsection (4) only for the degree or percentage of fault assessed to those persons who are held jointly liable pursuant to this subsection (4).

(5) In a jury trial in any civil action in which contributory negligence or comparative fault is an issue for determination by the jury, the trial court shall instruct the jury on the effect of its finding as to the degree or percentage of negligence or fault as between the plaintiff or plaintiffs and the defendant or defendants. However, the jury shall not be informed as to the effect of its finding as to the allocation of fault among two or more defendants. The attorneys for each party shall be allowed to argue the effect of the instruction on the facts which are before the jury.

(6) (a) The general assembly hereby finds, determines, and declares that:

(I) It is in the best interests of this state and its citizens and consumers to ensure that every construction business in the state is financially responsible under the tort liability system for losses that a business has caused;

(II) The provisions of this subsection (6) will promote competition and safety in the construction industry, thereby benefitting Colorado consumers;

(III) Construction businesses in recent years have begun to use contract provisions to shift the financial responsibility for their negligence to others, thereby circumventing the intent of tort law;

(IV) It is the intent of the general assembly that the duty of a business to be responsible for its own negligence be nondelegable;

(V) Construction businesses must be able to obtain liability insurance in order to meet their responsibilities;

(VI) The intent of this subsection (6) is to create an economic climate that will promote safety in construction, foster the availability and affordability of insurance, and ensure fairness among businesses;

(VII) If all businesses, large and small, are responsible for their own actions, then construction companies will be able to obtain adequate insurance, the quality of construction will be improved, and workplace safety will be enhanced.

(b) Except as otherwise provided in paragraphs (c) and (d) of this subsection (6), any provision in a construction agreement that requires a person to indemnify, insure, or defend in litigation another person against liability for damage arising out of death or bodily injury to persons or damage to property caused by the negligence or fault of the indemnitee or any third party under the control or supervision of the indemnitee is void as against public policy and unenforceable.

(c) The provisions of this subsection (6) shall not affect any provision in a construction agreement that requires a person to indemnify and insure another person against liability for damage, including but not limited to the reimbursement of attorney fees and costs, if provided for by contract or statute, arising out of death or bodily injury to persons or damage to property, but not for any amounts that are greater than that represented by the degree or percentage of negligence or fault attributable to the indemnitor or the indemnitor's agents, representatives, subcontractors, or suppliers.

(d) (I) This subsection (6) does not apply to contract clauses that require the indemnitor to purchase, maintain, and carry insurance covering the acts or omissions of the indemnitor, nor shall it apply to contract provisions that require the indemnitor to name the indemnitee as an

additional insured on the indemnitor's policy of insurance, but only to the extent that such additional insured coverage provides coverage to the indemnitee for liability due to the acts or omissions of the indemnitor. Any provision in a construction agreement that requires the purchase of additional insured coverage for damage arising out of death or bodily injury to persons or damage to property from any acts or omissions that are not caused by the negligence or fault of the party providing such additional insured coverage is void as against public policy.

(II) This subsection (6) also does not apply to builder's risk insurance.

(e) (I) As used in this subsection (6) and except as otherwise provided in subparagraph (II) of this paragraph (e), "construction agreement" means a contract, subcontract, or agreement for materials or labor for the construction, alteration, renovation, repair, maintenance, design, planning, supervision, inspection, testing, or observation of any building, building site, structure, highway, street, roadway bridge, viaduct, water or sewer system, gas or other distribution system, or other work dealing with construction or for any moving, demolition, or excavation connected with such construction.

(II) "Construction agreement" does not include:

(A) A contract, subcontract, or agreement that concerns or affects property owned or operated by a railroad, a sanitation district, as defined in section 32-1-103 (18), C.R.S., a water district, as defined in section 32-1-103 (25), C.R.S., a water and sanitation district, as defined in section 32-1-103 (24), C.R.S., a municipal water enterprise, a water conservancy district, a water conservation district, or a metropolitan sewage disposal district, as defined in section 32-4-502 (18), C.R.S.; or

(B) Any real property lease or rental agreement between a landlord and tenant regardless of whether any provision of the lease or rental agreement concerns construction, alteration, repair, improvement, or maintenance of real property.

(f) Nothing in this subsection (6) shall be construed to:

(I) Abrogate or affect the doctrine of respondeat superior, vicarious liability, or other nondelegable duties at common law;

(II) Affect the liability for the negligence of an at-fault party; or

(III) Abrogate or affect the exclusive remedy available under the workers' compensation laws or the immunity provided to general contractors and owners under the workers' compensation laws.

(g) **Choice of law.** Notwithstanding any contractual provision to the contrary, the laws of the state of Colorado shall apply to every construction agreement affecting improvements to real property within the state of Colorado.

**Source:** **L. 86:** Entire section added, p. 680, § 1, effective July 1. **L. 87:** (1) amended and (4) and (5) added, p. 551, § 1, effective July 1. **L. 90:** (3)(b) amended, p. 863, § 3, effective July 1. **L. 2007:** (6) added, p. 446, § 1, effective July 1. **L. 2021:** (1.5) added, (HB 21-1188), ch. 147, p. 863, § 1, effective September 7.

## ANNOTATION

**Law reviews.** For article, "New Role for Nonparties in Tort Actions — The Empty Chair", see 15 Colo. Law. 1650 (1986). For article, "Negligent Entrustment", see 16 Colo. Law. 642 (1987). For article, "Joint and Several Liability: A Case for Reform", see 64 Den. U. L. Rev. 651 (1988). For article, "Designation of Immune, Nonliable and Unknown Nonparties", see 22 Colo. Law. 31 (1993). For article, "Designating Immune Nonparties: Fair Or Foul?", see 22 Colo. Law. 759 (1993). For article, "Application of the Pro Rata Liability, Comparative Negligence and Contribution Statutes", see 23 Colo. Law. 1717 (1994). For comment, "Settlements with Nonparties: A Closer Look at Colorado's Collateral Source and Contribution Statutes", see 66 U. Colo. L. Rev. 195 (1995). For article, "Overview of Comparative Fault", see 29 Colo. Law. 95 (July 2000). For article, "Fifteen Years of Colorado Legislative Tort Reform: Where Are We Now?", see 30 Colo. Law. 5 (Feb. 2001). For article, "Health Care Litigation in Colorado: A Survey of Recent Decisions", see 30 Colo. Law. 91 (Aug. 2001). For article, "The Impact of Tort Reform on Product Liability Litigation in Colorado", see 30 Colo. Law. 91 (Nov. 2001). For article, "Theories of Homebuilder Liability for Subcontractor Negligence Part

I", see 34 Colo. Law. 69 (June 2005). For article, "S.B. 07-087 and the Enforceability of Indemnification Provisions in Colorado Construction Contracts", see 36 Colo. Law. 59 (Sept. 2007). For article, "Additional Insured and Insured Contract Liability Insurance Coverage for General Contractors", see 36 Colo. Law. 45 (Nov. 2007). For article, "Deconstructing Construction Defect Fault Allocation and Damages Apportionment Part I", see 40 Colo. Law. 37 (Nov. 2011). For article, "Unique Construction Defect Damages Mitigation Issues", see 44 Colo. Law. 33 (Feb. 2015). For article, "Contribution and Indemnification Among Multiple Infringers", see 44 Colo. Law. 49 (May 2015). For article, "Application of the Pro Rata Liability Statute to 'Tort Claims in a Contractual Wrapper'", see 45 Colo. Law. 37 (June 2016). For article, "Mitigating Potential Condo Conversion and Renovation Construction Defect Liabilities: Part 2", see 48 Colo. Law. 40 (May 2019). For article, "Indemnification Provisions in Commercial Contracts: A Drafting Primer", see 49 Colo. Law. 28 (Jan. 2020). For article, "Owner Association Board Member Duties and Liabilities — Part 3", see 50 Colo. Law. 30 (Aug.-Sept. 2021).

**Pro rata liability statute does not violate due process**, as it provides plaintiffs notice and an opportunity to be heard regarding nonparties' alleged fault and there is a rational basis between the means utilized by the statute and the legitimate state purpose of adjusting the inequitable common law rule of joint and several liability. *Salazar v. Am. Sterilizer Co.*, 5 P.3d 357 (Colo. App. 2000).

**The primary purpose of this section** was to abolish the harsh effects of joint and several liability. *Watters v. Pelican Intern., Inc.*, 706 F. Supp. 1452 (D. Colo. 1989); *Moody v. A.G. Edwards & Sons, Inc.*, 847 P.2d 215 (Colo. App. 1992); *Miller v. Byrne*, 916 P.2d 566 (Colo. App. 1995).

**The adoption of this statute was intended to cure the perceived inequity under the common law concept of joint and several liability** whereby wrongdoers could be held fully responsible for a plaintiff's entire loss, despite the fact that another wrongdoer, who was not held accountable, contributed to the result. *Barton v. Adams Rental, Inc.*, 938 P.2d 532 (Colo. 1997); *Loughridge v. Goodyear Tire & Rubber Co.*, 207 F. Supp. 2d 1187 (D. Colo. 2002).

**Provisions of this section are not limited to negligence actions.** Rather, it specifically applies to "an action brought as a result of . . . an injury to person or property." Such actions may include, for example, a strict products liability action. *O'Quinn v. Wedco Tech., Inc.*, 746 F. Supp. 38 (D. Colo. 1990); *Miller v. Byrne*, 916 P.2d 566 (Colo. App. 1995).

**The general assembly clearly intended that this section apply to product liability actions.** *Loughridge v. Goodyear Tire & Rubber Co.*, 207 F. Supp. 2d 1187 (D. Colo. 2002).

The use of the word "action" in subsection (1) indicates that the statute is applicable to non-tort claims. *Loughridge v. Goodyear Tire & Rubber Co.*, 207 F. Supp. 2d 1187 (D. Colo. 2002).

**Pro rata liability applies to product liability claims.** *Loughridge v. Goodyear Tire & Rubber Co.*, 207 F. Supp. 2d 1187 (D. Colo. 2002).

**This section does not differentiate between intentional acts and negligent acts in its mandate to apportion liability among tortfeasors.** The general assembly intended that liability may be apportioned not only between negligent tortfeasors, but also between a negligent tortfeasor and an intentional tortfeasor. Thus, the provisions of this section apply even when one of several tortfeasors commits an intentional tort that contributes to an indivisible injury. *Harvey v. Farmers Ins. Exch.*, 983 P.2d 34 (Colo. App. 1998), *aff'd sub nom. Slack v. Farmers Ins. Exch.*, 5 P.3d 280 (Colo. 2000).

**A loss of consortium claim qualifies as an "action brought as a result of a death or an injury to person or property" under subsection (1)**, and thus, the apportionment rules contained in this statute apply to such claim. *Harvey v. Farmers Ins. Exch.*, 983 P.2d 34 (Colo. App. 1998), *aff'd sub nom. Slack v. Farmers Ins. Exch.*, 5 P.3d 280 (Colo. 2000).

**Term, "attributable," as used in this section, means assignable, ascribable, or imputable in the sense of an obligation or duty.** While nonparties who are immune from suit may properly be designated, those who owed no duty to the plaintiff may not. *Miller v. Byrne*, 916 P.2d 566 (Colo. App. 1995).

**In a negligence by omission case,** the factors to be considered in determining whether the law should impose a duty are the risk, foreseeability, and likelihood of injury weighed against the social utility of the actor's conduct, the magnitude of the burden of guarding against the injury, and the consequences of placing that burden on the defendant. *Whitlock v. Univ. of Denver*, 712 P.2d 1072 (Colo. App. 1985), rev'd on other grounds, 744 P.2d 54 (Colo. 1987).

**Pro rata liability of defendants and plaintiff must be ascertained before applying statutory cap on noneconomic damages** in cases involving multiple defendants or where plaintiff is partially at fault. *Gen. Elec. Co. v. Niemet*, 866 P.2d 1361 (Colo. 1994).

**Defendant cannot be held liable for more than its pro rata share of damages even where it is permissible to exceed the damages cap.** *Hoffman v. Ford Motor Co.*, 690 F. Supp. 2d 1179 (D. Colo. 2010).

**The limitation of joint and several liability under this section is irrelevant in applying the setoff amounts and limits of uninsured and underinsured coverage under § 10-4-609 (5),** where an insurer under that section may offset against the uninsured and underinsured limits the

amount received by the insured from all parties liable for the injuries. *Farmers Ins. Exch. v. Star*, 952 P.2d 809 (Colo. App. 1997); *Am. Family Mut. Ins. Co. v. Murakami*, 169 P.3d 192 (Colo. App. 2007).

**Defendant must properly designate a nonparty in a pleading which complies with the requirements of this section** in order for a court to allow the finder of fact to consider the negligence or fault of such nonparty. *Thompson v. Colo. & Eastern R.R. Co.*, 852 P.2d 1328 (Colo. App. 1993); *Chavez v. Parkview Episcopal Med. Ctr.*, 32 P.3d 609 (Colo. App. 2001).

**Evidence that a nonparty's acts or omissions were the cause of injuries is admissible even if the nonparty at fault has not been designated** under this section. A defense that the defendant did not cause the plaintiff's injuries is not equivalent to the designation of a nonparty because it cannot result in apportionment of liability, but rather is a complete defense if successful. *Danko v. Conyers*, 2018 COA 14, 432 P.3d 958.

**Subsection (3)(b) expressly permits a court to accept nonparty designations filed outside the 90-day period when it determines that a "longer period is necessary",** so the provisions of C.R.C.P. 6(b)(2) concerning demonstration of "excusable neglect" do not apply. *Antolovich v. Brown Grp. Retail, Inc.*, 183 P.3d 582 (Colo. App. 2007).

**Instruction informing jury that an emergency room physician who treated plaintiff had the exclusive authority to either admit or discharge plaintiff was**

**properly denied** because plaintiff had failed to designate the emergency room physician as a responsible nonparty pursuant to this section, and such an instruction could have confused or misled the jury. *Sheron v. Lutheran Med. Ctr.*, 18 P.3d 796 (Colo. App. 2000).

**This section does not accommodate post-trial motions.** Where defendant had knowledge of former co-defendants' settlements with plaintiffs before trial, defense counsel should have alerted the court that former co-defendants' proportionate fault would be an issue when the judgment was rendered. *Montoya v. Grease Monkey Holding Corp.*, 883 P.2d 486 (Colo. App. 1994).

**The effect of this proportionate liability statute on the goal of full recovery of the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is minimal and does not necessitate the formulation of a uniform national law of joint and several liability.** Therefore this statute is not preempted by a federal common law rule of joint and several liability. *Resolution Trust Corp. v. Heiserman*, 856 F. Supp. 578 (D. Colo. 1994).

**Since the federal Americans with Disabilities Act, the Fair Housing Amendments Act, and the Rehabilitation Act of 1973 do not provide for comparative fault, subsection (1) does not apply to federal question claims brought pursuant to those statutes.** *Roe v. Hous. Auth. of City of Boulder*, 909 F. Supp. 814 (D. Colo. 1995).

**Section not exclusive remedy.** Nothing in the language of this section indicates it is intended to be the exclusive mechanism for litigating the relative fault of all joint tortfeasors. A claim for contribution may be made under § 13-50.5-102 when a party has not been formally designated in the action under this section. *Watters v. Pelican Intern., Inc.*, 706 F. Supp. 1452 (D. Colo. 1989).

**Defendants designation of non-parties by category held not the "best identification" possible under the circumstances and therefore stricken.** *Federal Deposit Ins. Corp. v. Isham*, 782 F. Supp. 524 (D. Colo. 1992).

**Section does not apply** to cases commenced prior to the enactment of the section. *Mladjan v. Pub. Serv. Co.*, 797 P.2d 1299 (Colo. App. 1990).

**Section does not apply in conservatorship cases that do not involve actions brought as a result of negligence or another tort.** This title 13 is intended to contemplate limitations on damages in actions brought as a result of negligence or another tort, and subsection (1) does not contemplate surcharge proceedings at issue in a conservatorship case. *In Interest of Becker*, 2017 COA 114, 405 P.3d 499.

**Exemplary damages are not subject to reduction by application of the comparative negligence statute.** *Lira v. Davis*, 832 P.2d 240 (Colo. 1992).

**And a solatium award** recoverable by a wrongful death plaintiff is not subject to reduction by operation of this section. *B.G.'s, Inc. v. Gross*, 23 P.3d 691 (Colo.

2001); *Smith v. Vincent*, 77 P.3d 927 (Colo. App. 2003).

**This section does not permit a recovery against a defendant on a joint/concerted action theory for cases filed after July 1, 1986 and before July 1, 1987.** *Voelker v. Cherry Creek Sch. Dist.* 5, 840 P.2d 353 (Colo. App. 1992).

**This section has the effect of eliminating liability of a physician for the negligent acts of another physician absent** a showing that the physicians "acted in concert", as provided in subsection (4), or that the physicians were in an employment, partnership, or joint venture relationship with one another. *Freyer v. Albin*, 5 P.3d 329 (Colo. App. 1999).

**This section does not abrogate the well-established rule that partners are jointly and severally liable for the wrongs of the partnership,** absent an explicit and express revision of § 7-60-113 by the Colorado legislature. *Bank of Denver v. Se. Capital Grp., Inc.*, 763 F. Supp. 1552 (D. Colo. 1991).

**Section does not abrogate the statute under which an individual partner can be held vicariously liable for wrongful acts or omissions of a partner in the ordinary course of partnership business.** *Hughes v. Johnson*, 764 F. Supp. 1412 (D. Colo. 1991).

**This section does not apply to a lawsuit filed prior to July 1, 1986,** and amended pleading relating back to filing of lawsuit prior to July 1, 1986, does not make this section applicable to the lawsuit. *Halliburton*

*v. Pub. Serv. Co.*, 804 P.2d 213 (Colo. App. 1990).

**The abolition of joint and several liability by this section does not extinguish a defendant's right to contribution from joint tortfeasors.** The language of § 13-50.5-102 does not evince an intention by the general assembly to require a defendant to establish both joint liability and several liability as a prerequisite to the defendant's right of contribution. A defendant is permitted to establish the several liability of one or more parties as a cause of the same injury to the plaintiff. *Graber v. Westaway*, 809 P.2d 1126 (Colo. App. 1991).

**Joint and several liability may be imposed** where the tortious act is based on negligence or the breach of fiduciary duty of due care or loyalty. *Resolution Trust Corp. v. Heiserman*, 898 P.2d 1049 (Colo. 1995).

**Joint and several liability may be imposed** based on evidence of a course of conduct from which a tacit agreement to act in concert can be implied. *Resolution Trust Corp. v. Heiserman*, 898 P.2d 1049 (Colo. 1995).

The elements of civil conspiracy are that: (1) Two or more persons; (2) come to a meeting of the minds; (3) on an object to be accomplished or a course of action to be followed; (4) and one or more overt unlawful acts are performed; (5) with damages as the proximate result thereof. *Jet Courier Serv., Inc. v. Mulei*, 771 P.2d 486 (Colo. 1989); *Loughridge v. Goodyear Tire & Rubber Co.*, 192 F. Supp. 2d 1175 (D. Colo. 2002).



**This section prohibits a judgment of joint and several liability when a trial court finds that damages are indivisible.** Blakeland Drive Inv'rs, LLP v. Taghavi, 2023 COA 30M, 532 P.3d 369.

**The restatement (second) of torts § 433B(2) may not override this section as written when determining the exceptions in the section to the prohibition on joint and several liability.** Because the general assembly has not adopted § 433B of the restatement (second) of torts, § 433B may not supersede the pro rata division of liability provided in subsection (1) of this section. Blakeland Drive Inv'rs, LLP v. Taghavi, 2023 COA 30M, 532 P.3d 369.

**The elements necessary to find aiding and abetting liability do not, as a matter of law, include the elements necessary to find joint liability under subsection (4).** Anstine v. Alexander, 128 P.3d 249 (Colo. App. 2005), rev'd on other grounds, 152 P.3d 497 (Colo. 2007).

**To impose joint liability, jury must be required to find that defendants consciously and deliberately pursued a common plan or design to commit a tortious act.** Jury could find that defendants engaged in conduct that lent substantial assistance so as to have aided and abetted another, yet did not conspire with another and knowingly pursue a common plan to commit a civil wrong. Anstine v. Alexander, 128 P.3d 249 (Colo. App. 2005), rev'd on other grounds, 152 P.3d 497 (Colo. 2007).

**Under subsection (3)(b), "[p]ersons against whom recovery is sought" includes designated nonparties.** Painter v.

Inland/Riggle Oil Co., 911 P.2d 716 (Colo. App. 1995); Barton v. Adams Rental, Inc., 938 P.2d 532 (Colo. 1997).

**Even a person who is immune from suit may be a nonparty designee so long as the person owes a duty of care to the injured plaintiff.** Doering ex rel. Barrett v. Copper Mtn., Inc., 259 F.3d 1202 (10th Cir. 2001).

**When a landowner is vicariously liable under the nondelegability doctrine for acts or omissions of other defendants, the trial court should instruct the jury to determine the respective shares of fault of the landowner and the other defendants.** But, in entering a judgment, the court shall aggregate the fault of the landowner with any other defendants for whom the landowner is vicariously liable. Reid v. Berkowitz, 2013 COA 110M, 315 P.3d 185.

**Designation of unidentified or unknown party allowed** where the designation alleged a sufficient basis for believing the nonparty to be wholly or partially at fault. Pedge v. RM Holdings, Inc., 75 P.3d 1126 (Colo. App. 2002).

**Parental immunity does not bar designation as nonparty under this section.** It does not undermine the policy of qualified parental immunity to forbid the allocation of financial responsibility for the otherwise non-recoverable negligence of that parent to another defendant. Paris ex rel. Paris v. Dance, 194 P.3d 404 (Colo. App. 2008).

**That negligence of parent is not imputable to child does not bar parent's nonparty designation under this section.**

Nonparty designation concerns the independent negligence of a parent; it does not attribute the negligence of the parent to the child. *Paris ex rel. Paris v. Dance*, 194 P.3d 404 (Colo. App. 2008).

**A nonparty fault designation based only on vicarious liability is insufficient to establish nonparty's fault.** Just in *Case Bus. Lighthouse v. Murray*, 2013 COA 112M, 383 P.3d 1, *aff'd in part, rev'd in part* on other grounds, 2016 CO 47M, 374 P.3d 443.

**As used in subsection (4), "tortious act" means** any conduct other than breach of contract that constitutes a civil wrong and causes injury or damages; therefore, any negligent conduct resulting in injury or damage is sufficient to give rise to joint liability. *Resolution Trust Corp. v. Heiserman*, 898 P.2d 1049 (Colo. 1995); *Loughridge v. Goodyear Tire & Rubber Co.*, 192 F. Supp. 2d 1175 (D. Colo. 2002).

There is no basis to assume that by using the term "tortious act" in subsection (4) the general assembly intended to exclude one or more forms of wrongful conduct from the scope of that term. Thus, "tortious act" encompasses any wrongful conduct. *Resolution Trust Corp. v. Heiserman*, 898 P.2d 1049 (Colo. 1995); *Double Oak Constr., L.L.C. v. Cornerstone Dev. Int'l, L.L.C.*, 97 P.3d 140 (Colo. App. 2003).

**Both negligent and intentional acts are sufficient to give rise to joint liability for purposes of subsection (4).** *Loughridge v. Goodyear Tire & Rubber Co.*, 192 F. Supp. 2d 1175 (D. Colo. 2002).

**There need not be a "specific intent" to commit a tortious act for the actors to be subject to joint liability.** *Resolution Trust Corp. v. Heiserman*, 898 P.2d 1049 (Colo. 1995).

**Nonparty's acts need not be the same as those of a defendant** to reduce the defendant's liability under this section. Except to the extent joint liability is retained in subsection (4), this section establishes a pure several liability regime under which liability for an injury caused by separate torts, as well as by separate tortfeasors, may be apportioned among the persons responsible. *Moody v. A.G. Edwards & Sons, Inc.*, 847 P.2d 215 (Colo. App. 1992).

**Subsection (4) does not require an express agreement to cause injury in order to sustain a claim for civil conspiracy.** *Schneider v. Midtown Motor Co.*, 854 P.2d 1322 (Colo. App. 1992); *Loughridge v. Goodyear Tire & Rubber Co.*, 192 F. Supp. 2d 1175 (D. Colo. 2002).

**The evidence must reveal some indicia of an agreement sufficient to prove that the defendants consciously conspired and deliberately pursued a common plan or design** that resulted in a tortious act. *Loughridge v. Goodyear Tire & Rubber Co.*, 192 F. Supp. 2d 1175 (D. Colo. 2002).

Therefore, summary judgment not appropriate where there is a question as to whether the requisite nexus existed that would establish a tacit agreement between a car dealer, in its various forms, and its agents to provide vehicles to "dangerous," "mean" driver, who injured plaintiff, in exchange for payment in cash and

motivation for repeat business. *Schneider v. Midtown Motor Co.*, 854 P.2d 1322 (Colo. App. 1992).

**The tort of negligent entrustment can constitute the predicate "tortious act" required to establish joint liability pursuant to subsection (4).** *Schneider v. Midtown Motor Co.*, 854 P.2d 1322 (Colo. App. 1992).

**Section 13-50.5-105 does not apply to reduce a defendant's liability under subsection (4).** The joint liability provision, as the more recently enacted statute, must be deemed controlling to the extent of any inconsistency. *Pierce v. Wiglesworth*, 903 P.2d 656 (Colo. App. 1994); *Toothman v. Freeborn & Peters*, 80 P.3d 804 (Colo. App. 2002).

**Plaintiff's fault may not reduce an intentional tortfeasor's liability.** *Toothman v. Freeborn & Peters*, 80 P.3d 804 (Colo. App. 2002).

**Colorado approaches an attorney's breach of implied warranty as a hybrid of the standard tort claim for malpractice, sounding in negligence, and subject to this proportionate liability statute.** *Fed. Deposit Ins. Corp. v. Clark*, 978 F.2d 1541 (10th Cir. 1992).

**In a negligence action, a nonparty designation will be struck unless evidence demonstrating a prima facie case of nonparty liability is set forth.** *Stone v. Satriana*, 41 P.3d 705 (Colo. 2002); *Anstine v. Alexander*, 128 P.3d 249 (Colo. App. 2005), rev'd on other grounds, 152 P.3d 497 (Colo. 2007).

Where defendants did not present expert testimony or any other evidence to establish the duty of care applicable to nonparty attorneys, defendants failed to establish a prima facie case of negligence. *Anstine v. Alexander*, 128 P.3d 249 (Colo. App. 2005), rev'd on other grounds, 152 P.3d 497 (Colo. 2007).

**Designation of a plaintiff's current legal counsel as a nonparty in a legal malpractice action by opposing counsel** is subject to strong public policy considerations and opposing counsel must allege a cognizable malpractice claim. In determining whether designation of current counsel is appropriate, the court evaluated: The danger of joining successor counsel as either a nonparty or third-party as an unfair litigation tactic; the adverse effect it would have on the client's ability to pursue a malpractice action; and the interference such designation would have on attorney-client confidences. *Stone v. Satriana*, 41 P.3d 705 (Colo. 2002).

There is no legal duty for a legal malpractice plaintiff's counsel to ameliorate the injury effected by predecessor counsel. *Stone v. Satriana*, 41 P.3d 705 (Colo. 2002).

A failure to appeal can never be a failure to mitigate damages caused by malpractice at trial. Litigation is too uncertain and costly to impose such a duty on a party. *Stone v. Satriana*, 41 P.3d 705 (Colo. 2002).

**There being no concerted action by the two tortfeasors, the trier of fact must apportion negligence or fault between them.** While defendant's negligence ultimately combined with the actions of

another party to cause plaintiff's loss, there is no support for the proposition that the parties consciously conspired and deliberately pursued a common plan to commit a tortious act or to cause the loss. The court does not perceive that it is possible to conspire to be negligent. *Messler v. Phillips*, 867 P.2d 128 (Colo. App. 1993).

**Even though the imposition of costs is required by this section**, the apportionment of costs among multiple defendants is not prescribed. It remains at the discretion of the court. *Bohrer v. DeHart*, 943 P.2d 1220 (Colo. App. 1996), rev'd on other grounds, 961 P.2d 472 (Colo. 1998).

**Trial court erroneously computed the compensatory damages** to which plaintiff was entitled by setting off amounts that plaintiff had received from settling defendants from the gross compensatory damage award for the breach of warranty and misrepresentation claims. *Sprung v. Adcock*, 903 P.2d 1224 (Colo. App. 1995).

**Erroneous jury instruction.** Negligence per se jury instruction on alleged nonparty's statutory violation should not have been given when there was no evidence that

another person or vehicle was involved. *Ramirez v. Mixsooke*, 907 P.2d 617 (Colo. App. 1994).

**District court's failure to provide the jury with computational verdict forms in compliance with this section was error.** The error was harmless, however, because the court properly instructed the jury on apportionment of damages, and the verdict forms did not demonstrate that the jury ignored the instructions. *Bohrer v. DeHart*, 961 P.2d 472 (Colo. 1998).

**Where plaintiff seeks damages for aggravation of a pre-existing condition, the doctrine of apportionment should be applied in conjunction with determining pro rata liability.** Conduct that originally created the condition cannot be prorated with conduct that aggravated the condition. The jury must apportion damages between those arising from the pre-existing condition and those arising from aggravation of the condition. Pro rata liability then provides the method for determining legal responsibility for the damages after they are separated. *Fried v. Leong*, 946 P.2d 487 (Colo. App. 1997).

### **13-21-111.6. Civil actions - reduction of damages for payment from collateral source.**

In any action by any person or his legal representative to recover damages for a tort resulting in death or injury to person or property, the court, after the finder of fact has returned its verdict stating the amount of damages to be awarded, shall reduce the amount of the verdict by the amount by which such person, his estate, or his personal representative has been or will be wholly or partially indemnified or compensated for his loss by any other person, corporation, insurance company, or fund in relation to the injury, damage, or death sustained; except that the verdict shall not be reduced by the amount by which such person, his estate, or his personal representative has been or will be wholly or partially indemnified or compensated by a benefit

paid as a result of a contract entered into and paid for by or on behalf of such person. The court shall enter judgment on such reduced amount.

**Source: L. 86:** Entire section added, p. 679, § 3, effective July 1.

## ANNOTATION

**Law reviews.** For article, "Recovery of Interest: Part I — Personal Injury", see 18 Colo. Law. 1063 (1989). For article, "Set-Off Under the Contribution and Collateral Source Statutes", see 21 Colo. Law. 1421 (1992). For article, "Partial Settlements in Multiparty Tort Actions: The Latest Chapter", see 22 Colo. Law. 2529 (1993). For comment, "Settlements with Nonparties: A Closer Look at Colorado's Collateral Source and Contribution Statutes", see 66 U. Colo. L. Rev. 195 (1995). For article, "Recovery of Medical Expenses by Insured Medical Malpractice Victims", see 33 Colo. Law. 113 (July 2004).

**This section sets forth a general rule that damages for which a claimant has been wholly or partially indemnified or compensated by another cannot be recovered in a tort action against the tortfeasor involving the same injury.** *Miller v. Brannon*, 207 P.3d 923 (Colo. App. 2009).

**The clear and plain meaning of this section** is that a determination of liability is not required for a setoff; the only requirement is that compensation made be in relation to the injury or damage sustained. *U.S. Fid. & Guarantee Co. v. Salida Gas Serv. Co.*, 793 P.2d 602 (Colo. App. 1989).

**The intent of this section** is to prevent double recovery by an injured party. *U.S. Fid. & Guarantee Co. v. Salida Gas Serv. Co.*, 793 P.2d 602 (Colo. App. 1989); *Montoya v. Grease Monkey Holding Corp.*, 883 P.2d 486 (Colo. App. 1994).

**This section does not apply to payments made by settling tortfeasors**, but only to payments from collateral sources independent of any alleged tort liability. *Montoya v. Grease Monkey Holding Corp.*, 883 P.2d 486 (Colo. App. 1994); *Smith v. Vincent*, 77 P.3d 927 (Colo. App. 2003).

**Intent of this section was not to deny compensation** to which a claimant was entitled under a contract the claimant or someone on the claimant's behalf entered into and paid for with the expectation of receiving the contract benefits in the future. The purpose of excluding such contractual benefits is to allow recovery to a claimant who contracted for and purchased, either directly or indirectly, some type of insurance or other protection against accident-induced losses without penalizing the person for prudence and thereby providing a windfall for a culpable tortfeasor. *Van Waters & Rodgers, Inc. v. Keelan*, 840 P.2d 1070 (Colo. 1992); *Frost v. Schroeder & Co., Inc.*, 876 P.2d 126 (Colo. App. 1994).

**The intent of the contract exception of this section** is to ensure that a defendant does not receive a windfall by avoiding payment of damages because the plaintiff had the foresight to purchase insurance, or enter into a contract that compensates the plaintiff for injury caused by the defendant. When, however, the payor of the compensation pursuant to the contract is also liable for the plaintiff's judgment, the rationale for the contract exception disappears. In such a case, offset pursuant to this section is required. *Colo. Permanente Medi. Grp., P.C. v. Evans*, 926 P.2d 1218 (Colo. 1996); *Levy v. Am. Family Mut. Ins. Co.*, 293 P.3d 40 (Colo. App. 2011).

**This section controls over § 13-50.5-105**, since it was passed last. *U.S. Fid. & Guarantee Co. v. Salida Gas Serv. Co.*, 793 P.2d 602 (Colo. App. 1989).

**This section and § 13-50.5-105 must be reconciled, if possible, to give effect to both sections.** Therefore, § 13-50.5-105 should apply when a percentage of negligence has been attributed by the fact finder to the non-party while this section should control if the fact finder attributes no fault to the non-party. *Gutierrez v. Bussey*, 837 P.2d 272 (Colo. App. 1992).

**Medicare does not preempt application of this section or § 10-1-135.** *Forfar v. Wal-Mart Stores, Inc.*, 2018 COA 125, 436 P.3d 580.

**Collateral source rule is not applicable to personal injury protection benefit payments (PIP).** A jury instruction to not award damages for losses that are eligible for coverage under the Colorado Auto

Accident Reparations Act (former § 10-4-701) sets forth a proper statement of the law. *Martinez v. Shapland*, 833 P.2d 837 (Colo. App. 1992) (decided under law as it existed prior to the 2003 repeal of § 10-4-713).

**Under the common law collateral source rule, evidence of the amount paid by third-party payors, and conversely, the amount discounted (or written off) from the billed amount due under a contract between the third-party payor and the provider, is inadmissible**, even to show the reasonable value of services rendered, because these payments and discounts constitute collateral sources. *Crossgrove v. Wal-Mart Stores, Inc.*, 280 P.3d 29 (Colo. App. 2010), *aff'd*, 2012 CO 31, 276 P.3d 562; *Forfar v. Wal-Mart Stores, Inc.*, 2018 COA 125, 436 P.3d 580.

**Colorado's common law collateral source rule is not limited to protecting merely the cash amounts paid to providers for services rendered;** rather, the rule is broad enough to encompass the amount by which a medical provider's bill is discounted pursuant to a contractual arrangement between the provider and third-party payor. *Crossgrove v. Wal-Mart Stores, Inc.*, 280 P.3d 29 (Colo. App. 2010), *aff'd*, 2012 CO 31, 276 P.3d 562.

**This section does not address the evidentiary prohibition of the collateral source rule;** however, the admission of the evidence is still prohibited by the common law collateral source rule. *Crossgrove v. Wal-Mart Stores, Inc.*, 280 P.3d 29 (Colo. App. 2010), *aff'd*, 2012 CO 31, 276 P.3d

562; *Forfar v. Wal-Mart Stores, Inc.*, 2018 COA 125, 436 P.3d 580.

**Collateral rule does not apply** when a workers' compensation insurer resolves its subrogation claim with the third-party tortfeasor because the injured employee no longer has a claim for damages arising out of past medical expenses covered by workers' compensation. Therefore, there is no reason to present evidence of either amounts billed or amounts paid for medical services. *Delta Airlines, Inc. v. Scholle*, 2021 CO 20, 484 P.3d 695; *Gill v. Waltz*, 2021 CO 21, 484 P.3d 691.

**This section has no effect until the finder of fact returns a verdict;** accordingly, it has no impact on the admissibility of evidence during trial. Because the general assembly spoke with exactitude in altering the application of the collateral source rule after the verdict is received from the fact finder, but expressed no intention to alter the jury's function in assessing the damages, this section does not abrogate the common law rule prohibiting evidence of collateral sources at trial. *Crossgrove v. Wal-Mart Stores, Inc.*, 280 P.3d 29 (Colo. App. 2010), *aff'd*, 2012 CO 31, 276 P.3d 562.

**The contract exception to the collateral source rule applies to PIP benefits of an automobile insurance policy.** Because the Colorado Auto Accident Reparations Act (former §§ 10-4-701 to 10-4-726) ("no-fault insurance act"), under which losses resulting from an automobile accident that were eligible for PIP coverage under an insurance policy were not recoverable in a tort action

against the tortfeasor who caused the losses, was repealed before the automobile accident occurred, the contract exception to the collateral source rule applied to plaintiff's claim for lost earnings. *Miller v. Brannon*, 207 P.3d 923 (Colo. App. 2009) (decided under law as it existed prior to the 2003 repeal of § 10-4-713).

There is nothing in the language of the contract exception that would exclude PIP benefits because the no-fault insurance act required a person to purchase such benefits. *Miller v. Brannon*, 207 P.3d 923 (Colo. App. 2009) (decided under law as it existed prior to the 2003 repeal of § 10-4-713).

**The contract exception applies to medicare benefits for which the plaintiff has qualified through social security disability insurance (SSDI),** as a result of his contributions to social security. *Forfar v. Wal-Mart Stores, Inc.*, 2018 COA 125, 436 P.3d 580.

**The scope of this section is not entirely clear.** Therefore, the courts must look beyond the plain language to determine legislative intent. The court is to look at the object sought to be attained by the general assembly and at the legislative history. *Van Waters & Rogers, Inc. v. Keelen*, 840 P.2d 1070 (Colo. 1992).

**A settlement accompanied by a release or covenant not to execute falls within the scope of the "contract" exception.** *Simon v. Coppola*, 876 P.2d 10 (Colo. App. 1993).

**Collateral source rule is not applicable to benefits under a fire and police pension plan contract.** This section was part of

sweeping legislation designed to limit amounts that plaintiffs can recover. However, legislative history indicates that the exemptions to the collateral source rule include benefits received under a fire and police pension plan contract, regardless of whether consideration paid for benefits is in the form of money or services. *Van Waters & Rogers, Inc. v. Keelen*, 840 P.2d 1070 (Colo. 1992).

**Disability benefits paid to a state employee by the public employees' retirement association constitute a collateral source** and are not required to be offset from the employee's base pay damage award. *Dept. of Human Servs. v. State Pers. Bd.*, 2016 COA 37, 371 P.3d 748.

**The contract exception to this section applies to a contract between plaintiff's insurer and health care providers** that decreased the amount actually paid for plaintiff's medical care and thereby injured to plaintiff's benefit. The trial court erred by reducing plaintiff's damages award by the amount in excess of the medical bills actually paid on plaintiff's behalf. *Tucker v. Volunteers of Am. Colo. Branch*, 211 P.3d 708 (Colo. App. 2008), *aff'd sub nom. Volunteers of Am. v. Gardenswartz*, 242 P.3d 1080 (Colo. 2010); *Scholle v. Ehrichs*, 2024 CO 22, 546 P.3d 1170.

**Under the collateral source rule, a plaintiff may recover damages for the full amount of medical expenses incurred.** *Volunteers of Am. v. Gardenswartz*, 242 P.3d 1080 (Colo. 2010).

**The discounted medical rates paid by plaintiff's insurance company are a direct**

**result of his health insurance contract.** Therefore, tortfeasor may not claim these discounts to reduce its liability for the medical care plaintiff received. *Volunteers of Am. v. Gardenswartz*, 242 P.3d 1080 (Colo. 2010); *Scholle v. Ehrichs*, 2024 CO 22, 546 P.3d 1170.

**This section is subject to former § 10-4-713 (1) of the no-fault insurance act**, which prohibits recovery of PIP benefits in tort actions, notwithstanding that such benefits may qualify as "benefit[s] paid as a result of a contract entered into and paid for by" the plaintiff. *Martinez v. Shapland*, 833 P.2d 837 (Colo. App. 1992) (decided under law as it existed prior to the 2003 repeal of § 10-4-713).

**Benefits that result from an employment contract are protected by the exception clause of this section.** An employee's services are something of value given in exchange for an employment contract and its derivative benefits. Disability payments received as part of the compensation for such services are entitled to the same protection against offset as proceeds from private insurance contracts. *Van Waters & Rogers, Inc. v. Keelan*, 840 P.2d 1070 (Colo. 1992).

**When the jury assigns fault to a settling party as a nonparty pursuant to this section, the trial verdict shall be reduced by an amount equal to the cumulative percentage of fault attributed to the settling nonparties.** The amount to be reduced from the trial verdict shall be calculated by multiplying the total percentage of liability attributed to the



settling nonparties by the total trial verdict awarded the plaintiff. *Smith v. Zufelt*, 880 P.2d 1178 (Colo. 1994).

**However, the amount of a solatium award made under § 13-21-203.5 may not be reduced according to general principles of pro-rata liability.** *Smith v. Vincent*, 77 P.3d 927 (Colo. App. 2003).

**Trial court erred in an action for negligence** for gas explosion that destroyed the home of insurance company's client by not allowing the judgment against joint tortfeasors to be offset by the amount paid to the insurance company by a plumbing company, even though the plumbing company was found not to be negligent. *U.S. Fid. & Guarantee Co. v. Salida Gas Serv. Co.*, 793 P.2d 602 (Colo. App. 1989).

**Unemployment compensation benefits are not deductible** by employer to mitigate damages in an action for damages for breach of an employment contract. *Tech. Computer Serv. v. Buckley*, 844 P.2d 1249 (Colo. App. 1992).

**Court was correct in ordering that any future payments paid to homeowners** from homeowners' warranty insurance policy should be credited against judgment under collateral source rule. *Howard v. Wood Bros. Homes, Inc.*, 835 P.2d 556 (Colo. App. 1992).

**The indirect payment of insurance premiums by real property purchasers through the sellers** pursuant to a wrap-around agreement is a contract entered into and paid for by or on behalf of the purchasers that falls within the exception

clause in this section. The trial court erred in setting off the insurance proceeds against the jury verdict in favor of the purchasers. *Frost v. Schroeder & Co.*, 876 P.2d 126 (Colo. App. 1994).

**SSDI benefits should not be set off against Uninsured/underinsured motorist (UM/UIM) insurance benefits** because SSDI benefits arise from a "contract entered into and paid for" by the injured party. *Barnett v. Am. Family Mut. Ins. Co.*, 843 P.2d 1302 (Colo. 1993).

**Medicaid benefits are subject to the contract exception in this section in post-verdict proceedings.** *Pressey v. Children's Hosp. Colo.*, 2017 COA 28, 488 P.3d 151.

**Damages cap under the Health Care Availability Act (HCAA) is not in conflict with the contract exception in this section and is thus applicable** in post-verdict proceedings to reduce damages in medical malpractice actions under § 13-64-302. The contract exception applies to "any action...to recover damages for a tort"; the HCAA is silent on application of the contract exception; and nothing on the face of either statute makes them inconsistent. *Pressey v. Children's Hosp. Colo.*, 2017 COA 28, 488 P.3d 151.

**Workers' compensation benefits may not be offset against UIM coverage.** This section is not implicated because workers' compensation benefits are received as a result of an employee's contract with his or her employer and therefore fall within the express statutory exception for benefits "paid as a result of a contract entered into and paid for by or on behalf of such person."

Adamscheck v. Am. Family Mut. Ins. Co., 818 F.3d 576 (10th Cir. 2016).

**Nothing in this section would impermissibly limit an insured's recovery of UM/UIM coverage,** where insurer aggregates amounts received by insured from all parties liable for his or her injuries. Carlisle v. Farmers Ins. Exch., 946 P.2d 555 (Colo. App. 1997).

**Benefits paid pursuant to employment contract are not subject to statutory setoff.** Combined Com. Corp. v. Pub. Serv. Co., 865 P.2d 893 (Colo. App. 1993).

**In a contract case, the common law collateral source rule applies rather than**

**this section.** Yeiser v. Ferrellgas, Inc., 214 P.3d 458 (Colo. App. 2009), rev'd on other grounds, 247 P.3d 1022 (Colo. 2011).

**The contract exception applies to a credit card company's reimbursement of the card holder.** The district court erred in finding that the card holder did not incur any economic damages as a result of being reimbursed by the credit card company. Whether the reimbursement was made by the credit card company as opposed to the defendant is a material fact. Thomas v. Childhelp, Inc., 2024 COA 16, 548 P.3d 1152.

#### **13-21-111.7. Assumption of risk - consideration by trier of fact.**

Assumption of a risk by a person shall be considered by the trier of fact in apportioning negligence pursuant to section 13-21-111. For the purposes of this section, a person assumes the risk of injury or damage if he voluntarily or unreasonably exposes himself to injury or damage with knowledge or appreciation of the danger and risk involved. In any trial to a jury in which the defense of assumption of risk is an issue for determination by the jury, the court shall instruct the jury on the elements as described in this section.

**Source: L. 86:** Entire section added, p. 679, § 3, effective July 1.

#### **ANNOTATION**

**Law reviews.** For article, "Legal Aspects of Health and Fitness Clubs: A Healthy and Dangerous Industry", see 15 Colo. Law. 1787 (1986).

**This section satisfies the rational basis in fact standard of equal protection analysis** since the statutory definition under

this section is based on the long-standing legal principle that there are significant differences between plaintiffs and defendants such that different legal consequences may be attributed to their respective conduct solely on the basis of their status as either plaintiff or defendant in

a negligence action. *Harris v. The Ark*, 810 P.2d 226 (Colo. 1991).

**This section satisfies equal protection analysis under the rational basis standard of review** since one of the purposes is to make clear that both the voluntary and the unreasonable exposure to a known danger are species of assumption of risk under the comparative negligence statutory scheme. *Harris v. The Ark*, 810 P.2d 226 (Colo. 1991).

**By defining "assumption of risk" in disjunctive terms of "voluntary" or "unreasonable" conduct**, this section includes within the definition a plaintiff's voluntary but not necessarily unreasonable, as well as a plaintiff's unreasonable, exposure to a known danger. *Harris v. The Ark*, 810 P.2d 226 (Colo. 1991); *Carter v. Lovelace*, 844 P.2d 1288 (Colo. App. 1992).

**Assumption of risk requires knowledge of the danger and consent to it.** *Carter v. Lovelace*, 844 P.2d 1288 (Colo. App. 1992); *Scott v. City of Greeley*, 931 P.2d 525 (Colo. App. 1996).

**Attempt to pass vehicles involved negligence and assumption of some risks, but not the known risk that someone would turn immediately in front of him.** To hold otherwise would be to hold that all

drivers presume the risk of any accident when passing another automobile. *Carter v. Lovelace*, 844 P.2d 1288 (Colo. App. 1992).

**This section defines the term "assumption of risk" in language that gives clear notice of the conduct encompassed within the term** — that is, the voluntary or unreasonable exposure to injury or damage with knowledge or appreciation of the danger and risk involved — and provides meaningful guidance to courts and juries in resolving issues of liability and damages by directing them to factor the plaintiff's assumption of risk into the comparative negligence calculus. *Harris v. The Ark*, 810 P.2d 226 (Colo. 1991).

**A passenger in an automobile driven by an intoxicated person may be negligent for having entered the automobile** in the first place. Thus, an instruction on assumption of risk is proper when a plaintiff is injured while a passenger in an automobile driven by someone who the plaintiff has reason to know is intoxicated. *Wark v. McClellan*, 68 P.3d 574 (Colo. App. 2003).

**No error in failing to instruct jury on assumption of risk.** *Howard v. Wood Bros. Homes, Inc.*, 835 P.2d 556 (Colo. App. 1992).

### **13-21-111.8. Assumption of risk - shooting ranges.**

(1) Any person who engages in sport shooting activities at a qualifying sport shooting range, as defined under section 25-12-109 (2)(d), C.R.S., assumes the risk of injury or damage associated with sport shooting activities as set forth in section 13-21-111.7.

(2) For purposes of this section, "engages in sport shooting activities" means entering and exiting a qualifying sport shooting range, preparing to shoot, waiting to shoot, shooting, or assisting another person in shooting at a qualifying sport shooting range. The term includes being a spectator at a qualifying sport shooting range and being present in the range for any reason.

**Source: L. 98:** Entire section added, p. 242, § 2, effective April 13.

**13-21-112. Ad damnum clauses in professional liability actions.**

In any professional liability action for damages, the ad damnum clause or prayer for damages in any pleading shall not recite any sum as alleged damages other than an allegation that damages are in excess of any minimum dollar amount necessary to establish the jurisdiction of the court.

**Source: L. 77:** Entire section added, p. 803, § 1, effective May 26.

**13-21-113. Donation of items of food - exemption from civil and criminal liability - definitions.**

(1) (a) (I) Except as described in subsection (1)(a)(II) of this section, the following persons are not liable for damages in any civil action or subject to prosecution in any criminal proceeding resulting from the nature, age, condition, or packaging of donated foods, regardless of whether the donated food is alleged to have caused illness or death:

(A) A farmer, a retail food establishment, a correctional facility, a school district, a hospital, a faith-based organization, or a processor, distributor, wholesaler, or retailer of food that donates items of food to a nonprofit organization or a faith-based organization or an individual for use or distribution in providing assistance to individuals; and

(B) A nonprofit organization in receipt of donated food that transfers the food to another nonprofit organization for use or distribution in providing assistance to individuals.

(II) The immunity from liability described in subsection (1)(a)(I) of this section does not apply to willful, wanton, or reckless acts of donors that result in injury or death to recipients of donated foods.

(b) As used in this section, unless the context otherwise requires:

(I) "Correctional facility" has the meaning set forth in section 17-1-102 (1.7).

- (II) "Hospital" means a hospital licensed pursuant to section 25-3-101.
- (II.5) "Local education provider" means:
- (A) A school district organized pursuant to article 30 of title 22;
  - (B) A board of cooperative services created pursuant to article 5 of title 22;
  - (C) A charter school authorized by a school district pursuant to part 1 of article 30.5 of title 22;
  - (D) An institute charter school authorized by the state charter school institute pursuant to part 5 of article 30.5 of title 22;
  - (E) An approved facility school as defined in section 22-2-402 (1); or
  - (F) The Colorado school for the deaf and the blind described in section 22-80-102.
- (III) "Nonprofit organization" means any organization that is exempt from the income tax imposed under article 22 of title 39; except that "nonprofit organization" does not include organizations that sell or offer to sell donated items of food.
- (IV) "Retail food establishment" has the meaning set forth in section 25-4-1602 (14).
- (V) "School district" has the meaning set forth in section 22-30-103 (13).
- (VI) "Share table" has the meaning set forth in section 22-32-152.
- (2) Nothing in this section relieves a nonprofit organization that serves or provides food to individuals for consumption from any liability for any injury or death, including injury or death resulting from ingesting donated foods, as a result of receiving, accepting, gathering, or removing any foods donated under this section; except that a nonprofit organization is not liable for any injury or death caused by donated food produced pursuant to the "Colorado Cottage Foods Act", section 25-4-1614, unless the nonprofit organization acted unreasonably.
- (3) Any nonprofit organization that receives any donated items of food pursuant to this section shall not sell or offer to sell any such donated items of food. This prohibition shall not affect the transfer of such donated items of gleaned or donated food between nonprofit organizations, without contemplation of remuneration, for ultimate disposition in accordance with the provisions of this section.
- (3.5) A farmer that allows one or more individuals to make entry on the farmer's property for the purpose of gleaning produce for donation to a nonprofit organization for use or distribution in providing assistance to individuals, as described in subsection (1)(a) of this section, is not liable for damages in any civil action or subject to prosecution in any criminal proceeding resulting from an injury or death to such individuals unless the injury or death results from a willful or wanton act or omission of the farmer.

(4) Nothing in this section is intended to restrict the authority of any appropriate agency to regulate or ban the use of such donated foods for human consumption.

(5) A designated school employee or local education provider that supervises the redistribution of food and beverage items returned to a share table pursuant to section 22-32-152 is not liable for damages in any civil action or subject to prosecution in any criminal proceeding resulting from the nature, age, condition, or packaging of the redistributed food or beverage items; except that this exemption does not apply to willful, wanton, or reckless acts of school personnel or local education providers, including disregard for applicable sanitation and health requirements or protocols to prevent exposure to allergens, that result in injury to recipients of redistributed items.

**Source:** **L. 80:** Entire section added, p. 513, § 1, effective April 6. **L. 82:** (1) and (3) amended, p. 291, § 1, effective April 2. **L. 89:** (1) amended, p. 758, § 1, effective April 10. **L. 2000:** (1) amended, p. 1844, § 23, effective August 2. **L. 2012:** (2) amended, (SB 12-048), ch. 16, p. 41, § 2, effective March 15. **L. 2020:** (1) amended and (3.5) added, (SB 20-090), ch. 127, p. 549, § 3, effective September 14. **L. 2025:** (1)(a), (2), and (3.5) amended, (HB 25-1166), ch. 90, p. 373, § 4, effective August 6; (1)(b)(II.5), (1)(b)(VI), and (5) added, (HB 25-1059), ch. 77, p. 328, § 3, effective August 6.

**Cross references:** For the legislative declaration in the 2012 act amending subsection (2), see section 1 of chapter 16, Session Laws of Colorado 2012.

## ANNOTATION

|                                                                                                                                 |                                                                                                                |
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| <b>Law reviews.</b> For article, "What's in the Package: Food, Beverage, and Dietary Supplement Law and Litigation Part I", see | 43 Colo. Law. 77 (July 2014). For article, "Colorado's Good Samaritan Laws", see 53 Colo. Law. 42 (Apr. 2024). |
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### **13-21-113.3. Donation of firefighting equipment - exemption from civil and criminal liability - definitions - legislative declaration.**

(1) A fire department or other person or entity that donates surplus firefighting equipment to a fire department shall not be liable for damages in any civil action or subject to prosecution in any criminal proceeding resulting from the nature, age, condition, or packaging of such equipment; except that this exemption shall not apply to the grossly negligent, willful, wanton, or reckless acts of donors that result in injury to recipients of such equipment.

(2) As used in this section:

(a) "Fire department" has the meaning set forth in section 24-33.5-1202, C.R.S., and includes a fire department that uses paid firefighters, volunteer firefighters, or both. The term includes, without limitation, not-for-profit nongovernmental entities that are organized to provide firefighting services and recognized under section 24-33.5-1208.5, C.R.S.

(b) "Firefighting equipment" means any and all equipment designed for or typically used in the prevention and suppression of fire, the protection of firefighters, or the rescue and extrication of victims of fire or other emergencies, including without limitation hoses, fire trucks, rescue vehicles, extrication equipment, protective clothing, and breathing apparatus.

(3) A fire department that receives donated firefighting equipment pursuant to this section shall not sell or offer to sell any such donated equipment. This prohibition shall not affect the transfer of such donated equipment, without contemplation of remuneration, between fire departments for future use.

(4) Nothing in this section limits the authority of any appropriate agency to regulate, prohibit, or place conditions on the use of specific firefighting equipment.

(5) The general assembly intends that the provisions of this section and of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., be read together and harmonized. If any provision of this section is construed to conflict with a provision of the "Colorado Governmental Immunity Act", the provision that grants the greatest immunity shall prevail.

**Source:** **L. 2009:** Entire section added, (SB 09-013), ch. 413, p. 2284, § 2, effective June 3. **L. 2015:** (2)(a) amended, (HB 15-1017), ch. 3, p. 7, § 4, effective March 11.

**Cross references:** In 2009, this section was added by the "Marc Mullinex Volunteer Firefighter Protection Act". For the short title and the legislative declaration, see sections 1 and 2 of chapter 413, Session Laws of Colorado 2009.

## ANNOTATION

**Law reviews.** For article, "Colorado's Good Samaritan Laws", see 53 Colo. Law. 42 (Apr. 2024).

**13-21-113.5. Use of school or nonprofit organization kitchen - exemption from civil and criminal liability.**

A school or nonprofit organization that provides one or more community kitchens used by producers to bake or process goods for sale pursuant to the "Colorado Cottage Foods Act", section 25-4-1614, C.R.S., is not liable for damages in any civil action or subject to prosecution in any criminal proceeding resulting from the use of its kitchens by producers preparing goods for direct sale to consumers, unless the school or nonprofit organization acted unreasonably. A school or nonprofit organization may require anyone using its kitchens for this purpose to show proof of liability insurance before using the kitchen. This section does not apply to an injury or death of the ultimate user of the product that results from an act or omission of the school or nonprofit organization constituting gross negligence or intentional misconduct.

**Source: L. 2012:** Entire section added, (SB 12-048), ch. 16, p. 41, § 3, effective March 15.

**Cross references:** For the legislative declaration in the 2012 act adding this section, see section 1 of chapter 16, Session Laws of Colorado 2012.

**ANNOTATION**

**Law reviews.** For article, "Colorado's Good Samaritan Laws", see 53 Colo. Law. 42 (Apr. 2024).

**13-21-113.7. Immunity of volunteer firefighters, volunteers, incident management teams, and their employers or organizations - definitions - legislative declaration.**

(1) A volunteer firefighter or volunteer who, in good faith, takes part in firefighting efforts or provides emergency care, rescue, assistance, or recovery services at the scene of an emergency; any incident management team; and any person who, in good faith, commands, directs, employs, sponsors, or represents any such volunteer firefighter, volunteer, or incident management team shall not be liable for civil damages as a result of an act or omission by such volunteer firefighter, volunteer, incident management team, or other person in connection with the emergency or with activities described in section 33-1-102 (1.3); except that this exemption shall not apply to grossly negligent, willful, wanton, or reckless acts or omissions.

(2) As used in this section:



(a) "Emergency" means any incident to which a response by a fire department or incident management team is appropriate or requested, including, without limitation:

(I) A fire, fire alarm response, motor vehicle crash, rescue call, or hazardous materials incident;

(II) A natural or man-made disaster such as an earthquake, flood, or severe weather event;

(III) A terrorist attack; or

(IV) An outbreak of a harmful biological agent or infectious disease.

(b) "Fire department" has the meaning set forth in section 24-33.5-1202, C.R.S., and includes a fire department that uses paid firefighters, volunteer firefighters, or both. The term includes, without limitation, not-for-profit nongovernmental entities that are organized to provide firefighting services and recognized under section 24-33.5-1208.5, C.R.S.

(c) "Incident management team" means an ad hoc or standing team of trained personnel from different departments, organizations, agencies, and jurisdictions, including persons engaged in backcountry search and rescue efforts as defined in section 33-1-102 (1.3), activated to manage the logistical, fiscal, planning, operational, safety, and community issues related to an emergency or other incident.

(c.5) "Volunteer" has the meaning as set forth in section 13-21-115.5.

(d) "Volunteer firefighter" has the meaning set forth in section 31-30-1102, C.R.S., and includes volunteer firefighters of not-for-profit nongovernmental entities that are organized to provide firefighting services.

(3) The general assembly intends that the provisions of this section and of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., be read together and harmonized. If any provision of this section is construed to conflict with a provision of the "Colorado Governmental Immunity Act", the provision that grants the greatest immunity shall prevail.

(4) Nothing in this section alters the protections set forth in section 12-315-117, 13-21-108, 13-21-115.5, or 24-33.5-1505.

**Source: L. 2009:** Entire section added, (SB 09-013), ch. 413, p. 2284, § 2, effective June 3. **L. 2014:** (1) amended and (2)(c.5) and (4) added, (SB 14-138), ch. 55, p. 252, § 1, effective March 21. **L. 2015:** (2)(b) amended, (HB 15-1017), ch. 3, p. 8, § 5, effective March 11. **L. 2019:** (4) amended, (HB 19-1172), ch. 136, p. 1664, § 70, effective October 1. **L. 2022:** (1) and (2)(c) amended, (SB 22-168), ch. 296, p. 2119, § 3, effective June 1. **L. 2026:** (2)(a)(I) amended, (HB 26-1237), ch. 117, p. 462, § 4, effective August 12.

**Editor's note:** Subsection (2)(c.5) was numbered as (2)(e) in Senate Bill 14-138 but has been renumbered on revision for ease of location.

**Cross references:** In 2009, this section was added by the "Marc Mullinex Volunteer Firefighter Protection Act". For the short title and the legislative declaration, see sections 1 and 2 of chapter 413, Session Laws of Colorado 2009.

#### ANNOTATION

**Law reviews.** For article, "Colorado's Good Samaritan Laws", see 53 Colo. Law. 42 (Apr. 2024).

#### **13-21-114. Immunity of mine rescue participants and their employers or organizations.**

No person engaged in mine rescue or recovery work who, in good faith, renders emergency care, rescue, assistance, or recovery services at the scene of any emergency at or in a mine in this state or who employs, sponsors, or represents any person rendering emergency care, rescue, assistance, or recovery services shall be liable for any civil damages as a result of any act or omission by any person in rendering emergency care, rescue, assistance, or recovery service.

**Source: L. 82:** Entire section added, p. 293, § 1, effective April 23.

#### ANNOTATION

**Law reviews.** For article, "Colorado's Good Samaritan Laws", see 53 Colo. Law. 42 (Apr. 2024).

#### **13-21-115. Actions against landowners - short title - legislative declaration - definitions.**

- (1) The short title of this section is the "Colorado Premises Liability Act".
- (2) The general assembly finds and declares that:

(a) The provisions of this section were enacted in 1986 to promote a state policy of responsibility by both landowners and those upon the land as well as to ensure that the ability of an injured party to recover is correlated with the injured party's status as a trespasser, licensee, or invitee;

(b) These objectives were characterized by the Colorado supreme court as "legitimate governmental interests" in *Gallegos v. Phipps*, 779 P.2d 856 (Colo. 1989);

(c) The purpose of amending this section in the 1990 legislative session was to:

(I) Ensure that the language of this section effectuates these legitimate governmental interests by imposing on landowners a higher standard of care with respect to an invitee than a licensee and a higher standard of care with respect to a licensee than a trespasser; and

(II) Create a legal climate that will promote private property rights and commercial enterprise and foster the availability and affordability of insurance;

(d) The general assembly recognizes that by amending this section it is not reinstating the common law status categories as they existed immediately prior to *Mile Hi Fence v. Radovich*, 175 Colo. 537, 489 P.2d 308 (1971) but that its purpose is to protect landowners from liability in some circumstances when they were not protected at common law and to define the instances when liability will be imposed in the manner most consistent with the policies set forth in subsections (2)(a) and (2)(c) of this section; and

(e) (I) The *Rocky Mountain Planned Parenthood, Inc. v. Wagner*, 2020 CO 51, 467 P.3d 287, and *Wagner v. Planned Parenthood Federation of America, Inc.*, 2019 COA 26, 471 P.3d 1089, decisions do not accurately reflect the intent of the general assembly regarding landowner liability and must not be relied upon in applying this section to the extent that the majority opinions determined:

(A) The foreseeability of third-party criminal conduct based upon whether the goods or services offered by a landowner are controversial; and

(B) That a landowner could be held liable as a substantial factor in causing harm without considering whether a third-party criminal act was the predominant cause of that harm, as noted by the dissenting justices and judge.

(II) In making this declaration, the general assembly does not intend to reject or otherwise disturb any judicial decision other than the *Wagner* decisions.

(3) In any civil action brought against a landowner by a person who alleges injury occurring while on the real property of another and by reason of the condition of such property, or activities conducted or circumstances existing on such property, the landowner is liable only as provided in subsection (4) of this section. Sections 13-21-111, 13-21-111.5, and 13-21-111.7 apply to an action to which this section applies. This subsection (3) must not be construed to abrogate the

doctrine of attractive nuisance as applied to persons under fourteen years of age. A person who is at least fourteen years of age but is less than eighteen years of age is presumed competent for purposes of the application of this section.

(4) (a) A trespasser may only recover damages willfully or deliberately caused by the landowner.

(b) A licensee may only recover damages caused:

(I) By the landowner's unreasonable failure to exercise reasonable care with respect to dangers created by the landowner that the landowner actually knew about; or

(II) By the landowner's unreasonable failure to warn of dangers not created by the landowner that are not ordinarily present on property of the type involved and that the landowner actually knew about.

(c) (I) Except as otherwise provided in subsection (4)(c)(II) of this section, an invitee may recover for damages caused by the landowner's unreasonable failure to exercise reasonable care to protect against dangers the landowner actually knew about or should have known about.

(II) If the landowner's real property is classified for property tax purposes as agricultural land or vacant land, an invitee may recover for damages caused by the landowner's unreasonable failure to exercise reasonable care to protect against dangers the landowner actually knew about.

(5) It is the intent of the general assembly in enacting the provisions of subsection (4) of this section that the circumstances under which a licensee may recover include all of the circumstances under which a trespasser could recover and that the circumstances under which an invitee may recover include all of the circumstances under which a trespasser or a licensee could recover.

(6) In any action to which this section applies, the court shall determine whether the plaintiff is a trespasser, a licensee, or an invitee, in accordance with the definitions set forth in subsection (7) of this section. If two or more landowners are party defendants to the action, the court shall determine the application of this section to each landowner. The issues of liability and damages in any such action must be determined by the jury or, if there is no jury, by the court.

(7) As used in this section, unless the context otherwise requires:

(a) "Invitee" means a person who enters or remains on the land of another to transact business in which the parties are mutually interested or who enters or remains on such land in response to the landowner's express or implied representation that the public is requested, expected, or intended to enter or remain.

(b) "Landowner" means, without limitation, an authorized agent or a person in possession of real property and a person legally responsible for the condition of real property or for the activities conducted or circumstances existing on real property.

(c) "Licensee" means a person who enters or remains on the land of another for the licensee's own convenience or to advance the licensee's own interests, pursuant to the landowner's permission or consent. "Licensee" includes a social guest.

(d) "Trespasser" means a person who enters or remains on the land of another without the landowner's consent.

(8) If any provision of this section is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of the section are deemed valid.

**Source:** **L. 86:** Entire section added, p. 683, § 1, effective May 16. **L. 90:** (1.5), (3.5), (5), and (6) added and (3) and (4) amended, p. 867, § 1, effective April 20. **L. 2006:** (2) amended, p. 344, § 1, effective April 5. **L. 2022:** Entire section amended, (SB 22-115), ch. 75, p. 381, § 2, effective April 7.

**Editor's note:** Subsections (5)(a) and (5)(c), as they were enacted in House Bill 90-1107, were relettered on revision in 2002 as (5)(c) and (5)(a), respectively.

**Cross references:** For the legislative declaration in SB 22-115, see section 1 of chapter 75, Session Laws of Colorado 2022.

## ANNOTATION

**Law reviews.** For article, "Legal Aspects of Health and Fitness Clubs: A Healthy and Dangerous Industry", see 15 Colo. Law. 1787 (1986). For article, "The Landowners' Liability Statute", see 18 Colo. Law. 208 (1989). For article, "The Changing Boundaries of Premises Liability after Gallegos", see 18 Colo. Law. 2121 (1989). For article, "Recreational Use Of Agricultural Lands", see 23 Colo. Law. 529 (1994). For article, "The Colorado Premises

Liability Statute", see 25 Colo. Law. 71 (May 1996). For article, "Stealth Statute: The Unexpected Reach of the Colorado Premises Liability Act", see 40 Colo. Law. 27 (Mar. 2011). For article, "Expanding Potential Exposure for Businesses: Causation Standards and the Planned Parenthood Shooting Opinion", see 50 Colo. Law. 46 (May 2021). For article, "A Deeper Look at CDARA's Scope", see 51 Colo. Law. 32 (Aug.-Sept. 2022).

**Constitutionality.** The phrase "deliberate failure to exercise reasonable care" found in subsection (3)(c) is not unconstitutionally vague. *Giebink v. Fischer*, 709 F. Supp. 1012 (D. Colo. 1989).

This section does not violate article II, § 6, of the state constitution since that provision is a mandate to the judiciary and not the legislature. *Giebink v. Fischer*, 709 F. Supp. 1012 (D. Colo. 1989).

This section does not violate article V, section 25 of the state constitution since this provision applies uniformly to all landowners. *Giebink v. Fischer*, 709 F. Supp. 1012 (D. Colo. 1989).

This section does not violate equal protection since the provision of limited protection to landowners is reasonably related to the protection of the state economy. *Giebink v. Fischer*, 709 F. Supp. 1012 (D. Colo. 1989).

**Unconstitutionality.** This section violates both the federal and state constitutional guarantees of equal protection of the laws. *Gallegos v. Phipps*, 779 P.2d 856 (Colo. 1989); *Klausz v. Dillion Co., Inc.*, 779 P.2d 863 (Colo. 1989) (disagreeing with *Giebink v. Fischer* cited above) (decided prior to 1990 amendments).

**This section provides the exclusive remedy against a landowner for physical injuries sustained on the landowner's property.** *Henderson v. Master Klean Janitorial, Inc.*, 70 P.3d 612 (Colo. App. 2003); *Vigil v. Franklin*, 103 P.3d 322 (Colo. 2004); *Anderson v. Hyland Hills Park & Recreation Dist.*, 119 P.3d 533 (Colo. App.

2004); *Sweeney v. United Artists Theater Circuit*, 119 P.3d 538 (Colo. App. 2005); *Raup v. Vail Summit Resorts, Inc.*, 160 F. Supp. 3d 1285 (D. Colo. 2016); *Tolle v. Steeland, LLC*, 2023 COA 84, 541 P.3d 24.

**A landowner may not be simultaneously liable for damages separately assessed under this section and under common law negligence theories.** *Reid v. Berkowitz*, 2016 COA 28, 370 P.3d 644.

**Section applies to conditions, activities, and circumstances on a property that the landowner is liable for in its capacity as a landowner.** Defendant, in its capacity as a landowner, was responsible for the activities conducted and conditions on its premises, including the process of assisting a customer with loading a freezer he had purchased from defendant. *Larrieu v. Best Buy Stores, L.P.*, 2013 CO 38, 303 P.3d 558.

This section applies to activities conducted on the property, such as driving a motor vehicle, and is not limited solely to activities related to the land. *Tancrede v. Freund*, 2017 COA 36, 401 P.3d 132.

**This section preempts the common law creation of both landowner duties and defenses to those duties.** Consequently, the open and obvious danger doctrine cannot be asserted by a landowner as a defense to a premises liability law suit. *Vigil v. Franklin*, 103 P.3d 322 (Colo. 2004); *Tancrede v. Freund*, 2017 COA 36, 401 P.3d 132.

**But this section is not the exclusive remedy for a plaintiff allegedly injured when a landowner sold a product meant**

**for human consumption on site**, and the plaintiff-purchaser was injured by ingesting the allegedly defective or dangerous product. *Gangemi v. AMF Bowling Ctrs., Inc.*, 722 F. Supp. 3d 1170 (D. Colo. 2024).

An injury resulting from the sale of tainted or contaminated food or beverages by a restaurant or bar gives rise to a different kind of claim from a claim against a landowner for activities conducted on the property. Section 4-2-314, which creates an implied warranty of merchantability, is intended to protect purchasers from dangerous or unfit products. This is entirely different from the policy objectives the general assembly was trying to balance in passing this section. *Gangemi v. AMF Bowling Ctrs., Inc.*, 722 F. Supp. 3d 1170 (D. Colo. 2024).

**Section does not require that damages resulting from landowner's negligence be assessed without regard to negligence** of the injured party or fault of a nonparty. *Union Pac. R.R. v. Martin*, 209 P.3d 185 (Colo. 2009).

**Section does not abrogate statutorily created defenses, which were available to landowners before the 2006 amendment and afterward.** The trial court correctly allowed defendants' affirmative defenses of comparative negligence and assumption of the risk. *Tucker v. Volunteers of Am. Colo. Branch*, 211 P.3d 708 (Colo. App. 2008), *aff'd* on other grounds *sub nom. Volunteers of Am. v. Gardenswartz*, 242 P.3d 1080 (Colo. 2010).

**The pre-2006 version of this section never expressly excluded the statutory**

**defense of comparative negligence** from its coverage, and limiting the statutory protection provided to landowners would tend to increase liability rather than protect landowners from liability. *DeWitt v. Tara Woods Ltd. P'ship*, 214 P.3d 466 (Colo. App. 2008) (decided under law in effect prior to 2006 amendment).

**Statute does not have to expressly bar waiver by contract for the contract provision to be invalid because it is contrary to public policy.** *Stanley v. Creighton Co.*, 911 P.2d 705 (Colo. App. 1996).

**Exculpatory provision in athletic club's membership agreement did not bar mother's claim under this section** against club based on minor daughter's alleged injuries sustained as a result of club employee's sexual abuse. The exculpatory provision did not express the parties' intention to waive negligence claims related to the risk of sexual abuse in clear, unambiguous, and unequivocal language. And the exculpatory provision created a substantial likelihood that a reader would fail to recognize that the provision could apply to the risk of sexual abuse resulting from the club's negligence or failure to exercise reasonable care. *Doe v. Wellbridge Club Mgmt. LLC*, 2022 COA 137, 525 P.3d 682 (decided under law in effect prior to the 2022 amendment).

**Exculpatory provision's reference to "facilities" did not bar an athletic club member's claim for damages** resulting from the member's slip and fall on an icy sidewalk near the athletic club's entrance

because the term "facilities" in the exculpatory clause did not clearly and unambiguously cover a publicly accessible sidewalk outside of the athletic club building, on which it does not provide "recreational services". *Shive v. 24 Hour Fitness USA, LLC*, 2025 COA 87, 582 P.3d 479.

**Holding title to property is not dispositive in determining who is a landowner under subsection (1).** *Wark v. U.S.*, 269 F.3d 1185 (10th Cir. 2001).

**The term "landowner" is no more expansive than the common law definition.** *Wark v. U.S.*, 269 F.3d 1185 (10th Cir. 2001).

**A landowner is any person in possession of real property and such possession need not necessarily be to the exclusion of all others.** Therefore, for purposes of this section, a landowner can be an independent contractor. *Pierson v. Black Canyon Aggregates, Inc.*, 48 P.3d 1215 (Colo. 2002).

**An individual sued in her capacity as the owner of the companies that own and serve as the property manager for leased townhomes is a landowner within the meaning of this section** for two reasons: first, because the individual was the property manager's authorized agent and the principal individual through whom the property manager performed its duties for the unit in the leased townhomes; and, second, because the authorized agent was in possession, within the meaning of this section, of the unit in the leased townhomes. *Martinez v. Cast, LLC*, 2025 COA 32, 569 P.3d 865.

**For a defendant to qualify as a landowner, the conditions, activities, and circumstances on real property that are alleged to have injured an entrant do not need to occur in close physical proximity** to the defendant's activities. *Macomber v. Nations Roof, LLC*, 2025 COA 59, 574 P.3d 757.

**This section offers its protection to a person who is legally conducting an activity on the property or legally creating a condition on the property.** Such person or entity is responsible for the activity or condition and, therefore, prospectively liable to an entrant onto the property. *Pierson v. Black Canyon Aggregates, Inc.*, 48 P.3d 1215 (Colo. 2002); *Wycoff v. Grace Cmty. Church*, 251 P.3d 1260 (Colo. App. 2010).

**Defendant is not a "landowner" where there is no evidence that it was in possession of the sidewalk or** that it was responsible for creating a condition on the sidewalk or conducting an activity on the sidewalk that caused plaintiff's injuries. *Jordan v. Panorama Ortho. & Spine Ctr.*, 2013 COA 87, 350 P.3d 863, *aff'd*, 2015 CO 24, 346 P.3d 1035; *Lopez v. Trujillo*, 2016 COA 53, 399 P.3d 750, *aff'd*, 2017 CO 79, 397 P.3d 370; *Andrade v. Johnson*, 2016 COA 147, 409 P.3d 582.

When a plaintiff is injured on a public sidewalk adjacent to private property, the property owner is not considered a "landowner" of the public sidewalk and is not liable pursuant to the provisions of this section. *Andrade v. Johnson*, 2016 COA 147, 409 P.3d 582.



**A seller of property pursuant to an installment land contract is not a "landowner" and not responsible for injury to a third party on the property** despite being the record title holder of the property if the seller is not in possession of the property at the time of the injury and is not otherwise legally responsible for the conditions, activities, or circumstances on the property pursuant to the contract. *Lucero v. Ulvestad*, 2015 COA 98, 411 P.3d 949.

**The test for determining if a victim is an invitee is whether she or he was on the premises to transact business in which the parties are mutually interested.** *Grizzell v. Hartman Enters., Inc.*, 68 P.3d 551 (Colo. App. 2003).

Plaintiff was an invitee. Defendant owned the temporary electrical box at issue and was responsible for its condition and for providing electrical access to subcontractors at a construction site. Defendant thus was a property owner for purposes of this section because it was legally responsible for the condition of the box. Plaintiff was a subcontractor who was injured while using the box during construction. Because the parties were mutually interested in transacting business, plaintiff was defendant's invitee for purposes of accessing power from the box. *Warembourg v. Excel Elec., Inc.*, 2020 COA 103, 471 P.3d 1213.

**Trial court erred in ruling that plaintiff was defendant's licensee rather than invitee.** Therefore, jury instructions minimized the duties defendant owed to plaintiff under this section, *Wycoff v.*

*Seventh Day Adventist Ass'n*, 251 P.3d 1258 (Colo. App. 2010).

**In relation to a common interest community association, a unit owner's guest is an invitee of the association under this section in areas that** are part of the common elements owned and controlled by the association. As in a landlord-tenant relationship, payments to a common interest community association are deemed consideration for the right to invite guests to use the common elements. *Willis v. Twin Shores Master Owner Ass'n*, 2025 COA 37, 568 P.3d 807.

**If the victim was on the premises at an employee's invitation for either the employee's benefit, victim's benefit, or their mutual benefit, then she or he was a licensee or trespasser not an invitee.** *Grizzell v. Hartman Enters., Inc.*, 68 P.3d 551 (Colo. App. 2003).

**Volunteers are generally classified as licensees.** *Grizzell v. Hartman Enters., Inc.*, 68 P.3d 551 (Colo. App. 2003); *Rieger v. Wat Buddhawararam of Denver, Inc.*, 2013 COA 156, 338 P.3d 404.

**So long as a landowner retains possession of its property, it cannot delegate the duties imposed on it by subsection (1).** *Jules v. Embassy Props., Inc.*, 905 P.2d 13 (Colo. App. 1995).

**When a landowner is vicariously liable under the nondelegability doctrine for acts or omissions of other defendants, the trial court should instruct the jury to determine the respective shares of fault of the landowner and the other defendants.**

But, in entering a judgment, the court shall aggregate the fault of the landowner with any other defendants for whom the landowner is vicariously liable. *Reid v. Berkowitz*, 2013 COA 110M, 315 P.3d 185.

**But possession of property is not dependent upon title and need not be exclusive.** Under this section, a party not an owner or lessee may nevertheless be a "landowner" if the party either maintains control over the property or is legally responsible for either the condition of the property or for activities conducted on the property. *Henderson v. Master Klean Janitorial, Inc.*, 70 P.3d 612 (Colo. App. 2003).

**However, a contractor who would otherwise be categorized as a "landowner" during time of work on property** is not liable if, at the time of the accident in question, the contractor was neither in possession of the property nor conducting any activity related to the property. In such a case, the plaintiff is not required to prove that defendant contractor had actual knowledge of the alleged dangerous condition. *Land-Wells v. Rain Way Sprinkler & Lands.*, 187 P.3d 1152 (Colo. App. 2008); *Collard v. Vista Paving Corp.*, 2012 COA 208, 292 P.3d 1232.

Contractor who had a legal responsibility for the condition of the premises and who was potentially liable for injuries resulting from that condition held to be a "landowner" for purposes of this section. *Henderson v. Master Klean Janitorial, Inc.*, 70 P.3d 612 (Colo. App. 2003).

**When a public entity provides a public building for public use, it owes a nondelegable duty to protect invitees from an unreasonable risk** to their health and safety due to a negligent act or omission in constructing or maintaining the facility. *Springer v. City & County of Denver*, 13 P.3d 794 (Colo. 2000).

**Owner of property adjacent to public sidewalk does not have a duty to pedestrians to clear sidewalk of snow merely because it complied with snow removal ordinance from time to time and on a voluntary basis in order to avoid the imposition of penalties.** *Burbach v. Canwest Invs., LLC*, 224 P.3d 437 (Colo. App. 2009).

**Snow removal ordinance does not make public sidewalks the "property of" adjacent property owners.** The court therefore properly granted summary judgment since owner of property adjacent to public sidewalk was not legally responsible for the condition of the sidewalk. *Burbach v. Canwest Invs., LLC*, 224 P.3d 437 (Colo. App. 2009).

**A landlord retaining sufficient control** over an area or instrumentality has a duty to exercise due care in maintaining that area or instrumentality. *Nordin v. Madden*, 148 P.3d 218 (Colo. App. 2006).

**In effect, this section establishes two separate elements for landowner liability:**

(1) Breach of a duty to use reasonable care to protect against a danger on the property, and (2) actual or constructive knowledge of the danger. *Sofford v. Schindler Elevator Corp.*, 954 F. Supp. 1459 (D. Colo. 1997).

**Statute's requirement that the landowner "knew or should have known" of the danger can be satisfied by actual or constructive knowledge.** Lombard v. Colo. Outdoor Educ. Ctr., 187 P.3d 565 (Colo. 2008).

Plaintiff presented sufficient evidence to overcome defendant's motion for summary judgment on the issue of knowledge because, as the builder, defendant had actual or constructive knowledge of the violation of a building code provision that was intended to ensure the safety of those on the premises, such as plaintiff. Lombard v. Colo. Outdoor Educ. Ctr., 187 P.3d 565 (Colo. 2008).

The fact that landowner did not obtain a plumbing permit when he installed a water heater does not support an inference that he knew or should have known of a leak in a propane pipe three years later. Invitee could not identify particular sections of the plumbing code that govern the possibility of propane gas leaks. The intent of the permit requirement is too general and its connection to a propane gas leak too remote to reasonably impute knowledge to the landowners. Giblin v. Sliemers, 147 F. Supp. 3d 1207 (D. Colo. 2015).

**Plaintiff may overcome summary judgment on the issue of a landowner's unreasonable failure to exercise reasonable care** by presenting evidence that the landowner violated a statute or ordinance that was intended to protect the plaintiff from the type of injury plaintiff suffered. Lombard v. Colo. Outdoor Educ. Ctr., 187 P.3d 565 (Colo. 2008).

**Common law tort principles apply to the concept of causation in subsection (3)(c)(I).** There were genuine issues of material fact regarding whether or not a shooter was the predominate cause of plaintiffs' injuries, so summary judgment was not appropriate. Rocky Mtn. Planned Parenthood v. Wagner, 2020 CO 51, 467 P.3d 287.

**Whether a landowner should have known of a danger to invitees and whether the actions of another person limit a landowner's liability are factual issues that must be decided by a jury.** Wagner v. Planned Parenthood Fed'n, 2019 COA 26, 471 P.3d 1089, aff'd, 2020 CO 51, 467 P.3d 287.

**A court could find a danger to be so unprecedented and remote that, as a matter of law, no rational juror could find that a landowner should have known about it,** but a court could not so find when invitees presented some evidence suggesting that the risk of an "active shooter" incident in a facility, especially one that performed abortions, was not unknown. Wagner v. Planned Parenthood Fed'n, 2019 COA 26, 471 P.3d 1089, aff'd on other grounds, 2020 CO 51, 467 P.3d 287.

**A plaintiff may recover against the landowner pursuant to the statute only and not under any other theory of negligence.** The language of the premises liability statute makes clear that a party may no longer bring a negligence per se claim against a landowner to recover for damages caused on the premises. Lombard v. Colo. Outdoor Educ. Ctr., 187 P.3d 565 (Colo.

2008); *Tancrede v. Freund*, 2017 COA 36, 401 P.3d 132.

**Building code violation may be evidence that owners failed to use reasonable care.** Trial court did not err in tendering to a jury an instruction that included this statement, while rejecting other jury instructions that misstated the relationship between the common law and the premises liability act. *Lombard v. Colo. Outdoor Educ. Ctr., Inc.*, 266 P.3d 412 (Colo. App. 2011).

**No lessor liability for injuries.** Under this section, as under common law, a lessor who has transferred possession and control over the leased premises to a lessee has no liability for injuries resulting from a dangerous condition of the premises absent proof as to one of the exceptions. *Perez v. Grovert*, 962 P.2d 996 (Colo. App. 1998).

Under this section, a landlord who has transferred control of the premises to a tenant is no longer a "person in possession" of the real property and is not liable for injuries resulting from a danger on the premises unless the landlord had actual knowledge of the danger before the transfer. *Wilson v. Marchiondo*, 124 P.3d 837 (Colo. App. 2005).

**And no landowner liability for injuries occurring on that portion of an easement exclusively owned, maintained, and controlled by easement holder.** *deBoer v. Jones*, 996 P.2d 754 (Colo. App. 2000); *deBoer v. Ute Water Conservancy Dist.*, 17 P.3d 187 (Colo. App. 2000).

**The reservation of the right of inspection and the right of maintenance and repairs is generally not a sufficient attribute** of control to support imposition of tort liability on the lessor for injuries to the tenant or third parties. *Wilson v. Marchiondo*, 124 P.3d 837 (Colo. App. 2005).

**This section does not reflect an intention to extend the application of the premises liability doctrine to the negligent supply of a chattel by a landowner.** *Geringer v. Wildhorn Ranch, Inc.*, 706 F. Supp. 1442 (D. Colo. 1988).

**This section does not apply to ski accident cases** which are governed by the Ski Safety Act, article 44 of title 33. *Calvert v. Aspen Skiing Co.*, 700 F. Supp. 520 (D. Colo. 1988).

**This section would apply to ski accident cases** which involve dangerous conditions that are not ordinarily present at ski areas since the Ski Safety Act, article 44 of title 33, protects skiers against only those dangerous conditions that are commonly present at ski areas. *Giebink v. Fischer*, 709 F. Supp. 1012 (D. Colo. 1989).

**Claim of spectator injured by flying puck at hockey rink governed by this section.** The common law "no duty" rule for injuries suffered by spectators at sporting events was superceded by this section. *Teneyck v. Roller Hockey Colo., Ltd.*, 10 P.3d 707 (Colo. App. 2000).

**Subsection (2) does not apply when plaintiff is a co-owner of the area where the injuries were sustained,** because the

injury could not have occurred on the real property of another. *Acierno v. Trailside Townhome Ass'n, Inc.*, 862 P.2d 975 (Colo. App. 1993).

**Jury instructions presenting a general negligence theory with regard to an invitee was not prejudicial error**, even if there is a meaningful difference between a failure to exercise reasonable care, in the instruction, and an unreasonable failure to exercise reasonable care, from the statute. *Lawson v. Safeway, Inc.*, 878 P.2d 127 (Colo. App. 1994); *Thornbury v. Allen*, 991 P.2d 335 (Colo. App. 1999).

**Because plaintiff is a landowner, trial court should have applied the standard of care in this section rather than the standard of care for operators of amusement devices contained in the jury instructions.** *Anderson v. Hyland Hills Park & Recreation Dist.*, 119 P.3d 533 (Colo. App. 2004).

**The provisions of this act do not apply to the common areas of a townhome complex that are owned by a townhome owners association**, because the townhome owners have a continuing right of access to the common areas in the townhome complex by virtue of their status as owners, regardless of whether the association has given consent. *Trailside Townhome Ass'n, Inc. v. Acierno*, 880 P.2d 1197 (Colo. 1994).

Rather, the relationship between the townhome owners association and the townhome owners is controlled by the duties specified in the operative documents creating the townhome complex and the association, to the extent those duties are

consistent with public policy. *Trailside Townhome Ass'n, Inc. v. Acierno*, 880 P.2d 1197 (Colo. 1994).

**Under this section, a tenant is classified as an invitee**, as a customer of the landlord in a continuing business relationship that is mutually beneficial, regardless of the particular activity in which the tenant was engaged when injured. *Maes v. Lakeview Assocs., Ltd.*, 892 P.2d 375 (Colo. App. 1994), *aff'd*, 907 P.2d 580 (Colo. 1995); *Pedge v. RM Holdings, Inc.*, 75 P.3d 1126 (Colo. App. 2002).

**Plaintiff who paid admission was invitee and not a social guest.** Social hosts do not typically require their guests to sign permission slips and pay for their hospitality. *Wycoff v. Grace Cmty. Church*, 251 P.3d 1260 (Colo. App. 2010).

**A social guest of a tenant is a licensee** absent a showing that the guest entered the premises to transact business with the landlord or that the landlord represented that the guest was expected to enter or remain. *Wilson v. Marchiondo*, 124 P.3d 837 (Colo. App. 2005).

**Plaintiff was a licensee.** Grazing permit granted by the United States forest service provides sufficient basis to infer that, by accepting the permit, the permit holders impliedly consented to entry onto the property by those who had the forest service's consent. *Legro v. Robinson*, 2015 COA 183, 369 P.3d 785.

**Contractor with legal responsibility for the condition of the premises owes an employee of a lessor of the premises a**

**duty of care which this section imposes upon a landowner with respect to an invitee.** Henderson v. Master Klean Janitorial, Inc., 70 P.3d 612 (Colo. App. 2003).

**The liability of a landowner to a licensee** under this section is to be limited to situations in which the landowner possesses an active awareness of the dangerous condition. Wright v. Vail Run Resort Cmty. Ass'n, 917 P.2d 364 (Colo. App. 1996); Grizzell v. Hartman Enters., Inc., 68 P.3d 551 (Colo. App. 2003).

**A person walking on a public sidewalk adjacent to private property is not an "invitee", "licensee", or "trespasser"** on the adjacent property for purposes of this section. Andrade v. Johnson, 2016 COA 147, 409 P.3d 582.

**Attractive nuisance doctrine applies to all children, regardless of their classification within the trespasser-licensee-invitee trichotomy.** S.W. v. Towers Boat Club, Inc., 2013 CO 72, 315 P.3d 1257.

**Summary judgment in favor of landlord proper** in absence of any evidence concerning landlord's knowledge of alleged defect. Casey v. Christie Lodge Owners Ass'n, 923 P.2d 365 (Colo. App. 1996); Giblin v. Sliemers, 147 F. Supp. 3d 1207 (D. Colo. 2015).

**Section covers claims for negligent supervision and retention** when a claim relates to the condition of property. Casey v. Christie Lodge Owners Ass'n, 923 P.2d 365 (Colo. App. 1996).

**Section does not abrogate claims that also arise under dog bite statute.** Plaintiff bitten by defendant's dogs on property where defendant qualified as a "landowner" could bring a claim under this section. Legro v. Robinson, 2012 COA 182, 328 P.3d 238, aff'd on other grounds, 2014 CO 40, 325 P.3d 1053.

**The term "consent" includes both express and implied consent.** The fact that the term "express or implied" is used with respect to an "invitee" but not with respect to a "licensee" or a "trespasser" does not preclude implied consent from being sufficient to make one entering property a "licensee" and not a "trespasser". Corder v. Folds, 2012 COA 174, 292 P.3d 1177.

**In and of itself, a "For Sale" sign on a property does not create an implied representation to strangers to enter the private property of another.** Nor does it impose the status of "invitee" on a stranger entering the private property. Rucker v. Fed. Nat'l Mortgage Ass'n, 2016 COA 114, 410 P.3d 675.

**13-21-115.5. Volunteer service act - immunity - exception for operation of motor vehicles - exception for helicopter search and rescue - short title - legislative declaration - definitions.**

(1) This section shall be known and may be cited as the "Volunteer Service Act".

(2) The general assembly finds and declares that:

(a) The willingness of volunteers to offer their services has been increasingly deterred by a perception that they put personal assets at risk in the event of tort actions seeking damages arising from their activities as volunteers;

(b) The contributions of programs, activities, and services to communities is diminished and worthwhile programs, activities, and services are deterred by the unwillingness of volunteers to serve as volunteers of nonprofit public and private organizations;

(c) It is in the public interest to strike a balance between the right of a person to seek redress for injury and the right of an individual to freely give time and energy without compensation as a volunteer in service to the community without fear of personal liability for acts undertaken in good faith absent willful and wanton conduct on the part of the volunteer; and

(d) The provisions of this section are intended to encourage volunteers to contribute their services for the good of their communities and at the same time provide a reasonable basis for redress of claims which may arise relating to those services.

(3) As used in this section, unless the context otherwise requires:

(a) "Nonprofit corporation" means any corporation which is exempt from taxation pursuant to section 501(a) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501(a), as amended, or which is listed as an exempt organization in section 501(c) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501(c), as amended. The term includes a not-for-profit corporation.

(b) "Nonprofit organization" means any organization which is exempt from taxation pursuant to section 501(a) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501(a), as amended, or which is listed as an exempt organization in section 501(c) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501(c), as amended, and any homeowners association, as defined in and which is exempt from taxation pursuant to section 528 of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 528.

(c) (I) "Volunteer" means a person performing services for a nonprofit organization, a nonprofit corporation, a governmental entity, or a hospital without compensation, other than reimbursement for actual expenses incurred. The term excludes a volunteer serving as a director, officer, or trustee who shall be protected from civil liability in accordance with the provisions of sections 13-21-116 and 13-21-115.7.

(II) "Volunteer" includes:

(A) A licensed physician, a licensed physician assistant, and a licensed anesthesiologist assistant governed by article 240 of title 12 performing the practice of medicine, as defined in

section 12-240-107, as a volunteer for a nonprofit organization, a nonprofit corporation, a governmental entity, or a hospital;

(B) A licensed chiropractor governed by article 215 of title 12 performing chiropractic, as defined in section 12-215-103 (4), as a volunteer for a nonprofit organization, a nonprofit corporation, a governmental entity, or a hospital;

(C) A registered direct-entry midwife governed by article 225 of title 12 performing the practice of direct-entry midwifery, as defined in section 12-225-103 (3), as a volunteer for a nonprofit organization, a nonprofit corporation, a governmental entity, or a hospital;

(D) A licensed nurse governed by the "Nurse and Nurse Aide Practice Act", article 255 of title 12, performing the practice of practical nursing or the practice of professional nursing, as defined in section 12-255-104 (9) and (10), respectively, as a volunteer for a nonprofit organization, a nonprofit corporation, a governmental entity, or a hospital;

(E) An advanced practice registered nurse governed by the "Nurse and Nurse Aide Practice Act", article 255 of title 12, performing nursing tasks within the scope of the person's nursing license and performing advanced practice under authority granted by the state board of nursing pursuant to sections 12-255-111 and 12-255-112 as a volunteer for a nonprofit organization, a nonprofit corporation, a governmental entity, or a hospital;

(E.5) A certified midwife governed by the "Nurse and Nurse Aide Practice Act", article 255 of title 12, performing certified midwife tasks within the scope of the person's certified midwife license and performing practice as a certified midwife under authority granted by the state board of nursing pursuant to sections 12-255-111.5 and 12-255-112 as a volunteer for a nonprofit organization, a nonprofit corporation, a governmental entity, or a hospital;

(F) A licensed volunteer nurse governed by the provisions of part 1 of article 255 of title 12 performing volunteer nursing tasks within the scope of the person's nursing license, as described in section 12-255-115, as a volunteer for a nonprofit organization, a nonprofit corporation, a governmental entity, or a hospital;

(G) A certified nurse aide governed by the provisions of article 255 of title 12 performing the practice of a nurse aide, as defined in section 12-255-104 (8.5), as a volunteer for a nonprofit organization, a nonprofit corporation, a governmental entity, or a hospital;

(H) A licensed nursing home administrator and registered nursing home administrator-in-training governed by the provisions of article 265 of title 12 performing the practice of nursing home administration, as defined in section 12-265-103 (5), and the training of an administrator-in-training, as described in section 12-265-109, as a volunteer for a nonprofit organization, a nonprofit corporation, a governmental entity, or a hospital;



(I) A licensed optometrist governed by the provisions of article 275 of title 12 performing the practice of optometry, as defined in section 12-275-103, as a volunteer for a nonprofit organization, a nonprofit corporation, a governmental entity, or a hospital;

(J) A licensed physical therapist governed by the "Physical Therapy Practice Act", article 285 of title 12, performing physical therapy, as defined in section 12-285-104 (6), as a volunteer for a nonprofit organization, a nonprofit corporation, a governmental entity, or a hospital;

(K) A licensed respiratory therapist governed by the "Respiratory Therapy Practice Act", article 300 of title 12, performing respiratory therapy, as defined in section 12-300-104 (3), as a volunteer for a nonprofit organization, a nonprofit corporation, a governmental entity, or a hospital;

(L) A licensed psychiatric technician governed by the provisions of article 295 of title 12 performing the practice as a psychiatric technician, as defined in section 12-295-103 (4), as a volunteer for a nonprofit organization, a nonprofit corporation, a governmental entity, or a hospital;

(M) A licensed psychologist governed by the provisions of article 245 of title 12 performing the practice of psychology, as defined in section 12-245-303, as a volunteer for a nonprofit organization, a nonprofit corporation, a governmental entity, or a hospital;

(N) A licensed social worker and licensed clinical social worker governed by the provisions of article 245 of title 12 performing social work practice, as defined in section 12-245-403, as a volunteer for a nonprofit organization, a nonprofit corporation, a governmental entity, or a hospital;

(O) A licensed marriage and family therapist governed by the provisions of article 245 of title 12 performing marriage and family therapy practice, as defined in section 12-245-503, as a volunteer for a nonprofit organization, a nonprofit corporation, a governmental entity, or a hospital;

(P) A licensed professional counselor governed by article 245 of title 12 practicing professional counseling as defined in section 12-245-603 as a volunteer for a nonprofit organization, a nonprofit corporation, a governmental entity, or a hospital;

(Q) A licensed pharmacist governed by article 280 of title 12 performing the practice of pharmacy, as defined in section 12-280-103 (39), as a volunteer for a nonprofit organization, a nonprofit corporation, a governmental entity, or a hospital;

(R) A licensed dentist, dental therapist, or dental hygienist governed by article 220 of title 12 performing the practice of dentistry, dental therapy, or dental hygiene, as defined in section 12-220-104 and as described in sections 12-220-305, 12-220-402, 12-220-403, and 12-220-508; as a volunteer for a nonprofit organization, nonprofit corporation, governmental entity, or hospital; or

a dentist, dental therapist, or dental hygienist who holds a license in good standing from another state performing the practice of dentistry, dental therapy, or dental hygiene, as defined in section 12-220-104 and as described in sections 12-220-305, 12-220-402, 12-220-403, and 12-220-508, as a volunteer for a nonprofit organization, nonprofit corporation, governmental entity, or hospital pursuant to section 12-220-302 (1)(j);

(S) A licensed or certified addiction counselor governed by article 245 of title 12 performing addiction counseling, as defined in section 12-245-803, as a volunteer for a nonprofit organization, a nonprofit corporation, a governmental entity, or a hospital;

(T) A volunteer member of a rescue unit as defined in section 25-3.5-103 (11); and

(U) A person engaged in backcountry search and rescue efforts as defined in section 33-1-102 (1.3).

(III) The nonprofit organization, nonprofit corporation, governmental entity, or hospital for which a volunteer performs shall annually verify that the volunteer holds an unrestricted Colorado license, registration, or certification to practice the volunteer's respective profession, if a license, registration, or certification is required for the volunteer's profession.

(4) (a) Any volunteer shall be immune from civil liability in any action on the basis of any act or omission of a volunteer resulting in damage or injury if:

(I) The volunteer is immune from liability for the act or omission under the federal "Volunteer Protection Act of 1997", as from time to time may be amended, codified at 42 U.S.C. sec. 14501 et seq.; and

(II) The damage or injury was not caused by misconduct or other circumstances that would preclude immunity for such volunteer under the federal law described in subparagraph (I) of this paragraph (a).

(III) (Deleted by amendment, L. 2006, p. 531, § 1, effective July 1, 2006.)

(b) (I) Except as otherwise provided in subparagraph (II) of this paragraph (b), nothing in this section shall be construed to bar any cause of action against a nonprofit organization, nonprofit corporation, governmental entity, or hospital or change the liability otherwise provided by law of a nonprofit organization, nonprofit corporation, governmental entity, or hospital arising out of an act or omission of a volunteer exempt from liability for negligence under this section.

(II) A nonprofit organization, nonprofit corporation, governmental entity, or hospital that is formed for the sole purpose of facilitating the volunteer provision of health care shall be immune from liability arising out of an act or omission of a volunteer who is immune from liability under this subsection (4).

(4.5) (a) As used in this subsection (4.5), unless the context otherwise requires:

(I) "Backcountry search and rescue" has the meaning set forth in section 33-1-102 (1.3).

(II) (A) "Governmental entity" means the state, any state agency or institution, or any authority, county, city, city and county, special district, or other political subdivision of the state or any tribal government with jurisdiction in Colorado.

(B) "Governmental entity" includes any institution, department, agency, or authority of any entity listed in subsection (4.5)(a)(II)(A) of this section.

(III) "Rescue unit" has the meaning set forth in section 25-3.5-103 (11).

(IV) "Search and rescue operation" means the operation of a rescue unit or a backcountry search and rescue.

(V) Notwithstanding the definition of "volunteer" in subsection (3)(c) of this section, "volunteer" means an individual, nonprofit organization, for-profit corporation, private organization, or other person that participates as a volunteer in a search and rescue operation by arranging or operating a helicopter for use in a search and rescue operation, or by assisting as a helicopter crew member in a search and rescue operation, without compensation from a governmental entity, other than reimbursement for actual expenses incurred.

(b) A volunteer is immune from civil liability in any action on the basis of any act or omission of the volunteer resulting in damage or injury if:

(I) The volunteer arranges the use of, operates, or assists as a crew member of a helicopter:

(A) For the benefit of a rescue unit or backcountry search and rescue;

(B) On behalf of a governmental entity that is leading the rescue unit or conducting the backcountry search and rescue;

(C) That meets the safety and training requirements described in subsection (4.5)(c)(II) of this section;

(D) Under a memorandum of understanding or other agreement with the governmental entity; and

(E) That is operated in compliance with the federal aviation administration's 2018 advisory circular AC 00-1.1B, appendix A, "Public Aircraft Operations - Manned and Unmanned", as may be updated by the federal aviation administration;

(II) The volunteer is:

(A) A pilot who satisfies, or employs or contracts with one or more pilots who satisfy, the requirements specified in subsection (4.5)(c)(I) of this section;

(B) In compliance with all requirements of the federal aviation administration for recent flight experience; and

(C) Not compensated by the governmental entity for assisting in a search and rescue operation, other than reimbursement for actual expenses incurred; and

(III) The damage or injury was not caused by willful or criminal misconduct, gross negligence, or a conscious, flagrant indifference to the rights or safety of any individuals harmed by the volunteer.

(c) (I) A volunteer that operates a helicopter as part of search and rescue operations in accordance with this subsection (4.5) must:

(A) Have experience in mountainous landings, high altitude operations, confined area landings, and snow operations;

(B) Possess a commercial pilot license and instrument rating;

(C) Have a minimum of one thousand five hundred hours of total flight time, including at least five hundred hours of mountainous helicopter time and at least one hundred hours of flight time in the type of helicopter used in the search and rescue operation; and

(D) Be certified, within the previous twelve months, by the helicopter manufacturer's instructor, a company check pilot, or a federal aviation association-certified and -rated flight instructor to operate the helicopter used in the search and rescue operation.

(II) The owner or operator of a helicopter used in search and rescue operations must ensure that the helicopter meets the following safety and training requirements:

(A) The helicopter is capable of operation at the altitude, in the terrain, and in the weather conditions necessary for the rescue or the search and rescue operation;

(B) The helicopter has been used as part of a training program with the rescue unit or backcountry search and rescue team within the twelve months immediately preceding use of the helicopter in a search and rescue operation;

(C) The helicopter is operated under a safety management system that has been approved by an independent third party; and

(D) The helicopter is maintained in accordance with regulations promulgated by the federal aviation administration for the maintenance and alteration of aircraft pursuant to 14 CFR 91.401 to 91.499, as amended.

(5) Notwithstanding the provisions of subsection (4) of this section, a plaintiff may sue and recover civil damages from a volunteer based upon a negligent act or omission involving the operation of a motor vehicle during an activity; except that the amount recovered from such

volunteer must not exceed the limits of applicable insurance coverage maintained by or on behalf of such volunteer with respect to the negligent operation of a motor vehicle in such circumstances. However, nothing in this section limits the right of a plaintiff to recover from a policy of uninsured or underinsured motorist coverage available to the plaintiff as a result of a motor vehicle crash.

**Source:** **L. 92:** Entire section added, p. 278, § 1, effective July 1. **L. 99:** (3)(c) and (4)(a) amended, p. 399, § 1, effective April 22. **L. 2006:** (3)(c), (4)(a), and (4)(b) amended, p. 531, § 1, effective July 1. **L. 2007:** (4)(a)(I) amended, p. 2025, § 26, effective June 1; (3)(c)(II)(R) amended, p. 691, § 2, effective August 3. **L. 2008:** (3)(c)(II)(S) added, p. 426, § 26, effective August 5. **L. 2009:** (3)(c)(II)(B) amended, (SB 09-167), ch. 366, p. 1924, § 11, effective June 1. **L. 2011:** (3)(c)(II)(C) amended, (SB 11-088), ch. 283, p. 1269, § 14, effective July 1; (3)(c)(II)(P) and (3)(c)(II)(S) amended, (SB 11-187), ch. 285, p. 1326, § 67, effective July 1. **L. 2012:** (3)(c)(II)(Q) amended, (HB 12-1311), ch. 281, p. 1617, § 34, effective July 1; (3)(c)(II)(A) amended, (HB 12-1332), ch. 238, p. 1059, § 14, effective August 8. **L. 2019:** (3)(c)(II) amended, (HB 19-1172), ch. 136, p. 1664, § 71, effective October 1. **L. 2020:** (3)(c)(II)(D), (3)(c)(II)(E), (3)(c)(II)(F), and (3)(c)(II)(G) amended, (HB 20-1183), ch. 157, p. 699, § 50, effective July 1; (3)(c)(II)(F) amended, (HB 20-1216), ch. 190, p. 878, § 20, effective July 1; (3)(c)(II)(R) amended, (HB 20-1056), ch. 64, p. 262, § 5, effective September 14. **L. 2022:** (3)(c)(II)(R) and (3)(c)(III) amended and (3)(c)(II)(T) and (3)(c)(II)(U) added, (SB 22-168), ch. 296, p. 2119, § 4, effective June 1; (3)(c)(II)(R) amended, (SB 22-219), ch. 381, p. 2724, § 33, effective January 1, 2023. **L. 2023:** (3)(c)(II)(E.5) added, (SB 23-167), ch. 261, p. 1547, § 54, effective May 25. **L. 2024:** (4.5) added, (HB 24-1309), ch. 156, p. 695, § 2, effective May 3. **L. 2026:** (5) amended, (HB 26-1237), ch. 117, p. 462, § 5, effective August 12.

**Editor's note:** (1) Amendments to subsection (3)(c)(II)(F) by HB 20-1183 and HB 20-1216 were harmonized.

(2) Amendments to subsection (3)(c)(II)(R) by SB 22-168 and SB 22-219 were harmonized, effective January 1, 2023.

**Cross references:** For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of Colorado 2020. For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of Colorado 2022. For the legislative declaration in HB 24-1309, see section 1 of chapter 156, Session Laws of Colorado 2024.

## ANNOTATION

**Law reviews.** For article, "Colorado's Good Samaritan Laws", see 53 Colo. Law. 42 (Apr. 2024).

**The immunity granted pursuant to this section extends to an unlimited variety of volunteer activities and applies to injury claims by third parties, but protects only individual volunteers.** In contrast, the

immunity granted in § 13-21-116 extends only to volunteers who assist specifically with youth programs and sporting activities and does not apply to claims by third parties, but protects corporate as well as individual volunteers. *Jones v. Westernaires, Inc.*, 876 P.2d 50 (Colo. App. 1993), overruled in *Concerned Parents of Pueblo, Inc. v. Gilmore*, 47 P.3d 311 (Colo. 2002).

### **13-21-115.6. Immunity from civil liability for school crossing guards and sponsors.**

(1) As used in this section:

(a) "School crossing guard" means any person eighteen years of age and older acting with or without compensation who supervises, directs, monitors, or otherwise assists school children at a street or intersection.

(b) "School crossing guard sponsor" means any governmental agency or subdivision, including but not limited to any county, city, city and county, town, or school district, and any individual, volunteer group, club, or nonprofit corporation that sponsors, organizes, or provides for school crossing guards.

(2) Any school crossing guard and any school crossing guard sponsor shall be immune from civil liability for any act or omission that results in damage or injury if the school crossing guard was acting within the scope of such person's official functions and duties as a school crossing guard unless the damage or injury was caused by a willful and wanton act or omission of the school crossing guard.

(3) Nothing in this section shall be construed to abrogate or limit the sovereign immunity granted to public entities pursuant to the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

**Source: L. 96:** Entire section added, p. 1593, § 1, effective June 3.

## ANNOTATION

**Law reviews.** For article, "Colorado's 42 (Apr. 2024).  
Good Samaritan Laws", see 53 Colo. Law.

**13-21-115.7. Immunity from civil liability for directors, officers, or trustees - nonprofit corporations or nonprofit organizations.**

(1) As used in this section, unless the context otherwise requires:

(a) "Nonprofit corporation" means any corporation which is exempt from taxation pursuant to section 501(a) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501(a), as amended, and listed as an exempt organization in section 501(c)(2), (3), (4), (5), (6), (7), (8), (11), or (19) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501(c), as amended. The term includes a not-for-profit corporation. The term includes a public hospital certified pursuant to section 25-1.5-103 (1)(a), C.R.S.

(b) "Nonprofit organization" means any organization which is exempt from taxation pursuant to section 501(a) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501(a), as amended, and listed as an exempt organization in section 501(c)(2), (3), (4), (5), (6), (7), (8), (11), or (19) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501(c), as amended.

(2) In addition to the provisions of section 13-21-116 (2)(b), on and after April 23, 1992, any person who serves as a director, officer, or trustee of a nonprofit corporation or nonprofit organization and who is not compensated for serving as a director, officer, or trustee on a salary or prorated equivalent basis shall be immune from civil liability for any act or omission which results in damage or injury if such person was acting within the scope of such person's official functions and duties as a director, officer, or trustee unless such damage or injury was caused by the willful and wanton act or omission of such director, officer, or trustee.

(3) Nothing in this section shall be construed to establish, diminish, or abrogate any duties that a director, officer, or trustee of a nonprofit corporation or nonprofit organization has to the nonprofit corporation or nonprofit organization for which the director, officer, or trustee serves.

(4) For purposes of this section, a director, officer, or trustee shall not be considered compensated solely by reason of:

(a) The payment of such person's actual expenses incurred in attending meetings or in executing such office;

(b) The receipt of meals at meetings; or

(c) The receipt of gifts up to but not exceeding a total value of one thousand dollars in any twelve consecutive months.

(5) The individual immunity granted by subsection (2) of this section shall not extend to any act or omission of such director, officer, or trustee which results in damage or injury caused by such director, officer, or trustee during the operation of any motor vehicle, airplane, or boat.

**Source:** **L. 92:** Entire section added, p. 296, § 2, effective April 23. **L. 2003:** (1)(a) amended, p. 703, § 21, effective July 1.

#### ANNOTATION

**Law reviews.** For article, "Owner Association Board Member Duties and Liabilities — Part 1", see 50 Colo. Law. 20 (June 2021). For article, "Colorado's Good Samaritan Laws", see 53 Colo. Law. 42 (Apr. 2024).

#### **13-21-116. Actions not constituting an assumption of duty - board member immunity - immunity for volunteers assisting organizations for young persons.**

(1) It is the intent of the general assembly to encourage the provision of services or assistance by persons on a voluntary basis to enhance the public safety rather than to allow judicial decisions to establish precedents which discourage such services or assistance to the detriment of public safety.

(2) (a) To encourage the provision of services or assistance by persons on a voluntary basis, a person shall not be deemed to have assumed a duty of care where none otherwise existed when he performs a service or an act of assistance, without compensation or expectation of compensation, for the benefit of another person, or adopts or enforces a policy or a regulation to protect another person's health or safety. Such person providing such services or assistance or adopting or enforcing such a policy or regulation shall not be liable for any civil damages for acts or omissions in good faith. Such performance of a service or an act of assistance for the benefit of another person or adoption or enforcement of a policy or regulation for the protection of another person's health or safety shall not create any duty of care with respect to a third person, nor shall it create a duty for any person to perform such a service or an act of assistance nor to adopt or enforce such a policy or regulation.

(b) (I) No member of the board of directors of a nonprofit corporation or nonprofit organization shall be held liable for actions taken or omissions made in the performance of his or her duties as a board member except for wanton and willful acts or omissions. For purposes of this paragraph (b), "the board of directors of a nonprofit corporation or nonprofit organization" shall include, but not be limited to, the board of directors of a public hospital certified pursuant to section 25-1.5-103 (1)(a), C.R.S.



(II) For purposes of this paragraph (b), unless the context otherwise requires:

(A) "Nonprofit corporation" means any corporation which is exempt from taxation pursuant to section 501(a) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501(a), as amended, and listed as an exempt organization in section 501(c) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501(c), as amended. The term includes a not-for-profit corporation.

(B) "Nonprofit organization" means any organization which is exempt from taxation pursuant to section 501(a) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501(a), as amended, and listed as an exempt organization in section 501(c) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501(c), as amended.

(2.5) (a) No person who performs a service or an act of assistance, without compensation or expectation of compensation, as a leader, assistant, teacher, coach, or trainer for any program, organization, association, service group, educational, social, or recreational group, or nonprofit corporation serving young persons or providing sporting programs or activities for young persons shall be held liable for actions taken or omissions made in the performance of his duties except for wanton and willful acts or omissions; except that such immunity from liability shall not extend to protect such person from liability for acts or omissions which harm third persons.

(b) For the purposes of this subsection (2.5), "young persons" means persons who are eighteen years of age or younger.

(3) Nothing in this section shall be construed to supersede, abrogate, or limit any immunities or limitations of liability otherwise provided by law.

(4) As used in this section, "person" means an individual, corporation, partnership, or association.

**Source:** **L. 86:** Entire section added, p. 685, § 1, effective July 1. **L. 87:** (2.5) added, p. 553, § 1, effective April 30; (2)(b) amended, p. 372, § 17, effective May 20. **L. 92:** (2) amended, p. 295, § 1, effective April 23. **L. 2003:** (2)(b)(I) amended, p. 704, § 22, effective July 1.

## ANNOTATION

**Law reviews.** For article, "Owner Association Board Member Duties and Liabilities — Part 1", see 50 Colo. Law. 20 (June 2021). For article, "Colorado's Good

Samaritan Laws", see 53 Colo. Law. 42 (Apr. 2024).

**Because the declared intent in subsection (1) is to encourage "persons" to volunteer services and assistance and**

**because subsection (4) defines "person" to include a corporation, the statute provides immunity for a volunteer providing services as a leader, assistant, teacher, coach, or trainer for a program serving young persons or providing sporting programs or activities for young persons, even if that volunteer is a corporation.** *Jones v. Westernaires, Inc.*, 876 P.2d 50 (Colo. App. 1993), overruled in *Concerned Parents of Pueblo, Inc. v. Gilmore*, 47 P.3d 311 (Colo. 2002).

**The immunity granted pursuant to §13-21-115.5 extends to an unlimited variety of volunteer activities and applies to injury claims by third parties, but protects only individual volunteers.** In contrast, the immunity granted in this section extends only to volunteers who assist specifically with youth programs and sporting activities and does not apply to claims by third parties, but protects corporate as well as individual volunteers. *Jones v. Westernaires, Inc.*, 876 P.2d 50 (Colo. App. 1993), overruled in *Concerned Parents of Pueblo, Inc. v. Gilmore*, 47 P.3d 311 (Colo. 2002).

**"Good samaritan" provisions of this section do not apply where a pre-existing duty exists.** *Combined Com. Corp. v. Pub. Serv. Co.*, 865 P.2d 893 (Colo. App. 1993).

**Section is inapplicable to real estate broker found to have breached duty of care to plaintiff** because defendant's actions did not pertain to "public safety" and were not performed gratuitously as an act of a good samaritan. Rather, the actions were undertaken in order to receive compensation in the form of real estate brokerage commissions. *Messler v. Phillips*, 867 P.2d 128 (Colo. App. 1993).

**A non-profit corporation receiving compensation, even if it does not realize a profit, is liable** for personal injuries sustained by a volunteer working for the corporation. Where there is a contractual exchange of money in return for specific services to be rendered and the services rendered are for the benefit of the entity paying the funds, the entity has received compensation. *Gilmore v. Concerned Parents of Pueblo*, 28 P.3d 963 (Colo. App. 2000), *aff'd* on other grounds, 47 P.3d 311 (Colo. 2002).

**Subsection (2.5) protects from liability people who work as volunteers for designated types of non-profit organizations;** it does not, however, insulate those organizations themselves from liability. *Concerned Parents of Pueblo, Inc. v. Gilmore*, 47 P.3d 311 (Colo. 2002) (overruling *Jones v. Westernaires, Inc.*, 876 P.2d 50 (Colo. App. 1993)).

### **13-21-117. Civil liability - mental health providers - duty to warn - definitions.**

(1) As used in this section, unless the context otherwise requires:

(a) "Mental health provider" means a physician, social worker, psychiatric nurse, psychologist, or other mental health professional, or a mental health hospital, behavioral health entity, institution, or their staff.

(b) "Psychiatric nurse" means a registered professional nurse as defined in section 12-255-104 (11) who, by virtue of postgraduate education and additional nursing preparation, has gained knowledge, judgment, and skill in psychiatric or mental health nursing.

(2) (a) A mental health provider is not liable for damages in any civil action for failure to warn or protect a specific person or persons, including those identifiable by their association with a specific location or entity, against the violent behavior of a person receiving treatment from the mental health provider, and any such mental health provider must not be held civilly liable for failure to predict such violent behavior except where the patient has communicated to the mental health provider a serious threat of imminent physical violence against a specific person or persons, including those identifiable by their association with a specific location or entity.

(b) When there is a duty to warn and protect under the provisions of paragraph (a) of this subsection (2), the mental health provider shall make reasonable and timely efforts to notify the person or persons, or the person or persons responsible for a specific location or entity, that is specifically threatened, as well as to notify an appropriate law enforcement agency or to take other appropriate action, including but not limited to hospitalizing the patient. A mental health provider is not liable for damages in any civil action for warning a specific person or persons, or a person or persons responsible for a specific location or entity, against or predicting the violent behavior of a person receiving treatment from the mental health provider.

(c) A mental health provider must not be subject to professional discipline when there is a duty to warn and protect pursuant to this section.

(3) The provisions of this section do not apply to the negligent release of a patient from any mental health hospital or ward or to the negligent failure to initiate involuntary seventy-two-hour treatment and evaluation after a personal patient evaluation determining that the person appears to have a mental health disorder and, as a result of the mental health disorder, appears to be an imminent danger to others.

**Source:** **L. 86:** Entire section added, p. 687, § 1, effective May 22. **L. 2006:** Entire section amended, p. 1396, § 37, effective August 7. **L. 2014:** Entire section R&RE, (HB 14-1271), ch. 109, p. 398, § 1, effective April 7. **L. 2018:** (3) amended, (SB 18-091), ch. 35, p. 384, § 13, effective August 8. **L. 2019:** (1)(b) amended, (HB 19-1172), ch. 136, p. 1666, § 72, effective October 1. **L. 2022:** (1)(a) amended, (HB 22-1278), ch. 222, p. 1588, § 217, effective July 1, 2024.

**Cross references:** For the legislative declaration in SB 18-091, see section 1 of chapter 35, Session Laws of Colorado 2018.

## ANNOTATION

**Law reviews.** For article, "The Duty to Warn and the Liability of Mental Health Care Providers", see 16 Colo. Law. 70 (1987). For article, "New Definitions of Therapist Confidentiality", see 18 Colo. Law. 251 (1989). For article, "Perreira v. Colorado — A Psychiatrist's Duty to Protect Others", see 18 Colo. Law. 2323 (1989). For comment, "A Proposal to Adopt a Professional Judgment Standard of Care in Determining the Duty of a Psychiatrist to Third Persons", see 62 U. Colo. L. Rev. 237 (1991).

**Annotator's note.** The following annotations include cases decided under this section as it existed prior to the 2014 repeal and reenactment.

**The language of the statute is broad and all-encompassing.** It applies to "any civil action" for "failure to warn", and nothing in the statute supports plaintiff's claim that it focuses only on duties to take affirmative action. *Marcellot v. Exempla, Inc.*, 2012 COA 200, 317 P.3d 1275.

**Limits on liability not confined to context of confidential, therapeutic relationship.** Section applies to psychologist who evaluated individual even though psychologist did not treat the individual. *Fredericks v. Jonsson*, 609 F.3d 1096 (10th Cir. 2010).

**The statute applies to inpatients.** If the general assembly had intended the statute to apply only to outpatients, it could have used the words "a mental health outpatient's" instead of "a mental health patient's". *Marcellot v. Exempla, Inc.*, 2012 COA 200, 317 P.3d 1275.

**Victim rights statute (§§ 24-4.1-301 to 24-4.1-304) does not support any expansion of liability of mental health providers** because it imposes no duty on those providers or liability for damages. *Fredericks v. Jonsson*, 609 F.3d 1096 (10th Cir. 2010).

**Exception to immunity for acts of hospitalized patients.** Although immunity is expressly extended to mental health hospitals and their staff members who fail to warn or protect others against a mental health patient's violent propensities, tendencies, or generalized threats of potential violence, there is an exception where hospital is aware of hospitalized patient's aggressive behavior towards plaintiff. *Halverson v. Pikes Peak Fam. Counseling*, 795 P.2d 1352 (Colo. App. 1990).

**Exception does not only apply when attacked victim communicates violent threat to hospital** and is broad enough to apply when the violent patient's threats have been communicated to the health care provider. *Halverson v. Pikes Peak Fam.*

Counseling, 851 P.2d 233 (Colo. App. 1992).

**Mental health provider has a duty to warn a person or persons of patient's violent behavior only when** patient himself predicts his violent behavior by communicating or expressing his threat to the mental health provider. *Fredericks v. Jonsson*, 609 F.3d 1096 (10th Cir. 2010).

**A psychologist's immunity for warning a possible victim is not dependent upon a subsequent determination that the patient was in fact a threat.** Otherwise, the immunity would have little value if the psychologist would be exposed to liability after the threat failed to manifest harm, which may be the result of such a warning. In addition, immunity is not discharged by hospitalization. *McCarty v. Kaiser-Hill Co., L.L.C.*, 15 P.3d 1122 (Colo. App. 2000).

**Section inapplicable to wrongful death action based upon alleged negligence in the treatment of a suicidal patient who later does commit suicide;** instead, section contemplates and describes the duty to protect third persons from a mental health patient's behavior. *Sheron v. Lutheran Med. Center*, 18 P.3d 796 (Colo. App. 2000).

**Threatening communications made to a mental health provider that trigger the "duty to warn" statute are not confidential as a matter of law.** Therefore, when the mental health provider discharges his or her duty to warn based on those communications, the threatening communications are not protected by the psychologist-patient privilege, and the therapist may testify to those threatening communications. *People v. Kailey*, 2014 CO 50, 333 P.3d 89.

### **13-21-117.5. Civil liability - intellectual and developmental disability service providers - definitions.**

#### **(1) Legislative declaration.**

(a) In recognition of the varied, extensive, and substantial needs of persons with developmental disabilities, the general assembly hereby finds and declares that the purposes of this section are:

(I) To reaffirm the high value Colorado places on the rights of persons with developmental disabilities to receive services and supports that enable them to live in integrated community settings, to participate fully in community life, and to exercise choice and self-direction in their lives;

(II) To recognize that there are inherent risks in such integration, participation, and self-direction due to the cognitive limitations experienced by persons with developmental disabilities;

(III) To recognize that providers to such persons are exposed to risk of liability when they assist or permit persons with developmental disabilities to experience community integration, participation, and self-direction;

(IV) To recognize that providers provide essential services and functions and that unlimited liability could disrupt or make prohibitively expensive the provision of such essential services;

(V) To recognize that providers should be provided with protection from unlimited liability so that providers are not discouraged from providing such services and functions.

(b) The general assembly, therefore, declares that it is the intent of the general assembly to mitigate the risk of liability to providers to the developmentally disabled to the extent that such mitigation is reasonable and possible.

(2) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "Case management agency" has the same meaning as set forth in section 25.5-6-1702 (2).

(a.5) Repealed.

(b) "Department" means the department of health care policy and financing.

(c) "Developmental disability" has the same meaning as "intellectual and developmental disability" as defined in section 25.5-10-202, C.R.S.

(d) "Family caregiver" has the same meaning as set forth in section 25.5-10-202 (17).

(e) "Host home" means a private home that houses up to three persons with intellectual and developmental disabilities and whose owner or renter provides residential services, as described in section 25.5-10-206 (1)(e), to those persons as an independent contractor of a service agency.

(f) "Provider" means any case management agency, service agency, host home, family caregiver, and the directors, officers, and employees of these entities, who provide long-term services or supports to persons with intellectual and developmental disabilities pursuant to article 10 of title 25.5 or article 10.5 of title 27.

(g) "Service agency" means a privately operated program-approved service agency designated pursuant to the rules of the department.

(3) A person filing an action against a provider for injury which lies in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by a claimant shall demonstrate liability by a preponderance of the evidence. If a provider raises the issue that a claimant cannot demonstrate liability by a preponderance of the evidence or raises any other limitation on liability pursuant to this section prior to or after the commencement of discovery, the court shall suspend discovery, except any discovery necessary to decide the issue of

limitation of liability, and shall decide such issue on motion. The court's decision on such motion shall be a final judgment and shall be subject to interlocutory appeal.

(4) **Duty of care.** The performance of a service or an act of assistance for the benefit of a person with an intellectual and developmental disability or adoption or enforcement of a policy, procedure, guideline, or practice for the protection of the person's health or safety by a provider does not create any duty of care with respect to a third person, nor does it create a duty for any provider to perform or sustain a service or an act of assistance nor to adopt or enforce a policy, procedure, guideline, or practice; however, nothing in this section relieves a provider of a duty of care expressly imposed by federal or state law or department rule, nor shall anything in this section be deemed to create any duty of care.

(5) No action in tort under this section may be maintained on behalf of, for, or by a person with an intellectual and developmental disability or by a family member of a person with an intellectual and developmental disability against a provider unless the person claiming to have suffered an injury or grievance or the person's guardian or representative has filed for dispute resolution or other applicable intervention, if any, by the department or a case management agency or pursuant to rules promulgated under article 6 or 10 of title 25.5 or article 10.5 of title 27 within one year after the date of the discovery of the injury or grievance, regardless of whether the person then knew all of the elements of a claim or of a cause of action for such injury or grievance. Compliance with this subsection (5), documented by a letter from the department certifying that any and all interventions and dispute resolution procedures, with either the department or a case management agency applicable to the matter at hand have been exhausted, or by submission of evidence that such an intervention or dispute resolution request has been filed and no action has been taken by the department within ninety days, is a jurisdictional prerequisite to any action brought under the provisions of this section, and failure of compliance forever bars any such action and must result in a dismissal of any claim with prejudice. Certification by the department that all applicable interventions and dispute resolution procedures have been exhausted does not result in the department becoming a party to the tort claim action.

(6) A provider shall not be liable for damages in any civil action for failure to warn or protect any person against the violent, assaultive, disorderly, or harassing behavior of a person with a developmental disability, nor shall any such provider be held civilly liable for failure to predict or prevent such behavior, except there shall be a duty to warn where the person with the developmental disability has communicated to the provider a serious and credible threat of imminent physical violence and serious bodily injury against a specific person or persons. If there is a duty to warn as specified in this subsection (6), the duty shall be discharged by the provider making reasonable and timely efforts to notify any person or persons specifically threatened, except that if the person or persons threatened with imminent physical violence and serious bodily injury is a person with a developmental disability under the care of a provider, the

provider shall take reasonable action to protect such person from serious bodily injury until the threat can reasonably be deemed to have abated. A provider shall not be liable for damages in any civil action for warning a person against or predicting violent, assaultive, disorderly, or harassing behavior of a person with a developmental disability, nor shall a provider be subject to professional discipline for such warning or prediction.

(7) The owner of a property leased by a provider for the purpose of providing services pursuant to article 10 of title 25.5 or article 10.5 of title 27 is not responsible for the provision or monitoring of such services.

(8) If a person with an intellectual and developmental disability residing in a residential program operated by the department is referred by the department for community placement, the provider is not subject to civil liability for accepting that person for community placement.

(9) Claims predicated on an alleged deceptive trade practice pursuant to article 1 of title 6 shall not apply to providers engaged in the provision of services pursuant to article 10 of title 25.5 or article 10.5 of title 27.

(10) Case management agencies and service agencies shall have the authority to move a person with an intellectual and developmental disability from any residential setting that they operate under medicaid authority if the case management agency or service agency believes that the person with an intellectual and developmental disability may be at risk of abuse, neglect, mistreatment, exploitation, or other harm in such setting. If a person is moved for one of the aforementioned reasons, the person-centered planning required by this subsection (10) must occur as soon as possible following the move. In the absence of willful and wanton acts or omissions, case management agencies and service agencies have no civil liability for exercising such authority or for termination of any related contracts if the risk is substantiated by investigation pursuant to the rules of the department.

(11) In the absence of willful and wanton acts or omissions, a provider shall not have civil liability for injurious consequences to a person with a developmental disability in the provider's care when that person having the legal capacity for such decisions at the time such decisions were made, or the person's guardian or other person or entity duly authorized to make medication or treatment decisions for the person, declines or obstructs the administration of prescribed medication or other treatment recommended by a licensed physician, licensed psychologist, or certified therapist.

(12) When a person with a developmental disability who has the legal capacity to make decisions, or that person's guardian, refuses to comply with restrictions established pursuant to an interdisciplinary team process that are designed to safeguard the health and safety of the person or others, and it can be shown that a provider has made reasonable efforts to secure such compliance from the person or has taken other reasonable actions to safeguard the person or others, a provider of services shall not have civil liability for injuries or damages to the person



with a developmental disability that may arise from the refusal by the person with a developmental disability, or that person's guardian, to comply with such restrictions.

**Source:** **L. 92:** Entire section added, p. 1396, § 53, effective July 1. **L. 2003:** Entire section R&RE, p. 1963, § 1, effective May 22. **L. 2013:** (2)(a), (2)(c), and (2)(e) amended, (HB 13-1314), ch. 323, p. 1802, §23, effective March 1, 2014. **L. 2018:** (2)(a), (2)(d), (2)(f), (2)(g), (4), (5), (7), (8), (9), and (10) amended and (2)(a.5) added, (SB 18-174), ch. 148, p. 937, § 1, effective April 23. **L. 2021:** (2)(a), (2)(b), (2)(e), (2)(f), (2)(g), (4), (5), (8), and (10) amended, (HB 21-1187), ch. 83, p. 324, § 5, effective July 1, 2024; (2)(a.5)(II) added by revision, (HB 21-1187), ch. 83, pp. 324, 354, §§ 5, 70.

**Editor's note:** Subsection (2)(a.5)(II) provided for the repeal of subsection (2)(a.5), effective July 1, 2024. (See L. 2021, p. 324.)

#### ANNOTATION

**Defendants are immune from liability to third persons as providers of services to persons with developmental disabilities.** Subsections (4) and (6) create an affirmative duty only where the person with the developmental disability has communicated to the provider a serious and credible threat against a specific person, or where a federal or state law or a department of human services rule expressly imposes a duty of care. *J.C. v. Dungarvin Colo., LLC*, 252 P.3d 41 (Colo. App. 2010).

**Immunity from liability afforded to providers under subsection (6)** applies both to lawsuits arising from harm to a victim of the person with a developmental disability as well as lawsuits arising from harm to the person with the developmental disability when the harm resulted from the provider's "failure to predict or prevent" certain behaviors by the person. *McLaughlin v. Oxley*, 2012 COA 114, 297 P.3d 1007.

#### **13-21-117.7. Civil actions against family foster care providers - limited liability.**

(1) A foster care provider shall be immune from civil liability for any acts or omissions committed by a foster child in his or her care, unless a court of competent jurisdiction determines that acts or omissions on the part of the foster care provider were negligent and that such foster care provider's acts or omissions were a cause of injuries, damages, or losses.

(2) If a plaintiff in a civil liability action described in subsection (1) of this section is a biological or adoptive parent or other relative of the foster child and such plaintiff is successful against the foster care provider for any actions or omissions regarding foster care, any monetary compensation received by the plaintiff as a result of the civil action shall be deposited in a trust account at a federally licensed and insured financial institution to be held in trust for the benefit of the foster care child. The amount so deposited shall be subject to the jurisdiction and oversight of the court having probate jurisdiction.

(3) For purposes of this section, "foster care provider" means a foster care parent or a family member living in a foster care home who provides care to one or more foster children in that home.

**Source: L. 2000:** Entire section added, p. 1403, § 1, effective May 30.

#### **13-21-118. Actions based on flight in aircraft.**

No cause of action at law or in equity based upon flight in aircraft over lands or waters of this state shall be maintained unless other than nominal damages result therefrom or unless irreparable damage will probably result therefrom.

**Source: L. 88:** Entire section added, p. 1094, § 12, effective January 1, 1989.

#### **13-21-119. Equine activities - llama activities - legislative declaration - exemption from civil liability.**

(1) The general assembly recognizes that persons who participate in equine activities or llama activities may incur injuries as a result of the risks involved in such activities. The general assembly also finds that the state and its citizens derive numerous economic and personal benefits from such activities. It is, therefore, the intent of the general assembly to encourage equine activities and llama activities by limiting the civil liability of those involved in such activities.

(2) As used in this section, unless the context otherwise requires:

(a) "Engages in a llama activity" means riding, training, assisting in medical treatment of, driving, or being a passenger upon a llama, whether mounted or unmounted or any person assisting a participant or show management. The term "engages in a llama activity" does not

include being a spectator at a llama activity, except in cases where the spectator places himself in an unauthorized area and in immediate proximity to the llama activity.

(a.5) "Engages in an equine activity" means riding, training, assisting in medical treatment of, driving, or being a passenger upon an equine, whether mounted or unmounted or any person assisting a participant or show management. The term "engages in an equine activity" does not include being a spectator at an equine activity, except in cases where the spectator places himself in an unauthorized area and in immediate proximity to the equine activity.

(b) "Equine" means a horse, pony, mule, donkey, or hinny.

(c) "Equine activity" means:

(I) Equine shows, fairs, competitions, performances, or parades that involve any or all breeds of equines and any of the equine disciplines, including, but not limited to, dressage, hunter and jumper horse shows, grand prix jumping, three-day events, combined training, rodeos, driving, pulling, cutting, polo, steeplechasing, English and western performance riding, endurance trail riding and western games, and hunting;

(II) Equine training or teaching activities or both;

(III) Boarding equines;

(IV) Riding, inspecting, or evaluating an equine belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect, or evaluate the equine;

(V) Rides, trips, hunts, or other equine activities of any type however informal or impromptu that are sponsored by an equine activity sponsor; and

(VI) Placing or replacing horseshoes on an equine.

(d) "Equine activity sponsor" means an individual, group, club, partnership, or corporation, whether or not the sponsor is operating for profit or nonprofit, which sponsors, organizes, or provides the facilities for, an equine activity, including but not limited to: Pony clubs, 4-H clubs, hunt clubs, riding clubs, school and college-sponsored classes, programs and activities, therapeutic riding programs, and operators, instructors, and promoters of equine facilities, including but not limited to stables, clubhouses, ponyride strings, fairs, and arenas at which the activity is held.

(e) "Equine professional" means a person engaged for compensation:

(I) In instructing a participant or renting to a participant an equine for the purpose of riding, driving, or being a passenger upon the equine; or

(II) In renting equipment or tack to a participant.

(f) "Inherent risks of equine activities" and "inherent risks of llama activities" means those dangers or conditions which are an integral part of equine activities or llama activities, as the case may be, including, but not limited to:

(I) The propensity of the animal to behave in ways that may result in injury, harm, or death to persons on or around them;

(II) The unpredictability of the animal's reaction to such things as sounds, sudden movement, and unfamiliar objects, persons, or other animals;

(III) Certain hazards such as surface and subsurface conditions;

(IV) Collisions with other animals or objects;

(V) The potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the animal or not acting within his or her ability.

(f.1) "Llama" means a South American camelid which is an animal of the genus llama, commonly referred to as a "one llama", including llamas, alpacas, guanacos, and vicunas.

(f.2) "Llama activity" means:

(I) Llama shows, fairs, competitions, performances, packing events, or parades that involve any or all breeds of llamas;

(II) Using llamas to pull carts or to carry packs or other items;

(III) Using llamas to pull travois-type carriers during rescue or emergency situations;

(IV) Llama training or teaching activities or both;

(V) Taking llamas on public relations trips or visits to schools or nursing homes;

(VI) Participating in commercial packing trips in which participants pay a llama professional to be a guide on a hike leading llamas;

(VII) Boarding llamas;

(VIII) Riding, inspecting, or evaluating a llama belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the llama or is permitting a prospective purchaser of the llama to ride, inspect, or evaluate the llama;

(IX) Using llamas in wool production;

(X) Rides, trips, or other llama activities of any type however informal or impromptu that are sponsored by a llama activity sponsor; and

(XI) Trimming the nails of a llama.

(f.3) "Llama activity sponsor" means an individual, group, club, partnership, or corporation, whether or not the sponsor is operating for profit or nonprofit, which sponsors, organizes, or provides the facilities for, a llama activity, including but not limited to: Llama clubs, 4-H clubs, hunt clubs, riding clubs, school and college-sponsored classes, programs and activities, therapeutic riding programs, and operators, instructors, and promoters of llama facilities, including but not limited to stables, clubhouses, fairs, and arenas at which the activity is held.

(f.4) "Llama professional" means a person engaged for compensation:

(I) In instructing a participant or renting to a participant a llama for the purpose of riding, driving, or being a passenger upon the llama; or

(II) In renting equipment or tack to a participant.

(g) "Participant" means any person, whether amateur or professional, who engages in an equine activity or who engages in a llama activity, whether or not a fee is paid to participate in such activity.

(3) Except as provided in subsection (4) of this section, an equine activity sponsor, an equine professional, a llama activity sponsor, a llama professional, a doctor of veterinary medicine, or any other person, which shall include a corporation or partnership, shall not be liable for an injury to or the death of a participant resulting from the inherent risks of equine activities, or from the inherent risks of llama activities and, except as provided in subsection (4) of this section, no participant nor participant's representative shall make any claim against, maintain an action against, or recover from an equine activity sponsor, an equine professional, a llama activity sponsor, a llama professional, a doctor of veterinary medicine, or any other person for injury, loss, damage, or death of the participant resulting from any of the inherent risks of equine activities or resulting from any of the inherent risks of llama activities.

(4) (a) This section shall not apply to the horse racing industry as regulated in article 32 of title 44.

(b) Nothing in subsection (3) of this section shall prevent or limit the liability of an equine activity sponsor, an equine professional, a llama activity sponsor, a llama professional, or any other person if the equine activity sponsor, equine professional, llama activity sponsor, llama professional, or person:

(I) (A) Provided the equipment or tack, and knew or should have known that the equipment or tack was faulty, and such equipment or tack was faulty to the extent that it did cause the injury; or

(B) Provided the animal and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity or llama activity and determine

the ability of the participant to safely manage the particular animal based on the participant's representations of his ability;

(II) Owns, leases, rents, or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries because of a dangerous latent condition which was known to the equine activity sponsor, equine professional, llama activity sponsor, llama professional, or person and for which warning signs have not been conspicuously posted;

(III) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission caused the injury;

(IV) Intentionally injures the participant.

(c) Nothing in subsection (3) of this section shall prevent or limit the liability of an equine activity sponsor, equine professional, llama activity sponsor, or llama professional:

(I) Under liability provisions as set forth in the products liability laws; or

(II) Under liability provisions in section 35-46-102, C.R.S.

(5) (a) Every equine professional shall post and maintain signs which contain the warning notice specified in paragraph (b) of this subsection (5). Such signs shall be placed in a clearly visible location on or near stables, corrals, or arenas where the equine professional conducts equine activities if such stables, corrals, or arenas are owned, managed, or controlled by the equine professional. The warning notice specified in paragraph (b) of this subsection (5) shall appear on the sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by an equine professional for the providing of professional services, instruction, or the rental of equipment or tack or an equine to a participant, whether or not the contract involves equine activities on or off the location or site of the equine professional's business, shall contain in clearly readable print the warning notice specified in paragraph (b) of this subsection (5).

(b) The signs and contracts described in paragraph (a) of this subsection (5) shall contain the following warning notice:

### **WARNING**

Under Colorado Law, an equine professional is not liable for an injury to or the death of a participant in equine activities resulting from the inherent risks of equine activities, pursuant to section 13-21-119, Colorado Revised Statutes.

(6) (a) Every llama professional shall post and maintain signs which contain the warning notice specified in paragraph (b) of this subsection (6). Such signs shall be placed in a clearly visible location on or near stables, corrals, pens, or arenas where the llama professional conducts llama activities if such stables, corrals, pens, or arenas are owned, managed, or controlled by the llama professional. The warning notice specified in paragraph (b) of this subsection (6) shall appear on the sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by a llama professional for the providing of professional services, instruction, or the rental of equipment or tack or a llama to a participant, whether or not the contract involves llama activities on or off the location or site of the llama professional's business, shall contain in clearly readable print the warning notice specified in paragraph (b) of this subsection (6).

(b) The signs and contracts described in paragraph (a) of this subsection (6) shall contain the following warning notice:

### **WARNING**

Under Colorado Law, a llama professional is not liable for an injury to or the death of a participant in llama activities resulting from the inherent risks of llama activities, pursuant to section 13-21-119, Colorado Revised Statutes.

**Source:** **L. 90:** Entire section added, p. 870, § 1, effective July 1. **L. 92:** Entire section amended, p. 283, § 1, effective March 16; (3) amended, p. 268, § 1, effective April 9. **L. 2018:** (4)(a) amended, (HB 18-1024), ch. 26, p. 322, § 9, effective October 1.

**Editor's note:** (1) This section was enacted by Senate Bill 90-84, Session Laws of Colorado 1990, chapter 108, as § 13-21-120 but was renumbered on revision for ease of location.

(2) Amendments to this section by House Bill 92-1064 and Senate Bill 92-58 were harmonized.

### **ANNOTATION**

**Law reviews.** For article, "Recreational Use Of Agricultural Lands", see 23 Colo. Law. 529 (1994). For article, "Horse Law—A Look at the Equine Statute and Liability

Law", see 41 Colo. Law. 95 (July 2012). For article, "Indemnification Provisions in Commercial Contracts: A Drafting Primer", see 49 Colo. Law. 28 (Jan. 2020).

**This section recognizes the inherent risks involved in equine activities and protects sponsors of such activities by limiting their liability, except under specified circumstances.** The section itself imposes no liability on the sponsors for injuries beyond those for which liability is specifically limited. *Chadwick v. Colt Ross Outfitters*, 100 P.3d 465 (Colo. 2004).

**Thus, parties may, consistent with this section, contract separately to release sponsors even from negligent conduct** so long as the parties' intent is clearly expressed in the contract and the contract does not violate public policy. *Chadwick v. Colt Ross Outfitters*, 100 P.3d 465 (Colo. 2004).

**Defendant was not granted limited immunity under this section because according to subsection (4)(b)(I)(A) it provided the faulty equipment which caused plaintiff's injury, and it was unclear whether defendant knew the equipment was faulty.** *Day v. Snowmass Stables, Inc.*, 810 F. Supp. 289 (D. Colo. 1993).

**Pursuant to subsection (4)(b)(I)(B), defendant may be exempt from civil liability** if he or she provided the animal and made reasonable and prudent efforts to determine both the ability of a participant to engage safely in the equine activity and the

ability of the participant to safely manage the particular animal based on the participant's representation of his or her ability. *Waneka v. Clyncke*, 157 P.3d 1072 (Colo. 2007).

**Because every equine release agreement limiting liability must contain the mandatory warning under this section,** the insertion of a broader clause further limiting liability does not make the agreement ambiguous per se. *B & B Livery, Inc. v. Riehl*, 960 P.2d 134 (Colo. 1998).

**Because injury resulted from wrangler's negligence in failing to take precautions that a reasonable and prudent person in the same or similar circumstances would have taken by removing intermittently screaming child from horse before it bolted,** injury did not result from inherent risk of equine activity and immunity related to injuries resulting from the inherent risks of equine activity did not apply. *Fielder v. Acad. Riding Stables*, 49 P.3d 349 (Colo. App. 2002).

**Protection afforded "any other person" pursuant to subsection (3) extends** to owners of horses who allow their use for equine activities. *Culver v. Samuels*, 37 P.3d 535 (Colo. App. 2001).

**Applied** in *Hamill v. Cheley Colo. Camps, Inc.*, 262 P.3d 945 (Colo. App. 2011).



**13-21-120. Colorado baseball spectator safety act - legislative declaration - limitation on actions - duty to post warning notice.**

(1) This section shall be known and may be cited as the "Colorado Baseball Spectator Safety Act of 1993".

(2) The general assembly recognizes that persons who attend professional baseball games may incur injuries as a result of the risks involved in being a spectator at such baseball games. However, the general assembly also finds that attendance at such professional baseball games provides a wholesome and healthy family activity which should be encouraged. The general assembly further finds that the state will derive economic benefit from spectators attending professional baseball games. It is therefore the intent of the general assembly to encourage attendance at professional baseball games. Limiting the civil liability of those who own professional baseball teams and those who own stadiums where professional baseball games are played will help contain costs, keeping ticket prices more affordable.

(3) As used in this section, unless the context otherwise requires:

(a) "Owner" means a person, including a corporation, partnership, or limited liability company, who is in lawful possession and control of a professional baseball team or a person, including a corporation, partnership, or limited liability company, who is in lawful possession and control of a stadium in which a professional baseball game is played. "Owner" shall also include the owner's shareholders, partners, directors, officers, employees, and agents.

(b) "Professional baseball game" means any baseball game, whether for exhibition or competition, in which the participating baseball teams are members of a league of professional baseball clubs, commonly known as a major league or a minor league, and which teams are comprised of paid baseball players. "Professional baseball game" shall also include pregame activities and shall include any baseball game or pregame activity regardless of the time of day when the game is played.

(c) "Spectator" means a person who is present at a professional baseball game for the purpose of observing such game, whether or not a fee is paid by such "spectator".

(4) (a) Spectators of professional baseball games are presumed to have knowledge of and to assume the inherent risks of observing professional baseball games, insofar as those risks are obvious and necessary. These risks include, but are not limited to, injuries which result from being struck by a baseball or a baseball bat.

(b) Except as provided in subsection (5) of this section, the assumption of risk set forth in this subsection (4) shall be a complete bar to suit and shall serve as a complete defense to a suit against an owner by a spectator for injuries resulting from the assumed risks, notwithstanding the provisions of sections 13-21-111 and 13-21-111.5. Except as provided in subsection (5) of this section, an owner shall not be liable for an injury to a spectator resulting from the inherent risks

of attending a professional baseball game, and, except as provided in subsection (5) of this section, no spectator nor spectator's representative shall make any claim against, maintain an action against, or recover from an owner for injury, loss, or damage to the spectator resulting from any of the inherent risks of attending a professional baseball game.

(c) Nothing in this section shall preclude a spectator from suing another spectator for any injury to person or property resulting from such other spectator's acts or omissions.

(5) Nothing in subsection (4) of this section shall prevent or limit the liability of an owner who:

(a) Fails to make a reasonable and prudent effort to design, alter, and maintain the premises of the stadium in reasonably safe condition relative to the nature of the game of baseball;

(b) Intentionally injures a spectator; or

(c) Fails to post and maintain the warning signs required pursuant to subsection (6) of this section.

(6) (a) Every owner of a stadium where professional baseball games are played shall post and maintain signs which contain the warning notice specified in paragraph (b) of this subsection (6). Such signs shall be placed in conspicuous places at the entrances outside the stadium and at stadium facilities where tickets to professional baseball games are sold. The warning notice specified in paragraph (b) of this subsection (6) shall appear on the sign in black letters, with each letter to be a minimum of one inch in height.

(b) The signs described in paragraph (a) of this subsection (6) shall contain the following warning notice:

### **WARNING**

UNDER COLORADO LAW, A SPECTATOR OF PROFESSIONAL BASEBALL ASSUMES THE RISK OF ANY INJURY TO PERSON OR PROPERTY RESULTING FROM ANY OF THE INHERENT DANGERS AND RISKS OF SUCH ACTIVITY AND MAY NOT RECOVER FROM AN OWNER OF A BASEBALL TEAM OR AN OWNER OF A STADIUM WHERE PROFESSIONAL BASEBALL IS PLAYED FOR INJURY RESULTING FROM THE INHERENT DANGERS AND RISKS OF OBSERVING PROFESSIONAL BASEBALL, INCLUDING BUT NOT LIMITED TO, BEING STRUCK BY A BASEBALL OR A BASEBALL BAT.

(7) Insofar as any provision of law or statute is inconsistent with the provisions of this section, this section shall control.

**Source: L. 93:** Entire section added, p. 2043, § 1, effective January 1, 1994.

**13-21-121. Agricultural recreation or agritourism activities - legislative declaration - inherent risks - limitation of civil liability - duty to post warning notice - definitions.**

(1) The general assembly recognizes that persons who participate in certain agricultural recreation or agritourism activities may incur injuries as a result of the inherent risks involved with these activities. The general assembly also finds that the state and its citizens derive numerous economic and personal benefits from these activities. It is, therefore, the intent of the general assembly to encourage these activities by limiting the civil liability of certain persons involved in providing the opportunity to participate in these activities.

(2) As used in this section, unless the context otherwise requires:

(a) "Activity instructor or equipment provider" means an individual, facility person, group, club, association, partnership, or corporation, whether or not engaged for compensation, that instructs a participant or that rents, sells, or otherwise provides equipment to a participant for the purpose of engaging in an agricultural recreation or agritourism activity.

(b) "Agricultural recreation or agritourism activity" means an activity related to the normal course of agriculture, as defined in section 35-1-102 (1), which activity is engaged in by participants for entertainment, pleasure, or other recreational purposes, or for educational purposes, regardless of whether a fee is charged to the participants. "Agricultural recreation or agritourism activity" also means hunting, shooting, swimming, diving, tubing, and riding or operating a motorized recreational vehicle that occurs on or in proximity to the property of an agricultural operation or an adjacent roadway. "Agricultural recreation or agritourism activity" includes, but is not limited to, planting, cultivation, irrigation, or harvesting of crops; acceptable practices of animal husbandry; rodeo and livestock activities; and maintenance of farm or ranch equipment. "Agricultural recreation or agritourism activity" does not include any activity related to or associated with medical marijuana as defined in section 44-10-103 (34) or retail marijuana as defined in section 44-10-103 (57).

(c) "Equipment" means a device used to engage in an agricultural recreation or agritourism activity.

(d) "Facility" means a privately owned and operated farm, ranch, or a public property that is leased or rented and under the control of the person defined in paragraph (e) of this subsection (2) on which the opportunity to engage in one or more agricultural recreation or agritourism

activities is offered to a participant, regardless of whether it is situated in an incorporated area or unincorporated area.

(e) "Facility person" means a person who owns, leases, operates, manages, is an independent contractor to, or is employed at or who volunteers at a facility. For purposes of this paragraph (e) only, "person" includes any individual, corporation, partnership, association, cooperative, or commercial entity.

(f) "Inherent risks of agricultural recreation or agritourism activities" means those dangers or conditions that are an integral part of such activities, including but not limited to:

- (I) The varied degrees of the skill and experience of the participants;
- (II) The nature of the activity, including but not limited to the equipment used and the location where the activity is conducted;
- (III) Certain hazards, such as ground conditions, surface grade, weather conditions, and animal behavior;
- (IV) Collisions with other persons or objects;
- (V) The types and the complexity of equipment used by the participants;
- (VI) Malfunctions with equipment used by the participants;
- (VII) The potential of a participant to act in a negligent manner that may contribute to injury incurred by the participant or others, such as imprudent showmanship, failing to maintain control over his or her equipment, or not acting within his or her ability.

(g) "Participant" means a person who engages in an agricultural recreation or agritourism activity, whether or not a fee is paid to participate in the activity.

(3) Except as provided in subsections (4) and (5) of this section, an activity instructor or equipment provider or facility person is not civilly liable for any property damage or damages for injury to or the death of a participant resulting from the inherent risks of agricultural recreation or agritourism activities performed or conducted on or in a facility. A participant expressly assumes the risk and legal responsibility for any property damage or damages arising from personal injury or death that results from the inherent risk of agricultural recreation or agritourism activities. A participant has the sole responsibility for knowing the range of that person's ability to participate in an agricultural recreation or agritourism activity. It is the duty of a participant to act within the limits of the participant's own ability, to heed all warnings, and to refrain from acting in a manner that may cause or contribute to the injury or death of any person or damage to any property. A participant or a participant's representative may not make any claim against, maintain an action against, or recover from an activity instructor or equipment provider or facility person for injury, loss, damage, or death of the participant resulting from any of the

inherent risks of agricultural recreation or agritourism activities performed or conducted on or in a facility.

(4) (a) Nothing in subsection (3) of this section shall prevent or limit the liability of an activity instructor or equipment provider or facility person if the activity instructor or equipment provider or facility person:

(I) Rented, sold, or otherwise provided equipment to a participant, and knew that the equipment was faulty, and such equipment was faulty to the extent that it caused the injury;

(II) Committed an act or omission that constituted gross negligence or willful or wanton disregard for the safety of the participant and the act or omission was the cause of the injury; or

(III) Intentionally injured the participant.

(b) Nothing in subsection (3) of this section shall prevent or limit the liability of an activity instructor or equipment provider or facility person under liability provisions set forth in the product liability laws.

(c) A participant is not precluded under this section from suing and recovering from another participant for injury to person or property resulting from the other participant's act or omission. Notwithstanding any provision of law to the contrary, the risk of injury from another participant shall not be considered an inherent risk or a risk assumed by a participant in an action by the participant against another participant.

(5) (a) The operator of a facility shall:

(I) Exercise reasonable care to protect against dangers of which he or she actually knew; or

(II) Give warning of any dangers that are ordinarily present on the property.

(b) (I) The operator of a facility may provide notice of the inherent risks of agricultural recreation or agritourism activities either by a statement signed by the participant or a sign or signs prominently displayed at the place or places where the agricultural recreation or agritourism activities take place. The statement or sign must set forth the following warning notice:

### **WARNING**

UNDER COLORADO LAW, THERE IS NO LIABILITY FOR THE DEATH OF OR INJURY TO A PARTICIPANT IN AN AGRICULTURAL RECREATION OR AGRITOURISM ACTIVITY RESULTING FROM THE INHERENT RISKS OF THE

AGRICULTURAL RECREATION OR AGRITOURISM ACTIVITY, PURSUANT TO  
SECTION 13-21-121, COLORADO REVISED STATUTES.

(II) The text on the sign must be in black letters at least one inch in height.

**Source: L. 2003:** Entire section added, p. 1742, § 1, effective July 1. **L. 2014:** Entire section amended, (HB 14-1280), ch. 354, p. 1649, § 1, effective July 1. **L. 2018:** (2)(b) amended, (HB 18-1023), ch. 55, p. 585, § 8, effective October 1. **L. 2019:** (2)(b) amended, (SB 19-224), ch. 315, p. 2936, § 12, effective January 1, 2020.

**13-21-122. Civil liability for unlawful use of personal identifying information.**

(1) Notwithstanding any other remedies provided under this article, a person who suffers damages as a result of a crime described in article 5 of title 18, C.R.S., in which personal identifying information was used in the commission of the crime, shall have a private civil right of action against the perpetrator who committed the crime, regardless of whether the perpetrator was convicted of the crime. In such action, the plaintiff shall be entitled to actual damages, including, but not limited to damage to reputation or credit rating, punitive damages, and attorney fees and costs.

(2) For purposes of this section, "personal identifying information" means any information that may be used, alone or in conjunction with any other information, to identify a specific individual, including but not limited to: Name; date of birth; social security number; personal identification number; password; pass code; official state-issued or government-issued driver's license or identification card number; government passport number; biometric data; employer, student, or military identification number; or financial transaction device as defined in section 18-5-701 (3), C.R.S.

**Source: L. 2004:** Entire section added, p. 658, § 2, effective July 1.

**13-21-122.5. Civil liability for trading in telephone records.**

(1) In addition to any other remedies provided under this article, a person who suffers damages as a result of a violation of section 18-13-125, C.R.S., shall have a private civil right of action against the perpetrator who committed the crime, regardless of whether the perpetrator

was convicted of the crime. In such action, the plaintiff shall be entitled to actual damages, including, but not limited to, damage to reputation or credit rating, punitive damages, and attorney fees and costs. If such damages are less than five thousand dollars per telephone record, the plaintiff shall be entitled to statutory damages of five thousand dollars per telephone record procured, bought, sold, possessed, or received in violation of section 18-13-125, C.R.S.

(2) No telecommunications provider shall be liable for damages in a claim based, in whole or in part, on acts of third parties that violate section 18-13-125, C.R.S.

(3) This section shall not be construed to create a new duty or expand the existing duty of a telecommunications provider to protect telephone records beyond those otherwise established by Colorado law, any other state law, or federal law, including, without limitation, the rules promulgated by the federal communications commission.

(4) This section shall not apply to a telecommunications provider or its agents or representatives who reasonably and in good faith act pursuant to Colorado law, any other state law, or federal law, including, without limitation, the rules promulgated by the federal communications commission, notwithstanding a later determination that the act was not authorized by such law.

**Source: L. 2006:** Entire section added, p. 586, § 2, effective July 1.

### **13-21-123. Civil liability for newspaper theft. (Repealed)**

**Source: L. 2004:** Entire section added, p. 446, § 3, effective July 1. **L. 2013:** Entire section repealed, (HB 13-1160), ch. 373, p. 2199, § 7, effective June 5; entire section amended, (HB 13-1014), ch. 7, p. 18, § 3, effective August 7.

### **13-21-124. Civil actions against dog owners.**

(1) As used in this section, unless the context otherwise requires:

(a) "Bodily injury" means any physical injury that results in severe bruising, muscle tears, or skin lacerations requiring professional medical treatment or any physical injury that requires corrective or cosmetic surgery.

(b) "Dog" means any domesticated animal related to the fox, wolf, coyote, or jackal.

(c) "Dog owner" means a person, firm, corporation, or organization owning, possessing, harboring, keeping, having financial or property interest in, or having control or custody of, a dog.

(d) "Serious bodily injury" has the same meaning as set forth in section 18-1-901 (3)(p), C.R.S.

(2) A person or a personal representative of a person who suffers serious bodily injury or death from being bitten by a dog while lawfully on public or private property shall be entitled to bring a civil action to recover economic damages against the dog owner regardless of the viciousness or dangerous propensities of the dog or the dog owner's knowledge or lack of knowledge of the dog's viciousness or dangerous propensities.

(3) In any case described in subsection (2) of this section in which it is alleged and proved that the dog owner had knowledge or notice of the dog's viciousness or dangerous propensities, the court, upon a motion made by the victim or the personal representative of the victim, may enter an order that the dog be euthanized by a licensed veterinarian or licensed shelter at the expense of the dog owner.

(4) For purposes of this section, a person shall be deemed to be lawfully on public or private property if he or she is in the performance of a duty imposed upon him or her by local, state, or federal laws or regulations or if he or she is on property upon express or implied invitation of the owner of the property or is on his or her own property.

(5) A dog owner shall not be liable to a person who suffers bodily injury, serious bodily injury, or death from being bitten by the dog:

(a) While the person is unlawfully on public or private property;

(b) While the person is on property of the dog owner and the property is clearly and conspicuously marked with one or more posted signs stating "no trespassing" or "beware of dog";

(c) While the dog is being used by a peace officer or military personnel in the performance of peace officer or military personnel duties;

(d) As a result of the person knowingly provoking the dog;

(e) If the person is a veterinary health-care worker, dog groomer, humane agency staff person, professional dog handler, trainer, or dog show judge acting in the performance of his or her respective duties; or

(f) While the dog is working as a hunting dog, herding dog, farm or ranch dog, or predator control dog on the property of or under the control of the dog's owner.

(6) Nothing in this section shall be construed to:



- (a) Affect any other cause of action predicated on other negligence, intentional tort, outrageous conduct, or other theories;
- (b) Affect the provisions of any other criminal or civil statute governing the regulation of dogs; or
- (c) Abrogate any provision of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

**Source: L. 2004:** Entire section added, p. 507, § 1, effective April 21.

#### ANNOTATION

**The phrase "under the control of" in the working-dog exemption** relates to control of the owner's dog and not of the property. A dog owner is exempt from strict liability, and only from strict liability, if a person is bitten by a predator control dog "while the dog is working" either (a) "on the property of . . . the dog's owner" or (b) "under the control of the dog's owner". It is the control of the dog, not the control of the property, that is the relevant inquiry for the exemption to apply. *Robinson v. Legro*, 2014 CO 40, 325 P.3d 1053.

**Dog owner not liable for injuries sustained by person frightened by owner's dogs.** A passerby was frightened by two dogs that were behind a fence, and the passerby entered the street where she was struck by a car. Owner owes no duty of care

because dogs were inside a fence and there was no foreseeability or likelihood of injury. *Lopez v. Trujillo*, 2016 COA 53, 399 P.3d 750, *aff'd*, 2017 CO 79, 397 P.3d 370.

**Grazing permit granted by the United States forest service does not confer a property interest in subject land.** Therefore, permit holders' dogs were not working "on the property of . . . the dog's owner" at the time of the dog-bite attack on the plaintiff. *Legro v. Robinson*, 2015 COA 183, 369 P.3d 785.

**Grazing permit granted by the forest service provides sufficient basis to infer** that, by accepting the permit, the permit holders impliedly consented to entry onto the property by those who had the forest service's consent. *Legro v. Robinson*, 2015 COA 183, 369 P.3d 785.

#### **13-21-125. Civil actions for theft in the mortgage lending process.**

A person who suffers damages as a result of a violation of section 18-4-401, C.R.S., in the mortgage lending process, as defined by section 18-4-401 (9)(e)(I), C.R.S., shall have a private civil right of action against the perpetrator, regardless of whether the perpetrator was convicted

of the crime. A claim arising under this section shall not be asserted against a bona fide purchaser of a mortgage contract.

**Source: L. 2006:** Entire section added, p. 1328, § 3, effective July 1.

**Cross references:** For the legislative declaration contained in the 2006 act enacting this section, see section 1 of chapter 290, Session Laws of Colorado 2006.

**13-21-126. Funeral picketing - legislative declaration - definitions - damages.**

- (1) The general assembly finds and declares that:
  - (a) One of the fundamental reasons we humans organize ourselves into societies is to ritually assist in and recognize the grieving process;
  - (b) Funeral picketing disrupts that fundamental grieving process;
  - (c) Funeral picketing intentionally inflicts severe emotional distress on the mourners; and
  - (d) Full opportunity exists under the terms and provisions of this section for the exercise of freedom of speech and other constitutional rights other than at and during the funeral.
- (2) The general assembly, therefore, determines it is necessary to enact this section in order to:
  - (a) Protect the privacy of the mourners during the funeral; and
  - (b) Preserve a funeral-site atmosphere that enhances the grieving process.
- (3) As used in this section:
  - (a) "Funeral" means the ceremonies, rituals, processions, and memorial services held in connection with the final disposition or memorial of a deceased person, including the assembly and dispersal of the mourners.
  - (b) "Funeral picketing" means a public demonstration at a funeral site during the funeral that is reasonably calculated to inflict severe emotional distress on the mourners.
  - (c) "Funeral site" means a church, synagogue, mosque, funeral home, mortuary, gravesite, mausoleum, or other place where a funeral is being conducted.
  - (d) "Mourner" means a member of the decedent's immediate family at the funeral.

(4) It is unlawful for a person to knowingly engage in funeral picketing within one hundred feet of the funeral site or to engage in electronically amplified funeral picketing within one hundred fifty feet of the funeral site.

(5) (a) Each mourner shall be entitled to recover reasonable damages, but not less than one thousand dollars, together with reasonable attorney fees and costs from each person who violates subsection (4) of this section.

(b) The court shall impose joint and several liability on any person who:

(I) Violates subsection (4) of this section by acting in concert with one or more other persons; or

(II) Consciously conspires with one or more other persons and deliberately pursues a common plan or design to commit a violation of subsection (4) of this section.

**Source:** **L. 2006:** Entire section added, p. 1200, § 8, effective May 26. **L. 2021:** (3)(a) amended, (SB 21-006), ch. 123, p. 491, § 10, effective September 7.

**Editor's note:** (1) This section was originally numbered as § 13-21-125 in House Bill 06-1382 but has been renumbered on revision for ease of location.

(2) In *Snyder v. Phelps*, 562 U.S. 443 (2011), the United States Supreme Court held that the first amendment shields military funeral protesters from tort liability for picketing because picketing constitutes protected speech on matters of public concern and because the father of the deceased was not a member of a captive audience.

**Cross references:** For the legislative declaration and short title contained in the 2006 act enacting this section, see section 1 of chapter 262, Session Laws of Colorado 2006.

### **13-21-127. Civil damages for human trafficking and involuntary servitude.**

(1) In addition to all other remedies, a victim, as defined in section 18-3-502 (12), C.R.S., is entitled to recover damages proximately caused by any person who commits human trafficking for involuntary servitude, as described in section 18-3-503, C.R.S., or human trafficking for sexual servitude, as described in section 18-3-504, C.R.S.

(2) A conviction for human trafficking for involuntary servitude, as described in section 18-3-503, C.R.S., or human trafficking for sexual servitude, as described in section 18-3-504,

C.R.S., is not a condition precedent to maintaining a civil action pursuant to the provisions of this section.

**Source: L. 2012:** Entire section added, (HB 12-1151), ch. 174, p. 621, § 2, effective August 8.  
**L. 2014:** Entire section amended, (HB 14-1273), ch. 282, p. 1152, § 7, effective July 1.

**13-21-128. Civil liability for destruction or unlawful seizure of recordings by a law enforcement officer - definitions.**

(1) (a) Notwithstanding any other remedies, a person has a right of recovery against a peace officer's employing law enforcement agency if a person attempts to or lawfully records an incident involving a peace officer and:

- (I) A peace officer unlawfully destroys or damages the recording or recording device;
- (II) A peace officer seizes the recording or recording device without permission, without lawful order of the court, or without other lawful grounds to seize the device;
- (III) A peace officer intentionally interferes with the person's lawful attempt to record an incident involving a peace officer;
- (IV) A peace officer retaliates against a person for recording or attempting to record an incident involving a peace officer; or
- (V) A peace officer refuses to return the person's recording device that contains a recording of a peace officer-involved incident within a reasonable time period and without legal justification.

(b) If a peace officer engages in any of the conduct described in paragraph (a) of this subsection (1), the aggrieved property owner may submit an affidavit to the peace officer's employing law enforcement agency setting forth the facts of the incident, the damage done to the owner's property, and a verifiable estimate of the replacement cost for any damaged or destroyed device. If a recording was damaged or destroyed, the owner may claim five hundred dollars as the value of the recording itself. Upon receipt of this affidavit, the law enforcement agency shall have thirty days to either pay the aggrieved property owner the amount requested in the affidavit or issue a denial of the request in writing.

(c) If a denial of claim is issued by the law enforcement agency pursuant to paragraph (b) of this subsection (1), and the aggrieved property owner disagrees with the denial, the property owner may bring a civil action against the peace officer's employing law enforcement agency for actual damages, including the replacement value of the device, the amount of five hundred dollars for any damaged or destroyed recording, and any costs and fees associated with the filing

of the civil action. The court may order punitive damages up to fifteen thousand dollars and attorney fees to the property owner upon a finding that the denial by the law enforcement agency to reimburse the person pursuant to paragraph (b) of this subsection (1) was made in bad faith. If the court finds that an action brought by a person is frivolous and without merit, the court may award the law enforcement agency its reasonable costs and attorney fees.

(2) An action brought pursuant to this section does not preclude the person from seeking that criminal charges be filed against a peace officer for tampering with physical evidence in violation of section 18-8-610, C.R.S., or any other crime.

(3) For purposes of this section, "retaliation" means a threat, act of harassment, as defined in section 18-9-111, C.R.S., or act of harm or injury upon any person or property, which action is directed to or committed upon a person recording the peace officer-involved incident, as retaliation or retribution against such witness or victim.

**Source: L. 2015:** Entire section added, (HB 15-1290), ch. 212, p. 773, § 1, effective May 20, 2016.

**13-21-129. Snow removal service liability limitation - exceptions - short title - definitions.**

- (1) This section may be cited as the "Snow Removal Service Liability Limitation Act".
- (2) As used in this section, unless the context otherwise requires:
  - (a) "Public utility" has the same meaning as set forth in section 40-1-103.
  - (b) "Service provider" means a person providing services under a snow removal and ice control services contract.
  - (c) "Service receiver" means a person receiving services under a snow removal and ice control services contract.
  - (d) "Snow removal and ice control services contract" means a contract or agreement for the performance of any of the following:
    - (I) Plowing, shoveling, or other removal of snow or other mixed precipitation from a surface;
    - (II) Deicing services; or
    - (III) A service incidental to an activity described in subsection (2)(d)(I) or (2)(d)(II) of this section, including operating or otherwise moving snow removal or deicing equipment or materials.

(3) A provision, clause, covenant, or agreement that is part of or in connection with a snow removal and ice control services contract is against public policy and void if it does any of the following in the instance where the service provider is prohibited, by express contract terms or in writing, from mitigating a specific snow, ice, or other mixed precipitation event or risk:

(a) Requires, or has the effect of requiring, a service provider to indemnify a service receiver for damages resulting from the acts or omissions of the service receiver or the service receiver's agents or employees;

(b) Requires, or has the effect of requiring, a service receiver to indemnify a service provider for damages resulting from the acts or omissions of the service provider or the service provider's agents or employees;

(c) Requires, or has the effect of requiring, a service provider to hold a service receiver harmless from any tort liability for damages resulting from the acts or omissions of the service receiver or the service receiver's agents or employees;

(d) Requires, or has the effect of requiring, a service receiver to hold a service provider harmless from any tort liability for damages resulting from the acts or omissions of the service provider or the service provider's agents or employees;

(e) Requires, or has the effect of requiring, a service provider to defend a service receiver against any tort liability for damages resulting from the acts or omissions of the service receiver or the service receiver's agents or employees; or

(f) Requires, or has the effect of requiring, a service receiver to defend a service provider against any tort liability for damages resulting from the acts or omissions of the service provider or the service provider's agents or employees.

(4) This section does not apply to the following:

(a) Contracts for snow removal or ice control services on public roads or with public bodies;

(b) Contracts for snow removal or ice control services with a public utility;

(c) Deicing services or ice control services provided at a municipal or county airport, an airport under the jurisdiction of a public airport authority created under the provisions of article 3 of title 41, or any other public airport, including contracts for services provided to commercial passenger and cargo airlines at such airports; or

(d) An insurance policy, as surety bond, or workers' compensation.

(5) This section does not affect any liabilities, immunities, or affirmative defenses arising under other law.

**Source: L. 2018:** Entire section added, (SB 18-062), ch. 328, p. 1967, § 1, effective August 8.

**13-21-130. Civil liability for false statement to recover possession of real property.**

In addition to any other remedies, a person removed from a residential premises pursuant to section 13-40.1-101 on the basis of false statements made by a declarant has a private cause of action against the declarant. In the action, the plaintiff is entitled to actual damages, attorney fees, and costs.

**Source: L. 2018:** Entire section added, (SB 18-015), ch. 393, p. 2350, § 3, effective July 1.

**Cross references:** For the short title "Protecting Homeowners and Deployed Military Personnel Act" in SB 18-015, see section 1 of chapter 393, Session Laws of Colorado 2018.

**13-21-131. Civil action for deprivation of rights.**

(1) A peace officer, as defined in section 24-31-901 (3), who, under color of law, subjects or causes to be subjected, including failing to intervene, any other person to the deprivation of any individual rights that create binding obligations on government actors secured by the bill of rights, article II of the state constitution, is liable to the injured party for legal or equitable relief or any other appropriate relief.

(2) (a) Statutory immunities and statutory limitations on liability, damages, or attorney fees do not apply to claims brought pursuant to this section. The "Colorado Governmental Immunity Act", article 10 of title 24, does not apply to claims brought pursuant to this section.

(b) Qualified immunity is not a defense to liability pursuant to this section.

(3) In any action brought pursuant to this section, a court shall award reasonable attorney fees and costs to a prevailing plaintiff. In actions for injunctive relief, a court shall deem a plaintiff to have prevailed if the plaintiff's suit was a substantial factor or significant catalyst in obtaining the results sought by the litigation. When a judgment is entered in favor of a defendant, the court may award reasonable costs and attorney fees to the defendant for defending any claims the court finds frivolous.

(4) (a) Notwithstanding any other provision of law, a peace officer's employer shall indemnify its peace officers for any liability incurred by the peace officer and for any judgment or settlement entered against the peace officer for claims arising pursuant to this section; except that, if the peace officer's employer determines on a case-by-case basis that the officer did not act

upon a good faith and reasonable belief that the action was lawful, then the peace officer is personally liable and shall not be indemnified by the peace officer's employer for five percent of the judgment or settlement or twenty-five thousand dollars, whichever is less. Notwithstanding any provision of this section to the contrary, if the peace officer's portion of the judgment is uncollectible from the peace officer, the peace officer's employer or insurance shall satisfy the full amount of the judgment or settlement. A public entity does not have to indemnify a peace officer if the peace officer was convicted of a criminal violation for the conduct from which the claim arises unless the peace officer's employer was a causal factor in the violation, through its action or inaction.

(b) (I) An employer shall not:

(A) Preemptively determine whether a peace officer acted in good faith before such action in question has occurred; or

(B) Provide a determination providing that any peace officer or peace officers are deemed to have acted in good faith until completion of a documented investigation conducted by the employer.

(II) If a person believes that an employer has violated the provisions of subsection (4)(b)(I) of this section, the person shall submit a complaint to the P.O.S.T. board, created in section 24-31-302, which shall refer the complaint to an administrative law judge to determine whether a violation occurred. The administrative law judge shall notify the P.O.S.T. board chair of a finding that a violation of subsection (4)(b)(I) of this section occurred. If a violation is found, the P.O.S.T. board shall not provide P.O.S.T. cash fund money to the employer for one full year from the date of the finding.

(III) For the purposes of this subsection (4)(b), an employer includes the elected sheriff, chief of police, city or town administrator, county administrator, mayor, city or town council, county commission, or any other public body with formal supervision and oversight of a law enforcement agency.

(5) A civil action pursuant to this section must be commenced within two years after the cause of action accrues.

**Source:** L. 2020: Entire section added, (SB 20-217), ch. 110, p. 452, § 3, effective June 19. L. 2021: (1) and (4) amended, (HB 21-1250), ch. 458, p. 3062, § 6, effective July 6.

**Cross references:** For the legislative declaration in SB 20-217, see section 1 of chapter 110, Session Laws of Colorado 2020.



## ANNOTATION

**Law reviews.** For article, "The Qualified Immunity Litigation Machine: Eviscerating the Anti-racist Heart of § 1983, Weaponizing Interlocutory Appeal, and the Routine of Police Violence Against Black Lives", see 98 Denv. L. Rev. 629 (2021).

**42 U.S.C. § 1983's personal participation requirement applies to this section.** This section should be read against the background of tort liability that makes a person responsible for the natural consequences of their actions. *Shash v. City of Pueblo*, 770 F. Supp. 3d 1279 (D. Colo. 2025).

**While seeking monetary damages under subsection (1), to prove a constitutional violation,** a plaintiff must show that an officer's false statements or omissions in an affidavit in support of a search warrant were made intentionally or with reckless disregard to the truth, instead of merely being a product of mistake or negligence. *Johnson v. Staab*, 2025 COA 45, 571 P.3d 939.

**Based on the plain language of subsection (1), an individual asserting a civil rights violation by a peace officer does not have a direct claim against the peace officer's employer for the violation.** *Ditirro v. Sando*, 2022 COA 94, 520 P.3d 1203; *Shash v. City of Pueblo*, 770 F. Supp. 3d 1279 (D. Colo. 2025).

**Subsection (3) of this section controls over § 13-16-105** and requires a court to find that a plaintiff's claims were frivolous

before it may award costs to defendant. *Waugh v. Veith*, 2025 COA 41M, 571 P.3d 376.

**While subsection (4) allows a peace officer to obtain indemnification from the peace officer's employer under certain circumstances, it only provides a remedy for peace officers,** at least before the peace officer has incurred any liability or any judgment or settlement has been entered against the peace officer, under the statute. *Ditirro v. Sando*, 2022 COA 94, 520 P.3d 1203.

**The standard for evaluating an excessive force claim brought under this section is the objective reasonableness standard** articulated in *Graham v. Connor*, 490 U.S. 386 (1989). *Woodall v. Godfrey*, 2024 COA 42, 553 P.3d 249.

**The constitutionality of an arrest did not depend on the constitutionality of the ordinances that the arrestee was charged with violating,** but instead turned on whether there was probable cause to effect the arrest under the ordinances as written. Because the jury could reasonably find that the arrest was supported by probable cause under the ordinances as they existed at the time, the arrestee's individual rights were not violated, without regard to whether the ordinances were unconstitutionally vague. *Bullock v. Brooks*, 2025 COA 6, 565 P.3d 1091.

**Legal justification for a warrantless search is an affirmative defense that the**

**defendant must prove** by a preponderance of the evidence in a civil action. Mosley v.

Daves, 2025 COA 80, 580 P.3d 584.

**13-21-132. Civil liability for misuse of gametes - definitions.**

(1) As used in this section, unless the context otherwise requires:

(a) "Assisted reproduction" means a method of causing pregnancy through means other than by sexual intercourse. "Assisted reproduction" includes, but is not limited to:

- (I) Intrauterine or intracervical insemination;
- (II) Donation of eggs or sperm;
- (III) Donation of embryos;
- (IV) In vitro fertilization and embryo transfer; and
- (V) Intracytoplasmic sperm injection.

(b) "Donor" means an individual who expressly provides consent to provide donated eggs, sperm, or embryos for a patient for assisted reproduction.

(c) "Gametes" means one or more cells containing a haploid complement of DNA that has the potential to form an embryo when combined with another gamete. Sperm and eggs are gametes. A gamete may consist of nuclear DNA from one human being combined with the cytoplasm, including cytoplasmic DNA, of another human being.

(d) "Health care provider" means any individual who is authorized to practice some component of the healing arts by license, certificate, or registration pursuant to title 12.

(2) Any of the following may bring an action against a health care provider who, in the course of performing or assisting an assisted reproduction procedure on a patient, knowingly uses gametes from a donor that the patient did not expressly consent to the use of that donor's gametes:

- (a) A patient who gives birth to a child after being treated through assisted reproduction by the health care provider;
- (b) A spouse or partner of a patient described in subsection (2)(a) of this section;
- (c) A surviving spouse or partner of a patient described in subsection (2)(a) of this section; or
- (d) A child born as a result of the actions of the health care provider.

(3) A plaintiff who prevails in an action pursuant to this section is entitled to reasonable attorney fees and either:

(a) All damages reasonably necessary to compensate the plaintiff for any injuries suffered as a result of the health care provider's actions, including but not limited to emotional or mental distress; or

(b) Liquidated damages of fifty thousand dollars.

(4) A person who brings an action pursuant to subsection (2) of this section has a separate cause of action for each child born as the result of the assisted reproduction procedure.

(5) Nothing in this section prohibits a person from pursuing any other remedy provided by law.

**Source:** L. 2020: Entire section added, (HB 20-1014), ch. 238, p. 1153, § 1, effective September 14.

**13-21-133. Out-of-state civil action against a person or entity prohibited - legally protected health-care activity - out-of-state civil judgment.**

(1) (a) It is against the public policy of this state for the law of another state to authorize a person to bring a civil action against another person or entity for engaging or attempting or intending to engage in a legally protected health-care activity, as defined in section 12-30-121, or for providing insurance coverage for gender-affirming health-care services, as defined in section 12-30-121, or reproductive health care, as defined in section 25-6-402.

(b) (I) If a person or entity brings an out-of-state civil or criminal action, or attempts to enforce any order or judgment issued in connection with any such action, against another person or entity for engaging in or attempting or intending to engage in a legally protected health-care activity, as defined in section 12-30-121, or for providing insurance coverage for gender-affirming health-care services, as defined in section 12-30-121, or reproductive health care, as defined in section 25-6-402, the person or entity subject to the out-of-state civil or criminal action has a private right of action against the person or entity and, within six years after the date the out-of-state action is commenced, or if the person or entity is attempting to enforce an out-of-state order or judgment, six years after the date enforcement is attempted, may institute a civil action in district court for injunctive relief; actual damages, including the amount of any judgment issued in connection with the out-of-state action, along with any expenses, costs, or reasonable attorney fees incurred in connection with the out-of-state action and civil action filed pursuant to this section; and any other appropriate remedy.

(II) The attorney general may intervene in any out-of-state action brought against the state pursuant to this subsection (1)(b).

(2) A court shall not apply another state's law as described in subsection (1) of this section to a case or controversy heard in a Colorado court.

(3) In any action filed to enforce a foreign judgment issued in connection with any litigation concerning a legally protected health-care activity, as defined in section 12-30-121 (1)(d), the court shall not give any force or effect to any judgment issued without personal jurisdiction or due process or to any judgment that is penal in nature.

**Source:** **L. 2023:** Entire section added, (SB 23-188), ch. 68, p. 245, § 7, effective April 14. **L. 2025:** (1) amended, (SB 25-129), ch. 96, p. 438, § 4, effective April 24.

**Cross references:** For the legislative declaration in SB 23-188, see section 1 of chapter 68, Session Laws of Colorado 2023.

## PART 2

### DAMAGES FOR DEATH BY NEGLIGENCE

**Law reviews:** For article, "Calculating Net Pecuniary Loss Under Colorado Wrongful Death Law", see 24 Colo. Law. 1257 (1995); for article, "The Colorado Wrongful Death Act", see 40 Colo. Law. 63 (May 2011).

#### **13-21-201. Damages for death.**

(1) When any person dies from any injury resulting from or occasioned by the negligence, unskillfulness, or criminal intent of any officer, agent, servant, or employee while running, conducting, or managing any locomotive, car, or train of cars, or of any driver of any coach or other conveyance operated for the purpose of carrying either freight or passengers for hire while in charge of the same as a driver, and when any passenger dies from an injury resulting from or occasioned by any defect or insufficiency in any railroad or any part thereof, or in any locomotive or car, or other conveyance operated for the purpose of carrying either freight or passengers for hire, the corporation or individuals in whose employ any such officer, agent, servant, employee, master, pilot, engineer, or driver is at the time such injury is committed, or who owns any such railroad, locomotive, car, or other conveyance operated for the purpose of carrying either freight or passengers for hire at the time any such injury is received, and resulting from or occasioned by the defect or insufficiency above described shall forfeit and pay for every

person and passenger so injured the sum of not exceeding ten thousand dollars and not less than three thousand dollars, which may be sued for and recovered:

(a) In the first year after such death:

(I) By the spouse of the deceased;

(II) Upon the written election of the spouse, by the spouse and the heir or heirs of the deceased;

(III) Upon the written election of the spouse, by the heir or heirs of the deceased;

(IV) If there is no spouse, by the heir or heirs of the deceased or the designated beneficiary, if there is one designated pursuant to article 22 of title 15, with the right to bring an action pursuant to this section, and if there is no designated beneficiary, by the heir or heirs of the deceased; or

(V) If, at the time of death, there is no spouse, no heir or heirs, and no designated beneficiary, or, if the deceased was an unmarried minor without descendants or an unmarried adult without descendants, and there is no mother and no father of the deceased, then by the sibling or siblings of the deceased or the heir or heirs of the sibling or siblings of the deceased.

(b) (I) In the second year after such death:

(A) By the spouse of the deceased;

(B) By the heir or heirs of the deceased;

(C) By the spouse and the heir or heirs of the deceased;

(D) By the designated beneficiary of the deceased, if there is one designated pursuant to article 22 of title 15, with the right to bring an action pursuant to this section, and the heir or heirs of the deceased; or

(E) By the sibling or siblings of the deceased or the heir or heirs of the sibling or siblings of the deceased, but only if, at the time of death, the deceased had no surviving spouse, no heir or heirs, and no designated beneficiary, or, if the deceased was an unmarried minor without descendants or an unmarried adult without descendants, and had no mother and no father.

(II) However, if the heir or heirs of the deceased commence an action under the provisions of sub-subparagraph (B) of subparagraph (I) of this paragraph (b), the spouse or the designated beneficiary of the deceased, if there is one designated pursuant to article 22 of title 15, C.R.S., with the right to bring an action pursuant to this section, upon motion filed within ninety days after service of written notice of the commencement of the action upon the spouse or designated beneficiary, shall be allowed to join the action as a party plaintiff.

(c) (I) If the deceased is an unmarried minor without descendants or an unmarried adult without descendants and without a designated beneficiary pursuant to article 22 of title 15, C.R.S., by the father or mother who may join in the suit. Except as provided in subparagraphs (II) and (III) of this paragraph (c), the father and mother shall have an equal interest in the judgment, or if either of them is dead, then the surviving parent shall have an exclusive interest in the judgment.

(II) For cases in which the father and mother are divorced, separated, or living apart, a motion may be filed by either the father or the mother prior to trial requesting the court to apportion fairly any judgment awarded in the case. Where such a motion is filed, the court shall conduct a post-judgment hearing at which the father and the mother shall have the opportunity to be heard and to produce evidence regarding each parent's relationship with the deceased child.

(III) On conclusion of the post-judgment hearing conducted pursuant to subparagraph (II) of this paragraph (c), the court shall fairly determine the percentage of the judgment to be awarded to each parent. In making such a determination, the court shall consider each parent's relationship with the deceased, including custody, control, support, parental responsibility, and any other factors the court deems pertinent. The court's determination of the percentage of the judgment awarded to each parent shall not be disturbed absent an abuse of discretion.

(d) For purposes of this section, "father or mother" means a natural parent of the deceased or a parent of the deceased by adoption. "Father or mother" does not include a person whose parental rights concerning the deceased were terminated pursuant to the provisions of title 19, C.R.S.

(2) In suits instituted under this section, it is competent for the defendant for his defense to show that the defect or insufficiency named in this section was not a negligent defect or insufficiency. The judgment obtained in an action under this section shall be owned by such persons as are heirs at law of the deceased under the statutes of descent and distribution and shall be divided among such heirs at law in the same manner as real estate is divided according to said statute of descent and distribution.

**Source:** G.L. § 877. G.S. § 1030. L. 07: p. 296, § 1. R.S. 08: § 2056. C.L. § 6302. CSA: C. 50, § 1. L. 51: p. 338, § 1. CRS 53: § 41-1-1. C.R.S. 1963: § 41-1-1. L. 88: (1)(a), (1)(b), and (1)(c) R&RE and (2) amended, pp. 603, 604, §§ 1, 2, effective July 1. L. 2000: (1)(c) amended and (1)(d) added, p. 169, § 1, effective July 1. L. 2009: (1) amended, (HB 09-1260), ch. 107, p. 441, § 6, effective July 1. L. 2024: (1)(a)(III), (1)(a)(IV), (1)(b)(I)(C), and (1)(b)(I)(D) amended and (1)(a)(V) and (1)(b)(I)(E) added, (HB 24-1472), ch. 325, p. 2172, § 3, effective January 1, 2025.

**Cross references:** (1) For determination of death, see § 12-240-140.

(2) For the legislative declaration in HB 24-1472, see section 1 of chapter 325, Session Laws of Colorado 2024.

## ANNOTATION

### II. Who May Recover.

#### I. GENERAL CONSIDERATION.

##### A. In General.

##### B. Damages.

##### A. In General.

**Law reviews.** For article, "Double Recovery for Wrongful Death by Public Carrier?", see 28 Dicta 131 (1951). For comment on *McEntyre v. Jones*, appearing below, see 31 Dicta 198 (1954). For article, "Damages for Death — Limited or Unlimited", see 34 Dicta 32 (1957). For article, "In Defense of the Colorado Guest Statute", see 35 Dicta 174 (1958). For note, "Notes and Comments: What is a Life Worth?", see 34 Dicta 41 (1957). For article, "One Year Review of Torts", see 38 Dicta 93 (1961). For note, "Wrongful Death in Colorado", see 33 Rocky Mt. L. Rev. 393 (1961). For comment on *Clint v. Stolworthy* appearing below, see 33 Rocky Mt. L. Rev. 443 (1961). For note, "Personal Injury Damages in Colorado", see 35 U. Colo. L. Rev. 332 (1963). For comment on *Herbertson v. Russell* appearing below, see 35 U. Colo. L. Rev. 463 (1963). For comment, "Preconception Torts", see 48 U. Colo. L. Rev. 621 (1977). For case note, "Wrongful Death Recovery in Colorado — A Reward for a Timely Demise", see 49 U.

Colo. L. Rev. 431 (1978). For article, "Measures of Economic Loss in the Wrongful Death of a Child", see 14 Colo. Law. 392 (1985). For case note, "The Fetus as a Person in Wrongful Death Actions", 57 U. Colo. L. Rev. 895 (1986). For article, "Sitting Pretty in Probate: What Sandstead Means for Probate Jurisdiction", see 48 Colo. Law. 50 (Jan. 2019).

**The statute is constitutional.** *Mollie Gibson Consol. Mining & Milling Co. v. Sharp*, 5 Colo. App. 321, 38 P. 850 (1894).

**All the provisions of the act are clearly expressed in the title.** *Mollie Gibson Consol. Mining & Milling Co. v. Sharp*, 23 Colo. 259, 47 P. 266 (1894).

**Purpose of the wrongful death statute** is to compensate those who sustain pecuniary injury by the loss of the life of a spouse or parent. *Niven v. Falkenburg*, 553 F. Supp. 1021 (D. Colo. 1983).

**This section largely extends the right of recovery for injuries resulting in the death of the injured party** against the surviving wrongdoer, and specifically makes it applicable to transportation companies, and designates the persons who are entitled to bring suits, and who may reap the benefits of the recovery. It does not in terms cause the action against the wrongdoer to survive,

for it is silent on the subject. *Letson v. Brown*, 11 Colo. App. 11, 52 P. 287 (1898).

**This section creates a new cause of action.** *Denver & R. G. R. R. v. Frederic*, 57 Colo. 90, 140 P. 463 (1914); *Lindsay v. Chicago, B & Q. R. R.*, 226 F. 23 (7th Cir. 1915); *Taylor v. Welle*, 143 Colo. 37, 352 P.2d 106 (1960).

**Right of action does not depend on whether injured person could have recovered.** That the right of action under this section does not depend upon whether the injured person, if death had not ensued, could have recovered for personal injury, is one of the essential characteristics which distinguishes it from §§ 13-21-202 and 13-21-203, where the right exists only on the theory that the person injured would have had a cause of action had he not been killed. *Denver & R. G. R. R. v. Frederic*, 57 Colo. 90, 140 P. 463 (1914).

**Such action did not exist at common law.** No right of action for damages resulting from death through wrongful act or negligence was given by the common law, and such right exists only by virtue of this section. *Martin v. Cuellar*, 131 Colo. 117, 279 P.2d 843 (1955).

Wrongful death recovery did not exist at common law, but is purely a creature of statute. *Niven v. Falkenburg*, 553 F. Supp. 1021 (D. Colo. 1983); *Hale v. Morris*, 725 P.2d 26 (Colo. App. 1986).

**This section must be strictly construed.** *Martin v. Cuellar*, 131 Colo. 117, 279 P.2d 843 (1955); *Estate of Kronmeyer v. Meinig*, 948 P.2d 119 (Colo. App. 1997).

**The judiciary should adhere to its previous constructions of this act.** Where the general assembly has repeatedly reenacted this article which has received settled judicial construction, there can be no doubt that the legislative intent was that such reenactments continue to be construed in accordance with such former judicial construction. *Herbertson v. Russell*, 150 Colo. 110, 371 P.2d 422 (1962).

**This section with §§ 13-21-202, 13-21-203, and 13-21-204 must be construed as one act,** and each section construed as it is connected with and related to the whole act. *Clint v. Stolworthy*, 144 Colo. 597, 357 P.2d 649 (1960).

**It is penal in character.** *Denver & R. G. R. R. v. Frederic*, 57 Colo. 90, 140 P. 463 (1914); *Denver & R. G. R. R. v. Clint*, 235 F.2d 445 (10th Cir. 1956); *Clint v. Stolworthy*, 144 Colo. 597, 357 P.2d 649 (1960).

**It manifests a purpose to compensate dependent relatives.** The statute must be construed in the light of its purpose, and while it is penal in character, the fact that the forfeiture or penalty is recoverable by the kin of the deceased manifests a purpose to in a measure protect or compensate dependent relatives by blood or direct marriage. *Myers v. Denver & R. G. R. R.*, 61 Colo. 302, 157 P. 196 (1916).

**Recovery may be had under the section without any proof whatever of damages.** *Clint v. Stolworthy*, 144 Colo. 597, 357 P.2d 649 (1960).



**A wrongful death claim is not assignable.** *Espinosa v. Perez*, 165 P.3d 770 (Colo. App. 2006).

**The section may be divided with reference to persons injured, into two parts;** The first giving the right of action to any person injured by the negligence, unskillfulness or criminal intent of any officer, agent, servant or employee, etc.; the second furnishing a right of action where the death of the passenger resulted from a defect or insufficiency of a railroad locomotive, stage coach, or other public conveyance. *Atchison, T. & S. F. R. R. v. Headland*, 18 Colo. 477, 33 P. 185 (1893).

**Impact not required in negligence claim against common carrier.** There is no impact requirement for claims which allege negligence on the part of a common carrier. *Deming v. Kellogg*, 41 Colo. App. 264, 583 P.2d 944 (1978).

**A second civil action against treating physicians for wrongful death is prohibited where plaintiffs previously settled a wrongful death action against the driver that struck pedestrian.** The plain language of this section clearly and unambiguously reflects the intent of the general assembly to permit only one wrongful death action for the death of one decedent. *Estate of Kronmeyer v. Meinig*, 948 P.2d 119 (Colo. App. 1997).

**Passenger elevators in office buildings are included within the term "other public conveyance"** as used in this section. *Davis v. Colo. Sav. Bank*, 78 Colo. 509, 242 P. 985 (1926).

**Station agent may be an employee managing train.** The station agent of a railroad company charged with the duty to communicate to the conductor and engineer of the several trains the orders of the train dispatcher as to where they are to pass other trains, is managing the trains, within the meaning of this section. If by his negligent failure to deliver an order, a collision occurs, and the death of a passenger results, the railway company is liable. *Whittle v. Denver & R. G. R. R.*, 51 Colo. 382, 118 P. 971 (1911).

**"Any person" does not include servant injured by negligence of fellow-servant.** The rule of the common law, that the servant assumes all the ordinary risks of the service upon which he enters, including those risks which arise from the negligence of other servants of the same master in the same employment, is not abrogated by this section, and the words "any person" do not include servants of the same master injured by the negligence of a fellow-servant while acting in the common employment. *Atchison, T. & S. F. R. R. v. Farrow*, 6 Colo. 498 (1883).

**Subsection (2) refers to statute of descent and distribution in effect at time section is applied.** In *re Arrington v. Arrington*, 618 P.2d 744 (Colo. App. 1980).

**Statute as basis for jurisdiction.** See *First Nat'l Bank v. Rostek*, 182 Colo. 437, 514 P.2d 314 (1973); *Ellerman v. Amax, Inc.*, 194 Colo. 392, 572 P.2d 836 (1977).

**Applied** in *Berry Constr., Inc. v. Indus. Comm'n*, 39 Colo. App. 251, 567 P.2d 806 (1977); *Espinoza v. O'Dell*, 633 P.2d 455

(Colo. 1981); in re Estate of Daigle, 634 P.2d 71 (Colo. 1981).

#### B. Damages.

**There is no absurdity in a legislative decision to authorize in effect an award of different amounts depending on whether an insured is injured or killed** in an accident. Kline v. Am. States Ins. Co., 924 P.2d 1150 (Colo. App. 1996).

**The amount of recovery under this section depends on** the degree of culpability of the defendant. Clint v. Stolworthy, 144 Colo. 597, 357 P.2d 649 (1960).

**It is exclusively the province of the jury to estimate and assess the damages,** and the amount to be allowed in such cases rests largely in their sound discretion. Dawkins v. Chavez, 132 Colo. 61, 285 P.2d 821 (1955).

**Funeral expense is an item of recovery under the wrongful death statute,** but in no event can recovery exceed the amount provided by statute. McEntyre v. Jones, 128 Colo. 461, 263 P.2d 313 (1953); Kling v. Phayer, 130 Colo. 158, 274 P.2d 97 (1954); Espinoza v. Gurule, 144 Colo. 381, 356 P.2d 891 (1960).

**Funeral expenses may be recovered by the parents of a deceased child in an action independent** of this article where an alleged financial loss results to parents from negligence on the part of another. Espinoza v. Gurule, 144 Colo. 381, 356 P.2d 891 (1960).

**This section's remedy is not exclusive.** While funeral expenses are recoverable in an action under this article, the remedy

provided therein is not exclusive. Espinoza v. Gurule, 144 Colo. 381, 356 P.2d 891 (1960).

**Federal civil rights claim for damages under 42 U.S.C. § 1983 cannot be limited** by Colorado's survival statute, § 13-20-101, or this section. White v. Talboys, 573 F. Supp. 49 (D. Colo. 1983).

**For damages resulting from a wrongful death accident,** see Kling v. Phayer, 130 Colo. 158, 274 P.2d 97 (1954).

## II. WHO MAY RECOVER.

**The paragraphs of subsection (1) are intended to take rank and have effect in the order in which they occur,** and their true meaning may be stated in this way: If the deceased leave a husband or wife, the sole right of action will be in such survivor, save that, as against children, the right will be lost unless asserted by suit within one year; but if there be no surviving husband or wife, or the survivor fails to sue within one year, then the sole right of action will be in the children; and if there be no surviving husband or wife, nor any child, then, and then only, will the right of action be in the father and mother, or the survivor of them. The first subdivision does not make the right of the husband or wife dependent upon the majority of the deceased, nor does the second make the right of the children dependent upon his majority or upon his being married at the time of his death; and as the third is evidently designed to take rank and have effect in subordination to the other two, we think it should be interpreted as if it read: "If such deceased be a minor or unmarried, and leave no surviving husband

or wife and no surviving child, then by the father and mother". In no other way can the three subdivisions be completely harmonized without violating the sense of the statute as a whole. *Hopper v. Denver & R. G. R. R.*, 155 F. 273 (8th Cir. 1907); *Clint v. Stolworthy*, 144 Colo. 597, 357 P.2d 649 (1960).

**No one can invoke this section except the class of persons listed in the subdivisions.** The wrongful death statute cannot be invoked where deceased is not survived by a husband or children, nor a father or mother, to which the statute limits such an action. *Kling v. Phayer*, 130 Colo. 158, 274 P.2d 97 (1954).

**This act makes no distinction between citizens and aliens, residents, and nonresidents;** and public policy does not require the making of any such discrimination. Indeed, the policy of the state would seem to require that no such discrimination should be made. *Patek v. Am. Smelting & Ref. Co.*, 154 F. 190 (8th Cir. 1907); *Ferrara v. Auric Mining Co.*, 43 Colo. 496, 95 P. 952 (1908).

**The right to sue is vested, in the first instance, in the surviving husband or wife** to the exclusion of all others; and the existence of the right in the second class named is wholly dependent upon the fact that there be neither husband nor wife surviving, or that he or she shall have waived the right by failing to sue in the time prescribed; thus evincing an intention on the part of the law-making power to confer the right of action upon the second class, only in the event the decedent, at the time of death,

was, or had been, a married person, and should leave surviving lineal descendants. *Hindry v. Holt*, 24 Colo. 464, 51 P. 1002 (1897); *Hahn v. Union P. R. R.*, 162 F. Supp. 558 (D. Colo. 1958); *Clint v. Stolworthy*, 144 Colo. 597, 357 P.2d 649 (1960).

The surviving spouse has the exclusive right to bring the action within the first year from the date of death. *Peck v. Taylor*, 38 Colo. App. 90, 554 P.2d 698 (1976); *Campbell v. Shankle*, 680 P.2d 1352 (Colo. App. 1984).

The sole right to bring an action for wrongful death within the first year after the death is with the surviving husband or wife. *Niven v. Falkenburg*, 553 F. Supp. 1021 (D. Colo. 1983).

**Surviving spouse is authorized to sue in his or her own name without joining decedent's children,** who are real parties in interest. *Howlett v. Greenberg*, 34 Colo. App. 356, 530 P.2d 1285 (1974).

**This section does not limit the widow's cause of action to one year.** *Hayes v. Williams*, 17 Colo. 465, 30 P. 352 (1892); *Hahn v. Union P. R. R.*, 162 F. Supp. 558 (D. Colo. 1958).

**It simply declares that if she does not sue within that time the heirs may bring an action.** *Hahn v. Union P. R. R.*, 162 F. Supp. 558 (D. Colo. 1958).

**When spouse may sue after first year.** If the spouse does not sue within the first year, the heir or heirs may bring an action during the second year, but, if the heirs have not instituted proceedings, the spouse can maintain an action at any time before the

expiration of the two years. *Peck v. Taylor*, 38 Colo. App. 90, 554 P.2d 698 (1976) (expressly disapproved in *Pub. Serv. Co. v. District Court*, 674 P.2d 383 (Colo. 1984)); *Murphy v. Colo. Aviation, Inc.*, 41 Colo. App. 237, 588 P.2d 877 (1978).

**In general the spouse's right to maintain an action continues throughout the two years.** *Peck v. Taylor*, 38 Colo. App. 90, 554 P.2d 698 (1976).

The real purpose of this section was simply to give the surviving wife or husband preference during the first year; but not to estop her or him from maintaining an action at any time before the expiration of the second year. *Peck v. Taylor*, 38 Colo. App. 90, 554 P.2d 698 (1976).

**Children may bring suit within the first year only if** there is no surviving spouse. *Niven v. Falkenburg*, 553 F. Supp. 1021 (D. Colo. 1983).

**A surviving spouse's earlier settlement of a wrongful death claim precludes an heir's subsequent wrongful death claim.** *Barnhart v. Am. Furniture Warehouse Co.*, 2013 COA 158, 338 P.3d 1027.

**Action by spouse and daughter as coplaintiffs.** A wrongful death action instituted the second year after the death by both the surviving spouse and the daughter as coplaintiffs can be maintained by both plaintiffs. *Peck v. Taylor*, 38 Colo. App. 90, 554 P.2d 698 (1976).

An action filed by both surviving spouse and daughter does not operate against the interests of either. Consequently, since the purpose of the statute is to compensate those

who sustain pecuniary injury by the loss of the life of a spouse or parent, retention of both husband and daughter as parties plaintiff is proper. *Peck v. Taylor*, 38 Colo. App. 90, 554 P.2d 698 (1976).

**This section requires proportionate division among the heirs** when a widow obtains a judgment. *Clint v. Stolworthy*, 144 Colo. 597, 357 P.2d 649 (1960).

**When multiple plaintiffs bring a wrongful death action and the plaintiffs only seek damages for noneconomic losses**, each plaintiff does not need to establish that he or she personally suffered damages for noneconomic losses to remain a party to the action. *Reigel v. SavaSeniorCare L.L.C.*, 292 P.3d 977 (Colo. App. 2011).

**Presumption that spouse will make good faith effort to represent rights of decedent's children.** Implicit in this statute is a presumption that the surviving spouse will make a good faith effort to represent adequately the rights of all decedent's children, regardless of whether the surviving spouse is their natural parent. *Howlett v. Greenberg*, 34 Colo. App. 356, 530 P.2d 1285 (1974).

**Insurance companies have no common law duty to assure distribution of settlement proceeds.** Where insurers distributed settlement proceeds to the surviving spouse in a wrongful death action, the insurers satisfied their statutory duty and are not required to monitor the distribution of the proceeds to all potential beneficiaries. *Campbell v. Shankle*, 680 P.2d 1352 (Colo. App. 1984).

**Heirs preempted if spouse sues.** A spouse, having elected to sue pursuant to this section, preempts the heirs at law from ever bringing a subsequent action. *Howlett v. Greenberg*, 34 Colo. App. 356, 530 P.2d 1285 (1974).

**Heirs at law have proprietary interest in judgment** resulting from the lawsuit in accordance with the applicable rules of descent and distribution. *Howlett v. Greenberg*, 34 Colo. App. 356, 530 P.2d 1285 (1974).

**What their right to sue depends on.** The right to sue of the heirs (interpreted as lineal descendants for the purposes of this portion of the statute) depends on either there being no surviving spouse or on the spouse's not having sued during the first year. *Peck v. Taylor*, 38 Colo. App. 90, 554 P.2d 698 (1976).

**Intervention by heirs if spouse elects to abandon cause.** Where the surviving spouse sues under this section and subsequent thereto elects to abandon the litigation against the wishes of the other heirs at law, they are entitled to intervene pursuant to C.R.C.P. 24(a)(2), for the purpose of continuing the litigation. *Howlett v. Greenberg*, 34 Colo. App. 356, 530 P.2d 1285 (1974).

**General assembly did not intend to grant exclusive control of litigation to spouse** where there is a showing of inadequate representation of decedent's children's rights. *Howlett v. Greenberg*, 34 Colo. App. 356, 530 P.2d 1285 (1974).

**Automatic intervention by parties represented by spouse contrary to section's intent.** To allow all parties whose interests are represented by the surviving spouse an automatic right of intervention in pending litigation would be contrary to the intent of the statute vesting the surviving spouse with the exclusive right to sue and would result in confusion and controversy in litigating a wrongful death action. *Howlett v. Greenberg*, 34 Colo. App. 356, 530 P.2d 1285 (1974).

**The words "heir or heirs", in the second paragraph of subsection (1), mean child or children,** that is, lineal descendants. *Hindry v. Holt*, 24 Colo. 464, 51 P. 1002 (1897); *Hopper v. Denver & R. G. R. R.*, 155 F. 273 (8th Cir. 1907); *Grogan v. Denver & R. G. R. R.*, 56 Colo. 450, 138 P. 764 (1914); *Rocky Mt. Fuel Co. v. Kovaics*, 26 Colo. App. 554, 144 P. 863 (1914); *Page v. Elwell*, 81 Colo. 73, 253 P. 1059 (1927); *Blom v. United Air Lines*, 152 Colo. 486, 382 P.2d 993 (1963); *McGill v. GMC*, 174 Colo. 388, 484 P.2d 790 (1971); *Howlett v. Greenberg*, 34 Colo. App. 356, 530 P.2d 1285 (1974); *McCord v. Affinity Ins. Group, Inc.*, 13 P.3d 1224 (Colo. App. 2000).

**The term "heirs" as used in this section refers only to lineal descendants of the deceased and does not include the deceased's parents.** *Whitenhill v. Kaiser Permanente*, 940 P.2d 1129 (Colo. 1997).

**An adult adoptee is a lineal descendant of a decedent,** and therefore an "heir". *Ferguson v. Spalding Rehab., LLC*, 2019 COA 93, 456 P.3d 59.

**Heirs do not include brothers and sisters of deceased.** Hindry v. Holt, 24 Colo. 464, 51 P. 1002 (1897), distinguishing Denver S. R. & P. R. R. v. Wilson, 12 Colo. 20, 20 P. 340 (1888); Grogan v. Denver & R. G. R. R., 56 Colo. 450, 138 P. 764 (1914); Blom v. United Air Lines, 152 Colo. 486, 382 P.2d 993 (1963); Ablin v. Richard O'Brien Plastering Co., 885 P.2d 289 (Colo. App. 1994).

**Sister cannot recover.** This section does not provide for a cause of action by a deceased minor's sister. Sager v. City of Woodland Park, 543 F. Supp. 282 (D. Colo. 1982).

**Under this section the parents of an unmarried adult are entitled** to recover their pecuniary loss resulting from his death from the negligence of another. Denver, S. P. & P. R. R. v. Wilson, 12 Colo. 20, 20 P. 340 (1888).

**Decedent's parents may not bring a wrongful death action if there is a surviving child** of the deceased. Pub. Serv. Co. v. District Court, 674 P.2d 383 (Colo. 1984).

**Plaintiff may bring a cause of action that would have belonged to the decedent had he survived.** A claim that could have been brought by a plaintiff on behalf of a minor decedent if he had survived is barred unless brought under the wrongful death act. Hale v. Morris, 725 P.2d 26 (Colo. App. 1986).

**"Father or mother" should be read "father and mother".** The true reading of the words "father or mother" in the third

paragraph is "father and mother"; such is the language of the first official publication; and such is the language of the enrolled bill in the office of the secretary of state. Pierce v. Conners, 20 Colo. 178, 37 P. 721 (1894); Hopper v. Denver & R. G. R. R., Co., 155 F. 273 (8th Cir. 1907).

**The legislature did not bar or reduce recovery for parents, who have abandoned, deserted or failed to support a child under this section.** Therefore, subsection (1)(c) allows both parents to share equally in any judgment and does not require a parent to have a close relationship with the deceased child. Brill v. Hughes, 958 P.2d 529 (Colo. App. 1998).

**Father and mother may be joined.** Under this section, if the deceased was a minor, the father and mother may join in the suit and each shall have an equal interest in the judgment; but the joining of the father and mother is permissive, not imperative; either may sue alone. Pierce v. Conners, 20 Colo. 178, 37 P. 721 (1894); Phillips v. Denver City Tramway Co., 53 Colo. 458, 128 P. 460 (1912).

**Even after judgment or review.** A parent not joined, but entitled to join, in a suit under this section may be made a party on his or her application at any time, even after judgment or after review in an appellate court, for the purpose of protecting the interest which he or she may have in the judgment. Pierce v. Conners, 20 Colo. 178, 37 P. 721 (1894); Phillips v. Denver City Tramway Co., 53 Colo. 458, 128 P. 460 (1912).

**The joinder or nonjoinder of a parent is material only to the parents themselves;** the defendant cannot be prejudiced by the nonjoinder of one of them; the measure of recovery is the same whether the action be brought in the name of one or both; the defendant can only be subjected to a single suit. *Pierce v. Conners*, 20 Colo. 178, 37 P. 721 (1894).

**"Unmarried" is not limited to those who have never been married.** The great weight of authority as to the meaning of the word "unmarried", as defined by lexicographers and law writers, and as construed by courts, includes within the term not only those who have not been married, but who are at the time unmarried. *Myers v. Denver & R. G. R. R.*, 61 Colo. 302, 157 P. 196 (1916).

**Deceased's marital status is determined at time of death.** Deceased woman was married at the time of her death. Prior to filing suit, her husband died without heirs. Woman's parents lacked standing to bring wrongful death action because under this statute parents of a deceased adult may bring a wrongful death action only if the deceased is unmarried and without descendants. *Hansen v. Barron's Oilfield Serv., Inc.*, 2018 COA 132, 429 P.3d 101.

**Parents have right to support and maintenance from children.** As a matter of sentiment, life has no pecuniary value, but considered with reference to the relations of deceased with others, it is capable of such estimate. In this sense a parent is entitled to the services of children during their minority, and to support and maintenance

from them in his declining years. *Dawkins v. Chavez*, 132 Colo. 61, 285 P.2d 821 (1955).

**Parent need not show deceased child's pecuniary value to them.** It is not necessary for a husband and wife, in order to recover for the death of an adult child, to prove loss of food, clothing, shelter, or care which may be measured in dollars and cents. The court may consider the loss of a legal obligation for future financial support, bodily care, and intellectual care. *Stevens v. Strauss*, 147 Colo. 547, 364 P.2d 382 (1961).

**The mental, moral, and physical characteristics of the child must be considered as well** as the expectation of life in determining the pecuniary aid which she would probably give to the parents and the probable future earning capacity of the child. *Stevens v. Strauss*, 147 Colo. 547, 364 P.2d 382 (1961).

**Adoptive parent cannot recover when one over 21 is adopted.** Where one over the age of 21 years is adopted as an heir-at-law by another person, such adoptive parent is without legal status to maintain action under the wrongful death statute for the death of such adopted person. *Martin v. Cuellar*, 131 Colo. 117, 279 P.2d 843 (1955).

**An equitably adopted child is not an "heir" for purposes of this section.** *Herrera v. Glau*, 772 P.2d 682 (Colo. App. 1989).

**Parents of child who is married and of age have no cause.** Under the wrongful death statute the parents of a child who is both married and of age at the time of his death have no standing to maintain such an

action. *McGill v. GMC*, 174 Colo. 388, 484 P.2d 790 (1971).

**Parents of child who was married and of age have no cause of action.** Further, parents cannot represent purported common-law widow because they have adverse interests to such widow. *Potter v. Thieman*, 770 P.2d 1348 (Colo. App. 1989).

**Court's decision that overrules prior case law by precluding any claim for relief by a surviving spouse commenced after the first anniversary of the spouse's death** need not be applied retroactively if it creates an injustice and hardship in the case at bar. *Williams v. Trailmobile, Inc.*, 745 P.2d 267 (Colo. App. 1987) (decided prior to 1988 amendment repealing and reenacting paragraphs (a) to (c) of subsection (1)).

**If surviving spouse fails to sue**, the spouse loses not only the right to sue, but the right to share in the proceeds of any award made to the children. *Landsberg v. Hutsell*, 837 P.2d 205 (Colo. App. 1992) (decided under law in effect prior to the 1988 amendment repealing and reenacting paragraphs (a) to (c) of subsection (1)); *Champlin v. Burlington N. Santa Fe Corp.*, 385 F. Supp. 2d 720 (N. Dist. Ill. 2005).

**Where divorced parents' son was killed in an automobile accident, and each parent had a separate policy applicable to the accident that provided up to \$100,000 for damages arising from an accident involving an underinsured motor vehicle**, and the driver's policy had a liability limit of \$100,000, the driver was obligated to pay \$50,000 to each parent. As a result, for purposes of each parent's policy, \$50,000

was paid to a person "other than an insured injured person in the accident", namely, the other parent. Hence, the driver's vehicle was underinsured under the terms of each policy. Under the provisions of this section, each parent could recover up to \$75,000 in uninsured motorist (UIM) benefits, and insurer was potentially liable under each parent's UIM policy for such amount. *Kline v. Am. States Ins. Co.*, 924 P.2d 1150 (Colo. App. 1996).

### III. DEFENSES.

A. In General.

B. Negligence Required.

C. Contributory Negligence.

A. In General.

**Person riding freight train without paying fare is not a passenger.** A person who is riding upon a freight train without paying fare, and after having been refused permission to ride by the conductor, is not a passenger within the meaning of this section. *Atchison, T. & S. F. R. R. v. Headland*, 18 Colo. 477, 33 P. 185 (1893).

**The fact that deceased was riding on free pass is no defense.** In an action under this section, it is no defense to the action that the deceased was riding upon a free pass, stipulating that the passenger "assumes all risks of accident and the company shall not be liable, under any circumstances, whether of negligence by its agents or others". *Denver & R. G. R. R. v. Frederic*, 57 Colo. 90, 140 P. 463 (1914).

**Pass is properly excluded as evidence.** From the nature, purposes, and objects of



this section, it is manifest that the cause of action is one in which the deceased had no interest at all, and from the liability for which he could not relieve the company by a contract with it. It, therefore, follows that a free pass, and the contract included in it, offered in evidence is incompetent and immaterial, and is properly excluded. *Denver & R. G. R. R. v. Frederic*, 57 Colo. 90, 140 P. 463 (1914).

**Section not applicable when decedent killed by police.** This and § 13-21-202 entitle certain classes of survivors of a person killed to damages in the manner and to the extent prescribed but do not apply in an action by a wife to recover against bondsmen of public peace officers who killed her husband. *People ex rel. Putnum v. United States Fid. & Guar. Co.*, 99 Colo. 64, 59 P.2d 796 (1936).

**Rights not waived by claim under workmen's compensation act.** The general proposition that a person who has a cause of action against a third party tortfeasor for damages for wrongful death or injury does not lose or waive it by exercising another right based on a claim for workman's compensation is settled beyond dispute in this jurisdiction. *Drake v. Hodges*, 114 Colo. 10, 161 P.2d 338 (1945).

**Guest statute (repealed § 42-9-101) limited recovery under the wrongful death act.** There being no recovery for death except under the provisions of the wrongful death statute, and the guest statute specifically precluding recovery for death except under the conditions therein specified, the guest statute was held to apply

to and limit recovery under the wrongful death statute. *Taylor v. Welle*, 143 Colo. 37, 352 P.2d 106 (1960).

#### B. Negligence Required.

**Negligence must be affirmatively established by a preponderance of the evidence.** It is well established that in a case of this kind the plaintiff is not entitled to recover unless the negligence of the defendant is affirmatively established by a preponderance of the evidence. *Denver & R. G. R. R. v. Ryan*, 17 Colo. 98, 28 P. 79 (1891).

**Accident caused by defect in road or machinery, or carelessness of defendant's agents, is prima facie evidence of negligence,** and the defendant must establish affirmatively that no negligence existed on its part. *Kansas Pac. Ry. v. Miller*, 2 Colo. 442 (1874).

**Construction of new bridge in different manner is not admission of negligence.** In action by administrator for injuries resulting in the death of his intestate, by the subversion of a bridge on defendant's railway, by which the train wherein intestate was traveling was wrecked, it was held that the subsequent construction of a new bridge over the same channel, in a different manner, amounted to an admission that the former one was improperly constructed, but not that these defects were attributable to negligence. *Kansas Pac. Ry. v. Miller*, 2 Colo. 442 (1874).

**Evidence as to health, age, earning capacity, and contributions of deceased is inadmissible.** Because of the penal

character of this section, and the rights of the plaintiffs and the liability of the defendant as therein defined, evidence showing the character, habits, health, age, and earning capacity of the deceased, and the contributions by him to the support of his parents, was inadmissible. *Denver & R. G. R. R. v. Frederic*, 57 Colo. 90, 140 P. 463 (1914).

**Presumption of negligence may be rebutted.** If a railroad car is overturned, and a passenger in consequence is killed, a presumption arises that the casualty was the result of negligence, but this presumption may be rebutted by the company, by showing that the accident itself was such that human prudence and foresight could not have guarded against it. *Denver Ry. v. Woodward*, 4 Colo. 1 (1877).

#### C. Contributory Negligence.

**Contributory negligence of decedent bars wrongful death action.** Where a driver of an automobile with ample opportunity to observe an oncoming train at a highway crossing, either failed to look or having looked failed to see the approaching train, he was guilty of contributory negligence, constituting a proximate cause of the accident, and recovery for wrongful death was barred. *Union P. R. R. v. Larson*, 153 Colo. 354, 386 P.2d 583 (1963).

**Contributory negligence on the part of the person entitled to recover is a defense** to an action brought under this section or § 13-21-202. *Willy v. Atchison, T. & S. F. Ry.*, 115 Colo. 306, 172 P.2d 958 (1946).

**Contributory negligence of infant's father is not imputable to mother.** Where husband and wife unite as joint plaintiffs in an action for the death of a child, the negligence of the husband contributing to the death is not to be imputed to the wife, unless in the acts producing the injury, he was acting as her agent, or they were jointly engaged in the prosecution of a common enterprise. If the father is convicted of contributory negligence, the jury may ascertain the amount to be awarded to the mother. *Phillips v. Denver City Tramway Co.*, 53 Colo. 458, 128 P. 460 (1912).

**Issues of negligence and proximate cause to be determined by trier of fact.** In an action for wrongful death of a child, where the issues of primary negligence, contributory negligence, and proximate cause presented clearly disputed issues of fact, findings made by the trier of facts on such disputed evidence will not be disturbed on review if supported by credible evidence. *Herbertson v. Russell*, 150 Colo. 110, 371 P.2d 422 (1962).

**Instruction as to duty to look and listen permissible.** The learned judge who presided at the trial very properly charged the jury that, "as a matter of law it is negligence and carelessness for a person to go, stand, or be upon the track of a railroad without keeping watch both ways for trains"; and further, that it was the duty of deceased in going upon the track of the defendant company "to look and listen for the approach of trains and observe the surroundings", and that if he failed so to do, it was negligence on his part. *Denver & R.*

G. R. R. v. Ryan, 17 Colo. 98, 28 P. 79 (1891).

### **13-21-202. Action notwithstanding death.**

When the death of a person is caused by a wrongful act, neglect, or default of another, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who or the corporation which would have been liable, if death had not ensued, shall be liable in an action for damages notwithstanding the death of the party injured.

**Source:** G.L. § 878. G.S. § 1031. R.S. 08: § 2057. C.L. § 6303. CSA: C. 50, § 2. CRS 53: § 41-1-2. C.R.S. 1963: § 41-1-2.

## **ANNOTATION**

I. General Consideration.

II. Negligence.

III. Pleading and Practice.

### **I. GENERAL CONSIDERATION.**

**Law reviews.** For note, "The Effect of the Wrongdoer's Death Upon an Action for Wrongful Death", see 22 Rocky Mt. L. Rev. 99 (1949). For comment discussing the interplay between actions brought pursuant to 42 U.S.C. § 1983 and the state wrongful death statute, see 55 Den. L. J. 291 (1978). For article, "Measures of Economic Loss in the Wrongful Death of a Child", see 14 Colo. Law. 392 (1985).

**Primary purpose of the wrongful death statute** is to compensate those who suffer a direct loss from the death. Barnhill v. Pub. Serv. Co., 649 P.2d 716 (Colo. App. 1982), aff'd, 690 P.2d 1248 (Colo. 1984).

**No right of action existed at common law.** No right of action for damages resulting from death through wrongful act or negligence was given by the common law, and such right exists only by virtue of this section. Hindry v. Holt, 24 Colo. 464, 51 P. 1002 (1897); Fish v. Liley, 120 Colo. 156, 208 P.2d 930 (1949); Taylor v. Welle, 143 Colo. 37, 352 P.2d 106 (1960).

**Cause of action for wrongful death is created by statute.** Mangus v. Miller, 35 Colo. App. 335, 535 P.2d 219 (1975).

Since Colorado law does not recognize the existence of a wrongful death action other than that created and defined by statute, the special statute of limitations made part of this act applies to wrongful death actions arising from alleged medical malpractice, absent a specific, valid exception provided by the general assembly. Weedon v. United States, 509 F. Supp. 1052 (D. Colo. 1981).

**Such action is separate and distinct from the action deceased would have had if he or she had survived,** even though plaintiff's cause of action under the statute arises only if the deceased would have been entitled to bring an action had he or she survived. *Mangus v. Miller*, 35 Colo. App. 335, 535 P.2d 219 (1975).

A plaintiff's right to pursue a wrongful death action is derived from and dependent upon the decedent's right to have maintained an action had death not ensued. *Crownover v. Gleichman*, 38 Colo. App. 96, 554 P.2d 313 (1976), *aff'd*, 194 Colo. 48, 574 P.2d 497 (1977); *Rowan v. Vail Holdings, Inc.*, 31 F. Supp. 2d 889 (D. Colo. 1998).

**The constitutionality of this act has never been questioned.** The general assembly had the undoubted authority to give certain representatives of deceased a right of action against the person causing his death by negligence or wrongful act. *Vindicator Consol. Gold Mining Co. v. Firstbrook*, 36 Colo. 498, 86 P. 313 (1906).

**The statutory sections were enacted to preserve a right of action.** This and the following section were enacted for the purpose of preserving to the surviving relatives designated in § 13-21-201, a right of action that would else have failed by the decease of the party injured. They are in aid of the common law, not in derogation thereof. *Hayes v. Williams*, 17 Colo. 465, 30 P. 352 (1892); *Denver & R. G. R. v. Frederic*, 57 Colo. 90, 140 P. 463 (1914).

The wrongful death statute creates a claim for relief and an entitlement to damages for parties who have not themselves been

directly injured by the actions of the tortfeasor. *Espinoza v. O'Dell*, 633 P.2d 455 (Colo. 1981).

**Sections should receive a liberal construction.** The provisions of this and the following section should unquestionably receive a liberal construction. *Hayes v. Williams*, 17 Colo. 465, 30 P. 352 (1892).

**The death act is not in its essence a "survival" statute,** but operates to create a new cause of action. *Fish v. Liley*, 120 Colo. 156, 208 P.2d 930 (1949).

**Plaintiff's right of action under this section was in existence and inchoate** at the time of the commission of the wrongful act by the tortfeasor resulting thereafter in the death of decedent. *Fish v. Liley*, 120 Colo. 156, 208 P.2d 930 (1949).

**This section is remedial,** the recovery being limited by § 13-21-203 to the pecuniary loss resulting from the death to the party who may be entitled to sue. *Hayes v. Williams*, 17 Colo. 465, 30 P. 352 (1892); *Clint v. Stolworthy*, 144 Colo. 597, 357 P.2d 649 (1960).

**The damages collectible under this section are compensatory only;** pecuniary loss must be shown by those who bring the action. *Rigot v. Conda*, 134 Colo. 375, 304 P.2d 629 (1956); *Denver & R. G. W. R. R. v. Clint*, 235 F.2d 445 (10th Cir. 1956); *Mosley v. Prall*, 158 Colo. 504, 408 P.2d 434 (1965).

**A common carrier may properly be sued under either this or the preceding section.** If this were not so, certain forms of negligence on the part of a common carrier, which are clearly not within the narrower

limits of § 13-21-101, could cause death without entailing any liability whatever, though any other kind of corporation would under the same conditions be held responsible by virtue of this section. *Friedrichs v. Denver Tramway Corp.*, 93 Colo. 539, 27 P.2d 497 (1933).

**The wrongful death statute did not create a right of action independent of the guest statute (repealed § 42-9-101)** but was subject to the limitations the latter imposed. *Taylor v. Welle*, 143 Colo. 37, 352 P.2d 106 (1960).

**Any recovery under this section is controlled and must be distributed** under the provisions of § 13-21-201, this without regard to whether or not an heir entitled to share suffered damages. *Clint v. Stolworthy*, 144 Colo. 597, 357 P.2d 649 (1960).

**The operative injury for purposes of a wrongful death action is the wrongful death itself;** thus the \$150,000 per injury damages cap in the Colorado Governmental Immunity Act does not apply separately to each party in a wrongful death action but rather to the wrongful death action as a whole. *Steedle v. Sereff*, 167 P.3d 135 (Colo. 2007).

Section 24-10-103 (2) defines an "injury" as including "death"; therefore, the operative injury for purposes of a wrongful death action is the wrongful death itself, and § 24-10-114 (1)(a) limits damages to \$150,000. *Steedle v. Sereff*, 167 P.3d 135 (Colo. 2007).

**Action for wrongful death is property tort action.** An action for wrongful death is an action which may be brought by certain

named survivors of a decedent who sustain a direct pecuniary loss upon the death of the decedent. It is classified as a property tort action and cannot be classified as a tort action "for injuries done to the person". *Jones v. Hildebrant*, 432 U.S. 183 (1977).

**A constitutional claim based on an alleged deprivation of a mother's own rights,** and not on deprivation of those of her son, is not for any "property loss". *Jones v. Hildebrant*, 432 U.S. 183 (1977).

**Asserted breach of warranty is a wrongful act.** Since section refers to "wrongful acts" and not simply "tortious acts", there is no basis for distinguishing between breaches of contractual duties and breaches of tort duties. *Ayala v. Joy Mfg. Co.*, 580 F. Supp. 521 (D. Colo. 1984).

**A child who is born alive and subsequently dies is a person within the meaning of this section.** A wrongful death action may be maintained regardless of whether the child was viable at the time of the injury or whether the child was viable at the time of birth. *Gonzales v. Mascarenas*, 190 P.3d 826 (Colo. App. 2008).

**Applicability of provisions to viable fetus.** A wrongful death action may be maintained for the death of a viable fetus, particularly a full-term fetus. *Espadero v. Feld*, 649 F. Supp. 1480 (D. Colo. 1986).

**Heirs of fatally-injured intoxicated person may not maintain wrongful death action against vendor of alcoholic beverages** because § 12-47-128.5 abolishes such actions by the consumers of alcohol and this statute permits heirs to maintain

such actions only if the deceased could have done so had the deceased's injuries not been fatal. *Sigman v. Seafood Ltd. P'ship I*, 817 P.2d 527 (Colo. 1991).

**Parents of a deceased convicted inmate may not maintain a wrongful death action against a jail** because § 24-10-106 (1.5)(a) excludes inmates who are incarcerated pursuant to a conviction at the time of their injury from the waiver of the Colorado Governmental Immunity Act and this statute permits injured parties to maintain wrongful death actions only if the deceased could have done so had the deceased's injuries not been fatal. *Duke v. Gunnison County*, 2019 COA 170, 456 P.3d 38.

**Wrongful death action based on theory of negligent entrustment** is derivative and granting of summary judgment motion not proper because genuine issues of material fact remained to be determined. *Casebolt v. Cowan*, 829 P.2d 352 (Colo. 1992).

**Applied** in *In re Estate of Daigle*, 634 P.2d 71 (Colo. 1981); *Dohaish v. Tooley*, 670 F.2d 934 (10th Cir. 1982); *Sager v. City of Woodland Park*, 543 F. Supp. 282 (D. Colo. 1982).

## II. NEGLIGENCE.

**The breach of duty to be established** under the statute is that owed by the tortfeasor to the deceased, not that owed to the heirs of the deceased. *Espinoza v. O'Dell*, 633 P.2d 455 (Colo. 1981).

**In a wrongful death action, negligence is not presumed** from the happening of an accident, although it may be inferred from the surrounding facts and circumstances.

*Ranke v. Fowler Real Estate Co.*, 30 Colo. App. 543, 497 P.2d 268 (1972).

**Questions of fact are for the jury.** In a wrongful death action where two equally plausible conclusions are deducible from the circumstances, the question is for the jury. *Ranke v. Fowler Real Estate Co.*, 30 Colo. App. 543, 497 P.2d 268 (1972).

**It is a question for the jury.** As a matter of law it cannot be said that the negligence of deceased directly contributed to his death, and whether this was true as matter of fact is for the consideration of the jury to whom it is properly referred and by whom it is determined, in conformity with established principles of law. *Kan. Pac. Ry. v. Twombly*, 3 Colo. 125 (1876).

**It is a matter of law when the facts are undisputed.** In a wrongful death action, contributory negligence is a question of law for the court to determine when the facts are undisputed and reasonable men can draw but one inference from them. *Ranke v. Fowler Real Estate Co.*, 30 Colo. App. 543, 497 P.2d 268 (1972).

**For when contributory negligence should be decided as a matter of fact not law**, see *Dillon v. Sterling Rendering Works*, 106 Colo. 407, 106 P.2d 358 (1940).

**Contributory negligence is a defense.** Recovery may be denied because of a deceased employee's contributory negligence in failing to discover defects or weaknesses in machinery or appliances of which he had charge. *Wells v. Coe*, 9 Colo. 159, 11 P. 50 (1886); *Willy v. Atchison, T. &*

S. F. Ry., 115 Colo. 306, 172 P.2d 958 (1946).

**It must be established like other defenses.** The law does not presume contributory negligence; unless appearing in the proofs offered by plaintiff, it is a defense to be established as are other defenses. *Platte & Denver Canal & Milling Co. v. Dowell*, 17 Colo. 376, 30 P. 68 (1892).

**"Loss of a chance of survival" theory of proximate causation.** A plaintiff may recover damages when the defendant's conduct was not the cause of the medical condition which caused the injury but did cause a substantial reduction in the plaintiff's chance of survival. *Mays v. United States*, 608 F. Supp. 1476 (D. Colo. 1985).

**For proximate cause necessary for liability,** see *Ward v. United States*, 208 F. Supp. 118 (D. Colo. 1962).

**For case where proximate cause is lacking,** see *McMillan v. Hammond*, 158 Colo. 40, 404 P.2d 549 (1965).

### III. PLEADING AND PRACTICE.

**Complaint held sufficient.** *Pierce v. Conners*, 20 Colo. 178, 37 P. 721 (1894).

**Plaintiff has burden of establishing prima facie right to punitive damages.** When punitive damages are in issue and information is sought by the plaintiff relating to the defendant's financial condition, justice requires no less than the imposition on the plaintiff of the burden of establishing a prima facie right to punitive damages. *Leidholt v. District Court*, 619 P.2d 768 (Colo. 1980).

**Statute of limitations relating to death cases commences with time of injury.** *Ferrari, S.p.A. SEFAC v. District Court*, 185 Colo. 136, 522 P.2d 105 (1974).

**Exclusion of evidence held harmless.** A wife sued road building contractors for the death of her husband alleged to have been caused by their failure to install sufficient warning signals at a road barrier as required by their contract. On the trial she offered the pertinent provisions of the contract in evidence, which were by the court excluded. The exclusion was harmless because plaintiff's right to sue and defendants' liability were to be determined by the law of negligence and not by provisions of the contract. *Lewis v. La Nier*, 84 Colo. 376, 270 P. 656 (1928).

**Admission of evidence not reversible error.** Admission in evidence of statement of decedent that his family had "turned him down", apparently offered on the theory that it tended to show that plaintiffs suffered no loss, if erroneous, was trivial and not reversible. *Dwinelle v. Union Pac. R. R.*, 104 Colo. 545, 92 P.2d 741 (1939).

**Permissible scope of discovery of defendant's financial worth should include only** material evidence of the defendant's financial worth where a prima facie case for punitive damages has been made, and should be framed in such a manner that the questions proposed are not unduly burdensome. *Leidholt v. District Court*, 619 P.2d 768 (Colo. 1980).

**Extent of discovery of defendant's financial condition not unlimited.** The extent of discovery of defendant's financial

condition, even after a prima facie case for punitive damages is made, is not unlimited. *Leidholt v. District Court*, 619 P.2d 768 (Colo. 1980).

**Specific requests of detailed information may constitute harassment.** Specific questions requesting detailed information regarding the defendant's financial status may constitute unnecessary harassment. *Leidholt v. District Court*, 619 P.2d 768 (Colo. 1980).

**Decedents' ability to accumulate wealth and loss of earning capacity in a certain business are relevant** in a wrongful death action when a material part of the heir's net pecuniary loss is based on the loss of increase in her anticipated inheritance and the estimates and opinions presented were sufficiently grounded in fact to be admissible and probative on the issue of the decedents' earning capacity. *Ford v. Bd. of County Comm'rs*, 677 P.2d 358 (Colo. App. 1983).

**Objections to giving and refusing instructions held without merit** in action under this section by parents for death of minor son. *Windsor Reservoir & Canal Co. v. Smith*, 92 Colo. 464, 21 P.2d 1116 (1933).

**This section relates only to wrongs done within the state**, imposes no duty upon anyone not subject to its jurisdiction, and gives a right of action to persons without its jurisdiction only when they are injured by a wrong done within its jurisdiction. *Patek v. Am. Smelting & Ref. Co.*, 154 F. 190 (8th Cir. 1907).

**The Colorado wrongful death statute does not attempt to give a right of action for wrongful death committed** outside of Colorado. *Stoltz v. Burlington Transp. Co.*, 178 F.2d 514 (10th Cir. 1949); *Estate of Murphy v. Colo. Aviation, Inc.*, 353 F. Supp. 1095 (D. Colo. 1973).

**Lex loci governs where injury occurred outside state.** In an action for wrongful death where the injury occurred outside of the state in which the action is brought, the amount of recovery is governed by the lex loci and not by the lex fori. *Stoltz v. Burlington Transp. Co.*, 178 F.2d 514 (10th Cir. 1949).

**Mere disagreement with the amount of damages awarded** is not a sufficient ground to overturn an award of damages which is supported by competent evidence in the record. *Morrison v. Bradley*, 655 P.2d 385 (Colo. 1982).

### **13-21-203. Limitation on damages.**

(1) (a) All damages accruing under section 13-21-202 shall be sued for and recovered by the same parties and in the same manner as provided in section 13-21-201, and in every such action the jury may give such damages as they may deem fair and just, with reference to the necessary injury resulting from such death, including damages for noneconomic loss or injury as defined in section 13-21-102.5 and subject to the limitations of this section and including within noneconomic loss or injury damages for grief, loss of companionship, pain and suffering, and



emotional stress, to the surviving parties who may be entitled to sue; and also having regard to the mitigating or aggravating circumstances attending any such wrongful act, neglect, or default; except that, if the decedent left neither a widow, a widower, minor children, nor a dependent father or mother, the damages recoverable in any such action shall not exceed the sum of two million one hundred twenty-five thousand dollars in any wrongful death action or binding arbitration filed on or after January 1, 2025, and before January 1, 2026, or any wrongful death claim that accrues on or after January 1, 2025, in which damages for derivative or direct noneconomic loss or injury may be awarded, unless the wrongful act, neglect, or default causing death constitutes a felonious killing, as defined in section 15-11-803 (1)(b), and as determined in the manner described in section 15-11-803 (7), in which case there shall be no limitation on the damages for noneconomic loss or injury recoverable in such action. No action shall be brought and no recovery shall be had under both section 13-21-201 and section 13-21-202, and in all cases the plaintiff is required to elect under which section he or she will proceed. There shall be only one civil action under this part 2 for recovery of damages for the wrongful death of any one decedent. Notwithstanding anything in this section or in section 13-21-102.5 to the contrary, there shall be no recovery under this part 2 for noneconomic loss or injury in excess of two million one hundred twenty-five thousand dollars in any wrongful death action or binding arbitration filed on or after January 1, 2025, and before January 1, 2026, or any wrongful death claim that accrues on or after January 1, 2025, in which damages for derivative or direct noneconomic loss or injury may be awarded, unless the wrongful act, neglect, or default causing death constitutes a felonious killing, as defined in section 15-11-803 (1)(b), and as determined in the manner described in section 15-11-803 (7). Damages arising from claims brought against a public entity or public employee, as defined in section 24-10-103, shall be controlled by the damage limitations set forth in section 24-10-114.

(b) Notwithstanding the limitation set forth in subsection (1)(a) of this section or in section 13-64-302 (1):

(I) Effective January 1, 2025, the total amount recoverable for derivative or direct noneconomic loss or injury, as defined in section 13-64-302 (1)(a)(I) and (1)(a)(II), in any civil action or binding arbitration for damages in tort brought against a health-care professional, as defined in section 13-64-202 (4), or a health-care institution, as defined in section 13-64-202 (3), based on a claim of wrongful death of a patient shall not exceed five hundred fifty-five thousand dollars, which amount applies to acts or omissions occurring on or after January 1, 2025, but before January 1, 2026.

(II) Effective January 1, 2026, the total amount recoverable for derivative or direct noneconomic loss or injury, as defined in section 13-64-302 (1)(a)(I) and (1)(a)(II), in any civil action or binding arbitration for damages in tort brought against a health-care professional, as defined in section 13-64-202 (4), or a health-care institution, as defined in section 13-64-202 (3), based on a claim of wrongful death of a patient shall not exceed eight hundred ten thousand

dollars, which amount applies to acts or omissions occurring on or after January 1, 2026, but before January 1, 2027.

(III) Effective January 1, 2027, the total amount recoverable for derivative or direct noneconomic loss or injury, as defined in section 13-64-302 (1)(a)(I) and (1)(a)(II), in any civil action or binding arbitration for damages in tort brought against a health-care professional, as defined in section 13-64-202 (4), or a health-care institution, as defined in section 13-64-202 (3), based on a claim of wrongful death of a patient shall not exceed one million sixty-five thousand dollars, which amount applies to acts or omissions occurring on or after January 1, 2027, but before January 1, 2028.

(IV) Effective January 1, 2028, the total amount recoverable for derivative or direct noneconomic loss or injury, as defined in section 13-64-302 (1)(a)(I) and (1)(a)(II), in any civil action or binding arbitration for damages in tort brought against a health-care professional, as defined in section 13-64-202 (4), or a health-care institution, as defined in section 13-64-202 (3), based on a claim of wrongful death of a patient shall not exceed one million three hundred twenty thousand dollars, which amount applies to acts or omissions occurring on or after January 1, 2028, but before January 1, 2029.

(V) Effective January 1, 2029, the total amount recoverable for derivative or direct noneconomic loss or injury, as defined in section 13-64-302 (1)(a)(I) and (1)(a)(II), in any civil action or binding arbitration for damages in tort brought against a health-care professional, as defined in section 13-64-202 (4), or a health-care institution, as defined in section 13-64-202 (3), based on a claim of wrongful death of a patient shall not exceed one million five hundred seventy-five thousand dollars, which amount applies to acts or omissions occurring on or after January 1, 2029, but before January 1, 2030.

(VI) Effective January 1, 2030, the limitation on damages specified in subsection (1)(b)(V) of this section shall be adjusted in accordance with section 13-21-203.7 (4).

(VII) The limitations of subsection (1)(b)(I) of this section are not applicable to a health-care professional who is a public employee under the "Colorado Governmental Immunity Act" and are not applicable to a certified health-care institution that is a public entity under the "Colorado Governmental Immunity Act".

(2) This section shall apply to a cause of action based on a wrongful act, neglect, or default occurring on or after July 1, 1969. A cause of action based on a wrongful act, neglect, or default occurring prior to July 1, 1969, shall be governed by the law in force and effect at the time of such wrongful act, neglect, or default.

(3) (a) In all actions brought under section 13-21-201 or 13-21-202 in which damages are assessed by the trier of fact, and the death complained of is attended by circumstances of fraud, malice, or willful and wanton conduct, the trier of fact, in addition to the actual damages, may

award reasonable exemplary damages. The amount of such reasonable exemplary damages shall not exceed an amount that is equal to the amount of the actual damages awarded to the injured party.

(b) For purposes of this subsection (3), "willful and wanton conduct" shall have the same meaning as set forth in section 13-21-102 (1)(b).

(c) (I) A claim for exemplary damages in an action governed by this section may not be included in any initial claim for relief. A claim for exemplary damages in an action governed by this section shall be allowed by amendment to the pleadings only after the passage of sixty days following the exchange of initial disclosures pursuant to rule 26 of the Colorado rules of civil procedure and the plaintiff establishes prima facie proof of a triable issue. After the plaintiff establishes the existence of a triable issue of exemplary damages, the court may, in its discretion, allow additional discovery on the issue of exemplary damages as the court deems appropriate.

(II) A claim for exemplary damages in an action governed by this section shall not be time barred by the applicable provisions of law for the commencement of actions, so long as:

(A) The claim for exemplary damages arises, pursuant to paragraph (a) of this subsection (3), from the claim in such action that is brought under section 13-21-201 or 13-21-202; and

(B) The claim in such action that is brought under section 13-21-201 or 13-21-202 is not time barred.

(III) The assertion of a claim for exemplary damages in an action governed by this section shall not be rendered ineffective solely because the assertion was made after the applicable deadline contained in the court's case management order, so long as the plaintiff establishes that he or she did not discover, and could not have reasonably discovered prior to such deadline, the grounds for asserting the exemplary damages claim.

(4) Notwithstanding the provisions of subsection (3) of this section, the court may reduce or disallow the award of exemplary damages to the extent that:

(a) The deterrent effect of the damages has been accomplished; or

(b) The conduct that resulted in the award has ceased; or

(c) The purpose of such damages has otherwise been served.

(5) Notwithstanding the provisions of subsection (3) of this section, the court may increase any award of exemplary damages to a sum not to exceed three times the amount of actual damages, if it is shown that:

(a) The defendant has continued the behavior or repeated the action that is the subject of the claim against the defendant in a willful and wanton manner against another person or persons during the pendency of the case; or

(b) The defendant has acted in a willful and wanton manner during the pendency of the action in a manner that has further aggravated the damages of the plaintiff when the defendant knew or should have known such action would produce aggravation.

(6) The provisions of this section shall not apply to a peace officer, as described in section 16-2.5-101, C.R.S., or to any firefighter, as defined in section 18-3-201 (1.5), C.R.S., for claims arising out of injuries sustained from an act or omission of the peace officer or firefighter acting in the performance of his or her duties and within the scope of his or her employment.

(7) Nothing in this section shall be construed to alter or amend the provisions of section 13-64-302.5 or the provisions of part 1 of article 10 of title 24, C.R.S.

**Source:** G.L. § 879. G.S. § 1032. R.S. 08: § 2058. C.L. § 6304. CSA: C. 50, § 3. L. 51: p. 339, § 2. CRS 53: § 41-1-3. L. 57: p. 338, §§ 1, 2. C.R.S. 1963: § 41-1-3. L. 67: p. 481, § 1. L. 69: pp. 329, 330, §§ 1, 3. L. 89: (1) amended, p. 752, § 2, effective July 1. L. 96: (1) amended, p. 49, § 1, effective July 1. L. 2001: Entire section amended, p. 376, § 1, effective August 8. L. 2003: (1) amended, p. 1787, § 2, effective July 1; (6) amended, p. 1614, § 6, effective August 6. L. 2014: (6) amended, (HB 14-1214), ch. 336, p. 1498, § 8, effective August 6. L. 2024: (1) amended, (HB 24-1472), ch. 325, p. 2173, § 4, effective January 1, 2025.

**Cross references:** For the legislative declaration in HB 24-1472, see section 1 of chapter 325, Session Laws of Colorado 2024.

## ANNOTATION

### I. General Consideration.

#### I. GENERAL CONSIDERATION.

**Law reviews.** For article, "Double Recovery for Wrongful Death by Public Carrier", see 28 Dicta 299 (1951). For comment on *McEntyre v. Jones*, appearing below, see 31 Dicta 198 (1954). For article, "Damages for Death — Limited or Unlimited", see 34 Dicta 32 (1957). For comment on *Clint v. Stolworthy*, appearing below, see 33 Rocky Mt. L. Rev. 443 (1961). For comment on *Herbertson v.*

*Russell*, appearing below, see 35 U. Colo. L. Rev. 463 (1963). For note, "The Propriety of Punitive Damages Under Colorado's Wrongful Death Statute", see 49 Den. L.J. 81 (1972). For note, "Blind Imitation of the Past: An Analysis of Pecuniary Damages in Wrongful Death Actions", see 49 Den. L.J. 99 (1972).

#### **Rationale for limitation of recovery.**

The state policy of limiting wrongful death recovery to the actual property loss which has been suffered by the heirs of the deceased serves to negate any possibility of

a windfall of the decedent's heirs by denying them compensation for injuries which were not their own. *Espinoza v. O'Dell*, 633 P.2d 455 (Colo. 1981).

**This section does not involve a suspect class** and it furthers a legitimate state interest because it seems well within the general assembly's discretion to weigh the competing social interests and determine that, where the parents are not actually dependent on a child, the recovery should be limited to \$45,000. *Pollock v. City & County of Denver*, 194 Colo. 380, 572 P.2d 828 (1977).

**It may not be given retroactive effect.** *Hansen v. Mercy Hosp.*, 40 Colo. App. 17, 570 P.2d 1309 (1977), *aff'd*, 195 Colo. 529, 579 P.2d 1158 (1978).

**Legislative intent to treat negligent acts and omissions identically with regard to subsection (2).** The general assembly selected the phrase, "wrongful act, neglect or default", to govern application of amendments to the damages limitation of the death statute. This indicates a legislative intent to treat negligent acts and negligent omissions identically. *Hernandez v. United States*, 383 F. Supp. 168 (D. Colo. 1974).

**Rule does not unconstitutionally restrict damages.** Damages under the wrongful death statute are not unconstitutionally restricted by the net pecuniary loss rule, which permits recovery of only compensatory damages for the loss of a decedent's services and support and does not permit recovery of damages for the survivor's grief or for punitive damages. *Jones v. Hildebrant*, 191 Colo. 1, 550 P.2d

339 (1976), overruled on other grounds in *Espinoza v. O'Dell*, 633 P.2d 455 (Colo. 1981).

**The noneconomic damages cap under this section applies on a per-claim basis** and not a per-defendant basis. The term "recovery" refers to the plaintiff's total recovery, and the plain language of the statute limits that recovery to \$250,000. *Lanahan v. Chi Psi Fraternity*, 175 P.3d 97 (Colo. 2008).

The noneconomic damages cap applies after damages have been reduced based on a plaintiff's comparative negligence. *Alhilo v. Kliem*, 2016 COA 142, 412 P.3d 902.

**There is no limitation on the amount of recovery for noneconomic damages when death caused by a wrongful act, neglect, or default constitutes a felonious killing as defined in § 15-11-803 (1) and as determined in the manner described in § 15-11-803 (7).** *Estate of Wright ex rel. Wright v. United Serv. Auto. Ass'n*, 53 P.3d 683 (Colo. App. 2001).

**The felonious killing exception** in subsection (1)(a) does not apply to skiing-related wrongful death actions. *Stamp v. Vail Corp.*, 172 P.3d 437 (Colo. 2007).

**The felonious killing exception and the term "individual" apply to corporations and other entities** in the context of this section and the wrongful death act. It was the legislature's intent to allow the damages cap to be lifted when either individuals or corporations commit felonious killings. *Estate of Ross v. Pub. Serv. Co.*, 2025 COA 31, 569 P.3d 882.

**Wrongful death and outrageous conduct actions serve entirely different purposes,** and the validity of one does not rise and fall with the success or failure of the other. *DeCicco v. Trinidad Area Health Ass'n*, 40 Colo. App. 63, 573 P.2d 559 (1977).

**An arbitration proceeding is not a civil action as contemplated by the wrongful death statute.** Arbitration is an alternative dispute resolution mechanism designed to avoid the need for filing a civil action or to resolve an existing civil action. *Morrison v. Colo. Permanente Medi. Grp.*, 983 F. Supp. 937 (D. Colo. 1997).

**Rule inapplicable in § 1983 action.** In an action in state court under 42 U.S.C. § 1983, the plaintiff is not subject to the net pecuniary loss limitation on his right to recover damages otherwise imposed by this section. *Espinoza v. O'Dell*, 633 P.2d 455 (Colo. 1981).

**Subsection (1)(a) limits wrongful death actions to "only one civil action",** and the severance of plaintiff's negligence claim and the concomitant transfer of this claim to a new venue has created two civil actions for wrongful death, thereby violating the terms of the section. To the extent that the rules of venue set forth in C.R.C.P. 98 support defendant's demand for a change of venue, those rules are subordinate to the statutory language applicable in unique situations where, as here, co-defendants are sued for the wrongful death of one decedent based on separate torts committed in different counties. *Hernandez v. Downing*, 154 P.3d 1068 (Colo. 2007).

**A prelitigation settlement is an "action" for purposes of subsection (1)(a).** A beneficiary with the primary right of action necessarily has the power to settle his or her claim. The beneficiary may settle the claim with or without filing suit, and any such settlement is binding on all other beneficiaries. *Barnhart v. Am. Furniture Warehouse Co.*, 2013 COA 158, 338 P.3d 1027.

The "only one civil action" provision is merely a limit on the number of recoveries that may be sought, not a requirement that an action must be filed for the bar to apply. *Barnhart v. Am. Furniture Warehouse Co.*, 2013 COA 158, 338 P.3d 1027.

**Claim for breach of underinsured motorist policy not barred by subsection (1)(a).** *Plaza Ins. Co. v. Lester*, 110 F. Supp. 3d 1041 (D. Colo. 2015).

**Resolution of a wrongful death claim by an out-of-court settlement is an "action" for purposes of subsection (1)(a)'s "only one civil action" limitation.** Because husband settled his wrongful death claim within one year of his wife's death, son's subsequent claim was barred. *Barnhart v. Am. Furniture Warehouse Co.*, 2013 COA 158, 338 P.3d 1027.

Resolution of a wrongful death claim by an out-of-court settlement, after which the complaint is dismissed without prejudice, is an "action" for purposes of subsection (1)(a)'s "only one civil action" limitation and thus barred subsequent wrongful death actions. *Nicola v. City of Grand Junction*, 2023 COA 111, 544 P.3d 120.

**This section allows compensatory damages only.** Moffat v. Tenney, 17 Colo. 189, 30 P. 348 (1892); Hayes v. Williams, 17 Colo. 465, 30 P. 352 (1892); Pierce v. Conners, 20 Colo. 178, 37 P. 721; Mollie Gibson Consol. Mining & Milling Co. v. Sharp, 5 Colo. App. 321, 38 P. 850 (1894); Denver & R. G. R. R. v. Spencer, 25 Colo. 9, 52 P. 211 (1898); Mitchell v. Colo. Milling & Elevator Co., 12 Colo. App. 277, 55 P. 736 (1898); Denver & R. G. R. R. v. Spencer, 27 Colo. 313, 61 P. 606 (1900).

This section limits damages in wrongful death to compensatory damages. Mangus v. Miller, 35 Colo. App. 335, 535 P.2d 219 (1975).

**Not exemplary damages.** If the general assembly had intended to authorize exemplary damages they would, doubtless, have used different language. This they did not do; but lest the courts should be troubled with excessive verdicts which might be supposed to rest upon a vindictive basis, they placed an absolute limit upon the recovery in the class of actions thus authorized. Moffat v. Tenney, 17 Colo. 189, 30 P. 348 (1892); Herbertson v. Russell, 150 Colo. 110, 371 P.2d 422 (1962).

This section excludes an award of exemplary damages. Mangus v. Miller, 35 Colo. App. 335, 535 P.2d 219 (1975).

**Net pecuniary loss is the proper measure of damages** in a wrongful death action under this section. Good v. A.B. Chance Co., 39 Colo. App. 70, 565 P.2d 217 (1977).

A plaintiff in a wrongful death action is limited in damages to his net pecuniary loss. Espinoza v. O'Dell, 633 P.2d 455 (Colo. 1981).

**The net pecuniary loss rule** limits a wrongful death plaintiff's damages to the financial benefit, if any, which that person might reasonably have expected to receive from the decedent had he lived. Espinoza v. O'Dell, 633 P.2d 455 (Colo. 1981).

**Evidence regarding decedent's future income tax liability may not be considered** when determining amount of plaintiff's (decedent's wife's) net pecuniary loss. Hoyal v. Pioneer Sand Co., 188 P.3d 716 (Colo. 2008).

**Plaintiffs may recover only for diminution of decedent's estate;** there is no recovery permitted for grief, loss of comfort and society and other general damages. Niven v. Falkenburg, 553 F. Supp. 1021 (D. Colo. 1983).

**For the true measure of damages being pecuniary loss resulting to plaintiff,** see Pierce v. Conners, 20 Colo. 178, 37 P. 721, 46 Am. St. R. 279 (1894); Denver & R. G. R. R. v. Spencer, 25 Colo. 9, 52 P. 211 (1898); Mitchell v. Colo. Milling & Elevator Co., 12 Colo. App. 277, 55 P. 736 (1898); Denver & R. G. R. R. v. Spencer, 27 Colo. 313, 61 P. 606, 51 L.R.A. 121 (1900); Herbertson v. Russell, 150 Colo. 110, 371 P.2d 422 (1962); Kogul v. Sonheim, 150 Colo. 316, 372 P.2d 731 (1962); Pollock v. City & County of Denver, 194 Colo. 380, 572 P.2d 828 (1977).

**For sufficient statement of pecuniary injury**, see Orman v. Mannix, 17 Colo. 564, 30 P. 1037 (1892); Mollie Gibson Consol. Mining & Milling Co. v. Sharp, 5 Colo. App. 321, 38 P. 850 (1894).

**Life has pecuniary value with reference to the relations of the deceased.** As a matter of sentiment, life has no pecuniary value, but considered with reference to the relations of deceased with others, it is capable of such estimate. In this sense a parent is entitled to the services of children during their minority, and to support and maintenance from them in his declining years. McEntyre v. Jones, 128 Colo. 461, 263 P.2d 313 (1953).

**Amount is made largely dependent on plaintiff's interest in deceased's life.** Under this statute, the amount to be received by the plaintiff is made largely, if not wholly, dependent upon the interest which the plaintiff had in the life of the deceased. Mitchell v. Colo. Milling & Elevator Co., 12 Colo. App. 277, 55 P. 736 (1898).

**Recovery is not to be measured or determined by the extent of the contributions** or support furnished by the deceased to the plaintiff. In other words, although the deceased as a son may never yet have contributed to the support of his father, yet when the son's age, habits, earning capacity, and the age of the father are once established, a recovery may be had for the probable injury which the father has sustained in the loss of his son. Mollie Gibson Consol. Mining & Milling Co. v. Sharp, 5 Colo. App. 321, 38 P. 850 (1894).

**The sum will depend on a variety of circumstances and future contingencies**, and will, therefore, be difficult of exact ascertainment; but the damages to be awarded in each case may be approximated by considering the age, health, condition in life, habits of industry or otherwise, ability to earn money, on the part of the deceased, including his or her disposition to aid or assist the plaintiff; not only the kinship or legal relation between the deceased and the plaintiff, but the actual relations between them as manifested by acts of pecuniary assistance rendered by the deceased to the plaintiff, and also contrary acts may be taken into consideration. Pierce v. Conners, 20 Colo. 178, 37 P. 721 (1894).

**The amount of recovery may be determined from the prospective accumulations** of the deceased had he not been killed, having reference to his or her age, occupation, habits, bodily health and ability to earn money. Compensation as damages under these sections is based on the reasonable expectation of benefit which a plaintiff may have a right to indulge from a continuance of the life of the deceased. Kansas Pac. Ry. v. Lundin, 3 Colo. 94 (1876); Denver & R. R. R. v. Frederic, 57 Colo. 90, 140 P. 463 (1914).

Damages in a wrongful death action under this section necessarily include estimations of the accumulations of a decedent during the probable remainder of his life. Good v. A.B. Chance Co., 39 Colo. App. 70, 565 P.2d 217 (1977).



**For approximation of pecuniary value,** see *Herbertson v. Russell*, 150 Colo. 110, 371 P.2d 422 (1962).

**The recovery allowable is in no sense a solatium for the grief of the living** occasioned by the death of the relative or friend, however dear. *Herbertson v. Russell*, 150 Colo. 110, 371 P.2d 422 (1962).

**Damages for mental suffering, caused by grief, are not recoverable,** but this conclusion is based upon the ground that damages recoverable by this section are limited to the net pecuniary benefit which the plaintiff might reasonably have expected to receive from the deceased. *Bleecker v. Colo. & S. Ry.*, 50 Colo. 140, 114 P. 481 (1911).

**Parental grief is not an element of damages** in wrongful death actions, it being the peculiar province of the jury to estimate and assess such loss under proper instructions. *Kogul v. Sonheim*, 150 Colo. 316, 372 P.2d 731 (1962); *Bradshaw v. Nicolay*, 765 P.2d 630 (Colo. App. 1988); *Aiken v. Peters*, 899 P.2d 382 (Colo. App. 1995).

The net pecuniary loss rule does not allow for the compensation of parental grief. *Jones v. Hildebrant*, 191 Colo. 1, 550 P.2d 339 (1976), overruled on other grounds in *Espinoza v. O'Dell*, 633 P.2d 455 (1981).

**Decedents' families' mental anguish claims covered by an insurance policy are limited by this section,** which prohibits recovery for noneconomic loss or injury in wrongful death cases in excess of \$250,000. This limit is applied collectively for each

decedent. *Old Republic Ins. Co. v. Durango Air Serv., Inc.*, 283 F.3d 1222 (10th Cir. 2002).

**Child is minor until age 21.** A child is a minor, as that term is used in subsection (1), until his or her twenty-first birthday. *Hesseltine v. United States*, 538 F. Supp. 1003 (D. Colo. 1982).

**A parent may or may not be a dependent.** *Hesseltine v. United States*, 538 F. Supp. 1003 (D. Colo. 1982).

**A change in this rule must be by the general assembly.** Any change in the law as to the measure of damages allowed for the wrongful death of a child in our view should only come by proper legislative action and not through judicial legislation. *Kogul v. Sonheim*, 150 Colo. 316, 372 P.2d 731 (1962).

**Parents are entitled to anticipated support in their declining years.** "Net pecuniary loss" has been construed so as to include not only the loss to the parent of the services and earnings which they could have reasonably expected from their child during his or her minority, less their expenditures for his or her maintenance, but also includes the loss of services and support which they could have reasonably anticipated during their "declining years", but for the untimely death. *Herbertson v. Russell*, 150 Colo. 110, 371 P.2d 422 (1962).

**Supreme court declines to recognize a Colorado common law right in parents to seek damages for loss of consortium with their injured child.** The decision to grant a right of recovery for loss of consortium

because of a child's injury is a matter best left to the general assembly. *Bartlett v. Elgin*, 973 P.2d 694 (Colo. App. 1998), *aff'd*, 994 P.2d 411 (Colo. 1999) (following *Lee v. Colo. Dept. of Health*, 718 P.2d 221 (Colo. 1986) and *Hill v. United States*, 854 F. Supp. 727 (D. Colo. 1994) and declining to follow *Hancey v. United States*, 967 F. Supp. 443 (D. Colo. 1997)).

**Widow need not be necessitous in order to recover.** We fail to discover in our statute any warrant for saying that unless the widow in the lifetime of her husband was necessitous, or dependent she is not entitled to recover. Without regard to the needy condition of the widow, *caeteris paribus*, the measure of her damages is the same in each case. *Denver, etc., Ry. v. Woodward*, 4 Colo. 1 (1877).

**The phrase "mitigating or aggravating circumstances"** is confined to those circumstances which increase or diminish this compensation. *Hayes v. Williams*, 17 Colo. 465, 30 P. 352 (1892).

Mitigating or aggravating circumstances contemplates circumstances not relating to the wrongful act itself, but such as affect the actual damages suffered by the surviving party entitled to sue, either by way of diminishing or enhancing the same. *Mangus v. Miller*, 35 Colo. App. 335, 535 P.2d 219 (1975).

**Charge need not specifically enumerate every aggravating or mitigating circumstance.** In actions under this and the preceding section, it is not necessary for the court to specifically enumerate in its charge each and every aggravating or mitigating

circumstance to be considered in computing compensatory damages. *Hayes v. Williams*, 17 Colo. 465, 30 P. 352 (1892).

**Funeral expenses are a proper element of damage.** *McEntyre v. Jones*, 128 Colo. 461, 263 P.2d 313 (1953).

**Proceeds of judgment must be distributed according to § 13-21-201.** The proceeds of a judgment obtained by a widow and based only on her pecuniary loss under this section and § 13-21-202 do not belong solely to her, but are to be owned by and divided among the heirs as provided in § 13-21-201, even though heirs other than the widow personally suffered no pecuniary loss. *Clint v. Stolworthy*, 144 Colo. 597, 357 P.2d 649 (1960); *Mosley v. Prall*, 158 Colo. 504, 408 P.2d 434 (1965).

**Insurance companies have no common law duty to assure distribution of settlement proceeds.** Where insurers distributed settlement proceeds to the surviving spouse in a wrongful death action, the insurers satisfied their statutory duty and are not required to monitor the distribution of the proceeds to all potential beneficiaries. *Campbell v. Shankle*, 680 P.2d 1352 (Colo. App. 1984).

**Court may instruct jury that pecuniary loss may exist when there is no obligation of support.** It is urged that the court erred in instructing the jury that the appellees were entitled to recover for the pecuniary loss resulting to them in consequence of the said death, for the reason that there was no legal obligation upon the part of the deceased to support the appellees, and therefore there were no damages except simply nominal

damages. This position is untenable. *Denver & R. G. R. R. v. Wilson*, 12 Colo. 20, 20 P. 340 (1888).

**Instruction failing to limit recovery to pecuniary loss is erroneous.** It is only for the pecuniary loss resulting to the living party entitled to sue resulting from the death of the deceased that this section affords compensation, and an instruction which omits this important limitation, and leaves the jury at liberty to find any amount that they might deem fair and just, not exceeding the maximum, regardless of the fact whether the plaintiffs suffered any pecuniary loss by the death of the deceased, or not, is erroneous. *Denver & R. G. R. R. v. Spencer*, 25 Colo. 9, 52 P. 211 (1898).

**For instructions on damages held correct,** see *Lehrer v. Lorenzen*, 124 Colo. 17, 233 P.2d 382 (1951); *St. Lukes Hosp. Ass'n v. Long*, 125 Colo. 25, 240 P.2d 917 (1952); *McEntyre v. Jones*, 128 Colo. 461, 263 P.2d 313 (1953).

**Instruction to jury on provocation as an element to be considered is error.** In a wrongful death action, it is error for the trial court to give an instruction on provocation as an element to be considered by the jury in mitigation of damages or as a factor to be considered in the determination of liability. *Mangus v. Miller*, 35 Colo. App. 335, 535 P.2d 219 (1975).

**Tortious act or omission occurs when and where negligence occurs, without reference to time of discovery or accrual.** The language used by the general assembly suggests that the time of the wrongful act, neglect, or default's occurrence must be

determined as an objective fact, without reference to the subjective elements of the "time of discovery" or accrual rules. *Hernandez v. United States*, 383 F. Supp. 168 (D. Colo. 1974).

**Wrongful default occurs when failure to disclose becomes tortious negligence,** or in other words, when the duty to disclose was first breached. *Hernandez v. United States*, 383 F. Supp. 168 (D. Colo. 1974).

**Evidence of defendant's actions following decedent's death is irrelevant** in determining the noneconomic damages recoverable under this section, since any additional mental suffering thereby inflicted on grieving relatives is not a "necessary injury resulting from [the] death" of the decedent. *Aiken v. Peters*, 899 P.2d 382 (Colo. App. 1995).

**Enhanced award not available.** Subsection (1) mandates that the provisions of § 13-21-102.5 authorizing the court to enter an award of damages for noneconomic losses up to \$500,000 are to be disregarded, and the \$250,000 limit set forth in this section applies. *Aiken v. Peters*, 899 P.2d 382 (Colo. App. 1995).

**Although the decedent's children were entitled to an award,** the defendant counsel satisfied his statutory duty by paying the settlement proceeds to his client, the surviving spouse. *Klancke v. Smith*, 829 P.2d 464 (Colo. App. 1991).

**Trial court abused its discretion** when it denied plaintiffs' motion to amend their complaint to add a claim for exemplary damages where amended complaint satisfied

the burden of proof set forth in subsection (3)(c)(I). Stamp v. Vail Corp., 172 P.3d 437 (Colo. 2007).

**Applied** in Sager v. City of Woodland Park, 543 F. Supp. 282 (D. Colo. 1982); Pub. Serv. Co. v. District Court, 674 P.2d 383 (Colo. 1984).

## II. PROOF OF DAMAGES.

A. Jury Function.

B. Evidence.

A. Jury Function.

**While damages in a wrongful death action need not be proved with mathematical certainty**, there must be some evidence to prima facie establish with a reasonable degree of certainty the damages flowing from the wrongful death. Herbertson v. Russell, 150 Colo. 110, 371 P.2d 422 (1962).

**There must be some evidence to prima facie establish** with at least a reasonable degree of certainty the damages flowing from the wrongful death. Herbertson v. Russell, 150 Colo. 110, 371 P.2d 422 (1962).

**Court cannot set aside jury's verdict unless damages are grossly and manifestly inadequate.** It is an abuse of discretion on the part of the trial court to set aside the verdict of the jury and grant a new trial solely on the ground of inadequacy of the verdict unless, under the evidence, it can be definitely said that the verdict is grossly and manifestly inadequate, or unless the amount thereof is so small as to clearly and definitely indicate that the jury neglected to take into consideration evidence of

pecuniary loss or were influenced either by prejudice, passion, or other improper considerations. Kogul v. Sonheim, 150 Colo. 316, 372 P.2d 731 (1962).

**Disagreement with amount awarded insufficient ground to overturn.** Mere disagreement with the amount of damages awarded is not a sufficient ground to overturn an award of damages which is supported by competent evidence in the record. Morrison v. Bradley, 655 P.2d 385 (Colo. 1982); Foster ex rel. Foster v. Phillips, 6 P.3d 791 (Colo. App. 1999).

**The jury has the benefit of extensive testimony and evidence**, and it is its peculiar province to estimate and assess the damages. Kogul v. Sonheim, 150 Colo. 316, 372 P.2d 731 (1962).

**Jury verdict may be upset when it cannot be supported by any legitimate inference.** In view of the undisputed testimony on deceased's salary and life expectancy, it is apparent that no consideration at all was given to the net pecuniary loss the plaintiffs would sustain in the near foreseeable future by reason of being deprived of the support they could reasonably expect under the various life expectancy tables which the jury was told to consider, not only relating to the deceased, but also in connection with the plaintiffs. The verdict is contrary to the undisputed evidence and cannot be supported by any legitimate inferences. Lewis v. Great W. Distrib. Co., 168 Colo. 424, 451 P.2d 754 (1969).

**A directed verdict in any dollar amount is not sanctioned** even in the clearest of

liability cases where the recovery is unlimited. It would not be a valid ground to invade the province of the jury merely because the case involved an amount which by statute put a ceiling on the jury determination. *Lewis v. Great W. Distrib. Co.*, 168 Colo. 424, 451 P.2d 754 (1969).

**The words "the jury" in this section should not be read as excluding the court in nonjury cases.** *Bartch v. United States*, 330 F.2d 466 (10th Cir. 1964).

**Statutory limit is applicable in suits under federal tort claim act.** The Colorado statutory limitation upon gross recovery for wrongful death is applicable in an action brought under the federal tort claims act, 28 U.S.C. §§ 1346(b), 2674. *Bartch v. United States*, 330 F.2d 466 (10th Cir. 1964).

**This section does not purport to apply to actions brought for wrongful death under a statute of another state.** Neither is there anything in the Colorado statute which indicates that Colorado regards full compensatory damages for wrongful death committed outside of Colorado to be contrary to good morals or natural justice, or violative of the public policy of Colorado. *Stoltz v. Burlington Transp. Co.*, 178 F.2d 514 (10th Cir. 1949).

#### B. Evidence.

**Testimony concerning the relations of the deceased to the plaintiff is admissible,** in order to form a just estimate of the

probable damage. *Mollie Gibson Consol. Mining & Milling Co. v. Sharp*, 5 Colo. App. 321, 38 P. 850 (1894).

**Evidence of value of services of girl from seven to eighteen.** The trial court did not err in admitting evidence of the value of the services of a girl like the deceased from the age of seven years to the age of eighteen, though the law does not necessarily limit the recovery to the value of such services. *Pierce v. Conners*, 20 Colo. 178, 37 P. 721 (1894).

**Evidence of provocation is irrelevant to assessment of actual damages** in a wrongful death claim. *Mangus v. Miller*, 35 Colo. App. 335, 535 P.2d 219 (1975).

**Statute does not permit the jury to consider the aggravating circumstances surrounding defendant's actions.** Technical evidence of the level of alcohol in the defendant's blood was irrelevant on the issue of whether noneconomic damages were aggravated by the knowledge of the defendant's intoxication. *Foster ex rel. Foster v. Phillips*, 6 P.3d 791 (Colo. App. 1999).

**Approved mortality tables may be used** for the purpose of showing the probable duration of life. *Kansas Pac. Ry. v. Lundin*, 3 Colo. 94 (1876).

**For when proof is sufficient to show probable loss,** see *Colo. Coal & Iron Co. v. Lamb*, 6 Colo. App. 255, 40 P. 251 (1895).

**13-21-203.5. Alternative means of establishing damages - solatium amount.**

In a case arising under section 13-21-202, the persons entitled to sue under section 13-21-201 (1) may elect in writing to sue for and recover a solatium in the amount of fifty thousand dollars. The solatium amount is in addition to economic damages and to reasonable final disposition expenses, which expenses may also be recovered in an action under this section. The solatium amount is in lieu of noneconomic damages recoverable under section 13-21-203 and is awarded upon a finding or admission of the defendant's liability for the wrongful death.

**Source:** L. 89: Entire section added, p. 753, § 3, effective July 1. L. 2021: Entire section amended, (SB 21-006), ch. 123, p. 492, § 11, effective September 7.

**ANNOTATION**

**Procedural due process is not denied by solatium statute** since it requires a full civil trial to determine liability thereby providing defendants a substantial opportunity to be heard. *Dewey v. Hardy*, 917 P.2d 305 (Colo. App. 1995).

**Amount of \$50,000 set by solatium statute for death of a human being is not so grossly excessive** and severe as to be disproportionate to the offense and obviously unreasonable in violation of the due process clause. *Dewey v. Hardy*, 917 P.2d 305 (Colo. App. 1995).

**The solatium award of \$50,000 is exempt from reduction** by operation of the comparative fault statute. *Dewey v. Hardy*, 917 P.2d 305 (Colo. App. 1995).

**And it is not subject to reduction** by operation of the pro-rata liability statute. To the extent that the comparative fault statute and the pro-rata liability statute conflict with this section by compelling a reduction of the solatium amount recoverable by a wrongful

death plaintiff, this section prevails. *B.G.'s Inc. v. Gross*, 23 P.3d 691 (Colo. 2001).

**Nor is the \$50,000 solatium award subject to reduction by a co-defendant's settlement where the settlement did not designate the nature of the damages for which payment was made.** To permit such a settlement to reduce the solatium award would run contrary to the rationale that the solatium award is intended as an ultimate award not subject to further reduction regardless of the fault of other tortfeasors. *Smith v. Vincent*, 77 P.3d 927 (Colo. App. 2003).

**With limited exceptions, this section generally does not require co-defendants to share equitably in the responsibility to pay the solatium award.** *Smith v. Vincent*, 77 P.3d 927 (Colo. App. 2003).

**Trial court did not err in awarding costs to plaintiff** pursuing a wrongful death action under this section and denying

**13-21-203.7. Adjustments of dollar limitations for effects of inflation - definition.**

(1) The limitations on noneconomic damages set forth in section 13-21-203 (1)(a) and the amount of the solatium set forth in section 13-21-203.5 must be adjusted for inflation as of January 1, 1998, January 1, 2008, January 1, 2020, and each January 1 every two years thereafter until January 1, 2024. The adjustments made on January 1, 1998, January 1, 2008, January 1, 2020, and each January 1 every two years thereafter must be based on the cumulative annual adjustment for inflation for each year since the effective date of the damages limitations in sections 13-21-203 (1)(a) and 13-21-203.5. The adjustments made pursuant to this subsection (1) must be rounded upward or downward to the nearest ten-dollar increment.

(1.5) After January 1, 2024, the limitations on damages set forth in section 13-21-203 (1)(a) must be adjusted for inflation on January 1, 2028, and on January 1 every two years thereafter. The adjustments made on January 1, 2028, and on January 1 every two years thereafter must be based on the cumulative annual adjustment for inflation for each year since the effective date of the damages limitations in section 13-21-203 (1)(a). The adjustments made pursuant to this subsection (1.5) must be rounded upward or downward to the nearest ten-dollar increment.

(2) As used in this section, "inflation" means the annual percentage change in the United States department of labor's bureau of labor statistics consumer price index for Denver-Aurora-Lakewood for all items paid by all urban consumers, or its successor index.

(3) The secretary of state shall certify the adjusted limitation on damages within fourteen days after the appropriate information is available, and:

(a) The adjusted limitation on damages is applicable to all claims for relief that accrue on or after January 1, 1998, and before January 1, 2008;

(b) The adjusted limitation on damages as of January 1, 2008, is applicable to all claims for relief that accrue on and after January 1, 2008, and before January 1, 2020; and

(c) The adjusted limitation on damages as of January 1, 2020, and each January 1 every two years thereafter is applicable to all claims for relief that accrue on and after the specified January 1 and before the January 1 two years thereafter.

(4) (a) Effective January 1, 2030, the damages limitation specified in section 13-21-203 (1)(b)(V) must be adjusted for inflation on January 1, 2030, and on January 1 every two years thereafter. The adjustments made on January 1, 2030, and on January 1 every two years thereafter must be based on the cumulative annual adjustment for inflation for each year since the effective date of the damages limitation specified in section 13-21-203 (1)(b)(V). The

adjustments made pursuant to this subsection (4) must be rounded upward or downward to the nearest ten-dollar increment.

(b) The secretary of state shall certify the adjusted limitation on damages within fourteen days after the appropriate information is available and shall publish the adjusted amount on the secretary of state's website.

(c) The adjusted limitation on damages as of January 1, 2030, and on January 1 every two years thereafter is applicable to all claims for relief that accrue on and after the specified January 1 and before the January 1 two years thereafter.

**Source:** **L. 97:** Entire section added, p. 923, § 5, effective August 6. **L. 2007:** (1) and (3) amended, p. 330, § 4, effective July 1. **L. 2019:** (1) and (3) amended, (SB 19-109), ch. 83, p. 296, § 3, effective August 2. **L. 2024:** (1) and (2) amended and (1.5) and (4) added, (HB 24-1472), ch. 325, p. 2175, § 5, effective January 1, 2025.

**Cross references:** For the legislative declaration in HB 24-1472, see section 1 of chapter 325, Session Laws of Colorado 2024.

#### **13-21-204. Limitation of actions.**

All actions provided for by this part 2 shall be brought within the time period prescribed in section 13-80-102.

**Source:** **G.L.** § 880. **G.S.** § 1033. **R.S. 08:** § 2059. **C.L.** § 6305. **CSA:** C. 50, § 4. **CRS 53:** § 41-1-4. **C.R.S. 1963:** § 41-1-4. **L. 79:** Entire section amended, p. 615, § 1, effective June 7. **L. 86:** Entire section amended, p. 704, § 13, effective July 1.

#### **ANNOTATION**

**The time limitation in this section is a matter of procedural law rather than substantive law** based on court's reading of *Barnhill v. Public Serv. Co.* (649 P.2d 716 (Colo. App. 1982), *aff'd*, 690 P.2d 1248 (Colo. 1984)). Therefore, in diversity action

filed in Mississippi where Mississippi's choice of law principles apply, Mississippi must apply the substantive law of Colorado but may apply its own law in procedural matters including statute of limitations.



Davis v. Nat'l Gypsum Co., 743 F.2d 1132 (5th Cir. 1984).

**Language of section is plainly all-inclusive**, and must be construed to apply to all wrongful death actions in the absence of an express exception in former § 13-80-127. McClanahan v. Am. Gilsonite Co., 494 F. Supp. 1334 (D. Colo. 1980).

**Bringing action is indispensable condition for liability.** Commencement of an action within the time fixed by this section is an indispensable condition of the liability and of the action which wrongful death statutes permit. Ritter v. Aspen Skiing Corp., 519 F. Supp. 907 (D. Colo. 1981).

**The statute of limitations begins to run immediately upon the happening of the wrongful act.** Fish v. Liley, 120 Colo. 156, 208 P.2d 930 (1949).

The statute of limitations in a wrongful death action begins to run on the date the damage or injury arising from the commission of the alleged negligence from which death later results becomes known or by reasonable care could have been discovered. Crownover v. Gleichman, 38 Colo. App. 96, 554 P.2d 313 (1976), *aff'd*, 194 Colo. 48, 574 P.2d 497 (1977).

**Limitation period starts running no later than date of death.** The statute of limitations specifically starts running no later than the date of death. With v. Gen. Elec. Co., 653 P.2d 764 (Colo. App. 1982); Gonzales v. Denver & Rio Grande Western Railroad Co., 686 P.2d 1362 (Colo. App. 1984).

**Action not filed in two years is barred.**

The action not having been filed within two years after the commission of the alleged negligence, said to have resulted in the death of the injured husband, is barred. Franzen v. Zimmerman, 127 Colo. 381, 256 P.2d 897 (1953).

Action is barred when not filed within two years from the "discovery" of the alleged negligence. Crownover v. Gleichman, 194 Colo. 48, 574 P.2d 497 (1977); Rauschenberger v. Radetsky, 745 P.2d 640 (Colo. 1987).

**Having an action for wrongful conduct not a condition precedent to bringing wrongful death action.** The wrongful death action is not complete until death. Therefore, statute of limitations begins at death. Rowell v. Clifford, 976 P.2d 363 (Colo. App. 1998).

**Limitation period not tolled by former § 13-80-126.** The Colorado wrongful death act is not a "statute of limitations but a statute of creation," thus former § 13-80-126 will not toll the two year period in which one has to commence a wrongful death action. Nelson v. Hall, 573 F. Supp. 1097 (D. Colo. 1983).

**Limitation period tolled by § 13-81-103.** This statute is not a "nonclaim statute" which prohibits filing of a lawsuit after a specific period of time, and, therefore, it is subject to tolling provision of general disability statute, § 13-81-103. Pub. Serv. Co. v. Barnhill, 690 P.2d 1248 (Colo. 1984).

**Action barred by this section is not revived by former § 13-80-128.** The remedial revival statute, former § 13-80-

128, does not apply to wrongful death actions. *Gonzales v. Denver Rio Grande Western R.R.*, 686 P.2d 1362 (Colo. App. 1984); *Phillips v. Beethe*, 679 P.2d 126 (Colo. App. 1984).

**For situation where statute does not begin to run until injury occurred**, see *Decaie v. Pub. Serv. Co.*, 173 Colo. 402, 479 P.2d 964 (1971).

**Limitations period is subject to tolling for fraudulent concealment** of facts underlying the wrongful act. *First Interstate Bank v. Piper Aircraft*, 744 P.2d 1197 (Colo. 1987).

The mere fact that the plaintiff was aware of a death on the date of its occurrence is not

dispositive of whether the fraudulent concealment doctrine should be applied to a wrongful death action. Negligent conduct cannot be presumed from the happening of an accident, but may be established by the facts and circumstances surrounding the accident. *First Interstate Bank v. Piper Aircraft*, 744 P.2d 1197 (Colo. 1987).

**Question of whether plaintiff applied reasonable diligence in discovering that death was caused by negligent act** is not question of law, but must generally be deemed a question of fact for determination by fact finder. *First Interstate Bank v. Piper Aircraft*, 744 P.2d 1197 (Colo. 1987).

## PART 3

### SETTLEMENTS, RELEASES, AND STATEMENTS

#### **13-21-301. Settlements, releases, and statements of injured persons.**

(1) If a person is injured as a result of an occurrence which might give rise to liability and said person is a patient under the care of a practitioner of the healing arts or is hospitalized, no person or agent of any person whose interest is adverse to the injured person shall:

(a) Within thirty days after the date of the occurrence causing the injury, negotiate or attempt to negotiate a settlement with the injured patient;

(b) Within thirty days after the date of the occurrence causing the injury, obtain or attempt to obtain a general release of liability from the injured patient; or

(c) Within fifteen days after the date of the occurrence causing the injury, obtain or attempt to obtain any statement, either written, oral, recorded, or otherwise, from the injured patient for use in negotiating a settlement or obtaining a release except as provided by the Colorado rules of civil procedure.

(2) Any settlement agreement entered into or any general release of liability given by the injured patient in violation of this section shall be void. Any statement, written, oral, recorded, or

otherwise, which is given by the injured party in violation of this section may not be used in evidence against the interest of the injured party in any civil action relating to the injury.

(3) Nothing in this section shall preclude the taking of statements by peace officers, as defined in section 24-31-301 (5), C.R.S., acting in their official capacity in the ordinary course of their employment, and nothing shall preclude the use of such statements for any purpose permitted by statute or rule of court applying to the admission of evidence.

**Source:** **L. 75:** Entire part added, p. 571, § 1, effective July 1. **L. 83:** (3) amended, p. 962, § 5, effective July 1, 1984. **L. 92:** (3) amended, p. 1097, § 4, effective March 6. **L. 96:** (1) amended, p. 1137, § 2, effective July 1.

**Cross references:** For the legislative declaration contained in the 1992 act amending subsection (3), see section 12 of chapter 167, Session Laws of Colorado 1992.

#### ANNOTATION

**Law reviews.** For comment, "The Enforceability of Personal Injury Releases", see 54 U. Colo. L. Rev. 277 (1983).

**Subsection (3) is constitutional in promoting the legitimate governmental interest in encouraging the prompt and accurate reporting of incidents to peace officers.** *Wills v. State*, 821 P.2d 866 (Colo. App. 1991).

**Subsection (3) reflects the General Assembly's intent to allow statements given to peace officers to be admissible as evidence** if such statements are otherwise properly admissible. *Wills v. State*, 821 P.2d 866 (Colo. App. 1991).

**Legislative intent is to prevent hasty settlements.** The intent of the general assembly in enacting this section was to prevent hasty settlements and to prohibit the

evidentiary use of statements made by injured persons before the passage of enough time following an injury to permit the injured party to evaluate his condition carefully. *Safeway Stores, Inc. v. Smith*, 658 P.2d 255 (Colo. 1983).

**Purpose of medical care requirement.** The purpose of the requirement that the injured party be under the care of a practitioner of the healing arts or be hospitalized is to exclude from the protective provisions of this section those situations where no injuries result or where they are so slight as to require only brief medical attention. *Safeway Stores, Inc. v. Smith*, 658 P.2d 255 (Colo. 1983).

**"Under the care of a practitioner of the healing arts".** For a person to be considered "under the care of a practitioner of the healing arts", such care need not be actual

and continuous, but rather must be provided in good faith and must be reasonably required. *Smith v. Safeway Stores, Inc.*, 636 P.2d 1310 (Colo. App. 1981), *aff'd*, 658 P.2d 255 (Colo. 1983).

**State of mind of party taking statement is not determinative of its admissibility.** This section does not require that the party taking a statement do so with the specific purpose of using the statement to negotiate a settlement or obtain a release before the exclusionary provisions of this section apply. The state of mind of the party taking the statement is not determinative of whether the statement is admissible. So long as the other requirements of this section have been met, this section applies to any statement which may be of some use or value in negotiating a settlement or obtaining a release irrespective of the state of mind or purpose of the party taking the statement. *Marlow v. Atchison, T. & S.F. Ry.*, 671 P.2d 438 (Colo. App. 1983).

**Statements obtained in violation of this section may not be used** for purposes of impeachment. *Smith v. Safeway Stores, Inc.*, 636 P.2d 1310 (Colo. App. 1981), *aff'd*, 658 P.2d 255 (Colo. 1983).

Where a statement was clearly taken in violation of subsection (1)(c), its use is prohibited at trial for impeachment purposes or as substantive evidence. *Rowland v. Ditlow*, 653 P.2d 61 (Colo. App. 1982).

This section makes no distinction between use of a statement for impeachment and for other purposes. *Safeway Stores, Inc. v. Smith*, 658 P.2d 255 (Colo. 1983).

**The right to have statements excluded from evidence under this section is personal to an injured party** and applies only to statements given by the injured party. It may not be applied to exclude the otherwise admissible statement of a third party. *White v. Hansen*, 813 P.2d 750 (Colo. App. 1990), *rev'd on other grounds*, 837 P.2d 1229 (Colo. 1992).

## PART 4

### PRODUCT LIABILITY ACTIONS - GENERAL PROVISIONS

**Cross references:** For limitation of actions against manufacturers, sellers, or lessors, see §§ 13-80-106 and 13-80-107.

**Law reviews:** For article, "The Apportionment of Tort Responsibility", see 14 Colo. Law. 741 (1985); for article, "Torts", which discusses Tenth Circuit decisions dealing with product liability actions, see 62 Den. U. L. Rev. 357 (1985); for article, "Product Liability", see 16 Colo. Law. 474 (1987); for article, "Permanent Solution for Product Liability Crises: Uniform Federal Tort Law Standards", see 64 Den. U. L. Rev. 685 (1988); for article, "Our Product Liability System:

An Efficient Solution to a Complex Problem", see 64 Den. U. L. Rev. 703 (1988); for article, "Recovering Asbestos Abatement Costs in Tort Actions", see 19 Colo. Law. 659 (1990); for article, "Strict Product Liability and Comparative Fault in Colorado", see 19 Colo. Law. 2081 (1990); for article, "Preemption of State Tort Claims Under The Medical Device Amendments", see 24 Colo. Law. 2217 (1995).

### **13-21-401. Definitions.**

As used in this part 4, unless the context otherwise requires:

(1) "Manufacturer" means a person or entity who designs, assembles, fabricates, produces, constructs, or otherwise prepares a product or a component part of a product prior to the sale of the product to a user or consumer. The term includes any seller who has actual knowledge of a defect in a product or a seller of a product who creates and furnishes a manufacturer with specifications relevant to the alleged defect for producing the product or who otherwise exercises some significant control over all or a portion of the manufacturing process or who alters or modifies a product in any significant manner after the product comes into his possession and before it is sold to the ultimate user or consumer. The term also includes any seller of a product who is owned in whole or significant part by the manufacturer or who owns, in whole or significant part, the manufacturer. A seller not otherwise a manufacturer shall not be deemed to be a manufacturer merely because he places or has placed a private label on a product if he did not otherwise specify how the product shall be produced or control, in some significant manner, the manufacturing process of the product and the seller discloses who the actual manufacturer is.

(2) "Product liability action" means any action brought against a manufacturer or seller of a product, regardless of the substantive legal theory or theories upon which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of any product, or the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product.

(3) "Seller" means any individual or entity, including a manufacturer, wholesaler, distributor, or retailer, who is engaged in the business of selling or leasing any product for resale, use, or consumption.

**Source: L. 77:** Entire part added, p. 820, § 2, effective July 1.

### **ANNOTATION**

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**For liability of successor corporations under the Colorado products liability act,** see Ruiz v. ExCello Corp., 653 P.2d 415 (Colo. App. 1982); Florum v. Elliott Mfg. Co., 629 F. Supp. 1145 (D. Colo. 1986), aff'd in part, rev'd in part, 867 F.2d 570 (10th Cir. 1989).

**The plain meaning of the phrase "otherwise prepares a product" does not encompass use of one's name on that product.** Townsend v. Toro Co., 735 F. Supp. 3d 1352 (D. Colo. 2024).

Therefore, placement of branded labels that identify the product as that of the rental company does not transform an innocent seller into a manufacturer where the actual manufacturer's brand and name were also conspicuously displayed. Townsend v. Toro Co., 735 F. Supp. 3d 1352 (D. Colo. 2024).

Nor does placement of a GPS tracker after the product was manufactured transform the product in any meaningful way. Townsend v. Toro Co., 735 F. Supp. 3d 1352 (D. Colo. 2024).

Nor does the completion of check-in/check-out procedures or cleaning and maintenance of the product along with the distribution of safety manuals, where there is no evidence that the cleaning or maintenance altered or modified the product. Townsend v. Toro Co., 735 F. Supp. 3d 1352 (D. Colo. 2024).

**By negative implication, the statute allows a seller who places a private label on a product without disclosing the actual manufacturer to be held liable as a manufacturer.** Yoder v. Honeywell, Inc.,

104 F.3d 1215 (10th Cir. 1997); Long v. United States Brass Corp., 333 F. Supp. 2d 999 (D. Colo. 2004); Heinrich v. Master Craft Eng'g, Inc., 131 F. Supp. 3d 1137 (D. Colo. 2015).

**An injured party seeking to assert the apparent manufacturer doctrine need not show that he or she was actually misled, deceived, or suffered some unfairness or injustice** related to the seller's labeling of the product in addition to proving that the seller placed a private label on a product and did not disclose the identity of the actual manufacturer. Heinrich v. Master Craft Eng'g, Inc., 131 F. Supp. 3d 1137 (D. Colo. 2015).

**Placement of branded labels that identify the product as that of the rental company does not transform an innocent seller into an apparent manufacturer** where the actual manufacturer's brand and name were also conspicuously displayed. Townsend v. Toro Co., 735 F. Supp. 3d 1352 (D. Colo. 2024).

**To hold a seller liable as a manufacturer,** the plaintiff must prove that the seller had both actual knowledge of the design and use of the final product and actual knowledge that the final product was unreasonably dangerous without a warning. Bond v. E.I. Du Pont De Nemours & Co., 868 P.2d 1114 (Colo. App. 1993); Townsend v. Toro Co., 735 F. Supp. 3d 1352 (D. Colo. 2024).

**Liability for injuries caused by a product will not be imputed to a corporation that provides the trademark but has no role in the manufacturing**

**process or the sale of the product.** *Yoder v. Honeywell, Inc.*, 900 F. Supp. 240 (D. Colo. 1995), *aff'd*, 104 F.3d 1215 (10th Cir. 1997).

**Negligence claim allegations that fall within the definition of "product liability action" in subsection (2) are barred by §**

**13-21-402.** *Townsend v. Toro Co.*, 735 F. Supp. 3d 1352 (D. Colo. 2024).

**Applied** in *Roberts v. May*, 41 Colo. App. 82, 583 P.2d 305 (1978); *Persichini v. Brad Ragan, Inc.*, 735 P.2d 168 (Colo. 1987); *Rice v. Armstrong World Indus., Inc.*, 653 F. Supp. 763 (D. Colo. 1987).

### **13-21-402. Innocent seller.**

(1) No product liability action shall be commenced or maintained against any seller of a product unless said seller is also the manufacturer of said product or the manufacturer of the part thereof giving rise to the product liability action. Nothing in this part 4 shall be construed to limit any other action from being brought against any seller of a product.

(2) If jurisdiction cannot be obtained over a particular manufacturer of a product or a part of a product alleged to be defective, then that manufacturer's principal distributor or seller over whom jurisdiction can be obtained shall be deemed, for the purposes of this section, the manufacturer of the product.

**Source:** **L. 77:** Entire part added, p. 820, § 2, effective July 1. **L. 2003:** (1) amended, p. 1289, § 1, effective September 1.

### **ANNOTATION**

**Law reviews.** For article, "New Statutes Change Civil Litigation in Colorado", see 33 Colo. Law. 65 (May 2004). For article, "What's in the Package: Food, Beverage, and Dietary Supplement Law and Litigation Part I", see 43 Colo. Law. 77 (July 2014).

**Issues under strict liability theory.** Under a strict liability theory, the determination is whether the product is defective, or, if not defective, unreasonably unsafe, and whether, under an objective standard, after weighing the relevant costs

and benefits, a warning was required. *Downing v. Overhead Door Corp.*, 707 P.2d 1027 (Colo. App. 1985).

**Claims based upon negligence and breach of implied warranty of merchantability are not based on the doctrine of strict liability in tort;** hence, action could proceed against seller even though the seller was not also the manufacturer. *Wallman v. Kelley*, 976 P.2d 330 (Colo. App. 1998).

**Contract claims that seek only economic loss for a defective product without collateral damage or risk of harm to others do not constitute product liability actions.** With the innocent seller statute, the general assembly intended to insulate sellers who did not manufacture a product from liability for harm caused by the product and not from the commercial obligation to stand behind the merchantability of a product the seller chooses to sell in the public market place. *Carter v. Brighton Ford, Inc.*, 251 P.3d 1179 (Colo. App. 2010).

**Strict liability is limited to claims against manufacture** of an allegedly defective product. *Potthoff v. Alms*, 41 Colo. App. 51, 583 P.2d 309 (1978) (cause of action arose before effective date of section).

**Strict liability on the part of manufacturer of component parts** for injuries resulting from design defects does not equate to absolute liability. *Shaw v. Gen. Motors Corp.*, 727 P.2d 387 (Colo. App. 1986).

**Electricity is a product** for purposes of section 402 of the Restatement (Second) of Torts while the distribution system for electricity is a service. *Smith v. Home Light & Power Co.*, 695 P.2d 788 (Colo. App. 1984) (cause of action arose before effective date of section), *aff'd*, 734 P.2d 1051 (Colo. 1987).

**Defense of misuse available.** *Uptain v. Huntington Lab, Inc.*, 685 P.2d 218 (Colo. App. 1984).

**Generally, living things do not constitute "products"** within the meaning of this section. *Kaplan v. C Lazy U Ranch*, 615 F. Supp. 234 (D. Colo. 1985).

**Lack of a passive restraint system in automobiles held not actionable under unreasonable defect theory of restatement (second) of torts § 402A.** *Kern v. Gen. Motors Corp.*, 724 P.2d 1365 (Colo. App. 1986).

**The absence of leg protection devices was not a defect** that rendered the motorcycle unreasonably dangerous. *Camacho v. Honda Motor Co., Ltd.*, 701 P.2d 628 (Colo. App. 1985), *rev'd on other grounds*, 741 P.2d 1240 (Colo. 1987).

Nor was the motorcycle in a defective condition unreasonably dangerous because defendants failed to warn the plaintiffs of the risk of harm of driving a motorcycle without crash bars or leg protection devices. *Camacho v. Honda Motor Co., Ltd.*, 701 P.2d 628 (Colo. App. 1985), *rev'd on other grounds*, 741 P.2d 1240 (Colo. 1987).

**A manufacturer of component parts** may be held strictly liable for injuries as a result of design defects in the component when it is expected to and does reach the consumer without substantial change in condition. *Union Supply Co. v. Pust*, 583 P.2d 276 (1978); *Shaw v. Gen. Motors Corp.*, 727 P.2d 387 (Colo. App. 1986).

Dealership which sold truck that injured plaintiff was not a manufacturer and could not be held strictly liable for alleged defective and unreasonably dangerous



condition in truck. *Shaw v. Gen. Motors Corp.*, 727 P.2d 387 (Colo. App. 1986).

The analysis for determining the liability of a manufacturer of component parts rests on whether the component parts or raw materials were unreasonably dangerous as a result of a failure to warn or other design defect existing at the time of delivery. *Bond v. E.I. Du Pont De Nemours & Co.*, 868 P.2d 1114 (Colo. App. 1993).

**For liability of successor corporations under the Colorado products liability act**, see *Ruiz v. ExCello Corp.*, 653 P.2d 415 (Colo. App. 1982); *Florum v. Elliott Mfg. Co.*, 629 F. Supp. 1145 (D. Colo. 1986), *aff'd in part, rev'd in part*, 867 F.2d 570 (10th Cir. 1989).

The Colorado Products Liability Act does not address the liability of successor manufacturers or corporations in relation to the product line theory. *Johnston v. Amsted Indus., Inc.*, 830 P.2d 1141 (Colo. App. 1992).

**Product-line theory and continuity of enterprise theory exceptions to general rule of nonliability of successor corporation not adopted by court decision.** Since such concepts existed prior to enactment of this act, their omission creates a negative inference that the general assembly considered these concepts and chose not to enact them. *Florum v. Elliott Mfg. Co.*, 629 F. Supp. 1145 (D. Colo. 1986), *aff'd in part, rev'd in part*, 867 F.2d 570 (10th Cir. 1989); *Johnson v. Amsted Indus., Inc.*, 830 P.2d 1141 (Colo. App. 1992).

**Sale of product to defendant not found.** *Borroel v. Lakeshore, Inc.*, 618 F. Supp. 354 (D. Colo. 1985).

**The crashworthiness doctrine is adopted for this jurisdiction** so that a motor vehicle manufacturer may be liable in negligence or strict liability when the design or manufacturing defect caused or enhanced the injuries sustained. *Camacho v. Honda Motor Co., Ltd.*, 741 P.2d 1240 (Colo. 1987).

This doctrine requires motorcycle manufacturers to provide reasonable, cost-acceptable safety features to reduce the severity of injuries incurred in foreseeable motorcycle accidents. *Camacho v. Honda Motor Co., Ltd.*, 741 P.2d 1240 (Colo. 1987).

**Installation of a windshield which includes preparation of component parts** is a "product" prepared for sale to the consumer. *Miller v. Solaglas Cal., Inc.*, 870 P.2d 559 (Colo. App. 1993).

**Colorado will not hold a successor corporation liable under the product line theory of liability.** The court will not follow the reasoning which holds a corporation liable merely because it is able to pay the plaintiff's damages. *Johnston v. Amsted Indus., Inc.*, 830 P.2d 1141 (Colo. App. 1992).

**The qualified immunity granted to sellers and distributors is an affirmative defense** that must be raised in the defendant's responsive pleading or answer. *Stone's Farm Supply, Inc. v. Deacon*, 805 P.2d 1109 (Colo. 1991).

**Once seller who is not manufacturer invokes the protections of this section,** the burden of proof shifts to the plaintiff to show that jurisdiction could not be obtained over the manufacturer. *Deacon v. Am. Plant Food Corp.*, 782 P.2d 861 (Colo. App. 1989), rev'd on other grounds sub nom. *Stone's Farm Supply, Inc. v. Deacon*, 805 P.2d 1109 (Colo. 1991).

**When claim against manufacturer is barred by expiration of limitation period, not by lack of jurisdiction, claim may not be asserted against seller under subsection (2).** *Halter v. Waco Scaffolding & Equip. Co.*, 797 P.2d 790 (Colo. App. 1990).

**Although the plaintiff's product liability suit against the manufacturer was automatically stayed by the manufacturer's filing of a petition in bankruptcy,** the court retained jurisdiction over the product liability suit. *Bond v. E.I. Du Pont De Nemours & Co.*, 868 P.2d 1114 (Colo. App. 1993).

**Applied** in *Frazier v. Kysor Indus. Corp.*, 43 Colo. App. 287, 607 P.2d 1296 (1979); *Am. Safety Equip. Corp. v. Winkler*, 640 P.2d 216 (Colo. 1982); *Shaw v. Gen. Motors Corp.*, 727 P.2d 387 (Colo. App. 1986).

#### **13-21-402.5. Product misuse.**

A product liability action may not be commenced or maintained against a manufacturer or seller of a product that caused injury, death, or property damage if, at the time the injury, death, or property damage occurred, the product was used in a manner or for a purpose other than that which was intended and which could not reasonably have been expected, and such misuse of the product was a cause of the injury, death, or property damage.

**Source: L. 2003:** Entire section added, p. 1289, § 2, effective September 1.

#### **ANNOTATION**

**Law reviews.** For article, "New Statutes Change Civil Litigation in Colorado", see 33 *Colo. Law.* 65 (May 2004).

**The words "commenced or maintained" cannot properly be read as an indication that the general assembly intended to abrogate the common law status of misuse as an affirmative defense.**

*Faulhaber v. Petzl Am., Inc.*, 656 F. Supp. 3d 1257 (D. Colo. 2023).

**Misuse is a causation concept.** The product liability statute regime does not abrogate the common law regarding a defendant's burden to establish misuse as an affirmative defense. *Faulhaber v. Petzl Am., Inc.*, 656 F. Supp. 3d 1257 (D. Colo. 2023).

### **13-21-403. Presumptions.**

(1) In any product liability action, it shall be rebuttably presumed that the product which caused the injury, death, or property damage was not defective and that the manufacturer or seller thereof was not negligent if the product:

(a) Prior to sale by the manufacturer, conformed to the state of the art, as distinguished from industry standards, applicable to such product in existence at the time of sale; or

(b) Complied with, at the time of sale by the manufacturer, any applicable code, standard, or regulation adopted or promulgated by the United States or by this state, or by any agency of the United States or of this state.

(2) In like manner, noncompliance with a government code, standard, or regulation existing and in effect at the time of sale of the product by the manufacturer which contributed to the claim or injury shall create a rebuttable presumption that the product was defective or negligently manufactured.

(3) Ten years after a product is first sold for use or consumption, it shall be rebuttably presumed that the product was not defective and that the manufacturer or seller thereof was not negligent and that all warnings and instructions were proper and adequate.

(4) In a product liability action in which the court determines by a preponderance of the evidence that the necessary facts giving rise to a presumption have been established, the court shall instruct the jury concerning the presumption.

**Source:** L. 77: Entire part added, p. 820, § 2, effective July 1. L. 2003: (4) added, p. 1289, § 3, effective September 1.

### **ANNOTATION**

**Law reviews.** For comment, "Liability Without Fault and the AIDS Plague Compel a New Approach to Cases of Transfusion-Transmitted Disease", see 61 U. Colo. L. Rev. 81 (1990). For article, "New Statutes Change Civil Litigation in Colorado", see 33 Colo. Law. 65 (May 2004). For article, "What's in the Package: Food, Beverage,

and Dietary Supplement Law and Litigation Part I", see 43 Colo. Law. 77 (July 2014).

**Presumption as to "unavoidably unsafe" product.** The presumption in subsection (1)(a) does not apply in the case of a product which is claimed to be unavoidably unsafe. Belle Bonfils Mem.

Blood Bank v. Hansen, 665 P.2d 118 (Colo. 1983).

**Evidence showing compliance with applicable statutes and regulations** may be controverted by evidence sufficient to warrant a reasonable inference of noncompliance (evidence of lack of odorization of propane gas). Blueflame Gas, Inc. v. Van Hoose, 679 P.2d 579 (Colo. 1984) (cause of action arose before effective date of section).

**Subsection (3) presumption inapplicable within 10 years of first sale.** An injury complained of must have occurred within 10 years of the date the product was first sold for use or consumption, otherwise the rebuttable presumption in subsection (3) will be applicable. Fraley v. Am. Cyanamid Co., 570 F. Supp. 497 (D. Colo. 1983).

The ten-year period runs from the sale of the individual product or item which causes the personal injury, death, or property damage, not from the first sale of the particular model to the public. Downing v. Overhead Door Corp., 707 P.2d 1027 (Colo. App. 1985).

For the purposes of subsection (3), the date that "a product is first sold for use or consumption" refers to the time when a product line of a particular design is first sold to the public and not the date on which the particular product was sold. Patterson v. Magna Am. Corp., 754 P.2d 1385 (Colo. App. 1988) (holding contrary to Downing v. Overhead Door Corp. annotated above).

**Implicit in subsection (3) is assumption that no other strict liability claims have**

**been established against product** during the ten-year period. Uptain v. Huntington Lab, Inc., 723 P.2d 1322 (Colo. 1986).

**The phrase "the necessary facts giving rise" in subsection (4) is not ambiguous.** Subsection (4) simply refers back to the preceding subsections, directing courts to issue an instruction on a rebuttal presumption once the facts in the relevant subsections have been demonstrated. Looking to subsection (3), the plain language states that the presumption is triggered when more than ten years have passed since the product was first sold on the market. Helmer v. Goodyear Tire & Rubber Co., 828 F.3d 1195 (10th Cir. 2016).

**Nothing in the plain language of subsection (3) or (4) suggests courts must consider a product's useful safe life.** Helmer v. Goodyear Tire & Rubber Co., 828 F.3d 1195 (10th Cir. 2016).

**Error to instruct jury concerning the presumption.** Where the evidence demonstrated only that the manufacturer began manufacturing the model of garage opener involved in the incident in October, 1967, and that by its serial number, the product in this case was allegedly manufactured in September, 1968, the jury was without sufficient evidence reasonably to conclude by a preponderance of the evidence, that the basic facts giving rise to the presumption existed. Downing v. Overhead Door Corp., 707 P.2d 1027 (Colo. App. 1985).

**This statute inapplicable to suit of subrogee** since subrogor's cause of action accrued before the effective date of the

statute. *Union Insurance Co. v. RCA Corp.*, 724 P.2d 80 (Colo. App. 1986).

**Presumption may be rebutted by a preponderance of the evidence to the contrary.** Based upon language in *Hawkinson v. A.H. Robins Co., Inc.* (595 F. Supp. 1290 (D. Colo. 1984)) and *Union Ins. Co. v. RCA*, (724 P.2d 80 (Colo. App. 1986)), the trial court's application of the preponderance of the evidence standard was the proper standard to use when rebutting a presumption under this section. *Tafoya v. Sears Roebuck & Co.*, 884 F.2d 1330 (10th Cir. 1989).

**Expert testimony showing compliance with federal standards is admissible** to show that the product is not defective. *States v. R.D. Werner Co.*, 799 P.2d 427 (Colo. App. 1990).

**Instruction not warranted.** Where plaintiff has presented sufficient evidence to defeat a motion for a directed verdict, he has necessarily rebutted the presumption of subsection (3), and there is no reason for judge to issue instruction. *Matz v. Mile Hi Concrete, Inc.*, 819 P.2d 530 (Colo. App. 1991), *aff'd in part, rev'd in part on other grounds*, 842 P.2d 198 (Colo. 1992) (decided prior to 2003 amendment); *Perlmutter v. U.S. Gypsum Co.*, 4 F.3d 864 (10th Cir. 1993) (decided prior to 2003 amendment).

**It was error to instruct the jury regarding the statutory presumption**

where warnings regarding concrete had been given within the last ten years, there was testimony that concrete had caused injuries within the last ten years, and there had been lawsuits during the last ten years alleging that concrete was unreasonably dangerous without warnings. *Matz v. Mile Hi Concrete, Inc.*, 819 P.2d 530 (Colo. App. 1991), *aff'd in part, rev'd in part on other grounds*, 842 P.2d 198 (Colo. 1992) (decided prior to 2003 amendment).

**Once a showing by a preponderance has been made concerning the facts giving rise to subsection (3)'s presumption, an instruction regarding the presumption must be given.** *Kokins v. Teleflex, Inc.*, 621 F.3d 1290 (10th Cir. 2010).

The presumption in subsection (3) is to be considered by the jury along with traditional forms of evidence, so long as the trial court determines by a preponderance of the evidence that the necessary facts giving rise to the presumption have been established. *Kokins v. Teleflex, Inc.*, 621 F.3d 1290 (10th Cir. 2010).

**Applied** in *Welch v. F.R. Stokes, Inc.*, 555 F. Supp. 1054 (D. Colo. 1983); *Uptain v. Huntington Lab, Inc.*, 685 P.2d 218 (Colo. App. 1984); *Hawkinson v. A.H. Robins Co., Inc.*, 595 F. Supp. 1290 (D. Colo. 1984); *Squires v. Goodwin*, 829 F. Supp. 2d 1041 (D. Colo. 2011).

#### **13-21-404. Inadmissible evidence.**

In any product liability action, evidence of any scientific advancements in technical or other knowledge or techniques, or in design theory or philosophy, or in manufacturing or testing

knowledge, techniques, or processes, or in labeling, warnings of risks or hazards, or instructions for the use of such product, where such advancements were discovered subsequent to the time the product in issue was sold by the manufacturer, shall not be admissible for any purpose other than to show a duty to warn.

**Source: L. 77:** Entire part added, p. 821, § 2, effective July 1.

#### ANNOTATION

**Duty to warn.** After a product involving human safety has been sold and dangerous defects in design have come to the manufacturer's attention, the manufacturer has a duty either to remedy such defects, or if a complete remedy is not feasible, to give users adequate warnings and instructions concerning methods for minimizing danger. *Downing v. Overhead Door Corp.*, 707 P.2d 1027 (Colo. App. 1985).

**Evidence of preaccident warning.** Evidence that the defendant prepared and distributed warnings regarding the product prior to the accident is admissible to show that the defendant had breached its duty to warn, as such evidence is probative of defendant's preaccident knowledge of the danger inherent in the product, and the feasibility of giving a warning to make the product less dangerous. *Downing v. Overhead Door Corp.*, 707 P.2d 1027 (Colo. App. 1985).

**Evidence of postaccident design change admissible.** Since a postaccident design change may bear directly on the issue of feasible alternatives to the defective design,

evidence of such a change may be admitted. *Roberts v. May*, 41 Colo. App. 82, 583 P.2d 305 (1978) (cause of action arose before effective date of section).

**Limitation on evidence of subsequent remedial measures applicable** in diversity-based action and controls the application of Fed. Rule of Evid. 407 but not in this case since cause of action arose before effective date of section. *Moe v. Avions Marcel Dassault-Breguet Aviation*, 727 F.2d 917 (1984).

**Evidence of alternative concepts implemented later that were known as possible at time of manufacture is admissible under this section.** *Meller v. Heil Co.*, 745 F.2d 1297 (10th Cir. 1984).

**Scientific advancements construed as new discoveries after original construction.** *Meller v. Heil Co.*, 745 F.2d 1297 (10th Cir. 1984).

**For court's refusal to apply this section to new warning label,** see *Uptain v. Huntington Lab, Inc.*, 723 P.2d 1322 (Colo. 1986).

**13-21-405. Report to general assembly. (Repealed)**

**Source:** **L. 77:** Entire part added, p. 821, § 2, effective July 1. **L. 92:** Entire section repealed, p. 1613, § 168, effective May 20.

**13-21-406. Comparative fault as measure of damages.**

(1) In any product liability action, the fault of the person suffering the harm, as well as the fault of all others who are parties to the action for causing the harm, shall be compared by the trier of fact in accordance with this section. The fault of the person suffering the harm shall not bar such person, or a party bringing an action on behalf of such a person, or his estate, or his heirs from recovering damages, but the award of damages to such person or the party bringing the action shall be diminished in proportion to the amount of causal fault attributed to the person suffering the harm. If any party is claiming damages for a decedent's wrongful death, the fault of the decedent, if any, shall be imputed to such party.

(2) Where comparative fault in any such action is an issue, the jury shall return special verdicts, or, in the absence of a jury, the court shall make special findings determining the percentage of fault attributable to each of the persons to whom some fault is attributed and determining the total amount of damages sustained by each of the claimants. The entry of judgment shall be made by the court, and no general verdict shall be returned by the jury.

(3) Repealed.

(4) The provisions of section 13-21-111 do not apply to any product liability action.

**Source:** **L. 81:** Entire section added, p. 885, § 1, effective July 1; (3) amended, p. 2030, § 42, effective July 14. **L. 86:** (3) repealed, p. 682, § 6, effective July 1.

**ANNOTATION**

**Law reviews.** For comment, "Multiple Defendants in Negligence Actions: Mountain Mobile Mix, Inc. v. Gifford", see 56 U. Colo. L. Rev. 303 (1985). For article, "Application of the Pro Rata Liability, Comparative Negligence and Contribution Statutes", see 23 Colo. Law. 1717 (1994).

For article, "Overview of Comparative Fault", see 29 Colo. Law. 95 (July 2000).

**This section does not apply to the issue of liability;** it merely permits the jury to consider fault in arriving at the damage figure. *Welch v. F.R. Stokes, Inc.*, 555 F. Supp. 1054 (D. Colo. 1983); *Perlmutter v.*

U.S. Gypsum Co., 4 F.3d 864 (10th Cir. 1993).

**If product is defective, and both the product and the injured party's conduct contributed to the injury**, then the injured party's recovery must be reduced by a percentage representing the amount of fault attributable to his own conduct. *States v. R.D. Werner Co.*, 799 P.2d 427 (Colo. App. 1990); *Armentrout v. FMC Corp.*, 819 P.2d 522 (Colo. App. 1991).

If the injured party's misuse of the product is the sole cause of damages, and the alleged defect was not a cause thereof, then the injured party cannot recover under strict liability theory. *States v. R.D. Werner Co.*, 799 P.2d 427 (Colo. App. 1990); *Armentrout v. FMC Corp.*, 819 P.2d 522 (Colo. App. 1991).

**The word "fault"**, although not defined, is not restricted to assumption of risk and/or product misuse but is to be construed as a general term encompassing a broad range of

culpable behavior including, but not limited, to negligence. *Huffman v. Caterpillar Tractor Co.*, 908 F.2d 1470 (10th Cir. 1990); *Carter v. Unit Rig & Equip. Co.*, 908 F.2d 1483 (10th Cir. 1990); *Miller v. Solaglas Cal., Inc.*, 870 P.2d 559 (Colo. App. 1993); *Montag v. Honda Motor Co.*, 75 F.3d 1414 (10th Cir. 1996).

**Manufacturer was not entitled to a jury instruction on comparative fault.** Where instructions regarding use of paint product were contained only in marketing materials intended for architects and designers, and were not printed on the product itself, there was no evidence that the consumer of the product knew of its limitations and no jury instruction was warranted. *Perlmutter v. U.S. Gypsum Co.*, 4 F.3d 864 (10th Cir. 1993).

**Applied** in *Mtn. Mobile Mix, Inc. v. Gifford*, 660 P.2d 883 (Colo. 1983); *Nat'l Farmers Union Prop. & Cas. Co. v. Frackelton*, 662 P.2d 1056 (Colo. 1983).

## PART 5

### PRODUCT LIABILITY ACTIONS - FIREARMS AND AMMUNITION

#### 13-21-501 to 13-21-505. (Repealed)

**Source: L. 2023:** Entire part repealed, (SB 23-168), ch. 122, p. 453, § 1, effective October 1.

**Editor's note:** This part 5 was added in 1986. For amendments to this part 5 prior to its repeal in 2023, consult the 2022 Colorado Revised statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.



## ANNOTATION

**Law reviews.** For article, "Negligent Entrustment of Guns and Other Dangerous Instrumentalities", see 47 Colo. Law. 46 (June 2018).

**Applied** in Phillips v. Lucky Gunner, LLC, 84 F. Supp. 3d 1216 (D. Colo. 2015).

## PART 6

### LIABILITY FOR ELECTRONIC COMPUTING DEVICE FAILURES ASSOCIATED WITH THE YEAR 2000 DATE CHANGE

**13-21-601 to 13-21-604. (Repealed)**

**Source: L. 2011:** Entire part repealed, (HB 11-1303), ch. 264, p. 1152, § 18, effective August 10.

**Editor's note:** This part 6 was added in 1999 and was not amended prior to its repeal in 2011. For the text of this part 6 prior to 2011, consult the 2010 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

## PART 7

### YEAR 2000 CITIZENS' PROTECTION ACT

**13-21-701 to 13-21-705. (Repealed)**

**Editor's note:** (1) This part 7 was added in 1999 and was not amended prior to its repeal in 2006. For the text of this part 7 prior to 2006, consult the 2005 Colorado Revised Statutes.

(2) Section 13-21-705 provided for the repeal of this part 7, effective December 31, 2006. (See L. 99, p. 632.)

PART 8  
DRUG DEALER LIABILITY ACT

**13-21-801. Short title.**

This part 8 shall be known and may be cited as the "Drug Dealer Liability Act".

**Source: L. 99:** Entire part added, p. 1261, § 1, effective June 2.

**13-21-802. Legislative declaration.**

(1) The general assembly hereby declares that the purpose of this part 8 is:

(a) To provide a civil remedy for damages to persons in this state injured as a result of the use of an illegal drug;

(b) To shift, to the extent possible, the cost of damage caused by the market for illegal drugs in the state to those who illegally profit from that market; and

(c) To deter those who have not yet entered into the distribution market for illegal drugs by establishing the prospect of substantial monetary loss.

**Source: L. 99:** Entire part added, p. 1261, § 1, effective June 2.

**13-21-803. Definitions.**

As used in this part 8, unless the context otherwise requires:

(1) "Illegal drug" means a controlled substance as defined in section 18-18-102 (5), C.R.S.

(2) "Individual illegal drug user" means the individual whose use of a specified illegal drug is the basis of an action brought under this part 8.

(3) "Participate in the marketing of illegal drugs" means to transport, import into this state, sell, possess with the intent to sell, furnish, administer, or give away, import into this state, sell, furnish, administer, or give away an illegal drug. "Participate in the marketing of illegal drugs" does not include the purchase or receipt of an illegal drug for personal use.

(4) "Period of illegal drug use" means, in relation to the individual illegal drug user, the period of time from the individual's first use of a specified illegal drug to the accrual of the cause

of action. The period of illegal drug use is presumed to commence two years before the cause of action accrues unless the defendant proves otherwise by clear and convincing evidence.

(5) "Person" means an individual, governmental entity, corporation, firm, trust, partnership, or incorporated or unincorporated association existing under or authorized by the laws of this state, another state, or a foreign country.

(6) "Specified illegal drug" means the type of illegal drug used by an individual illegal drug user whose use is the basis of an action brought under section 13-21-804 (2)(b).

**Source: L. 99:** Entire part added, p. 1261, § 1, effective June 2.

#### **13-21-804. Damages - persons injured by an individual illegal drug user.**

(1) Any one or more of the following persons may bring an action for damages caused by an individual's use of an illegal drug within this state:

- (a) A parent, legal guardian, child, spouse, or sibling of the individual illegal drug user;
- (b) An employer of an individual illegal drug user;
- (c) A medical facility, insurer, governmental entity, employer, or other entity that funded a drug treatment program or employee assistance program for the individual illegal drug user or that otherwise expended money on behalf of the individual illegal drug user or a dependent of the individual illegal drug user; and
- (d) A person injured as a result of the willful, reckless, or negligent actions of an individual illegal drug user.

(2) (a) A person entitled to seek damages under this section may seek damages from one or more of the following:

- (I) A person who sold, administered, or furnished, or is in the chain of distribution of, an illegal drug used by the individual illegal drug user;
- (II) A person who knowingly participated in the marketing or distribution in the state of Colorado of the specified illegal drug used by an individual illegal drug user during the individual drug user's period of illegal drug use.

(b) Nothing in this section shall be deemed to authorize a suit against an employer of a person described in paragraph (a) of this subsection (2) if the employer had no knowledge of the actions of the person giving rise to the claim under this section.

(3) The standard of proof for establishing liability under this section shall be by clear and convincing evidence.

(4) A person entitled to bring an action under this section may recover all of the following damages:

(a) Economic damages, including but not limited to the cost of treatment and rehabilitation, medical expenses, or any other pecuniary loss proximately caused by an individual's use of an illegal drug;

(b) Noneconomic damages, including but not limited to pain and suffering, disfigurement, loss of enjoyment, loss of companionship and consortium, and other nonpecuniary loss proximately caused by an individual's use of an illegal drug;

(c) Exemplary damages;

(d) Reasonable attorney fees incurred as a result of bringing an action under this section; and

(e) Costs of suit, including but not limited to expenses for expert witnesses and expenses for investigative services to determine the identity of the defendants and the location of any assets of the defendants.

**Source: L. 99:** Entire part added, p. 1262, § 1, effective June 2.

#### **13-21-805. Nonexclusiveness - exceptions to liability - joinder.**

(1) Any cause of action established by this part 8 shall be in addition to and not in lieu of any other cause of action available to a plaintiff.

(2) A person whose possession, use, or distribution of illegal drugs is authorized by law is not liable for damages under this part 8.

(3) A law enforcement officer or agency, the state, or a person acting at the direction of a law enforcement officer or agency or the state is not liable for participating in the marketing of illegal drugs if the participation is in furtherance of an official investigation.

(4) Two or more persons may join together in one action under section 13-21-804 if any portion of the period of illegal drug use of the individual illegal drug user whose actions resulted in the damages to one plaintiff overlaps with the period of illegal drug use of the individual illegal drug users whose actions resulted in the damages to every other plaintiff.

(5) A third party shall not pay damages awarded under this part 8 or provide a defense or money for a defense on behalf of an insured under a contract of insurance or indemnification.

**Source: L. 99:** Entire part added, p. 1263, § 1, effective June 2.

**13-21-806. Comparative negligence.**

- (1) An action under this part 8 is governed by the principles of comparative negligence.
- (2) The burden of proving the comparative negligence of the plaintiff shall be on the defendant by clear and convincing evidence.

**Source: L. 99:** Entire part added, p. 1264, § 1, effective June 2.

**13-21-807. Contribution among and recovery from multiple defendants.**

Notwithstanding the provisions of section 13-50.5-102 (3), a person subject to liability under this part 8 has a right of contribution against any other person subject to liability under this part 8. Contribution may be enforced either in the original action or by a separate action brought for that purpose. A plaintiff may seek recovery against a person whom a defendant has asserted a right of contribution in accordance with this part 8 and other laws.

**Source: L. 99:** Entire part added, p. 1264, § 1, effective June 2.

**13-21-808. Effect of criminal drug conviction.**

(1) (a) A person against whom recovery is sought is estopped from denying participation in the marketing of illegal drugs if the person has a criminal conviction based on the same circumstances that are the basis for the claim for damages. Said conviction must be for other than mere possession of the specified illegal drug:

(I) That is a felony under the "Comprehensive Drug Abuse Prevention and Control Act of 1970", 21 U.S.C. sec. 801, et seq.;

(II) Under section 18-18-405 or 18-18-406, C.R.S.; or

(III) That is a felony related to participation in the marketing of illegal drugs under the laws of another state.

(b) Such a conviction is also prima facie evidence of the person's participation in the marketing of illegal drugs during the two years preceding the date of an act giving rise to a conviction.

(2) The absence of a conviction of a person against whom recovery is sought does not bar an action against that person.

**Source: L. 99:** Entire part added, p. 1264, § 1, effective June 2.

### **13-21-809. Prejudgment attachment and execution on judgments.**

(1) (a) Except as provided in subsection (3) of this section, a plaintiff under this part 8 may request an ex parte, prejudgment order of attachment under rule 102 of the Colorado rules of civil procedure against all of the assets of a defendant sufficient to satisfy a potential award. If attachment is issued, a defendant is entitled to an immediate hearing. The attachment may be removed if the defendant demonstrates that the assets will be available for a potential award or if the defendant posts a bond sufficient to cover a potential award.

(b) Prior to the payment of any judgment awarded pursuant to this part 8, payment shall first be made to satisfy any order or judgment entered against the defendant in a criminal proceeding for restitution, including any contributions to a crime victim compensation fund pursuant to article 4.1 of title 24, C.R.S., or to a victims and witnesses assistance and law enforcement fund pursuant to article 4.2 of title 24, C.R.S.

(2) A person against whom a judgment has been rendered under this part 8 is not eligible to exempt any property, of whatever kind, from process to levy or process to execute on the judgment.

(3) Any assets sought to satisfy a judgment under this part 8 that have been named in a forfeiture action pending on the date that the attachment under subsection (1) of this section is sought or have been seized for forfeiture by any state or federal agency may not be attached or used to satisfy a judgment under this part 8 unless and until the assets have been released following conclusion of the forfeiture action or released by the agency that seized the assets.

**Source: L. 99:** Entire part added, p. 1265, § 1, effective June 2.

**13-21-810. Statute of limitations.**

(1) Except as otherwise provided by this section, a claim under this part 8 shall not be brought more than four years after the cause of action accrues. A cause of action accrues under this part 8 when a person who may recover has reason to know of the harm from illegal drug use that is the basis of the cause of action and has reason to know that the illegal drug use is the cause of the harm.

(2) For a defendant, the statute of limitations under this section does not expire until six months after the individual potential defendant is convicted of a criminal offense or as otherwise provided by law.

**Source: L. 99:** Entire part added, p. 1265, § 1, effective June 2.

**13-21-811. Stay of action.**

On motion by a governmental agency involved in a drug investigation or prosecution, an action brought under this part 8 shall be stayed until the completion of the criminal investigation or prosecution that gave rise to the motion for a stay of the action.

**Source: L. 99:** Entire part added, p. 1265, § 1, effective June 2.

**13-21-812. Nonretroactive.**

No cause of action shall accrue based upon any act by a defendant that occurred prior to June 2, 1999.

**Source: L. 99:** Entire part added, p. 1265, § 1, effective June 2.

**13-21-813. Severability.**

If any provision of this part 8 or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this part 8 that can be given effect without the invalid provision or application, and to this end the provisions of this part 8 are declared to be severable.

**Source: L. 99:** Entire part added, p. 1266, § 1, effective June 2.

## PART 9

### LIABILITY OF HOSPITAL ENTERPRISES FOR ELECTRONIC COMPUTING DEVICE FAILURES ASSOCIATED WITH THE YEAR 2000 DATE CHANGE

#### **13-21-901 to 13-21-902. (Repealed)**

**Source: L. 2011:** Entire part repealed, (HB 11-1303), ch. 264, p. 1152, § 19, effective August 10.

**Editor's note:** This part 9 was added in 1999. For amendments to this part 9 prior to its repeal in 2011, consult the 2010 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

## PART 10

### LIABILITY FOR COMPUTER DISSEMINATION OF INDECENT MATERIAL TO CHILDREN

#### **13-21-1001. Definitions.**

As used in this article, unless the context otherwise requires:

- (1) "Child" means a person under eighteen years of age.
- (2) "Sexual contact", "sexual intrusion", and "sexual penetration" shall have the same meanings as set forth in section 18-3-401 (4), (5), and (6), C.R.S., respectively.

**Source: L. 2003:** Entire part added, p. 1879, § 1, effective July 1.

#### **13-21-1002. Computer dissemination of indecent material to a child - prohibition.**

- (1) A person commits computer dissemination of indecent material to a child when:



(a) Knowing the character and content of the communication which, in whole or in part, depicts actual or simulated nudity, or sexual conduct, as defined in section 19-1-103, the person willfully uses a computer, computer network, telephone network, data network, or computer system allowing the input, output, examination, or transfer of computer data or computer programs from one computer to another or a text-messaging or instant-messaging system to initiate or engage in such communication with a person he or she believes to be a child; and

(b) By means of such communication the person importunes, invites, entices, or induces a person he or she believes to be a child to engage in sexual contact, sexual intrusion, or sexual penetration with the person, or to engage in a sexual performance or sexual conduct, as defined in section 19-1-103, for the person's benefit.

(2) Computer dissemination of indecent material to a child is prohibited. A person who violates the provisions of subsection (1) of this section shall be subject to a civil penalty as provided in section 13-21-1003.

(3) It shall not be an affirmative defense in a civil action brought under this part 10 that the person the defendant believed to be a child in fact was not a child.

**Source: L. 2003:** Entire part added, p. 1879, § 1, effective July 1. **L. 2009:** (1)(a) amended, (HB 09-1132), ch. 341, p. 1792, § 1, effective July 1. **L. 2021:** (1) amended, (SB 21-059), ch. 136, p. 711, § 14, effective October 1.

### **13-21-1003. Civil penalty - action for recovery - distribution of proceeds - attorney fees.**

(1) A person who is found in a civil action brought under this part 10 to have committed computer dissemination of indecent material to a child in violation of section 13-21-1002 shall forfeit and pay a civil penalty established pursuant to verdict or judgment.

(2) (a) An action to recover a civil penalty under this part 10 may be brought by any private individual. Venue for the action shall be proper in the district court for the county in which the defendant resides or maintains a principal place of business in this state, or in the county in which the defendant sent the communication, or in the county in which the recipient received the communication.

(b) The action shall be brought in the name of the person seeking recovery of the civil penalty.

(3) In determining the liability for or the amount of a civil penalty pursuant to this section, the court or jury shall consider the nature, circumstances, and gravity of the alleged violation and

the alleged violator's degree of culpability, history of prior violations, criminal convictions, and level of cooperation with any investigation of the alleged violation.

(4) No action may be brought or maintained pursuant to this section without the written consent of the child's parent or guardian, which consent may be withdrawn at any time.

(5) A child alleged to be a victim of computer dissemination of indecent material to a child, or his or her parent or guardian, shall have the right to intervene and assume control of any case brought pursuant to this section.

(6) In a case in which the court awards a civil penalty pursuant to this section, the court shall order the distribution as follows:

(a) In a case brought by a child or other recipient of indecent material as described in subsection 13-21-1002 (1), one hundred percent to the plaintiff;

(b) In a case brought by a plaintiff other than a child or recipient of indecent material, forty percent to the plaintiff and sixty percent to the child or recipient;

(c) In a case initiated by a plaintiff and in which the child's parent or guardian has intervened, eighty percent to the child and twenty percent to the plaintiff.

(7) If a plaintiff is awarded a distribution of the civil penalty pursuant to subsection (6) of this section, the court shall award judgment to the plaintiff for the plaintiff's reasonable attorney fees and costs.

(8) Nothing in this part 10 shall be construed to limit or abrogate:

(a) A criminal action brought to prosecute an act described in the criminal laws of this state;

(b) Any right or cause of action that a person, on the person's own behalf or on behalf of another, may have;

(c) The ability to include in a civil action brought under this part 10 additional claims that are otherwise permitted by law to be brought in a civil action.

**Source: L. 2003:** Entire part added, p. 1880, § 1, effective July 1.

## PART 11

### COMMONSENSE CONSUMPTION ACT

**Law reviews:** For article, "What's in the Package: Food, Beverage, and Dietary Supplement Law and Litigation Part I", see 43 Colo. Law. 77 (July 2014).

**13-21-1101. Short title.**

This part 11 shall be known and may be cited as the "Commonsense Consumption Act".

**Source: L. 2004:** Entire part added, p. 759, § 1, effective May 17.

**13-21-1102. Legislative declaration.**

(1) The general assembly hereby finds and declares that:

(a) Obesity and many other conditions that are detrimental to the health and well-being of individuals are frequently long-term manifestations of poor choices that are habitually made by those individuals;

(b) Despite commercial influences, individuals remain ultimately responsible for the choices they make regarding their body; and

(c) Excessive litigation restricts the wide range of choices otherwise available to individuals who consume products responsibly.

**Source: L. 2004:** Entire part added, p. 759, § 1, effective May 17.

**13-21-1103. Definitions.**

For the purposes of this part 11, unless the context otherwise requires:

(1) "Claim" means any claim by or on behalf of a natural person and any derivative or other claim arising therefrom that is asserted by or on behalf of any other person.

(2) "Food" means any food or beverage, including chewing gum, intended for human consumption and articles used for components of any such food or beverage.

(3) "Injury caused by or likely to result from long-term consumption" means an injury or condition resulting or likely to result from the cumulative effect of consumption and not from a single instance of consumption.

(4) "Other person" means any individual, corporation, company, association, firm, partnership, society, joint-stock company, or any other entity, including any governmental entity or private attorney general.

**Source: L. 2004:** Entire part added, p. 760, § 1, effective May 17.

**13-21-1104. Actions against food providers that comply with applicable state and federal laws - exemptions.**

(1) Except as otherwise provided in subsection (2) of this section, a manufacturer, packer, distributor, carrier, holder, or seller of a food, or an association of one or more such entities, shall not be subject to civil liability for any claim arising from weight gain, obesity, a health condition associated with weight gain or obesity, or other injury caused by or likely to result from the long-term consumption of the food.

(2) The provisions of subsection (1) of this section shall not preclude civil liability of a manufacturer, packer, distributor, carrier, holder, or seller of a food in cases in which a claim of injury not related to weight gain, obesity, or a health condition associated with weight gain or obesity is based on a material violation of a composition, branding, or labeling standard prescribed by state or federal law and the claimed injury was actual and proximately caused by such violation.

**Source: L. 2004:** Entire part added, p. 760, § 1, effective May 17.

**13-21-1105. Pleading requirements.**

(1) In any action permitted under section 13-21-1104 (2), the plaintiff shall state the following with particularity in the complaint:

(a) The statute, regulation, or other provision of state or federal law that was allegedly violated;

(b) The facts that are alleged to constitute a material violation of such law; and

(c) The facts that are alleged to demonstrate that the material violation proximately caused actual injury to the plaintiff.

(2) In addition to the requirements set forth in subsection (1) of this section, the complaint shall state with particularity facts sufficient to support a reasonable inference that the violation was knowing and willful.

(3) For purposes of applying this part 11:

(a) The pleading requirements contained in this section shall be regarded as jurisdictional prerequisites to the bringing of an action and not merely procedural provisions; and

(b) The requirements of actual injury, knowledge and willfulness, and proximate cause as described in this section shall apply to all actions commenced under this part 11 notwithstanding any provision of law of another state that may be inconsistent with or contrary to such requirements.

**Source: L. 2004:** Entire part added, p. 760, § 1, effective May 17.

### **13-21-1106. Stay of proceedings pending motion to dismiss.**

(1) In any action brought against a manufacturer, packer, distributor, carrier, holder, or seller of a food for claims related to the long-term consumption of food, all proceedings including but not limited to discovery shall be stayed during the pendency of a motion to dismiss unless the court finds for good cause shown on the motion of any party that limited discovery is necessary to preserve evidence or to prevent undue prejudice to the movant.

(2) During a stay of discovery, unless otherwise ordered by the court, any party in the case, including any plaintiff and any defendant that has been properly served with the complaint, shall preserve all documents, data compilations including but not limited to electronically recorded data and electronically stored data, and tangible objects that are in the custody or control of such party and that are relevant to the allegations in the complaint as though a request for production of those documents and things had been served pursuant to court rule.

**Source: L. 2004:** Entire part added, p. 761, § 1, effective May 17.

## **PART 12**

### **DAMAGES FOR UNLAWFUL TERMINATION OF PREGNANCY**

**Cross references:** For the legislative declaration in HB 14-1388, see section 1 of chapter 379, Session Laws of Colorado 2014.

### **13-21-1201. Short title.**

This part 12 is known and may be cited as the "Civil Remedy for Unlawful Termination of Pregnancy Act".

**Source: L. 2014:** Entire part added, (HB 14-1388), ch. 379, p. 1857, § 2, effective July 1.

### **13-21-1202. Legislative declaration.**

The general assembly hereby declares that the purpose of this part 12 is to provide an appropriate civil remedy to a woman who suffers an unlawful termination of her pregnancy, without establishing the legal personhood of an unborn human being.

**Source: L. 2014:** Entire part added, (HB 14-1388), ch. 379, p. 1857, § 2, effective July 1.

### **13-21-1203. Definitions.**

As used in this part 12, unless the context otherwise requires:

- (1) "Consent" has the same meaning as provided in section 18-1-505, C.R.S.
- (2) "Intentionally" has the same meaning as provided in section 18-1-501 (5), C.R.S.
- (3) "Knowingly" has the same meaning as provided in section 18-1-501 (6), C.R.S.
- (4) "Pregnancy" means the presence of an implanted human embryo or fetus within the uterus of a woman.
- (5) "Recklessly" has the same meaning as provided in section 18-1-501 (8), C.R.S.
- (6) "Unlawful termination of pregnancy" means the termination of a pregnancy by any means other than birth or a medical procedure, instrument, agent, or drug for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained, or for which the pregnant woman's consent is implied by law.

**Source: L. 2014:** Entire part added, (HB 14-1388), ch. 379, p. 1857, § 2, effective July 1.

**13-21-1204. Construction.**

Nothing in this part 12 shall be construed to confer the status of "person" upon a human embryo, fetus, or unborn child at any stage of development prior to live birth.

**Source: L. 2014:** Entire part added, (HB 14-1388), ch. 379, p. 1857, § 2, effective July 1.

**ANNOTATION**

**Law reviews.** For article, "Disposition of Pre-Embryos upon Dissolution of Marriage in Colorado", see 50 Colo. Law. 40 (Feb. 2021).

**13-21-1205. Damages - woman injured by the unlawful termination of a pregnancy.**

(1) A woman may bring an action for damages in accordance with this part 12 against any person who intentionally, knowingly, or recklessly caused an unlawful termination of her pregnancy.

(2) (a) The action authorized in this section is in addition to, and does not limit or affect, other actions available by statute or common law, before or after July 1, 2014.

(b) Nothing in this part 12 is intended to alter, replace, limit, supersede, or in any way restrict any provision of the "Health Care Availability Act", article 64 of this title, or any successor statute.

(3) The standard of proof for establishing liability under this section is proof by a preponderance of the evidence.

(4) A woman entitled to bring an action under this section may recover the following damages:

(a) Her own economic damages;

(b) Her own noneconomic damages; and

(c) Exemplary damages to the extent permitted by section 13-21-102, or any successor statute.

**Source: L. 2014:** Entire part added, (HB 14-1388), ch. 379, p. 1857, § 2, effective July 1.

**13-21-1206. Exceptions to liability.**

(1) Nothing in this part 12 shall create liability for damages, or permit a cause of action, against:

(a) A health-care institution, as defined in section 13-64-202 (3), to the extent that the health-care institution is engaged in providing health-care services to a pregnant woman with her consent or where her consent is implied by law; or

(b) A health-care professional, as defined in section 13-64-202 (4)(a), to the extent that the health-care professional is engaged in providing health-care services to a pregnant woman with her consent or where her consent is implied by law.

(2) Nothing in this part 12 imposes liability for damages upon a woman for acts she engages in with respect to her own pregnancy.

**Source: L. 2014:** Entire part added, (HB 14-1388), ch. 379, p. 1858, § 2, effective July 1.

**13-21-1207. Limitation of actions - three years.**

Any action brought under this part 12 must be commenced within three years after the cause of action accrues and not thereafter. For purposes of this part 12, a cause of action accrues when a woman has reason to know that her pregnancy was unlawfully terminated.

**Source: L. 2014:** Entire part added, (HB 14-1388), ch. 379, p. 1858, § 2, effective July 1.

## PART 13

### WHOLESALE SALES REPRESENTATIVES

**Editor's note:** This part 13 was added with relocations in 2017. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

**13-21-1301. Legislative declaration.**

The general assembly hereby finds, determines, and declares that independent wholesale sales representatives are a key ingredient to the Colorado economy. The general assembly further finds and declares that wholesale sales representatives spend many hours developing their territory in



order to properly market their products. Therefore, it is the intent of the general assembly to provide security and clarify the relations between distributors, jobbers, or manufacturers and their wholesale sales representatives.

**Source: L. 2017:** Entire part added with relocations, (HB 17-1243), ch. 241, p. 991, § 1, effective August 9.

**Editor's note:** This section is similar to former § 12-66-101 as it existed prior to 2017.

### **13-21-1302. Jurisdiction over nonresident representatives.**

A distributor, jobber, or manufacturer who is not a resident of Colorado and who enters into any written contract or written sales agreement regulated by this part 13 shall be deemed to be doing business in Colorado for purposes of personal jurisdiction.

**Source: L. 2017:** Entire part added with relocations, (HB 17-1243), ch. 241, p. 991, § 1, effective August 9.

**Editor's note:** This section is similar to former § 12-66-102 as it existed prior to 2017.

### **13-21-1303. Damages.**

(1) A distributor, jobber, or manufacturer who knowingly fails to pay commissions as provided in any written contract or written sales agreement shall be liable to the wholesale sales representative in a civil action for treble the damages proved at trial.

(2) In a civil action brought by a wholesale sales representative pursuant to this section, the prevailing party shall be entitled to reasonable attorney fees and costs in addition to any other recovery.

**Source: L. 2017:** Entire part added with relocations, (HB 17-1243), ch. 241, p. 991, § 1, effective August 9.

**Editor's note:** This section is similar to former § 12-66-103 as it existed prior to 2017.

**13-21-1304. Liquor licensees excepted.**

This part 13 shall not apply to any person licensed under article 3 or 4 of title 44.

**Source:** L. 2017: Entire part added with relocations, (HB 17-1243), ch. 241, p. 992, § 1, effective August 9. L. 2019: Entire section amended, (SB 19-241), ch. 390, p. 3464, § 7, effective August 2.

**Editor's note:** This section is similar to former § 12-66-104 as it existed prior to 2017.

## PART 14

### UNIFORM CIVIL REMEDIES FOR UNAUTHORIZED DISCLOSURE OF INTIMATE IMAGES

**13-21-1401. Short title.**

The short title of this part 14 is the "Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act".

**Source:** L. 2019: Entire part added, (SB 19-100), ch. 88, p. 325, § 1, effective April 8.

**13-21-1402. Definitions.**

As used in this part 14, unless the context otherwise requires:

- (1) "Consent" means affirmative, conscious, and voluntary authorization by an individual with legal capacity to give authorization.
- (2) "Depicted individual" means an individual whose body is shown in whole or in part in an intimate image.
- (3) "Disclosure" means transfer, publication, or distribution to another person. "Disclose" has a corresponding meaning.

- (4) "Identifiable" means recognizable by a person other than the depicted individual:
  - (a) From an intimate image itself; or
  - (b) From the intimate image and identifying characteristic displayed in connection with the intimate image.
- (5) "Identifying characteristic" means information that may be used to identify a depicted individual.
- (6) "Individual" means a human being.
- (7) "Intimate image" means a photograph, film, video recording, or other similar medium that shows:
  - (a) The uncovered genitals, pubic area, anus, or female postpubescent nipple of a depicted individual; or
  - (b) The depicted individual engaging in or being subjected to sexual conduct.
- (8) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.
- (9) "Sexual conduct" includes:
  - (a) Masturbation;
  - (b) Genital, anal, or oral sex;
  - (c) Sexual penetration of, or with, an object;
  - (d) Bestiality; or
  - (e) The transfer of semen onto a depicted individual.

**Source: L. 2019:** Entire part added, (SB 19-100), ch. 88, p. 325, § 1, effective April 8.

**13-21-1403. Civil action - definitions.**

- (1) In this section, unless the context otherwise requires:
  - (a) "Harm" means physical harm, economic harm, and emotional distress whether or not accompanied by physical or economic harm.
  - (b) "Private" means:

(I) Created or obtained under circumstances in which the depicted individual had a reasonable expectation of privacy; or

(II) Made accessible through theft, bribery, extortion, fraud, false pretenses, voyeurism, or exceeding authorized access to an account, message, file, device, resource, or property.

(2) Except as otherwise provided in section 13-21-1404, a depicted individual who is identifiable and who has suffered harm from a person's intentional disclosure or threatened disclosure of an intimate image that was private without the depicted individual's consent has a cause of action against the person if the person knew or acted with reckless disregard for whether:

(a) The depicted individual did not consent to the disclosure;

(b) The intimate image was private; and

(c) The depicted individual was identifiable.

(3) The following conduct by a depicted individual does not establish by itself that the individual consented to the disclosure of the intimate image, which is the subject of the action, or that the individual lacked a reasonable expectation of privacy:

(a) Consent to the creation of the image; or

(b) Previous consensual disclosure of the image.

(4) A depicted individual who does not consent to sexual conduct or the uncovering of the part of the body depicted in the intimate image of the individual retains a reasonable expectation of privacy even if the image was created when the individual was in a public place.

(5) This section is not the exclusive remedy for an intentional disclosure or threatened disclosure of an intimate image; a plaintiff may also bring any other available common law or statutory claims.

**Source: L. 2019:** Entire part added, (SB 19-100), ch. 88, p. 326, § 1, effective April 8.

### **13-21-1404. Exceptions to liability - definitions.**

(1) In this section, unless the context otherwise requires:

(a) "Child" means an unemancipated individual who is less than eighteen years of age.

(b) "Parent" means an individual recognized as a parent under the law of this state other than this part 14.

(2) A person is not liable under this part 14 if the person proves that disclosure of, or a threat to disclose, the intimate image was:

(a) Made in good faith in:

(I) Law enforcement;

(II) A legal proceeding; or

(III) Medical education or treatment; or

(b) Made in good faith in the reporting or investigation of:

(I) Unlawful conduct;

(II) Unsolicited and unwelcome conduct;

(III) Related to a matter of public concern or public interest; or

(IV) Reasonably intended to assist the depicted individual.

(3) Subject to subsection (4) of this section, a defendant who is a parent, legal guardian, or individual with legal custody of a child is not liable under this part 14 for a disclosure or threatened disclosure of an intimate image of the child.

(4) If a defendant asserts an exception to liability under subsection (3) of this section, the exception does not apply if the plaintiff proves the disclosure was:

(a) Prohibited by law other than this part 14; or

(b) Made, possessed, or distributed for the purposes of sexual arousal, sexual gratification, humiliation, degradation, or monetary or commercial gain.

(5) Disclosure of, or a threat to disclose, an intimate image is not a matter of public concern or public interest solely because the depicted individual is a public figure.

**Source: L. 2019:** Entire part added, (SB 19-100), ch. 88, p. 327, § 1, effective April 8.

### **13-21-1405. Plaintiff's privacy.**

(1) In an action under this part 14:

(a) A plaintiff may proceed using a pseudonym in place of the true name of the plaintiff;

(b) The court may exclude or redact from all pleadings and documents filed in the action other identifying characteristics of the plaintiff;

(c) A plaintiff to whom subsection (1)(a) or (1)(b) of this section applies shall file with the court and serve on the defendant a confidential information form that includes the excluded or redacted plaintiff's name and other identifying characteristics; and

(d) The court may make further orders as necessary to protect the identity and privacy of a plaintiff.

**Source: L. 2019:** Entire part added, (SB 19-100), ch. 88, p. 328, § 1, effective April 8.

### **13-21-1406. Remedies.**

(1) In an action under this part 14, a prevailing plaintiff may recover:

(a) The greater of:

(I) Economic and noneconomic damages proximately caused by the defendant's disclosures or threatened disclosures, including damages for emotional distress whether or not accompanied by other damages; or

(II) (A) Statutory damages not to exceed ten thousand dollars against each defendant found liable under this part 14 for all disclosures and threatened disclosures by the defendant of which the plaintiff knew or reasonably should have known when filing the action or which became known during the pendency of the action.

(B) In determining the amount of statutory damages under this subsection (1)(a)(II), consideration must be given to the age of the parties at the time of the disclosure or threatened disclosure, the number of disclosures or threatened disclosures made by the defendant, the breadth of distribution of the image by the defendant, and other exacerbating or mitigating factors.

(b) An amount equal to any monetary gain made by the defendant from disclosure of the intimate image; and

(c) Punitive damages as allowed under the law of this state other than this part 14.

(2) In an action under this part 14, the court may award a prevailing plaintiff:

(a) Reasonable attorney fees and costs; and

(b) Additional relief, including injunctive relief.

(3) This part 14 does not affect a right or remedy available under state law other than this part 14.

**Source: L. 2019:** Entire part added, (SB 19-100), ch. 88, p. 328, § 1, effective April 8.

**13-21-1407. Statute of limitations.**

(1) An action under section 13-21-1403 (2) for:

(a) An unauthorized disclosure may not be brought later than six years from the date the disclosure was discovered or should have been discovered with the exercise of reasonable diligence; and

(b) A threat to disclose may not be brought later than six years from the date of the threat to disclose.

(2) Except as otherwise provided in subsection (3) of this section, this section is subject to the tolling statutes of this state.

(3) In an action under section 13-21-1403 (2) by a depicted individual who was a minor on the date of the disclosure or threat to disclose, the time specified in subsection (1) of this section does not begin to run until the depicted individual attains the age of majority.

**Source: L. 2019:** Entire part added, (SB 19-100), ch. 88, p. 329, § 1, effective April 8.

**13-21-1408. Construction.**

(1) This part 14 must be construed to be consistent with the federal "Communications Decency Act of 1996", 47 U.S.C. sec. 230.

(2) This section does not apply to an interactive computer service, as defined in 47 U.S.C. sec. 230 (f)(2), for content provided by another person.

**Source: L. 2019:** Entire part added, (SB 19-100), ch. 88, p. 330, § 1, effective April 8.

**13-21-1409. Uniformity of application and construction.**

In applying and construing this part 14, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**Source: L. 2019:** Entire part added, (SB 19-100), ch. 88, p. 330, § 1, effective April 8.

## PART 15

### PREVENTING UNAUTHORIZED DISCLOSURE OF INTIMATE DIGITAL DEPICTIONS ACT

#### **13-21-1501. Short title.**

The short title of this part 15 is the "Preventing Unauthorized Disclosure of Intimate Digital Depictions Act".

**Source: L. 2025:** Entire part added, (SB 25-288), ch. 339, p. 1819, § 1, effective August 6.

#### **13-21-1502. Definitions.**

As used in this part 15, unless the context otherwise requires:

(1) "Broadcaster" means:

(a) An entity that operates a licensed AM, FM, or television broadcast facility under the jurisdiction of the federal communications commission, including a digital platform owned and operated by the entity; or

(b) A radio or television broadcasting station, including a cable or satellite television operator, programmer, producer, or streaming service.

(2) "Computer-generated" means created, developed, made, or produced by digital software, including, but not limited to, phone applications and image editing software.

(3) "Consent" means affirmative, conscious, and voluntary authorization by a depicted individual.

(4) "Depicted individual" means an individual who, by digital or computer-generated means, appears in whole or in part in an intimate digital depiction and who is identifiable by virtue of the individual's face, likeness, or other distinguishing characteristic, including a unique birthmark or other recognizable feature, or from information another person displays in connection with the digital depiction.



(5) "Digital depiction" means a highly realistic visual depiction of a depicted individual that falsely appears to be authentic or truthful, features a depiction of an individual appearing to act in a way that the individual did not act, and has been created, altered, or produced by generative AI, image editing software, or computer-generated means. "Digital depiction" includes stored data that is capable of conversion into a visual image. "Digital depiction" does not include an image of the depicted individual contemporaneously captured by film, video, camera, or digital means without further editing, changes, alterations, or additions of an intimate part or explicit sexual conduct not otherwise found in the original image or captured at the time of the original image.

(6) "Disclose" means to transfer, publish, distribute, or make accessible.

(7) "Explicit sexual conduct" means sexual intercourse, sexual intrusion, erotic fondling, erotic nudity, masturbation, sadomasochism, or sexual excitement.

(8) "Generative AI" means a subset of artificial intelligence that involves using algorithms and models to generate or create new and original content.

(9) "Image editing software" means a computer program that allows editing, modification, or alteration of an image or video.

(10) "Intimate digital depiction" means a digital depiction that depicts:

- (a) The intimate parts of a depicted individual;
- (b) Sexual contact involving a depicted individual; or
- (c) A depicted individual engaging in explicit sexual conduct.

(11) "Intimate parts" means the external genitalia or the perineum or the anus or the buttocks or the pubes or the breast of a person.

(12) "Reckless disregard" means consciously disregarding a substantial and unjustifiable risk that a result will occur or that a circumstance exists. "Reckless disregard" includes, but is not limited to, circumstances when a person is placed on notice, either implicitly or explicitly, that the disclosure would cause reputational, emotional, financial, or physical harm to the depicted individual.

(13) "Sexual contact" means:

(a) The touching of a depicted individual's intimate parts by another person, or of another person's intimate parts by the depicted individual, or the touching of the clothing covering the immediate area of the depicted individual or other person's intimate parts if that sexual contact is for the purposes of sexual arousal, gratification, or abuse;

(b) The emission or ejaculation of seminal fluid onto a body part of the depicted individual or the clothing covering a body part of the depicted individual; or

(c) Causing semen, blood, urine, feces, or a bodily substance to contact a body part of the depicted individual or the clothing covering a body part of the depicted individual if that contact with semen, blood, urine, feces, or a bodily substance is for the purpose of sexual arousal, gratification, or abuse.

(14) "Voluntary authorization" means authorization provided in the absence of force, fraud, misrepresentation, duress, or coercion.

**Source: L. 2025:** Entire part added, (SB 25-288), ch. 339, p. 1819, § 1, effective August 6.

### **13-21-1503. Civil action - consent - disclaimers.**

(1) Except as otherwise provided in section 13-21-1504, a depicted individual who is the subject of an intimate digital depiction that a person disclosed or threatened to disclose without the depicted individual's consent and who has suffered harm from the disclosure or threatened disclosure of the intimate digital depiction has a cause of action against the person who disclosed the intimate digital depiction if the person knew or acted with reckless disregard for whether the depicted individual:

(a) Did not consent to the disclosure;

(b) Would experience severe emotional distress due to the disclosure or threatened disclosure; and

(c) Was identifiable.

(2) For purposes of an action brought pursuant to subsection (1) of this section:

(a) A depicted individual's consent to the creation of the intimate digital depiction does not establish that the depicted individual consented to disclosure of the intimate digital depiction;

(b) A depicted individual's consent is not valid unless the consent is set forth in an agreement that:

(I) Is written in plain language;

(II) Is signed knowingly and voluntarily by the depicted individual;

(III) Includes a general description of the intimate digital depiction;

(IV) Identifies the specific use of the intimate digital depiction agreed upon between the parties, including the platforms or locations where the intimate digital depiction will be published or otherwise made available to third parties, the time period during which the intimate digital depiction will be made available to third parties, and security features contained within the digital depiction to prevent theft or unauthorized copying; and

(V) If applicable, includes a general description of the visual work into which the intimate digital depiction is incorporated, including, but not limited to, a movie, television show, artwork, product, comic book, computer application, visual novel, web series, online avatar, dating application, computer game, video game, or chatbot; and

(c) Previous consensual disclosure of the intimate digital depiction that is the subject of the action does not, by itself, establish that the depicted individual consented to a subsequent disclosure of the intimate digital depiction.

(3) It is not a defense to an action brought pursuant to this part 15 that there is a disclaimer stating that the intimate digital depiction of the depicted individual was unauthorized or that the depicted individual did not participate in the creation or development of the intimate digital depiction.

(4) In the case of a depicted individual who is under eighteen years of age or is incompetent, incapacitated, or deceased, the legal guardian of the depicted individual, another family member, a representative of the depicted individual's estate, or any other person appointed as suitable by the court may assume the depicted individual's rights pursuant to this part 15; except that a defendant against whom an action is brought pursuant to this part 15 shall not, in any event, assume the depicted individual's rights.

(5) This section is not the exclusive remedy for a disclosure or threatened disclosure of an intimate digital depiction; a plaintiff may also bring any other available common law or statutory claims.

**Source: L. 2025:** Entire part added, (SB 25-288), ch. 339, p. 1821, § 1, effective August 6.

#### **13-21-1504. Exceptions to liability - construction.**

(1) (a) A person is not liable under this part 15 if the person proves that disclosure of, or a threat to disclose, the intimate digital depiction was:

(I) Made in good faith:

(A) To law enforcement; or

- (B) In a legal proceeding;
- (II) Made in good faith in the reporting or investigation of:
  - (A) Unlawful conduct; or
  - (B) Unsolicited and unwelcome conduct;
- (III) Related to a matter of public concern or public interest; or
- (IV) Reasonably intended to assist the depicted individual.

(b) Notwithstanding the exceptions in subsection (1)(a) of this section, a claim of good faith does not limit liability for a defendant who created, developed, or otherwise made the intimate digital depiction.

(2) If a defendant asserts an exception to liability pursuant to this section, the exception does not apply if the plaintiff proves by a preponderance of the evidence that the disclosure was:

- (a) Prohibited by law other than this part 15; or
- (b) Made, possessed, or distributed for the purposes of sexual arousal, sexual gratification, humiliation, degradation, or monetary or commercial gain.

(3) Disclosure of, or a threat to disclose, an intimate digital depiction is not a matter of public concern or public interest solely because the depicted individual is a public figure.

(4) This part 15 does not apply to media content that constitutes satire or parody, or to media content, the production of which is substantially dependent on the ability of a person to physically or verbally impersonate a depicted individual and not upon computer-generated means.

(5) This part 15 does not apply to the provider of technology used in the creation of an intimate digital depiction.

(6) Nothing in this section imposes liability on the provider of an interactive computer service, as defined in 47 U.S.C. sec. 230 (f)(2); an information service, as defined in 47 U.S.C. sec. 153 (24); or a telecommunications service, as defined in 47 U.S.C. sec. 153 (53), for content provided by another person.

(7) Nothing in this part 15 imposes liability on the provider of an interactive computer service, as defined in 47 U.S.C. sec. 230 (f)(2), for:

- (a) An action the provider of an interactive computer service takes voluntarily and in good faith to restrict access to or availability of an intimate digital depiction; or

(b) An action the provider of an interactive computer service takes to enable or make available to information content providers, as defined in 47 U.S.C. sec. 230 (f)(3), or other persons the technical means to restrict access to an intimate digital depiction.

(8) (a) Notwithstanding any other provision of this part 15, a broadcaster is not liable pursuant to this part 15 solely for the broadcast, rebroadcast, or publication of third-party content that contains or is alleged to contain an intimate digital depiction if the broadcaster:

(I) Did not create, alter, or materially contribute to the development of the intimate digital depiction;

(II) Lacked actual knowledge that the content was an intimate digital depiction that the depicted individual did not consent to have disclosed; and

(III) Upon obtaining the actual knowledge described in subsection (8)(a)(II) of this section, acted promptly and in good faith to remove, cease further dissemination of, or otherwise limit access to the content, when reasonably feasible.

(b) This subsection (8) does not limit liability if a broadcaster knowingly or recklessly broadcasts, publishes, or distributes content in violation of this part 15, or fails to respond to a valid request to remove the material.

(9) This part 15 must be construed to be consistent with the federal "Communications Decency Act of 1996", 47 U.S.C. sec. 230.

**Source: L. 2025:** Entire part added, (SB 25-288), ch. 339, p. 1822, § 1, effective August 6.

### **13-21-1505. Plaintiff privacy.**

(1) In a civil action filed pursuant to this part 15:

(a) A plaintiff may proceed using a pseudonym in place of the plaintiff's true name;

(b) The court may authorize an in camera proceeding; and

(c) The court may make further orders as necessary to protect the identity and privacy of a plaintiff.

**Source: L. 2025:** Entire part added, (SB 25-288), ch. 339, p. 1824, § 1, effective August 6.

### **13-21-1506. Remedies.**

(1) In a civil action filed pursuant to this part 15, a prevailing plaintiff may recover all of the following:

(a) An amount equal to the monetary gain the defendant made from the creation, development, or disclosure of the intimate digital depiction;

(b) Either of the following, whichever is greater:

(I) The actual damages sustained by the depicted individual as a result of the intimate digital depiction's disclosure, including damages for emotional distress; or

(II) Liquidated damages of one hundred fifty thousand dollars;

(c) Exemplary damages; and

(d) The cost of the action, including reasonable attorney fees and other litigation costs reasonably incurred.

(2) In a civil action filed pursuant to this part 15, a court may, in addition to any other relief available pursuant to state law, order equitable relief, including a temporary restraining order, a preliminary injunction, or a permanent injunction ordering the defendant to cease disclosure of the intimate digital depiction.

**Source: L. 2025:** Entire part added, (SB 25-288), ch. 339, p. 1824, § 1, effective August 6.

### **13-21-1507. Rules.**

The attorney general may adopt rules as necessary for the purpose of implementing this part 15.

**Source: L. 2025:** Entire part added, (SB 25-288), ch. 339, p. 1825, § 1, effective August 6.

## **CONTRACTS AND AGREEMENTS**

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PART 1

AGE OF COMPETENCE - TRANSPLANT AND TRANSFUSION LIMITATION

**Law reviews:** For article, "Consent to Treatment and Access to Minors' Medical Records", see 17 Colo. Law. 1323 (1988).

**13-22-101. Competence of persons eighteen years of age or older.**

(1) Notwithstanding any other provision of law enacted or any judicial decision made prior to July 1, 1973, every person, otherwise competent, shall be deemed to be of full age at the age of eighteen years or older for the following specific purposes:

(a) To enter into any legal contractual obligation and to be legally bound thereby to the full extent as any other adult person; but such obligation shall not be considered a family expense of the parents of the person who entered into the contract, under section 14-6-110, C.R.S.;

(b) To manage his estate in the same manner as any other adult person. This section shall not apply to custodial property given or held under the terms of the "Colorado Uniform Transfers to Minors Act", article 50 of title 11, C.R.S., or property held for a protected person under the "Colorado Probate Code", article 14 of title 15, C.R.S., unless otherwise permitted in said articles;

(c) To sue and be sued in any action to the full extent as any other adult person in any of the courts of this state, without the necessity for a guardian ad litem or someone acting in his behalf;

(d) To make decisions in regard to his own body and the body of his issue, whether natural or adopted by such person, to the full extent allowed to any other adult person.

**Source:** L. 73: p. 543, §§ 1, 2. C.R.S. 1963: § 41-4-1. L. 84: (1)(b) amended, p. 394, § 5, effective July 1. L. 91: (1)(b) amended, p. 1442, § 2, effective July 1.

## ANNOTATION

**Law reviews.** For article, "Age Requirements in Colorado: A Guide for Estate Planners", see 34 Colo. Law. 87 (Aug. 2005). For article, "JDF 999 Collection of Personal Property by Affidavit Pursuant to CRS §§ 15-12-1201 and -1202", see 42 Colo. Law. 49 (June 2013).

**Legislative intent.** The title of this section and the relevant language of subsection (1)(c) do not suggest that the general assembly intended to change the age of majority for bringing actions on contract but not for personal actions. *McKinney v. Armco Recreational Prods., Inc.*, 419 F. Supp. 464 (D. Colo. 1976).

**The context of § 19-3-602 (3) requires that "minor" be defined as a person 18 years of age or older.** Defining "minor" in § 19-3-602 (3) as a person under the age of 21 would be inconsistent with this section and the definitions of "child" and "adult" in the Colorado Children's Code. *People ex rel. L.A.C.*, 97 P.3d 363 (Colo. App. 2004).

The definition of a "minor" in § 2-4-401 (6) is not applicable in § 19-3-602 (3) because "the context otherwise requires". *People ex rel. L.A.C.*, 97 P.3d 363 (Colo. App. 2004).

**Contract entered into by minor is not void but only voidable** by the minor, and on reaching the age of 18 one is required either to disaffirm a contract made during minority

within a reasonable time, or be bound thereby. *Jones v. Dressel*, 40 Colo. App. 459, 582 P.2d 1057 (1978), *aff'd*, 623 P.2d 370 (Colo. 1981).

**As matter of public policy, courts have protected minors from improvident and imprudent contractual commitments** by declaring that the contract of a minor is voidable at the election of the minor after he attains his majority. *Jones v. Dressel*, 623 P.2d 370 (Colo. 1981).

**Parent's duty to support not abrogated.** There is no general mandate in this section or §§ 19-1-103 (3) or 19-7-101 (2) (now § 19-6-101 (2)) which abrogates the duty of support a parent has toward his minor child until the age of 21 or emancipation. In *re Weaver*, 39 Colo. App. 523, 571 P.2d 307 (1977).

**The "disability" of minority of a plaintiff in an employment discrimination action was prospectively removed** on July 1, 1973, the effective date of this section, at which time he was 20 years old, and not May 5, 1974, when he turned 21. *McKinney v. Armco Recreational Prods., Inc.*, 419 F. Supp. 464 (D. Colo. 1976).

**Industrial commission not a court.** A claimant before the industrial commission does not have to be regarded as an adult in determining benefits because the commission is a tribunal of the executive

branch of government. *Casa Bonita Restaurant v. Indus. Comm'n*, 677 P.2d 344 (Colo. App. 1983) (decided prior to the abolition of the industrial commission in 1986).

**Because child was not represented by guardian ad litem in initial paternity proceeding**, she was not a party to the action for purposes of determining whether doctrine of res judicata and collateral estoppel barred a present paternity hearing. *People in Interest of M.C.*, 895 P.2d 1098

(Colo. App. 1994), *aff'd*, 914 P.2d 355 (Colo. 1996).

**There is no conflict between the provisions of this section and § 13-81-103.** This section addresses how a suit may be brought while the other section addresses how the statute of limitations applies to a suit. *Elgin v. Bartlett*, 994 P.2d 411 (Colo. 1999).

**Applied** in *In re A.W.*, 637 P.2d 366 (Colo. 1981); *Hesseltine v. United States*, 538 F. Supp. 1003 (D. Colo. 1982).

### **13-22-102. Minors - consent for medical care and treatment for use of drugs or a substance use disorder.**

Notwithstanding any other provision of law, any physician licensed to practice in this state, upon consultation by a minor as a patient, with the consent of such minor patient, may examine, prescribe for, and treat the minor patient for use of drugs or a substance use disorder without the consent of or notification to the parent, parents, or legal guardian of the minor patient, or to any other person having custody or decision-making responsibility with respect to the medical care of the minor patient. In any such case the physician or any person acting pursuant to the minor's direction incurs no civil or criminal liability by reason of having made such examination or prescription or having rendered such treatment, but this immunity does not apply to any negligent acts or omissions by the physician or any person acting pursuant to the physician's direction.

**Source:** **L. 71:** p. 493, § 1. **C.R.S. 1963:** § 41-2-12. **L. 98:** Entire section amended, p. 1393, § 28, effective February 1, 1999. **L. 2017:** Entire section amended, (SB 17-242), ch. 263, p. 1293, § 109, effective May 25.

**Cross references:** For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

**13-22-103. Minors - consent for medical, dental, and related care.**

(1) Except as otherwise provided in sections 15-19-204, 18-1.3-407 (4.5), and 25-4-409, a minor eighteen years of age or older, or a minor fifteen years of age or older who is living separate and apart from his or her parent, parents, or legal guardian, with or without the consent of his or her parent, parents, or legal guardian, and is managing his or her own financial affairs, regardless of the source of his or her income, or any minor who has contracted a lawful marriage may give consent to organ or tissue donation or the furnishing of hospital, medical, dental, emergency health, and surgical care to himself or herself. Such consent is not subject to disaffirmance because of minority, and, when such consent is given, the minor has the same rights, powers, and obligations as if he or she had obtained majority. Consent to organ or tissue donation may be revoked pursuant to section 15-19-206.

(2) The consent of the parent, parents, or legal guardian of a minor described in subsection (1) of this section shall not be necessary in order to authorize organ or tissue donation or hospital, medical, dental, emergency health, or surgical care, and no hospital, physician, surgeon, dentist, trained emergency health-care provider, or agent or employee thereof who, in good faith, relies on such a minor's consent shall be liable for civil damages for failure to secure the consent of such a minor's parent, parents, or legal guardian prior to rendering such care. The parent, parents, or legal guardian of a minor described in subsection (1) of this section shall not be liable to pay the charges for the care provided the minor on said minor's consent, unless said parent, parents, or legal guardian agrees to be so liable.

(3) In addition to the authority granted in section 25-4-1704 (2.5), C.R.S., any parent, including a parent who is a minor, may request and consent to organ or tissue donation of his or her child or the furnishing of hospital, medical, dental, emergency health, and surgical care to his or her child or ward. The consent of a minor parent shall not be subject to disaffirmance because of minority, and, when such consent is given, said minor parent has the same rights, powers, and obligations as if he or she were of legal age.

**Source:** L. 71: p. 494, § 1. C.R.S. 1963: § 41-2-13. L. 72: p. 594, § 71. L. 79: Entire section amended, p. 616, § 1, effective May 18. L. 95: (1) amended, p. 871, § 2, effective May 24. L. 96: (3) amended, p. 585, § 5, effective July 1. L. 2000: Entire section amended, p. 729, § 6, effective July 1. L. 2002: (1) amended, p. 1487, § 122, effective October 1. L. 2007: (1) amended, p. 796, § 2, effective July 1. L. 2013: (1) amended, (HB 13-1154), ch. 372, p. 2193, § 5, effective July 1. L. 2016: (1) amended, (SB 16-146), ch. 230, p. 915, § 6, effective July 1. L. 2017: (1) amended, (SB 17-223), ch. 158, p. 557, § 4, effective August 9.

**Cross references:** For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration in the 2013 act amending subsection (1), see section 1 of chapter 372, Session Laws of Colorado 2013.

#### ANNOTATION

**Law reviews.** For article, "Involuntary Sterilization of Retarded Minors in Colorado", see 11 Colo. Law. 421 (1982).

**Sterilization is special case.** While this section empowers parents to consent to

normal medical procedures on their minor offspring, sterilization is a special case which requires more than parental consent. A court, using uniform criteria, must be the ultimate arbiter. In re A.W., 637 P.2d 366 (Colo. 1981).

#### **13-22-103.5. Minors - consent for medical care - pregnancy.**

Notwithstanding any other provision of law, a pregnant minor may authorize prenatal, delivery, and post-delivery medical care for herself related to the intended live birth of a child.

**Source: L. 2006:** Entire section added, p. 535, § 1, effective April 22.

#### **13-22-104. Transplants and transfusions generally - declaration of policy - limit on liability of minors.**

(1) The availability of scientific knowledge, skills, and materials for the transplantation, injection, transfusion, or transfer of human tissue, organs, blood, or components thereof is important to the health and welfare of the people of this state. Equally important is the duty of those performing such service or providing such materials to exercise due care under the attending circumstances to the end that those receiving health care will benefit and adverse results therefrom will be minimized by the use of available and proven scientific safeguards. The imposition of legal liability without fault upon the persons and organizations engaged in such scientific procedures may inhibit the exercise of sound medical judgment and restrict the availability of important scientific knowledge, skills, and materials. It is, therefore, the public policy of this state to promote the health and welfare of the people by emphasizing the importance of exercising due care, and by limiting the legal liability arising out of such scientific procedures to instances of negligence or willful misconduct.

(2) The donation, whether for or without valuable consideration, the acquisition, preparation, transplantation, injection, or transfusion of any human tissue, organ, blood, or component thereof for or to a human being is the performance of a medical service and does not, in any way, constitute a sale. No physician, surgeon, hospital, blood bank, tissue bank, or other person or entity who donates, obtains, prepares, transplants, injects, transfuses, or otherwise transfers, or who assists or participates in donating, obtaining, preparing, transplanting, injecting, transfusing, or transferring any tissue, organ, blood, or component thereof from one or more human beings, living or dead, to another living human being for the purpose of therapy or transplantation needed by him for his health or welfare shall be liable for any damages of any kind or description directly or indirectly caused by or resulting from any such activity; except that each such person or entity remains liable for his or its own negligence or willful misconduct.

(3) Any provision of the law to the contrary notwithstanding, any minor who has reached the age of eighteen years may give consent to the donation of his or her blood, organs, or tissue and to the penetration of tissue which is necessary to accomplish such donation. Such consent shall not be subject to disaffirmance because of minority. The consent of the parent, parents, or legal guardian of such a minor shall not be necessary in order to authorize such donation of blood, organs, or tissue and penetration of tissue.

(4) Any provision of the law to the contrary notwithstanding, a minor who is at least sixteen years of age but is less than eighteen years of age may give consent to the donation of his or her blood and to the penetration of tissue that is necessary to accomplish the donation, so long as the minor's parent or legal guardian consents to authorize the donation of the minor's blood and the penetration of tissue. A minor's consent shall not be subject to disaffirmance because of minority.

**Source:** L. 71: p. 491, § 1. C.R.S. 1963: § 41-2-11. L. 2000: (3) amended, p. 730, § 7, effective July 1. L. 2009: (4) added, (HB 09-1023), ch. 27, p. 117, § 1, effective August 5.

**Cross references:** For additional authority, see the "Uniform Anatomical Gift Act", parts 2 and 3 of article 19 of title 15; for the donation of human tissue, organ, or blood or component thereof under the uniform commercial code, see § 4-2-102.

## ANNOTATION

**Law reviews.** For note, "Medical Products and Services Liability: Public Policy Requires Legislative Innovation and Judicial Restraint", see 53 Den. L. J. 387

(1976). For comment, "Liability Without Fault and the Aids Plague Compel a New Approach to Cases of Transfusion-

Transmitted Disease", see 61 U. Colo. L. Rev. 81 (1990).

**This section does not have retroactive application.** Belle Bonfils Mem. Blood Bank v. Hansen, 665 P.2d 118 (Colo. 1983).

**This section affirms that general negligence standards,** not product liability standards, shall apply in determining the liability of a blood bank supplying blood tainted with the AIDS virus. Quintana v. United Blood Servs., 811 P.2d 424 (Colo. App. 1991), *aff'd*, 827 P.2d 509 (Colo. 1992).

**This section expresses a twofold purpose.** One purpose is to foster the development of medical services and to make those services more available to health care recipients by relieving blood banks from unduly rigid standards of legal liability. The other purpose is to minimize the risk of harm to health care recipients by requiring a blood bank to exercise due care by utilizing "available and proven scientific safeguards" in its operations. United Blood Servs. v. Quintana, 827 P.2d 509 (Colo. 1992).

**The implantation of an embryo is not a sale of a good or product;** rather it constitutes the provision of a medical service pursuant to this section. Am. Econ.

Ins. Co. v. Schoolcraft, 551 F. Supp. 2d 1235 (D. Colo. 2007).

**The statutory scheme of this section clearly contemplates that a blood bank's conduct in procuring and processing blood is to be measured by a professional standard of care** because subsection (2) expressly categorizes the acquisition, preparation, and transfer of human blood or its components for medical transfusion as the performance of a medical service. United Blood Servs. v. Quintana, 827 P.2d 509 (Colo. 1992).

**The trial court erred in excluding expert testimony** on the unreasonably deficient character of the blood banking community's screening and testing procedures. The trial court, after correctly ruling that a professional standard of conduct applied, erroneously applied that standard in a manner that effectively precluded the plaintiffs from establishing that the national blood banking community's standard of care was itself unreasonably deficient in not incorporating available safeguards designed to provide substantially more protection against the risk of infecting a transfusion recipient with AIDS. United Blood Servs. v. Quintana, 827 P.2d 509 (Colo. 1992).

### **13-22-105. Minors - consent - contraception.**

With the minor's consent, a health-care provider licensed, certified, or registered pursuant to title 12 who is acting within the health-care provider's scope of practice may furnish contraceptive procedures, supplies, or information to a minor without notification to or the consent of the minor's parent or parents, legal guardian, or any other person having custody of or decision-making responsibility for the minor.

**Source:** L. 71: p. 639, § 3. C.R.S. 1963: § 91-1-38. L. 2013: Entire section amended, (HB 13-1154), ch. 372, p. 2193, § 6, effective July 1. L. 2019: Entire section amended, (HB 19-1172), ch. 136, p. 1667, § 73, effective October 1. L. 2023: Entire section amended, (SB 23-189), ch. 69, p. 259, § 6, effective April 14.

**Cross references:** For the legislative declaration in the 2013 act amending this section, see section 1 of chapter 372, Session Laws of Colorado 2013.

### **13-22-106. Minors - consent - sexual offense.**

(1) Any physician licensed to practice in this state, upon consultation by a minor as a patient who indicates that he or she was the victim of a sexual offense pursuant to part 4 of article 3 of title 18, C.R.S., with the consent of such minor patient, may perform customary and necessary examinations to obtain evidence of the sexual offense and may prescribe for and treat the patient for any immediate condition caused by the sexual offense.

(2) (a) Prior to examining or treating a minor pursuant to subsection (1) of this section, a physician shall make a reasonable effort to notify the parent, parents, legal guardian, or any other person having custody or decision-making responsibility with respect to the medical care of such minor of the sexual offense.

(b) So long as the minor has consented, the physician may examine and treat the minor as provided for in subsection (1) of this section whether or not the physician has been able to make the notification provided for in paragraph (a) of this subsection (2) and whether or not those notified have given consent, but, if the person having custody or decision-making responsibility with respect to the minor's medical care objects to treatment, then the physician shall proceed under the provisions of part 3 of article 3 of title 19, C.R.S.

(c) Nothing in this section shall be deemed to relieve any person from the requirements of the provisions of part 3 of article 3 of title 19, C.R.S., concerning child abuse.

(3) If a minor is unable to give the consent required by this section by reason of age or mental or physical condition and it appears that the minor has been the victim of a sexual assault, the physician shall not examine or treat the minor as provided in subsection (1) of this section but shall proceed under the provisions of part 3 of article 3 of title 19, C.R.S.

(4) A physician shall incur no civil or criminal liability by reason of having examined or treated a minor pursuant to subsection (1) of this section, but this immunity shall not apply to any negligent acts or omissions by the physician.



**Source:** **L. 79:** Entire section added, p. 618, § 1, effective May 4. **L. 87:** (2)(b), (2)(c), and (3) amended, p. 814, § 12, effective October 10. **L. 98:** (2)(a) and (2)(b) amended, p. 1394, § 29, effective February 1, 1999. **L. 2003:** (1) and (2)(a) amended, p. 1432, § 23, effective April 29.

**Cross references:** For the exemption from civil liability of physicians and surgeons rendering emergency assistance, see § 13-21-108; for the exemption from civil liability for persons administering tests to persons suspected of driving under the influence of alcohol or drugs, see § 42-4-1301.1 (6)(b).

**13-22-107. Legislative declaration - definitions - children - waiver by parent of prospective negligence claims.**

(1) (a) The general assembly hereby finds, determines, and declares it is the public policy of this state that:

(I) Children of this state should have the maximum opportunity to participate in sporting, recreational, educational, and other activities where certain risks may exist;

(II) Public, private, and non-profit entities providing these essential activities to children in Colorado need a measure of protection against lawsuits, and without the measure of protection these entities may be unwilling or unable to provide the activities;

(III) Parents have a fundamental right and responsibility to make decisions concerning the care, custody, and control of their children. The law has long presumed that parents act in the best interest of their children.

(IV) Parents make conscious choices every day on behalf of their children concerning the risks and benefits of participation in activities that may involve risk;

(V) These are proper parental choices on behalf of children that should not be ignored. So long as the decision is voluntary and informed, the decision should be given the same dignity as decisions regarding schooling, medical treatment, and religious education; and

(VI) It is the intent of the general assembly to encourage the affordability and availability of youth activities in this state by permitting a parent of a child to release a prospective negligence claim of the child against certain persons and entities involved in providing the opportunity to participate in the activities.

(b) The general assembly further declares that the Colorado supreme court's holding in case number 00SC885, 48 P.3d 1229 (Colo. 2002), has not been adopted by the general assembly and does not reflect the intent of the general assembly or the public policy of this state.

(2) As used in this section, unless the context otherwise requires:

(a) "Child" means a person under eighteen years of age.

(b) For purposes of this section only, "parent" means a parent, as defined in section 19-1-103; a person who has guardianship of the person, as defined in section 19-1-103; a person who has legal custody, as defined in section 19-1-103; a legal representative, as defined in section 19-1-103; a physical custodian, as defined in section 19-2.5-102; or a responsible person, as defined in section 19-1-103.

(3) A parent of a child may, on behalf of the child, release or waive the child's prospective claim for negligence.

(4) Nothing in this section shall be construed to permit a parent acting on behalf of his or her child to waive the child's prospective claim against a person or entity for a willful and wanton act or omission, a reckless act or omission, or a grossly negligent act or omission.

**Source:** L. 2003: Entire section added, p. 1721, § 1, effective May 14. L. 2021: (2)(b) amended, (SB 21-059), ch. 136, p. 711, § 15, effective October 1.

## ANNOTATION

**Law reviews.** For article, "Recreational Waivers in Colorado: Playing at Your Own Risk", see 32 Colo. Law. 77 (Aug. 2003).

**Section may not be applied retrospectively** to cause of action accruing prior to its effective date. Absent express legislative intent to the contrary, a statute is presumed to apply only prospectively. *Pollock v. Highlands Ranch Cmty. Ass'n*, 140 P.3d 351 (Colo. App. 2006).

**Ski resort may not absolve itself by way of private release agreements of liability for violations of the statutory and regulatory duties on which father's**

**negligence per se claim is based.** Resort may not absolve itself of a statutory duty based on alleged violations of the Ski Safety Act of 1979, §§ 33-44-101 to 33-44-114; passenger tramway safety under article 150 of title 12; and regulations promulgated thereunder from liability for negligence per se when a child sustained injuries after falling from a chair lift. *Miller v. Crested Butte, LLC*, 2024 CO 30, 549 P.3d 228.

**Decision to release child's prospective claims voluntary and informed.** When mother releasor signed release, she had sufficient information to assess the degree of

risk and the extent of possible injuries from any activity and to make an informed decision to release any claims. *Squires v. Goodwin*, 829 F. Supp. 2d 1062 (D. Colo. 2011), *aff'd*, 715 F.3d 867 (10th Cir. 2013).

**Release legally valid.** The release met four criteria: (1) There was no obvious disparity in bargaining power between releasor and releasee; (2) the agreement set forth the parties' intentions in clear and unambiguous language; (3) the circumstances and the nature of the service indicated that the agreement was fairly entered into; and (4) the agreement did not

violate public policy. *Squires v. Goodwin*, 829 F. Supp. 2d 1062 (D. Colo. 2011), *aff'd*, 715 F.3d 867 (10th Cir. 2013).

**Where registration form made no reference to the relevant activity or to waiving personal injury claims, the form is legally insufficient to release plaintiff's personal injury claims.** *Wycoff v. Grace Cmty. Church*, 251 P.3d 1260 (Colo. App. 2010).

**Applied** in *Hamill v. Cheley Colo. Camps, Inc.*, 262 P.3d 945 (Colo. App. 2011).

## PART 2

### UNIFORM ARBITRATION ACT

**Editor's note:** This part 2 was added in 1975. This part 2 was repealed and reenacted in 2004, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 2 prior to 2004, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated.

**Cross references:** For the employment of the procedures in this part 2 to disputes arising under written agreements between employers and employees, see § 8-1-123.

**Law reviews:** For article, "Enforcement of Arbitration Awards in Colorado", see 14 Colo. Law. 535 (1985); for article, "New Avenues for the Domestic Relations Practitioner", see 14 Colo. Law. 998 (1985); for article, "Avoiding Arbitration in Complex Construction Litigation", see 15 Colo. Law. 1808 (1986); for a discussion of Tenth Circuit decisions dealing with arbitration, see 66 Den. U.L. Rev. 675 (1989); for numerous articles dealing with alternative dispute resolution (ADR), see 18 Colo. Law. 828-928 (1989); for articles "The Power of Arbitrators and Courts to Order Discovery in Arbitration" parts I and II, see 25 Colo. Law. 55

(Feb. 1996) and 25 Colo. Law. 35 (Mar. 1996); for article, "Alternative Dispute Resolution in Colorado", see 28 Colo. Law. 67 (Sept. 1999); for article, "Colorado's Revised Uniform Arbitration Act", see 33 Colo. Law. 11 (Sept. 2004); for article, "A Three-Year Survey of Colorado Appellate Decisions on Arbitration Part I", see 34 Colo. Law. 41 (Feb. 2005); for article, "A Three-Year Survey of Colorado Appellate Decisions on Arbitration Part II", see 34 Colo. Law. 47 (Mar. 2005); for article, "Arbitrator and Mediator Disclosure Obligations in Colorado", see 34 Colo. Law. 53 (Sept. 2005); for article, "The State of the Intertwining Doctrine in Colorado", see 36 Colo. Law. 15 (Jan. 2007); for article, "Demise of the Intertwining Doctrine in Colorado", see 37 Colo. Law. 21 (Jan. 2008); for article, "Arbitration Clauses", see 43 Colo. Law. 59 (Aug. 2014); for article, "Application of the Federal Arbitration Act in State Court Proceedings", see 43 Colo. Law. 33 (Dec. 2014); for article, "Construction Defect Municipal Ordinances: The Balkanization of Tort and Contract Law (Part 3)", see 46 Colo. Law. 27 (Apr. 2017); for article, "When is an 'Arbitration' not an Arbitration?", see 46 Colo. Law. 29 (Oct. 2017); for article, "Effective Advocacy in Arbitration", see 47 Colo. Law. 26 (Apr. 2018); for article, "International Arbitration: Resolving Collateral Colorado Business Disputes", see 48 Colo. Law. 20 (July 2019); for article, "SCOTUS Decision Applies FAA to Empower Businesses and Arbitrators", see 48 Colo. Law. 30 (Aug.-Sept. 2019); for article, "Civil Interlocutory Appeals in Colorado State Courts", 49 Colo. Law. 38 (Oct. 2020); for article, "Claim and Issue Preclusion Arising from Residential Construction and Other Arbitrations -- Part 1", see 51 Colo. Law. 18 (Feb. 2022); for article, "Receiverships and Arbitrations", see 51 Colo. Law. 18 (Oct. 2022); for article, "Making Up Your Own Rules for Resolving Residential Construction Defect Disputes", see 52 Colo. Law. 36 (May 2023).

### **13-22-201. Definitions.**

As used in this part 2, unless the context otherwise requires:

- (1) "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.
- (2) "Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.
- (3) "Court" means a court of competent jurisdiction in this state.
- (4) "Knowledge" means actual knowledge.
- (5) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(6) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**Source: L. 2004:** Entire part R&RE, p. 1718, § 1, effective August 4.

#### **13-22-202. Notice.**

(1) Except as otherwise provided in this part 2, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

(2) A person has notice if the person has knowledge of the notice or has received notice.

(3) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

**Source: L. 2004:** Entire part R&RE, p. 1719, § 1, effective August 4.

#### **13-22-203. Applicability.**

(1) Except as otherwise provided in subsection (2) of this section, this part 2 shall govern an agreement to arbitrate made on or after August 4, 2004.

(2) This part 2 shall govern an agreement to arbitrate made before August 4, 2004, if all parties to the agreement or to the arbitration proceeding so agree in a record.

**Source: L. 2004:** Entire part R&RE, p. 1719, § 1, effective August 4.

**Editor's note:** This section is similar to former § 13-22-222 as it existed prior to 2004.

### **ANNOTATION**

**Insurance policy's appraisal process is not an arbitration under this act. Auto-**

Owners Ins. Co. v. Summit Park Townhome                      2015).  
Ass'n, 129 F. Supp. 3d 1150 (D. Colo.

**13-22-203.5. Sexual harassment or sexual misconduct dispute - determination of applicability - definitions.**

(1) As used in this section, unless the context otherwise requires:

(a) "Predispute arbitration agreement" means any agreement to arbitrate a dispute that has not arisen at the time of making the agreement.

(b) "Predispute joint-action waiver" means an agreement, whether or not part of a predispute arbitration agreement, that prohibits or waives the rights of a party to the agreement from participating in a joint action, class action, or collective action in a judicial, arbitral, administrative, or other forum concerning a dispute that has not arisen at the time of making the agreement.

(c) "Sexual harassment dispute" means a dispute relating to conduct that is alleged to constitute sexual harassment pursuant to the "Colorado Anti-discrimination Act", parts 3 to 8 of article 34 of title 24, or any other applicable federal, state, or tribal law.

(d) "Sexual misconduct dispute" means a dispute involving sexual misconduct, as defined in section 13-80-103.7 (2).

(2) Notwithstanding any provision of law to the contrary, a predispute arbitration agreement or predispute joint-action waiver is not valid or enforceable upon request of an individual who alleges conduct that results in a sexual harassment dispute or a sexual misconduct dispute, or upon request of a named representative of a joint action, class action, or collective action that results in a sexual harassment dispute or a sexual misconduct dispute.

(3) This section applies to an agreement to arbitrate. The court, rather than an arbitrator, shall determine the validity and enforceability of a predispute arbitration agreement and predispute joint-action waiver regardless of whether the party resisting arbitration challenges the predispute arbitration agreement or predispute joint-action waiver, specifically or in conjunction with other terms of the contract that contain a predispute arbitration agreement or predispute joint-action waiver, and regardless of whether the predispute arbitration agreement or predispute joint-action waiver delegates validity and enforceability determinations to an arbitrator.

**Source: L. 2026:** Entire section added, (SB 26-095), ch. 133, p. 592, § 4, effective May 19.

**13-22-204. Effect of agreement to arbitrate - nonwaivable provisions.**

(1) Except as otherwise provided in subsections (2) and (3) of this section, a party to an agreement to arbitrate or to an arbitration proceeding may waive, or, the parties may vary the effect of, the requirements of this part 2 to the extent permitted by law.

(2) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(a) Waive or agree to vary the effect of the requirements of section 13-22-205 (1), 13-22-206 (1), 13-22-208, 13-22-217 (1) or (2), 13-22-226, or 13-22-228;

(b) Agree to unreasonably restrict the right under section 13-22-209 to notice of the initiation of an arbitration proceeding;

(c) Agree to unreasonably restrict the right under section 13-22-212 to disclosure of any facts by a neutral arbitrator; or

(d) Waive the right under section 13-22-216 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this part 2, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(3) (a) Except as otherwise provided in paragraph (b) of this subsection (3), a party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or section 13-22-203 (1), 13-22-207, 13-22-214, 13-22-218, 13-22-220 (4) or (5), 13-22-222, 13-22-223, 13-22-224, 13-22-225 (1) or (2), or 13-22-229.

(b) If the parties to an agreement to arbitrate or to an arbitration proceeding are a government, governmental subdivision, governmental agency, governmental instrumentality, public corporation, or any commercial entity, the parties may waive the requirements of section 13-22-223 except if the award was procured by corruption or fraud.

**Source: L. 2004:** Entire part R&RE, p. 1719, § 1, effective August 4.

**13-22-205. Application for judicial relief.**

(1) Except as otherwise provided in section 13-22-228, an application for judicial relief under this part 2 must be made by motion to the court and heard in the manner provided by law or court rule for making and hearing motions.

(2) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this part 2 must be served in the manner provided by law for the

service of a summons in a civil action. Otherwise, notice of the motion must be given in the manner provided by law or court rule for serving motions in pending cases.

**Source: L. 2004:** Entire part R&RE, p. 1720, § 1, effective August 4.

**Editor's note:** This section is similar to former § 13-22-218 as it existed prior to 2004.

#### ANNOTATION

**An application for confirmation of an arbitrator's award is not a complaint that initiates a civil action in the district court.**

It is thus not a "civil action" as that term is used in C.R.C.P. 3(a). *Estate of Guido v. Exempla, Inc.*, 2012 COA 48, 292 P.3d 996.

**This section sets no deadline to file an application to confirm an arbitrator's award.** *Estate of Guido v. Exempla, Inc.*, 2012 COA 48, 292 P.3d 996.

#### **13-22-206. Validity of agreement to arbitrate.**

(1) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except on a ground that exists at law or in equity for the revocation of a contract.

(2) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(3) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(4) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

**Source: L. 2004:** Entire part R&RE, p. 1720, § 1, effective August 4.

**Editor's note:** This section is similar to former § 13-22-203 as it existed prior to 2004.



## ANNOTATION

**Law reviews.** For article, "SCOTUS Decision Applies FAA to Empower Businesses and Arbitrators", see 48 Colo. Law. 30 (Aug.-Sept. 2019).

**Annotator's note.** Since § 13-22-206 is similar to § 13-22-203 as it existed prior to the 2004 repeal and reenactment of this part 2, relevant cases construing that provision have been included in the annotations to this section.

**Colorado's arbitration act encompasses all forms of contract** and contract conditions that expressly or impliedly include a duty to arbitrate. *Lane v. Urgitus*, 145 P.3d 672 (Colo. 2006).

**An agreement to arbitrate can take the form of previously executed consents to arbitrate.** Where licensed real estate brokers signed membership agreements consenting to arbitration with other members of the professional organization should disputes arise among themselves, and where those brokers were members of the organization at the time they entered into the alleged referral fee agreement that led to the dispute, their previously executed consents to arbitrate constituted an implied condition of the alleged referral fee agreement enforceable under Colorado's arbitration act. *Lane v. Urgitus*, 145 P.3d 672 (Colo. 2006).

**Binding grievance arbitration of public employment agreement disputes.** Binding grievance arbitration of disputes arising under the terms of a public employment collective bargaining agreement is not per se

unconstitutional as a delegation of legislative authority. *City & County of Denver v. Denver Firefighters Local 858*, 663 P.2d 1032 (Colo. 1983).

**While parties may waive the provision that authorizes a court to determine whether an agreement to arbitrate exists or a controversy exists,** the parties must plainly and unambiguously empower an arbiter to decide arbitrability. *Johnson-Linzy v. Conifer Care Comtys.*, 2020 COA 88, 469 P.3d 537.

**Parties may expand an original contract for arbitration** by agreeing to submit other matters of dispute to arbitration. *Cabus v. Dairyland Ins. Co.*, 656 P.2d 54 (Colo. App. 1982).

**Once a controversy is submitted, it remains before the arbitrator** until an award is rendered unless the parties mutually agree to withdraw it. *Cabus v. Dairyland Ins. Co.*, 656 P.2d 54 (Colo. App. 1982).

That an issue was voluntarily submitted or submitted by an agreement expanding the original scope of the arbitrator's jurisdiction does not alter the fact that, once agreed upon, it becomes part of a binding contract to arbitrate. *Cabus v. Dairyland Ins. Co.*, 656 P.2d 54 (Colo. App. 1982).

**Parties' agreement for binding Rabbinical arbitration in a legal separation proceeding that was later dismissed** remained valid and applicable to

the subsequent dissolution of marriage proceeding between the same parties where the agreement stated that the parties would submit any future issues that might arise relating to the marriage to the "Beth Din" and where the agreement contained no qualifying or limiting language indicating that the parties intended to link the agreement to any particular proceeding. In *re Popack*, 998 P.2d 464 (Colo. App. 2000).

**Arbitration of claim that underlying contract induced by fraud.** Where a party does not contest the validity of the arbitration clause itself, the statutory exception contained in this section does not preclude arbitration of the claim that underlying contract was induced by fraud. *Nat'l Camera, Inc. v. Love*, 644 P.2d 94 (Colo. App. 1982).

**Former § 13-22-204(1) contemplates that the trial court will have the authority to consider one issue: The existence of the agreement to arbitrate.** All other issues, including challenges to the enforceability of the agreement under former § 13-22-203, implicitly are the province of the arbitrator. Furthermore, the trial court's authority is limited to specific challenges to the agreement to arbitrate, not the broader contract containing the arbitration provision. A fraudulent inducement claim, if it is to be considered by the trial court, must be directed specifically to fraud inducing the plaintiff to agree to arbitrate. Broader allegations of fraudulent inducement must be resolved in arbitration. *Ingold v. AIMCO/Bluffs, L.L.C. Apartments*, 159 P.3d 116 (Colo. 2007) (decided under law in

effect prior to the 2004 repeal and reenactment).

**Allegations of fraudulent inducement directed specifically to an arbitration provision in a contract must be decided by a trial court;** allegations of fraudulent inducement directed more broadly to the contract as a whole must be decided by the arbitrator. *Ingold v. AIMCO/Bluffs, L.L.C. Apartments*, 159 P.3d 116 (Colo. 2007) (decided under law in effect prior to the 2004 repeal and reenactment); *J.A. Walker Co. v. Cambria Corp.*, 159 P.3d 126 (Colo. 2007).

**Allegation of fraudulent inducement not directed specifically to lease's arbitration provision** is an issue to be decided by the arbitrator and not the trial court. *Ingold v. AIMCO/Bluffs, L.L.C. Apartments*, 159 P.3d 116 (Colo. 2007) (decided under law in effect prior to the 2004 repeal and reenactment).

**Despite the expiration of the contract, an arbitration clause survives** as to disputes that arise under the contract. *Shams v. Howard*, 165 P.3d 876 (Colo. App. 2007).

**The Uniform Arbitration Act cannot breathe life into an arbitration agreement that the Wage Claim Act deems void.** The compensation provisions of an employment contract of a Colorado employee that mandated arbitration of disputes concerning payment of his commission was void as it waived his substantive and procedural rights under the Wage Claim Act. *Lambdin v. District Ct. of Arapahoe County*, 903 P.2d 1126 (Colo. 1995).

**For a discussion of whether certain claims were within the scope of an arbitration clause in an employment agreement,** see *Austin v. U S West, Inc.*, 926 P.2d 181 (Colo. App. 1996).

**Prior to ordering arbitration, the court was required to determine whether the arbitration clause was enforceable and whether the plaintiff had sufficient mental capacity to enter into the contract.** The doctrine of separability applies, and the court must resolve any challenge to an arbitration provision before an arbitrator can decide any challenge to the entire contract.

However, there is a difference between questions about the contract's validity and whether any agreement was ever concluded, and a mental capacity defense requires the court to make a determination whether an agreement exists. Therefore, the mental capacity defense is exempt from the separability inquiry under the Colorado Uniform Arbitration Act. *Estate of Grimm v. Evans*, 251 P.3d 574 (Colo. App. 2010).

**Applied** in *Cabs, Inc. v. Delivery Drivers Local 435*, 39 Colo. App. 241, 566 P.2d 1078 (1977).

### **13-22-207. Motion to compel or stay arbitration.**

(1) On the motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(a) If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and

(b) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(2) On the motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is not an agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

(3) If the court finds that there is no enforceable agreement, it may not invoke the provisions of subsection (1) or (2) of this section to order the parties to arbitrate.

(4) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or because one or more grounds for the claim have not been established.

(5) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion made under this section shall be filed with that court. Otherwise, a motion made under this section may be filed in any court pursuant to section 13-22-227.

(6) If a party files a motion with the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the ordering court renders a final decision under this section.

(7) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

**Source: L. 2004:** Entire part R&RE, p. 1720, § 1, effective August 4.

**Editor's note:** This section is similar to former § 13-22-204 as it existed prior to 2004.

#### ANNOTATION

**Annotator's note.** Since § 13-22-207 is similar to § 13-22-204 as it existed prior to the 2004 repeal and reenactment of this part 2, relevant cases construing that provision have been included in the annotations to this section.

**When arbitration proceedings stayed.** A court is empowered to stay arbitration proceedings upon a showing that there is no agreement to arbitrate; and where it is apparent from the language of the contract that the issue sought to be arbitrated lies clearly beyond the scope of the arbitration clause, a court cannot order arbitration. *Cabs, Inc. v. Delivery Drivers Local 435*, 39 Colo. App. 241, 566 P.2d 1078 (1977).

This section gives the court authority to stay an arbitration only if there is no arbitration agreement or it appears from the arbitration agreement that the claim sought to be arbitrated is beyond the scope of the arbitration clause. *Sopko v. Clear Channel*

*Satellite Servs., Inc.*, 151 P.3d 663 (Colo. App. 2006).

Where, however, there is an agreement to arbitrate and there is a reasonable basis for construing the agreement in support of arbitrability of the claim, the scope of the arbitration agreement must be determined by the arbitrator, not by the court. *Sopko v. Clear Channel Satellite Servs., Inc.*, 151 P.3d 663 (Colo. App. 2006).

**Scope of arbitration to be determined by arbitrator.** Where there is a reasonable basis for construing the agreement in support of arbitrability, the legislative policy underlying the article requires that the scope of the arbitration be determined by the arbitrator. *Cabs, Inc. v. Delivery Drivers Local 435*, 39 Colo. App. 241, 566 P.2d 1078 (1977).

**Order compelling arbitration not appealable.** An order compelling parties to arbitrate is not a final appealable order.

Frontier Materials, Inc. v. City of Boulder, 663 P.2d 1065 (Colo. App. 1983).

**Uniform Arbitration Act authorizes party to arbitration agreement to apply to district court for order compelling arbitration.** Thomas v. Farmers Ins. Exch., 857 P.2d 532 (Colo. App. 1993).

**Proper procedure to stay action pending arbitration.** A stay of the proceeding preserves plaintiff's right to foreclose on its mechanic's lien if it prevails in arbitration. Mtn. Plains Constructors v. Torrez, 785 P.2d 928 (Colo. 1990).

**Party's unsuccessful attempt to stay the arbitration of a contract dispute** does not mean that the party is estopped from obtaining clarification of issues which may be arbitrated. Associated Natural Gas v. Nordic Petro., 807 P.2d 1195 (Colo. App. 1990).

**A trial court has limited power to preserve the status quo** even though there is a statutory requirement that a pending civil action be stayed pending an arbitrator's decision. Hughley v. Rocky Mtn. HMO, Inc., 927 P.2d 1325 (Colo. 1996).

**Appealable order.** A denial of a motion to compel arbitration is an appealable order. However, an immediate appeal is permissive and not mandatory. Therefore, an order denying a motion to compel arbitration may also be appealed after final judgment. Mtn. Plains Constructors v. Torrez, 785 P.2d 928 (Colo. 1990).

**The phrase "proceed to summarily decide the issue" in subsection (1)(b) requires that a trial court considering a**

**fraudulent inducement challenge to an arbitration agreement should begin by considering the undisputed affidavits, pleadings, discovery, and stipulations.** If the material facts are undisputed, trial court can resolve the challenge on the record before it. J.A. Walker Co. v. Cambria Corp., 159 P.3d 126 (Colo. 2007).

**If, however, the material facts are in dispute, the trial court should proceed expeditiously in holding an evidentiary hearing to consider the disputed facts and resolve the party's challenge to the arbitration agreement.** J.A. Walker Co. v. Cambria Corp., 159 P.3d 126 (Colo. 2007).

**Parties may enter into an enforceable agreement to arbitrate notwithstanding the absence of their signatures.** Trial court should hold an evidentiary hearing to consider disputed facts and resolve the challenge regarding the existence of the alleged arbitration agreement. E-21 Eng'g v. Steve Stock & Assocs., 252 P.3d 36 (Colo. App. 2010).

**Once the court determines that a valid, enforceable arbitration agreement exists, the court is divested of jurisdiction** over matters submitted to arbitration and the proper procedure is to stay the proceedings until arbitration is completed. An order granting a motion to stay the proceedings is an interlocutory order that is not immediately appealable. Lane v. Urgitus, 145 P.3d 672 (Colo. 2006).

**Arbitration is a favored means of dispute resolution** and any doubts about the scope of an arbitration clause should be resolved in favor of arbitration. Gergel v.

High View Homes, LLC, 996 P.2d 233 (Colo. App. 1999); Lane v. Urgitus, 145 P.3d 672 (Colo. 2006).

**A court may refuse to compel arbitration** upon application by a party showing an agreement to arbitrate, only if there is no agreement to arbitrate or if the issue sought to be arbitrated is clearly beyond the scope of the arbitration provision. Shorey v. Jefferson County Sch. District No. R-1, 807 P.2d 1181 (Colo. App. 1990); Eychner v. Van Vleet, 870 P.2d 486 (Colo. App. 1993); Gergel v. High View Homes, LLC, 996 P.2d 233 (Colo. App. 1999); Eagle Ridge Condo. Ass'n v. Metro. Builders, Inc., 98 P.3d 915 (Colo. App. 2004).

**In resolving a motion to compel arbitration** the court must inquire whether there is a valid agreement to arbitrate between the parties to the action, and whether the issues being disputed are within the scope of that agreement. Eychner v. Van Vleet, 870 P.2d 486 (Colo. App. 1993).

In considering a motion to compel arbitration, the court must first determine whether a valid agreement to arbitrate exists. Eagle Ridge Condo. Ass'n v. Metro. Builders, Inc., 98 P.3d 915 (Colo. App. 2004).

**Intertwining doctrine no longer good law in Colorado.** Claims that are subject to an arbitration agreement must be arbitrated regardless of their joinder with non-arbitrable claims. Claims that are not subject to arbitration should be stayed or proceed separately in litigation based on the discretion of the trial court. Ingold v.

AIMCO/Bluffs, L.L.C. Apartments, 159 P.3d 116 (Colo. 2007) (overruling Sandefer v. District Court, 635 P.2d 547 (Colo. 1981)).

**Intertwining doctrine does not prevent a court from ordering arbitration** where all claims to be decided fall within the scope of an arbitration clause. Gergel v. High View Homes, LLC, 996 P.2d 233 (Colo. App. 1999); Eagle Ridge Condo. Ass'n v. Metro. Builders, Inc., 98 P.3d 915 (Colo. App. 2004).

**A signatory to an agreement containing an arbitration clause may be equitably estopped from avoiding arbitration** when the signatory sues a nonsignatory on claims that (1) presume the existence of that agreement; or (2) allege interconnected and concerted misconduct between the nonsignatory and one or more of the signatories related to that agreement. Meister v. Stout, 2015 COA 60, 353 P.3d 916.

**When facts and issues are intertwined,** if some issues require arbitration and others do not, consideration of the interests of judicial economy, time, and expense leads to the conclusion that all the issues should be resolved by litigation. Atmel Corp. v. Vitesse Semiconductor Corp., 30 P.3d 789 (Colo. App. 2001), overruled in Ingold v. AIMCO/Bluffs, L.L.C. Apartments, 159 P.3d 116 (Colo. 2007); Eagle Ridge Condo. Ass'n v. Metro. Builders, Inc., 98 P.3d 915 (Colo. App. 2004), overruled in Ingold v. AIMCO/Bluffs, L.L.C. Apartments, 159 P.3d 116 (Colo. 2007).

**Determining whether the intertwining doctrine applies** requires determinations as to whether any claims fall under the arbitration provision at issue and whether any nonarbitrable claims are so inextricably intertwined with the arbitrable claims as to prevent severance. *Eagle Ridge Condo. Ass'n v. Metro. Builders, Inc.*, 98 P.3d 915 (Colo. App. 2004), overruled in *Ingold v. AIMCO/Bluffs, L.L.C. Apartments*, 159 P.3d 116 (Colo. 2007).

**Intertwining doctrine does not prevent a court from ordering arbitration** where all claims to be decided fall within the scope of an arbitration clause. *Gergel v. High View Homes, LLC*, 996 P.2d 233 (Colo. App. 1999); *Eagle Ridge Condo. Ass'n v. Metro. Builders, Inc.*, 98 P.3d 915 (Colo. App. 2004).

**The right to compel arbitration is derived from contract.** Unless the intent of the parties to the contract is to bring a nonparty within the scope of an arbitration agreement, one who is not a party to the contract lacks standing to compel, or to be subject to, arbitration. *Eychner v. Van Vleet*, 870 P.2d 486 (Colo. App. 1993); *Parker v. Ctr. for Creative Leadership*, 15 P.3d 297 (Colo. App. 2000); *Eagle Ridge Condo. Ass'n v. Metro. Builders, Inc.*, 98 P.3d 915 (Colo. App. 2004).

In determining whether the parties agreed or intended to submit an issue to arbitration, the ordinary principles of contract interpretation apply. *Eagle Ridge Condo. Ass'n v. Metro. Builders, Inc.*, 98 P.3d 915 (Colo. App. 2004).

**In determining the scope of an arbitration clause**, the court must strive to ascertain and give effect to the mutual intent of the parties and must consider the subject matter and purposes to be accomplished by the agreement. *Eychner v. Van Vleet*, 780 P.2d 486 (Colo. App. 1993); *Hughley v. Rocky Mtn. HMO, Inc.*, 910 P.2d 30 (Colo. App. 1995), rev'd on other grounds, 927 P.2d 1325 (Colo. 1996); *Parker v. Ctr. for Creative Leadership*, 15 P.3d 297 (Colo. App. 2000).

**Arbitration agreement enforced notwithstanding the arbitration agreement's incorporation of an arbitral forum's rules that require a now defunct arbitrator to administer them.** The agreement evidenced the parties' agreement to arbitrate any disputes that arose between them, without regard to who was named as arbitrator. *Johnson-Linzy v. Conifer Care Comtys.*, 2020 COA 88, 469 P.3d 537.

**When arbitration agreement covers interpretation of contract terms**, arbitrator, not court, empowered to decide whether dispute falls within scope of arbitration provision. *BRM Constr., Inc. v. Marais Gaylord, L.L.C.*, 181 P.3d 283 (Colo. App. 2007).

**If a party asserts that the entire contract is illegal**, the court must determine this threshold issue first. *R.P.T. v. Innovative Commc'ns*, 917 P.2d 340 (Colo. App. 1996).

**Allegations of fraudulent inducement directed specifically to an arbitration provision in a contract must be decided by a trial court**; allegations of fraudulent inducement directed more broadly to the

contract as a whole must be decided by the arbitrator. *Ingold v. AIMCO/Bluffs, L.L.C. Apartments*, 159 P.3d 116 (Colo. 2007) (decided under law in effect prior to the 2004 repeal and reenactment).

**Applied** in *Paul Mullins Constr. Co. v. Alspaugh*, 628 P.2d 113 (Colo. App. 1980); *Weedin v. United States*, 509 F. Supp. 1052

(D. Colo. 1981); *Sandefer v. District Court*, 635 P.2d 547 (Colo. 1981); *City & County of Denver v. Denver Firefighters Local 858*, 663 P.2d 1032 (Colo. 1983); *Lawrence St. Part. v. Lawrence St. Vent.*, 786 P.2d 508 (Colo. App. 1989); *Shorey v. Jefferson County Sch. Dist. R-1*, 807 P.2d 1181 (Colo. App. 1990); *Lane v. Urgitus*, 145 P.3d 672 (Colo. 2006).

### **13-22-208. Provisional remedies.**

(1) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(2) After an arbitrator is appointed and is authorized and able to act:

(a) The arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

(b) A party to an arbitration proceeding may request the court to issue an order for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

(3) A party does not waive a right of arbitration by making a motion under subsection (1) or (2) of this section.

**Source: L. 2004:** Entire part R&RE, p. 1721, § 1, effective August 4.

### **ANNOTATION**

**Law reviews.** For article, "Receiverships and Arbitrations", see 51 Colo. Law. 18 (Oct. 2022).



**13-22-209. Initiation of arbitration.**

(1) A person may initiate an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of an agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized by law for the commencement of a civil action. The notice shall describe the nature of the controversy and the remedy sought.

(2) Unless a person objects to the lack of notice or the insufficiency of notice under section 13-22-215 (3) not later than the beginning of the arbitration hearing, a person who appears at the arbitration hearing waives any objection to the lack of notice or insufficiency of notice.

**Source: L. 2004:** Entire part R&RE, p. 1722, § 1, effective August 4.

**13-22-210. Consolidation of separate arbitration proceedings.**

(1) Except as otherwise provided in subsection (3) of this section, upon the motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if all parties in the arbitration proceedings consent and:

(a) There are separate agreements to arbitrate or separate arbitration proceedings between or among the same persons or one of the persons is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

(b) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(c) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(d) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(2) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(3) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

**Source: L. 2004:** Entire part R&RE, p. 1722, § 1, effective August 4.

**13-22-211. Appointment of arbitrator - service as a neutral arbitrator.**

(1) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, the method shall be followed unless the method fails. If the parties have not agreed on a method, or the agreed method fails, or an appointed arbitrator fails to act or is unable to act and a successor has not been appointed, the court, on the motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator appointed pursuant to this subsection (1) shall have all the powers of an arbitrator designated in an agreement to arbitrate or appointed pursuant to an agreed method.

(2) An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator if the agreement requires the arbitrator to be neutral.

**Source: L. 2004:** Entire part R&RE, p. 1722, § 1, effective August 4.

**Editor's note:** This section is similar to former § 13-22-205 as it existed prior to 2004.

**ANNOTATION**

**Standards for a neutral arbitrator.**  
Because the parties' stipulation did not specify whether appraisers were to be treated as arbitrators, and if so, whether they were to be held to the statutory standard for impartial arbitrators, this section and § 13-

22-212 regarding disclosures to be made by impartial arbitrators did not apply. *Owners Ins. Co. v. Dakota Station II*, 2017 COA 103, 444 P.3d 784, *aff'd in part, rev'd in part* on other grounds, 2019 CO 65, 443 P.3d 47.

**13-22-212. Disclosure by arbitrator.**

(1) Before accepting an appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(a) A financial or personal interest in the outcome of the arbitration proceeding; and

(b) A current or previous relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or another arbitrator.

(2) An arbitrator shall have a continuing obligation to disclose to all parties to the agreement to arbitrate and to the arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment that a reasonable person would consider likely to affect the impartiality of the arbitrator.

(3) If an arbitrator discloses a fact required to be disclosed by subsection (1) or (2) of this section and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under section 13-22-223 (1)(b) for vacating an award made by an arbitrator.

(4) If the arbitrator does not disclose a fact as required by subsection (1) or (2) of this section, upon timely objection by a party, the court may vacate an award under section 13-22-223 (1)(b).

(5) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party shall be presumed to act with evident partiality under section 13-22-223 (1)(b).

(6) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under section 13-22-223 (1)(b).

**Source: L. 2004:** Entire part R&RE, p. 1723, § 1, effective August 4.

### **13-22-213. Action by majority.**

If there is more than one arbitrator, the powers of an arbitrator shall be exercised by a majority of the arbitrators, except that all of the arbitrators shall conduct the hearing under the provisions of section 13-22-215 (3).

**Source: L. 2004:** Entire part R&RE, p. 1724, § 1, effective August 4.

**Editor's note:** This section is similar to former § 13-22-205 as it existed prior to 2004.

**13-22-214. Immunity of arbitrator - competency to testify - attorney fees and costs.**

(1) An arbitrator or an arbitration organization acting in the capacity of an arbitrator is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

(2) The immunity afforded by this section is in addition to, and not in lieu of, or in derogation of, immunity conferred under any other provision of law.

(3) The failure of an arbitrator to make a disclosure required by section 13-22-212 shall not cause any loss of immunity that is granted under this section.

(4) (a) In a judicial proceeding, administrative proceeding, or other similar proceeding, an arbitrator or representative of an arbitration organization shall not be competent to testify and may not be required to produce records as to any statement, conduct, decision, or ruling that occurred during the arbitration proceeding, to the same extent as a judge of a court of this state acting in a judicial capacity.

(b) This subsection (4) shall not apply:

(I) To the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or

(II) To a hearing on a motion to vacate an award under section 13-22-223 (1)(a) or (1)(b) if the movant makes a prima facie showing that a ground for vacating the award exists.

(5) If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative, or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection (4) of this section, and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorney fees and reasonable expenses of litigation.

**Source: L. 2004:** Entire part R&RE, p. 1724, § 1, effective August 4.

**13-22-215. Arbitration process.**

(1) An arbitrator may conduct an arbitration in a manner that the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon

the arbitrator by this part 2 shall include, but not be limited to, the power to hold conferences with the parties to the arbitration proceeding before the hearing and the power to determine the admissibility, relevance, materiality, and weight of any evidence.

(2) An arbitrator may decide a request for summary disposition of a claim or particular issue:

(a) If all interested parties agree; or

(b) Upon request of one or more parties to the arbitration proceeding if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

(3) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing shall waive the objection. Upon the request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced even if a party who was duly notified of the arbitration proceeding does not appear. The court, on motion, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(4) At a hearing under subsection (3) of this section, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(5) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator shall be appointed in accordance with section 13-22-211 to continue the proceeding and to resolve the controversy.

**Source: L. 2004:** Entire part R&RE, p. 1724, § 1, effective August 4.

**Editor's note:** This section is similar to former § 13-22-207 as it existed prior to 2004.

#### ANNOTATION

**Annotator's note.** Since § 13-22-215 is the 2004 repeal and reenactment of this part similar to § 13-22-207 as it existed prior to 2, relevant cases construing that provision

have been included in the annotations to this section.

**Generally, arbitrators are not bound by either substantive or procedural rules of law**, except as required under the terms of the arbitration agreement. *Cabus v. Dairyland Ins. Co.*, 656 P.2d 54 (Colo. App. 1982).

**No absolute right to a hearing under this section if the arbitration agreement does not require a hearing.** Section 10203 (a) of the National Association of Securities

Dealers, Inc., code of arbitration procedure does not require an arbitrator to hold a hearing. Therefore, it was within the discretion of the arbitrator whether to hold a hearing. *Carson v. PaineWebber, Inc.*, 62 P.3d 996 (Colo. App. 2002).

**Taking of oath not required.** The taking of an oath prior to commencing deliberations is not required by the hearing procedures set forth in this section. In re *Salter v. Farner*, 653 P.2d 413 (Colo. App. 1982).

### **13-22-216. Representation by attorney.**

A party to an arbitration proceeding may be represented by an attorney.

**Source: L. 2004:** Entire part R&RE, p. 1725, § 1, effective August 4.

**Editor's note:** This section is similar to former § 13-22-208 as it existed prior to 2004.

### **13-22-217. Witnesses - subpoenas - depositions - discovery.**

(1) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena issued under this section shall be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or by the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(2) In order to make the proceedings fair, expeditious, and cost effective, upon the request of a party or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for a hearing or who is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(3) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other

affected persons and the desirability of making the proceeding fair, expeditious, and cost effective.

(4) If an arbitrator permits discovery under subsection (3) of this section, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a non-complying party to the extent a court could take such action if the controversy were the subject of a civil action; except that the arbitrator shall not have the power of contempt.

(5) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action.

(6) All provisions of law that compel a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness shall apply to an arbitration proceeding in the same manner as if the controversy were the subject of a civil action.

(7) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost effective. A subpoena or discovery-related order issued by an arbitrator in another state shall be served in the manner provided by law for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action.

**Source: L. 2004:** Entire part R&RE, p. 1725, § 1, effective August 4.

**Editor's note:** This section is similar to former § 13-22-209 as it existed prior to 2004.

**Cross references:** For the Colorado rule of civil procedure concerning subpoenas, see rule 45; for the fees of witnesses, see § 13-33-102.

## ANNOTATION

**Annotator's note.** Since § 13-22-217 is similar to § 13-22-209 as it existed prior to the 2004 repeal and reenactment of this part 2, a relevant case construing that provision has been included in the annotations to this section.

**This section allows arbitrators to issue subpoenas for the production of**

**documents and other evidence;** therefore there is no merit in the argument that the arbitration clause of a health care contract is unenforceable because it does not provide for discovery. *Rains v. Found. Health Sys. Life & Health*, 23 P.3d 1249 (Colo. App. 2001).

### **13-22-218. Judicial enforcement of pre-award ruling by arbitrator.**

If an arbitrator makes a pre-award ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under section 13-22-219. A prevailing party may make a motion to the court for an expedited order to confirm the award under section 13-22-222, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under section 13-22-223 or 13-22-224.

**Source: L. 2004:** Entire part R&RE, p. 1726, § 1, effective August 4.

### **13-22-219. Award.**

(1) An arbitrator shall make a record of an award. The record shall be signed or otherwise authenticated by an arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(2) An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend the time or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may do so within or after the time specified or ordered. A party shall be deemed to have waived any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

**Source: L. 2004:** Entire part R&RE, p. 1727, § 1, effective August 4.



**Editor's note:** This section is similar to former § 13-22-210 as it existed prior to 2004.

## ANNOTATION

**Annotator's note.** Since § 13-22-219 is similar to § 13-22-210 as it existed prior to the 2004 repeal and reenactment of this part 2, relevant cases construing that provision have been included in the annotations to this section.

**Arbitrator is the final judge of both fact and law.** Judd Constr. Co. v. Evans Joint Venture, 642 P.2d 922 (Colo. 1982).

**Arbitration award is tantamount to a judgment.** Judd Constr. Co. v. Evans Joint Venture, 642 P.2d 922 (Colo. 1982); Container Tech. v. J. Gadsden Pty., 781 P.2d 119 (Colo. App. 1989); McNaughton & Rodgers v. Besser, 932 P.2d 819 (Colo. App. 1996).

**Specific findings of fact not required.** An arbitration award does not need to contain specific findings of fact if there is no statute or contractual provision in the arbitration agreement which requires such

findings. Ash Apts. v. Martinez, 656 P.2d 708 (Colo. App. 1982).

**Contractual provisions that give arbitrators authority to resolve disputes concerning the time period in which an award must be made are enforceable.** Sopko v. Clear Channel Satellite Servs., Inc., 151 P.3d 663 (Colo. App. 2006).

**Time requirements for issuance of an arbitration award are directory, not mandatory or jurisdictional.** In the absence of language in an arbitration agreement indicating that "time is of the essence" or that an award issued outside the pertinent time period in an arbitration agreement is void, the party seeking to preclude an award issued outside the time period must make a timely objection and demonstrate prejudice. Sopko v. Clear Channel Satellite Servs., Inc., 151 P.3d 663 (Colo. App. 2006).

### **13-22-220. Change of award by arbitrator.**

(1) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

- (a) Upon a ground stated in section 13-22-224 (1)(a) or (1)(c);
- (b) If the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or
- (c) To clarify the award.

(2) A motion made under subsection (1) of this section shall be made and notice shall be given to all parties within twenty days after the movant receives notice of the award.

(3) A party to the arbitration proceeding shall give notice of any objection to the motion within ten days after receipt of the notice.

(4) If a motion to the court is pending under section 13-22-222, 13-22-223, or 13-22-224, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(a) Upon a ground stated in section 13-22-224 (1)(a) or (1)(c);

(b) If the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(c) To clarify the award.

(5) An award modified or corrected pursuant to this section is subject to the provisions of sections 13-22-219 (1), 13-22-222, 13-22-223, and 13-22-224.

**Source: L. 2004:** Entire part R&RE, p. 1727, § 1, effective August 4.

**Editor's note:** This section is similar to former § 13-22-211 as it existed prior to 2004.

## ANNOTATION

**Annotator's note.** Since § 13-22-220 is similar to § 13-22-211 as it existed prior to the 2004 repeal and reenactment of this part 2, relevant cases construing that provision have been included in the annotations to this section.

**District court lacks subject matter jurisdiction to confirm arbitration award while a motion to modify or clarify the award is before the arbitrator.** If the arbitrator dies or is otherwise unavailable to rule on the motion, the court must appoint a replacement arbitrator to consider the pending motions. The replacement arbitrator may act only pursuant to statute and may not redetermine the merits of the award. In re Roth, 2017 COA 45, 395 P.3d 1226.

**An application for modification of award pursuant to this section tolls the time limits in §§ 13-22-214 and 13-22-215 for seeking review by the court.** Swan v. Am. Family Mut. Ins. Co., 8 P.3d 546 (Colo. App. 2000).

**Amendment or modification of the award by the arbitrator is permitted only under the narrow circumstances listed in this section.** Applehans v. Farmers Ins. Exch., 68 P.3d 594 (Colo. App. 2003); Rocha v. Fin. Indem. Corp., 155 P.3d 602 (Colo. App. 2006).

**"Clarify", in subsection (1)(a), does not connote a reassessment or redetermination, but rather involves making something clear or**

**understandable.** This does not mean that an arbitrator may reexamine the merits under the auspices of clarification — merely that an arbitrator's mistake, ambiguity, or general lack of clarity may require elucidation for the parties and reviewing courts to make sense of an arbitration award. *Sooper Credit Union v. Sholar Group Architects, P.C.*, 113 P.3d 768 (Colo. 2005).

According to former § 13-22-211, an arbitrator may "modify or correct the award . . . for the purpose of clarifying the award". This unambiguous phrase means that a confusing award may be clarified as required for better understanding. Nowhere does the statute impose an additional requirement that the confusion be evident or apparent strictly on the face of the award. Had the general assembly intended to limit clarification to patently ambiguous awards, it would have said so. *Sooper Credit Union v. Sholar Group Architects, P.C.*, 113 P.3d 768 (Colo. 2005) (decided under law in effect prior to the 2004 repeal and reenactment).

Where an award is confusing because of an error, ambiguity, or general lack of clarity, an arbitrator may modify it to make it clearer and thereby effectuate the arbitrator's intent. The statute does not require that the confusion be evident on the face of the award or patently ambiguous, but an arbitrator may not redetermine the merits

when clarifying an award. *Sooper Credit Union v. Sholar Group Architects, P.C.*, 113 P.3d 768 (Colo. 2005).

**Failure to object to an arbitrator's authority to issue a clarification or explanation** of an award precludes raising an objection to the same on appeal. *Osborn v. Packard*, 117 P.3d 77 (Colo. App. 2004) (decided under law in effect prior to 2004 repeal and reenactment).

**If an arbitrator's rulings are ambiguous**, the court should attempt to resolve the ambiguity from the record whenever possible. If that is not possible, however, the matter must be remanded to the arbitrator for issuance of a modified arbitration award that clarifies the ambiguity. The arbitrator may conduct such further proceedings as he or she deems necessary. *Osborn v. Packard*, 117 P.3d 77 (Colo. App. 2004) (decided under law in effect prior to 2004 repeal and reenactment).

**Arbitrator acted within his or her statutory authority by correcting an award that was initially miscalculated, thus clarifying the initial award's ruling on the merits of the case.** *Sooper Credit Union v. Sholar Group Architects, P.C.*, 113 P.3d 768 (Colo. 2005).

**Applied** in *Red Carpet Armory Realty Co. v. Golden W. Realty*, 644 P.2d 93 (Colo. App. 1982).

**13-22-221. Remedies - fees and expenses of arbitration proceeding.**

(1) An arbitrator may award reasonable attorney fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(2) An arbitrator's expenses and fees, together with other expenses, shall be paid as provided in the award.

(3) Nothing in this section shall be construed to alter or amend the provisions of section 13-21-102 (5).

**Source: L. 2004:** Entire part R&RE, p. 1728, § 1, effective August 4.

**Editor's note:** This section is similar to former § 13-22-212 as it existed prior to 2004.

**ANNOTATION**

**Annotator's note.** Since § 13-22-221 is similar to § 13-22-212 as it existed prior to the 2004 repeal and reenactment of this part 2, relevant cases construing that provision have been included in the annotations to this section.

**Where appellants have not shown section arbitrarily singles out a group of persons similarly situated for disparate treatment,** provisions of section, which allow an interlocutory appeal of an order denying a motion to compel arbitration but do not authorize an interlocutory appeal of an order compelling arbitration, are rationally based and do not violate equal protection. *Ferla v. Infinity Dev. Assocs., LLC*, 107 P.3d 1006 (Colo. App. 2004).

**Trial court is not required to conduct an evidentiary hearing on an arbitrator's request for payment of fees.** Although the

necessity or reasonableness of an arbitrator's fees may be subject to dispute, the parties' due process rights to litigate the scope of the services and the amounts requested are well protected by written motion practice. In re Eggert, 53 P.3d 794 (Colo. App. 2002).

**Although section excludes "counsel fees," it appears to cover other costs incurred in the arbitration.** Because there was no agreement to the contrary, the statute compels the parties to pay these costs as provided under the arbitrator's award. Thus, to the extent the arbitrator's award represented costs other than counsel fees, the trial court should have confirmed the award. *Compton v. Lemon Ranches, Ltd.*, 972 P.2d 1078 (Colo. App. 1999).

**This section prohibits an arbitrator from awarding attorney fees** unless the parties have specifically agreed that the

arbitrator shall address that issue. Therefore, the trial court did not err in awarding the defendant its attorney fees incurred in the trial court, and the trial court's order was not void for lack of jurisdiction. *Camelot Invs., LLC v. LANDesign, LLC*, 973 P.2d 1279 (Colo. App. 1999).

**This section does not apply to an arbitrating party's attorney.** The

authorization in this section is not broad or express enough to confer on arbitrators the authority to sanction a party's attorney when no agreement binds the attorney to arbitrate the issue of sanctions against him in an individual capacity. *Herrera v. Santangelo Law Offices, P.C.*, 2022 COA 93, 520 P.3d 698.

### **13-22-222. Confirmation of award.**

(1) After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to section 13-22-220 or 13-22-224 or is vacated pursuant to section 13-22-223.

(2) Repealed.

**Source:** **L. 2004:** Entire part R&RE, p. 1728, § 1, effective August 4. **L. 2005:** (2) repealed, p. 764, § 20, effective June 1.

**Editor's note:** This section is similar to former § 13-22-213 as it existed prior to 2004.

### **ANNOTATION**

**Annotator's note.** Since § 13-22-222 is similar to § 13-22-213 as it existed prior to the 2004 repeal and reenactment of this part 2, relevant cases construing that provision have been included in the annotations to this section.

**Purpose of article is** to provide ground rules and procedures for enforcement of awards through the courts, but not to supersede any agreement entered into by the parties. *Water Works Employees Local 1045*

*v. Bd. of Water Works*, 44 Colo. App. 178, 615 P.2d 52 (1980).

**Court's role is limited.** The role of the court is considering an arbitrator's award is strictly limited. *Judd Constr. Co. v. Evans Joint Venture*, 642 P.2d 922 (Colo. 1982).

The issues before the court in a confirmation proceeding are limited by this article. *Judd Constr. Co. v. Evans Joint Venture*, 642 P.2d 922 (Colo. 1982); *State*

Farm Mut. Auto. Ins. v. Cabs, Inc., 751 P.2d 61 (Colo. 1988); Container Tech. v. J. Gadsden Pty., 781 P.2d 119 (Colo. App. 1989); S. Washington Assoc. v. Flanagan, 859 P.2d 217 (Colo. 1992); Kutch v. State Farm Mut. Auto. Ins. Co., 960 P.2d 93 (Colo. 1998).

The trial court erred in considering defendant's substantive defense concerning the constitutionality of the statute because the only defenses permitted to a request for confirmation of an arbitration award are whether grounds exist to vacate, modify, or correct such award and such defenses must be made within specified time limits. State Farm Mut. Auto. Ins. v. Cabs, Inc., 751 P.2d 61 (Colo. 1988).

In the absence of appropriate grounds to modify, vacate, or correct an award, a trial court is required to affirm the award without review of the merits. McNaughton & Rodgers v. Besser, 932 P.2d 819 (Colo. App. 1996); Osborn v. Packard, 117 P.3d 77 (Colo. App. 2004).

**A court is limited on review to modify or correct an arbitration award only upon statutory grounds** and may not review the merits of the arbitrator's decision. Duncan v. Nat'l Home Ins. Co., 36 P.3d 191 (Colo. App. 2001); Levy v. Am. Family Mut. Ins. Co., 293 P.3d 40 (Colo. App. 2011).

When arbitration award is for all damages incurred by plaintiff, which under state law includes prejudgment interest, district court's subsequent order granting prejudgment interest was an impermissible modification of arbitration award. Levy v. Am. Family

Mut. Ins. Co., 293 P.3d 40 (Colo. App. 2011).

**Trial court correctly denied plaintiff's motion to confirm the award** where defendant had filed an application to modify or correct the award with the arbitrator. Applehans v. Farmers Ins. Exch., 68 P.3d 594 (Colo. App. 2003).

**District court lacks subject matter jurisdiction to confirm arbitration award while a motion to modify or clarify the award is before the arbitrator.** If the arbitrator dies or is otherwise unavailable to rule on the motion, the court must appoint a replacement arbitrator to consider the pending motions. The replacement arbitrator may act only pursuant to statute and may not redetermine the merits of the award. In re Roth, 2017 COA 45, 395 P.3d 1226.

**Failure to take oath does not invalidate proceedings.** Failure of the arbitrators to take an oath does not invalidate proceedings which comply with the requirement of both the uniform act and the arbitration agreement. In re Salter v. Farner, 653 P.2d 413 (Colo. App. 1982).

**Arbitrator held deprived of binding power by contract.** Where under the contract at issue, binding arbitration had been expressly excluded by the specific provision for advisory arbitration, arbitrator was deprived of any power to bind either party. Water Works Employees Local 1045 v. Bd. of Water Works, 44 Colo. App. 178, 615 P.2d 52 (1980).

**Uniform Arbitration Act authorizes party to arbitration agreement to apply to**

**district court for order confirming arbitration award after award has been entered.** *Thomas v. Farmers Ins. Exch.*, 857 P.2d 532 (Colo. App. 1993).

**When a party attacks the validity of an arbitration award, he bears the burden of sustaining the attack.** *Container Tech. v. J. Gadsden Pty.*, 781 P.2d 119 (Colo. App. 1989).

The party challenging the validity of an arbitration award bears a heavy burden of establishing sufficient evidence of partiality. *McNaughton & Rodgers v. Besser*, 932 P.2d 819 (Colo. App. 1996).

**Arbitrators may not be deposed** for the purpose of inquiring into their thought processes. *Container Tech. v. J. Gadsden Pty.*, 781 P.2d 119 (Colo. App. 1989).

**Unconfirmed arbitration award not enforceable through contempt proceedings.** Where neither spouse in the post-decree matter petitioned the district court to confirm the arbitrator's award, court erred in finding husband in contempt for failing to comply with order concerning children's therapy. *In re Leverett*, 2012 COA 69, 318 P.3d 31.

### **13-22-223. Vacating award.**

(1) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if the court finds that:

- (a) The award was procured by corruption, fraud, or other undue means;
- (b) There was:
  - (I) Evident partiality by an arbitrator appointed as a neutral arbitrator;
  - (II) Corruption by an arbitrator; or
  - (III) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
- (c) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section 13-22-215, so as to prejudice substantially the rights of a party to the arbitration proceeding;
- (d) An arbitrator exceeded the arbitrator's powers;
- (e) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under section 13-22-215 (3) not later than the beginning of the arbitration hearing; or

(f) The arbitration was conducted without proper notice of the initiation of an arbitration as required in section 13-22-209 so as to substantially prejudice the rights of a party to the arbitration proceeding.

(1.5) Notwithstanding the provisions of subsection (1) of this section, the fact that the relief was such that it could not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.

(2) A motion made under this section shall be filed within ninety-one days after the movant receives notice of the award pursuant to section 13-22-219 or within ninety-one days after the movant receives notice of a modified or corrected award pursuant to section 13-22-220, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion must be made within ninety-one days after either the ground is known or by the exercise of reasonable care should have been known by the movant.

(3) If the court vacates an award on a ground other than that set forth in paragraph (e) of subsection (1) of this section, it may order a rehearing. If the award is vacated on a ground stated in paragraph (a) or (b) of subsection (1) of this section, the rehearing shall be held before a new arbitrator. If the award is vacated on a ground stated in paragraph (c), (d), or (f) of subsection (1) of this section, the rehearing may be held before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in section 13-22-219 (2) for an award.

(4) If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

**Source:** **L. 2004:** Entire part R&RE, p. 1728, § 1, effective August 4. **L. 2005:** (1.5) added, p. 764, § 21, effective June 1. **L. 2012:** (2) amended, (SB 12-175), ch. 208, p. 824, § 7, effective July 1.

**Editor's note:** This section is similar to former § 13-22-214 as it existed prior to 2004.

#### ANNOTATION

**Law reviews.** For article, "Claim and Issue Preclusion Arising from Residential Construction and Other Arbitrations — Part 2", see 51 Colo. Law. 18 (Mar. 2022).

**Annotator's note.** Since § 13-22-223 is similar to § 13-22-214 as it existed prior to the 2004 repeal and reenactment of this part 2, relevant cases construing that provision



have been included in the annotations to this section.

**Generally, arbitrators are not bound by either substantive or procedural rules of law**, except as required under the terms of the arbitration agreement. *Cabus v. Dairyland Ins. Co.*, 656 P.2d 54 (Colo. App. 1982); *Byerly v. Kirkpatrick Pettis Smith Polian, Inc.*, 996 P.2d 771 (Colo. App. 2000).

The arbitrators do not exceed their authority by rendering a decision that is contrary to the rules of law that would have been applied by a court. *Byerly v. Kirkpatrick Pettis Smith Polian, Inc.*, 996 P.2d 771 (Colo. App. 2000).

**An arbitrator's manifest disregard of the law** is not a ground for vacating an arbitration award as exceeding the arbitrator's power under former § 13-22-214 (1)(a)(III) or as a nonstatutory common law ground. An arbitrator does not necessarily exceed his power when he does not properly apply the law. *Coors Brewing Co. v. Cabo*, 114 P.3d 60 (Colo. App. 2004) (decided under former law).

**Failure to take oath does not invalidate proceedings.** Failure of the arbitrators to take an oath does not invalidate proceedings which comply with the requirement of both the uniform act and the arbitration agreement. *In re Salter v. Farner*, 653 P.2d 413 (Colo. App. 1982).

**Rule's inconsistency with section overridden.** To the extent C.R.C.P. 109 is inconsistent with this section, it would appear to be overridden. *Copper Mt., Inc. v.*

*Project Oneco, Inc.*, 3 B.R. 284 (Bankr. D. Colo. 1980).

**If an arbitrator exceeds his authority** by going beyond the contract terms and, in effect, enacting new binding terms and conditions of employment, the dissatisfied party may apply to the court to vacate the award. *City & County of Denver v. Denver Firefighters Local 858*, 663 P.2d 1032 (Colo. 1983).

**Applicable statute of limitations for breach of contract/duty of fair representation claim under the federal Railway Labor Act** was the six-month period provided by the federal National Labor Relations Act and not the 90-day period in subsection (2). *Barnett v. United Airlines, Inc.*, 738 F.2d 358 (10th Cir. 1984).

**Uniform Arbitration Act authorizes party to arbitration agreement to apply to district court for order vacating arbitration award after entry of award.** *Thomas v. Farmers Ins. Exch.*, 857 P.2d 532 (Colo. App. 1993).

**Failure of a party to title a motion to vacate as a motion.** While this section refers to a "motion" to vacate, rather than a "petition", the substance of the pleading, and not its title, governs. *Owners Ins. Co. v. Dakota Station II*, 2017 COA 103, 444 P.3d 784, *aff'd in part, rev'd in part on other grounds*, 2019 CO 65, 443 P.3d 47.

**Failure of a party to move to vacate an arbitration award** within the prescribed time period precludes such party from using the grounds as an affirmative defense in a subsequent action by the other party to

enforce the award. Elec. Workers Local 969 v. Babcock & Wilcox, 826 F.2d 962 (10th Cir. 1987); UFCW, Local No. 7 v. King Soopers, Inc., 743 F.3d 1310 (10th Cir. 2014).

**Failure to bring a motion to vacate, modify, or correct the arbitration award within the prescribed time limit prevents the defendant from raising the contractual policy limits as a defense in a confirmation proceeding held after expiration of the statutory time limit.** Kutch v. State Farm Mut. Auto. Ins. Co., 960 P.2d 93 (Colo. 1998).

**However, an application to arbitrator pursuant to § 13-22-211 to modify award tolls the 30-day time limit under this section for seeking judicial review.** Swan v. Am. Family Mut. Ins. Co., 8 P.3d 546 (Colo. App. 2000).

**When a party moves to vacate an award** under subsection (1)(f), the court must independently determine the adequacy of the notice and any resulting prejudice. Braata, Inc. v. Oneida Cold Storage Co., 251 P.3d 584 (Colo. App. 2010).

**Vacating, modifying, or correcting awards** by court permissible only on the basis of the statutory grounds set forth in this section or § 13-22-215. Foust v. Aetna Cas. & Ins. Co., 786 P.2d 450 (Colo. App. 1989); Sportsman's Quikstop I, Ltd. v. Didonato, 32 P.3d 633 (Colo. App. 2001).

**An arbitrator's award is not a "final judgment" reviewable by an appellate court.** Upon confirmation of the award by a district court in accordance with § 13-22-

213, and absent a timely motion to vacate, modify, or correct the award, there is no appealable issue. S. Wash. Assoc. v. Flanagan, 859 P.2d 217 (Colo. 1992).

**General assembly's authority to determine the jurisdiction of the court of appeals is exclusive.** S. Wash. Assoc. v. Flanagan, 859 P.2d 217 (Colo. 1992).

**Parties to an arbitration agreement cannot define and prescribe the powers of a court of law.** Where a contract term purported to allow an appellate court to conduct a substantive review of the arbitration panel's award, contrary to the controlling statutes, clause was void and unenforceable. S. Wash. Assoc. v. Flanagan, 859 P.2d 217 (Colo. 1992).

**Trial court erred in finding arbitrators had the authority to decide whether insureds were entitled to stack uninsured motorist benefits.** Arbitration clause in policy was a limited clause and provided only for the arbitration of two stated issues. State Farm Mut. Auto. Ins. Co. v. Stein, 886 P.2d 323 (Colo. App. 1994).

**An unfavorable interpretation of a contract is not a basis for setting aside an arbitration award.** Container Tech. v. J. Gadsden Pty., 781 P.2d 119 (Colo. App. 1989).

**The five enumerated grounds for relief set forth in subsection (1)(a) are exclusive.** Byerly v. Kirkpatrick Pettis Smith Polian, Inc., 996 P.2d 771 (Colo. App. 2000).

**The party seeking to vacate an award on the grounds that it was procured by corruption, fraud, or undue means must**

**show by clear and convincing evidence** that (1) fraud occurred; (2) the fraud was not discoverable by exercising due diligence prior to or during the arbitration; and (3) the fraud had a material effect on a dispositive issue in the arbitration. A failure to establish any of these elements will doom the effort. *Price v. Mt. Sleep Diagnostics, Inc.*, 2020 COA 155, 479 P.3d 68.

**In order to establish that the award was "procured by" undue means**, there must be a causal connection between the improper conduct and the arbitration award. *Nasca v. State Farm Mut. Auto. Ins. Co.*, 12 P.3d 346 (Colo. App. 2000); *BFN-Greeley, LLC*, 141 P.3d 937 (Colo. App. 2006).

Affidavits of the arbitration panel members may be properly considered on the causation issue as long as the purpose is not to establish the thought process of the panel members. *Nasca v. State Farm Mut. Auto. Ins. Co.*, 12 P.3d 346 (Colo. App. 2000).

**The ordinary meaning of "undue means" suggests some type of impropriety in the arbitration process.** The terms are broad enough to include a party-appointed arbitrator's non-disclosure of a substantial business relationship. Thus, if an arbitrator in a law firm with attorneys who have a substantial business relationship with an insurance carrier in the arbitration proceeding, including service as expert witnesses, has a duty to disclose the relationship to the parties in the proceeding. *Nasca v. State Farm Mut. Auto. Ins. Co.*, 12 P.3d 346 (Colo. App. 2000).

**Party must demonstrate that he or she was substantially prejudiced by an**

arbitrator's refusal to consider evidence material to the controversy before a court can vacate an award. *Carson v. PaineWebber, Inc.*, 62 P.3d 996 (Colo. App. 2002).

**One of the statutory grounds for vacation of an award is** that the arbitrator exceeded the powers granted in the arbitration agreement. It is not sufficient to argue merely that the arbitrator committed an error of law on the merits, but rather, plaintiff must establish that the arbitrator refused to apply or ignored the legal standard agreed upon by the parties for resolution of the dispute. *Giraldi by and through Giraldi v. Morrell*, 892 P.2d 422 (Colo. App. 1994).

**When provision states that arbitrator shall award "fees and expenses (including reasonable attorneys' fees)" to the prevailing party**, whether attorney fees should be awarded to the prevailing party was not an arbitrable issue, and the arbitrator exceeded his powers in refusing to award any attorney fees. *Magenis v. Bruner*, 187 P.3d 1222 (Colo. App. 2008).

**Evident partiality is a fact-sensitive standard.** It depends on the nature of the conflict between the arbitrator and the party, the issue being arbitrated, and the structure of the arbitration agreement. *McNaughton & Rodgers v. Besser*, 932 P.2d 819 (Colo. App. 1996).

**Arbitrators have a duty to disclose any potential conflict that could constitute evident partiality**, which is a relationship that would persuade a reasonable person that the arbitrator is likely to be partial to one

side in the dispute. *McNaughton & Rodgers v. Besser*, 932 P.2d 819 (Colo. App. 1996).

Some facts indicating bias include pecuniary interest, familial relationship, and the existence of an adversarial or sympathetic relationship. *McNaughton & Rodgers v. Besser*, 932 P.2d 819 (Colo. App. 1996).

**Evident partiality was not established in medical malpractice case** by mere fact that some of arbitrator's relatives were health care professionals. *Giraldi by and through Giraldi v. Morrell*, 892 P.2d 422 (Colo. App. 1994).

**If a party asserts that the entire contract is illegal**, the court must determine this threshold issue first. *R.P.T. v. Innovative Commc'ns*, 917 P.2d 340 (Colo. App. 1996).

**When a party does not seek judicial resolution of the question of whether a contract exists before participating in an arbitration regarding the existence of the contract and the contract's arbitration clause**, the party waives any arguments about the existence of the underlying contract on appeal. Holding otherwise would give the party a second bite at the apple, a result that is contrary to the arbitration act's policy of promoting arbitration. *Harper Hofer & Assocs. v. Nw. Direct*, 2014 COA 153, 412 P.3d 659.

**Colorado law affords an arbitrator great flexibility** in fashioning appropriate remedies, including specific performance and conditional assessment of damages.

*R.P.T. v. Innovative Commc'ns*, 917 P.2d 340 (Colo. App. 1996).

**To determine if the arbitrator exceeded his or her authority** within the meaning of this section, the court must determine the scope of the arbitration clause contained in the contract. *Farmers Ins. Exch. v. Taylor*, 45 P.3d 759 (Colo. App. 2001).

**Award does not exceed arbitrator's power because its explanation was lacking or mistaken**, as long as there was a reason that could have justified the award. *Treadwell v. Vill. Homes of Colo., Inc.*, 222 P.3d 398 (Colo. App. 2009).

**When an arbitration award is secured by fraud, the court must vacate the whole award unless there is a discrete and severable part of the award that was procured by fraud.** *Superior Constr. Co. v. Bentley*, 104 P.3d 331 (Colo. App. 2004) (decided under former § 13-22-214 prior to 2004 repeal and reenactment).

**Fraudulent testimony** that was brought to the attention of the arbitrators well before they issued the award could not have "procured" the award. *BFN-Greely, LLC v. Adair Group, Inc.*, 141 P.3d 937 (Colo. App. 2006).

**Applied** in *Judd Constr. Co. v. Evans Joint Venture*, 642 P.2d 922 (Colo. 1982); *Red Carpet Armory Realty Co. v. Golden W. Realty*, 644 P.2d 93 (Colo. App. 1982); *S. Conejos Sch. District RE-10 v. Martinez*, 709 P.2d 594 (Colo. App. 1985).

**13-22-224. Modification or correction of award.**

(1) Upon motion made within ninety-one days after the movant receives notice of the award pursuant to section 13-22-219 or within ninety-one days after the movant receives notice of a modified or corrected award pursuant to section 13-22-220, the court shall modify or correct the award if:

(a) There is an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

(b) The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

(c) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(2) If a motion made under subsection (1) of this section is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

(3) A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

**Source:** **L. 2004:** Entire part R&RE, p. 1729, § 1, effective August 4. **L. 2012:** IP(1) amended, (SB 12-175), ch. 208, p. 824, § 8, effective July 1.

**Editor's note:** This section is similar to former § 13-22-215 as it existed prior to 2004.

**ANNOTATION**

**Annotator's note.** Since § 13-22-224 is similar to § 13-22-215 as it existed prior to the 2004 repeal and reenactment of this part 2, relevant cases construing that provision have been included in the annotations to this section.

**"Evident miscalculation of figures"** refers only to mathematical errors committed by arbitrators which would be patently clear to a reviewing court. Court

cannot use these grounds to review the merits of the award on appeal. In re Gavend, 781 P.2d 161 (Colo. App. 1989).

Such a mistake which permits a modification under subsection (1)(a) must be so gross as to evidence that the award did not actually represent the arbitrator's intent. Such a modification is only authorized if it seeks to effectuate the clearly expressed intent of the arbitrator by correcting a

mathematical error without altering the arbitrator's conclusion on the merits. *Foust v. Aetna Cas. & Ins. Co.*, 786 P.2d 450 (Colo. App. 1989).

**Vacating, modifying, or correcting awards** by court permissible only on the basis of the statutory grounds set forth in this section or § 13-22-214. *Foust v. Aetna Cas. & Ins. Co.*, 786 P.2d 450 (Colo. App. 1989); *Sportsman's Quikstop I, Ltd. v. Didonato*, 32 P.3d 633 (Colo. App. 2001).

**An arbitrator's award is not a "final judgment" reviewable by an appellate court.** Upon confirmation of the award by a district court in accordance with § 13-22-213, and absent a timely motion to vacate, modify, or correct the award, there is no appealable issue. *S. Washington Assoc. v. Flanagan*, 859 P.2d 217 (Colo. 1992).

**General assembly's authority to determine the jurisdiction of the court of appeals is exclusive.** *S. Washington Assoc. v. Flanagan*, 859 P.2d 217 (Colo. 1992).

**Parties to an arbitration agreement cannot define and prescribe the powers of a court of law.** Where a contract term purported to allow an appellate court to conduct a substantive review of the arbitration panel's award, contrary to the controlling statutes, clause was void and unenforceable. *S. Washington Assoc. v. Flanagan*, 859 P.2d 217 (Colo. 1992).

**Failure to bring a motion to vacate, modify, or correct the arbitration award within the prescribed time limit** prevents the defendant from raising the contractual policy limits as a defense in a confirmation

proceeding held after expiration of the statutory time limit. *Kutch v. State Farm Mut. Auto. Ins. Co.*, 960 P.2d 93 (Colo. 1998).

Since defendant failed to follow prescribed time limit in motion to vacate, modify, or correct the arbitration award, he is barred from presenting the substantive defenses to plaintiff's motion. *Sportsman's Quikstop I, Ltd. v. Didonato*, 32 P.3d 633 (Colo. App. 2001).

**Where there is no evidence that the parties disagreed over policy limits, the issue of policy limits was not arbitrable.** Court could modify arbitration award to reduce the award to the policy limits. *Rocha v. Fin. Indem. Corp.*, 155 P.3d 602 (Colo. App. 2006).

**However, an application to arbitrator pursuant to § 13-22-211 to modify award tolls the 30-day time limit under this section for seeking judicial review.** *Swan v. Am. Family Mut. Ins. Co.*, 8 P.3d 546 (Colo. App. 2000).

**Trial court's award of prejudgment interest upon confirmation of the arbitration award is an impermissible modification of the arbitration award where such interest was not requested during the arbitration.** *Duncan v. Nat'l Home Ins. Co.*, 36 P.3d 191 (Colo. App. 2001).

**Applied** in *Atencio v. Mid-Century Ins. Co.*, 619 P.2d 784 (Colo. App. 1980); *Judd Constr. Co. v. Evans Joint Venture*, 642 P.2d 922 (Colo. 1982).

**13-22-225. Judgment on award - attorney fees and litigation expenses.**

(1) Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

(2) A court may award the reasonable costs of the motion and subsequent judicial proceedings.

(3) On the application of a prevailing party to a contested judicial proceeding under section 13-22-222, 13-22-223, or 13-22-224, the court may add reasonable attorney fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

**Source: L. 2004:** Entire part R&RE, p. 1730, § 1, effective August 4.

**Editor's note:** This section is similar to former § 13-22-216 as it existed prior to 2004.

**ANNOTATION**

**Annotator's note.** Since § 13-22-225 is similar to § 13-22-216 as it existed prior to the 2004 repeal and reenactment of this part 2, relevant cases construing that provision have been included in the annotations to this section.

**Arbitration award is tantamount to a judgment.** Judd Constr. Co. v. Evans Joint Venture, 642 P.2d 922 (Colo. 1982); Container Tech. v. J. Gadsden Pty., 781 P.2d 119 (Colo. App. 1989).

**A judgment confirming an arbitration award is enforceable in the same manner as any other judgment.** Therefore, the district court did not err in ordering post-judgment interest on the unpaid portion of

the judgment. Barrett v. Inv. Mgmt. Consultants, 190 P.3d 800 (Colo. App. 2008).

**District court erred in granting costs in favor of plaintiff.** Where plaintiff did not petition court to confirm the arbitration award pursuant to subsection (2) and is not the prevailing party to a contested judicial proceeding under subsection (3), plaintiff is not entitled to costs of the court proceedings. Levy v. Am. Family Mut. Ins. Co., 293 P.3d 40 (Colo. App. 2011).

**Collateral estoppel and res judicata apply to arbitration proceedings.** To determine whether an arbitration proceeding should be given preclusive effect, the court

looks to the factors of the collateral estoppel test. Collateral estoppel, or issue preclusion, bars relitigation of an issue determined in a prior proceeding if: (1) The issue precluded is identical to an issue actually determined in the prior proceeding; (2) the party against whom estoppel is asserted has been a party to or is in privity with a party in the prior proceeding; (3) there is a final judgment on the merits in the prior proceeding; and (4) the party against whom the doctrine is asserted has had a full and fair opportunity to litigate the issue in the prior proceeding. Dale v. Guar. Nat'l Ins. Co., 948 P.2d 545 (Colo. 1997); Barnett v. Elite Props. of Am., 252 P.3d 14 (Colo. App. 2010).

**Collateral estoppel precludes relitigation of issues decided in an arbitration proceeding if the traditional collateral estoppel test has been met.** Guar. Nat'l Ins. Co. v. Williams, 982 P.2d 306 (Colo. 1999); Barnett v. Elite Props. of Am., 252 P.3d 14 (Colo. App. 2010).

**While certiorari is unresolved, arbitration proceeding is not final for issue preclusion purposes.** Certiorari can be resolved in any of three ways: (1) The parties fail to file a timely petition for certiorari; (2) the court denies the petition for certiorari; or (3) the court issues an opinion after granting certiorari. Barnett v. Elite Props. of Am., 252 P.3d 14 (Colo. App. 2010).

### **13-22-226. Jurisdiction.**

(1) A court having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

(2) An agreement to arbitrate providing for arbitration in this state confers jurisdiction on the court to enter judgment on an award under this part 2.

**Source: L. 2004:** Entire part R&RE, p. 1730, § 1, effective August 4.

**Editor's note:** This section is similar to former § 13-22-219 as it existed prior to 2004.

### **ANNOTATION**

**Annotator's note.** Since § 13-22-226 is similar to § 13-22-219 as it existed prior to the 2004 repeal and reenactment of this part 2, a relevant case construing that provision

has been included in the annotations to this section.

**A motion to compel arbitration is a motion to dismiss for lack of subject**



**matter jurisdiction** which cannot be resolved by the presumptive truthfulness of the complaint but which must be determined

in a factual hearing. Eychner v. Van Vleet, 870 P.2d 486 (Colo. App. 1993).

### **13-22-227. Venue.**

A motion pursuant to section 13-22-205 shall be made in a court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in a court of the county in which it was held. Otherwise, a motion pursuant to section 13-22-205 may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in a court of any county in this state. All subsequent motions must be made in the court hearing the initial motion unless the court otherwise directs.

**Source: L. 2004:** Entire part R&RE, p. 1730, § 1, effective August 4.

**Editor's note:** This section is similar to former § 13-22-220 as it existed prior to 2004.

### **13-22-228. Appeals.**

- (1) An appeal may be taken from:
  - (a) An order denying a motion to compel arbitration;
  - (b) An order granting a motion to stay arbitration;
  - (c) An order confirming or denying confirmation of an award;
  - (d) An order modifying or correcting an award;
  - (e) An order vacating an award without directing a rehearing; or
  - (f) A final judgment entered pursuant to this part 2.
- (2) An appeal under this section shall be taken in the same manner as an appeal of an order or judgment in a civil action.

**Source: L. 2004:** Entire part R&RE, p. 1730, § 1, effective August 4.

**Editor's note:** This section is similar to former § 13-22-221 as it existed prior to 2004.

## ANNOTATION

**Annotator's note.** Since § 13-22-228 is similar to § 13-22-221 as it existed prior to the 2004 repeal and reenactment of this part 2, relevant cases construing that provision have been included in the annotations to this section.

**When denial of application to compel arbitration not appealable.** An appeal may not be taken from an order denying an application to compel arbitration on an employment contract entered into before July 14, 1975. *Monatt v. Pioneer Astro Indus., Inc.*, 42 Colo. App. 265, 592 P.2d 1352 (1979).

**Order compelling arbitration not appealable.** An order compelling parties to arbitrate, pursuant to § 13-22-204, is not a final appealable order. *Frontier Materials, Inc. v. City of Boulder*, 663 P.2d 1065 (Colo. App. 1983); *Thomas v. Farmers Ins. Exch.*, 857 P.2d 532 (Colo. App. 1993).

Order compelling arbitration is interlocutory order which is not appealable even if court's order determines the substantive issue of arbitrability. *Thomas v. Farmers Ins. Exch.*, 857 P.2d 532 (Colo. App. 1993).

**Order denying a stay of arbitration not appealable.** Section expressly authorizes an appeal from an order granting a stay of arbitration, not an order denying such a stay. Therefore, court of appeals lacked jurisdiction to review an order denying a

stay of arbitration. *Gergel v. High View Homes, L.L.C.*, 58 P.3d 1132 (Colo. App. 2002).

**An order denying a motion to consolidate arbitration proceedings not appealable.** The order is not included in the list of pre-award orders that are appealed pursuant to this section, nor is it a final judgment. *Tug Hill Marcellus LLC v. BKV Chelsea LLC*, 2021 COA 17, 486 P.3d 461.

**An order denying a motion to remand a case to an arbitrator for clarification is not appealable.** The court of appeals lacks jurisdiction because the order is not the type of appeal allowed under subsection (1). *Pool Co. v. MW Golden Constructors*, 2024 COA 116, 562 P.3d 923.

**Where the district court's denial of Denver's motion** to dismiss contractor's claims and Denver's request to stay proceedings pending alternative dispute resolution raised issues of substantial public importance, permissive immediate appeal under this section was appropriate. *City & County of Denver v. District Court*, 939 P.2d 1353 (Colo. 1997).

**Securities brokers acted inconsistently with right to arbitrate by pursuing discovery** and confirming intent to go to trial in open court, after they knew that they had legally enforceable arbitration clause. Therefore, brokers waived right to arbitration, where brokers had completed

discovery, but customer had not done so. *Norden v. E.F. Hutton & Co., Inc.*, 739 P.2d 914 (Colo. App. 1987).

**Defendants' failure to assert right to arbitration contemporaneously with their motions to dismiss** was an act deemed to be a waiver of the right to have the dispute resolved by arbitration. *Bashor v. Bache Halsey Stuart Shields*, 773 P.2d 578 (Colo. App. 1989).

**No waiver of right to arbitrate** by failing to appeal denial of motion to dismiss where issue reserved in answer, trial data certificate, and motion for a new trial. *Mtn. Plains Constructors v. Torrez*, 785 P.2d 928 (Colo. 1990).

**No waiver of right to arbitrate** by litigating claims that arose under a separate agreement that did not contain an arbitration clause. *Breaker v. Corrosion Control Corp.*, 23 P.3d 1278 (Colo. App. 2001).

**Appealable order.** A denial of a motion to compel arbitration is an appealable order. However, an immediate appeal is permissive and not mandatory. Therefore, an order denying a motion to compel arbitration may also be appealed after final judgment. *Mtn. Plains Constructors v. Torrez*, 785 P.2d 928 (Colo. 1990).

Appeals court had jurisdiction under this section although the trial court dismissed the action for lack of jurisdiction, finding that the dispute was subject to arbitration, and entered an order awarding attorney fees. *Camelot Invs., LLC v. LANDesign, LLC*, 973 P.2d 1279 (Colo. App. 1999).

**Uniform Arbitration Act authorizes party to arbitration agreement to appeal certain district court orders** in the same manner and to the same extent as appeals may be taken from court orders and judgments in other civil actions. *Thomas v. Farmers Ins. Exch.*, 857 P.2d 532 (Colo. App. 1993).

**Court of appeals lacks jurisdiction to review an arbitration award;** jurisdiction extends only to orders and judgments entered by statutorily specified courts. *Thomas v. Farmers Ins. Exch.*, 857 P.2d 532 (Colo. App. 1993).

**An order that vacates an arbitration award and orders a new hearing under subsection (1)(e) is not appealable as an implicit order** denying confirmation of the arbitration award under subsection (1)(c). *Turoff v. Itachi Capital, Inc.*, 2022 COA 147, 527 P.3d 436.

**Assertion that trial court erred in directing arbitration cannot be raised before an appellate court** until there has been an award by the arbitrator on the merits of the controversy and a court order entered confirming the award. *Thomas v. Farmers Ins. Exch.*, 857 P.2d 532 (Colo. App. 1993).

**An arbitrator's award is not a "final judgment" reviewable by an appellate court.** Upon confirmation of the award by a district court in accordance with § 13-22-213, and absent a timely motion to vacate, modify, or correct the award, there is no appealable issue. *So. Wash. Assoc. v. Flanagan*, 859 P.2d 217 (Colo. 1992).

**While certiorari is unresolved, arbitration proceeding is not final for issue preclusion purposes.** Certiorari can be resolved in any of three ways: (1) The parties fail to file a timely petition for certiorari; (2) the court denies the petition for certiorari; or (3) the court issues an opinion after granting certiorari. *Barnett v. Elite Props. of Am.*, 252 P.3d 14 (Colo. App. 2010).

**The determination of the existence of a valid agreement to arbitrate does not trigger a right to appeal under the Act.** *Gergel v. High View Homes, L.L.C.*, 58 P.3d 1132 (Colo. App. 2002).

**An interlocutory appeal under subsection (1)(a) of this section may only be taken from the denial of a motion that seeks to compel arbitration based on "an agreement to arbitrate" as described in §**

13-22-207 (1). *Vulcan Power Co. v. Munson*, 252 P.3d 511 (Colo. App. 2011).

**General assembly's authority to determine the jurisdiction of the court of appeals is exclusive.** *So. Wash. Assoc. v. Flanagan*, 859 P.2d 217 (Colo. 1992).

This section is not the exclusive source of appellate jurisdiction over arbitration-related interlocutory appeals. *Triple Crown v. Vill. Homes of Colo.*, 2013 COA 144, 389 P.3d 888.

**Parties to an arbitration agreement cannot define and prescribe the powers of a court of law.** Where a contract term purported to allow an appellate court to conduct a substantive review of the arbitration panel's award, contrary to the controlling statutes, clause was void and unenforceable. *So. Wash. Assoc. v. Flanagan*, 859 P.2d 217 (Colo. 1992).

### **13-22-229. Uniformity of application and construction.**

In applying and construing this part 2, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**Source: L. 2004:** Entire part R&RE, p. 1731, § 1, effective August 4.

**Editor's note:** This section is similar to former § 13-22-223 as it existed prior to 2004.

### **13-22-230. Saving clause.**

This part 2 shall not affect an action or proceeding commenced or a right accrued before this part 2 takes effect. Except as otherwise provided in section 13-22-203, an arbitration agreement made before August 4, 2004, is governed by the "Uniform Arbitration Act of 1975".

**Source: L. 2004:** Entire part R&RE, p. 1731, § 1, effective August 4.

## PART 3

### DISPUTE RESOLUTION ACT

**Law reviews:** For article, "The Mediation Alternative is Gaining Support in Colorado", see 13 Colo. Law. 589 (1984); for article, "Divorce Mediation: A Financial Perspective", see 13 Colo. Law. 1650 (1984); for article, "Enforcement of Arbitration Awards in Colorado", see 14 Colo. Law. 535 (1985); for article, "Litigation v. Alternative Dispute Resolution -- Let's Talk About It", see 17 Colo. Law. 655 (1988); for article, "Mediation Revisited: Amendments to the Colorado Dispute Resolution Act", see 17 Colo. Law. 1297 (1988); for article, "The 'Alternatives' in Alternative Dispute Resolution", see 18 Colo. Law. 1751 (1989); for several articles regarding the issue of the "Quality of dispute resolution", see 66 Den. U.L. Rev. 335-549 (1989); for numerous articles dealing with alternative dispute resolution (ADR), see 18 Colo. Law. 828-928 (1989); for article, "Court-ordered Mediation of Civil Cases", see 19 Colo. Law. 1057 (1990); for article, "The Growing Duty to Effectuate Settlement", see 20 Colo. Law. 453 (1991); for article, "New Rules on ADR: Professional Ethics, Shotguns and Fish", see 21 Colo. Law. 1877 (1992); for article, "Alternative Dispute Resolution in Colorado", see 22 Colo. Law. 1445 (1993); for article, "ADR: Important Options for Municipal Government", see 24 Colo. Law. 1279 (1995); for article, "Alternative Dispute Resolution Meets the Administrative Process", see 24 Colo. Law. 1549 (1995); for article, "Civil Mediation: Where, When and Why It Is Effective", see 24 Colo. Law. 1261 (1995); for article, "Alternative Dispute Resolution in Colorado", see 28 Colo. Law. 67 (Sept. 1999); for article, "The Mediation Privilege", see 29 Colo. Law. 65 (Nov. 2000); for article, "Mediating with Handkerchiefs: The New Model Standards for Divorce Mediation", see 31 Colo. Law. 69 (Jan. 2002); for article, "The Uniform Mediation Act: Its Potential Impact on Colorado Mediation Practice -- Part I", see 31 Colo. Law. 61 (May 2002); for article, "The Uniform Mediation Act: Its Potential Impact on Colorado Mediation Practice -- Part II", see 31 Colo. Law. 67 (June 2002); for article, "The Uniform Mediation Act: Its Potential Impact on Colorado Mediation Practice -- Part III", see 31 Colo. Law. 101 (July 2002); for article, "Colorado Law on Mediation: A Primer", see 35 Colo. Law. 21 (Mar. 2006); for article, "Complex Confidentiality Issues in Mediation", see 44 Colo. Law. 23 (Jan. 2015); for article, "Good Faith and the Duty of Disclosure", see 44 Colo. Law. 41 (Aug. 2015); for article, "Mediating the Interactive Process", see 46 Colo. Law. 35 (May 2017); for article, "Online Dispute Resolution -- A Digital Door to Justice or Pandora's Box? Part 3", 49 Colo. Law. 26 (Apr. 2020); for article, "Unlocking Apology's Potential in Resolving Disputes", see 51 Colo. Law. 20 (July 2022); for article, "Managing High-Conflict Dissolutions in Mediation and Court", see 51 Colo. Law. 18 (Aug.-Sept. 2022); for article, "The Benefits of Promoting Party Self-

Determination in Mediation", see 51 Colo. Law. 12 (Oct. 2022); for article, "Beyond the Standard Settlement Conference: Consider Customizing Your Commercial Dispute Mediation", see 54 Colo. Law. 24 (Apr. 2025).

**13-22-301. Short title.**

This part 3 shall be known and may be cited as the "Dispute Resolution Act".

**Source: L. 83:** Entire part added, p. 624, § 1, effective July 1.

**13-22-302. Definitions.**

As used in this part 3, unless the context otherwise requires:

(1) "Arbitration" means the referral of a dispute to one or more neutral third parties for a decision based on evidence and testimony provided by the disputants.

(1.3) "Chief justice" means the chief justice of the Colorado supreme court.

(1.7) "Director" means the director of the office of dispute resolution.

(2) "Early neutral evaluation" means an early intervention in a lawsuit by a court-appointed evaluator to narrow, eliminate, and simplify issues and assist in case planning and management. Settlement of the case may occur under early neutral evaluation.

(2.1) "Fact finding" means an investigation of a dispute by a public or private body that examines the issues and facts in a case and may or may not recommend settlement procedures.

(2.3) "Med-arb" means a process in which parties begin by mediation, and failing settlement, the same neutral third party acts as arbitrator of the remaining issues.

(2.4) "Mediation" means an intervention in dispute negotiations by a trained neutral third party with the purpose of assisting the parties to reach their own solution.

(2.5) "Mediation communication" means any oral or written communication prepared or expressed for the purposes of, in the course of, or pursuant to, any mediation services proceeding or dispute resolution program proceeding, including, but not limited to, any memoranda, notes, records, or work product of a mediator, mediation organization, or party; except that a written agreement to enter into a mediation service proceeding or dispute resolution proceeding, or a final written agreement reached as a result of a mediation service proceeding or dispute resolution proceeding, which has been fully executed, is not a mediation communication unless otherwise agreed upon by the parties.

(2.7) "Mediation organization" means any public or private corporation, partnership, or association which provides mediation services or dispute resolution programs through a mediator or mediators.

(3) "Mediation services" or "dispute resolution programs" means a process by which parties involved in a dispute, whether or not an action has been filed in court, agree to enter into one or more settlement discussions with a mediator in order to resolve their dispute.

(4) "Mediator" means a trained individual who assists disputants to reach a mutually acceptable resolution of their disputes by identifying and evaluating alternatives.

(4.3) "Mini-trial" means a structured settlement process in which the principals involved meet at a hearing before a neutral advisor to present the merits of each side of the dispute and attempt to formulate a voluntary settlement.

(4.5) "Multi-door courthouse concepts" means that form of alternative dispute resolution in which the parties select any combination of problem solving methods designed to achieve effective resolution, including, but not limited to, arbitration, early neutral evaluation, med-arb, mini-trials, settlement conference, special masters, and summary jury trials.

(5) "Office" means the office of dispute resolution.

(6) "Party" means a mediation participant other than the mediator and may be a person, public officer, corporation, partnership, association, or other organization or entity, either public or private.

(7) "Settlement conference" means an informal assessment and negotiation session conducted by a legal professional who hears both sides of the case and may advise the parties on the law and precedent relating to the dispute and suggest a settlement.

(8) "Special master" means a court-appointed magistrate, auditor, or examiner who, subject to specifications and limitations stated in the court order, shall exercise the power to regulate all proceedings in every hearing before such special master, and to do all acts and take all measures necessary or proper for compliance with the court's order.

(9) "Summary jury trial" means summary presentations in complex cases before a jury empaneled to make findings which may or may not be binding.

**Source: L. 83:** Entire part added, p. 624, § 1, effective July 1. **L. 88:** (3) amended and (6) added, p. 605, § 1, effective July 1. **L. 91:** (2.5) and (2.7) added and (3) amended, p. 369, § 1, effective July 1. **L. 92:** (1) and (2) amended and (1.3), (1.7), (2.1), (2.3), (2.4), (4.3), (4.5), (7), (8), and (9) added, p. 298, § 2, effective June 2.

**Cross references:** For the legislative declaration contained in the 1992 act amending subsections (1) and (2) and enacting subsections (1.3), (1.7), (2.1), (2.3), (2.4), (4.3), (4.5), (7), (8), and (9), see section 1 of chapter 66, Session Laws of Colorado 1992.

## ANNOTATION

**Law reviews.** For article, "Early Neutral Evaluation as a Dispute Resolution Tool in Family Court", see 41 Colo. Law. 37 (May 2012). For article, "The Benefits of the Joint Session in Family Law Matters", see 51 Colo. Law. 26 (Dec. 2022).

**"Mediation communications" does not extend to all communications that may be related to the mediation.** Mediation communications are limited to those made in the presence or at the behest of the mediator. After a preliminary settlement agreement

had been signed following a mediation, negotiations between counsel and statements to the court were not mediation communications required to be kept confidential pursuant to § 13-22-307. *Yaekle v. Andrews*, 195 P.3d 1101 (Colo. 2008).

**Under the plain language of subsection (2.5), statements forming an oral agreement allegedly reached during mediation are mediation communications.** *Tuscany Custom Homes, LLC v. Westover*, 2020 COA 178, 490 P.3d 1039.

### **13-22-303. Office of dispute resolution - establishment.**

There is hereby established in the judicial department the office of dispute resolution, the head of which shall be the director of the office of dispute resolution, who shall be appointed by the chief justice of the supreme court and who shall receive such compensation as determined by the chief justice.

**Source: L. 83:** Entire part added, p. 624, § 1, effective July 1.

### **13-22-304. Director - assistants.**

The director shall be an employee of the judicial department and shall be responsible to the chief justice for the administration of the office. The director may be but need not be an attorney and shall be hired on the basis of training and experience in management and mediation. The director, subject to the approval of the chief justice, may appoint such additional employees as deemed necessary for the administration of the office of dispute resolution.



**Source: L. 83:** Entire part added, p. 625, § 1, effective July 1. **L. 88:** Entire section amended, p. 605, § 2, effective July 1.

**13-22-305. Mediation services.**

(1) In order to resolve disputes between persons or organizations, dispute resolution programs shall be established or made available in such judicial districts or combinations of such districts as shall be designated by the chief justice of the supreme court, subject to moneys available for such purpose. For all office of dispute resolution programs, the director shall establish rules, regulations, and procedures for the prompt resolution of disputes. Such rules, regulations, and procedures shall be designed to establish a simple nonadversary format for the resolution of disputes by neutral mediators in an informal setting for the purpose of allowing each participant, on a voluntary basis, to define and articulate the participant's particular problem for the possible resolution of such dispute.

(2) Persons involved in a dispute shall be eligible for the mediation services set forth in this section before or after the filing of an action in either the county or the district court.

(3) Each party who uses the mediation services or ancillary forms of alternative dispute resolution in section 13-22-313 of the office of dispute resolution shall pay a fee as prescribed by order of the supreme court. Fees shall be set at a level necessary to cover the reasonable and necessary expenses of operating the program. Any fee may be waived at the discretion of the director. The fees established in this part 3 shall be transmitted to the state treasurer, who shall credit the same to the dispute resolution fund created in section 13-22-310.

(4) All rules, regulations, and procedures established pursuant to this section shall be subject to the approval of the chief justice.

(5) No adjudication, sanction, or penalty may be made or imposed by any mediator or the director.

(6) The liability of mediators shall be limited to willful or wanton misconduct.

**Source: L. 83:** Entire part added, p. 625, § 1, effective July 1. **L. 88:** (1), (2), and (3) amended and (6) added, p. 606, § 3, effective July 1. **L. 91:** (1), (3), and (6) amended, p. 370, § 2, effective July 1. **L. 92:** (3) amended, p. 300, § 4, effective June 2.

**Cross references:** For the legislative declaration contained in the 1992 act amending subsection (3), see section 1 of chapter 66, Session Laws of Colorado 1992.

### **13-22-306. Office of dispute resolution programs - mediators.**

In order to implement the dispute resolution programs described in section 13-22-305, the director may contract with mediators or mediation organizations on a case-by-case or service or program basis. Such mediators or mediation organizations shall be subject to the rules, regulations, procedures, and fees set by the director. The tasks of the mediators or mediation organizations shall be defined by the director. The director may also use qualified volunteers to assist in mediation service or dispute resolution program efforts.

**Source: L. 83:** Entire part added, p. 625, § 1, effective July 1. **L. 88:** Entire section R&RE, p. 606, § 4, effective July 1. **L. 91:** Entire section amended, p. 370, § 3, effective July 1.

### **ANNOTATION**

**Law reviews.** For article, "Selecting Cases for Mediation", see 17 Colo. Law. 2007 (1988).

### **13-22-307. Confidentiality.**

- (1) Dispute resolution meetings may be closed at the discretion of the mediator.
- (2) Any party or the mediator or mediation organization in a mediation service proceeding or a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any information concerning any mediation communication or any communication provided in confidence to the mediator or a mediation organization, unless and to the extent that:
  - (a) All parties to the dispute resolution proceeding and the mediator consent in writing; or
  - (b) The mediation communication reveals the intent to commit a felony, inflict bodily harm, or threaten the safety of a child under the age of eighteen years; or
  - (c) The mediation communication is required by statute to be made public; or
  - (d) Disclosure of the mediation communication is necessary and relevant to an action alleging willful or wanton misconduct of the mediator or mediation organization.
- (3) Any mediation communication that is disclosed in violation of this section shall not be admitted into evidence in any judicial or administrative proceeding.

(4) Nothing in this section shall prevent the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a mediation service proceeding or dispute resolution proceeding.

(5) Nothing in this section shall prevent the gathering of information for research or educational purposes, or for the purpose of evaluating or monitoring the performance of a mediator, mediation organization, mediation service, or dispute resolution program, so long as the parties or the specific circumstances of the parties' controversy are not identified or identifiable.

**Source:** **L. 83:** Entire part added, p. 625, § 1, effective July 1. **L. 91:** Entire section amended, p. 370, § 4, effective July 1.

#### ANNOTATION

**Law reviews.** For article, "From Gladiators to Counselors: The Mediator's Role in Encouraging Attorneys to Problem-Solve", see 50 Colo. Law. 22 (Apr. 2021). For article, "The Past, Present, and Future of Residential Construction Defect Action Reform in Colorado", see 54 Colo. Law. 28 (Jan.-Feb. 2025).

**"Mediation communications" does not extend to all communications that may be related to the mediation.** Mediation communications are limited to those made in the presence or at the behest of the mediator. After a preliminary settlement agreement had been signed following a mediation, negotiations between counsel and statements to the court were not mediation communications required to be kept confidential pursuant to this section. *Yaekle v. Andrews*, 195 P.3d 1101 (Colo. 2008).

**Mediator's email that was prepared pursuant to a mediation services proceeding is an inadmissible mediation communication.** *Tuscany Custom Homes, LLC v. Westover*, 2020 COA 178, 490 P.3d 1039.

**Unexecuted draft agreement offered to prove the existence and terms of an oral agreement reached during a mediation proceeding is inadmissible,** regardless of whether the agreement was drafted at the behest of the mediator. Even if the draft agreement was not written at the mediator's behest, it is inadmissible because it documents communications made in the mediator's presence at the mediation. *Tuscany Custom Homes, LLC v. Westover*, 2020 COA 178, 490 P.3d 1039.

### **13-22-308. Settlement of disputes.**

(1) If the parties involved in a dispute reach a full or partial agreement, the agreement upon request of the parties shall be reduced to writing and approved by the parties and their attorneys, if any. If reduced to writing and signed by the parties, the agreement may be presented to the court by any party or their attorneys, if any, as a stipulation and, if approved by the court, shall be enforceable as an order of the court.

(2) (Deleted by amendment, L. 91, p. 371, § 5, effective July 1, 1991.)

**Source: L. 83:** Entire part added, p. 626, § 1, effective July 1. **L. 88:** Entire section amended, p. 606, § 5, effective July 1. **L. 91:** Entire section amended, p. 371, § 5, effective July 1.

### **ANNOTATION**

**Oral agreement not enforceable as an order of the court.** Alleged oral settlement agreement entered into during private mediation was not enforceable by a court under this section. *Nat'l Union Fire Ins. Co. v. Price*, 78 P.3d 1138 (Colo. App. 2003).

**This section does not control in the context of an agreement to modify parenting time.** Because § 14-10-129 allows the trial court to modify parenting time whenever doing so would be in the child's best interests, the court did not abuse its discretion in adopting the agreement and

modifying the parenting time accordingly despite the fact that the agreement was not reduced to writing or signed. *In re Barker*, 251 P.3d 591 (Colo. App. 2010).

**This section specifies the requirements for an agreement to become an order of court.** This section does not limit the ways by which the parties may form a binding agreement; but § 13-22-307 limits the admissibility of some evidence of such an agreement. *Yaekle v. Andrews*, 195 P.3d 1101 (Colo. 2008).

### **13-22-309. Reports. (Repealed)**

**Source: L. 83:** Entire part added, p. 626, § 1, effective July 1. **L. 88:** Entire section amended, p. 606, § 6, effective July 1. **L. 92:** Entire section amended, p. 301, § 6, effective June 2. **L. 98:** Entire section repealed, p. 724, § 1, effective May 18.

**13-22-310. Dispute resolution fund - creation - source of funds - transfer.**

(1) There is hereby created in the state treasury a fund to be known as the dispute resolution fund, which fund shall consist of:

- (a) All moneys collected pursuant to section 13-22-305 (3);
- (b) Any moneys appropriated by the general assembly for credit to the fund; and
- (c) Any moneys collected by the office from federal grants and other contributions, grants, gifts, bequests, and donations.

(2) All moneys in the fund shall be subject to annual appropriation by the general assembly. Any moneys not appropriated shall remain in the fund at the end of any fiscal year and shall not revert to the general fund.

(3) Repealed.

**Source:** **L. 83:** Entire part added, p. 626, § 1, effective July 1. **L. 88:** Entire section R&RE, p. 607, § 7, effective July 1. **L. 91:** Entire section R&RE, p. 372, § 6, effective July 1. **L. 2009:** (2) amended, (SB 09-208), ch. 149, p. 620, § 10, effective April 20. **L. 2015:** (2) amended, (SB 15-264), ch. 259, p. 949, § 29, effective August 5. **L. 2025:** (3) added, (HB 25-1215), ch. 312, p. 1629, § 3, effective May 30.

**Editor's note:** Subsection (3)(b) provided for the repeal of subsection (3), effective July 1, 2026. (See L. 2025, p. 1629.)

**Cross references:** For the legislative declaration in HB 25-1215, see section 1 of chapter 312, Session Laws of Colorado 2025.

**13-22-311. Court referral to mediation - duties of mediator.**

(1) Any court of record may, in its discretion, refer any case for mediation services or dispute resolution programs, subject to the availability of mediation services or dispute resolution programs; except that the court shall not refer the case to mediation services or dispute resolution programs where one of the parties claims that the party has been the victim of physical or psychological abuse by the other party, at any time and regardless of prior participation, and states that the party is thereby unwilling to enter into mediation services or dispute resolution programs. In addition, the court may exempt from referral any case in which a party files with

the court, within five days of a referral order, a motion objecting to mediation and demonstrating compelling reasons why mediation should not be ordered. Compelling reasons may include, but are not limited to, that the costs of mediation would be higher than the requested relief and previous attempts to resolve the issues were not successful. Parties referred to mediation services or dispute resolution programs may select said services or programs from mediators or mediation organizations or from the office of dispute resolution. This section shall not apply in any civil action where injunctive or similar equitable relief is the only remedy sought.

(2) Upon completion of mediation services or dispute resolution programs, the mediator shall supply to the court, unless counsel for a party is required to do so by local rule or order of the court, a written statement certifying that parties have met with the mediator.

(3) In the event the mediator and the parties agree and inform the court that the parties are engaging in good faith mediation, any pending hearing in the action filed by the parties shall be continued to a date certain.

(4) In no event shall a party be denied the right to proceed in court in the action filed because of failure to pay the mediator.

**Source:** **L. 88:** Entire section added, p. 607, § 8, effective July 1. **L. 91:** (1) and (2) amended, p. 372, § 7, effective July 1. **L. 92:** Entire section amended, p. 299, § 3, effective June 2. **L. 2021:** (1) amended, (HB 21-1228), ch. 292, p. 1729, § 2, effective June 22.

**Cross references:** For the legislative declaration contained in the 1992 act amending this section, see section 1 of chapter 66, Session Laws of Colorado 1992. For the legislative declaration in HB 21-1228, see section 1 of chapter 292, Session Laws of Colorado 2021.

## ANNOTATION

**Law reviews.** For article, "Selecting Cases for Mediation", see 17 Colo. Law. 2007 (1988).

**Where petitioner files a verified, uncontroverted claim of physical and psychological abuse by husband,** the trial court "shall not refer" such a case to mediation; the plain and obvious language of subsection (1) forbids a court from

ordering mediation where a party claims physical and psychological abuse. *Pearson v. District Court*, 18th Jud. Dist., 924 P.2d 512 (Colo. 1996).

**This section does not require a party to file a declaration of abuse and an unwillingness to participate in mediation prior to the entry of a court order to**

**mediate.** Pearson v. District Court, 18th Jud. Dist., 924 P.2d 512 (Colo. 1996).

**Subsection (1) covers two distinct circumstances:** First, it contains a mandatory command that a court "shall not refer" a case to mediation services where a party claims physical or psychological abuse, which requirement has no time limitations. Second, it contains a discretionary "compelling reasons" excusal that is subject to the five-day rule and exists

independently of the mandatory excusal for physical or psychological abuse. Pearson v. District Court, 18th Jud. Dist., 924 P.2d 512 (Colo. 1996).

**A trial court lacks the authority to order mediation in a criminal case.** Both parties may consent to mediation, but mediation may not be made mandatory by the court. People v. Justice, 2023 CO 9, 524 P.3d 1178.

### **13-22-312. Applicability.**

This part 3 shall apply to all mediation services or dispute resolution programs conducted in this state, whether conducted through the office of dispute resolution or through a mediator or mediation organization.

**Source: L. 91:** Entire section added, p. 373, § 8, effective July 1.

### **13-22-313. Judicial referral to ancillary forms of alternative dispute resolution.**

(1) Any court of record, in its discretion, may refer a case to any ancillary form of alternative dispute resolution; except that the court shall not refer the case to any ancillary form of alternative dispute resolution where one of the parties claims that it has been the victim of physical or psychological abuse by the other party and states that it is thereby unwilling to enter into ancillary forms of alternative dispute resolution. In addition, the court may exempt from referral any case in which a party files with the court, within five days of a referral order, a motion objecting to ancillary forms of alternative dispute resolution and demonstrating compelling reasons why ancillary forms of alternative dispute resolution should not be ordered. Compelling reasons may include, but are not limited to, that the costs of ancillary forms of alternative dispute resolution would be higher than the requested relief and previous attempts to resolve the issues were not successful. Such forms of alternative dispute resolution may include, but are not limited to: arbitration, early neutral evaluation, med-arb, mini-trial, multi-door courthouse concepts, settlement conference, special master, summary jury trial, or any other form of alternative dispute resolution which the court deems to be an effective method for resolving the dispute in question. Parties and counsel are encouraged to seek the most appropriate forum for the resolution of their dispute. Judges may provide guidance or suggest an

appropriate forum. However, nothing in this section shall impinge upon the right of parties to have their dispute tried in a court of law, including trial by jury.

(2) Ancillary programs may be established, made available, and promoted in any judicial district or combination of districts as designated by the chief judge of the affected district. Rules and regulations for ancillary forms of alternative dispute resolution shall be promulgated by the director of the office of dispute resolution.

(3) All rules, regulations, and procedures established pursuant to this section shall be subject to the approval of the chief justice.

(4) Nothing in this section shall preclude any court from making a referral to mediation services provided for in this article.

(5) All referrals under this section shall be made subject to the availability of alternative dispute resolution programs. Parties referred to ancillary forms of alternative dispute resolution may select services offered by the office of dispute resolution or by other individuals or organizations.

(6) This section shall not apply in any civil action where injunctive or similar equitable relief is the only remedy sought.

**Source: L. 92:** Entire section added, p. 300, § 5, effective June 2.

**Cross references:** For the legislative declaration contained in the 1992 act enacting this section, see section 1 of chapter 66, Session Laws of Colorado 1992.

#### ANNOTATION

**This section and § 14-10-128.1 are in conflict and cannot be harmonized with respect to the standards for the appointment of a parenting coordinator if abuse by one parent is alleged by the other.** Although this section bars the court from referring a case to any ancillary form of alternative dispute resolution if one of the parties claims abuse by the other party, under § 14-10-128.1, a mere claim of abuse

by one parent is insufficient to bar the appointment of a parenting coordinator. Even documented evidence of domestic violence does not automatically bar such an appointment. Rather, the court is required only to consider the effect of the evidence on the parties' ability to engage in parenting coordination. In *re Rozzi*, 190 P.3d 815 (Colo. App. 2008).



## PART 4

### MANDATORY ARBITRATION - CIVIL ACTIONS

#### **13-22-401 to 13-22-411. (Repealed)**

**Editor's note:** (1) This part 4 was added in 1987. For amendments to this part 4 prior to its repeal in 1991, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 13-22-411 provided for the repeal of this part 4, effective July 1, 1991. (See L. 90, p. 875.)

## PART 5

### COLORADO INTERNATIONAL DISPUTE RESOLUTION ACT

#### **13-22-501. Short title.**

This part 5 shall be known and may be cited as the "Colorado International Dispute Resolution Act".

**Source: L. 93:** Entire part added, p. 360, § 5, effective April 12.

#### **13-22-502. Legislative declaration.**

The general assembly finds and declares that it is the policy of the state of Colorado to encourage parties to international commercial or noncommercial agreements or transactions to resolve disputes arising from such agreements or transactions, when appropriate, through arbitration, mediation, or conciliation. Therefore, it is the intent of the general assembly that arbitration and ancillary forms of alternative dispute resolution be made available to resolve international disputes.

**Source: L. 93:** Entire part added, p. 360, § 5, effective April 12.

### **13-22-503. Definitions.**

As used in this part 5, unless the context otherwise requires:

- (1) "Arbitration" means the referral of a dispute to one or more neutral third parties for a decision based on evidence and testimony provided by the disputants.
- (2) "Conciliation" means all forms of dispute resolution including, but not limited to, arbitration and mediation.
- (3) "International dispute" means any dispute which involves the following:
  - (a) A dispute between persons who are residents of more than one country or entities which have facilities or operations relevant to the dispute located in more than one country;
  - (b) A dispute in which the parties have expressly agreed that the subject matter relates to interests in more than one country; or
  - (c) A dispute which is otherwise related to interests in more than one country.
- (4) "Mediation" means an intervention in dispute negotiations by a trained, neutral third party with the purpose of assisting the parties to reach their own solution.

**Source: L. 93:** Entire part added, p. 361, § 5, effective April 12.

### **13-22-504. Agreement for alternative dispute resolution.**

The parties to an international dispute may agree to submit such dispute to arbitration, mediation, or conciliation for resolution of such dispute by means other than by litigation. Such dispute resolution pursuant to this part 5 shall be subject to any treaties or agreements which are in force and effect between the United States and any other country.

**Source: L. 93:** Entire part added, p. 361, § 5, effective April 12.

### **13-22-505. Applicability.**

The provisions of part 2 of this article and sections 13-22-307 and 13-22-308 shall apply to any international dispute submitted to alternative dispute resolution pursuant to this part 5.

**Source: L. 93:** Entire part added, p. 361, § 5, effective April 12.

**13-22-506. Choice of language.**

The parties to any international dispute submitted for alternative dispute resolution pursuant to this part 5 may agree upon the language or languages to be used in the dispute resolution proceedings.

**Source: L. 93:** Entire part added, p. 361, § 5, effective April 12.

**13-22-507. Immunity.**

None of the arbitrators, mediators, conciliators, witnesses, parties, or representatives of the parties involved in the arbitration, mediation, or conciliation of an international dispute pursuant to this part 5 shall be subject to service of process on any civil matter while such persons are present in this state for the purpose of participating in the arbitration, mediation, or conciliation of that international dispute.

**Source: L. 93:** Entire part added, p. 362, § 5, effective April 12.

## PART 6

### MARIJUANA CONTRACTS ENFORCEABLE

**13-22-601. Contracts pertaining to marijuana enforceable.**

It is the public policy of the state of Colorado that a contract is not void or voidable as against public policy if it pertains to lawful activities authorized by section 16 of article XVIII of the state constitution and article 10 of title 44.

**Source: L. 2013:** Entire part added, (SB 13-283), ch. 332, p. 1890, § 4, effective May 28. **L. 2018:** Entire section amended, (HB 18-1023), ch. 55, p. 586, § 9, effective October 1. **L. 2019:** Entire section amended, (SB 19-224), ch. 315, p. 2936, § 13, effective January 1, 2020.

#### ANNOTATION

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**Law reviews.** For article, "Commercial Leases Involving Cannabis Businesses—A

Practical Guide for Landlords and Their Counsel", see 50 Colo. Law. 42 (Mar. 2021).

## PART 7

### COLORADO PARENTAL NOTIFICATION ACT

**Editor's note:** (1) This part 7 was added with amended and relocated provisions in 2018. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this part 7, see the comparative tables located in the back of the index.

(2) (a) This part 7 was originally numbered as article 37.5 of title 12. It was added as an initiated measure that was adopted by the people in the general election held November 3, 1998, effective upon proclamation of the Governor, December 30, 1998.

(b) The vote count on the measure at the general election held November 3, 1998, was as follows:

FOR: 708,689

AGAINST: 582,102

#### **13-22-701. Short title.**

The short title of this part 7 is the "Colorado Parental Notification Act".

**Source: L. 2018:** Entire part added with relocations, (SB 18-032), ch. 8, p. 145, § 1, effective October 1.

**Editor's note:** This section is similar to former § 12-37.5-101 as it existed prior to 2018.

## ANNOTATION

**Colorado Parental Notification Act is unconstitutional.** The act violates the rights of minor women protected by the fourteenth amendment to the U.S. Constitution. The

U.S. supreme court has required that any abortion regulation except from its reach an abortion medically necessary for the preservation of the mother's health. The act

fails to provide such a health exception, and the delay inherent in the act's notification requirements will place some women at risk of serious health problems or even death.

Planned Parenthood of Rocky Mtns. Servs. Corp. v. Owens, 107 F. Supp. 2d 1271 (D. Colo. 2000), aff'd, 287 F.3d 910 (10th Cir. 2002) (decided under former law).

### **13-22-702. Legislative declaration.**

(1) The people of the state of Colorado, pursuant to the powers reserved to them in Article V of the Constitution of the state of Colorado, declare that family life and the preservation of the traditional family unit are of vital importance to the continuation of an orderly society; that the rights of parents to rear and nurture their children during their formative years and to be involved in all decisions of importance affecting such minor children should be protected and encouraged, especially as such parental involvement relates to the pregnancy of an unemancipated minor, recognizing that the decision by any such minor to submit to an abortion may have adverse long-term consequences for her.

(2) The people of the state of Colorado, being mindful of the limitations imposed upon them at the present time by the federal judiciary in the preservation of the parent-child relationship, hereby enact into law the following provisions.

**Source: L. 2018:** Entire part added with relocations, (SB 18-032), ch. 8, p. 145, § 1, effective October 1.

**Editor's note:** This section is similar to former § 12-37.5-102 as it existed prior to 2018.

### **ANNOTATION**

**The legislative declaration of the Colorado Parental Notification Act does not provide any positive indication that the act should be interpreted in conjunction with the Colorado Children's Code to protect the health of a minor.**

Planned Parenthood of Rocky Mtns. Servs. Corp. v. Owens, 107 F. Supp. 2d 1271 (D. Colo. 2000), aff'd on other grounds, 287 F.3d 910 (10th Cir. 2002) (decided under former law).

### **13-22-703. Definitions.**

As used in this part 7, unless the context otherwise requires:

- (1) "Minor" means a person under eighteen years of age.
- (2) "Parent" means the natural or adoptive mother and father of the minor who is pregnant, if they are both living; one parent of the minor if only one is living, or if the other parent cannot be served with notice, as hereinafter provided; or the court-appointed guardian of such minor if she has one or any foster parent to whom the care and custody of such minor shall have been assigned by any agency of the state or county making such placement.
- (3) "Abortion" for purposes of this part 7 means the use of any means to terminate the pregnancy of a minor with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the minor's unborn offspring.
- (4) "Clergy member" means a priest; a rabbi; a duly ordained, commissioned, or licensed minister of a church; a member of a religious order; or a recognized leader of any religious body.
- (5) "Medical emergency" means a condition that, on the basis of the physician's good-faith clinical judgment, so complicates the medical condition of a pregnant minor as to necessitate a medical procedure necessary to prevent the pregnant minor's death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function.
- (6) "Relative of the minor" means a minor's grandparent, adult aunt, or adult uncle, if the minor is not residing with a parent and resides with the grandparent, adult aunt, or adult uncle.

**Source: L. 2018:** Entire part added with relocations, (SB 18-032), ch. 8, p. 146, § 1, effective October 1.

**Editor's note:** This section is similar to former § 12-37.5-103 as it existed prior to 2018.

#### **13-22-704. Notification concerning abortion.**

- (1) No abortion shall be performed upon an unemancipated minor until at least 48 hours after written notice of the pending abortion has been delivered in the following manner:
  - (a) The notice shall be addressed to the parent at the dwelling house or usual place of abode of the parent. Such notice shall be delivered to the parent by:
    - (I) The attending physician or member of the physician's immediate staff who is over the age of eighteen; or
    - (II) The sheriff of the county where the service of notice is made, or by his deputy; or
    - (III) Any other person over the age of eighteen years who is not related to the minor; or

(IV) A clergy member who is over the age of eighteen.

(b) Notice delivered by any person other than the attending physician shall be furnished to and delivered by such person in a sealed envelope marked "Personal and Confidential", and its content shall not in any manner be revealed to the person making such delivery.

(c) Whenever the parent of the minor includes two persons to be notified as provided in this part 7 and such persons reside at the same dwelling house or place of abode, delivery to one such person shall constitute delivery to both, and the 48-hour period shall commence when delivery is made. Should such persons not reside together and delivery of notice can be made to each of them, notice shall be delivered to both parents, unless the minor shall request that only one parent be notified, which request shall be honored and shall be noted by the physician in the minor's medical record. Whenever the parties are separately served with notice, the 48-hour period shall commence upon delivery of the first notice.

(d) The person delivering such notice, if other than the physician, shall provide to the physician a written return of service at the earliest practical time, as follows:

(I) If served by the sheriff or his deputy, by his certificate with a statement as to date, place, and manner of service and the time such delivery was made.

(II) If by any other person, by his affidavit thereof with the same statement.

(III) Return of service shall be maintained by the physician.

(e) (I) In lieu of personal delivery of the notice, the same may be sent by postpaid certified mail, addressed to the parent at the usual place of abode of the parent, with return receipt requested and delivery restricted to the addressee. Delivery shall be conclusively presumed to occur, and the 48-hour time period as provided in this part 7 shall commence to run at 12:00 o'clock noon on the next day on which regular mail delivery takes place.

(II) Whenever the parent of the minor includes two persons to be notified as provided in this part 7 and such persons reside at the same dwelling house or place of abode, notice addressed to one parent and mailed as provided in the foregoing subparagraph shall be deemed to be delivery of notice to both such persons. Should such persons not reside together and notice can be mailed to each of them, such notice shall be separately mailed to both parents unless the minor shall request that only one parent shall be notified, which request shall be honored and shall be noted by the physician in the minor's medical record.

(III) Proof of mailing and the delivery or attempted delivery shall be maintained by the physician.

(2) (a) Notwithstanding the provisions of subsection (1) of this section, if the minor is residing with a relative of the minor and not a parent, the written notice of the pending abortion shall be provided to either the relative of the minor or a parent.

(b) If a minor elects to provide notice to a person specified in subsection (2)(a) of this section, the notice shall be provided in accordance with the provisions of subsection (1) of this section.

(3) At the time the physician, licensed health-care professional, or staff of the physician or licensed health-care professional informs the minor that notice must be provided to the minor's parents prior to performing an abortion, the physician, licensed health-care professional, or the staff of the physician or licensed health-care professional must inform the minor under what circumstances the minor has the right to have only one parent notified.

**Source: L. 2018:** Entire part added with relocations, (SB 18-032), ch. 8, p. 146, § 1, effective October 1.

**Editor's note:** This section is similar to former § 12-37.5-104 as it existed prior to 2018.

#### ANNOTATION

**Annotator's note.** The following annotations include cases decided under former provisions similar to this section.

**The provisions of the Parental Notification Act supersede § 19-1-104 (3) of the Children's Code with regard to the provision of notice to parents about abortions.** Planned Parenthood of Rocky Mtns. Servs. Corp. v. Owens, 287 F.3d 910 (10th Cir. 2002).

**As a result, the Parental Notification Act must be held unconstitutional because it lacks a health exception to the parental notification requirement.** Planned Parenthood of Rocky Mtns. Servs. Corp. v. Owens, 287 F.3d 910 (10th Cir. 2002).

**Applied in** In re Doe, 166 P.3d 293 (Colo. App. 2007).

#### **13-22-705. No notice required - when.**

(1) No notice shall be required pursuant to this part 7 if:

(a) The person or persons who may receive notice pursuant to section 13-22-704 (1) certify in writing that they have been notified; or

(b) The person whom the minor elects to notify pursuant to section 13-22-704 (2) certifies in writing that he or she has been notified; or



(c) The pregnant minor declares that she is a victim of child abuse or neglect by the acts or omissions of the person who would be entitled to notice, as such acts or omissions are defined in "The Child Protection Act of 1987", as set forth in article 3 of title 19, and any amendments thereto, and the attending physician has reported such child abuse or neglect as required by the said act. When reporting such child abuse or neglect, the physician shall not reveal that he or she learned of the abuse or neglect as the result of the minor seeking an abortion.

(d) The attending physician certifies in the pregnant minor's medical record that a medical emergency exists and there is insufficient time to provide notice pursuant to section 13-22-704; or

(e) A valid court order is issued pursuant to section 13-22-707.

**Source: L. 2018:** Entire part added with relocations, (SB 18-032), ch. 8, p. 148, § 1, effective October 1.

**Editor's note:** This section is similar to former § 12-37.5-105 as it existed prior to 2018.

#### **13-22-706. Penalties - damages - defenses.**

(1) Any person who performs or attempts to perform an abortion in willful violation of this part 7 shall be liable for damages proximately caused thereby.

(2) It shall be an affirmative defense to any civil proceedings if the person establishes that:

(a) The person relied upon facts or information sufficient to convince a reasonable, careful and prudent person that the representations of the pregnant minor regarding information necessary to comply with this part 7 were bona fide and true; or

(b) The abortion was performed to prevent the imminent death of the minor child and there was insufficient time to provide the required notice.

(3) Any person who counsels, advises, encourages or conspires to induce or persuade any pregnant minor to furnish any physician with false information, whether oral or written, concerning the minor's age, marital status, or any other fact or circumstance to induce or attempt to induce the physician to perform an abortion upon such minor without providing written notice as required by this part 7 commits a class 5 felony and shall be punished as provided in section 18-1.3-401.

**Source: L. 2018:** Entire part added with relocations, (SB 18-032), ch. 8, p. 148, § 1, effective October 1.

**Editor's note:** This section is similar to former § 12-37.5-106 as it existed prior to 2018.

**13-22-707. Judicial bypass - rules.**

(1) (a) If any pregnant minor elects not to allow the notification required pursuant to section 13-22-704, any judge of a court of competent jurisdiction shall, upon petition filed by or on behalf of such minor, enter an order dispensing with the notice requirements of this part 7 if the judge determines that the giving of such notice will not be in the best interest of the minor, or if the court finds, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to have an abortion. Any such order shall include specific factual findings and legal conclusions in support thereof and a certified copy of such order shall be provided to the attending physician of said minor and the provisions of section 13-22-704 (1) and section 13-22-706 shall not apply to the physician with respect to such minor.

(b) The court, in its discretion, may appoint a guardian ad litem for the minor and also an attorney if said minor is not represented by counsel.

(c) Court proceedings under this subsection (1) shall be confidential and shall be given precedence over other pending matters so that the court may reach a decision promptly without delay in order to serve the best interests of the minor. Court proceedings under this subsection (1) shall be heard and decided as soon as practicable but in no event later than four days after the petition is filed.

(d) Notwithstanding any other provision of law, an expedited confidential appeal to the court of appeals shall be available to a minor for whom the court denies an order dispensing with the notice requirements of this part 7. Any such appeal shall be heard and decided no later than five days after the appeal is filed. An order dispensing with the notice requirements of this part 7 shall not be subject to appeal.

(e) Notwithstanding any provision of law to the contrary, the minor is not required to pay a filing fee related to an action or appeal filed pursuant to this subsection (1).

(f) If either the district court or the court of appeals fails to act within the time periods required by this subsection (1), the court in which the proceeding is pending shall immediately issue an order dispensing with the notice requirements of this part 7.

(g) The Colorado supreme court shall issue rules governing the judicial bypass procedure, including rules that ensure that the confidentiality of minors filing bypass petitions will be

protected. The Colorado supreme court shall also promulgate a form petition that may be used to initiate a bypass proceeding. The Colorado supreme court shall promulgate the rules and form governing the judicial bypass procedure by August 1, 2003. Physicians shall not be required to comply with this part 7 until forty-five days after the Colorado supreme court publishes final rules and a final form.

**Source: L. 2018:** Entire part added with relocations, (SB 18-032), ch. 8, p. 149, § 1, effective October 1.

**Editor's note:** This section is similar to former § 12-37.5-107 as it existed prior to 2018.

### **13-22-708. Limitations.**

- (1) This part 7 shall in no way be construed so as to:
  - (a) Require any minor to submit to an abortion; or
  - (b) Prevent any minor from withdrawing her consent previously given to have an abortion; or
  - (c) Permit anything less than fully informed consent before submitting to an abortion.
- (2) This part 7 shall in no way be construed as either ratifying, granting or otherwise establishing an abortion right for minors independently of any other regulation, statute or court decision which may now or hereafter limit or abridge access to abortion by minors.

**Source: L. 2018:** Entire part added with relocations, (SB 18-032), ch. 8, p. 150, § 1, effective October 1.

**Editor's note:** This section is similar to former § 12-37.5-108 as it existed prior to 2018.

## **ARTICLE 23**

### **Structured Settlement Protection Act**

13-23-101. Short title.

13-23-102. Definitions.

|            |                                                                |            |                                                                                                                                              |
|------------|----------------------------------------------------------------|------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| 13-23-103. | Required disclosures to payee.                                 | 13-23-107. | General provisions - construction.                                                                                                           |
| 13-23-104. | Approval of transfers of structured settlement payment rights. | 13-23-108. | Exceptions - judgment for periodic payment against a health-care professional or institution - assignment of workers' compensation benefits. |
| 13-23-105. | Effect of transfer of structured settlement payment right.     |            |                                                                                                                                              |
| 13-23-106. | Procedure for approval of transfer.                            |            |                                                                                                                                              |

### **13-23-101. Short title.**

This article shall be known and may be cited as the "Structured Settlement Protection Act".

**Source: L. 2004:** Entire article added, p. 494, § 1, effective July 1.

### **13-23-102. Definitions.**

As used in this article, unless the context otherwise requires:

- (1) "Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.
- (2) "Dependent" means a payee's spouse, minor child, or any person for whom the payee is legally obligated to provide support, including maintenance.
- (3) "Discounted present value" means the present value of future payments determined by discounting such payments to the present using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the United States internal revenue service.
- (4) "Gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions are made from such consideration.
- (5) "Independent professional advice" means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser.

(6) "Interested parties" means the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party who has continuing rights or obligations under such structured settlement. If a delegate child support enforcement unit is enforcing a payee's legal obligation to support his or her dependent children, pursuant to section 26-13-105, C.R.S., "interested parties" shall also include the delegate child support enforcement unit.

(7) "Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under section 13-23-103.

(8) "Payee" means an individual who is receiving tax-free payments under a structured settlement and who proposes to make a transfer of payment rights thereunder.

(9) "Periodic payment" means a recurring payment or a scheduled future lump-sum payment.

(10) "Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of section 130 of the federal "Internal Revenue Code of 1986", as amended.

(11) "Responsible administrative authority" means any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement.

(12) "Settled claim" means the original tort claim resolved by a structured settlement.

(13) "Structured settlement" means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim.

(14) "Structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(15) "Structured settlement obligor" means the party who has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

(16) "Structured settlement payment right" means the right to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where:

(a) The payee is domiciled in Colorado or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is Colorado; or

(b) The structured settlement agreement was approved by a court or responsible administrative authority in Colorado; or

(c) The structured settlement agreement is expressly governed by the laws of Colorado.

(17) "Terms of the structured settlement" means the terms of the structured settlement agreement, the annuity contract, a qualified assignment agreement, and any order or other approval of a court or responsible administrative authority or other government authority that authorized or approved such structured settlement.

(18) "Transfer" means a sale, assignment, pledge, hypothecation, or other alienation or encumbrance of a structured settlement payment right made by a payee for consideration; except that the term "transfer" does not include the creation or perfection of a security interest in a structured settlement payment right under a blanket security agreement entered into with an insured depository institution in the absence of any action to redirect the structured settlement payments to such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the structured settlement payment rights.

(19) "Transfer agreement" means the agreement providing for a transfer of a structured settlement payment right.

(20) "Transferee" means a party acquiring or proposing to acquire a structured settlement payment right through a transfer.

(21) "Transfer expenses" means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, court filing fees, attorney fees, escrow fees, lien recordation fees, judgment and lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary. "Transfer expenses" does not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.

**Source: L. 2004:** Entire article added, p. 494, § 1, effective July 1.

### **13-23-103. Required disclosures to payee.**

(1) Not fewer than three days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than fourteen points, setting forth:

- (a) The amounts and due dates of the structured settlement payments to be transferred;
- (b) The aggregate amount of such payments;
- (c) The discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under

federal standards for valuing annuities", and the amount of the applicable federal rate used in calculating such discounted present value;

(d) The gross advance amount;

(e) An itemized listing of all applicable transfer expenses, other than attorney fees and related disbursements, payable in connection with the transferee's application for approval of the transfer and the transferee's best estimate of the amount of any attorney fees and related disbursements;

(f) The net advance amount;

(g) The amount of any penalties or liquidated damages payable by the payee in the event of a breach of the transfer agreement by the payee; and

(h) A statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.

**Source: L. 2004:** Entire article added, p. 496, § 1, effective July 1.

#### **13-23-104. Approval of transfers of structured settlement payment rights.**

(1) A direct or indirect transfer of a structured settlement payment right shall not be effective and a structured settlement obligor or annuity issuer shall not be required to make a payment directly or indirectly to a transferee of a structured settlement payment right unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based on express findings by such court or responsible administrative authority that:

(a) The transfer is in the best interests of the payee, taking into account the welfare and support of the payee's dependents;

(b) The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly and willingly waived such advice in writing; and

(c) The transfer does not contravene any applicable statute or the order of any court or other government authority.

**Source: L. 2004:** Entire article added, p. 497, § 1, effective July 1.

**13-23-105. Effect of transfer of structured settlement payment right.**

- (1) Following a transfer of a structured settlement payment right pursuant to this article:
  - (a) The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from all liability for the transferred payments;
  - (b) The transferee shall be liable to the structured settlement obligor and the annuity issuer:
- (I) If the transfer contravenes the terms of the structured settlement, for any taxes incurred by such parties as a consequence of the transfer; and
- (II) For any other liabilities or costs, including reasonable costs and attorney fees, arising from compliance by such parties with the order of the court or responsible administrative authority or arising as a consequence of the transferee's failure to comply with the provisions of this article;
- (c) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and a transferee or assignee or between two or more transferees or assignees; and
- (d) Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this article.

**Source: L. 2004:** Entire article added, p. 497, § 1, effective July 1.

**13-23-106. Procedure for approval of transfer.**

- (1) An application under this article for approval of a transfer of a structured settlement payment right shall be made by the transferee and may be brought:
  - (a) In the district court for the county in which the payee resides;
  - (b) In the district court for the county in which the structured settlement obligor or the annuity issuer maintains its principal place of business; or
  - (c) In any court or before any responsible administrative authority that approved the structured settlement agreement.
- (2) Not fewer than twenty days prior to the scheduled hearing on an application for approval of a transfer of structured settlement payment rights under section 13-23-104, the transferee shall file with the court or responsible administrative authority and serve on all interested parties a notice of the proposed transfer and the application for its authorization. The transferee shall file and serve:



- (a) A copy of the transferee's application;
- (b) A copy of the transfer agreement;
- (c) A copy of the disclosure statement required pursuant to section 13-23-103;
- (d) A listing of each of the payee's dependents, together with each dependent's age;
- (e) A notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and
- (f) A notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which shall be not fewer than fifteen days after service of the transferee's notice, in order to be considered by the court or responsible administrative authority.

**Source: L. 2004:** Entire article added, p. 498, § 1, effective July 1.

#### **13-23-107. General provisions - construction.**

- (1) The provisions of this article may not be waived by any payee.
- (2) Any transfer agreement entered into on or after July 1, 2004, by a payee who resides in Colorado shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of Colorado. No such transfer agreement shall authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.
- (3) A transfer of structured settlement payment rights shall not extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for periodically confirming the payee's survival and giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.
- (4) A payee who proposes to make a transfer of a structured settlement payment right shall not incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on a failure of such transfer to satisfy the conditions of this article.

(5) Nothing contained in this article shall be construed to authorize a transfer of a structured settlement payment right in contravention of any law or to imply that a transfer under a transfer agreement entered into prior to July 1, 2004, is valid or invalid.

(6) Compliance with the requirements set forth in section 13-23-103 and fulfillment of the conditions set forth in section 13-23-104 shall be solely the responsibility of the transferee in a transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear responsibility for, or any liability arising from, noncompliance with such requirements or failure to fulfill such conditions.

**Source: L. 2004:** Entire article added, p. 499, § 1, effective July 1.

**13-23-108. Exceptions - judgment for periodic payment against a health-care professional or institution - assignment of workers' compensation benefits.**

Nothing in this article shall apply to a judgment entered pursuant to the provisions of part 2 of article 64 of this title or to compensation or benefits due under articles 40 to 47 of title 8, C.R.S.

**Source: L. 2004:** Entire article added, p. 500, § 1, effective July 1.

## **ARTICLE 24**

### **Uniform Collaborative Law Act**

|            |                                                           |            |                                                                              |
|------------|-----------------------------------------------------------|------------|------------------------------------------------------------------------------|
| 13-24-101. | Short title.                                              | 13-24-107. | Emergency order.                                                             |
| 13-24-102. | Definitions.                                              | 13-24-108. | Approval of agreement by tribunal.                                           |
| 13-24-103. | Applicability.                                            | 13-24-109. | Disqualification of collaborative lawyer and lawyers in associated law firm. |
| 13-24-104. | Collaborative law participation agreement - requirements. | 13-24-110. | (Reserved)                                                                   |
| 13-24-105. | Beginning and concluding collaborative law process.       | 13-24-111. | Governmental entity as party.                                                |
| 13-24-106. | Proceedings pending before tribunal - status report.      | 13-24-112. | Disclosure of information.                                                   |

|            |                                                                                |            |                                                                                |
|------------|--------------------------------------------------------------------------------|------------|--------------------------------------------------------------------------------|
| 13-24-113. | Standards of professional responsibility and mandatory reporting not affected. | 13-24-118. | communication - admissibility - discovery. Waiver and preclusion of privilege. |
| 13-24-114. | Appropriateness of collaborative law process - informed consent.               | 13-24-119. | Limits of privilege.                                                           |
| 13-24-115. | Coercive or violent relationship.                                              | 13-24-120. | Authority of tribunal in case of noncompliance.                                |
| 13-24-116. | Confidentiality of collaborative law communication.                            | 13-24-121. | Uniformity of application and construction.                                    |
| 13-24-117. | Privilege against disclosure for collaborative law                             | 13-24-122. | Relation to electronic signatures in global and national commerce act.         |
|            |                                                                                | 13-24-123. | Authority of supreme court.                                                    |

**13-24-101. Short title.**

This article 24 may be cited as the "Uniform Collaborative Law Act".

**Source: L. 2021:** Entire article added, (SB 21-143), ch. 142, p. 788, § 1, effective January 1, 2022.

**13-24-102. Definitions.**

In this article 24:

(1) "Collaborative law communication" means a statement, whether oral or in a record, or verbal or nonverbal, that:

(a) Is made to conduct, participate in, continue, or reconvene a collaborative law process; and

(b) Occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is terminated or concluded.

(2) "Collaborative law participation agreement" means an agreement by persons to participate in a collaborative law process.

(3) "Collaborative law process" means a procedure intended to resolve a collaborative matter, without intervention by a tribunal, in which persons:

- (a) Sign a collaborative law participation agreement; and
- (b) Are represented by collaborative lawyers.

(4) "Collaborative lawyer" means a lawyer who represents a party in a collaborative law process.

(5) "Collaborative matter" means a dispute, transaction, claim, problem, negotiation, or issue for resolution, including a dispute, claim, or issue in a proceeding, which is described in a collaborative law participation agreement and arises under the family or domestic relations law of this state, including:

- (a) Marriage, divorce, dissolution, annulment, and property distribution;
- (b) Child custody, visitation, and parenting time;
- (c) Alimony, maintenance, and child support;
- (d) Adoption;
- (e) Parentage; and
- (f) Premarital, marital, and post-marital agreements.

(6) "Law firm" means:

(a) Lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association; and

(b) Lawyers employed in a legal services organization, or the legal department of a corporation or other organization, or the legal department of a government or governmental subdivision, agency, or instrumentality.

(7) "Nonparty participant" means a person, other than a party and the party's collaborative lawyer, that participates in a collaborative law process.

(8) "Party" means a person that signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(10) "Proceeding" means:

(a) A judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related prehearing and post-hearing motions, conferences, and discovery; or

(b) A legislative hearing or similar process.

(11) "Prospective party" means a person that discusses with a prospective collaborative lawyer the possibility of signing a collaborative law participation agreement.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Related to a collaborative matter" means involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

(14) "Sign" means with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound, or process.

(15) "Tribunal" means:

(a) A court, arbitrator, administrative agency, or other body acting in an adjudicative capacity which, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party's interests in a matter; or

(b) A legislative body conducting a hearing or similar process.

**Source: L. 2021:** Entire article added, (SB 21-143), ch. 142, p. 788, § 1, effective January 1, 2022.

### **13-24-103. Applicability.**

This article 24 applies to a collaborative law participation agreement that meets the requirements of section 13-24-104 signed on or after January 1, 2022.

**Source: L. 2021:** Entire article added, (SB 21-143), ch. 142, p. 790, § 1, effective January 1, 2022.

**13-24-104. Collaborative law participation agreement - requirements.**

- (1) A collaborative law participation agreement must:
  - (a) Be in a record;
  - (b) Be signed by the parties;
  - (c) State the parties' intention to resolve a collaborative matter through a collaborative law process under this article 24 as enacted in Colorado and informed consent concerning the consequences of the disqualification process;
  - (d) Describe the nature and scope of the matter;
  - (e) Identify the collaborative lawyer who represents each party in the process; and
  - (f) Contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the collaborative law process.
- (2) Parties may agree to include in a collaborative law participation agreement additional provisions not inconsistent with this article 24.

**Source: L. 2021:** Entire article added, (SB 21-143), ch. 142, p. 790, § 1, effective January 1, 2022.

**13-24-105. Beginning and concluding collaborative law process.**

- (1) A collaborative law process begins when the parties sign a collaborative law participation agreement.
- (2) A tribunal may not order a party to participate in a collaborative law process over that party's objection.
- (3) A collaborative law process is concluded by a:
  - (a) Resolution of a collaborative matter as evidenced by a signed record;
  - (b) Resolution of a part of the collaborative matter, evidenced by a signed record, in which the parties agree that the remaining parts of the matter will not be resolved in the process; or
  - (c) Termination of the process.
- (4) A collaborative law process terminates:
  - (a) When a party gives notice to other parties in a record that the process is ended;

- (b) When a party:
  - (I) Begins a proceeding related to a collaborative matter without the agreement of all parties;  
or
  - (II) In a pending proceeding related to the matter:
    - (A) Initiates a pleading, motion, order to show cause, or request for a conference with the tribunal;
    - (B) Requests that the proceeding be put on the tribunal's active calendar; or
    - (C) Takes similar action requiring notice to be sent to the parties; or
- (c) Except as otherwise provided by subsection (7) of this section, when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.
- (5) A party's collaborative lawyer shall give prompt notice to all other parties in a record of a discharge or withdrawal.
- (6) A party may terminate a collaborative law process with or without cause.
- (7) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues if, not later than thirty days after the date that the notice of the discharge or withdrawal of a collaborative lawyer required by subsection (5) of this section is sent to the parties:
  - (a) The unrepresented party engages a successor collaborative lawyer; and
  - (b) In a signed record:
    - (I) The parties consent to continue the process by reaffirming the collaborative law participation agreement;
    - (II) The agreement is amended to identify the successor collaborative lawyer; and
    - (III) The successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative process.
- (8) A collaborative law process does not conclude if, with the consent of the parties, a party requests a tribunal to approve a resolution of the collaborative matter or any part thereof as evidenced by a signed record.
- (9) A collaborative law participation agreement may provide additional methods of concluding a collaborative law process.

**Source: L. 2021:** Entire article added, (SB 21-143), ch. 142, p. 791, § 1, effective January 1, 2022.

**13-24-106. Proceedings pending before tribunal - status report.**

(1) Persons in a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve a collaborative matter related to the proceeding. The parties shall file promptly with the tribunal a notice of the collaborative law participation agreement after it is signed. Subject to subsection (3) of this section and sections 13-24-107 and 13-24-108 and the parties and the collaborative lawyers inform the court that the parties are engaging in good faith in the collaborative law process, any pending proceeding in the action filed by the parties shall be continued to a date certain.

(2) The parties shall file promptly with the tribunal notice in a record when a collaborative law process concludes. The stay of the proceeding under subsection (1) of this section is lifted when the notice is filed. The notice may not specify any reason for termination of the process.

(3) A tribunal in which a proceeding is stayed under subsection (1) of this section may require the parties and collaborative lawyers to provide a status report on the collaborative law process and the proceeding. A status report may include only information on whether the process is ongoing or concluded. It may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process or collaborative law matter.

(4) A tribunal may not consider a communication made in violation of subsection (3) of this section.

(5) A tribunal shall provide parties notice and an opportunity to be heard before dismissing a proceeding in which a notice of collaborative process is filed based on delay or failure to prosecute.

**Source: L. 2021:** Entire article added, (SB 21-143), ch. 142, p. 792, § 1, effective January 1, 2022.

**13-24-107. Emergency order.**

During a collaborative law process, a tribunal may issue emergency orders to protect the health, safety, welfare, or interest of a party or a minor child of either of the parties.



**Source: L. 2021:** Entire article added, (SB 21-143), ch. 142, p. 793, § 1, effective January 1, 2022.

**13-24-108. Approval of agreement by tribunal.**

A tribunal may approve an agreement resulting from a collaborative law process.

**Source: L. 2021:** Entire article added, (SB 21-143), ch. 142, p. 793, § 1, effective January 1, 2022.

**13-24-109. Disqualification of collaborative lawyer and lawyers in associated law firm.**

(1) Except as otherwise provided in subsection (3) of this section, a collaborative lawyer is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter.

(2) Except as otherwise provided in subsection (3) of this section and section 13-24-111, a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under subsection (1) of this section.

(3) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party:

- (a) To ask a tribunal to approve an agreement resulting from the collaborative law process; or
- (b) To seek or defend an emergency order to protect the health, safety, welfare, or interest of a party, or a minor child of either of the parties as defined in section 13-14-101 (2.2) if a successor lawyer is not immediately available to represent that person.

(4) If subsection (3)(b) of this section applies, a collaborative lawyer, or lawyer in a law firm with which the collaborative lawyer is associated, may represent a party or minor child of either of the parties as defined in section 13-14-101 (2.2) for a limited time only until the person or minor child is represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or interest of the person.

**Source: L. 2021:** Entire article added, (SB 21-143), ch. 142, p. 793, § 1, effective January 1, 2022.

**13-24-110. (Reserved)**

**13-24-111. Governmental entity as party.**

(1) The disqualification of section 13-24-109 (1) applies to a collaborative lawyer representing a party that is a government or governmental subdivision, agency, or instrumentality.

(2) After a collaborative law process concludes, another lawyer in a law firm with which the collaborative lawyer is associated may represent a government or governmental subdivision, agency, or instrumentality in the collaborative matter or a matter related to the collaborative matter if:

- (a) The collaborative law participation agreement so provides; and
- (b) The collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm which are reasonably calculated to isolate the collaborative lawyer from such participation.

**Source: L. 2021:** Entire article added, (SB 21-143), ch. 142, p. 794, § 1, effective January 1, 2022.

**13-24-112. Disclosure of information.**

Except as provided by law other than this article 24, during the collaborative law process, on the request of one party made to the other party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery. A party also shall update promptly previously disclosed information that has materially changed. The parties may define the scope of disclosure during the collaborative law process; however, at a minimum, the disclosure shall include the documents required to be disclosed pursuant to rule 16.2 (e)(2) of the Colorado rules of civil procedure.

**Source: L. 2021:** Entire article added, (SB 21-143), ch. 142, p. 794, § 1, effective January 1, 2022.

**13-24-113. Standards of professional responsibility and mandatory reporting not affected.**

- (1) This article 24 does not affect:
  - (a) The professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or
  - (b) The obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult under the law of this state.
- (2) Nothing in section 13-24-117 waives the provisions of rule 1.6 (b) of the Colorado rules of professional conduct.

**Source: L. 2021:** Entire article added, (SB 21-143), ch. 142, p. 794, § 1, effective January 1, 2022.

**13-24-114. Appropriateness of collaborative law process - informed consent.**

- (1) Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:
  - (a) Assess with the prospective party factors the lawyer reasonably believes relate to whether a collaborative law process is appropriate for the prospective party's matter;
  - (b) Provide the prospective party with information that the lawyer reasonably believes is sufficient for the party to make an informed decision about the material benefits and risks of a collaborative law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, such as litigation, mediation, arbitration, or expert evaluation, and other alternative dispute resolution options; and
  - (c) Advise the prospective party in writing:
    - (I) That after signing an agreement if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative matter, the collaborative law process terminates;
    - (II) That participation in a collaborative law process is voluntary and any party has the right to terminate unilaterally a collaborative law process with or without cause;
    - (III) That the collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter, except as authorized by section 13-24-109; and

(IV) Of the privileged nature of collaborative communications as reflected in this article 24.

**Source: L. 2021:** Entire article added, (SB 21-143), ch. 142, p. 795, § 1, effective January 1, 2022.

**13-24-115. Coercive or violent relationship.**

(1) Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall make reasonable inquiry into whether the prospective party has a history of a coercive or violent relationship with another prospective party.

(2) Throughout a collaborative law process, a collaborative lawyer reasonably and continuously shall assess whether the party the collaborative lawyer represents has a history of a coercive or violent relationship with another party.

(3) If a collaborative lawyer reasonably believes that the party the lawyer represents or the prospective party who consults the lawyer has a history of a coercive or violent relationship with another party or prospective party, the lawyer may not begin or continue a collaborative law process unless:

- (a) The party or the prospective party requests beginning or continuing a process; and
- (b) The collaborative lawyer reasonably believes that the safety of the party or prospective party can be protected adequately during a process.

**Source: L. 2021:** Entire article added, (SB 21-143), ch. 142, p. 795, § 1, effective January 1, 2022.

**13-24-116. Confidentiality of collaborative law communication.**

A collaborative law communication is confidential to the extent agreed by the parties in a signed record or as provided by law of this state and the provisions of this article 24. Nothing herein modifies the confidentiality provisions contained in part 3 of article 22 of this title 13.

**Source: L. 2021:** Entire article added, (SB 21-143), ch. 142, p. 796, § 1, effective January 1, 2022.

**13-24-117. Privilege against disclosure for collaborative law communication - admissibility - discovery.**

(1) Subject to sections 13-24-118 and 13-24-119, a collaborative law communication is privileged under subsection (2) of this section, is not subject to discovery, and is not admissible in evidence in any proceeding except as agreed by the parties and nonparty participants, if any, in a signed participation agreement or later agreement signed by both parties and nonparty participants, if any, and except as noted in this article 24.

(2) In a proceeding, the following privileges apply:

(a) A party may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication; and

(b) A nonparty participant or a collaborative law attorney may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication except as agreed by both parties and nonparty participants, if any, in writing.

(3) Evidence or information, including but not limited to disclosures made pursuant to rule 16.2 of the Colorado rules of civil procedure, as amended, that is otherwise admissible to a tribunal or subject to discovery does not become inadmissible or protected from discovery solely because of its disclosure or use in a collaborative law process.

**Source: L. 2021:** Entire article added, (SB 21-143), ch. 142, p. 796, § 1, effective January 1, 2022.

**13-24-118. Waiver and preclusion of privilege.**

(1) A privilege under section 13-24-117 may be waived in a record or orally during a proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant.

(2) A person that makes a disclosure or representation about a collaborative law communication which prejudices another person in a proceeding may not assert a privilege under section 13-24-117, but this preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

**Source: L. 2021:** Entire article added, (SB 21-143), ch. 142, p. 796, § 1, effective January 1, 2022.

**13-24-119. Limits of privilege.**

(1) There is no privilege under section 13-24-117 for a collaborative law communication that is:

- (a) Available to the public under article 72 of title 24;
- (b) A threat or statement of a plan to inflict bodily injury or commit a crime of violence or a threat to the safety of a child under eighteen years of age;
- (c) Intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity; or
- (d) In an agreement resulting from the collaborative law process, evidenced by a record signed by all parties to the agreement.

(2) The privileges under section 13-24-117 for a collaborative law communication do not apply to the extent that a communication is:

- (a) Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or related to a collaborative law process or matter; or
- (b) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult.

(3) If a collaborative law communication is subject to an exception under subsection (1) or (2) of this section, only the part of the communication necessary for the application of the exception may be disclosed or admitted.

(4) Disclosure or admission of evidence excepted from the privilege under subsection (1) or (2) of this section does not make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.

(5) The privileges under section 13-24-117 do not apply if the parties agree in advance in a signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative law process is not privileged. This subsection (5) does not apply to a collaborative law communication made by a person that did not receive actual notice of the agreement before the communication was made.

**Source: L. 2021:** Entire article added, (SB 21-143), ch. 142, p. 797, § 1, effective January 1, 2022.

**13-24-120. Authority of tribunal in case of noncompliance.**

(1) If an agreement fails to meet the requirements of section 13-24-104 or a lawyer fails to comply with section 13-24-114 or 13-24-115, a tribunal may nonetheless find that the parties intended to enter into a collaborative law participation agreement if they:

(a) Signed a record indicating an intention to enter into a collaborative law participation agreement; and

(b) Reasonably believed they were participating in a collaborative law process.

(2) If a tribunal makes the findings specified in subsection (1) of this section, and the interests of justice require, the tribunal may:

(a) Enforce an agreement evidenced by a record resulting from the process in which the parties participated;

(b) Apply the disqualification provisions of sections 13-24-105, 13-24-106, 13-24-109, and 13-24-111; and

(c) Apply a privilege under section 13-24-117.

**Source: L. 2021:** Entire article added, (SB 21-143), ch. 142, p. 797, § 1, effective January 1, 2022.

**13-24-121. Uniformity of application and construction.**

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**Source: L. 2021:** Entire article added, (SB 21-143), ch. 142, p. 798, § 1, effective January 1, 2022.

**13-24-122. Relation to electronic signatures in global and national commerce act.**

This article 24 modifies, limits, and supersedes the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. sec. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. sec. 7003(b).

**Source: L. 2021:** Entire article added, (SB 21-143), ch. 142, p. 798, § 1, effective January 1, 2022.

**13-24-123. Authority of supreme court.**

Nothing in this article 24 impinges upon the authority of the Colorado supreme court to regulate the conduct of attorneys in this state.

**Source: L. 2021:** Entire article added, (SB 21-143), ch. 142, p. 798, § 1, effective January 1, 2022.

**EVIDENCE**

**ARTICLE 25**

**Evidence - General Provisions**

|            |                                                          |            |                                      |
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|            |                                                          | 13-25-111. | Patents already recorded.            |
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|              |                                                                                             |            |                                                                                                     |
|--------------|---------------------------------------------------------------------------------------------|------------|-----------------------------------------------------------------------------------------------------|
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| 13-25-128.   | Rules of evidence - grant of authority subject to reservation.                              | 13-25-139. | Criminal action - interference with witness - forfeiture by wrongdoing.                             |
| 13-25-129.   | Statements of a child - hearsay exception.                                                  |            |                                                                                                     |
| 13-25-129.5. | Statements of persons with intellectual and developmental disabilities - hearsay exception. |            |                                                                                                     |
| 13-25-130.   | Criminal actions - use of photographs, video tapes, or films of property.                   |            |                                                                                                     |

### **13-25-101. Printed statutes - reports of decisions.**

The printed statute books of the United States and of the several states and territories, printed under the authority of such states and territories, and the books of reports of decisions of the supreme courts of the United States and of the several states and territories, published by authority of such courts, may be read as evidence in all courts of this state of such acts and decisions.

**Source:** R.S. p. 309, § 1. G.L. § 1078. G.S. § 1308. R.S. 08: § 2489. C.L. § 6535. CSA: C. 63, § 1. CRS 53: § 52-1-1. C.R.S. 1963: § 52-1-1.

**Cross references:** For use of statutes and books as evidence, see C.R.C.P. 44(e) and 264.

#### **ANNOTATION**

**Applied** in *Sego v. Mains*, 41 Colo. App. 1, 578 P.2d 1069 (1978).

### **13-25-102. United States census bureau mortality table as evidence.**

In all civil actions, special proceedings, or other modes of litigation in courts of justice or before magistrates or other persons having power and authority to receive evidence, when it is necessary to establish the expectancy of continued life of any person from any period of such person's life, whether he or she is living at the time or not, the most recent United States census bureau expectation of life and expected deaths by race, sex, and age table, as published by the United States census bureau from time to time, must be received as evidence, together with other evidence as to health, constitution, habits, and occupation of the person regarding the person's expectancy of continued life.

**Source:** L. 1893: p. 261, § 1. R.S. 08: § 2490. C.L. § 6536. CSA: C. 63, § 2. CRS 53: § 52-1-2. C.R.S. 1963: § 52-1-2. L. 91: Entire section amended, p. 358, § 16, effective April 9. L. 2014: Entire section amended, (SB 14-048), ch. 46, p. 222, § 1, effective August 6.

#### **ANNOTATION**

**Tables are admissible where personal injuries are alleged to be permanent.** Where in an action for personal injuries there is evidence that the disability complained of is permanent, the mortuary tables are admissible to establish the plaintiff's expectancy of life. *Rio Grande S. R. R. v. Nichols*, 52 Colo. 300, 123 P. 318 (1912).

**Under this section, a mortality table which has legislative recognition at any given time is evidence** to be considered with other pertinent matter as bearing upon the life expectancy of person whose rights are being adjudicated; such table does not fix the liability of an employer, and under certain circumstances might be wholly disregarded by the industrial commission. *Colo. Fuel & Iron Corp. v. Indus. Comm'n*, 148 Colo. 557, 367 P.2d 597 (1961).

**However, the tables are not conclusive,** but are to be considered in connection with other evidence as to the health, habits, and condition of the injured party. *Rio Grande S. R. R. v. Nichols*, 52 Colo. 300, 123 P. 318

(1912); *Riss & Co. v. Anderson*, 108 Colo. 78, 114 P.2d 278 (1941); *Colo. Fuel & Iron Corp. v. Indus. Comm'n*, 148 Colo. 557, 367 P.2d 597 (1961).

**Evidence as to the age, habits, and health of the absentee is admissible,** because bearing upon the probable duration of his life. The mortuary table prescribed by this section is admissible for the reason that it bears upon the probable duration of his life. *New York Life Ins. Co. v. Holck*, 59 Colo. 416, 151 P. 916 (1915).

In such cases the litigant may avail himself of the admissibility of the mortality tables or not, at his pleasure. *Gilligan v. Blakesley*, 93 Colo. 370, 26 P.2d 808 (1933).

In determining the life expectancy of a claimant, the industrial commission may use any recognized expectancy tables without their formal introduction by either party at the hearing. *Indus. Comm'n v. Big Six Coal Co.*, 72 Colo. 377, 211 P. 361 (1922) (decided prior to the abolition of the industrial commission in 1986).

### **13-25-103. Mortality table. (Repealed)**

**Source:** L. 1893: p. 261, § 2. R.S. 08: § 2491. C.L. § 6537. CSA: C. 63, § 3. CRS 53: § 52-1-3. L. 55: p. 371, § 1. L. 60: p. 138, § 1. C.R.S. 1963: § 52-1-3. L. 77: Entire section R&RE, p. 804, § 1, effective July 1. L. 86: Entire section R&RE, p. 691, § 1, effective July 1. L. 93: Entire section amended, p. 250, § 1, effective July 1. L. 2002: Entire section amended, p. 1354, § 1, effective July 1. L. 2014: Entire section repealed, (SB 14-048), ch. 46, p. 222, § 2, effective August 6.

### **13-25-104. Proof of handwriting.**

Comparison of a disputed writing, with any writing proved to the satisfaction of the court to be genuine, shall be permitted to be made by witnesses in all trials and proceedings, and the evidence of witnesses respecting the same may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute.

**Source: L. 1893:** p. 264, § 1. **R.S. 08:** § 2492. **C.L.** § 6538. **CSA:** C. 63, § 4. **CRS 53:** § 52-1-4. **C.R.S. 1963:** § 52-1-4.

### **ANNOTATION**

**An expert in handwriting may depose as to the authenticity of the handwriting in question,** though he acquires his knowledge of the writing of the person to whom it is ascribed merely by examination of specimens proven or admitted to be his genuine handwriting, such specimens being produced in court and the witness comparing them and stating his conclusions as to their similarity or dissimilarity. *Salazar v. Taylor*, 18 Colo. 538 (1893); *Ausmus v. People*, 47 Colo. 167, 107 P. 204 (1910).

**It is not necessary that an expert testify** as to the authenticity of the writing. If there is a genuine writing which may be used to compare the handwriting of the disputed writings, then such disputed writings are admissible into evidence. *Lewis v. People*, 174 Colo. 334, 483 P.2d 949 (1971).

**Anyone can identify handwriting by comparison.** The rule is that when a writing in issue is claimed on the one hand and denied upon the other to be the writing of a particular person, any other writing of that person's may be admitted in evidence for the mere purpose of comparison with the

writing in dispute, whether the latter is susceptible of or supported by direct proof or not; but before any such writing shall be admissible for such purpose, its genuineness must be found as a preliminary fact by the presiding judge, upon clear and undoubted evidence. *Wilson v. Scroggs*, 85 Colo. 537, 277 P. 784 (1929).

**Preliminary determination of genuineness of writing.** This section requires that before a disputed writing is admissible for comparison purposes, the court shall make a preliminary determination that the writing is genuine. In order for the court to make such a determination, the party offering the evidence must make a prima facie showing of genuineness based on clear and competent evidence. *People v. Taylor*, 197 Colo. 161, 591 P.2d 1017 (1979).

**For proof of extraneous writing as genuine,** see *Bradford v. People*, 22 Colo. 157, 43 P. 1013 (1896); *Brindisi v. People*, 76 Colo. 244, 230 P. 797 (1924).

**Something must connect the authors of the two writings.** Before such standards of comparison are admissible, there must be something to connect the author of them with the writing, the authenticity of which is in dispute. *Wilson v. Scroggs*, 85 Colo. 537, 277 P. 784 (1929).

**If shown to be authentic it is admissible as standard of comparison.** Where the genuineness of a signature is an issue, the court should allow all evidence which tends to establish the genuineness of a signature offered in evidence as a basis of comparison, and should then determine as a matter of law whether the authenticity of such signature has been established, and if this has been done to his satisfaction, then the proven signature should be admitted as a standard of comparison to be used by witnesses and jurors in determining the issue. *Wilson v. Scroggs*, 85 Colo. 537, 277 P. 784 (1929).

**Disputed signature need not be admitted to be genuine if comparison**

**shows it is.** In an action involving a disputed signature, it is not the law that before an alleged genuine signature may be admitted in evidence as a standard of comparison, it must be admitted to be genuine. If the evidence establishes the signature to be genuine to the satisfaction of the court, it is admissible. *Wilson v. Scroggs*, 85 Colo. 537, 277 P. 784 (1929).

**The words "the same" appearing in this section refer to "writing proved"** as well as to "disputed writing" and the words "and such writings" may well have been stricken from the original bill as superfluous. *Brindisi v. People*, 76 Colo. 244, 230 P. 797 (1924).

**This section is not applicable to a prosecution for forgery in a federal court.** *Withaup v. United States*, 127 F. 530 (8th Cir. 1903).

**Applied** in *People v. Todd*, 189 Colo. 117, 538 P.2d 433 (1975).

### **13-25-105. Certificate of register - patent.**

The official certificate of any register or receiver of any land office of the United States to any fact or matter on record in his office shall be received and held competent to prove the fact as certified. The certificate of any such register of the entry or purchase of any tract of land within his district shall be taken to be evidence of title in the party who made such entry or purchase, or his heirs and assigns; but a patent for land shall be considered a better legal and paramount title in the patentee, his heirs, or his assigns than such register's certificate of the entry and purchase of the same land.

**Source:** R.S. p. 309, § 3. G.L. § 1080. G.S. § 1310. R.S. 08: § 2494. C.L. § 6540. CSA: C. 63, § 6. CRS 53: § 52-1-6. C.R.S. 1963: § 52-1-6.

## ANNOTATION

**The statute was clearly intended to cover only facts and matters affirmatively appearing on record in the land office;** and it is too simple a proposition to admit of argument that it does not authorize receiving in evidence a certificate stating that a certain fact or matter does not appear on record. *Knoth v. Barclay*, 8 Colo. 300, 6 P. 924 (1885).

**Land entered as herein prescribed has always been held to be the subject of contract and sale,** and the receipt of the money and the issuance of the certificate have universally been held to be such a segregation of the land from the public domain as to entitle the party to his patent, and to warrant legal proceedings for the purposes of procuring it. *Godding v. Decker*, 3 Colo. App. 198, 32 P. 832 (1893).

**A purchase money receipt from land office is prima facie evidence.** A receipt for the purchase money of lands issued by the receiver of a land office of the United States is prima facie evidence of title to the lands therein described. *Carson v. Cudworth*, 26 Colo. App. 131, 140 P. 935 (1914).

**A record of a receiver's receipt constitutes recorded title** within the meaning of this section. *Dallemand v. Mannon*, 4 Colo. App. 262, 35 P. 679 (1894).

**A receiver's duplicate receipt** is by this section made evidence of title in the person making the entry or purchase of the land, and is entitled to be recorded. *Dallemand v. Mannon*, 4 Colo. App. 262, 35 P. 679 (1894).

**It has been held good as against a subsequent patent.** A receiver's receipt, regular in all respects, both as to its form and the antecedent acts of entryman leading up to it, has been held to be good as against a subsequent patent issued by the government. *Carson v. Cudworth*, 26 Colo. App. 131, 140 P. 935 (1914).

**A patent is conclusive evidence of compliance with federal statutes.** A patent for lands purchased of the United States relates to the entry, and is conclusive evidence of compliance by the entryman with all the requirements of the federal statutes. *Carson v. Cudworth*, 26 Colo. App. 131, 140 P. 935 (1914).

**A purchaser cannot complain that vendor has only a final receipt.** That the vendor holds only a final receipt, and not a patent for the land, is not a defect of which the purchaser can complain. *Godding v. Decker*, 3 Colo. App. 198, 32 P. 832 (1893).

### **13-25-106. Judicial notice of laws of other jurisdictions.**

(1) Every court of this state shall take judicial notice of the common law and statutes of every state, territory, and other jurisdiction of the United States.

(2) The court may inform itself of such laws in such manner as it may deem proper, and the court may call upon counsel to aid it in obtaining such information.

(3) The determination of such laws shall be made by the court and not by the jury and is reviewable.

(4) Any party may also present to the trial court any admissible evidence of such laws, but, to enable a party to offer evidence of the law in another jurisdiction or to ask that judicial notice be taken thereof, reasonable notice shall be given to the adverse parties either in the pleadings or otherwise.

(5) The law of a jurisdiction other than those referred to in subsection (1) of this section is an issue for the court but shall not be subject to the foregoing provisions concerning judicial notice.

(6) This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it and may be cited as the "Uniform Judicial Notice of Foreign Law Act".

**Source:** R.S. p. 310, § 4. G.L. § 1081. G.S. § 1311. R.S. 08: § 2495. C.L. § 6541. CSA: C. 63, § 7. CRS 53: § 52-1-7. L. 67: p. 989, § 1. C.R.S. 1963: § 52-1-7.

#### ANNOTATION

**Applied** in *People v. Swain*, 43 Colo. App. 343, 607 P.2d 396 (1979).

#### **13-25-107. Proceedings of cities and towns.**

Copies of all papers, books, or proceedings or parts thereof appertaining to transactions in their corporate capacity of any town or city incorporated under any general or special law of this state, certified to be true copies by the clerk or keeper of the same, under the seal of such town or city, or under the private seal of said clerk or keeper if there is no public seal, the clerk or keeper also certifying that he is entrusted with the safekeeping of the original, shall be received as prima facie evidence of the facts so certified in any court in this state.

**Source:** R.S. p. 311, § 7. G.L. § 1084. G.S. § 1314. R.S. 08: § 2496. C.L. § 6542. CSA: C. 63, § 8. CRS 53: § 52-1-8. C.R.S. 1963: § 52-1-8.

## ANNOTATION

**Applied** in *People v. Stribel*, 199 Colo. 377, 609 P.2d 113 (1980).

### **13-25-108. Evidence of assessment.**

In all actions in all courts of record, the original assessment, or a certified copy thereof purporting to be made by the corporate authorities of any municipality in this state, under a statute authorizing the same, which determines the cost and expense due from any piece of real estate, or from the owner thereof, because of the construction of any kind of local improvement in the taxing district wherein such property is located, or in front of, abutting upon, or adjacent to said realty within any such municipality shall be accepted and treated by such tribunals as prima facie evidence of the lawful existence, and due and proper performance of all preliminary steps essential to make such assessment a legal and valid assessment against the realty or owner thereof, or both, against whom it appears to be made.

**Source:** L. 1891: p. 192, § 1. R.S. 08: § 2497. C.L. § 6543. CSA: C. 63, § 9. CRS 53: § 52-1-9. C.R.S. 1963: § 52-1-9. L. 64: p. 266, § 158.

## ANNOTATION

**Law reviews.** For note, "Notes and Comments: What is a Life Worth?", see 34 Dicta 41 (1957).

### **13-25-109. Recording of patents to land.**

Any person to whom any patent to any land, whether agricultural or mineral, situate in this state, has been issued from the government of the United States may have same recorded in the office of the recorder of deeds of the county wherein such lands are situate upon presentation of the same at the proper office.

**Source:** L. 1872: p. 162, § 1. G.L. § 2145. G.S. § 1317. R.S. 08: § 2498. C.L. § 6544. CSA: C. 63, § 10. CRS 53: § 52-1-10. C.R.S. 1963: § 52-1-10.



### **13-25-110. Patent - copy of record.**

Any patent may be read in evidence in the first instance without further proof of its execution. Copy of the record of such patent is entitled to be read in evidence under such regulations as are provided for the admission of a copy of the record of deeds.

**Source:** L. 1872: p. 162, § 2. G.L. § 2146. G.S. § 1318. R.S. 08: § 2499. C.L. § 6545. CSA: C. 63, § 11. CRS 53: § 52-1-11. C.R.S. 1963: § 52-1-11.

### **13-25-111. Patents already recorded.**

The provisions of sections 13-25-109 and 13-25-110 apply to patents already recorded.

**Source:** L. 1872: p. 162, § 3. G.L. § 2147. G.S. § 1319. R.S. 08: § 2500. C.L. § 6546. CSA: C. 63, § 12. CRS 53: § 52-1-12. C.R.S. 1963: § 52-1-12.

### **13-25-112. Fees of recorder.**

The fees of the recorder of deeds for the record of such patents are the same as fixed for the record of deeds.

**Source:** L. 1872: p. 163, § 4. G.L. § 2148. G.S. § 1320. R.S. 08: § 2501. C.L. § 6547. CSA: C. 63, § 13. CRS 53: § 52-1-13. C.R.S. 1963: § 52-1-13. L. 73: p. 631, § 1.

**Cross references:** For fees of county clerks, see § 30-1-103.

### **13-25-113. Lost deed - bond - note - affidavit.**

When, in the progress of any suit in any court in this state, either party thereto relies for its maintenance or defense, in whole or in part, on any deed, bond, note, draft, bill of exchange, letter, or any other writing alleged to have been executed, signed, or written by the adverse party, and to have been lost or destroyed, the party so relying on the same as evidence in his behalf in the trial of the cause shall not be permitted to give evidence of the contents thereof by a

competent witness until said party or his agent or attorney first makes an oath to the loss or destruction thereof, and to the substance of the same.

**Source:** L. 1870: p. 73, § 1. G.L. § 1085. G.S. § 1321. R.S. 08: § 2502. C.L. § 6548. CSA: C. 63, § 14. CRS 53: § 52-1-14. C.R.S. 1963: § 52-1-14.

#### ANNOTATION

**Under this section the filing of a proper affidavit lays the foundation for the introduction of secondary evidence** as to the contents of a lost instrument; but where such secondary evidence is admitted, it must be clear and satisfactory as to the contents of the document involved, and if the proceeding is one for specific performance, the evidence must be strong and unequivocal. *Walker v. Drogmund*, 101 Colo. 521, 74 P.2d 1235 (1937).

**Affidavit must show original is unavailable.** The reception of secondary evidence of the contents of a writing in the absence of a showing that the original is unavailable is error. *Epple v. First Nat'l Bank*, 143 Colo. 319, 352 P.2d 796 (1960).

**Affidavit was not sufficient to comply with this section** where it was not based upon the affiant's personal knowledge of the existence of the document and his personal

knowledge that it was lost. *People v. Heckers*, 37 Colo. App. 166, 543 P.2d 1311 (1975).

**It need not be lost as long as affiant does not have power to produce.** This section does not require proof that the original deed has been lost. It is sufficient if affidavit be made that the original is not in the affiant's possession or power to produce. *Coleman v. Davis*, 13 Colo. 98, 21 P. 1018 (1889).

**The greater the value of the instrument, the more conclusive should be the proof of its existence** and contents. *People v. Heckers*, 37 Colo. App. 166, 543 P.2d 1311 (1975).

**Secondary evidence adduced to prove contents of lost instrument must be clear and convincing especially in criminal case.** *People v. Heckers*, 37 Colo. App. 166, 543 P.2d 1311 (1975).

#### **13-25-114. Certificate of publisher.**

When any notice or advertisement is required by law or order of court to be published in any newspaper, the certificate of the printer or publisher with a printed copy of such notice or advertisement annexed, stating the number of times which the same has been published and the dates of the first and last paper containing the same, shall be sufficient evidence of the

publication therein set forth. Such notices and certificates of the publication thereof, when so certified, shall be a part of the records of the court.

**Source:** R.S. p. 45, §§ 1, 2. G.L. §§ 6, 7. G.S. §§ 1315, 1316. R.S. 08: §§ 2503, 2504. C.L. §§ 6549, 6550. CSA: C. 63, §§ 15, 16. CRS 53: § 52-1-15. C.R.S. 1963: § 52-1-15.

**Cross references:** For legal notices and advertisements, see article 70 of title 24 and C.R.C.P. 4(g) and (h).

### **13-25-115. Certificate of head officer.**

Where a subpoena is issued to a state agency of an executive department seeking an appearance in any court of record, and the evidence sought is proof of the absence of a public record or entry, or the foundation for or the authenticity of the documents which are otherwise admissible pursuant to the Colorado rules of evidence, such subpoena may be complied with by the submission of the documents under the official certificate of the head officer, or acting head officer, or official custodian acting under the authority of the head officer of any executive department of the government of the state of Colorado, as provided for in this section, without an appearance by the personnel of such agency. Nothing in this section shall be construed to restrict the right of any party to any legal proceeding to subpoena a state employee to testify to matters going beyond the foundation or authenticity of the records of the executive department.

**Source:** L. 11: p. 231, § 1. C.L. § 6551. CSA: C. 63, § 17. CRS 53: § 52-1-16. C.R.S. 1963: § 52-1-16. L. 91: Entire section amended, p. 374, § 1, effective April 19.

### **ANNOTATION**

**This section concerns the authentication of official state documents and not the competency or relevance of the documents themselves.** Liber v. Flor, 160 Colo. 7, 415 P.2d 332 (1966); Orth v. Bauer, 163 Colo. 136, 429 P.2d 279 (1967).

**The word "fact" refers to facts within the knowledge of the reporting officer or**

agent and cannot refer to hearsay statements or conclusions of others, such as those sought to be admitted here. Orth v. Bauer, 163 Colo. 136, 429 P.2d 279 (1967).

**It is a codification of the hearsay exception for official records.** The section is not specific in requiring the admission of findings, adjudications, and conclusions,

and, thus, it is nothing more than a codification of the common-law exception to the hearsay rule in favor of official records. *Orth v. Bauer*, 163 Colo. 136, 429 P.2d 279 (1967).

**The records themselves cannot contain hearsay.** The section does not authorize the reception in evidence of every report of an investigation regardless of its hearsay character and of whether it contains conclusions and adjudications. *Orth v. Bauer*, 163 Colo. 136, 429 P.2d 279 (1967).

**Where the officer was not present, and the defendant was not given the opportunity to cross-examine him,** the

entire report was properly excluded. "Official documents" to be admissible in evidence must first be tested by common-law principles of testimonial competency. The mere writing down of hearsay does not remove the bar to its admission. *Orth v. Bauer*, 163 Colo. 136, 429 P.2d 279 (1967).

**The court has invariably noticed the documents evidencing action of the general assembly,** subscribed by the proper officials, and found in the office of the secretary of state. They are accepted as prima facie evidence of the law, and whoever asserts the contrary has the burden of proof. *Harrison v. People ex rel. Whatley*, 57 Colo. 137, 140 P. 203 (1914).

### **13-25-116. Water officials' records.**

In all civil actions, special proceedings, or other modes of litigation before a water judge or referee having power to receive evidence, all records, reports, tables, and other documents of division engineers and water commissioners of the state of Colorado and all records, streamflow tables, rating curves, automatic water register sheets, and special reports of the state engineer and his deputies, hydrographers, and employees, and of the division engineers of the several divisions, and all records of canal headgate keepers, reservoir outlet keepers, gauge readers, and other systematically compiled records or reports of diversions, storage, and discharge of waters or of the flows of streams on file in or constituting a part of the records and files of the state engineer of the state of Colorado, and all copies duly certified as correct by the state engineer or his deputy shall be admitted as evidence of the facts contained therein.

**Source: L. 21:** p. 309, § 1. **C.L.** § 6552. **CSA:** C. 63, § 18. **CRS 53:** § 52-1-17. **C.R.S. 1963:** § 52-1-17.

### **ANNOTATION**

**Water commissioners' reports will be assumed by an appellate court to be properly verified.** Where portions of water

commissioners' reports are admitted in evidence, it will be assumed on review, in the absence of evidence to the contrary, that

they were properly verified where such verification is required by statute. *Commonwealth Irrigation Co. v. Rio Grande Canal Water Users Ass'n*, 96 Colo. 478, 45 P.2d 622 (1935).

**An objection to their admissibility cannot first be made on appeal.** A party may not successfully urge an objection to the admission in evidence of water commissioners' reports on the ground that they were not sworn to, where the question is raised for the first time in the reviewing court. *Commonwealth Irrigation Co. v. Rio*

*Grande Canal Water Users Ass'n*, 96 Colo. 478, 45 P. 2d 622 (1935).

**The water court did not abuse its discretion when it admitted the state's water records into evidence** despite fact the state failed to furnish copies to the owner of the water rights within time specified in the pretrial order, when reason for the delay was explained, the exhibit was matter of public record, and additional time to respond was given. *Masters Inv. Co. v. Irrigationists Ass'n*, 702 P.2d 268 (Colo. 1985).

### **13-25-117. Parties plaintiff.**

In trials of actions upon contracts, expressed or implied, where the action is brought by partners or by joint payees or obligees, it shall not be necessary for the plaintiff, in order to maintain any such action, to prove the partnership of the individuals named in such action or to prove the first names or surnames of such partners or of joint payees or obligees, but the names of the partners or joint payees or obligees shall be presumed to be truly set forth in the declaration, petition, or bill. Nothing in this section shall prevent the defendant from pleading in abatement or proving on the trial that more persons should have been made plaintiffs, or that more persons have been made plaintiffs than have the legal right to sue, in which event the defendant's right shall be as at common law.

**Source:** R.S. p. 310, § 5. G.L. § 1082. G.S. § 1312. R.S. 08: § 2505. C.L. § 6553. CSA: C. 63, § 19. CRS 53: § 52-1-18. C.R.S. 1963: § 52-1-18. L. 73: p. 612, § 1.

### **13-25-118. Joint defendants.**

In actions upon express contracts against two or more defendants alleged to have been made or executed by such defendants as partners or joint obligors or payors, proof of the joint liability or partnership of the defendants, or their first names or surnames, shall not in the first instance be required to entitle the plaintiff to judgment, unless such proof is rendered necessary by the filing of pleas denying the execution of such writing, verified by affidavit as required by law.

**Source:** R.S. p. 310, § 6. G.L. § 1083. G.S. § 1313. R.S. 08: § 2506. C.L. § 6554. CSA: C. 63, § 20. CRS 53: § 52-1-19. C.R.S. 1963: § 52-1-19. L. 73: p. 612, § 2.

**Cross references:** For joint and several obligations, see article 50 of this title; for pleading special matters, see C.R.C.P. 9.

#### ANNOTATION

**Joint liability as partners need not be proved unless denied.** Under this section a plaintiff is not required to prove the joint liability of defendants sued as partners, unless the execution of the instrument sued on is denied by plea verified by affidavit. *Litchfield v. Daniels*, 1 Colo. 268 (1871).

against two persons as partners to recover damages for failure to deliver stock pursuant to a contract which was not in writing, the general issue by one of the defendants, without oath, operates to deny the partnership. *Rogers v. Nuckolls*, 2 Colo. 281 (1874).

**Denial of partnership may be made by general issue, without oath.** In *assumpsit*

#### **13-25-119. Dying declarations.**

(1) The dying declarations of a deceased person are admissible in evidence in all civil and criminal trials and other proceedings before courts, commissions, and other tribunals to the same extent and for the same purposes that they might have been admissible had the deceased survived and been sworn as a witness in the proceedings, under the following restrictions. To render the declarations of the deceased competent evidence, it must be satisfactorily proved:

(a) That at the time of the making of such declaration he was conscious of approaching death and believed there was no hope of recovery;

(b) That such declaration was voluntarily made, and not through the persuasion of any person;

(c) That such declaration was not made in answer to interrogatories calculated to lead the deceased to make any particular statement;

(d) That he was of sound mind at the time of making the declaration.

**Source:** L. 37: p. 557, § 1. CSA: C. 63, § 21. CRS 53: § 52-1-20. C.R.S. 1963: § 52-1-20.

## ANNOTATION

**Law reviews.** For article, "A Voice from the Grave: Dying Declarations in Colorado", see 15 Dicta 127 (1938). For article, "Dying Declarations", see 16 Dicta 379 (1939). For note, "Dying Declarations in Colorado", see 21 Rocky Mt. L. Rev. 106 (1948). For article, "Hearsay in Criminal Cases Under The Colorado Rules of Evidence: An Overview", see 50 U. Colo. L. Rev. 277 (1979).

**This section is not unconstitutional on its face.** Dying declarations are not subject to the confrontation clause, and, therefore, not subject to Crawford v. Washington, 541 U.S. 36 (2004). People v. Cockrell, 2017 COA 125, 488 P.3d 278.

**It is admission of declarations resulting from persuasion or leading questions that this section seeks to prohibit.** People v. Mackey, 185 Colo. 24, 521 P.2d 910 (1974).

**Fact that declaration was in response to question does not violate either subsection (1)(b) or (1)(c) of this section.** People v. Mackey, 185 Colo. 24, 521 P.2d 910 (1974).

**A voluntary statement, as laid out in subsection (1)(b), is not synonymous with spontaneous.** People v. Cockrell, 2017 COA 125, 488 P.3d 278.

Victim's statements, though made in response to repeated questioning, were voluntarily made. People v. Cockrell, 2017 COA 125, 488 P.3d 278.

**Declarant need not declare that he has sense of impending death.** To make a dying

declaration admissible in evidence it is not necessary that the declarant should have stated that at the time it was made under a sense of impending death. It is enough if it satisfactorily appears, in any mode, that they were made under that sanction; whether it be directly proved by the express language of the declarant, or be inferred from his evident danger. Dolan v. People, 168 Colo. 19, 449 P.2d 828 (1969).

**Deceased motorist's statement, in regard to collision, admitted** under this section where all the essential elements of a dying declaration under this section were positively established. Barsch v. Hammond, 110 Colo. 441, 135 P.2d 519 (1943).

**Statements made two months prior to death admissible.** Where a victim of homicide caused by an abortion made statements two months before her death as to who performed the unlawful operation, knowing at the time that death was inevitable, such statements would be admissible under this section. Ferguson v. People, 118 Colo. 54, 192 P.2d 523 (1948).

**In an abortion case where deceased was not conscious of approaching death,** and where it was not a voluntary statement, but was made through persuasion by her physician in order to obtain a history of her case, her statement did not satisfy the requirements of this section so as to make it admissible. Polly v. People, 107 Colo. 6, 108 P.2d 220 (1940).

**Judge passes on admissibility.** The rule as to determination of the sufficiency of the foundation proof which will allow dying declarations to be admitted into evidence is that the judge is to pass on the preliminary conditions necessary to the admissibility. *People v. Mackey*, 185 Colo. 24, 521 P.2d 910 (1974).

**After dying declaration has been admitted, the weight to be given to it is matter exclusively for jury.** *People v. Mackey*, 185 Colo. 24, 521 P.2d 910 (1974).

**Applied** in *People v. Howard*, 198 Colo. 317, 599 P.2d 899 (1979); *People v. Lagunas*, 710 P.2d 1145 (Colo. App. 1985).

### **13-25-120. Corporate resolutions and minutes.**

(1) A certified copy of a resolution purportedly adopted by a meeting of the board of directors, or by a meeting of the stockholders of a corporation, or of the minutes or of a portion of the minutes of a meeting of the board of directors or stockholders of a corporation, when the same purports to be certified by an officer of such corporation and purports to have the seal of such corporation affixed to such certification, shall be admissible in evidence as prima facie evidence of the adoption of such resolution or as prima facie evidence of the truth of the statements or recitals contained in such minutes or portion of such minutes insofar as the same may affect the title to real estate, and it shall not be necessary to prove any facts as the foundation for the admission of the same in evidence. If any such certified copy has been filed for record in the office of the county clerk and recorder of the county where the real estate affected thereby is situate, the record thereof in the office of said clerk and recorder, or a certified copy of such record certified by the county clerk and recorder, shall be admissible in evidence in the same manner as the certified copy itself.

(2) The word "corporation" as used in this section shall include both foreign and domestic corporations. The words "board of directors" as used in this section shall include both a board of directors and any other board or body of a corporation which has powers and duties similar to those exercised by a board of directors. The word "stockholders" as used in this section shall include both stockholders and members of corporations.

(3) The provisions of this section apply to certified copies of resolutions adopted prior to April 16, 1941, as well as those adopted after such date, and to certified copies of minutes of meetings or portions of minutes of meetings held prior to April 16, 1941, as well as those held after such date, and to certified copies which were certified prior to April 16, 1941, as well as those which were certified after such date.

**Source: L. 41: p. 354, § 1. CSA: C. 63, § 22. CRS 53: § 52-1-21. C.R.S. 1963: § 52-1-21.**



## ANNOTATION

**Law reviews.** For article, "Curative Statutes of Colorado Respecting Titles to Real Estate", see 26 Dicta 281 (1949).

### **13-25-121. Reports of death.**

A written finding of actual death, made by the secretary of the Army, the secretary of the Navy, or other officer or employee of the United States authorized to make such finding pursuant to the federal missing persons act (50 U.S.C. app. supp. 1001-17), as now or hereafter amended, or a duly certified copy of such finding may be received in any court, office, or other place in this state as evidence of the death of the person therein found to be dead in place of and with like effect as a state certificate of death. A written finding by such federal officer or employee of presumed death because missing in action or a duly certified copy of such finding after one year from the cessation of war in that theater of war where missing may be received in any court, office, or other place in this state as evidence of the death of the person therein found presumed dead and the date, circumstances, and place of disappearance.

**Source: L. 45:** p. 326, § 1. **CSA:** C. 63, § 23. **CRS 53:** § 52-1-22. **C.R.S. 1963:** § 52-1-22.

### **13-25-122. Person missing, interned, or captured.**

An official written report or record, or duly certified copy thereof, that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is alive made by any officer or employee of the United States authorized by the act referred to in section 13-25-121, or by any other law of the United States to make the same, may be received in any court, office, or other place in this state as evidence that such person was, on the date of the certificate, missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or was dead, or was alive, as the case may be.

**Source: L. 45:** p. 326, § 2. **CSA:** C. 63, § 23. **CRS 53:** § 52-1-23. **C.R.S. 1963:** § 52-1-23.

### **13-25-123. Report deemed pursuant to law.**

For purposes of sections 13-25-121 and 13-25-122, any finding, report, or record, or duly certified copy thereof, purporting to have been signed by an officer or employee of the United States as described in sections 13-25-121 and 13-25-122 shall prima facie be deemed to have been signed and issued by such officer or employee pursuant to law, and the person signing same shall prima facie be deemed to have acted within the scope of his authority. If a copy purports to have been certified by a person authorized by law to certify the same, that certified copy shall be prima facie evidence of his authority to so certify.

**Source:** L. 45: p. 327, § 3. CSA: C. 63, § 23. CRS 53: § 52-1-24. C.R.S. 1963: § 52-1-24.

### **13-25-124. Libel and slander - how pleaded.**

In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose. It shall be sufficient to state generally that the same was published or spoken concerning the plaintiff; and, if such allegation is controverted, the plaintiff shall establish on the trial that it was so published or spoken.

**Source:** L. 1887: p. 114, § 68. Code 08: § 74. Code 21: § 74. Code 35: § 74. CRS 53: § 52-1-25. C.R.S. 1963: § 52-1-25.

## **ANNOTATION**

**Law reviews.** For article, "The Law of Libel in Colorado", see 28 Dicta 121 (1951). For article, "Emotional Distress, The First Amendment, and 'This kind of speech': A Heretical Perspective on Hustler Magazine v. Falwell", see 50 U. Colo. L. Rev. 315 (1989).

**Annotator's note.** For statements by officers within scope of duties as an absolute privilege, see Barr v. Matteo, 360 U.S. 564 (1959) and Howard v. Lyons, 360 U.S. 593 (1959).

**Identity of party who committed libel may be generally pleaded.** It has been held under a similar statute that even where the person against whom the libelous charge is made is so ambiguously described that, without the aid of extrinsic facts, his identity cannot be ascertained, it is sufficient to state generally that it was published concerning the plaintiff and that the averments and colloquium which were formerly necessary to connect the libel with the plaintiff may be

dispensed with. *Craig v. Pueblo Press Publ'g Co.*, 5 Colo. App. 208, 37 P. 945 (1894).

**It is proper for the injured party to plead that the defamatory words were spoken by the master, although in fact they were uttered by his employee.** In such a situation the acts of the servant are the acts of the master, where the defamatory words were spoken or published by the authority or with the consent of the latter. *Kendall v. Lively*, 94 Colo. 483, 31 P.2d 343 (1934).

**Evidence of pecuniary loss is unnecessary** to a right of action for a libelous charge of attempt to commit murder. *Republican Publ'g Co. v. Miner*, 12 Colo. 77, 20 P. 345 (1888).

**Effect of retraction demand.** Whether a demand to the publisher for retraction of an

allegedly false statement should be a condition precedent to the commencement of an action for libel is more properly within the legislative ambit than the subject of initial judicial purview. *Walker v. Colo. Springs Sun, Inc.*, 188 Colo. 86, 538 P.2d 450 (1975), overruled on other grounds, *Diversified Mgmt., Inc. v. Denver Post, Inc.*, 653 P.2d 1103 (Colo. 1982).

**Certain foreseeable "self-publication" can impose responsibility for publication on an originator**, when the originator of the defamatory statement has reason to believe that the person defamed will be under a strong compulsion to disclose the contents of the defamatory statement to a third party. *Churchey v. Adolph Coors Co.*, 759 P.2d 1336 (Colo. 1988) (decided prior to enactment of § 13-25-125.5).

### **13-25-125. Justification - pleaded and proved.**

In an action for libel or slander, the defendant, in his answer, may allege both the truth of the matter charged as defamatory and any mitigating circumstances to reduce the amount of damages; and, whether he proves the justification or not, he may give in evidence the mitigating circumstances.

**Source: L. 1887:** p. 114, § 69. **Code 08:** § 75. **Code 21:** § 75. **Code 35:** § 75. **CRS 53:** § 52-1-26. **C.R.S. 1963:** § 52-1-26.

## **ANNOTATION**

### **I. General Consideration.**

### **III. Mitigation of Damages.**

### **I. GENERAL CONSIDERATION.**

**Law reviews.** For article, "The Law of Libel in Colorado", see 28 Dicta 121 (1951). For article, "Emotional Distress, The First Amendment, and 'This kind of speech': A

Heretical Perspective on Hustler Magazine v. Falwell", see 50 U. Colo. L. Rev. 315 (1989).

## II. DEFENSES.

A. Truth.

B. Qualified Privilege.

A. Truth.

**Truth of published matter, established by evidence, is a complete justification and defense.** Republican Publ'g Co. v. Mosman, 15 Colo. 399, 24 P. 1051 (1890); Gomba v. McLaughlin, 180 Colo. 232, 504 P.2d 337 (1972).

**The truth of the charge must be shown.** Where the publication is not privileged, the rule is that where the libelous article is published as being alleged in the complaint, it is not sufficient as a defense to show that it was thus alleged, but the truth of the charge must be shown. Republican Publ'g Co. v. Miner, 3 Colo. App. 568, 34 P. 485 (1893).

**He only must justify that the gist of the matter is true.** A defendant asserting truth as a defense in a libel action is not required to justify every word of the alleged defamatory matter; it is sufficient if the substance, the gist, the sting, of the matter is true. Gomba v. McLaughlin, 180 Colo. 232, 504 P.2d 337 (1972).

**Question to be decided is whether there is substantial difference between truth and libelous statement.** Where the defendant asserts truth as a defense in a libel suit, the question, a factual one, is whether there is a substantial difference between the

allegedly libelous statement and the truth; or stated differently whether the statement produces a different effect upon the reader than that which would be produced by the literal truth of the matter. Gomba v. McLaughlin, 180 Colo. 232, 504 P.2d 337 (1972).

**The defendant may plead the truth of the alleged libel without admitting the publication.** Daniels v. Stock, 21 Colo. App. 651, 126 P. 281 (1912).

**Even where libel is per se.** Evidence of the truth of any allegedly libelous statement is admissible, even where the libel is per se, or where the publication is admittedly false. Gomba v. McLaughlin, 180 Colo. 232, 504 P.2d 337 (1972).

**Defamatory statement of public concern libelous only if knowingly false.** When a defamatory statement has been published concerning one who is not a public official or a public figure, but the matter involved is of public or general concern, the publisher of the statement will be liable to the person defamed if, and only if, he knew the statement to be false or made the statement with reckless disregard for whether it was true or not. Walker v. Colo. Springs Sun, Inc., 188 Colo. 86, 538 P.2d 450 (1975), overruled on other grounds, Diversified Mgmt., Inc. v. Denver Post, Inc., 653 P.2d 1103 (Colo. 1982).

**For definition of "reckless disregard",** see Diversified Mgmt., Inc. v. Denver Post, Inc., 653 P.2d 1103 (Colo. 1982).

**Publisher can assume the truth of facts contained in his reporters' stories but this**

rule cannot apply to the publication of letters to the editor selected for publication in the paper by the publisher. *Walker v. Colo. Springs Sun, Inc.*, 188 Colo. 86, 538 P.2d 450 (1975), overruled on other grounds, *Diversified Mgmt., Inc. v. Denver Post, Inc.*, 653 P.2d 1103 (Colo. 1982).

**There can be no libel by innuendo of a public figure** if the allegedly libelous statements are true. *Pietrafesa v. D.P.I., Inc.*, 757 P.2d 1113 (Colo. App. 1988).

**Question of truth is jury question.** One who is alleged to have defamed another has a constitutional and statutory right to assert the truth of the defamatory statement and to have a jury decide such a defense. *Churchey v. Adolph Coors Co.*, 759 P.2d 1336 (Colo. 1988).

#### B. Qualified Privilege.

**Qualified privilege is an affirmative defense to be pleaded by defendant.** *Radovich v. Douglas*, 84 Colo. 149, 268 P. 575 (1928); *Morley v. Post Printing & Publ'g Co.*, 84 Colo. 41, 268 P. 540 (1928).

**The defense of qualified privilege is precluded where it is not pleaded,** and facts alleged in the complaint, upon which it might be based, are denied. *Radovich v. Douglas*, 84 Colo. 149, 268 P. 575 (1928).

**This defense may be pleaded without admitting the publication.** *Daniels v. Stock*, 21 Colo. App. 651, 126 P. 281 (1912).

**Defense of privilege is destroyed if plaintiff proves actual malice.** It is the law that the condition that makes a published

communication privileged is that it be not made maliciously. In such a case the law does not imply malice from the publication itself, but casts upon the plaintiff the burden of alleging and proving actual malice; but if he does this, the defense of privilege is destroyed. *Morley v. Post Printing & Publ'g Co.*, 84 Colo. 41, 268 P. 540 (1928).

**If the complaint sufficiently pleads facts showing that the publication is privileged,** then it is not necessary that defendant affirmatively plead that defense. *Radovich v. Douglas*, 84 Colo. 149, 268 P. 575 (1928).

**This point is raised by demurrer.** Where it appears from the allegations of the complaint that the publication sued upon is privileged, a demurrer is the proper method of raising the point. *Morley v. Post Printing & Publ'g Co.*, 84 Colo. 41, 268 P. 540 (1928).

**Balancing test is used to determine when a qualified privilege should protect a communication.** It is a question of law requiring the court to balance the interests protected by a privilege and the interests served by allowing a defamation action. *Churchey v. Adolph Coors Co.*, 759 P.2d 1336 (Colo. 1988).

**National labor policy does not require unqualified privilege** be given employer in a defamation action based upon statements made in a grievance proceeding. *Thompson v. Pub. Serv. Co. of Colo.*, 800 P.2d 1299 (Colo. 1990).

A state law defamation action based upon statements made in a grievance or

disciplinary proceeding may go forward when a qualified privilege for such statements is recognized. *Thompson v. Pub. Serv. Co. of Colo.*, 800 P.2d 1299 (Colo. 1990).

### **III. MITIGATION OF DAMAGES.**

**Defendant may rely upon mitigating circumstances to reduce the damages**, though pleaded in bar of the action. *Rocky Mt. News Printing Co. v. Fridborn*, 46 Colo. 440, 104 P. 956 (1909).

**Even if publication was in fact false.** *Republican Publ'g Co. v. Mosman*, 15 Colo. 399, 24 P. 1051 (1890).

**The mitigating circumstances are limited to those tending to show a mitigation of the injury inflicted** — a mitigation of the damages naturally flowing therefrom. *Republican Publ'g Co. v. Miner*, 12 Colo. 77, 20 P. 345 (1888).

**Such as retraction by defendant.** Thus, the circumstances showing the acts and conduct of the party inflicting injury by libel or slander in retracting or explaining the matter published, or anything else tending to lessen or to remove the injury or in any way to restore the injured party to the esteem previously enjoyed, are admissible in mitigation. *Republican Publ'g Co. v. Miner*, 12 Colo. 77, 20 P. 345 (1888).

**Rumors and reports prior to publication are admissible.** Giving our statute a liberal construction, and especially considering how the pleadings in this action are framed, we are of the opinion that common reports and rumors, to the same effect as the defamatory publication

complained of, if circulated before such publication and without the agency of the defendant, were proper to be admitted in evidence, and should have been submitted to the jury by an appropriate and well-guarded instruction, not in any sense as a justification of the publication, but as matter tending in some degree, perhaps, to show that the plaintiff had suffered less damages than he might otherwise have sustained by reason of the publication. *Republican Publ'g Co. v. Mosman*, 15 Colo. 399, 24 P. 1051 (1890).

**While good faith is not a defense, it may be pleaded in mitigation of damages.** *Rocky Mt. News Printing Co. v. Fridborn*, 46 Colo. 440, 104 P. 956 (1909).

**It has been held that a defendant newspaper may plead that it merely copied** the libelous article from another paper. *Rocky Mt. News Printing Co. v. Fridborn*, 46 Colo. 440, 104 P. 956 (1909).

**The denial of malice does not constitute a good plea in mitigation of damages;** it sets forth no allegation of facts as required by our code and held by all the authorities necessary in order to make up such an issue. *Meeker v. Post Printing & Publ'g Co.*, 55 Colo. 355, 135 P. 457 (1913).

**The mitigating circumstances are new matter to be pleaded in the answer.** Under code provisions like ours, it is held that justification and mitigating circumstances are new matter to be pleaded in the answer. *Meeker v. Post Printing & Publ'g Co.*, 55 Colo. 355, 135 P. 457 (1913).

**Pleading should state the facts relied upon.** The general rule is in specially

pleading mitigating circumstances that the answer should state the facts on which the mitigation is predicated. *Meeker v. Post*

*Printing & Publ'g Co.*, 55 Colo. 355, 135 P. 457 (1913).

### **13-25-125.5. Libel and slander - self-publication.**

No action for libel or slander may be brought or maintained unless the party charged with such defamation has published, either orally or in writing, the defamatory statement to a person other than the person making the allegation of libel or slander. Self-publication, either orally or in writing, of the defamatory statement to a third person by the person making such allegation shall not give rise to a claim for libel or slander against the person who originally communicated the defamatory statement.

**Source: L. 89:** Entire section added, p. 759, § 1, effective April 8.

### **ANNOTATION**

**Law reviews.** For article, "The Legality of Generative AI -- Part 2", see 52 Colo. Law. 30 (Sept. 2023).

**Certain foreseeable "self-publication" can impose responsibility for publication on an originator**, when the originator of the defamatory statement has reason to believe that the person defamed will be under a strong compulsion to disclose the contents

of the defamatory statement to a third party. *Churchey v. Adolph Coors Co.*, 759 P.2d 1336 (Colo. 1988) (decided prior to enactment of this section).

**Summary judgment proper where evidence of defendant's involvement in publication not sufficient.** *Card v. Blakeslee*, 937 P.2d 846 (Colo. App. 1996).

### **13-25-126. Genetic tests to determine parentage.**

(1) (a) (I) In any action, suit, or proceeding in which the parentage of a child is at issue, including but not limited to actions or proceedings pursuant to section 14-10-122 (6) or 19-4-107.3, C.R.S., upon motion of the court or any of the interested parties, the court shall order the alleged mother, the child or children, and the alleged father to submit to genetic testing and other appropriate testing of inherited characteristics, including but not limited to blood and tissue type, for the purpose of determining probability of parentage. If a party refuses to submit to these tests, the court may resolve the question of parentage against the party to enforce its order if the rights of others and the interests of justice so require.

(II) A court, pursuant to this section, or delegate child support enforcement unit pursuant to section 26-13.5-105, C.R.S., shall not order genetic testing of a child whose parentage has previously been determined by or pursuant to the law of another state, but a court may stay a support proceeding for such reasonable time as determined by the court to allow the party asserting the defense to pursue the nonparentage claim in the other state.

(b) The tests shall be conducted by a laboratory approved by an accreditation body designated by the secretary of the federal department of health and human services, utilizing any genetic test of a type generally acknowledged as reliable by such accreditation body. Costs of any such expert witness for the first test administered shall be fixed at a reasonable amount and shall be paid as the court orders. If the results of the tests or the expert analysis of inherited characteristics are disputed by any party, the court shall order that an additional test be made by the same or another laboratory at the expense of the party disputing the test results or analysis.

(c) Documentation from the testing laboratory of the following information is sufficient to establish a reliable chain of custody that makes the results of genetic testing admissible without testimony:

- (I) The names and photographs of the individuals from whom specimens have been taken;
- (II) The names of the individuals who collected the specimens;
- (III) The places at which and dates on which the specimens were collected;
- (IV) The names of the individuals who received the specimens in the testing laboratory; and
- (V) The dates the specimens were received.

(d) A specimen used in genetic testing may consist of one or more samples or a combination of samples, of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.

(e) Specimens and reports are confidential. An individual who intentionally releases an identifiable specimen of another individual for any purpose other than that relevant to the proceeding regarding parentage without a court order or the written permission of the individual who furnished the specimen commits a class 2 misdemeanor and, upon conviction, shall be punished as provided in section 18-1.3-501 (1).

(f) A report of genetic testing must be in a record, defined in section 19-1-103, and signed under penalty of perjury by a designee of the testing laboratory. A report made pursuant to the requirements of this article 25 is self-authenticating.

(g) Under this section, a man is presumed to be the father of a child if the genetic testing complies with the requirements of this section and the results disclose that the man is not excluded and that the man has at least a ninety-seven percent probability of paternity.



(h) A man presumed to be the father of the child pursuant to paragraph (g) of this subsection (1) may rebut the genetic testing results only by other genetic testing that satisfies the requirements of this section and that:

(I) Excludes the man as the genetic father of the child; or

(II) Identifies another man as the father of the child.

(i) The presumption of parentage of a child born during a marriage may be overcome, as provided in section 19-4-105 (2)(a), if the court finds that the conclusion of the experts conducting the tests, as disclosed by the evidence based upon the tests, shows that one of the spouses is not the parent of the child.

(2) Any objection to genetic testing results shall be made in writing not less than fifteen days before the first scheduled hearing at which the results may be introduced into evidence or fifteen days after motion for summary judgment is served on such person; except that a person shall object to the genetic testing results not less than twenty-four hours prior to the first scheduled hearing if such person did not receive the results fifteen or more days before such hearing. The test results shall be admissible as evidence of paternity in an action filed pursuant to article 10 of title 14, C.R.S., article 4 of title 19, C.R.S., or article 13.5 of title 26, C.R.S., without the need for foundation testimony or other proof of authenticity or accuracy.

(3) For good cause shown, the court may order genetic testing of a deceased individual.

(4) The court may order genetic testing of a brother of a man presumed to be the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the genetic father of the child. If genetic testing excludes none of the brothers as the genetic father, and each brother satisfies the requirements as the presumed father of the child under section 19-4-105, C.R.S., without consideration of another identical brother being presumed to be the father of the child, the court may rely on nongenetic evidence to adjudicate which brother is the father of the child.

**Source:** L. 57: p. 366, § 1. CRS 53: § 52-1-27. C.R.S. 1963: § 52-1-27. L. 67: p. 262, § 46. L. 77: (1)(a) amended, p. 1018, § 2, effective July 1. L. 78: (1)(a), (1)(c)(I), (1)(c)(III), and (1)(c)(IV) amended, p. 262, § 46, effective May 23. L. 83: Entire section R&RE, p. 627, § 1, effective May 26. L. 91: Entire section amended, p. 247, § 1, effective July 1. L. 94: (2) added, p. 1535, § 1, effective July 1. L. 97: (1)(b) and (2) amended, p. 1263, § 4, effective July 1. L. 2003: Entire section amended, p. 1238, § 1, effective July 1. L. 2008: (1)(a) amended, p. 1657, § 4, effective August 15. L. 2011: (1)(a) amended, (SB 11-123), ch. 46, p. 118, § 1, effective August 10. L. 2018: (1)(i) amended, (SB 18-095), ch. 96, p. 753, § 4, effective August 8. L. 2021: (1)(f) amended, (SB 21-059), ch. 136, p. 711, § 16, effective October 1; (1)(e) amended, (SB 21-271), ch. 462, p. 3158, § 156, effective March 1, 2022.

**Cross references:** (1) For parentage proceedings, see article 4 of title 19.

(2) For the legislative declaration contained in the 1997 act amending subsections (1)(b) and (2), see section 1 of chapter 236, Session Laws of Colorado 1997. For the legislative declaration in SB 18-095, see section 1 of chapter 96, Session Laws of Colorado 2018.

## ANNOTATION

**Law reviews.** For article, "One Year Review of Evidence", see 35 Dicta 44 (1958). For article, "One Year Review of Domestic Relations", see 41 Den. L. Ctr. J. 97 (1964). For article, "Legislative Update", see 12 Colo. Law. 1257 (1983). For article, "Paternity Testing in the Age of DNA", see 19 Colo. Law. 2061 (1990).

**The presumption of legitimacy is one of the strongest known to law**, and, prior to the adoption of this section, could be overcome only by proof of nonaccess or impotency of the husband; the rule has now been broadened by this section with respect to blood tests in cases where definite exclusion is established. *Beck v. Beck*, 153 Colo. 90, 384 P.2d 731 (1963).

**Under this section, a reputed father is entitled as a matter of right to have blood tests made** and to have such tests received in evidence when definite exclusion is established and proper foundation therefor is laid. *Beck v. Beck*, 153 Colo. 90, 384 P.2d 731 (1963).

**The right to have blood tests performed cannot be denied an indigent defendant** without violating the equal protection clause of the fourteenth amendment of the United

States Constitution. *Franklin v. District Court*, 194 Colo. 189, 571 P.2d 1072 (1977).

**Right to genetic testing does not apply where a legal paternity judgment was already entered** and a challenge based on mistake of material fact is barred by the six-month time limit set forth in C.R.C.P. 60(b). *People ex rel. J.A.U. v. R.L.C.*, 47 P.3d 327 (Colo. 2002).

**This section and former § 19-6-117 (now § 19-4-117) are inconsistent** on the question of who bears the cost of additional blood tests in paternity actions but this section controls. *L.D.G. v. E.R.*, 723 P.2d 746 (Colo. App. 1986).

**Conclusive evidence overcomes presumption of legitimacy.** Where accuracy of blood test relating to paternity of child was not challenged by the mother and shows conclusively that husband could not have been the father of the child, the evidence of such tests was competent and sufficient to overcome the presumption of legitimacy. *Beck v. Beck*, 153 Colo. 90, 384 P.2d 731 (1963).

**It is abundantly clear that the general assembly intended the section for paternity proceedings to be the only**

**vehicle** for establishing paternity because under the statute the putative father has the right to trial by jury in paternity proceedings and blood grouping tests may be ordered by the court and received as evidence, whereas the statute on support proceedings allows neither of the above. In re People in Interest of L.B., 179 Colo. 11, 498 P.2d 1157 (1972).

**No basis for diagnostic testing of minor.** There is no statutory basis for a guardian ad litem obtaining, in a paternity proceeding, genetic testing, at the expense of the department of social services or a county, to provide a basis for diagnosing problems that a minor child may encounter in later years. Figueroa v. Juvenile Court, 197 Colo. 510, 595 P.2d 223 (1979).

**Evidence that alleged father has been definitely excluded as probable father** based on blood test was properly admitted. K.H.R. by and through D.S.J. v. R.L.S., 807 P.2d 1201 (Colo. App. 1990).

**Subsection (1)(c) intended to ease burden of establishing the chain of custody of specimens.** The use of word "may" was intended to show a permissive alternative is shown by legislative history. K.H.R. by and through D.S.J. v. R.L.S., 807 P.2d 1201 (Colo. App. 1990).

**Applied** in People in Interest of R.M., 37 Colo. App. 209, 548 P.2d 1282 (1975); Smith v. Casey, 198 Colo. 433, 601 P.2d 632 (1979).

### **13-25-126.5. Documents arising from environmental self-evaluation - admissibility in evidence.**

(1) The general assembly hereby finds and declares that protection of the environment is enhanced by the public's voluntary compliance with environmental laws and that the public will benefit from incentives to identify and remedy environmental compliance issues. It is further declared that limited expansion of the protection against disclosure will encourage such voluntary compliance and improve environmental quality and that the voluntary provisions of this act will not inhibit the exercise of the regulatory authority by those entrusted with protecting our environment.

(2) For the purposes of this section, unless the context otherwise requires:

(a) "Administrative law judge" means any person appointed to be an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S.

(b) "Environmental audit report" means any document, including any report, finding, communication, or opinion or any draft of a report, finding, communication, or opinion, related to and prepared as a result of a voluntary self-evaluation that is done in good faith.

(c) "Environmental law" means any requirement contained in article 20.5 of title 8, C.R.S., articles 7, 8, 11, and 15 of title 25, C.R.S., or article 20 of title 30, C.R.S., in regulations

promulgated under such provisions, or in any orders, permits, licenses, or closure plans under such provisions.

(d) "In camera review" means a hearing or review in a courtroom, hearing room, or chambers to which the general public is not admitted. After such hearing or review, the content of the oral and other evidence and statements of the judge and counsel shall be held in confidence by those participating in or present at the hearing or review, and any transcript of the hearing or review shall be sealed and not considered a public record, until and unless its contents are disclosed by a court or administrative law judge having jurisdiction over the matter.

(e) "Voluntary self-evaluation" means a self-initiated assessment, audit, or review, not otherwise expressly required by environmental law, that is performed by any person or entity, for itself, either by an employee or employees employed by such person or entity who are assigned the responsibility of performing such assessment, audit, or review or by a consultant engaged by such person or entity expressly and specifically for the purpose of performing such assessment, audit, or review to determine whether such person or entity is in compliance with environmental laws. Once initiated, such voluntary self-evaluation shall be completed within a reasonable period of time. Nothing in this section shall be construed to authorize uninterrupted voluntary self-evaluations.

(3) An environmental audit report is privileged and is not admissible in any legal action or administrative proceeding and is not subject to any discovery pursuant to the rules of civil procedure, criminal procedure, or administrative procedure, unless:

(a) The entity or person for whom the environmental audit report was prepared, whether the environmental audit report was prepared by the entity or by a consultant hired by the entity, waives the privilege under this section;

(b) (I) A court of record, or, pursuant to section 24-4-105, C.R.S., an administrative law judge, after an in camera review, determines that:

(A) The environmental audit report shows evidence that the person or entity for which the environmental audit report was prepared is not or was not in compliance with an environmental law; and

(B) The person or entity did not initiate appropriate efforts to achieve compliance with the environmental law or complete any necessary permit application promptly after the noncompliance with the environmental law was discovered and, as a result, the person or entity did not or will not achieve compliance with the environmental law or complete the necessary permit application within a reasonable amount of time.

(II) For the purposes of this paragraph (b) only, if the evidence shows noncompliance by a person or entity with more than one environmental law, the person or entity may demonstrate that appropriate efforts to achieve compliance were or are being taken by instituting a

comprehensive program that establishes a phased schedule of actions to be taken to bring the person or entity into compliance with all of such environmental laws.

(c) A court of record, or, pursuant to section 24-4-105, C.R.S., an administrative law judge, after an in camera review, determines that compelling circumstances exist that make it necessary to admit the environmental audit report into evidence or that make it necessary to subject the environmental audit report to discovery procedures;

(d) A court of record, or, pursuant to section 24-4-105, C.R.S., an administrative law judge, after an in camera review, determines that the privilege is being asserted for a fraudulent purpose or that the environmental audit report was prepared to avoid disclosure of information in an investigative, administrative, or judicial proceeding that was underway, that was imminent, or for which the entity or person had been provided written notification that an investigation into a specific violation had been initiated; or

(e) A court of record, or, pursuant to section 24-4-105, C.R.S., an administrative law judge, after an in camera review, determines that the information contained in the environmental audit report demonstrates a clear, present, and impending danger to the public health or the environment in areas outside of the facility property.

(4) The self-evaluation privilege created by this section does not apply to:

(a) Documents or information required to be developed, maintained, or reported pursuant to any environmental law or any other law or regulation;

(b) Documents or other information required to be available or furnished to a regulatory agency pursuant to any environmental law or any other law or regulation;

(c) Information obtained by a regulatory agency through observation, sampling, or monitoring;

(d) Information obtained through any source independent of the environmental audit report or any person covered under section 13-90-107 (1)(j)(I)(A);

(e) Documents existing prior to the commencement of and independent of the voluntary self-evaluation;

(f) Documents prepared subsequent to the completion of and independent of the voluntary self-evaluation; or

(g) Any information, not otherwise privileged, including the privilege created by this section, that is developed or maintained in the course of regularly conducted business activity or regular practice.

(5) (a) Upon a showing by any party, based upon independent knowledge, that probable cause exists to believe that an exception to the self-evaluation privilege under subsection (3) of

this section is applicable to an environmental audit report or that the privilege does not apply to the environmental audit report pursuant to the provisions of subsection (4) of this section, then a court of record or, pursuant to section 24-4-105, C.R.S., any administrative law judge, may allow such party limited access to the environmental audit report for the purposes of an in camera review only. The court of record or the administrative law judge may grant such limited access to all or part of the environmental audit report under the provisions of this subsection (5) upon such conditions as may be necessary to protect the confidentiality of the environmental audit report. A moving party who obtains access to an environmental audit report pursuant to the provisions of this subsection (5) may not divulge any information from the report except as specifically allowed by the court or administrative law judge.

(b) (I) If any party divulges all or any part of the information contained in an environmental audit report in violation of the provisions of paragraph (a) of this subsection (5) or if any other person or entity knowingly divulges or disseminates all or any part of the information contained in an environmental audit report that was provided to such person or entity in violation of the provisions of paragraph (a) of this subsection (5), such party or other person or entity is liable for any damages caused by the divulgence or dissemination of the information that are incurred by the person or entity for which the environmental audit report was prepared.

(II) If any public entity, public employee, or public official divulges all or any part of the information contained in an environmental audit report in violation of the provisions of subsection (5)(a) of this section or knowingly divulges or disseminates all or any part of the information contained in an environmental audit report that was provided to such public entity, public employee, or public official in violation of the provisions of subsection (5)(a) of this section, such public entity, public employee, or public official commits a class 2 misdemeanor, may be found in contempt of court by a court of record, and may be assessed a penalty not to exceed ten thousand dollars by a court of record or an administrative law judge.

(6) Nothing in this section limits, waives, or abrogates the scope or nature of any statutory or common-law privilege.

(7) A person or entity asserting a voluntary self-evaluation privilege has the burden of proving a prima facie case as to the privilege. A party seeking disclosure of an environmental audit report has the burden of proving that such privilege does not exist under this section.

(8) Notwithstanding the provisions of subsection (3) of this section, the existence of an environmental audit report shall be subject to discovery proceedings pursuant to the rules of civil procedure, criminal procedure, or administrative procedure; except that the contents of such a report or any other privileged information contained therein shall remain confidential.

(9) This section applies to voluntary self-evaluations that are performed on or after June 1, 1994.

**Source:** **L. 94:** Entire section added, p. 1865, § 1, effective June 1. **L. 96:** (2)(c) amended, p. 1469, § 11, effective June 1. **L. 99:** (9) amended, p. 301, § 1, effective April 14. **L. 2021:** (5)(b)(II) amended, (SB 21-271), ch. 462, p. 3158, § 157, effective March 1, 2022.

#### ANNOTATION

**Law reviews.** For comment, "Colorado's Environmental Audit Privilege Statute: Striking the Appropriate Balance?", see 67 U. Colo. L. Rev. 443 (1996).

#### **13-25-127. Civil actions - degree of proof required.**

(1) Any provision of the law to the contrary notwithstanding and except as provided in subsection (2) of this section, the burden of proof in any civil action shall be by a preponderance of the evidence. The provisions of this subsection (1) shall not apply to the burden of proof required in determining the validity of any legislative enactment.

(2) Exemplary damages against the party against whom the claim is asserted shall only be awarded in a civil action when the party asserting the claim proves beyond a reasonable doubt the commission of a wrong under the circumstances set forth in section 13-21-102. Nothing in this subsection (2) shall be construed as preventing a party asserting the claim from being awarded money damages or other appropriate relief, other than exemplary damages, if he sustains the burden of proof by a preponderance of the evidence.

(3) (Deleted by amendment, L. 95, p. 15, § 5, effective March 9, 1995.)

(4) This section became effective July 1, 1972, and applies only to civil actions which accrue on or after such date.

**Source:** **L. 71:** p. 579, § 1. **C.R.S. 1963:** § 52-1-28. **L. 72:** pp. 317, 318, §§ 1, 2. **L. 95:** (1) and (3) amended, p. 15, § 5, effective March 9.

#### ANNOTATION

**Law reviews.** For article, "Inverse Condemnation — A Viable Alternative", see 51 Den. L. J. 529 (1974). For article, "Burdens of Proof in Colorado Civil Actions", see 23 Colo. Law. 83 (1994).

**This section prevails over conflicting appellate case law.** McCallum Family

L.L.C. v. Winger, 221 P.3d 69 (Colo. App. 2009).

**Burden of proof in quiet title action** to obtain title by adverse possession is preponderance of evidence, as required by this section, since such action does not constitute a taking, nor does it raise fundamental constitutional concerns. Gerner v. Sullivan, 768 P.2d 701 (Colo. 1989) (overruling Raftopoulos v. Monger, 656 P.2d 1308 (Colo. 1983)).

**Burden of party asserting equitable grounds.** The party attempting to set aside a transaction on equitable grounds should only be required to prove the truth of his contentions by a preponderance of the evidence. Page v. Clark, 197 Colo. 306, 592 P.2d 792 (1979).

**Burden in proceedings to terminate parental rights.** In the absence of a specific directive from the general assembly to use the "clear and convincing evidence" standard as the burden of proof in proceedings to terminate parental rights, courts are compelled to use the "preponderance of evidence" standard of civil actions. People in Interest of B.J.D., 626 P.2d 727 (Colo. App. 1981).

**Burden of proof does not shift.** The burden of proof resting upon the plaintiff to prove the elements of his case, as determined by the pleadings, by a preponderance of the evidence, does not shift during the course of trial, although it may be aided by a presumption or a shift of the burden of going forward with the evidence once the plaintiff has established a prima facie case. Exch. Nat'l Bank v.

Sparkman, 191 Colo. 534, 554 P.2d 1090 (1976); W. Distributing Co. v. Diodosio, 841 P.2d 1053 (Colo. 1992).

**Plaintiff failed to prove trust invalid as attempted testamentary disposition.** Exch. Nat'l Bank v. Sparkman, 191 Colo. 534, 554 P.2d 1090 (1976).

**Fraud must be shown by a preponderance of the evidence.** Caldwell v. Armstrong, 642 P.2d 47 (Colo. App. 1981).

**Fraud may be inferred from circumstantial evidence.** Direct evidence of reliance, one of the elements of fraud, is not required. Kopeikin v. Merchant Mortg. & Trust Corp., 679 P.2d 599 (Colo. 1984).

**Where preponderance acceptable burden in federal law controversy.** Although the right to mine claims located on federal land is derived from federal law, there is no provision made as to the quantum of proof necessary to prevail in a dispute over title to those claims. Thus, the application of state law imposing a preponderance of the evidence regarding burden of proof is not in conflict with the national policy for mining claims. Silver Core Mining Co. v. DeBell, 42 Colo. App. 169, 595 P.2d 269 (1979).

**Section does not apply to public official/public figure defamation cases.** Manuel v. Fort Collins Newspapers, Inc., 42 Colo. App. 324, 599 P.2d 931 (1979), rev'd on other grounds, 631 P.2d 1114 (Colo. 1981).

**Clear and convincing standard of proof applies to cases involving prescriptive**



**easements.** *Auslaender v. MacMillan*, 696 P.2d 836 (Colo. App. 1984).

**Preponderance standard applies in actions to pierce the corporate veil.** *McCallum Family L.L.C. v. Winger*, 221 P.3d 69 (Colo. App. 2009); *Sedgwick Props. Dev. Corp. v. Hinds*, 2019 COA 102, 456 P.3d 64.

**Section does not apply to Title VII and Civil Rights Act of 1991 cases.** The reasonable doubt standard set forth in this section is inconsistent with the remedial policies underlying Title VII and the Civil Rights Act of 1991. *Karnes v. SCI Colo. Funeral Servs., Inc.*, 162 F.3d 1077 (10th Cir. 1998).

**Evidence sufficient to show malice beyond a reasonable doubt.** *Vogel v. Carolina Intern., Inc.*, 711 P.2d 708 (Colo. App. 1985).

**For section's application to heirship,** see *In re Estate of Etchart v. Nelson*, 179 Colo. 142, 500 P.2d 363 (1972).

**Burden of proof in forfeiture action** under Colorado public nuisance statute rests on the state and must be proven by a preponderance of the evidence. *People v. Milton*, 732 P.2d 1199 (Colo. 1987).

**Claim of promissory estoppel** must be established by a preponderance of the evidence. *Nicol v. Nelson*, 776 P.2d 1144 (Colo. App. 1989).

**Preponderance of the evidence standard provided for in subsection (1) applies to actions for adverse possession.**

*Nicol v. Nelson*, 776 P.2d 1144 (Colo. App. 1989).

**Burden of proof in case raising inverse condemnation claim is by a preponderance of the evidence.** Because it could not be determined from trial court's order which standard trial court applied, case remanded for new findings using a preponderance of the evidence standard. *Animas Valley Sand & Gravel, Inc. v. Bd. of County Comm'rs*, 8 P.3d 522 (Colo. App. 2000), rev'd on other grounds, 38 P.3d 59 (Colo. 2001).

**Trial court is in best position to weigh credibility** where evidence on issue of fraud consisted of testimony of plaintiff and defendant and appellate court need not engage in factual determination. *Kinsey v. Preeson*, 746 P.2d 542 (Colo. 1987).

**Trial court abused its discretion when** similarly situated physicians were awarded punitive damages on arbitrary and inconsistent basis. *Ballow v. PHICO Ins. Co.*, 878 P.2d 672 (Colo. 1994).

**Proof by clear and convincing evidence is required in guardianship proceedings** because of the possibility of being deprived of basic liberties. *Sabrosky v. Denver DDS*, 781 P.2d 106 (Colo. App. 1989).

**This section is inapplicable to a motion to set aside a default judgment.** A motion to set aside a default judgment is not a "civil action" but is instead a simple procedural motion taking place within the context of a substantive "civil action". *Borer v. Lewis*, 91 P.3d 375 (Colo. 2004).

**In enacting this section, the general assembly did not legislatively override the "clear and convincing" burden of proof that has been applied to proceedings to set aside default judgments.** To decide otherwise would require the court to find the statute unconstitutional as an impermissible infringement on the judiciary's authority to promulgate procedural rules. *Borer v. Lewis*, 91 P.3d 375 (Colo. 2004).

**Higher standard of clear and convincing evidence is required for setting aside of default judgment.** *Salle v. Howe*, 757 P.2d 154 (Colo. App. 1988). (Holding modified in *White Front Auto Sales, Inc. v. Mygatt*, 810 P.2d 234 (Colo. App. 1990).)

**Taxpayer's burden is to prove by a preponderance of the evidence,** not by clear and convincing evidence, that the assessment is incorrect. *C.A. Staack v. Bd. of County Com'rs.*, 802 P.2d 1191 (Colo. App. 1990).

**Preponderance of evidence test should have been applied** in determination of motion to set aside default judgment since it is a civil action under subsection (1). *White Front Auto Sales, Inc. v. Mygatt*, 810 P.2d 234 (Colo. App. 1990).

**A party who claims a prescriptive easement** must prove by a preponderance of the evidence continuous, open, and adverse

use of the easement for the statutory period of 18 years. *Proper v. Greager*, 827 P.2d 591 (Colo. App. 1992).

**Applied** in *Cline v. City of Boulder*, 35 Colo. App. 349, 532 P.2d 770 (1975); *Page v. Clark*, 40 Colo. App. 24, 572 P.2d 1214 (1977); *Sherman Agency v. Carey*, 195 Colo. 277, 577 P.2d 759 (1978); *Roberts v. Bucher*, 41 Colo. App. 138, 584 P.2d 97 (1978); *Frick v. Abell*, 198 Colo. 508, 602 P.2d 852 (1979); *Malandris v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 703 F.2d 1152 (10th Cir. 1981); *Diversified Mgt., Inc. v. Denver Post, Inc.*, 653 P.2d 1103 (Colo. 1982); *Littlehorn v. Stratford*, 653 P.2d 1139 (Colo. 1982); *Honeywell Info. Sys. v. Bd. of Assmt. Appeals*, 654 P.2d 337 (Colo. App. 1982); *King v. Horizon Corp.*, 701 F.2d 1313 (10th Cir. 1983); *Ft. Logan Mental Health Ctr. v. Indus. Comm'n*, 665 P.2d 139 (Colo. App. 1983); *Palmer v. A.H. Robins Co., Inc.*, 684 P.2d 187 (Colo. 1984); *Hawkinson v. A.H. Robins Co., Inc.*, 595 F. Supp. 1290 (D. Colo. 1984); *Basnett v. Vista Vill. Mobile Home Park*, 699 P.2d 1343 (Colo. App. 1984); *Florey v. District Court*, 713 P.2d 840 (Colo. 1985); *Tri-Aspen Constr. Co. v. Johnson*, 714 P.2d 484 (Colo. 1986); *Juarez v. United Farm Tools, Inc.*, 798 F.2d 1341 (10th Cir. 1986); *Cty. Bd. of Equal. v. Bd. of Assess. App.*, 743 P.2d 444 (Colo. App. 1987); *W. Distrib. Co. v. Diodosio*, 841 P.2d 1053 (Colo. 1992).

### **13-25-128. Rules of evidence - grant of authority subject to reservation.**

The supreme court of the state of Colorado shall have the power to prescribe general rules of evidence for the courts of record in the state of Colorado. Such rules of evidence shall be construed to be rules of practice and procedure and shall not be construed in such manner that

such rules would fix, abridge, enlarge, modify, or diminish any substantive rights. The general assembly specifically reserves to itself the power to enact laws relating to substantive rights including, but not limited to, laws modifying or eliminating said rules of evidence.

**Source: L. 79:** Entire section added, p. 620, § 1, effective July 3.

### **13-25-129. Statements of a child - hearsay exception.**

(1) An out-of-court statement made by a person under thirteen years of age, not otherwise admissible by a statute or court rule that provides an exception to the hearsay objection, is admissible in any criminal, delinquency, or civil proceeding in which the person is alleged to have been a victim if the conditions of subsection (5) of this section are satisfied.

(2) An out-of-court statement made by a child, as child is defined under the statutes that are the subject of the action, or a person under fifteen years of age if child is undefined under the statutes that are the subject of the action, describing all or part of an offense of unlawful sexual behavior, as defined in section 16-22-102 (9), performed or attempted to be performed with, by, on, or in the presence of the child declarant, and that is not otherwise admissible by a statute or court rule that provides an exception to the hearsay objection, is admissible in evidence in any criminal, delinquency, or civil proceeding if the conditions of subsection (5) of this section are satisfied.

(3) An out-of-court statement by a child, as child is defined under the statutes that are the subject of the action, describing any act of child abuse, as defined in section 18-6-401, to which the child declarant was subjected or that the child declarant witnessed, and that is not otherwise admissible by a statute or court rule that provides an exception to the hearsay objection, is admissible in evidence in any criminal, delinquency, or civil proceeding in which a child is a victim of child abuse or the subject of a proceeding alleging that a child is neglected or dependent under section 19-1-104 (1)(b), if the conditions of subsection (5) of this section are satisfied.

(4) An out-of-court statement made by a person under thirteen years of age describing all or part of an offense contained in part 1 of article 3 of title 18, or describing an act of domestic violence as defined in section 18-6-800.3 (1), and that is not otherwise admissible by statute or court rule that provides an exception to the hearsay objection, is admissible in evidence in any criminal, delinquency, or civil proceeding if the conditions of subsection (5) of this section are satisfied.

(5) (a) The exceptions to the hearsay objection described in subsections (1) to (4) of this section apply only if the court finds in a pretrial hearing conducted outside the presence of the

jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability; and

(b) The child either:

(I) Testifies at the proceedings; or

(II) Is unavailable as a witness and there is corroborative evidence of the act which is the subject of the statement.

(6) If a statement is admitted pursuant to this section, the court shall instruct the jury in the final written instructions that during the proceeding the jury heard evidence repeating a child's out-of-court statement and that it is for the jury to determine the weight and credit to be given the statement and that, in making the determination, the jury shall consider the age and maturity of the child, the nature of the statement, the circumstances under which the statement was made, and any other relevant factor.

(7) The proponent of the statement shall give the adverse party reasonable notice of the proponent's intention to offer the statement and the particulars of the statement.

**Source:** **L. 83:** Entire section added, p. 629, § 1, effective May 25. **L. 85:** IP(1) amended, p. 676, § 5, effective June 7; IP(1) amended, p. 714, § 1, effective June 7. **L. 87:** IP(1) amended, p. 558, § 1, effective April 16; IP(1) amended, p. 815, § 13, effective October 1. **L. 93:** (2) amended, p. 515, § 1, effective July 1. **L. 2003:** IP(1) amended, p. 973, § 5, effective April 17. **L. 2006:** IP(1) amended, p. 420, § 1, effective April 13. **L. 2015:** IP(1) amended, (HB 15-1183), ch. 96, p. 275, § 1, effective April 10. **L. 2019:** Entire section amended, (SB 19-071), ch. 42, p. 144, § 1, effective July 1.

**Editor's note:** (1) Senate Bill 85-042 superseded by House Bill 85-1327.

(2) Amendments to the introductory portion to subsection (1) by House Bill 87-1256 and Senate Bill 87-144 were harmonized.

## ANNOTATION

**Law reviews.** For article, "Children as Witnesses: Competency and Rules Favoring Their Testimony", see 12 Colo. Law 1982 (1983). For article, "The Child Sex Abuse Case in the Courtroom", see 15 Colo. Law.

807 (1986). For comment, "Confrontation of Child Victim-Witnesses: Trauma, Unavailability, and Colorado's Hearsay Exceptions for Statements Describing Sexual Abuse", see 60 Colo. L. Rev. 659

(1989). For article, "The Child Witness", see 22 Colo. Law. 1201 (1993). For article, "Children as Witnesses", see 31 Colo. Law. 15 (Oct. 2002). For comment, "Crawford v. Washington: Child Victims of Sex Crimes in Colorado and the United States Supreme Court's Revised Approach to the Confrontation Clause", see 82 Den. U.L. Rev. 427 (2004). For article, "The Child's Wishes in APR Proceedings: An Evidentiary Conundrum", see 36 Colo. Law. 33 (Jan. 2007).

**Statutory child hearsay exception for statements by sexual assault victims violates the confrontation clause of the sixth amendment of the U.S. constitution** where the statements admitted are testimonial in nature and where defendant has not been afforded the opportunity to cross-examine the witness. *People v. Moreno*, 160 P.3d 242 (Colo. 2007).

**Where a child's hearsay statement offered under this section is nontestimonial, the federal confrontational clause is not implicated.** *People v. Phillips*, 2012 COA 176, 315 P.3d 136.

**Even if the statement is testimonial**, where the defendant is afforded an opportunity to cross-examine the child at trial, the federal confrontation clause also is not implicated. *People v. Phillips*, 2012 COA 176, 315 P.3d 136.

**To use the forfeiture doctrine to deprive a defendant of the protection of the confrontation clause**, the prosecution must show that defendant's wrongful conduct was designed, at least in part, to subvert the

criminal justice system by depriving that system of the evidence upon which it depends. The people must prove that defendant intended to prevent or dissuade the child from testifying against him or her. *People v. Moreno*, 160 P.3d 242 (Colo. 2007).

**This section may only be applied constitutionally to admit out-of-court testimonial statements when the defendant has forfeited the right to confrontation.** *Pena v. People*, 173 P.3d 1107 (Colo. 2007).

**Trial court must find that the time, content, and circumstances of contested statements provide sufficient safeguards of reliability and that there is sufficient corroborative evidence of the charged acts for statements of unavailable witness to be admitted under this section.** *Pena v. People*, 173 P.3d 1107 (Colo. 2007).

**Testimonial hearsay statements are admissible only if:** (1) The declarant is unavailable to testify and (2) the defendant had a previous opportunity to cross-examine the declarant. The juvenile victim's statement to an investigating officer in a question and answer format is a testimonial statement. Since, the defendant did not have an opportunity to cross-examine the juvenile victim, the statement is inadmissible. *People ex rel. R.A.S.*, 111 P.3d 487 (Colo. App. 2004).

**Admission of testimony under subsection (1) committed to sound discretion of trial court and not violative of defendant's constitutional rights.**

People v. Galloway, 726 P.2d 249 (Colo. App. 1986).

**The admission into evidence at trial of prior out-of-court statements does not violate the confrontation clause, if the declarant is not absent but is present to testify and to submit to cross-examination.** People v. Argomaniz-Ramirez, 102 P.3d 1015 (Colo. 2004); People v. Whitman, 205 P.3d 371 (Colo. App. 2007).

**Section not unconstitutional on its face or as applied.** Because the victims were available, testified, and were subject to cross-examination, the sixth amendment confrontation issue does not apply. People v. Whitman, 205 P.3d 371 (Colo. App. 2007).

**Application of section held not to be barred on the basis of constituting an ex post facto law.** People v. Koon, 724 P.2d 1367 (Colo. App. 1986).

**Trial court is required to instruct contemporaneously with admission of hearsay evidence pursuant to subsection (2),** and, where no such instruction is given, the judgment of conviction had to be reversed. People v. Mathes, 703 P.2d 608 (Colo. App. 1985).

**If a hearsay statement is admitted pursuant to this section,** a court must instruct the jury as required in subsection (2). However, failure to object to proffered evidence at trial constitutes a waiver of the objection, and such objection may not thereafter be raised on appeal. People v. Lucero, 724 P.2d 1374 (Colo. App. 1986).

**This section constitutes the exclusive basis for admitting a child victim's**

**hearsay statement of a sexual act committed against the child when such hearsay statement is not otherwise admissible** under any other specific hearsay exception created by statute or court rule. People v. Diefenderfer, 784 P.2d 741 (Colo. 1989); People v. Bowers, 801 P.2d 511 (Colo. 1990); People v. Wilson, 838 P.2d 284 (Colo. 1992); People v. Jones, 851 P.2d 247 (Colo. App. 1993); People v. Williams, 899 P.2d 306 (Colo. App. 1995); People v. Juvenile Court, 937 P.2d 758 (Colo. 1997).

**This section is not controlling in every instance in which child hearsay is admitted.** People v. Bolton, 859 P.2d 303 (Colo. App. 1993); People v. Bolton, 859 P.2d 311 (Colo. App. 1993).

**The general assembly enacted this section** to balance the interests of a person accused of the sexual abuse of a child and the interests of the truth-seeking process. McPeck v. Colo. Dept. of Soc. Servs., 919 P.2d 942 (Colo. App. 1996).

**In administrative adjudication in which the sexual abuse of a child is an issue, this section provides the appropriate standard for determining the admissibility of hearsay statements of the child-declarant which describe the alleged sexual abuse.** McPeck v. Colo. Dept. of Soc. Servs., 919 P.2d 942 (Colo. App. 1996).

**This section provides sufficient guidelines for consistent and fair application in the trial courts.** People v. Diefenderfer, 784 P.2d 741 (Colo. 1989); McPeck v. Colo. Dept. of Soc. Servs., 919 P.2d 942 (Colo. App. 1996).

**Two-step analysis used when challenging hearsay evidence based on the constitutional ground of lack of confrontation:** Initially, the prosecution must either produce the hearsay declarant for cross-examination, or in most instances, demonstrate his unavailability and secondly, in those instances when the unavailability of the witness is demonstrated, only hearsay bearing sufficient indicia of reliability is admissible. *People v. Hise*, 738 P.2d 13 (Colo. App. 1986); *People v. Diefenderfer*, 784 P.2d 741 (Colo. 1989).

**Where there is a confrontation clause challenge to hearsay evidence,** the two-step analysis is still applicable when considering exceptions to the hearsay rule which are nontraditional, i.e., exceptions which are not "firmly rooted" in the law of hearsay. *People v. Diefenderfer*, 784 P.2d 741 (Colo. 1989).

**This section is in many ways more protective than the required two-step analysis,** since first, unlike that analysis, it requires a showing of "sufficient safeguards of reliability" whether or not the declarant is unavailable and, second, if the declarant is unavailable, it requires corroborative evidence of the act which is the subject of the statement. Therefore, statements meeting the standard of this section also fulfill the requirements of the two-step analysis. *People v. Diefenderfer*, 784 P.2d 741 (Colo. 1989); *People v. Dill*, 904 P.2d 1367 (Colo. App. 1995), *aff'd*, 927 P.2d 1315 (Colo. 1996).

**Statements admissible when victim testifies,** in accord with subsection (1)(b)(I).

*People v. Williams*, 899 P.2d 306 (Colo. App. 1995).

**Victim need not be a "child" at the time of trial** for victim's out-of-court statement to be admissible. *People v. Gookins*, 111 P.3d 525 (Colo. App. 2004).

**The relevant age of a "child", as defined under the statutes that are the subject of the action, is the age applicable to the general offense, not the age relevant to the sentence enhancer.** *People v. Chirinos-Raudales*, 2021 COA 37, 491 P.3d 538, *aff'd*, 2023 CO 33, 532 P.3d 1200.

**"Subject of the action"** means the matter of concern over which the judicial proceeding is created. *Chirinos-Raudales v. People*, 2023 CO 33, 532 P.3d 1200; *Orellana-Leon v. People*, 2023 CO 34, 530 P.3d 626.

**Phrase "at the proceedings" in subsection (1)(b)(I) does not mean at every stage of the proceedings.** Where prosecution expressed that victim would testify at trial, the requirements of this section were conditionally met. *People v. Juvenile Court*, 937 P.2d 758 (Colo. 1997).

**The phrase "when the victim was less than 15 years of age at the time of the commission of the offense" in subsection (1) applies only to a victim of incest, as defined in § 18-6-301.** Therefore, the court did not err in applying this section to defendant's case when the victim was 16 and defendant was charged with unlawful sexual offenses other than incest. *People v. Trujillo*, 251 P.3d 477 (Colo. App. 2010).

**Purpose of hearing under this section is not to determine the victim's competency.** Rather, the determinations to be made are (1) whether sufficient safeguards of reliability exist to permit the admission of the victim's hearsay statements into evidence, and (2) whether the victim is available to testify. *People v. Juvenile Court*, 937 P.2d 758 (Colo. 1997).

**Child's hearsay statements are admissible under this section only if court finds:** (1) The time, context, and circumstances of statement provides sufficient safeguards of reliability; and (2) if child is unavailable as a witness, there must be corroborative evidence of sexual abuse that is the subject of the statement. *Stevens v. People*, 796 P.2d 946 (Colo. 1990).

**Although the trial court should make specific findings on which factors establish sufficient safeguards of reliability of its decision to admit the child hearsay statements, the trial court's ruling will be affirmed absent such findings if the record shows adequate factual basis to support the trial court's findings.** *People v. Rojas*, 181 P.3d 1216 (Colo. App. 2008).

**The fact that not all the relevant factors support admissibility does not require exclusion of the statements.** *People v. Rojas*, 181 P.3d 1216 (Colo. App. 2008).

**Applicability of this section is not limited to those circumstances in which the child is unavailable to testify or when the child has difficulty expressing herself.** *People v. Salas*, 902 P.2d 398 (Colo. App. 1994).

**Statutory requirement of "corroborative evidence"** means any evidence, direct or by proof of surrounding circumstances, that tends to establish the act described in child's hearsay statement occurred. *Stevens v. People*, 796 P.2d 946 (Colo. 1990); *People v. Bowers*, 801 P.2d 511 (Colo. 1990).

**Corroboration requirement of this section** is objective method of establishing commission of sexual act rather than a guarantee of reliability of child's hearsay statement. *Stevens v. People*, 796 P.2d 946 (Colo. 1990).

This requirement ensures sexual abuse occurred and indirectly safeguards against wrongful conviction by requiring corroborative evidence sufficient to induce person of ordinary prudence and caution to entertain reasonable belief that sexual abuse that is subject of hearsay statement occurred. *Stevens v. People*, 796 P.2d 946 (Colo. 1990).

**Attendant circumstances necessary to provide adequate description of the sexual conduct** are admissible and within scope of statute. *People v. Serna*, 738 P.2d 802 (Colo. App. 1987).

**Preponderance of evidence standard of proof** is applicable to trial court's determination of whether requirements for the admissibility of child's hearsay statement, as set forth in this section, have been satisfied. *People v. Bowers*, 801 P.2d 511 (Colo. 1990).

**Finding child incompetent to testify due to child's reluctance to answer questions**



**in courtroom setting** does not automatically impair the guarantees of reliability of child's hearsay statement and render such statement inadmissible. *People v. Bowers*, 801 P.2d 511 (Colo. 1990).

**Child's use of anatomically correct dolls and gestures were part and parcel of hearsay statements** and, without independent corroborative evidence, fail to meet statutory requirements. *People v. Bowers*, 773 P.2d 1093 (Colo. App. 1988), *aff'd*, 801 P.2d 511 (Colo. 1990).

**Corroborative evidence required for admissibility of child's hearsay statement pursuant to this section** is evidence, direct or circumstantial, that is independent of and supplementary to statement and that tends to confirm act described in statement occurred and child's verbal or nonverbal assertions made during statement does not constitute corroborative evidence. *People v. Bowers*, 801 P.2d 511 (Colo. 1990); *People v. Nara*, 964 P.2d 578 (Colo. App. 1998).

**However, even where pretrial ruling approved admission of hearsay statement by child-victim to pediatrician** it was error to permit pediatrician to give impermissible opinion testimony. *People v. Gaffney*, 769 P.2d 1081 (Colo. 1989).

**Trial court's findings concerning reliability** of child victim's hearsay statements will not be disturbed on appeal if supported by the evidence. *People v. Serna*, 738 P.2d 802 (Colo. App. 1987).

**Trial court properly considered the age of the child** in light of the extensive case authority holding that such statements of

very young children relating incidents of sexual abuse tend to be reliable. *People v. Diefenderfer*, 784 P.2d 741 (Colo. 1989).

**Trial court examines evidence as a whole** to determine whether sufficient corroboration exists to admit child's hearsay statement under this section and such determination will not be overturned unless trial court abused its discretion. *Stevens v. People*, 796 P.2d 946 (Colo. 1990).

**Trial judge's statements that he did not know much about the victim's character**, that he had some concerns that the victim's mother was present during an interview between the child and a social worker and about the cumulative effect and rehearsal factor of the child's statements, and, as a result, that he would leave the issues of credibility and reliability to the jury did not constitute an improper delegation of duty from the court to the jury where the court found on balance that the child's statements met the reliability standard of the hearsay exception. *People v. Cordova*, 854 P.2d 1337 (Colo. App. 1992).

**Children's age-appropriate sexual terminology** cannot supply corroborative evidence of sexual abuse. *Stevens v. People*, 796 P.2d 946 (Colo. 1990).

**Children's demonstrations with anatomically correct dolls** contained sufficient indicia of reliability for purposes of this section. *Stevens v. People*, 796 P.2d 946 (Colo. 1990).

**Children's behavioral changes constituted corroborative evidence of existence of sexual abuse** even though such

changes are not conclusive of sexual abuse. *Stevens v. People*, 796 P.2d 946 (Colo. 1990).

**Where a child's hearsay statements falls within a recognized exception to the hearsay rule**, the statement will be held to bear sufficient indicia of reliability. If it does not come within any recognized hearsay exception, it may still be admitted if it falls within the residual exception to the hearsay rule. *People v. District Court*, 776 P.2d 1083 (Colo. 1989).

**Although trial court did not adequately identify specific factors which provided sufficient guarantees of reliability** of child's hearsay statements, offer of proof by prosecuting attorney cured deficiency in trial court's ruling. *People v. Bowers*, 801 P.2d 511 (Colo. 1990).

**Where hearsay evidence is admitted pursuant to the provisions of this section**, the trial court must give the cautionary instruction contemporaneously with the admission of this particular type of evidence and again in the court's general charge to the jury at the conclusion of the case, and failure to do so is reversible error. *People v. McClure*, 779 P.2d 864 (Colo. 1989); *People v. Cowan*, 813 P.2d 810 (Colo. App. 1991).

**Trial court could not admit evidence of alleged sexual assault under § 16-10-301, then in effect before prosecution presented prima facie case to jury**. Yet child's out-of-court statements could not establish a prima facie case warranting submission to the jury because, under subsection (1)(b), the statements were not admissible without the corroborative

evidence. *People v. Nara*, 964 P.2d 578 (Colo. App. 1998).

As a result of the interplay of this section and § 16-10-301 then in effect, alleged victim's out-of-court statements could not be corroborated by similar acts, and those statements could not provide the prima facie case necessary for admission of evidence of the similar act. The trial court therefore could not properly admit evidence of either. *People v. Nara*, 964 P.2d 578 (Colo. App. 1998).

**Sole purpose of contemporaneous instruction** is to alert jury to the suspect nature of hearsay testimony and thereby promote jury's critical examination of the hearsay evidence as it is being received. *People v. Jones*, 843 P.2d 67 (Colo. App. 1992).

**Failure to give a jury instruction on the credibility of a child's testimony at the time child's hearsay statement is admitted is not plain error** in a prosecution for aggravated incest and sexual assault on a child, so long as such instruction was given as a jury instruction at the conclusion of the evidence. *People v. Flysaway*, 807 P.2d 1179 (Colo. App. 1990).

**To find plain error**, the court must conclude, after reviewing the record as a whole, that trial court's failure to give contemporaneous cautionary instruction so undermined the fundamental fairness of the trial that it cast serious doubt on the reliability of the conviction. *People v. Jones*, 843 P.2d 67 (Colo. App. 1992).

**Plain error resulted** where court failed to give cautionary instruction contemporaneously with the testimony of two expert witnesses and four other witnesses who testified as to hearsay statements made by a four year old victim and her six year old brother identifying the defendant as the perpetrator. *People v. Jones*, 843 P.2d 67 (Colo. App. 1992).

**Cautionary instruction required by subsection (2) incorporates defendant's rights to due process and confrontation.** Court should not accompany instruction with comments tending to denigrate its importance. *People v. Talley*, 824 P.2d 65 (Colo. App. 1991).

**Where several witnesses gave testimony concerning child's hearsay statements and cautionary statement was given before the most extensive of those statements there was no plain error** although the cautionary statement should be given before any testimony regarding such hearsay statements by a child. *People v. Wilson*, 838 P.2d 284 (Colo. 1992).

**Omission of contemporaneous cautionary instruction regarding the victim's hearsay statement was not error.** The 1993 amendment to subsection (2) eliminated the requirement for such a contemporaneous cautionary instruction. The amended section requires a cautionary instruction only with the final written instructions. *People v. Burgess*, 946 P.2d 565 (Colo. App. 1997); *People v. Streat*, 74 P.3d 387 (Colo. App. 2002).

**Nor did it cause unfair prejudice to give a contemporaneous cautionary**

**instruction** despite the 1993 change in the law. *People v. Burgess*, 946 P.2d 565 (Colo. App. 1997).

**Although this section requires the court to instruct the jury regarding the weight of the witness's testimony**, and no such specific instruction was given, the omission did not undermine the fundamental fairness of the trial because the testimony of the witness was merely corroborative of that of the victim. *People v. Wood*, 743 P.2d 422 (Colo. 1987); *People v. Miller*, 821 P.2d 881 (Colo. App. 1991).

The court's error in failing to instruct the jury as to the witnesses' credibility did not so undermine the fairness of the trial as to require reversal of defendant's conviction where one witness's testimony was corroborative of the victim's testimony and the other witness's testimony consisted mainly of the witness's observations of the victim and the witness's experience in interpreting body language of victims of sexual abuse. *People v. Miller*, 821 P.2d 881 (Colo. App. 1991).

**Although the state failed to fully comply** with this section by not informing the defendant of the particulars of the witness's testimony, there is no reversible error because the defendant was already aware of the substance of the testimony. *People v. Wood*, 743 P.2d 422 (Colo. 1987); *People v. Brown*, 761 P.2d 261 (Colo. App. 1988).

**A child who is not competent to testify is unavailable both within the meaning of subsection (1)(b)(II) and under the two-step analysis.** *People v. District Court*, 776

P.2d 1083 (Colo. 1989); *People v. Diefenderfer*, 784 P.2d 741 (Colo. 1989).

**"Unavailability", both within the meaning of this section and the constitutionally required two-step analysis**, can be met when the court makes a particularized finding that the child's emotional or psychological health would be substantially impaired if she were forced to testify and that such impairment will be long standing rather than transitory in nature. *People v. Diefenderfer*, 784 P.2d 741 (Colo. 1989).

**Mere inconvenience or discomfort at the prospect of testifying does not meet the statutory standard of unavailability.** *People v. Diefenderfer*, 784 P.2d 741 (Colo. 1989).

**Where the trial court found that requiring child victim to testify would be traumatic**, where the evidence showed that the trauma would be long lasting rather than transitory, and where the potential benefit to the defendant of requiring the child victim's testimony was not substantial, there was no error in the court's determination that the child victim was unavailable. *People v. Diefenderfer*, 784 P.2d 741 (Colo. 1989).

**The final requirement in order to admit statements under this section when the witness is unavailable to testify at trial** is that there be corroborative evidence of the act which is the subject of the statement. *People v. Diefenderfer*, 784 P. 2d 741 (Colo. 1989).

**Child unavailable because testifying would gravely harm her mental and**

**emotional health.** Thus, the trial court did not err in admitting the child's statement from the forensic interview without the child testifying at trial. *People in Interest of G.E.S.*, 2016 COA 183, 409 P.3d 645.

**Admitting a child's hearsay statements** held not in error when there was expert testimony to the effect that substantial long-term emotional impairment would result from testifying in court as well as corroborative evidence in the form of physical evidence and expert opinion to satisfy the finding of unavailability. *People v. Haynie*, 826 P.2d 371 (Colo. App. 1991).

**Both CRE 803(24) and this section are residuary rules and apply only if hearsay is not otherwise admissible under the other hearsay exceptions.** This section applies only to hearsay statements not otherwise admissible by statute or court rule. CRE 803(24) applies to hearsay statements which are not covered by the more specific hearsay exceptions in CRE 803(1) to (23). Because this section and CRE 803(24) have different requirements for the admission of hearsay statements, confusion and inconsistent results may occur if either residuary provision may be applied to the same hearsay statement of a child sexual assault victim which is otherwise not admissible into evidence. Since the more specific provision should prevail, this section is the sole basis upon which hearsay evidence, which otherwise comes within the terms of that statute, may be admitted. *People v. Diefenderfer*, 784 P.2d 741 (Colo. 1989); *People v. Bowers*, 801 P.2d 511 (Colo. 1990).

**Statements made by child victim to investigator and social services caseworker were properly admissible under this section** where the statements in question: (1) Are reliable; (2) the child victim was unavailable; and (3) there existed corroborating evidence consisting of incriminating statements made by defendant to the investigator and the child victim's physiological reaction to a child psychiatrist's questioning regarding the abuse incident. *People v. Diefenderfer*, 784 P.2d 741 (Colo. 1989).

**This section does not infringe on a court's procedural rulemaking powers** since, as with the "rape shield" statute, it effects the substantive policy of protecting certain witnesses from the sometimes traumatizing effect of facing their abusers openly in court. *People v. Diefenderfer*, 784 P.2d 741 (Colo. 1989).

**Hearing mandated by this section is not required** where prior statements were otherwise admissible by court rule. *People v. Doss*, 782 P.2d 1198 (Colo. App. 1989).

**Section does not apply to preliminary hearings.** This section applies to trial proceedings but not to such probable cause proceedings as a preliminary hearing. *People v. Jensen*, 765 P.2d 1028 (Colo. 1988).

**This section provides a hearsay exception only for testimony regarding statements from the child victim of, or a child witness to, the charged offense** and does not authorize the admission of otherwise inadmissible hearsay statements of similar transactions. *People in Interest of G.W.R.*, 943 P.2d 466 (Colo. App. 1996).

**But the better public policy to follow** is that when a child is a victim of an unlawful sexual offense, this section permits the admission into evidence of hearsay statements that are not otherwise admissible under the statutes or court rule, provided the court gives a cautionary instruction to the jury both at the time the evidence is received and again in the general charge. In the event such evidence is admissible under other statutes or court rules, then the procedural requirements of this section are not implicated. *People v. Pineda*, 40 P.3d 60 (Colo. App. 2001).

**Trial court's ruling as to admissibility of child's hearsay statement pursuant to this section is based solely upon matters presented at in-limine hearing** and therefore, for purposes of an effective appellate review, the court's decision shall state on the record its findings regarding: (1) The time, content, and circumstances of statements that provide sufficient safeguards of reliability; (2) if the child is determined to be an unavailable witness, the factors rendering the child unavailable; and (3) if the child's statement is ruled admissible, the nature of the corroborative evidence of the act which is the subject of the statement. *People v. Bowers*, 801 P.2d 511 (Colo. 1990).

**Juvenile court did not abuse its discretion by granting guardian ad litem's motion to admit child's out of court statements** during the proceedings to adjudicate whether the child was dependent and neglected even though the jury ultimately found the child had not been subjected to mistreatment or abuse. *People*

in Interest of C.L.S., 934 P.2d 851 (Colo. App. 1996).

**Appellate review of trial court's determination pursuant to this section regarding admissibility of child's hearsay statement** should be based upon record made at in-limine hearing and may go beyond record only if issue of harmless error or plain error is raised. *People v. Bowers*, 801 P.2d 511 (Colo. 1990).

**This section is not applicable to videotaped statements of child abuse victim.** A child victim videotape may be admitted only if it is a videotaped deposition made in compliance with § 18-3-413 which governs all videotaped statements obtained from child sexual abuse victims. *People v. Newbrough*, 803 P.2d 155 (Colo. 1990); *People v. Carter*, 919 P.2d 862 (Colo. App. 1996).

**If the evidence is admissible under other statutes or court rules**, then the procedural requirements of this section need not be followed. *People v. Aldrich*, 849 P.2d 821 (Colo. App. 1992).

**Subsection (1) does not require that a child declarant be determined as competent in order for that declarant's statement to be admissible** so long as the reliability requirement of the statute is met. *People v. Moore*, 860 P.2d 549 (Colo. App. 1993).

Where both the children's statements were made shortly after the sexual assault, the statements made by them during the course of their videotaped interviews used age-appropriate language, they were made in

response to nonleading questions, and while each displayed some reluctance to discuss sexual matters, their demeanor during the course of the interviews reinforced their reliability, the trial court's admission of these statements was proper. *People v. Moore*, 860 P.2d 549 (Colo. App. 1993).

**In determining the reliability of a child's statements under this section, the following factors may be helpful for the court to consider:** (1) Whether the statement was made spontaneously; (2) whether the statement was made while the child was still upset or in pain from the alleged abuse; (3) whether the language of the statement was likely to have been used by a child the age of the declarant; (4) whether the allegation was made in response to a leading question; (5) whether the child or the hearsay witness has any bias against the defendant or any motive for lying; (6) whether any other event occurred between the time of the abuse and the time of the statement which could account for the contents of the statement; (7) whether more than one person heard the statement; and (8) the general character of the child. *People v. District Court*, 776 P.2d 1083 (Colo. 1989); *People v. Dill*, 904 P.2d 1367 (Colo. App. 1995), *aff'd*, 927 P.2d 1315 (Colo. 1996); *McPeck v. Colo. Dept. of Soc. Servs.*, 919 P.2d 942 (Colo. App. 1996); *People v. Trujillo*, 923 P.2d 277 (Colo. App. 1996); *People v. Frost*, 5 P.3d 317 (Colo. App. 1999); *People v. Underwood*, 53 P.3d 765 (Colo. App. 2002); *People v. Strean*, 74 P.3d 387 (Colo. App. 2002).

**Trial court's decision to admit child hearsay is overturned only upon a finding**

**of an abuse of discretion.** Court found victim's statement to her mother was reliable and "an outcry" made while explaining her mood swings and depression. *People v. Underwood*, 53 P.3d 765 (Colo. App. 2002).

**Court did not err in admitting statements** where statements were spontaneous, made in response to an open-ended question and not in response to any leading question, and the victim used age-appropriate language. *People v. Trujillo*, 923 P.2d 277 (Colo. App. 1996).

**Trial court properly admitted videotaped interview.** Although defendant argued on appeal that the court should have made a "particularized assessment" of the videotape's reliability, he never asked the trial court for such an assessment, and the court's findings demonstrate that it was addressing the reliability of the taped statement as well as the other out-of-court statements. *People v. Melendez*, 80 P.3d 883 (Colo. App. 2003), *aff'd* on other grounds, 102 P.3d 315 (Colo. 2004).

The videotaped interview was not unfairly prejudicial as both the child and the interviewer testified at trial and were subject to cross-examination. The substance of the videotaped interview did not differ significantly from testimony by these and other prosecution witnesses at trial. *People v. Melendez*, 80 P.3d 883 (Colo. App. 2003), *aff'd* on other grounds, 102 P.3d 315 (Colo. 2004).

**A trial court does not commit plain error when it does not limit a jury's access to recorded statements without an**

**objection by defendant.** *People v. Romero*, 2017 CO 37, 393 P.3d 973.

**Trial court's failure to exercise its discretion with regard to controlling jury access to testimonial evidence during deliberations was not harmless.** Trial court could have admonished the jury not to give the exhibit undue weight or emphasis, instructed the jury that it watch the video no more than a specific number of times, or even required that the video be viewed in open court or under the supervision of a bailiff. In selecting those controls appropriate for each case, the trial court would have made a record of assessment. *DeBella v. People*, 233 P.3d 664 (Colo. 2010); *People v. Jefferson*, 2014 COA 77M, 411 P.3d 823, *aff'd*, 2017 CO 35, 393 P.3d 493.

**Trial court's failure to assess the potential for undue prejudice with respect to the jury's access to the videotape was a failure to exercise its discretion,** and so an abuse of discretion. *DeBella v. People*, 233 P.3d 664 (Colo. 2010).

**Trial judge should carefully consider the alternatives before placing video in unrestrained hands of jury during deliberations.** The heightened danger that undue emphasis will be placed on detailed videotaped statements of victim-witnesses is exacerbated in cases where minimal evidence corroborates victim's statements and testimony. *People v. Jefferson*, 2014 COA 77M, 411 P.3d 823, *aff'd*, 2017 CO 35, 393 P.3d 493.

**Trial court abused its discretion in allowing the jury unfettered access to**

**videotaped statements during deliberations** because two of the grounds identified by the trial court were insufficient to support a reasonable conclusion that the trial court need not control the jury's access to the statements. *People v. Jefferson*, 2014 COA 77M, 411 P.3d 823, *aff'd*, 2017 CO 35, 393 P.3d 493.

**Admission of testimony of witness who did not participate in a pre-trial hearing**, where such testimony was cumulative of other similar evidence properly admitted, did not undermine the fairness of the trial or cast serious doubt on the reliability of the verdict. *People v. Burgess*, 946 P.2d 565 (Colo. App. 1997).

**This section permits hearsay testimony related to acts of mental and emotional abuse in a child abuse case.** The term "health" in § 18-6-401 (1) includes both

physical and mental well-being. *People v. Sherrod*, 204 P.3d 472 (Colo. App. 2007), *rev'd on other grounds*, 204 P.3d 466 (Colo. 2009).

**It was not plain error for court to admit child's statements where defendant did not touch the child** but where there was testimony that defendant intimidated the child into undressing herself and touching herself for the defendant's sexual gratification while threatening the child if she did not comply. The "constructive touching" of the child was sufficient to permit the testimony under the statute. *People v. Cook*, 197 P.3d 269 (Colo. App. 2008).

**Applied** in *People v. Woertman*, 786 P.2d 443 (Colo. App. 1989); *People v. Hansen*, 920 P.2d 831 (Colo. App. 1995).

### **13-25-129.5. Statements of persons with intellectual and developmental disabilities - hearsay exception.**

(1) An out-of-court statement made by a person with an intellectual and developmental disability, as defined in section 25.5-10-202 (26)(a), C.R.S., not otherwise admissible by a statute or court rule that provides an exception to the objection of hearsay is admissible in any criminal or delinquency proceeding in which the person is alleged to have been a victim if the conditions of subsection (5) of this section are satisfied.

(2) (a) An out-of-court statement made by a person with an intellectual and developmental disability, as defined in section 25.5-10-202 (26)(a), C.R.S., that describes all or part of an offense described in paragraph (b) of this subsection (2) performed with, by, on, or in the presence of the declarant, and that is not otherwise admissible by a statute or court rule that provides an exception to the objection of hearsay, is admissible in any criminal, delinquency, or civil proceeding if the conditions of subsection (5) of this section are satisfied.

(b) The exception described in subsection (2)(a) of this section applies to an out-of-court statement made by a person with an intellectual and developmental disability, which statement describes all or part of any of the following offenses:



- (I) Sexual assault, as described in section 18-3-402 or 18-6.5-103;
  - (II) Unlawful sexual contact, as described in section 18-3-404 or 18-6.5-103;
  - (III) Sexual assault on a child, as described in section 18-3-405 or 18-6.5-103;
  - (IV) Sexual assault on a child by one in a position of trust, as described in section 18-3-405.3 or 18-6.5-103;
  - (V) Internet sexual exploitation of a child, as described in section 18-3-405.4;
  - (VI) Sexual assault on a client by a psychotherapist, as described in section 18-3-405.5 or 18-6.5-103;
  - (VII) Incest, as described in section 18-6-301;
  - (VIII) Aggravated incest, as described in section 18-6-302;
  - (IX) Human trafficking of a minor for involuntary servitude, as described in section 18-3-503, or human trafficking of a minor for sexual servitude, as described in section 18-3-504 (2);
  - (X) Sexual exploitation of a child, as described in section 18-6-403;
  - (XI) Indecent exposure, as described in section 18-7-302;
  - (XI.5) An offense contained in article 6.5 of title 18; or
  - (XII) Criminal attempt to commit any of the acts specified in this subsection (2)(b).
- (3) An out-of-court statement by a person with an intellectual and developmental disability, as defined in section 25.5-10-202 (26)(a), C.R.S., that describes any act of child abuse, as defined in section 18-6-401, C.R.S., to which the declarant was subjected or which the declarant witnessed, and that is not otherwise admissible by a statute or court rule that provides an exception to the objection of hearsay, is admissible in evidence in any criminal, delinquency, or civil proceeding in which a child is alleged to be a victim of child abuse or the subject of a proceeding alleging that a child is neglected or dependent under section 19-1-104 (1)(b), C.R.S., if the conditions of subsection (5) of this section are satisfied.
- (4) An out-of-court statement made by a person with an intellectual and developmental disability, as defined in section 25.5-10-202 (26)(a), that describes all or part of an offense contained in part 1 of article 3 of title 18 or article 6.5 of title 18, or that describes an act of domestic violence as defined in section 18-6-800.3 (1), not otherwise admissible by statute or court rule that provides an exception to the objection of hearsay, is admissible in evidence in any criminal, delinquency, or civil proceeding if the conditions of subsection (5) of this section are satisfied.

(5) The exceptions to the objection of hearsay described in subsections (1), (2), (3), and (4) of this section shall apply only if the court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability; and either:

(a) The statement is a nontestimonial statement; or

(b) (I) The declarant testifies at the proceedings; or

(II) If the declarant is unavailable to testify, the defendant has had an opportunity to cross-examine the declarant in a previous proceeding and there is corroborative evidence of the act which is the subject of the statement.

(6) If a statement is admitted pursuant to this section, the court shall instruct the jury in the final written instructions that during the proceeding the jury heard evidence repeating a person's out-of-court statement, that it is for the jury to determine the weight and credit to be given the statement, and that, in making the determination, the jury shall consider the nature of the statement, the circumstances under which the statement was made, and any other relevant factor.

(7) The proponent of the statement shall give the adverse party reasonable notice of his or her intention to offer the statement and the particulars of the statement.

**Source: L. 2012:** Entire section added, (HB 12-1085), ch. 75, p. 253, § 1, effective August 8. **L. 2013:** (1), (2)(a), (3), and (4) amended, (HB 13-1314), ch. 323, p. 1802, § 24, effective March 1, 2014. **L. 2014:** (2)(b)(IX) amended, (HB 14-1273), ch. 282, p. 1152, § 8, effective July 1. **L. 2017:** (2)(b) and (4) amended, (SB 17-024), ch. 83, p. 257, § 1, effective July 1.

### **13-25-130. Criminal actions - use of photographs, video tapes, or films of property.**

(1) Photographs, video tapes, or films of property over which a person is alleged to have exerted unauthorized control or otherwise to have obtained unlawfully are competent evidence if the photographs, video tapes, or films are admissible into evidence under the rules of law governing the admissibility of photographs, video tapes, or films into evidence. Any photographic, video tape, or film record, when satisfactorily identified and authenticated, is as admissible in evidence as the property itself.

(2) (a) Any photograph may bear a written description of the property alleged to have been wrongfully taken, the name of the owner of the property taken, the name of the accused, the name of the arresting law enforcement officer, the date of the photograph, and the signature of the photographer.

(b) Any video tape or film may include, as a segment of the tape or film, a written description of the property alleged to have been wrongfully taken, the name of the owner of the property taken, the name of the accused, the name of the arresting law enforcement officer, the date the tape or film was produced, and a segment showing the signature of the photographer.

(3) A law enforcement agency which is holding property over which a person is alleged to have exerted unauthorized control or otherwise to have obtained unlawfully may return that property to its owner if:

(a) The appropriately identified photographs, video tapes, or films are filed and retained by the law enforcement agency;

(b) Satisfactory proof of ownership of the property is shown by the owner;

(c) A declaration of ownership is signed under penalty of perjury;

(d) The defendant, if a defendant has been filed upon, has been notified that such photographs, video tapes, or films have been taken, recorded, or produced; and

(e) A receipt for the property is obtained from the owner upon delivery by the law enforcement agency.

**Source: L. 85:** Entire section added, p. 576, § 1, effective July 1.

**Cross references:** For provisions in the criminal code concerning the use of photographs, video tapes, or films of property, see §§ 18-4-305, 18-4-415, and 18-4-514.

### **13-25-131. Civil actions - sexual assault - certain evidence presumed irrelevant.**

(1) In any civil action for damages by an alleged victim which alleges damages resulting from a sexual assault on a client by any person who enters into a professional-client relationship that permits professional physical access to the client's person or the opportunity to affect or influence the thought processes or emotions of such client, including, but not limited to, actions for professional malpractice or assault and battery, evidence of specific instances of the victim's prior or subsequent sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct shall be presumed to be irrelevant, except as provided in subsections (2) and (4) of this section. The persons to whom this subsection (1) applies in a civil action against such persons shall include any psychotherapist as defined in section 18-3-405.5, C.R.S., any medical professional, any member of the clergy, or any person acting under the color of a religious organization. This subsection (1) shall also apply in a civil

action against a parent or other person in a position of trust, power, or authority over any child or other person, in a civil action by or on behalf of such child or such other person.

(2) Subsection (1) of this section notwithstanding, in any of the civil actions described in such subsection (1), evidence of the following shall be presumed to be relevant:

(a) Evidence of the victim's prior or subsequent sexual conduct with the defendant in such civil action;

(b) Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, disease, or any similar evidence of sexual intercourse, including, but not limited to, genetic testing pursuant to section 13-25-126, offered for the purpose of showing that the act or acts alleged were or were not committed by the defendant in such civil action.

(3) In any civil action described in subsection (1) of this section, evidence of specific instances of the alleged victim's prior or subsequent sexual conduct is not subject to discovery.

(4) Notwithstanding subsections (1) and (3) of this section, evidence of specific instances of the alleged victim's prior or subsequent sexual conduct may be determined to be subject to discovery or offered as evidence, if the defendant or plaintiff requests a hearing prior to conducting discovery or attempting to admit such evidence and makes an offer of proof of the relevancy of such evidence and the court finds that the evidence is relevant and the probative value of such evidence outweighs its prejudicial effect. Such hearing shall be held no later than thirty days prior to trial. In making an order that such evidence is relevant, the court shall detail the information or conduct that is subject to discovery or which may be admitted into evidence.

**Source: L. 91:** Entire section added, p. 352, § 1, effective July 1. **L. 97:** (2)(b) amended, p. 560, § 3, effective July 1.

### **13-25-132. Criminal actions - video tape depositions - use at trial.**

(1) (a) In any criminal action, if the court finds, upon application of the prosecution, that there is substantial risk of physical harm or intimidation of a witness, the court may enter an order that a deposition be taken of that witness' testimony and that the deposition be recorded and preserved on video tape.

(b) For the purposes of this section, "intimidation" means to, directly or indirectly, by oneself or through any other person in one's behalf, make use of any force, violence, restraint, abduction, duress, or forcible or fraudulent device or contrivance, or to inflict or threaten the infliction of any injury, damage, harm, or loss, or in any manner to practice intimidation upon or against any person in order to impede, prevent, or otherwise interfere with the testimony of the witness, or to

compel, induce, or prevail upon any witness to give or refrain from giving testimony in any criminal action.

(2) The prosecution shall apply for the order specified in subsection (1) of this section in writing at least three days prior to the taking of the deposition. The defendant shall receive reasonable notice of the taking of the deposition. The defendant shall have a right to be present and represented by counsel at the deposition.

(3) Upon timely receipt of the application, the court shall make a preliminary finding regarding whether, at the time of trial, there is likely to be a substantial risk of physical harm or intimidation of a witness. If the court so finds, it shall order that the deposition be taken, pursuant to rule 15 (d) of the Colorado rules of criminal procedure, and preserved on video tape. The prosecution shall transmit the video tape to the clerk of the court in which the action is pending.

**Source: L. 92:** Entire section added, p. 281, § 2, effective July 1.

**13-25-133. Telecommunications devices for the deaf and teletype - inadmissibility in evidence - exception.**

(1) Except as provided in subsection (3) of this section, the contents of any communication made directly or indirectly through a telecommunications device for the deaf (commonly known as TDD) or teletype (commonly known as TTY) and any writing or recording resulting from the communication are inadmissible as evidence of the existence or contents of the communication in any court of law, legal proceeding, or administrative hearing.

(2) For the purposes of this section, "telecommunications device for the deaf or teletype" means any auxiliary aid or service consisting of listening or transcription systems that allow the reception or transmission of aurally delivered communication and materials for the benefit of individuals with hearing, speech, or physical impairments.

(3) The provisions of this section do not apply to any communication intercepted pursuant to a lawful court order.

**Source: L. 94:** Entire section added, p. 458, § 1, effective March 29.

**13-25-134. Electronic records and signatures - admissibility in evidence - originals.**

Pursuant to the provisions of article 71.3 of title 24, C.R.S., in any legal proceeding, nothing in the application of the rules of evidence shall apply so as to deny the admissibility of an electronic

record or electronic signature into evidence on the sole ground that it is an electronic record or electronic signature or on the grounds that it is not in its original form or is not an original.

**Source: L. 99:** Entire section added, p. 1347, § 4, effective July 1. **L. 2002:** Entire section amended, p. 858, § 5, effective May 30.

**13-25-135. Evidence of admissions - civil proceedings - unanticipated outcomes - medical care.**

(1) In any civil action brought by an alleged victim of an unanticipated outcome of medical care, or in any arbitration proceeding related to such civil action, any and all statements, affirmations, gestures, or conduct expressing apology, fault, sympathy, commiseration, condolence, compassion, or a general sense of benevolence which are made by a health-care provider or an employee of a health-care provider to the alleged victim, a relative of the alleged victim, or a representative of the alleged victim and which relate to the discomfort, pain, suffering, injury, or death of the alleged victim as the result of the unanticipated outcome of medical care shall be inadmissible as evidence of an admission of liability or as evidence of an admission against interest.

(2) For purposes of this section, unless the context otherwise requires:

(a) "Health-care provider" means any person licensed or certified by the state of Colorado to deliver health care and any clinic, health dispensary, or health facility licensed by the state of Colorado. The term includes any professional corporation or other professional entity comprised of such health-care providers as permitted by the laws of this state.

(b) "Relative" means a victim's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents. The term includes said relationships that are created as a result of adoption. In addition, "relative" includes any person who has a family-type relationship with a victim.

(c) "Representative" means a legal guardian, attorney, person designated to make decisions on behalf of a patient under a medical power of attorney, or any person recognized in law or custom as a patient's agent.

(d) "Unanticipated outcome" means the outcome of a medical treatment or procedure that differs from an expected result.

**Source: L. 2003:** Entire section added, p. 940, § 1, effective April 17.

## ANNOTATION

**Law reviews.** For article, "Apology in the Aftermath of Injury: Colorado's 'I'm Sorry' Law", see 34 Colo. Law. 47 (Apr. 2005). For

article, "Unlocking Apology's Potential in Resolving Disputes", see 51 Colo. Law. 20 (July 2022).

### **13-25-136. Criminal actions - prenatal drug and alcohol screening - admissibility of evidence.**

A court shall not admit in a criminal proceeding information relating to substance use obtained as part of a screening or test performed to determine pregnancy or to provide prenatal or postpartum care, up to one year postpartum, or if a pregnant or parenting person discloses substance use during pregnancy while seeking or participating in behavioral health treatment. This section does not prohibit prosecution of any claim or action related to such substance use based on evidence obtained through methods other than those described in this section.

**Source:** **L. 2012:** Entire section added, (HB 12-1100), ch. 10, p. 27, § 2, effective March 9. **L. 2019:** Entire section amended, (HB 19-1193), ch. 272, p. 2574, § 10, effective May 23. **L. 2023:** Entire section amended, (HB 23-1187), ch. 246, p. 1340, § 2, effective August 7.

**Cross references:** For the legislative declaration in the 2012 act adding this section, see section 1 of chapter 10, Session Laws of Colorado 2012. For the legislative declaration in HB 19-1193, see section 1 of chapter 272, Session Laws of Colorado 2019.

### **13-25-137. Admissibility of commercial packaging.**

(1) Labels or packages listing, indicating, or describing the contents or ingredients of any commercially packaged item are admissible in evidence to prove that the item contains the contents or ingredients listed on the label or package. A label or package listing that identifies the contents or ingredients of a container or package constitutes prima facie evidence that the items in the container or package were composed in whole or in part of the contents.

(2) Prior to the admission of evidence pursuant to this section, the court shall make a preliminary determination as to whether the item constitutes a commercially packaged item as described in subsection (1) of this section. This determination may include any evidence the court deems appropriate, including but not limited to evidence of where the item is available for

purchase, whether the item is subject to state or federal regulation, or any other evidence observable on the package that indicates or constitutes indicia of the label's or package's reliability. Extrinsic evidence that an item is commercially packaged is not a prerequisite to the court's determination.

**Source: L. 2012:** Entire section added, (HB 12-1310), ch. 268, p. 1391, § 1, effective June 7.

**13-25-138. Victim's prior sexual conduct history - evidentiary hearing - victim's identity - protective order.**

(1) Evidence of specific instances of the victim's prior or subsequent sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct is presumed irrelevant and is not admissible in a civil proceeding involving alleged sexual misconduct except for evidence of specific instances of sexual activity showing the source or origin of semen or any similar evidence of sexual intercourse offered for the purpose of showing that the alleged act was not committed by the defendant.

(1.5) Evidence of the victim's manner of dress, hairstyle, mode or manner of speech, or lifestyle at the time of, prior to, or subsequent to the alleged offense is not admissible as evidence of the victim's consent, credibility, or the existence or extent of damages or harm.

(2) If a party intends to offer evidence pursuant to subsection (1) or (1.5) of this section, or introduce a witness from whom the evidence is intended to be elicited, the party shall:

(a) File a written motion at least sixty-three days prior to trial, unless later for good cause shown, to the court and to the opposing parties stating that the moving party has an offer of proof of the relevancy and materiality of evidence of specific instances of the victim's prior or subsequent sexual conduct, or opinion evidence of the victim's sexual conduct, or reputation evidence of the victim's sexual conduct that is proposed to be presented. The written motion must be accompanied by an affidavit in which the offer of proof is stated.

(b) Notify the alleged victim or alleged victim's representative.

(3) (a) (I) Before admitting evidence pursuant to this section, the party making a motion to admit the evidence shall raise the issue at a conference pursuant to rule 16 or 16.1 of the Colorado rules of civil procedure. At the conference, the moving party must make a prima facie showing that the evidence is relevant for an admissible reason and that discovery is likely to rebut the presumption against inadmissibility. The court shall provide the objecting party, if any, the opportunity be heard.



(II) The court may permit discovery only if the moving party makes a prima facie showing that the evidence is relevant for an admissible reason and that discovery is likely to rebut the presumption against inadmissibility. If the court permits discovery, the court shall issue a comprehensive protective order that limits the scope of discovery to relevant issues and protects against unwarranted, irrelevant, or overly broad discovery into the alleged victim's sexual conduct or history.

(III) The court must issue an order prohibiting discovery into evidence presumed inadmissible pursuant to this section if neither party raises the issue at a conference pursuant to rule 16 or 16.1 of the Colorado rules of civil procedure or if the moving party fails to make a prima facie showing that the evidence is relevant for an admissible reason and that discovery is likely to rebut the presumption against inadmissibility.

(a.5) Before admitting evidence pursuant to this section, the court shall conduct an in camera hearing and provide the alleged victim the right to attend and be heard. The motion, related materials, and the hearing record are confidential. A party making a motion pursuant to this section shall state in the caption that the motion is confidential. After the conclusion of the in camera hearing, if a party makes a motion to make the related materials or hearing record public, the party's motion must not disclose any confidential information.

(b) At the conclusion of the hearing, if the court finds that the evidence proposed to be offered regarding the sexual conduct of the victim is relevant to a material issue to the case and that its probative value substantially outweighs the probability that its admission will create an unfair prejudice or invasion of privacy, the court shall order that evidence may be introduced and prescribe the nature of the evidence or questions to be permitted. The moving party may then offer evidence pursuant to the order of the court.

(c) All motions and supporting documents filed pursuant to this section must be filed under seal and may be unsealed only if the court rules that the evidence is admissible and the case proceeds to trial. If the court determines that only part of the evidence contained in the motion is admissible, only that portion of the motion and supporting documents pertaining to the admissible portion may be unsealed.

(d) The court shall seal all court transcripts, tape recordings, and records of proceedings, other than minute orders of a hearing held pursuant to this section. The court may unseal the transcripts, tape recordings, and records only if the court rules that the evidence is admissible and the case proceeds to trial. If the court determines that only part of the evidence is admissible, only the portion of the hearing pertaining to the admissible evidence may be unsealed.

(4) In a civil proceeding, at any time upon motion of the plaintiff or on the court's own motion, the court may issue a protective order pursuant to the Colorado rules of civil procedure concerning disclosure of information relating to the victim. The court may punish a violation of a protective order by contempt of court.

**Source: L. 2018:** Entire section added, (HB 18-1243), ch. 160, p. 1121, § 1, effective April 25.  
**L. 2025:** (1), IP(2), (3)(a), and (3)(b) amended and (1.5) and (3)(a.5) added, (HB 25-1138), ch. 9, p. 21, § 1, effective July 1.

**13-25-139. Criminal action - interference with witness - forfeiture by wrongdoing.**

When a party to a criminal case wrongfully procures the unavailability of a witness, a statement otherwise not admissible pursuant to the Colorado rules of evidence that is offered against the party that was involved in or responsible for the wrongdoing that was intended to, and did, deprive the criminal justice system of evidence is admissible as an exception to the hearsay rule; except that such a statement is not admissible unless the proponent has given to the adverse party advance written notice of an intention to introduce the statement sufficient to provide the adverse party a fair opportunity to contest the admissibility of the statement. In determining the admissibility of the evidence, the court shall determine, prior to the trial, whether the forfeiture by wrongdoing occurred by a preponderance of the evidence.

**Source: L. 2020:** Entire section added, (SB 20-088), ch. 133, p. 577, § 1, effective June 26.

## **ARTICLE 26**

### **Uniform Photographic Records Act**

- |            |                                             |            |                                                               |
|------------|---------------------------------------------|------------|---------------------------------------------------------------|
| 13-26-101. | Short title.                                | 13-26-103. | Records of trust departments<br>or companies not<br>excepted. |
| 13-26-102. | Business and public records<br>as evidence. | 13-26-104. | Uniform construction.                                         |

**13-26-101. Short title.**

This article shall be known and may be cited as the "Uniform Photographic Copies of Business and Public Records as Evidence Act".

**Source: L. 55:** p. 374, § 3. **CRS 53:** § 52-2-3. **C.R.S. 1963:** § 52-2-3.

### **13-26-102. Business and public records as evidence.**

If any business, institution, or member of a profession or calling or any department or agency of government in the regular course of business or activity keeps or records any memorandum, writing, entry, print, or representation, or combination thereof, of any act, transaction, occurrence, or event and in the regular course of business has caused any of the same to be recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, optical disk, or other form of mass storage, electronic imaging, electronic data processing, electronically transmitted facsimile, printout, or other reproduction of electronically stored data, or other process which accurately reproduces or forms a durable medium for reproducing the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity or unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not, and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement, or facsimile does not preclude admission of the original. This shall not be construed to exclude from evidence any document or copy thereof which is otherwise admissible under the rules of evidence.

**Source:** L. 55: p. 373, § 1. CRS 53: § 52-2-1. C.R.S. 1963: § 52-2-1. L. 94: Entire section amended, p. 454, § 1, effective July 1.

### **ANNOTATION**

**Law reviews.** For article, "Highlights of Evidence", see 28 Rocky Mt. L. Rev. 91 the 1955 Colorado Legislative Session — (1955).

### **13-26-103. Records of trust departments or companies not excepted.**

The records of the trust department of a bank or trust company are not such records as are excepted under the phrase "held in a custodial or fiduciary capacity" in section 13-26-102. The originals of such trust records may be reproduced at any time and destroyed at any time, if done in good faith and without wrongful intent. Neither the manner in which an original is destroyed, whether voluntarily or by casualty or otherwise, nor the fact that it may have been destroyed while it was held in a custodial or fiduciary capacity shall affect the admissibility of a reproduction.

**Source: L. 57:** p. 367, § 1. **CRS 53:** § 52-2-4. **C.R.S. 1963:** § 52-2-4. **L. 87:** Entire section amended, p. 1577, § 16, effective July 10.

## **ANNOTATION**

**Law reviews.** For article, "One Year Review of Evidence", see 35 Dicta 44 (1958).

### **13-26-104. Uniform construction.**

This article shall be so interpreted and construed as to effectuate its general purpose of making uniform the law of those states which enact it.

**Source: L. 55:** p. 374, § 2. **CRS 53:** § 52-2-2. **C.R.S. 1963:** § 52-2-2.

## **ARTICLE 27**

### **Uniform Unsworn Declarations Act**

- |            |                                  |            |                                                                          |
|------------|----------------------------------|------------|--------------------------------------------------------------------------|
| 13-27-101. | Short title.                     | 13-27-106. | Form of unsworn declaration.                                             |
| 13-27-102. | Definitions.                     | 13-27-107. | Uniformity of application and construction.                              |
| 13-27-103. | Applicability.                   | 13-27-108. | Relation to "Electronic Signatures in Global and National Commerce Act". |
| 13-27-104. | Validity of unsworn declaration. |            |                                                                          |
| 13-27-105. | Required medium.                 |            |                                                                          |

## **PREFATORY NOTE**

Declarations of persons are routinely received in state and federal courts and agencies. Many — but not all — of the declarations are affidavits and other documents sworn to by declarants before notaries public or authorized officials.

Courts and agencies do receive unsworn declarations. Unsworn declarations may be oral or in writing. For example, they may be in the form of:

- testimony given under affirmation rather than oath. See, e.g., Fed. R. Evid. 603 ("a witness must give an oath or affirmation to testify truthfully"); Ala. R. Evid. 603 ("every witness [must] declare that the witness will testify truthfully, by oath or affirmation"); Mich. R. Evid. 603 (same); Wash. R. Evid. 603 (same);

- an attested (or witnessed) will. See, e.g., Ala. Code § 43-8-131; Cal. Prob. Code § 6110; Colo. Rev. Stats. § 15-11-502; Tex. Estates Code § 251.051; Va. Code § 64.2-403;

- other unsworn declarations authorized by a state's law or rules. See, e.g., Cal. Civ. Proc. Code § 2015.5; Fla. Stat. § 92.525; Kan. Stats. § 53-601; Va. Code § 8.01-4.3;

- statements made while under a belief of impending death. See, e.g., Fed. R. Evid. 804(b)(2) (statements under belief of imminent death); Ala. R. Evid. 804(b)(2) (statement under belief of impending death); Mich. Laws § 767.72 (dying declarations admissible as evidence in manslaughter cases); Ohio R. Evid. 804(b)(2) (statement under belief of impending death); or

- declarations made by an officer of the court. See, e.g., *Cox v. State*, 279 So. 2d 143, 144-45 (Ala. Crim. App. 1973) ("[I]t was within the judge's judicial discretion as to whether or not he would take the unsworn statement of an officer of his court as evidence.").

In 2008 the Uniform Law Commission completed work on the Uniform Unsworn Foreign Declarations Act (UUFDA), which allows for the use of unsworn declarations

under penalty of perjury when made outside the United States. The UUFDA extends to state proceedings the same flexibility that federal courts have had since 1976 under 28 U.S.C. § 1746. However, 28 U.S.C. § 1746 is broader than the UUFDA in that it also covers unsworn declarations made within the United States. Additionally, while working on the UUFDA, the ULC identified 22 states with existing laws, procedural rules or statutes having a similar effect as 28 U.S.C. § 1746. It is noted in the comments of the UUFDA that the Drafting Committee considered expanding the UUFDA to include unsworn declarations made within the United States but decided against it due to the limited charge of the Committee as well as time and enactability concerns.

Since its promulgation, the UUFDA has been adopted in over 20 states and the District of Columbia. It is under consideration in additional states. Additionally, a number of states have existing or procedural rules that permit the use of unsworn declarations made within the United States.

The Uniform Unsworn Declarations Act (UUDA) affirms the use in state legal proceedings of unsworn declarations made by declarants. Under the UUDA, if an unsworn declaration is made subject to penalties for perjury and contains the information in the model form provided in the act, then the statement may be used as an equivalent of a sworn declaration. The UUDA excludes use of unsworn declarations for depositions, oaths of office, oaths related to self-proved wills,

declarations recorded under certain real estate statutes, and oaths required to be given before specified officials other than a notary.

The UUDA will extend to state proceedings the same flexibility that federal — and a number of state — courts and agencies have employed for decades. Since 1976, federal law (28 U.S.C. § 1746) has allowed an unsworn declaration to be recognized and valid as the equivalent of a sworn affidavit if it contained an affirmation substantially in the form set forth in the federal act. The courts, though, have ruled that 28 U.S.C. § 1746 is inapplicable to state court proceedings. Several states also authorize the use of unsworn declarations (e.g., Cal. Civ. Proc. Code § 2015.5; Fla.

Stat. § 92.525; Kan. Stats. § 53-601), but the state procedures are not uniform.

Existing state legislation varies significantly in content, scope and form. Enactment of the UUDA harmonizes state and federal treatment of unsworn declarations. Uniformity is important because many matters as to which the use of unsworn declarations is valuable will involve more than one state or jurisdiction. Further, the UUDA will reduce aspects of confusion regarding differences in federal and state litigation practice. The act also eases some of the declarants' burdens in providing important information for state proceedings.

The Uniform Unsworn Declarations Act should be enacted in every state.

### **13-27-101. Short title.**

The short title of this article 27 is the "Uniform Unsworn Declarations Act".

**Source:** L. 2018: Entire article added with relocations, (SB 18-032), ch. 8, p. 154, § 9, effective October 1.

**Editor's note:** This section is similar to former § 12-55-301 as it existed prior to 2018.

### **13-27-102. Definitions.**

In this article 27:

(1) "Boundaries of the United States" means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(2) "Law" includes the federal or a state constitution, a federal or state statute, a judicial decision or order, a rule of court, an executive order, and an administrative rule, regulation, or order.

(3) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound, or process.

(5) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(6) "Sworn declaration" means a declaration in a signed record given under oath. The term includes a sworn statement, verification, certificate, and affidavit.

(7) "Unsworn declaration" means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.

**Source: L. 2018:** Entire article added with relocations, (SB 18-032), ch. 8, p. 154, § 9, effective October 1.

**Editor's note:** This section is similar to former § 12-55-302 as it existed prior to 2018.

## COMMENT

1. The definition of "law" is drafted in an open - ended manner to give it the widest possible application. The term is not ordinarily defined in uniform acts but in this context it is important that judges applying the act be in no doubt about its breadth. The wording is taken from the definition contained in the Revised Model State Administrative Procedure Act.

In most instances, "law" is referring to the law of the enacting state. Section 7 is the exception; in that section, "law" would address the general law on the subject of declarations because the provision encourages interpretation to achieve uniformity in the law.

2. A "record" includes information that is in intangible form (e.g., electronically

stored) as well as tangible form (e.g., written on paper). It is consistent with the Uniform Electronic Transactions Act and the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.).

3. The definition of "sign" is broad enough to cover any writing containing a

traditional signature and any record containing an electronic signature. It is consistent with the Uniform Electronic Transactions Act and the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.).

### **13-27-103. Applicability.**

This article 27 applies to an unsworn declaration by a declarant who at the time of making the declaration is physically located within or outside the boundaries of the United States whether or not the location is subject to the jurisdiction of the United States.

**Source: L. 2018:** Entire article added with relocations, (SB 18-032), ch. 8, p. 154, § 9, effective October 1.

**Editor's note:** This section is similar to former § 12-55-303 as it existed prior to 2018.

### **COMMENT**

This act applies to unsworn declarations made by a declarant regardless of where the declarant was located at the time of the declaration. The declaration could have been made within the United States whether within the enacting state or in a different

state (even if the location is under the control of another sovereign, such as foreign embassies or consulates or federally recognized Indian lands), or in a foreign country.

### **13-27-104. Validity of unsworn declaration.**

(1) Except as otherwise provided in subsection (2) of this section, if a law of this state requires or permits use of a sworn declaration in a court proceeding, an unsworn declaration meeting the requirements of this article 27 has the same effect as a sworn declaration.

(2) This article 27 does not apply to:

(a) A deposition;



- (b) An oath of office;
- (c) An oath required to be given before a specified official other than a notary public;
- (d) A declaration to be recorded pursuant to article 35 of title 38 for the purposes of conveying and recording title to real property or a declaration required to be recorded for purposes of registering title to real property pursuant to article 36 of title 38; or
- (e) An oath required by section 15-11-504 for a self-proved will.

**Source: L. 2018:** Entire article added with relocations, (SB 18-032), ch. 8, p. 154, § 9, effective October 1.

**Editor's note:** This section is similar to former § 12-55-304 as it existed prior to 2018.

### COMMENT

Except as provided in subsection 4(b) of this section, an unsworn declaration meeting the requirements of this act may be used in a state proceeding or transaction whenever other state law authorizes the use of a sworn declaration. Thus, if other state law permits the use of an affidavit, an unsworn declaration meeting the requirements of this act would also suffice. Additionally, if other state law authorizes other substitutes for a sworn declaration, such as an affirmation, then as provided in subsection (a) of this section, an unsworn declaration meeting the requirements of this act could serve as a substitute for an affirmation. Nothing in this act affects the efficacy of sworn declarations. An unsworn declaration is an alternative to a sworn declaration. In perhaps most cases, sworn or notarized declarations may be preferred; unsworn declarations though may be used when necessary or suggested by circumstances.

The use of unsworn declarations is not limited to litigation. Unsworn declarations would be usable in civil, criminal, and regulatory proceedings and settings. However, there are certain contexts in which unsworn declarations should not be used, and these contexts are listed in subsection (b) of this section.

This act does not relieve a party from establishing the necessary foundation for the admission of an unsworn declaration. Authenticity is not addressed in this act.

The authenticity of the declaration must be established in accordance with the law of the enacting state. If authorized by the law of the enacting state, authenticity of written declarations might be established through, for example, testimony of witnesses to the declaration, handwriting experts or lay witnesses familiar with the signature of the declarant, comparison with authenticated

specimens, or other recognized methods of authentication. See Fed. R. Evid. 901. Such approaches are commonly acceptable in cases involving attested wills. Although subscribing witnesses are preferred, their testimony is not necessary for authentication of the declaration if its authenticity can be established by other means. See, e.g., Fed. R. Evid. 903; Cal. Prob. Code §§ 8220 - 21, (attested wills may be proved by testimony or deposition to subscribing witness or absent a witness by proof of handwriting and affidavit of person with personal knowledge); Iowa Code § 622.24 (absent testimony of subscribing witness to attested will, execution of will may be proved by other evidence); Mass. Gen. Laws 190B § 3 - 406(a) (due execution of an attested will

may be proved by evidence other than testimony of attesting witness); Mich. Comp. Laws § 700.3405(2) (authentication of attested wills by witnesses or other evidence authorized).

As noted in the Legislative Note, an enacting state should ensure that its perjury law includes unsworn declarations. For example, see Ore. Rev. Stats. § 162.065, which provides: "(1) A person commits the crime of perjury if the person makes a false sworn statement or a false unsworn declaration in regard to a material issue, knowing it to be false. (2) Perjury is a Class C felony." See also 11 Del. Code § 1224 (definition of "swears falsely" includes unsworn declarations).

### **13-27-105. Required medium.**

If a law of this state requires that a sworn declaration be presented in a particular medium, an unsworn declaration must be presented in that medium.

**Source: L. 2018:** Entire article added with relocations, (SB 18-032), ch. 8, p. 155, § 9, effective October 1.

**Editor's note:** This section is similar to former § 12-55-305 as it existed prior to 2018.

### **COMMENT**

Courts and agencies often restrict the medium in which pleadings, motions, and other documents may be filed. This section

recognizes that such a restriction is binding on a person seeking to introduce an unsworn declaration.

**13-27-106. Form of unsworn declaration.**

An unsworn declaration under this article 27 must be in substantially the following form:

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct.

Executed on \_\_\_\_\_ day of \_\_\_\_\_,  
the \_\_\_\_\_ (date) \_\_\_\_\_ (month) \_\_\_\_\_ (year)

at \_\_\_\_\_  
(city or other location, and state or country)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(signature)

**Source: L. 2018:** Entire article added with relocations, (SB 18-032), ch. 8, p. 155, § 9, effective October 1.

**Editor's note:** This section is similar to former § 12-55-306 as it existed prior to 2018.

**COMMENT**

The form informs the declarant that the declaration is made under penalty of perjury, thereby reminding the declarant of the potential liability it establishes. Section 3 of this act authorizes the use of unsworn declarations regardless of where the

declaration was made. The form seeks the location of the declarant at the time of making the declaration which may be helpful for authentication purposes even though location does not affect admissibility.

**13-27-107. Uniformity of application and construction.**

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**Source: L. 2018:** Entire article added with relocations, (SB 18-032), ch. 8, p. 155, § 9, effective October 1.

**Editor's note:** This section is similar to former § 12-55-307 as it existed prior to 2018.

**COMMENT**

This section recites the importance of uniformity among the adopting states when applying and construing the act.

**13-27-108. Relation to "Electronic Signatures in Global and National Commerce Act".**

This article 27 modifies, limits, and supersedes the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001, et seq., but does not modify, limit, or supersede section 101 (c) of that act, 15 U.S.C. sec. 7001 (c), or authorize electronic delivery of any of the notices described in section 103 (b) of that act, 15 U.S.C. sec. 7003 (b).

**Source: L. 2018:** Entire article added with relocations, (SB 18-032), ch. 8, p. 155, § 9, effective October 1.

**Editor's note:** This section is similar to former § 12-55-308 as it existed prior to 2018.

**COMMENT**

This section responds to the specific language of the Electronic Signatures in Global and National Commerce Act and is designed to avoid preemption of state law under that federal legislation.

## FEES AND SALARIES

### ARTICLE 30

#### Compensation of Justices and Judges

|            |                                      |            |                              |
|------------|--------------------------------------|------------|------------------------------|
| 13-30-101. | Short title.                         | 13-30-104. | Judicial compensation        |
| 13-30-102. | Legislative declaration.             |            | adjustment - annual          |
| 13-30-103. | Compensation of justices and judges. |            | general appropriations bill. |

##### **13-30-101. Short title.**

This article shall be known and may be cited as the "Colorado Judicial Compensation Act".

**Source:** L. 71: p. 581, § 1. C.R.S. 1963: § 56-7-1.

##### **13-30-102. Legislative declaration.**

In carrying out its responsibility to provide for judicial salaries pursuant to section 18 of article VI of the state constitution, the general assembly hereby declares that the purpose of this article is to set the amount of judicial compensation for justices of the supreme court, judges of the court of appeals, judges of the district courts, judges of the county courts, and judges of the probate and juvenile courts of the city and county of Denver.

**Source:** L. 71: p. 581, § 1. C.R.S. 1963: § 56-7-2. L. 80: Entire section R&RE, p. 575, § 1, effective July 1. L. 85: Entire section amended, p. 571, § 7, effective November 14, 1986.

##### **13-30-103. Compensation of justices and judges.**

(1) In addition to the provisions of section 13-30-104, the following salaries for the following officers shall apply:

(a) The chief justice of the supreme court shall receive effective July 1, 1991, an annual salary of seventy-nine thousand dollars, and effective July 1, 1992, an annual salary of eighty-two thousand dollars.

(b) Each associate justice of the supreme court shall receive effective July 1, 1991, an annual salary of seventy-six thousand five hundred dollars, and effective July 1, 1992, an annual salary of seventy-nine thousand five hundred dollars.

(c) The chief judge of the court of appeals shall receive effective July 1, 1991, an annual salary of seventy-four thousand five hundred dollars, and effective July 1, 1992, an annual salary of seventy-seven thousand five hundred dollars.

(d) Each judge of the court of appeals, other than the chief judge, shall receive effective July 1, 1991, an annual salary of seventy-two thousand dollars, and effective July 1, 1992, an annual salary of seventy-five thousand dollars.

(e) The judges of the district courts shall each receive effective July 1, 1991, an annual salary of sixty-seven thousand five hundred dollars, and effective July 1, 1992, an annual salary of seventy thousand five hundred dollars.

(f) Each judge of the juvenile court of the city and county of Denver shall receive effective July 1, 1991, an annual salary of sixty-seven thousand five hundred dollars, and effective July 1, 1992, an annual salary of seventy thousand five hundred dollars.

(g) The judge of the probate court of the city and county of Denver shall receive effective July 1, 1991, an annual salary of sixty-seven thousand five hundred dollars, and effective July 1, 1992, an annual salary of seventy thousand five hundred dollars.

(h) Repealed.

(i) Each judge of the county court of the city and county of Denver shall receive an annual salary as provided by the ordinances of said city and county.

(j) The annual salary of judges of the county court in Class B counties, as defined in section 13-6-201, effective July 1, 1991, shall be sixty thousand five hundred dollars, and effective July 1, 1992, shall be sixty-three thousand five hundred dollars.

(k) Repealed.

(l) (I) Effective July 1, 1998, the annual salary of judges of the county court in each Class C or Class D county, as defined in section 13-6-201, and the annual salaries of all special associate, associate, and assistant county judges shall be determined annually by the chief justice and certified to the general assembly and the controller pursuant to procedures approved by the supreme court. The certification shall include the workload measures developed pursuant to subparagraph (II) of this paragraph (I). In determining the salaries to take effect on July 1 of each year, the chief justice shall use the average number of cases filed annually in each county court during the three-year period ending on the previous December 31.

(II) Procedures used to calculate incremental part-time county judge workload salary levels shall be based on the method used to determine the need for full-time county judges as established and approved by the supreme court and shall take into account case types, case processing requirements, support staff assistance, travel, and such other factors as are relevant to workload assessment. Salaries for part-time county judges shall begin at twenty percent of the amount of a full-time county judge salary, as specified in paragraph (j) of this subsection (1) and section 13-30-104, and increase by five percent increments commensurate with increases in the part-time county judge's workload, up to ninety percent of a full-time county judge workload.

(III) When the workload for a part-time county judge reaches eighty percent of a full-time county judge workload, the chief justice may assign the part-time county judge to serve on a full-time basis, so long as the part-time county judge meets the qualifications established for county judges in Class A and Class B counties, as specified in section 13-6-203. Upon assignment to serve on a full-time basis, the part-time county judge shall be paid the full amount of a county judge salary as specified in paragraph (j) of this subsection (1) and section 13-30-104. Assignment of a part-time county judge to serve on a full-time basis pursuant to this subparagraph (III) shall not affect the statutory classification of the county in which the part-time county judge serves, as specified in section 13-6-201.

(IV) Notwithstanding the provisions of subparagraph (I) of this paragraph (I), the salary of a county judge or special associate, associate, or assistant county judge serving in office as of June 30, 1998, may not be reduced while such judge remains in office. Any reduction in salary for a judge appointed after June 30, 1998, shall take effect at the beginning of such judge's next term of office.

(1.5) Notwithstanding the provisions of subsection (1) of this section, for the fiscal year commencing July 1, 1999, and each fiscal year thereafter, the increase over and above the provisions set forth in this section and section 13-30-104, if any, in compensation of justices and judges shall be determined by the general assembly as set forth in the annual general appropriations bill. Any increase in judicial compensation set forth in an annual general appropriations bill shall be an increase only for the fiscal year of the annual general appropriations bill in which the amount is specified and shall not constitute an increase for any other fiscal year. It is the intent of the general assembly that an increase in judicial compensation specified in an annual general appropriations bill shall be added to the compensation set forth in this section and section 13-30-104 and shall not represent a statutory change.

(2) The annual salaries under this section and as increased by the annual general appropriations bill for the fiscal year commencing July 1, 1999, and for each fiscal year thereafter, shall be paid in equal monthly amounts.

**Source:** **L. 71:** p. 581, § 1. **C.R.S. 1963:** § 56-7-3. **L. 72:** p. 319, § 1. **L. 73:** p. 634, § 1. **L. 76:** (1)(b) amended, p. 301, § 30, effective May 20; (2) and (10) amended, p. 591, § 2, effective July 1. **L. 77:** (10) R&RE, p. 783, § 3, effective July 1, 1978. **L. 78:** Entire section amended, p. 391, § 1, effective January 1, 1979. **L. 80:** Entire section R&RE, p. 575, § 2, effective July 1. **L. 84:** IP(1) and (1)(a) to (1)(h) R&RE, p. 455, § 5, effective July 1. **L. 85:** (1)(h) repealed, p. 572, § 12, effective November 14, 1986. **L. 87:** IP(1), (1)(a) to (1)(g), (1)(j), and (1)(k)(I) amended, p. 560, § 2, effective July 1. **L. 91:** IP(1), (1)(a), (1)(b), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), and (1)(j) amended, p. 378, § 1, effective July 1. **L. 97:** (1)(k)(V) and (1)(l) added, p. 767, §§ 1, 2, effective May 1. **L. 98:** (1.5) added and (2) amended, p. 957, § 1, effective May 27.

**Editor's note:** Subsection (1)(k)(V) provided for the repeal of subsection (1)(k), effective July 1, 1998. (See L. 97, p. 767.)

**Cross references:** For compensation of judges outside county of residence, see § 13-3-110.

#### ANNOTATION

**Nothing in the language of former subsection (1)(k)(I) indicates or implies that the county court judge salary calculation formula was contractual in**

**nature** or that it could not be modified or amended in the future. *Alderton v. State of Colo.*, 17 P.3d 817 (Colo. App. 2000).

#### **13-30-104. Judicial compensation adjustment - annual general appropriations bill.**

(1) Effective July 1, 1988, the annual compensation of justices and judges in effect on the preceding June 30, as provided in section 13-30-103 (1)(a) to (1)(g) and (1)(j), shall be increased by four thousand five hundred dollars, and the annual compensation of all special associate, associate, and assistant county judges shall be adjusted as a percentage of such amount as provided in section 13-30-103 (1)(k).

(2) (a) Effective July 1, 1995, the annual compensation of justices and judges in effect on the preceding June 30, as provided in section 13-30-103 (1)(a) to (1)(g) and (1)(j) and subsection (1) of this section, shall be increased by four thousand dollars, and the annual compensation of all special associate, associate, and assistant county judges shall be adjusted as a percentage of such amount as provided in section 13-30-103 (1)(k).

(b) Effective July 1, 1996, the annual compensation of justices and judges in effect on the preceding June 30, as provided in section 13-30-103 (1)(a) to (1)(g) and (1)(j), subsection (1) of



this section, and paragraph (a) of this subsection (2), shall be increased by three thousand dollars, and the annual compensation of all special associate, associate, and assistant county judges shall be adjusted as a percentage of such amount as provided in section 13-30-103 (1)(k).

(c) Effective July 1, 1997, the annual compensation of justices and judges in effect on the preceding June 30, as provided in section 13-30-103 (1)(a) to (1)(g) and (1)(j), subsection (1) of this section, and paragraphs (a) and (b) of this subsection (2), shall be increased by three thousand dollars, and the annual compensation of all special associate, associate, and assistant county judges shall be adjusted as a percentage of such amount as provided in section 13-30-103 (1)(k).

(3) For the fiscal year commencing July 1, 1999, and for each fiscal year thereafter, the increase over and above the provisions set forth in this section and section 13-30-103, if any, in compensation of justices and judges shall be determined by the general assembly as set forth in the annual general appropriations bill. Any increase in judicial compensation set forth in an annual general appropriations bill shall be an increase only for the fiscal year of the annual general appropriations bill in which the amount is specified and shall not constitute an increase for any other fiscal year. It is the intent of the general assembly that an increase in judicial compensation specified in an annual general appropriations bill shall be added to the compensation set forth in this section and section 13-30-103 and shall not represent a statutory change.

**Source:** **L. 81:** Entire section added, p. 887, § 1, effective January 1, 1982. **L. 84:** Entire section amended, p. 714, § 13, effective July 1. **L. 85:** Entire section repealed, p. 1359, § 7, effective June 28. **L. 87:** Entire section RC&RE, p. 561, § 3, effective July 1. **L. 95:** Entire section amended, p. 739, § 1, effective July 1. **L. 98:** (3) added, p. 958, § 2, effective May 27.

**Editor's note:** The references in subsections (1) and (2) to § 13-30-103 (1)(k) refer to that section as it existed prior to its repeal on July 1, 1998.

## **ARTICLE 31**

### **Compensation of Clerks of Courts and Other Assistants**

#### **13-31-101 to 13-31-109. (Repealed)**

**Source:** **L. 79:** Entire article repealed, p. 602, § 30, effective July 1.

**Editor's note:** This article was numbered as article 3 of chapter 56 in C.R.S. 1963. For amendments to this article prior to its repeal in 1979, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

## **ARTICLE 32**

### **Fees of Clerks of Court**

- |              |                                                                                                                                                                                                                                                                                     |            |                                                                                  |
|--------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|----------------------------------------------------------------------------------|
| 13-32-101.   | Docket fees in civil actions -<br>judicial stabilization cash<br>fund - justice center cash<br>fund - justice center<br>maintenance fund - equal<br>justice fee collection -<br>court security surcharge<br>collection - created -<br>report - legislative<br>declaration - repeal. | 13-32-106. | Fee bill and application of<br>fees.                                             |
|              |                                                                                                                                                                                                                                                                                     | 13-32-107. | Fee book a public record.                                                        |
|              |                                                                                                                                                                                                                                                                                     | 13-32-108. | Unclaimed funds - district<br>court.                                             |
|              |                                                                                                                                                                                                                                                                                     | 13-32-109. | Report of unclaimed funds -<br>district court.                                   |
|              |                                                                                                                                                                                                                                                                                     | 13-32-110. | Actions for funds barred in<br>two years.                                        |
| 13-32-102.   | Fees in probate proceedings -<br>equal justice fee<br>collection - court security<br>surcharge collection.                                                                                                                                                                          | 13-32-111. | Refund by decree of court -<br>when.                                             |
|              |                                                                                                                                                                                                                                                                                     | 13-32-112. | Unclaimed funds - county<br>court.                                               |
| 13-32-103.   | Docket fees in special<br>proceedings.                                                                                                                                                                                                                                              | 13-32-113. | Exemption from fees.                                                             |
| 13-32-104.   | Additional fees of clerks of<br>courts.                                                                                                                                                                                                                                             | 13-32-114. | Judicial department<br>information technology<br>cash fund - creation -<br>uses. |
| 13-32-105.   | Docket fees in criminal<br>actions.                                                                                                                                                                                                                                                 |            |                                                                                  |
| 13-32-105.5. | Docket fees - reduction by<br>rule.                                                                                                                                                                                                                                                 |            |                                                                                  |

**13-32-101. Docket fees in civil actions - judicial stabilization cash fund - justice center cash fund - justice center maintenance fund - equal justice fee collection - court security surcharge collection - created - report - legislative declaration - repeal.**

(1) [*Editor's note: This version of subsection (1) is effective until July 1, 2027.*] At the time of first appearance in all civil actions and special proceedings in all courts of record, except in the supreme court and the court of appeals, and except in the probate proceedings in the district court or probate court of the city and county of Denver, and except as provided in subsection (3) of this section and in sections 13-32-103 and 13-32-104, there shall be paid in advance the total docket fees, as follows:

(a) On and after July 1, 2009, by the petitioner in a proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage and by the petitioner in an action for a declaratory judgment concerning the status of marriage, a fee of two hundred thirty dollars;

(a.5) On and after October 1, 2013, by the petitioner in a proceeding for dissolution of a civil union, legal separation of a civil union, or declaration of invalidity of a civil union and by the petitioner in an action for a declaratory judgment concerning the status of a civil union, a fee of two hundred thirty dollars;

(b) On and after July 1, 2009, by the respondent in a proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage and by the respondent to an action for a declaratory judgment concerning the status of marriage, a fee of one hundred sixteen dollars;

(b.5) On and after October 1, 2013, by the respondent in a proceeding for dissolution of a civil union, legal separation of a civil union, or declaration of invalidity of a civil union and by the respondent to an action for a declaratory judgment concerning the status of a civil union, a fee of one hundred sixteen dollars;

(c) (I) to (III) Repealed.

(III.5) Except as provided in subsections (1)(c)(IV) and (1)(c)(V) of this section:

(A) On or after January 1, 2019, by each plaintiff, petitioner, third-party plaintiff, and party filing a cross claim or counterclaim, when a money judgment sought is less than one thousand dollars and such action is commenced in a court of record of appropriate limited jurisdiction, a fee in the amount of eighty-five dollars.

(B) On or after January 1, 2019, by each defendant, respondent, third-party defendant, or other party in such court not filing a cross claim or counterclaim, when a money judgment sought is less than one thousand dollars and such action is commenced in a court of record of appropriate limited jurisdiction, a fee in the amount of eighty dollars.

(C) On or after January 1, 2019, by each plaintiff, petitioner, third-party plaintiff, and party filing a cross claim or counterclaim, when a money judgment sought is one thousand dollars or

more but less than fifteen thousand dollars and such action is commenced in a court of record of appropriate limited jurisdiction, a fee in the amount of one hundred five dollars.

(D) On or after January 1, 2019, by each defendant, respondent, third-party defendant, or other party in such court not filing a cross claim or counterclaim, when a money judgment sought is one thousand dollars or more but less than fifteen thousand dollars and such action is commenced in a court of record of appropriate limited jurisdiction, a fee in the amount of one hundred dollars.

(E) On or after January 1, 2019, by each plaintiff, petitioner, third-party plaintiff, and party filing a cross claim or counterclaim, when a money judgment sought is fifteen thousand dollars or more but does not exceed twenty-five thousand dollars and such action is commenced in a court of record of appropriate limited jurisdiction, a fee in the amount of one hundred thirty-five dollars.

(F) On or after January 1, 2019, by each defendant, respondent, third-party defendant, or other party in such court not filing a cross claim or counterclaim, when a money judgment sought is fifteen thousand dollars or more but does not exceed twenty-five thousand dollars and such action is commenced in a court of record of appropriate limited jurisdiction, a fee in the amount of one hundred thirty dollars.

(IV) The general assembly hereby declares that docket fees for actions filed in the small claims division of the county court should reflect the range of the monetary jurisdictional limit established for such actions and that such fees should promote access to the courts and reflect appropriate contributions from litigants using the court system based on the money judgment sought in an action. The general assembly hereby declares that it is appropriate to establish docket fees for the small claims division of the county court as follows:

(A) On and after July 1, 2008, when the money judgment sought by the plaintiff in an action filed in the small claims division of the county court is five hundred dollars or less, a plaintiff shall pay a fee of thirty-one dollars.

(B) On and after July 1, 2008, when the money judgment sought by the plaintiff in an action filed in the small claims division of the county court is five hundred dollars or less, a defendant filing an answer without a counterclaim in such an action shall pay a fee of twenty-six dollars.

(C) On and after July 1, 2008, when the money judgment sought in an action filed in the small claims division of the county court exceeds five hundred dollars and is no more than seven thousand five hundred dollars, a plaintiff shall pay a fee of fifty-five dollars.

(D) On and after July 1, 2008, when the money judgment sought in an action filed in the small claims division of the county court exceeds five hundred dollars and is no more than seven thousand five hundred dollars, a defendant filing an answer without a counterclaim in such an action shall pay a fee of forty-one dollars.

(E) On and after July 1, 2008, if a defendant files an answer with a counterclaim in an action in the small claims division of the county court and the amount sought in the action and amount sought in the counterclaim are each five hundred dollars or less, the fee for such answer and counterclaim shall be thirty-one dollars.

(F) On and after July 1, 2008, if a defendant files an answer with a counterclaim in an action in the small claims division of the county court and the amount sought in either the action or the counterclaim is more than five hundred dollars and is not more than seven thousand five hundred dollars, the fee for such answer and counterclaim shall be forty-six dollars.

(V) A defendant or third-party defendant shall not be charged any fee, charge, or cost for filing an answer in response to a forcible entry and detainer complaint, regardless of whether the filing of the answer includes a counterclaim or cross claim, and regardless of whether a money judgment is being sought for any amount.

(d) On and after January 1, 2019, by each plaintiff, petitioner, third-party plaintiff, and party filing a cross claim or counterclaim filed in a district court of the state, a fee of two hundred thirty-five dollars;

(e) On and after July 1, 2008, by each appellant, a fee of one hundred sixty-three dollars;

(f) On and after January 1, 2019, by an appellee and by each defendant or respondent not filing a cross claim or counterclaim, a fee of one hundred ninety-two dollars;

(g) On and after July 1, 2008, by a petitioner in adoption proceedings, a fee of one hundred sixty-seven dollars.

(1) ***[Editor's note: This version of subsection (1) is effective July 1, 2027.]*** At the time of first appearance in all civil actions and special proceedings in all courts of record, except in the supreme court and the court of appeals, and except in the probate proceedings in the district court or probate court of the city and county of Denver, and except as provided in subsection (3) of this section and in sections 13-32-103 and 13-32-104, there shall be paid in advance the total docket fees, as follows:

(a) On and after July 1, 2027, by the petitioner in a proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage and by the petitioner in an action for a declaratory judgment concerning the status of marriage, a fee of two hundred twenty-five dollars;

(a.5) On and after July 1, 2027, by the petitioner in a proceeding for dissolution of a civil union, legal separation of a civil union, or declaration of invalidity of a civil union and by the petitioner in an action for a declaratory judgment concerning the status of a civil union, a fee of two hundred twenty-five dollars;

(b) On and after July 1, 2027, by the respondent in a proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage and by the respondent to an action for a declaratory judgment concerning the status of marriage, a fee of one hundred eleven dollars;

(b.5) On and after July 1, 2027, by the respondent in a proceeding for dissolution of a civil union, legal separation of a civil union, or declaration of invalidity of a civil union and by the respondent to an action for a declaratory judgment concerning the status of a civil union, a fee of one hundred eleven dollars;

(c) (I) to (III) Repealed.

(III.5) Except as provided in subsections (1)(c)(IV) and (1)(c)(V) of this section:

(A) On or after July 1, 2027, by each plaintiff, petitioner, third-party plaintiff, and party filing a cross claim or counterclaim, when a money judgment sought is less than one thousand dollars and such action is commenced in a court of record of appropriate limited jurisdiction, a fee in the amount of eighty dollars.

(B) On or after July 1, 2027, by each defendant, respondent, third-party defendant, or other party in such court not filing a cross claim or counterclaim, when a money judgment sought is less than one thousand dollars and such action is commenced in a court of record of appropriate limited jurisdiction, a fee in the amount of seventy-five dollars.

(C) On or after July 1, 2027, by each plaintiff, petitioner, third-party plaintiff, and party filing a cross claim or counterclaim, when a money judgment sought is one thousand dollars or more but less than fifteen thousand dollars and such action is commenced in a court of record of appropriate limited jurisdiction, a fee in the amount of one hundred dollars.

(D) On or after July 1, 2027, by each defendant, respondent, third-party defendant, or other party in such court not filing a cross claim or counterclaim, when a money judgment sought is one thousand dollars or more but less than fifteen thousand dollars and such action is commenced in a court of record of appropriate limited jurisdiction, a fee in the amount of ninety-five dollars.

(E) On or after July 1, 2027, by each plaintiff, petitioner, third-party plaintiff, and party filing a cross claim or counterclaim, when a money judgment sought is fifteen thousand dollars or more but does not exceed twenty-five thousand dollars and such action is commenced in a court of record of appropriate limited jurisdiction, a fee in the amount of one hundred thirty dollars.

(F) On or after July 1, 2027, by each defendant, respondent, third-party defendant, or other party in such court not filing a cross claim or counterclaim, when a money judgment sought is fifteen thousand dollars or more but does not exceed twenty-five thousand dollars and such action is commenced in a court of record of appropriate limited jurisdiction, a fee in the amount of one hundred twenty-five dollars.

(IV) The general assembly hereby declares that docket fees for actions filed in the small claims division of the county court should reflect the range of the monetary jurisdictional limit established for the actions and that the fees should promote access to the courts and reflect appropriate contributions from litigants using the court system based on the money judgment sought in an action. The general assembly hereby declares that it is appropriate to establish docket fees for the small claims division of the county court as follows:

(A) On and after July 1, 2027, when the money judgment sought by the plaintiff in an action filed in the small claims division of the county court is five hundred dollars or less, a plaintiff shall pay a fee of twenty-six dollars.

(B) On and after July 1, 2027, when the money judgment sought by the plaintiff in an action filed in the small claims division of the county court is five hundred dollars or less, a defendant filing an answer without a counterclaim in such an action shall pay a fee of twenty-one dollars.

(C) On and after July 1, 2027, when the money judgment sought in an action filed in the small claims division of the county court exceeds five hundred dollars and is no more than seven thousand five hundred dollars, a plaintiff shall pay a fee of fifty dollars.

(D) On and after July 1, 2027, when the money judgment sought in an action filed in the small claims division of the county court exceeds five hundred dollars and is no more than seven thousand five hundred dollars, a defendant filing an answer without a counterclaim in such an action shall pay a fee of thirty-six dollars.

(E) On and after July 1, 2027, if a defendant files an answer with a counterclaim in an action in the small claims division of the county court and the amount sought in the action and amount sought in the counterclaim are each five hundred dollars or less, the fee for such answer and counterclaim shall be twenty-six dollars.

(F) On and after July 1, 2027, if a defendant files an answer with a counterclaim in an action in the small claims division of the county court and the amount sought in either the action or the counterclaim is more than five hundred dollars and is not more than seven thousand five hundred dollars, the fee for such answer and counterclaim shall be forty-one dollars.

(V) A defendant or third-party defendant shall not be charged any fee, charge, or cost for filing an answer in response to a forcible entry and detainer complaint, regardless of whether the filing of the answer includes a counterclaim or cross claim, and regardless of whether a money judgment is being sought for any amount.

(d) On and after July 1, 2027, by each plaintiff, petitioner, third-party plaintiff, and party filing a cross claim or counterclaim filed in a district court of the state, a fee of two hundred thirty dollars;

(e) On and after July 1, 2027, by each appellant, a fee of one hundred fifty-eight dollars;

(f) On and after July 1, 2027, by an appellee and by each defendant or respondent not filing a cross claim or counterclaim, a fee of one hundred eighty-seven dollars;

(g) On and after July 1, 2027, by a petitioner in adoption proceedings, a fee of one hundred sixty-two dollars.

(2) On and after July 1, 2008, in any proceeding held pursuant to articles 5, 10, 11, 13, and 14 of title 14, C.R.S., where a decree or final or permanent order has been entered and more than sixty days have passed, there shall be assessed at the time of filing a motion to modify, amend, or alter said decree or order a fee of one hundred five dollars.

(3) (a) Notwithstanding the provisions of subsection (1) of this section, if parties appear jointly, only one fee shall be charged or paid, and no fee shall be charged in any event for the filing of a disclaimer, or for an acknowledgment of service for the purpose of conferring jurisdiction, or for an appearance or answer filed by a guardian ad litem, or by an attorney appointed by the court to represent and protect the interest of any defendant.

(b) (I) No docket fee shall be charged in mental health proceedings under article 10 or 10.5 of title 27, C.R.S.; but, where an estate is thereafter probated for any mental incompetent, the committing court has a claim against such estate, as a cost of the mental health proceedings, in the sum of twenty dollars, in addition to any other expense of commitment allowed and paid by the county, to be paid by the conservator of such estate as a claim pursuant to section 15-14-429, C.R.S.

(II) On and after July 1, 2009, all claims of twenty dollars that are paid to and collected by the committing court under subparagraph (I) of this paragraph (b) shall be transmitted to the state treasurer for deposit in the judicial stabilization cash fund created in subsection (6) of this section.

(c) No docket fee shall be charged in proceedings concerning dependent or neglected children, relinquishment of children, or delinquent children.

(4) (a) In a civil case in which there is a contested trial to the court or a trial to a jury and a monetary judgment rendered which is paid in whole or in part in cash or other property, there shall be assessed, against the judgment debtor, by the clerk of the court an additional fee as provided in paragraph (b) of this subsection (4). This additional fee shall be paid to the clerk of the district court upon request for full or partial satisfaction of judgment and before the certificate of satisfaction of judgment is issued.

(b) The additional fee to be paid by the judgment debtor, as provided in paragraph (a) of this subsection (4), is as follows:

(I) Judgments over \$5,000 and not more than \$10,000, a total additional fee of \$10;

(II) Judgments over \$10,000 and not more than \$20,000, a total additional fee of \$30;



- (III) Judgments over \$20,000 and not more than \$30,000, a total additional fee of \$50;
- (IV) Judgments over \$30,000 and not more than \$50,000, a total additional fee of \$90;
- (V) Judgments over \$50,000, \$90 plus an additional fee of \$2 for each \$1,000 above \$50,000.

(5) (a) Each fee collected pursuant to subsection (1)(a) or (1)(a.5) of this section must be transmitted to the state treasurer and divided as follows:

(I) Fifteen dollars must be deposited in the Colorado child abuse prevention trust fund created in section 26.5-3-206;

(II) One hundred fifteen dollars shall be deposited in the performance-based collaborative management incentive cash fund created in section 24-1.9-104, C.R.S.;

(III) Fifty dollars shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section;

(IV) (A) Five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204;

(B) This subsection (5)(a)(IV) is repealed, effective July 1, 2027.

(V) Twenty-six dollars shall be deposited in the justice center cash fund created in paragraph (a) of subsection (7) of this section;

(VI) One dollar shall be deposited in the general fund pursuant to section 2-5-119, C.R.S.;

(VII) Pursuant to section 25-2-107 (2) or 25-2-107.5, C.R.S., three dollars shall be deposited in the vital statistics records cash fund created in section 25-2-121, C.R.S.;

(VIII) Five dollars shall be deposited in the displaced homemakers fund created in section 8-15.5-108, C.R.S.;

(IX) Five dollars shall be deposited in the Colorado domestic abuse program fund created in section 39-22-802 (1), C.R.S.; and

(X) Five dollars shall be deposited in the family violence justice fund created in section 14-4-107 (1), C.R.S.

(b) ***[Editor's note: This version of the introductory portion to subsection (5)(b) is effective until July 1, 2027.]*** Each fee collected pursuant to paragraph (b) or (b.5) of subsection (1) of this section shall be transmitted to the state treasurer and divided as follows:

(b) ***[Editor's note: This version of the introductory portion to subsection (5)(b) is effective July 1, 2027.]*** Each fee collected pursuant to subsection (1)(b) or (1)(b.5) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) **[Editor's note: This version of subsection (5)(b)(II) is effective until July 1, 2027.]** On and after July 1, 2010, seventy-five dollars shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section, five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, twenty-six dollars shall be deposited in the justice center cash fund created in paragraph (a) of subsection (7) of this section, five dollars shall be deposited in the Colorado domestic abuse program fund created in section 39-22-802 (1), C.R.S., and five dollars shall be deposited in the family violence justice fund created in section 14-4-107 (1), C.R.S.

(II) **[Editor's note: This version of subsection (5)(b)(II) is effective July 1, 2027.]** On and after July 1, 2027, seventy-five dollars shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section, twenty-six dollars shall be deposited in the justice center cash fund created in subsection (7)(a) of this section, five dollars shall be deposited in the Colorado domestic abuse program fund created in section 39-22-802 (1), and five dollars shall be deposited in the family violence justice fund created in section 14-4-107 (1).

(c) to (g) Repealed.

(g.5) **[Editor's note: This version of subsection (5)(g.5) is effective until July 1, 2027.]** Each fee collected pursuant to subsection (1)(c)(III.5)(A), (1)(c)(III.5)(C), or (1)(c)(III.5)(E) of this section shall be transmitted to the state treasurer and five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, thirty-eight dollars shall be deposited in the justice center cash fund created in subsection (7)(a) of this section, and one dollar shall be deposited in the general fund pursuant to section 2-5-119. The remaining balance shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section.

(g.5) **[Editor's note: This version of subsection (5)(g.5) is effective July 1, 2027.]** Each fee collected pursuant to subsection (1)(c)(III.5)(A), (1)(c)(III.5)(C), or (1)(c)(III.5)(E) of this section shall be transmitted to the state treasurer and thirty-eight dollars shall be deposited in the justice center cash fund created in subsection (7)(a) of this section, and one dollar shall be deposited in the general fund pursuant to section 2-5-119. The remaining balance shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section.

(h) Repealed.

(h.5) **[Editor's note: This version of subsection (5)(h.5) is effective until July 1, 2027.]** Each fee collected pursuant to subsection (1)(c)(III.5)(B), (1)(c)(III.5)(D), or (1)(c)(III.5)(F) of this section shall be transmitted to the state treasurer and five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, and thirty-eight dollars shall be deposited in the justice center cash fund created in subsection (7)(a) of this section. The

remaining balance shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section.

(h.5) ***[Editor's note: This version of subsection (5)(h.5) is effective July 1, 2027.]*** Each fee collected pursuant to subsection (1)(c)(III.5)(B), (1)(c)(III.5)(D), or (1)(c)(III.5)(F) of this section shall be transmitted to the state treasurer and thirty-eight dollars shall be deposited in the justice center cash fund created in subsection (7)(a) of this section. The remaining balance shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section.

(i) ***[Editor's note: This version of the introductory portion to subsection (5)(i) is effective until July 1, 2027.]*** Each fee collected pursuant to sub-subparagraph (A) of subparagraph (IV) of paragraph (c) of subsection (1) of this section shall be transmitted to the state treasurer and divided as follows:

(i) ***[Editor's note: This version of the introductory portion to subsection (5)(i) is effective July 1, 2027.]*** Each fee collected pursuant to subsection (1)(c)(IV)(A) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) ***[Editor's note: This version of subsection (5)(i)(II) is effective until July 1, 2027.]*** On and after July 1, 2010, fourteen dollars shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section, five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, eleven dollars shall be deposited in the justice center cash fund created in paragraph (a) of subsection (7) of this section, and one dollar shall be deposited in the general fund pursuant to section 2-5-119, C.R.S.

(II) ***[Editor's note: This version of subsection (5)(i)(II) is effective July 1, 2027.]*** On and after July 1, 2027, fourteen dollars shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section, eleven dollars shall be deposited in the justice center cash fund created in subsection (7)(a) of this section, and one dollar shall be deposited in the general fund pursuant to section 2-5-119.

(j) ***[Editor's note: This version of the introductory portion to subsection (5)(j) is effective until July 1, 2027.]*** Each fee collected pursuant to sub-subparagraph (B) of subparagraph (IV) of paragraph (c) of subsection (1) of this section shall be transmitted to the state treasurer and divided as follows:

(j) ***[Editor's note: This version of the introductory portion to subsection (5)(j) is effective July 1, 2027.]*** Each fee collected pursuant to subsection (1)(c)(IV)(B) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) ***[Editor's note: This version of subsection (5)(j)(II) is effective until July 1, 2027.]*** On and after July 1, 2010, ten dollars shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section, five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, and eleven dollars shall be deposited in the justice center cash fund created in paragraph (a) of subsection (7) of this section.

(II) ***[Editor's note: This version of subsection (5)(j)(II) is effective July 1, 2027.]*** On and after July 1, 2027, ten dollars shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section and eleven dollars shall be deposited in the justice center cash fund created in subsection (7)(a) of this section.

(k) ***[Editor's note: This version of the introductory portion to subsection (5)(k) is effective until July 1, 2027.]*** Each fee collected pursuant to sub-subparagraph (C) of subparagraph (IV) of paragraph (c) of subsection (1) of this section shall be transmitted to the state treasurer and divided as follows:

(k) ***[Editor's note: This version of the introductory portion to subsection (5)(k) is effective July 1, 2027.]*** Each fee collected pursuant to subsection (1)(c)(IV)(C) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) ***[Editor's note: This version of subsection (5)(k)(II) is effective until July 1, 2027.]*** On and after July 1, 2010, thirty-eight dollars shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section, five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, eleven dollars shall be deposited in the justice center cash fund created in paragraph (a) of subsection (7) of this section, and one dollar shall be deposited in the general fund pursuant to section 2-5-119, C.R.S.

(II) ***[Editor's note: This version of subsection (5)(k)(II) is effective July 1, 2027.]*** On and after July 1, 2027, thirty-eight dollars shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section, eleven dollars shall be deposited in the justice center cash fund created in subsection (7)(a) of this section, and one dollar shall be deposited in the general fund pursuant to section 2-5-119.

(l) ***[Editor's note: This version of the introductory portion to subsection (5)(l) is effective until July 1, 2027.]*** Each fee collected pursuant to sub-subparagraph (D) of subparagraph (IV) of paragraph (c) of subsection (1) of this section shall be transmitted to the state treasurer and divided as follows:

(l) ***[Editor's note: This version of the introductory portion to subsection (5)(l) is effective July 1, 2027.]*** Each fee collected pursuant to subsection (1)(c)(IV)(D) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) ***[Editor's note: This version of subsection (5)(l)(II) is effective until July 1, 2027.]*** On and after July 1, 2010, twenty-five dollars shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section, five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, and eleven dollars shall be deposited in the justice center cash fund created in paragraph (a) of subsection (7) of this section.

(II) ***[Editor's note: This version of subsection (5)(l)(II) is effective July 1, 2027.]*** On and after July 1, 2027, twenty-five dollars shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section and eleven dollars shall be deposited in the justice center cash fund created in subsection (7)(a) of this section.

(m) ***[Editor's note: This version of the introductory portion to subsection (5)(m) is effective until July 1, 2027.]*** Each fee collected pursuant to sub-subparagraph (E) of subparagraph (IV) of paragraph (c) of subsection (1) of this section shall be transmitted to the state treasurer and divided as follows:

(m) ***[Editor's note: This version of the introductory portion to subsection (5)(m) is effective July 1, 2027.]*** Each fee collected pursuant to subsection (1)(c)(IV)(E) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) ***[Editor's note: This version of subsection (5)(m)(II) is effective until July 1, 2027.]*** On and after July 1, 2010, fifteen dollars shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section, five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, and eleven dollars shall be deposited in the justice center cash fund created in paragraph (a) of subsection (7) of this section.

(II) ***[Editor's note: This version of subsection (5)(m)(II) is effective July 1, 2027.]*** On and after July 1, 2027, fifteen dollars shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section and eleven dollars shall be deposited in the justice center cash fund created in subsection (7)(a) of this section.

(n) ***[Editor's note: This version of the introductory portion to subsection (5)(n) is effective until July 1, 2027.]*** Each fee collected pursuant to sub-subparagraph (F) of subparagraph (IV) of paragraph (c) of subsection (1) of this section shall be transmitted to the state treasurer and divided as follows:

(n) ***[Editor's note: This version of the introductory portion to subsection (5)(n) is effective July 1, 2027.]*** Each fee collected pursuant to subsection (1)(c)(IV)(F) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) ***[Editor's note: This version of subsection (5)(n)(II) is effective until July 1, 2027.]*** On and after July 1, 2010, thirty dollars shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section, five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, and eleven dollars shall be deposited in the justice center cash fund created in paragraph (a) of subsection (7) of this section.

(II) ***[Editor's note: This version of subsection (5)(n)(II) is effective July 1, 2027.]*** On and after July 1, 2027, thirty dollars shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section and eleven dollars shall be deposited in the justice center cash fund created in subsection (7)(a) of this section.

(o) Each fee collected pursuant to subsection (1)(d) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) ***[Editor's note: This version of subsection (5)(o)(II) is effective until July 1, 2027.]*** On and after January 1, 2019, one hundred sixty-one dollars shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section, five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, sixty-eight dollars shall be deposited in the justice center cash fund created in subsection (7)(a) of this section, and one dollar shall be deposited in the general fund pursuant to section 2-5-119.

(II) ***[Editor's note: This version of subsection (5)(o)(II) is effective July 1, 2027.]*** On and after July 1, 2027, one hundred sixty-one dollars shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section, sixty-eight dollars shall be deposited in the justice center cash fund created in subsection (7)(a) of this section, and one dollar shall be deposited in the general fund pursuant to section 2-5-119.

(p) ***[Editor's note: This version of the introductory portion to subsection (5)(p) is effective until July 1, 2027.]*** Each fee collected pursuant to paragraph (e) of subsection (1) of this section shall be transmitted to the state treasurer and divided as follows:

(p) ***[Editor's note: This version of the introductory portion to subsection (5)(p) is effective July 1, 2027.]*** Each fee collected pursuant to subsection (1)(e) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) ***[Editor's note: This version of subsection (5)(p)(II) is effective until July 1, 2027.]*** On and after July 1, 2010, ninety dollars shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section, five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, and sixty-eight dollars shall be deposited in the justice center cash fund created in paragraph (a) of subsection (7) of this section.

(II) ***[Editor's note: This version of subsection (5)(p)(II) is effective July 1, 2027.]*** On and after July 1, 2027, ninety dollars shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section and sixty-eight dollars shall be deposited in the justice center cash fund created in subsection (7)(a) of this section.

(q) Each fee collected pursuant to subsection (1)(f) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) ***[Editor's note: This version of subsection (5)(q)(II) is effective until July 1, 2027.]*** On and after January 1, 2019, one hundred nineteen dollars shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section, five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, and sixty-eight dollars shall be deposited in the justice center cash fund created in subsection (7)(a) of this section.

(II) ***[Editor's note: This version of subsection (5)(q)(II) is effective July 1, 2027.]*** On and after July 1, 2027, one hundred nineteen dollars shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section and sixty-eight dollars shall be deposited in the justice center cash fund created in subsection (7)(a) of this section.

(r) ***[Editor's note: This version of the introductory portion to subsection (5)(r) is effective until July 1, 2027.]*** Each fee collected pursuant to paragraph (g) of subsection (1) of this section shall be transmitted to the state treasurer and divided as follows:

(r) ***[Editor's note: This version of the introductory portion to subsection (5)(r) is effective July 1, 2027.]*** Each fee collected pursuant to subsection (1)(g) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) ***[Editor's note: This version of subsection (5)(r)(II) is effective until July 1, 2027.]*** On and after July 1, 2010, one hundred forty-three dollars shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section, five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, fifteen dollars shall be deposited in the justice center cash fund created in paragraph (a) of subsection (7) of this section, one dollar shall be deposited in the general fund pursuant to section 2-5-119, C.R.S., and three dollars shall be deposited in the vital statistics records cash fund created in section 25-2-121, C.R.S.

(II) ***[Editor's note: This version of subsection (5)(r)(II) is effective July 1, 2027.]*** On and after July 1, 2027, one hundred forty-three dollars shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section, fifteen dollars shall be deposited in the justice center cash fund created in subsection (7)(a) of this section, one dollar shall be deposited in the

general fund pursuant to section 2-5-119, and three dollars shall be deposited in the vital statistics records cash fund created in section 25-2-121.

(s) Each fee collected pursuant to subsection (2) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) On and after July 1, 2010, ninety-five dollars shall be deposited in the judicial stabilization cash fund created in subsection (6) of this section and ten dollars shall be deposited in the justice center cash fund created in paragraph (a) of subsection (7) of this section.

(6) There is hereby created in the state treasury the judicial stabilization cash fund, referred to in this subsection (6) as the "fund", that shall consist of all fees required to be deposited in the fund. The moneys in the fund shall be subject to annual appropriation by the general assembly for the expenses of trial courts in the judicial department. Any moneys in the fund not expended for the purpose of this subsection (6) may be invested by the state treasurer as provided in section 24-36-113, C.R.S. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

(7) (a) There is hereby created in the state treasury the justice center cash fund, referred to in this subsection (7) as the "fund", that shall consist of all fees required by law to be deposited in the fund and any lease payments received by the judicial department from agencies occupying the state justice center. The money in the fund shall be subject to annual appropriation by the general assembly for the expenses related to the design, construction, maintenance, operation, and interim accommodations for the state justice center, including but not limited to payments on any financed purchase of an asset or certificate of participation agreements entered into pursuant to the provisions of section 2 of Senate Bill 08-206, as enacted at the second regular session of the sixty-sixth general assembly, collectively referred to in this subsection (7) as "financed purchase of an asset or certificate of participation agreements". Any money in the fund not expended for the purpose of this subsection (7) may be invested by the state treasurer as provided in section 24-36-113. All interest and income derived from the investment and deposit of money in the fund shall be credited to the fund. Any unexpended and unencumbered money remaining in the fund at the end of any fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

(b) (I) The general assembly hereby finds and declares:

(A) The state judicial department is in need of additional space;



(B) The state museum and the offices of the state historical society occupy a building on the same block at Fourteenth avenue and Broadway as the current offices of the Colorado supreme court, the Colorado court of appeals, and the supreme court library;

(C) By building a new facility on the entire block at Fourteenth avenue and Broadway, the judicial department will consolidate its offices into a single location and the state judicial department will operate more efficiently and cost-effectively; and

(D) It is appropriate for the judicial department to pay the state museum and the state historical society for its building and for vacating its current location at Fourteenth avenue and Broadway and to assist in relocation expenses so that the entire block is available for use by the state judicial department.

(II) Repealed.

(III) The general assembly further finds and declares that it is not the general assembly's intent that the judicial department artificially raise the fees that are required by law to be deposited in the fund in order to increase the amount of money appropriated from the fund to the maintenance fund created in subsection (7)(d) of this section.

(c) (I) For the fiscal year commencing July 1, 2014, and each fiscal year thereafter so long as there are any payments due under any financed purchase of an asset or certificate of participation agreements, the executive director of the department of personnel shall calculate the net savings to the state by locating the department of law and any other executive branch agency in the new state justice center.

(II) For the fiscal year commencing July 1, 2014, and each year thereafter so long as there are payments due on any financed purchase of an asset or certificate of participation agreements, the general assembly shall appropriate from the general fund to the fund the amount of savings calculated by the executive director of the department of personnel pursuant to subsection (7)(c)(I) of this section. Any money received in the fund pursuant to this subsection (7)(c) shall be used to prepay any obligations due pursuant to any financed purchase of an asset or certificate of participation agreement.

(d) (I) The justice center maintenance fund is hereby created in the state treasury and referred to in this subsection (7)(d) as the "maintenance fund". The maintenance fund consists of money annually appropriated by the general assembly to the maintenance fund from the justice center cash fund and any other money that the general assembly may appropriate or transfer to the fund. The amount appropriated to the maintenance fund from the justice center cash fund must be equal to the amount described in subsection (7)(d)(II) of this section. The state treasurer shall credit all interest and income derived from the deposit and investment of money in the maintenance fund to the maintenance fund. Subject to annual appropriation by the general assembly and subject to capital development review of any controlled maintenance needs that the

committee would typically review for state-funded projects, money from the maintenance fund may be expended for controlled maintenance needs of the Ralph L. Carr Colorado judicial center.

(II) Current and projected appropriations to the maintenance fund from the justice center cash fund should be sufficient to pay for current and projected controlled maintenance needs for the Ralph L. Carr Colorado judicial center as outlined in the report required in subsection (7)(d)(IV) of this section, taking into account any projected interest earnings on the maintenance fund.

(III) For purposes of this subsection (7)(d), "controlled maintenance" has the same meaning as set forth in section 24-30-1301 (4); except that it may include any maintenance needs that would ordinarily be funded in the judicial department's operating budget and it may include information technology equipment to support network operations, such as servers or uninterruptible power supply units, or to regulate or control building systems, such as lighting or HVAC.

(IV) The judicial department shall provide a written report to the joint budget committee and the capital development committee on November 1, 2018, and each November 1 thereafter, that documents expenditures that have been made from the maintenance fund and that documents projected future expenditures from the maintenance fund over a twenty-year term, or such other term as requested by the capital development committee and the joint budget committee. Notwithstanding section 24-1-136 (11)(a), the reporting requirement specified in this subsection (7)(d)(IV) continues indefinitely.

(8) At the time of filing a motion pursuant to section 19-4-107.3 or 14-10-122 (6), C.R.S., seeking to set aside a final or permanent order concerning parentage based upon DNA evidence establishing the exclusion of the petitioner as the biological father of a child, or to terminate an order requiring the petitioner to pay child support for that child, the petitioner shall pay a fee of seventy dollars. The fee collected pursuant to this subsection (8) shall be transmitted to the state treasurer for deposit in the judicial stabilization cash fund created in subsection (6) of this section.

(9) Beginning January 1, 2025, the court shall collect the equal justice fee on filings specified in subsection (1) of this section in the amount of thirty dollars on civil actions filed in district court and ten dollars on civil actions filed in county court, except for filings in small claims court, on behalf of the equal justice authority and transmit the equal justice fee in the manner specified in section 13-5.7-205 (2).

(10) ***[Editor's note: Subsection (10) is effective July 1, 2027.]*** Beginning July 1, 2027, the court shall collect, on behalf of the court security authority, the court security surcharge described in section 13-1-505 on filings specified in subsection (1) of this section in the amount of ten dollars on civil actions filed in district court and ten dollars on civil actions filed in county

court. The court shall transmit the court security surcharge in the manner specified in section 13-1-505 (2).

**Source:** **L. 21:** p. 227, § 1. **C.L. § 7873.** **L. 23:** p. 249, § 1. **CSA:** C. 66, § 4. **L. 47:** p. 456, § 1. **CRS 53:** § 56-5-1. **L. 58:** pp. 241, 249, §§ 6, 19, 20. **L. 60:** p. 144, § 2. **L. 61:** p. 384, § 1. **C.R.S. 1963:** § 56-5-1. **L. 64:** p. 463, § 4. **L. 67:** p. 991, § 1. **L. 69:** p. 388, §§ 3, 4. **L. 72:** p. 598, § 84. **L. 73:** p. 1405, §§ 41, 42. **L. 75:** (1)(c) amended, p. 579, § 1, effective July 1; (1)(d) amended, p. 581, § 1, effective July 1; (2) amended, p. 924, § 17, effective July 1; (2) amended, p. 209, § 22, effective July 16. **L. 76:** (1)(c) amended, p. 302, § 31, effective May 20; (1)(c) amended, p. 520, § 2, effective October 1. **L. 79:** (4) amended, p. 621, § 1, effective June 1; (4)(a) and IP(4)(b) amended, p. 600, § 22, effective July 1. **L. 80:** (4) amended, p. 515, § 1, effective January 29. **L. 81:** (1)(c) amended, p. 2031, § 43, effective July 14. **L. 82:** (1)(c) amended, p. 294, § 1, effective July 1; (1)(d) amended, p. 295, § 1, effective July 1. **L. 83:** (1)(c) amended, p. 2047, § 3, effective October 14. **L. 84:** (1)(a), (1)(b), and (1)(f) amended, p. 455, § 6, effective July 1. **L. 87:** (1)(a), (1)(b), (1)(c)(I), (1)(d), and (1)(f) amended, p. 562, § 4, effective July 1; (1)(c)(II) amended, p. 544, § 3, effective July 1. **L. 90:** (1)(c)(I) amended and (1)(c)(II) R&RE, p. 851, §§ 12, 13, effective May 31; (1)(c)(I) amended and (1)(c)(II) R&RE, p. 856, §§ 5, 6, effective July 1. **L. 91:** (1)(a), (1)(c)(I), and (1)(d) amended and (1)(a.5) and (5) added, pp. 386, 379, §§ 1, 3, effective July 1. **L. 92:** (1)(a.5)(I) amended, p. 218, § 23, effective August 1. **L. 94:** (1)(a.5) amended, p. 1691, § 1, effective July 1. **L. 95:** (1)(a), (1)(b), (1)(d), (1)(f), and (5) amended, p. 740, § 2, effective July 1; (1)(c)(II)(D) and (1)(c)(III) added, pp. 728, 729, §§ 2, 3, effective January 1, 1996. **L. 98:** (1)(a.5)(III) added by revision, pp. 767, 769, §§ 18, 23. **L. 99:** (1)(a.5) amended, p. 1084, § 1, effective July 1. **L. 2000:** (1)(a) amended, p. 1571, § 9, effective July 1; (2) amended, p. 1832, § 4, effective January 1, 2001. **L. 2001:** (1)(a) amended, p. 741, § 6, effective June 1; (1)(c)(I), (1)(c)(II), and (1)(c)(III) amended, pp. 1518, 1516, §§ 12, 10, effective September 1. **L. 2002:** (1)(a) amended, p. 529, § 3, effective May 24; (6) added, p. 671, § 1, effective May 28. **L. 2003:** (1)(a) amended, p. 386, § 2, effective March 5; (1)(a), (1)(b), (1)(c), (1)(d), (1)(f), and (5) amended and (1.5) added, p. 568, § 1, effective March 18. **L. 2004:** (1)(a) amended, p. 1555, § 4, effective May 28. **L. 2007:** (7) added, p. 1268, § 2, effective May 25; (1)(a), (1)(b), (1)(c), (1)(d), (1)(f), (2), and (5) amended, p. 1530, § 19, effective May 31. **L. 2008:** Entire section amended, p. 2114, § 7, effective June 4; (8) added, p. 1658, § 5, effective August 15. **L. 2009:** (1)(a), (1)(b), (5)(a)(VII), (5)(a)(VIII), and (5)(b) amended and (5)(a)(IX) and (5)(a)(X) added, (SB 09-068), ch. 264, p. 1210, § 4, effective July 1; (1)(c)(III)(C) repealed, (SB 09-038), ch. 119, p. 498, § 1, effective July 1. **L. 2013:** (1)(a.5) and (1)(b.5) added and IP(5)(a), (5)(a)(VII), and IP(5)(b) amended, (SB 13-011), ch. 49, pp. 160, 161, §§ 8, 9, effective May 1; (7)(c) amended, (HB 13-1300), ch. 316, p. 1674, § 33, effective August 7. **L. 2015:** (7)(b)(II) repealed, (SB 15-264), ch. 259, p. 949, § 30, effective August 5. **L. 2018:** (7)(b)(III) and (7)(d) added, (SB 18-267), ch. 407, p. 2392, § 1, effective August 8; IP(1)(c)(III), (1)(c)(III)(A), (1)(c)(III)(B), (5)(g), and (5)(h) repealed, (1)(c)(III.5), (5)(g.5), and

(5)(h.5) added, (1)(d), (1)(f), IP(5)(o), (5)(o)(II), IP(5)(q), and (5)(q)(II) amended, (SB 18-056), ch. 298, p. 1817, § 3, effective January 1, 2019; (1)(c)(III)(D), (5)(g)(II), and (5)(h)(II) added by revision, (SB 18-056), ch. 298, pp. 1817, 1820, §§ 3, 5. **L. 2021:** (7)(a) and (7)(c) amended, (HB 21-1316), ch. 325, p. 1999, § 9, effective July 1; IP(5)(a) and (5)(a)(I) amended, (HB 21-1248), ch. 335, p. 2167, § 2, effective September 7. **L. 2022:** (5)(a)(I) amended, (HB 22-1295), ch. 123, p. 828, § 27, effective July 1. **L. 2024:** (9) added, (HB 24-1286), ch. 339, p. 2297, § 4, effective June 3; IP(1)(c)(III.5) amended and (1)(c)(V) added, (HB 24-1099), ch. 379, p. 2569, § 1, effective November 1. **L. 2026:** (1), IP(5)(b), (5)(b)(II), (5)(g.5), (5)(h.5), IP(5)(i), (5)(i)(II), IP(5)(j), (5)(j)(II), IP(5)(k), (5)(k)(II), IP(5)(l), (5)(l)(II), IP(5)(m), (5)(m)(II), IP(5)(n), (5)(n)(II), (5)(o)(II), IP(5)(p), (5)(p)(II), (5)(q)(II), IP(5)(r), and (5)(r)(II) amended and (10) added, (HB 26-1422), ch. 331, p. 1948, § 19, effective July 1, 2027; (5)(a)(IV)(B) added by revision, (HB 26-1422), ch. 331, pp. 1948, 1962, §§ 19, 32.

**Editor's note:** (1) Amendments to subsection (2) by Senate Bill 75-135 and Senate Bill 75-453 were harmonized. Amendments to subsection (4) by House Bill 79-1568 were harmonized in part with and superseded in part by House Bill 79-1206. Amendments to subsection (1)(a) by Senate Bill 03-172 and Senate Bill 03-186 were harmonized. Amendments to this section by Senate Bill 08-206 and Senate Bill 08-183 were harmonized.

(2) Subsection (1)(a.5)(III) provided for the repeal of subsection (1)(a.5), effective January 1, 2001. (See L. 99, p. 1084.)

(3) Subsection (1)(c)(I)(C) provided for the repeal of subsection (1)(c)(I), effective July 1, 2009. (See L. 2008, p. 2114.)

(4) Subsection (5)(c)(II) provided for the repeal of subsection (5)(c), effective July 1, 2009. (See L. 2008, p. 2114.)

(5) Subsections (1)(c)(II)(C), (5)(d)(II), (5)(e)(II), and (5)(f)(II) provided for the repeal of subsections (1)(c)(II), (5)(d), (5)(e), and (5)(f), respectively, effective July 1, 2010. (See L. 2008, p. 2114.)

(6) Subsections (5)(b)(I)(B), (5)(i)(I)(B), (5)(j)(I)(B), (5)(k)(I)(B), (5)(l)(I)(B), (5)(m)(I)(B), (5)(n)(I)(B), (5)(o)(I)(B), (5)(p)(I)(B), (5)(q)(I)(B), (5)(r)(I)(B), and (5)(s)(I)(B) provided for the repeal of subsections (5)(b)(I), (5)(i)(I), (5)(j)(I), (5)(k)(I), (5)(l)(I), (5)(m)(I), (5)(n)(I), (5)(o)(I), (5)(p)(I), (5)(q)(I), (5)(r)(I), and (5)(s)(I), respectively, effective July 1, 2011. (See L. 2008, p. 2114.)

(7) Subsections (1)(c)(III)(D), (5)(g)(II), and (5)(h)(II) provided for the repeal of subsections (1)(c)(III), (5)(g), and (5)(h), respectively, effective January 1, 2019. (See L. 2018, pp. 1817, 1820.)

**Cross references:** (1) For the additional fee assessed against the petitioner of a dissolution of marriage action and deposited in the displaced homemakers fund, see § 14-10-120.5.

(2) For the legislative declaration contained in the 1990 act amending subsections (1)(c)(I) and (1)(c)(II), see section 1 of chapter 100, Session Laws of Colorado 1990. For the legislative declaration contained in the 2008 act amending this section, see section 1 of chapter 417, Session Laws of Colorado 2008. For the legislative declaration in HB 24-1286, see section 1 of chapter 339, Session Laws of Colorado 2024.

## ANNOTATION

**Law reviews.** For article, "Expediting Court Procedure", see 10 Dicta 113 (1933). For article, "Obtaining Costs for Clients — Part 1", see 14 Colo. Law. 1974 (1985). For article, "Significant Changes to Landlord-Tenant Law in 2024", see 53 Colo. Law. 48 (Dec. 2024).

**The purpose of this section was to make the clerk's fees payable in a lump sum** in each suit and chargeable in that manner, instead of in itemized detail as previously. *Newitt v. Bd. of Comm'rs*, 80 Colo. 109, 249 P. 269 (1926).

**For necessary docket fee in appeal from justice court to county court**, see *Bullington v. Root*, 102 Colo. 268, 78 P.2d 628 (1938).

**The conditions for assessment of the additional fee were met** where, after a jury

trial, a monetary judgment was entered which was paid in part through a negotiated settlement. The fact that the judgment was vacated does not alter that it was so entered for purposes of such assessment. *Cabot v. Colo. Charter Lines, Inc.*, 776 P.2d 1151 (Colo. App. 1989).

**A claim that is accompanied by an insufficient funds check for payment of fees is not considered filed for purposes of the statute of limitations.** The claim is not considered filed until the filing fee is actually paid. *Broker House Int'l, Ltd. v. Bendelow*, 952 P.2d 860 (Colo. App. 1998).

**Applied** in *Carls Constr., Inc. v. Gigliotti*, 40 Colo. App. 535, 577 P.2d 1107 (1978); *Ford v. Bd. of County Comm'rs*, 677 P.2d 358 (Colo. App. 1983).

**13-32-102. Fees in probate proceedings - equal justice fee collection - court security surcharge collection.**

(1) *[Editor's note: This version of subsection (1) is effective until July 1, 2027.]* On and after July 1, 2019, for services rendered by judges and clerks of district or probate courts in all

counties of the state of Colorado in proceedings had pursuant to articles 10 to 17 of title 15, the court shall charge the following fees:

- (a) Docket fee at the time of filing first papers in any decedent's estate eligible for summary administrative procedures under section 15-12-1203, or in any small estate of a person under disability qualifying under section 15-14-118, which estates involve no real property ..... \$ 83.00
- (b) Docket fee at time of filing first papers in any estate not coming within the provisions of subsection (1)(a) of this section ..... 199.00
- (c) Additional fee payable by petitioner at time of filing petition for supervised administration of a decedent's estate pursuant to sections 15-12-501 and 15-12-502, except for contested claims ..... 198.00
- (d) Docket fee to be paid by the claimant prior to hearing on any contested claim, which fee is taxed by the district or probate court in the same manner as costs in civil actions .....  
..... 198.00
- (e) Registration fee for registration of trust pursuant to article 5 of title 15 ..... 198.00
- (f) Docket fee at time of filing first papers in each action relating to a trust ..... 199.00
- (g) Nonrefundable fee for any demand for notice filed pursuant to section 15-12-204 .....  
..... 36.00
- (h) A fee to be paid by the testator at the time of depositing a will with the court during the testator's lifetime pursuant to section 15-11-515 ..... 18.00
- (1) **[Editor's note: This version of subsection (1) is effective July 1, 2027.]** On and after July 1, 2027, for services rendered by judges and clerks of district or probate courts in all counties of the state of Colorado in proceedings had pursuant to articles 10 to 17 of title 15, the court shall charge the following fees:
  - (a) Docket fee at the time of filing first papers in any decedent's estate eligible for summary administrative procedures under section 15-12-1203, or in any small estate of a person under disability qualifying under section 15-14-118, which estates involve no real property ..... \$ 78.00
  - (b) Docket fee at time of filing first papers in any estate not coming within the provisions of subsection (1)(a) of this section ..... 194.00
  - (c) Additional fee payable by petitioner at time of filing petition for supervised administration of a decedent's estate pursuant to sections 15-12-501 and 15-12-502, except for contested claims ..... 193.00

(d) Docket fee to be paid by the claimant prior to hearing on any contested claim, which fee is taxed by the district or probate court in the same manner as costs in civil actions .....

..... 193.00

(e) Registration fee for registration of trust pursuant to article 5 of title 15..... 193.00

(f) Docket fee at time of filing first papers in each action relating to a trust..... 194.00

(g) Nonrefundable fee for any demand for notice filed pursuant to section 15-12-204 .....

..... 31.00

(h) A fee to be paid by the testator at the time of depositing a will with the court during the testator's lifetime pursuant to section 15-11-515 ..... 13.00

(2) Repealed.

(3) to (5) (Deleted by amendment, L. 2008, p. 2129, § 8, effective June 4, 2008.)

(6) (a) Each fee collected pursuant to subsection (1)(a) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) **[Editor's note: This version of subsection (6)(a)(II) is effective until July 1, 2027.]** On and after July 1, 2019, forty-eight dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6), five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, fifteen dollars shall be deposited in the office of public guardianship cash fund established pursuant to section 13-94-108 (1), and fifteen dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(II) **[Editor's note: This version of subsection (6)(a)(II) is effective July 1, 2027.]** On and after July 1, 2027, forty-eight dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6), fifteen dollars shall be deposited in the office of public guardianship cash fund established pursuant to section 13-94-108 (1), and fifteen dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(b) Each fee collected pursuant to subsection (1)(b) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) **[Editor's note: This version of subsection (6)(b)(II) is effective until July 1, 2027.]** On and after July 1, 2019, one hundred forty-three dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6), five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, fifteen dollars shall be

deposited in the justice center cash fund created in section 13-32-101 (7)(a), thirty-five dollars shall be deposited in the office of public guardianship cash fund established pursuant to section 13-94-108 (1), and one dollar shall be deposited in the general fund pursuant to section 2-5-119.

(II) ***[Editor's note: This version of subsection (6)(b)(II) is effective July 1, 2027.]*** On and after July 1, 2027, one hundred forty-three dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6), fifteen dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a), thirty-five dollars shall be deposited in the office of public guardianship cash fund established pursuant to section 13-94-108 (1), and one dollar shall be deposited in the general fund pursuant to section 2-5-119.

(c) Each fee collected pursuant to subsection (1)(c) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) ***[Editor's note: This version of subsection (6)(c)(II) is effective until July 1, 2027.]*** On and after July 1, 2019, one hundred forty-three dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6), five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, thirty-five dollars shall be deposited in the office of public guardianship cash fund established pursuant to section 13-94-108 (1), and fifteen dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(II) ***[Editor's note: This version of subsection (6)(c)(II) is effective July 1, 2027.]*** On and after July 1, 2027, one hundred forty-three dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6), thirty-five dollars shall be deposited in the office of public guardianship cash fund established pursuant to section 13-94-108 (1), and fifteen dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(d) Each fee collected pursuant to subsection (1)(d) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) ***[Editor's note: This version of subsection (6)(d)(II) is effective until July 1, 2027.]*** On and after July 1, 2019, one hundred forty-three dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6), five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, thirty-five dollars shall be deposited in the office of public guardianship cash fund established pursuant to section 13-94-108 (1), and fifteen dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).



(II) ***[Editor's note: This version of subsection (6)(d)(II) is effective July 1, 2027.]*** On and after July 1, 2027, one hundred forty-three dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6), thirty-five dollars shall be deposited in the office of public guardianship cash fund established pursuant to section 13-94-108 (1), and fifteen dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(e) Each fee collected pursuant to subsection (1)(e) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) ***[Editor's note: This version of subsection (6)(e)(II) is effective until July 1, 2027.]*** On and after July 1, 2019, one hundred forty-three dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6), five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, thirty-five dollars shall be deposited in the office of public guardianship cash fund established pursuant to section 13-94-108 (1), and fifteen dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(II) ***[Editor's note: This version of subsection (6)(e)(II) is effective July 1, 2027.]*** On and after July 1, 2027, one hundred forty-three dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6), thirty-five dollars shall be deposited in the office of public guardianship cash fund established pursuant to section 13-94-108 (1), and fifteen dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(f) Each fee collected pursuant to subsection (1)(f) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) ***[Editor's note: This version of subsection (6)(f)(II) is effective until July 1, 2027.]*** On and after July 1, 2019, one hundred forty-three dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6), five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, fifteen dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a), thirty-five dollars shall be deposited in the office of public guardianship cash fund established pursuant to section 13-94-108 (1), and one dollar shall be deposited in the general fund pursuant to section 2-5-119.

(II) ***[Editor's note: This version of subsection (6)(f)(II) is effective July 1, 2027.]*** On and after July 1, 2027, one hundred forty-three dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6), fifteen dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a), thirty-five dollars shall be deposited in the office of public guardianship cash fund established pursuant to section 13-94-108 (1), and one dollar shall be deposited in the general fund pursuant to section 2-5-119.

(g) Each fee collected pursuant to subsection (1)(g) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) ***[Editor's note: This version of subsection (6)(g)(II) is effective until July 1, 2027.]*** On and after July 1, 2019, twenty-five dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6), six dollars shall be deposited in the office of public guardianship cash fund established pursuant to section 13-94-108 (1), and five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204.

(II) ***[Editor's note: This version of subsection (6)(g)(II) is effective July 1, 2027.]*** On and after July 1, 2027, twenty-five dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6) and six dollars shall be deposited in the office of public guardianship cash fund established pursuant to section 13-94-108 (1).

(h) Each fee collected pursuant to subsection (1)(h) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) ***[Editor's note: This version of subsection (6)(h)(II) is effective until July 1, 2027.]*** On and after July 1, 2019, ten dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6), three dollars shall be deposited in the office of public guardianship cash fund established pursuant to section 13-94-108 (1), and five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204.

(II) ***[Editor's note: This version of subsection (6)(h)(II) is effective July 1, 2027.]*** On and after July 1, 2027, ten dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6) and three dollars shall be deposited in the office of public guardianship cash fund established pursuant to section 13-94-108 (1).

(7) Beginning January 1, 2025, the court shall collect the equal justice fee in the amount of thirty dollars on filings specified in subsections (1)(a), (1)(b), and (1)(f) of this section on behalf of the equal justice authority and transmit the equal justice fee in the manner specified in section 13-5.7-205 (2).

(8) ***[Editor's note: Subsection (8) is effective July 1, 2027.]*** Beginning July 1, 2027, the court shall collect, on behalf of the court security authority, the court security surcharge described in section 13-1-505 on each filing specified in subsection (1) of this section in the amount of ten dollars. The court shall transmit the court security surcharge in the manner specified in section 13-1-505 (2).

**Source:** **L. 45:** p. 329, §§ 1 to 4. **CSA:** C. 66, § 23(1). **CRS 53:** § 56-5-2. **L. 58:** pp. 243, 249, §§ 8, 19, 20. **L. 60:** p. 142, § 1. **C.R.S. 1963:** § 56-5-2. **L. 64:** p. 464, § 5. **L. 67:** p. 992, § 3. **L. 74:** Entire section R&RE, p. 273, § 1, effective July 1. **L. 75:** (1)(e) amended and (1)(f) added, p. 587, § 5, effective July 1. **L. 84:** (1)(a) to (1)(f) amended, p. 456, § 7, effective July 1. **L. 87:** (1)(b) to (1)(d) and (1)(f) amended, p. 562, § 5, effective July 1. **L. 91:** IP(1) amended, (1)(g) and (1)(h) added, and (2) repealed, pp. 380, 1443, §§ 4, 3, 4, effective July 1. **L. 94:** (1)(h) amended, p. 1040, § 17, effective July 1, 1995. **L. 95:** (1)(b) to (1)(f) amended, p. 740, § 3, effective July 1, 1997. **L. 2000:** (1)(a) amended, p. 1833, § 5, effective January 1, 2001. **L. 2003:** (3) added, p. 571, § 2, effective March 18. **L. 2007:** (4) added, p. 1268, § 3, effective May 25; (5) added, p. 1534, § 20, effective May 31. **L. 2008:** Entire section amended, p. 2129, § 8, effective June 4. **L. 2018:** IP(1) and (1)(e) amended, (SB 18-180), ch. 169, p. 1192, § 5, effective January 1, 2019. **L. 2019:** (1), IP(6)(a), (6)(a)(II), IP(6)(b), (6)(b)(II), IP(6)(c), (6)(c)(II), IP(6)(d), (6)(d)(II), IP(6)(e), (6)(e)(II), IP(6)(f), (6)(f)(II), IP(6)(g), (6)(g)(II), IP(6)(h), and (6)(h)(II) amended, (HB 19-1045), ch. 366, p. 3363, § 4, effective July 1. **L. 2024:** (7) added, (HB 24-1286), ch. 339, p. 2297, § 5, effective June 3. **L. 2026:** (1), (6)(a)(II), (6)(b)(II), (6)(c)(II), (6)(d)(II), (6)(e)(II), (6)(f)(II), (6)(g)(II), and (6)(h)(II) amended and (8) added, (HB 26-1422), ch. 331, p. 1954, § 20, effective July 1, 2027.

**Editor's note:** (1) Subsections (6)(a)(I)(B), (6)(b)(I)(B), (6)(c)(I)(B), (6)(d)(I)(B), (6)(e)(I)(B), (6)(f)(I)(B), and (6)(g)(I)(B) provided for the repeal of subsections (6)(a)(I), (6)(b)(I), (6)(c)(I), (6)(d)(I), (6)(e)(I), (6)(f)(I), and (6)(g)(I), respectively, effective July 1, 2010. (See L. 2008, p. 2129.)

(2) Subsection (6)(h)(I)(B) provided for the repeal of subsection (6)(h)(I), effective July 1, 2011. (See L. 2008, p. 2129.)

**Cross references:** For the legislative declaration contained in the 2008 act amending this section, see section 1 of chapter 417, Session Laws of Colorado 2008. For the legislative declaration in HB 24-1286, see section 1 of chapter 339, Session Laws of Colorado 2024.

## ANNOTATION

**Law reviews.** For article, "The Inventory and Final Report", see 27 Dicta 291 (1950).

### **13-32-103. Docket fees in special proceedings.**

(1) (a) ***[Editor's note: This version of subsection (1)(a) is effective until July 1, 2027.]*** On and after July 1, 2008, if an appeal is taken from a judgment of a county court in a criminal matter or from a judgment of a municipal court, the appellant shall pay a docket fee of seventy dollars. Such an appeal shall not be subject to the tax imposed by section 2-5-119, C.R.S., for the use of the committee on legal services.

(1) (a) ***[Editor's note: This version of subsection (1)(a) is effective July 1, 2027.]*** If an appeal is taken from a judgment of a county court in a criminal matter or from a judgment of a municipal court, the appellant shall pay a docket fee of sixty-five dollars. The appeal is not subject to the tax imposed by section 2-5-119 for the use of the committee on legal services.

(b) ***[Editor's note: This version of the introductory portion to subsection (1)(b) is effective until July 1, 2027.]*** Each fee collected pursuant to paragraph (a) of this subsection (1) shall be transmitted to the state treasurer and divided as follows:

(b) ***[Editor's note: This version of the introductory portion to subsection (1)(b) is effective July 1, 2027.]*** Each fee collected pursuant to subsection (1)(a) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) ***[Editor's note: This version of subsection (1)(b)(II) is effective until July 1, 2027.]*** On and after July 1, 2010, forty-five dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6), five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, and twenty dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(II) ***[Editor's note: This version of subsection (1)(b)(II) is effective July 1, 2027.]*** On and after July 1, 2027, forty-five dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6) and twenty dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(2) (a) ***[Editor's note: This version of subsection (2)(a) is effective until July 1, 2027.]*** On and after July 1, 2008, in cases where a motion to dismiss for failure to file a complaint is filed, the defendant shall pay a docket fee of fifty-five dollars.

(2) (a) ***[Editor's note: This version of subsection (2)(a) is effective July 1, 2027.]*** On and after July 1, 2027, in cases where a motion to dismiss for failure to file a complaint is filed, the defendant shall pay a docket fee of fifty dollars.

(b) ***[Editor's note: This version of the introductory portion to subsection (2)(b) is effective until July 1, 2027.]*** Each fee collected pursuant to paragraph (a) of this subsection (2) shall be transmitted to the state treasurer and divided as follows:

(b) ***[Editor's note: This version of the introductory portion to subsection (2)(b) is effective July 1, 2027.]*** Each fee collected pursuant to subsection (2)(a) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) ***[Editor's note: This version of subsection (2)(b)(II) is effective until July 1, 2027.]*** On and after July 1, 2010, thirty dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6), five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, and twenty dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(II) ***[Editor's note: This version of subsection (2)(b)(II) is effective July 1, 2027.]*** On and after July 1, 2027, thirty dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6) and twenty dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(3) (a) ***[Editor's note: This version of subsection (3)(a) is effective until July 1, 2027.]*** On and after July 1, 2008, in cases where a motion to authorize a sale in accordance with the provisions of rule 120, Colorado rules of civil procedure, is filed, the applicant shall pay a docket fee of two hundred twenty-four dollars.

(3) (a) ***[Editor's note: This version of subsection (3)(a) is effective July 1, 2027.]*** On and after July 1, 2027, in cases where a motion to authorize a sale in accordance with the provisions of rule 120, Colorado rules of civil procedure, is filed, the applicant shall pay a docket fee of two hundred nineteen dollars.

(b) ***[Editor's note: This version of the introductory portion to subsection (3)(b) is effective until July 1, 2027.]*** Each fee collected pursuant to paragraph (a) of this subsection (3) shall be transmitted to the state treasurer and divided as follows:

(b) ***[Editor's note: This version of the introductory portion to subsection (3)(b) is effective July 1, 2027.]*** Each fee collected pursuant to subsection (3)(a) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) ***[Editor's note: This version of subsection (3)(b)(II) is effective until July 1, 2027.]*** On and after July 1, 2010, one hundred fifty dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6), five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, sixty-eight dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a), and one dollar shall be deposited in the general fund pursuant to section 2-5-119, C.R.S.

(II) ***[Editor's note: This version of subsection (3)(b)(II) is effective July 1, 2027.]*** On and after July 1, 2027, one hundred fifty dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6), sixty-eight dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a), and one dollar shall be deposited in the general fund pursuant to section 2-5-119.

(4) This section shall not apply to the fee charged for filing the record of any birth or death or changes in any certificate thereof.

(5) ***[Editor's note: This version of subsection (5) is effective until July 1, 2027.]*** In cases of domestic abuse pursuant to article 4 of title 14, C.R.S., the plaintiff shall not be required to pay the docket fee set forth in section 13-32-101. At the first hearing held in connection with the action, the court shall set a date for payment of the docket fee unless the court determines that the plaintiff is unable to pay the docket fee pursuant to section 13-16-103.

(5) ***[Editor's note: This version of subsection (5) is effective July 1, 2027.]*** In cases of domestic abuse pursuant to article 4 of title 14, the plaintiff shall not be required to pay the docket fee set forth in section 13-32-101 or the court security surcharge described in section 13-1-505. At the first hearing held in connection with the action, the court shall set a date for payment of the docket fee and surcharge unless the court determines that the plaintiff is unable to pay the docket fee and surcharge pursuant to section 13-16-103.

(6) (a) ***[Editor's note: This version of subsection (6)(a) is effective until July 1, 2027.]*** On and after July 1, 2008, in any supplemental proceeding held pursuant to rule 69, Colorado rules of civil procedure, or rule 369, Colorado rules of county court civil procedure, the judgment creditor, upon commencement of the proceeding, shall pay a docket fee of seventy dollars.

(6) (a) ***[Editor's note: This version of subsection (6)(a) is effective July 1, 2027.]*** In any supplemental proceeding held pursuant to rule 69, Colorado rules of civil procedure, or rule 369, Colorado rules of county court civil procedure, the judgment creditor, upon commencement of the proceeding, shall pay a docket fee of sixty-five dollars.

(b) ***[Editor's note: This version of the introductory portion to subsection (6)(b) is effective until July 1, 2027.]*** Each fee collected pursuant to paragraph (a) of this subsection (6) shall be transmitted to the state treasurer and divided as follows:

(b) ***[Editor's note: This version of the introductory portion to subsection (6)(b) is effective July 1, 2027.]*** Each fee collected pursuant to subsection (6)(a) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) ***[Editor's note: This version of subsection (6)(b)(II) is effective until July 1, 2027.]*** On and after July 1, 2010, forty-five dollars shall be deposited in the judicial stabilization cash fund

created in section 13-32-101 (6), five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, and twenty dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(II) **[Editor's note: This version of subsection (6)(b)(II) is effective July 1, 2027.]** On and after July 1, 2027, forty-five dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6) and twenty dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(7) (Deleted by amendment, L. 2008, p. 2134, § 9, effective June 4, 2008.)

(8) **[Editor's note: Subsection (8) is effective July 1, 2027.]** Beginning July 1, 2027, the court shall collect, on behalf of the court security authority, the court security surcharge described in section 13-1-505 on each filing specified in subsections (1), (2), (3), and (6) of this section in the amount of ten dollars. The court shall transmit the court security surcharge in the manner specified in section 13-1-505 (2).

**Source:** L. 21: p. 229, § 2. C.L. § 7874. CSA: C. 66, § 5. L. 47: p. 457, § 2. CRS 53: § 56-5-3. L. 58: pp. 245, 249, §§ 9, 19, 20. C.R.S. 1963: § 56-5-3. L. 64: p. 467, §§ 6, 8. L. 79: (1) amended, p. 600, § 23, effective July 1. L. 84: (1) and (3) amended, p. 456, § 8, effective July 1. L. 91: (5) and (6) added, pp. 239, 380, §§ 2, 5, effective July 1. L. 91, 2nd Ex. Sess.: (6) amended, p. 7, § 1, effective October 7. L. 95: (3) amended, p. 741, § 4, effective July 1, 1997. L. 2003: (1), (2), (3), and (6) amended, p. 571, § 3, effective March 18. L. 2007: (7) added, p. 1268, § 4, effective May 25; (1), (2), (3), and (6) amended, p. 1534, § 21, effective May 31. L. 2008: (1), (2), (3), (6), and (7) amended, p. 2134, § 9, effective June 4. L. 2026: (1)(a), IP(1)(b), (1)(b)(II), (2)(a), IP(2)(b), (2)(b)(II), (3)(a), IP(3)(b), (3)(b)(II), (5), (6)(a), IP(6)(b), and (6)(b)(II) amended and (8) added, (HB 26-1422), ch. 331, p. 1957, § 21, effective July 1, 2027.

**Editor's note:** Subsections (1)(b)(I)(B), (2)(b)(I)(B), (3)(b)(I)(B), and (6)(b)(I)(B) provided for the repeal of subsections (1)(b)(I), (2)(b)(I), (3)(b)(I), and (6)(b)(I), respectively, effective July 1, 2011. (See L. 2008, p. 2134.)

**Cross references:** For the legislative declaration contained in the 2008 act amending subsections (1), (2), (3), (6), and (7), see section 1 of chapter 417, Session Laws of Colorado 2008.

### **13-32-104. Additional fees of clerks of courts.**

(1) On and after July 1, 2008, in addition to the fees provided in sections 13-32-101, 13-32-103, and 13-32-105 (1), the following fees shall be paid to the clerk of the court by the party ordering the same:

(a) For preparing any record on appellate review, or for a copy of any record, proceeding, or paper on file, where the copy is not furnished by the party ordering the same, thirty cents per folio or seventy-five cents per page for photographic copies;

(b) For issuing and docketing each execution, and for filing the sheriff's return of the same, a fee of forty-five dollars;

(c) For a certificate of dismissal or no suit pending, a fee of twenty dollars;

(d) For a certificate of satisfaction of judgment, a fee of twenty dollars;

(e) For taking acknowledgment of any deed or other conveyance, including clerk's certificate thereof, a fee of one dollar;

(f) For certifying a copy of any record, proceeding, or paper on file, a fee of twenty dollars;

(g) For preparing and issuing a transcript of judgment, a fee of twenty-five dollars; except that this fee shall not be charged for a judgment entered pursuant to section 18-1.3-701, C.R.S.;

(h) For a certificate of exemplification of any record, proceeding, or paper on file, a fee of twenty dollars;

(i) For each service of process attempted pursuant to section 13-6-415, a fee of the actual charge of the United States postal service for certified mail;

(j) For issuing a writ of garnishment, a fee of forty-five dollars for each garnishee named in the writ;

(k) For issuing a writ of attachment, a fee of sixty-five dollars.

(2) The clerk of the court shall assess a fifty-dollar penalty against any person who issues a check returned for insufficient funds in payment of any court fees. The penalty provided in this section shall be assessed in addition to any other penalties or interest provided by law. For purposes of this section, the term "insufficient funds" means not having a sufficient balance in account with a bank or other drawee for the payment of a check when presented for payment within thirty days after issue.

(3) (a) Each fee collected pursuant to paragraph (a) of subsection (1) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.



(II) On and after July 1, 2009, the entire fee amount shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6).

(b) Each fee collected pursuant to paragraph (b) of subsection (1) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) On and after July 1, 2009, thirty-five dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6) and ten dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(c) Each fee collected pursuant to paragraph (c) of subsection (1) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) On and after July 1, 2009, fifteen dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6) and five dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(d) Each fee collected pursuant to paragraph (d) of subsection (1) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) On and after July 1, 2009, fifteen dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6) and five dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(e) Each fee collected pursuant to paragraph (e) of subsection (1) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) On and after July 1, 2009, the entire fee amount shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6).

(f) Each fee collected pursuant to paragraph (f) of subsection (1) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) On and after July 1, 2009, fifteen dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6) and five dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(g) Each fee collected pursuant to paragraph (g) of subsection (1) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) On and after July 1, 2009, twenty dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6) and five dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(h) Each fee collected pursuant to paragraph (h) of subsection (1) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) On and after July 1, 2009, fifteen dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6) and five dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(i) Each fee collected pursuant to paragraph (i) of subsection (1) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) On and after July 1, 2009, the entire fee amount shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6).

(j) Each fee collected pursuant to paragraph (j) of subsection (1) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) On and after July 1, 2009, thirty-five dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6) and ten dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(k) Each fee collected pursuant to paragraph (k) of subsection (1) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) On and after July 1, 2009, fifty-five dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6) and ten dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(4) Each penalty collected pursuant to subsection (2) of this section shall be transmitted to the state treasurer and divided as follows:

(a) Repealed.

(b) On and after July 1, 2009, forty dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6) and ten dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

**Source:** L. 21: p. 230, § 3. C.L. § 7875. CSA: C. 66, § 6. L. 47: p. 458, § 3. CRS 53: § 56-5-4. L. 58: pp. 246, 249, §§ 10, 19, 20. L. 61: p. 385, §§ 1, 2. C.R.S. 1963: § 56-5-4. L. 69: p. 389, § 5. L. 79: IP(1) amended, p. 601, § 24, effective July 1. L. 87: (1)(g) amended, p. 563, § 6, effective July 1. L. 90: (1)(i) added, p. 850, § 8, effective May 31. L. 91: Entire section amended, p. 380, § 6, effective July 1. L. 2003: Entire section amended, p. 572, § 4, effective March 18; (1)(g) amended, p. 1693, § 2, effective August 6. L. 2007: (3) and (4) added, p. 1535, § 22, effective May 31. L. 2008: Entire section amended, p. 2136, § 10, effective June 4.

**Editor's note:** (1) Amendments to subsection (1)(g) by Senate Bill 03-186 and Senate Bill 03-141 were harmonized.

(2) Subsections (3)(a)(I)(B), (3)(b)(I)(B), (3)(c)(I)(B), (3)(d)(I)(B), (3)(e)(I)(B), (3)(f)(I)(B), (3)(g)(I)(B), (3)(h)(I)(B), (3)(i)(I)(B), (3)(j)(I)(B), (3)(k)(I)(B), and (4)(a)(II) provided for the repeal of subsections (3)(a)(I), (3)(b)(I), (3)(c)(I), (3)(d)(I), (3)(e)(I), (3)(f)(I), (3)(g)(I), (3)(h)(I), (3)(i)(I), (3)(j)(I), (3)(k)(I), and (4)(a), respectively, effective July 1, 2010. (See L. 2008, p. 2136.)

**Cross references:** (1) For the fee paid the clerk of the court for filing a foreign judgment, see § 13-53-106.

(2) For the legislative declaration contained in the 1990 act amending subsection (1)(i), see section 1 of chapter 100, Session Laws of Colorado 1990. For the legislative declaration contained in the 2008 act amending this section, see section 1 of chapter 417, Session Laws of Colorado 2008.

## ANNOTATION

**Clerk may not refuse to issue a transcript of judgment** where creditors tendered the fee after judgment was entered

but during a stay of execution. Rocky Mt. Ass'n of Credit Mgt. v. District Court, 193 Colo. 344, 565 P.2d 1345 (1977).

**13-32-105. Docket fees in criminal actions.**

(1) (a) At the time of the first appearance of the defendant in all criminal actions in all courts of record, except the county court, court of appeals, and the supreme court, there shall be charged against the defendant a total docket fee of thirty dollars, which shall be payable upon conviction of the defendant. In county courts, the total docket fee in criminal actions shall be eighteen dollars, which shall be payable by the defendant upon conviction. These fees shall cover all clerks' fees prior to judgment.

(b) On and after June 6, 2003, the docket fee in all criminal actions in all courts of record, except the county court, court of appeals, and the supreme court, is increased by five dollars, and the docket fee in county court criminal actions is increased by three dollars. The additional revenue generated by the docket fee increases shall be transmitted to the state treasurer for deposit in the state commission on judicial performance cash fund created in section 13-5.5-115.

(c) Except as otherwise provided in paragraph (b) of this subsection (1), on and after July 1, 2008, all fees collected under this section shall be transmitted to the state treasurer for deposit in the judicial stabilization cash fund created in section 13-32-101 (6).

(2) Repealed.

(3) *[Editor's note: This version of subsection (3) is effective until July 1, 2027.]* Pursuant to section 13-1-204 (1)(b), a five-dollar surcharge shall be assessed and collected on each docket fee described in this section concerning criminal convictions entered on and after July 1, 2007.

(3) *[Editor's note: This version of subsection (3) is effective July 1, 2027.]* Beginning July 1, 2027, the court shall collect, on behalf of the court security authority, the court security surcharge described in section 13-1-505 on each docket fee specified in this section in the amount of ten dollars. The court shall transmit the court security surcharge in the manner specified in section 13-1-505 (2).

**Source:** L. 1891: p. 201, § 3. R.S. 08: § 2528. C.L. § 7878. CSA: C. 66, § 8. CRS 53: § 56-5-5. L. 58: pp. 246, 249, §§ 11, 19, 20. C.R.S. 1963: § 56-5-5. L. 64: p. 467, § 7. L. 69: p. 389, § 6. L. 75: (1) amended, p. 579, § 2, effective July 1. L. 77: (1) amended, p. 788, § 2, effective January 1, 1978. L. 79: (2) repealed, p. 602, § 30, effective July 1. L. 87: (1) amended, p. 563, § 7, effective July 1. L. 91: (1) amended, p. 379, § 2, effective July 1; (1) amended, p. 1405, § 3, effective July 1. L. 2003: (1) amended, p. 2671, § 1, effective June 6. L. 2007: (3) added, p. 1269, § 5, effective May 25; (1)(c) added, p. 1536, § 23, effective May 31. L. 2008: (1)(c) amended, p. 2146, § 17, effective June 4. L. 2017: (1)(b) amended, (HB 17-1303), ch. 331, p. 1780, § 3, effective August 9. L. 2026: (3) amended, (HB 26-1422), ch. 331, p. 1958, § 22, effective July 1, 2027.

**Editor's note:** Amendments to subsection (1) by House Bill 91-1108 and House Bill 91-1187 were harmonized.

**Cross references:** For the legislative declaration contained in the 2008 act amending subsection (1)(c), see section 1 of chapter 417, Session Laws of Colorado 2008.

## ANNOTATION

**Law reviews.** For article, "Expediting Court Procedure", see 10 Dicta 113 (1933).

**Right to require deposit.** This section provides that clerks of courts may require a deposit in advance on account of fees. *Drennen v. Johnson*, 65 Colo. 381, 176 P. 479 (1918).

**Deposit may be waived.** If the right to require a deposit in advance on account of fees is not insisted upon at the proper time, the officer must be understood to have waived it, and to have consented that such fees shall abide the result of the suit. *Cunningham v. Quinn*, 12 Colo. 473, 21 P. 488 (1889).

**Provision for deposit is permissive only and not mandatory.** The language, "may require in advance, on account of their fees a deposit of five dollars", appearing in the last paragraph of the section, seems to be permissive only and not mandatory. Plainly the sum is not in payment of any specific fee, but is a deposit on account of all fees in the case. It is a general statute and applies to all cases alike, and to all fees in all courts of record. *Wigton v. Wigton*, 69 Colo. 19, 169

P. 133 (1917); *Drennen v. Johnson*, 65 Colo. 381, 176 P. 479 (1918).

**Payment of the deposit is not jurisdictional but is to be treated as penal in its nature,** and for such reason, it is held that while this deposit may be required as a condition precedent, yet such payment may be waived by express action of the clerk as in this case. *Wigton v. Wigton*, 69 Colo. 19, 169 P. 133 (1917).

**Docketing the case without fee is immaterial.** The fact that the clerk, in any particular case, chooses to docket the cause without collecting the docket fee in advance, is not material. *Drennen v. Johnson*, 65 Colo. 381, 176 P. 479 (1918).

**And is no ground for remanding the case.** The clerk of the district court could refuse to docket a case until the docket fee was paid, but having actually docketed the case without first obtaining the docket fee the result is the same, so far as the appellee in the district court is concerned, as if the docket fee had been paid; and the cause cannot be remanded simply on the ground that the fee had not been paid. *Drennen v. Johnson*, 65 Colo. 381, 176 P. 479 (1918).

**An appeal may, so far as this section is concerned, be perfected without paying the docket fee.** Provided the clerk actually docketed the case within the prescribed time, a rule of court cannot be so enforced or construed as to nullify the clerk's docketing of the case, simply because the clerk acted without collecting the docket fee. *Drennen v. Johnson*, 65 Colo. 381, 176 P. 479 (1918).

**Mandamus lies after tender of fees.** It being admitted that the clerk's legal fees for the services desired have been tendered him the rule that mandamus lies to compel the performance of purely ministerial duties is applicable. *Cunningham v. Quinn*, 12 Colo. 473, 21 P. 488 (1889).

**Payment of docket fees does not violate principles of double jeopardy.** Costs are

not a form of punishment but are essentially civil and are not traditionally considered to be punishment, and the imposition of costs generally does not serve the goals of retribution and deterrence. *People v. McQuarrie*, 66 P.3d 181 (Colo. App. 2002), overruled on other grounds in *Yeadon v. People*, 2020 CO 38, 462 P.3d 1087, and *Waddell v. People*, 2020 CO 39, 462 P.3d 1100.

**A district court has no authority to collect the fee imposed pursuant to subsection (1) after the completion of a deferred sentence and dismissal of the underlying charges.** *Pineda-Liberato v. People*, 2017 CO 95, 403 P.3d 160.

### **13-32-105.5. Docket fees - reduction by rule.**

Notwithstanding the amount specified for any fee in this article, the chief justice of the supreme court by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the chief justice by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

**Source: L. 98:** Entire section added, p. 1330, § 38, effective June 1.

### **13-32-106. Fee bill and application of fees.**

Any person in interest in any cause is entitled to a certified bill of costs or fees specifically itemized. All fees collected by any clerk or judge shall be paid over to the state treasurer as provided by law, except as provided in section 30-1-112, C.R.S. No clerk of any court of record shall certify a record to the supreme court or to any other court until he collects all clerk's costs

and fees then due and payable from the person ordering the record, unless otherwise ordered by the court in which the record reposes or by the court to which the cause was transferred or appealed, or from which appellate review as provided by law and the Colorado appellate rules may issue.

**Source:** L. 1891: p. 309, § 4. R.S. 08: § 2529. C.L. § 7879. CSA: C. 66, § 9. L. 47: p. 458, § 4. CRS 53: § 56-5-6. L. 58: pp. 247, 249, §§ 14, 19, 20. C.R.S. 1963: § 56-5-6. L. 69: p. 386, § 2.

#### **13-32-107. Fee book a public record.**

The fee book to be kept by each clerk is a public record and subject to public inspection as are all other records of his office, except those specifically excluded by statute or order of court.

**Source:** L. 1891: p. 310, § 6. R.S. 08: § 2531. C.L. § 7881. CSA: C. 66, § 11. CRS 53: § 56-5-8. C.R.S. 1963: § 56-5-8. L. 79: Entire section amended, p. 601, § 25, effective July 1.

#### **13-32-108. Unclaimed funds - district court.**

All fees, court costs, trust funds, and other moneys paid to the clerks of the district courts or into the registry of said courts, which have been or shall be unclaimed, for a period of two years after the final determination of any case in which said fees were collected or money paid, may be disposed of as provided in section 13-32-109.

**Source:** L. 31: p. 315, § 1. CSA: C. 66, § 12. CRS 53: § 56-5-9. C.R.S. 1963: § 56-5-9.

### **ANNOTATION**

**Continuing jurisdiction.** Where money is deposited in the registry of the court pending determination of an action, the court retains jurisdiction notwithstanding dismissal of the action to dispose of the

funds in its possession, and such jurisdiction continues until the funds are disposed of. *Schwartz v. Stone*, 135 Colo. 222, 310 P.2d 567 (1957).

### **13-32-109. Report of unclaimed funds - district court.**

(1) Within sixty days from January 1 in each year, the clerk of the district court of every judicial district shall report to the judge what sums of money are held unclaimed in the clerk's accounts or the registry of the court, for a period of more than two years after the final determination of the case in which said moneys have been paid or deposited, and, if it appears to the court sitting en banc that no claim for said moneys has been presented to the clerk of the court for more than two years, then the court may order that said moneys be paid by the clerk to the state treasurer for deposit in the state general fund; but, if it appears to the court by specific order made in any case, or from any other cause or circumstances, the court in its discretion may withhold making such order in any case.

(2) On and after July 1, 2010, all moneys paid to the state treasurer pursuant to subsection (1) of this section shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6).

**Source:** L. 31: p. 315, § 2. CSA: C. 66, § 13. CRS 53: § 56-5-10. C.R.S. 1963: § 56-5-10. L. 69: p. 257, § 34. L. 2007: Entire section amended, p. 1536, § 24, effective May 31. L. 2008: (2) amended, p. 2146, § 18, effective June 4.

**Cross references:** For the legislative declaration contained in the 2008 act amending subsection (2), see section 1 of chapter 417, Session Laws of Colorado 2008.

### **13-32-110. Actions for funds barred in two years.**

Any claim for such moneys shall be made within two years from and after the payment thereof into the state general fund and unless so presented to the court shall be forever barred unless the court by proper order made in any case otherwise decrees.

**Source:** L. 31: p. 316, § 3. CSA: C. 66, § 14. CRS 53: § 56-5-11. C.R.S. 1963: § 56-5-11. L. 69: p. 257, § 35.

### **13-32-111. Refund by decree of court - when.**

If any such moneys have been paid into the state general fund and a claimant appears therefor, if the court upon consideration of the circumstances finds that such claim is valid and should be



paid, in that event the state shall refund the same unto the claimant as required by the decree of court.

**Source:** L. 31: p. 316, § 4. CSA: C. 66, § 15. CRS 53: § 56-5-12. C.R.S. 1963: § 56-5-12. L. 69: p. 257, § 36.

### **13-32-112. Unclaimed funds - county court.**

(1) All moneys in the possession of the clerk of any county court, subject to the provisions of section 13-3-104, as unearned fees of the clerk or judge of such court, that remain in possession of said clerk for a period of two years after the final determination of the cause or proceeding in which such fees were collected shall be paid over by the clerk into the state general fund, except as otherwise provided in subsection (2) of this section.

(2) On and after July 1, 2010, all fees required to be paid over by the clerk into the state general fund pursuant to subsection (1) of this section shall be transmitted to the state treasurer for deposit in the judicial stabilization cash fund created in section 13-32-101 (6).

**Source:** L. 29: p. 300, § 4. CSA: C. 66, § 24. CRS 53: § 56-5-13. C.R.S. 1963: § 56-5-13. L. 69: p. 257, § 37. L. 73: p. 1405, § 42. L. 2007: Entire section amended, p. 1536, § 25, effective May 31. L. 2008: (2) amended, p. 2146, § 19, effective June 4.

**Cross references:** For the legislative declaration contained in the 2008 act amending subsection (2), see section 1 of chapter 417, Session Laws of Colorado 2008.

### **13-32-113. Exemption from fees.**

Delegate child support enforcement units shall be exempt from the payment of any fees authorized in this article when they file proceedings in connection with the establishment and enforcement of child support pursuant to article 13 of title 26, C.R.S., or pursuant to article 5 of title 14, C.R.S.

**Source:** L. 89: Entire section added, p. 796, § 27, effective July 1. L. 90: Entire section amended, p. 900, § 28, effective July 1.

**13-32-114. Judicial department information technology cash fund - creation - uses.**

(1) There is hereby created in the state treasury the judicial department information technology cash fund, which shall be referred to in this section as the "fund". The judicial department shall transmit to the state treasurer for deposit in the fund all fees and cost recoveries, which are not otherwise required by law to be deposited in another fund, related to:

- (a) Electronic filings;
- (b) Network access and searches of court databases;
- (c) Electronic searches of court records; and
- (d) Any other information technology services.

(2) The moneys in the fund shall be subject to annual appropriation by the general assembly to the judicial department for any expenses related to the department's information technology needs. Any moneys in the fund not expended for the purpose of this section may be invested by the state treasurer as provided in section 24-36-113, C.R.S. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

(3) Repealed.

(4) In addition to the money deposited in the fund pursuant to subsection (1) of this section, the fund consists of money transferred to the fund from the revenue loss restoration cash fund pursuant to section 24-75-227 (3.5) and money transferred to the fund from the ARPA refinance state money cash fund pursuant to section 24-75-226.5. Money transferred to the fund as described in this subsection (4) is subject to annual appropriation by the general assembly to the judicial department for information technology infrastructure upgrades from the 2022-23 fiscal year through December 31, 2026; except that all such transferred money that originates from money the state received from the federal coronavirus state fiscal recovery fund must be expended or obligated by the judicial department prior to December 31, 2024.

**Source: L. 2008:** Entire section added, p. 1238, § 1, effective May 27. **L. 2022:** (4) added, (HB 22-1335), ch. 131, p. 897, § 2, effective April 25. **L. 2024:** (4) amended, (HB 24-1465), ch. 257, p. 1681, § 2, effective May 24; (4) amended, (HB 24-1466), ch. 429, p. 2936, § 13, effective June 5.

**Editor's note:** (1) Subsection (3)(b) provided for the repeal of subsection (3), effective July 1, 2009. (See L. 2008, p. 1238.)

(2) Amendments to subsection (4) by HB 24-1465 and HB 24-1466 were harmonized.

**Cross references:** For the legislative declaration in HB 22-1335, see section 1 of chapter 131, Session Laws of Colorado 2022. For the legislative declaration in HB 24-1466, see section 1 of chapter 429, Session Laws of Colorado 2024.

## ARTICLE 33

### Fees of Jurors and Witnesses

|            |                                          |            |                                            |
|------------|------------------------------------------|------------|--------------------------------------------|
| 13-33-101. | Fees of jurors.                          | 13-33-104. | Witness fees paid into<br>treasury - when. |
| 13-33-102. | Fees of witnesses.                       |            |                                            |
| 13-33-103. | Mileage fees of jurors and<br>witnesses. | 13-33-105. | Witness fees - claim for.                  |
|            |                                          | 13-33-106. | Failure of clerk to comply -<br>penalty.   |

#### 13-33-101. Fees of jurors.

(1) Trial and grand jurors serving in any court, as defined in the "Colorado Uniform Jury Selection and Service Act", article 71 of this title, shall receive compensation as provided for in that article.

(2) Jury fees for attending any court of record other than a municipal court shall be paid by the state pursuant to section 13-3-104.

(3) Municipalities shall set and pay fees for juror service in a municipal court.

(4) Jurors attending inquests over dead bodies before coroners shall receive the same fees as provided in subsection (1) of this section, which fees shall be paid by the county in which the inquest is held.

**Source:** L. 1891: p. 214, § 10. R.S. 08: § 2541. C.L. § 7905. L. 29: p. 425, § 1. L. 33: p. 653, § 1. CSA: C. 66, § 45. CRS 53: § 56-6-1. L. 55: p. 395, § 1. C.R.S. 1963: § 56-6-1. L. 64: p. 386, § 18. L. 71: p. 320, § 4. L. 88: (1) amended, p. 1124, § 2, effective April 4. L. 89: (1) and (3) amended, p. 775, § 6, effective January 1, 1990.

**Cross references:** For fees of jurors in municipal courts, see § 13-10-114 (3).

#### ANNOTATION

**Unless court taxes jury fees as costs,** county is liable. The compensation of jurymen is fixed by this section and except where jury fees are taxed to parties litigant, the county must discharge that burden; but neither the service of the juror nor the obligation of the county, comes of appointment or contract. Bd. of County

Comm'rs v. Evans, 99 Colo. 83, 60 P.2d 225 (1936).

**This section places jurors for coroners' inquests on an equality with other jurors,** and they are to be compensated in the same manner; that is, by a per diem while serving as such. Ireland v. County Comm'rs, 6 Colo. 280 (1882).

#### **13-33-102. Fees of witnesses.**

(1) to (3) (Deleted by amendment, L. 2010, (HB 10-1291), ch. 325, p. 1505, § 1, effective July 1, 2010.)

(4) Witnesses in courts of record called to testify only to an opinion founded on special study or experience in any branch of science or to make scientific or professional examinations and state the result thereof shall receive compensation, to be fixed by the court, with reference to the value of the time employed and the degree of learning or skill required.

(5) Witness fees for attending criminal trials in any court of record, except a municipal court or the county court of the city and county of Denver, shall be paid as costs as provided in section 16-18-101, C.R.S.

(6) Notwithstanding the provisions of subsections (4) and (5) of this section, the witness fee specified in this section shall not be paid to any witness who at the time of testifying is in the legal custody of any state or federal agency or any local law enforcement agency and whose transportation to court is provided at government expense.

**Source:** L. 1891: p. 215, § 11. R.S. 08: § 2542. C.L. § 7906. L. 33: p. 900, § 1. CSA: C. 66, § 46. CRS 53: § 56-6-2. C.R.S. 1963: § 56-6-2. L. 64: p. 386, § 19. L. 71: p. 320, § 5. L. 88: (2) amended, p. 1124, § 3, effective April 4. L. 91: (1) amended, p. 358, § 17, effective April 9. L. 98: (6) added, p. 947, § 3, effective May 27. L. 2010: (1), (2), (3), (4), and (6) amended, (HB 10-1291), ch. 325, p. 1505, § 1, effective July 1.

**Cross references:** For classification of counties fixing fees, see § 30-1-101.

## ANNOTATION

**Law reviews.** For article, "Expert Witnesses", see 24 Rocky Mt. L. Rev. 418 (1952).

**Application by defendant for procurement of witnesses should be made at earliest opportunity.** *Osborn v. People*, 83 Colo. 4, 262 P. 892 (1927).

**Expenses of obtaining testimony of witnesses for indigent defendant must be paid by state.** *People v. McCabe*, 37 Colo. App. 181, 546 P.2d 1289 (1975).

**State is liable for advancement of costs.** Since the state will ultimately pay the costs of securing out-of-state witnesses for the defendant, there is no legal justification for holding that it is not liable for advancement of such costs as mileage and witness fees. *People v. McCabe*, 37 Colo. App. 181, 546 P.2d 1289 (1975).

**This section allows experts extra compensation,** and a landowner should be repaid all the necessary expenses incurred in fixing the value of his land, including the preparatory work, time and expenses of experts who testify for him, provided that the sum allowed must be reasonable and that it is within the sound discretion of the trial court as to the exact amount. *Rullo v. Pub. Serv. Co.*, 163 Colo. 99, 428 P.2d 708 (1967).

Subsection (4) authorizes the court, in fixing an expert's fee, to consider time spent by the expert in preparation for trial as well as time spent in court. *Yeager Garden Acres, Inc. v. Summit Constr. Co.*, 32 Colo. App. 242, 513 P.2d 458 (1973).

Subsection (4) permits additional compensation for expert witnesses, but no such exception exists for lay witnesses. *Catlin v. Tormey Bewley Corp.*, 219 P.3d 407 (Colo. App. 2009).

**In amounts deemed proper by the court.** Under this section courts may allow witness fees to experts, testifying as such, in an amount which they may deem proper. *Denver Joint Stock Land Bank v. Bd. of County Comm'rs*, 105 Colo. 366, 98 P.2d 283 (1940); *Am. Water Dev., Inc. v. City of Alamosa*, 874 P.2d 352 (Colo. 1994).

The award of expert witness fees, and the amount thereof, is within the sound discretion of the court. *Crawford v. French*, 633 P.2d 524 (Colo. App. 1981).

**Allowances may include.** The allowances included travel, ordinary witness fees, food and lodging expenses, and preparation of an inventory by consultants, plus \$100 per day as additional fees for each expert for every day of attendance at the trial, whether or not they testified. There is evidence in the record that \$100 per day was a reasonable amount of compensation for

services of the kind furnished in the eminent domain hearing. *Leadville Water Co. v. Parkville Water Dist.*, 164 Colo. 362, 436 P.2d 659 (1967).

Allowances awarded may include travel, ordinary witness fees, food, and lodging expenses. *Am. Water Dev., Inc. v. City of Alamosa*, 874 P.2d 352 (Colo. 1994).

**Witness's lost wages not a recoverable cost.** A witness's lost wages are not necessarily incurred by reason of the litigation and for the proper preparation for trial so as to be an awardable cost. *Catlin v. Tormey Bewley Corp.*, 219 P.3d 407 (Colo. App. 2009).

**Amount of fee is circumscribed by rule of reason.** While this section allows expert witness fees, the property owner in an eminent domain hearing will not be fully indemnified for any unusual compensation which he might choose to pay his expert witnesses. The awarding of expert witness fees is limited, being circumscribed by a rule of reason, viz., sound judicial discretion. *Leadville Water Co. v. Parkville Water Dist.*, 164 Colo. 362, 436 P.2d 659 (1967); *Denver Urban Renewal Auth. v. Hayutin*, 40 Colo. App. 559, 583 P.2d 296 (1978).

**In absence of stipulation, court must decide if witness is an expert.** In the absence of a stipulation between the litigants as to whether a witness is an expert, the length of time and the value of time spent in attendance at trial, and the judicial determination of what is a reasonable fee to be awarded an expert witness in a given case, are all evidentiary questions. *Slavsky*

*v. Callaham*, 162 Colo. 208, 425 P.2d 686 (1967).

**Party must push motion for expert witness fees in trial court.** The portion of plaintiffs' motion requesting expert witness fees was never called up for hearing or ruled upon by the trial court, although there was ample time for plaintiffs to have duly presented to the trial court their original motion to fix and award expert witness fees prior to the issuance of a writ of error and if disappointed in the trial court's ruling, they could have assigned cross-error on that question, as they had done successfully in their request for statutory interest. Failure to do so is dispositive. *Slavsky v. Callaham*, 162 Colo. 208, 425 P.2d 686 (1967).

**This section does not require that the amounts actually paid to the expert be assessed as costs;** assessment is addressed to the sound discretion of the trial court. *Lamont v. Riverside Irrigation Dist.*, 179 Colo. 134, 498 P.2d 1150 (1972).

**Award of costs for expert who did not testify.** The winning party is entitled to an award of costs for its expert, even though the expert did not testify. *Great W. Sugar Co. v. N. Natural Gas Co.*, 661 P.2d 684 (Colo. App. 1982).

If the expert was not listed on trial data certificate as scheduled to testify, such costs are not allowed. *Schultz v. Linden-Alimak, Inc.*, 734 P.2d 146 (Colo. App. 1986).

**This section controls costs which may be taxed in eminent domain proceedings.** *Denver Urban Renewal Auth. v. Hayutin*, 40 Colo. App. 559, 583 P.2d 296 (1978); *State*

Dept. of Hwys. v. Anvil Point Props., 722 P.2d 1024 (Colo. App. 1986).

But this section does not specifically provide for assessment of costs generated by a cost hearing. State Dept. of Hwys. v. Anvil Point Props., 722 P.2d 1024 (Colo. App. 1986).

**In fixing an expert's fees, the court is authorized to consider the time spent by the expert in preparation for trial** in addition to time spent in court. Am. Water Dev., Inc. v. City of Alamosa, 874 P.2d 352 (Colo. 1994).

**Fees for an expert's assistant** should not be allowed because they are not authorized by statute. Perkins v. Flatiron Structures Co., 849 P.2d 832 (Colo. App. 1992); W. Fire Truck, Inc. v. Emergency One, Inc., 134 P.3d 570 (Colo. App. 2006).

**Fees for pretrial preparation to render an opinion not admitted into evidence** are not recoverable. Perkins v. Flatiron Structures Co., 849 P.2d 832 (Colo. App. 1992).

**Applied** in Spensieri v. Farmers Alliance Mut. Ins., 804 P.2d 268 (Colo. App. 1990).

### **13-33-103. Mileage fees of jurors and witnesses.**

(1) All jurors entitled to compensation for mileage in accordance with the "Colorado Uniform Jury Selection and Service Act", article 71 of this title, and all witnesses shall receive, in counties of every class, the same base mileage allowance amount as provided for state officers and employees under section 24-9-104, C.R.S., for each mile actually and necessarily traveled in going from his or her place of residence to the place named in the summons or subpoena and in returning to such place of residence.

(2) No officer of the courts, in which the cause is pending and on which he is in actual attendance in his official capacity, including clerks, sheriffs, bailiffs, jurors, and police officers, shall be entitled to witnesses' fees or mileage as a witness in any criminal case.

(3) No witness before a coroner, commissioner, or magistrate shall be allowed fees unless such witness claims the same under oath before the adjournment of the court.

(4) No witness in any court of record shall be allowed fees unless such witness claims the same under oath, then only for the number of days such witness actually attended such court in the capacity of a witness.

(5) No witness testifying in more than one criminal case on the same day shall be entitled to receive fees as a witness for more than one day by reason thereof, nor more than one day's attendance on any day, though attending in several cases.

(6) The mileage fee shall not be paid to any witness who at the time of testifying is in the legal custody of any state or federal agency or any local law enforcement agency and whose transportation to court is provided at government expense.

**Source:** L. 1891: p. 215, § 12. R.S. 08: § 2543. C.L. § 7907. CSA: C. 66, § 47. CRS 53: § 56-6-3. C.R.S. 1963: § 56-6-3. L. 64: p. 387, § 20. L. 89: (1) amended, p. 775, § 7, effective January 1, 1990. L. 91: (3) amended, p. 359, § 18, effective April 9. L. 98: (6) added, p. 947, § 4, effective May 27. L. 99: (1) amended, p. 680, § 1, effective July 1.

## ANNOTATION

**Fees of witnesses either for attendance or mileage are purely statutory.** Union Pac. R. R. v. Brower, 60 Colo. 579, 155 P. 312 (1916); Crawford v. French, 633 P.2d 524 (Colo. App. 1981).

**There is no provision allowing a witness mileage from his residence outside of the state.** Union Pac. R. R. v. Brower, 60 Colo. 579, 155 P. 312 (1916).

**Witness cannot claim mileage unless he has been subpoenaed.** It is clearly not the purpose of this section to compensate a witness for the expense of travel, unless incurred in obedience to the command of the court, and hence, it follows that a witness cannot claim mileage unless he has been subpoenaed. Union Pac. R. R. v. Brower, 60 Colo. 579, 155 P. 312 (1916); Welch v. George, 19 P.3d 675 (Colo. 2000).

**Unsubpoenaed, out-of-state witness** testifying at a deposition taken in the state is not entitled to any mileage fee. Crawford v. French, 633 P.2d 524 (Colo. App. 1981).

**Mileage expense is determined by the number of miles necessarily traveled by**

**the witness.** It follows that the distance is to be measured, not in a direct line, but by the route that the witness is necessarily required to travel. Osborn v. People, 83 Colo. 4, 262 P. 892 (1927).

**An expert witness is not entitled to a greater sum for mileage.** Bd. of Comm'rs v. Lee, 3 Colo. App. 177, 32 P. 841 (1893); Osborn v. People, 83 Colo. 4, 262 P. 892 (1927).

**Because appearance of incarcerated inmates to testify as witnesses at criminal trials was compelled by writs of habeas corpus ad testificandum rather than by subpoenas and since their transportation in response to the writs was furnished at state expense, trial court did not err in refusing to order payment of the statutory mileage allowance to them.** Collins v. Bandy, 890 P.2d 266 (Colo. App. 1995).

**Applied** in In re C.R.A.H., 647 P.2d 239 (Colo. App. 1981); Carruthers v. Carrier Access Corp., 251 P.3d 1199 (Colo. App. 2010).



### **13-33-104. Witness fees paid into treasury - when.**

Any witness fee collected by a clerk of any district court or county court shall be paid to the person entitled to the witness fee, when claimed. Any witness fee collected and not paid to a witness claimant in the same month shall be paid by the clerk of the court to the state treasurer pursuant to section 30-1-112 (2), C.R.S.

**Source:** R.S. pp. 326, 327, §§ 26, 27. G.L. §§ 1155, 1156. G.S. §§ 1412, 1413. R.S. 08: §§ 1403, 1404. C.L. §§ 7908, 7909. CSA: C. 66, §§ 48, 49. CRS 53: § 56-6-4. C.R.S. 1963: § 56-6-4. L. 71: p. 321, § 6. L. 73: p. 1405, § 43.

### **ANNOTATION**

**It is the duty of the clerk to pay all witness fees into the treasury.** The clerk of the district court was authorized by this section to collect and receive witness fees taxed as costs in actions tried in the district court, and it was made his duty to pay into the treasury of the county all jury fees when collected, and all witness fees that remained in his possession for a period of a month. *Adams v. People*, 25 Colo. 532, 55 P. 806 (1898).

**Deposit of checks, etc., is equivalent to collection.** Where the clerk of a district court received payment of jury and witness fees in checks and drafts which he deposited

in bank to his credit, it was equivalent in law to the collection by him of money, and it was his duty to pay over to the county the money thus collected and for failure to do so he might be prosecuted under a charge of failure to pay over money collected. *Adams v. People*, 25 Colo. 532, 55 P. 806 (1898).

**Clerk may be prosecuted upon failure to pay over such fees.** The clerk of the district court is an officer in this state entrusted by law with the collection and receiving of jury and witness fees and as such is subject to prosecution under § 13-33-106. *Adams v. People*, 25 Colo. 532, 55 P. 806 (1898).

### **13-33-105. Witness fees - claim for.**

If any person entitled to a witness fee in any district court or county court makes an application to the clerk of such court for payment of the fee, the clerk, if the witness fee claimed was previously collected by him, shall pay the witness claimant the witness fee due. If the fee was not previously collected by the clerk, the state shall pay the witness claimant pursuant to section 13-3-104.

**Source:** R.S. p. 327, § 28. G.L. § 1157. G.S. § 1414. R.S. 08: § 1405. C.L. § 7910. CSA: C. 66, § 50. CRS 53: § 56-6-5. C.R.S. 1963: § 56-6-5. L. 71: p. 321, § 7. L. 73: p. 1405, § 44.

**13-33-106. Failure of clerk to comply - penalty.**

Any such clerk who fails to comply with the provisions of sections 13-33-104 and 13-33-105 shall be liable to the state in the penal sum of five hundred dollars for each offense, to be collected as other like fines.

**Source:** R.S. p. 327, § 29. G.L. § 1158. G.S. § 1415. R.S. 08: § 1406. C.L. § 7911. CSA: C. 66, § 51. CRS 53: § 56-6-6. C.R.S. 1963: § 56-6-6. L. 71: p. 321, § 8.

## **FORCIBLE ENTRY AND DETAINER**

### **ARTICLE 40**

#### **Forcible Entry and Detainer - General Provisions**

|              |                                                                                          |              |                                                                                              |
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| 13-40-101.   | Forcible entry and detainer defined.                                                     | 13-40-110.   | Action - how commenced - report.                                                             |
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### **13-40-101. Forcible entry and detainer defined.**

(1) If any person enters upon or into any lands, tenements, mining claims, or other possessions with force or strong hand or multitude of people, whether any person is actually upon or in the same at the time of such entry, or if any person by threats of violence or injury to the party in possession or by such words or actions as have a natural tendency to excite fear or apprehension of danger gains possession of any lands, tenements, mining claims, or other possessions and detains and holds the same, such person so offending is guilty of a forcible entry and detainer within the meaning of this article.

(2) If any person enters peaceably upon any lands, tenements, mining claims, or other possessions, whether any person is actually in or upon the same at the time of such entry and by force turns the party in possession out or, by threats or by words or actions which have a natural tendency to excite fear or apprehension of danger, frightens the party out of possession and detains and holds the same, such person so offending is guilty of a forcible detainer within the meaning of this article.

(3) If any person enters upon or into any lands, tenements, mining claims, or other possessions by force or by threats of violence, or words or actions which have a natural tendency to excite fear or apprehension of danger, and intimidates the party entitled to possession from

returning upon or possessing the same, such person so offending is guilty of a forcible entry within the meaning of this article.

**Source:** L. 1887: p. 271, § 2. R.S. 08: § 2600. C.L. § 6366. CSA: C. 70, § 1. CRS 53: § 58-1-1. C.R.S. 1963: § 58-1-1.

## ANNOTATION

### I. General Consideration.

### II. Necessary Elements.

#### I. GENERAL CONSIDERATION.

**Law reviews.** For article, "A Lawyers' Guide to OPA", see 20 Dicta 195 (1943). For article, "Enforcement of Security Interests in Colorado", see 25 Rocky Mt. L. Rev. 1 (1952). For article, "One Year Review of Property", see 37 Dicta 89 (1960). For note, "Holdover Tenants in Colorado", see 34 Rocky Mt. L. Rev. 320 (1962). For article, "The Rights of Landlords in Tenants' Personal Property", see 57 Den. L.J. 685 (1980). For article, "Remedies of a Landlord Following DeFault by a Tenant", see 11 Colo. Law. 2588 (1982). For article, "Representation of the Landlord in an Unlawful Detainer Action", see 12 Colo. Law. 69 (1983). For comment, "Francam v. Fail: Waiver of Statutory Notice Under Colorado's Forcible Entry and Detainer Statute", see 55 U. Colo. L. Rev. 125 (1983). For article, "Self-Help for Commercial Landlords", see 19 Colo. Law. 479 (1990). For article, "Enforcement of Leases Through Unlawful Detainer Actions", see 20 Colo. Law. 251 (1991). For article, "Forcible Entry and Detainer: A Primer", see 29 Colo. Law. 89 (Oct. 2000).

**Constitutionality.** The forcible entry and detainer statute, as applied, neither deprives the tenant of property without due process of law nor violates his right to equal protection of the laws. Hurricane v. Kanover, Ltd., 651 P.2d 1218 (Colo. 1982).

**Doctrine of retaliatory eviction not applicable.** Where a landlord sought to evict a tenant in retaliation for the tenant's claim of water damage to her apartment, the case did not involve retaliation for reporting a housing code violation to a governmental authority and does not create a case for applying the retaliatory eviction doctrine, if this doctrine is even available in Colorado. W.W.G. Corp. v. Hughes, 960 P.2d 720 (Colo. App. 1998).

**The modern form of the common-law action of ejectment is forcible entry and detainer** as provided in this article. Baumgartner v. Schey, 143 Colo. 373, 353 P.2d 375 (1960).

**Common-law principles govern it.** The nature of the action as one in ejectment has not been changed by statutes abolishing fictions or regulating procedure, not even by those adopting a substitute form of action, and resort must still be had to the common law for the principles which govern it.

Baumgartner v. Schey, 143 Colo. 373, 353 P.2d 375 (1960).

**This section is "separate and apart" from the general provisions relating to procedure before justices of the peace.** General Am. Indus., Inc. v. County Court, 136 Colo. 86, 316 P.2d 565 (1957).

**It is sui generis.** The forcible entry and unlawful detainer provision are sui generis. General Am. Indus., Inc. v. County Court, 136 Colo. 86, 316 P.2d 565 (1957).

**When equitable defense is asserted the action acquires an equitable character.** Where an equitable defense is interposed in an action in forcible entry and detainer, the action acquires an equitable character as to the plaintiff, who then becomes entitled to such equitable relief as the facts indicate. White v. Widger, 144 Colo. 566, 358 P.2d 592 (1960).

**Delay in bringing the action may disqualify action.** Where plaintiff had unreasonably delayed exerting his claim in a forcible entry and detainer action until defendant had changed his position, the legal consequence of such delay was disqualification to maintain the action. White v. Widger, 144 Colo. 566, 358 P.2d 592 (1960).

**Trial by jury.** Where the predominant issues to be tried in an action under this section are legal, the defendant is entitled to a trial by jury. Husar v. Larimer County Court, 629 P.2d 1104 (Colo. App. 1981).

**Applied** in People v. Bement, 193 Colo. 435, 567 P.2d 382 (1977); Francam Bldg. Corp. v. Fail, 646 P.2d 345 (Colo. 1982).

## II. NECESSARY ELEMENTS.

**The force contemplated by this section is actual force,** and an entry made with no more force than such as is implied in an ordinary trespass is not within the meaning of the section. Goshen v. People, 22 Colo. 270, 44 P. 503 (1896).

**Evidence of force or appearances tending to inspire just apprehension of violence is essential.** To constitute a cause of action for forcible entry and detainer, it is necessary to keep that force or appearances tending to inspire a just apprehension of violence was used by defendant in obtaining possession. Such requirement is not satisfied by simply showing that the entry was against the will of the possessor. Goad v. Heckler, 19 Colo. App. 479, 76 P. 542 (1904).

Defendant's actions of building a fence to block property access without consulting plaintiffs, using guns in various ways, and posting signs were properly held to have a natural tendency to excite fear and apprehension of danger such that defendants forcibly entered and detained plaintiffs' property. Schuler v. Oldervik, 143 P.3d 1197 (Colo. App. 2006).

**Action lies where possession is maintained with force.** Whether the facts stated in the complaint constitute a forcible entry or not is immaterial, as the action lies where the possession is maintained with force and strong hand, although the entry may have been peaceable. Miller v. Sparks, 4 Colo. 303 (1878).

**It is necessary to show in the complaint that the defendant entered upon the possession of the plaintiff.** Miller v. Sparks, 4 Colo. 303 (1878).

**This need not be expressly averred.** But that which is apparent to the court and appears from a necessary implication out of the record is the same as if it were expressly averred. Miller v. Sparks, 4 Colo. 303 (1878).

**That the complaint alleges a demand of possession, when no demand was necessary, does not affect its sufficiency,** or render it obnoxious to the objection that two causes of action are stated in one and the same count. Miller v. Sparks, 4 Colo. 303 (1878).

**Section gives no right to tenant forcibly evicted by one having better title.** Our forcible entry statute is like that of Richard II, and not that of Henry VI, in that it gives no right of restitution to a tenant forcibly evicted by one having a better title. Rudolph v. Thompson, 66 Colo. 98, 179 P. 151 (1919).

**Color of title is sufficient as against one having no title whatever.** In an action of forcible entry and detainer, it appeared that plaintiff was in possession under a deed from a railroad company which had received a grant of the land; but the patent was withheld pending a question as to the rights of the company. Defendant applied for the land under the homestead act, and was refused, but went on a part of the land, and built a house, and both parties were living on the land when action was commenced.

Held, that plaintiff's color of title entitled him to his action against one having no title whatever. Jenkins v. Tynon, 1 Colo. App. 133, 27 P. 893 (1891).

**Owner of fee may be guilty of forcible entry.** The owner of the fee, as well as a stranger to the title, may be guilty of an unlawful and forcible entry upon premises demised to his own tenant. Farncomb v. Stern, 18 Colo. 279, 32 P. 612 (1893).

**Tenant may complain of entry which destroys his possession.** Forcible entry which disturbs the possession of the tenant can be complained of by the tenant or by a lessee entitled to possession. Mageon v. Alkire, 41 Colo. 338, 92 P. 720 (1907).

**Unless lease retains right of entry.** This article takes away the right that existed at common law to make entry by force, although the right to possession may exist. Yet a license reserved in the lease to make such an entry does not contravene it, and, under such a provision, the landlord may enter and remove a tenant upon condition broken, if he uses no unnecessary force to accomplish his purpose. Goshen v. People, 22 Colo. 270, 44 P. 503 (1896).

**One who is in the lawful possession of premises may defend such possession.** Possessor will not be held liable criminally for the use of force in defending such possession unless the force used was excessive or unnecessary. Goshen v. People, 22 Colo. 270, 44 P. 503 (1896).

**For acts which constitute forcible entry,** see Potts v. Magnes, 17 Colo. 364, 30 P. 58 (1892).

**13-40-102. Forcible entry prohibited.**

No person shall enter into or upon any real property, except in cases where entry is allowed by law, and in such cases not with strong hand or with a multitude of people, but only in a peaceable manner.

**Source:** L. 1885: p. 224, § 1. R.S. 08: § 2601. C.L. § 6367. CSA: C. 70, § 2. CRS 53: § 58-1-2. C.R.S. 1963: § 58-1-2.

**13-40-103. Forcible detention prohibited.**

No person, having peaceably entered into or upon any real property without right to the possession thereof, shall forcibly hold or detain the same as against the person who has a lawful right to such possession.

**Source:** L. 1885: p. 224, § 2. R.S. 08: § 2602. C.L. § 6368. CSA: C. 70, § 3. CRS 53: § 58-1-3. C.R.S. 1963: § 58-1-3.

**ANNOTATION**

**Applied** in Christensen v. Hoover, 643 P.2d 525 (Colo. 1982).

**13-40-104. Unlawful detention defined - definitions.**

(1) A person has committed an unlawful detention of real property in the following cases:

(a) When entry is made, without right or title, into any vacant or unoccupied lands or tenements;

(b) When entry is made, wrongfully, into any public lands, tenements, mining claims, or other possessions which are claimed or held by a person who may have located, entered, or settled upon the same in conformity with the laws, rules, and regulations of the United States, or of this state, in relation thereto;

(c) When any lessee or tenant at will, or at sufferance, or for any period of time, of any nonresidential real property or residential premises described in section 38-12-1302 (1)(a),

(1)(b), (1)(d), (1)(e), or (1)(f), including a specific or undivided portion of a building, holds over and continues in possession of the nonresidential real property or residential premises described in section 38-12-1302 (1)(a), (1)(b), (1)(d), (1)(e), or (1)(f), or any portion thereof, after the expiration of the term for which the nonresidential real property or residential premises described in section 38-12-1302 (1)(a), (1)(b), (1)(d), (1)(e), or (1)(f) was leased or after the tenancy has been terminated by either party;

(d) When such tenant or lessee holds over without permission of the tenant's or lessee's landlord after any default in the payment of rent pursuant to the agreement under which the tenant or lessee holds, and, ten days' notice in writing has been duly served upon the tenant or lessee holding over, requiring in the alternative the payment of the rent or the possession of the premises; except that, for a nonresidential agreement or an employer-provided housing agreement, three days' notice is required pursuant to this section, and for an exempt residential agreement, five days' notice is required pursuant to this section. No such agreement shall contain a waiver by the tenant of the notice requirement of this subsection (1)(d). It is not necessary, in order to work a forfeiture of such agreement for nonpayment of rent, to make a demand for such rent on the day on which the same becomes due; but a failure to pay such rent upon demand, when made, works a forfeiture.

(d.5) When such tenant or lessee holds over, without the permission of the landlord, contrary to any condition or covenant the violation of which is defined as a substantial violation in section 13-40-107.5, and notice in writing has been duly served upon such tenant or lessee in accordance with section 13-40-107.5;

(e) When a tenant or lessee holds over without permission, contrary to any material condition or covenant of the agreement under which the tenant or lessee holds, and ten days' notice in writing has been duly served upon the tenant or lessee requiring either compliance with the condition or covenant or the delivery of the possession of the premises; except that, for a nonresidential agreement or an employer-provided housing agreement, three days' notice is required, and for an exempt residential agreement, five days' notice is required;

(e.5) (I) When a tenant or lessee has previously been served with the notice described in paragraph (e) of this subsection (1) requiring compliance with a condition or covenant of the agreement, and subsequent to that notice holds over, without permission of the tenant or lessee's landlord, contrary to the same condition or covenant.

(II) A tenancy pursuant to a residential agreement may be terminated at any time pursuant to this subsection (1)(e.5) on the basis of a subsequent violation of the same condition or covenant of the agreement. The termination of a residential tenancy is effective ten days after service of written notice to terminate tenancy. Notwithstanding any other provision of this subsection (1)(e.5)(II), a tenancy pursuant to a nonresidential agreement, an exempt residential agreement, or an employer-provided housing agreement may be terminated at any time pursuant to this



subsection (1)(e.5) on the basis of a subsequent violation. The termination of a nonresidential tenancy or an employer-provided housing tenancy is effective three days after service of written notice to terminate tenancy, and the termination of a tenancy pursuant to an exempt residential agreement is effective five days after service of written notice to terminate tenancy.

(e.8) When a tenant holds over and maintains possession of a residential premises after the landlord has properly initiated a no-fault eviction by satisfying the notice requirements and other requirements associated with the no-fault eviction, as described in section 38-12-1303 (3);

(f) When the property has been duly sold under any power of sale, contained in any mortgage or trust deed that was executed by such person, or any person under whom such person claims by title subsequent to date of the recording of such mortgage or trust deed, and the title under such sale has been duly perfected and the purchaser at such sale, or his or her assigns, has duly demanded the possession thereof;

(g) When the property has been duly sold under the judgment or decree of any court of competent jurisdiction and the party or privies to such judgment or decree, after the expiration of the time of redemption when redemption is allowed by law, refuse or neglect to surrender possession thereof after demand therefor has been duly made by the purchaser at such sale, or his or her assigns;

(h) When an heir or devisee continues in possession of any premises sold and conveyed by any personal representative with authority to sell, after demand therefor is duly made;

(i) When a vendee having obtained possession under an agreement to purchase lands or tenements, and having failed to comply with his agreement, withholds possession thereof from his vendor, or assigns, after demand therefor is duly made;

(j) (I) When a tenant or lessee holds over without permission of the landlord after the tenant or lessee has engaged in conduct that is disturbing others or causing a nuisance, which conduct interferes with the quiet enjoyment of the landlord, if the landlord lives in the same or an immediately adjacent property, or of others who reside in an immediately adjacent property, or of other tenants or occupants of the same property, or the tenant or lessee by reason of negligence damaged the housing accommodation, and ten days' notice in writing has been duly served upon the tenant or lessee, which notice contains a description of the specific conduct that disturbed others or caused a nuisance, requiring in the alternative cessation of the conduct that is disturbing others or causing a nuisance that interferes with the quiet enjoyment of the landlord, if the landlord lives in the same or immediately adjacent property, or other tenants or occupants of the same property, or maliciously or by reason of negligence damaged the housing accommodation or possession of the premises so held; except that, for a nonresidential agreement or an employer-provided housing agreement, three days' notice is required pursuant to this subsection (1)(j), and for an exempt residential agreement, five days' notice is required pursuant to this section.

(II) The lawful exercise by a tenant of any rights pursuant to any law or rule relating to occupancy of a property, including this subsection (1)(j), shall not be deemed to interfere with the quiet enjoyment of the landlord or other tenants or other ground for eviction pursuant to this subsection (1)(j).

(III) Repealed.

(2) and (3) Repealed.

(4) (a) It is not an unlawful detention of real property as described in subsection (1)(d), (1)(d.5), (1)(e), (1)(e.5), or (1)(j) of this section if the tenant or lessee is a victim-survivor of unlawful sexual behavior, stalking, domestic violence, or domestic abuse, which unlawful sexual behavior, stalking, domestic violence, or domestic abuse was the cause of, contributed to, or resulted in the alleged unlawful detention and which unlawful sexual behavior, stalking, domestic violence, or domestic abuse has been documented by at least one of the following:

(I) A police report;

(II) A valid civil, criminal, or emergency protection order or restraining order issued pursuant to article 14 or article 14.5 of this title 13 or section 18-1-1001;

(III) A self-attestation affidavit that states the tenant is a victim-survivor of unlawful sexual behavior, stalking, domestic violence, or domestic abuse and that the incident of unlawful sexual behavior, stalking, domestic violence, or domestic abuse is the cause of, contributed to, or resulted in the alleged unlawful detention of real property described in subsection (1)(d), (1)(d.5), (1)(e), or (1)(e.5) of this section. The self-attestation affidavit must include the name of the party who is allegedly responsible for the unlawful sexual behavior, stalking, domestic violence, or domestic abuse, if the name of the party is known and if the tenant determines it is safe to provide.

(IV) (A) A letter signed by a qualified third party, including, but not limited to, an employee, agent, or volunteer of a victim-survivor service provider, an attorney, a social worker, a medical professional, a faith leader, or a mental health provider, as defined in section 38-12-401, from whom a tenant has sought assistance relating to unlawful sexual behavior, stalking, domestic violence, or domestic abuse. The letter must state that the qualified third party believes that the incident of unlawful sexual behavior, stalking, domestic violence, or domestic abuse occurred and is the cause of, contributed to, or resulted in the alleged unlawful detention described in subsection (1)(d), (1)(d.5), (1)(e), or (1)(e.5) of this section.

(B) If a landlord receives documentation pursuant to this subsection (4)(a) that contains conflicting information, the landlord may require a tenant to submit a letter signed by a qualified third party pursuant to subsection (4)(a)(IV)(A) of this section.

(b) A person is not guilty of an unlawful detention of real property pursuant to subsection (4)(a) of this section, including for nonpayment of rent, if the tenant agrees to and remains compliant with the requirements described in subsection (4)(e) of this section and if the alleged violation of the rental or lease agreement was caused by or resulted from unlawful sexual behavior, stalking, domestic violence, or domestic abuse against the tenant or lessee.

(c) A rental, lease, or other agreement must not contain a waiver of the protections provided in this subsection (4).

(d) This subsection (4) does not prevent the landlord from seeking judgment for possession against the tenant or lessee of the premises who is responsible for the unlawful sexual behavior, stalking, domestic violence, or domestic abuse that was the cause of, contributed to, or resulted in the alleged unlawful detention of real property.

(e) (I) (A) If the tenant has been alleged to have committed unlawful detention of real property due to nonpayment or late payment of rent and the tenant has provided documentation pursuant to subsection (4)(a) of this section that the tenant is a victim-survivor, the landlord shall offer the tenant a repayment plan no later than three business days after serving a demand for unpaid rent or no later than three business days after receiving the documentation described in subsection (4)(a) of this section, whichever is later. Within seven days after receipt of the repayment plan offered by the landlord, the tenant shall accept the landlord's repayment plan or propose an alternative repayment plan that conforms with the requirements of this subsection (4)(e). If the tenant accepts the repayment plan and either party notifies the court by motion, the court must vacate any previous order of judgment. If either party notifies a court that the parties have agreed upon a repayment plan, the court shall not enter an order of judgment for possession or for monetary damages during the pendency of a repayment plan, except as provided in subsection (4)(e)(I)(B) of this section. A landlord's failure to offer a repayment plan pursuant to this subsection (4)(e)(I)(A) is an affirmative defense to an action for unlawful detainer. A tenant's failure to accept the landlord's repayment plan or failure to propose an alternative repayment plan within seven days after receipt of the landlord's repayment plan is a waiver of the affirmative defense. The repayment plan must be structured at the tenant's discretion and must include, at a minimum, a requirement that the tenant pay the full repayment of all lawfully owed rent and make payments on a monthly basis, and the repayment plan must include the amount that must be paid on a monthly basis, which must be at least twenty-five dollars per month. The repayment plan must not exceed nine months from the date the plan is established.

(B) The tenant shall make payments according to the repayment plan schedule. Any payment made more than ten days after the date agreed upon for each payment installment is untimely. If a tenant fails to make a payment or makes three or more untimely payments, the landlord may serve, no sooner than seven days after the payment is untimely or is not made, the tenant with a notice of default demanding payment of all rent that remains lawfully owed. A payment that is not made before the next monthly payment is due constitutes a failure to make a payment. If the

tenant fails to make the payment of all remaining rent within seven days, the landlord may file a motion for judgment for possession. In an action for judgment for possession, the tenant may assert any available defenses for nonpayment of rent that may be applicable.

(C) A landlord shall not charge a tenant any fees, interest, or penalties associated with a repayment plan.

(II) If a tenant has satisfied the documentation requirements described in subsection (4)(a) of this section and the tenant relinquishes possession of the property, the tenant is entitled to repay any lawfully owed rent and is entitled to any other protections available pursuant to subsection (4)(e)(I) of this section, and the landlord shall not pursue a claim for monetary damages unless the tenant has failed to comply with the terms of the repayment plan.

(5) As used in this section, unless the context otherwise requires:

(a) "Domestic abuse" has the same meaning as set forth in section 38-12-401.

(b) "Domestic violence" has the same meaning as set forth in section 38-12-401.

(c) "Employer-provided housing agreement" means a residential tenancy agreement between an employee and an employer when the employer or an affiliate of the employer acts as a landlord.

(d) "Exempt residential agreement" means a residential agreement leasing a single family home by a landlord who owns five or fewer single family rental homes and who provides notice in the agreement that a ten-day notice period required pursuant to this section does not apply to the tenancy entered into pursuant to the agreement.

(e) "Stalking" has the same meaning as set forth in section 38-12-401.

(f) "Unlawful sexual behavior" has the same meaning as set forth in section 38-12-401.

(g) "Victim-survivor" has the same meaning as set forth in section 38-12-401.

(6) Repealed.

**Source:** L. 1885: p. 224, § 3. R.S. 08: § 2603. C.L. § 6369. CSA: C. 70, § 4. CRS 53: § 58-1-4. C.R.S. 1963: § 58-1-4. L. 79: (1)(h) amended, p. 648, § 4, effective July 1. L. 83: (1)(d) amended, p. 631, § 1, effective July 1. L. 86: (1)(c), (1)(f), and (1)(g) amended and (2) added, p. 434, § 7, effective April 18. L. 87: (1)(e) amended, p. 565, § 1, effective March 13; (2)(a)(I), (2)(a)(II), and (2)(b) amended and (3) added, p. 1356, § 6, effective July 1. L. 94: (1)(d.5) added, p. 1467, § 1, effective May 31. L. 95: (1)(e) amended and (1)(e.5) added, p. 271, § 1, effective July 1. L. 98: (1)(c), (1)(f), and (1)(g) amended, p. 819, § 15, effective August 5. L. 2005: (4) added, p. 401, § 1, effective July 1. L. 2019: (1)(d), (1)(e), and (1)(e.5)(II) amended and (5)

added, (HB 19-1118), ch. 230, p. 2316, § 1, effective May 20. **L. 2024:** IP(1), (1)(c), (1)(e), and (1)(e.5)(II) amended and (1)(e.8) and (1)(j) added, (HB 24-1098), ch. 113, p. 360, § 3, effective April 19. **L. 2025:** (1)(j)(III) repealed, (4) and (5) amended, and (6) added, (HB 25-1168), ch. 229, p. 1049, § 2, effective May 22.

**Editor's note:** (1) Subsection (2)(b) provided for the repeal of subsection (2), effective January 31, 1989. (See L. 87, p. 1356.) Subsection (3)(b) provided for the repeal of subsection (3), effective July 1, 1991. (See L. 87, p. 1356.)

(2) Subsection (6)(b) provided for the repeal of subsection (6), effective July 1, 2026. (See L. 2025, p. 1049.)

**Cross references:** For the legislative declaration in HB 24-1098, see section 1 of chapter 113, Session Laws of Colorado 2024. For the legislative declaration in HB 25-1168, see section 1 of chapter 229, Session Laws of Colorado 2025.

## ANNOTATION

I. General Consideration.

II. Paragraph (b).

III. Paragraph (c).

IV. Paragraph (d).

V. Paragraph (e).

VI. Paragraph (f).

VII. Paragraph (i).

VIII. Subsection (2).

Fail: Waiver of Statutory Notice Under Colorado's Forcible Entry and Detainer Statute", see 55 U. Colo. L. Rev. 125 (1983). For article, "A Review of Agricultural Law: Hard Times and Hard Choices", see 15 Colo. Law. 629 (1986). For article, "The Colorado Farm Homestead Protection Act", see 15 Colo. Law. 1642 (1986). For article, "The Agricultural Credit Act of 1987", see 17 Colo. Law. 611 (1988). For article, "An Analysis of the Effect of S.B. 123 on Foreclosures", see 17 Colo. Law. 845 (1988).

### I. GENERAL CONSIDERATION.

**Law reviews.** For article, "Remedies of a Landlord Following Default by a Tenant", see 11 Colo. Law. 2588 (1982). For article, "Representation of the Landlord in an Unlawful Detainer Action", see 12 Colo. Law. 69 (1983). For comment, "Francam v.

**No force is necessary to complete a cause of action in unlawful detention.** Northrup v. Nicklas, 115 Colo. 207, 171 P.2d 417 (1946); Cronk v. Bowers, 2023 COA 68M, 537 P.3d 401.

**The only question to be determined in an action for unlawful detainer is the right to possession** of the premises, and no demand for damages or rent can be joined in such action. *Tyler v. McKenzie*, 43 Colo. 233, 95 P. 943 (1908); *Beman v. Rocky Ford Nat'l Bank*, 100 Colo. 64, 65 P.2d 708 (1937); *Stone v. Lerner*, 118 Colo. 455, 195 P.2d 964 (1948).

**Title cannot be tried.** In ordinary actions of forcible entry and detainer, title to the property is not involved and cannot be tried. *Kelly v. E. F. Hallack Lumber & Mfg. Co.*, 22 Colo. 221, 43 P. 1003 (1896); *Wise v. Schimmel*, 76 Colo. 184, 230 P. 786 (1924).

**Where a determination of the right of possession cannot be had** without a trial of title, the plaintiff must fail. *Hamill v. Bank of Clear Creek County*, 22 Colo. 384, 45 P. 411 (1896).

**Muniments of title may be put in evidence.** In an action of forcible entry and detainer, title may not be tried, but muniments of plaintiff's title may be put in evidence to show the character of his possession. *Jenkins v. Tynon*, 1 Colo. App. 133, 27 P. 893 (1891).

**As a bearing on right of possession, title may indirectly be a subject of inquiry.** When the action is for unlawful detention, under subsection (1)(f), equitable defenses may be interposed, and indirectly, but only as bearing on the right of possession, title to the property may be a subject of inquiry. *Hamill v. Bank of Clear Creek County*, 22 Colo. 384, 45 P. 411 (1896).

**Lessee cannot deny lessor's title.** In an action of unlawful detainer, plaintiff having proved the execution of a lease and defendant's possession under it, defendant offered to show that his wife had erected buildings on the leased premises and claimed ownership. The court held that, as lessee of plaintiff, defendant could not deny his title, nor set up an outstanding title in another, and the evidence was properly rejected. *Eckles v. Booco*, 11 Colo. 522, 19 P. 465 (1898).

**Specific performance of a verbal agreement to execute a lease of lands** cannot be had in an action for the wrongful detainer of the lands. *Adcock v. Lieber*, 51 Colo. 373, 117 P. 993 (1911).

**Court may sustain motion for judgment on the pleadings.** Where, in an action in forcible entry and detainer, defendant raised no issue and none was shown by the pleadings, there was nothing left for a jury to determine, and regardless of any contention otherwise, the county court could, and did, properly sustain the motion for judgment on the pleadings. *Jorden v. Ellis*, 128 Colo. 350, 262 P.2d 275 (1953).

**Contempt sanction available in forcible entry and detainer (FED) proceedings** in appropriate circumstances. Nothing in C.R.C.P. 107 or the FED statute precludes the remedy of contempt in an FED action under appropriate circumstances. *Hartsel Springs Ranch v. Cross Slash Ranch*, 179 P.3d 237 (Colo. App. 2007).

**Applied** in *Burrows v. Greene*, 198 Colo. 167, 599 P.2d 258 (1979); *Hoffman v. Brown*, 42 Colo. App. 444, 599 P.2d 959

(1979); Maxwell v. District Court, 641 P.2d 931 (Colo. 1982); Christensen v. Hoover, 643 P.2d 525 (Colo. 1982).

## **II. PARAGRAPH (b).**

**For evidence of title being admissible when possessor's title comes from the public domain,** see Kelley v. Andrew, 3 Colo. App. 122, 32 P. 175 (1893).

## **III. PARAGRAPH (c).**

**Paragraph (c) provides that any tenant shall be deemed guilty of an unlawful detention who shall hold over,** and continue in possession of, the demised premises, after the expiration of the term of occupancy. MacKenzie v. Porter, 40 Colo. 340, 91 P. 916 (1907).

**The holding over itself constitutes an unlawful detention.** This paragraph itself does not say that a holding, only after refusal to surrender on demand, or notice to quit, but that such a holding over itself, constitutes an unlawful detention. Dulmaine v. Reed Bldg. Co., 46 Colo. 469, 104 P. 1038 (1909).

**It is inapplicable where tenancy fixed and certain.** Where a lease is not from year to year or for an indefinite term, but is a lease where the tenancy is fixed and certain, the provisions of this section do not apply. Koch v. Monaghan, 119 Colo. 557, 205 P.2d 652 (1949), citing Millage v. Spahn, 115 Colo. 444, 175 P.2d 982 (1946).

**Notice to quit not necessary when term ends at a certain time.** The applicable rule would seem to be that notice to quit is not required where, by the express words of the

contract, the term is to end at a certain time. Dulmaine v. Reed Bldg. Co., 46 Colo. 469, 104 P. 1038 (1909); Swaim v. Swanson, 118 Colo. 509, 197 P.2d 624 (1948); July Bldg. Corp. v. Heathrow & Co., Ltd., 679 P.2d 1120 (Colo. App. 1984).

**Action under this paragraph does not bar action for rent.** Although each party should bring forward all demands existing at the time of bringing an action in a justice court which can be consolidated, and, upon failure so to do, shall be debarred from afterwards suing for any such demand, a landlord is not barred from bringing an action for rent, which was due at the time of bringing an action of unlawful detainer for the premises under this paragraph (c). MacKenzie v. Porter, 40 Colo. 340, 91 P. 916 (1907).

**Demand for rent cannot be joined in action for possession of premises.** The action of unlawful detainer is not a common-law action, but is purely statutory, and, in the absence of statutory provisions therefor, a demand for damages or rent cannot be joined in an action for possession of the premises. MacKenzie v. Porter, 40 Colo. 340, 91 P. 916 (1907).

**Nor is landlord's right to bring action of unlawful detention affected because tenant must bring action for forcible entry.** The right to immediate possession being in the tenant, the action for forcible entry must be brought by her; but that by no means interferes with the right of the landlord to bring the action of unlawful detention upon the determination of the tenancy for any of the causes for which that

action will lie under this section. *Mageon v. Alkire*, 41 Colo. 338, 92 P. 720 (1907).

**Complainant alleging tenancy and holding over cannot recover on evidence showing occupation under agreement to purchase.** In an action of unlawful detainer where the complainant alleges a tenancy and a holding over, and there is evidence tending to show that the defendant is in occupation under an agreement to purchase, it was not error to instruct the jury that, if they should find the defendant went in under an agreement to purchase, the plaintiff could not recover. *Keller v. Klopfer*, 3 Colo. 132 (1876).

**For action not being commenced prematurely,** see *Beman v. Rocky Ford Nat'l Bank*, 100 Colo. 64, 65 P.2d 708 (1937).

#### IV. PARAGRAPH (d).

**Landlords must give thirty days' notice before filing for eviction to tenants living in properties covered by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).** The notice provision of 15 U.S.C. § 9058(c) remains in effect and prevails over Colorado's ten-day-notice requirement. *Arvada Vill. Gardens, LP v. Garate*, 2023 CO 24, 529 P.3d 105.

**Paragraph (d) relates only to cases of forfeiture by tenants for nonpayment of rent.** *Getty v. Miller*, 10 Colo. App. 331, 51 P. 166 (1897).

**Tender of rent renders attempt to terminate lease ineffectual.** A tender of rent due under the terms of a lease, if properly made and kept good, renders an attempt to

terminate it for nonpayment of rent ineffectual, the tender being equivalent to payment so far as the term of the lease is concerned. *Barlow v. Hoffman*, 103 Colo. 286, 86 P.2d 239 (1938).

**Tender must be sufficient.** A tender of rent due on leased premises is ineffectual where the amount of the tender is insufficient to cover the amount in default. *Barlow v. Hoffman*, 103 Colo. 286, 86 P.2d 239 (1938).

**Landlord may forfeit lease even if he has a deposit.** Deposit of funds to be applied to the payment of rent for the last eight months of a five-year lease does not deprive the landlord of his right to forfeit the lease if currently accruing rent becomes overdue. *Barlow v. Hoffman*, 103 Colo. 286, 86 P.2d 239 (1938).

**Service of notice constituting election of remedies.** Service of notice on a tenant in possession under lease to quit with a demand for possession, made for the express purpose of terminating the lease, constitutes an election of remedies and after such service the landlord has no right to ignore it or to bring an action based on any other theory than that the lease was terminated. *Barlow v. Hoffman*, 103 Colo. 286, 86 P.2d 239 (1938).

The general rule in Colorado is that a notice to pay or quit constitutes an election by the landlord to terminate the lease unless the notice is rendered ineffective by the tenant's payment of rent. *Aigner v. Cowell Sales Co.*, 660 P.2d 907 (Colo. 1983).



**Bringing of suit for rent is an irrevocable election to waive the forfeiture.** Perry v. White, 69 Colo. 234, 193 P. 543 (1920).

**A judgment in a forcible detainer suit cannot go beyond an adjudication of the right to possession** as between the parties except when suit is brought under paragraph (d). Hendron v. Bolander, 101 Colo. 414, 74 P.2d 706 (1937).

**A dismissed unlawful detainer case is not res judicata** as to the defendant in a subsequent suit involving the same cause of action, and he is not bound by the position he took in the original case where the dismissal was without prejudice. Barlow v. Hoffman, 103 Colo. 286, 86 P.2d 239 (1938).

**Complaint must show three days' notice in writing.** A complaint under the forcible entry and detainer act, where the only breach is failure to pay rent, is deficient, if it does not show three days' notice in writing requiring in the alternative the payment of rent or possession of the premises. Perry v. White, 69 Colo. 234, 193 P. 543 (1920).

**Alternative demands required.** A notice sent for alleged default in rental payment, under subsection (1)(d), must include in the alternative a demand for payment within three days or possession of the premises. If it does not include the alternative demands it is insufficient to work a forfeiture for nonpayment of rent. Tumbarello v. Byers, 37 Colo. App. 61, 543 P.2d 1278 (1975).

**Waiver of notice.** The notice requirement of subsection (1)(d) may be waived by lease provisions. Francam Bldg. Corp. v. Fail, 646 P.2d 345 (Colo. 1982).

**Sufficiency of service of notice.** The posting of a notice pursuant to the provisions of § 13-40-108 was sufficient to satisfy the three-day notice requirement under paragraph (d) and provide jurisdiction for entry of the judgment for possession. Magliocco v. Olson, 762 P.2d 681 (Colo. App. 1987).

**A failure to serve the demand three days before filing suit is not cured by the mere act of appending a copy of the demand to the complaint.** Rocky Mtn. Props. v. Purified H2O, 3 P.3d 485 (Colo. App. 2000).

**Statutory notice provision complied with where** landlord did not file an unlawful detainer action until ten days after his demand notice was served upon lessee. W. Cities Broad. v. Schueller, 830 P.2d 1074 (Colo. App. 1991), *aff'd in part, rev'd in part* on other grounds, 849 P.2d 44 (Colo. 1993).

**An unlawful detention action sounds in tort.** Federal court predicted that the Colorado supreme court would conclude that an unlawful detention action under subsection (1)(d) sounds in tort. Plaintiff's action for unlawful detention is thus subject to the Federal Tort Claims Act and its administrative remedies, which must be exhausted before an action in district court may be filed. Boehme v. United States Postal Serv., 343 F.3d 1260 (10th Cir. 2003).

## **V. PARAGRAPH (e).**

**Where the lessees failed to put the premises to the use required by the lease,** the lessees were in breach of the lease and an unlawful detainer action was proper. *Edlen Co. v. Nashville Mgmt., Inc.*, 680 P.2d 1331 (Colo. App. 1984).

**Return of rent matured and collected is not required.** The landlord, declaring a forfeiture of the lease for the tenant's violation of its conditions, is not required to return any part of the rent matured and collected. The tenant violating the conditions of the lease loses both the term and the rent. *Hepp Wall Paper & Mercantile Co. v. Deahl*, 53 Colo. 274, 125 P. 491 (1912).

**Landlord's acceptance of rent in ignorance of tenant's violation of conditions of lease is no waiver** of the condition, or the breach of it. *Hepp Wall Paper & Mercantile Co. v. Deahl*, 53 Colo. 274, 125 P. 491 (1912).

**Three-day notice required** before commencement of unlawful detainer action. *W. Cities Broad. v. Schueller*, 830 P.2d 1074 (Colo. App. 1991), *aff'd in part, rev'd in part* on other grounds, 849 P.2d 44 (Colo. 1993).

**Statutory notice provision complied with where** landlord did not file an unlawful detainer action until ten days after his demand notice was served upon lessee. *W. Cities Broad. v. Schueller*, 830 P.2d 1074 (Colo. App. 1991), *aff'd in part, rev'd in part* on other grounds, 849 P.2d 44 (Colo. 1993).

## **VI. PARAGRAPH (f).**

**Where grantor in trust deed does not unlawfully detain mortgaged premises after trustee's sale,** the purchaser has no occasion to resort to the provisions of the forcible entry and detainer statute. *Lane v. Morris*, 77 Colo. 343, 237 P. 154 (1925).

**The recovery provided for in paragraph (f) was not intended as a penalty** for the unlawful withholding of mortgaged premises by the owner after foreclosure sale, but as compensation for the use thereof. *Lane v. Morris*, 77 Colo. 343, 237 P. 154 (1925).

**Deed of trust, trustee's deed, and demand for possession with officer's return make prima facie case.** In an action for possession under a foreclosure sale, when the plaintiff had introduced in evidence the deed of trust, the trustee's deed, and demand for possession with the officer's return on the demand, he had proven a prima facie case, and upon defendant's failure to offer any evidence, plaintiff was entitled to judgment. *Ensley v. Page*, 13 Colo. App. 452, 59 P. 225 (1899).

**Foreclosure and sale in violation of contract is a defense.** It is a defense to an action for unlawful detention brought under paragraph (f) against the grantor of a deed of trust that it was foreclosed and a sale made thereunder in violation of a contract between him and the beneficiary that a foreclosure should not take place until the happening of certain contingencies, and then only in a certain manner. *Hamill v. Bank of Clear Creek County*, 22 Colo. 384, 45 P. 411 (1896).

## **VII. PARAGRAPH (i).**

**Law reviews.** For article, "Must Colorado Real Property Installment Sale Contracts Be Foreclosed as Mortgages?", see 9 Dicta 320 (1932). For note, "Vendor's Remedies Under Colorado Executory Land Contracts", see 22 Rocky Mt. L. Rev. 296 (1950). For note, "Relief upon Default Under a Contract for Purchase and Sale of Land", see 29 Dicta 7 (1952).

**It is immaterial whether the contract to convey is designated a "contract to purchase" or a "contract of purchase".** Schiffner v. Chicago Title & Trust Co., 79 Colo. 249, 244 P. 1012 (1926).

**Vendor may sue for unlawful detainer or in ejectment.** Unlawful detainer will lie where a vendee in possession under a contract to purchase withholds possession from the vendor after default and demand. Schiffner v. Chicago Title & Trust Co., 79 Colo. 249, 244 P. 1012 (1926).

### **13-40-105. Crops of possessor.**

In all cases arising under section 13-40-104 (1)(c) to (1)(i), the person in possession is entitled to cultivate and gather the crops, if any, planted or sown by him previous to the service of the demand to deliver up possession, and then grown or growing on the premises, and shall have the right to enter such premises for the purpose of cultivating or removing such crops, first paying or tendering to the party entitled to the possession of said premises a reasonable compensation for the use of the land before removing such crops.

**Source: L. 1885:** p. 225, § 4. **R.S. 08:** § 2604. **C.L.** § 6370. **CSA:** C. 70, § 5. **CRS 53:** § 58-1-5. **C.R.S. 1963:** § 58-1-5.

## **Vendee cannot question vendor's title.**

Where a vendee went into possession of real estate in pursuance of a contract of sale, he cannot be heard to question his vendor's title in an action by the vendor to recover the premises for a failure on the part of the vendee to comply with the contract, and a complaint that alleges such contract of sale and the failure of the vendee to comply therewith is sufficient as against a general demurrer without an allegation of ownership. Ruth v. Smith, 29 Colo. 154, 68 P. 278 (1901).

## **VIII. SUBSECTION (2).**

**The language of subsection (2)(a)** refers to § 13-40-124 for the definition of a qualified farm owner-tenant and the circumstances under which the attendant rights can be exercised. Fed. Land Bank of Wichita v. Needham, 759 P.2d 799 (Colo. App. 1988) (decided prior to repeal of subsection (2)).

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**Where a tenancy is from year to year this section is applicable** and under it the tenant has the right to "away-going" crops sown by him previous to the service of the demand to deliver up possession of the premises, unless there is a specific agreement providing otherwise. *Millage v. Spahn*, 115 Colo. 444, 175 P.2d 982 (1946).

**But not where tenancy is for a fixed term.** But where the tenancy is fixed certain, that is, where the tenant knows when he sows crops precisely when the lease will end, and it is plain he cannot reap before the lease terminates, he has no right to the crops remaining unharvested, or at least not to those that do not mature until after the termination of the lease. *Millage v. Spahn*, 115 Colo. 444, 175 P.2d 982 (1946).

**This section does not apply to a lease that is extinguished upon the foreclosure of a deed of trust.** Rather, it applies only to forcible entry and detainer actions where a landlord has evicted a tenant after a crop has been planted, but before it has been harvested. *Erick v. Merrill*, 10 P.3d 689 (Colo. App. 2000).

**Lessee will not be entitled to crops after fixed term expires.** Thus, where tenancy was for a five-year period, and lessee knew the date of termination of the lease at the time he planted his crop and was cautioned in regard thereto, the provisions of this section did not apply, and lessee was not entitled to the crops remaining unharvested at the termination of the lease. *Koch v. Monaghan*, 119 Colo. 557, 205 P.2d 652 (1949), citing *Miliage v. Spahn*, 115 Colo. 444, 175 P.2d 982 (1946).

**Where notice of termination is given after tilling, tenant may harvest.** Where tenant summer-tilled some of the land before receiving notice of termination of the tenancy, he was entitled to his share of the crop on the acres tilled before receiving the notice. *Hemberger v. Hagemann*, 120 Colo. 431, 210 P.2d 995 (1949).

**Right to crops is not a defense to forcible entry and detainer.** The right of a tenant under certain circumstances to growing crops is not in and of itself a valid defense to a complaint in forcible entry and detainer. *Orebaugh v. Doscocil*, 145 Colo. 484, 359 P.2d 671 (1961).

### **13-40-106. Written demand.**

(1) The demand or notice required by section 13-40-104 or 38-12-1303 shall be made in writing, specifying the grounds of the demandant's right to the possession of the premises, including a specific description of the alleged violation or no-fault eviction grounds, describing the premises, and indicating the date and time when the premises shall be delivered up, and shall be signed by the person claiming such possession, the person's agent, or the person's attorney.

(2) The demand or notice required by section 13-40-104 or 38-12-1303 must also include a statement that a residential tenant who receives supplemental security income, social security disability insurance under Title II of the federal "Social Security Act", 42 U.S.C. sec. 401 et seq.,

as amended, or cash assistance through the Colorado works program created in part 7 of article 2 of title 26 has a right to mediation prior to the landlord filing an eviction complaint with the court pursuant to section 13-40-110.

(3) The demand or notice required by section 13-40-104 or 38-12-1303 must be written in English, Spanish, or any other language that the landlord knows, or has reason to know, is the primary language of the tenant.

(4) If the demand or notice required by section 13-40-104 or 38-12-1303 includes a demand for unpaid rent, the demand or notice must include a statement that if the tenant has experienced unlawful sexual behavior, stalking, domestic violence, or domestic abuse that has caused the tenant to miss a rent payment, the tenant may provide the landlord with documentation of the unlawful sexual behavior, stalking, domestic violence, or domestic abuse and is entitled to a repayment plan that allows the tenant to repay the unpaid rent over a period of time not to exceed nine months.

**Source:** L. 1885: p. 226, § 5. R.S. 08: § 2605. C.L. § 6371. CSA: C. 70, § 6. CRS 53: § 58-1-6. C.R.S. 1963: § 58-1-6. L. 2023: Entire section amended, (HB 23-1120), ch. 414, p. 2454, § 4, effective June 6. L. 2024: Entire section amended, (HB 24-1098), ch. 113, p. 362, § 4, effective April 19. L. 2025: (4) added, (HB 25-1168), ch. 229, p. 1052, § 3, effective August 6.

**Cross references:** For the legislative declaration in HB 23-1120, see section 1 of chapter 414, Session Laws of Colorado 2023. For the legislative declaration in HB 24-1098, see section 1 of chapter 113, Session Laws of Colorado 2024. For the legislative declaration in HB 25-1168, see section 1 of chapter 229, Session Laws of Colorado 2025.

## ANNOTATION

**The Colorado supreme court has recognized the rule requiring a demand for rent due prior to the exercise of the right of reentry.** Lessor, before he exercises the right of reentry reserved for breach of covenant to pay rent, must make an actual demand of the amount of rent due, in strict compliance with the requirements of the common law. Whenever a forfeiture for the nonpayment of rent is to be established, it is

necessary to prove such a demand. *Audubon Commercial Area Co. v. Skelly Oil Co.*, 268 F. Supp. 883 (D. Colo. 1967).

**Demand must be in writing and left with the party.** A demand, formal according to all of the requirements of the law, and set out in writing, if read to the party, is not sufficient. It must be made in writing and left with the party or it is no demand. *Doss v. Craig*, 1 Colo. 177 (1869).

**A party cannot be guilty of wrongful detainer until after this demand** has been made upon him. Doss v. Craig, 1 Colo. 177 (1869).

**A distinction in respect to necessity of demand exists between action for forcible entry, and action for unlawful detainer** after a peaceable and lawful entry. Farncomb v. Stern, 18 Colo. 279, 32 P. 612 (1893).

**No demand is necessary where entry was forcible.** In an action of forcible entry and detainer, where the entry complained of was forcible and illegal, the plaintiff need not make a demand for the possession of the premises before commencing his action. Farncomb v. Stern, 18 Colo. 279, 32 P. 612 (1893).

**Demand may be signed by an agent or attorney.** This section expressly provides that the demand for possession may be signed by the agent or attorney of the person claiming such possession. Ensley v. Page, 13 Colo. App. 452, 59 P. 225 (1899).

**Sufficiency of notice cannot be questioned in appellate court when due service was conceded.** Where, in wrongful detainer by landlord against tenant, the latter concedes, in the court below, due service of notice to quit, he will not be heard to question the sufficiency of the notice upon error. Hepp Wall Paper & Mercantile Co. v. Deahl, 53 Colo. 274, 125 P. 491 (1912).

**Omission to make demand is not cured by plea of title in defendant or by verdict.** In an action for unlawful detainer under this section the plaintiff must aver and prove a demand in writing for possession of the premises which he seeks to recover, and the omission to make such demand is not cured by plea of title in defendant nor by verdict. Doss v. Craig, 1 Colo. 177 (1869).

**The common-law necessity for a demand of rent may be obviated** by a provision in the lease or by the acts of the parties. Audubon Com. Area Co. v. Skelly Oil Co., 268 F. Supp. 883 (D. Colo. 1967).

### **13-40-107. Notice to terminate tenancy.**

(1) A landlord of nonresidential real property or a residential premises described in section 38-12-1302 (1)(a), (1)(b), (1)(d), (1)(e), or (1)(f) or a tenant of any property or premises may terminate a periodic tenancy at the end of the tenancy period or elect to not renew a fixed term tenancy at the end of the fixed term by serving written notice that expires at the end of the period or fixed term, based on the length of the applicable tenancy described in subsection (2) of this section.

(2) The written notice described in subsection (1) of this section must be served before the end of the period or fixed term, as follows:

(a) A tenancy for one year or longer, at least ninety-one days;

- (b) A tenancy of six months or longer but less than a year, at least twenty-eight days;
  - (c) A tenancy of one month or longer but less than six months, at least twenty-one days;
  - (d) A tenancy of one week or longer but less than one month, or a tenancy at will, at least three days;
  - (e) A tenancy for less than one week, at least one day.
- (3) The written notice described in subsection (1) of this section must:
- (a) Describe the property and the particular date when the tenancy will terminate; and
  - (b) Be signed by the landlord or tenant, the party giving such notice, or the landlord's or tenant's agent or attorney.
- (4) No written notice under subsection (1) of this section is necessary from a tenant with a fixed-term tenancy that is, by agreement, to end at a time certain.

**Source:** L. 1885: p. 226, § 6. R.S. 08: § 2606. C.L. § 6372. CSA: C. 70, § 7. CRS 53: § 58-1-7. L. 55: p. 407, § 3. C.R.S. 1963: § 58-1-7. L. 79: (5) added, p. 1399, § 2, effective June 21. L. 2012: (1)(a), (1)(b), and (1)(c) amended, (SB 12-175), ch. 208, p. 825, § 9, effective July 1. L. 2017: (1)(c) amended, (SB 17-245), ch. 352, p. 1837, § 2, effective August 9. L. 2024: Entire section amended, (HB 24-1098), ch. 113, p. 362, § 5, effective April 19.

**Cross references:** For the legislative declaration in HB 24-1098, see section 1 of chapter 113, Session Laws of Colorado 2024.

## ANNOTATION

**Law reviews.** For note, "Holdover Tenants in Colorado", see 34 Rocky Mt. L. Rev. 320 (1962). For article, "The Effect of Zoning Violations on the Enforceability of Leases", see 19 Colo. Law. 2077 (1990).

**Constitutionality.** The forcible entry and detainer statute, as applied, neither deprives the tenant of property without due process of law nor violates his right to equal protection

of the laws. *Hurricane v. Kanover, Ltd.*, 651 P.2d 1218 (Colo. 1982).

**Notice to quit purporting to be by landlord's attorney is good.** *Ensley v. Page*, 13 Colo. App. 452, 59 P. 225 (1899).

**It is not essential that the landlord's notice to quit should be upon a single piece of paper.** Two papers, relating to the same matter, and served at the same time, are necessarily construed as one document.

Hepp Wall Paper & Mercantile Co. v. Deahl, 53 Colo. 274, 125 P. 491 (1912).

**Provision for notice to tenant has no application where tenant voluntarily vacates.** This section, which provides that a tenant from month to month is entitled to 10 days notice to quit to terminate the tenancy, has no application to an action to recover rent for premises occupied without a lease from month to month, or other definite period, brought after the premises had been voluntarily vacated by the tenant. Salomon v. O'Donnell, 5 Colo. App. 35, 36 P. 893 (1894).

**Notice to quit is not required where, by the express words of the lease, the term ends at a day certain.** Dulmaine v. Reed Bldg. Co., 46 Colo. 469, 104 P. 1038 (1909); Hancock v. Central Shoe & Clothing Co., 53 Colo. 190, 125 P. 123 (1912); Swaim v. Swanson, 118 Colo. 509, 197 P.2d 624 (1948); Mahaney v. Field, 120 Colo. 518, 211 P.2d 827 (1949).

**Notice to quit not required.** Defendants were tenants at sufferance with a possessory interest pursuant to an agreement which expired at a time certain. Therefore, a notice to quit was not a condition precedent to maintaining an action for unlawful detention. July Bldg. Corp. v. Heathrow & Co., Ltd., 679 P.2d 1120 (Colo. App. 1984).

**Payment of rent at stated periods is a criterion as to duration of term.** The reservation of rent and its payment at stated periods, as for a year or month, is, in the absence of express agreement as to length of the lease, one of the principal criterions to

determine the duration of the term. Hurd v. Whitsett, 4 Colo. 77 (1878).

**Month to month tenant entitled to ten days notice from landlord** who was purchaser of premises at federal tax sale. Danyew v. Phelps, 676 P.2d 707 (Colo. App. 1983).

**This section recognizes a monthly tenancy as distinct from one from year to year.** Hurd v. Whitsett, 4 Colo. 77 (1878).

**Holding merely at will of landlord deemed tenancy from year to year.** A holding merely at the will of the landlord, according to the ancient meaning of the term "tenancy at will", is an estate unknown in modern times, unless where created by express agreement between the parties, or by clear implication. All such tenancies are, for the purpose of a notice to quit, deemed to be tenancies from year to year. Hurd v. Whitsett, 4 Colo. 77 (1878).

**Where term is for less than year holding over is implied to be for like term.** Where a tenant for a year or for years holds over after the expiration of his term, with the assent of his landlord, the holding is implied to be from year to year. But where the term is for a shorter period than a year, according to the current of authorities, both English and American, the holding over is implied to be for a like term, and the notice to quit is determined thereby, and is sufficient if it equals the length of the term or the interval between the times of payment of rent. Hurd v. Whitsett, 4 Colo. 77 (1878).

**Where there was a holding over by a tenant from month to month, after**



**conveyance by the original lessor**, with the assent of both the landlord and tenant, it was held that such holding over was upon the same terms as the prior letting, and, in the absence of a new lease, the character of the tenancy continued the same. *Hurd v. Whitsett*, 4 Colo. 77 (1878).

**Where a tenant occupied premises for several years, and then entered into a**

**lease for one year certain**, it was held that his former occupancy did not inure to his benefit and constitute him a tenant from year to year and so entitle him to three months notice to quit under this section. *Brandenburg v. Reithman*, 7 Colo. 323, 3 P. 577 (1884).

**Applied** in *Maxwell v. District Court*, 641 P.2d 931 (Colo. 1982).

**13-40-107.5. Termination of tenancy for substantial violation - definition - legislative declaration.**

- (1) The general assembly finds and declares that:
  - (a) Violent and antisocial criminal acts are increasingly committed by persons who base their operations in rented homes, apartments, and commercial properties;
  - (b) Such persons often lease such property from owners who are unaware of the dangerous nature of such persons until after the persons have taken possession of the property;
  - (c) Under traditional landlord and tenant law, such persons may have established the technical, legal right to occupy the premises for a fixed term which continues long after they have demonstrated themselves unfit to coexist with their neighbors and co-tenants; furthermore, such persons often resist eviction as long as possible;
  - (d) In certain cases it is necessary to curtail the technical, legal right of occupancy of such persons in order to protect the equal or greater rights of neighbors and co-tenants, the interests of property owners, the values of trust and community within neighborhoods, and the health, safety, and welfare of all the people of this state;
  - (e) A tenant who experiences unlawful sexual behavior, stalking, domestic violence, or domestic abuse is not responsible for the acts of the responsible party, especially when the responsible party exercises control over the tenant, and the tenant must not be unfairly penalized or suffer the undue loss of housing due to the acts of the responsible party.
- (2) It is declared to be an implied term of every lease of real property in this state that the tenant shall not commit a substantial violation while in possession of the premises.
- (3) As used in this section, "substantial violation" means any act or series of acts by the tenant or any guest or invitee of the tenant that, when considered together:

(a) Occurs on or near the premises and endangers the person or willfully and substantially endangers the property of the landlord, any co-tenant, or any person living on or near the premises; or

(b) Occurs on or near the premises and constitutes a violent or drug-related felony prohibited under article 3, 4, 6, 7, 9, 10, 12, or 18 of title 18, C.R.S.; or

(c) Occurs on the tenant's leased premises or the common areas, hallway, grounds, parking lot, or other area located in the same building or complex in which the tenant's leased premises are located and constitutes a criminal act in violation of federal or state law or local ordinance that:

(I) Carries a potential sentence of incarceration of one hundred eighty days or more; and

(II) Has been declared to be a public nuisance under state law or local ordinance based on a state statute.

(4) (a) A tenancy may be terminated at any time on the basis of a substantial violation. The termination is effective three days after service of written notice to terminate tenancy.

(b) The notice to terminate tenancy must describe the property, the particular date when the tenancy will terminate, and the grounds for termination. The notice must be signed by the landlord or by the landlord's agent or attorney.

(5) (a) In any action for possession under this section, the landlord has the burden of proving the occurrence of a substantial violation by a preponderance of the evidence.

(b) In any action for possession under this section, it shall be a defense that:

(I) (Deleted by amendment, L. 2005, p. 402, § 2, effective July 1, 2005.)

(II) The tenant did not know of, and could not reasonably have known of or prevented, the commission of a substantial violation by a guest or invitee but immediately notified a law enforcement officer of his or her knowledge of the substantial violation.

(c) (I) A landlord does not have a basis for possession pursuant to this section if the tenant or lessee is the victim-survivor of unlawful sexual behavior, stalking, domestic violence, or domestic abuse, which unlawful sexual behavior, stalking, domestic violence, or domestic abuse was the cause of, contributed to, or resulted in the alleged substantial violation and the unlawful sexual behavior, stalking, domestic violence, or domestic abuse has been documented pursuant to section 13-40-104 (4).

(II) This subsection (5)(c) does not prevent a landlord from seeking possession against a tenant or lessee of the premises who is responsible for the unlawful sexual behavior, stalking, domestic violence, or domestic abuse that was the cause of, contributed to, or resulted in the alleged substantial violation.

**Source:** **L. 94:** Entire section added, p. 1467, § 2, effective May 31. **L. 98:** IP(3) and (3)(b) amended and (3)(c) added, p. 419, § 1, effective April 21. **L. 2003:** (5)(b)(I) amended, p. 1010, § 11, effective July 1. **L. 2005:** (5) amended, p. 402, § 2, effective July 1. **L. 2024:** (4)(a) and (4)(b) amended, (HB 24-1098), ch. 113, p. 363, § 6, effective April 19. **L. 2025:** (1)(e) added and (5)(c) amended, (HB 25-1168), ch. 229, p. 1052, § 4, effective May 22.

**Cross references:** For the legislative declaration in HB 24-1098, see section 1 of chapter 113, Session Laws of Colorado 2024. For the legislative declaration in HB 25-1168, see section 1 of chapter 229, Session Laws of Colorado 2025.

## ANNOTATION

**Section does not conflict with city ordinances** that impose strict liability for over-occupancy. To the contrary, the section and the ordinances appear to be complimentary in that they provide mechanisms to deal with lease violations. *Boulder County Apt. Ass'n v. City of Boulder*, 97 P.3d 332 (Colo. App. 2004).

**Lessee committed no substantial breach that would allow landowners to defeat the lease pursuant to this section.** Whether a breach of a contract is material, and therefore excuses further performance by a party, is a question of fact. Because the trial court's findings that no breach of a lease to remove sand, gravel, and rock from a

landowner's property are supported by the record, lessee committed no substantial breach. *Carder, Inc. v. Cash*, 97 P.3d 174 (Colo. App. 2003).

**Court erred in granting restitution of the premises where owner failed to prove by a preponderance of the evidence that tenant violated lease covenant by committing criminal activity.** Unlawful detention for violation of a lease covenant requires proof by a preponderance of the evidence that the covenant was actually violated, not merely that the owner had reasonable grounds to believe that it was violated. *Miles v. Fleming*, 214 P.3d 1054 (Colo. 2009).

### **13-40-108. Service of notice to vacate or demand.**

(1) Except as provided in subsection (2) of this section, a written notice to vacate or demand as required by section 13-40-104, 38-12-202, 38-12-204, or 38-12-1303 may be served by delivering a copy of the notice to a known tenant occupying the premises, or by leaving the copy with a person or a member of the tenant's family who is older than fifteen years of age, residing on or in charge of the premises, or, in case no one is on the premises after attempts at personal

service at least once on two separate days, by posting the copy in a conspicuous place on the premises.

(2) If a tenant provides the landlord with written or actual notice that the tenant is a victim-survivor of unlawful sexual behavior, stalking, domestic violence, or domestic abuse, the landlord shall make all reasonable efforts to perfect service described in subsection (1) of this section through personal service to the tenant who provided the written or actual notice. If personal service cannot be perfected after three attempts, the landlord shall perfect service by posting a copy of the notice in a conspicuous place on the premises and by serving the notice to the tenant through certified mail or through any commercial mail courier if the notice includes a receipt or other documentation demonstrating proof of delivery.

**Source:** L. 1885: p. 226, § 7. R.S. 08: § 2607. C.L. § 6373. CSA: C. 70, § 8. CRS 53: § 58-1-8. L. 61: p. 390, § 1. C.R.S. 1963: § 58-1-8. L. 2024: Entire section amended, (HB 24-1098), ch. 113, p. 363, § 7, effective April 19. L. 2025: Entire section amended, (HB 25-1168), ch. 229, p. 1053, § 5, effective August 6.

**Cross references:** For the legislative declaration in HB 24-1098, see section 1 of chapter 113, Session Laws of Colorado 2024. For the legislative declaration in HB 25-1168, see section 1 of chapter 229, Session Laws of Colorado 2025.

## ANNOTATION

**Law reviews.** For comment on *Hemberger v. Hagemann*, appearing below, see 22 Rocky Mt. L. Rev. 196 (1950).

**Acknowledgment of receipt of notice is equivalent to any statutory method of service** so long as the notice reaches the hands of the person sought to be notified in sufficient time. Sufficiency of the notice or

the manner of service thereof cannot be questioned where notice was conceded to have been received. *Hemberger v. Hagemann*, 120 Colo. 431, 210 P.2d 995 (1949).

**Applied** in *Hurricane v. Kanover, Ltd.*, 651 P.2d 1218 (Colo. 1982).

### 13-40-109. Jurisdiction of courts.

The district courts in their respective districts and county courts in their respective counties have jurisdiction of all cases of forcible entry, forcible detainer, or unlawful detainer arising pursuant to this article 40, and the person entitled to the possession of any premises may recover

possession thereof by action brought in any of said courts in the manner provided in this article 40. On and after January 1, 2019, in all actions brought before county courts pursuant to section 13-40-104 (1)(f) to (1)(i), where the allegations of the complaint are put in issue by a verified answer and in actions in which the verified answer alleges a monthly rental value of the property in excess of twenty-five thousand dollars, the county court, upon the filing of said answer, shall suspend all proceedings therein and certify said cause and transmit the papers therein to the district court of the same county. Causes so certified by the county court shall be proceeded within the courts to which they have been so certified in all respects as if originally begun in the court to which they have been certified. On and after January 1, 2019, the jurisdiction of the county court to enter judgment for rent, or damages, or both and to render judgment on a counterclaim in forcible entry and detainer shall be limited to a total of twenty-five thousand dollars in favor of either party, exclusive of costs and attorney fees.

**Source:** L. 1885: p. 226, § 8. L. 1887: p. 271, § 3. R.S. 08: § 2608. C.L. § 6374. CSA: C. 70, § 9. CRS 53: § 58-1-9. C.R.S. 1963: § 58-1-9. L. 64: p. 469, § 1. L. 75: Entire section amended, p. 562, § 2. L. 82: Entire section amended, p. 642, § 1, effective June 1. L. 90: Entire section amended, p. 850, § 9, effective May 31; entire section amended, p. 856, § 7, effective July 1. L. 2001: Entire section amended, p. 1518, § 13, effective September 1. L. 2018: Entire section amended, (SB 18-056), ch. 298, p. 1817, § 2, effective January 1, 2019.

**Cross references:** For the legislative declaration contained in the 1990 act amending this section, see section 1 of chapter 100, Session Laws of Colorado 1990.

## ANNOTATION

**Law reviews.** For article, "Colorado's New Court System", see 41 Den. L. Ctr. J. 140 (1964).

**In forcible entry and detainer suit court may give judgment on pleadings.** Where, in an action in forcible entry and detainer, defendant raised no issue and none was shown by the pleadings, there was nothing left for a jury to determine, and, regardless of any contention otherwise, the county court could, and did, properly sustain the motion for judgment on the pleadings.

Jorden v. Ellis, 128 Colo. 350, 262 P.2d 275 (1953).

**Forcible entry and detainer action in county court is limited to question of possession,** and title to the land involved may not be an issue for resolution there. Aasgaard v. Spar Consol. Mining & Dev. Co., 185 Colo. 157, 522 P.2d 726 (1974).

**When a party validly raises the issue of ownership in a district court forcible entry and detainer action that directly**

**affects the party's right to possession, the district court must determine ownership prior to ruling on possession.** A forcible entry and detainer proceeding in district

court is not rendered inappropriate simply because the issue of ownership arises. *Schuler v. Oldervik*, 143 P.3d 1197 (Colo. App. 2006).

### **13-40-110. Action - how commenced - report.**

(1) (a) An action pursuant to this article 40 is commenced by filing with the court a complaint in writing using the standard form of eviction complaint and affidavit for a residential tenancy that is available online through the judicial department's website to describe the property with reasonable certainty; the street address and the zip code, listed separately; the grounds for recovery; the name of the person in possession or occupancy; a prayer for recovery of possession; and a signed affidavit that states:

(I) The residential tenant receives supplemental security income, social security disability insurance under Title II of the federal "Social Security Act", 42 U.S.C. sec. 401 et seq., as amended, or cash assistance through the Colorado works program created in part 7 of article 2 of title 26, and the complainant and residential tenant participated in mandatory mediation and the mediation was unsuccessful;

(II) The complainant and residential tenant did not participate in mandatory mediation because the residential tenant:

(A) Did not disclose or declined to disclose in writing in response to a written inquiry from the complainant that the residential tenant receives supplemental security income, social security disability insurance under Title II of the federal "Social Security Act", 42 U.S.C. sec. 401 et seq., as amended, or cash assistance through the Colorado works program created in part 7 of article 2 of title 26; or

(B) Does not receive supplemental security income, social security disability insurance under Title II of the federal "Social Security Act", 42 U.S.C. sec. 401 et seq., as amended, or cash assistance through the Colorado works program created in part 7 of article 2 of title 26; or

(III) The complainant and residential tenant did not participate in mandatory mediation because the complainant is:

(A) A 501(c)(3) nonprofit organization that offers opportunities for mediation to residential tenants prior to filing a residential eviction in court; or

(B) A landlord with five or fewer single-family rental homes and no more than five total rental units, including any single-family homes.

(b) Mandatory mediation must be conducted by a trained neutral third party and be provided at no cost to the residential tenant. The landlord is only required to pay for the landlord's portion of the mandatory mediation. The complainant and residential tenant may have legal representation present during the mandatory mediation. A residential tenant may voluntarily waive the tenant's right to mandatory mediation, but a waiver must not be in any lease agreement or other agreement between the complainant and residential tenant pursuant to section 38-12-801.

(c) The office of dispute resolution, created in section 13-22-303, shall schedule the mandatory mediation at the first available date, but no later than fourteen calendar days after the landlord requests the mediation.

(d) Failure to comply with the mandatory mediation requirements outlined in this subsection (1) is an affirmative defense. If the affirmative defense is raised and the complainant cannot demonstrate that the requirements were met, the court shall dismiss the case without prejudice and a new complaint must be filed.

(e) The complaint may also set forth the amount of rent due, the rate at which it is accruing, the amount of damages due, and the rate at which they are accruing and may include a prayer for rent due or to become due, present and future damages, costs, and any other relief to which plaintiff is entitled.

(f) Notwithstanding the requirement to file a complaint using the standard form of eviction pursuant to subsection (1)(a) of this section, the court shall accept a complaint filed on a different form if the complaint meets the requirements of this section.

(2) In an action for termination of a tenancy in a mobile home park, the complaint, in addition to the requirements of subsection (1) of this section, must specify the reasons for termination as the reasons are stated in section 38-12-203. The complaint must specify the approximate time, place, and manner in which the tenant allegedly committed the acts giving rise to the complaint. If the action is based on the mobile home or mobile home lot being out of compliance with the rules and regulations adopted pursuant to section 38-12-214, the complaint must specify that the home owner was given ninety days after the date of service or posting of the notice to terminate tenancy to cure the noncompliance, that ninety days have passed, and the noncompliance has not been cured.

(3) The complaint must include:

(a) A designation of whether the plaintiff elects to participate in any hearing in person or remotely by phone or video on a platform designated by the court. Upon filing the complaint, the court shall provide the plaintiff with any necessary information to facilitate the plaintiff's participation.

(b) A box indicating if the eviction is for a residential or commercial tenancy.

(3.5) If the tenant provides written or actual notice to the landlord that the tenant is a victim-survivor of unlawful sexual behavior, stalking, domestic violence, or domestic abuse, and the tenant consents to the landlord sharing the information with the court, the landlord shall disclose the information on the complaint or with the return of service filed with the court.

(4) Beginning January 2024, the judicial department shall report to the house of representatives judiciary committee and the senate judiciary committee, or their successor committees, during the judicial department's "SMART Act" hearing the total number of mediations scheduled by the office of dispute resolution pursuant to this section, the outcomes of the mediations, and the cost of the mediations for the previous fiscal year.

**Source:** **L. 1885:** p. 226, § 9. **L. 1887:** p. 272, § 4. **R.S. 08:** § 2609. **C.L.** § 6375. **L. 33:** p. 481, § 1. **CSA:** C. 70, § 10. **CRS 53:** § 58-1-10. **L. 55:** p. 406, § 1. **L. 61:** p. 390, § 2. **C.R.S. 1963:** § 58-1-10. **L. 85:** Entire section amended, p. 578, § 1, effective July 1. **L. 96:** (2) amended, p. 670, § 1, effective July 1. **L. 2020:** (2) amended, (HB 20-1196), ch. 195, p. 927, § 17, effective June 30. **L. 2023:** (1) amended and (4) added, (HB 23-1120), ch. 414, p. 2452, § 2, effective June 6; (3) added, (HB 23-1186), ch. 415, p. 2459, § 3, effective January 1, 2024. **L. 2024:** (2) amended, (HB 24-1098), ch. 113, p. 364, § 8, effective April 19; IP(1)(a) amended and (1)(f) added, (SB 24-064), ch. 297, p. 2029, § 2, effective May 31. **L. 2025:** (3.5) added, (HB 25-1168), ch. 229, p. 1053, § 6, effective August 6.

**Cross references:** For the legislative declaration in HB 23-1186, see section 1 of chapter 415, Session Laws of Colorado 2023. For the legislative declaration in HB 23-1120, see section 1 of chapter 414, Session Laws of Colorado 2023. For the legislative declaration in HB 24-1098, see section 1 of chapter 113, Session Laws of Colorado 2024. For the legislative declaration in HB 25-1168, see section 1 of chapter 229, Session Laws of Colorado 2025.

## ANNOTATION

**Law reviews.** For article, "Highlights of the 1955 Colorado Legislative Session — Real Property", see 28 Rocky Mt. L. Rev. 58 (1955). For article, "Representation of the Landlord in an Unlawful Detainer Action", see 12 Colo. Law. 69 (1983). For article, "The COVID-19 Eviction Impact", see 50 Colo. Law. 43 (Aug.-Sept. 2021). For article, "The Past, Present, and Future of

Residential Construction Defect Action Reform in Colorado", see 54 Colo. Law. 28 (Jan.-Feb. 2025).

**Substantial facts must be set out in complaint.** This section requires that the substantial facts, upon which the plaintiff relies, shall be set out in the complaint. *Klopper v. Keller*, 1 Colo. 410 (1871).



**Fact of written demand for the premises.** It is the duty of the plaintiff, if demand in writing for the premises was made, to set it out in his petition as a substantial fact, as required in this section. Doss v. Craig, 1 Colo. 177 (1869).

**Allegation held one of material facts and not of mere evidence.** An allegation that defendant by "beating plaintiff, and by superior strength and numbers, with threats of violence, did forcibly eject plaintiff", is an allegation not of mere evidence, but of material facts. Kenny v. Daugherty, 67 Colo. 56, 185 P. 471 (1919).

**This and § 13-40-113 are the only sections of the act in any way relating to the pleadings** required of the parties, where the action is commenced in a justice court and by implication exclude necessity for further written pleadings. Joss v. Hallett, 39 Colo. 392, 89 P. 809 (1907).

**Verification permitted at close of case.** In a forcible entry and detainer action brought under this article in the district court, plaintiffs were properly permitted at the close of their case to verify their complaint. Franklin v. Macedonia Baptist Church, 123 Colo. 432, 231 P. 2d 793 (1951).

**13-40-110.2. Personal identifying information in eviction court filings - landlord's duties - definition.**

*[Editor's note: This section is effective January 1, 2027.]*

(1) A landlord shall comply with applicable court rules governing the protection and redaction of personal identifying information in eviction filings.

(2) A landlord shall redact personal identifying information from any supporting documents submitted to a court that may become publicly accessible. A landlord may submit personal identifying information in a confidential manner consistent with judicial department procedures if a court requires such information.

(3) Nothing in this section prohibits a landlord from including personal identifying information explicitly required by a court. All other supporting documents submitted must comply with subsection (2) of this section.

(4) As used in this section, unless the context otherwise requires, "personal identifying information" includes a:

- (a) Social security number;
- (b) Birth date;
- (c) Driver's license number;
- (d) State identification number;

- (e) Bank account number;
- (f) Credit card number; and
- (g) Debit card number.

**Source: L. 2026:** Entire section added, (HB 26-1196), ch. 326, p. 1895, § 2, effective January 1, 2027.

**Cross references:** For the legislative declaration in HB 26-1196, see section 1 of chapter 326, Session Laws of Colorado 2026.

#### **13-40-110.5. Automatic suppression of court records - definition.**

(1) As used in this section, unless the context otherwise requires, "suppressed court record" means a court record that is accessible only to judges; court staff; a party to the case and, if represented, the party's attorneys; authorized judicial department staff; and a person with a valid court order authorizing access to the court record.

(2) Upon the commencement of an action pursuant to this article 40, any court record of the action is a suppressed court record.

(3) (a) Except as provided in subsection (3)(b) of this section, when an order granting the plaintiff possession of the premises is entered in an action to which this section applies, the record is no longer a suppressed court record and the court shall make the record available to the public unless the parties to the action agree that the record remain suppressed. If the parties agree that the record remain suppressed, the record remains a suppressed court record.

(b) A defendant who is a victim-survivor pursuant to section 13-40-104 may file a motion or petition to suppress a court record related to an action for possession or to maintain a record as suppressed if the record is currently suppressed, including a record that predates August 6, 2025. Upon receiving a motion or petition to suppress, the court shall suppress, or continue to suppress, any related records, including a judgment for possession if one is entered, if a tenant provides one or more of the documents described in section 13-40-104 (4)(a) and asserts that public access to the records poses a risk to the defendant's safety or the safety of a family member of the defendant's household.

(4) The names of the parties included in a court record that is suppressed pursuant to this section may be used by the court for administrative purposes, but the court shall not, for any reason, publish the names of the parties online.

(5) In addition to the persons described in subsection (1) of this section, a court shall allow a person to access a suppressed court record if the person affirms to the court, in writing or electronically, that:

(a) The person is an attorney, other than a party's attorney described in subsection (1) of this section, or is acting on behalf of the attorney;

(b) A party included in the court record has given written or verbal permission for the person to access the suppressed court record;

(c) The person is only accessing the record for the purpose of:

(I) Providing legal advice to, or evaluating whether to enter an appearance on behalf of, the party who gave permission for the person to access the record; or

(II) Evaluating whether the matter is suitable for mediation or in preparation for a mediation between the parties included in the court record; and

(d) The person is not accessing the record for commercial purposes, other than as described in subsection (5)(c) of this section.

(6) In addition to the persons described in subsections (1) and (5) of this section, a court shall allow a person to access a suppressed court record if the person affirms to the court, in writing or electronically, that the person is accessing the suppressed court record on behalf of the attorney general for the purpose of investigating any violation of state law that the attorney general is authorized to enforce pursuant to section 24-31-101 (1)(i).

**Source:** L. 2020: Entire section added, (HB 20-1009), ch. 37, p. 120, § 1, effective December 1. L. 2022: Subsection (5) added, (SB 22-019), ch. 19, p. 133, § 1, effective August 10. L. 2025: (3) amended, (HB 25-1168), ch. 229, p. 1053, § 7, effective August 6; (6) added, (SB 25-020), ch. 264, p. 1354, § 1, effective August 6.

**Cross references:** For the legislative declaration in HB 25-1168, see section 1 of chapter 229, Session Laws of Colorado 2025.

### **13-40-111. Issuance and return of summons.**

(1) Upon filing the complaint as required in section 13-40-110, the clerk of the court or the attorney for the plaintiff shall issue a summons. The summons must command the defendant to appear before the court at a place named in the summons and at a time and on a day not less than seven days but not more than fourteen days after the day of issuing the same to answer the

complaint of plaintiff. A court shall not enter a default judgment for possession before the close of business on the date upon which an appearance is due. The summons must also contain a statement addressed to the defendant stating: "If you do not respond to the landlord's complaint by filing a written answer with the court on or before the date and time in this summons or appearing in court at the date and time in this summons, the judge may enter a default judgment against you in favor of your landlord for possession. A default judgment for possession means that you will have to move out, and it may mean that you will have to pay money to the landlord. In your answer to the court, you can state why you believe you have a right to remain in the property, whether you admit or deny the landlord's factual allegations against you, and whether you believe you were given proper notice of the landlord's reasons for terminating your tenancy before you got this summons."

(2) Repealed.

(3) For actions commenced pursuant to section 13-40-104 (1)(f) and (1)(g) only, if no answer to the complaint is filed as provided in subsection (1) of this section, the court shall examine the complaint, and, if satisfied that venue is proper and the plaintiff is entitled to possession of the premises, the court shall dispense with appearances by the plaintiff or a hearing and shall forthwith enter a judgment for possession, present or future damages, and costs.

(4) A summons issued pursuant to this section must contain a statement in bold-faced type notifying the defendant that:

(a) Any records associated with the action are suppressed and not accessible to the public until an order is entered granting the plaintiff possession of the premises;

(b) If the plaintiff is granted possession of the premises, the court records may remain private if both parties agree to suppress the records; and

(c) For a residential action filed in county court pursuant to this article 40, either party has a right to appear in person or remotely by phone or video on a platform designated by the court. If a party participates remotely and the party is disconnected or there is a technology failure, the court shall make all reasonable efforts to contact the party and shall allow reasonable time for the party to reestablish connection. If the party is unable to reestablish connection, the court shall reschedule the hearing in person on the first available date after the date of the originally scheduled hearing but no later than one week after the originally scheduled hearing, to the extent practicable. The court shall not enter a default judgment if a party is unable to participate remotely due to a technological disconnection or failure.

(5) A summons issued pursuant to this section must also contain a list of available resources with a website link and phone number for residential tenants to obtain civil legal aid and rental assistance. The department of local affairs shall make available and keep current the list of resources available. Local government entities may also provide or supplement the list of

resources and provide such resources to the department of local affairs for publication on its website.

(6) A summons issued pursuant to this section must also contain:

(a) A copy of a blank answer form required pursuant to section 13-40-113. The form must include a place for the defendant to indicate whether the defendant will participate in the eviction hearing in person or remotely by phone or video on a platform designated by the court.

(b) A form that allows either party to request all documents in the landlord's and tenant's possession relevant to the current action;

(c) Information about how a pro se party can file documents related to the case;

(d) A statement, in bold-faced type, that informs the defendant that if the defendant has experienced unlawful sexual behavior, stalking, domestic violence, or domestic abuse that was the cause of, contributed to, or resulted in an alleged lease violation that is the subject of the action for possession, a defense may exist and the tenant may be entitled to a repayment plan pursuant to section 13-40-104 (4)(e) for any rent that remains lawfully owed; and

(e) Information about how to enroll in the address confidentiality program pursuant to part 21 of article 30 of title 24.

**Source:** **L. 1885:** p. 227, § 10. **L. 1887:** p. 272, § 5. **L. 1891:** p. 227, § 1. **R.S. 08:** § 2610. **C.L.** § 6376. **CSA:** C. 70, § 11. **CRS 53:** § 58-1-11. **L. 61:** p. 391, § 3. **C.R.S. 1963:** § 58-1-11. **L. 64:** p. 470, § 2. **L. 75:** Entire section amended, p. 582, § 1, effective July 1. **L. 87:** Entire section amended, p. 565, § 2, effective March 13. **L. 2004:** Entire section amended, p. 594, § 1, effective July 1. **L. 2006:** (3) added, p. 1479, § 35, effective July 1. **L. 2007:** (3) amended, p. 1830, § 1, effective January 1, 2008. **L. 2008:** (1) amended, p. 1819, § 1, effective September 1. **L. 2012:** (1) amended and (2) repealed, (SB 12-175), ch. 208, p. 825, § 10, effective July 1. **L. 2020:** (4) added, (HB 20-1009), ch. 37, p. 121, § 2, effective December 1. **L. 2021:** (1) amended, (HB 21-1121), ch. 348, p. 2259, § 1, effective June 25; (1) amended and (5) and (6) added, (SB 21-173), ch. 349, p. 2262, § 1, effective October 1. **L. 2023:** (4) and (6) amended, (HB 23-1186), ch. 415, p. 2460, § 4, effective January 1, 2024. **L. 2024:** (1) amended, (SB 24-094), ch. 158, p. 730, § 14, effective May 3; (1) amended, (HB 24-1099), ch. 379, p. 2570, § 3, effective November 1. **L. 2025:** (6)(b) amended and (6)(d) and (6)(e) added, (HB 25-1168), ch. 229, p. 1054, § 8, effective August 6.

**Editor's note:** (1) Amendments to subsection (1) by HB 21-1121 and SB 21-273 were harmonized.

(2) Amendments to subsection (1) by SB 24-094 and HB 24-1099 were harmonized, effective November 1, 2024.

**Cross references:** For the legislative declaration in HB 23-1186, see section 1 of chapter 415, Session Laws of Colorado 2023. For the legislative declaration in HB 25-1168, see section 1 of chapter 229, Session Laws of Colorado 2025.

#### ANNOTATION

**Unsuccessful party by appeal waives irregularities in the summons.** The unsuccessful party, by taking an appeal from a judgment of a justice of the peace, waives all irregularities in the summons and service

thereof. *Fort v. Demmer*, 91 Colo. 285, 14 P.2d 489 (1932).

**Applied** in *Maxwell v. District Court*, 641 P.2d 931 (Colo. 1982).

#### **13-40-112. Service.**

(1) A summons may be served by personal service as in any civil action. A copy of the complaint must be served with the summons. If a defendant provides the plaintiff with written or actual notice that the defendant is a victim-survivor of unlawful sexual behavior, stalking, domestic violence, or domestic abuse, the plaintiff shall only perfect service through personal service to the defendant who provided the written or actual notice.

(2) Except as provided in subsection (1) of this section, if personal service cannot be made upon the defendant by a person qualified under the Colorado rules of civil procedure to serve process, after having made diligent effort to make the personal service, the person may make service by posting a copy of the summons and the complaint in some conspicuous place upon the premises. In addition, the plaintiff shall mail, no later than the next business day following the day on which the plaintiff files the complaint, a copy of the summons, or, in the event that an alias summons is issued, a copy of the alias summons, and a copy of the complaint to the defendant at the premises by postage prepaid, first-class mail.

(3) Personal service or service by posting shall be made at least seven days before the day for appearance specified in such summons, and the time and manner of such service shall be endorsed upon such summons by the person making service thereof.

(4) For purposes of this section, "business days" means any calendar day excluding Saturdays, Sundays, and legal holidays.

**Source:** L. 1885: p. 227, § 11. L. 1887: p. 273, § 6. R.S. 08: § 2611. C.L. § 6377. CSA: C. 70, § 12. CRS 53: § 58-1-12. L. 61: p. 392, § 4. C.R.S. 1963: § 58-1-12. L. 64: p. 470, § 3. L. 83: (2) and (3) amended, p. 632, § 1, effective May 26. L. 84: (2) and (3) amended, p. 465, § 1, effective March 16. L. 87: (2) amended, p. 566, § 3, effective March 13. L. 2004: (2) and (3) amended and (4) added, p. 594, § 2, effective July 1. L. 2012: (3) amended, (SB 12-175), ch. 208, p. 825, § 11, effective July 1. L. 2025: (1) and (2) amended, (HB 25-1168), ch. 229, p. 1054, § 9, effective May 22.

**Cross references:** (1) For the procedure for service of process, see C.R.C.P. 4.

(2) For the legislative declaration in HB 25-1168, see section 1 of chapter 229, Session Laws of Colorado 2025.

## ANNOTATION

**An actual appearance always cures a defective service of a summons,** when, except for such defect, the court would have jurisdiction of the person and the subject matter of the suit. Tyler v. McKenzie, 43 Colo. 233, 95 P. 943 (1908).

**Landlord properly can take possession of abandoned apartment** without resort to legal process. Martinez v. Steinbaum, 623 P.2d 49 (Colo. 1981).

### **13-40-113. Answer of defendant - additional and amended pleadings.**

(1) (a) The defendant shall file with the court, at or before the day specified for the defendant's appearance in the summons, an answer in writing. The defendant's answer must set forth the grounds on which the defendant bases the defendant's claim for possession, admitting or denying all of the material allegations of the complaint, and presenting every defense that then exists and upon which the defendant intends to rely, either by including the same in the defendant's answer or by simultaneously filing motions setting forth each defense.

(b) If the defendant asserts by motion that the defendant did not timely file an answer in writing because the defendant is a victim-survivor of unlawful sexual behavior, stalking, domestic violence, or domestic abuse and did not receive or have a reasonable opportunity to review the summons and complaint or the defendant was otherwise unable to appear, the court shall relieve the defendant from final judgment and vacate any judgment or writ of restitution that may have been issued and provide the defendant with a reasonable amount of time, no less than seven days, to submit an answer to the complaint.

(2) The court for good cause may permit the filing of additional and amended pleadings if it will not result in a delay prejudicial to the defendant. If the defendant asserts a defense described in section 13-40-104 (4)(a), the court shall permit the filing of additional and amended pleadings.

(2.5) A defendant may assert as an affirmative defense to a proceeding under this article 40 that the landlord violated or is in violation of a provision of part 5 of article 34 of title 24.

(3) A defendant does not waive any defense related to proper notice by filing an answer pursuant to this section. A defendant can raise a defense related to proper notice in the defendant's answer or by filing a motion prehearing. A defendant cannot raise this defense for the first time at the hearing if the defendant failed to raise it in the defendant's answer or in a prehearing motion.

(4) After an answer is provided to the court pursuant to this section:

(a) The court shall set a date for trial no sooner than seven days, but not more than ten days, after the answer is filed, unless the defendant requests a waiver of the requirement in the defendant's answer or after filing an answer; except that a court may extend beyond ten days if either party demonstrates good cause for an extension, if the court otherwise finds justification for the extension, or if a party participating remotely pursuant to section 13-40-113.5 was disconnected and unable to reestablish connection. The requirement set forth in this subsection (4)(a) does not apply to a forcible entry and detainer petition that alleges a substantial violation, as defined in section 13-40-107.5 (3), or terminates a tenancy pursuant to section 38-12-203 (1)(f), unless the alleged substantial violation or termination of tenancy is a result of unlawful sexual behavior, stalking, domestic violence, or domestic abuse, provided that the court has been made aware that the tenant is a victim-survivor.

(a.5) If a defendant in an action filed pursuant to this article 40 asserts a defense described in section 13-40-104 (4)(a) and requests an extension of a scheduled trial date, the court shall find good cause exists to extend the trial date beyond ten days after the answer is filed and shall make all reasonable efforts to schedule the trial date to accommodate any safety concerns raised by the defendant requesting the extension.

(b) In the time after an answer is filed and before a trial occurs, the court shall order that the landlord or tenant provide any documentation relevant to the current action that either party requests pursuant to section 13-40-111 (6)(b).

(c) The court shall provide any party who opted to participate remotely with necessary information to facilitate such participation. The information must include a phone number and email address for the court and instructions on what to do in the event remote participation is disrupted.



**Source:** L. 1885: p. 227, § 12. R.S. 08: § 2612. C.L. § 6378. CSA: C. 70, § 13. CRS 53: § 58-1-13. L. 55: p. 406, § 2. L. 61: p. 392, § 5. C.R.S. 1963: § 58-1-13. L. 2021: Entire section amended, (SB 21-173), ch. 349, p. 2263, § 2, effective October 1. L. 2023: (2.5) added, (SB 23-184), ch. 402, p. 2413, § 6, effective August 7; (4)(a) amended and (4)(c) added, (HB 23-1186), ch. 415, p. 2460, § 5, effective January 1, 2024. L. 2025: (1), (2), and (4)(a) amended and (4)(a.5) added, (HB 25-1168), ch. 229, p. 1055, § 10, effective May 22.

**Cross references:** For the legislative declaration in HB 23-1186, see section 1 of chapter 415, Session Laws of Colorado 2023. For the legislative declaration in HB 25-1168, see section 1 of chapter 229, Session Laws of Colorado 2025.

## ANNOTATION

**Structure of forcible entry and detainer (F.E.D.) statute evinces a legislative intent to accelerate trial settings in order to provide expeditious remedy.** *Butler v. Farner*, 704 P.2d 853 (Colo. 1985).

**Due process is satisfied so long as F.E.D. statute permits continuances in cases requiring intensive trial preparation.** *Butler v. Farner*, 704 P.2d 853 (Colo. 1985).

**Defendant failing to file answer admits allegations of complaint.** A defendant, by failing to file an answer to the complaint in an unlawful detainer action, admits the allegations therein contained. *Feste v. People*, 93 Colo. 206, 25 P.2d 177 (1933).

A defendant in an unlawful detainer action who fails to answer within the required time thereby admits the allegations set forth in the complaint. *Spar Consol. Mining & Dev. Co. v. Aasgaard*, 33 Colo. App. 35, 516 P.2d 127 (1973), *aff'd*, 185 Colo. 157, 522 P.2d 726 (1974).

**Failure to answer results in default judgment.** Failure of defendant in a county court proceeding for F.E.D. to file a timely answer in writing properly results in a default judgment against him. *Spar Consol. Mining & Dev. Co. v. Aasgaard*, 33 Colo. App. 35, 516 P.2d 127 (1973), *aff'd*, 185 Colo. 157, 522 P.2d 726 (1974).

**If no answer is filed, there is no issue to be tried.** In an unlawful detainer action where a written complaint is filed in compliance with § 13-40-110, if defendant fails to file a written answer, there is no issue to be tried, and defendant is in default in both original and appellate courts, if an appeal be taken from a judgment against him. *Fort v. Demmer*, 91 Colo. 285, 14 P.2d 489 (1932).

**Where defendant's answer admits possession, plaintiff need not prove it.** In an action of F.E.D., where the defendant in her answer admits possession, it is not necessary for plaintiff to prove possession.

Ensley v. Page, 13 Colo. App. 452, 59 P. 225 (1899).

**Answers held insufficient.** An answer denying that plaintiff gave defendant an option to purchase the premises and that defendant was to pay a specified sum, and denying that defendant had forfeited any rights to the property by virtue of an option to purchase the same, or otherwise, allegations of such facts appearing in the complaint, was held insufficient. Bonnell v. Gill, 41 Colo. 59, 92 P. 13 (1907).

**Answer in a F.E.D. action stating mere conclusions is insufficient** under this section. Ensley v. Page, 13 Colo. App. 452, 59 P. 225 (1899); McCrimmon v. Raymond, 77 Colo. 81, 234 P. 1058 (1925).

**An answer merely denying that defendants took possession by force was held not compliance with this section.** Kenney v. Daugherty, 67 Colo. 56, 185 P. 471 (1919).

**Motion for bill of particulars is not provided for in this section,** and it does not constitute an answer because it fails to admit or deny the material allegations. Spar Consol. Mining & Dev. Co. v. Aasgaard, 33 Colo. App. 35, 516 P.2d 127 (1973), *aff'd*, 185 Colo. 157, 522 P.2d 726 (1974).

**A defendant as such is not barred from denying a plaintiff's title,** but it is a tenant who is not allowed to deny the landlord's title. The latter relation must exist to apply the rule. The plaintiff may allege that the defendant is a tenant and introduce evidence to prove it, but that is not conclusive upon the defendant. The latter may go forward

and prove that he never was a tenant, but a purchaser or mortgagor in possession, for instance, and, for that reason, entitled to remain. Reitze v. Humphreys, 53 Colo. 171, 125 P. 522 (1912).

**Defendant may set up defense that he is a mortgagor.** In an action of wrongful detainer by landlord against tenant, the defendant may set up as a defense that he is the owner in equity of the premises, and the plaintiff, though invested with the title, a mere mortgagee. And he may prove such relation of mortgagor and mortgagee, thus disproving the relation of landlord and tenant, averred in the complaint. The rule that the tenant may not deny the landlord's title has no application. Reitze v. Humphreys, 53 Colo. 171, 125 P. 522 (1912).

**Equitable defenses may be interposed** in actions of F.E.D. Adcock v. Lieber, 51 Colo. 373, 117 P. 993 (1911); McCrimmon v. Raymond, 77 Colo. 81, 234 P. 1058 (1925).

**A tenant may raise a landlord's alleged violation of the Colorado Fair Housing Act as an affirmative defense to a F.E.D. action.** Miller v. Amos, 2024 CO 11, 543 P.3d 393.

**Defendant may offer all facts entitling him to possession at law or equity.** All the substantial facts upon which a defendant relies, entitling him to the possession of the property, include such facts as will entitle him to the possession at law or in equity. Adcock v. Lieber, 51 Colo. 373, 117 P. 993 (1911).

**Fact that possessor did not know plaintiff's residence is no defense.** The allegation in the answer that defendant was not able to surrender and deliver up to plaintiff possession of the premises described in the demand, because she was not acquainted with him, and did not know his place of residence, constitutes no defense at all. No livery of seisin was necessary, and all that was necessary for defendant to have done in order to have complied with the

demand was to have vacated the premises. *Ensley v. Page*, 13 Colo. App. 452, 59 P. 225 (1899).

**Section does not require pleading of evidence.** The provision of this section that the answer shall set forth "all the substantial facts", does not require the pleading of evidence. *W.H. Swanson Theater Co. v. Pueblo Opera Block Inv. Co.*, 70 Colo. 83, 197 P. 762 (1921).

**13-40-113.5. Residential actions in county court - remote participation - electronic filing - procedures for technology failure - auxiliary services providers.**

(1) For a residential action filed in county court pursuant to this article 40:

(a) The court shall allow either party and any witness to choose to appear in person or remotely by phone or video on a platform designated by the court at any return, conference, hearing, trial, or other court proceeding. Either party and any witness may elect to change how the party or witness intends to participate by contacting the court; except that, if a party or witness contacts the court within forty-eight hours of the scheduled appearance, the court has discretion whether to approve the party or witness's requested change in participation.

(b) A pro se defendant may file an answer electronically through an e-filing system. If either party is pro se, the party may file a motion or other documents, including, but not limited to, evidence or additional documentation, electronically through an e-filing system.

(c) (I) (Deleted by amendment, L. 2024.)

(II) The court shall not assess, charge, or collect an e-filing fee, service fee, or any other fee associated with the filing of motions, answers, or documents that are filed by a defendant.

(d) The court shall comply with any federal or state law or regulation, including any supreme court directive or policy, regarding the provision of accommodations for people with a disability or for people with limited English proficiency during any proceeding, regardless of whether the proceeding is conducted in person or remotely by phone or video on a platform designated by the court; and

(e) If a pro se defendant files an answer or any other document physically instead of filing electronically through an e-filing system, the court shall timely serve the document on the plaintiff on behalf of the defendant and shall not charge any fee or cost related to the service.

(2) In the event a party is disconnected or there is a technology failure, the court shall make all reasonable efforts to contact the party and shall allow reasonable time for the party to reestablish connection with the court. If the party is unable to reestablish connection, the court shall reschedule the hearing, to be held in person, for the first available date after the date of the originally scheduled hearing but no later than one week after the originally scheduled hearing, to the extent practicable. The court shall not enter a default judgment if a party is unable to participate remotely due to a technological disconnection or failure.

(3) A court shall not construe this section to provide less than is required by Title II of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., as amended, and its implementing regulations.

**Source:** L. 2023: Entire section added, (HB 23-1186), ch. 415, p. 2458, § 2, effective January 1, 2024. L. 2024: (1)(b), (1)(c), and (1)(d) amended and (1)(e) added, (HB 24-1099), ch. 379, p. 2570, § 2, effective November 1.

**Cross references:** For the legislative declaration in HB 23-1186, see section 1 of chapter 415, Session Laws of Colorado 2023.

#### **13-40-114. Delay in trial - undertaking.**

If either party requests a delay in trial longer than five days, the court in its discretion may, upon good cause shown, require either of the parties to give bond or other security approved and fixed by the court in an amount for the payment to the opposite party of such sum as he may be damaged due to the delay.

**Source:** L. 1885: p. 228, § 13. R.S. 08: § 2613. C.L. § 6379. CSA: C. 70, § 14. CRS 53: § 58-1-14. L. 61: p. 393, § 6. C.R.S. 1963: § 58-1-14. L. 87: Entire section amended, p. 566, § 4, effective March 13.

#### **ANNOTATION**

**This section does not authorize the trial court to issue a default judgment for failure to comply with the court's order requiring the posting of bond. Rather, the**

remedy for failure to post the bond required by the court is immediate trial. *Beeghly v. Mack*, 20 P.3d 610 (Colo. App. 2001).

**This section is applicable when a forcible entry and detainer action is brought, regardless of whether other issues regarding ownership may be raised**

**and resolved during the pendency of such action.** *Beeghly v. Mack*, 20 P.3d 610 (Colo. App. 2001).

**13-40-115. Judgment - writ of restitution - cure period.**

(1) Upon the trial of any action under this article if service was had only by posting in accordance with section 13-40-112 (2) and if the court finds that the defendant has committed an unlawful detainer, the court shall enter judgment for the plaintiff to have restitution of the premises and shall issue a writ of restitution. The court may also continue the case for further hearing from time to time and may issue alias and pluries summonses until personal service upon the defendant is had.

(2) Upon a trial or further hearing pursuant to this article 40 after personal service has been made upon the defendant in accordance with section 13-40-112 (1), if the court or jury has not already tried the issue of unlawful detainer, it may do so. If the court finds that the defendant has committed an unlawful detainer, the court shall enter judgment for the plaintiff to have restitution of the premises and shall issue a writ of restitution. In addition to the judgment for restitution, the court or jury shall further find the amount of rent, if any, due to the plaintiff from the defendant at the time of trial; the amount of damages, if any, sustained by the plaintiff to the time of the trial on account of the unlawful detention of the property by the defendant; and damages sustained by the plaintiff to the time of trial on account of injuries to the property. The court shall enter judgment for such amounts, together with any reasonable attorney fees and costs as in other civil actions. This section does not permit the entry of judgment in excess of the court's jurisdictional limit.

(3) A writ of restitution that is issued by the court pursuant to subsection (1) or (2) of this section shall remain in effect for forty-nine days after issuance and shall automatically expire thereafter.

(4) A landlord who provides a tenant with proper notice of nonpayment shall accept payment of the tenant's full payment of all amounts lawfully due according to the notice, as well as any rent that remains due under the rental agreement or that remains due pursuant to a repayment plan established pursuant to section 13-40-104 (4)(e), at any time until a judge issues a judgment for possession pursuant to subsection (1) or (2) of this section. A tenant may pay this amount to either the landlord or to the court. Once a court has confirmation that the full amount has been timely paid, the court shall:

- (a) Vacate any judgments that have been issued; and
- (b) Dismiss the action with prejudice.

(5) The rights provided in subsection (4) of this section may not be waived by any written agreement.

**Source:** L. 1885: p. 228, § 14. R.S. 08: § 2614. C.L. § 6380. CSA: C. 70, § 15. CRS 53: § 58-1-15. L. 61: p. 393, § 7. C.R.S. 1963: § 58-1-15. L. 2005: (3) added, p. 263, § 1, effective August 8. L. 2012: (3) amended, (SB 12-175), ch. 208, p. 826, § 12, effective July 1. L. 2021: (2) amended and (4) and (5) added, (SB 21-173), ch. 349, p. 2264, § 3, effective October 1. L. 2025: IP(4) amended, (HB 25-1168), ch. 229, p. 1056, § 11, effective August 6.

**Cross references:** For the legislative declaration in HB 25-1168, see section 1 of chapter 229, Session Laws of Colorado 2025.

#### ANNOTATION

**Law reviews.** For article, "The Rights of Landlords in Tenants' Personal Property", see 57 Den. L.J. 685 (1980). For article, "Representation of the Landlord in an Unlawful Detainer Action", see 12 Colo. Law. 69 (1983).

**Jury trials possible.** By this section, the general assembly recognized that there could be jury trials in forcible entry and detainer actions. *Husar v. Larimer County Court*, 629 P.2d 1104 (Colo. App. 1981).

**This section does not make clear whether it confers a jury trial right in FED possession actions,** and, if so, in what circumstances that right applies. *Mercy Hous. Mgmt. Grp., Inc. v. Bermudez*, 559 P.3d 1163 (Colo. 2024).

**For landlord's liability for damage to tenant's property during removal from premises,** see *Christensen v. Hoover*, 643 P.2d 525 (Colo. 1982).

**Where legal relationship between parties and entitlement to possession of home was still in dispute,** district court was in error to issue an order for a writ of restitution. *Lindsay v. District Court*, 694 P.2d 843 (Colo. 1985).

**Res judicata of judgment.** The entry of a default judgment on the issue of possession properly entered pursuant to this section is a final order and is res judicata on the issue. *Magliocco v. Olson*, 762 P.2d 681 (Colo. App. 1987).

**Statute allows a plaintiff in an FED action to recover damages for past due rent in addition to restitution of the premises.** Plaintiff's damages are not limited to the reasonable rental value of the use of the premises during the period of the unlawful detainer. *Renco Assocs. v. D'Lance, Inc.*, 214 P.3d 1069 (Colo. App. 2009).

**When this section is read with § 13-40-123, it is clear that the award of attorney fees in a forcible entry and detainer action is in the nature of compensatory damages.** Thus, any prevailing party in a forcible entry and detainer action is entitled to attorney fees, and the trial court erred in refusing to award them. *Wilcox v. Clark*, 42 P.3d 29 (Colo. App. 2001).

**Contempt sanction available in forcible entry and detainer (FED) proceedings** in appropriate circumstances. Nothing in C.R.C.P. 107 or the FED statute precludes the remedy of contempt in an FED action under appropriate circumstances. *Hartsel Springs Ranch v. Cross Slash Ranch*, 179 P.3d 237 (Colo. App. 2007).

**Court erred in granting restitution of the premises where owner failed to prove by a preponderance of the evidence that tenant violated lease covenant by committing criminal activity.** Unlawful detention for violation of a lease covenant requires proof by a preponderance of the evidence that the covenant was actually violated, not merely that the owner had reasonable grounds to believe that it was violated. *Miles v. Fleming*, 214 P.3d 1054 (Colo. 2009).

**Applied** in *Maxwell v. District Court*, 641 P.2d 931 (Colo. 1982).

#### **13-40-116. Dismissal.**

If the plaintiff's action brought for any of the causes mentioned in this article, upon the trial thereon, is dismissed or the action fails to prove the plaintiff's right to the possession of the premises described in the complaint, the defendant shall have judgment and execution for his costs.

**Source:** L. 1885: p. 229, § 16. R.S. 08: § 2616. C.L. § 6382. CSA: C. 70, § 17. CRS 53: § 58-1-17. C.R.S. 1963: § 58-1-17.

**Cross references:** For dismissal of actions generally, see C.R.C.P. 41.

#### **13-40-117. Appeals.**

(1) If either party feels aggrieved by the judgment rendered in such action before the county court, he may appeal to the district court, as in other cases tried before the county court, with the additional requirements provided in this article.

(2) Upon the court's taking such appeal, all further proceedings in the case shall be stayed, and the appellate court shall thereafter issue all needful writs and process to carry out any judgment which may be rendered thereon in the appellate court.

(3) If the appellee believes that the appellee may suffer serious economic harm during the pendency of the appeal, the appellee may petition the court taking the appeal to require the appellant to have an additional undertaking to cover the anticipated harm. The court shall order such undertaking only after a hearing and upon a finding that the appellee has shown a substantial likelihood of suffering such economic harm during the pendency of the appeal and that the appellee will not be adequately protected under the appeals bond and the other requirements for appeal pursuant to sections 13-40-118, 13-40-120, and 13-40-123.

**Source:** L. 1885: p. 229, § 17. R.S. 08: § 2617. C.L. § 6383. CSA: C. 70, § 18. CRS 53: § 58-1-18. C.R.S. 1963: § 58-1-18. L. 64: p. 470, § 4. L. 84: Entire section amended, p. 466, § 1, effective July 1. L. 85: (1) amended, p. 571, § 8, effective November 14, 1986. L. 2021: (3) amended, (SB 21-173), ch. 349, p. 2264, § 4, effective October 1.

#### ANNOTATION

**This section gives to either party the right of appeal.** *Dulmaine v. Reed Bldg. Co.*, 46 Colo. 469, 104 P. 1038 (1909).

**Judgment for immediate possession is proper.** In an action by a landlord against a tenant, judgment for immediate possession is proper. The only effect of this section is to stay enforcement of the judgment for 48 hours, in order that an appeal may in the meantime be perfected. *Dulmaine v. Reed Bldg. Co.*, 46 Colo. 469, 104 P. 1038 (1909).

**It will be assumed that the appeal bond was tendered and filed on the day of its approval,** in the absence of a filing mark. *Fort v. Demmer*, 91 Colo. 285, 14 P.2d 489 (1932).

**Applied** in *Maxwell v. District Court*, 641 P.2d 931 (Colo. 1982); *Francam Bldg. Corp. v. Fail*, 687 P.2d 991 (Colo. App. 1984).

#### **13-40-118. Deposit of rent.**

In all appeals from the judgment of a county court, in an action founded upon section 13-40-104 (1)(d), the defendant, at the time of the filing thereof, shall deposit with the court the amount of rent found due and specified in such judgment. Unless such deposit is made, the appeal is not perfected, and proceedings upon such judgment shall thereupon be had accordingly. If the appeal is perfected, the court shall transmit such deposit to the clerk of the appellate court, with the



papers in such case; and the appellant thereafter, at the time when the rents become due as specified in the judgment appealed from and as often as the same become due, shall deposit the amount thereof with the clerk of such appellate court. In case the appellant, at any time during the pendency of such appeal and before final judgment therein, neglects or fails to make any deposit of rent, falling due at the time specified in the judgment appealed from, the court in which such appeal is pending, upon such fact being made to appear and upon motion of the appellee, shall affirm the judgment appealed from with costs; and proceedings thereupon shall be had as in like cases determined upon the merits.

**Source:** L. 1885: p. 229, § 18. R.S. 08: § 2618. C.L. § 6384. CSA: C. 70, § 19. CRS 53: § 58-1-19. C.R.S. 1963: § 58-1-19. L. 64: p. 471, § 5. L. 84: Entire section amended, p. 467, § 2, effective July 1.

#### ANNOTATION

**This section, which relates to appeals of judgments for possession in cases involving the nonpayment of rent,** states that an appeal shall not be deemed taken and perfected unless a deposit of rentals be made in the justice of the peace court. It further provides that during the pendency of the action in the county court on appeal, further deposits of rent be made in the county court. *General Am. Indus., Inc. v. County Court*, 136 Colo. 86, 316 P.2d 565 (1957).

**Rent owed is not included in general damages under § 13-40-117.** Since this section requires a deposit of rent in nonpayment of rent cases, rentals were excluded as items of damage recoverable under the provision requiring an undertaking to cover damages which had accrued or would accrue. *General Am. Indus., Inc. v.*

*County Court*, 136 Colo. 86, 316 P.2d 565 (1957).

**Appeals must be perfected in strict compliance with statutes.** Appeals are creatures of statute, and a party desiring to avail himself of the right must comply with its terms, and unless he does so, and the appeal is perfected in strict compliance therewith, the appellate court has no power to make any order other than the order of dismissal. *Erbaugh v. Fields*, 77 Colo. 254, 235 P. 568 (1925).

**This provision does not apply where land is rented for share of products from livestock.** *Routen v. J. & O. Ranch Co.*, 91 Colo. 53, 11 P.2d 566 (1932).

**Applied** in *Francam Bldg. Corp. v. Fail*, 687 P.2d 991 (Colo. App. 1984).

### **13-40-119. Rules of practice.**

In all actions brought under any provision of this article in any court, the proceedings shall be governed by the rules of practice and the provisions of law concerning civil actions in such court, except as may be otherwise provided in this article.

**Source:** L. 1885: p. 230, § 20. R.S. 08: § 2620. C.L. § 6386. CSA: C. 70, § 21. CRS 53: § 58-1-21. L. 61: p. 394, § 8. C.R.S. 1963: § 58-1-21.

### **ANNOTATION**

**Allegations must be supported by proof.** The rule which requires that the proof shall support the allegation is as applicable to the action of unlawful detainer as to any other. Klopfer v. Keller, 1 Colo. 410 (1871).

**Misjoinder of causes of action must be demurred to in trial court.** Objections on the ground that several causes of action have been improperly united, as well as on the ground of misjoinder of parties, must be taken by demurrer or otherwise in the trial court, or they are to be deemed waived. This rule is as applicable to actions for forcible entry and detainer as to other civil actions. Farncomb v. Stern, 18 Colo. 279, 32 P. 612 (1893).

**Evidence tending to disprove the facts stated in the complaint is admissible** on the part of the defendant, although such evidence might also tend to prove another case upon which the plaintiff might, if he

had so declared, maintain his action. Klopfer v. Keller, 1 Colo. 410 (1871).

**Defendant may show he entered premises as purchaser and not as tenant.** In an action of unlawful detainer against a tenant holding over, for the purpose of disproving the tenancy, the defendant may show that he entered as a purchaser and not as a tenant, and this whether the agreement to purchase was good or bad. Klopfer v. Keller, 1 Colo. 410 (1871).

**A directed verdict may be given.** Where, in an action for unlawful detainer, there was no evidence which should have gone to the jury, nor any matter presented for the jury's determination which would deprive the landlord of his right of reentry and possession under the terms of a written lease, the court properly directed a verdict for plaintiff. Mageon v. Alkire, 41 Colo. 338, 92 P. 720 (1907).

### **13-40-120. Appellate review.**

Appellate review of the judgment of the district courts of this state, in proceedings under this article, is allowed as provided by law and the Colorado appellate rules. In cases of appeal from

judgments founded upon causes of action embraced in section 13-40-104 (1)(d), the deposit of rent money during pendency of appeal shall be made, or judgment of affirmance shall be entered, in the manner provided in section 13-40-118.

**Source:** L. 1885: p. 230, § 22. L. 1891: p. 228, § 1. R.S. 08: § 2622. C.L. § 6388. CSA: C. 70, § 23. CRS 53: § 58-1-23. C.R.S. 1963: § 58-1-22. L. 64: p. 472, § 6. L. 84: Entire section amended, p. 467, § 3, effective July 1. L. 85: Entire section amended, p. 571, § 9, effective November 14, 1986.

#### ANNOTATION

**Under this section the unsuccessful party may come to the supreme court on appeal or by writ of error.** Kilker v. Herrington, 77 Colo. 581, 238 P. 41 (1925).

**Right of appeal is subject to general law regulating appeals.** The right of appeal under this statute was held subject to the conditions prescribed by the code of civil procedure, or other general law regulating appeals to the supreme court, and other additional conditions, as provided in this section. Crane v. Farmer, 14 Colo. 294, 23 P. 455 (1900); Brennan Mercantile Co. v. Vickers, 31 Colo. 323, 73 P. 45 (1903).

**Strict compliance with the statutory requirements is mandated.** Morgan v. District Court, 192 Colo. 418, 559 P.2d 712 (1977).

**Act abolishing appeals does not apply to unlawful detainer proceedings.** The act "in relation to appeals and writs of error" found in the former code of civil procedure, abolishing appeals, did not apply to, amend, or repeal the detainer act, or other statutes creating special proceedings. Hewitt v. Landis, 75 Colo. 277, 225 P. 842 (1924).

**Applied** in Maxwell v. District Court, 641 P.2d 931 (Colo. 1982); Francam Bldg. Corp. v. Fail, 687 P.2d 991 (Colo. App. 1984).

#### **13-40-121. When deposit of rent is paid.**

The rent money deposited, as provided for in this article, shall be paid to the landlord entitled thereto, upon the order of the court wherein the same is deposited and at such time and in such manner as the court determines necessary to protect the rights of the parties.

**Source:** L. 1885: p. 231, § 23. R.S. 08: § 2623. C.L. § 6389. CSA: C. 70, § 24. CRS 53: § 58-1-24. C.R.S. 1963: § 58-1-23.

### **13-40-122. Writ of restitution after judgment - definitions.**

(1) (a) Except as provided in subsection (1)(a.5) of this section, a court shall not issue a writ of restitution upon any judgment entered in any action pursuant to this article 40 until forty-eight hours after the time of the entry of the judgment. If the writ of restitution concerns a residential tenant who receives supplemental security income, social security disability insurance under Title II of the federal "Social Security Act", 42 U.S.C. sec. 401 et seq., as amended, or cash assistance through the Colorado works program created in part 7 of article 2 of title 26, the writ must specify that the writ is not executable for thirty days after entry of judgment pursuant to subsection (1)(b) of this section; except in the case:

(I) In which a court has ordered a judgment for possession for a substantial violation pursuant to section 13-40-107.5; or

(II) Of a landlord with five or fewer single-family rental homes and no more than five total rental units including any single-family homes.

(a.5) If the writ of restitution concerns a residential tenant who asserts a defense pursuant to section 13-40-104 (4)(a) and provides the required documentation, any filing submitted by the plaintiff that requests a writ must include a statement that identifies the defendant as a victim-survivor of unlawful sexual behavior, stalking, domestic violence, or domestic abuse, and a statement specifying that the writ is not executable for thirty days after entry. If the writ of restitution is granted by the court, the writ must not be executable for thirty days after entry of judgment and must be executed by the officer in the daytime between sunrise and sunset.

(b) A writ of restitution must be executed by the officer having the same only in the daytime and between sunrise and sunset, and the officer shall not execute a writ of restitution concerning a residential tenancy until at least ten days after entry of the judgment; except that the officer shall not execute a writ of restitution concerning a residential tenancy until at least thirty days after entry of judgment if the residential tenant receives supplemental security income, social security disability insurance under Title II of the federal "Social Security Act", 42 U.S.C. sec. 401 et seq., as amended, or cash assistance through the Colorado works program created in part 7 of article 2 of title 26, as specified in the writ; except in the case:

(I) In which a court has ordered a judgment for possession for a substantial violation pursuant to section 13-40-107.5; or

(II) Of a landlord with five or fewer single-family rental homes and no more than five total rental units including any single-family homes.

(c) Any writ of restitution governed by this section may be executed by the county sheriff's office in which the property is located by a sheriff, undersheriff, or deputy sheriff, as described in

section 16-2.5-103 (1) or (2), while off duty or on duty at rates charged by the employing sheriff's office in accordance with section 30-1-104 (1)(gg).

(2) The officer that executes a writ of restitution under subsection (1) of this section and the law enforcement agency that employs such officer shall be immune from civil liability for any damage to a tenant's personal property that was removed from the premises during the execution of the writ. A landlord who complies with the lawful directions of the officer executing a writ of restitution shall be immune from civil and criminal liability for any act or omission related to a tenant's personal property that was removed from the premises during or after the execution of a writ of restitution.

(2.5) (a) (I) Notwithstanding subsections (3) and (4) of this section, the officer that executes a writ of restitution under subsection (1) of this section shall immediately inspect the premises for any pet animals.

(II) If the tenant is present on the premises at the time the writ of restitution is being executed, the officer shall give any pet animals found during the inspection required by subsection (2.5)(a)(I) of this section to the tenant.

(III) If the tenant is not present on the premises at the time the writ of restitution is being executed and there are any pet animals found during the inspection required by subsection (2.5)(a)(I) of this section, the officer shall contact the local authority in charge of animal control to take custody of the pet animals. The landlord shall provide the local authority in charge of animal control access to the premises to remove or secure the pet animals in a timely manner and provide the name and contact information of the tenant, if available. The landlord shall post notice at the premises in a visible place with the name and contact information of the organization where the pet animals have been taken and, upon request of the tenant, shall provide the tenant with the name and contact information of the organization where the pet animals have been taken.

(b) No pet animal shall be removed from the premises during the execution of a writ of restitution and left unattended on public or private property.

(c) As used in this section, unless the context otherwise requires, "pet animal" has the same meaning as set forth in section 35-80-102 (10).

(3) A landlord has no duty to store or maintain a tenant's personal property that is removed from the premises during or after the execution of a writ of restitution. Regardless of whether a landlord elects to store or maintain the personal property so removed, the landlord shall have no duty to inventory the personal property or to determine ownership of or the condition of the personal property. Such storage shall not create either an implied or express bailment of the personal property, and the landlord shall be immune from liability for any loss or damage to the personal property.

(4) A landlord who elects to store a tenant's personal property that was removed from the premises during or after the execution of a writ of restitution may charge the tenant the reasonable costs of storing the personal property. To recover such costs, the landlord may either dispose of the personal property under any lien rights the landlord has under part 1 of article 20 of title 38, C.R.S., or the landlord may allow the tenant to recover the personal property after paying the reasonable storage charges incurred by the landlord.

**Source:** L. 1885: p. 231, § 24. R.S. 08: § 2624. C.L. § 6390. CSA: C. 70, § 25. CRS 53: § 58-1-25. C.R.S. 1963: § 58-1-24. L. 64: p. 472, § 7. L. 98: Entire section amended, p. 630, § 1, effective August 5. L. 2004: (1) amended, p. 510, § 1, effective August 4. L. 2021: (1) amended, (HB 21-1121), ch. 348, p. 2260, § 2, effective June 25. L. 2023: (1) amended, (HB 23-1120), ch. 414, p. 2453, § 3, effective June 6; (2.5) added, (HB 23-1068), ch. 416, p. 2463, § 3, effective January 1, 2024. L. 2025: IP(1)(a) amended and (1)(a.5) added, (HB 25-1168), ch. 229, p. 1056, § 12, effective May 22.

**Cross references:** For the legislative declaration in HB 23-1068, see section 1 of chapter 416, Session Laws of Colorado 2023. For the legislative declaration in HB 23-1120, see section 1 of chapter 414, Session Laws of Colorado 2023. For the legislative declaration in HB 25-1168, see section 1 of chapter 229, Session Laws of Colorado 2025.

## ANNOTATION

**Section limits time of enforcement of judgment, not judgment itself.** The provision of this section that upon judgment for the plaintiff in wrongful detainer no writ of restitution shall issue until the expiration of 48 hours from its entry does not import that judgment may not be given for immediate possession. Its only effect is to stay the enforcement of the judgment for the period specified. *Dulmaine v. Reed Bldg. Co.*, 46 Colo. 469, 104 P. 1038 (1909).

**Sheriff subject to minimum standard of care.** In carrying out his statutory duties, an officer or sheriff is subject to a minimum

standard of care. *Christensen v. Hoover*, 643 P.2d 525 (Colo. 1982).

**Duty to remove tenant and property.** It is the officer's duty not only to remove the tenant, but also to remove the tenant's personal property and effects from the premises. *Christensen v. Hoover*, 643 P.2d 525 (Colo. 1982).

**No duty to safeguard property following eviction.** The sheriff has no duty to safeguard the tenant's possessions after a lawful eviction has occurred, even though he knows the tenant's belongings might be

taken if they are left unattended. Christensen v. Hoover, 643 P.2d 525 (Colo. 1982).

**premises**, see Christensen v. Hoover, 643 P.2d 525 (Colo. 1982).

**For landlord's liability for damage to tenant's property during removal from**

**13-40-123. Damages.**

The prevailing party in any action brought under the provisions of this article is entitled to recover damages, reasonable attorney fees, and costs of suit; except that a residential landlord or tenant who is a prevailing party shall not be entitled to recover reasonable attorney fees unless the residential rental agreement between the parties contains a provision for either party to obtain attorney fees. Nothing in this section shall be construed to permit the entry of judgments in any single proceeding in excess of the jurisdictional limit of said court.

**Source:** L. 1885: p. 231, § 25. R.S. 08: § 2625. C.L. § 6391. CSA: C. 70, § 26. CRS 53: § 58-1-26. L. 61: p. 394, § 9. C.R.S. 1963: § 58-1-25. L. 84: Entire section amended, p. 467, § 4, effective July 1. L. 2008: Entire section amended, p. 1819, § 2, effective September 1.

**Cross references:** For assessment for expense and inconvenience in litigation, see C.R.C.P. 3(a); for awarding of attorney fees in civil actions generally, see § 13-17-102.

**ANNOTATION**

**Former provisions violated constitutional rights.** Provisions of this section prior to the 1984 amendment, by imposing a pecuniary penalty on defendants for the benefit of prevailing plaintiffs without granting defendants a corresponding right, violated the defendants' fourteenth amendment right to the equal protection of law and was contrary to art. II, § 6, Colo. Const. More v. Johnson, 193 Colo. 489, 568 P.2d 437 (1977).

**In a case involving multiple issues, the prevailing party for purposes of this**

**section is the party adjudged to have the right to possession.** Integra Fin. Inc. v. Grynberg Petroleum Co., 74 P.3d 347 (Colo. App. 2002).

**The definition of "action" for purposes of this section excludes claims and counterclaims relating to nonpossessory issues.** Integra Fin. Inc. v. Grynberg Petroleum Co., 74 P.3d 347 (Colo. App. 2002).

**Damages are recoverable where lessee retains land after termination of the lease.** Where possession of leased property is

wrongfully retained by the lessee after termination of the lease, damages are recoverable against him. *Strauss v. Boatright*, 160 Colo. 581, 418 P.2d 878 (1966).

**It seems to be well settled that the measure of such damages is the reasonable rental value** for the time that possession was wrongfully withheld. *Strauss v. Boatright*, 160 Colo. 581, 418 P.2d 878 (1966).

**Allowance of attorney's fees as part of judgment where not pursuant to contract expressed or implied.** *Gulf, Colo. & Santa Fe v. Ellis*, 165 U.S. 150 (1897); *Los Angeles Gold Mining Co. v. Campbell*, 13 Colo. App. 1, 56 P. 246 (1899); *Davidson v. Jennings*, 27 Colo. 187, 60 P. 354 (1900); *Pacific Mut. Life Ins. Co. v. Van Fleet*, 47 Colo. 401, 107 P. 1087 (1909); *Commodore Mining Co. v. People*, 82 Colo. 77, 257 P. 259 (1927); *Denver Bldg. & Construction Trade Council v. Henry Shore*, 132 Colo. 187, 287 P.2d 267 (1955).

**This section provides for an award of attorney fees** as damages for injury sustained during time landlord is deprived of possession of property. *Allmer v. Andrews*, 153 Colo. 487, 386 P.2d 705 (1963).

**In a separate or supplemental proceeding.** This section provides for such an award of attorney fees to be determined either in a separate action or in supplemental proceedings in the principal action and are in the nature of damages for injury sustained during the time he shall have been deprived of possession of the premises. *Allmer v.*

*Andrews*, 153 Colo. 487, 386 P.2d 705 (1963).

**Claims that do not bear on the right to possession are not part of a forcible entry and detainer action for purposes of awarding attorney fees.** *Schuler v. Oldervik*, 143 P.3d 1197 (Colo. App. 2006).

**It is proper, however, to award attorney fees concerning an ownership claim if it is necessary for the court to determine ownership of the property prior to making a determination regarding possession.** *Schuler v. Oldervik*, 143 P.3d 1197 (Colo. App. 2006).

**The amount of damages a prevailing plaintiff may recover in an F.E.D. action** is the reasonable rental value of the premises during the time the other party continued an unlawful detainer. *Behr v. Burge*, 940 P.2d 1084 (Colo. App. 1996).

**Where property was sold at a tax sale,** the court erroneously awarded damages to plaintiffs for the rental value of property from the time the tax lien was recorded until dispossession of defendants since those damages could not begin to accrue at least until the execution and delivery of the director's deed. *Behr v. Burge*, 940 P.2d 1084 (Colo. App. 1996).

**When this section is read with § 13-40-115, it is clear that the award of attorney fees in a forcible entry and detainer action is in the nature of compensatory damages.** Thus, any prevailing party in a forcible entry and detainer action is entitled to attorney fees, and the trial court erred in refusing to



award them. *Wilcox v. Clark*, 42 P.3d 29 (Colo. App. 2001).

**Applied** in *Torres v. Portillos*, 638 P.2d 274 (Colo. 1981); *Cronk v. Bowers*, 2023 COA 68M, 537 P.3d 401.

#### **13-40-124. Qualified farm owner-tenant defined. (Repealed)**

**Source:** **L. 86:** Entire section added, p. 436, § 8, effective April 18. **L. 87:** (1)(f)(I), (1)(g), (3), and (4) amended and (1)(j) and (5) added, p. 1357, §§ 7, 8, effective July 1; (1)(i) amended, p. 1577, § 17, effective July 10.

**Editor's note:** Subsection (4) provided for the repeal of subsections (1) to (4), effective January 31, 1989. (See L. 87, p. 1357.) Subsection (5)(b) provided for the repeal of subsection (5), effective July 1, 1991. (See L. 87, p. 1357.)

#### **13-40-125. Rights of qualified farm owner-tenant. (Repealed)**

**Source:** **L. 86:** Entire section added, p. 437, § 8, effective April 18. **L. 87:** (1) to (4) amended and (3.5) and (5) added, p. 1358, §§ 9, 10.

**Editor's note:** Subsection (4) provided for the repeal of subsections (1) to (4), effective January 31, 1989. (See L. 87, p. 1358.) Subsection (5)(b) provided for the repeal of subsection (5), effective July 1, 1991. (See L. 87, p. 1358.)

#### **13-40-125.5. Possession pursuant to agreement - enforcement. (Repealed)**

**Source:** **L. 87:** Entire section added, p. 1360, § 11, effective July 1.

**Editor's note:** Subsection (4) provided for the repeal of this section, effective January 31, 1989. (See L. 87, p. 1360.)

### **13-40-126. Priority of proceedings. (Repealed)**

**Source:** **L. 86:** Entire section added, p. 438, § 9, effective April 18. **L. 87:** Entire section amended, p. 1361, § 12, effective July 1.

**Editor's note:** Subsection (2) provided for the repeal of this section, effective January 31, 1989. (See L. 87, p. 1361.)

### **13-40-127. Eviction legal assistance - fund - rules - report - definitions.**

- (1) As used in this section, unless the context otherwise requires:
  - (a) "Administrator" means the state court administrator, appointed pursuant to section 13-3-101.
  - (b) "Fund" means the eviction legal defense fund established in subsection (2) of this section.
  - (c) "Indigent" means a person whose income does not exceed two hundred percent of the family federal poverty guidelines, adjusted for family size, determined annually by the United States department of health and human services.
  - (d) "Qualifying organization" means an organization that:
    - (I) Has demonstrated experience and expertise in providing full service civil legal services to indigent clients;
    - (II) Is based in Colorado;
    - (III) Is exempt from taxation pursuant to section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended; and
    - (IV) Obtains more than twenty percent of its funding from sources other than grants from the fund.
- (2) There is established in the state treasury the eviction legal defense fund. Pursuant to subsection (3) of this section, the state court administrator is authorized to make grants from the fund to qualifying organizations providing civil legal services to indigent residents of the state of Colorado.
- (3) The administrator shall award grants from the fund to qualifying organizations to provide legal advice, counseling, and representation for, and on behalf of, indigent clients who are

experiencing an eviction or are at immediate risk of an eviction. Money from the fund may be used for services that include:

(a) Providing legal representation to indigent tenants for resolving civil legal matters related to an eviction or impending eviction. Such representation may include representation in any forcible entry and detainer proceeding or action for monetary damages related to nonpayment of rent or other lease violation, legal assistance prior to the filing of an eviction, or any other judicial actions in which legal representation is necessary to protect the interests of an indigent tenant.

(b) Establishing clinics designed to educate and assist indigent tenants in eviction proceedings, including providing information related to the rights and responsibilities of landlords and tenants;

(c) Providing legal information and advice to indigent tenants;

(d) Referring clients to appropriate persons or agencies that provide assistance with issues related to housing; and

(e) Providing mediation services for disputes between a landlord and tenant that could prevent or resolve the filing of an eviction.

(4) (a) A qualifying organization seeking to receive a grant from the fund shall submit an application each year to the state court administrator on a form provided by the administrator. The application form must request any information that the administrator needs to determine whether the applying organization meets the qualifications for receipt of a grant.

(b) (I) On October 1, 2019, and on July 1 each year thereafter, the administrator shall distribute grants from the fund, subject to available appropriations, to a qualifying organization for each county or city and county in proportion to the number of forcible entry and detainer petitions filed in the county or city and county.

(II) If there is more than one qualifying organization within a county or city and county, the administrator shall disburse the grant for such county or city and county to each qualifying organization in proportion to the number of clients served by each qualifying organization or its predecessor in the preceding year.

(c) Each qualifying organization that receives a grant pursuant to this section shall submit an annual report to the administrator that includes the following information, to the extent possible and to the extent that it does not violate the privilege and confidentiality of an attorney client relationship:

(I) The number of clients served by the organization;

(II) The nature of the assistance rendered to each client, such as providing information, advice, mediation, or representation;

(III) The type of alleged lease violation, if any, for each client;

(IV) The amount of rent in dispute, if any, for each client;

(V) The number of tenants the organization was unable to serve;

(VI) Demographic data for clients assisted by the organization with a grant from the fund, including zip code, household income, family status, race and ethnicity information, age, and disability status;

(VII) The number of referrals to a rental assistance or mediation program provided to clients; and

(VIII) The outcome of each client's case, including whether a case was dismissed, judgment for possession was entered, a stipulated agreement was made that prevented entry of a judgment for possession, a stipulated agreement was made that provided the client with an opportunity to vacate a judgment for possession at a later date, and whether the client had to move from the residence and, if so, whether the client received additional time to move and how much time was provided.

(5) (a) In addition to money transferred to the fund pursuant to section 24-22-118 (2) and any appropriation from the general fund, the administrator may seek, accept, and expend gifts, grants, or donations from private or public sources for the purposes of this section. The administrator shall transmit all money received through gifts, grants, or donations to the state treasurer, who shall credit the money to the fund.

(b) Subject to annual appropriation by the general assembly, the administrator may expend money from the fund for the direct and indirect costs associated with the administration of this section. The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund.

(c) Any unexpended and unencumbered money remaining in the fund at the end of a fiscal year remains in the fund and does not revert to the general fund or any other fund.

(6) (a) On or before December 31, 2024, and on or before December 31 every five years thereafter, the administrator shall evaluate the use of grant money awarded from the fund. This evaluation must consider the following metrics, and whether each has increased or decreased compared to the years before the fund was established:

(I) The percentage of forcible entry and detainer filings that resulted in judgments ordered against tenants, organized by whether the tenant was represented by an attorney;

(II) The number of writs of restitution issued, organized by whether the tenant was represented by an attorney;

(III) The rate of legal representation among defendants facing eviction;

(IV) The number of answers filed in response to forcible entry and detainer petitions, organized by whether the tenant was represented by an attorney;

(V) Based on information reported to the administrator by qualifying organizations, the number of indigent clients who have been referred to programs that provide emergency rent assistance or mediation services or to other public and nonprofit resources that will bolster the economic security of tenants and their families;

(VI) Based on information reported to the administrator by qualifying organizations, the distribution of information to indigent tenants concerning state laws related to the landlord-tenant relationship; and

(VII) Based on information reported to the administrator by qualifying organizations, the number of indigent clients who were provided legal advice.

(b) An evaluation performed pursuant to this subsection (6) must include, and consider, the information provided to the administrator by qualified organizations related to client services pursuant to subsection (4)(c) of this section.

(c) Notwithstanding section 24-1-136 (11)(a)(I), the administrator shall submit an evaluation required pursuant to this subsection (6) to the judiciary committees of the house of representatives and the senate, or any successor committees.

(7) to (9) Repealed.

**Source: L. 2019:** Entire section added, (SB 19-180), ch. 372, p. 3388, § 2, effective May 30. **L. 2020:** (7) added, (HB 20-1410), ch. 112, p. 465, § 2, effective June 22; (5)(a) amended, (HB 20-1427), ch. 248, p. 1203, § 19, effective January 1, 2021. **L. 2020, 1st Ex. Sess.:** (5)(c) and (8) added, (SB 20B-002), ch. 8, p. 43, § 3, effective December 7. **L. 2021:** (7)(a) and (7)(c) amended, (SB 21-178), ch. 134, p. 546, § 2, effective May 13; (9) added, (HB 21-1329), ch. 347, p. 2257, § 3, effective June 25. **L. 2022:** (9)(a) amended, (HB 22-1342), ch. 137, p. 920, § 3, effective April 25. **L. 2023:** (9)(a) amended, (HB 23-1301), ch. 303, p. 1819, § 16, effective August 7.

**Editor's note:** (1) Section 27(2) of chapter 248 (HB 20-1427), Session Laws of Colorado 2020, provides that changes to this section take effect on the date of the governor's proclamation or January 1, 2021, whichever is later, only if, at the November 2020 statewide election, a

majority of voters approve the ballot issue referred in accordance with § 39-28-401. The ballot issue, referred to the voters as proposition EE, was approved on November 3, 2020, and was proclaimed by the Governor on December 31, 2020. The vote count for the measure was as follows:

FOR: 2,134,608

AGAINST: 1,025,182

(2) Subsection (8)(b) provided for the repeal of subsection (8), effective January 1, 2022. (See L. 2020, 1st Ex. Sess., p. 43.)

(3) Subsection (7)(c) provided for the repeal of subsection (7), effective September 1, 2022. (See L. 2021, p. 546.)

(4) Subsection (9)(d) provided for the repeal of subsection (9), effective July 1, 2025. (See L. 2021, p. 2257.)

**Cross references:** For the legislative declaration in SB 19-180, see section 1 of chapter 372, Session Laws of Colorado 2019. For the legislative declaration in HB 20-1410, see section 1 of chapter 112, Session Laws of Colorado 2020. For the legislative declaration in SB 21-178, see section 1 of chapter 134, Session Laws of Colorado 2021.

### **13-40-128. Monthly residential eviction data - report - definitions.**

(1) As used in this section, unless the context otherwise requires:

(a) "Qualified entity" means:

(I) A principal department of the state described in section 24-1-110;

(II) An organization in good standing with the secretary of state that is exempt from taxation under section 501(c)(3) of the federal "Internal Revenue Code of 1986", as amended, that has a demonstrated history of credible housing-related research and publications; or

(III) An institution of higher education that has a demonstrated history of credible housing-related research and publications.

(b) "Qualified request" means a request for compiled data from residential forcible entry and detainer actions that is filed in compliance with directives and policies governing the judicial department's response to requests for compiled and aggregate data.

(c) "Residential eviction data" means, for each residential forcible entry and detainer action filed pursuant to this article 40:

- (I) The date the complaint was filed;
- (II) The return date;
- (III) The date of the scheduled hearing;
- (IV) Whether the plaintiff was represented by legal counsel;
- (V) Whether the tenant was represented by legal counsel;
- (VI) Whether the tenant filed an answer;
- (VII) Any of the following case outcomes:
  - (A) Default judgment;
  - (B) Judgment for possession;
  - (C) Stipulated agreement;
  - (D) Writ of restitution; or
  - (E) Dismissal;
- (VIII) The zip code of the property at issue;
- (IX) Whether the action was filed for:
  - (A) Nonpayment of rent or utilities; or
  - (B) Other lease violations;
- (X) The total amount of unpaid rent or utilities at the time of filing, and any late fees that the plaintiff claims the tenant owes;
- (XI) Whether the tenant elected to participate in person or remotely; and
- (XII) Whether the plaintiff elected to participate in person or remotely.

(2) (a) Beginning July 1, 2024, Denver county court shall electronically provide residential eviction data for all actions filed in Denver county to the judicial department, and the judicial department shall electronically collect residential eviction data for all actions filed in each county, including data provided by Denver county court, pursuant to this article 40.

(b) Beginning January 1, 2025, the judicial department shall, on a monthly basis, compile and publish online in a searchable format, and make available free of charge, aggregate residential eviction data for all actions filed in each county, including residential eviction data provided to the judicial department by Denver county court, pursuant to this article 40 that concluded in the immediately preceding month; except that on January 1, 2025, the judicial department shall compile and publish online the aggregate residential eviction data for July 1,

2024, through December 31, 2024. The judicial department shall post the residential eviction data in a conspicuous place on the judicial department's website.

(c) (I) After receiving a qualified request from a qualified entity, the judicial department shall make data from residential forcible entry and detainer actions electronically available on an individual case level. A request for individual case level data must not be used for the purpose of identifying individual plaintiffs or tenants, for any action against individual plaintiffs or tenants, or to advertise or sell any goods or services.

(II) A qualifying entity shall agree to comply with data confidentiality and suppression requirements as determined by the judicial department. At a minimum, the agreement must ensure that the requesting qualified entity shall not disclose any personally identifiable information about the plaintiff or tenant, nor make the data publicly accessible in any way that would enable a third party to discern the identity of an individual plaintiff or tenant.

(3) Beginning January 2025 and each January thereafter until January 2035, the judicial department shall report to the house of representatives judiciary committee and the senate judiciary committee, or their successor committees, during the judicial department's "SMART Act" hearing pursuant to part 2 of article 7 of title 2, on the compiled residential eviction data collected and published pursuant to this section in the aggregate for the previous calendar year. At a minimum, the report must include the number of requests for individual case level residential eviction data pursuant to subsection (2)(c) of this section and the names of the requesting entities.

**Source: L. 2024:** Entire section added, (SB 24-064), ch. 297, p. 2027, § 1, effective May 31.

## **13-40.1 ARTICLE 40.1**

### **Removal of Unauthorized Persons**

13-40.1-101. Removal of unauthorized persons - definitions.

13-40.1-102. Unauthorized alteration or damage of a residential property.

#### **13-40.1-101. Removal of unauthorized persons - definitions.**

(1) As used in this article 40.1, unless the context otherwise requires:



(a) "Residential premises" means a dwelling unit, the structure of which the unit is a part, and any immediately surrounding property that is owned by or subject to the exclusive control of the same person as the dwelling unit itself.

(b) (I) "Unauthorized person" means a person who occupies an uninhabited or vacant residential premises without any current or prior agreement or consent of the owner or an authorized agent of the owner, whether written or oral, concerning the use of the residential premises.

(II) "Unauthorized person" does not include:

(A) A relative of the property owner or a relative of an authorized agent of the property owner, including a spouse, descendant, stepchild, parent, stepparent, grandparent, brother, sister, uncle, or aunt, whether related by whole or half blood or by adoption;

(B) A person or persons from which the owner or an authorized agent of the owner has accepted money or anything of value; or

(C) A person who was previously given permission to enter and remain on the premises.

(2) The owner of a residential premises, or his or her authorized agent, may initiate the investigation of and request the removal of an unauthorized person or persons from the residential premises by filing with the county court a complaint and a verified motion for a temporary mandatory injunction restoring possession of the residential property to the owner or lawful occupant. To the extent known or reasonably ascertainable, the verified motion must identify the unauthorized person or persons and include statements substantially as follows:

#### VERIFIED MOTION FOR ORDER TO

#### REMOVE UNAUTHORIZED PERSONS

The undersigned owner, or authorized agent of the owner, of the residential premises located at \_\_\_\_\_ requests that the court hold a hearing within one court day and that the court enter a temporary mandatory injunction and issue a writ of restitution ordering that the person or persons currently occupying the residential premises be removed from the premises and be ordered not to return to the premises for a period of fourteen days. In support of the request, the undersigned owner or authorized agent hereby represents and declares under the penalty of perjury that (initial each box):

1. ☐ The declarant is the owner of the premises or the authorized agent of the owner of the premises;

2. ☐ An unauthorized person or persons have entered and are remaining unlawfully on the premises;
3. ☐ Neither the owner nor an authorized agent of the owner has ever given permission for the unauthorized person or persons to enter and remain on the premises;
4. ☐ Neither the owner nor an authorized agent of the owner has ever had a written or oral agreement with the unauthorized person or persons regarding the use of the premises;
5. ☐ Neither the owner nor an authorized agent of the owner is related to the unauthorized person or persons;
6. ☐ Neither the owner nor an authorized agent of the owner has ever accepted money or anything of value from the unauthorized person or persons regarding the use of the premises;
7. ☐ The declarant has demanded that the unauthorized person or persons vacate the premises but they have not done so;
8. ☐ The declarant has informed the unauthorized person or persons that he or she is going to court to request a temporary mandatory injunction restoring the owner to possession and shall deliver a copy of this Verified Motion for Order to Remove Unauthorized Persons Form to the unauthorized person or persons;
9. ☐ Additional optional explanatory comments or statement that the premises has been altered or damaged: .....

(3) A declarant who falsely swears on a motion filed with the county court pursuant to this section may be:

- (a) Subject to sanctions under the Colorado rules of county court civil procedure;
- (b) Held in contempt of court; or
- (c) Prosecuted for perjury in the first or second degree, as described in section 18-8-502 or 18-8-503, or false swearing, as described in section 18-8-504.

(4) (a) The county court shall consider the complaint and motion for temporary mandatory injunction under this section and conduct a hearing on the motion as soon as practicable, but in no event later than the next court day after the filing of the motion, unless a later date is requested by the moving party.

(b) (I) The summons, complaint, motion, and notice required by subsection (4)(b)(III) of this section shall either be served by personal service upon the defendant, as in any civil action, by a person qualified under the Colorado rules of county court civil procedure to serve process, or such person may make service by posting a copy of the summons, complaint, motion, and notice required by subsection (4)(b)(III) of this section in some conspicuous place upon the premises.

(II) Personal service or service by posting must be made at least twenty-four hours before the time for appearance specified in such summons and notice, and the time and manner of the service must be endorsed upon such summons by the person making service thereof.

(III) The written notice of the date, time, and location of the hearing must be served with the complaint. The notice must be printed in black ink and have a font size of not less than twelve and in substantially the following form:

#### NOTICE

On [date], [year], at [time] in Courtroom [number], [courthouse name], [courthouse address], the Court will hold a hearing on a Motion for an Order for Temporary Mandatory Injunction and writ of restitution in order to require the removal from the residential premises located at [residential premises address] of each unauthorized person identified in the motion that accompanies this notice. If you are identified as an unauthorized person and if you believe that is not true, then you must attend the hearing and present any evidence supporting your position. **IF YOU FAIL TO ATTEND THE HEARING, THE COURT MAY ENTER AN ORDER INSTRUCTING THE SHERIFF TO REMOVE YOU FROM THE RESIDENTIAL PREMISES IMMEDIATELY.**

(c) Any occupant of the residential premises who disputes that he or she is an unauthorized person may appear at the hearing and must be permitted to provide testimony and other evidence that the occupant is not an unauthorized person. The court, in its discretion, may accept a written statement submitted to the court prior to the commencement of the hearing in lieu of personal testimony from the occupant.

(d) If no person identified in the motion as an unauthorized person appears at the hearing, and no written statement that the court deems sufficient is filed in opposition to the motion, the court may proceed to rule on the motion based on the contents of the motion and any additional testimony offered by the moving party. The court may, but need not, require the moving party to confirm in oral testimony the facts recited in the motion and may make such other inquiry of the

owner or authorized agent as the court determines proper under the circumstances. After taking testimony from the moving party and any occupant who contests the motion or after considering the content of the motion or written statement, the court shall determine whether the occupant is an unauthorized person. If the court determines that the occupant is an unauthorized person, the court shall enter an order for a temporary mandatory injunction and issue a writ of restitution prior to adjourning the hearing, which order may include such additional terms or limitations as the court may in its discretion determine necessary and equitable under the circumstances. If the court determines that the occupant is not an unauthorized person, the court shall deny the motion for an order for temporary mandatory injunction. If an order for temporary mandatory injunction is denied, the owner is not prejudiced from thereafter commencing an eviction pursuant to section 13-40-101.

(e) The court shall not require the appointment of an attorney to represent any occupant or other interested person as a condition of considering such motion.

(f) If the court enters the order for temporary mandatory injunction and issues a writ of restitution, the owner or his or her authorized agent may deliver the order for temporary mandatory injunction to the sheriff having jurisdiction to enforce the order.

(5) (a) Except as provided in subsection (5)(b) of this section, the writ of restitution must be executed pursuant to section 13-40-122.

(b) No later than twenty-four hours after receipt of order for temporary mandatory injunction, a sheriff, undersheriff, or deputy sheriff, as described in section 16-2.5-103 (1) or (2), while off duty or on duty at rates charged by the employing sheriff's office in accordance with section 30-1-104 (1)(gg), shall:

(I) Remove the person or persons from the residential premises, with or without arresting the person or persons; and

(II) Order the person or persons to remain off the residential premises or be subject to arrest for criminal trespass.

(c) If the motion filed with the county court includes a statement that the property has been altered or damaged or the sheriff, undersheriff, or deputy sheriff sees evidence that the property has been altered or damaged, the sheriff, undersheriff, or deputy sheriff shall collect personal information from the person or persons and shall provide that information to the declarant.

**Source: L. 2018:** Entire article added, (SB 18-015), ch. 393, p. 2346, § 2, effective July 1.

**13-40.1-102. Unauthorized alteration or damage of a residential property.**

(1) If a person's conduct satisfies all of the elements of section 18-4-501, the person who is removed from a residential property pursuant to section 13-40.1-101 and who knowingly damages the real or personal property of one or more other persons may have committed criminal mischief.

(2) Nothing in this section precludes the prosecution of violations under any other provision of law.

**Source: L. 2018:** Entire article added, (SB 18-015), ch. 393, p. 2350, § 2, effective July 1.

**HABEAS CORPUS**

**ARTICLE 45**

**Habeas Corpus - General Provisions**

|            |                                               |            |                                                  |
|------------|-----------------------------------------------|------------|--------------------------------------------------|
| 13-45-101. | Petition for writ - criminal cases.           | 13-45-110. | Prisoner not to be removed - when.               |
| 13-45-102. | Petition for relief - civil cases.            | 13-45-111. | Removal of prisoners - causes.                   |
| 13-45-103. | Hearing - pleadings - discharge.              | 13-45-112. | Judge refusing or delaying writ - penalty.       |
| 13-45-104. | Witnesses - duty of sheriff.                  | 13-45-113. | Failure to obey writ - penalty.                  |
| 13-45-105. | Court to examine witnesses.                   | 13-45-114. | Avoiding writ - penalty.                         |
| 13-45-106. | Bail - recognizance - binding witness.        | 13-45-115. | Failure to deliver process - penalty. (Repealed) |
| 13-45-107. | Remand - second writ - offenses not bailable. | 13-45-116. | Detention after release - penalty.               |
| 13-45-108. | Second writ - bailable offense.               | 13-45-117. | Forfeitures go to use of prisoner.               |
| 13-45-109. | Once discharged - reimprisonment.             | 13-45-118. | Recovery of forfeiture not bar to civil suit.    |

13-45-119. Writ to testify or be  
surrendered - run to any  
county - copy - fees.

13-45-121. Powers of county court.  
(Repealed)

13-45-120. When county court can issue  
writ. (Repealed)

### **13-45-101. Petition for writ - criminal cases.**

(1) If any person is committed or detained for any criminal or supposed criminal matter, it is lawful for him to apply to the supreme or district courts for a writ of habeas corpus, which application shall be in writing and signed by the prisoner or some person on his behalf setting forth the facts concerning his imprisonment and in whose custody he is detained, and shall be accompanied by a copy of the warrant of commitment, or an affidavit that the said copy has been demanded of the person in whose custody the prisoner is detained, and by him refused or neglected to be given. The court to which the application is made shall forthwith award the writ of habeas corpus, unless it appears from the petition itself, or from the documents annexed, that the party can neither be discharged nor admitted to bail nor in any other manner relieved. Said writ, if issued by the court, shall be under the seal of the court, and directed to the person in whose custody the prisoner is detained, and made returnable forthwith.

(2) To the intent that no officer, sheriff, jailer, keeper, or other person to whom such writ is directed may pretend ignorance thereof, every writ shall be endorsed with the words "by the habeas corpus act". When the writ is served by any person upon the sheriff, jailer, or keeper, or other person to whom the same is directed, or brought to him, or left with any of his underofficers or deputies at the jail or place where the prisoner is detained, he or some of his underofficers or deputies, upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the court awarding the said writ and endorsed thereon not exceeding fifteen cents per mile and upon sufficient security given to pay the charges of carrying him back if he is remanded, shall make return of the writ and bring, or cause to be brought, the body of the prisoner before the court which granted the writ and certify the true cause of his imprisonment within three days thereafter, unless the commitment of such person is in a place beyond the distance of twenty miles from the place where the writ is returnable; if it is beyond the distance of twenty miles and not above one hundred miles, the writ shall be returned within ten days and, if beyond the distance of one hundred miles, within twenty days after the delivery of the writ, and not longer.

**Source:** R.S. p. 352, § 1. G.L. § 1323. G.S. § 1609. R.S. 08: § 2917. C.L. § 6486. CSA: C. 77, § 1. CRS 53: § 65-1-1. C.R.S. 1963: § 65-1-1.

**Cross references:** For the constitutional bar to suspension of habeas corpus, see § 21 of art. II, Colo. Const.; for the availability of writ, see C.R.C.P. 106(a).

## ANNOTATION

### I. GENERAL CONSIDERATION.

A. In General.

B. Civil Proceeding.

A. In General.

**Law reviews.** For note, "Jurisdiction of Custody Matters in Colorado", see 28 Rocky Mt. L. Rev. 393 (1956). For note, "Habeas Corpus in Colorado for the Convicted Criminal", see 30 Rocky Mt. L. Rev. 145 (1958). For note, "Habeas Corpus Procedure", see 41 Den. L. Ctr. J. 111 (1964). For note, "Federal Habeas Corpus Confronts the Colorado Courts: Catalyst or Cataclysm?", see 39 U. Colo. L. Rev. 83 (1966). For article, "Habeas Corpus", which discusses Tenth Circuit decisions dealing with habeas corpus, see 62 Den. U. L. Rev. 241 (1985). For article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses cases relating to habeas corpus, see 15 Colo. Law. 1618 (1986). For article, "Criminal Law", which discusses Tenth Circuit decisions dealing with habeas corpus, see 64 Den. U. L. Rev. 225 (1987). For article, "Criminal Procedure", which discusses a Tenth Circuit decision dealing with habeas corpus, see 65 Den. U. L. Rev. 553 (1988).

**Habeas corpus has been designated the greatest of all writs**, and the precious safeguard of personal liberty, concerning which courts are admonished that there is no higher duty than to maintain it unimpaired. Its ascendancy among the writs should be ever sustained. *Geer v. Alaniz*, 138 Colo. 177, 331 P.2d 260 (1958).

**A complaint in the nature of mandamus may be treated as a habeas corpus proceeding.** A complaint labeled for relief in the nature of mandamus, filed as an original proceeding in the supreme court seeking release of persons allegedly illegally confined, is essentially a proceeding in habeas corpus rather than mandamus. *Riley v. City & County of Denver*, 137 Colo. 312, 324 P.2d 790 (1958).

**The purpose of proceedings in habeas corpus** is to determine whether or not the person instituting them is illegally restrained of his liberty. *Ex parte Casper*, 26 Colo. App. 344, 144 P. 1137 (1914); *Riley v. City & County of Denver*, 137 Colo. 312, 324 P.2d 790 (1958); *Hithe v. Nelson*, 172 Colo. 179, 471 P.2d 596 (1970); *Eathorne v. Nelson*, 180 Colo. 288, 505 P.2d 1 (1973); *Collins v. Gunter*, 834 P.2d 1283 (Colo. 1992).

The essential purpose to be served with a writ of habeas corpus is to resolve the issue

of whether a person is unlawfully detained. *Ryan v. Cronin*, 191 Colo. 487, 553 P.2d 754 (1976); *Mulkey v. Sullivan*, 753 P.2d 1226 (Colo. 1988); *Johnson v. Gunter*, 852 P.2d 1263 (Colo. 1993).

Therefore, because the issues involved in habeas corpus proceedings are very narrow, Crim. P. 54(b)(2) provides that the rules of criminal procedure are not applicable to habeas corpus proceedings, and a court may only authorize discovery under said rules if an appellant clearly shows the information sought will be relevant to the very narrow issues of the habeas corpus hearing. *Temen v. Barry*, 695 P.2d 745 (Colo. 1984).

**Where imprisonment is without warrant or authority, the prisoner is entitled to discharge.** *Harper v. Montez*, 149 Colo. 569, 370 P.2d 154 (1962).

**It is incumbent upon a defendant to exhaust his legal remedies** before asking the indulgence of the court in the issuance of a writ of habeas corpus. *Stilley v. Tinsley*, 153 Colo. 66, 385 P.2d 677 (1963); *Garrett v. Knight*, 173 Colo. 419, 480 P.2d 569 (1971).

**A writ of habeas corpus cannot be substituted for a writ of error.** Where the trial judge and defendant's counsel misconceived the law and permitted defendant to be subjected to a penitentiary sentence when the court was limited in its judgment to imposing a sentence for a term in the county jail, the judgment of the trial court could and should have been corrected by a writ of error issued out of the supreme court. A habeas corpus writ is an extraordinary writ which may be procured,

not as a matter of right, but in the discretion of the court, when the defendant has exhausted his legal remedies. *Hart v. Best*, 119 Colo. 569, 205 P.2d 787 (1949); *People ex rel. Metzger v. District Court*, 121 Colo. 141, 215 P.2d 327 (1949); *Farrell v. District Court*, 135 Colo. 329, 311 P.2d 410 (1957); *Zimmerman v. Angele*, 137 Colo. 129, 321 P.2d 1105 (1958); *Lewis v. Tinsley*, 138 Colo. 117, 330 P.2d 532 (1958); *Mendez v. Tinsley*, 139 Colo. 127, 336 P.2d 706 (1959); *Gallegos v. Tinsley*, 139 Colo. 157, 337 P.2d 386 (1959); *Lowe v. People*, 139 Colo. 578, 342 P.2d 631 (1959); *McKenna v. Tinsley*, 141 Colo. 63, 346 P.2d 584 (1959); *Medberry v. Patterson*, 142 Colo. 180, 350 P.2d 571 (1960); *Moore v. Tinsley*, 142 Colo. 516, 351 P.2d 456 (1960); *Valentine v. Tinsley*, 143 Colo. 19, 351 P.2d 825 (1960); *Bates v. Tinsley*, 143 Colo. 390, 353 P.2d 76 (1960); *Nickle v. Reeder*, 144 Colo. 593, 357 P.2d 921 (1960); *Stilley v. Tinsley*, 153 Colo. 66, 385 P.2d 677 (1963); *Specht v. Tinsley*, 153 Colo. 235, 385 P.2d 423 (1963); *Smith v. Tinsley*, 223 F. Supp. 68 (D. Colo. 1963); *Saxton v. Patterson*, 370 F.2d 112 (10th Cir. 1966); *Martinez v. Patterson*, 382 F.2d 1002 (10th Cir. 1967); *McGill v. Leach*, 180 Colo. 331, 505 P.2d 374 (1973).

The writ of habeas corpus may not be used as a substitute for an appeal and a hearing on a writ of habeas corpus may not be used as a basis for reviewing issues resolved by another court. *Ryan v. Cronin*, 191 Colo. 487, 553 P.2d 754 (1976).

Erroneous judgments are not subject to attack by use of the writ of habeas corpus. It is to be used only where the judgment is void. *Ryan v. Cronin*, 191 Colo. 487, 553



P.2d 754 (1976); *Mulkey v. Sullivan*, 753 P.2d 1226 (Colo. 1988).

**It may not be used to consider sufficiency of evidence.** Sufficiency of evidence may not be raised in a habeas corpus proceeding for it is not a substitute for a writ of error. *Johnson v. Tinsley*, 155 Colo. 346, 394 P.2d 842 (1964).

**Prisoner may not attack validity of foreign detainer through habeas corpus petition.** It is improper for a prisoner serving a sentence in Colorado to attack the validity of a foreign detainer through a habeas corpus petition. The proper procedure was to obtain disposition of the charges in the state where they were pending. *Russell v. Cooper*, 724 P.2d 1302 (Colo. 1986); *Butler v. Zavaras*, 924 P.2d 1060 (Colo. 1996).

**A writ of habeas corpus does not run against the people of the state of Colorado.** *Oates v. People*, 136 Colo. 208, 315 P.2d 196 (1957); *Olson v. People*, 138 Colo. 310, 332 P.2d 486 (1958); *Lowe v. People*, 139 Colo. 578, 342 P.2d 631 (1959); *Stilley v. Tinsley*, 153 Colo. 66, 385 P.2d 677 (1963); *Petition of Gallegos v. Schooley*, 155 Colo. 215, 393 P.2d 573 (1964); *People v. Calyer*, 736 P.2d 1204 (Colo. 1987).

**The only parties before a trial court in a habeas corpus proceeding are the petitioner and the person having him in custody,** and the only question properly before the trial court is the authority of the respondent to restrain petitioner of his liberty. *Stilley v. Tinsley*, 153 Colo. 66, 385 P.2d 677 (1963); *Cardiel v. Brittan*, 833

P.2d 748 (Colo. 1992); *Johnson v. Gunter*, 852 P.2d 1263 (Colo. 1993).

**The persons to whom the writ was directed must make return to the writ.** The return which can only be filed by the individuals to whom the writ is directed is a return to the writ and not a return to the petition. *Petition of Gallegos v. Schooley*, 155 Colo. 215, 393 P.2d 573 (1964); *Ede v. Bray*, 178 Colo. 99, 495 P.2d 1139 (1972).

**The failure to make a formal return neither invalidates a hearing on the merits nor does it operate to discharge the prisoner.** *Ferrell v. Vogt*, 161 Colo. 549, 423 P.2d 844 (1967); *Marshall v. Geer*, 140 Colo. 305, 344 P.2d 440 (1959); *Ede v. Bray*, 178 Colo. 99, 495 P.2d 1139 (1972).

**One may seek a writ of habeas corpus without running any risk whatever** other than having the petition denied or being charged with costs. One may seek a writ of habeas corpus without running any risk whatsoever, other than the risk of having his petition denied and the possibility of being chargeable with the costs of the proceedings. He cannot in such proceedings, whereby he seeks release from illegal restraint, be legally incarcerated on other grounds. *Stilley v. Tinsley*, 153 Colo. 66, 385 P.2d 677 (1963).

**Poor person may seek habeas corpus without payment of costs.** The legal device existing in the state of Colorado which provides this equal protection in the postconviction civil remedy of habeas corpus is contained in and governed by § 13-16-103, which allows a poor person to proceed without the payment of costs in a

civil action on his making a showing of poverty. *Williams v. District Court*, 160 Colo. 348, 417 P.2d 496 (1966).

**Either while seeking the writ or after its dismissal.** The supreme court sees no difference of substance save subtlety between the "invidious discrimination" worked by a fee imposed upon an indigent before he is allowed to petition, which he cannot pay, and a fee saddled upon him after dismissal, which he also cannot pay. Both practices are effective deterrents. To interpose any financial consideration between an indigent prisoner of the state and his exercise of a state right to sue for his liberty is to deny that prisoner the equal protection of the laws. *Williams v. District Court*, 160 Colo. 348, 417 P.2d 496 (1966).

**Financial hurdles must not be permitted to condition its exercise.** There is no higher duty than to maintain the federal writ of habeas corpus unimpaired and unsuspended save only in the cases specified in the federal constitution. When an equivalent right is granted by a state, financial hurdles must not be permitted to condition its exercise. *Williams v. District Court*, 160 Colo. 348, 417 P.2d 496 (1966).

**The only issue to be resolved at a habeas corpus proceeding** is whether the custodian has authority to deprive the petitioner of liberty. *Johnson v. Gunter*, 852 P.2d 1263 (Colo. 1993).

**The "return" referred to in subsection (2) is the return of the writ, not the return of the petition for the writ.** Subsection (1) requires the court to issue the writ unless the petition or supporting documents indicate

that no relief is available. Thus, where the court did not issue the writ, the petitioner had no right to a return of the writ. *People v. Calyer*, 736 P.2d 1204 (Colo. 1987); *Wiedemer v. People*, 784 P.2d 739 (Colo. 1989).

**Writ issued did not comply with requirements of this section.** Where writ did not refer to the Habeas Corpus Act, did not require certification of the cause of imprisonment, and did not give notice of nature of proceeding, the order based on the writ purporting to release the prisoner was invalid. *People v. Calyer*, 736 P.2d 1204 (Colo. 1987).

**Writ served to improper respondent.** Superintendent of correctional facility was not proper respondent for purposes of the act where superintendent had no responsibility for supervising petitioner's conduct at another facility, even if superintendent may have been deemed agent of department of corrections for purposes of service of process. *People v. Calyer*, 736 P.2d 1204 (Colo. 1987).

**Insufficient notice to state authorities.** Notice to district attorney was insufficient notice to all involved in state administrative authority for purposes of determining whether proper notice had been given of petitioner's habeas corpus proceeding. *People v. Calyer*, 736 P.2d 1204 (Colo. 1987).

**Service must be made upon person who has custody of a petitioner in habeas corpus action** and therefore the director of the department of corrections or the attorney general must be personally served. *Zaborski*

v. Colo. Dept. of Corr., 812 P.2d 236 (Colo. 1991).

**Crim. P. 35(c) governing postconviction remedies did not provide basis for granting habeas corpus relief** where petition was not filed under postconviction rule, even though petition was assigned case number of petitioner's original criminal action. *People v. Calyer*, 736 P.2d 1204 (Colo. 1987).

**Allegation that the trial court lacked subject matter jurisdiction to adjudicate defendant as an habitual criminal was properly raised in a C.R.C.P. 35(c) motion for postconviction relief rather than a petition for habeas corpus** where original information did not charge defendant as an habitual criminal. *Johnson v. Gunter*, 852 P.2d 1263 (Colo. 1993).

**An improperly filed pro se habeas corpus petition should be treated as a Crim. P. 35(c) motion in order to provide review on the merits of the claims raised by a petitioner.** *Chatfield v. Colo. Court of Appeals*, 775 P.2d 1168 (Colo. 1989).

Rather than dismissing an improper habeas corpus petition, the court should convert such petition into a motion under Crim. P. 35(c) where the petitioner is acting pro se, the petitioner raises issues in the habeas corpus petition which should have been raised in a Crim. P. 35(c) motion, and the petitioner's claims are not barred by the statute of limitations. *Graham v. Gunter*, 855 P.2d 1384 (Colo. 1993).

Pro se habeas corpus petition was improperly filed in case where an invalid

judgment of conviction and sentence were rendered since relief was available under Crim. P. 35 and Crim. P. 36 and the district court should have treated petition as motion under section (c)(2) of Crim. P. 35. *Kailey v. Colo. Dept. of Corr.*, 807 P.2d 563 (Colo. 1991); *Johnson v. Gunter*, 852 P.2d 1263 (Colo. 1993).

**A petition for habeas corpus relief which fails to establish prima facie that the petitioner is not validly confined** and is thus entitled to immediate release or that the petitioner has suffered a serious infringement of a fundamental constitutional right resulting in a significant loss of liberty is insufficient and should be dismissed without a hearing. *Jones v. Zavaras*, 926 P.2d 579 (Colo. 1996).

**Defendant's challenges to procedures by which he was sentenced rather than the legality of his confinement may be raised by means of a Crim. P. 35(c) motion but not by means of a habeas corpus petition.** *Jones v. Zavaras*, 926 P.2d 579 (Colo. 1996).

**Remedy of habeas corpus was available to person who was detained in Colorado** pursuant to request from Nevada parole authorities and who challenged the validity of proceedings under the Parole Supervision Act. *People v. Velarde*, 739 P.2d 845 (Colo. 1987).

**Trial court's error of failing to convert habeas corpus petition into a motion for postconviction relief was cured by defendant's filing of postconviction motion in sentencing court.** *Johnson v. Gunter*, 852 P.2d 1263 (Colo. 1993).

**Remand required** for hearing on the propriety of defendant's continued confinement as an habitual criminal after second degree assault conviction used to support habitual criminal adjudication was reversed on grounds that the trial court failed to determine defendant's competence to stand trial. *Johnson v. Gunter*, 852 P.2d 1263 (Colo. 1993).

**The remedy of habeas corpus cannot be pursued to redress an unlawful restraint** where the petitioner is not in the custody of the respondent. *Van Riper v. Sheriff of Jefferson County*, 868 P.2d 395 (Colo. 1994).

**The relief requested in a habeas corpus proceeding must have a practical effect on the restraint of the prisoner at the time of the habeas corpus hearing.** Habeas corpus cannot be granted based on a complaint of former punitive segregation. *Brant v. Fielder*, 883 P.2d 17 (Colo. 1994).

**Where petitioner was a prisoner of the state of Wisconsin and was imprisoned in the Colorado prison system under the Interstate Corrections Compact**, petitioner was being detained for a criminal matter and the district court properly applied the provisions of this section. *Brant v. Fielder*, 883 P.2d 17 (Colo. 1994).

**Habeas corpus not appropriate to contest DOC reclassification due to the existence of a detainer** because such reclassification does not rise to the level of a constitutional violation. *Reed v. People*, 745 P.2d 235 (Colo. 1987); *Butler v. Zavaras*, 924 P.2d 1060 (Colo. 1996).

## B. Civil Proceeding.

**Habeas corpus is a civil proceeding.** *Geer v. Alaniz*, 137 Colo. 432, 326 P.2d 71 (1958); *Wright v. Tinsley*, 148 Colo. 258, 365 P.2d 691 (1961); *Buhler v. People*, 151 Colo. 345, 377 P.2d 748 (1963); *Hithe v. Nelson*, 172 Colo. 179, 471 P.2d 596 (1970); *Mote v. Koch*, 173 Colo. 82, 476 P.2d 255 (1970).

**Habeas corpus is a civil proceeding independent of the criminal charge.** *Mulkey v. Sullivan*, 753 P.2d 1226 (Colo. 1988).

**Habeas corpus is independent of the criminal charge.** An application for a writ of habeas corpus is a civil action, independent of the criminal charge, and is no part of an inquiry based on an information. *Oates v. People*, 136 Colo. 208, 315 P.2d 196 (1957); *Stilley v. Tinsley*, 153 Colo. 66, 385 P.2d 677 (1963); *Luker v. Koch*, 176 Colo. 75, 489 P.2d 191 (1971).

**Public providing of counsel is not authorized.** Proceedings in habeas corpus are civil actions. There is no constitutional or statutory provision which permits the appointment of counsel for plaintiffs in civil actions. Therefore the appointment of counsel and the payment of fees therefor out of public funds is not authorized and is not and cannot be sanctioned. *McGrath v. Tinsley*, 138 Colo. 18, 328 P.2d 579 (1958).

**Judgment is reviewable by writ of error.** Actions in habeas corpus are civil in nature, and a judgment therein is reviewable by writ of error. *Stilley v. Tinsley*, 153 Colo. 66, 385 P.2d 677 (1963).

**The rules of civil procedure do not govern** the procedure and practice in any special statutory proceeding so far as they are inconsistent or in conflict therewith; this section concerning habeas corpus in criminal matters is such special statutory proceeding and its provisions are controlling. *Wright v. Tinsley*, 148 Colo. 258, 365 P.2d 691 (1961).

Because this section is a special statutory proceeding, the rules of civil procedure do not apply insofar as they are inconsistent or in conflict with the provisions of this section. *Evans v. District Court*, 194 Colo. 299, 572 P.2d 811 (1977).

**There is no conflict between C.R.C.P. 98 and this section.** *Evans v. District Court*, 194 Colo. 299, 572 P.2d 811 (1977).

**Neither do rules governing proceedings on error in criminal cases.** Habeas corpus is in the nature of a civil action, hence the rules governing proceedings on error in criminal cases do not apply, and an abstract of the record and assignments of error are not necessary. *Barrett v. People*, 136 Colo. 144, 315 P.2d 192 (1957), overruled on another point, *Stilley v. Tinsley*, 153 Colo. 66, 385 P.2d 677 (1963).

**No class action may be brought.** Although habeas corpus is a civil proceeding, the rules of civil procedure, providing for class actions, do not apply. The very nature of habeas corpus proceedings forbids class actions. *Riley v. City & County of Denver*, 137 Colo. 312, 324 P.2d 790 (1958).

**Rules of civil procedure do govern venue.** Suits seeking relief by habeas corpus being civil in nature, the question of venue is governed by Colorado rules of civil procedure. *Stilley v. Tinsley*, 153 Colo. 66, 385 P.2d 677 (1963).

Habeas corpus being civil in nature, C.R.C.P. 98 governs venue. *Evans v. District Court*, 194 Colo. 299, 572 P.2d 811 (1977).

**Noncompliance with the warrant requirement does not deprive a court of jurisdiction over a habeas corpus petition.**

The warrant requirement is a statutory procedural requirement. Failure to comply with the warrant requirement should not result in summary dismissal for lack of jurisdiction. *Jones v. Williams*, 2019 CO 61, 443 P.3d 56 (overruling *Butler v. Zavaras*, 924 P.2d 1060 (Colo. 1996), *Evans v. District Court*, 572 P.2d 811 (Colo. 1977), *Garrett v. Knight*, 480 P.2d 569 (Colo. 1971), and *McNamara v. People*, 410 P.2d 517 (Colo. 1966)).

**Jurisdictional requirement.** Requirement that petitions for writs of habeas corpus shall be accompanied by a copy of the warrant of commitment is a mandatory requirement and is therefore jurisdictional. Prisoners must comply with the requirement, and the courts may not waive it. *Evans v. District Court*, 194 Colo. 299, 572 P.2d 811 (1977); *Butler v. Zavaras*, 924 P.2d 1060 (Colo. 1996), both overruled in *Jones v. Williams*, 2019 CO 61, 443 P.3d 56.

**Rules of civil procedure apply to habeas corpus actions** when the rules are not in conflict with habeas corpus statutes.

Zaborski v. Dept. of Corr., 812 P.2d 236 (Colo. 1991).

**This act contemplates a less structured and more abbreviated hearing procedure** than that used in other civil proceedings. Under the act, the court shall act in a summary way. Cardiel v. Brittan, 833 P.2d 748 (Colo. 1992).

**Applied** in Gomez v. Colo. State Parole Bd., 470 F. Supp. 778 (D. Colo. 1979); Shea v. Heggie, 624 F.2d 175 (10th Cir. 1980); Beals v. Wilson, 631 P.2d 1181 (Colo. App. 1981); Holder v. Ricketts, 650 P.2d 544 (Colo. 1982); Schumm v. Nelson, 659 P.2d 1389 (Colo. 1983).

## **II. GROUNDS FOR ISSUANCE.**

A. In General.

B. Rights Protected.

A. In General.

**In order to invoke the remedy of habeas corpus, adequate grounds must be alleged.** McKenna v. Tinsley, 141 Colo. 63, 346 P.2d 584 (1959).

**Habeas corpus is a limited remedy in Colorado.** Smith v. Tinsley, 223 F. Supp. 68 (D. Colo. 1963); Martinez v. Tinsley, 241 F. Supp. 730 (D. Colo. 1965).

**In a habeas corpus action by a person convicted of a crime, the sole question for consideration is** whether the petitioner therein was convicted in a court having jurisdiction of his person and of the charge in the information, and the judgment and sentence were within the statutory limitations. Freeman v. Tinsley, 135 Colo.

62, 308 P.2d 220 (1957); McGrath v. Tinsley, 138 Colo. 18, 328 P.2d 579 (1958); Mendez v. Tinsley, 139 Colo. 127, 336 P.2d 706 (1959); Lowe v. People, 139 Colo. 578, 342 P.2d 631 (1959); McKenna v. Tinsley, 141 Colo. 63, 346 P.2d 584 (1959); Medberry v. Patterson, 142 Colo. 180, 350 P.2d 571 (1960); Trueblood v. Tinsley, 148 Colo. 503, 366 P.2d 655 (1961); Kostal v. Tinsley, 152 Colo. 196, 381 P.2d 43 (1963); Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963); Titmus v. Tinsley, 153 Colo. 96, 384 P.2d 728 (1963); Specht v. Tinsley, 153 Colo. 235, 385 P.2d 423 (1963); Smith v. Tinsley, 223 F. Supp. 68 (D. Colo. 1963); King v. Tinsley, 158 Colo. 99, 405 P.2d 689 (1965); Martinez v. Tinsley, 241 F. Supp. 730 (D. Colo. 1965); Shearer v. Patterson, 159 Colo. 319, 411 P.2d 247 (1966).

B. Rights Protected.

**Right to speedy trial is protected by habeas corpus.** The proceeding by habeas corpus is the proper remedy, under the statute of this state, to protect the right of persons charged with the higher class of crimes to a speedy trial, according to law. In re Garvey, 7 Colo. 502, 4 P. 758 (1884); Cummins v. People, 4 Colo. App. 71, 34 P. 734 (1893); Rader v. People, 138 Colo. 397, 334 P.2d 437 (1959).

**Right to speedy trial may now be raised under Crim. P. 35(b).** When the issues before a trial court in a habeas corpus proceeding raise substantive constitutional questions concerning the right to a speedy trial, the issues are within the purview of postconviction remedy, and a petition for habeas corpus would be treated as a motion

under Crim. P. 35(b). *Dodge v. People*, 178 Colo. 71, 495 P.2d 213 (1972).

**Defendant's writ of habeas corpus was properly denied because speedy trial claims should be pursued through C.A.R. 21 petitions and post-conviction remedies under Crim. P. 35.** *Vreeland v. Weaver*, 193 P.3d 836 (Colo. App. 2008).

**Habeas corpus is not the proper remedy to accomplish modification of a sentence.** *Wright v. Tinsley*, 148 Colo. 258, 365 P.2d 691 (1961).

**Or when an arraignment is faulty.** Habeas corpus is not available for an alleged denial of due process occasioned by a faulty arraignment or a coerced plea. *Smith v. Tinsley*, 223 F. Supp. 68 (D. Colo. 1963). See *Specht v. Tinsley*, 153 Colo. 235, 385 P.2d 423 (1963).

**Or for involuntary pleas.** Habeas corpus is not the proper remedy to secure an accused's release from the penitentiary after the imposition of sentence upon a plea of guilty, on the ground that the plea was involuntarily made. *Lowe v. People*, 139 Colo. 578, 342 P.2d 631 (1959).

**Where allegations of a petition for habeas corpus relief go to validity of petitioner's plea of guilty,** they are properly brought under Crim. P. 35(b). *Martinez v. Tinsley*, 158 Colo. 236, 405 P.2d 943 (1965).

**Crim. P. 35 also affords a remedy for an improper sentence.** Crim. P. 35 in no way seeks to impose any conditions on the issuance of habeas corpus writs — it only affords a remedy for those seeking a proper sentence, a remedy which the prisoner may

seek or not seek at his election. *Stilley v. Tinsley*, 153 Colo. 66, 385 P.2d 677 (1963).

**Incarceration in an institution other than that provided by law is void.** Habeas corpus does not lie to obtain release from an erroneous sentence, but a sentence beyond the jurisdiction of the sentencing court, or providing for incarceration in an institution other than that provided by law is void. *Stilley v. Tinsley*, 153 Colo. 66, 385 P.2d 677 (1963).

**Trial judge's discretion as to institution not reviewable by habeas corpus.** Where the sentence of one convicted of a crime to the state reformatory or to the penitentiary rests in the discretion of the trial court, a petition for a writ of habeas corpus is properly denied where the record discloses that the petitioners, who were 18 years of age, had four previous convictions for various offenses and the probation officer recommended sentences to the penitentiary rather than to the state reformatory, and petitioners were so sentenced. *Roy v. Tinsley*, 142 Colo. 241, 350 P.2d 564 (1960).

**An adjudication that an insane person has been restored to reason cannot be had in habeas corpus proceedings.** *Pigg v. Tinsley*, 158 Colo. 160, 405 P.2d 687 (1965).

**Once adjudged sane, a person's imprisonment may be tested by habeas corpus.** The proper method for appellant who was transferred to state penitentiary from state hospital after acquittal on grounds of insanity to test the constitutionality of his imprisonment is by a habeas corpus proceeding either in the state or federal

courts. *Franklin v. Meredith*, 386 F.2d 958 (10th Cir. 1967).

**A person on parole can resort to the remedy of habeas corpus where parole officers are not following the statutory mandate with regard to revocation proceedings.** *Schooley v. Wilson*, 150 Colo. 483, 374 P.2d 353 (1962).

**When parolee is actually, instead of constructively, imprisoned.** Parolee's actual imprisonment at a time when he should have been only constructively imprisoned constituted an unlawful restraint of his liberty. *Schooley v. Wilson*, 150 Colo. 483, 374 P.2d 353 (1962).

**Prisoner extradited to Colorado cannot contest extradition by this writ.** Detention under extradition and detention following conviction of a crime relate to different procedures, and an illegal extradition is impotent to endanger a jurisdictional question arising out of the criminal charge. *Lowe v. People*, 139 Colo. 578, 342 P.2d 631 (1959).

**Sheriff's holding of fugitive prior to extradition to another state may.** A habeas corpus petitioner charged as an out-of-state fugitive, not the sheriff-respondent, has the burden of going forward with clear and convincing evidence to prove that he was not in the demanding state at the time of the crime or that he is not the individual named in the extradition papers. *Ede v. Bray*, 178 Colo. 99, 495 P.2d 1139 (1972).

**Where the record does not show that the petitioner for writ of habeas corpus is charged** with any offense under the laws of

the demanding state, a warrant for arrest issued pursuant to a demand for extradition is without authority of law. *Buhler v. People*, 151 Colo. 345, 377 P.2d 748 (1963).

**The issuance of a governor's warrant is prima facie evidence** that a habeas corpus petitioner is substantially charged with a crime and is a fugitive from justice. *Ede v. Bray*, 178 Colo. 99, 495 P.2d 1139 (1972).

**Remedy for improper treatment in mental hospital.** Writ of habeas corpus is a proper remedy for persons committed to a state hospital after a plea of not guilty by reason of insanity to challenge a lack of treatment and to obtain a remedy addressing appropriate treatment short of immediate release. *Marshall v. Kort*, 690 P.2d 219 (Colo. 1984).

**Denial of free transcript is not grounds for issuance of writ.** The denial of a request for a free transcript, even if timely made, affords no basis for the issuance of a writ of habeas corpus. *McKenna v. Tinsley*, 141 Colo. 63, 346 P.2d 584 (1959); *Medberry v. Patterson*, 142 Colo. 180, 350 P.2d 571 (1960).

**Habeas corpus is not the correct vehicle to allege invasion of attorney-client relationship** by electronic eavesdropping. It should be brought to the attention of the trial court either by a pre-trial motion to suppress or at the trial when the prosecution offers evidence which the defendant claims is "tainted", because of the manner in which it was obtained by the prosecution. *Ferrell v. Vogt*, 161 Colo. 549, 423 P.2d 844 (1967).



**Writ of habeas corpus is proper remedy** for claim that defendant is being unconstitutionally denied the opportunity to be considered for parole as other postconviction relief for such claim is not available. *Naranjo v. Johnson*, 770 P.2d 784 (Colo. 1984); *White v. People*, 866 P.2d 1371 (Colo. 1994).

**Inquiry undertaken in a habeas corpus proceeding is limited to a determination of the validity of the petitioner's confinement at the time of the hearing.** *White v. People*, 866 P.2d 1371 (Colo. 1994); *Brant v. Fielder*, 883 P.2d 17 (Colo. 1994).

**Any restriction in excess of legal restraint that substantially infringes on basic rights** may be remedied through habeas corpus, even if total discharge does not result. *Naranjo v. Johnson*, 770 P.2d 784 (Colo. 1989).

**Habeas corpus action will not lie with respect to an inmate's department of corrections security level** because such classification does not involve a constitutional right. *Reed v. People*, 745 P.2d 235 (Colo. 1987).

**Habeas corpus relief is not available for review of loss of good-time credits resulting from prison disciplinary proceeding** because other remedies are available, and the requested relief would have no current effect on petitioner's confinement. *Kodama v. Johnson*, 786 P.2d 417 (Colo. 1990).

**The court is precluded from granting a writ of habeas corpus where another legal**

**remedy exists.** Where the prisoner is subject to the jurisdiction of the Wisconsin authorities, but is in Colorado under the provisions of the Interstate Corrections Compact, a legal avenue exists for him to be returned to the sending state. *Brant v. Fielder*, 883 P.2d 17 (Colo. 1994).

**Habeas corpus petition should be dismissed without a hearing** unless factual allegations in the petition make a prima facie showing of invalid confinement or demonstrate a serious infringement of a fundamental constitutional right. *White v. People*, 866 P.2d 1371 (Colo. 1994).

**Habeas corpus petition is properly dismissed** where petitioner fails to allege that he is entitled to discharge or that a fundamental constitutional right was violated. *Deason v. Kautzky*, 786 P.2d 420 (Colo. 1990).

Habeas corpus petition is properly dismissed where petitioner has not alleged he is entitled to immediate release but instead alleges he has been denied credit for earned good time which would grant him an earlier parole date. *Pearson v. Diesslan*, 848 P.2d 364 (Colo. 1993); *Badger v. Diesslan*, 850 P.2d 149 (Colo. 1993); *Rather v. Colo. State Bd. of Parole*, 856 P.2d 860 (Colo. 1993).

Habeas corpus petition is properly dismissed because allegation that department denied prisoner the use of his color television does not allege violation of a fundamental constitutional right. *Brant v. Fielder*, 883 P.2d 17 (Colo. 1994).

**Habeas corpus petition properly dismissed as premature** when inmate could not show he was entitled to release at time petition was filed. *Thorson v. Dept. of Corr.*, 801 P.2d 540 (Colo. 1990).

**When the municipal court properly had jurisdiction** over both the subject matter and the defendant, the failure of the court to advise the defendant of his right to counsel during a guilty plea hearing was not subject to correction by habeas corpus. *Mulkey v. Sullivan*, 753 P.2d 1226 (Colo. 1988).

**Petition under this section moot** where petitioner was provided a parole revocation hearing and was represented by counsel prior to the scheduled hearing on the petition made pursuant to this section. *Blea v. Colo. State Bd. of Parole*, 779 P.2d 1353 (Colo. 1989).

**A prisoner mistakenly released before serving a complete sentence** is not entitled to have credited against his sentence the time he subsequently served in another state for convictions unrelated to the original sentence because reincarceration would not be inconsistent with fundamental principles of liberty and justice in that the prisoner's conduct after being mistakenly released was not such as to reestablish himself in the community, but to leave the state at his first opportunity and be arrested and convicted of charges in another jurisdiction. *Brown v. Brittain*, 773 P.2d 570 (Colo. 1989).

**Writ of habeas corpus properly denied as inmate's right to payment of postage fees by the state** for mailing costs associated with litigation is not a

fundamental constitutional right protected by habeas corpus proceeding. *Reece v. Johnson*, 793 P.2d 1152 (Colo. 1990).

### **III. DUTIES OF COURT.**

A. In General.

B. Action on Petition.

C. Jurisdiction.

A. In General.

**A habeas corpus writ is an extraordinary writ** which may be procured, not as a matter of right, but in the discretion of the court. *Stilley v. Tinsley*, 153 Colo. 66, 385 P.2d 677 (1963).

**Writ not necessarily issued without probable cause.** The writ of habeas corpus is a writ of right, but not necessarily a writ issuable without a showing of probable cause. *Stilley v. Tinsley*, 153 Colo. 66, 385 P.2d 677 (1963).

**This section, prescribing the duty of the court upon application for a writ of habeas corpus, is mandatory,** and to impose other or additional conditions on one seeking the writ is to do that which the constitution and the statute have said shall not be done and amounts pro tanto to a suspension of the writ. *Stilley v. Tinsley*, 153 Colo. 66, 385 P.2d 677 (1963).

**Petitions for habeas corpus must be treated as such and granted or denied.** *Stilley v. Tinsley*, 153 Colo. 66, 385 P.2d 677 (1963).

**Prohibition does not lie, in the supreme court or district courts, to prevent courts having jurisdiction of habeas corpus** from

proceeding to grant or deny the relief requested. *Stilley v. Tinsley*, 153 Colo. 66, 385 P.2d 677 (1963).

**A court has no power to stay proceedings upon an order** directing the unconditional discharge of a prisoner upon a writ of habeas corpus. *Geer v. Alaniz*, 137 Colo. 432, 326 P.2d 71 (1958).

**Petition for a writ of habeas corpus can only be considered after a final judgment.** In a criminal prosecution where the defendant stands unarraigned and untried, a petition for a writ of habeas corpus filed in such action and relating only to preliminary proceedings cannot be considered by the supreme court in the absence of a final judgment. *Oates v. People*, 136 Colo. 208, 315 P.2d 196 (1957).

**Courts will not ordinarily entertain successive applications for writs of habeas corpus** based upon the same grounds and the same facts, or on other grounds or facts which existed when the first application was made, whether or not they were presented at that time. *Marshall v. Geer*, 140 Colo. 305, 344 P.2d 440 (1959).

**The judgment of guilt and the sentence imposed on that judgment are presumed to be valid** until the contrary is made to appear. *Lowe v. People*, 139 Colo. 578, 342 P.2d 631 (1959); *Medberry v. Patterson*, 142 Colo. 180, 350 P.2d 571 (1960); *Bates v. Tinsley*, 143 Colo. 390, 353 P.2d 76 (1960).

**Regulatory provisions for parole contemplate grant of parole by parole board** and thereafter either rescission or suspension is necessary to curtail

effectiveness prior to release of prisoner. Although parole agreement is anticipated, it is not a condition to grant of parole but a condition to release on parole. Regulations do not suggest that grant of parole not effective until prisoner actually released from custody. Prisoner granted parole to a county detainer and serving consecutive sentence on another conviction made prima facie case for writ of habeas corpus relief when he alleged that parole had not been suspended or rescinded. *Cardiel v. Brittan*, 833 P.2d 748 (Colo. 1992); *Van Riper v. Sheriff of Jefferson County*, 868 P.2d 395 (Colo. 1994).

#### B. Action on Petition.

**Where a petition on its face is insufficient, a court is correct in denying it.** *McGrath v. Tinsley*, 138 Colo. 18, 328 P.2d 579 (1958); *Valentine v. Tinsley*, 143 Colo. 19, 351 P.2d 825 (1960); *Furlow v. Tinsley*, 151 Colo. 280, 377 P.2d 132 (1962); *Bitner v. Tinsley*, 151 Colo. 367, 378 P.2d 203 (1963); *Titmus v. Tinsley*, 153 Colo. 96, 384 P.2d 728 (1963); *Minor v. Tinsley*, 154 Colo. 249, 389 P.2d 850 (1964); *Bizup v. Tinsley*, 155 Colo. 131, 393 P.2d 556 (1964); *Coleman v. Tinsley*, 155 Colo. 245, 393 P.2d 739 (1964); *King v. Tinsley*, 158 Colo. 99, 405 P.2d 689 (1965).

**This is not a denial of due process or equal protection.** Denial of a petition for a writ of habeas corpus, which shows upon its face that petitioner is not entitled to any relief, does not deny him due process or equal protection of the law. *Hatch v. Tinsley*, 143 Colo. 170, 352 P.2d 670 (1960); *Bitner*

v. Tinsley, 151 Colo. 367, 378 P.2d 203 (1963).

**Petition for writ must be discharged if it is not accompanied by the warrant of commitment.** Failure to follow the provisions of this section, requiring that a petition for a writ of habeas corpus in any supposed criminal matter shall be accompanied by a copy of the warrant of commitment, precludes review of judgment denying petition on writ of error, since the supreme court has nothing but allegations of pleading from which to determine specific convictions upon which commitment was made. Wright v. Tinsley, 148 Colo. 258, 365 P.2d 691 (1961); Garrett v. Knight, 173 Colo. 419, 480 P.2d 569 (1971).

**Denial of petition for writ of habeas corpus held correct.** People v. Jackson, 180 Colo. 135, 502 P.2d 1106 (1972); Reece v. Johnson, 793 P.2d 1152 (Colo. 1990).

**Facts establishing prima facie case entitle petitioner to hearing.** Where a petition for a writ of habeas corpus alleged that the petitioner entered his plea of guilty to an information charging him with obtaining moneys by means and use of the confidence game, under the mistaken belief that the charge in the information was proper and correct, whereas in fact all of the acts, deeds, activities, intentions, and actions of petitioner were sufficient at law only to make him guilty of a misdemeanor and service of sentence was begun but was vacated and petitioner discharged by court order, but petitioner was again imprisoned by the warden against his will, such facts were sufficient to establish a prima facie

case entitling petitioner to a hearing. People ex rel. Metzger v. District Court, 121 Colo. 141, 215 P.2d 327 (1949); Espinoza v. Tinsley, 154 Colo. 347, 390 P.2d 941 (1964); Osborne v. Van Cleave, 166 Colo. 398, 443 P.2d 988 (1968).

**District court incorrectly decided that petitioner had not established a prima facie case** where the petitioner presented a notice of parole board action granting parole and no evidence was presented that parole had been rescinded or suspended, as required by parole board regulations. The motion to dismiss should have been denied. Cardiel v. Brittan, 833 P.2d 748 (Colo. 1992).

**If no prima facie case is established on face of petition, there is no right to a hearing.** Reed v. People, 745 P.2d 235 (Colo. 1987).

#### C. Jurisdiction.

**District courts have original jurisdiction** in habeas corpus proceedings. Ex parte Arakawa, 78 Colo. 193, 240 P. 940 (1925); Petition of Phillips, 93 Colo. 203, 24 P.2d 755 (1933); Rogers v. Best, 115 Colo. 245, 171 P.2d 769 (1946); Hart v. Best, 119 Colo. 569, 205 P.2d 787 (1949); Stilley v. Tinsley, 156 Colo. 66, 385 P.2d 677 (1963).

**Jurisdiction conferred by this section and constitution.** District courts have jurisdiction in habeas corpus proceedings under this section as well as under the provisions of § 11 of art. VI, Colo. Const. People ex rel. Metzger v. District Court, 121 Colo. 141, 215 P.2d 327 (1949).

**This section uses the plural "district courts", without any limitation.** To say that any district court is without jurisdiction to determine questions properly presented by petitions for habeas corpus runs head-on into and does violence to the above legislative pronouncement. *Stilley v. Tinsley*, 153 Colo. 66, 385 P.2d 677 (1963).

**Applicant may seek the writ in the most convenient forum.** This supreme court accepts this section at its face value and so construes it as to make applications for the writ available in the forum most convenient for the applicant, and recognize no restrictions attempted to be imposed upon the right of one to choose any forum provided by statute for asserting his rights and the protection afforded by the constitution and statutes. *Stilley v. Tinsley*, 153 Colo. 66, 385 P.2d 677 (1963).

**Petitions should be addressed to the district court, not an individual judge.** Except in vacation, petitions should be addressed to the district court, not to an individual judge, because the power to act is the court's, not the man's. *People ex rel. Wyse v. District Court*, 180 Colo. 88, 503 P.2d 154 (1972).

**Jurisdiction will be presumed to issue the writ.** By this section the district courts and the judges thereof are given general jurisdiction to issue the writ of habeas corpus, and the jurisdiction to issue the writ in a particular case will be presumed in the absence of a showing to the contrary. *People v. District Court*, 6 Colo. 534 (1883); *Atchison, T. & S. F. R. R. v. Nicholls*, 8 Colo. 188, 6 P. 512 (1885); *Cooper v. People*

*ex rel. Wyatt*, 13 Colo. 337, 22 P. 790 (1889).

**The supreme court may also assume original jurisdiction** in habeas corpus cases, but the writ in such a case may not be used as a writ of error. *People ex rel. Burchinell v. District Court*, 22 Colo. 422, 45 P. 402 (1896); *In re Popejoy*, 26 Colo. 32, 55 P. 1083 (1899); *Martin v. District Court*, 37 Colo. 110, 86 P. 82 (1906); *Ex parte Stidger*, 37 Colo. 407, 86 P. 219 (1906); *Ex parte Arakawa*, 78 Colo. 193, 240 P. 940 (1925); *Hart v. Best*, 119 Colo. 569, 205 P.2d 787 (1949).

**The justices of the supreme court acting singly or out of term, are without constitutional jurisdiction** and authority to issue the writ of habeas corpus or to hear or determine the matters arising thereon, despite the authority attempted to be given by this section. *In re Garvey*, 7 Colo. 502, 4 P. 758 (1884).

**Writ of habeas corpus may not be prosecuted in a district court to challenge an order of a different district court in another judicial district** concerning presentence confinement credit. *Pipkin v. Brittain*, 713 P.2d 1358 (Colo. App. 1985).

**A court may correct an excessive sentence.** Where a judgment is merely excessive and the court which pronounces it is one of general jurisdiction, it is not void ab initio because of the excess, but is good so far as the power of the court extends, and is invalid only as to the excess, and therefore a person in custody under such sentence cannot be discharged on habeas corpus until he has suffered or performed so much of it

as it is within the power of the court to impose. *Stilley v. Tinsley*, 153 Colo. 66, 385 P.2d 677 (1963).

**If an illegal sentence has been pronounced, the court has power to substitute a legal sentence,** and this power is not impaired by the expiration of the term of court, during which the judgment was pronounced. *Stilley v. Tinsley*, 153 Colo. 66, 385 P.2d 677 (1963).

**An improper mittimus will be corrected, but prisoner will not be discharged.** Where upon petitioner's own showing, the only relief to which he was entitled was a correction of the wording of the mittimus under which he was confined to conform to the judgment, the issuance of a new mittimus and the denial of discharge on a writ of habeas corpus was proper. *Sexton v. People*, 143 Colo. 35, 351 P.2d 842 (1960); *Bernard v. Tinsley*, 144 Colo. 244, 355 P.2d 1098 (1960).

**Unless the mittimus is void.** Where release on habeas corpus is sought on the ground that the sentence imposed on a petitioner is void, and the court determines that mittimus under which the warden of a prison held the petitioner is void, the court's only duty is to order the petitioner released from the custody of the warden. *Stilley v. Tinsley*, 153 Colo. 66, 385 P.2d 677 (1963).

**Or a commutation superceded the mittimus.** The alleged commutation, if true, may entitle petitioner to some relief. The commutation superceded the mittimus issued upon the original conviction and reduced the petitioner's minimum sentence. Unless it be shown by some evidence in a

hearing that the commutation of the governor was revoked, the petitioner could not be required by the warden or the parole board, or anyone else, to resume serving the five year minimum sentence originally imposed by the court. They are not apparent on the face of the petition. It may be that, had a hearing been held and these records produced, the court would have been justified in discharging the writ. The error committed is the summary refusal by the court to issue the writ or grant a hearing when the allegations on the face of the petition indicated recitals that entitled the petitioner to the writ forthwith. *Sharp v. Tinsley*, 147 Colo. 84, 362 P.2d 859 (1961).

**Petitioner may seek federal habeas corpus when all state remedies are exhausted.** Where the Colorado supreme court had reached a conclusion on the substantive issue of the legality of a search and seizure, this portion of the decision was only dictum and therefore not binding upon a trial court where it is stated in such a way that under ordinary circumstances, a trial court would feel bound by the decision, and would therefore deny a motion made pursuant to Crim. P. 35(b) on the grounds that the Colorado supreme court had already decided the question; where habeas corpus was unavailable to the petitioner, for all practical purposes the petitioner has exhausted his state remedies and a petition for federal habeas corpus was properly before the district court. *Peters v. Dillon*, 227 F. Supp. 487 (D. Colo. 1964), *aff'd* on other grounds, 341 F.2d 337 (10th Cir. 1965).

**But, not so long as trial court had jurisdiction over the crime, defendant, and sentence.** Habeas corpus will never lie to afford relief from a conviction obtained at a trial at which any of the defendant's federal or state constitutional procedural rights have been violated, so long as the trial court in question had jurisdiction over the crime and over the defendant and imposed a sentence within statutory limits. No matter how unfair the trial, no matter what constitutional rights were violated, habeas corpus cannot be used to remedy the wrong. *Peters v. Dillon*, 227 F. Supp. 487 (D. Colo. 1964), *aff'd* on other grounds, 341 F.2d 337 (10th Cir. 1965).

**Petitions dismissed for failure to exhaust state judicial remedies.** Petitions

for federal writ of habeas corpus were dismissed on the grounds that the petitioner had failed to exhaust available state judicial remedies which could provide the relief he sought. *Peterson v. Ricketts*, 495 F. Supp. 312 (D. Colo. 1980).

**The habeas corpus statute applies only to persons, and not to nonhuman animals,** no matter how cognitively, psychologically, or socially sophisticated they may be. *NRP v. Cheyenne Mountain Zoological Soc'y*, 2025 CO 3, 562 P.3d 63.

Because an elephant is not a person, the elephants confined in a state zoo do not have standing to bring a habeas corpus claim under § 13-45-102. *NRP v. Cheyenne Mountain Zoological Soc'y*, 2025 CO 3, 562 P.3d 63.

### **13-45-102. Petition for relief - civil cases.**

When any person not being committed or detained for any criminal or supposed criminal matter is confined or restrained of his liberty under any color or pretense whatever, he may proceed by appropriate action as prescribed by the Colorado rules of civil procedure in the nature of habeas corpus which petition shall be in writing, signed by the party or some person on his behalf, setting forth the facts concerning his imprisonment and wherein the illegality of such imprisonment consists, and in whose custody he is detained. The petition shall be verified by the oath or affirmation of the party applying or some other person on his behalf. If the confinement or restraint is by virtue of any judicial process or order, a copy thereof shall be annexed thereto or an affidavit made that the same has been demanded and refused. The same proceedings shall thereupon be had in all respects as are directed in section 13-45-101.

**Source:** R.S. 353, § 2. G.L. § 1324. G.S. § 1610. **R.S. 08:** § 2918. **C.L.** § 6487. **CSA:** C. 77, § 2. **CRS 53:** § 65-1-2. **C.R.S. 1963:** § 65-1-2.

## **ANNOTATION**

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**Law reviews.** For article, "One Year Review of Criminal Law and Procedure", see 36 Dicta 34 (1959). For article, "Recovering the Parentally Kidnapped Child", see 12 Colo. Law. 1798 (1983).

**The purpose of habeas corpus proceedings is to determine whether a person is unlawfully restrained** of his liberty. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

**A juvenile court has exclusive jurisdiction of adoption matters, but such jurisdiction has nothing to do with habeas corpus** proceedings involving unlawful restraint. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958).

**Strict technicalities of habeas corpus that are applied** in criminal case have no application in custodial questions. Fackerell v. District Court, 133 Colo. 370, 295 P.2d 682 (1956).

**Habeas corpus is a proper remedy where a mother is not a party to an adoption.** Fackerell v. District Court, 133 Colo. 370, 295 P.2d 682 (1956).

**Mother may proceed by habeas corpus to regain custody of children from guardians.** Where a full hearing was accorded guardians in a habeas corpus proceeding by a mother to regain custody of her child from guardians, as such, this did not cure the infirmity which resulted from the failure of the juvenile court to give guardians notice of mother's prior petition to dismiss guardianship proceedings. Woodson v. Ingram, 173 Colo. 65, 477 P.2d 455 (1970).

**Stranger may not utilize writ to get children from parents.** Habeas corpus is an available remedy to adjudicate custody of children under certain circumstances. But, a stranger lacks standing to maintain habeas corpus looking to an award of custody as against the parents of the child who are presumed to be entitled to the custody. Lopez v. Smith, 146 Colo. 180, 360 P.2d 967 (1961).

**One who seeks custody through habeas corpus must show a prima facie right to custody.** The habeas corpus petition alleges abandonment of the child by the parents. It seeks to establish a right based on past custody in fact although admittedly not in law. In the absence of a right to custody based on an adjudication decreeing adoption on one of the statutory grounds or on a finding of dependency under that statute, a third person may not maintain a habeas corpus action seeking an award of custody of a child as against the child's natural parents upon an allegation of prior abandonment by the parents. Lopez v. Smith, 146 Colo. 180, 360 P.2d 967 (1961).

**A district court in habeas corpus proceedings has jurisdiction to determine whether a child is being unlawfully restrained by the grandparents.** Such determination cannot in any manner affect the outcome of any adoption proceedings. An adjudication in the habeas corpus proceedings cannot be considered as an adjudication of abandonment as defined in the adoption statute or as used in the dependent and neglected children statute, for two reasons: (1) The question of abandonment is not an issue; (2) the district



court has no jurisdiction over abandonment. *Johnson v. Black*, 137 Colo. 119, 322 P.2d 99 (1958).

**Habeas corpus may be utilized to determine custody of child originally domiciled in another state in an emergency.** In the ordinary case, absent an emergency situation affecting the immediate needs and welfare of the child, an award of custody of a minor child domiciled in another state, made by a court having jurisdiction to do so, will be recognized under the long established custom of comity among the several states. However, under the doctrine of *parens patriae*, where an emergency exists concerning the immediate needs and welfare of a child within this state, our courts may, in such circumstances, enter custodial orders for the protection of such child, notwithstanding the child's domicile elsewhere and the existence of otherwise valid orders to the contrary theretofore entered in a sister state having jurisdiction of the parties. Such power may

be exercised not only in ordinary custody proceedings, but also in habeas corpus proceedings as were pending in the present controversy. *Wilson v. Wilson*, 172 Colo. 566, 474 P.2d 789 (1970).

**Colorado's habeas corpus statute applies only to persons, and not to nonhuman animals,** no matter how cognitively, psychologically, or socially sophisticated they may be. The general assembly's use of the word "person" demonstrates its intent to limit the reach of this section to human beings. *NRP v. Cheyenne Mountain Zoological Soc'y*, 2025 CO 3, 562 P.3d 63.

Because an elephant is not a person, the elephants confined in a Colorado zoo do not have standing to bring a habeas corpus claim. *NRP v. Cheyenne Mountain Zoological Soc'y*, 2025 CO 3, 562 P.3d 63.

**Applied** in *Nelson v. District Court*, 186 Colo. 381, 527 P.2d 811 (1974).

### **13-45-103. Hearing - pleadings - discharge.**

(1) Upon the return of the writ of habeas corpus, a day shall be set for the hearing of the cause of imprisonment or detainer not exceeding five days thereafter, unless the prisoner requests a longer time. The prisoner may deny any of the material facts set forth in the return or may allege any fact to show either that the imprisonment or detention is unlawful or that he is then entitled to his discharge, which allegations or denials shall be made on oath. The return may be amended by leave of the court, before or after the same is filed as also may all suggestions made against it, that thereby all material facts may be ascertained. The court shall proceed in a summary way to settle the facts by hearing the testimony and arguments of all parties interested civilly, if there are any, as well as of the prisoner and the person who holds him in custody and shall dispose of the prisoner as the case may require.

(2) If it appears that the prisoner is in custody by virtue of process from any court legally constituted, he can be discharged only for some of the following causes:

- (a) Where the court has exceeded the limit of its jurisdiction, either as to the matter, place, sum, or person;
  - (b) Where, though the original imprisonment was lawful, yet by some act, omission, or event which has subsequently taken place, the party has become entitled to his discharge;
  - (c) Where the process is defective in some substantial form required by law;
  - (d) Where the process, though in proper form, has been issued in a case or under circumstances where the law does not allow process or orders for imprisonment or arrest to issue;
  - (e) Where, although in proper form, the process has been issued or executed by a person either unauthorized to issue or execute the same or where the person having the custody of the prisoner under such process is not the person empowered by law to detain him;
  - (f) Where the process appears to have been obtained by false pretense or bribery;
  - (g) Where there is no general law, nor any judgment, order, or decree of a court to authorize the process, if in a civil suit, nor any conviction if in a criminal proceeding.
- (3) No court on the return of a habeas corpus shall inquire into the legality or justice of a judgment or decree of a court legally constituted, in any other manner. In all cases where the imprisonment is for a criminal or supposed criminal matter, if it appears to the court that there is sufficient legal cause for the commitment of the prisoner although such commitment may have been informally made, or without due authority, or the process may have been executed by a person not authorized, the court shall make a new commitment, in proper form and directed to the proper officer, or admit the party to bail if the case is bailable.

**Source:** R.S. p. 353, § 3. G.L. § 1325. G.S. § 1611. R.S. 08: § 2919. C.L. § 6488. CSA: C. 77, § 3. CRS 53: § 65-1-3. C.R.S. 1963: § 65-1-3.

#### ANNOTATION

**Law reviews.** For article, "Post-Convention Remedies in Colorado Criminal Cases", see 31 Rocky Mt. L. Rev. 249 (1951). For note, "Habeas Corpus in Colorado for the Convicted Criminal", see 30 Rocky Mt. L. Rev. 145 (1958).

**To warrant a habeas corpus hearing the court must have jurisdiction** of the respondent and the person allegedly suffering restraint. To satisfy this requirement it usually is necessary that the alleged restraint shall be exercised upon such person within the state. Nevertheless, if it appears that respondent is able to produce

such person, it is generally considered that the writ may issue, notwithstanding he is not within the state. *Ex parte Emerson*, 107 Colo. 83, 108 P.2d 866 (1940).

**In a habeas corpus proceeding by a person convicted of a crime, the sole question for consideration is** whether the petitioner was convicted in a court having jurisdiction over his person of the charge in the information and whether judgment and sentence were within the statutory limitations. *In re Garvey*, 7 Colo. 384, 3 P. 903 (1884); *Petition of Phillips*, 93 Colo. 203, 24 P.2d 755 (1933); *People ex rel. Metzger v. District Court*, 121 Colo. 141, 215 P.2d 327 (1949); *Farrell v. District Court*, 135 Colo. 329, 311 P.2d 410 (1957); *Stilley v. Tinsley*, 153 Colo. 66, 385 P.2d 677 (1963); *Ruark v. Tinsley*, 158 Colo. 565, 408 P.2d 969 (1965); *Henry v. Tinsley*, 344 F.2d 109 (10th Cir. 1965); *People ex rel. Patterson v. District Court*, 157 Colo. 69, 401 P.2d 88 (1965); *Breckenridge v. Patterson*, 374 F.2d 857 (10th Cir. 1967); *De Baca v. Trujillo*, 167 Colo. 311, 447 P.2d 533 (1968).

**In habeas corpus proceedings, judicial inquiry generally is limited** to an investigation of the validity of the petitioner's confinement at the time of the hearing. Where petitioner alleged only that his place of confinement should be altered, rather than that the particular circumstances of his place of confinement deprived him of constitutionally protected rights, the petitioner's request for habeas corpus relief was properly dismissed. *White v. Ricketts*, 684 P.2d 239 (Colo. 1984).

**A writ of habeas corpus will not issue to enable the supreme court to review a judgment that is merely irregular or erroneous.** It is only where there has been no conviction, or, what is the same thing, a conviction that is wholly void, and not where there has been an erroneous conviction before a competent tribunal, that the prisoner may be released on habeas corpus under this section. *Ex parte Farnham*, 3 Colo. 545 (1877).

**There is a distinction between a void and erroneous judgment,** and where the court has jurisdiction of the subject matter and of the person, its judgment will not be void; at most, it is erroneous, in which case it can be corrected by the court which pronounced it or by the supreme court. In a collateral habeas corpus proceeding the validity of the judgment cannot be questioned. *Hart v. Best*, 119 Colo. 569, 205 P.2d 787 (1949).

**Hearing is required.** Ordinarily, there can be no doubt that under this section where the person allegedly restrained has challenged the truth of the officer's return on its face, the court must settle the facts by hearing the testimony and arguments and then dispose of the prisoner as the case may require. *Ex parte Emerson*, 107 Colo. 83, 108 P.2d 866 (1940).

**Final determination is based on hearing.** Final determination of a habeas corpus proceeding is not to be had on the petition. It can only be had upon the answer and return to the writ. *Minor v. Tinsley*, 154 Colo. 249, 389 P.2d 850 (1964).

**Continuance not in interest of petitioner improperly granted.** The trial court improperly continued the hearing on the habeas corpus petition beyond the five-day statutory time limit. A child could not be said to have requested the continuance by filing a custody petition through his mother where the legal custodian of the child by habeas corpus seeks expeditious enforcement of the custody order, while the mother by a custody proceeding seeks a determination concerning the child's permanent custody. A continuance in the habeas corpus proceeding entirely defeats the purpose for which the custodian and the child pursued that course of action — immediate restoration of the child to his legal custodian. *Nelson v. District Court*, 186 Colo. 381, 527 P.2d 811 (1974).

**In habeas corpus proceeding, burden rested upon petitioner to allege facts entitling him to relief.** *Pigg v. Tinsley*, 158 Colo. 160, 405 P.2d 687 (1965).

**Petitioner may have right to habeas corpus due to some happening after commitment.** This section provides that a prisoner can be discharged where though the original imprisonment was lawful, yet by some act, omission or event, which has subsequently taken place, the party has become entitled to his discharge. *Kostal v. Tinsley*, 152 Colo. 196, 381 P.2d 43 (1963).

**Such as prison board forfeiting "good time" credit.** Subsection (2) is an authorization to test the legality of the prison board proceedings in the state courts whereby good time credits were forfeited by the prison board following the return of the

appellant to prison after an escape. *Henry v. Patterson*, 363 F.2d 443 (10th Cir. 1966).

**Formal defects in information will not entitle prisoner to discharge.** The omission from a criminal information, otherwise above exception, of the concluding phrase "and against the peace and dignity of the same", goes to matter of form, and in no degree impairs the jurisdiction of the court and one convicted upon such information will not be discharged on habeas corpus. *Chemgas v. Tynan*, 51 Colo. 35, 116 P. 1045 (1911).

**Satisfaction of judgment entitles petitioner to release.** A petition to have the trial court determine that he had in fact satisfied a valid judgment of the court and was therefore entitled to release from the penitentiary comes within the provisions of writ of habeas corpus. *Saiz v. People*, 156 Colo. 43, 396 P.2d 963 (1964).

**Writ improperly discharged.** Although the district court properly proceeded in a summary way to settle the petitioner's request for release from the custody of the department of corrections on the basis that the petitioner fully served his sentences, the court improperly discharged the writ. The district court incorrectly decided that petitioner had not established a prima facie case where the petitioner presented a notice of parole board action granting parole and no evidence was presented that parole had been rescinded or suspended, as required by parole board regulations. The motion to dismiss should have been denied. *Cardiel v. Brittan*, 833 P.2d 748 (Colo. 1992).

**Writ of habeas corpus properly denied** as prisoners do not have any constitutional right to a particular classification level within a correctional system, and the department of corrections' classification of petitioner did not impermissibly invade any retained liberty interest. *Andretti v. Johnson*, 779 P.2d 382 (Colo. 1989).

**Writ of habeas corpus properly denied as inmate's right to payment of postage fees by the state** for mailing costs associated with litigation is not fundamental constitutional right protected by habeas

corpus proceeding. *Reece v. Johnson*, 793 P.2d 1152 (Colo. 1990).

**In using the telephone as the transmission mechanism for hearing the parties' legal theories**, the court did not abuse its discretion as to the manner of a hearing under this section. *Spoto v. Colo. State Dept. of Corr.*, 883 P.2d 11 (Colo. 1994).

**Applied** in *Beverly v. Davis*, 648 P.2d 621 (Colo. 1982); *Schumm v. Nelson*, 659 P.2d 1389 (Colo. 1983).

#### **13-45-104. Witnesses - duty of sheriff.**

When a habeas corpus is issued to bring the body of any prisoner committed as aforesaid, unless the court issuing the same deems it wholly unnecessary and useless, the court shall issue a subpoena to the sheriff of the county where said person is confined, commanding him to summon the witnesses therein named to appear before the court at the time and place where such habeas corpus is returnable. It is the duty of the sheriff to serve such subpoena, if it is possible, in time to enable such witnesses to attend. It is the duty of the witnesses thus served with said subpoena to attend and give evidence before the court issuing the same on pain of being deemed guilty of a contempt of court and proceeded against accordingly by said court.

**Source:** R.S. p. 253, § 243. G.L. § 848. G.S. § 989. R.S. 08: § 2920. C.L. § 6489. CSA: C. 77, § 4. CRS 53: § 65-1-4. C.R.S. 1963: § 65-1-4.

#### **13-45-105. Court to examine witnesses.**

On the hearing of any habeas corpus, it is the duty of the court who hears the same to examine the witnesses aforesaid, and such other witnesses as the prisoner may request, touching any offense named in the warrant of commitment whether or not said offense is technically set out in the commitment.

**Source:** R.S. p. 254, § 244. G.L. § 849. G.S. § 990. R.S. 08: § 2921. C.L. § 6490. CSA: C. 77, § 5. CRS 53: § 65-1-5. C.R.S. 1963: § 65-1-5.

### **13-45-106. Bail - recognizance - binding witness.**

(1) When any person is admitted to bail on habeas corpus, he shall enter into recognizance with one or more securities in such sum as the court directs, having regard to the circumstances of the prisoner and the nature of the offense, conditioned upon his appearance at the district court held in and for the county where the offense was committed or where the same is to be tried. Where any court admits to bail or remands any prisoner brought before it on any writ of habeas corpus, it is the duty of the court to bind all such persons who declare anything material to prove the offense with which the prisoner is charged by recognizance to appear at the proper court having cognizance of the offense, upon a date certain, to give evidence touching the offense and not to depart the court without leave.

(2) Repealed.

**Source:** R.S. p. 354, § 4. G.L. § 1326. G.S. § 1612. R.S. 08: § 2922. C.L. § 6491. CSA: C. 77, § 6. CRS 53: § 65-1-6. C.R.S. 1963: § 65-1-6. L. 2021: (2)(b) added by revision, (SB 21-271), ch. 462, pp. 3158, 3331, §§ 158, 803.

**Editor's note:** Subsection (2)(b) provided for the repeal of subsection (2), effective March 1, 2022. (See L. 2021, pp. 3158, 3331.)

### **ANNOTATION**

**Admission to bail pending proceedings for review of an order or judgment in a habeas corpus proceeding is largely statutory.** Thus, apart from applicable statute authorizing admission to bail in such a case, where the habeas corpus proceedings were dismissed and the prisoner remanded, the court will not admit to bail pending an appeal and thereby grant indirectly the very relief which was previously denied him. *People ex rel. Patterson v. District Court*, 157 Colo. 69, 401 P.2d 88 (1965).

**Prisoner cannot be freed by bail on appeal from denial of habeas corpus.** In a habeas corpus proceeding, where the trial court has heard the case and discharged the writ, that court has no power to release a prisoner on bond who has been legally convicted and sentenced for commission of a crime, pending a review of the judgment dismissing the writ. *People ex rel. Patterson v. District Court*, 157 Colo. 69, 401 P.2d 88 (1965).

**13-45-107. Remand - second writ - offenses not bailable.**

When any prisoner brought up on a habeas corpus is remanded to prison, it is the duty of the court remanding him to make out and deliver to the sheriff, or other person to whose custody he is remanded, an order in writing stating the cause of remanding him. If such prisoner obtains a second writ of habeas corpus, it is the duty of such sheriff or other person to whom the same is directed to return therewith the order aforesaid. If it appears that the prisoner was remanded for any offense not bailable, it shall be taken and received as conclusive, and the prisoner shall be remanded without further proceedings.

**Source:** R.S. p. 355, § 5. G.L. § 1327. G.S. § 1613. R.S. 08: § 2923. C.L. § 6492. CSA: C. 77, § 7. CRS 53: § 65-1-7. C.R.S. 1963: § 65-1-7.

**ANNOTATION**

**Law reviews.** For article, "Enforcement of Justice Court Judgments", see 12 Dicta 274 (1935).

**13-45-108. Second writ - bailable offense.**

It is unlawful for any court, on a second writ of habeas corpus obtained by the prisoner to discharge the prisoner if he is clearly and specifically charged in the warrant of commitment with a criminal offense; but the court on the return of such second writ has power only to admit such prisoner to bail, where the offense is bailable by law, or remand him to prison where the offense is not bailable or where such prisoner fails to give the bail required.

**Source:** R.S. p. 355, § 6. G.L. § 1328. G.S. § 1614. R.S. 08: § 2924. C.L. § 6493. CSA: C. 77, § 8. CRS 53: § 65-1-8. C.R.S. 1963: § 65-1-8.

**13-45-109. Once discharged - reimprisonment.**

(1) No person who has been discharged by order of a court on a habeas corpus shall be again imprisoned, restrained, or kept in custody for the same cause, unless he is afterwards indicted for the same offense or unless by the legal order or process of the court wherein he is bound by recognizance to appear.

(2) The following shall not be deemed to be the same cause:

(a) If, after a discharge for a defect of proof or on any material defect in the commitment in a criminal case, the prisoner is again arrested on sufficient proof and committed by legal process for the same offense;

(b) If, in a civil suit, the party has been discharged for any illegality in the judgment or process and is afterwards imprisoned by legal process for the same cause of action;

(c) Generally, when the discharge has been ordered on account of the nonobservance of any of the forms required by law, the party may be a second time imprisoned if the cause is legal and the forms required by law observed.

**Source:** R.S. p. 355, § 7. G.L. § 1329. G.S. § 1615. R.S. 08: § 2925. C.L. § 6494. CSA: C. 77, § 9. CRS 53: § 65-1-9. C.R.S. 1963: § 65-1-9.

#### ANNOTATION

**When prisoner is discharged by writ of habeas corpus, no court may stay such discharge.** Staying a prisoner's discharge by a subsequent order is tantamount to keeping him in custody for the same cause notwithstanding his discharge by a writ of habeas corpus. Such action by a court is forbidden by the law. For it is provided in part by this section that no person who has been discharged by order of a court of judge on a habeas corpus shall be again imprisoned, restrained, or kept in custody for the same cause, unless he be afterwards indicted for the same offense, nor unless by the legal order or process of the court wherein he is bound by recognizance to appear. *Geer v. Alaniz*, 137 Colo. 432, 326 P.2d 71 (1958).

**The doctrine of res judicata should not be employed to prevent the correction of errors or cure insufficiencies** in extradition proceedings. *Boyd v. Van Cleave*, 180 Colo. 403, 505 P.2d 1305 (1973).

**Or when the facts and issues are different.** Generally, whether a discharge on habeas corpus of one held for extradition bars a subsequent extradition proceeding depends on whether the court in the second proceeding is required to pass upon the same or different matters from those ruled upon by the court in the first proceeding; if facts and the issues are different from those raised by the first petition, court is not precluded from reaching a different conclusion than it did on the initial petition. *Boyd v. Van Cleave*, 180 Colo. 403, 505 P.2d 1305 (1973).



**13-45-110. Prisoner not to be removed - when.**

To prevent any person from avoiding or delaying his trial, it is unlawful to remove any prisoner on habeas corpus under this article out of the county in which he is confined within fifteen days next preceding the date certain set for trial except if it is to convey him into the county where the offense with which he stands charged is properly cognizable.

**Source:** R.S. p. 356, § 9. G.L. § 1331. G.S. § 1617. R.S. 08: § 2927. C.L. § 6495. CSA: C. 77, § 10. CRS 53: § 65-1-10. C.R.S. 1963: § 65-1-10.

**13-45-111. Removal of prisoners - causes.**

Any person committed to any prison or in the custody of any officer, sheriff, jailer, keeper, or other person, or his underofficer or deputy, for any criminal or supposed criminal matter shall not be removed from the prison or custody into any other prison or custody, unless it is by habeas corpus or some other legal writ; or where the prisoner is delivered to some common jail; or is removed from one place to another within the county, in order to effect his discharge or trial in due course of law; or in case of sudden fire, infection, or other necessity; or where the sheriff commits such prisoner to the jail of an adjoining county for the want of a sufficient jail in his own county, as provided in section 17-26-119, C.R.S.; or where the prisoner, in pursuance of a law of the United States, is claimed or demanded by the executive of the United States or territories. If any person, after such commitment, makes out, signs, or countersigns any warrant for such removal except as before excepted, then he shall forfeit to the prisoner or aggrieved party a sum not exceeding three hundred dollars to be recovered by the prisoner or party aggrieved in the manner provided in section 13-45-117.

**Source:** R.S. p. 356, § 10. G.L. § 1332. G.S. § 1618. R.S. 08: § 2928. C.L. § 6496. CSA: C. 77, § 11. CRS 53: § 65-1-11. C.R.S. 1963: § 65-1-11. L. 79: Entire section amended, p. 1634, § 23, effective July 19.

**ANNOTATION**

**This section and § 13-45-117 have to do with the improper removal of a prisoner from a county jail** and providing for the forfeiture to such an aggrieved party of a

sum not to exceed \$300. *Kostal v. People*, 160 Colo. 64, 414 P.2d 123 (1966).

**Common jail given its ordinary meaning.** Usage of "common jail" was to distinguish the numerous municipal and

county jails from state-operated correctional institutions. Kinney v. Young, 689 P.2d 614 (Colo. 1984).

**13-45-112. Judge refusing or delaying writ - penalty.**

Any judge of a court empowered by this article to issue writs of habeas corpus who corruptly refuses to issue such writ when legally applied for in a case where such writ may lawfully issue or who, for the purpose of oppression, unreasonably delays the issuing of such writ shall for every such offense forfeit to the prisoner or party aggrieved a sum not exceeding five hundred dollars.

**Source:** R.S. p. 356, § 11. G.L. § 1333. G.S. § 1619. **R.S. 08:** § 2929. C.L. § 6497. **CSA:** C. 77, § 12. **CRS 53:** § 65-1-12. **C.R.S. 1963:** § 65-1-12.

**13-45-113. Failure to obey writ - penalty.**

If any officer, sheriff, jailer, keeper, or other person to whom any such writ is directed neglects or refuses to make the returns or to bring the body of the prisoner according to the command of said writ within the time required by this article, such officer, sheriff, jailer, keeper, or other person is guilty of contempt of the court which issued said writ; whereupon the court shall issue an attachment against such officer, sheriff, jailer, keeper, or other person and cause him to be committed to the jail of the county, there to remain without bail, until he obeys the writ. Such officer, sheriff, jailer, keeper, or other person shall also forfeit to the prisoner or aggrieved party a sum not exceeding five hundred dollars and shall be incapable of holding or executing his said office.

**Source:** R.S. p. 357, § 12. G.L. § 1334. G.S. § 1620. **R.S. 08:** § 2930. C.L. § 6498. **CSA:** C. 77, § 13. **CRS 53:** § 65-1-13. **C.R.S. 1963:** § 65-1-13.

**ANNOTATION**

|                                                                                   |                                                             |
|-----------------------------------------------------------------------------------|-------------------------------------------------------------|
| <b>For evidence of custody being insufficient to justify holding in contempt,</b> | see Atchel v. Lanphere, 170 Colo. 545, 463 P.2d 457 (1970). |
|-----------------------------------------------------------------------------------|-------------------------------------------------------------|

**13-45-114. Avoiding writ - penalty.**

Anyone having a person in his or her custody or under his or her restraint, power, or control for whose relief a writ of habeas corpus is issued who, with the intent to avoid the effect of such writ, transfers such person to the custody, or places him or her under the control, of another or conceals him or her or changes the place of his or her confinement with intent to avoid the operation of such a writ or with intent to remove him or her out of this state commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S. In any prosecution for the penalty incurred under this section, it shall not be necessary to show that the writ of habeas corpus had issued at the time of the removal, transfer, or concealment therein mentioned if it is proved that the acts therein forbidden were done with the intent to avoid the operation of such writ.

**Source:** R.S. p. 357, § 13. G.L. § 1335. G.S. § 1621. R.S. 08: § 2931. C.L. § 6499. CSA: C. 77, § 14. CRS 53: § 65-1-14. L. 62: p. 170, § 1. C.R.S. 1963: § 65-1-14. L. 77: Entire section amended, p. 877, § 43, effective July 1, 1979. L. 89: Entire section amended, p. 827, § 32, effective July 1. L. 2002: Entire section amended, p. 1488, § 123, effective October 1.

**Editor's note:** The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See *People v. McKenna*, 199 Colo. 452, 611 P.2d 574 (1980).

**Cross references:** For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

**ANNOTATION**

|                                                                                           |                                                      |
|-------------------------------------------------------------------------------------------|------------------------------------------------------|
| <b>For penalties imposed on custodian not affecting custodial status of prisoner, see</b> | Ex parte Emerson, 107 Colo. 83, 108 P.2d 866 (1940). |
|-------------------------------------------------------------------------------------------|------------------------------------------------------|

**13-45-115. Failure to deliver process - penalty. (Repealed)**

**Source:** R.S. p. 357, § 14. G.L. § 1336. G.S. § 1622. R.S. 08: § 2932. C.L. § 6500. CSA: C. 77, § 15. CRS 53: § 65-1-15. C.R.S. 1963: § 65-1-15. L. 91: Entire section repealed, p. 428, § 1, effective May 24.

**13-45-116. Detention after release - penalty.**

Any person, knowing that another has been discharged by order of a competent tribunal on a habeas corpus, who, contrary to the provisions of this article, arrests or detains him again, for the same cause which was shown on the return of such writ, shall forfeit five hundred dollars for the first offense and one thousand dollars for every subsequent offense.

**Source:** R.S. p. 357, § 15. G.L. § 1337. G.S. § 1623. R.S. 08: § 2933. C.L. § 6501. CSA: C. 77, § 16. CRS 53: § 65-1-16. C.R.S. 1963: § 65-1-16.

**13-45-117. Forfeitures go to use of prisoner.**

All pecuniary forfeitures under this article shall inure to the use of the party for whose benefit the writ of habeas corpus issued and shall be sued for and recovered, with costs, in the name of the state by every person aggrieved.

**Source:** R.S. p. 357, § 16. G.L. § 1338. G.S. § 1624. R.S. 08: § 2934. C.L. § 6502. CSA: C. 77, § 17. CRS 53: § 65-1-17. C.R.S. 1963: § 65-1-17.

**Cross references:** For actions in the name of the state for the benefit of another, see C.R.C.P. 17(a).

**ANNOTATION**

**This section and § 13-45-111 have to do with the improper removal of a prisoner from a county jail** and providing for the forfeiture to such an aggrieved party of a sum not to exceed \$300. *Kostal v. People*, 160 Colo. 64, 414 P.2d 123 (1966).

**Plaintiff not entitled to costs against state** pursuant to this section because there is no express authorization allowing costs to be assessed against the state. *McFarland v. Gunter*, 829 P.2d 510 (Colo. App. 1992).

**13-45-118. Recovery of forfeiture not bar to civil suit.**

The recovery of the said penalties shall not be a bar to a civil suit for damages.

**Source:** R.S. p. 358, § 18. G.L. § 1340. G.S. § 1626. R.S. 08: § 2936. C.L. § 6504. CSA: C. 77, § 19. CRS 53: § 65-1-18. C.R.S. 1963: § 65-1-18.

**13-45-119. Writ to testify or be surrendered - run to any county - copy - fees.**

The supreme and district courts within this state have power to issue writs of habeas corpus to bring the body of any person confined in any jail before them to testify or to be surrendered in discharge of bail. When a writ of habeas corpus is issued to bring into court any person to testify, or the principal to be surrendered in discharge of bail and such principal or witness is confined in any jail in this state out of the county in which such principal or witness is required to be surrendered or to testify, the writ may run into any county in this state and there be executed and returned by any officer to whom it is directed. The principal, after being surrendered or his bail discharged, or a person testifying as aforesaid shall be returned by the officer executing such writ by virtue of an order of the court for the purpose aforesaid, an attested copy of which, lodged with the jailer, exonerates such jailer of liability for an escape. The party praying out such writ of habeas corpus shall pay to the officer executing the same a reasonable sum for his services as adjudged by the courts respectively.

**Source:** R.S. p. 358, § 19. G.L. § 1341. G.S. § 1627. R.S. 08: § 2937. C.L. § 6505. CSA: C. 77, § 20. CRS 53: § 65-1-19. C.R.S. 1963: § 65-1-19.

**13-45-120. When county court can issue writ. (Repealed)**

**Source:** L. 1879: p. 84, § 1. G.S. § 1628. R.S. 08: § 2938. CSA: C. 77, § 21. CRS 53: § 65-1-20. C.R.S. 1963: § 65-1-20. L. 75: Entire section repealed, p. 209, § 23, effective July 16.

**13-45-121. Powers of county court. (Repealed)**

**Source:** L. 1879: p. 84, § 2. G.S. § 1629. R.S. 08: § 2939. C.L. § 6507. CSA: C. 77, § 22. CRS 53: § 65-1-21. C.R.S. 1963: § 65-1-21. L. 75: Entire section repealed, p. 209, § 23, effective July 16.

## JOINT RIGHTS AND OBLIGATIONS

### ARTICLE 50

#### Joint Rights and Obligations

|            |                                   |            |                                                                                         |
|------------|-----------------------------------|------------|-----------------------------------------------------------------------------------------|
| 13-50-101. | Joint obligations and covenants.  | 13-50-104. | Right of surety.                                                                        |
| 13-50-102. | Joint debtors - release - effect. | 13-50-105. | Actions by and against partnerships and associations - what property bound by judgment. |
| 13-50-103. | Liability of remaining debtor.    |            |                                                                                         |

#### **13-50-101. Joint obligations and covenants.**

All joint obligations and covenants shall be taken and held to be joint and several obligations and covenants.

**Source:** R.S. p. 368, § 3. G.L. § 1408. G.S. § 1834. R.S. 08: § 3604. C.L. § 5124. CSA: C. 92, § 4. CRS 53: § 76-1-1. C.R.S. 1963: § 76-1-1.

### ANNOTATION

**Law reviews.** For note, "A Survey of the Colorado Torrens Act", see 5 Rocky Mt. L. Rev. 149 (1933). For article, "Duties and Rights Under Joint and Several Contracts in Colorado", see 7 Rocky Mt. L. Rev. 247 (1935). For article, "A Decade of Colorado Law: Conflict of Laws, Security, Contracts and Equity", see 23 Rocky Mt. L. Rev. 247 (1951). For article, "One Year Review of Contracts", see 34 Dicta 85 (1957).

**Release abrogates section's applicability.** This section and §§ 13-50-102 and 13-50-103 did not apply where the defendant guarantors expressly agreed that the release of coguarantors would not affect defendants' liability in any way. United States v. Immordino, 386 F. Supp. 611 (D. Colo. 1974), aff'd, 534 F.2d 1378 (10th Cir. 1976).

**Joint agreements are several,** and suit may be brought against any of the parties liable or against all of them. *Bennett v. Morse*, 6 Colo. App. 122, 39 P. 582 (1894).

**Under which the liability of the parties is joint and several.** Where a contract provided that, in consideration of a certain sum of money having been paid to one of the parties of the first part, the parties of the first part would pay the same to the party of the second part if such sum were not paid by a third party within a specified time, such obligation of the parties of the first part is joint and several within this section. *Doyle v. Nesting*, 37 Colo. 522, 88 P. 862 (1906).

**Under this section "obligation" means a written contract.** Whenever the word "obligation" is used in a statute as the name of a contract (as in this section), an agreement in writing is meant; but where it is used with reference to a legal duty or liability, the term includes any indebtedness arising from contract, express or implied, oral or written. *Exch. Bank v. Ford*, 7 Colo. 314, 3 P. 449 (1884); *Sawyer v. Armstrong*, 23 Colo. 287, 47 P. 391 (1896).

**This section has no application to oral contracts.** *Townsend v. Heath*, 106 Colo. 273, 103 P.2d 691 (1940).

**The liability upon a promissory note is clearly rendered several by this section.** *Exch. Bank v. Ford*, 7 Colo. 314, 3 P. 449 (1884); *Hochmark v. Richler*, 16 Colo. 263, 26 P. 818 (1891).

**For the applicability of this section to negotiable instruments,** see *Hamill v. Ward*, 14 Colo. 277, 23 P. 330 (1890); *Tabor v. Miles*, 5 Colo. App. 127, 38 P. 64 (1894).

**Partnership contracts are excluded from this section.** Doubt is cast upon the applicability of this statute to partnership contracts; and whatever may be said of our previous decisions, their effect certainly is to exclude partnership contracts from the provisions of this section. *Thompson v. White*, 25 Colo. 226, 54 P. 718 (1898).

**Equitable doctrine that partnership debts are joint and several does not obtain in a purely legal action.** *Exch. Bank v. Ford*, 7 Colo. 314, 3 P. 449 (1884).

**Satisfaction must be pleaded to release joint debtor.** Plea that contract is joint and several, and that plaintiff has already recovered judgment but not alleging satisfaction, is insufficient. *Fitzgerald v. Burke*, 14 Colo. 559, 23 P. 993 (1890).

### **13-50-102. Joint debtors - release - effect.**

A creditor of joint debtors may release one or more of such debtors, and such release shall operate as a full discharge of such debtor so released, but such release shall not release or discharge or affect the liability of the remaining debtor. Such release shall be taken and held to be a payment in the indebtedness of the full proportionate share of the debtor so released.

**Source:** L. 1899: p. 239, § 1. R.S. 08: § 3605. C.L. § 5125. CSA: C. 92, § 5. CRS 53: § 76-1-2. C.R.S. 1963: § 76-1-2.

## ANNOTATION

**Release abrogates section's applicability.** This section and §§ 13-50-101 and 13-50-103 did not apply where the defendant guarantors expressly agreed that the release of coguarantors would not affect defendants' liability in any way. *United States v. Immordino*, 386 F. Supp. 611 (D. Colo. 1974), *aff'd*, 534 F.2d 1378 (10th Cir. 1976).

**A plaintiff can lawfully release any coguarantor from liability** without thereby releasing the other guarantors from their obligation to contribute their several proportions. *Taylor v. Hake*, 92 Colo. 330, 20 P.2d 546 (1933).

**For the rule as to release of one joint tortfeasor**, see *Price v. Baker*, 143 Colo. 264, 352 P.2d 90 (1960); *Hamm v. Thompson*, 143 Colo. 298, 353 P.2d 73 (1960).

**A co-judgment debtor may take an assignment of the judgment** against his codebtor and enforce it to the extent of the latter's proportionate liability thereon under this and the following section, irrespective of the amount paid for the assignment. *Simpson v. Morgan*, 124 Colo. 441, 238 P.2d 200 (1951).

**A loan receipt is not a release.** *Wilson v. Anderson*, 113 Colo. 396, 157 P.2d 690 (1945).

**Release of some joint debtors extinguishes the obligation of any remaining joint debtors** to pay so much of the debt as was deemed paid by the released joint debtors. *Smith v. Weindrop*, 833 P.2d 856 (Colo. App. 1992).

**Where release of one of the debtors from liability in promissory note included liability for attorney fees, other debtors are each liable for their proportionate share of any liability for fees.** *A. Tenenbaum & Co., Inc. v. Colantuno*, 3 P.3d 456 (Colo. App. 1999), *aff'd*, 23 P.3d 708 (Colo. 2001).

**A creditor may not collect more than the original debt.** For example, a creditor is owed \$100 by three joint and several debtors. One debtor pays \$25 and obtains a complete release from further liability. The remaining debtors are now severally liable for the balance. The proportionate share of each remaining debtor is \$33.33. If, however, the settling debtor pays \$60, the proportionate share of each of the remaining debtors is still \$33.33. The creditor can collect up to \$33.33 from each remaining debtor until the obligation is paid in full. This collection could be \$33.33 from one and \$7.67 from the other. *A. Tenenbaum & Co., Inc. v. Colantuno*, 117 P.3d 20 (Colo. App. 2004).

**Proportionate shares should be determined by dividing the debt equally,**



**per capita, among promissory note judgment debtors who were jointly liable for attorney fees prior to release of one of the debtors** and, if a debtor pays more than his percentage share to satisfy the attorney

fee indebtedness, the debtor may file an action for contribution against the other debtors. *A. Tenenbaum & Co., Inc. v. Colantuno*, 3 P.3d 456 (Colo. App. 1999), *aff'd*, 23 P.3d 708 (Colo. 2001).

### **13-50-103. Liability of remaining debtor.**

In case one or more joint debtors are released, no one of the remaining debtors shall be liable for more than his proportionate share of the indebtedness, unless he is the principal debtor and the debtor released was his surety, in which case the principal debtor is liable for the whole of the remainder of the indebtedness.

**Source:** L. 1899: p. 239, § 2. R.S. 08: § 3606. C.L. § 5126. CSA: C. 92, § 6. CRS 53: § 76-1-3. C.R.S. 1963: § 76-1-3.

## **ANNOTATION**

**Release abrogates section's applicability.** This section and §§ 13-50-101 and 13-50-102 did not apply where the defendant guarantors expressly agreed that the release of coguarantors would not affect defendants' liability in any way. *United States v. Immordino*, 386 F. Supp. 611 (D. Colo. 1974), *aff'd*, 534 F.2d 1378 (10th Cir. 1976).

**Remaining debtors are only liable for their proportionate share.** A release of one or more joint debtors is held to be payment on the indebtedness of the full proportionate share of such debtor or debtors and further that none of the remaining debtors shall be liable for more than his proportionate share of indebtedness. *Hosler v. Ireland*, 219 F. 489 (8th Cir. 1915).

**Release executed by plaintiff in favor of co-obligors** reduces defendant's liability. *Smith v. Weindrop*, 833 P.2d 856 (Colo. App. 1992).

**Release of some joint debtors extinguishes the obligation of any remaining joint debtors** to pay so much of the debt as was deemed paid by the released joint debtors. *Smith v. Weindrop*, 833 P.2d 856 (Colo. App. 1992).

**Where release of one of the debtors from liability in promissory note included liability for attorney fees, other debtors are each liable for their proportionate share of any liability for fees.** *A. Tenenbaum & Co., Inc. v. Colantuno*, 3 P.3d 456 (Colo. App. 1999), *aff'd*, 23 P.3d 708 (Colo. 2001).

**Proportionate shares should be determined by dividing the debt equally, per capita, among promissory note judgment debtors who were jointly liable for attorney fees prior to release of one of the debtors** and, if a debtor pays more than his percentage share to satisfy the attorney fee indebtedness, the debtor may file an action for contribution against the other debtors. *A. Tenenbaum & Co., Inc. v.*

*Colantuno*, 3 P.3d 456 (Colo. App. 1999), *aff'd*, 23 P.3d 708 (Colo. 2001).

**Court erred in reducing doctor's liability** to account for fault apportioned to the nurses by the jury. In light of "captain of the ship" doctrine, no evidence exists to qualify doctor and nurses as joint debtors. *Ochoa v. Vered*, 212 P.3d 963 (Colo. App. 2009).

#### **13-50-104. Right of surety.**

Nothing in sections 13-50-102 to 13-50-104 affects or changes the right of a surety who has paid his proportionate share of an indebtedness of recovering the same from his principal debtor.

**Source:** L. 1899: p. 239, § 3. **R.S. 08:** § 3607. **C.L.** § 5127. **CSA:** C. 92, § 7. **CRS 53:** § 76-1-4. **C.R.S. 1963:** § 76-1-4.

#### **13-50-105. Actions by and against partnerships and associations - what property bound by judgment.**

A partnership or other unincorporated association may sue or be sued in an action in its common name to enforce for or against it a substantive right; except that in such action only the property of the partnership or other unincorporated association, the joint property of the associates, and the separate property of any individual member thereof who is named as a party individually and over whom individually the court has acquired jurisdiction either by entry of appearance or by service of process may be bound by the judgment therein.

**Source:** L. 55: p. 497, § 1. **CRS 53:** § 76-1-6. **C.R.S. 1963:** § 76-1-6.

**Cross references:** For judgment against partnership, see C.R.C.P. 54(e).

### **ANNOTATION**

**Law reviews.** For article, "Highlights of the 1955 Colorado Legislative Session — Partnerships", see 28 Rocky Mt. L. Rev. 64 (1955).

**This section is permissive and not mandatory.** *Frazier v. Carlin*, 42 Colo. App. 226, 591 P.2d 1348 (1979).

**Suit in common name or in names of partners.** A partnership or limited partnership may sue or be sued either in its common name or by naming its partners. *Frazier v. Carlin*, 42 Colo. App. 226, 591 P.2d 1348 (1979); *Rush v. Winker*, 892 P.2d 328 (Colo. App. 1994).

**This section provides that an unincorporated association may sue in its common name.** This wording is permissive, not mandatory. *Morrison-Knudson Co. v. Rocky Mt. Chapter, Nat'l Elec. Contractors Ass'n*, 236 F. Supp. 436 (D. Colo. 1964).

**This section applies to joint ventures.** There appears to be no Colorado case specifically holding that a joint venture comes within this section, but there is no reason why a "joint venture" should not fall within the "unincorporated association" language of this section. *Morrison-Knudson Co. v. Rocky Mt. Chapter, Nat'l Elec. Contractors Ass'n*, 236 F. Supp. 436 (D. Colo. 1964).

**This section does not deem a joint venture a jural entity for all purposes;** it would seem to do so only for procedural purposes as venue and service of process. *Morrison-Knudson Co. v. Rocky Mt. Chapter, Nat'l Elec. Contractors Ass'n*, 236 F. Supp. 436 (D. Colo. 1964).

**Notice to general partners sufficient for limited partnership.** Because the general partners possess sole management responsibility for a limited partnership, notice to them in their capacities as general partners affords that notice to the limited partnership which is necessary to satisfy the demands of due process. *Frazier v. Carlin*, 42 Colo. App. 226, 591 P.2d 1348 (1979).

**Whether plaintiff qualified as a partnership or as an unincorporated association** is applied in *Johnson v. Chilcote*, 599 F. Supp. 224 (D. Colo. 1984).

**For judgment against partnership,** see *Thomas v. Dunne*, 131 Colo. 20, 279 P.2d 427 (1955).

**Where the only reference to an entity in a complaint in which a default judgment has been entered is in the context of its status as an alleged partner of a named defendant,** the entity was not a party defendant in the case. *Rush v. Winker*, 892 P.2d 328 (Colo. App. 1994).

**If a church is considered an unincorporated association,** it can not be represented in court by its pastor who is not an attorney. *People v. LaPorte Church of Christ*, 830 P.2d 1150 (Colo. App. 1992).

**This section and C.R.C.P. 106 can be construed harmoniously.** C.R.C.P. 106 (a)(5) complements § 13-50-105 by providing the procedure for subjecting an unnamed partner to the court's jurisdiction after judgment enters against his partnership. *Resolution Trust Corp. v. Teem P'ship*, 835 F. Supp. 563 (D. Colo. 1993).

**C.R.C.P. 106 (a)(5) does not provide an "alternate, cumulative remedy" to this section** that a party may elect in lieu of naming a defendant during the pendency of an action where a corporate respondent was a member of the partnership whose identity was known by plaintiff but not named in the original action based upon a friendship with plaintiff's counsel. *Gutrich v. LaPlante*, 942 P.2d 1266 (Colo. App. 1996), *aff'd sub nom. Gutrich v. Cogswell & Wehrle*, 961 P.2d 1115 (Colo. 1998).

**C.R.C.P. 106(a)(5) may provide relief in the context of partnership law when:** (1) The plaintiff could not have determined the existence or status of individual partners despite reasonable attempts to ascertain their identities; (2) the plaintiff could not bring about personal jurisdiction in the original action; or (3) some other reason beyond the plaintiff's control prevented the plaintiff from naming and serving the individual partners. *Gutrich v. Cogswell & Wehrle*, 961 P.2d 1115 (Colo. 1998).

**A judgment against the partnership does not bind the individual partners**

**unless they are individually named and subject to the personal jurisdiction of the court.** Where plaintiffs sued the partnership under its common name and failed to sue individual partners, plaintiffs were barred from seeking recovery of the judgment against the partnership from the individual partners. *Gutrich v. Cogswell & Wehrle*, 961 P.2d 1115 (Colo. 1998).

This section and C.R.C.P. 54(e) contain clear requirements that an individual partner must be named, personally served, and subjected to the jurisdiction of the court to seek recovery from the individual. Plaintiffs actually knew the identity of some of the individual partners but made a conscious decision not to name and serve them. The plaintiffs' judgment was enforceable only against the assets of the partnership. *Gutrich v. Cogswell & Wehrle*, 961 P.2d 1115 (Colo. 1998).

**Applied** in *Collection Agency, Inc. v. Golding*, 44 Colo. App. 421, 616 P.2d 988 (1980); *Heinold Hog Mkt., Inc. v. McCoy*, 700 F.2d 611 (10th Cir. 1983).

## **13-50.5 ARTICLE 50.5**

### **Uniform Contribution Among Tortfeasors**

13-50.5-101. Short title.

13-50.5-103. Pro rata shares.

13-50.5-102. Right to contribution -  
contract or agreement  
provision to indemnify or  
hold harmless void  
against public policy.

13-50.5-104. Enforcement.

13-50.5-105. Release or covenant not to  
sue.

13-50.5-106. Uniformity of interpretation.

**13-50.5-101. Short title.**

This article shall be known and may be cited as the "Uniform Contribution Among Tortfeasors Act".

**Source: L. 77:** Entire article added, p. 808, § 1, effective July 1.

**ANNOTATION**

**Law reviews.** For article, "Immunity to Direct Action: Is it a Defense to a Contribution Claim?", see 52 U. Colo. L. Rev. 151 (1980). For article, "Conflicts in Settlement of Personal Injury Cases", see 11 Colo. Law. 399 (1982). For article, "Application of Comparative Negligence and Contribution Statutes to Third-Party Defendants", see 13 Colo. Law. 626 (1984). For article, "Set-Off Under the Contribution and Collateral Source Statutes", see 21 Colo. Law. 1421 (1992).

**Traditional theories of loss allocation in tort altered.** The general assembly has altered traditional theories of loss allocation in tort with the passage of this act and with the introduction of a comparative negligence scheme into Colorado law, § 13-21-111. Pub. Serv. Co. v. District Court, 638 P.2d 772 (Colo. 1981).

**Act remedies harsh common-law rule.** This act is designed to remedy a harsh common-law rule. Changing rules of tort liability have expanded the number of parties who can be considered joint tortfeasors, while the rule of joint and several liability left the plaintiff with control

over who would ultimately bear the losses. The contribution act remedied this situation by permitting the shifting of losses equitably among those tortfeasors who caused the damages. Nat'l Farmers Union Prop. & Cas. Co. v. Frackelton, 662 P.2d 1056 (Colo. 1983).

**Employer covered under workmen's compensation not liable for contribution.** Because the workmen's compensation act immunizes an employer from tort liability to a covered employee, the employer is not "jointly liable in tort" and therefore contribution is barred. Hammond v. Kolberg Mfg. Corp., 542 F. Supp. 662 (D. Colo. 1982).

**Emphasis on intent to define scope of general releases** effectuates the purpose of this article in that it retains the liability of joint tortfeasors unless the releaser intended to release all claims. Neves v. Potter, 769 P.2d 1047 (Colo. 1989).

**Applied** in Martinez v. Stefanich, 195 Colo. 341, 577 P.2d 1099 (1978); Hillman v. Bray Lines, 41 Colo. App. 493, 591 P.2d 1332 (1978); Sager v. City of Woodland Park, 543 F. Supp. 282 (D. Colo. 1982).

**13-50.5-102. Right to contribution - contract or agreement provision to indemnify or hold harmless void against public policy.**

(1) Except as otherwise provided in this article, where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them.

(2) The right of contribution exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tortfeasor is compelled to make contribution beyond his own pro rata share of the entire liability.

(3) There is no right of contribution in favor of any tortfeasor who has intentionally, willfully, or wantonly caused or contributed to the injury or wrongful death.

(4) A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in respect to any amount paid in a settlement which is in excess of what was reasonable.

(5) A liability insurer, who by payment has discharged in full or in part the liability of a tortfeasor and has thereby discharged in full its obligation as insurer, is subrogated to the tortfeasor's right of contribution to the extent of the amount it has paid in excess of the tortfeasor's pro rata share of the common liability. This provision does not limit or impair any right of subrogation arising from any other relationship.

(6) This article does not impair any right of indemnity under existing law. Where one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of his indemnity obligation.

(7) This article shall not apply to breaches of trust or of other fiduciary obligation.

(8) (a) Any public contract or agreement for architectural, engineering, or surveying services; design; construction; alteration; repair; or maintenance of any building, structure, highway, bridge, viaduct, water, sewer, or gas distribution system, or other works dealing with construction, or any moving, demolition, or excavation connected with such construction that contains a covenant, promise, agreement, or combination thereof to defend, indemnify, or hold harmless any public entity is enforceable only to the extent and for an amount represented by the degree or percentage of negligence or fault attributable to the indemnity obligor or the indemnity obligor's agents, representatives, subcontractors, or suppliers. Any such covenant, promise, agreement, or combination thereof requiring an indemnity obligor to defend, indemnify, or hold

harmless any public entity from that public entity's own negligence is void as against public policy and wholly unenforceable.

(b) This subsection (8) shall not apply to construction bonds, contracts of insurance, or insurance policies that provide for the defense, indemnification, or holding harmless of public entities or contract clauses regarding insurance. This subsection (8) is intended only to affect the contractual relationship between the parties relating to the defense, indemnification, or holding harmless of public entities, and nothing in this subsection (8) shall affect any other rights or remedies of public entities or contracting parties.

(c) If the indemnity obligor is a person or entity providing architectural, engineering, surveying, or other design services, then the extent of an indemnity obligor's obligation to defend, indemnify, or hold harmless an indemnity obligee may be determined only after the indemnity obligor's liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the indemnity obligor and obligee.

**Source:** **L. 77:** Entire article added, p. 808, § 1, effective July 1. **L. 87:** (6) amended, p. 1577, § 18, effective July 10. **L. 88:** (8) added, p. 404, § 2, effective May 17. **L. 89:** (8) amended, p. 760, § 1, effective March 15. **L. 2015:** (8) amended, (HB 15-1197), ch. 93, p. 265, § 1, effective September 1.

## ANNOTATION

**Law reviews.** For article, "Immunity to Direct Action: Is it a Defense to a Contribution Claim?", see 52 U. Colo. L. Rev. 151 (1980). For article, "The Harm in Hold Harmless Clauses", see 19 Colo. Law. 1081 (1990). For article, "Application of the Pro Rata Liability, Comparative Negligence and Contribution Statutes", see 23 Colo. Law. 1717 (1994). For article, "S.B. 07-087 and the Enforceability of Indemnification Provisions in Colorado Construction Contracts", see 36 Colo. Law. 59 (Sept. 2007). For article, "Application of the Pro Rata Liability Statute to 'Tort Claims in a

Contractual Wrapper'", see 45 Colo. Law. 37 (June 2016).

**Doctrine of indemnity abolished.** The doctrine of indemnity, insofar as it requires one of two joint tortfeasors to reimburse the other for the entire amount paid by the other as damages to a party injured as the result of the negligence of both joint tortfeasors, is no longer viable, and is hereby abolished. *Brochner v. W. Ins. Co.*, 724 P.2d 1293 (Colo. 1986).

**A tortfeasor no longer may unfairly be forced to pay all or a disproportionate share of damages** suffered by an injured

party as the result of negligent conduct by two or more joint tortfeasors. *Brochner v. W. Ins. Co.*, 724 P.2d 1293 (Colo. 1986).

**Joint tortfeasors are now subject to contribution among themselves based upon their relative degrees of fault.** That principal is at odds with the essential characteristic of our present rule of indemnity that, without regard to apportionment of fault, a single tortfeasor may ultimately pay the expenses of all injuries sustained by a third party as a result of negligent conduct by two or more tortfeasors. There can be no mistake concerning the intent of the general assembly to establish the policy of responsibility related to proportionate fault in the context of personal injury litigation. *Brochner v. W. Ins. Co.*, 724 P.2d 1293 (Colo. 1986).

**Right of contribution is statutory.** The right of contribution in Colorado is in all respects a creature of statutory origin. *Greer v. Intercole Automation, Inc.*, 553 F. Supp. 275 (D. Colo. 1982).

**Contribution** is right of recovery by one joint tortfeasor from a co-tortfeasor and has nothing to do with the rights of the injured party to recover from the tortfeasors. *Greenemeier By Redington v. Spencer*, 694 P.2d 850 (Colo. App. 1984), *aff'd*, 719 P.2d 710 (Colo. 1986).

**Joint or several liability required for contribution.** To recover contribution against a person, that person must be found as a party jointly or severally liable with the ones seeking contribution. *Nat'l Farmers Union Prop. & Cas. Co. v. Frackelton*, 645

P.2d 1321 (Colo. App. 1981); *Nat'l Farmers Union Prop. & Cas. Co. v. Frackelton*, 650 P.2d 571 (Colo. App. 1981), *aff'd*, 662 P.2d 1056 (Colo. 1983); *Tex-Ark Joist Co. v. Derr & Gruenewald Const.*, 719 P.2d 384 (Colo. App. 1986), *aff'd*, 749 P.2d 431 (Colo. 1988).

The right of contribution "vests" only upon the existence of a common liability. *Greer v. Intercole Automation, Inc.*, 553 F. Supp. 275 (D. Colo. 1982).

The uniform act is clear and unequivocal in its requirement that joint or common liability in tort exist as a precondition to the right of contribution. *Greer v. Intercole Automation, Inc.*, 553 F. Supp. 275 (D. Colo. 1982).

The term "common liability" must be interpreted in light of the final sentence of subsection (2) that "No tortfeasor is compelled to make contribution beyond his own pro rata share of the entire liability." *Kussman v. City & County of Denver*, 706 P.2d 776 (Colo. 1985).

Common liability exists only when tortfeasors are "jointly or severally liable" in tort for the same injury. *Kussman v. City & County of Denver*, 706 P.2d 776 (Colo. 1985).

Joint and several liability means each tortfeasor may be held liable for the entire damages arising from a single injury. *Kussman v. City & County of Denver*, 706 P.2d 776 (Colo. 1985).

**Employee and employer not joint tortfeasors within the meaning of the Uniform Contribution Among Tortfeasors**



**Act where** the initial complaint alleged that employee was negligent but that employer was liable based only on a theory of respondeat superior, not negligence. Since employee and employer were not joint tortfeasors with the meaning of the act, the act does not bar employee's indemnity action against employer. *Serna v. Kingston Enters.*, 72 P.3d 376 (Colo. App. 2002).

**Individual tortfeasor not entitled to right of contribution.** Where judgment is rendered against a tortfeasor for no more than its proportionate share of liability, it is not eligible for deduction of a settling tortfeasor's settlement amount from the judgment. *Kussman v. City & County of Denver*, 706 P.2d 776 (Colo. 1985).

**One immune from liability for injury cannot be liable for contribution.** An employer who is immune from common-law liability for an injury cannot become "jointly or severally liable in tort" so as to trigger a right of contribution under this section. *Greer v. Intercole Automation, Inc.*, 553 F. Supp. 275 (D. Colo. 1982).

**Contribution provision does not apply** where jury finds one of the tortfeasors not negligent. *Wesley v. United Servs. Auto Ass'n*, 694 P.2d 855 (Colo. App. 1984).

**Contribution from nonparty permitted.** An insurer of a tortfeasor found liable in a prior action can recover contribution from a nonparty to that prior action. *Nat'l Farmers Union Prop. & Cas. Co. v. Frackelton*, 662 P.2d 1056 (Colo. 1983).

The language "liable in tort" in subsection (1) refers to a person's exposure to a civil

action and not to the existence of final judgment in tort. This section only requires that a person become "liable in tort" before the right of contribution arises. The right to collect contribution, of course, depends on a binding and final determination of fault among joint tortfeasors, obtained either in the initial lawsuit by asserting a claim of contribution or in a separate action. *Nat'l Farmers Union Prop. & Cas. Co. v. Frackelton*, 662 P.2d 1056 (Colo. 1983); *Cachne Nat'l Bank v. Hinman*, 626 F. Supp. 1341 (D. Colo. 1986); *Patten v. Knutzen*, 646 F. Supp. 427 (D. Colo. 1986).

**Since the Workmen's Compensation Act is intended to be the exclusive forum for determining employer liability for job-related injuries**, a third-party claim for contribution under this section is denied. *Williams v. White Mtn. Const. Co.*, 749 P.2d 423 (Colo. 1988); *Tex-Ark Joist Co. v. Derr & Gruenewald, Const.*, 749 P.2d 431 (Colo. 1988).

**Subsection (2) does not bar recovery by corporation for claims it owes third-parties even though those claims have not yet been, and may never be, paid.** In re Stat-Tech Sec. Litigation, 905 F. Supp. 1416 (D. Colo. 1995).

**Nonparty not bound by determination of relative fault.** A nonparty to a suit cannot be conclusively bound by the jury's determination of relative fault in a subsequent declaratory judgment action for contribution. *Nat'l Farmers Union Prop. & Cas. Co. v. Frackelton*, 662 P.2d 1056 (Colo. 1983).

**An employer who complies with the workmen's compensation act cannot be subject to a third-party action for contribution.** *Borroel v. Lakeshore, Inc.*, 618 F. Supp. 354 (D. Colo. 1985).

**Accrual of joint tortfeasor's action.** No cause of action accrues to a joint tortfeasor until there has been a judgment against him or a settlement of the claim, since a claim for contribution is an action separate and distinct from the underlying tort, and the rights and obligations of the tortfeasors flow, not from the tort, but from the judgment or settlement. *Coniaris v. Vail Assocs.*, 196 Colo. 392, 586 P.2d 224 (1978); *Kelly v. Mid-Century Ins. Co.*, 695 P.2d 752 (Colo. App. 1984).

**Effective date of section.** This section applies to a satisfaction of a judgment or a settlement made or entered into on and after July 1, 1977, when the settled case arose as a result of an injury-causing act or omission which occurred before June 30, 1977 (the effective date of the act). *Coniaris v. Vail Assocs.*, 196 Colo. 392, 586 P.2d 224 (1978).

**Section 13-21-111.5 is not exclusive remedy for contribution.** Nothing in the

language of § 13-21-111.5 indicates it is intended to be the exclusive mechanism for litigating the relative fault of all joint tortfeasors. A claim for contribution may be made under this section when a party has not been formally designated in the action under § 13-21-111.5. *Watters v. Pelican Intern., Inc.*, 706 F. Supp. 1452 (D. Colo. 1989).

**The abolition of joint and several liability by § 13-21-111.5 does not extinguish a defendant's right to contribution from joint tortfeasors.** The language of subsection (1) does not evince an intention by the general assembly to require a defendant to establish both joint liability and several liability as a prerequisite to the defendant's right of contribution. A defendant is permitted to establish the several liability of one or more parties as a cause of the same injury to the plaintiff. *Graber v. Westaway*, 809 P.2d 1126 (Colo. App. 1991).

**Applied** in *Pub. Serv. Co. v. District Court*, 638 P.2d 772 (Colo. 1981); *McCall v. Roper*, 685 P.2d 230 (Colo. App. 1984); *D.R. Horton, Inc. v. D&S Landscaping, LLC*, 215 P.3d 1163 (Colo. App. 2008).

### **13-50.5-103. Pro rata shares.**

The relative degrees of fault of the joint tortfeasors shall be used in determining their pro rata shares.

**Source:** **L. 77:** Entire article added, p. 809, § 1, effective July 1. **L. 86:** Entire section amended, p. 681, § 2, effective July 1.

## ANNOTATION

**Law reviews.** For comment, "Multiple Defendants in Negligence Actions: Mountain Mobile Mix, Inc. v. Gifford", see 56 U. Colo. L. Rev. 303 (1985). For article, "1986 Colorado Tort Reform Legislation", see 15 Colo. Law. 1363 (1986). For article, "Negligent Entrustment", see 16 Colo. Law.

642 (1987). For article, "Recovery of Interest: Part I — Personal Injury", see 18 Colo. Law. 1063 (1989).

**Applied** in Pub. Serv. Co. v. District Court, 638 P.2d 772 (Colo. 1981); Mtn. Mobile Mix, Inc. v. Gifford, 660 P.2d 883 (Colo. 1983).

### **13-50.5-104. Enforcement.**

(1) Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.

(2) Where a judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants by motion upon notice to all parties to the action.

(3) If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, any separate action by him to enforce contribution must be commenced within one year after the judgment has become final by lapse of time for appeal or after appellate review.

(4) If there is no judgment for the injury or wrongful death against the tortfeasor seeking contribution, his right of contribution is barred unless he has either:

(a) Discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against him and has commenced his action for contribution within one year after payment; or

(b) Agreed while action is pending against him to discharge the common liability and has within one year after the agreement paid the liability and commenced his action for contribution.

(5) The recovery of a judgment for an injury or wrongful death against one tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.

(6) The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death shall be binding as among such defendants in determining their right to contribution.

**Source: L. 77:** Entire article added, p. 809, § 1, effective July 1.

#### ANNOTATION

**Law reviews.** For article, "Immunity to Direct Action: Is it a Defense to a Contribution Claim?", see 52 U. Colo. L. Rev. 151 (1980).

**A contribution action may brought within one year of the underlying judgment becoming final by lapse of the time for appeal, regardless of whether the parties have agreed to forego appellate proceedings.** Gibraltar Cas. v. Walters, 185 F.3d 1103 (10th Cir. 1999).

**Nonparty not bound by determination of relative fault.** A nonparty to a suit cannot

be conclusively bound by a jury's determination of relative fault in a subsequent declaratory judgment action for contribution. Nat'l Farmers Union Prop. & Cas. Co. v. Frackelton, 662 P.2d 1056 (Colo. 1983).

**Applied** in Nat'l Farmers Union Prop. & Cas. Co. v. Frackelton, 645 P.2d 1321 (Colo. App. 1981); Nat'l Farmers Union Prop. & Cas. Co. v. Frackelton, 650 P.2d 571 (Colo. App. 1981).

#### **13-50.5-105. Release or covenant not to sue.**

(1) When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(a) It does not discharge any of the other tortfeasors from liability for their several pro rata shares of liability for the injury, death, damage, or loss unless its terms so provide; but it reduces the aggregate claim against the others to the extent of any degree or percentage of fault or negligence attributable by the finder of fact, pursuant to section 13-21-111 (2) or (3) or section 13-21-111.5, to the tortfeasor to whom the release or covenant is given; and

(b) It discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

**Source: L. 77:** Entire article added, p. 810, § 1, effective July 1. **L. 86:** (1)(a) amended, p. 681, § 3, effective July 1.

#### ANNOTATION

**Law reviews.** For article, "Collecting Pre- and Post-Judgment Interest in Colorado: A Primer", see 15 Colo. Law. 753 (1986). For article, "1986 Colorado Tort Reform Legislation", see 15 Colo. Law. 1363 (1986). For article, "New Role for Nonparties in Tort Actions — The Empty Chair", see 15 Colo. Law. 1650 (1986). For article, "Partial Settlements in Multiparty Tort Actions: The Latest Chapter", see 22 Colo. Law. 2529 (1993). For article, "Protecting the Professional: Contribution Bar Orders in Securities Cases", see 24 Colo. Law. 775 (1995). For comment, "Settlements with Nonparties: A Closer Look at Colorado's Collateral Source and Contribution Statutes", see 66 U. Colo. L. Rev. 195 (1995).

**Formerly, release of one constituted release of all.** Prior to July 1, 1977, the effective date of this section, absent a manifestation of a contrary intent, a release of one joint tortfeasor released all joint tortfeasors. *Mills v. Standard Title Ins. Co.*, 195 Colo. 281, 577 P.2d 756 (1978).

This section overrules the common-law rule that the release of an original tortfeasor operates to release a subsequent treating physician, absent specific language in the release to the contrary. *Summey v. Lacy*, 42 Colo. App. 1, 588 P.2d 892 (1978).

**This section was currently formulated to encourage settlements** and combined with the retention of the joint and several liability rule means that nonsettling tortfeasors may be forced to bear more than the portion of damages attributed to their relative degree of fault. *Kussman v. City and*

*County of Denver*, 706 P.2d 776 (Colo. 1985).

**For history of common-law joint tortfeasor release rule in Colorado**, see *Cingoranelli v. St. Paul Fire & Marine Ins. Co.*, 658 P.2d 863 (Colo. 1983).

**Release rule inapplicable to personal injury protection claims.** The original rationale for the general joint tortfeasor release rule — that there is only one cause of action — is clearly not applicable to personal injury protection claims under § 10-4-701 et seq., which gives rise to a separate cause of action in contract. *Cingoranelli v. St. Paul Fire & Marine Ins. Co.*, 658 P.2d 863 (Colo. 1983).

**Within the meaning of this section tortfeasors are "liable in tort for the same injury" only when judgment is rendered against the nonsettling tortfeasor for an amount greater than its proportionate share of damages as measured by its degree of fault.** Where tortfeasor is found liable for an amount in excess of its proportionate share of damages, it may deduct the settlement amount paid by another tortfeasor from its liability up to the judgment amount in excess of its proportionate share of damages. *Kussman v. City and County of Denver*, 706 P.2d 776 (Colo. 1985).

**Tortfeasors' contribution from joint tortfeasor was not barred** where a release was given by the injured parties to all persons liable in tort for the same injury and where the tortfeasors paid the injured parties the full amount of the settlement and then sought contribution from the joint

tortfeasors for their pro rata share. *Miller v. Jarrell*, 684 P.2d 954 (Colo. App. 1984).

**A release that one tortfeasor received from the plaintiffs as part of a settlement did not discharge the tortfeasor's contribution liability to the other tortfeasor under this section.** The settlement between the tortfeasor and the plaintiffs did not resolve any common liability shared by the two tortfeasors. *LB Rose Ranch v. Hansen Constr.*, 2019 COA 141, 477 P.3d 739.

**Release or covenant not to sue from claimant insulates tortfeasor from contribution to other tortfeasors.** *W. Ins. Co. v. Brochner*, 682 P.2d 1213 (Colo. App. 1983), rev'd on other grounds, 724 P.2d 1293 (Colo. 1986); *Kussman v. City & County of Denver*, 706 P.2d 776 (Colo. 1985).

**Section not applicable where joint tortfeasors were not liable for the "same injury".** *Panther v. Raybestos-Manhattan, Inc.*, 701 P.2d 145 (Colo. App. 1985).

**Settlement amount deducted from the total judgment** rather than from the joint and several portion only, which means that a nonsettling tortfeasor will be liable for any part of the settling tortfeasor's pro rata share of damages that is greater than the amount paid in settlement. *Perlmutter v. Blessing*, 706 P.2d 777 (Colo. 1985); *Greenmeier by Redington v. Spencer*, 719 P.2d 710 (Colo. 1986).

**Absent special circumstances, jury should be informed of the fact of settlement, but not the amount paid.**

*Greenemeier by Redington v. Spencer*, 719 P.2d 710 (Colo. 1986).

**Failure to inform jury of settlement not reversible error.** When jury was explicitly instructed to award damages which would reasonably compensate plaintiffs for injuries, and to consider any physical pain, mental suffering, or permanent injury or disability plaintiffs have suffered, plaintiffs were not prejudiced by jury's lack of knowledge of prior settlement. *Greenemeier by Redington v. Spencer*, 719 P.2d 710 (Colo. 1986).

**This section and § 13-21-111.6 must be reconciled, if possible, to give effect to both sections.** Therefore, this section should apply when a percentage of negligence has been attributed by the fact finder to the non-party while § 13-21-111.6 should control if the fact finder attributes no fault to the non-party. *Gutierrez v. Bussey*, 837 P.2d 272 (Colo. App. 1992).

**Parole evidence** may be used to vary or contradict a general release when the litigation is between a party to the release and a stranger thereto. *Neves v. Potter*, 769 P.2d 1047 (Colo. 1989).

**Money received under loan receipt agreement not a payment** entitling co-tortfeasors to a reduction in judgment, because plaintiff's contingent obligation to return money advanced by settling defendants precludes double recovery. *Balistreri Greenhouses v. Roper Corp.*, 767 P.2d 736 (Colo. App. 1988) (decided under former law).

**Because under the original statute there typically was no determination made at trial as to whether those who had settled were "liable in tort", the current statute, which created a procedure for the fact finder at trial routinely to determine the liability of a tortfeasor who had settled before the trial, should not be construed to require such a finding before a reduction in the amount of the settlement is permitted. Simon v. Coppola, 876 P.2d 10 (Colo. App. 1993).**

**This section applies to those who pay compensation to an injury victim because they are facing exposure to being held "liable in tort" at trial, as distinct from those who provide payments from a collateral source, such as an insurance contract. Simon v. Coppola, 876 P.2d 10 (Colo. App. 1993).**

**Right to setoff by joint tortfeasors is limited to the amounts actually collected from settling defendants, rather than the amounts provided for in settlement agreements. Fireboard Corp. v. Fenton, 845 P.2d 1168 (Colo. 1993).**

**Full compensation for plaintiff, as intended by the general assembly, was ensured where the trial court set off the judgment against defendants for any amount collected by plaintiff in settlement of claims against defendants no longer parties and where in the event the settlement from one defendant could not be collected, other defendants remained liable. Fenton v. Fibreboard Corp., 827 P.2d 564 (Colo. App. 1991).**

**When the jury assigns fault to a settling party as a nonparty pursuant to § 13-21-**

**111.6, the trial verdict shall be reduced by an amount equal to the cumulative percentage of fault attributed to the settling nonparties. The amount to be reduced from the trial verdict shall be calculated by multiplying the total percentage of liability attributed to the settling nonparties by the total trial verdict awarded the plaintiff. Smith v. Zufelt, 880 P.2d 1178 (Colo. 1994).**

**Settlement of lawsuit brought by one partner "d/b/a" the partnership precluded subsequent claim by other partner and partnership itself under the common law theory of claim preclusion. Cruz v. Benine, 984 P.2d 1173 (Colo. 1999).**

**Release of one partner and limited partnership did not bar claims against remaining partner or employee of limited partnership who were sued as joint tortfeasors. However, recovery in the second action must be reduced by any degree or percentage of fault attributed to the released partner and limited partnership. Cruz v. Benine, 984 P.2d 1173 (Colo. 1999).**

**The duty of good faith extends to non-settling tortfeasors. Stubbs v. Copper Mtn., Inc., 862 P.2d 978 (Colo. App. 1993), aff'd sub nom. Copper Mtn., Inc. v. Poma of Am., Inc., 890 P.2d 100 (Colo. 1995).**

**The test for determining if a settlement was made in bad faith is whether the agreement was the product of collusive conduct intended to prejudice the interests of non-settling defendants. Whether a settlement is low compared with plaintiff's estimate of total damage is not sufficient to establish bad faith. Stubbs v.**

Copper Mtn., Inc., 862 P.2d 978 (Colo. App. 1993), aff'd sub nom. Copper Mtn., Inc. v. Poma of Am., Inc., 890 P.2d 100 (Colo. 1995).

**Proof of collusion requires more than an agreement which results in the termination of a right of contribution.** Stubbs v. Copper Mtn., Inc., 862 P.2d 978 (Colo. App. 1993), aff'd sub nom. Copper Mtn., Inc. v. Poma of Am., Inc., 890 P.2d 100 (Colo. 1995).

**The party challenging the good faith of a settlement barring a claim for contribution has the burden of establishing that the settlement was collusive.** Stubbs v. Copper Mtn., Inc., 862 P.2d 978 (Colo. App. 1993), aff'd sub nom. Copper Mtn., Inc. v. Poma of Am., Inc., 890 P.2d 100 (Colo. 1995).

**The settlement agreement did not indicate a lack of good faith** when it required a party to remain in a case to provide its own expert witnesses to respond to an "empty chair" defense and afforded an injured person prompt payment of funds for her losses. Stubbs v. Copper Mtn., Inc., 862 P.2d 978 (Colo. App. 1993), aff'd sub nom. Copper Mtn., Inc. v. Poma of Am., Inc., 890 P.2d 100 (Colo. 1995).

**Since none of the amount paid by defendant to settle a remaining claim could be attributed to breach of warranty by a co-defendant, the trial court did not err in refusing to allow defendant to proceed with a cross claim against the co-defendant for damages paid based on such a claim.** Stubbs v. Copper Mtn., Inc., 862 P.2d 978 (Colo. App. 1993), aff'd sub

nom. Copper Mtn., Inc. v. Poma of Am., Inc., 890 P.2d 100 (Colo. 1995).

**This section does not apply to reduce a defendant's liability under § 13-21-111.5 (4)** where two or more persons act in concert to commit a tort. The joint liability provision, as the more recently enacted statute, must be deemed controlling to the extent of any inconsistency. Pierce v. Wiglesworth, 903 P.2d 656 (Colo. App. 1994); Toothman v. Freeborn & Peters, 80 P.3d 804 (Colo. App. 2002).

**Plaintiff's fault may not reduce an intentional tortfeasor's liability.** Toothman v. Freeborn & Peters, 80 P.3d 804 (Colo. App. 2002).

Proportionate fault is not applicable in a securities law context. Toothman v. Freeborn & Peters, 80 P.3d 804 (Colo. App. 2002).

**Right to setoff does not apply to action under the Colorado Consumer Protection Act** that is brought by the attorney general. People v. Shifrin, 2014 COA 14, 342 P.3d 506.

**Applied** in Cingoranelli v. St. Paul Fire & Marine Ins. Co., 636 P.2d 1285 (Colo. App. 1981); McCall v. Roper, 685 P.2d 230 (Colo. App. 1984); Rupert v. Clayton Brokerage Co. of St. Louis, 705 P.2d 988 (Colo. App. 1985); Forsyth v. Associated Grocers of Colo., 724 P.2d 1360 (Colo. App. 1986); Hauser v. Pub. Serv. Co., 797 F.2d 876 (10th Cir. 1986); Rupert v. Clayton Brokerage Co., 737 P.2d 1106 (Colo. 1987), overruling on other grounds Rupert v. Clayton Brokerage Co., 705 P.2d 988 (Colo. App. 1985); McKown-Katy v. Rego Co., 776 P.2d 1130



(Colo. App. 1989), rev'd in part on other grounds, 801 P.2d 536 (Colo. 1990); Padilla

v. Ghuman, 183 P.3d 653 (Colo. App. 2007).

### **13-50.5-106. Uniformity of interpretation.**

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it.

**Source: L. 77:** Entire article added, p. 810, § 1, effective July 1.

## **JUDGMENTS AND EXECUTIONS**

### **ARTICLE 51**

#### **Declaratory Judgments**

|            |                                     |            |                                  |
|------------|-------------------------------------|------------|----------------------------------|
| 13-51-101. | Short title.                        | 13-51-108. | Purposes of declaration.         |
| 13-51-102. | Legislative declaration.            | 13-51-109. | Not a limitation.                |
| 13-51-103. | Definitions.                        | 13-51-110. | When court may refuse.           |
| 13-51-104. | Interpretation and<br>construction. | 13-51-111. | Review.                          |
| 13-51-105. | Power and force of<br>declaration.  | 13-51-112. | Further relief.                  |
| 13-51-106. | Who may obtain declaration.         | 13-51-113. | Issues of fact.                  |
| 13-51-107. | Contract construed any time.        | 13-51-114. | Costs.                           |
|            |                                     | 13-51-115. | Parties - ordinances - statutes. |

### **13-51-101. Short title.**

This article shall be known and may be cited as the "Uniform Declaratory Judgments Law".

**Source: L. 23:** p. 271, § 16. **CSA:** C. 93, § 92. **CRS 53:** § 77-11-15. **C.R.S. 1963:** § 77-11-15.

**Cross references:** For declaratory judgments generally, see also C.R.C.P. 57.

## ANNOTATION

**Law reviews.** For note, "The Colorado Declaratory Judgment Act", see 1 Rocky Mt. L. Rev. 52 (1928). For article, "Twenty-six Years Under the Colorado Declaratory Judgments Act", see 27 Dicta 177 (1950). For article, "Trusts and Estates", see 30 Dicta 435 (1953).

**For constitutionality of the declaratory judgment act,** see *San Luis Power & Water Co. v. Trujillo*, 93 Colo. 385, 26 P.2d 537 (1933).

**This article is designed to afford parties relief from uncertainty** with respect to their rights and status under law. *Silverstein v. Sisters of Charity*, 38 Colo. App. 286, 559 P.2d 716 (1976); *Mt. Emmons Mining Co. v. Town of Crested Butte*, 690 P.2d 231 (Colo. 1984).

**This article is to be liberally construed and administered.** *Silverstein v. Sisters of Charity*, 38 Colo. App. 286, 559 P.2d 716 (1976); *Mt. Emmons Mining Co. v. Town of Crested Butte*, 690 P.2d 231 (Colo. 1984); *Trinen v. City & County of Denver*, 725 P.2d 65 (Colo. App. 1986).

**Who may seek judicial determination of rights.** One whose rights are favorably affected by a statute is entitled to seek a judicial determination thereof so long as the court is provided with a properly adverse context. *Silverstein v. Sisters of Charity*, 38 Colo. App. 286, 559 P.2d 716 (1976).

One whose rights or status may be affected by statute is entitled to have any

question of construction determined provided that a substantial controversy between adverse parties of sufficient immediacy to warrant the issuance of a declaratory judgment exists. *Silverstein v. Sisters of Charity*, 38 Colo. App. 286, 559 P.2d 716 (1976).

**Prerequisites to jurisdiction such as exhaustion of remedies apply when a party seeks declaratory relief from agency action.** *City & County of Denver v. United Air Lines, Inc.*, 8 P.3d 1206 (Colo. 2000).

**Burden on moving party in summary judgment on constitutional issues in context of declaratory judgment.** Party seeking declaratory relief must demonstrate challenged statute or ordinance will cause tangible detriment to its activities and that statute or ordinance is unconstitutional beyond a reasonable doubt. *Mt. Emmons Mining Co. v. Town of Crested Butte*, 690 P.2d 231 (Colo. 1984).

**Time limitations of appeal process cannot be circumvented by attempting to obtain declaratory relief.** *Trinen v. City & County of Denver*, 725 P.2d 65 (Colo. App. 1986).

**This statute neither expands nor contracts the jurisdiction of Colorado's courts.** In creating a new remedy the general assembly did not by implication grant political subdivisions of the state the right to sue the state. *Romer v. Fountain Sanitation Dist.*, 898 P.2d 37 (Colo. 1995); *City &*

County of Denver v. United Air Lines, Inc., 8 P.3d 1206 (Colo. 2000).

**Applied** in Bd. of County Comm'rs v. Fifty-first Gen. Ass'y, 198 Colo. 302, 599

P.2d 887 (1979); Citizens for Free Enter. v. Dept. of Rev., 649 P.2d 1054 (Colo. 1982); Denver & R. G. W. R. R. v. City & County of Denver, 673 P.2d 354 (Colo. 1983).

### **13-51-102. Legislative declaration.**

This article is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and it is to be liberally construed and administered.

**Source:** L. 23: p. 270, § 12. CSA: C. 93, § 89. CRS 53: § 77-11-12. C.R.S. 1963: § 77-11-12.

### **ANNOTATION**

**Law reviews.** For article, "Twenty-six Years Under the Colorado Declaratory Judgments Act", see 27 Dicta 177 (1950).

**The purpose of the statute** and the rule is to be remedial and to afford relief from uncertainty and insecurity. The statute and rule expressly provide that they be liberally construed and administered. Colo. State Bd. of Optometric Exam'rs v. Dixon, 165 Colo. 488, 440 P.2d 287 (1968).

This article is designed to afford parties relief from uncertainty with respect to their rights and status under law. Silverstein v. Sisters of Charity, 38 Colo. App. 286, 559 P.2d 716 (1976).

**Liberal construction makes this section applicable to decisions to be made by board or commission.** A liberal construction of the statute and the rule rejects the proposition that a person adversely affected by a statute and seeking

relief from uncertainty and insecurity with respect to his rights by reason of a statute or a rule of a board or commission must take the risk of prosecutions, fines, imprisonment, loss of property, or loss of profession in order to secure adjudication of his rights. Colo. State Bd. of Optometric Exam'rs v. Dixon, 165 Colo. 488, 440 P.2d 287 (1968).

**This article is to be liberally construed and administered.** Silverstein v. Sisters of Charity, 38 Colo. App. 286, 559 P.2d 716 (1976).

**Who may seek judicial determination of rights.** One whose rights are favorably affected by a statute is entitled to seek a judicial determination thereof so long as the court is provided with a properly adverse context. Silverstein v. Sisters of Charity, 38 Colo. App. 286, 559 P.2d 716 (1976).

One whose rights or status may be affected by statute is entitled to have any question of construction determined provided that a substantial controversy between adverse parties of sufficient immediacy to warrant the issuance of a declaratory judgment exists. *Silverstein v. Sisters of Charity*, 38 Colo. App. 286, 559 P.2d 716 (1976); *Buckley Powder Co. v. State*, 924 P.2d 1133 (Colo. App. 1996), *aff'd* in part, *rev'd* in part on other grounds, 945 P.2d 841 (Colo. 1997).

**This statute neither expands nor contracts the jurisdiction of Colorado's courts.** In creating a new remedy the general assembly did not by implication grant political subdivisions of the state the right to sue the state. *Romer v. Fountain Sanitation Dist.*, 898 P.2d 37 (Colo. 1995).

**Declaratory judgment action is an appropriate means of testing the validity of a decree and resolving uncertainty** as to the legal rights and status of the parties, even if the controversy has not yet ripened into litigation. *In re Lockwood*, 857 P.2d 557 (Colo. App. 1993).

**Trial court properly exercised its jurisdiction to review a Wyoming dissolution decree** where the marital status of the parties was at issue and could be speedily and efficiently resolved through a declaratory judgment action. *In re Lockwood*, 857 P.2d 557 (Colo. App. 1993).

**Applied** in *Toncray v. Dolan*, 197 Colo. 382, 593 P.2d 956 (1979); *Citizens Progressive Alliance v. S.W. Water Conservation Dist.*, 97 P.3d 308 (Colo. App. 2004).

### **13-51-103. Definitions.**

As used in this article, unless the context otherwise requires:

(1) "Person" means any person, partnership, joint stock company, unincorporated association, or society, or municipal or other corporation of any character whatsoever.

**Source: L. 23: p. 271, § 13. CSA: C. 93, § 90. CRS 53: § 77-11-13. C.R.S. 1963: § 77-11-13.**

### **13-51-104. Interpretation and construction.**

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.

**Source: L. 23: p. 271, § 15. CSA: C. 93, § 91. CRS 53: § 77-11-14. C.R.S. 1963: § 77-11-14.**

### **13-51-105. Power and force of declaration.**

Courts of record within their respective jurisdictions have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

**Source:** L. 23: p. 268, § 1. CSA: C. 93, § 78. CRS 53: § 77-11-1. C.R.S. 1963: § 77-11-1.

#### **ANNOTATION**

**Declaratory judgment is conclusive as to questions raised by parties** and passed upon by court. *Atchison v. City of Englewood*, 180 Colo. 407, 506 P.2d 140 (1973).

**Declaratory judgment does not constitute absolute bar** to subsequent proceedings where parties are seeking other remedies, even though based upon claims which could have been asserted in original action. *Atchison v. City of Englewood*, 180 Colo. 407, 506 P.2d 140 (1973); *Near v. Calkins*, 946 P.2d 537 (Colo. App. 1997).

**The judgment leaves the parties to pursue the remedies which the law provides**, after performing its office of declaring the existence of a certain liability. *San Luis Power & Water Co. v. Trujillo*, 93 Colo. 385, 26 P.2d 537 (1933).

**Declaratory judgment on contract validity held not res judicata in subsequent action for reformation, rescission, and damages.** *Atchison v. City*

*of Englewood*, 180 Colo. 407, 506 P.2d 140 (1973).

**Judgment is res judicata as to questions of statutory construction raised between the parties.** Preventive relief in some instances is just as properly a matter of judicial function as remedial relief and if given by a declaratory order in the construction of a statute, it is res judicata as to the questions of construction raised between the parties and passed upon. *San Luis Power & Water Co. v. Trujillo*, 93 Colo. 385, 26 P.2d 537 (1933).

**Subsequent relief may be sought by separate action.** Subsequent relief sought by party to prior declaratory judgment action need not be sought by amendment of complaint in original action, but may be sought by separate action. *Atchison v. City of Englewood*, 180 Colo. 407, 506 P.2d 140 (1973).

**Declaratory judgment should not be accorded to try a controversy piecemeal.** In granting the remedy of declaratory

judgment, it should not be accorded, however, to try a controversy by piecemeal, or to try particular issues without settling the entire controversy. *Lane v. Page*, 126 Colo. 560, 251 P.2d 1078 (1952).

**Act not intended to be a substitute for proper pleading.** The uniform act was never intended to be a substitute for, or a short cut to, proper pleading and specifically provides that all issues of fact shall be tried and determined as in other cases. *Home Owners' Loan Corp. v. Meyer*, 110 Colo. 501, 136 P.2d 282 (1943).

**For the procedure in cases when issues involve equity and actions at law**, see *Beacon Theatre, Inc. v. Westover*, 359 U.S. 500 (1959).

**Declaratory judgment action is an appropriate means of testing the validity of a decree and resolving uncertainty** as to the legal rights and status of the parties,

even if the controversy has not yet ripened into litigation. *In re Lockwood*, 857 P.2d 557 (Colo. App. 1993).

**Applied** in *Colo. & Utah Coal Co. v. Walter*, 75 Colo. 489, 226 P. 864 (1924); *Rice v. Franklin Loan & Fin. Co.*, 82 Colo. 163, 258 P. 223 (1927); *Bedford v. Colo. Nat'l Bank*, 104 Colo. 311, 91 P.2d 469 (1939); *Colo. Nat'l Bank v. Bedford*, 105 Colo. 373, 98 P.2d 1120, *aff'd*, 310 U.S. 41 (1940); *Gordon v. Wheatridge Water Dist.*, 107 Colo. 128, 109 P.2d 899 (1941); *McNichols v. City & County of Denver*, 109 Colo. 269, 124 P.2d 601 (1942); *Carpenter v. Carman Distrib. Co.*, 111 Colo. 566, 144 P.2d 770 (1943); *Woodridge v. Denver & R. G. R. R.*, 118 Colo. 25, 191 P.2d 882 (1948); *Comm'n's Workers of Am. v. W. Elec. Co.*, 191 Colo. 128, 551 P.2d 1065 (1976); *Pennobscot, Inc. v. Bd. of County Comm'rs*, 642 P.2d 915 (Colo. 1982).

### **13-51-106. Who may obtain declaration.**

Any person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

**Source: L. 23:** p. 268, § 2. **CSA:** C. 93, § 79. **CRS 53:** § 77-11-2. **C.R.S. 1963:** § 77-11-2.

## **ANNOTATION**

I. General Consideration.

II. Actions Subject to Declaratory Judgment.

## **I. GENERAL CONSIDERATION.**

**Law reviews.** For article, "Twenty-six Years Under the Colorado Declaratory Judgments Act", see 27 Dicta 177 (1950). For article, "One Year Review of Criminal Law and Procedure", see 39 Dicta 81 (1962). For comment, "Pre-Enforcement Judicial Review: CF&I Steel Corp. v. Colo. Air Pollution Control Commission", see 58 Den. L.J. 693 (1981).

**This act was not intended to repeal the statute prohibiting judges from giving legal advice,** nor to impose the duties of the profession upon the courts, nor to provide advance judgments as the basis of commercial enterprises, nor to settle mere academical questions. *Gabriel v. Bd. of Regents of Univ. of Colo.*, 83 Colo. 582, 267 P. 407 (1928); *City & County of Denver v. Lynch*, 92 Colo. 102, 18 P.2d 907 (1932).

**Primary purpose of declaratory judgment procedure** is to provide a speedy, inexpensive, and readily accessible means of determining actual controversies which depend on the validity or interpretation of some written instrument of law. *Toncray v. Dolan*, 197 Colo. 382, 593 P.2d 956 (1979).

The purpose of this statute is to afford relief from the uncertainty surrounding legal rights and legal relations. It is remedial in nature and should be liberally construed and administered. *Cmty. Tele-Communications v. Heather Corp.*, 677 P.2d 330 (Colo. 1984).

**No proceeding lies under our declaratory judgment act to obtain merely an advisory opinion.** *Farmers*

*Elevator Co. v. First Nat'l Bank*, 176 Colo. 168, 489 P.2d 318 (1971).

**A proceeding for declaratory judgment must be based upon an actual controversy.** *Farmers Elevator Co. v. First Nat'l Bank*, 176 Colo. 168, 489 P.2d 318 (1971); *Beacom v. Bd. of County Comm'rs*, 657 P.2d 440 (Colo. 1983); *Cmty. Tele-Communications v. Heather Corp.*, 677 P.2d 330 (Colo. 1984).

A controversy exists where an insured has submitted a claim and the insurer determined that it did not intend unilaterally to admit liability, even though the insurer had not in fact denied such claim. *Am. Family Mut. Ins. Co. v. Bowser*, 779 P.2d 1376 (Colo. App. 1989).

Plaintiff must demonstrate that there is an existing legal controversy that can be effectively resolved by a declaratory judgment, and not a mere possibility of a future legal dispute. *Bd. of County Comm'rs v. Bowen/Edwards Assoc.*, 830 P.2d 1045 (Colo. 1992).

**A justiciable controversy existed, and so the dismissal of a declaratory judgment claim was an abuse of discretion,** where a town's ordinance limited a developer's rights under an existing contract with the town, notwithstanding the fact that the developer had not applied for a permit from the town. *Lot Thirty-Four Venture, L.L.C. v. Town of Telluride*, 976 P.2d 303 (Colo. App. 1998), *aff'd on other grounds*, 3 P.3d 30 (Colo. 2000).

**Injury in fact and interest legally protected by law give rise to standing.**

Cable television company was injured in fact by city ordinance granting unlawful permit to competitor without holding franchise election, and cable television company had a legally protected interest in conducting its business in a lawful manner satisfying requirements for standing under this act. *Cnty. Tele-Communications v. Heather Corp.*, 677 P.2d 330 (Colo. 1984).

**Judgment creditor of insured has standing** to defend against claim for reformation of insurance policy. *Cont'l Western v. Jim's Hardwood Fl.*, 12 P.3d 824 (Colo. App. 2000).

**As does another insurer of judgment debtor.** *Cont'l Western v. Jim's Hardwood Fl.*, 12 P.3d 824 (Colo. App. 2000).

**The questions presented must not be uncertain or hypothetical.** The questions presented here are not uncertain or hypothetical, and because they are presented in an action seeking a declaratory judgment are no less justiciable than if presented by injunction or otherwise. *San Luis Power & Water Co. v. Trujillo*, 93 Colo. 385, 26 P.2d 537 (1933).

**Courts need not reply to mere "speculative inquiries".** The court cannot decide any other of the various questions raised, however desirable it might be to have them settled, unless it is now willing to answer questions "which have not yet arisen and which may never arise" and reply to mere "speculative inquiries". It cannot thus permit the courts to be converted into legal aid bureaus. *Gabriel v. Bd. of Regents of Univ. of Colo.*, 83 Colo. 582, 267 P. 407 (1928).

**A court should not enter into a speculative inquiry for the purpose of upholding or condemning statutory provisions,** the effect of which, in concrete situations not yet developed, could not be definitely perceived. *Am. Fed'n of Labor v. Reilly*, 113 Colo. 90, 155 P.2d 145 (1944).

**Or determine validity of a proposed city ordinance.** A declaratory judgment may not issue under the provisions of this article on the validity of a city ordinance to create a storm sewer district, where the proposed ordinance is in contemplation only and has not been passed by the city council. *City & County of Denver v. Denver Land Co.*, 85 Colo. 198, 274 P. 743 (1929).

**Especially in the absence of the necessary parties.** Desirable as it might be to have an announcement of the court upon a question, it would be improper to decide the question in the absence of the necessary parties. *City & County of Denver v. Denver Land Co.*, 85 Colo. 198, 274 P. 743 (1929); *Cont'l Mut. Ins. Co. v. Cochrane*, 89 Colo. 462, 4 P.2d 308 (1931).

**A declaratory judgment can only be taken to be a determination** as to the rights of the parties before the court. *Farmers Elevator Co. v. First Nat'l Bank*, 176 Colo. 168, 489 P.2d 318 (1971).

For a declaratory judgment to be binding, the necessary parties must be before the court. *Beacom v. Bd. of County Comm'rs*, 657 P.2d 440 (Colo. 1983).

**A judicial tribunal is not required to render a judicial opinion on a matter which has become moot.** A judicial opinion



would not serve to terminate any controversy or put to an end any uncertainty, which in this complaint and petition evaporated when the election was concluded. *Crowe v. Wheeler*, 165 Colo. 289, 439 P.2d 50 (1968).

**Possible financial loss makes one an interested party.** Junior college districts, which would suffer loss of funds if an act were declared unconstitutional, have the right to intervene in a declaratory judgment suit. *Mesa County Junior Coll. Dist. v. Donner*, 150 Colo. 156, 371 P.2d 442 (1962).

**This statute neither expands nor contracts the jurisdiction of Colorado's courts.** In creating a new remedy the general assembly did not by implication grant political subdivisions of the state the right to sue the state. *Romer v. Fountain Sanitation Dist.*, 898 P.2d 37 (Colo. 1995).

**An anticipatory declaratory judgment action must be independent of and separable from the underlying action.** This determination constitutes the third standard that a trial court must consider in determining whether an anticipatory declaratory judgment action is appropriate. *Constitution Assoc. v. N.H. Ins. Co.*, 930 P.2d 556 (Colo. 1996).

An anticipatory declaratory judgment action is more likely to be independent of and separable from the underlying action if no duty to defend in the underlying action has arisen. However, even if the duty has arisen, a party may bring the action if the party can demonstrate that a justiciable controversy exists, the judgment will finally

resolve the controversy as to all parties, and independence and separability from the underlying action exists. *Constitution Assoc. v. N.H. Ins. Co.*, 930 P.2d 556 (Colo. 1996).

To have standing, a party seeking declaratory relief must demonstrate that the challenged statute or regulation will likely cause tangible detriment to conduct or activities that are presently occurring or are likely to occur in the near future. *Mt. Emmons Mining Co. v. Town of Crested Butte*, 690 P.2d 231 (Colo. 1984); *Citizens Progressive Alliance v. S.W. Water Conservation Dist.*, 97 P.3d 308 (Colo. App. 2004).

Since the southwestern water conservation district's rights were affected by a request made pursuant to the Colorado Open Records Act (CORA), and the district had a legitimate basis for believing that it could not respond to the request within the CORA time limits because of the breadth of and lack of specificity in the request, the district was entitled to have the court determine whether, under CORA, it was required to respond to the request within the statutory time limits. Such a declaration is the type of relief expressly contemplated under the declaratory judgments law. *Citizens Progressive Alliance v. S.W. Water Conservation Dist.*, 97 P.3d 308 (Colo. App. 2004).

To have standing a plaintiff seeking a declaratory judgment on the validity of a regulatory scheme need not violate the regulation and thus become subject to punishment in order to secure the adjudication of uncertain legal rights. *Bd. of*

County Comm'rs v. Bowen/Edwards Assoc., 830 P.2d 1045 (Colo. 1992).

Injury-in-fact element of standing satisfied when allegations of complaint, along with other evidence on issue of standing, establish that regulatory scheme threatens to cause injury to a legally protected interest of the plaintiff. *Bd. of County Comm'rs v. Bowen/Edwards Assoc.*, 830 P.2d 1045 (Colo. 1992).

**Plaintiff has no standing to bring a declaratory judgment action against defendant's insurance company before obtaining a judgment against the defendant.** *Farmers Ins. Exch. v. District Court for the Fourth Judicial Dist.*, 862 P.2d 944 (Colo. 1993).

**An injured party in the underlying action cannot initiate an anticipatory declaratory judgment action against the other party's insurance company** because the injured party does not have an enforceable judgment against nor a contractual relationship with either the other party or the other party's insurer. *Constitution Assoc. v. N.H. Ins. Co.*, 930 P.2d 556 (Colo. 1996).

**Applied** in *In re Estate of Daigle*, 634 P.2d 71 (Colo. 1981); *Dolores Huerta Prep. High v. Colo. State Bd. of Educ.*, 215 P.3d 1229 (Colo. App. 2009).

## **II. ACTIONS SUBJECT TO DECLARATORY JUDGMENT.**

**The courts have jurisdiction over certain enumerated actions seeking declaratory judgments.** The general assembly is without power to require courts

to exercise nonjudicial functions; but it is not without the power to impose upon courts jurisdiction over certain enumerated actions seeking declaratory judgments on matters that lend themselves to and receive judicial determination in otherwise litigated cases, as it at once appears, such would not be nonjudicial in their nature. *San Luis Power & Water Co. v. Trujillo*, 93 Colo. 385, 26 P.2d 537 (1933).

**Section may be employed by an insurance company to determine its liability.** An action for declaratory judgment may be properly maintained by an insurance company to determine if it will be liable to its insured for a defense and for payment of a possible judgment arising from a specified occurrence. *Beeson v. State Auto. & Cas. Underwriters*, 32 Colo. App. 62, 508 P.2d 402 (1973).

An insurer may seek a declaration of its contractual responsibilities of defense and indemnification in connection with a claim filed against a person who arguably qualified as an "insured" under the insurance contract. *Hartford Ins. Group v. District Court*, 625 P.2d 1013 (Colo. 1981).

The factual nature of the inquiry surrounding an action for declaratory judgment brought by an insurance company to determine its liability under a policy does not bar action. *Am. Family Mut. Ins. Co. v. Bowser*, 779 P.2d 1376 (Colo. App. 1989).

**The section is applicable to a dispute over the right to the use of spring waters** not tributary to any natural stream. *Colo. & Utah Coal Co. v. Walter*, 75 Colo. 489, 226 P. 864 (1924); *Stratton v. Beaver Farmers'*

Canal & Ditch Co., 82 Colo. 118, 257 P. 1077 (1927).

**Proposed game procedures, rules, and materials that were not the subject of seizure by the department of revenue** do not constitute a present controversy. *Snizek v. Dept. of Rev.*, 113 P.3d 1280 (Colo. App. 2005).

**Validity of statute may be tested.** Where results to occur from the enforcement of a statutory provision can be predicted with certainty or where the basic right of the state to enter legislative fields said to be the domain of the federal government is questioned, a court properly may declare with respect to the validity of a statute. *Am. Fed'n of Labor v. Reilly*, 113 Colo. 90, 155 P.2d 145 (1944).

One whose rights are affected by a statute may have its construction or validity determined by declaratory judgment. *Toncray v. Dolan*, 197 Colo. 382, 593 P.2d 956 (1979).

Where the taxpayers' liability for income taxes turns on the construction of a statute and the validity, or invalidity, of regulations purporting to interpret that statute, the case is well within the purpose of declaratory judgment. *Toncray v. Dolan*, 197 Colo. 382, 593 P.2d 956 (1979).

**Where all administrative remedies within a labor organization have been exhausted and union officials are charged with fraud**, trial court may properly assume jurisdiction of action by railroad company for declaratory judgment to determine rights under proposed contract. *Wooldrige v.*

*Denver & R. G. R. R.*, 118 Colo. 25, 191 P.2d 882 (1948).

**Declaratory judgment is not proper procedure by which to make preenforcement challenge to regulation promulgated by a state agency.** *CF&I Steel Corp. v. Colo. Air Pollution Control Comm'n*, 199 Colo. 270, 610 P.2d 85 (1980).

**For declaring a note or chattel mortgage void for usury**, see *Rice v. Franklin Loan & Fin. Co.*, 82 Colo. 163, 258 P. 223 (1927).

**For applicability to determination of rights under teachers' salary law**, see *Washington County High Sch. Dist. v. Bd. of Comm'rs*, 85 Colo. 72, 273 P. 879 (1928).

**For determination of certain levies**, see *Denver Land Co. v. Moffat Tunnel Imp. Dist.*, 87 Colo. 1, 284 P. 339 (1930).

**A lawsuit seeking a declaratory judgment may not be instituted** if it impermissibly seeks to chill or freeze the defendant's protected political speech. *Bd. of County Comm'rs v. Shroyer*, 662 F. Supp. 1542 (D. Colo. 1987).

**A cognizable claim is stated under this section and rule 57 of the Colorado Rules of Civil Procedure** where towing carriers claimed that a Colorado state patrol policy invalidly abrogates a claimed legal right of such carriers to impose a lien on personal property obtained through rendition of towing services. *Jam Action, Inc. v. Colo. State Patrol*, 890 P.2d 210 (Colo. App. 1994).

**Declaratory judgment actions may be filed to determine the existence of, or rights under, an oral contract.** Berenergy Corp. v. Zab, Inc., 94 P.3d 1232 (Colo. App. 2004), *aff'd*, 136 P.3d 252 (Colo. 2006).

**A trial court may grant declaratory relief in oral contract disputes where relief would terminate the controversy or remove an uncertainty.** Zab, Inc. v. Berenergy Corp., 136 P.3d 252 (Colo. 2006).

**Claim seeking a declaration that, as a matter of law, the word "firearm" in § 30-15-301 includes bows and arrows does not present a nonjusticiable political question.** District court erred, therefore, in dismissing plaintiff's declaratory judgment claim based on the political question doctrine. Moss v. Bd. of County Comm'rs for Boulder County, 2015 COA 35, 411 P.3d 918.

This case is a classic case appropriate for resolution by entry of a declaratory judgment. A declaratory judgment would resolve the controversy between the parties regarding whether bow-and-arrow discharges are prohibited under the existing county resolution in the area where plaintiffs reside. At a minimum, there is controversy about whether bow-and-arrow discharges are prohibited under the applicable county resolution. A declaratory judgment would resolve the dispute about what conduct is prohibited under the current legal framework. Thus, a declaratory judgment will terminate the controversy or uncertainty regarding the scope of the resolution. As such, plaintiffs' claim is appropriate for resolution by entry of a declaratory judgment. Moss v. Bd. of County Comm'rs for Boulder County, 2015 COA 35, 411 P.3d 918.

### **13-51-107. Contract construed any time.**

A contract may be construed either before or after there has been a breach thereof.

**Source: L. 23:** p. 268, § 3. **CSA:** C. 93, § 80. **CRS 53:** § 77-11-3. **C.R.S. 1963:** § 77-11-3.

## **ANNOTATION**

**Validity of contract or question arising under contract must be pleaded.** In an action under this article to determine the validity of a contract, the complaint failing to allege that the validity of the contract had been questioned, or that a question had arisen under it, no cause of action was

stated. *Gabriel v. Bd. of Regents of Univ. of Colo.*, 83 Colo. 582, 267 P. 407 (1928).

**Contracts interpreted only when all necessary facts determinable.** Although this section and C.R.C.P. 57 provide that a contract may be interpreted prior to breach, these provisions are inapplicable where the dispute requires an interpretation in light of

extrinsic facts which are not yet determinable. *McDonald's Corp. v. Rocky Mt. McDonald's, Inc.*, 42 Colo. App. 143, 590 P.2d 519 (1979).

**Insurer may seek declaration of contractual responsibilities of defense against "insured".** An insurer may seek a

declaration of its contractual responsibilities of defense and indemnification in connection with a claim filed against a person who arguably qualifies as an "insured" under the insurance contract. *Hartford Ins. Group v. District Court*, 625 P.2d 1013 (Colo. 1981).

### **13-51-108. Purposes of declaration.**

(1) Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust in the administration of a trust or of the estate of a decedent, an infant, a mental incompetent, or an insolvent may have a declaration of rights or legal relations in respect thereto:

- (a) To ascertain any class of creditors, devisees, legatees, heirs, next of kin, or other; or
- (b) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or
- (c) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

**Source:** L. 23: p. 269, § 4. CSA: C. 93, § 81. CRS 53: § 77-11-4. C.R.S. 1963: § 77-11-4. L. 75: IP(1) amended, p. 925, § 18, effective July 1.

### **ANNOTATION**

**Law reviews.** For article, "Express Trusts in Colorado", see 10 Rocky Mt. L. Rev. 9 (1937).

**This section does not authorize advice on matters not before the court.** The court at the request of the parties will determine all questions that have properly arisen, but will decline to determine those which had not arisen and which might never arise during the administration of the trust. Neither under the equity practice nor under

this act are the courts required to give general advice and instructions upon matters which have not arisen at the time their jurisdiction is invoked. *Mulcahy v. Johnson*, 80 Colo. 499, 252 P. 816 (1927).

**It confers no new authority concerning wills and trusts.** District courts had full and complete jurisdiction before the passage of that act to construe wills and trusts and to control executors and trustees in the

administration of estates. *Mulcahy v. Johnson*, 80 Colo. 499, 252 P. 816 (1927).

**Applied** in *In re Estate of Daigle*, 634 P.2d 71 (Colo. 1981).

### **13-51-109. Not a limitation.**

The enumeration in sections 13-51-106 to 13-51-108 does not limit or restrict the exercise of the general powers conferred in section 13-51-105, in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

**Source: L. 23:** p. 269, § 5. **CSA:** C. 93, § 82. **CRS 53:** § 77-11-5. **C.R.S. 1963:** § 77-11-5.

## **ANNOTATION**

**Although § 13-51-106 and C.R.C.P. 57(b) detail situations in which declaratory judgment actions may be brought,** they do not restrict the court's ability to grant declaratory relief in other situations when appropriate. *Berenergy Corp. v. Zab, Inc.*, 94 P.3d 1232 (Colo. App. 2004), *aff'd* on other grounds, 136 P.3d 252 (Colo. 2006).

**Declaratory judgment action is an appropriate means of testing the validity of a decree and resolving uncertainty** as to

the legal rights and status of the parties, even if the controversy has not yet ripened into litigation. *In re Lockwood*, 857 P.2d 557 (Colo. App. 1993).

**A trial court may exercise its discretion to declare the existence of an oral contract** and, if one exists, the terms of that contract, where such relief would "terminate the controversy or remove an uncertainty." *Zab, Inc. v. Berenergy Corp.*, 136 P.3d 252 (Colo. 2006).

### **13-51-110. When court may refuse.**

The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

**Source: L. 23:** p. 269, § 6. **CSA:** C. 93, § 83. **CRS 53:** § 77-11-6. **C.R.S. 1963:** § 77-11-6.

### **13-51-111. Review.**

All orders, judgments, and decrees under this article may be reviewed as other orders, judgments, and decrees.

**Source:** L. 23: p. 269, § 7. CSA: C. 93, § 84. CRS 53: § 77-11-7. C.R.S. 1963: § 77-11-7.

### **13-51-112. Further relief.**

Further relief based on a declaratory judgment or decree may be granted when necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application is deemed sufficient, the court, on reasonable notice, shall require any adverse party whose rights have been adjudicated by the declaratory judgment or decree to show cause why further relief should not be granted forthwith.

**Source:** L. 23: p. 269, § 8. CSA: C. 93, § 85. CRS 53: § 77-11-8. C.R.S. 1963: § 77-11-8.

## **ANNOTATION**

**Relief is not limited by language of statute or rule to prevailing party in declaratory judgment action.** Atchison v. City of Englewood, 180 Colo. 407, 506 P.2d 140 (1973).

**Reversal of an underlying declaratory judgment is not the "further relief" contemplated by this section and C.R.C.P.**

**57(h) but is, instead, ordinary postjudgment relief.** While "further relief" is not limited to the original prevailing party, nevertheless, such relief must seek remedies different from those granted in the declaratory judgment. Spencer v. Bd. of County Comm'rs, 39 P.3d 1272 (Colo. App. 2001).

### **13-51-113. Issues of fact.**

When a proceeding under this article involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of facts are tried and determined in other civil actions in the court in which the proceeding is pending.

**Source:** L. 23: p. 270, § 9. CSA: C. 93, § 86. CRS 53: § 77-11-9. C.R.S. 1963: § 77-11-9.

## ANNOTATION

**Factual determinations may be necessary in order to declare rights, status or legal relations.** An action for declaratory judgment may be properly maintained by an insurance company to fix liability vel non, notwithstanding that factual determinations are necessary to make a declaration on the controlling issue. *O'Herron v. State Farm Mut. Auto. Ins. Co.*, 156 Colo. 164, 397 P.2d 227 (1964); *Am. Family Mut. Ins. Co. v. Bowser*, 779 P.2d 1376 (Colo. App. 1989).

**Parties are entitled to jury trial if issue would have matured into one at law.** If the action in which declaratory relief is sought would have been an action at law had it been permitted to mature without intervention of declaratory procedure, the right to trial by jury of disputed questions of fact is not affected. *Baumgartner v. Schey*, 143 Colo. 373, 353 P.2d 375 (1960).

### **13-51-114. Costs.**

In any proceeding under this article, the court may make such award of costs as may seem equitable and just.

**Source: L. 23:** p. 270, § 10. **CSA:** C. 93, § 87. **CRS 53:** § 77-11-10. **C.R.S. 1963:** § 77-11-10.

## ANNOTATION

**County treasurer is entitled to attorney fees in mandamus suit against board of commissioners.** Where county treasurer seeks writ of mandamus requiring board of commissioners to approve salaries set by treasurer and requests declaratory judgment construing and interpreting relative rights, powers and duties of treasurer and board under statute, treasurer is entitled to reasonable attorney fees incurred in prosecuting action. *Kanaly v. Wadlow*, 31

Colo. App. 193, 502 P.2d 83 (1972), modified, 511 P.2d 484 (1973).

**This section does not evince a legislative intent to authorize cost awards against public entities,** because this section neither explicitly refers to such entities nor to any action that can be brought only against such entities. *Farmers Reservoir & Irrigation Co. v. City of Golden*, 113 P.3d 119 (Colo. 2005).



### **13-51-115. Parties - ordinances - statutes.**

When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party and is entitled to be heard, and, if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and be entitled to be heard.

**Source:** L. 23: p. 270, § 11. CSA: C. 93, § 88. CRS 53: § 77-11-11. C.R.S. 1963: § 77-11-11.

**Cross references:** For similar provisions in court rules, see C.R.C.P. 57(j).

#### **ANNOTATION**

**Law reviews.** For note, "Has the Colorado IRA Met an Advisory Death?", see 8 Rocky Mt. L. Rev. 140 (1936).

**All persons who have an interest shall be made parties.** This section provides that all persons who claim an interest in the litigation which would be affected by the declaration sought shall be made parties. Mesa County Junior Coll. Dist. v. Donner, 150 Colo. 156, 371 P.2d 442 (1962).

**It was appropriate for the insurer to name the injured party in the underlying action as a party defendant in the anticipatory declaratory judgment action** to ensure that the declaratory judgment would resolve the controversy at issue with regard to all parties. Once named, it was appropriate for the injured party in the underlying action to defend against the declaratory judgment action brought by the insurer. Constitution Assoc. v. N.H. Ins. Co., 930 P.2d 556 (Colo. 1996).

**Any person or entity not named as a party to an anticipatory declaratory judgment action is not bound** by the court's ruling in the action. Constitution Assoc. v. N.H. Ins. Co., 930 P.2d 556 (Colo. 1996).

**Possible loss of funds is sufficient interest.** Under this section all persons claiming an interest in the litigation to be affected by the declaration sought shall be made parties. It is error to deny petitions of intervention of junior colleges whose rights would be directly affected by a declaration of unconstitutionality depriving them of funds. Mesa County Junior Coll. Dist. v. Donner, 150 Colo. 156, 371 P.2d 442 (1962).

**Neither this section nor C.R.C.P. 57 (j) applies to regulations promulgated pursuant to legislative grant of authority;** therefore, in challenging a regulation, the attorney general need not be joined. Cont'l

Liquor Co. v. Kalbin, 43 Colo. App. 438, 608 P.2d 353 (1977).

**Nor do they address situation where constitutional question arises during trial.** This section and C.R.C.P. 57 (j), mandating notice to the attorney general when allegations of unconstitutionality are made, do not address the situation where the question of constitutionality arises for the first time during the course of trial. Howell v. Woodlin Sch. Dist. R-104, 198 Colo. 40, 596 P.2d 56 (1979).

**Where the state was already a party to the action and the constitutionality of a statute had been raised and argued in the trial court, this section did not require additional notice to the attorney general.** Raptor Educ. Found., Inc. v. State, 2012 COA 219, 296 P.3d 352.

**In suit seeking declaratory judgment that tax statute is unconstitutional, the**

attorney general, governor, state property tax commissioner, and county attorney are not proper parties defendant, but the state of Colorado and county officials are proper parties defendant. Lucchesi v. State, 807 P.2d 1185 (Colo. App. 1990).

**Condominium association and its board members can adequately represent the interests of absent unit owners** for purposes of a declaratory judgment claim concerning the validity of a declaration provision. Accordingly, plaintiff need not join absent unit owners as parties. Accetta v. Brooks Towers Residences, 2019 CO 11, 434 P.3d 600.

**Applied** in Hide-A-Way Massage Parlor, Inc. v. Bd. of County Comm'rs, 198 Colo. 175, 597 P.2d 564 (1979); Empire Sav., Bldg. & Loan Ass'n v. Otero Sav. & Loan Ass'n, 640 P.2d 1151 (Colo. 1982).

## **13-51.5 ARTICLE 51.5**

### **Review of Land Use Decisions**

13-51.5-101. Scope and purpose of article.

13-51.5-102. Definitions.

13-51.5-103. Request for administrative record - certification - time limits.

13-51.5-104. Request for judicial review of local land use decisions - attorney fees - effect of filing action - good faith reliance.

#### **13-51.5-101. Scope and purpose of article.**

This article applies to judicial review of local land use decisions in cases where it is alleged that a governmental body or officer or any lower judicial body exercising judicial or quasi-judicial functions has exceeded its jurisdiction or abused its discretion and there is no plain,

speedy, and adequate remedy otherwise provided by law. Review shall be limited to a determination of whether the body or officer has exceeded its jurisdiction or abused its discretion, based on the evidence in the record before the defendant body or officer.

**Source: L. 97:** Entire article added, p. 214, § 2, effective July 1.

### **13-51.5-102. Definitions.**

As used in this article, unless the context otherwise requires:

(1) "Development permit" means any zoning permit, subdivision approval, certification, special exception, variance, or any other similar action of a governmental entity that has the effect of authorizing the development of real property. "Development permit" does not include a building permit.

(1.5) "Dwelling unit" has the same meaning as set forth in section 38-12-502.

(2) "Governmental entity" includes any municipal, county, or regional government with the authority to plan and zone land. "Governmental entity" does not include the state of Colorado, any agency of the state of Colorado, the United States, or any agency of the United States.

(3) "Local land use decision" means any action of a governmental entity that has or will have the effect of granting, denying, or granting with conditions an application for a development permit.

**Source: L. 97:** Entire article added, p. 214, § 2, effective July 1. **L. 2024:** (1.5) added, (HB 24-1107), ch. 285, p. 1897, § 1, effective May 30.

**Editor's note:** Subsections (2) and (3), as they were enacted in House Bill 97-1156, were renumbered on revision in 2002 as (3) and (2), respectively.

### **13-51.5-103. Request for administrative record - certification - time limits.**

(1) Unless the court specifically orders otherwise upon a showing of good cause for delay, a defendant governmental body or officer shall file the record pursuant to rule 106 (a)(4)(III), C.R.C.P., or any successor rule thereto within thirty-five days after the filing of the complaint.

(2) Except as otherwise provided in this section, all aspects of the proceeding shall be conducted in accordance with the Colorado rules of civil procedure, including without limitation C.R.C.P. 106 and any successor thereto.

**Source: L. 97:** Entire article added, p. 214, § 2, effective July 1. **L. 2012:** (1) amended, (SB 12-175), ch. 208, p. 826, § 13, effective July 1.

#### ANNOTATION

**Section does not confer any legally protected interest for purposes of establishing standing.** Purpose of section is to provide more expeditious disposition of

land use decisions being reviewed under C.R.C.P. 106(a)(4) when standing otherwise independently exists. *Reeves v. City of Fort Collins*, 170 P.3d 850 (Colo. App. 2008).

#### **13-51.5-104. Request for judicial review of local land use decisions - attorney fees - effect of filing action - good faith reliance.**

(1) (a) The court shall award reasonable attorney fees to a prevailing governmental entity in any action for judicial review of a local land use decision involving residential use with a net project density of five dwelling units per acre or more brought pursuant to this article 51.5 or rule 106 (a)(4) of the Colorado rules of civil procedure.

(b) This subsection (1) does not apply to an action for judicial review brought by the land use applicant before the governmental entity.

(2) Filing an action for judicial review of a local land use decision pursuant to this article 51.5 or rule 106 (a)(4) of the Colorado rules of civil procedure does not affect the validity of the local land use decision. The governmental entity and public may rely on the local land use decision in good faith for all purposes until the action for judicial review is resolved.

**Source: L. 2024:** Entire section added, (HB 24-1107), ch. 285, p. 1897, § 2, effective May 30.

## ARTICLE 52

### Property Subject to Levy

13-52-101. Property first levied on.

|            |                                                        |            |                                                                |
|------------|--------------------------------------------------------|------------|----------------------------------------------------------------|
| 13-52-102. | Property subject to execution<br>- lien - real estate. | 13-52-107. | What moneys may be levied<br>on.                               |
| 13-52-103. | Change of name of debtor -<br>record.                  | 13-52-108. | Concerning garnishment and<br>attachment prior to<br>judgment. |
| 13-52-104. | Transcript of federal<br>judgment filed - lien.        | 13-52-109. | Property sold in parcels.                                      |
| 13-52-105. | Legal and equitable interests.                         | 13-52-110. | Execution to any county.                                       |
| 13-52-106. | Certificate holders included.                          | 13-52-111. | Return - endorsement - entry.                                  |

### **13-52-101. Property first levied on.**

The judgment creditor in execution may elect on what property he will have the same levied except the land on which the judgment debtor resides, which shall be last taken in execution, excepting and reserving, however, to the judgment debtor in execution such property as is, or may be, by law exempted from execution.

**Source:** R.S. p. 372, § 9. G.L. § 1415. G.S. § 1847. **R.S. 08:** § 3608. **C.L.** § 5897. **CSA:** C. 93, § 1. **CRS 53:** § 77-1-1. **C.R.S. 1963:** § 77-1-1. **L. 90:** Entire section amended, p. 1839, § 15, effective May 31.

### **ANNOTATION**

**Law reviews.** For article, "Trusts and Estates", see 30 Dicta 435 (1953). For article, "Election to Sue on a Mortgage Note in Lieu of Foreclosure", which discusses executions on homestead property, see 13 Colo. Law. 621 (1984).

**Debtor should be able to designate property to be taken in place of his residence.** In case of the levy of an execution on land on which the debtor resides, without giving him an opportunity, when practicable, to designate other property of his sufficient to satisfy the writ,

the levy ought to be set aside, upon a timely application by the debtor, accompanied with a satisfactory showing of other property, subject to levy, sufficient to satisfy the execution. Victor Inv. Co. v. Roerig, 22 Colo. App. 257, 124 P. 349 (1912).

**Attorney should give directions to officer making levy.** The attorney controlling an execution owes to his client the duty to give the officer to whom the writ is committed proper directions. But even where a levy upon the lands where the execution defendant is residing is

contemplated, such attorney is under no duty to the defendant to notify him of the intended levy. *Victor Inv. Co. v. Roerig*, 22 Colo. App. 257, 124 P. 349 (1912).

**Officer need not notify debtor that a levy on his realty is to be made.** No decided case has been brought to our notice

in which it was held that a failure of the officer to notify the defendant in the execution, before levying upon his real estate, would authorize a court of equity to set aside the sheriff's sale and deed, after the expiration of the statutory period of redemption. *Victor Inv. Co. v. Roerig*, 22 Colo. App. 257, 124 P. 349 (1912).

### **13-52-102. Property subject to execution - lien - real estate.**

(1) All goods and chattels, lands, tenements, and real estate of every person against whom any judgment is obtained in any court of record in this state, either at law or in equity, or against whom any foreign judgment is filed with the clerk of any court of this state in accordance with the provisions of the "Uniform Enforcement of Foreign Judgments Act" pursuant to article 53 of this title, which judgment, in either case, is for any debt, damages, costs, or other sum of money are liable to be sold on execution to be issued upon such judgment. A transcript of the judgment record of such judgment, certified by the clerk of such court, may be recorded in any county; and from the time of recording such transcript, and not before, the judgment shall become a lien upon all the real estate, not exempt from execution in the county where such transcript of judgment is recorded, owned by such judgment debtor or which such judgment debtor may afterwards acquire in such county, until such lien expires. The lien of such judgment shall expire six years after the entry of judgment unless, prior to the expiration of such six-year period, such judgment is revived as provided by law and a transcript of the judgment record of such revived judgment, certified by the clerk of the court in which such revived judgment was entered, is recorded in the same county in which the transcript of the original judgment was recorded, in which event the lien shall continue for six years from the entry of the revived judgment. A lien may be obtained with respect to a revived judgment in the same manner as an original judgment and the lien of a revived judgment may be continued in the same manner as the lien of an original judgment. The lien of any judgment shall expire if the judgment is satisfied or considered as satisfied as provided in this section. The lien created by recording a notice of lien of a judgment for child support or maintenance or arrears thereof or child support debt pursuant to section 14-10-122, C.R.S., shall be governed by such section. The lien created by recording a transcript of an order for restitution pursuant to section 16-18.5-104 (5)(a), C.R.S., shall be governed by article 18.5 of title 16, C.R.S.

(2) (a) Except as provided in paragraph (b) of this subsection (2), execution may issue on any judgment described in subsection (1) of this section to enforce the same at any time within twenty years from the entry thereof, but not afterwards, unless revived as provided by law, and,

after twenty years from the entry of final judgment in any court of this state, the judgment shall be considered as satisfied in full, unless so revived.

(b) (I) With respect to judgments entered in county courts on or after July 1, 1981, the time limitation within which execution may issue is six years from the entry thereof, but not afterwards, unless revived as provided by law, and, after six years from the entry of final judgment in any county court of this state, the judgment shall be considered as satisfied in full, unless so revived.

(II) The twenty-year limitation contained in paragraph (a) of this subsection (2) shall not apply to judgments entered for restitution pursuant to article 18.5 of title 16, C.R.S. Execution may issue on judgments for restitution at any time until paid in full.

(c) If, after the date that a transcript of judgment is recorded in a county, some portion or all of such county is merged with, annexed to, or otherwise becomes part of some other county or city and county, whether then existing or newly formed, then:

(I) It shall not be necessary to record the transcript of judgment in such other county or city and county in order to continue the lien of the judgment and the priority thereof as to any real estate that the judgment debtor acquired before or acquires after the date of recording of the transcript of judgment if such real estate was in the county in which the transcript of judgment was recorded on or after the date of recording of the transcript of judgment; and

(II) If such judgment is revived as provided by law, timely recording of a transcript of the revived judgment in such other county or city and county is necessary to continue the lien of the original judgment and the priority thereof with respect to any real estate that was in the county in which the transcript of the original judgment was recorded on or after the date of recording the transcript of the original judgment but, at the time of recording of the transcript of the revived judgment, is in such other county or city and county.

(3) The term "real estate" as used in this section includes all interests of the defendant or any person to his use held or claimed by virtue of any deed, bond, covenant, or otherwise for a conveyance or as mortgagor of lands in fee, for life, or for years.

(4) (a) Any person, including a title insurance company as defined by article 11 of title 10, C.R.S., who makes representations concerning the existence of any judgment lien on the real property of another shall have the duty to make a bona fide good faith effort, prior to the making of such representations, to determine whether the person against whom the judgment was obtained is the same person as the person who holds an interest in the real property which is the subject of the representation. If a bona fide good faith effort is made and such effort fails to disclose satisfactory information as to whether or not the person against whom the judgment was obtained is the same person as the person who holds an interest in the real property which is the subject of the representation, then, in that event, the person or title insurance company who

makes the representation may require the person who holds an interest in the real property which is the subject of the representation to provide satisfactory evidence or information that he is not the same person as the judgment debtor.

(b) Any person, including a title insurance company as defined by article 11 of title 10, C.R.S., who makes representations concerning the existence of any judgment lien on the real property of another without making a bona fide good faith effort, prior to the making of such representations, to determine whether the person against whom the judgment was obtained is the same person as the person who holds an interest in the real property which is the subject of the representation is liable to any person damaged by the failure to make such effort in a sum of not less than one hundred dollars nor more than one thousand dollars for his actual and exemplary damages. The prevailing party shall recover the costs of the action together with reasonable attorney fees, as determined by the court. No action pursuant to this paragraph (b) shall be brought more than one year after the date of the representation concerning the existence of the judgment lien.

(c) As used in this subsection (4), "bona fide good faith effort" means honesty in fact in the effort to discover and determine the actual and true identity of the judgment debtor against whom the judgment lien attaches. The effort shall include but need not be limited to an examination of the judgment debtor's social security number, his driver's license, his address, his birth record, and the court record in the action which resulted in the judgment lien, if available.

**Source:** R.S. p. 370, § 1. G.L. § 1409. G.S. § 1835. L. 1891: p. 246, § 1. L. 01: p. 231, § 1. R.S. 08: § 3609. L. 17: p. 329, § 1. C.L. § 5898. CSA: C. 93, § 2. CRS 53: § 77-1-2. C.R.S. 1963: § 77-1-2. L. 80: (4) added, p. 517, § 1, effective July 1. L. 81: (2) amended, p. 889, § 1, effective July 1. L. 92: (1) amended, p. 218, § 24, effective August 1. L. 93: (1) amended, p. 1563, § 14, effective September 1. L. 2000: (1) and (2) (b) amended, p. 1051, § 23, effective September 1. L. 2002: (1), (2) (a), and (2) (b) (II) amended and (2) (c) added, p. 49, § 1, effective March 21.

**Cross references:** For procedures in execution and other proceedings after judgment, see C.R.C.P. 69.

## ANNOTATION

I. General Consideration.

III. Nature and Extent of Lien.

II. Interests Subject to Execution.



## **I. GENERAL CONSIDERATION.**

**Law reviews.** For article, "State Statutes of Limitation Contrasted and Compared", see 3 Rocky Mt. L. Rev. 106 (1931). For article, "Enforcement of Justice Court Judgments", see 12 Dicta 274 (1935). For note, "Revived Judgments and the Full Faith and Credit Clause", see 22 Rocky Mt. L. Rev. 87 (1949). For article, "Reaching Fraudulent Conveyances and Equitable Interests of Debtors", see 27 Dicta 137 (1950). For article, "Executions and Levies on Tangible Property", see 27 Dicta 143 (1950). For article, "Transmissibility of Future Interest in Colorado", see 27 Rocky Mt. L. Rev. 1 (1954). For article, "Marketable Title: What Certifiable Copies of Court Papers Should Appear of Record", see 34 Dicta 7 (1957). For article, "One Year Review of Domestic Relations", see 38 Dicta 84 (1961). For comment, "The Effect of Certified Realty Corp. v. Smith on Mortgage Foreclosure in Colorado", see 52 U. Colo. L. Rev. 301 (1981). For article, "Some Malpractice Pitfalls in Collection Cases", which discusses malpractice by collection attorneys, see 13 Colo. Law. 2235 (1984). For article, "The Nuts and Bolts of Collecting Support", see 19 Colo. Law. 1595 (1990). For article, "In 'Case' You Missed It: Recent Real Estate Case Law Highlights", see 50 Colo. Law. 36 (Apr. 2021).

**The duly recorded judgment became a lien upon all real property** which the judgment debtor then owned or thereafter acquired. *Sky Harbor, Inc. v. Jenner*, 164 Colo. 470, 435 P.2d 894 (1968).

**Under this section, execution may issue at any time within 20 years** after the entry of the judgment. *Balfe v. Rumsey & Sikemeier Co.*, 55 Colo. 97, 133 P. 417 (1913).

**The running of the six-year statute of limitations established by this section** for collection of payment of a debt through execution on a judgment lien does not extinguish the debt. It bars execution of the judgment lien, but payment of the debt may be enforced by other available legal means. *Mortgage Invs. Corp. v. Battle Mtn. Corp.*, 70 P.3d 1176 (Colo. 2003).

**If more than six, but less than twenty, years have passed since the entry of judgment**, a creditor may obtain a judgment lien if he or she first revives the judgment and records the transcript of the revived judgment. *Sec. Credit Servs., LLC v. Hulterstrom*, 2019 COA 7, 436 P.3d 593; *In re Kellogg*, 601 B.R. 537 (Bankr. D. Colo. 2019).

**If a judgment creditor allows its judgment lien to expire and it does not properly revive the judgment** before the six-year period lapses, the creditor can no longer execute because its lien has expired. *In re Kellogg*, 601 B.R. 537 (Bankr. D. Colo. 2019).

To obtain a new lien against the debtor's property, the judgment creditor must necessarily establish that the debtor owes the creditor a judgment debt, but it cannot if that debt has been discharged. *In re Kellogg*, 601 B.R. 537 (Bankr. D. Colo. 2019).

**Section also governs time within which body executions may issue.** The sections relating to body executions do not prescribe any different time limit than that mentioned in the instant section for the issuance of such executions. Both body executions and property executions are issued on judgments, "to enforce the same". In our opinion this section prescribes the time within which body executions may issue. Roll v. Davis, 85 Colo. 594, 277 P. 767 (1929).

**The general assembly may, while a judgment is in full life, extend the time within** which execution may issue. Balfe v. Rumsey & Sikemeier Co., 55 Colo. 97, 133 P. 417 (1913).

**Generally, court may not impair creditor's right to enforce collection.** As a general rule, a court may not stay execution and thereby impair or destroy the statutory right of a judgment creditor to enforce collection of its judgment against nonexempt property of the judgment debtor. First Nat'l Bank v. District Court, 652 P.2d 613 (Colo. 1982).

**Right to enforce may be statutorily limited.** The substantive right of a judgment creditor to enforce collection of the judgment may be statutorily limited, as by § 7-60-128. First Nat'l Bank v. District Court, 652 P.2d 613 (Colo. 1982).

**A judgment directing restitution of money is a judgment for a "sum of money"** as that phrase is used in this section. Scott v. Woodhams, 79 Colo. 528, 246 P. 1027 (1926).

**Execution may issue on order for permanent and temporary alimony.** Under the provisions of this section an execution is authorized not only on an order for permanent alimony, but on temporary alimony also. Daniels v. Daniels, 9 Colo. 133, 10 P. 657 (1886); Paul v. Marty, 72 Colo. 399, 211 P. 667 (1922); Hauck v. Schuck, 143 Colo. 324, 353 P.2d 79 (1960).

**Alimony and support installments are judgments,** and are enforceable during the entire period of the statute of limitations. Hauck v. Schuck, 143 Colo. 324, 353 P.2d 79 (1960).

**Creditor may file bill in equity to remove fraudulent obstruction.** The right of a judgment creditor to come into a court of equity to remove a fraudulent obstruction to the collection of his judgment, and to enforce a claim against property which ought to be subject thereto, is well established. Barnes v. Beighly, 9 Colo. 475, 12 P. 906 (1887).

**Once lien exists.** In some way the lien must be acquired and exist at the time a bill is filed in equity to remove fraudulent obstructions. Barnes v. Beighly, 9 Colo. 475, 12 P. 906 (1887).

**Levy must become visible and accessible to be valid.** The designation is a mental act; but, in order that it may be valid as a levy, it must be embodied in some visible memorial—some record of what was done, accessible to the judgment debtor and to the public. Strictly speaking, the record is not itself a levy, it is merely the evidence that the levy was made, but as the statute does not require that the record shall be

made upon the writ, no reason is apparent why it may not be made elsewhere, provided it is equally public and permanent. *Herr v. Broadwell*, 5 Colo. App. 467, 39 P. 70 (1895); *Jones v. Olson*, 17 Colo. App. 144, 67 P. 349 (1902).

**Judgment itself does not constitute a lien** upon realty; the creditor must go a step further and acquire a specific lien. *Robison v. Gumaer*, 43 Colo. 310, 95 P. 935 (1908).

**Mere recording of transcript does not effect execution.** The recording of the transcript of judgment does not, in and of itself, effect an execution upon the property of the debtor. *Rocky Mt. Ass'n of Credit Mgt. v. District Court*, 193 Colo. 344, 565 P.2d 1345 (1977).

**Creditor may, prior to sale, bring action to determine nature and extent of debtor's interest in land.** While under the statute every interest in land, whether legal or equitable, is subject to levy and sale on execution, and the purchaser of such interest may maintain an action to determine the extent thereof, yet the judgment creditor may resort to an action prior to the sale. for the purpose of having the debtor's interest determined, and the question of title settled in advance of the sale. *O'Connell v. Taney*, 16 Colo. 353, 27 P. 888 (1891).

**Estate, not subjected specifically to a judgment lien before it was homesteaded, is exempt from execution.** *Weare v. Johnson*, 20 Colo. 363, 38 P. 374 (1894).

**Proviso as to suspension of statute applies to supersedeas on appeal.** The proviso in the statute, suspending the

running of the statute when issue of execution is restrained by injunction, applies to a suspension of issue by supersedeas on appeal. *Gottlieb v. Thatcher*, 151 U.S. 271 (1894).

**General appearance and motion to quash by debtor waives defects in service.** A general appearance, and motion to quash an execution, upon the sole ground that more than 10 (now 20) years elapsed between the entry of judgment and the issuance of execution, and that the judgment had not been revived, is a waiver of all defects and irregularities in the service or return of the summons. *Balfe v. Rumsey & Sikemeier Co.*, 55 Colo. 97, 133 P. 417 (1913).

**Court-ordered foreclosure need not conform to this section.** The district court's order foreclosing the chattel mortgages and directing sale of the personalty was not entered by way of execution. The procedures specified in articles 51 to 61 of title 13 for levies on execution were not violated by the district court's order of foreclosure and sale. *Terrell v. Walter E. Heller & Co.*, 165 Colo. 463, 439 P.2d 989 (1968).

**Judicial liens in bankruptcy.** Judicial liens impair a bankruptcy debtor's equity where they are created subsequent to the establishment of a homestead right and no waiver is obtained from the property owner. Consequently, pursuant to 11 U.S.C. § 522 and §§ 13-54-107, 38-41-201 and 38-41-202, these liens are null and void as judicial liens. *Lincoln v. Cherry Creek Homeowners Ass'n*, 30 B.R. 905 (Bankr. D. Colo. 1983).

**Good faith improver doctrine did not apply** to exempt a residence from a judgment lien which had been recorded against judgment debtor before debtor's successor in interest began construction of such residence. *Mooring v. Brown*, 763 F.2d 386 (10th Cir. 1985).

**For execution sale by one creditor not divesting lien of another creditor**, see *Casserleigh v. Spar Consol. Mining Co.*, 23 Colo. App. 239, 128 P. 863 (1912).

**Personal and real property not owned by judgment debtor is not subject to execution**, absent another statute creating liability. *Brink v. McNeil*, 761 P.2d 271 (Colo. App. 1988).

**Twenty-year period prescribed for execution upon judgments in this section and not the six-year period in § 13-80-103.5 is the applicable statute of limitations for child support arrearages.** *In re Aragon*, 773 P.2d 1110 (Colo. App. 1989).

**Seizure of jointly held personal property pursuant to writ of attachment or execution** to secure debt of one joint owner does not constitute conversion. *Ruscitti v. Sackheim*, 817 P.2d 1046 (Colo. App. 1991).

**Property subject to homestead exemption is exempt from execution and therefore from judgment lien.** *City Ctr. Nat'l Bank v. Barone*, 807 P.2d 1251 (Colo. App. 1991).

**If bank could not assert a lien against property while party retained title, it could not enforce a lien against the**

**party's grantees**, provided the transaction was bona fide. *City Ctr. Nat'l Bank v. Barone*, 807 P.2d 1251 (Colo. App. 1991).

**Issuance of a writ of execution and the filing of a certificate of levy does not extend the six-year term of a judgment lien.** Regardless of when acquired, writs of execution or certificates of levy merely serve as means to enforce the lien. *Great W. Exch., Inc. v. Walters*, 819 P.2d 1093 (Colo. App. 1991).

**Nothing in this section requires a judgment creditor to obtain a valid judgment lien as a prerequisite to obtaining a writ of execution and certificate of levy or to execute on the judgment.** *Franklin Credit Mgmt. Corp. v. Galvan*, 2019 COA 107, 457 P.3d 749.

**When calculating the six-year time limit** on a judgment lien under this section that originated as a foreign judgment lien under the Uniform Enforcement of Foreign Judgments Act, the time begins to run when the judgment was entered in the foreign jurisdiction, not when it was filed in Colorado. *Baum v. Baum*, 820 P.2d 1122 (Colo. 1991); *Mortg. Inv. Corp. v. Battle Mtn. Corp.*, 56 P.3d 1104 (Colo. App. 2001), rev'd on other grounds, 70 P.3d 1176 (Colo. 2003); *Indep. Bank v. Pandey*, 2015 COA 3, 383 P.3d 64, aff'd on other grounds, 2016 CO 49, 372 P.3d 1047.

**Judgment lien, based on a domesticated out-of-state judgment, must be revived under Colorado procedural law for the lien to be extended.** To extend a judgment lien beyond six years after the date of judgment, Colorado procedural law requires

a judgment to be revived pursuant to C.R.C.P. 54(h) and a transcript of the revival to be filed with the clerk and recorder. *Wells Fargo Bank, N.A. v. Kopfman*, 205 P.3d 437 (Colo. App. 2008), *aff'd*, 226 P.3d 1068 (Colo. 2010).

**Personal property not owned by judgment debtor not subject to execution to satisfy judgment.** *Ruscitti v. Sackheim*, 817 P.2d 1046 (Colo. App. 1991).

**Applied** in *Baker v. Allen*, 34 Colo. App. 363, 528 P.2d 922 (1974); *Mohler v. Buena Vista Bank & Trust Co.*, 42 Colo. App. 4, 588 P.2d 894 (1978); *Lucero v. Sec. Indus. Bank*, 4 B.R. 659 (Bankr. D. Colo. 1980); *Trimble v. McCoy Bros.*, 11 B.R. 512 (Bankr. D. Colo. 1981); *Lease Fin. Inc. v. Cohen*, 705 P.2d 1008 (Colo. App. 1985).

## II. INTERESTS SUBJECT TO EXECUTION.

**Under this section every interest in land, whether legal or equitable, is subject to levy and sale on execution.** *McFarran v. Knox*, 5 Colo. 217 (1880); *Stock-Growers' Bank v. Newton*, 13 Colo. 245, 22 P. 444 (1889); *O'Connell v. Taney*, 16 Colo. 353, 27 P. 888 (1891); *Arnett v. Coffey*, 1 Colo. App. 34, 27 P. 614 (1891).

**It is to be presumed that when the general assembly used the term "real estate"** it intended a lien upon whatever real estate on which there might be a levy. *McFarran v. Knox*, 5 Colo. 217 (1880).

**Creditor's interest is superior to third party's equitable interest if he has no notice.** A creditor who, acting in good faith and without notice of equitable interests,

acquires a lien under the statutes against the apparent interest of his judgment debtor, acquires a valid lien superior to a third party's equitable interests. *Sky Harbor, Inc. v. Jenner*, 164 Colo. 470, 435 P.2d 894 (1968); *Shearton Serv. Corp. v. Johnson*, 5 P.3d 395 (Colo. App. 2000).

Filing dissolution action does not give a debtor's spouse any rights that predate attachment of a judgment lien creditor's rights. Thus, if judgment lien creditor perfects a lien on real property before debtor's spouse asserts and perfects a claim to the property in dissolution proceeding, then the rights of debtor's spouse to the property are subordinate to those of the judgment lien creditor. *Shearton Serv. Corp. v. Johnson*, 5 P.3d 395 (Colo. App. 2000).

**A lease of land for a term of years is real estate.** *Liggett v. Enneking*, 101 Colo. 254, 72 P.2d 1118 (1937).

**The equity of redemption of a mortgagor in chattels is not subject to an execution** at law where the possession of the chattels has been transferred to the mortgagee. *Metzler v. James*, 12 Colo. 322, 19 P. 885 (1888).

**Where one also has right of possession, land is subject to execution.** *Twogood v. Ocsay*, 97 Colo. 300, 49 P.2d 437 (1935).

**Where a judgment debtor had neither a legal nor an equitable interest** in a property, recording a judgment does not create a lien on the property, because there is no interest on which the lien could attach. Junior creditor who successfully exposes a fraudulent transfer by filing suit takes

priority over senior creditors holding judgments recorded prior to the junior creditor uncovering the fraud. *Shepler v. Whalen*, 119 P.3d 1084 (Colo. 2005); *In re Bryan*, 469 B.R. 348 (Bankr. D. Colo.), *aff'd*, 483 B.R. 738 (D. Colo. 2012).

**The interest must be vested and based on legal or equitable title.** Under this provision it is clear that if appellant was vested with any interest in the property, either legal or equitable, then such interest was liable to seizure and sale under the execution. It must appear, however, that the interest was a vested interest, which attached to the body of the land itself, and was held by him under a legal or equitable title, within the meaning of the law. *Fallon v. Worthington*, 13 Colo. 559, 22 P. 960 (1889).

**A chose in action is not such an interest.** A vendor of real estate who enters into a subsequent contract with his vendee, whereby the trust-deed given to secure instalments of purchase money is released, a lien merely being reserved, has only a chose in action, and no interest in the land which can be subjected to sale on execution. *Fallon v. Worthington*, 13 Colo. 559, 22 P. 960 (1889).

**An inchoate interest is liable to execution.** The inchoate interest of a purchaser of lands, under an executory agreement for the future conveyance thereof, is liable to execution. under this section. *Salisbury v. La Fitte*, 57 Colo. 358, 141 P. 484 (1914).

**Interest of joint tenants unsatisfactory to creditor of one joint tenant.** The real

property interest of two joint tenants cannot be used to satisfy the judgment creditor of one joint tenant. *First Nat'l Bank v. Energy Fuels Corp.*, 200 Colo. 540, 618 P.2d 1115 (1980).

**For ineffectiveness of judgment against lessee of debtor whose leasehold interest antedates recordation,** see *Routt County Mining Co. v. Stutheit*, 101 Colo. 254, 72 P.2d 692 (1937).

**For C.R.C.P. 69(a) not curtailing rights given by this section,** see *Jones v. District Court*, 135 Colo. 468, 312 P.2d 503 (1957).

### III. NATURE AND EXTENT OF LIEN.

**Lien attaches immediately upon filing and recording of judgment.** A judgment being filed for record and recorded as required by the statutes, a lien attaches at once upon the real estate of the judgment debtor. *Gottlieb v. Thatcher*, 151 U.S. 271 (1894).

**Or upon levy of execution.** A judgment creditor has no lien upon real property by virtue of his judgment until he files a transcript of the judgment with the county clerk and recorder or levies execution upon the property. *Routt County Min. Co. v. Stutheit*, 101 Colo. 254, 72 P.2d 692 (1937).

**In each county where the transcript is filed.** The filing of a transcript of a judgment in La Plata county fastened a lien securing its payment upon the interest of the coal and coke company in its real estate in that county, under this statute. *Schofield v. Ute Coal & Coke Co.*, 92 F. 269 (8th Cir. 1879).

The recording of the transcript of judgment establishes a lien only against property owned by the debtor within the county where it is recorded. *Mtn. States Bank v. Irvin*, 809 P.2d 1113 (Colo. App. 1991).

**Lien is not lost by failure to return execution within 90 days.** The lien on real estate created by the filing of a transcript of judgment in the office of the county recorder is not lost by the failure to return an execution issued on the judgment within 90 days as required by law. *Davis Bros. Drug Co. v. Counter*, 75 Colo. 239, 225 P. 245 (1924).

**It attaches not only to property owned at the time the execution was so received, but to property acquired thereafter** while the writ is in force. In this respect, the execution lien in the present case is similar to the lien of a chattel mortgage covering after-acquired property. *Indian Creek Coal Mining Co. v. Home Sav. & Merchants' Bank*, 80 Colo. 96, 249 P. 499 (1926); *Robinson v. Wright*, 90 Colo. 417, 9 P.2d 618 (1932).

**An attachment lien merges in that of the judgment when a judgment lien is acquired**, but the latter relates back to the date of the former. *Floyd v. Sellers*, 7 Colo. App. 498, 44 P. 373 (1896).

**And its priority is preserved.** When a transcript of the judgment is filed with the recorder, it becomes a lien upon all the real estate of the judgment defendant situated in the county for six years from the rendition of the judgment. The lien of the attachment becomes merged in that of the judgment, but

its priority is preserved, and the lien of the judgment, insofar as the specific real estate attached is concerned, relates back to the lien of the attachment. *Floyd v. Sellers*, 7 Colo. App. 498, 44 P. 373 (1896).

**It continues for six years where the creditor secures no judgment lien** by the filing of a transcript of the judgment docket. *Emery v. Yount*, 7 Colo. 107, 1 P. 686 (1883); *Floyd v. Sellers*, 7 Colo. App. 498, 44 P. 373 (1896).

**Purchaser who fails to record deed is inferior to judgment creditor who thereafter files transcript without knowledge of conveyance.** Where a judgment debtor having the record title to real property conveys it to another, he parts with his title and thereafter does not have even a naked legal title; and yet if before the recording of the deed, the judgment creditor, without notice of the conveyance, files a transcript of the judgment, the lien of his judgment is superior to the rights of the grantee in the deed. *Wedman v. Carpenter*, 65 Colo. 63, 173 P. 57 (1918); *Donahue v. Kohler-McLister Paint Co.*, 81 Colo. 244, 254 P. 989 (1927).

**For judgment creditor's priority over resulting trust**, see *W. Chem. Mfg. Co. v. McCaffrey*, 47 Colo. 397, 107 P. 1081 (1910).

**A proper lien is necessary before judgment creditor may bring bill for discovery.** A bill will not lie by a judgment creditor for discovery, and to have land in another county than that in which the judgment was rendered, alleged to be held in trust for the judgment debtor, who is

residing on such land, made subject to the judgment, where the judgment has not been made a lien upon the land claimed to be subjected by filing a transcript of the judgment with the recorder of the county in which the land is situated, as is provided by this section. *Barnes v. Beighly*, 9 Colo. 475, 12 P. 906 (1887).

**A judgment lien never attaches to a homestead exemption.** A judgment lien only attaches to the debtor's net equity after deduction of the homestead exemption amount. In *re Dickinson*, 185 B.R. 840 (Bankr. D. Colo. 1995); In *re Guzman*, 660 B.R. 149 (Bankr. D. Colo. 2024).

**A judgment must be a lien on the real estate sought to be subjected to sale on execution through the aid of a creditor's bill**, where it has not been made a lien on real estate in another county in the manner herein provided. *Barnes v. Beighly*, 9 Colo. 475, 12 P. 906 (1887).

**No lien created on property** where the debt created by a recorded judgment was discharged in bankruptcy prior to the acquisition of the property. In *re Yates*, 47 Bankr. 460 (D. Colo. 1985).

### **13-52-103. Change of name of debtor - record.**

If a transcript of judgment is placed of record against any judgment debtor who, after the rendition of the judgment, changes his name and by such new name acquires real estate, the judgment creditor, or someone in his behalf, shall record in the office of the recorder of the county where such real estate is located notice of such judgment and change of name. Unless such notice and change of name are recorded, such judgment shall not be operative against an innocent purchaser of such property for value without actual or constructive notice of such lien and change of name.

**Source:** L. 25: p. 335, § 1. CSA: C. 93, § 3. CRS 53: § 77-1-3. C.R.S. 1963: § 77-1-3.

### **13-52-104. Transcript of federal judgment filed - lien.**

(1) A transcript of the docket entry of any judgment or decree, either at law or in equity, for any debt, damages, costs, or other sum of money, entered or registered in any district court of the United States within this state, duly certified by the clerk of such district court of the United States, may be recorded in any county in the same manner as the transcript of the judgment record of any similar judgment of the court of general jurisdiction of this state may be recorded.

(2) From the time of the recording of such transcript, and not before, such judgment or decree shall be a lien upon all the real estate, not exempt from execution in the county where



such transcript of judgment is recorded, owned by the judgment debtor or which the judgment debtor may afterwards acquire in such county, in the same manner and to the same extent and under the same conditions as if such judgment or decree had been entered by a court of general jurisdiction of this state.

**Source:** L. 1889: p. 456, §§ 1, 2. R.S. 08: §§ 3610, 3611. C.L. §§ 5899, 5900. CSA: C. 93, §§ 4, 5. CRS 53: §§ 77-1-4, 77-1-5. C.R.S. 1963: §§ 77-1-4, 77-1-5. L. 2002: Entire section amended, p. 51, § 2, effective March 21.

#### ANNOTATION

**Law reviews.** For article, "The Perennial Problem of Security Priority and Recordation", see 24 Rocky Mt. L. Rev. 180 (1952).

#### **13-52-105. Legal and equitable interests.**

Every interest in land, legal and equitable, shall be subject to levy and sale under execution, and the claim or possessory right of any defendant in execution in or to any public lands may be levied upon and sold under execution in the same manner as if the same were held by such defendant in fee simple. Nothing contained in articles 51 to 61 of this title and part 2 of article 41 of title 38, C.R.S., shall be so construed as to give any plaintiff in execution the right to levy on any lands filed on by any person in the Colorado state office of the bureau of land management, department of the interior, and occupied as a homestead by the defendant in execution.

**Source:** R.S. p. 384, § 52. G.L. § 1453. G.S. § 1883. R.S. 08: § 3613. C.L. § 5901. CSA: C. 93, § 6. CRS 53: § 77-1-6. C.R.S. 1963: § 77-1-6.

#### ANNOTATION

**The proviso in this section has reference solely to lands the title of which still remains in the government.** It was inserted as a precautionary measure to prevent any apparent clash between the state statute and the provision of the federal statute making a homestead taken

thereunder exempt from liability for any debt contracted prior to the issuance of patent. *Weare v. Johnson*, 20 Colo. 363, 38 P. 374 (1894).

**It refers only to lands filed upon and held merely by possessory title.** The language of the statute clearly indicates that

the proviso refers to lands filed upon and held merely by possessory title, and not to lands after final proof has been made and to which a receiver's receipt has been issued. *Weare v. Johnson*, 20 Colo. 363, 38 P. 374 (1894).

**Creditor may restrain threatened sale of property in which debtor has equitable interest.** A plaintiff is entitled to maintain an action to restrain a threatened sale of property. Under the allegations of the

complaint, the judgment creditor was contending that the judgment debtor had an equitable title to the lode claim upon which execution was levied, and neither upon principle nor reason must the plaintiff claiming to be the real owner of all of the property, be compelled to sit back and wait until the claim of the judgment creditor had ripened into a complete and perfect claim. *Bell v. Murray*, 13 Colo. App. 217, 57 P. 488 (1899).

### **13-52-106. Certificate holders included.**

The legal holder by record of any certificate of purchase of lands of the United States shall be deemed to be within the true intent and meaning of articles 51 to 61 of this title and part 2 of article 41 of title 38, C.R.S.

**Source:** R.S. p. 371, § 3. G.L. § 1411. G.S. § 1843. R.S. 08: § 3614. C.L. § 5902. CSA: C. 93, § 7. CRS 53: § 77-1-7. C.R.S. 1963: § 77-1-7.

### **13-52-107. What moneys may be levied on.**

All paper currency, coins, bank bills, and other evidence of debt used or circulated or intended to be used or circulated as money and issued by any corporation or state, or by the United States, may be levied upon under any execution or writ of attachment as other personal property is levied upon or attached and shall be returned by the officer making such levy as so much money collected without sale.

**Source:** R.S. p. 383, § 45. G.L. § 1446. G.S. § 1876. R.S. 08: § 3615. C.L. § 5903. CSA: C. 93, § 8. CRS 53: § 77-1-8. C.R.S. 1963: § 77-1-8.

## **ANNOTATION**

**Money of debtor taken by sheriff when imprisoning him is subject to execution.**

*McMillen v. Yost*, 69 Colo. 462, 194 P. 938 (1921).

**13-52-108. Concerning garnishment and attachment prior to judgment.**

(1) No order of attachment prior to judgment on any garnishee shall be made out or issued in any court of record in this state for any sum less than twenty dollars.

(2) Wages, fees, or commissions shall not be subject to a writ of garnishment made out or issued in any court of record in this state until a complaint has been filed. After a defendant in any case has become subject to the jurisdiction of a court of record in this state, no wages, fees, or commissions shall be subject to any writ of garnishment theretofore or thereafter made out or issued in such case except in aid of execution of judgment.

(3) The provisions of this section shall not apply to methods of enforcing collections provided in article 79 of title 8, C.R.S.

(4) The provisions of this section shall be subject to article 5 of the "Uniform Consumer Credit Code".

**Source:** R.S. p. 383, § 44. G.L. § 1445. G.S. § 1875. R.S. 08: § 3616. C.L. § 5904. CSA: C. 93, § 9. CRS 53: § 77-1-9. C.R.S. 1963: § 77-1-9. L. 65: p. 805, § 1. L. 71: p. 852, § 2.

**Cross references:** For the "Uniform Consumer Credit Code", see articles 1 to 9 of title 5.

**ANNOTATION**

**Law reviews.** For note, "Rural Poverty and the Law in Southern Colorado", see 47 Den. L.J. 82 (1970).

**13-52-109. Property sold in parcels.**

When any real or personal property is taken in execution, if such property is susceptible of division, it shall be sold in such quantities as may be necessary to satisfy such execution and costs.

**Source:** R.S. p. 372, § 10. G.L. § 1416. G.S. § 1848. R.S. 08: § 3623. C.L. § 5911. CSA: C. 93, § 10. CRS 53: § 77-1-10. C.R.S. 1963: § 77-1-10.

## ANNOTATION

**Sale en masse is not always void.** The action of the sheriff in selling en masse does not render the sale void at the suit of the execution debtor if it should appear that the property was first offered in parcels and no bids were received — or, if he received bids, that the bid he received for all the property was greater than the aggregate of the bids for the parcels. *Leppel v. Kus*, 38 Colo. 292, 88 P. 448 (1908).

**The presumption exists that the sheriff first offered the property in parcels** and there were no bidders, or, if bids were received for the parcels, that the bid for the whole of the property was greater than the aggregate bids in parcels. *Leppel v. Kus*, 38 Colo. 292, 88 P. 448 (1908).

**Proof necessary to overcome presumption.** Where it is asserted that this section has not been complied with, there should be proof that a part of the property would have sold for a sum sufficient to satisfy the execution. *White v. Crow*, 110 U.S. 183 (1884); *Leppel v. Kus*, 38 Colo. 292, 88 P. 448 (1906).

**Only parties to the judgment may object.** The facts made it unnecessary to inquire whether the objection to a sale en masse could be successfully made after the time for redemption had passed, where both the party making the objection and the party claiming under the sale were strangers to the judgment. *White v. Crow*, 110 U.S. 183 (1884).

### 13-52-110. Execution to any county.

It is lawful for the party in whose favor any judgment may be obtained to have executions in the usual form directed to any county in this state against the goods, chattels, lands, and tenements of such party defendant, or upon his body, when the same is authorized by law.

**Source:** R.S. p. 371, § 5. G.L. § 1413. G.S. § 1845. L. 03: p. 299, § 1. R.S. 08: § 3625. C.L. 5912. CSA: C. 93, § 11. CRS 53: § 77-1-11. C.R.S. 1963: § 77-1-11.

## ANNOTATION

**Law reviews.** For article, "Executions and Levies on Tangible Property", see 27 *Dicta* 143 (1950).

**Writs to different counties may issue at the same time.** If there is authority for the

issuing of a writ to a county other than that in which the judgment was recovered, the remedies to issue the writ to the different counties are concurrent, and hence a writ to each of the counties may properly issue or

be in existence at the same time. People ex rel. Kenfield v. Finch, 19 Colo. App. 512, 76 P. 1120 (1904).

**This fact constitutes no defense in an action against a sheriff for making a false return.** In an action against a sheriff and the sureties on his official bond, for damages sustained by plaintiff, by an alleged false return upon an execution, an answer which alleges as a defense the issuance of two

executions on the same day to different counties, states no defense to the action, as, under this section, executions may issue on a judgment to different counties at the same time. People ex rel. Kenfield v. Finch, 19 Colo. App. 512, 76 P. 1120 (1904).

**Under this section a body execution may be directed to any county in the state.** Roll v. Davis, 85 Colo. 594, 277 P. 767 (1929).

### **13-52-111. Return - endorsement - entry.**

All executions shall be made returnable ninety days after date, and no writ of execution shall bind the personal property, goods, or chattels of any person against whom such writ is issued until the writ is delivered to the sheriff or other officer for execution. For a better manifestation of the time, the sheriff or other officer, on receipt of every such writ, shall endorse upon the back thereof the hour, day of the month, and the year when the same was received by him and shall immediately enter the receipt of said writ and the time of receiving it in a book to be kept for that purpose at the office of the sheriff. Said book shall be a public record and open to the inspection of the public. The execution shall be returned within ninety days from date of issue, unless sale is pending under levy made.

**Source:** R.S. p. 371, § 8. G.L. § 1414. G.S. § 1846. L. 03: p. 219, § 1. R.S. 08: § 3626. C.L. 5913. CSA: C. 93, § 12. CRS 53: § 77-1-12. C.R.S. 1963: § 77-1-12.

### **ANNOTATION**

**Law reviews.** For article, "Executions and Levies on Tangible Property", see 27 Dicta 143 (1950).

**Execution lien attaches upon receipt of execution by sheriff.** It has been held repeatedly that under this section an execution lien upon the personal property of the debtor attaches upon receipt of the execution by the sheriff. Williams v. Mellor,

12 Colo. 1, 19 P. 839 (1888); Joslin v. Spangler, 13 Colo. 491, 22 P. 804 (1889); Ankele v. Elder, 19 Colo. App. 330, 75 P. 29 (1904); Lewin v. Telluride Iron Works Co., 272 F. 590 (8th Cir. 1921); First Nat'l Bank v. Monte Vista Hdwe. Co., 75 Colo. 440, 226 P. 154 (1924); First State Bank v. Fox, 10 F.2d 116 (8th Cir. 1925).

**Such liens are entitled to priority in accordance with the respective dates of their delivery.** *Joslin v. Spangler*, 13 Colo. 491, 22 P. 804 (1889).

**The lien thus created is not a secret lien**, for the statute requires the sheriff, upon receipt of the writ, to indorse thereon, and to enter in a book kept for that purpose in his office, the exact time when the writ was received. *Robinson v. Wright*, 90 Colo. 419, P.2d 618 (1932).

**Executions are returnable without reference to any term of court.** The practice of returning the execution in term time has been changed by this section. Executions are made returnable within 90 days from date, without reference to any term of court. *Brown v. People*, 3 Colo. 115 (1876).

**Executions may be returned prior to expiration of 90-day period.** While it may be true that, in his discretion, the sheriff may take upon himself the responsibility of returning it at an earlier date, the fact that he does so, and that, too, at the request of defendant's counsel, is a circumstance which the court or judge may rightfully consider in determining the question whether all legal means have been exhausted to recover the fine and costs, when an application is made for the prisoner's discharge on the ground of the insufficiency of his estate wherewith to pay them. *Tate v. People*, 25 Colo. 335, 53 P. 1050 (1898).

**When sheriff delays in serving execution by directions of creditor, lien is delayed.** If because of any direction by, or of any understanding with, the execution

creditor, the sheriff delays making a levy upon the debtor's property, the lien is held to be waived during the period of such delay. *Williams v. Mellor*, 12 Colo. 1, 19 P. 839 (1888); *Lewin v. Telluride Iron Works Co.*, 272 F. 590 (8th Cir. 1921); *Robinson v. Wright*, 90 Colo. 417, 9 P.2d 618 (1932).

**Unreasonable delay is presumed to be by creditor's direction.** Where the sheriff delays an unreasonable time to make a levy, it is presumed, in the absence of an explanation for such delay, that the delay was caused by direction of the execution creditor. *Robinson v. Wright*, 90 Colo. 417, 9 P.2d 618 (1932).

**Where there is no evidence of such instructions, it is error to submit the question to the jury.** Where there is no evidence of instructions, or of an understanding on delivery of an execution to the sheriff, that a levy should be delayed, except the omission to make a levy for 20 days, and the testimony of the execution debtor to propositions for further time, which were not accepted, it is error, in replevin by mortgagees for goods levied on under the execution, to submit to the jury the question whether there were such instructions or understanding. *Williams v. Mellor*, 12 Colo. 1, 19 P. 839 (1888).

**For when circumstances reasonably explain the delay in making the levy**, see *Robinson v. Wright*, 90 Colo. 417, 9 P.2d 618 (1932).

**Action for false return on execution.** In an action against a sheriff and the sureties on his official bond for damages sustained by plaintiff by reason of an alleged false return

upon an execution, a demurrer should be sustained to a defense which shows upon its face that it involves a contradiction of the sheriff's return upon the execution, as evidence would not be admissible to support such defense. People ex rel. Kenfield v. Finch, 19 Colo. App. 512, 76 P. 1120 (1904).

**A lost execution's day of receipt may be shown by** the sheriff's fee book when the sheriff is dead. Bruns v. Clase, 9 Colo. 225, 11 P. 79 (1886).

**Applied in** In re Harms, 7 B.R. 398 (Bankr. D. Colo. 1980).

## ARTICLE 53

### Uniform Enforcement of Foreign Judgments

- |            |                                         |            |                               |
|------------|-----------------------------------------|------------|-------------------------------|
| 13-53-101. | Short title.                            | 13-53-105. | Stay.                         |
| 13-53-102. | Definitions.                            | 13-53-106. | Fees.                         |
| 13-53-103. | Filing and status of foreign judgments. | 13-53-107. | Optional procedure.           |
| 13-53-104. | Notice of filing.                       | 13-53-108. | Uniformity of interpretation. |

#### **13-53-101. Short title.**

This article shall be known and may be cited as the "Uniform Enforcement of Foreign Judgments Act".

**Source:** L. 69: p. 563, § 1. C.R.S. 1963: § 77-13-1.

## ANNOTATION

**Law reviews.** For article, "Enforcing Foreign Country Judgments in Colorado", see 13 Colo. Law. 381 (1984).

#### **13-53-102. Definitions.**

As used in this article, unless the context otherwise requires:

(1) "Foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court, except a protection order or a restraining order as described in section 13-14-110 that is entitled to full faith and credit in this state.

**Source:** L. 69: p. 563, § 1. C.R.S. 1963: § 77-13-2. L. 98: Entire section amended, p. 1234, § 6, effective July 1. L. 2004: (1) amended, p. 554, § 8, effective July 1. L. 2015: (1) amended, (SB 15-264), ch. 259, p. 949, § 31, effective August 5.

### **13-53-103. Filing and status of foreign judgments.**

A copy of any foreign judgment authenticated in accordance with the act of congress or the laws of this state may be filed in the office of the clerk of any court of this state which would have had jurisdiction over the original action had it been commenced first in this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of the court of this state in which filed and may be enforced or satisfied in like manner.

**Source:** L. 69: p. 563, § 1. C.R.S. 1963: § 77-13-3.

**Cross references:** For foreign actions and decrees, see §§ 13-80-110 and 14-11-101.

### **ANNOTATION**

**Full faith and credit inapplicable without judgment itself.** Where the only documents filed were: (1) An affidavit of petitioner stating that an order requiring payment of child support by respondent had been entered and that respondent was in arrears in the payments; (2) an order of court that a writ of fieri facias be issued; and (3) the writ of fieri facias, full faith and credit is inapplicable as none of these is a judgment order. *Manley v. Manley*, 41 Colo. App. 458, 591 P.2d 1042 (1978).

**Fines imposed by a foreign court** which have been reduced to final judgment and are not subject to modification are judgments entitled to full faith and credit. *Gedeon v. Gedeon*, 630 P.2d 579 (Colo. 1981).

**While a court asked to enforce foreign judgment cannot redetermine merits** of case or wisdom of judgment, it always has power to inquire into jurisdiction of foreign court to issue judgment. *Hansen v. Pingnot*, 739 P.2d 911 (Colo. App. 1987).



**"Uniform Enforcement of Foreign Judgments Act" does not create defenses to foreign judgments** which violate the full faith and credit clause of the federal constitution. *Marworth, Inc. v. McGuire*, 810 P.2d 653 (Colo. 1991).

**To allow Colorado courts to reexamine foreign judgments on their merits** would violate intent and purpose of this act and the full faith and credit clause. *Marworth, Inc. v. McGuire*, 810 P.2d 653 (Colo. 1991).

**Where respondents were given notice and opportunity to be heard in foreign court**, due process rights were not violated and foreign judgment should be enforced pursuant to this act. *Marworth, Inc. v. McGuire*, 810 P.2d 653 (Colo. 1991).

**Colorado court should have given full faith and credit** to Illinois dissolution order which granted the wife sole ownership of federal income tax refund check proceeds since wife became sole owner before checks came into creditor's possession and creditor's judgment did not give the creditor any interest in said checks. No provision of this act or the failure of party to act pursuant to the provisions of this act affects the obligation of the court. *Pardee v. Mostow*, 757 P.2d 1148 (Colo. App. 1988).

**Enforcement act applies to a foreign judgment recognized under the principles of comity** and is entitled to full faith and credit. *Milhoux v. Linder*, 902 P.2d 856 (Colo. App. 1995).

**Court has no authority to enter orders or issue writs to enforce foreign judgment when plaintiff fails to file authenticated**

**copy of such judgment** but merely files affidavit describing the foreign judgment. *Griggs v. Gibson*, 754 P.2d 783 (Colo. App. 1988).

**If foreign judgment was rendered without personal jurisdiction over the defendant**, the judgment is void and will not be enforced. *Tucker v. Vista Fin. Corp.*, 192 Colo. 440, 560 P.2d 453 (1977); *O'Brien v. Eubanks*, 701 P.2d 614 (Colo. App. 1984).

Where foreign default judgment was silent on issue of jurisdiction and plaintiff tendered no evidence contradicting defendant's affidavit stating that he did not transact any business in foreign state within meaning of foreign state's long-arm statute, plaintiff failed to establish that foreign state existence of default judgment raised presumption of valid jurisdiction. *Hansen v. Pingnot*, 739 P.2d 911 (Colo. App. 1987).

**Since a foreign judgment filed in Colorado is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a Colorado court**, trial court must hear defendant's motion for relief from judgment based on defenses brought under C.R.C.P. 60. *Marworth v. McGuire*, 787 P.2d 200 (Colo. App. 1989).

**Institution of an original action based on the constitutional provisions of full faith and credit is not required to enforce a foreign judgment; filing under this act is sufficient.** *Marworth v. McGuire*, 787 P.2d 200 (Colo. App. 1989).

**Judgment lien, based on a domesticated out-of-state judgment, must be revived**

**under Colorado procedural law for the lien to be extended.** To extend a judgment lien beyond six years after the date of judgment, Colorado procedural law requires a judgment to be revived pursuant to C.R.C.P. 54(h) and a transcript of the revival to be filed with the clerk and recorder. *Wells Fargo Bank, N.A. v. Kopfman*, 205 P.3d 437 (Colo. App. 2008), *aff'd*, 226 P.3d 1068 (Colo. 2010).

**The priority of charging orders issued against Colorado limited liability companies is determined by first-in-time service of charging orders enforceable in the state.** Charging orders that are

enforceable in Colorado include both those issued by Colorado courts as well as foreign charging orders that have been domesticated in Colorado courts. *McClure v. JP Morgan Chase Bank NA*, 2015 COA 117, 395 P.3d 1123, *aff'd*, 2017 CO 22, 393 P.3d 955.

**A party may file a foreign judgment in any court that would have had jurisdiction over the underlying action** had it been filed in Colorado. It does not require, as a condition of enforceability, that the county in which it is filed be a proper venue under C.R.C.P. 98. *L & R Exploration Venture v. Grynberg*, 271 P.3d 530 (Colo. App. 2011).

#### **13-53-104. Notice of filing.**

(1) At the time of the filing of the foreign judgment, the judgment creditor or his lawyer shall make and file with the clerk of court an affidavit setting forth the name and last-known post-office address of the judgment debtor and the judgment creditor.

(2) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post-office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

(3) No execution or other process for enforcement of a foreign judgment filed under this article shall issue until ten days after the date the judgment is filed.

**Source: L. 69: p. 563, § 1. C.R.S. 1963: § 77-13-4.**

#### **ANNOTATION**

**Notice provisions satisfy due process.**  
Where the basic requirements of notice and hearing have been met in a foreign court, the post-judgment notice provisions of this

section satisfy the requirements of due process. *Gedeon v. Gedeon*, 630 P.2d 579 (Colo. 1981).

### **13-53-105. Stay.**

(1) If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(2) If the judgment debtor shows the court any ground upon which enforcement of a judgment of a court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period upon requiring the same security for satisfaction of the judgment which is required in this state.

**Source:** L. 69: p. 564, § 1. C.R.S. 1963: § 77-13-5.

**Cross references:** For stay of proceedings to enforce a judgment, see C.R.C.P. 62.

### **ANNOTATION**

**Colorado court is not required to stay enforcement of a judgment from another state without a bond being posted** even though the judgment could have been stayed

in the state in which the judgment was entered without the posting of a bond. *Dependable Ins. v. Auto. Warranty*, 797 P.2d 1308 (Colo. App. 1990).

### **13-53-106. Fees.**

(1) (a) On and after July 1, 2008, any person filing a foreign judgment shall pay to the clerk of the court two hundred one dollars.

(b) Fees for docketing, transcription, or other enforcement proceedings shall be as provided for judgments of the courts of this state.

(c) Each fee collected pursuant to subsection (1)(a) of this section shall be transmitted to the state treasurer and divided as follows:

- (I) Ninety dollars shall be deposited in the general fund;
- (II) Sixty dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6);
- (III) Fifteen dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a);
- (IV) One dollar shall be deposited in the general fund pursuant to section 2-5-119; and
- (V) Thirty-five dollars shall be deposited in the office of public guardianship cash fund established pursuant to section 13-94-108 (1).

(2) Notwithstanding the amount specified for the fee in subsection (1) of this section, the chief justice of the supreme court by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the chief justice by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

**Source:** L. 69: p. 564, § 1. C.R.S. 1963: § 77-13-6. L. 84: Entire section amended, p. 456, § 9, effective July 1. L. 95: Entire section amended, p. 741, § 5, effective July 1, 1997. L. 98: Entire section amended, p. 1330, § 39, effective June 1. L. 2003: (1) amended, p. 574, § 5, effective March 18. L. 2007: (1) amended, p. 1537, § 26, effective May 31. L. 2008: (1) amended, p. 2142, § 11, effective June 4. L. 2019: (1)(a), IP(1)(c), (1)(c)(III), and (1)(c)(IV) amended and (1)(c)(V) added, (HB 19-1045), ch. 366, p. 3366, § 5, effective July 1.

**Cross references:** For the legislative declaration contained in the 2008 act amending subsection (1), see section 1 of chapter 417, Session Laws of Colorado 2008.

### **13-53-107. Optional procedure.**

The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under this article remains unimpaired.

**Source: L. 69:** p. 564, § 1. **C.R.S. 1963:** § 77-13-7.

**13-53-108. Uniformity of interpretation.**

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**Source: L. 69:** p. 564, § 1. **C.R.S. 1963:** § 77-13-8.

**ARTICLE 54**

**Property and Earnings Exempt**

- |              |                                                                         |            |                                                                                   |
|--------------|-------------------------------------------------------------------------|------------|-----------------------------------------------------------------------------------|
| 13-54-101.   | Definitions.                                                            | 13-54-104. | Restrictions on garnishment and levy under execution or attachment - definitions. |
| 13-54-102.   | Property exempt - commingled exempt and nonexempt assets - definitions. | 13-54-105. | No exemption for taxes.                                                           |
| 13-54-102.5. | Child support payments - exemption.                                     | 13-54-106. | Exemptions applicable to all writs - exception for child support.                 |
| 13-54-103.   | No exemption for purchase price.                                        | 13-54-107. | Exemptions in bankruptcy.                                                         |

**13-54-101. Definitions.**

As used in this article, unless the context otherwise requires:

(1) "Debtor" means a person whose property or earnings are subject to attachment, execution, or garnishment.

(2) "Dependent" means a person who receives more than one-half of his support from the debtor.

(2.5) "Disabled debtor", "disabled spouse", or "disabled dependent" means a debtor, spouse, or dependent who has a physical or mental impairment that is disabling and that, because of other factors such as age, training, experience, or social setting, substantially precludes the debtor, spouse, or dependent from engaging in a useful occupation as a homemaker, a wage-

earner, or a self-employed person in any employment that exists in the community for which he or she has competence.

(3) Repealed.

(3.5) "Elderly debtor", "elderly spouse", or "elderly dependent" means a debtor, spouse, or dependent who is sixty years of age or older.

(4) "Household goods" means, by way of illustration, household furniture, furnishings, dishes, utensils, cutlery, tableware, napery, pictures, prints, appliances, stoves, microwave ovens, beds and bedding, freezers, refrigerators, washing machines, dryers, exercise equipment, musical instruments, bicycles, sewing machines, toys, and home electronics, including but not limited to cameras, television sets, radios, stereos, computers, facsimile machines, telephones, and other audio and video equipment.

(5) "Value" means the fair market value of any property less the amount of any lien thereon valid as between the owner of the property and the holder of any such lien.

**Source:** L. 59: p. 529, § 1. CRS 53: § 77-13-1. C.R.S. 1963: § 77-2-1. L. 81: Entire section R&RE, p. 892, § 1, effective July 1. L. 2000: (4) amended, p.715, § 1, effective May 23. L. 2007: (2.5) and (3.5) added and (4) amended, p. 875, § 2, effective May 14. L. 2015: (3) repealed, (SB 15-283), ch. 301, p. 1237, § 1, effective July 1.

**Cross references:** For the legislative declaration contained in the 2007 act enacting subsections (2.5) and (3.5) and amending subsection (4), see section 1 of chapter 226, Session Laws of Colorado 2007.

## ANNOTATION

**Law reviews.** For article, "Legislative Update", see 11 Colo. Law. 2142 (1982). For article, "Rights of the Debtor and Creditor to Retirement Plan Benefits; An Update", see 25 Colo. Law. 45 (May 1996).

**Movie camera and movie projector are not exempt "household goods"** for purposes of a bankruptcy proceedings, but are recreational items. Gen. Fin. Corp. v. Ruppe, 3 B.R. 60 (Bankr. D. Colo. 1980); In

re Whitney, 70 B.R. 443 (Bankr. D. Colo. 1987).

**Stereo system is household goods.** In re Whitney, 70 B.R. 443 (Bankr. D. Colo. 1987).

**Applied in** In re Hellman, 474 F. Supp. 348 (D. Colo. 1979); Redin v. Fidelity Fin. Servs., 14 B.R. 727 (Bankr. D. Colo. 1981); In re Alvarez, 14 B.R. 940 (Bankr. D. Colo.

1981); In re Ferguson, 15 B.R. 439 (Bankr. D. Colo. 1981); In re Janesofsky, 22 B.R. 973 (Bankr. D. Colo. 1982).

**13-54-102. Property exempt - commingled exempt and nonexempt assets - definitions.**

(1) The following property is exempt from levy and sale under writ of attachment or writ of execution:

(a) The necessary wearing apparel of the debtor and each dependent to the extent of two thousand dollars in value;

(b) Watches, jewelry, and articles of adornment of the debtor and each dependent to the extent of two thousand five hundred dollars in value;

(c) The library, family pictures, and school books of the debtor and the debtor's dependents to the extent of two thousand dollars in value, not including any property constituting all or part of the stock in trade of the debtor;

(d) Burial sites, including spaces in mausoleums, to the extent of one site or space for the debtor and each dependent;

(e) The household goods owned and used by the debtor or the debtor's dependents to the extent of six thousand dollars in value;

(f) Provisions and fuel on hand for the use or consumption of the debtor or the debtor's dependents to the extent of six hundred dollars in value;

(g) (I) Except as otherwise provided in subsection (1)(g)(II) of this section, in the case of every debtor engaged in agriculture as the debtor's principal occupation, including farming, ranching, and dairy production or the raising of livestock or poultry, the following, in the aggregate value of one hundred thousand dollars:

(A) All livestock, poultry, or other animals;

(B) All crops, dairy products, and agricultural products grown, raised, or produced; and

(C) All tractors, farm implements, trucks used in agricultural operations, harvesting equipment, seed, and agricultural machinery and tools.

(II) Only one exemption in the aggregate value of one hundred thousand dollars is allowed for a debtor and the debtor's spouse under subsection (1)(g)(I) of this section. In the event that property is claimed as exempt by a debtor or the debtor's spouse under subsection (1)(g)(I) of this section, no exemption is allowed for the debtor or the debtor's spouse under subsection (1)(i) of this section.

(h) Except for amounts due under court-ordered support of children or spouse which are subject to the exemption provisions of section 13-54-104, all money received by any person as a pension, compensation, or allowance for any purpose on account or arising out of the services of such person as a member of the armed forces of the United States in time of war or armed conflict, and whether in the actual possession of the recipient thereof or deposited or loaned by him, and a like exemption to the unmarried widow or widower and the children of such person who receive a pension, compensation, or allowance of any kind from the United States on account or arising out of such service by a deceased member of such armed forces; and when a debtor entitled to exemption under this paragraph (h) dies or leaves his family said exemption shall extend to the dependents of said debtor;

(h.5) The articles of military equipment personally owned by members of the National Guard;

(i) (I) Except as described in subsection (1)(i)(II) of this section, the stock in trade, supplies, fixtures, maps, machines, tools, electronics, equipment, books, and business materials of a debtor that are used and kept for the purpose of carrying on:

(A) The debtor's primary gainful occupation, in the aggregate value of sixty thousand dollars; or

(B) Any other gainful occupation, in the aggregate value of twenty thousand dollars.

(II) Exempt property described in this subsection (1)(i) may not also be claimed as exempt pursuant to subsection (1)(j) of this section.

(j) (I) Up to two motor vehicles or bicycles kept and used by any debtor, in the aggregate value of fifteen thousand dollars; or

(II) (A) Up to two motor vehicles or bicycles kept and used by any debtor who is elderly or disabled or by any debtor's spouse or dependent who is elderly or disabled, in the aggregate value of twenty-five thousand dollars.

(B) (Deleted by amendment, L. 2007, p. 876, § 3, effective May 14, 2007.)

(III) The exemption provided in this paragraph (j) does not apply to snowmobiles, all-terrain vehicles, golf carts, boats or other watercraft, travel trailers, tent trailers, or motor homes.

(k) The library of any debtor who is a professional person, including a minister or priest of any faith, kept and used by the debtor in carrying on his or her profession, in the value of three thousand dollars; except that exemptions with respect to any of the property described in this paragraph (k) may not also be claimed under paragraph (i) of this subsection (1);

(l) (I) (A) The cash surrender value of policies or certificates of life insurance that have been owned by a debtor for a continuous, unexpired period of forty-eight months or more, to the



extent of two hundred fifty thousand dollars for writs of attachment or writs of execution issued against the insured; except that there is no exemption for increases in cash value from extraordinary moneys contributed to a policy or certificate of life insurance during the forty-eight months prior to the issuance of the writ of attachment or writ of execution; and

(B) The proceeds of policies or certificates of life insurance paid upon the death of the insured to a designated beneficiary, without limitation as to amount, for writs of attachment or writs of execution issued against the insured.

(II) The provisions of this paragraph (I) shall not be interpreted to provide an exemption for attachment or execution of the proceeds of any policy or certificate of life insurance to pay the debts of a beneficiary of such policy or certificate.

(III) The provisions of this paragraph (I) shall not provide an exemption for attachment or execution of the proceeds of any policy or certificate of life insurance if the beneficiary of such policy or certificate is the estate of the insured.

(IV) For purposes of this paragraph (I), "extraordinary moneys" means monetary contributions or loan payments in excess of those contractually required under the policy or certificate of life insurance.

(m) The proceeds of any claim for loss, destruction, or damage and the avails of any fire or casualty insurance payable because of loss, destruction, or damage to any property which would have been exempt under this article to the extent of the exemptions incident to such property;

(n) The proceeds of any claim for damages for personal injuries suffered by any debtor except for obligations incurred for treatment of any kind for such injuries or collection of such damages;

(o) The full amount of any federal or state income tax refund attributed to an earned income tax credit or any child tax credit, whether as a refundable tax credit or as a nonrefundable reduction in tax;

(p) Professionally prescribed health aids for the debtor or a dependent of the debtor;

(q) The debtor's right to receive, or property that is traceable to, an award under a crime victim's reparation law;

(r) For purposes of garnishment proceedings pursuant to article 54.5 of this title 13, any amount held by a third party as a security deposit, as defined in section 38-12-102 (6), or any amount held by a third party as a utility deposit to secure payment for utility goods or services used or consumed by the debtor or the debtor's dependents;

(s) Property, including funds, held in or payable from any pension or retirement plan, deferred compensation plan, and health savings accounts, including those in which the debtor has

received benefits or payments, has the present right to receive benefits or payments, or has the right to receive benefits or payments in the future and including pensions or plans that qualify under the federal "Employee Retirement Income Security Act of 1974", as amended; any employee pension benefit plan, as defined in 29 U.S.C. sec. 1002; any individual retirement account, as defined in 26 U.S.C. sec. 408; any Roth individual retirement account, as defined in 26 U.S.C. sec. 408A; and any plan, as defined in 26 U.S.C. sec. 401, and as these plans may be amended from time to time;

(t) All property which is subject to a judgment against a debtor for failure to pay state income tax to a state for periods when such individual was not a resident of such state on benefits received from a pension or other retirement plan;

(u) Any court-ordered domestic support obligation or payment, including a maintenance obligation or payment or a child support obligation or payment;

(v) Any claim for public or private disability benefits due, or any proceeds of such a claim, not otherwise provided for under law, up to five thousand dollars per month. Any claim or proceeds in excess of this amount is subject to garnishment in accordance with section 13-54-104.

(w) Up to two thousand five hundred dollars cumulative in a depository account or accounts in the name of the debtor.

(x) The debtor's aggregate interest in firearms and hunting and fishing equipment held for personal, family, or household use or for the personal safety of the debtor and members of the debtor's household, not to exceed one thousand dollars in value;

(y) (I) Any economic impact payment held by or payable to a debtor or to a debtor's dependents in any form.

(II) As used in this subsection (1)(y) and in subsection (3) of this section, unless the context otherwise requires, "economic impact payment" means a payment from a federal, state, or local government to a debtor or to a debtor's dependents to assist in managing the economic consequences of a national or statewide emergency or disaster. "Economic impact payment" includes:

(A) All economic impact and stimulus recovery payments to debtors pursuant to the federal "Coronavirus Aid, Relief, and Economic Security Act", Pub.L. 116-136, as amended, or otherwise relating to the COVID-19 pandemic; and

(B) All other economic impact or stimulus recovery payments to debtors, which payments are authorized to assist with economic recovery from the COVID-19 pandemic or from any national or statewide emergency or disaster. It is the intent of the general assembly that this definition be interpreted in the broadest possible manner to protect such payments.

(z) All money placed into a life expectancy set-aside account or similar reserve fund, escrow, or impound account, which money is derived from reverse mortgage proceeds that are designated for use to pay for real estate property taxes; homeowner's hazard, flood, or other property insurance; or other home maintenance expenses.

(2) Notwithstanding the provisions of paragraph (h) of subsection (1) of this section and section 13-54-104, military pensions shall be subject to court-ordered support of children or spouse.

(3) Notwithstanding subsections (1)(s) and (1)(y) of this section, any economic impact payment and any pension or retirement benefit or payment is subject to attachment or levy in satisfaction of a judgment taken for arrearages for child support or for child support debt, subject to the limitations in section 13-54-104.

(4) Notwithstanding anything to the contrary in this section, all property of a person who has committed a felonious killing, as defined in section 15-11-803 (1)(b), C.R.S., and as determined in the manner described in section 15-11-803 (7), C.R.S., shall be subject to attachment or levy in satisfaction of a judgment awarded pursuant to section 13-21-201 or section 13-21-202 for such felonious killing.

(5) (a) As provided in the exception contained in 11 U.S.C. sec. 522 (f)(3), as amended, a debtor shall not avoid a consensual lien on property otherwise eligible to be claimed as exempt property.

(b) As used in this subsection (5), unless the context otherwise requires, "consensual lien" means a lien on property granted with the consent and approval of the owner.

(6) To the extent that exempt assets are commingled with nonexempt assets, a first-in first-out accounting shall be used to determine the portion of the commingled assets to which the exemption applies. If exempt assets are commingled with nonexempt assets as part of a single transaction, any amounts withdrawn from an account for the purpose of such transaction shall be assessed on a pro rata basis. This subsection (6) applies to all provisions of the Colorado Revised Statutes concerning the exemption of assets from seizure, except for exemptions that require segregation.

**Source:** L. 59: p. 530, § 2. CRS 53: § 77-13-2. C.R.S. 1963: § 77-2-2. L. 73: pp. 236, 915, 916, §§ 15, 1, 3. L. 75: (1)(o)(II) amended, p. 1466, § 6, effective July 18. L. 77: (1)(h) amended and (1.1) added, p. 811, § 1, effective July 1. L. 81: Entire section R&RE, p. 893, § 2, effective July 1. L. 84: (1)(r) added, p. 475, § 2, effective January 1, 1985. L. 85: (1)(j) amended, p. 580, § 1, effective April 30. L. 91: (1)(s) and (3) added, p. 383, §§ 1, 2, effective May 1. L. 92: (1)(t) added, p. 2241, § 1, effective June 6. L. 94: (1)(u) added, p. 1210, § 1, effective May 22. L. 95: (1)(l) amended, p. 723, § 1, effective July 1. L. 96: (4) added, p. 50, § 2, effective July 1. L.

**2000:** (1)(a), (1)(b), (1)(c), (1)(e), (1)(f), (1)(g), (1)(i), (1)(j)(I), (1)(j)(II)(A), (1)(k), and (1)(o) amended, p. 715, § 2, effective May 23. **L. 2002:** (1)(h.5) added, p. 587, § 11, effective May 24; (1)(s) amended, p. 487, § 1, effective May 24; (1)(g) amended, p. 1862, § 1, effective July 1; (1)(l)(I)(A) amended, p. 641, § 1, effective August 7. **L. 2007:** (1)(b), (1)(g), (1)(i), (1)(j), (1)(o), and (1)(u) amended and (1)(v) and (5) added, pp. 876, 877, §§ 3, 4, effective May 14; (1)(s) amended, p. 2026, § 27, effective June 1. **L. 2010:** (1)(l)(I)(A) amended, (SB 10-147), ch. 147, p. 507, § 1, effective September 1. **L. 2015:** (1)(a), (1)(b), (1)(c), (1)(g)(I), (1)(i), (1)(j), (1)(l)(I)(A), and (1)(v) amended and (1)(l)(IV) added, (SB 15-283), ch. 301, p. 1237, § 2, effective July 1. **L. 2017:** (1)(l)(I)(A) amended, (HB 17-1093), ch. 57, p. 180, § 1, effective September 1. **L. 2020:** (1)(w) added, (SB 20-211), ch. 140, p. 610, § 3, effective June 29. **L. 2021:** (1)(w)(I) amended, (SB 21-002), ch. 7, p. 45, § 2, effective January 21; (1)(r) amended, (SB21-173), ch. 349, p. 2265, § 5, effective October 1. **L. 2022:** (1)(e), (1)(g), (1)(i), (1)(j)(I), (1)(j)(II)(A), (1)(o), (1)(s), (1)(u), (1)(v), (1)(w), and (3) amended and (1)(x), (1)(y), (1)(z), and (6) added, (SB 22-086), ch. 74, p. 377, § 6, effective April 7.

**Cross references:** (1) For specific exemptions for cemetery company property, see § 7-47-106; for workers' compensation benefits, see § 8-42-124; for employment security benefits, see § 8-80-103; for delinquent insurance company assets, see § 10-3-556; for group life insurance proceeds, see § 10-7-205; for fraternal benefit society insurance benefits, see § 10-14-403; for constitutional state officers' fees or salaries, see § 13-61-101; for family allowance from estate, see § 15-11-403; for public assistance payments, see § 26-2-131; for homestead exemptions, see part 2 of article 41 of title 38.

(2) For the legislative declaration contained in the 2007 act amending subsections (1)(b), (1)(g), (1)(i), (1)(j), (1)(o), and (1)(u) and enacting subsections (1)(v) and (5), see section 1 of chapter 226, Session Laws of Colorado 2007. For the legislative declaration in SB 20-211, see section 1 of chapter 140, Session Laws of Colorado 2020. For the legislative declaration in SB 22-086, see section 1 of chapter 74, Session Laws of Colorado 2022.

## ANNOTATION

### I. General Consideration.

#### I. GENERAL CONSIDERATION.

**Law reviews.** For article, "The Widow's Allowance", see 6 Dicta 11 (1929). For article, "Some Phases of the Exemption Laws", see 12 Dicta 107 (1935). For article, "Executions and Levies on Tangible

Property", see 27 Dicta 143 (1950). For note, "The Landlord's Lien in Colorado", see 27 Dicta 447 (1950). For note, "A Discussion of Garnishment and Its Exemptions", see 27 Dicta 453 (1950). For article, "Commercial Law", see 59 Den. L.J. 227 (1982). For article, "Legislative Update", see 11 Colo. Law. 2142 (1982). For

article, "Secured Transactions — Part II: Default, Foreclosure and Bankruptcy", see 12 Colo. Law. 13 (1983). For article, "Exempting Retirement Benefits from Bankruptcy in Colorado", see 18 Colo. Law. 17 (1989). For article, "The Nuts and Bolts of Collecting Support", see 19 Colo. Law. 1595 (1990). For article, "Rights of the Debtor and Creditor to Retirement Plan Benefits", see 20 Colo. Law. 199 (1991). For article, "Recent Changes to Military Retirement Division in Divorce", see 47 Colo. Law. 34 (Apr. 2018).

**Annotator's note.** Since § 13-54-102 is similar to repealed CSA, C. 93, § 14, and laws antecedent thereto, relevant cases construing these provisions have been included in the annotations to § 13-54-102.

**Constitutionality.** This section does not violate the uniformity clause of § 8 of art. I, U.S. Const., or the supremacy clause, art. VI, cl. 2, U.S. Const. In re Parrish, 19 B.R. 331 (Bankr. D. Colo. 1982).

**On its face this section clearly applies to all writs of execution, regardless of underlying claim.** Packard v. Packard, 33 Colo. App. 308, 519 P.2d 1221 (1974).

**The only exception is specified in § 13-54-103,** which denies exemptions if the writ of execution issues on a judgment for the purchase price of the property exempted. Packard v. Packard, 33 Colo. App. 308, 519 P.2d 1221 (1974).

**The purpose of exemption is to preserve to the debtor his means of support.** Watson v. Lederer, 11 Colo. 577, 19 P. 602 (1888); Smith v. Pueblo

Mercantile & Credit Ass'n, 82 Colo. 364, 260 P. 109 (1927).

**And to preserve the home for the family.** Repeated decisions are to the effect that the purpose of these statutes is to preserve the home for the family, and, to that end, to protect it from alienation by one spouse without the concurrence of the other, and also from execution or attachment arising from any debt, contract, or civil obligation. In re Youngstrom, 153 F. 98 (8th Cir. 1907).

**Exemptions are to be liberally construed.** The exemption laws of the state are for the benefit of residents, and they are to be liberally construed. Sandberg v. Borstadt, 48 Colo. 96, 109 P. 419 (1910).

**As indicated in the constitution.** The liberal policy of this state in regard to exemption laws is indicated by the organic law. Section 1 of art. XVIII, Colo. Const., expressly declares that "the general assembly shall pass liberal homestead and exemption laws". The decisions of the courts should be in harmony with this policy. Martin v. Bond, 14 Colo. 466, 24 P. 326 (1890); Hawkins v. Mosher, 8 Colo. App. 31, 44 P. 763 (1896).

**Exemptions provided by this section for the purposes intended are favored.** A perversion of the statute to admit of fraudulent purposes should be avoided by the courts; however, a construction so strict as to defeat its purpose and design should not prevail. Penrose v. Stevens, 100 Colo. 83, 65 P.2d 697 (1937).

**This section relates solely to civil actions.** Enderman v. Alexander, 68 Colo. 110, 187 P. 729 (1920).

**The statutory right to an exemption is personal and individual,** and must be exercised in relation to the property of the individual claiming it. McCrimmon v. Linton, 4 Colo. App. 420, 36 P. 300 (1894).

**Right cannot be exercised in respect to partnership property.** McCrimmon v. Linton, 4 Colo. App. 420, 36 P. 300 (1894).

**Exemptions apply to the estate of a mental incompetent.** The exemption provisions of this section are applicable to the assets in the estate of a mental incompetent, and insurance proceeds in such an estate are exempt from an approved claim of the Colorado state hospital. State v. Estate of Butler, 30 Colo. App. 246, 491 P. 2d 102 (1971).

**Benefits received by individuals at state mental hospital from veterans administration and the Colorado old age pension program** may be applied to cover costs of care at the hospital under former § 27-12-104 and therefore are not exempt under this section. In re Estate of Nau, 183 P.3d 626 (Colo. App. 2007).

**While property may be exempt from levy, there is no statute which exempts it from liens.** Noxon v. Glaze, 11 Colo. App. 503, 53 P. 827 (1898).

**Exemption can be claimed only from levy and sale upon execution or attachment.** As the common-law process of distress for rent does not exist in this state, it is only from levy and sale upon execution or

attachment that exemption can be claimed. Replevin on the ground of exemption will lie only where property has been seized by execution or attachment. The statute exempting property from levy does not exempt it from a landlord's lien. Noxon v. Glaze, 11 Colo. App. 503, 53 P. 827 (1898).

**Cognovit waiving exemptions is invalid.** Colorado has held that a stipulation in a cognovit note which waived the right of exemption was invalid as against public policy. In re Rade, 205 F. Supp. 336 (D. Colo. 1962).

**General waiver.** A general waiver of "any and all exemptions permitted by law" in a promissory note is invalid as against public policy. Beneficial Fin. Co. of Colo. v. Schmuhl, 713 P.2d 1294 (Colo. 1986).

**Implied waiver.** Combined note and security agreement result in an implied waiver of \$6000 residential mobile home exemption. Beneficial Fin. Co. of Colo. v. Schmuhl, 713 P.2d 1294 (Colo. 1986).

**An ordinary chattel mortgage given on property which is later claimed as exempt will prevail** over the exemption. In re Rade, 205 F. Supp. 336 (D. Colo. 1962).

**Exemption applicable to judgment for arrearages in child support and alimony.** The exemption from levy under writ of execution set forth in subsection (1)(j) applies to a judgment for arrearages in child support and alimony. Packard v. Packard, 33 Colo. App. 308, 519 P.2d 1221 (1974).

**The exemption would apply only to the debtor's equity.** When mortgaged property is claimed as exempt by a bankrupt, the

exemption applies to the equity and not to the specific items of property. In re Cummings, 413 F.2d 1281 (10th Cir. 1969); Centennial Savings & Loan Ass'n v. Schmuhl, 690 P.2d 882 (Colo. App. 1984), rev'd on other grounds sub nom. Beneficial Fin. Co. of Colo. v. Schmuhl, 713 P.2d 1294 (Colo. 1986); In re Holcomb, 54 B.R. 59 (Bankr. D. Colo. 1985).

**Vendor's assignee cannot resort to exempt property to satisfy judgment.** If the vendor takes a promissory note for the property sold, and transfers the note to a third party, such voluntary transfer of the note does not carry with it to the assignee the right to resort to exempt property to satisfy a judgment which he as assignee may recover upon the note. Whether the heir or personal representative of a deceased vendor would succeed to the privilege of his decedent under the proviso statute was not involved in the controversy in Weil v. Nevitt, 18 Colo. 10, 31 P. 487 (1892).

**Garnishment of former spouse's pension as indemnification for tax liability is not precluded by subsection (1)(s) exempting pension funds from levy and sale under writ of attachment or execution in "any action" brought after a specified date** where relevant action was dissolution, not motion to compel payment of tax. In re Plank, 881 P.2d 486 (Colo. App. 1994).

**Applied** in First Nat'l Bank v. District Court, 652 P.2d 613 (Colo. 1982).

## **II. EXEMPT PROPERTY.**

### **A. In General.**

- B. Agriculture.
- C. Household Goods.
- D. Stock in Trade.
- E. Motor Vehicles.
- F. Pensions and Retirement Plans.
- G. Life Insurance.
- H. Income Tax Refund.
- I. Personal Injury Damages.

### **A. In General.**

**The application of the amended Colorado exemption limits set forth in this section to a loan and security agreement that was entered into prior to the enactment of the amended exemption statute does not constitute a "retrospective" application of state law in violation of art. II, § 11, of the Colorado Constitution and § 2-4-202.** In re Larsen, 260 B.R. 174 (Bankr. D. Colo. 2001).

**The application also** does not constitute an unconstitutional "taking" of the loan collateral under the fifth amendment to the United States Constitution and the Constitution of the state of Colorado. In re Larsen, 260 B.R. 174 (Bankr. D. Colo. 2001).

**The application also** does not violate the respective "contracts" clauses of the United States and Colorado Constitutions. In re Larsen, 260 B.R. 174 (Bankr. D. Colo. 2001).

**Notwithstanding the exemption created by subsection (1)(a), public policy prevents the application of an attorney's**

**charging lien against funds owing to a parent as child support.** In re Etcheverry, 921 P.2d 82 (Colo. App. 1996).

**Wife is not a "single person" within meaning of this section** and she is not entitled to any claims for exemption as a "single person". In re Hellman, 474 F. Supp. 348 (D. Colo. 1979).

**Where husband and wife file separately for bankruptcy,** both the husband and the wife are entitled to the exemptions provided in paragraphs (c) and (e) of subsection (1). In re Hellman, 474 F. Supp. 348 (D. Colo. 1979).

**Subsection (1)(f) permits but one claim for exemption** and where the trustee had allowed that claim in the computation of the assets available for the creditors of the husband, the wife's claim for a similar exemption was disallowed. In re Hellman, 474 F. Supp. 348 (D. Colo. 1979).

**Debtor may claim exemptions under subsection (1)(g) and (1)(i) on the same property.** In re Case, 66 B.R. 44 (Bankr. D. Colo. 1986); In re Larsen, 260 B.R. 174 (Bankr. D. Colo. 2001).

And each debtor can claim the full amount of the exemption under both subsection (1)(g) and (1)(i) as these are personal exemptions belonging to each debtor on personalty. In re Larsen, 260 B.R. 174 (Bankr. D. Colo. 2001).

**"Implements"** are defined in Anderson's Law Dictionary to be: "Things necessary to any trade, without which the work cannot be performed". Eckman v. Poor, 38 Colo. 200, 87 P. 1088 (1906).

**Damages for personal injuries includes** damages recovered in actions for breach of warranty, fraud, deceit, or false imprisonment as well as damages for loss of consortium. In re Keyworth, 47 B.R. 966 (Bankr. D. Colo. 1985).

**But excludes** damages under the wrongful death act unless the claim was for damages for personal injury suffered by the debtor and punitive damages since they are awarded not because of personal injury but because of malicious, wanton, and reckless actions. In re Keyworth, 47 B.R. 966 (Bankr. D. Colo. 1985).

The exemption for damages for personal injury does not apply to punitive damages that are awarded to punish the wrongdoer and not to compensate the plaintiff for injury. Miller v. Accelerated Bureau of Collections, Inc., 932 P.2d 824 (Colo. App. 1996).

**Subsection (1)(n) does not protect the net proceeds of a personal injury judgment from garnishment for child support obligation.** The plain language of § 13-54-106 clearly permits the garnishment of otherwise exempt property or income for the collection of child support arrearages. Drachmeister v. Brassart, 93 P.3d 566 (Colo. App. 2004).

**Subsection (1)(o)(II) exemption for mobile home.** Under subsection (1)(o)(II), each debtor in a joint case in bankruptcy is entitled to an exemption for a mobile home used as a place of residence and of which each debtor is an owner. In re Janesofsky, 22 B.R. 973 (Bankr. D. Colo. 1982).



**Moneys from federally guaranteed student loan** in student's bank account are exempt from garnishment for judgment based on antecedent business debt owed by student. *Schaerrer v. Westman Comm'n Co.*, 769 P.2d 1058 (Colo. 1989).

**Funds of defendant were not exempt from garnishment** even though those funds were derived from a federal court order requiring defendant to make restitution as a part of a criminal case. *Newburn v. RFB Petroleum, Inc.*, 775 P.2d 93 (Colo. App. 1989).

**Where a non-custodial parent owes a duty of child support**, such parent may not offset that obligation against a personal judgment that the non-custodial parent may have against the custodial parent. *Hall v. Hall-Stradley*, 776 P.2d 1166 (Colo. App. 1989).

**Exemption for jewelry was denied where debtor failed to provide court with current market value of specific items.** In *re Raymond*, 132 B.R. 53 (Bankr. D. Colo. 1991).

**Debtor's annuity was not a life insurance policy for purposes of exemption under subsection (1)(l).** In *re Raymond*, 132 B.R. 53 (Bankr. D. Colo. 1991).

**Because the statute has no restrictive conditions, the term "avails" in subsection (1)(l) includes the cash surrender value of life insurance policies.** In *re Griesse*, 172 B.R. 336 (Bankr. D. Colo. 1994) (decided prior to 1995 amendment to subsection (1)(l)).

**An adoption expense credit is not an earned income tax credit and, therefore, does not qualify as exempt property under subsection (1)(o).** Earned income is not an element of eligibility for the adoption expense credit. Subsection (1)(o) refers to the very unique tax credit program that is based upon earned income. It does not create a generic exemption for all tax credits that use income as a qualifying factor. In *re Walsh*, 298 B.R. 894 (Bankr. D. Colo. 2003).

**Attorney's charging lien may attach to an award of spousal maintenance.** Because the language of the attorney's lien statute is unambiguous, the levy exception for maintenance payments in this section is irrelevant to whether such payments fall within the scope of § 12-5-119. *Samuel J. Stooman & Assocs. v. Dixon*, 2017 CO 42, 394 P.3d 691.

#### B. Agriculture.

**Debtors engaged in agriculture as their principal occupation where** they began trucking to save their farming business, a business that had been a way of life for each of them and for at least three generations for each of their families; they began trucking with reluctance; debtor wife steadfastly resisted driving a truck but finally did so only as a last resort to save the farming business; it is fairly common for farmers and ranchers in the area to take on employment outside of the family farm for at least part of the year in order to supplement farm income and pay bills; most, if not all, of the income from trucking was dedicated to paying the bills related to the family and its farming

and ranching business; both debtors expressed a credible and sincere intent to return to working full-time as farmers/ranchers once they were able to get back on their feet financially; and, while they drove trucks approximately 40 hours per week, they and their children also continued to raise cattle and manage the farm in their spare time. The debtors can, therefore, claim exemptions under subsection (1)(g). In re Larsen, 260 B.R. 174 (Bankr. D. Colo. 2001).

**Debtors' remaining livestock are in the nature of breeding stock, without which it would be virtually impossible for debtors to obtain a fresh start.** The stock is therefore exempt from levy as "tools of the trade" under subsection (1)(g). In re Larsen, 260 B.R. 174 (Bankr. D. Colo. 2001).

#### C. Household Goods.

**Ownership interest required before exemption may be claimed.** Each Colorado debtor in a joint case is entitled to claim up to \$1,500 a piece in household goods or tools of trade; however, the debtor must have an ownership interest in the property before any exemption may be claimed. In re Ferguson, 15 B.R. 439 (Bankr. D. Colo. 1981); In re Reeder, 60 B.R. 312 (Bankr. D. Colo. 1986).

**Where husband and wife are two separate debtors in a joint petition in bankruptcy, under subsection (1)(e), each is entitled to claim a \$1,500 exemption for a total exemption of \$3,000 for household goods.** In re Alvarez, 14 B.R. 940 (Bankr. D. Colo. 1981).

**Where husband and wife file separately for bankruptcy,** both the husband and the wife are entitled to the exemptions provided in paragraphs (c) and (e) of subsection (1). In re Hellman, 474 F. Supp. 348 (D. Colo. 1979).

**Subsection (1)(e) exemption superior to nonpossessory, nonpurchase money security interest.** A nonpossessory, nonpurchase money security interest in debtors' household goods and household furnishings under § 522 (f) of the federal bankruptcy code, is void to the extent that it impairs the exemption to which the debtors would be entitled under subsection (1)(e) if no security interest existed. Redin v. Fid. Fin. Servs., 14 B.R. 727 (Bankr. D. Colo. 1981); In re Weiss, 51 B.R. 224 (Bankr. D. Colo. 1985).

**Guns do not constitute household goods** when primarily used as recreational items. In re Greenlee, 61 B.R. 257 (Bankr. D. Colo. 1986).

**Tractor qualified as a household good** because it was necessary to the functioning of the household. In re Sarmiento, 363 B.R. 189 (Bankr. D. Colo. 2006).

#### D. Stock in Trade.

**Debtor may claim exemptions under subsection (1)(g) and (1)(i) on the same property.** In re Case, 66 B.R. 44 (Bankr. D. Colo. 1986); In re Larsen, 260 B.R. 174 (Bankr. D. Colo. 2001).

And each debtor can claim the full amount of the exemption under both subsection (1)(g) and (1)(i) as these are personal exemptions belonging to each

debtor on personalty. In re Larsen, 260 B.R. 174 (Bankr. D. Colo. 2001).

**Debtor may claim an exemption for "tools of the trade" in his personal bankruptcy when the debtor conducts his business operations through a wholly owned corporation.** In re Calderon, 501 B.R. 726 (Bankr. D. Colo. 2013).

The tools are owned by debtor in his individual capacity and are used and kept by him for purposes of carrying on a gainful occupation, that is, his masonry business. The fact that debtor uses and keeps the tools in relation to work performed through his wholly owned corporation, in itself, does not affect debtor's right to a personal exemption under § 13-54-107. In re Calderon, 501 B.R. 726 (Bankr. D. Colo. 2013).

**The words "stock in trade",** in subsection (1)(i), apply to the merchant or shopkeeper, as well as to the mechanic, and include the stock of goods kept on sale by the merchant. Weil v. Nevitt, 18 Colo. 10, 31 P. 487 (1892).

**Therefore it includes liquors of a saloonkeeper.** Weil v. Nevitt, 18 Colo. 10, 31 P. 487 (1892).

**Debtors may claim exemptions under subsection (1)(i) where evidence demonstrated** that equipment was not only used by the debtors in their farming and ranching operations but was an integral part of those operations. In re Larsen, 260 B.R. 174 (Bankr. D. Colo. 2001).

**The phrase "gainful occupation" requires at least some aspect of**

**profitability.** In re Sharp, 508 B.R. 457 (10th Cir. 2014).

**In order to disqualify a debtor's claimed tools of trade exemption,** the objecting party must prove by a preponderance of the evidence that the debtor's occupation is unlikely to contribute to the support of the debtor and the debtor's family in any significant way within a reasonable period of time under the specific facts of each case. In re Sharp, 508 B.R. 457 (10th Cir. 2014).

**The phrase "gainful occupation" means the principal work or business for which a person receives compensation or profit,** not reimbursement for the role of foster parent. In re Sedillo, 476 B.R. 619 (Bankr. D. Colo. 2012).

**Under the plain meaning of subsection (1)(i), debtor's role as a foster parent does not qualify for the claimed exemption of a motor vehicle** used by debtor to transport foster children to necessary everyday activities. In re Sedillo, 476 B.R. 619 (Bankr. D. Colo. 2012).

**A debtor may claim a motor vehicle as exempt pursuant to subsection (1)(i) so long as the vehicle qualifies for the exemption.** In re Van Winkle, 265 B.R. 247 (Bankr. D. Colo. 2002); In re Black, 280 B.R. 258 (Bankr. D. Colo. 2002).

**Debtor entitled to claim truck as exempt equipment pursuant to subsection (1)(i) where** debtor used and kept the truck for the specific purpose of carrying on debtor's occupation. In re Van Winkle, 265 B.R. 247 (Bankr. D. Colo. 2002).

**Debtor entitled to claim motor vehicle under subsection (1)(i) where debtor used the vehicle to carry on a gainful occupation.** In re Sackett, 394 B.R. 544 (Bankr. D. Colo. 2008).

**Failure to make selection under this section is waiver of right.** A defendant in attachment, claiming under subsection (1)(i), of "implements or stock in trade used or kept for the purpose of carrying on his trade or business", not specifically exempt by law, is entitled to select such articles as are suitable to his trade or business; and a failure on his part to make such selection, is a waiver of his right thereto. Behymer v. Cook, 5 Colo. 395 (1880).

**Property subject to levy and sale under § 13-54-103 cannot become exempt under subsection (1)(i).** Behymer v. Cook, 5 Colo. 395 (1880).

**Exemption for stock in trade cannot exceed statutory limit.** The supreme court of Colorado has made statements indicating it would not exempt a tool or instrument, or stock in trade, exceeding the value set by the statute. Watson v. Lederer, 11 Colo. 577, 19 P. 602 (1888).

#### E. Motor Vehicles.

**Law reviews.** For article, "Exemption of Automobiles from Levy Under Execution or Attachment", see 10 Dicta 143 (1933). For note, "The Status of an Automobile Under the Exemption Laws of Colorado", see 10 Rocky Mt. L. Rev. 269 (1938).

**Subsection (1)(j) provides for an exemption where the debtor uses a motor vehicle for carrying on any gainful**

**occupation.** In re Rade, 205 F. Supp. 336 (D. Colo. 1962).

**Legal title to an automobile is not a requirement of subsection (1)(j)(I).** Subsection (1)(j)(I) allows a debtor to exempt one or more motor vehicles kept and used by the debtor. Hill v. Koching, 338 B.R. 463 (Bankr. D. Colo. 2005).

**Use of vehicle on public highways is not a requirement of subsection (1)(j)(I).** In re Sarmiento, 363 B.R. 189 (Bankr. D. Colo. 2006).

Debtors entitled to claim tractor as exempt motor vehicle. In re Sarmiento, 363 B.R. 189 (Bankr. D. Colo. 2006).

**The application of subsection (1)(j)(II)(A) is expressly limited to debtors who are themselves elderly or disabled and not to a debtor who keeps and uses a motor vehicle for the purpose of obtaining medical care for a disabled dependent.** In re Coleman, 208 B.R. 739 (Bankr. D. Colo. 1997).

**Debtor's son's manic-depressive mental condition was not disabling under subsection (1)(j)(II)(A)** where there was no evidence or offer of proof of any inability of the son to maintain gainful employment. In re Coleman, 208 B.R. 739 (Bankr. D. Colo. 1997).

**For evidence supporting ruling that automobile was not exempt,** see Law v. Simon, 110 Colo. 545, 136 P.2d 520 (1943).

#### F. Pensions and Retirement Plans.

**Subsection (1)(s) applies only to original actions, writs of garnishments,**

**issued by a court on or after May 1, 1991.** Guidry v. Sheet Metal Wkrs. Intern. Ass'n, Local 9, 10 F.3d 700 (10th Cir. 1993).

**And the exemption does not apply in any action for dissolution of marriage in which the petition was filed before May 1, 1991.** In re LeBlanc, 944 P.2d 686 (Colo. App. 1997).

**Plain meaning of "retirement plan"** is not limited to plans that possess attributes of ERISA-qualified or tax-qualified plans. A future retirement obligation by company is therefore exempt from attachment or garnishment under subsection (1)(s). Dillabaugh v. Ellerton, 259 P.3d 550 (Colo. App. 2011).

**Health savings account is not a "retirement plan" as contemplated by subsection (1)(s).** The plain meaning of "retirement plan" is a plan intended to provide an income to a person after that person retires from a career. Comm'l Research, LLC v. Roup, 2013 COA 163, 353 P.3d 859, aff'd, 2015 CO 38, 349 P.3d 273.

**A custodial individual retirement account (IRA) is not a separate legal entity.** It is only a receptacle for a person's assets that enjoys certain tax attributes and is subject to certain tax penalties. But the assets held in the receptacle remain the assets of the individual owner. Assets in a debtor's IRA are property of the debtor's bankruptcy estate that may be exempted if the conditions of applicable state or federal exemption statutes are satisfied. In any suit involving these assets, the individual owner is the real party in interest. Thus, the custodian of the IRA is not a proper

defendant to recover allegedly preferential payments on a promissory note. In re Lakeview Dev. Corp., 614 B.R. 603 (Bankr. D. Colo. 2020).

**Subsection (1)(s) is preempted by the federal Employee Retirement Income Security Act (ERISA) because it imposes limitations not imposed by ERISA on a spouse's right to receive retirement plan funds under a qualified domestic relations order (QDRO).** Court may use a QDRO to satisfy husband's unpaid obligations relating to the dissolution of marriage, including those for child support, maintenance, and attorney fees and, doing so, does not violate the anti-alienation provisions of ERISA or the internal revenue code. Further, a QDRO issued for this purpose does not result in an improper modification of the property division provisions of the decree. In re Drexler, 2013 COA 43, 315 P.3d 179.

**Funds in a savings account that were the balance remaining from a lump-sum distribution from a retirement account are not exempt under subsection (1)(s).** In re Gordon, 791 F.3d 1182 (10th Cir. 2015).

G. Life Insurance.

**Statute exempts from garnishment the "cash surrender value" of a life insurance policy** up to \$25,000. In re Gedgaudas, 978 P.2d 677 (Colo. App. 1999).

**The exclusion from the exemption is the only garnishable or attachable asset,** measured by the incremental increases in "cash value" occasioned by the making of contributions to the policy through payment of premiums. In re Gedgaudas, 978 P.2d 677

(Colo. App. 1999); In re Moosman, 473 B.R. 385 (Bankr. D. Colo. 2012).

**If on the date of bankruptcy a debtor's life insurance policy has a cash surrender value equal to or less than the amount debtor's contributions** during the prior four years have increased the cash value of the policy, the entire cash surrender value is non-exempt. In re Moosman, 473 B.R. 385 (Bankr. D. Colo. 2012).

#### H. Income Tax Refund.

**The nonrefundable portion of the child tax credit of 26 U.S.C. § 24(a) is not exempt property under subsection (1)(o) of this section** and therefore is not exempt from a bankruptcy estate because it does not constitute a payment under the internal revenue code and thus cannot give rise to a refund. In re Borgman, 698 F.3d 1255 (10th Cir. 2012).

**The refundable portion of the child tax credit is property of the bankruptcy estate to the extent attributable to the pre-petition portion of the taxable year in question.** In re Garcia-Morales, 653 B.R. 660 (Bankr. D. Colo. 2023), aff'd, 664 B.R. 180 (D. Colo. 2024), aff'd, 151 F.4th 1228 (10th Cir. 2025) (all decided under law in effect prior to the 2022 amendment).

**To the extent an exemption applies, a debtor may remove exempt property from the estate.** In re Garcia-Morales, 653 B.R. 660 (Bankr. D. Colo. 2023), aff'd, 664 B.R. 180 (D. Colo. 2024), aff'd, 151 F.4th 1228 (10th Cir. 2025) (all decided under law in effect prior to the 2022 amendment).

**The phrase "attributed to" in subsection (1)(o) should be interpreted according to its ordinary meaning,** requiring the simple and traditional standard of but-for causation. If the refundable credit were removed from the tax equation, would the refund amount be different? If so, there is a but-for cause. In re Garcia-Morales, 653 B.R. 660 (Bankr. D. Colo. 2023), aff'd, 664 B.R. 180 (D. Colo. 2024), aff'd, 151 F.4th 1228 (10th Cir. 2025) (all decided under law in effect prior to the 2022 amendment).

Here, removing the refundable credit would eliminate the debtor's federal refund. The refundable credit is a but-for cause of debtor's refund, and the causation requirement of the exemption statute is satisfied. The refund is attributed to the refundable credit. In re Garcia-Morales, 653 B.R. 660 (Bankr. D. Colo. 2023), aff'd, 664 B.R. 180 (D. Colo. 2024), aff'd, 151 F.4th 1228 (10th Cir. 2025) (all decided under law in effect prior to the 2022 amendment).

**The refundable credit debtor received, the child tax credit, thus falls within the exemption of subsection (1)(o).** Subsection (1)(o) exempts "[t]he full amount of any ... refund". Giving effect to the term "full" requires a determination that a debtor's tax refund is exempt up to the amount of the exempt refundable credit received. In re Garcia-Morales, 653 B.R. 660 (Bankr. D. Colo. 2023), aff'd, 664 B.R. 180 (D. Colo. 2024), aff'd, 151 F.4th 1228 (10th Cir. 2025) (all decided under law in effect prior to the 2022 amendment).

I. Personal Injury Damages.

**Net proceeds from a personal injury claim should generally be included in the**

**calculation of a debtor's projected disposable income.** In re Adamson, 615 B.R. 303 (Bankr. D. Colo. 2020).

**13-54-102.5. Child support payments - exemption.**

Any past or present child support obligation owed by a parent or child support payment made by a parent that is required by a support order is exempt from levy under writ of attachment or writ of execution for any debt owed by either parent.

**Source: L. 94:** Entire section added, p. 1210, § 2, effective May 22. **L. 2022:** Entire section amended, (SB 22-086), ch. 74, p. 379, § 7, effective April 7.

**Cross references:** For the legislative declaration in SB 22-086, see section 1 of chapter 74, Session Laws of Colorado 2022.

**ANNOTATION**

**Notwithstanding the exemption created by subsection (1), public policy prevents the application of an attorney's charging lien against funds owing to a parent as child support.** In re Etcheverry, 921 P.2d 82 (Colo. App. 1996).

**Special coordinator appointed to arbitrate during a post-dissolution of marriage proceeding violated this section**

**by requesting that her fees be paid from child support funds deposited in the court registry.** Although the coordinator did not employ writs of attachment or execution to obtain payment, coordinator's behavior was functionally equivalent to extracting payment for a parent's debt from a child support payment. In re Eggert, 53 P.3d 794 (Colo. App. 2002).

**13-54-103. No exemption for purchase price.**

None of the property described in section 13-54-102 shall be exempt from levy and sale on writ of attachment or writ of execution for the purchase price of such property.

**Source: L. 59:** p. 532, § 3. **CRS 53:** § 77-13-3. **C.R.S. 1963:** § 77-2-3.

## ANNOTATION

**Annotator's note.** Since § 13-54-103 is similar to the repealed second proviso to CSA, C. 13, § 14 and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

**This section is for the protection of the vendor** who has parted with his property without getting his pay for it; it is a privilege personal to the vendor. *Weil v. Nevitt*, 18 Colo. 10, 31 P. 487 (1892).

**It is analogous to the vendor's lien for purchase price of real estate.** The privilege which the statute secures to the vendor would seem to bear a close analogy to the vendor's lien for the purchase price of real estate. *Weil v. Nevitt*, 18 Colo. 10, 31 P. 487 (1892).

**No property is exempt from levy to satisfy a claim for the purchase money thereof.** *Behymer v. Cook*, 5 Colo. 395 (1880).

**This section itself does not create a lien on exempt property.** As this section indicates, exempt personal property is subject to levy of attachment for the purchase price thereof. But it has been held that such a statutory provision in itself does not create a lien in exempt property. In *re Rade*, 205 F. Supp. 336 (D. Colo. 1962).

**It has been indicated that a favorable attitude towards equitable liens prevails in Colorado.** In *re Rade*, 205 F. Supp. 336 (D. Colo. 1962).

**Applied** in *Packard v. Packard*, 33 Colo. App. 308, 519 P.2d 1221 (1974); In *re Seguin*, 76 B.R. 175 (Bankr. D. Colo. 1987).

### **13-54-104. Restrictions on garnishment and levy under execution or attachment - definitions.**

(1) As used in this section, unless the context otherwise requires:

(a) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld and after the deduction of the cost of any health insurance provided by the individual pursuant to section 14-14-112 and the cost of any health insurance for the individual or members of the individual's household that is provided by the individual's employer and withheld from the individual's earnings. In the case of an order for the support of a spouse, former spouse, or dependent child, "disposable earnings" includes money voluntarily deposited in tax-deferred compensation funds.

(b) (I) "Earnings" means:



(A) Compensation paid or payable to an individual employee or independent contractor for personal labor or services;

(B) Funds held in or payable from any health, accident, or disability insurance.

(II) For the purposes of writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, for restitution for the theft, embezzlement, misappropriation, or wrongful conversion of public property, or in the event of a judgment for a willful and intentional violation of fiduciary duties to a public pension plan where the offender or a related party received direct financial gain, "earnings" also means:

(A) Workers' compensation benefits;

(B) Any pension or retirement benefits or payments, including but not limited to those paid pursuant to articles 51, 54, 54.5, and 54.6 of title 24, C.R.S., and articles 30.5 and 31 of title 31, C.R.S.;

(C) Dividends, severance pay, royalties, monetary gifts, monetary prizes, excluding lottery winnings not required by the rules of the Colorado lottery commission to be paid only at the lottery office, taxable distributions from general partnerships, limited partnerships, closely held corporations, or limited liability companies, interest, trust income, annuities, capital gains, or rents;

(D) Any funds held in or payable from any health, accident, disability, or casualty insurance to the extent that such insurance replaces wages or provides income in lieu of wages; and

(E) Tips declared by the individual for purposes of reporting to the federal internal revenue service or tips imputed to bring the employee's gross earnings to the minimum wage for the number of hours worked, whichever is greater.

(III) For the purposes of writs of garnishment issued by the state agency responsible for administering the state medical assistance program, which writs are issued as a result of a judgment for medical support for child support or for medical support debt, "earnings" includes:

(A) Payments received from a third party to cover the health-care cost of the child but which payments have not been applied to cover the child's health-care costs;

(A.5) Unemployment insurance benefits; and

(B) State tax refunds.

(IV) For the purposes of writs of garnishment issued by a county department of human or social services responsible for administering the state public assistance programs, which writs are issued as a result of a judgment for a debt for fraudulently obtained public assistance, fraudulently obtained overpayments of public assistance, or excess public assistance paid for which the recipient was ineligible, "earnings" includes workers' compensation benefits.

(V) For the purposes of attachments of earnings or writs of garnishment that are the result of a judgment taken for court assessments including fines, fees, costs, restitution, and surcharges pursuant to section 16-11-101.6 or section 16-18.5-105, C.R.S., "earnings" also means those enumerated under subparagraph (I) of this paragraph (b).

(1.1) Repealed.

(2) (a) Except as provided in subsection (3) of this section, the maximum part of the aggregate disposable earnings of an individual for any workweek that is subjected to garnishment or levy under execution or attachment may not exceed:

(I) For debts other than debts pursuant to subsection (2)(a)(II) of this section, the lesser of:

(A) Twenty percent of the individual's disposable earnings for that week; or

(B) The amount by which the individual's disposable earnings for that week exceed forty times the federal minimum hourly wage prescribed by 29 U.S.C. sec. 206 (a)(1) in effect at the time the earnings are payable; or

(C) The amount by which the individual's disposable earnings for that week exceed forty times the state minimum hourly wage pursuant to section 15 of article XVIII of the state constitution in effect at the time the earnings are payable;

(D) Notwithstanding the provisions of subsections (2)(a)(I)(A), (2)(a)(I)(B), and (2)(a)(I)(C) of this section, a judgment debtor may file a written objection pursuant to section 13-54.5-108 (1)(a), without the necessity of conferring with the garnishee, and seek a hearing pursuant to section 13-54.5-109 (1)(a). At the hearing the judgment debtor may establish that a greater portion of the judgment debtor's disposable earnings should be exempt from garnishment for the support of the judgment debtor or the judgment debtor's family supported, in whole or in part, by the judgment debtor. At such hearing, the court shall, pursuant to section 13-54.5-109 (2), determine whether the earnings of the judgment debtor following garnishment, together with any other income received by the judgment debtor's family, are insufficient to pay the actual and necessary living expenses of the judgment debtor or the judgment debtor and judgment debtor's family based upon proof of such expenses incurred during the sixty days prior to the hearing. In making this determination, the living expenses the court must consider include, but are not limited to, the following: Rent or mortgage; utilities; food and household supplies; medical and dental expenses; child care; clothing; education; transportation; and maintenance, alimony, or child support. If the court makes a determination of insufficiency, it shall order that more of the judgment debtor's disposable earnings should be exempt from garnishment than prescribed by subsections (2)(a)(I)(A), (2)(a)(I)(B), and (2)(a)(I)(C) of this section.

(II) For debts for fraudulently obtained public assistance or fraudulently obtained overpayments collected pursuant to section 26-2-128 (1)(a), C.R.S., the lesser of:

(A) Thirty-five percent of the individual's disposable earnings for that week; or

(B) The amount by which the individual's disposable earnings for that week exceed thirty times the federal minimum hourly wage prescribed by section 206 (a)(1) of title 29 of the United States Code in effect at the time the earnings are payable; or

(C) The amount by which the individual's disposable earnings for that week exceed thirty times the state minimum hourly wage pursuant to section 15 of article XVIII of the state constitution in effect at the time the earnings are payable.

(b) In the case of earnings for any pay period other than a week, a multiple of the federal minimum hourly wage or the state minimum hourly wage, equivalent in effect to that set forth in paragraph (a) of this subsection (2) shall be used.

(3) (a) The restrictions of subsection (2) of this section do not apply in the case of:

(I) Any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure which is established by state law, which affords substantial due process, and which is subject to judicial review;

(II) Any order of any court of the United States having jurisdiction over cases under chapter 13 of title 11 of the United States Code, the federal bankruptcy code of 1978;

(III) Any debt due for any state or federal tax.

(b) (I) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment or levy under execution or attachment to enforce any order for the support of any person shall not exceed:

(A) Where such individual is supporting his spouse or dependent child, other than a spouse or child with respect to whose support such order is used, fifty percent of such individual's disposable earnings for that week; and

(B) Where such individual is not supporting a spouse or dependent child as described in sub-subparagraph (A) of this subparagraph (I), sixty percent of such individual's disposable earnings for that week.

(II) With respect to the disposable earnings of any individual for any workweek, the fifty percent specified in sub-subparagraph (A) of subparagraph (I) of this paragraph (b) shall be deemed to be fifty-five percent, and the sixty percent specified in sub-subparagraph (B) of subparagraph (I) of this paragraph (b) shall be deemed to be sixty-five percent if and to the extent that such earnings are subject to garnishment or wage assignment or income assignment or levy under execution or attachment to enforce a support order with respect to a period that is prior to the twelve-week period that ends with the beginning of such workweek.

(III) Notwithstanding the maximum part of the aggregate disposable earnings of an individual which is subject to garnishment as provided in this paragraph (b), a debtor who is totally and permanently disabled and who establishes that at least seventy-five percent of his income is derived from any disability income or benefits may object to the amount of the aggregate disposable earnings subject to garnishment under this paragraph (b). The court, upon consideration of the circumstances of the parties, may provide for garnishment in an amount less than such maximum amounts.

(4) The restrictions established by this section shall be adhered to whether or not the employer of the debtor is subject to garnishee process.

**Source:** L. 59: p. 532, § 4. CRS 53: § 77-13-4. C.R.S. 1963: § 77-2-4. L. 71: p. 853, § 2. L. 79: Entire section R&RE, p. 623, § 1, effective May 31. L. 80: (1)(b) amended, p. 613, § 2, effective April 10; (3)(a)(II) amended, p. 785, § 11, effective June 5. L. 85: (3)(b)(II) amended, p. 590, § 5, effective July 1. L. 87: (1)(b) amended, p. 595, § 22, effective July 10. L. 88: (1.1) added, p. 609, § 1, effective April 14; (3)(b)(III) added, p. 611, § 3, effective July 1. L. 90: (1)(b) amended, p. 564, § 32, effective July 1. L. 91: (1)(b) amended and (1.1) repealed, pp. 383, 384, §§ 3, 4, effective May 1. L. 92: (1)(b) amended, p. 577, § 3, effective July 1; (1)(a) amended, p. 172, § 5, effective August 1. L. 93: (1)(b)(II) amended, p. 1871, § 3, effective June 6. L. 94: (1)(a) and (1)(b)(I)(A) amended, p. 1535, § 2, effective May 31; (1)(b)(II) amended, p. 2048, § 7, effective June 3; (1)(b) amended, p. 1594, § 3, effective July 1; (1)(b)(II) amended, p. 1252, § 4, effective July 1; (2)(a) amended, p. 2061, § 2, effective July 1. L. 96: (1)(b) and (3)(b)(II) amended, p. 590, § 1, effective July 1. L. 98: (1)(b)(II)(B) amended, p. 920 § 5, effective July 1. L. 99: (1)(b)(II)(B) amended, p. 620, § 13, effective August 4. L. 2005: IP(1)(b)(II) and (1)(b)(II)(B) amended, p. 71, § 1, effective August 8. L. 2006: (1)(b)(IV) added, p. 948, § 4, effective August 7. L. 2007: (2) amended, p. 877, § 5, effective July 1. L. 2009: (1)(b)(II)(B) amended, (SB 09-066), ch. 73, p. 259, § 23, effective July 1; (1)(b)(II)(B) amended, (SB 09-282), ch. 288, p. 1396, § 57, effective January 1, 2010. L. 2012: (1)(b)(V) added, (HB 12-1310), ch. 268, p. 1392, § 2, effective June 7. L. 2015: (1)(b)(I)(A) and (1)(b)(II)(C) amended, (SB 15-283), ch. 301, p. 1239, § 3, effective July 1. L. 2018: (1)(b)(IV) amended, (SB 18-092), ch. 38, p. 399, § 9, effective August 8. L. 2019: (1)(a), IP(2)(a), and (2)(a)(I) amended, (HB 19-1189), ch. 214, p. 2224, § 3, effective August 2.

**Editor's note:** (1) Amendments to subsection (1)(b) by Senate Bill 94-164, Senate Bill 94-088, Senate Bill 94-141, and House Bill 94-1345 were harmonized.

(2) Amendments to subsection (1)(b)(II)(B) by Senate Bill 09-066 and Senate Bill 09-282 were harmonized, effective January 1, 2010.

**Cross references:** For the legislative intent contained in the 2006 act enacting subsection (1)(b)(IV), see section 8(2) of chapter 208, Session Laws of Colorado 2006. For the legislative declaration contained in the 2007 act amending subsection (2), see section 1 of chapter 226, Session Laws of Colorado 2007. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

## ANNOTATION

**Law reviews.** For article, "The Revolution in Consumer Credit Legislation", see 45 Den. L.J. 679 (1968). For article, "An Individual's Retirement Benefits Under the Bankruptcy Code", see 16 Colo. Law. 1211 (1987). For article, "Perils of Pre-Bankruptcy Planning: Transfers, Exemptions and Taxes", see 17 Colo. Law. 1513 (1988). For article, "Operating a Personal Service Corporation", see 17 Colo. Law. 2011 (1988). For article, "Setoff and Security Interests In Deposit Accounts", see 17 Colo. Law. 2108 (1988). For article, "Exempting Retirement Benefits from Bankruptcy in Colorado", see 18 Colo. Law. 17 (1989). For article, "Rights of the Debtor and Creditor to Retirement Plan Benefits", see 20 Colo. Law. 199 (1991). For article, "Overcoming Difficulties in Collecting Child Support and Maintenance", see 24 Colo. Law. 2725 (1995).

**Annotator's note.** Since § 13-54-104 is similar to repealed laws antecedent to CSA, C. 93, § 16, cases construing those provisions have been included in the annotations to this section.

**Earnings received do not lose their character** as "wages" and become capital. It has been argued with much ingenuity that

the earnings of the laborer, when received by him, are no longer wages, but capital; that the exemption statute has performed its office when it has enabled the laborer to secure his wages from his employer without let or hindrance; and that thereafter the statute cannot be invoked in his favor. This section cannot be thus reasoned away. Such a construction is narrow and illiberal. It would compel the laborer to leave his earnings in the hands of his employer, or else forego the protection of the statute altogether. It would not only deprive him of the privilege of depositing his earnings with any bank or other depository for safekeeping, but would subject his wages to supplemental proceedings even in his own pocket; for, if earnings once received immediately lose their character as wages, then it is evident that the laborer could never retain his earnings for a single hour without exposing them to the very perils which the statute was designed to avert. Such a construction would practically frustrate the beneficent objects of the statute. *Rutter v. Shumway*, 16 Colo. 95, 26 P. 321 (1891).

**Earnings include money received according to the work done.** The earnings of defendant were according to the work

done, and not according to the length of employment. This fact does not preclude them from being "earnings" within the meaning of the statute. *Stranger v. Harris*, 77 Colo. 340, 236 P. 1001 (1925).

**The fact that some capital, and some assistants, enter into the work,** does not prevent the income from the contract from being "earnings" within the meaning of our statute. *Stranger v. Harris*, 77 Colo. 340, 236 P. 1001 (1925).

**Employee's interest in erstwhile retirement plan is not earnings.** Where employee terminated his employment and never did qualify for any pension or retirement benefits, employee's interest in erstwhile employer's retirement plan cannot be considered "earnings". *Fin. Acceptance Co. v. Breaux*, 160 Colo. 510, 419 P.2d 955 (1966).

**Shares of common stock debtor purchased through an employee stock purchase plan are not exempt earnings pursuant to this section and § 5-5-105.** In re *Kramer*, 339 B.R. 761 (Bankr. D. Colo. 2006).

**Termination payments held earnings for exempt services.** Termination payments which may be paid to the debtor pursuant to an insurance agent's agreement after the filing of his Chapter 7 petition are not payments due him under a covenant not to compete but are earnings for services which are exempt under this section. In re *Marshburn*, 5 B.R. 711 (Bankr. D. Colo. 1980).

**The whole spirit of acts such as this section is such that it was intended to protect** the exempt property from all manner of coercive process of the law, and not merely to protect the earnings of the debtor and other exempt property from seizure by means of the processes technically known as attachment, execution, or garnishment, but to preserve them for the benefit of his family against any appropriation for the payment of his debts not authorized by law to which he does not consent. *Fin. Acceptance Co. v. Breaux*, 160 Colo. 510, 419 P.2d 955 (1966).

**Attorney's fees not deductible before computing percentage of disposable earnings available for garnishment.** *Rios v. Mireles*, 937 P.2d 840 (Colo. App. 1996).

**A defendant cannot counterclaim for wages that are exempt.** In an action for wages exempt by statute from levy under execution, attachment, or garnishment which are due from a defendant, the defendant cannot counterclaim a debt due from the plaintiff to him. *Fin. Acceptance Co. v. Breaux*, 160 Colo. 510, 419 P.2d 955 (1966).

**Subsection (1.1) held invalid.** Since the federal constitution reserves to Congress the right to legislate bankruptcy exemptions, this attempt by the state to create a separate bankruptcy exemption was impermissible. The exemption provided by this subsection was one which served to protect a judgment debtor in bankruptcy but did not protect him from execution and levy. In re *Mata*, 115 B.R. 288 (Bankr. D. Colo. 1990) (decided prior to 1991 repeal of subsection (1.1)).

Since this subsection makes specific reference to ERISA plans, it is clear that this provision must be considered to have been preempted by the explicit provisions of ERISA. In re Starkey, 116 B.R. 259 (Bankr. D. Colo. 1990) (decided prior to 1991 repeal of subsection (1.1)).

**Subsection (2), which limits an exemption in pension plan benefits to 75% of the "avails" of any such plan, is preempted** by the ERISA provision which mandates a 100% exemption. In re Starkey, 116 B.R. 259 (Bankr. D. Colo. 1990).

**Deferred compensation plans are "earnings"** within the meaning of this section and not a "trust". In re Vann, 113 B.R. 704 (Bankr. D. Colo. 1990) (decided prior to 1991 amendment to subsection (1)(b)).

**Future commissions based on renewal of insurance policies qualify as "earnings" under subsection (1)(b) because they are "compensation . . . payable for personal services"**. Therefore, all renewal commissions are "earnings" that would be entitled to the statutory exemption. In re Fuchs, 189 B.R. 811 (Bankr. D. Colo. 1995).

**Indebtedness owed to an independent contractor is not earnings**, except for the garnishments described in section (1)(b)(II). Idaho Pac. Lumber Co. v. Celestial Land Co., 2013 COA 136, 348 P.3d 950.

**Personal injury settlement proceeds do not constitute "earnings"** as the term is defined in this section. Therefore, the statutory exemptions and methods of

computing "disposable earnings" subject to garnishment of earnings do not apply. People ex rel. J.W., 174 P.3d 315 (Colo. App. 2007).

**Applicability of exemption.** The exemption provided for in this section only applies to that portion of a pension or profit sharing plan that is interest or income and not to the corpus of such plan. In re Toner, 105 B.R. 978 (Bankr. D. Colo. 1989); In re Alagna, 107 B.R. 301 (Bankr. D. Colo. 1989).

The exemption in this section does not apply in an action for dissolution of marriage commenced by petition before May 1, 1991. In re LeBlanc, 944 P.2d 686 (Colo. App. 1997).

**Preemption of section.** This section is preempted with respect to ERISA qualified pensions or plans. In re Alagna, 107 B.R. 301 (Bankr. D. Colo. 1989).

**Debtors are permitted under the Bankruptcy Code and this section to exempt 75% of the entire balance of their IRA's from the bankruptcy estate.** In re Kulp, 949 F.2d 1106 (10th Cir. 1991).

**Wages paid to subcontractor do not lose characterization of "earnings" by virtue of having been deposited in joint marital account.** In re Kobernusz, 160 B.R. 844 (Bankr. D. Colo. 1993).

**Attorney's lien** is not "required to be withheld" until it is enforced and should not be calculated as part of garnishable "disposable earnings" until that time. Rios v. Mireles, 937 P.2d 840 (Colo. App. 1996).

**Trial court's determination that defendant was not supporting other dependents was supported by record.** Rios v. Mireles, 937 P.2d 840 (Colo. App. 1996).

**Defendant not entitled to more interest than has accrued on the amount due.** Rios v. Mireles, 937 P.2d 840 (Colo. App. 1996).

**Statutory limit on percent of wage that can be garnished is subject to fraud**

**exception.** Where debtor and garnishee colluded to avoid paying employee's wages until garnishment period had ended, court properly held garnishee liable for 100% of wages. Hoyman v. Coffin, 976 P.2d 311 (Colo. App. 1998).

**Applied** in In re McCue, 645 P.2d 854 (Colo. App. 1982); Bernstein v. Richardson, 34 B.R. 611 (Bankr. D. Colo. 1983).

#### **13-54-105. No exemption for taxes.**

Nothing in this article shall be construed to exempt any property of any debtor from sale for the payment of any taxes legally assessed.

**Source: L. 59:** p. 532, § 5. **CRS 53:** § 77-13-5. **C.R.S. 1963:** § 77-2-5.

#### **13-54-106. Exemptions applicable to all writs - exception for child support.**

The exemptions provided by this article shall extend and apply to writs of attachment, execution, and garnishment issued out of any court of record and by municipal courts, except those writs which are the result of a judgment taken for arrearages for child support or for child support debt which are subject to the exemptions set forth in section 13-54-104 (3).

**Source: L. 59:** p. 532, § 6. **CRS 53:** § 77-13-6. **C.R.S. 1963:** § 77-2-6. **L. 64:** p. 287, § 216. **L. 86:** Entire section amended, p. 728, § 11, effective July 1. **L. 87:** Entire section amended, p. 586, § 2, effective July 10.

### **ANNOTATION**

**The exemption procedure is an integral part of any garnishment proceeding.** Nolan v. District Court, 195 Colo. 6, 575 P.2d 9 (1978).

**Plain language of section clearly permits the garnishment of otherwise exempt property or income for the collection of child support arrearages.**



### **13-54-107. Exemptions in bankruptcy.**

The exemptions provided in section 522 (d) of the federal bankruptcy code of 1978, title 11 of the United States Code, as amended, are denied to residents of this state. Exemptions authorized to be claimed by residents of this state shall be limited to those exemptions expressly provided by the statutes of this state.

**Source: L. 81:** Entire section added, p. 894, § 3, effective July 1.

### **ANNOTATION**

**Law reviews.** For article, "Legislative Update", see 11 Colo. Law. 2142 (1982). For article, "Secured Transactions — Part II: Default, Foreclosure and Bankruptcy", see 12 Colo. Law. 13 (1983). For article, "Over the Hill to the Poor House — The Failure of Section 522 Bankruptcy Exemptions Under the Bankruptcy Reform Act of 1978", see 61 Den. L.J. 705 (1984). For article, "Homestead and Bankruptcy in Colorado and Elsewhere", see 56 U. Colo. L. Rev. 175 (1985). For article, "Bankruptcy Law", which discusses Tenth Circuit decisions dealing with constitutionality of the Colorado bankruptcy exemptions, see 62 Den. U. L. Rev. 53 (1985). For article, "An Individual's Retirement Benefits Under the Bankruptcy Code", see 16 Colo. Law. 1211 (1987). For article, "Perils of Pre-Bankruptcy Planning: Transfers, Exemptions and Taxes", see 17 Colo. Law. 1513 (1988). For a discussion of Tenth Circuit decisions dealing with bankruptcy, see 66 Den. U. L. Rev. 683 (1989). For article, "Rights of the

Debtor and Creditor to Retirement Plan Benefits", see 20 Colo. Law. 199 (1991).

**Constitutionality.** This section does not violate the uniformity clause of § 8 of art. I, U.S. Const., or the supremacy clause, art. VI, cl. 2, U.S. Const. In re Parrish, 19 B.R. 331 (Bankr. D. Colo. 1982); In re Robinson, 44 B.R. 292 (Bankr. D. Colo. 1984).

This section is constitutional, notwithstanding the fact that Colorado does not provide an exemption for alimony and support. Ranes v. Molen, 31 B.R. 70 (Bankr. D. Colo. 1983).

Debtor's claim that entire section is unconstitutional because second sentence exceeds state authority to deny federal exemptions is not addressed because debtor lacked standing to question the constitutionality of the statute. Hinkson v. Pfleiderer, 729 F.2d 697 (10th Cir. 1984).

**Purpose of revision of exemption schedules.** When Colorado revised its exemption schedules, it sought to meet

congressional criticism that most of the state exemption laws are outmoded, designed for more rural times, and hopelessly inadequate to serve the needs of and provide a fresh start for modern urban debtors. In re Parrish, 19 B.R. 331 (Bankr. D. Colo. 1982).

**State exemption scheme conforms to federal legislative attempt.** Colorado's scheme of bankruptcy exemptions is in conformity with the federal legislative intent to provide the required "fresh start" to debtors in bankruptcy. In re Parrish, 19 B.R. 331 (Bankr. D. Colo. 1982).

**Debtor limited to state exemptions.** Because Colorado's bankruptcy exemptions are not inconsistent with the federal scheme of exemptions, a debtor may use only those exemptions provided for in Colorado law. In re Parrish, 19 B.R. 331 (Bankr. D. Colo. 1982).

Colorado has "opted out" and denied to its residents the right to choose the exemptions in 11 U.S.C. § 522(d), thus confining its debtors to those exemptions enumerated in the Colorado statutes. In re Janesofsky, 22 B.R. 973 (Bankr. D. Colo. 1982).

**Colorado exemptions are available only to Colorado residents.** Since debtor may not claim Colorado exemptions because she is not a Colorado resident, and since the 730-day domiciliary requirement in the federal bankruptcy code renders her ineligible to claim exemptions under any state's laws, debtor may claim federal exemptions. In re Underwood, 342 B.R. 358 (Bankr. D. Colo. 2006).

**Debtor denied exemptions in 11 U.S.C. § 522 (d)** because Colorado has "opted out" of said exemptions as allowed by federal law. Hinkson v. Pfleiderer, 729 F.2d 697 (10th Cir. 1984).

**Federal nonbankruptcy exemptions available to debtors.** Colorado did not intend to deny the federal nonbankruptcy exemptions to debtors in this state, nor could Colorado deny those exemptions to its citizens. Those exemptions are specifically reserved to all debtors in 11 U.S.C. § 522(b)(2)(A). Thus, the federal nonbankruptcy exemptions are available to Colorado debtors. Ranes v. Molen, 31 B.R. 70 (Bankr. D. Colo. 1983).

**Recorded encumbrance is secure claim.** Where an encumbrance requiring payment of annual and special assessments is established by a prior recording of which the property owner had constructive notice when she accepted the deed, and where she also had actual notice from the contents of her deed, itself, the lienor holds a secured claim which a bankruptcy debtor must provide for. Lincoln v. Cherry Creek Homeowners Ass'n, 30 B.R. 905 (Bankr. D. Colo. 1983).

**Judicial liens in bankruptcy.** Judicial liens impair a bankruptcy debtor's equity where they are created subsequent to the establishment of a homestead right and no waiver is obtained from the property owner. Consequently, pursuant to 11 U.S.C. § 522 and §§ 13-54-107, 38-41-201 and 38-41-202, these liens are null and void and judicial liens. Lincoln v. Cherry Creek

Homeowners Ass'n, 30 B.R. 905 (Bankr. D. Colo. 1983).

**Applied** in Redin v. Fidelity Fin. Servs., 14 B.R. 727 (Bankr. D. Colo. 1981).

## **13-54.5 ARTICLE 54.5**

### **Garnishment**

- |                                                                   |                                                                                      |
|-------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| 13-54.5-101. Definitions.                                         | 13-54.5-108. Judgment debtor to file written objection or claim of exemption.        |
| 13-54.5-102. Continuing garnishment - creation of lien.           |                                                                                      |
| 13-54.5-103. Property or earnings subject to garnishment.         | 13-54.5-108.5. Garnishee not required to assert exemption.                           |
| 13-54.5-104. Priority between multiple garnishments.              | 13-54.5-109. Hearing on objection or claim of exemption.                             |
| 13-54.5-105. Notice to judgment debtor in continuing garnishment. | 13-54.5-110. No discharge from employment for any garnishment - general prohibition. |
| 13-54.5-106. Notice to judgment debtor in other garnishment.      | 13-54.5-111. Supreme court rules.                                                    |
| 13-54.5-107. Service of notice upon judgment debtor.              |                                                                                      |

#### **13-54.5-101. Definitions.**

As used in this article 54.5, unless the context otherwise requires:

(1) "Continuing garnishment" means any procedure for payment of a judgment debt by withholding earnings to which a judgment debtor becomes entitled for the duration of the writ of continuing garnishment.

(2) (a) "Earnings" means:

(I) Compensation paid or payable to an individual employee or independent contractor for personal labor or services;

(II) Funds held in or payable from any health, accident, or disability insurance.

(b) For the purposes of writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, for restitution for the theft, embezzlement,

misappropriation, or wrongful conversion of public property, or in the event of a judgment for a willful and intentional violation of fiduciary duties to a public pension plan where the offender or a related party received direct financial gain, "earnings" also means:

- (I) Workers' compensation benefits;
  - (II) Any pension or retirement benefits or payments, including but not limited to those paid pursuant to articles 51, 54, 54.5, and 54.6 of title 24, C.R.S., and articles 30.5 and 31 of title 31, C.R.S.;
  - (III) Dividends, severance pay, royalties, monetary gifts, monetary prizes, excluding lottery winnings not required by the rules of the Colorado lottery commission to be paid only at the lottery office, taxable distributions from general partnerships, limited partnerships, closely held corporations, or limited liability companies, interest, trust income, annuities, capital gains, or rents;
  - (IV) Any funds held in or payable from any health, accident, disability, or casualty insurance to the extent that such insurance replaces wages or provides income in lieu of wages; and
  - (V) Tips declared by the individual for purposes of reporting to the federal internal revenue service or tips imputed to bring the employee's gross earnings to the minimum wage for the number of hours worked, whichever is greater.
- (c) For the purposes of writs of garnishment issued by the state agency responsible for administering the state medical assistance program, which writs are issued as a result of a judgment for medical support for child support or for medical support debt, "earnings" includes:
- (I) Payments received from a third party to cover the health-care cost of the child but which payments have not been applied to cover the child's health-care costs; and
  - (II) State tax refunds.
- (d) For the purposes of writs of garnishment issued by a county department of human or social services responsible for administering the state public assistance programs and the Colorado child care assistance program, which writs are issued as a result of a judgment for a debt for fraudulently obtained public assistance or child care assistance, fraudulently obtained overpayments of public assistance or child care assistance, or excess public assistance or child care assistance paid for which the recipient was ineligible, "earnings" includes workers' compensation benefits.
- (e) For the purposes of attachments of earnings or writs of garnishment that are the result of a judgment taken for court assessments including fines, fees, costs, restitution, and surcharges pursuant to section 16-11-101.6 or section 16-18.5-105, C.R.S., "earnings" also means those enumerated under paragraph (a) of this subsection (2).

(3) "Garnishee" means a person other than a judgment creditor or judgment debtor who is in possession of earnings or property of the judgment debtor and who is subject to garnishment in accordance with the provisions of this article.

(4) "Garnishment" means any procedure through which the property or earnings of an individual in the possession or control of a garnishee are required to be withheld for payment of a judgment debt.

(5) "Judgment creditor" means any individual, corporation, partnership, or other legal entity that has recovered a money judgment against a judgment debtor in a court of competent jurisdiction.

(6) "Judgment debtor" means any person, including a corporation, partnership, or other legal entity, who has a judgment entered against him in a court of competent jurisdiction.

(7) "Notice of exemption and pending levy" means the document required to be served on the judgment debtor in any garnishment proceeding, except continuing garnishment, as soon as practicable following the service of the writ of garnishment on the garnishee. A "notice of exemption and pending levy" includes a statement that the judgment creditor intends to satisfy the judgment against the judgment debtor out of the judgment debtor's personal property held by a third party and that the judgment debtor has the right to claim certain property as exempt.

**Source:** **L. 84:** Entire article added, p. 469, § 1, effective January 1, 1985. **L. 85:** (7) amended, p. 582, § 1, effective May 3. **L. 87:** (2) amended, p. 595, § 23, effective July 10. **L. 90:** (2) amended, p. 564, § 33, effective July 1. **L. 91:** (2) amended, p. 384, § 5, effective May 1. **L. 92:** (2) amended, p. 577, § 4, effective July 1. **L. 93:** (2)(b) amended, p. 1871, § 4, effective June 6. **L. 94:** (2)(a)(I) amended, p. 1536, § 3, effective May 31; (2) amended, p. 1595, § 4, effective July 1; (2)(b) amended, p. 1252, § 5, effective July 1. **L. 96:** (2) amended, p. 591, § 2, effective July 1. **L. 98:** (2)(b)(II) amended, p. 920, § 6, effective July 1. **L. 99:** (2)(b)(II) amended, p. 620, § 14, effective August 4. **L. 2005:** IP(2)(b) and (2)(b)(II) amended, p. 71, § 2, effective August 8. **L. 2006:** (2)(d) added, p. 947, § 3, effective August 7. **L. 2009:** (2)(b)(II) amended, (SB 09-282), ch. 288, p. 1397, § 58, effective January 1, 2010. **L. 2010:** (2)(b)(II) amended, (HB 10-1422), ch. 419, p. 2068, § 23, effective August 11. **L. 2012:** (2)(e) added, (HB 12-1310), ch. 268, p. 1392, § 3, effective June 7. **L. 2015:** (1), (2)(a)(I), and (2)(b)(III) amended, (SB 15-283), ch. 301, p. 1239, § 4, effective July 1. **L. 2018:** IP and (2)(d) amended, (SB 18-092), ch. 38, p. 399, § 10, effective August 8. **L. 2022:** (2)(d) amended, (HB 22-1295), ch. 123, p. 828, § 28, effective July 1.

**Editor's note:** Amendments to subsection (2) by Senate Bill 94-088, Senate Bill 94-164, and House Bill 94-1345 were harmonized.

**Cross references:** For the legislative intent contained in the 2006 act enacting subsection (2)(d), see section 8(2) of chapter 208, Session Laws of Colorado 2006. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

#### ANNOTATION

**Law reviews.** For article, "Rights of the Debtor and Creditor to Retirement Plan Benefits", see 20 Colo. Law. 199 (1991).

**The definition of "earnings" before 1991** was broad enough to include tips. *United Guar. Residential Ins. Co. v. Dimmick*, 916 P.2d 638 (Colo. App. 1996).

#### **13-54.5-102. Continuing garnishment - creation of lien.**

(1) In addition to garnishment proceedings otherwise available pursuant to the laws of this state in any case in which a money judgment is obtained in a court of competent jurisdiction, the judgment creditor or its assignees are entitled, on notice to the judgment debtor required by section 13-54.5-105 (5)(b), to apply to the clerk of such court for garnishment against any garnishee. To the extent that the earnings are not exempt from garnishment, such garnishment is a lien and continuing levy upon the earnings due or to become due from the garnishee to the judgment debtor consistent and in accordance with the requirements of section 13-54.5-105 (6).

(2) Garnishment pursuant to subsection (1) of this section is a lien and continuing levy against said earnings due for one hundred eighty-two days consistent and in accordance with the requirements of section 13-54.5-105 (6) or for one hundred eighty-two days following the expiration of any writs with a priority pursuant to section 13-54.5-104, but such lien is terminated earlier than one hundred eighty-two days if earnings are no longer due; the underlying judgment is vacated, modified, or satisfied in full; or the writ is dismissed; except that a continuing garnishment may be suspended for a specified period of time by the judgment creditor upon agreement with the judgment debtor, which agreement shall be in writing and filed by the judgment creditor with the clerk of the court in which the judgment was entered and a copy of which shall be delivered by the judgment creditor to the garnishee.

(2.5) A garnishee is not required to collect, possess, or control the judgment debtor's tips, and any tips are not owed by a garnishee to a judgment creditor.

(3) Garnishment pursuant to subsection (1) of this section shall apply only to proceedings against the earnings of a judgment debtor who is a natural person.

**Source:** **L. 84:** Entire article added, p. 470, § 1, effective January 1, 1985. **L. 85:** (1) amended, p. 582, § 2, effective May 3. **L. 88:** (1) and (2) amended, p. 610, § 1, effective July 1. **L. 2001:** (2) amended, p. 35, § 1, effective August 8. **L. 2012:** (2) amended, (SB 12-175), ch. 208, p. 826, § 14, effective July 1. **L. 2019:** (1) and (2) amended and (2.5) added, (HB 19-1189), ch. 214, p. 2223, § 1, effective August 2.

### **13-54.5-103. Property or earnings subject to garnishment.**

(1) Repealed.

(2) Any indebtedness, intangible personal property, or tangible personal property capable of manual delivery, other than earnings, owned by the judgment debtor and in the possession and control of the garnishee at the time of service of the writ of garnishment upon the garnishee shall be subject to the process of garnishment.

(3) Notwithstanding the provisions of subsection (2) of this section, the exemptions from garnishment required or allowed by law, including but not limited to exemptions provided by sections 13-54-102 and 13-54-104 and 15 U.S.C. sec. 1671 et seq., apply to all garnishments.

**Source:** **L. 84:** Entire article added, p. 470, § 1, effective January 1, 1985. **L. 96:** (1) amended, p. 621, § 30, effective July 1. **L. 2019:** (1) repealed and (3) amended, (HB 19-1189), ch. 214, p. 2224, § 2, effective August 2.

### **ANNOTATION**

**Not federally guaranteed student loan.** Moneys in student's bank account, which are proceeds of federally guaranteed student loan, are not garnishable pursuant to a judgment based on antecedent business debt of student. *Schaerrer v. Westman Comm'n Co.*, 769 P.2d 1058 (Colo. 1989).

**Judgment debtor's right to annual discretionary disbursement of the corpus of a trust is not a garnishable asset.** The

right to annual disbursement of funds from principal is a power of appointment, and a power of appointment is neither property nor a property right. *Univ. Nat'l Bank v. Rhoadarmer*, 827 P.2d 561 (Colo. App. 1991).

**Foreclosure sale excess proceeds** may be garnished. *TCF Equip. Fin. v. Pub. Trustee*, 2013 COA 8, 297 P.3d 1048.

### **13-54.5-104. Priority between multiple garnishments.**

(1) (a) Only one writ of continuing garnishment against earnings due the judgment debtor shall be satisfied at one time. When more than one writ of continuing garnishment has been issued against earnings due the same judgment debtor, they shall be satisfied in the order of service on the garnishee. Except as provided in this subsection (1), a lien and continuing levy obtained pursuant to this article shall have priority over any subsequent garnishment lien or wage attachment.

(b) Where a continuing garnishment has been suspended for a specific period of time by agreement of the parties pursuant to the provisions of section 13-54.5-102 (2), such suspended continuing garnishment shall have priority over any writ of continuing garnishment served on the garnishee after such suspension has expired.

(c) (I) Notwithstanding any other provision of this subsection (1), a continuing garnishment obtained pursuant to section 14-14-105, C.R.S., for the satisfaction of debts or judgments for child support shall have priority over any other continuing garnishment.

(II) Notwithstanding any other provision of this subsection (1), a continuing garnishment obtained pursuant to section 26-2-128 (1)(a) or section 26.5-4-116 (1) for the satisfaction of a judgment for fraudulently obtained public assistance or child care assistance or fraudulently obtained overpayments has priority over any other continuing garnishment other than a garnishment for collection of child support pursuant to subsection (1)(c)(I) of this section.

(2) (a) Any writ of continuing garnishment served upon a garnishee while any previous writ is still in effect shall be answered by the garnishee with a statement that he has been served previously with one or more writs of continuing garnishment against earnings due the judgment debtor and specifying the date on which all such liens are expected to terminate.

(b) Upon the termination of a lien and continuing levy obtained pursuant to this article, any other writ of continuing garnishment which has been issued or which is issued subsequently against earnings due the judgment debtor shall have priority in the order of service on the garnishee, and no priority shall be given to any previous continuing lienholder whose lien has terminated. The person who serves a writ of continuing garnishment on a garnishee shall note the date and time of such service.

**Source:** L. 84: Entire article added, p. 471, § 1, effective January 1, 1985. L. 94: (1)(c) amended, p. 2062, § 3, effective July 1. L. 2022: (1)(c)(II) amended, (HB 22-1295), ch. 123, p. 828, § 29, effective July 1.

### **ANNOTATION**

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**Law reviews.** For article, "The Nuts and Bolts of Collecting Support", see 19 Colo. Law. 1595 (1990).

**13-54.5-105. Notice to judgment debtor in continuing garnishment.**

(1) In the case of a continuing garnishment, the writ of garnishment must be served on the garnishee in accordance with rule 4 of the Colorado rules of civil procedure.

(2) The writ of garnishment pursuant to subsection (1) of this section must include:

(a) The name of the judgment debtor;

(b) The last-known physical and mailing addresses of the judgment debtor or a statement that the information is not known;

(c) The amount of the judgment upon which the judgment creditor bases the continuing garnishment;

(d) Information sufficient to identify the judgment on which the continuing garnishment is based;

(e) A completed notice that satisfies subsection (3) of this section and that may be incorporated into and made a part of the writ of garnishment; and

(f) A notice of Colorado rules about garnishment that satisfies subsection (4) of this section and that is incorporated into and made a part of the notice required by subsection (2)(e) of this section.

(3) The notice required by subsection (2)(e) of this section must be in substantially the following form and conspicuously labeled:

**Notice of Garnishment**

Money will be taken from your pay if you fail to act.

**1. Why am I getting this notice?**

You are getting this notice because a court has ruled that you owe the judgment creditor, who is called "Creditor" in this notice, money. Creditor has started a legal process called a "garnishment". The process requires that money be taken from your pay and given to Creditor to pay what you owe. The person who pays you does not keep the money.

Creditor filled out this form. The law requires the person who pays you to give you this notice. Creditor may not be the person or company to which you originally owed money. You may

request that Creditor provide the name and address of the person or company to which you originally owed money. If you want this information, you must write Creditor or Creditor's lawyer at the address at the very beginning of this form. You must do this within 14 days after receiving this notice. Creditor will send you this information at the address you give Creditor. Creditor must send you this information within 7 days after receiving your request. Knowing the name of the original creditor might help you understand why the money will be taken from your pay.

## **2. How much do I owe?**

The amount the court has ruled that you currently owe is listed at the top of the writ of garnishment. The amount could go up if there are more court costs or additional interest. The interest rate on the amount you owe is listed at the top of the writ of garnishment. The amount could also go down if you make payments to Creditor.

## **3. How will the amount I owe be paid?**

The person who pays you will start taking money from your paycheck on the first payday that is at least 14 days after the day the person who pays you sends you this notice. Money will continue to be taken from your pay for up to 6 months. If the debt is not paid off or not likely to be paid off by that time, Creditor may serve another garnishment.

The rules about how much of your pay can be taken are explained in the notice of Colorado rules about garnishment that you received with this notice. This notice also contains an estimate of how much of your pay will likely be withheld each paycheck.

At any time, you can get a report that shows how the amount taken from your pay was calculated. To receive this report, you must write or e-mail the person who pays you.

## **4. Do I have options?**

Yes, you have several options, here are three of them:

A. You can talk with a lawyer: A lawyer can explain the situations to you and help you decide what to do. The self-help desk of the court where the garnishment action is pending can provide you help with resources to find a lawyer.

B. You can contact Creditor: If you can work something out with Creditor, money might not have to be taken from your pay. The Creditor's contact information is on the first page of the writ of garnishment.

C. You can request a court hearing: A hearing could be helpful if there are disagreements about the garnishment, the amount the court has ruled that you owe, whether the amount of money being withheld from your paycheck is correct, or whether the amount being withheld should be reduced to help you support your family and yourself. If you disagree with the estimate of the

amount of money that will be withheld from your paycheck, you must attempt to work this out with the person who pays you before going to court. You must do this within 7 days after receiving this notice. If you cannot work it out with the person who pays you, you may seek a hearing in court. If you want a court hearing, you must request one. If you think that you need more money to support your family and yourself, you may seek a court hearing without consulting the person who pays you. For help requesting a hearing, contact the self-help desk of the court where the garnishment action is pending.

#### **5. What if I don't do anything?**

If you don't do anything, the law requires that money be taken out of your paycheck beginning with the first payday that is at least 14 days after the day the person who pays you sends you this notice. The money will be given to Creditor. This process will continue for 6 months unless your debt is paid off before that.

#### **6. How does garnishment work in Colorado?**

Only a portion of your pay can be garnished. The amount that can be withheld from your pay depends on something called "disposable earnings". Your disposable earnings are what is left after deductions from your gross pay for taxes and certain health insurance costs. Your paycheck stub should tell what your disposable earnings are.

The amount of your disposable earnings that can be garnished is determined by comparing two numbers: (1) 20% of your disposable earnings and (2) the amount by which your disposable earnings exceed 40 times the minimum wage. The smaller of these two amounts will be deducted from your pay.

If you think that your earnings after garnishment are not enough to support yourself and any members of your family that you support, you can try to have the amount of your disposable earnings that are garnished further reduced. This is discussed earlier in this notice under 4. **Do I have options?**

Your employer cannot fire you because your earnings have been garnished. If your employer does this in violation of your legal rights, you may file a lawsuit within 91 days of your firing to recover wages you lost because you were fired. You can also seek to be reinstated to your job. If you are successful with this lawsuit, you cannot recover more than 6 weeks' wages and attorney fees.

Based on your most recent paycheck, the person who pays you estimates that \$\_\_\_\_\_ will be withheld from each paycheck that is subject to garnishment.

(4) The notice required by subsection (2)(f) of this section must:

- (a) Have a heading stating that it explains wage garnishment in Colorado; and
- (b) Reasonably inform the judgment debtor of:
  - (I) The limits on wage garnishment pursuant to section 13-54-104;
  - (II) Exemptions from and limits on garnishment and protections pursuant to the laws of Colorado; and
  - (III) An estimate, based on the judgment debtor's most recent paycheck and prepared by the garnishee, of the amount that would likely be withheld from the judgment debtor's paychecks in the future.
- (5) Not later than seven days after being served with a writ of garnishment:
  - (a) If one of the following grounds applies, the garnishee shall send notice to the judgment creditor stating the applicable ground:
    - (I) The judgment debtor is not an employee of the garnishee; or
    - (II) The writ of garnishment does not contain all information required by subsection (2) of this section.
  - (b) If subsection (5)(a) of this section does not apply, the garnishee shall:
    - (I) Send to the judgment creditor a notice that includes:
      - (A) A statement that the named judgment debtor is an employee of the garnishee;
      - (B) The pay frequency of the judgment debtor and the date of the first payday that is at least twenty-one days after the garnishee was served with the writ of garnishment in accordance with subsection (1) of this section or the first payday after the expiration of any prior effective writ of garnishment that is at least twenty-one days after service of the writ on the garnishee;
      - (C) If the judgment debtor's earnings are subject to deductions other than withholding for local, state, and federal income taxes and pursuant to the "Federal Insurance Contributions Act", 26 U.S.C. sec. 3101 et seq., as amended, the nature, number, and amounts of these deductions and the relative priority of the writ of garnishment; and
    - (II) Send to the judgment debtor on the same day the notice required by subsection (5)(b)(I) of this section is sent to the judgment creditor a copy of the writ of garnishment and the notices required pursuant to subsections (2)(e) and (2)(f) of this section.
- (6) If subsection (5)(b)(I) of this section applies, the garnishee shall begin garnishment on the first payday that occurs at least twenty-one days after the garnishee was served with the writ of garnishment in accordance with subsection (1) of this section or the first payday after the

expiration of any prior effective writ of garnishment that is at least twenty-one days after service of the writ on the garnishee.

**Source: L. 84:** Entire article added, p. 471, § 1, effective January 1, 1985. **L. 2019:** Entire section R&RE, (HB 19-1189), ch. 214, p. 2225, § 4, effective August 2.

#### ANNOTATION

**Use of the writ of garnishment form provided on the Colorado federal district court's website does not obviate the need to comply with this section** in the course of garnishing a debtor's wages. Because the

writ failed to include the notices required by this section, it was void, requiring the court to quash it. *Bell v. Hosier*, 640 F. Supp. 3d 998 (D. Colo. 2022).

#### **13-54.5-106. Notice to judgment debtor in other garnishment.**

(1) In a case where personal property of the judgment debtor other than earnings is subject to garnishment, following the service of the writ of garnishment on the garnishee, the person who served said writ shall, as soon as practicable, serve a copy of the writ of garnishment, together with a notice of exemption and pending levy, upon each judgment debtor whose property is subject to garnishment by said writ. The notice of exemption and pending levy shall inform the judgment debtor that the judgment creditor intends to seek satisfaction of any judgment rendered in its favor against the judgment debtor out of the judgment debtor's personal property in the possession or control of the garnishee and shall inform the judgment debtor of his right to claim exempt property.

(2) The notice of exemption and pending levy in such garnishment proceeding against the personal property of a judgment debtor who is a natural person shall contain the following:

- (a) The judgment creditor's name and business address;
- (b) The original amount of the judgment;
- (c) The amount, if any, paid on the principal of the judgment as of the date of the notice;
- (d) The principal balance due on the judgment;
- (e) The interest, if any, due on the judgment;
- (f) The itemized taxable costs, if any, including the estimated costs of serving the notice;
- (g) The total amount due and owing on the judgment;

- (h) The date of entry of the judgment;
  - (i) The name of the court in which the judgment was entered;
  - (j) A statement of the judgment debtor's right to claim any property levied upon as exempt, including, but not limited to:
    - (I) Exempt property under section 13-54-102 and exempt earnings under section 13-54-104;
    - (II) Workers' compensation benefits under section 8-42-124, C.R.S.;
    - (III) Unemployment compensation benefits under section 8-80-103, C.R.S.;
    - (IV) Group life insurance proceeds under section 10-7-205, C.R.S.;
    - (V) Health insurance benefits under section 10-16-212, C.R.S.;
    - (VI) Fraternal society benefits under section 10-14-403, C.R.S.;
    - (VII) Family allowances under section 15-11-404, C.R.S.;
    - (VIII) Repealed.
    - (IX) Public employees' retirement benefits pursuant to sections 24-51-212 and 24-54-111, C.R.S., social security benefits pursuant to 42 U.S.C. sec. 407, and railroad employee retirement benefits pursuant to 45 U.S.C. sec. 231m;
    - (X) Public assistance benefits under section 26-2-131, C.R.S.;
    - (XI) Police officers' and firefighters' pension fund payments under section 31-30.5-208, C.R.S.;
    - (XII) Utility and security deposits under section 13-54-102 (1)(r);
  - (j.5) A statement that, notwithstanding the debtor's right to claim any property levied upon as exempt for the property specified in paragraph (j) of this subsection (2), no exemption other than the exemptions set forth in section 13-54-104 (3) may be claimed for a writ which is the result of a judgment taken for arrearages for child support or for child support debt;
  - (k) The method of claiming an exemption and the time therefor; and
  - (l) The right to a hearing on any such claim of exemption and the time within which such hearing must be held.
- (3) Any notice to the judgment debtor required in the case of a garnishment proceeding against the assets of a judgment debtor other than a natural person shall be as prescribed by the supreme court pursuant to section 13-54.5-111.

**Source:** **L. 84:** Entire article added, p. 471, § 1, effective January 1, 1985. **L. 87:** (2)(j)(IX) amended, p. 1091, § 6, effective July 1; (2)(j)(IX) amended, p. 1585, § 56, effective July 1; (2)(j.5) added, p. 595, § 24, effective July 10. **L. 88:** (3) amended, p. 611, § 2, effective July 1. **L. 90:** (2)(j)(II) amended, p. 564, § 34, effective July 1. **L. 92:** (2)(j)(V) amended, p. 1726, § 15, effective July 1. **L. 93:** (2)(j)(VI) amended, p. 609, § 2, effective July 1. **L. 94:** (2)(j)(VII) amended, p. 1040, § 18, effective July 1, 1995. **L. 96:** (2)(j)(XI) amended, p. 941, § 3, effective May 23. **L. 2011:** (2)(j)(VIII) repealed, (HB 11-1303), ch. 264, p. 1152, § 20, effective August 10.

### **13-54.5-107. Service of notice upon judgment debtor.**

(1) In a case of continuing garnishment, the garnishee shall deliver a copy of the writ of garnishment and notices required by section 13-54.5-105 to the judgment debtor in accordance with the provisions of section 13-54.5-105 (5)(b)(II).

(2) (a) In cases other than a continuing garnishment where the judgment debtor's personal property is subject to garnishment, service of the notice of exemption and pending levy required by section 13-54.5-106 must be made by one of the following means:

(I) Giving the notice of exemption and pending levy to the judgment debtor in person and obtaining a receipt;

(II) Personal service;

(III) (A) Depositing the notice in the United States mail, postage prepaid and addressed to the judgment debtor's last-known address known to the judgment creditor. A notice served in this manner must be sent either by certified mail, return receipt requested, or by regular mail supported by an affidavit of mailing sworn and retained by the judgment creditor.

(B) A notice mailed and not returned as undeliverable by the United States postal service is presumed to have been given on the date of mailing. For the purposes of this subsection (2), "undeliverable" does not include unclaimed or refused.

(C) If the judgment debtor has provided consent for notice by electronic mail as described in subparagraph (IV) of this paragraph (a), the judgment creditor shall also provide the notice as described in subparagraph (IV) of this paragraph (a) when using the notice provisions in this subparagraph (III).

(IV) Transmitting the notice by electronic mail, if the judgment debtor has previously consented to receive information about the debt from the judgment creditor in electronic form, to the last-known electronic mail address of the judgment debtor on file with the judgment creditor. A notice served in this manner must be supported by an affidavit, executed under penalty of perjury, of any officer, clerk, or agent of the creditor or the creditor's attorney, authorized to serve

the notice or electronically transmit the notice under this section. The affidavit constitutes proof of notice under this subparagraph (IV).

(b) (I) If service cannot be made upon the judgment debtor as set forth in paragraph (a) of this subsection (2), and upon a showing that due diligence has been used to obtain service as set forth in paragraph (a) of this subsection (2), the court shall order service of a notice of exemption and pending levy to be made by one of the following methods:

(A) Publication for a period of fourteen days in a newspaper of general circulation published in the county in which the property was levied upon; or

(B) If there is no newspaper of general circulation published in the county in which the property was levied upon, then service is made by publication for a period of fourteen days in a newspaper of general circulation in an adjoining county, and the court shall order the clerk of the court in which the judgment was entered to mail a copy of the notice to the judgment debtor at the judgment debtor's last-known address, postage prepaid.

(II) A newspaper used for service by publication as set forth in this paragraph (b) must meet the requirements set forth in section 24-70-106, C.R.S.

(III) (A) The judgment creditor shall file with the clerk of the court in which the judgment was entered a notice of exemption and pending levy, as well as proof of service of the notice.

(B) In the case of service by publication, the judgment creditor shall file with the clerk of the court in which the judgment was entered an affidavit of publication and an affidavit of the mailing of the notice.

(3) Compliance with this section and sections 13-54.5-105 and 13-54.5-106 by the judgment creditor shall be deemed to give sufficient notice to the judgment debtor of the garnishment proceedings against him, and no further notice shall be required under this article.

**Source:** **L. 84:** Entire article added, p. 473, § 1, effective January 1, 1985. **L. 2012:** (2) amended, (SB 12-175), ch. 208, p. 826, § 15, effective July 1. **L. 2015:** (2) amended, (SB 15-283), ch. 301, p. 1240, § 5, effective July 1. **L. 2019:** (1) amended, (HB 19-1189), ch. 214, p. 2229, § 5, effective August 2.

### **13-54.5-108. Judgment debtor to file written objection or claim of exemption.**

(1) (a) In a case of continuing garnishment where the judgment debtor objects to the calculation of the amount of exempt earnings, the judgment debtor shall have seven days from receipt of the copy of the writ of continuing garnishment required by section 13-54.5-105 within which to resolve the issue of such miscalculation, by agreement with the garnishee, during which



time the garnishee shall not tender any money to the clerk of the court or judgment creditor. If such objection is not resolved within seven days and after good faith effort, the judgment debtor may file a written objection with the clerk of the court in which the judgment was entered setting forth with reasonable detail the grounds for such objection. The judgment debtor may also file a written objection with the clerk of the court in which the judgment was obtained pursuant to section 13-54-104 (2)(a)(I)(D). The judgment debtor shall, by certified mail, return receipt requested, deliver immediately a copy of such objection to the judgment creditor or his or her attorney of record.

(b) In a case where a garnishee, pursuant to a writ of garnishment, holds any personal property of the judgment debtor other than earnings which the judgment debtor claims to be exempt, said judgment debtor, within fourteen days after being served with the notice of exemption and pending levy required by section 13-54.5-106, shall make and file with the clerk of the court in which the judgment was entered a written claim of exemption setting forth with reasonable detail a description of the property claimed to be exempt, together with the grounds for such exemption. The judgment debtor shall, by certified mail, return receipt requested, deliver immediately a copy of such claim to the judgment creditor or his or her attorney of record.

(2) Upon the filing of a written objection or claim of exemption, all further proceedings with relation to the sale or other disposition of said property or earnings shall be stayed until the matter of such objection or claim of exemption is determined.

(3) Notwithstanding the provisions of subsection (1) of this section, a judgment debtor failing to make a written objection or claim of exemption may, at any time within one hundred eighty-two days from receipt of a copy of the writ of continuing garnishment required by section 13-54.5-105 or from service of the notice of exemption and pending levy required by section 13-54.5-106 and for good cause shown, move the court in which the judgment was entered to hear an objection or a claim of exemption as to any earnings or property levied in garnishment, the amount of which the judgment debtor claims to have been miscalculated or which the judgment debtor claims to be exempt. Such hearing may be granted upon a showing of mistake, accident, surprise, irregularity in proceedings, newly discovered evidence, events not in the control of the judgment debtor, or such other grounds as the court may allow.

**Source: L. 84:** Entire article added, p. 473, § 1, effective January 1, 1985. **L. 2012:** (1) and (3) amended, (SB 12-175), ch. 208, p. 827, § 16, effective July 1. **L. 2019:** (1)(a) amended, (HB 19-1189), ch. 214, p. 2229, § 6, effective August 2.

## ANNOTATION

**There is no provision by statute for oral amendment of a claim of exemption.** In re Nye, 210 B.R. 857 (Bankr. D. Colo. 1997).

**Court must hold a hearing to determine validity of defendant's claim of exemption**

**prior to allowing garnishment to proceed.** Summarily denying a claim of exemption based on a finding that the defendant was in contempt of another court order is insufficient. *Borrayo v. Lefever*, 159 P.3d 657 (Colo. App. 2006).

### **13-54.5-108.5. Garnishee not required to assert exemption.**

A garnishee shall not be required to deduct, set up, or plead any exemption for or on behalf of a judgment debtor, except as set forth in the writ.

**Source: L. 2006:** Entire section added, p. 579, § 1, effective July 1.

### **13-54.5-109. Hearing on objection or claim of exemption.**

(1) (a) Upon the filing of an objection pursuant to section 13-54.5-108 (1)(a) or the filing of a claim of exemption pursuant to section 13-54.5-108 (1)(b), the court in which the judgment was entered shall set a time for the hearing of such objection or claim, which shall be not more than fourteen days after filing. The clerk of the court where such objection or claim is filed shall immediately inform the judgment creditor or his or her attorney of record and the judgment debtor or his or her attorney of record by telephone, by mail, or in person of the date set for such hearing.

(b) The certificate of the clerk of the court that service of notice of such hearing has been made in the manner and form stated in paragraph (a) of this subsection (1), which certificate has been attached to the court file, shall constitute prima facie evidence of such service, and such certificate of service filed with the clerk of the court is sufficient return of such service.

(2) Upon such hearing, the court shall summarily try and determine whether the amount of the judgment debtor's exempt earnings was correctly calculated by the garnishee or whether the property held by the garnishee is exempt and shall enter an order or judgment setting forth the determination of the court. If the amount of exempt earnings is found to have been miscalculated or if said property is found to be exempt, the court shall order the clerk of the court to remit the amount of over-garnished earnings, or the garnishee to remit such exempt property, to the judgment debtor within seven days.

(3) Where the judgment debtor moves the court to hear an objection or claim of exemption within the time provided by section 13-54.5-108 (3) and the judgment giving rise to such claim has been satisfied against property or earnings of the judgment debtor, the court shall hear and

summarily try and determine whether the amount of the judgment debtor's earnings paid to the judgment creditor was correctly calculated and whether the judgment debtor's property sold in execution was exempt and shall issue an order setting forth the determination of the court. If such amount of earnings is found to have been miscalculated or if such property is found to be exempt, the court shall order the judgment creditor to remit the amount of the over-garnished earnings or such exempt property or the value thereof to the judgment debtor within seven days.

(4) Any order or judgment entered by the court as provided for in subsections (2) and (3) of this section is a final judgment or order for the purpose of appellate review.

**Source: L. 84:** Entire article added, p. 474, § 1, effective January 1, 1985. **L. 2012:** (1)(a), (2), and (3) amended, (SB 12-175), ch. 208, p. 827, § 17, effective July 1.

#### ANNOTATION

**Failure to comply with a court order does not supersede requirement to set a hearing pursuant to subsection (1)(a).** The court may not sanction a party for his or her failure to comply with a court order by refusing to set a hearing on an objection or claim of exemption. The setting of a hearing is mandatory, not discretionary. *Borrayo v. Lefever*, 159 P.3d 657 (Colo. App. 2006).

**Under § 5-12-102, a garnishor is entitled to postjudgment interest on a garnishment amount based on the garnishee's unreasonable delay in paying the sums due.** There is no basis to treat a garnishee against whom a judgment is entered differently from a defendant against whom another judgment is entered. *Thompson v. Catlin Ins. Co. (UK) Ltd.*, 2018 CO 95, 431 P.3d 224.

#### **13-54.5-110. No discharge from employment for any garnishment - general prohibition.**

(1) No employer shall discharge an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to any garnishment or like proceeding directed to the employer for the purpose of paying any judgment.

(2) If an employer discharges an employee in violation of the provisions of this section, the employee may, within ninety-one days, bring a civil action for the recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall be lost wages not to exceed six weeks, costs, and reasonable attorney fees.

**Source: L. 84:** Entire article added, p. 475, § 1, effective January 1, 1985. **L. 2012:** (2) amended, (SB 12-175), ch. 208, p. 828, § 18, effective July 1.

**13-54.5-111. Supreme court rules.**

The practice and procedure in garnishment actions instituted pursuant to this article, and all forms in connection therewith, shall be in accordance with rules prescribed by the supreme court pursuant to article 2 of this title.

**Source: L. 84:** Entire article added, p. 475, § 1, effective January 1, 1985.

## **ARTICLE 55**

### **Method of Claiming Exemption**

|            |                                  |            |                                  |
|------------|----------------------------------|------------|----------------------------------|
| 13-55-101. | Defendant to file written claim. | 13-55-106. | Order or judgment is final.      |
| 13-55-102. | Service of notice of levy.       | 13-55-107. | Failure to claim - effect.       |
| 13-55-103. | Proceedings for sale stayed.     | 13-55-108. | Damages.                         |
| 13-55-104. | Hearing on claim.                | 13-55-109. | Court may order sale - proceeds. |
| 13-55-105. | Court enters order or judgment.  | 13-55-110. | Appeals.                         |

**13-55-101. Defendant to file written claim.**

Except in cases of garnishment pursuant to article 54.5 of this title, in cases where a sheriff or other officer by virtue of a writ of execution, writ of attachment, or other order of court issued by a court of record or clerk thereof levies upon, seizes, or takes into his possession any property of the defendant debtor, which said property, or part thereof, the defendant claims as exempt under the provisions of the statutes of the state, said defendant debtor, within fourteen days after being served with notice of such levy or seizure, shall make and file with the clerk of the court of record out of which such writ of execution, writ of attachment, or other order was issued a written claim of such exemption setting forth with reasonable detail the description of the property so claimed to be exempt together with the grounds of such claim of exemption.

**Source:** L. 35: p. 244, § 1. CSA: C. 93, § 30. CRS 53: § 77-4-1. C.R.S. 1963: § 77-4-1. L. 64: p. 283, § 205. L. 85: Entire section amended, p. 582, § 3, effective May 3. L. 2012: Entire section amended, (SB 12-175), ch. 208, p. 828, § 19, effective July 1.

#### ANNOTATION

**Law reviews.** For note, "The Status of an Automobile Under the Exemption Laws of Colorado", see 10 Rocky Mt. L. Rev. 269 (1938). For article, "Executions and Levies on Tangible Property", see 27 Dicta 143

(1950). For article, "Trusts and Estates", see 30 Dicta 435 (1953). For note, "Rural Poverty and the Law in Southern Colorado", see 47 Den. L.J. 82 (1970).

#### **13-55-102. Service of notice of levy.**

Notice of such levy or seizure of any property under a writ of execution, writ of attachment, or other order of court shall be served upon the defendant debtor by delivering a copy of such notice to the defendant debtor personally or by leaving a copy of such notice at the usual abode of the defendant debtor with some member of his family over the age of fifteen years. In the event the defendant is a nonresident, or absent from the state or conceals himself or herself so personal service cannot be had upon him or her, then service of such notice of levy or seizure shall be made by publication thereof for a period of fourteen days in some newspaper published in the county in which said property was so levied upon or seized, or, if there is no newspaper published in such county, then like publication shall be made in a newspaper in an adjoining county, and the clerk of the court of record shall mail a copy of such notice to the defendant debtor directed to him or her at his or her last-known address, postage prepaid. Such notice, with proof of service thereof and, in case of publication, affidavit of publication and affidavit of mailing of notice shall be filed with the clerk of the court of record from which such writ of execution, writ of attachment, or other order of court was issued.

**Source:** L. 35: p. 245, § 2. CSA: C. 93, § 31. CRS 53: § 77-4-2. C.R.S. 1963: § 77-4-2. L. 64: p. 283, § 206. L. 2012: Entire section amended, (SB 12-175), ch. 208, p. 828, § 20, effective July 1.

**Cross references:** For requirements of publication of notice, as required by this section, see § 24-70-106.

## ANNOTATION

**This prescribed procedure must be strictly followed.** The remedy of attachment is in derogation of the common law, and must be strictly followed. Any failure to

conform to prescribed procedures, all being necessary and mandatory, is fatal and the writ is of no validity. *Jayne v. Peck*, 155 Colo. 513, 395 P.2d 603 (1964).

### **13-55-103. Proceedings for sale stayed.**

Upon the filing of a written claim of exemption, all further proceedings with relation to the sale or other disposition of said property shall be stayed until the matter of such claim of exemption is determined.

**Source: L. 35:** p. 245, § 3. **CSA:** C. 93, § 32. **CRS 53:** § 77-4-3. **C.R.S. 1963:** § 77-4-3.

### **13-55-104. Hearing on claim.**

(1) Upon the filing of such claim of exemption, the court of record shall set a time for the hearing of such claim of exemption, which shall not be less than seven days nor more than fourteen days thereafter. A written notice of the time and place of such hearing shall be given by the defendant or his or her attorney to the officer who made such levy or seizure, and to the plaintiff in said action or his or her attorney of record, by leaving a copy of such notice with said officer or his deputy at his office and by leaving a copy thereof with the plaintiff or his or her attorney of record, or notice may be given to the plaintiff by mailing a copy of such notice of hearing to the attorney of record of the plaintiff at least seven days in advance of date set for the hearing.

(2) The affidavit of the defendant or his attorney that service of notice of such hearing has been made in the manner and form stated, attached to the original notice, shall constitute prima facie evidence of such service, and such affidavit of service filed with the clerk of the court is sufficient return of such service. Such hearing may be continued from time to time in the discretion of the court. In case of the absence of the district judge from the county in which said claim of exemption has been filed with the clerk of the district court or in case of other inability of the district judge to act, the county judge of such county if possessing the qualifications of a district judge in cases of claims for exemption arising therein may set the time of hearing and hear and determine such claims, sitting as a judge of the district court, and his judgment, findings, or orders entered therein shall be of the same force and effect as though made by the district judge.

**Source:** L. 35: p. 246, § 4. CSA: C. 93, § 33. CRS 53: § 77-4-4. C.R.S. 1963: § 77-4-4. L. 64: p. 284, § 207. L. 2012: (1) amended, (SB 12-175), ch. 208, p. 829, § 21, effective July 1.

**13-55-105. Court enters order or judgment.**

Upon such hearing, the court shall summarily try and determine the question as to whether or not the property, or any part thereof, so levied upon, seized, and taken into possession by the officer making such levy, as set forth in said written claim of exemption, is exempt and shall enter an order or judgment setting forth the determination of the court. If any of said property is found to be exempt, the court shall order the sheriff or other officer to return such property so found to be exempt to the defendant within forty-eight hours, unless same is ordered sold as provided in section 13-55-109.

**Source:** L. 35: p. 247, § 5. CSA: C. 93, § 34. CRS 53: § 77-4-5. C.R.S. 1963: § 77-4-5. L. 64: p. 284, § 208.

**13-55-106. Order or judgment is final.**

Any order or judgment entered by the court as provided for by section 13-55-105 is a final judgment or order for the purpose of appellate review.

**Source:** L. 35: p. 247, § 6. CSA: C. 93, § 35. CRS 53: § 77-4-6. C.R.S. 1963: § 77-4-6. L. 64: p. 284, § 209.

**13-55-107. Failure to claim - effect.**

In case the defendant debtor fails to make written claim of exemption as provided in section 13-55-101, he conclusively waives his right of exemption under the statutes of this state and has no right of action against the officer making such levy or seizure or against the plaintiff on account of such levy or seizure on the ground of levying upon exempt property.

**Source:** L. 35: p. 247, § 7. CSA: C. 93, § 36. CRS 53: § 77-4-7. C.R.S. 1963: § 77-4-7.

### **13-55-108. Damages.**

If, after hearing of claim of exemption, the court determines that the property levied upon and seized, or any part thereof, is exempt and the officer making the levy in all matters obeys and abides by the order or judgment of the court, no right of action for other than actual damages suffered by the defendant shall exist against said officer or the plaintiff on account of such levy or seizure upon the ground of levying upon or seizure of exempt property. If such officer does not return the property seized and so found to be exempt within forty-eight hours, unless same is ordered sold as provided in section 13-55-109, then he is liable in damages for three times the value of the property seized.

**Source:** L. 35: p. 247, § 8. CSA: C. 93, § 37. CRS 53: § 77-4-8. C.R.S. 1963: § 77-4-8. L. 64: p. 285, § 210.

### **13-55-109. Court may order sale - proceeds.**

In case the court finds that a portion of such property is exempt to such value as is by statute fixed as being exempt but that the property seized is of a greater value and said property so seized cannot be readily divided, the court may order said property to be sold, and out of the first proceeds of said sale the defendant debtor shall be paid the amount, as is provided by statute, of his exemption. The disposal of the balance of the proceeds of said sale shall await the further order of the court. If such property is divisible, the court shall fix the value of each item thereof and shall require the defendant to select therefrom such items as the defendant may choose of an aggregate value not to exceed the amount of his exemptions, and the disposal of the balance of such property shall await the further order of the court. No sale of property seized or levied upon under a writ of attachment shall be ordered sold until after final judgment in said action has been rendered in favor of the plaintiff.

**Source:** L. 35: p. 248, § 9. CSA: C. 93, § 38. CRS 53: § 77-4-9. C.R.S. 1963: § 77-4-9. L. 64: p. 285, § 211.

### **ANNOTATION**

**Failure to provide for homestead exemption deprived court of jurisdiction to proceed.** Where, in its order authorizing the trustee to sell the interest of the bankrupt

as well as the trustee's interest, the bankruptcy court failed to provide for separation of the proceeds and payment to bankrupt of the amount of the homestead,



the bankruptcy court did not have jurisdiction of the property at the time of sale, and thus the sale by the bankruptcy

court was void. Baker v. Allen, 34 Colo. App. 363, 528 P.2d 922 (1974).

### **13-55-110. Appeals.**

Appellate review may be had from the final order or judgment entered in pursuance of this article as in other cases.

**Source: L. 35:** p. 248, § 10. **CSA:** C. 93, § 39. **CRS 53:** § 77-4-10. **C.R.S. 1963:** § 77-4-10.

## **ARTICLE 56**

### **Levy and Sale - Real Estate**

#### **PART 1**

##### **CERTIFICATES OF LEVY**

- 13-56-101. Certificate of levy - notice.
- 13-56-102. Writs from other county.
- 13-56-103. Lien of six years' duration.

13-56-104. Recorder to file and record.

#### **PART 2**

##### **SALE OF LANDS**

13-56-201. Hours - notice - penalty - irregularity.

#### **PART 1**

##### **CERTIFICATES OF LEVY**

### **13-56-101. Certificate of levy - notice.**

When in any case a writ of attachment or a writ of execution is issued from any district or county court and a levy thereunder is made upon real estate, it is the duty of the sheriff or officer making the levy to file a certificate of such fact with the recorder of the county where such real estate is situate, and, from and after the filing, such levy shall take effect as to creditors and bona fide purchasers without notice and not before.

**Source: L. 19:** p. 295, § 1. **C.L.** § 5932. **CSA:** C. 93, § 40. **CRS 53:** § 77-5-1. **C.R.S. 1963:** § 77-5-1.

## ANNOTATION

**Law reviews.** For article, "Foreclosures by the Public Trustee", see 9 Dicta 6 (1931). For article, "Executions and Levies on Tangible Property", see 27 Dicta 143 (1950).

**The purpose of this section is to enable the creditor to seize property,** and hold it for the satisfaction of the judgment to be obtained in the cause, and of course the lien of the attachment cannot be greater than the indebtedness stated in the affidavit and writ. *Tilton v. Cofield*, 2 Colo. 392 (1874) (decided prior to L. 19, p. 295, § 1, the earliest source of § 13-56-101).

**An imperfect statement may constitute notice.** That the plaintiff, by an imperfect statement of his case, may give such notice of his right as will affect purchasers and creditors as well as the defendant in the cause, there is every reason to believe. If, for instance, the creditor should state the facts upon information and belief instead of upon his own knowledge, or if he should claim several distinct sums of money and then state the aggregate amount of them incorrectly, he would probably give to all full notice of his right, although not in the precise manner prescribed by the act. *Tilton v. Cofield*, 2 Colo. 392 (1874).

**Although purchasers, etc., are entitled to rely upon the record as it exists.**

Purchaser's and creditors who acquire an interest in the property during the pendency of the suit are entitled to stand upon the record as it existed at the time such interest was acquired, and, of course, they cannot be supposed to have knowledge of any matter of which the record does not advise them. *Tilton v. Cofield*, 2 Colo. 392 (1874).

**Purchasers are presumed to have knowledge of the filed statement.** Whatever the rule may be as to the defendant, it is clear that purchasers of the attached property take it subject to the lien of the plaintiff for the sum stated in the affidavit and writ, with accruing interest, if he shall obtain judgment in that action for so much. To this extent, the record which is made for that purpose advises them of the incumbrance upon the property, and, therefore, they may be presumed to have knowledge of the fact. *Tilton v. Cofield*, 2 Colo. 392 (1874).

**Until creditors file their transcript or make a levy they have no lien** on the real estate. *Routt County Mining Co. v. Stutheit*, 101 Colo. 254, 72 P.2d 692 (1937).

**Applied** in *Baker v. Allen*, 34 Colo. App. 363, 528 P.2d 922 (1974).

### 13-56-102. Writs from other county.

Writs of attachment and writs of execution may issue from any district or county court of any county to the sheriff or other proper officer of such county or any other county, and, when in

such cases a levy is made upon real estate in such other county, it is the duty of the sheriff or other officer making such levy to file a certificate of such fact with the recorder of his county, and, from and after the filing of the same, such levy shall take effect as to creditors and bona fide purchasers without notice and not before.

**Source:** L. 19: p. 295, § 2. C.L. § 5933. CSA: C. 93, § 41. CRS 53: § 77-5-2. C.R.S. 1963: § 77-5-2.

### **13-56-103. Lien of six years' duration.**

The lien of an attachment or execution levied on real estate shall continue for six years from the filing of the certificate thereof, as provided in section 13-56-101, unless the same is sooner released or discharged or unless the judgment in the case is satisfied.

**Source:** L. 19: p. 295, § 3. C.L. § 5934. CSA: C. 93, § 42. CRS 53: § 77-5-3. C.R.S. 1963: § 77-5-3.

### **13-56-104. Recorder to file and record.**

It is the duty of the recorder of the proper county to file and record the certificates mentioned in this part 1 in a book to be kept for that purpose, for which he shall be entitled to the same fees as for recording other papers, to be paid by the plaintiff in such execution or attachment and taxed and collected by the sheriff as other costs.

**Source:** R.S. p. 378, § 26. G.L. omitted. G.S. § 1885. R.S. 08: § 3639. C.L. § 5937. CSA: C. 93, § 45. CRS 53: § 77-5-4. C.R.S. 1963: § 77-5-4.

## **PART 2**

### **SALE OF LANDS**

#### **13-56-201. Hours - notice - penalty - irregularity.**

(1) No lands or tenements shall be sold by virtue of any execution unless such sale is at public venue and between the hours of nine in the morning and the setting of the sun on the same day nor unless the time and place of holding such sale has been previously advertised for the

space of twenty days, by publishing notices of the time and place thereof in some daily or weekly newspaper printed and published in the county where such lands and tenements are situate or, if there is no such newspaper printed in the county, by posting such notices, printed or written, or partly printed and partly written, in three of the most public places in the county where the lands may be situated specifying the names of the plaintiff and defendant in the execution. In all such notices, the lands or tenements to be sold shall be described with reasonable certainty by setting forth their number or by some other appropriate description, and such notices shall comply with section 24-70-109, C.R.S.

(2) If any sheriff or other officer sells any lands or tenements by virtue of any such execution, otherwise than in the manner aforesaid, or without such previous notice, the sheriff or other officer so offending shall forfeit and pay the sum of fifty dollars for every offense to be recovered, with costs of suit, in any court of record in this state by the person whose lands were advertised and sold. No such offense nor any irregularity on the part of the sheriff or other officer having the execution shall affect the validity of any sale made under it, unless it appears that the purchaser had notice of such irregularity.

**Source:** R.S. p. 372, § 11. G.L. § 1417. G.S. § 1849. R.S. 08: § 3641. C.L. § 5939. CSA: C. 93, § 47. CRS 53: § 77-6-1. C.R.S. 1963: § 77-6-1. L. 88: (1) amended, p. 977, § 2, effective May 6.

**Cross references:** For sales on execution and lien foreclosures, see article 38 of title 38; for general requirements of publication, see § 24-70-106.

## ANNOTATION

**Law reviews.** For article, "Again — How Many Times?", see 21 Dicta 62 (1944). For article, "Executions and Levies on Tangible Property", see 27 Dicta 143 (1950).

**Generally a successful bid becomes a final and binding purchase.** When a judgment creditor or other party makes a successful bid and purchases property at a sheriff's execution sale, it becomes a final and binding purchase subject to the statutory rights of redemption. If later it is discovered

that the amount bid was in excess of the value, the judgment creditor or other party is nevertheless bound by his bid and a court in the exercise of its equity jurisdiction cannot on this ground alone set aside a sheriff's execution sale. If, in addition, however, the excessive bid was made because of the proven fraud and false representations of the judgment debtor, who would benefit by a high bid, then the court may have sufficient grounds to nullify the sheriff's sale. Cont'l

Oil Co. v. Benham, 163 Colo. 255, 430 P.2d 90 (1967).

**Where no fraud exists, mistaken bid will not nullify sale.** The property was adequately and fully described. Plaintiff mistakenly believed he was bidding on defendants' residence property, rather than on vacant land. No fraud is shown, and there exists no basis for nullifying the sheriff's execution sale. Cont'l Oil Co. v. Benham, 163 Colo. 255, 430 P.2d 90 (1967).

**So ordinarily, inadequacy of price paid is not sufficient cause for setting aside a judicial sale.** Generally in addition, it must appear that there were such irregularities in connection with the sale, or such fraud practiced, as tended to prevent the property

levied upon from being sold at a fairly adequate price. Cont'l Oil Co. v. Benham, 163 Colo. 255, 430 P.2d 90 (1967).

**The period of 20 days provided in this section applies to sales to enforce a mechanic's lien.** Keystone Mining Co. v. Gallagher, 5 Colo. 23 (1879); San Juan, etc., Smelting Co. v. Finch, 6 Colo. 214 (1882).

**The law does not recognize fractions of a day,** and a notice published on February 16 was 20 days prior to the sale on March 8; and this section was observed. Leppel v. Kus, 38 Colo. 292, 88 P. 448 (1906).

**Applied** in First Mtg. Sec. Co. v. Fader, 100 Colo. 22, 64 P.2d 1278 (1937); Travelers Ins. Co. v. Janitell Farms, Inc., 44 Colo. App. 34, 609 P.2d 1116 (1980).

## ARTICLE 57

### Sale of Chattels

13-57-101. Ten days' notice of sale.

13-57-103. Breach of bond - levy on security - sale.

13-57-102. Future delivery bond - conditions.

#### **13-57-101. Ten days' notice of sale.**

No goods or chattels shall be sold by virtue of any execution unless previous notice of such sale has been given for at least ten days successively in the same manner as required in the sale of real estate upon execution.

**Source:** R.S. p. 379, § 29. G.L. § 1430. G.S. § 1862. R.S. 08: § 3649. C.L. § 5947. CSA: C. 93, § 57. CRS 53: § 77-7-1. C.R.S. 1963: § 77-7-1.

**Cross references:** For procedure for sale of real estate upon execution, see § 13-56-201.

#### ANNOTATION

**Law reviews.** For article, "Again — How Many Times?", see 21 Dicta 62 (1944). Iowa Gulch Mining Co., 15 Colo. 29, 24 P. 920 (1890).

**For nonapplicability of this section to fixtures,** see Roseville Alta Mining Co. v.

#### **13-57-102. Future delivery bond - conditions.**

When a sheriff or other officer has levied an execution, issued out of any court of record, upon the personal property of a defendant, or is about to make such levy and the defendant is desirous of retaining the property in his possession, such sheriff shall take a bond from the defendant with security that the property shall be forthcoming or delivered at such time and place as is named in the condition and that the property shall not be disposed of nor injured. A bond so taken shall not be considered void as taken by color of office.

**Source:** R.S. p. 379, § 30. G.L. § 1431. G.S. § 1863. R.S. 08: § 3650. C.L. § 5948. CSA: C. 93, § 58. CRS 53: § 77-7-2. C.R.S. 1963: § 77-7-2.

#### **13-57-103. Breach of bond - levy on security - sale.**

Where bonds are taken by a sheriff for the future delivery of property and the defendant or his security does not return the property named in the bond conformably to the condition thereof, the officer having such execution may proceed to execute the same in the same manner as if no levy had been made. In case the defendant's property, or a sufficiency thereof, cannot be found, the officer may proceed to levy on so much of the property of the security in the delivery bond as will make the amount called for in such bond. The property which may be so taken may be sold, by giving notice thereof, as prescribed in section 13-57-101, and no future delivery bond shall be allowed.

**Source:** R.S. p. 379, § 31. G.L. § 1432. G.S. § 1864. R.S. 08: § 3651. C.L. § 5949. CSA: C. 93, § 59. CRS 53: § 77-7-3. C.R.S. 1963: § 77-7-3.

## ARTICLE 58

### Death of Parties

- |            |                                    |            |                                       |
|------------|------------------------------------|------------|---------------------------------------|
| 13-58-101. | Death of debtor - filing claim.    | 13-58-104. | Lien of judgment not abated by death. |
| 13-58-102. | Execution to issue after one year. | 13-58-105. | Administrator to buy on execution.    |
| 13-58-103. | Death of plaintiff - substitution. |            |                                       |

#### **13-58-101. Death of debtor - filing claim.**

When a judgment is obtained in any court of record in this state against any person who after the rendition of said judgment dies, a claim based upon such judgment may be filed against the estate of the deceased judgment debtor without first reviving the judgment against his heirs or personal representatives.

**Source:** R.S. p. 381, § 37. G.L. § 1438. G.S. § 1871. **R.S. 08:** § 3659. C.L. § 5957. **CSA:** C. 93, § 67. **L. 45:** p. 423, § 1. **CRS 53:** § 77-8-1. **C.R.S. 1963:** § 77-8-1.

### ANNOTATION

**A judgment lien which attaches to specific property of a party during his lifetime is not dissolved by his death,** but survives and is enforceable against the real estate of the decedent, and such lien may be

enforced by the lienholder without filing a claim against the estate and independently of the estate proceeding. *Willis v. Neilson*, 32 Colo. App. 129, 507 P.2d 1106 (1973).

#### **13-58-102. Execution to issue after one year.**

When any judgment becomes a lien and the defendant dies before execution is issued thereon, the remedy of the person in whose favor the judgment has been rendered shall not be delayed nor suspended by reason of the nonage of any heir of such defendant. No execution shall issue upon such judgment until the expiration of one year after the death of the defendant, nor shall any law of this state which gives no preference to the claims of a creditor of a deceased debtor be so construed as to impair or affect the lien of any judgment.

**Source:** R.S. p. 371, § 2. G.L. § 1410. G.S. § 1842. R.S. 08: § 3660. C.L. § 5958. CSA: C. 93, § 68. CRS 53: § 77-8-2. C.R.S. 1963: § 77-8-2.

### **13-58-103. Death of plaintiff - substitution.**

The collection of the judgments of courts of record shall not be delayed nor hindered by the death of the plaintiff or person in whose name the judgment exists, but the executor or administrator, as the case may be, may cause the letters testamentary or of administration to be recorded in the court in which the judgment exists, after which execution may issue and proceedings had thereon in the name of the executor or administrator as such, in the same manner that could or might be done, if the judgment exists or remains in the name and in favor of the executor or administrator in his capacity as such executor or administrator.

**Source:** R.S. p. 382, § 40. G.L. § 1441. G.S. § 1872. R.S. 08: § 3661. C.L. § 5959. CSA: C. 93, § 69. CRS 53: § 77-8-3. C.R.S. 1963: § 77-8-3.

#### **ANNOTATION**

**The effect of this section is to make the judgment the property of the administrator.** Being property it should be treated like other assets of the estate. Bright v. Schmitt, 76 Colo. 329, 231 P. 159 (1924).

**Section applies only where the estate has an interest in the judgment.** It is clear that this section only applies where the property in the judgment remains in the

judgment plaintiff. The statute does not reach the case of a judgment plaintiff who has parted with all interest in the judgment by assignment. Christ v. Flannagan, 13 Colo. 140, 46 P. 683 (1896).

**An assignee's right to execution on a judgment is not impaired by this section.** Christ v. Flannagan, 23 Colo. 140, 46 P. 683 (1896).

### **13-58-104. Lien of judgment not abated by death.**

The lien created by law on property shall not abate or cease by reason of the death of any plaintiff, but the same shall survive in favor of the executor or administrator of the testator or intestate, whose duty it is to have the judgment enforced in the manner provided in section 13-58-103.



**Source:** R.S. p. 382, § 41. G.L. § 1442. G.S. § 1873. R.S. 08: § 3662. C.L. § 5960. CSA: C. 93, § 70. CRS 53: § 77-8-4. C.R.S. 1963: § 77-8-4.

**13-58-105. Administrator to buy on execution.**

When it is necessary in order to secure the collection of any judgment in favor of any executor or administrator, it is the duty of such executor or administrator to bid for and become the purchaser of real estate at a sheriff's sale, which real estate so purchased shall be assets in his hands and may be again sold by him upon the order of the court of probate, and the moneys arising from such sale shall be paid over and accounted for as other moneys in his hands.

**Source:** R.S. p. 382, § 42. G.L. § 1443. G.S. § 1874. R.S. 08: § 3663. C.L. § 5961. CSA: C. 93, § 71. CRS 53: § 77-8-5. C.R.S. 1963: § 77-8-5.

## **ARTICLE 59**

### **Execution Against the Body**

|            |                                             |            |                                               |
|------------|---------------------------------------------|------------|-----------------------------------------------|
| 13-59-101. | No imprisonment for debt.                   | 13-59-104. | Finding - term - release.<br>(Repealed)       |
| 13-59-102. | Execution against the body.                 |            |                                               |
| 13-59-103. | Body execution in tort, when.<br>(Repealed) | 13-59-105. | Plaintiff to pay costs, unless.<br>(Repealed) |

**13-59-101. No imprisonment for debt.**

There shall be no imprisonment or arrest for debt in this state in any case upon any contract, expressed or implied.

**Source:** R.S. p. 358, § 1. G.L. § 1351. G.S. § 1646. R.S. 08: § 3022. C.L. § 5962. CSA: C. 93, § 72. CRS 53: § 77-9-1. C.R.S. 1963: § 77-9-1.

**13-59-102. Execution against the body.**

No execution shall issue against the body of any defendant in a civil action.

**Source:** G.L. § 1589. G.S. § 1648. R.S. 08: § 3023. C.L. § 5963. CSA: C. 93, § 73. CRS 53: § 77-9-2. C.R.S. 1963: § 77-9-2. L. 95: Entire section amended, p. 16, § 6, effective March 9.

#### ANNOTATION

**Law reviews.** For note, "Extension of Vicarious Liability to Include Body Judgments", see 2 Rocky Mt. L. Rev. 248 (1930).

#### **13-59-103. Body execution in tort, when. (Repealed)**

**Source:** G.L. § 1590. G.S. § 1649. R.S. 08: § 3024. L. 21: p. 310, § 1. C.L. § 5964. CSA: C. 93, § 74. CRS 53: § 77-9-3. C.R.S. 1963: § 77-9-3. L. 64: p. 286, § 212. L. 95: Entire section repealed, p. 16, § 2, effective March 9.

#### **13-59-104. Finding - term - release. (Repealed)**

**Source:** G.L. § 1591. G.S. § 1650. R.S. 08: § 3025. C.L. § 5965. CSA: C. 93, § 75. CRS 53: § 77-9-4. L. 64: p. 286, § 213. C.R.S. 1963: § 77-9-4. L. 95: Entire section repealed, p. 15, § 3, effective March 9.

#### **13-59-105. Plaintiff to pay costs, unless. (Repealed)**

**Source:** G.L. § 1592. G.S. § 1651. R.S. 08: § 3026. C.L. § 5966. CSA: C. 93, § 76. CRS 53: § 77-9-5. C.R.S. 1963: § 77-9-5. L. 95: Entire section repealed, p. 15, § 4, effective March 9.

### ARTICLE 60

#### **Judgments Against Municipal Corporations**

13-60-101. Levy to pay judgment against municipality - procedure.

### **13-60-101. Levy to pay judgment against municipality - procedure.**

(1) When a judgment for the payment of money is given and rendered against any municipal or quasi-municipal corporation of the state, or against any officer thereof, in an action prosecuted by or against him in his official capacity or name of office, such judgment being an obligation of such municipality, and when by reason of vacancy in office or for any other cause the duly constituted tax assessing and collecting officers fail or neglect to provide for the payment of such judgment or fail to make a tax levy to pay such judgment, the judgment creditor may file a transcript of such judgment with the board of county commissioners of the county, and counties if more than one, in which such public corporation is situated. Thereupon, the county commissioners shall levy a tax as provided in subsection (2) of this section upon all the taxable property within the limits of such public corporation for the purpose of making provision for the payment of such judgment, which tax shall be collected by the county treasurer, and, when collected by the county treasurer, it shall be paid over, as fast as collected by him, to the judgment creditor, or his assigns, upon the execution and delivery of proper vouchers therefor.

(2) The power conferred to pay such judgment by special levy of such tax is in addition to the taxing power given and granted to such public corporation to levy taxes for other purposes. The board of county commissioners shall levy under this section on all taxable property within said municipal or quasi-municipal corporation such taxes as are sufficient to discharge such judgment in the next fiscal year; but in no event shall such annual levy pursuant to this section and section 24-10-113, C.R.S., exceed a total of ten mills for one or more judgments, exclusive of mill levies for other purposes of such public corporation. The board of county commissioners shall continue to levy such taxes not to exceed a total of ten mills annually, exclusive of mill levies for other purposes of such public corporation, but in no event less than ten mills if such judgment will not be discharged by a lesser levy, until such judgment is discharged.

(3) Any taxes levied to pay the last payment upon or to pay any such judgment shall be valid, whether or not the sum sought to be raised thereby exceeds the sum due on such judgment, principal, and interest. Such excess of the sum required shall not exceed a sum equal to ten percent of such required sum, and no sale of real estate made to make such taxes shall be invalid by reason of such excess if the same is within said specified limit. All levies to pay judgments shall be made as near as possible to raise a sum equal to that due on the judgment to pay for which the tax is levied. Nevertheless, any excess levied, if such excess does not exceed ten percent of the sum due and desired to be paid, shall not invalidate any tax levy upon or tax sale of real or personal estate made to raise, make, or collect the sum due and excess. Any excess collected by the county treasurer remaining in his hands after paying all judgments in full, transcripts thereof having been filed with the county commissioners, shall be paid by him to the treasurer of such public corporation and become part of the general fund of such public corporation. This section shall not prevent said public corporation from paying any judgment

from any other funds it may have in its treasury available for that purpose. The provisions of this section shall not apply to counties.

**Source:** L. 13: p. 388, § 1. C.L. § 5967. CSA: C. 93, § 77. CRS 53: § 77-10-1. C.R.S. 1963: § 77-10-1. L. 71: p. 1213, § 7.

#### ANNOTATION

**Law reviews.** For article, "Trusts and Estates", see 30 Dicta 435 (1953). 761 (1934); Atchison, T. & S.F. Ry. v. Sch. Dist. No. 2, 100 Colo. 148, 66 P.2d 541 (1937).

**Applied** in Atchison, T. & S.F. Ry. v. Bd. of County Comm'rs, 95 Colo. 435, 37 P.2d

#### ARTICLE 61

##### Garnishment of Public Servants

- |            |                                  |            |                       |
|------------|----------------------------------|------------|-----------------------|
| 13-61-101. | Funds subject to garnishment.    | 13-61-103. | Summons - how served. |
| 13-61-102. | Other salaries, wages, and fees. | 13-61-104. | Garnishee to answer.  |
|            |                                  | 13-61-105. | Order of court.       |

##### **13-61-101. Funds subject to garnishment.**

The state of Colorado, municipal corporations, quasi-municipal corporations, and any officer, board, or commission thereof, having the control of the disbursing of any fund, whether the same be derived from appropriations, levies, fees, licenses, special taxes, or otherwise within the state of Colorado, shall be subject to garnishment upon writs of attachment and execution in the same manner as private corporations are subject to garnishment under such writs; except that the state of Colorado shall not be subject to garnishment regarding salaries or fees due to any officer designated as such and whose salary or fees are fixed by the provisions of the constitution of the state of Colorado.

**Source:** L. 27: p. 374, § 1. Code 35: § 132A. CRS 53: § 77-12-1. C.R.S. 1963: § 77-12-1.

## ANNOTATION

**Annotator's note.** Since § 13-61-001 is similar to repealed Appendix B, § 4, C.R.C.P., and rules antecedent to Appendix B, § 4, C.R.C.P., cases construing those provisions have been included in the annotations to this section.

**In the absence of a statutory provision a county is not subject to garnishment.** McFerson v. Bd. of Comm'rs, 78 Colo. 354, 241 P. 733 (1925).

**Municipal corporations are not counties.** Stermer v. Bd. of Comm'rs, 5 Colo. App. 379, 38 P. 839 (1894); Bd. of Comm'rs v. Brown, 6 Colo. App. 43, 39 P. 989 (1895); Gann v. Cribbs, 6 Colo. App. 484, 41 P. 829 (1895); McFerson v. Bd. of Comm'rs, 78 Colo. 354, 241 P. 733 (1925).

**Applied** in State v. Elkins, 84 Colo. 409, 270 P. 875 (1928).

### **13-61-102. Other salaries, wages, and fees.**

It is declared that no provision of this article is contrary to public policy and that the provisions of this article are meant to apply to all salaries, wages, fees, credits, and choses in action other than such as are exempt under the provisions of section 13-61-101, whether collection of the same might be enforced under any action in court, by an action in the nature of mandamus, or in any manner whatsoever.

**Source: L. 27:** p. 375, § 2. **Code 35:** § 132B. **CRS 53:** § 77-12-2. **C.R.S. 1963:** § 77-12-2.

**Cross references:** For an action in the nature of mandamus, see C.R.C.P. 106(a)(2).

### **13-61-103. Summons - how served.**

Garnishee summons issued upon writs of attachment and execution shall be served upon the officer of such state, municipal corporation, quasi-municipal corporation, or board or commission thereof, whose duty it is to issue warrants, checks, or money for the payment to any officer, employee, or other person whose salary, wages, earnings, or money due him is sought to be held. Service of such garnishee summons on such officer shall be made by leaving a copy thereof with him personally or, in the event of his absence from his office, then by leaving a copy thereof in his office with the chief clerk, deputy, or other employee of the office then in charge thereof.

**Source:** L. 27: p. 375, § 3. **Code 35:** § 132C. **CRS 53:** § 77-12-3. **C.R.S. 1963:** § 77-12-3.

**Cross references:** For personal service in state, see C.R.C.P. 4(e).

**13-61-104. Garnishee to answer.**

It is the duty of such officer to answer any garnishee summons served upon him under the provisions of this article in the same manner as is provided by law for the answer of garnishee summons by private corporations. If such answer is accompanied by a certificate of such officer that the same is true, such answer need not be under oath or affirmation, and such officer shall not be required to appear and answer in person, but may file his answer in writing or submit the same by United States mail to the court, or clerk thereof, designated in such summons. The officer need not include as money due the amount of any warrant or check drawn and signed prior to the time of the service of such garnishee summons.

**Source:** L. 27: p. 375, § 4. **Code 35:** § 132D. **CRS 53:** § 77-12-4. **C.R.S. 1963:** § 77-12-4. **L. 64:** p. 287, § 214.

**13-61-105. Order of court.**

Such officer shall abide by the order of the court with regard to paying into court any amount ordered, not, however, in excess of the salary, wages, earnings, or money due such officer, employee, or other person whose salary, wages, or money due him is sought to be held to the time of the service of such garnishee summons.

**Source:** L. 27: p. 376, § 5. **Code 35:** § 132E. **CRS 53:** § 77-12-5. **C.R.S. 1963:** § 77-12-5. **L. 64:** p. 287, § 215.

## **ARTICLE 62**

### **Uniform Foreign-country Money Judgments Recognition Act**

13-62-101. Short title.

13-62-103. Applicability.

13-62-102. Definitions.

|            |                                                        |            |                                                                 |
|------------|--------------------------------------------------------|------------|-----------------------------------------------------------------|
| 13-62-104. | Standards for recognition of foreign-country judgment. | 13-62-108. | Stay of proceedings pending appeal of foreign-country judgment. |
| 13-62-105. | Personal jurisdiction.                                 | 13-62-109. | Statute of limitations.                                         |
| 13-62-106. | Procedure for recognition of foreign-country judgment. | 13-62-110. | Uniformity of interpretation.                                   |
| 13-62-107. | Effect of recognition of foreign-country judgment.     | 13-62-111. | Saving clause.                                                  |
|            |                                                        | 13-62-112. | Applicability.                                                  |

**13-62-101. Short title.**

This article may be cited as the "Uniform Foreign-country Money Judgments Recognition Act".

**Source: L. 2008:** Entire article R&RE, p. 99, § 1, effective August 5.

**OFFICIAL COMMENT**

Source: This section is an updated version of Section 9 of the Uniform Foreign Money-Judgments Recognition Act of 1962.

**ANNOTATION**

**Law reviews.** For article, "Jurisdiction and Service of Process Beyond Colorado Boundaries", see 11 Colo. Law. 648 (1982). For article, "Enforcing Foreign Country Judgments in Colorado", see 13 Colo. Law. 381 (1984).

**Applied** in *In re McMahan*, 660 P.2d 515 (Colo. App. 1983) (decided prior to 2008 repeal and reenactment).

**13-62-102. Definitions.**

In this article:

- (1) "Foreign-country" means a government other than:
  - (a) The United States;
  - (b) A state, district, commonwealth, territory, or insular possession of the United States; or
  - (c) Any other government with regard to which the decision in this state as to whether to recognize a judgment of that government's courts is initially subject to determination under the full faith and credit clause of the United States constitution.
- (2) "Foreign-country judgment" means a judgment of a court of a foreign country.

**Source: L. 2008:** Entire article R&RE, p. 99, § 1, effective August 5.

### OFFICIAL COMMENT

Source: This section is derived from Section 1 of the Uniform Foreign Money-Judgments Recognition Act of 1962.

1. The defined terms "foreign state" and "foreign judgment" in the 1962 Act have been changed to "foreign country" and "foreign-country judgment" in order to make it clear that the Act does not apply to recognition of sister-state judgments. Some courts have noted that the "foreign state" and "foreign judgment" definitions of the 1962 Act have caused confusion as to whether the Act should apply to sister-state judgments because "foreign state" and "foreign judgment" are terms of art generally used in connection with recognition and enforcement of sister-state judgments. *See, e.g., Eagle Leasing v. Amandus*, 476 N.W.2d 35 (S.Ct. Iowa 1991) (reversing lower court's application of UFMJRA to a sister-state judgment, but noting lower court's confusion was understandable as "foreign judgment" is term of art normally applied to sister-state

judgments). *See also*, Uniform Enforcement of Foreign Judgments Act § 1 (defining "foreign judgment" as the judgment of a sister state or federal court).

The 1962 Act defines a "foreign state" as "any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryuku Islands." Rather than simply updating the list in the 1962 Act's definition of "foreign state," the new definition of "foreign country" in this Act combines the "listing" approach of the 1962 Act's "foreign state" definition with a provision that defines "foreign country" in terms of whether the judgments of the particular government's courts are initially subject to the Full Faith and Credit Clause standards for determining whether those judgments will be recognized. Under this new definition, a governmental unit is a "foreign country" if it is (1) not the United States or a state, district,



commonwealth, territory or insular possession of the United States; and (2) its judgments are not initially subject to Full Faith and Credit Clause standards.

The Full Faith and Credit Clause, Art. IV, section 1, provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof." Whether the judgments of a governmental unit are subject to the Full Faith and Credit Clause may be determined by judicial interpretation of the Full Faith and Credit Clause or by statute, or by a combination of these two sources. For example, pursuant to the authority granted by the second sentence of the Full Faith and Credit Clause, Congress has passed 28 U.S.C.A. § 1738, which provides *inter alia* that court records from "any State, Territory, or Possession of the United States" are entitled to full faith and credit under the Full Faith and Credit Clause. In *Stoll v. Gottlieb*, 305 U.S. 165, 170 (1938), the United States Supreme Court held that this statute also requires that full faith and credit be given to judgments of federal courts. States also have made determinations as to whether certain types of judgments are subject to the Full Faith and Credit Clause. *E.g.* *Day v. Montana Dept. Of Social & Rehab. Servs.*, 900 P.2d 296 (Mont. 1995) (tribal court judgment not subject to Full Faith and Credit, and should be treated with same deference shown foreign-country judgments). Under the definition of "foreign

country" in this Act, the determination as to whether a governmental unit's judgments are subject to full faith and credit standards should be made by reference to any relevant law, whether statutory or decisional, that is applicable "in this state."

The definition of "foreign country" in terms of those judgments not subject to Full Faith and Credit standards also has the advantage of more effectively coordinating the Act with the Uniform Enforcement of Foreign Judgments Act. That Act, which establishes a registration procedure for the enforcement of sister state and equivalent judgments, defines a "foreign judgment" as "any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state." Uniform Enforcement of Foreign Judgments Act, § 1 (1964). By defining "foreign country" in the Recognition Act in terms of those judgments not subject to full faith and credit standards, this Act makes it clear that the Enforcement Act and the Recognition Act are mutually exclusive - if a foreign money judgment is subject to full faith and credit standards, then the Enforcement Act's registration procedure is available with regard to its enforcement; if the foreign money judgment is not subject to full faith and credit standards, then the foreign money judgment may not be enforced until recognition of it has been obtained in accordance with the provisions of the Recognition Act.

2. The definition of "foreign-country judgment" in this Act differs significantly from the 1962 Act's definition of "foreign judgment." The 1962 Act's definition served

in large part as a scope provision for the Act. The part of the definition defining the scope of the Act has been moved to section 3, which is the scope section.

3. The definition of "foreign-country judgment" in this Act refers to "a judgment" of "a court" of the foreign country. The foreign-country judgment need not take a particular form - any order or decree that meets the requirements of this section and comes within the scope of the Act under Section 3 is subject to the Act. Similarly, any competent government tribunal that issues such a "judgment" comes within the term "court" for purposes of this Act. The judgment, however, must be a judgment of an adjudicative body of the foreign country, and not the result of an alternative dispute mechanism chosen by the parties. Thus, foreign arbitral awards and agreements to arbitrate are not covered by this Act. They

are governed instead by federal law, Chapter 2 of the U.S. Arbitration Act, 9 U.S.C. §§ 201-208, implementing the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards and Chapter 3 of the U.S. Arbitration Act, 9 U.S.C. §§ 301-307, implementing the Inter-American Convention on International Commercial Arbitration. A judgment of a foreign court confirming or setting aside an arbitral award, however, would be covered by this Act.

4. The definition of "foreign-country judgment" does not limit foreign-country judgments to those rendered in litigation between private parties. Judgments in which a governmental entity is a party also are included, and are subject to this Act if they meet the requirements of this section and are within the scope of the Act under Section 3.

## ANNOTATION

**Annotator's note.** Since § 13-62-102 is similar to § 13-62-102 as it existed prior to the 2008 repeal and reenactment of article 62 of title 13, a relevant case construing that provision has been included in the annotations to this section.

**Definition of "foreign state" requires** that the foreign government has entered into

a reciprocity agreement with the United States before judgments from its courts will be recognized in Colorado. *Milhoux v. Linder*, 902 P.2d 856 (Colo. App. 1995).

**Reciprocity requirement in definition of "foreign state"** does not necessarily render the act meaningless. *Milhoux v. Linder*, 902 P.2d 856 (Colo. App. 1995).

### 13-62-103. Applicability.

(1) Except as otherwise provided in subsection (2) of this section, this article applies to a foreign-country judgment to the extent that the judgment:

(a) Grants or denies recovery of a sum of money; and

(b) Under the law of the foreign country where rendered, is final, conclusive, and enforceable.

(2) This article does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

(a) A judgment for taxes;

(b) A fine or other penalty; or

(c) A judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations.

(3) A party seeking recognition of a foreign-country judgment has the burden of establishing that this article applies to the foreign-country judgment.

**Source: L. 2008:** Entire article R&RE, p. 100, § 1, effective August 5.

#### OFFICIAL COMMENT

Source: This section is based on Section 2 of the 1962 Act. Subsection (b) contains material that was included as part of the definition of "foreign judgment" in Section 1(2) of the 1962 Act. Subsection (c) is new.

1. Like the 1962 Act, this Act sets out in subsection 3(a) two basic requirements that a foreign-country judgment must meet before it comes within the scope of this Act - the foreign-country judgment must (1) grant or deny recovery of a sum of money and (2) be final, conclusive and enforceable under the law of the foreign country where it was rendered. Subsection 3(b) then sets out three types of foreign-country judgments that are excluded from the coverage of this Act, even though they meet the criteria of subsection 3(a) - judgments for taxes, judgments constituting fines and other penalties, and judgments in domestic relations matters.

These exclusions are comparable to those contained in Section 1(2) of the 1962 Act.

2. This Act applies to a foreign-country judgment only to the extent the foreign-country judgment grants or denies recovery of a sum of money. If a foreign-country judgment both grants or denies recovery of a sum of money and provides for some other form of relief, this Act would apply to the portion of the judgment that grants or denies monetary relief, but not to the portion that provides for some other form of relief. The U.S. court, however, would be left free to decide to recognize and enforce the non-monetary portion of the judgment under principles of comity or other applicable law. See Section 11.

3. In order to come within the scope of this Act, a foreign-country judgment must be final, conclusive, and enforceable under the

law of the foreign country in which it was rendered. This requirement contains three distinct, although inter-related concepts. A judgment is final when it is not subject to additional proceedings in the rendering court other than execution. A judgment is conclusive when it is given effect between the parties as a determination of their legal rights and obligations. A judgment is enforceable when the legal procedures of the state to ensure that the judgment debtor complies with the judgment are available to the judgment creditor to assist in collection of the judgment.

While the first two of these requirements - finality and conclusiveness - will apply with regard to every foreign-country money judgment, the requirement of enforceability is only relevant when the judgment is one granting recovery of a sum of money. A judgment denying a sum of money obviously is not subject to enforcement procedures, as there is no monetary award to enforce. This Act, however, covers both judgments granting and those denying recovery of a sum of money. Thus, the fact that a foreign-country judgment denying recovery of a sum of money is not enforceable does not mean that such judgments are not within the scope of the Act. Instead, the requirement that the judgment be enforceable should be read to mean that, if the foreign-country judgment grants recovery of a sum of money, it must be enforceable in the foreign country in order to be within the scope of the Act.

Like the 1962 Act, subsection 3(b) requires that the determinations as to finality, conclusiveness and enforceability

be made using the law of the foreign country in which the judgment was rendered. Unless the foreign-country judgment is final, conclusive, and (to the extent it grants recovery of a sum of money) enforceable in the foreign country where it was rendered, it will not be within the scope of this Act.

4. Subsection 3(b) follows the 1962 Act by excluding three categories of foreign-country money judgments from the scope of the Act - judgments for taxes, judgments that constitute fines and penalties, and judgments in domestic relations matters. The domestic relations exclusion has been redrafted to make it clear that all judgments in domestic relations matters are excluded from the Act, not just judgments "for support" as provided in the 1962 Act. This is consistent with interpretation of the 1962 Act by the courts, which extended the "support" exclusion in the 1962 Act beyond its literal wording to exclude other money judgments in connection with domestic matters. *E.g.*, *Wolff v. Wolff*, 389 A.2d 413 (My. App. 1978) ("support" includes alimony).

Recognition and enforcement of domestic relations judgments traditionally has been treated differently from recognition and enforcement of other judgments. The considerations with regard to those judgments, particularly with regard to jurisdiction and finality, differ from those with regard to other money judgments. Further, national laws with regard to domestic relations vary widely, and recognition and enforcement of such judgments thus is more appropriately handled through comity than through use of this uniform Act. Finally, other statutes, such

as the Uniform Interstate Family Support Act and the federal International Child Support Enforcement Act, 42 U.S.C. § 659a (1996), address various aspects of the recognition and enforcement of domestic relations awards. Under Section 11 of this Act, courts are free to recognize money judgments in domestic relations matters under principles of comity or otherwise, and U.S. courts routinely enforce money judgments in domestic relations matters under comity principles.

Foreign-country judgments for taxes and judgments that constitute fines or penalties traditionally have not been recognized and enforced in U.S. courts. *See, e.g.*, Restatement Third of the Foreign Relations Law of the United States § 483 (1986). Both the "revenue rule," under which the courts of one country will not enforce the revenue laws of another country, and the prohibition on enforcement of penal judgments seem to be grounded in the idea that one country does not enforce the public laws of another. *See id.* Reporters' Note 2. The exclusion of tax judgments and judgments constituting fines or penalties from the scope of the Act reflects this tradition. Under Section 11, however, courts remain free to consider whether such judgments should be recognized and enforced under comity or other principles.

A judgment for taxes is a judgment in favor of a foreign country or one of its subdivisions based on a claim for an assessment of a tax. Thus, a judgment awarding a plaintiff restitution of the purchase price paid for an item would not be considered in any part a judgment for taxes,

even though one element of the recovery was the sales tax paid by the plaintiff at the time of purchase. Such a judgment would not be one designed to enforce the revenue laws of the foreign country, but rather one designed to compensate the plaintiff. Courts generally hold that the test for whether a judgment is a fine or penalty is determined by whether its purpose is remedial in nature, with its benefits accruing to private individuals, or it is penal in nature, punishing an offense against public justice. *E.g.*, *Chase Manhattan Bank, N.A. v. Hoffman*, 665 F.Supp 73 (D. Mass. 1987) (finding that Belgium judgment was not penal even though the proceeding forming the basis of the suit was primarily criminal where Belgium court considered damage petition a civil remedy, the judgment did not constitute punishment for an offense against public justice of Belgium, and benefit of the judgment accrued to private judgment creditor, not Belgium). Thus, a judgment that awards compensation or restitution for the benefit of private individuals should not automatically be considered penal in nature and therefore outside the scope of the Act simply because the action is brought on behalf of the private individuals by a government entity. *Cf.* U.S.-Australia Free Trade Agreement, art.14.7.2, U.S.-Austl., May 18, 2004 (providing that when government agency obtains a civil monetary judgment for purpose of providing restitution to consumers, investors, or customers who suffered economic harm due to fraud, judgment generally should not be denied recognition and enforcement on ground that it is penal or revenue in nature, or based on other foreign public law).

5. Under subsection 3(b), a foreign-country money judgment is not within the scope of this Act "to the extent" that it comes within one of the excluded categories. Therefore, if a foreign-country money judgment is only partially within one of the excluded categories, the non-excluded portion will be subject to this Act.

6. Subsection 3(c) is new. The 1962 Act does not expressly allocate the burden of proof with regard to establishing whether a foreign-country judgment is within the scope of the Act. Courts applying the 1962 Act generally have held that the burden of proof is on the person seeking recognition to establish that the judgment is final, conclusive and enforceable where rendered. *E.g.*, *Mayekawa Mfg. Co. Ltd. v. Sasaki*,

888 P.2d 183, 189 (Wash. App. 1995) (burden of proof on creditor to establish judgment is final, conclusive, and enforceable where rendered); *Bridgeway Corp. v. Citibank*, 45 F.Supp.2d 276, 285 (S.D.N.Y. 1999) (party seeking recognition must establish that there is a final judgment, conclusive and enforceable where rendered); *S.C.Chimexim S.A. v. Velco Enterprises, Ltd.*, 36 F. Supp.2d 206, 212 (S.D.N.Y. 1999) (Plaintiff has the burden of establishing conclusive effect). Subsection (3)(c) places the burden of proof to establish whether a foreign-country judgment is within the scope of the Act on the party seeking recognition of the foreign-country judgment with regard to both subsection (a) and subsection (b).

#### **13-62-104. Standards for recognition of foreign-country judgment.**

(1) Except as otherwise provided in subsections (2) and (3) of this section, a court of this state shall recognize a foreign-country judgment to which this article applies.

(2) A court of this state may not recognize a foreign-country judgment if:

(a) The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(b) The foreign court did not have personal jurisdiction over the defendant; or

(c) The foreign court did not have jurisdiction over the subject matter.

(3) A court of this state need not recognize a foreign-country judgment if:

(a) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;

(b) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;

(c) The judgment or the claim for relief on which the judgment is based is repugnant to the public policy of this state or of the United States;

- (d) The judgment conflicts with another final and conclusive judgment;
  - (e) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;
  - (f) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;
  - (g) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or
  - (h) The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.
- (4) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (2) or (3) of this section exists.

**Source: L. 2008:** Entire article R&RE, p. 100, § 1, effective August 5.

## OFFICIAL COMMENT

Source: This section is based on Section 4 of the 1962 Act.

1. This Section provides the standards for recognition of a foreign-country money judgment. Section 7 sets out the effect of recognition of a foreign-country money judgment under this Act.

2. Recognition of a judgment means that the forum court accepts the determination of legal rights and obligations made by the rendering court in the foreign country. *See, e.g.* Restatement (Second) of Conflicts of Laws, Ch. 5, Topic 3, Introductory Note (recognition of foreign judgment occurs to the extent the forum court gives the judgment "the same effect with respect to the parties, the subject matter of the action and the issues involved that it has in the

state where it was rendered.") Recognition of a foreign-country judgment must be distinguished from enforcement of that judgment. Enforcement of the foreign-country judgment involves the application of the legal procedures of the state to ensure that the judgment debtor obeys the foreign-country judgment. Recognition of a foreign-country money judgment often is associated with enforcement of the judgment, as the judgment creditor usually seeks recognition of the foreign-country judgment primarily for the purpose of invoking the enforcement procedures of the forum state to assist the judgment creditor's collection of the judgment from the judgment debtor. Because the forum court cannot enforce the foreign-country judgment until it has determined that the judgment will be given

effect, recognition is a prerequisite to enforcement of the foreign-country judgment. Recognition, however, also has significance outside the enforcement context because a foreign-country judgment also must be recognized before it can be given preclusive effect under *res judicata* and collateral estoppel principles. The issue of whether a foreign-country judgment will be recognized is distinct from both the issue of whether the judgment will be enforced, and the issue of the extent to which it will be given preclusive effect.

3. Subsection 4(a) places an affirmative duty on the forum court to recognize a foreign- country money judgment unless one of the grounds for nonrecognition stated in subsection (b) or (c) applies. Subsection (b) states three mandatory grounds for denying recognition to a foreign-country money judgment. If the forum court finds that one of the grounds listed in subsection (b) exists, then it must deny recognition to the foreign-country money judgment. Subsection (c) states eight nonmandatory grounds for denying recognition. The forum court has discretion to decide whether or not to refuse recognition based on one of these grounds. Subsection (d) places the burden of proof on the party resisting recognition of the foreign-country judgment to establish that one of the grounds for nonrecognition exists.

4. The mandatory grounds for nonrecognition stated in subsection (b) are identical to the mandatory grounds stated in Section 4 of the 1962 Act. The discretionary grounds stated in subsection 4(c)(1) through (6) are based on subsection 4(b)(1) through (6) of the 1962 Act. The discretionary

grounds stated in subsection 4(c)(7) and (8) are new.

5. Under subsection (b)(1), the forum court must deny recognition to the foreign-country money judgment if that judgment was "rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law." The standard for this ground for nonrecognition "has been stated authoritatively by the Supreme Court of the United States in *Hilton v. Guyot*, 159 U.S.113, 205 (1895). As indicated in that decision, a mere difference in the procedural system is not a sufficient basis for nonrecognition. A case of serious injustice must be involved." Cmt § 4, Uniform Foreign Money-Judgment Recognition Act (1962). The focus of inquiry is not whether the procedure in the rendering country is similar to U.S. procedure, but rather on the basic fairness of the foreign-country procedure. *Kam- Tech Systems, Ltd. V. Yardeni*, 74 A.2d 644, 649 (N.J. App. 2001) (interpreting the comparable provision in the 1962 Act); *accord*, *Society of Lloyd's v. Ashenden*, 233 F.3d 473 (7<sup>th</sup> Cir. 2000) (procedures need not meet all the intricacies of the complex concept of due process that has emerged from U.S. case law, but rather must be fair in the broader international sense) (interpreting comparable provision in the 1962 Act). Procedural differences, such as absence of jury trial or different evidentiary rules are not sufficient to justify denying recognition under subsection (b)(1), so long as the essential elements of impartial administration and basic procedural fairness



have been provided in the foreign proceeding. As the U.S. Supreme Court stated in *Hilton*:

Where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect then a foreign-country judgment should be recognized. *Hilton*, 159 U.S. at 202.

6. Under section 4(b)(2), the forum court must deny recognition to the foreign-country judgment if the foreign court did not have personal jurisdiction over the defendant. Section 5(a) lists six bases for personal jurisdiction that are adequate as a matter of law to establish that the foreign court had personal jurisdiction. Section 5(b) makes clear that other grounds for personal jurisdiction may be found sufficient.

7. Subsection 4(c)(2) limits the type of fraud that will serve as a ground for denying recognition to extrinsic fraud. This provision is consistent with the interpretation of the comparable provision in subsection 4(b)(2) of the 1962 Act by the courts, which have found that only extrinsic fraud - conduct of the prevailing party that deprived the losing party of an adequate opportunity to present its case - is sufficient under the 1962 Act. Examples of extrinsic fraud would be when the plaintiff deliberately had the initiating process served on the defendant at the wrong address, deliberately gave the defendant wrong information as to the time and place of the hearing, or obtained a default judgment against the defendant based on a forged confession of judgment. When this type of fraudulent action by the plaintiff deprives the defendant of an adequate opportunity to present its case, then it provides grounds for denying recognition of the foreign-country judgment. Extrinsic fraud should be distinguished from intrinsic fraud, such as false testimony of a witness or admission of a forged document into evidence during the foreign proceeding. Intrinsic fraud does not provide a basis for denying recognition under subsection 4(c)(2), as the assertion that intrinsic fraud has occurred should be raised and dealt with in the rendering court.

8. The public policy exception in subsection 4(c)(3) is based on the public policy exception in subsection 4(b)(3) of the 1962 Act, with one difference. The public policy exception in the 1962 Act states that the relevant inquiry is whether "the [cause of action] [claim for relief] on which the

judgment is based" is repugnant to public policy. Based on this "cause of action" language, some courts interpreting the 1962 Act have refused to find that a public policy challenge based on something other than repugnancy of the foreign cause of action comes within this exception. *E.g.*, *Southwest Livestock & Trucking Co., Inc. v. Ramon*, 169 F.3d 317 (5<sup>th</sup> Cir. 1999) (refusing to deny recognition to Mexican judgment on promissory note with interest rate of 48 % because cause of action to collect on promissory note does not violate public policy ); *Guinness PLC v. Ward*, 955 F.2d 875 (4<sup>th</sup> Cir. 1992) (challenge to recognition based on post-judgment settlement could not be asserted under public policy exception); *The Society of Lloyd's v. Turner*, 303 F.3d 325 (5<sup>th</sup> Cir. 2002) (rejecting argument legal standards applied to establish elements of breach of contract violated public policy because cause of action for breach of contract itself is not contrary to state public policy); *cf.* *Bachchan v. India Abroad Publications, Inc.*, 585 N.Y.S.2d 661 (N.Y. Sup. Ct. 1992) (judgment creditor argued British libel judgment should be recognized despite argument it violated First Amendment because New York recognizes a cause of action for libel). Subsection 4(c)(3) rejects this narrow focus by providing that the forum court may deny recognition if either the cause of action or the judgment itself violates public policy. *Cf.* Restatement (Third) of the Foreign Relations Law of the United States, § 482(2)(d) (1986) (containing a similarly- worded public policy exception to recognition).

Although subsection 4(c)(3) of this Act rejects the narrow focus on the cause of action under the 1962 Act, it retains the stringent test for finding a public policy violation applied by courts interpreting the 1962 Act. Under that test, a difference in law, even a marked one, is not sufficient to raise a public policy issue. Nor is it relevant that the foreign law allows a recovery that the forum state would not allow. Public policy is violated only if recognition or enforcement of the foreign- country judgment would tend clearly to injure the public health, the public morals, or the public confidence in the administration of law, or would undermine "that sense of security for individual rights, whether of personal liberty or of private property, which any citizen ought to feel." *Hunt v. BP Exploration Co. (Libya) Ltd.*, 492 F. Supp. 885, 901 (N.D. Tex. 1980).

The language "or of the United States" in subsection 4(c)(3), which does not appear in the 1962 Act provision, makes it clear that the relevant public policy is that of both the State in which recognition is sought and that of the United States. This is the position taken by the vast majority of cases interpreting the 1962 public policy provision. *E.g.*, *Bachchan v. India Abroad Publications, Inc.*, 585 N.Y.S.2d 661 (Sup.Ct. N.Y. 1992) (British libel judgment denied recognition because it violates First Amendment).

9. Subsection 4(c)(5) allows the forum court to refuse recognition of a foreign-country judgment when the parties had a valid agreement, such as a valid forum selection clause or agreement to arbitrate,

providing that the relevant dispute would be resolved in a forum other than the forum issuing the foreign-country judgment. Under this provision, the forum court must find both the existence of a valid agreement and that the agreement covered the subject matter involved in the foreign litigation resulting in the foreign-country judgment.

10. Subsection 4(c)(6) authorizes the forum court to refuse recognition of a foreign-country judgment that was rendered in the foreign country solely on the basis of personal service when the forum court believes the original action should have been dismissed by the court in the foreign country on grounds of *forum non conveniens*.

11. Subsection 4(c)(7) is new. Under this subsection, the forum court may deny recognition to a foreign-country judgment if there are circumstances that raise substantial doubt about the integrity of the rendering court with respect to that judgment. It requires a showing of corruption in the particular case that had an impact on the judgment that was rendered. This provision may be contrasted with subsection 4(b)(1), which requires that the forum court refuse recognition to the foreign-country judgment if it was rendered under a judicial system that does not provide impartial tribunals. Like the comparable provision in subsection 4(a)(1) of the 1962 Act, subsection 4(b)(1) focuses on the judicial system of the foreign country as a whole, rather than on whether the particular judicial proceeding leading to the foreign-country judgment was impartial and fair. *See, e.g., The Society of Lloyd's v. Turner*, 303 F.3d 325, 330 (5<sup>th</sup> Cir. 2002) (interpreting the 1962 Act); *CIBC Mellon*

*Trust Co. v. Mora Hotel Corp., N.V.*, 743 N.Y.S.2d 408, 415 (N.Y. App. 2002) (interpreting the 1962 Act); *Society of Lloyd's v. Ashenden*, 233 F.3d 473, 477 (7<sup>th</sup> Cir. 2000) (interpreting the 1962 Act). On the other hand, subsection 4(c)(7) allows the court to deny recognition to the foreign-country judgment if it finds a lack of impartiality and fairness of the tribunal in the individual proceeding leading to the foreign-country judgment. Thus, the difference is that between showing, for example, that corruption and bribery is so prevalent throughout the judicial system of the foreign country as to make that entire judicial system one that does not provide impartial tribunals versus showing that bribery of the judge in the proceeding that resulted in the particular foreign-country judgment under consideration had a sufficient impact on the ultimate judgment as to call it into question.

12. Subsection 4(c)(8) also is new. It allows the forum court to deny recognition to the foreign-country judgment if the court finds that the specific proceeding in the foreign court was not compatible with the requirements of fundamental fairness. Like subsection 4(c)(7), it can be contrasted with subsection 4(b)(1), which requires the forum court to deny recognition to the foreign-country judgment if the forum court finds that the entire judicial system in the foreign country where the foreign-country judgment was rendered does not provide procedures compatible with the requirements of fundamental fairness. While the focus of subsection 4(b)(1) is on the foreign country's judicial system as a whole, the focus of

subsection 4(c)(8) is on the particular proceeding that resulted in the specific foreign-country judgment under consideration. Thus, the difference is that between showing, for example, that there has been such a breakdown of law and order in the particular foreign country that judgments are rendered on the basis of political decisions rather than the rule of law throughout the judicial system versus a showing that for political reasons the particular party against whom the foreign-country judgment was entered was denied fundamental fairness in the particular proceedings leading to the foreign-country judgment.

Subsections 4(c)(7) and (8) both are discretionary grounds for denying recognition, while subsection 4(b)(1) is mandatory. Obviously, if the entire judicial system in the foreign country fails to satisfy the requirements of impartiality and fundamental fairness, a judgment rendered in that foreign country would be so compromised that the forum court should refuse to recognize it as a matter of course. On the other hand, if the problem is evidence of a lack of integrity or fundamental fairness with regard to the particular proceeding leading to the foreign-country judgment, then there may or may not be other factors in the particular case that would cause the forum court to decide to recognize the foreign-country judgment. For example, a forum court might decide not

to exercise its discretion to deny recognition despite evidence of corruption or procedural unfairness in a particular case because the party resisting recognition failed to raise the issue on appeal from the foreign-country judgment in the foreign country, and the evidence establishes that, if the party had done so, appeal would have been an adequate mechanism for correcting the transgressions of the lower court.

13. Under subsection 4(d), the party opposing recognition of the foreign-country judgment has the burden of establishing that one of the grounds for nonrecognition set out in subsection 4(b) or (c) applies. The 1962 Act was silent as to who had the burden of proof to establish a ground for nonrecognition and courts applying the 1962 Act took different positions on the issue. *Compare* *Bridgeway Corp. v. Citibank*, 45 F.Supp. 2d 276, 285 (S.D.N.Y. 1999) (plaintiff has burden to show no mandatory basis under 4(a) for nonrecognition exists; defendant has burden regarding discretionary bases) *with* *The Courage Co. LLC v. The ChemShare Corp.*, 93 S.W.3d 323, 331 (Tex. App. 2002) (party seeking to avoid recognition has burden to prove ground for nonrecognition). Because the grounds for nonrecognition in Section 4 are in the nature of defenses to recognition, the burden of proof is most appropriately allocated to the party opposing recognition of the foreign-country judgment.

## ANNOTATION

**Foreign judgments recognized under principles of comity** are entitled to full faith and credit. *Milhoux v. Linder*, 902 P.2d 856 (Colo. App. 1995) (decided prior to 2008 repeal and reenactment).

court lacked personal jurisdiction. A court may not recognize a foreign-country judgment based on comity when mandatory grounds for nonrecognition exist. *Ledroit Law v. Kim*, 2015 COA 114, 360 P.3d 247.

**Foreign assessment may not be recognized in Colorado** when the foreign

### **13-62-105. Personal jurisdiction.**

(1) A foreign-country judgment may not be refused recognition for lack of personal jurisdiction if:

- (a) The defendant was served with process personally in the foreign country;
- (b) The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;
- (c) The defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;
- (d) The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country;
- (e) The defendant had a business office in the foreign country and the proceeding in the foreign court involved a claim for relief arising out of business done by the defendant through that office in the foreign country; or
- (f) The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a claim for relief arising out of that operation.

(2) The list of bases for personal jurisdiction in subsection (1) of this section is not exclusive. The courts of this state may recognize bases of personal jurisdiction other than those listed in subsection (1) of this section as sufficient to support a foreign-country judgment.

**Source: L. 2008:** Entire R&RE, p. 101, § 1, effective August 5.

### **OFFICIAL COMMENT**

Source: This provision is based on Section 5 of the 1962 Act. Its substance is the same as that of Section 5 of the 1962 Act, except as noted in Comment 2 below with regard to subsection 5(a)(4).

1. Under section 4(b)(2), the forum court must deny recognition to the foreign-country judgment if the foreign court did not have personal jurisdiction over the defendant. Section 5(a) lists six bases for personal jurisdiction that are adequate as a matter of law to establish that the foreign court had personal jurisdiction. Section 5(b) makes it clear that these bases of personal jurisdiction are not exclusive. The forum court may find that the foreign court had personal jurisdiction over the defendant on some other basis.

2. Subsection 5(a)(4) of the 1962 Act provides that the foreign court had personal

jurisdiction over the defendant if the defendant was "a body corporate" that "had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign state." Subsection 5(a)(4) of this Act extends that concept to forms of business organization other than corporations.

3. Subsection 5(a)(3) provides that the foreign court has personal jurisdiction over the defendant if the defendant agreed before commencement of the proceeding leading to the foreign-country judgment to submit to the jurisdiction of the foreign court with regard to the subject matter involved. Under this provision, the forum court must find both the existence of a valid agreement to submit to the foreign court's jurisdiction and that the agreement covered the subject matter involved in the foreign litigation resulting in the foreign-country judgment.

### **13-62-106. Procedure for recognition of foreign-country judgment.**

(1) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

(2) If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense.

**Source: L. 2008:** Entire article R&RE, p. 102, § 1, effective August 5.

### **OFFICIAL COMMENT**

Source: This section is new.

1. Unlike the 1962 Act, which was silent as to the proper procedure for seeking

recognition of a foreign-country judgment, Section 6 of this Act expressly sets out the ways in which the issue of recognition may

be raised. Under section 6, the issue of recognition always must be raised in a court proceeding. Thus, section 6 rejects decisions under the 1962 Act holding that the registration procedure found in the Uniform Enforcement of Foreign Judgments Act could be utilized with regard to recognition of a foreign-country judgment. *E.g.* *Society of Lloyd's v. Ashenden*, 233 F.3d 473 (7<sup>th</sup> Cir. 2000). The Enforcement Act deals solely with the *enforcement* of sister-state judgments and other judgments entitled to full faith and credit, not with the *recognition* of foreign-country judgments.

More broadly, section 6 rejects the use of any registration procedure in the context of the foreign-country judgments covered by this Act. A registration procedure represents a balance between the interest of the judgment creditor in obtaining quick and efficient recognition and enforcement of a judgment when the judgment debtor has already been provided with an opportunity to litigate the underlying issues, and the interest of the judgment debtor in being provided an adequate opportunity to raise and litigate issues regarding whether the foreign-country judgment should be recognized. In the context of sister-state judgments, this balance favors use of a truncated procedure such as that found in the Enforcement Act. Recognition of sister-state judgments normally is mandated by the Full Faith and Credit Clause. Courts recognize only a very limited number of grounds for denying full faith and credit to a sister-state judgment - that the rendering court lacked jurisdiction, that the judgment was procured by fraud, that the judgment has been

satisfied, or that the limitations period has expired. Thus, the judgment debtor with regard to a sister-state judgment normally does not have any grounds for opposing recognition and enforcement of the judgment. The extremely limited grounds for denying full faith and credit to a sister-state judgment reflect the fact such judgments will have been rendered by a court that is subject to the same due process limitations and the same overlap of federal statutory and constitutional law as the forum state's courts, and, to a large extent, the same body of court precedent and socio-economic ideas as those shaping the law of the forum state. Therefore, there is a strong presumption of fairness and competence attached to a sister-state judgment that justifies use of a registration procedure.

The balance between the benefits and costs of a registration procedure is significantly different, however, in the context of recognition and enforcement of foreign-country judgments. Unlike the limited grounds for denying full faith and credit to a sister-state judgment, this Act provides a number of grounds upon which recognition of a foreign-country judgment may be denied. Determination of whether these grounds apply requires the forum court to look behind the foreign-country judgment to evaluate the law and the judicial system under which the foreign-country judgment was rendered. The existence of these grounds for nonrecognition reflects the fact there is less expectation that foreign-country courts will follow procedures comporting with U.S. notions of fundamental fairness and jurisdiction or that those courts will

apply laws viewed as substantively tolerable by U.S. standards than there is with regard to sister-state courts. In some situations, there also may be suspicions of corruption or fraud in the foreign-country proceedings. These differences between sister-state judgments and foreign-country judgments provide a justification for requiring judicial involvement in the decision whether to recognize a foreign-country judgment in all cases in which that issue is raised. Although the threshold for establishing that a foreign-country judgment is not entitled to recognition under Section 4 is high, there is a sufficiently greater likelihood that significant recognition issues will be raised so as to require a judicial proceeding.

2. This Section contemplates that the issue of recognition may be raised either as an original matter or in the context of a pending proceeding. Subsection 6(a) provides that in order to raise the issue of recognition of a foreign-country judgment as an initial matter, the party seeking recognition must file an action for recognition of the foreign-country judgment. Subsection 6(b) provides that when the recognition issue is raised in a pending proceeding, it may be raised by counterclaim, cross-claim or affirmative defense, depending on the context in which it is raised. These rules are consistent with the way the issue of recognition most often was raised in most states under the 1962 Act.

3. An action seeking recognition of a foreign-country judgment under this Section is an action on the foreign-country judgment itself, not an action on the underlying cause of action that gave rise to that judgment. The parties to an action under Section 6 may not relitigate the merits of the underlying dispute that gave rise to the foreign-country judgment.

4. While this Section sets out the ways in which the issue of recognition of a foreign-country judgment may be raised, it is not intended to create any new procedure not currently existing in the state or to otherwise effect existing state procedural requirements. The parties to an action in which recognition of a foreign-country judgment is sought under Section 6 must comply with all state procedural rules with regard to that type of action. Nor does this Act address the question of what constitutes a sufficient basis for jurisdiction to adjudicate with regard to an action under Section 6. Courts have split over the issue of whether the presence of assets of the debtor in a state is a sufficient basis for jurisdiction in light of footnote 36 of the U.S. Supreme Court decision in *Shaffer v. Heitner*, 433 U.S. 186, 210 n.36 (1977). This Act takes no position on that issue.

5. In states that have adopted the Uniform Foreign-Money Claims Act, that Act will apply to the determination of the amount of a money judgment recognized under this Act.



### **13-62-107. Effect of recognition of foreign-country judgment.**

(1) If the court in a proceeding under section 13-62-106 finds that the foreign-country judgment is entitled to recognition under this article then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

(a) Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive; and

(b) Enforceable in the same manner and to the same extent as a judgment rendered in this state.

**Source: L. 2008:** Entire article R&RE, p. 102, § 1, effective August 5.

### **OFFICIAL COMMENT**

Source: The substance of subsection 7(1) is based on Section 3 of the 1962 Act. Subsection 7(2) is new.

1. Section 5 of this Act sets out the standards for the recognition of foreign-country judgments within the scope of this Act, and places an affirmative duty on the forum court to recognize any foreign-country judgment that meets those standards. Section 6 of this Act sets out the procedures by which the issue of recognition may be raised. This Section sets out the consequences of the decision by the forum court that the foreign-country judgment is entitled to recognition.

2. Under subsection 7(1), the first consequence of recognition of a foreign-country judgment is that it is treated as conclusive between the parties in the forum state. Section 7(1) does not attempt to establish directly the extent of that conclusiveness. Instead, it provides that the foreign-country judgment is treated as

conclusive to the same extent that a judgment of a sister state that had been determined to be entitled to full faith and credit would be conclusive. This means that the foreign-country judgment generally will be given the same effect in the forum state that it has in the foreign country where it was rendered. Subsection 7(1), however, sets out the minimum effect that must be given to the foreign-country judgment once recognized. The forum court remains free to give the foreign-country judgment a greater preclusive effect in the forum state than the judgment would have in the foreign country where it was rendered. *Cf.* Restatement (Third) of the Foreign Relations Law of the United States, § 481 cmt c (1986).

3. Under subsection 7(2), the second consequence of recognition of a foreign-country judgment is that, to the extent it grants a sum of money, it is enforceable in the forum state in accordance with the procedures for enforcement in the forum

state and to the same extent that a judgment of the forum state would be enforceable. *Cf.* Restatement (Third) of the Foreign Relations Law of the United States § 481 (1986) (judgment entitled to recognition is enforceable in accordance with the procedure for enforcement of judgments applicable where enforcement is sought). Thus, under subsection 7(2), once

recognized, the foreign-country judgment has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying a judgment of a comparable court in the forum state, and can be enforced or satisfied in the same manner as such a judgment of the forum state.

### **13-62-108. Stay of proceedings pending appeal of foreign-country judgment.**

If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

**Source: L. 2008:** Entire article R&RE, p. 102, § 1, effective August 5.

### **OFFICIAL COMMENT**

Source: This section is the same substantively as section 6 of the 1962 Act, except that it adds as an additional measure for the duration of the stay "the time for appeal expires."

1. Under Section 3 of this Act, a foreign-country judgment is not within the scope of this Act unless it is conclusive and enforceable where rendered. Thus, if the effect of appeal under the law of the foreign country in which the judgment was rendered is to prevent it from being conclusive or enforceable between the parties, the existence of a pending appeal in the foreign

country would prevent the application of this Act. Section 8 addresses a different situation. It deals with the situation in which either (1) the party seeking a stay has demonstrated that it intends to file an appeal in the foreign country, although the appeal has not yet been filed or (2) an appeal has been filed in the foreign country, but under the law of the foreign country filing of an appeal does not affect the conclusiveness or enforceability of the judgment. Section 8 allows the forum court in those situations to determine in its discretion that a stay of proceedings is appropriate.

### 13-62-109. Statute of limitations.

An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or fifteen years from the date that the foreign-country judgment became effective in the foreign country.

**Source: L. 2008:** Entire article R&RE, p. 102, § 1, effective August 5.

### OFFICIAL COMMENT

Source: This Section is new. The 1962 Act did not contain a statute of limitations. Some courts applying the 1962 Act have used the state's general statute of limitations, *e.g.*, *Vrozos v. Sarantopoulos*, 552 N.E.2d 1053 (Ill. App. 1990) (as Recognition Act contains no statute of limitations, general five-year statute of limitations applies), while others have used the statute of limitations applicable with regard to enforcement of a domestic judgment, *e.g.*, *La Societe Anonyme Goro v. Conveyor Accessories, Inc.*, 677 N.E. 2d 30 (Ill. App. 1997).

1. Under Section 3 of this Act, this Act only applies to foreign-country judgments that are conclusive, and if the judgment grants recovery of a sum of money, enforceable where rendered. Thus, if the period of effectiveness of the foreign-country judgment has expired in the foreign country where the judgment was rendered, the foreign-country judgment would not be subject to this Act. This means that the period of time during which a foreign-country judgment may be recognized under this Act normally is measured by the period of time during which that judgment is

effective (that is, conclusive and, if applicable, enforceable) in the foreign country that rendered the judgment. If, however, the foreign-country judgment remains effective for more than fifteen years after the date on which it became effective in the foreign country, Section 9 places an additional time limit on recognition of a foreign-country judgment. It provides that, if the foreign-country judgment remains effective between the parties for more than fifteen years, then an action to recognize the foreign-country judgment under this Act must be commenced within that fifteen year period.

2. Section 9 does not address the issue of whether a foreign-country judgment that can no longer be the basis of a recognition action under this Act because of the application of the fifteen-year limitations period in Section 9 may be used for other purposes. For example, a common rule with regard to judgments barred by a statute of limitations is that they still may be used defensively for purposes of offset and for their preclusive effect. The extent to which a foreign-country judgment with regard to which a recognition action is barred by Section 9 may be used

for these or other purposes is left to the other law of the forum state.

**13-62-110. Uniformity of interpretation.**

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**Source: L. 2008:** Entire article R&RE, p. 102, § 1, effective August 5.

**OFFICIAL COMMENT**

Source: This Section is substantively the same as Section 8 of the 1962 Act. The section has been rewritten to reflect current NCCUSL practice.

**13-62-111. Saving clause.**

This article does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of this article.

**Source: L. 2008:** Entire article R&RE, p. 103, § 1, effective August 5.

**OFFICIAL COMMENT**

Source: This section is based on Section 7 of the 1962 Act.

1. Section 3 of this Act provides that this Act applies only to certain foreign-country judgments that grant or deny recovery of a sum of money. The purpose of this Act is to establish the minimum standards for recognition of those judgments. Section 11 makes clear that no negative implication

should be read from the fact that this Act does not provide for recognition of other foreign-country judgments. Rather, this Act simply does not address the issue of whether foreign-country judgments not within its scope under Section 3 should be recognized. Courts are free to recognize those foreign-country judgments not within the scope of this Act under common law principles of comity or other applicable law.

**ANNOTATION**

**Annotator's note.** Since § 13-62-111 is similar to § 13-62-108 as it existed prior to the 2008 repeal and reenactment of article 62 of title 13, a relevant case construing that provision has been included in the annotations to this section.

**A foreign judgment may be recognized under the common law doctrine of comity where** defendants were represented by counsel during foreign proceedings, the foreign court had personal and subject

matter jurisdiction, there was no evidence of fraud, and defendants did not claim that they were denied the opportunity in the foreign proceedings of a full, fair, and impartial trial. *Milhoux v. Linder*, 902 P.2d 856 (Colo. App. 1995).

**Reciprocity is not required** for recognition of foreign judgments in Colorado as a matter of comity. *Milhoux v. Linder*, 902 P.2d 856 (Colo. App. 1995).

### **13-62-112. Applicability.**

This article applies to all actions commenced on or after August 5, 2008, in which the issue of recognition of a foreign-country judgment is raised.

**Source: L. 2008:** Entire article R&RE, p. 103, § 1, effective August 5.

## **13-62.1 ARTICLE 62.1**

### **Uniform Foreign-Money Claims Act**

- |                                                                          |                                                                       |
|--------------------------------------------------------------------------|-----------------------------------------------------------------------|
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| 13-62.1-102. Scope.                                                      | conversion; form of judgment.                                         |
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| 13-62.1-107. Judgments and awards on foreign-money claims;               | 13-62.1-111. Determining United States dollar value of foreign-       |

|                                                       |                                                          |
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| money claims for limited purposes.                    | 13-62.1-114. Uniformity of application and construction. |
| 13-62.1-112. Effect of currency revalorization.       | 13-62.1-115. Short title.                                |
| 13-62.1-113. Supplementary general principles of law. | 13-62.1-116. Severability clause.                        |
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### **13-62.1-101. Definitions.**

In this article:

(1) "Action" means a judicial proceeding or arbitration in which a payment in money may be awarded or enforced with respect to a foreign-money claim.

(2) "Bank-offered spot rate" means the spot rate of exchange at which a bank will sell foreign money at a spot rate.

(3) "Conversion date" means the banking day next preceding the date on which money, in accordance with this article, is:

- (a) Paid to a claimant in an action or distribution proceeding;
- (b) Paid to the official designated by law to enforce a judgment or award on behalf of a claimant; or
- (c) Used to recoup, set-off, or counterclaim in different moneys in an action or distribution proceeding.

(4) "Distribution proceeding" means a judicial or nonjudicial proceeding for the distribution of a fund in which one or more foreign-money claims is asserted and includes an accounting, an assignment for the benefit of creditors, a foreclosure, the liquidation or rehabilitation of a corporation or other entity, and the distribution of an estate, trust, or other fund.

(5) "Foreign money" means money other than money of the United States of America.

(6) "Foreign-money claim" means a claim upon an obligation to pay, or a claim for recovery of a loss, expressed in or measured by a foreign money.

(7) "Money" means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by intergovernmental agreement.

(8) "Money of the claim" means the money determined as proper pursuant to section 13-62.1-104.

(9) "Person" means an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, joint venture, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(10) "Rate of exchange" means the rate at which money of one country may be converted into money of another country in a free financial market convenient to or reasonably usable by a person obligated to pay or to state a rate of conversion. If separate rates of exchange apply to different kinds of transactions, the term means the rate applicable to the particular transaction giving rise to the foreign-money claim.

(11) "Spot rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for immediate or next day availability or for settlement by immediate payment in cash or equivalent, by charge to an account, or by an agreed delayed settlement not exceeding two days.

(12) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

**Source: L. 90:** Entire article added, p. 877, § 1, effective January 1, 1991.

#### **13-62.1-102. Scope.**

(1) This article applies only to a foreign-money claim in an action or distribution proceeding.

(2) This article applies to foreign-money issues even if other law under the conflict of laws rules of this state applies to other issues in the action or distribution proceeding.

**Source: L. 90:** Entire article added, p. 878, § 1, effective January 1, 1991.

#### **13-62.1-103. Variation by agreement.**

(1) The effect of this article may be varied by agreement of the parties made before or after commencement of an action or distribution proceeding or the entry of judgment.

(2) Parties to a transaction may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may agree to use different moneys for different aspects of the transaction. Stating the price in a foreign money for one aspect of a transaction does not alone require the use of that money for other aspects of the transaction.

**Source: L. 90:** Entire article added, p. 878, § 1, effective January 1, 1991.

**13-62.1-104. Determining money of the claim.**

(1) The money in which the parties to a transaction have agreed that payment is to be made is the proper money of the claim for payment.

(2) If the parties to a transaction have not otherwise agreed, the proper money of the claim, as in each case may be appropriate, is the money:

- (a) Regularly used between the parties as a matter of usage or course of dealing;
- (b) Used at the time of a transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or
- (c) In which the loss was ultimately felt or will be incurred by the party claimant.

**Source: L. 90:** Entire article added, p. 878, § 1, effective January 1, 1991.

**13-62.1-105. Determining amount of the money of certain contract claims.**

(1) If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date.

(2) If an amount contracted to be paid in a foreign money is to be measured by a different money at the rate of exchange prevailing on a date before default, that rate of exchange applies only to payments made within a reasonable time after default, not exceeding thirty days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date.

(3) A monetary claim is neither usurious nor unconscionable because the agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money, when received by the creditor, must equal a specified amount of the foreign money of the country of the creditor. If, because of unexcused delay in payment of a judgment or award, the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator shall amend the judgment or award accordingly.

**Source: L. 90:** Entire article added, p. 879, § 1, effective January 1, 1991.



**13-62.1-106. Asserting and defending foreign-money claim.**

- (1) A person may assert a claim in a specified foreign money. If a foreign-money claim is not asserted, the claimant makes the claim in United States dollars.
- (2) An opposing party may allege and prove that a claim, in whole or in part, is in a different money than that asserted by the claimant.
- (3) A person may assert a defense, set-off, recoupment, or counterclaim in any money without regard to the money of other claims.
- (4) The determination of the proper money of the claim is a question of law.

**Source: L. 90:** Entire article added, p. 879, § 1, effective January 1, 1991.

**13-62.1-107. Judgments and awards on foreign-money claims; times of money conversion; form of judgment.**

- (1) Except as provided in subsection (3) of this section, a judgment or award on a foreign-money claim must be stated in an amount of the money of the claim.
- (2) A judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate.
- (3) Assessed costs must be entered in United States dollars.
- (4) Each payment in United States dollars must be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.
- (5) A judgment or award made in an action or distribution proceeding on both (i) a defense, set-off, recoupment, or counterclaim and (ii) the adverse party's claim, must be netted by converting the money of the smaller into the money of the larger, and by subtracting the smaller from the larger, and specify the rates of exchange used.
- (6) A judgment substantially in the following form complies with subsection (1) of this section:

[IT IS ADJUDGED AND ORDERED, that Defendant (insert name) pay to Plaintiff (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of (insert rate - see Section 9) percent a year or, at the option of the judgment debtor, the number of United States dollars which will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of (insert amount) United States dollars.] [Note: States should insert their customary forms of judgment with appropriate modifications.]

(7) If a contract claim is of the type covered by section 13-62.1-105 (1) or (2), the judgment or award must be entered for the amount of money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars which will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

(8) A judgment must be [filed] [docketed] [recorded] and indexed in foreign money in the same manner, and has the same effect as a lien, as other judgments. It may be discharged by payment.

**Source: L. 90:** Entire article added, p. 879, § 1, effective January 1, 1991.

**Editor's note:** Section 9, which is referenced in the form in subsection (6), is found at § 13-62.1-109.

### **13-62.1-108. Conversions of foreign money in distribution proceeding.**

The rate of exchange prevailing at or near the close of business on the day the distribution proceeding is initiated governs all exchanges of foreign money in a distribution proceeding. A foreign-money claimant in a distribution proceeding shall assert its claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated.

**Source: L. 90:** Entire article added, p. 880, § 1, effective January 1, 1991.

**13-62.1-109. Pre-judgment and judgment interest.**

(1) With respect to a foreign-money claim, recovery of pre-judgment or pre-award interest and the rate of interest to be applied in the action or distribution proceeding, except as provided in subsection (2) of this section, are matters of the substantive law governing the right to recovery under the conflict-of-laws rules of this state.

(2) The court or arbitrator shall increase or decrease the amount of pre-judgment or pre-award interest otherwise payable in a judgment or award in foreign money to the extent required by the law of this state governing a failure to make or accept an offer of settlement or offer of judgment, or conduct by a party or its attorney causing undue delay or expense.

(3) A judgment or award on a foreign-money claim bears interest at the rate applicable to judgments of this state.

**Source: L. 90:** Entire article added, p. 880, § 1, effective January 1, 1991.

**13-62.1-110. Enforcement of foreign judgments.**

(1) If an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in this state as enforceable, the enforcing judgment must be entered as provided in section 13-62.1-107, whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars.

(2) A foreign judgment may be [filed] [docketed] [recorded] in accordance with any rule or statute of this state providing a procedure for its recognition and enforcement.

(3) A satisfaction or partial payment made upon the foreign judgment, on proof thereof, must be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of judgment in this state.

(4) A judgment entered on a foreign-money claim only in United States dollars in another state must be enforced in this state in United States dollars only.

**Source: L. 90:** Entire article added, p. 881, § 1, effective January 1, 1991.

**13-62.1-111. Determining United States dollar value of foreign-money claims for limited purposes.**

(1) Computations under this section are for the limited purposes of the section and do not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.

(2) For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution, or other legal process, the amount of United States dollars at issue for assessing costs, or the amount of United States dollars involved for a surety bond or other court-required undertaking, must be ascertained as provided in subsections (3) and (4) of this section.

(3) A party seeking process, costs, bond, or other undertaking under subsection (2) of this section shall compute in United States dollars the amount of the foreign money claimed from a bank-offered spot rate prevailing at or near the close of business on the banking day next preceding the filing of a request or application for the issuance of process or for the determination of costs, or an application for a bond or other court-required undertaking.

(4) A party seeking the process, costs, bond, or other undertaking under subsection (2) of this section shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation used and how it was obtained, and setting forth the calculation. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate.

**Source: L. 90:** Entire article added, p. 881, § 1, effective January 1, 1991.

**13-62.1-112. Effect of currency revalorization.**

(1) If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money.

(2) If substitution under subsection (1) of this section occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator shall amend the judgment or award by a like conversion of the former money.

**Source: L. 90:** Entire article added, p. 882, § 1, effective January 1, 1991.

**13-62.1-113. Supplementary general principles of law.**

Unless displaced by particular provisions of this article, the principles of law and equity, including the law merchant, and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes supplement its provisions.

**Source: L. 90:** Entire article added, p. 882, § 1, effective January 1, 1991.

**13-62.1-114. Uniformity of application and construction.**

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

**Source: L. 90:** Entire article added, p. 882, § 1, effective January 1, 1991.

**13-62.1-115. Short title.**

This article may be cited as the "Uniform Foreign-Money Claims Act".

**Source: L. 90:** Entire article added, p. 882, § 1, effective January 1, 1991.

**13-62.1-116. Severability clause.**

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

**Source: L. 90:** Entire article added, p. 882, § 1, effective January 1, 1991.

**13-62.1-117. Effective date.**

This article becomes effective on January 1, 1991.

**Source: L. 90:** Entire article added, p. 882, § 1, effective January 1, 1991.

**13-62.1-118. Transitional provision.**

This article applies to actions and distribution proceedings commenced after January 1, 1991.

**Source: L. 90:** Entire article added, p. 882, § 1, effective January 1, 1991.

**13-62.3 ARTICLE 62.3**

**Uniform Registration of Canadian Money Judgments Act**

- |                                                 |                                                                                         |
|-------------------------------------------------|-----------------------------------------------------------------------------------------|
| 13-62.3-101. Short title.                       | 13-62.3-108. Stay of enforcement proceedings.                                           |
| 13-62.3-102. Definitions.                       |                                                                                         |
| 13-62.3-103. Applicability.                     | 13-62.3-109. Relationship to "Uniform Foreign-country Money Judgments Recognition Act". |
| 13-62.3-104. Registration of Canadian judgment. |                                                                                         |
| 13-62.3-105. Effect of registration.            | 13-62.3-110. Uniformity of application and interpretation.                              |
| 13-62.3-106. Notice of registration.            |                                                                                         |
| 13-62.3-107. Petition to vacate registration.   | 13-62.3-111. Transitional provision.                                                    |
|                                                 | 13-62.3-112. Effective date.                                                            |

**13-62.3-101. Short title.**

This article 62.3 may be cited as the "Uniform Registration of Canadian Money Judgments Act".

**Source: L. 2020:** Entire article added, (SB 20-114), ch. 68, p. 272, § 1, effective July 1, 2021.

### **13-62.3-102. Definitions.**

In this article 62.3:

- (1) "Canada" means the sovereign nation of Canada and its provinces and territories. "Canadian" has a corresponding meaning.
- (2) "Canadian judgment" means a judgment of a court of Canada, other than a judgment that recognizes the judgment of another foreign country.

**Source: L. 2020:** Entire article added, (SB 20-114), ch. 68, p. 272, § 1, effective July 1, 2021.

### **13-62.3-103. Applicability.**

- (1) This article 62.3 applies to a Canadian judgment to the extent the judgment is within the scope of section 13-62-103, if recognition of the judgment is sought to enforce the judgment.
- (2) A Canadian judgment that grants both recovery of a sum of money and other relief may be registered under this article 62.3, but only to the extent of the grant of a sum of money.
- (3) A Canadian judgment regarding subject matter both within and not within the scope of this article 62.3 may be registered under this article 62.3, but only to the extent the judgment relates to subject matter within the scope of this article 62.3.

**Source: L. 2020:** Entire article added, (SB 20-114), ch. 68, p. 272, § 1, effective July 1, 2021.

### **13-62.3-104. Registration of Canadian judgment.**

- (1) A person seeking recognition of a Canadian judgment to enforce the judgment may register the judgment in the office of the clerk of a court in which an action for recognition of the judgment could be filed under section 13-62-106.
- (2) A registration under subsection (1) of this section must be executed by the person registering the judgment or the person's attorney and include:
  - (a) A copy of the Canadian judgment authenticated as accurate by the court that entered the judgment;
  - (b) The name and address of the person registering the judgment;

(c) If the person registering the judgment is not the person in whose favor the judgment was rendered, a statement describing the interest in the judgment of the person registering the judgment that entitles the person to seek its recognition and enforcement;

(d) The name and last-known address of the person against whom the judgment is being registered;

(e) If the judgment is of the type described in section 13-62.3-103 (2) or (3), a description of the part of the judgment being registered;

(f) The amount of the judgment or part of the judgment being registered, identifying:

(I) The amount of interest accrued as of the date of registration on the judgment or part of the judgment being registered, including the rate of interest, the part of the judgment to which interest applies, and the date when interest began;

(II) Costs and expenses included in the judgment or part of the judgment being registered, other than an amount awarded for attorney's fees; and

(III) The amount of an award of attorney's fees included in the judgment or part of the judgment being registered;

(g) The amount of post-judgment costs, expenses, and attorney's fees as of the date of registration claimed by the person registering the judgment or part of the judgment;

(h) The amount of the judgment or part of the judgment being registered that has been satisfied as of the date of registration;

(i) A statement that:

(I) The judgment is final, conclusive, and enforceable under the law of the Canadian jurisdiction in which it was rendered;

(II) The judgment or part of the judgment being registered is within the scope of this article 62.3; and

(III) If a part of the judgment is being registered, the amounts stated in the registration as required by subsections (2)(f), (2)(g), and (2)(h) of this section relate to the part;

(j) If the judgment is not in English, a certified translation of the judgment into English; and

(k) The docket fee stated in section 13-53-106.

(3) On receipt of a registration that includes the documents, information, and docket fee required by subsection (2) of this section, the clerk shall file the registration, assign a docket number, and enter the Canadian judgment in the court's docket.



(4) A registration substantially in the following form, which includes the attachments specified in the form, complies with the requirements under subsection (2) of this section for registration:

#### REGISTRATION OF CANADIAN MONEY JUDGMENT

**This completed form, together with the documents required by Subpart V, should be filed with the Clerk of the District Court. When stating a sum of money, identify the currency in which the sum is stated.**

##### **I. Identification of Canadian Judgment**

Canadian Court Rendering the Judgment: \_\_\_\_\_

Case/Docket Number in Canadian Court: \_\_\_\_\_

Name of Plaintiff: \_\_\_\_\_

Name of Defendant: \_\_\_\_\_

The Canadian Court entered the judgment on \_\_\_\_\_ [Date] in \_\_\_\_\_ [City] in \_\_\_\_\_ [Province or Territory]. The judgment includes an award for the payment of money in favor of \_\_\_\_\_ in the amount of \_\_\_\_\_.

If only part of the Canadian judgment is subject to registration (see sections 13-62.3-103 (2) and (3), Colorado Revised Statutes), describe the part of the judgment being registered. \_\_\_\_\_.

##### **II. Identification of Person Registering Judgment and Person Against Whom Judgment is Being Registered**

Name of Person Registering Judgment: \_\_\_\_\_. If the person registering the judgment is not the person in whose favor the judgment was rendered, describe the interest in the judgment of the person registering the judgment that entitles the person to seek its recognition and enforcement. \_\_\_\_\_

Address: \_\_\_\_\_

Additional Contact Information for Person Registering Judgment (optional):

Telephone Number: \_\_\_\_\_ FAX Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Name of Attorney for Person Registering Judgment, if any: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ FAX Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Name of Person Against Whom Judgment is Being Registered: \_\_\_\_\_

Address: \_\_\_\_\_ (provide the most recent address known)

Additional Contact Information for Person Against Whom Judgment is Being Registered  
(optional) (provide most recent information known):

Telephone Number: \_\_\_\_\_ FAX Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

### **III. Calculation of Amount for Which Enforcement is Sought**

The amount of the Canadian judgment or part of the judgment being registered is  
\_\_\_\_\_.

The amount of interest accrued as of the date of registration on the part of the judgment being registered is \_\_\_\_\_. The applicable rate of interest is \_\_\_\_\_. The date when interest began is \_\_\_\_\_. The part of the judgment to which the interest applies is \_\_\_\_\_.

The Canadian Court awarded costs and expenses relating to the part of the judgment being registered in the amount of \_\_\_\_\_ (exclude any amount included in the award of costs and expenses that represents an award of attorney's fees).

The Canadian Court awarded attorney's fees relating to the part of the judgment being registered in the amount of \_\_\_\_\_.

The person registering the Canadian judgment claims post-judgment costs and expenses of \_\_\_\_\_ and post-judgment attorney's fees of \_\_\_\_\_ relating to the part of the judgment being registered (include only costs, expenses, and attorney's fees incurred before registration).

The amount of the part of the judgment being registered that has been satisfied as of the date of registration is \_\_\_\_\_.

The total amount for which enforcement of the part of the judgment being registered is sought is  
\_\_\_\_\_.

### **IV. Statement of Person Registering Judgment**

I, \_\_\_\_\_ [Person Registering Judgment or Attorney for Person Registering Judgment], state:

1. The Canadian judgment is final, conclusive, and enforceable under the law of the Canadian jurisdiction in which it was rendered.

2. The Canadian judgment or part of the Canadian judgment being registered is within the scope of article 62.3 of title 13, Colorado Revised Statutes.

3. If only a part of the Canadian judgment is being registered, the amounts stated in Subpart III of the registration relate to that part.

#### **V. Items Required to be Included with Registration**

Attached are (check to signify required items are included):

\_\_\_\_\_ A copy of the Canadian judgment authenticated as accurate by the Canadian Court that entered the judgment in accordance with section 13-53-103, Colorado Revised Statutes.

\_\_\_\_\_ If the Canadian judgment is not in English, a certified translation of the judgment into English.

\_\_\_\_\_ A docket fee in the amount of \$201.00.

I declare that the information provided on this form is true and correct, except as to matters stated to be on information and belief and, as to those matters, I believe them to be true.

Submitted by: \_\_\_\_\_

Person Registering Judgment or Attorney for Person

Registering Judgment (specify whether signer is the person  
registering the judgment or that person's attorney)

Date of submission: \_\_\_\_\_

**Source: L. 2020:** Entire article added, (SB 20-114), ch. 68, p. 273, § 1, effective July 1, 2021.

#### **13-62.3-105. Effect of registration.**

(1) Subject to subsection (2) of this section, a Canadian judgment registered under section 13-62.3-104 has the same effect provided in section 13-62-107 for a judgment determined by a court to be entitled to recognition.

(2) A Canadian judgment registered under section 13-62.3-104 may not be enforced by sale or other disposition of property, or by seizure of property or garnishment, until thirty-five calendar days after service of notice of registration under section 13-62.3-106. The court for cause may provide for a shorter or longer time. This subsection (2) does not preclude use of relief available under law of this state other than this article 62.3 to prevent dissipation, disposition, or removal of property.

**Source: L. 2020:** Entire article added, (SB 20-114), ch. 68, p. 276, § 1, effective July 1, 2021.

### **13-62.3-106. Notice of registration.**

(1) A person that registers a Canadian judgment under section 13-62.3-104 shall cause notice of registration to be served on the person against whom the judgment has been registered.

(2) Notice under this section must be served in the same manner that a summons and complaint must be served in an action under section 13-62-106 seeking recognition of a foreign-country judgment.

(3) Notice under this section must include:

(a) The date of registration and court in which the judgment was registered;

(b) The docket number assigned to the registration;

(c) The name and address of:

(I) The person registering the judgment; and

(II) The person's attorney, if any;

(d) A copy of the registration, including the documents required under section 13-62.3-104 (2); and

(e) A statement that:

(I) The person against whom the judgment has been registered has thirty-five days after the date of service of notice in which to petition the court to vacate the registration; and

(II) The court for cause may provide for a shorter or longer time.

(4) Proof of service of notice under this section must be filed with the clerk of the court.

**Source: L. 2020:** Entire article added, (SB 20-114), ch. 68, p. 277, § 1, effective July 1, 2021.

### **13-62.3-107. Petition to vacate registration.**

(1) Not later than thirty-five days after notice under section 13-62.3-106 is served, the person against whom the judgment was registered may petition the court to vacate the registration. The court for cause may provide for a shorter or longer time.

(2) A petition under this section may assert only:

(a) A ground that could be asserted to deny recognition of the judgment under the "Uniform Foreign-country Money Judgments Recognition Act", article 62 of this title 13; or

(b) A failure to comply with the requirements of this article 62.3 for registration of the judgment.

(3) A petition under this section does not itself stay enforcement of the registered judgment.

(4) If the court grants a petition under this section, the registration is vacated and any act under the registration to enforce the registered judgment is void.

(5) If the court grants a petition under this section on a ground under subsection (2)(a) of this section, the court also shall render an order denying recognition of the Canadian judgment. An order rendered under this subsection (5) has the same effect as an order denying recognition to a judgment on the same ground under the "Uniform Foreign-country Money Judgments Recognition Act", article 62 of this title 13.

**Source: L. 2020:** Entire article added, (SB 20-114), ch. 68, p. 277, § 1, effective July 1, 2021.

### **13-62.3-108. Stay of enforcement proceedings.**

A person that files a petition under section 13-62.3-107 (1) to vacate registration of a Canadian judgment may request the court to stay enforcement of the judgment pending determination of the petition. The court shall grant the stay if the court determines that the person has established a likelihood of success on the merits with regard to a ground under section 13-62.3-107 (2) for vacating a registration. The court may require the person to provide security in an amount determined by the court.

**Source: L. 2020:** Entire article added, (SB 20-114), ch. 68, p. 278, § 1, effective July 1, 2021.

**13-62.3-109. Relationship to "Uniform Foreign-country Money Judgments Recognition Act".**

(1) This article 62.3 supplements the "Uniform Foreign-Country Money Judgments Recognition Act", article 62 of this title 13, and that act, other than section 13-62-106, applies to a registration under this article 62.3.

(2) A person may seek recognition of a Canadian judgment either:

(a) By registration under this article 62.3; or

(b) As provided under section 13-62-106.

(3) Subject to subsection (4) of this section, a person may not seek recognition in this state of the same judgment or part of a judgment described in section 13-62.3-103 (2) or (3) with regard to the same person under both this article 62.3 and section 13-62-106.

(4) If the court grants a petition to vacate a registration solely on a ground under section 13-62.3-107 (2)(b), the person seeking registration may:

(a) If the defect in the registration is one that can be cured, file a new registration under this article 62.3; or

(b) Seek recognition of the judgment under section 13-62-106.

**Source: L. 2020:** Entire article added, (SB 20-114), ch. 68, p. 278, § 1, effective July 1, 2021.

**13-62.3-110. Uniformity of application and interpretation.**

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**Source: L. 2020:** Entire article added, (SB 20-114), ch. 68, p. 278, § 1, effective July 1, 2021.

**13-62.3-111. Transitional provision.**

This article 62.3 applies to the registration of a Canadian judgment entered in a proceeding commenced in Canada on or after July 1, 2021.

**Source: L. 2020:** Entire article added, (SB 20-114), ch. 68, p. 279, § 1, effective July 1, 2021.

**13-62.3-112. Effective date.**

This article 62.3 takes effect July 1, 2021.

**Source: L. 2020:** Entire article added, (SB 20-114), ch. 68, p. 279, § 1, effective July 1, 2021.

## **ARTICLE 63**

### **Default Judgments Based on Affidavits**

13-63-101. Default judgments in civil  
actions - affidavit.

**13-63-101. Default judgments in civil actions - affidavit.**

(1) In every civil action in which the default of a party against whom a judgment for affirmative relief is sought has been entered, the court may enter judgment based upon affidavit of the party seeking such affirmative relief.

(2) The court may require such supporting evidence as it may deem helpful to the disposition of the issues in addition to an affidavit and may, upon its own motion, require that a formal hearing be held to determine any and all issues presented by the pleadings.

**Source: L. 82:** Entire article added, p. 296, § 1, effective July 1.

## **ARTICLE 64**

### **Health Care Availability Act**

#### **PART 1**

#### **SHORT TITLE - LEGISLATIVE DECLARATION**

13-64-101. Short title.

13-64-102. Legislative declaration.

#### **PART 2**

#### **PERIODIC PAYMENTS OF TORT JUDGMENTS**

13-64-201. Legislative declaration.

13-64-202. Definitions.

- 13-64-203. Periodic payments.
- 13-64-204. Special damages findings required.
- 13-64-205. Determination of judgment to be entered.
- 13-64-206. Periodic installment obligations.
- 13-64-207. Form of funding.
- 13-64-208. Funding the obligation.
- 13-64-209. Assignment of periodic payments.
- 13-64-210. Exemption of benefits.
- 13-64-211. Settlement agreements and consent judgments.
- 13-64-212. Satisfaction of judgment.
- 13-64-213. Effective date - applicability of part.

#### PART 3

#### FINANCIAL LIABILITY REQUIREMENTS - LIMITATIONS

- 13-64-301. Financial responsibility.
- 13-64-302. Limitation of liability - interest on damages - definition.
- 13-64-302.5. Exemplary damages - legislative declaration - limitations - distribution of damages collected.
- 13-64-303. Judgments and settlements - reported - penalties.

- 13-64-303.5. Exclusion - mental health-care facilities.
- 13-64-304. Effective date - applicability of part.

#### PART 4

#### PROCEDURES AND EVIDENCE IN MEDICAL MALPRACTICE ACTIONS

- 13-64-401. Qualifications as expert witness in medical malpractice actions or proceedings.
- 13-64-402. Collateral source evidence.
- 13-64-402.5. Evidence relating to legally protected health-care activity - legislative declaration.
- 13-64-403. Agreement for medical services - alternative arbitration procedures - form of agreement - right to rescind.

- 13-64-404. Effective date - applicability of part.

#### PART 5

#### LIMITATION ON ACTIONS BROUGHT

- 13-64-501. Definitions.
- 13-64-502. Limitation on actions.
- 13-64-503. Effective date - applicability of part.



## PART 1

### SHORT TITLE - LEGISLATIVE DECLARATION

#### **13-64-101. Short title.**

This article shall be known and may be cited as the "Health Care Availability Act".

**Source: L. 88:** Entire article added, p. 612, § 1, effective July 1.

#### **13-64-102. Legislative declaration.**

(1) The general assembly determines and declares that it is in the best interests of the citizens of this state to assure the continued availability of adequate health-care services to the people of this state by containing the significantly increasing costs of malpractice insurance for medical care institutions and licensed medical care professionals, and that such is rationally related to a legitimate state interest. To attain this goal and in recognition of the exodus of professionals from health-care practice or from certain portions or specialties thereof, the general assembly finds it necessary to enact this article limited to the area of medical malpractice to preserve the public peace, health, and welfare.

(2) The general assembly further determines and declares:

(a) The purpose of enacting the "Health Care Availability Act" and amendments thereto is to clearly and unequivocally state the intent of the general assembly that, in order to promote the purposes set forth in subsection (1) of this section, the limitations of liability set forth in section 13-64-302 are hereby reaffirmed; and

(b) All noneconomic damages of any kind whatsoever, whether direct or derivative, including but not limited to grief, loss of companionship, pain and suffering, inconvenience, emotional stress, impairment of quality of life, physical impairment, disfigurement, and damages for any other nonpecuniary harm awarded in a medical malpractice action, shall not exceed the limitations on noneconomic loss or injury specified in section 13-64-302.

**Source: L. 88:** Entire article added, p. 612, § 1, effective July 1. **L. 2003:** Entire section amended, p. 1788, § 3, effective July 1.

## PART 2

### PERIODIC PAYMENTS OF TORT JUDGMENTS

**Law reviews:** For article, "1988 Update on Colorado Tort Reform Legislation -- Part I", see 17 Colo. Law. 1719 (1988); for article, "1990 Update on Colorado Tort Reform Legislation", see 19 Colo. Law. 1529 (1990).

#### **13-64-201. Legislative declaration.**

- (1) The general assembly declares the purposes of enacting this part 2 are to:
  - (a) Alleviate the practical problems incident to the unpredictability of future losses;
  - (b) Effectuate more precise awards of damages for actual losses;
  - (c) Pay damages as the losses are found to accrue;
  - (d) Assure that payments of damages more nearly serve the purposes for which they are awarded;
  - (e) Reduce the burden on public assistance costs created by the dissipation of lump-sum payments; and
  - (f) Conform to the income tax policies in the federal "Internal Revenue Code of 1986" and the laws of this state with respect to compensation for personal injuries.

**Source: L. 88:** Entire article added, p. 613, § 1, effective July 1.

#### **13-64-202. Definitions.**

As used in this part 2, unless the context otherwise requires:

- (1) "Economic loss" means pecuniary harm for which damages are recoverable under the laws of this state.
- (2) "Future damages" means damages of any kind arising from personal injuries which the trier of fact finds will accrue after the damages findings are made.
- (3) "Health-care institution" means any licensed or certified hospital, health-care facility, dispensary, other institution for the treatment or care of the sick or injured, or a laboratory certified under the federal "Clinical Laboratories Improvement Act of 1967", as amended, 42 U.S.C. sec. 263a, to perform high complexity testing.

(4) (a) "Health-care professional" means any person licensed in this state or any other state to practice medicine, chiropractic, nursing, physical therapy, podiatry, dentistry, pharmacy, optometry, or other healing arts. The term includes any professional corporation or other professional entity comprised of such health-care providers as permitted by the laws of this state.

(b) Repealed.

(c) Nothing in this subsection (4) shall be construed to create an exception to the corporate practice of medicine doctrine.

(5) "Noneconomic loss" means nonpecuniary harm for which damages are recoverable under the laws of this state, but the term does not include punitive or exemplary damages.

(6) "Past damages" means damages that have accrued before the damages findings are made, including any punitive or exemplary damages allowed by the laws of this state.

(7) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the judgment is entered.

(8) "Qualified insurer" means an insurance company licensed to do business in this state or any self-insurer, assignee, plan, or arrangement approved by the court.

**Source:** **L. 88:** Entire article added, p. 613, § 1, effective July 1. **L. 93:** (4) amended, p. 1920, § 4, effective July 1. **L. 2003:** (4) amended, p. 1600, § 4, effective July 1. **L. 2004:** (3) amended, p. 966, § 5, effective May 21.

**Editor's note:** Subsection (4)(b) provided for the repeal of subsection (4)(b), effective July 1, 1996. (See L. 93, p. 1920.)

**Cross references:** For the legislative declaration contained in the 2003 act amending subsection (4), see section 1 of chapter 240, Session Laws of Colorado 2003.

## ANNOTATION

**Physical impairment is a recoverable item of damages under Colorado law as used in subsection (5).** Dupont v. Preston, 9

P.3d 1193 (Colo. App. 2000), aff'd, 35 P.3d 433 (Colo. 2001).

**Noneconomic damages for physical impairment and disfigurement are not included in the definition of noneconomic**

**loss contained in § 13-64-302.** Preston v. Dupont, 35 P.3d 433 (Colo. 2001).

**13-64-203. Periodic payments.**

(1) In any civil action for damages in tort brought against a health-care professional or a health-care institution, the trial judge shall enter a judgment ordering that awards for future damages be paid by periodic payments rather than by a lump-sum payment if the award for future damages exceeds the present value of one hundred fifty thousand dollars, as determined by the court.

(2) In any such action in which the award for future damages is one hundred fifty thousand dollars or less, present value, the trial judge may order that awards for future damages be paid by periodic payments.

**Source: L. 88:** Entire article added, p. 614, § 1, effective July 1.

**ANNOTATION**

**Law reviews.** For article, "Health Care Decisions", see 30 Colo. Law. 91 (Aug. 2001).  
Litigation in Colorado: A Survey of Recent

**13-64-204. Special damages findings required.**

(1) If liability is found in a trial under this part 2, the trier of fact, in addition to other appropriate findings, shall make separate findings for each claimant specifying the amount of:

(a) Any past damages for each of the following types:

(I) Medical and other costs of health care;

(II) Other economic loss except loss of earnings;

(III) Loss of earnings; and

(IV) Noneconomic loss;

(b) Any future damages and the period of time over which they will be paid, for each of the following types:

(I) Medical and other costs of health care;

(II) Other economic loss except loss of future earnings which would be incurred for the life of the claimant or any lesser period;

(III) Loss of future earnings which would be incurred for the work life expectancy of the claimant or a lesser period; and

(IV) Noneconomic loss which would be incurred for the life of the claimant or any lesser period.

(2) The calculation of all future damages under subparagraphs (I), (II), and (IV) of paragraph (b) of subsection (1) of this section shall reflect the costs and losses during the period of time, including life expectancy, if appropriate, that the claimant will sustain those costs and losses. The calculation of loss under subparagraph (III) of paragraph (b) of subsection (1) of this section shall be based on loss during the period of time the claimant would have earned income but for the injury upon which the claim is based.

(3) The fact that payment of any judgment will be paid by periodic payments shall not be disclosed to a jury.

**Source: L. 88:** Entire article added, p. 614, § 1, effective July 1.

#### ANNOTATION

**Law reviews.** For article, "Health Care Litigation in Colorado: A Survey of Recent Decisions", see 30 Colo. Law. 91 (Aug. 2001).

**The Health Care Availability Act limits the total recovery for all noneconomic loss or injury to \$250,000, including any such loss or injury resulting from physical impairment or disfigurement as set forth in § 13-21-102.5.** Plaintiffs may not recover for a separate category of damages for physical impairment and disfigurement in addition to the statutory categories set forth in this section. Ledstrom by and through Ledstrom v. Keeling, 10 F. Supp. 2d 1195 (D. Colo. 1998).

**This section does not prohibit recovery for physical impairment.** Damages for physical impairment are recoverable under the laws of this state as either economic or noneconomic loss and court did not err in instructing jury to determine separately the amount of past damages attributable to any physical impairment and any future damages allocable to any physical impairment. Dupont v. Preston, 9 P.3d 1193 (Colo. App. 2000), aff'd, 35 P.3d 433 (Colo. 2001).

**This section requires determination of present value of future damages but does not require presentation of expert testimony as to the calculation of present value.** Dupont v. Preston, 9 P.3d 1193 (Colo.

**13-64-205. Determination of judgment to be entered.**

(1) In order to determine what judgment is to be entered on a verdict requiring findings of special damages under this part 2, the court shall proceed as follows:

(a) The court shall apply to the findings of past and future damages any applicable rules of law, including setoffs, credits, comparative fault, additurs, and remittiturs in calculating the respective amounts of past and future damages each claimant is entitled to recover and each party is obligated to pay. The court shall preserve the rights of any subrogee to be paid in a lump sum.

(b) The court shall specify the payment of attorney fees and litigation expenses in a manner separate from the periodic installments payable to the claimant, either in a lump sum or by periodic installments, pursuant to any agreement entered into between the claimant or beneficiary and his attorney, computed in accordance with the applicable principles of law.

(c) The court shall enter judgment in a lump sum for past damages and for any damages payable in lump sum or otherwise under paragraphs (a) and (b) of this subsection (1).

(d) After hearing relevant expert testimony, the jury shall determine the present value of future damages and, except as provided in paragraphs (e) and (f) of this subsection (1), the court shall enter judgment for the periodic payment of future damages. The court, in considering evidence of the need for one or more future major medical proceedings or services, may enter judgment for lump-sum payment therefor, payable either immediately or at some designated date or dates in the future.

(e) Upon petition of a party before entry of judgment and a finding of incapacity to fund the periodic payments, the court, at the election of the claimant or at the election of the beneficiaries in an action for wrongful death, shall enter a judgment for the present value of the periodic payments.

(f) The plaintiff who meets the criteria set forth in this subsection (1) may elect to receive the immediate payment to the plaintiff of the present value of the future damage award in a lump-sum amount in lieu of periodic payments. In order to exercise this right, the plaintiff must either:

(I) (A) Have reached his or her eighteenth birthday by the time the periodic payment order is entered;

(B) Not be an incapacitated person, as defined in section 15-14-102 (5), C.R.S.; and

(C) Have been provided financial counseling and must be making an informed decision; or

(II) Be a person under disability who has a legal representative authorized to take action on his or her behalf, as described in section 13-81-102.

(2) For purposes of paragraph (f) of subsection (1) of this section, "legal representative", "person under disability", and "take action" shall have the same meanings as provided in section 13-81-101.

**Source:** **L. 88:** Entire article added, p. 614, § 1, effective July 1. **L. 2000:** (1)(f)(II) amended, p. 1833, § 6, effective January 1, 2001. **L. 2007:** (1)(f) amended and (2) added, p. 172, § 2, effective August 3.

**Cross references:** For the legislative declaration contained in the 2007 act amending subsection (1)(f) and enacting subsection (2), see section 1 of chapter 49, Session Laws of Colorado 2007.

#### ANNOTATION

**Law reviews.** For article, "Health Care Litigation in Colorado: A Survey of Recent Decisions", see 30 Colo. Law. 91 (Aug. 2001).

**Statute as amended in 2007 is not unconstitutional special legislation.** By covering all minor and incapacitated persons who receive large medical malpractice verdicts, the statute plainly has general future applicability. *Vitetta v. Corrigan*, 240 P.3d 322 (Colo. App. 2009).

**Subsection (1)(f) is rationally related to a legitimate government objective and, therefore, is constitutional and does not violate the respondent's equal protection rights.** Protecting "incapacitated persons represented by conservators" from prematurely exhausting their judgments is a legitimate governmental objective and subsection (1)(f) is rationally related to this

legitimate governmental objective. *HealthONE v. Rodriguez ex rel. Rodriguez*, 50 P.3d 879 (Colo. 2002); *Garhart v. Columbia/HealthONE, L.L.C.*, 95 P.3d 571 (Colo. 2004).

**Subsection (1)(f) excludes an "incapacitated person" from those who may elect to receive a lump-sum payment regardless of whether such person also is a "protected person".** *Rodriguez ex rel. Rodriguez v. HealthONE*, 24 P.3d 9 (Colo. App. 2000), rev'd on other grounds, 50 P.3d 879 (Colo. 2002); *Garhart v. Columbia/HealthONE, L.L.C.*, 95 P.3d 571 (Colo. 2004).

**Subsection (1)(b) does not preclude or affect a prevailing defendant's right to recover costs** and does not imply a repeal of § 13-16-105. *Mullins v. Kessler*, 83 P.3d 1203 (Colo. App. 2003).

**Court construed the Health Care Availability Act in harmony with § 13-16-105 and C.R.C.P. 54(d) to allow a prevailing**

defendant to recover costs in a medical negligence action. *Mullins v. Kessler*, 83 P.3d 1203 (Colo. App. 2003).

**13-64-206. Periodic installment obligations.**

(1) A judgment for periodic payments under this part 2 shall provide that:

(a) Such periodic payments are fixed and determinable as to amount and time of payment;

(b) Such periodic payments cannot be accelerated, deferred, increased, or decreased by the recipient of such payments; and

(c) The recipient of such payments shall be a general creditor of the qualified insurer.

(2) Unless the court directs otherwise and the parties otherwise agree, payments shall be scheduled at one-month intervals. Payments for damages accruing during the scheduled intervals are due at the beginning of the intervals. For good cause shown, the court may direct that periodic payments shall continue for an initial term of years notwithstanding the death of the judgment creditor during that term.

(3) Money damages awarded for loss of future earnings shall not be reduced or payments terminated by reason of the death of the judgment creditor. Any such remaining periodic payments shall be paid to the heirs and devisees of the judgment creditor. Payments for future damages other than loss of future earnings shall cease at the death of the judgment creditor.

**Source: L. 88:** Entire article added, p. 615, § 1, effective July 1.

**ANNOTATION**

**Although the federal government is not subject to the Colorado Health Care Availability Act (HCAA), under the Federal Tort Claims Act the government is to be treated in the same manner and to the same extent as a private individual under like circumstances.** Therefore the

government was entitled to receive a reversionary interest in that part of an award to a seriously injured child resulting from the government's negligence that would approximate the result contemplated by the HCAA. *Hill v. U.S.*, 81 F.3d 118 (10th Cir. 1996).



### **13-64-207. Form of funding.**

(1) A judgment for periodic payments entered in accordance with this part 2 shall provide for payments to be funded in one or more of the following forms approved by the court:

(a) Annuity contract issued by a company licensed to do business as an insurance company under the laws of this state;

(b) An obligation or obligations of the United States;

(c) Evidence of applicable and collectible liability insurance from one or more qualified insurers;

(d) An agreement by one or more personal injury liability assignees to assume the obligation of the judgment debtor;

(e) An obligation of the state of Colorado or of a public entity other than the state which is self-insured as provided in section 24-10-115, 24-10-115.5, or 24-10-116, C.R.S.; or

(f) Any other satisfactory form of funding.

(2) The court shall require that the annuity contract or other form of funding permitted by subsection (1) of this section show that portion of each periodic payment which is attributable to loss of future earnings and that portion attributable to all other future damages.

**Source: L. 88:** Entire article added, p. 616, § 1, effective July 1.

### **ANNOTATION**

**Section gives discretion to trial court in entering its judgment for periodic payments.** Trial court not required to approve an order allowing defendant to purchase an annuity at a cost less than the

jury's present value award even if the annuity pays the plaintiff the equivalent of the future value of damages. Garhart ex rel. Tinsman v. Columbia/HealthONE, L.L.C., 168 P.3d 512 (Colo. App. 2007).

### **13-64-208. Funding the obligation.**

(1) If the court enters a judgment for periodic payments under this part 2, then each party liable for all or a portion of the judgment, unless found to be incapable of doing so, shall separately or jointly with one or more others provide the funding for the periodic payments in a form prescribed in section 13-64-207, within sixty days after the date the judgment is entered. A liability insurer having a contractual obligation and any other person adjudged to have an

obligation to pay all or part of a judgment for periodic payments on behalf of a judgment debtor is obligated to provide such funding to the extent of its contractual or adjudged obligation if the judgment debtor has not done so.

(2) A judgment creditor or successor in interest and any party having rights under subsection (4) of this section may move that the court find that funding has not been provided with regard to a judgment obligation owing to the moving party. Upon so finding, the court shall order that funding complying with this article be provided within thirty days. If funding is not provided within that time and subsection (3) of this section does not apply, then the court shall calculate the present value of the periodic payment obligation and enter a judgment for that amount in favor of the moving party.

(3) If a judgment debtor who is the only person liable for a portion of a judgment for periodic payments fails to provide funding, then the right to present value payment described in subsection (2) of this section applies only against that judgment debtor and the portion of the judgment so owed.

(4) If more than one party is liable for all or a portion of a judgment requiring funding under this part 2 and the required funding is provided by one or more but fewer than all of the parties liable, the funding requirements are satisfied and those providing funding may proceed under subsection (2) of this section to enforce rights for funding or present value payment to satisfy or protect rights of reimbursement from a party not providing funding.

**Source: L. 88:** Entire article added, p. 616, § 1, effective July 1.

### **13-64-209. Assignment of periodic payments.**

(1) An assignment by a judgment creditor or an agreement by such person to assign any right to receive periodic payments for future damages contained in a judgment entered under this part 2 is enforceable only as to amounts:

- (a) To secure payment of alimony, maintenance, or child support;
- (b) For the costs of products, services, or accommodations provided or to be provided by the assignee for medical or other health care; or
- (c) For attorney fees and other expenses of litigation incurred in securing the judgment.

**Source: L. 88:** Entire article added, p. 617, § 1, effective July 1.

**13-64-210. Exemption of benefits.**

Except as provided in section 13-64-209, periodic payments for future damages contained in a judgment entered under this part 2 for loss of earnings are exempt from garnishment, attachment, execution, and any other process or claim to the extent that wages or earnings are exempt.

**Source: L. 88:** Entire article added, p. 617, § 1, effective July 1.

**13-64-211. Settlement agreements and consent judgments.**

Nothing in this part 2 is to be construed to limit or affect the settlement of actions triable under this part 2 nor shall it apply to the settlement of actions except as otherwise agreed to by the parties. Parties to an action on a claim for personal injury may, but are not required to, file with the clerk of the court in which the action is pending or, if none is pending, with the clerk of a court of competent jurisdiction over the claim a settlement agreement for future damages payable in periodic payments. The settlement agreement may provide that one or more sections of this part 2 apply to it.

**Source: L. 88:** Entire article added, p. 617, § 1, effective July 1.

**13-64-212. Satisfaction of judgment.**

Upon entry of an order by the court that the form of funding complies with section 13-64-207 and that the funding of the obligation complies with section 13-64-208, the court shall order a satisfaction of judgment and discharge of the judgment debtor.

**Source: L. 88:** Entire article added, p. 617, § 1, effective July 1.

**13-64-213. Effective date - applicability of part.**

This part 2 shall take effect July 1, 1988, and shall apply to acts or omissions occurring on or after said date.

**Source: L. 88:** Entire article added, p. 617, § 1, effective July 1.

## PART 3

### FINANCIAL LIABILITY REQUIREMENTS - LIMITATIONS

**Law reviews:** For article, "1988 Update on Colorado Tort Reform Legislation -- Part I", see 17 Colo. Law. 1719 (1988); for article, "1990 Update on Colorado Tort Reform Legislation", see 19 Colo. Law. 1529 (1990).

#### **13-64-301. Financial responsibility.**

(1) As a condition of active licensure or authority to practice in this state, every physician, dentist, dental therapist, or dental hygienist; every physician assistant; and every health-care institution as defined in section 13-64-202, except as provided in section 13-64-303.5, that provides health-care services shall establish financial responsibility, as follows:

(a) (I) (A) If a dentist, by maintaining commercial professional liability insurance coverage with an insurance company authorized to do business in this state or an eligible nonadmitted insurer allowed to insure in Colorado pursuant to article 5 of title 10, in a minimum indemnity amount of five hundred thousand dollars per incident and one million five hundred thousand dollars annual aggregate per year; except that this requirement is not applicable to a dentist who is a public employee under the "Colorado Governmental Immunity Act", article 10 of title 24.

(B) A licensed dental hygienist must maintain professional liability insurance in an amount not less than fifty thousand dollars per claim and with an aggregate liability limit for all claims during a calendar year of not less than three hundred thousand dollars; except that this requirement does not apply to a licensed dental hygienist who is a public employee under the "Colorado Governmental Immunity Act", article 10 of title 24.

(C) A licensed dental therapist must maintain professional liability insurance in an amount not less than five hundred thousand dollars per incident and one million five hundred thousand dollars annual aggregate per year; except that this requirement is not applicable to a dental therapist who is a public employee under the "Colorado Governmental Immunity Act", article 10 of title 24.

(II) The Colorado dental board, by rule, may exempt from or establish lesser financial responsibility standards than those prescribed in this section for classes of licensed dentists, dental therapists, and dental hygienists who:

(A) Perform dental services as employees of the United States government;

(B) Render limited, occasional, or no dental services;

(C) Perform less than full-time active dental services because of administrative or other nonclinical duties or partial or complete retirement; or

(D) Provide uncompensated dental care to patients but do not otherwise provide any compensated dental care to patients.

(III) The Colorado dental board may exempt from or establish lesser financial responsibility standards for a licensed dentist, dental therapist, or dental hygienist for reasons other than those described in subsection (1)(a)(II) of this section that render the limits provided in subsection (1)(a)(I) of this section unreasonable or unattainable.

(IV) Nothing in this subsection (1)(a) precludes or otherwise prohibits a licensed dentist, dental therapist, or dental hygienist from rendering appropriate patient care on an occasional basis when the circumstances surrounding the need for care so warrant.

(a.5) (I) If a physician or a physician assistant, by maintaining commercial professional liability insurance coverage with an insurance company authorized to do business in this state or an eligible nonadmitted insurer allowed to insure in Colorado pursuant to article 5 of title 10 in a minimum indemnity amount of one million dollars per incident and three million dollars annual aggregate per year; except that this requirement is not applicable to a physician or physician assistant who is a public employee under the "Colorado Governmental Immunity Act", article 10 of title 24.

(II) The Colorado medical board may, by rule, exempt from or establish lesser financial responsibility standards than those prescribed in this subsection (1)(a.5) for classes of physicians or physician assistants who:

(A) Perform medical services as employees of the United States government;

(B) Render limited or occasional medical services;

(C) Perform less than full-time active medical services because of administrative or other nonclinical duties or partial or complete retirement; or

(D) Provide uncompensated health care to patients but do not otherwise provide any compensated health care to patients.

(III) The Colorado medical board may exempt from or establish lesser financial responsibility standards for a physician or physician assistant for reasons other than those described in subsection (1)(a.5)(II) of this section that render the limits provided in subsection (1)(a.5)(I) of this section unreasonable or unattainable.

(IV) Nothing in this subsection (1)(a.5) precludes or otherwise prohibits a licensed physician or physician assistant from rendering appropriate patient care on an occasional basis when the circumstances surrounding the need for care so warrant.

(b) If a health-care institution, by maintaining, as a condition of licensure, certification, or other authority to render health-care services in this state, commercial professional liability insurance coverage with an insurance company authorized to do business in this state or an eligible nonadmitted insurer allowed to insure in Colorado pursuant to article 5 of title 10, C.R.S., in a minimum indemnity amount of five hundred thousand dollars per incident and three million dollars annual aggregate per year; except that this requirement is not applicable to a certified health-care institution that is a public entity under the "Colorado Governmental Immunity Act". In the event a health-care institution does not have a commercial professional liability insurance policy in compliance with this paragraph (b), or the limits of professional liability insurance coverage are in excess of any self-insured retention amount, or there is a deductible other than zero dollars, the health-care institution shall procure evidence that the commissioner of insurance has accepted and approved an alternative form of establishing financial responsibility in compliance with paragraph (c), (d), or (e) of this subsection (1), in accordance with applicable rules promulgated by the division of insurance. The health-care institution shall furnish evidence of alternative financial responsibility compliance to the department of public health and environment as part of the health-care institution's application for an initial or renewal license, certification, or other authority.

(c) In the alternative, by maintaining a surety bond in a form acceptable to the commissioner of insurance in the amounts set forth in paragraph (a), (a.5), or (b) of this subsection (1);

(d) As an alternative, by depositing cash or cash equivalents as security with the commissioner of insurance in such applicable amounts;

(e) As an alternative, any other security acceptable to the commissioner of insurance, which may include approved plans of self-insurance.

(2) Each such physician, physician assistant, or dentist, as a condition of receiving and maintaining an active or inactive license or other authority to provide health-care services, and each health-care institution, as a condition of receiving and maintaining an active license, certification, or other authority to provide health-care services in this state, shall furnish the appropriate authority that issues and administers the license, certification, or other authority with evidence of compliance with subsection (1) of this section. The license, certification, or other authority shall not be issued or renewed unless the health care professional or health care institution provides evidence of compliance with subsection (1) of this section to the appropriate authority that issues and administers the license, certification, or other authority.

(3) Notwithstanding the minimum amount specified in subsection (1)(a.5) of this section, if the Colorado medical board receives two or more reports pursuant to section 13-64-303 during any twelve-month period regarding a physician or physician assistant, the minimum amount of financial responsibility for that physician or physician assistant is twice the amount specified in subsection (1)(a.5) of this section. The Colorado medical board may reduce the additional

amount if the physician or physician assistant, upon motion, presents sufficient evidence to the Colorado medical board that one or more of the reports involved an action or claim that did not represent any substantial failure to adhere to accepted professional standards of care. Under these circumstances, the board may reduce the additional amount to an amount that would be fair and conscionable.

(4) (Deleted by amendment, L. 2010, (HB 10-1260), ch. 403, p. 1963, § 33, effective July 1, 2010.)

**Source:** **L. 88:** Entire article added, p. 617, § 1, effective July 1. **L. 89:** IP(1) and (1)(b) amended, p. 762, § 1, effective July 1. **L. 90:** IP(1), (1)(a), and (2) amended, p. 816, § 5, effective May 8. **L. 91:** (1)(a) amended, p. 973, § 2, effective May 6. **L. 2010:** (1)(a) and (1)(b) amended, (HB 10-1227), ch. 130, p. 428, § 1, effective April 15; IP(1), (1)(a), (1)(c), (3), and (4) amended and (1)(a.5) added, (HB 10-1260), ch. 403, p. 1963, § 33, effective July 1; (1)(a.5)(I) amended, (HB 10-1227), ch. 130, p. 429, § 2, effective July 1. **L. 2012:** (1)(a)(I), (1)(a.5)(I), and (1)(b) amended, (HB 12-1215), ch. 104, p. 356, § 11, effective August 8. **L. 2014:** IP(1)(a)(II) and (1)(a)(III) amended, (HB 14-1227), ch. 363 p. 1737, § 42, effective July 1. **L. 2016:** IP(1) and (1)(a) amended, (HB 16-1327), ch. 124, p. 353, § 3, effective August 10. **L. 2020:** IP(1), (1)(a.5)(I), IP(1)(a.5)(II), (1)(a.5)(III), (1)(a.5)(IV), (2), and (3) amended, (HB 20-1041), ch. 45, p. 155, § 2, effective March 20. **L. 2022:** IP(1), (1)(a)(I), IP(1)(a)(II), (1)(a)(III) and (1)(a)(IV) amended, (SB 22-219), ch. 381, p. 2725, § 34, effective January 1, 2023. **L. 2023:** IP(1) amended, (SB 23-083), ch. 114, p. 415, § 10, effective August 7.

**Editor's note:** Amendments to subsection (1)(a) by House Bill 10-1227 and House Bill 10-1260 were harmonized.

**Cross references:** (1) For the "Colorado Governmental Immunity Act", see article 10 of title 24.

(2) For the legislative declaration in SB 22-219, see section 1 of chapter 381, Session Laws of Colorado 2022.

## ANNOTATION

**Law reviews.** For article, "Physical Health Care Availability Act", see 28 Colo. Impairment and Disfigurement Under the Law. 65 (May 1999).

**13-64-302. Limitation of liability - interest on damages - definition.**

(1) (a) As used in this section:

(I) "Derivative noneconomic loss or injury" means noneconomic loss or injury to persons other than the person suffering the direct or primary loss or injury. "Derivative noneconomic loss or injury" does not include punitive or exemplary damages.

(II) (A) "Direct noneconomic loss or injury" means nonpecuniary harm for which damages are recoverable by the person suffering the direct or primary loss or injury, including pain and suffering, inconvenience, emotional stress, physical impairment or disfigurement, and impairment of the quality of life. "Direct noneconomic loss or injury" does not include punitive or exemplary damages.

(B) Nothing in this section shall be construed to prohibit a recovery for economic damages, whether past or future, resulting from physical impairment or disfigurement.

(b) The total amount recoverable for all damages for a course of care for all defendants in any civil action for damages in tort brought against a health-care professional, as defined in section 13-64-202, or a health-care institution, as defined in section 13-64-202, or as a result of binding arbitration, whether past damages, future damages, or a combination of both, shall not exceed the greater of one million dollars, present value per patient, or one hundred twenty-five percent of the noneconomic damages limitations set forth in section 13-21-203 (1)(b) in effect at the time the acts or omissions occurred, present value per patient, including any claim for derivative noneconomic loss or injury, of which not more than two hundred fifty thousand dollars, present value per patient, including any derivative claim, shall be attributable to direct or derivative noneconomic loss or injury; except that, if, upon good cause shown, the court determines that the present value of past and future economic damages would exceed such limitation and that the application of such limitation would be unfair, the court may award in excess of the limitation the present value of additional past and future economic damages only. The limitations of this section are not applicable to a health-care professional who is a public employee under the "Colorado Governmental Immunity Act" and are not applicable to a certified health-care institution which is a public entity under the "Colorado Governmental Immunity Act". For purposes of this section, "present value" has the same meaning as that set forth in section 13-64-202 (7). The existence of the limitations and exceptions thereto provided in this section shall not be disclosed to a jury.

(c) (I) (A) Effective July 1, 2003, the damages limitation of two hundred fifty thousand dollars described in subsection (1)(b) of this section shall be increased to three hundred thousand dollars, which increased amount shall apply to acts or omissions occurring on or after said date. It is the intent of the general assembly that the increase reflect an adjustment for inflation to the damages limitation.



(B) Effective January 1, 2025, in an action filed on or after that date that accrued on or after January 1, 2024, but before January 1, 2026, the damages limitation of three hundred thousand dollars described in subsection (1)(c)(I)(A) of this section for direct or derivative noneconomic loss or injury is increased to four hundred fifteen thousand dollars.

(C) Effective January 1, 2026, the damages limitation of four hundred fifteen thousand dollars described in subsection (1)(c)(I)(B) of this section is increased to five hundred thirty thousand dollars, which increased amount applies to acts or omissions occurring on or after January 1, 2026, but before January 1, 2027.

(D) Effective January 1, 2027, the damages limitation of five hundred thirty thousand dollars described in subsection (1)(c)(I)(C) of this section is increased to six hundred forty-five thousand dollars, which increased amount applies to acts or omissions occurring on or after January 1, 2027, but before January 1, 2028.

(E) Effective January 1, 2028, the damages limitation of six hundred forty-five thousand dollars described in subsection (1)(c)(I)(D) of this section is increased to seven hundred sixty thousand dollars, which increased amount applies to acts or omissions occurring on or after January 1, 2028, but before January 1, 2029.

(F) Effective January 1, 2029, the damages limitation of seven hundred sixty thousand dollars described in subsection (1)(c)(I)(E) of this section is increased to eight hundred seventy-five thousand dollars, which increased amount applies to acts or omissions occurring on or after January 1, 2029, but before January 1, 2030.

(G) Effective January 1, 2030, the damages limitation in subsection (1)(c)(I)(F) of this section must be adjusted for inflation as of January 1, 2030, and on January 1 every two years thereafter. The adjustments made on January 1, 2030, and on January 1 every two years thereafter must be based on the cumulative annual adjustment for inflation for each year since the effective date of the damages limitation specified in subsection (1)(c)(I)(F) of this section. The adjustments made pursuant to this subsection (1)(c)(I)(G) must be rounded upward or downward to the nearest ten-dollar increment. As used in this subsection (1)(c), "inflation" means the annual percentage change in the United States department of labor's bureau of labor statistics consumer price index for Denver-Aurora-Lakewood for all items paid by all urban consumers, or its successor index.

(II) The secretary of state shall certify the adjusted limitation on damages within fourteen days after the appropriate information is available and shall publish the adjusted amount on the secretary of state's website.

(III) The adjusted limitation on damages as of January 1, 2030, and on January 1 every two years thereafter is applicable to acts or omissions occurring on and after the specified January 1 and before the January 1 two years thereafter.

(2) In any civil action described in subsection (1) of this section, prejudgment interest awarded pursuant to section 13-21-101 that accrues during the time period beginning on the date the action accrued and ending on the date of filing of the civil action is deemed to be a part of the damages awarded in the action for the purposes of this section and is included within each of the limitations on liability that are established pursuant to subsection (1) of this section.

**Source:** **L. 88:** Entire article added, p. 619, § 1, effective July 1. **L. 95:** Entire section amended, p. 317, § 1, effective July 1. **L. 2003:** (1) amended, p. 1788, § 4, effective July 1. **L. 2004:** (1)(a)(I), (1)(a)(II)(A), and (1)(b) amended, p. 501, § 2, effective January 1, 2005. **L. 2024:** (1)(b) and (1)(c) amended, (HB 24-1472), ch. 325, p. 2176, § 6, effective January 1, 2025.

**Cross references:** (1) For the "Colorado Governmental Immunity Act", see article 10 of title 24.

(2) For the legislative declaration contained in the 2004 act amending subsections (1)(a)(I), (1)(a)(II)(A), and (1)(b), see section 1 of chapter 165, Session Laws of Colorado 2004. For the legislative declaration in HB 24-1472, see section 1 of chapter 325, Session Laws of Colorado 2024.

## ANNOTATION

**Law reviews.** For article, "Health Care Litigation in Colorado: A Survey of Recent Decisions", see 30 Colo. Law. 91 (Aug. 2001).

**Constitutional.** The provisions of this act and the damage limitations of this section do not violate the equal protection clause. *Scholz v. Metro. Pathologists, P.C.*, 851 P.2d 901 (Colo. 1993).

**Since there is no constitutional right to a civil jury trial, the Health Care Availability Act (HCAA) damage cap does not impermissibly infringe on the right to a jury trial.** *Garhart v. Columbia/HealthONE, L.L.C.*, 95 P.3d 571 (Colo. 2004).

**The HCAA damage cap does not violate separation of powers.** The cap does not interfere with the remittur authority of the courts. The court still has the authority to reduce the award by remittur. The HCAA damage cap does not infringe on the court's rule-making authority. Since the damage cap involves a substantive exercise of the general assembly's power to define and limit a cause of action, there is no infringement on court rules that relate to damages and jury awards. *Garhart v. Columbia/HealthONE, L.L.C.*, 95 P.3d 571 (Colo. 2004).

**The limitations of this section apply to any professional corporation or entity**

regardless of whether the injury was caused by a licensed health care professional or an unlicensed member of the staff. Scholz v. Metro. Pathologists, P.C., 851 P.2d 901 (Colo. 1993).

**Liability limitation can be applied to employer of licensed pharmacist who committed negligence that led to injury.** Although employer was not a licensed health care professional within the literal language of the statute, as it was neither a licensed person nor a professional corporation or professional entity comprised of licensed persons, had the licensed pharmacist who worked for employer been named as defendant, she or he would have come within the definition of a health care professional, and the liability limitation would have applied to that individual. In the context of this case, liability arose strictly from defendant's capacity as the employer of a licensed professional who committed a negligent act. Accordingly, the limitations of this section apply. Price v. Walgreen Co., 322 F. Supp. 2d 1179 (D. Colo. 2004).

**Prejudgment interest is not included in the damage cap provided in this section.** Scholz v. Metro. Pathologists, P.C., 851 P.2d 901 (Colo. 1993) (decided prior to 1995 amendment); Rudnicki v. Bianco, 2023 COA 103, 542 P.3d 1198, aff'd, 2025 CO 49, 576 P.3d 160.

**Prejudgment interest is subject to statutory damages cap.** Dupont v. Preston, 9 P.3d 1193 (Colo. App. 2000), aff'd on other grounds, 35 P.3d 433 (Colo. 2001).

**Under § 13-21-101, prejudgment interest** must be calculated based on the

amount awarded by the final judgment, regardless of the jury's determination. Ochoa v. Vered, 212 P.3d 963 (Colo. App. 2009).

**The HCAA creates a limited exception to the interest formula** regarding the accumulation of prefilings and prejudgment interest, which formula is created in § 13-21-101. Ochoa v. Vered, 212 P.3d 963 (Colo. App. 2009).

**Subsection (2) includes prefilings interest, which begins when the action has accrued and ends when the action is filed, but not prejudgment interest within the \$250,000 cap** on noneconomic damages. Ochoa v. Vered, 212 P.3d 963 (Colo. App. 2009).

**Noneconomic damages for physical impairment and disfigurement are not included in the definition of noneconomic loss contained in this section.** Preston v. Dupont, 35 P.3d 433 (Colo. 2001).

**Provisions of the act unambiguously limit recovery for noneconomic damages** against health care professionals to \$250,000 for a course of care of one patient regardless of the number of plaintiffs or the number of defendants. Evans v. Colo. Permanente Med. Grp., P.C., 902 P.2d 867 (Colo. App. 1995), aff'd, 926 P.2d 1218 (Colo. 1996).

**Limitations of damages for all defendants are governed by this act** rather than the general damages statute because of the particular type of action, medical malpractice claims, and the particular class of defendants, health care professionals, involved. Evans v. Colo. Permanente Med.

Group, P.C., 902 P.2d 867 (Colo. App. 1995), *aff'd*, 926 P.2d 1218 (Colo. 1996).

**Plaintiffs were unable to establish they were treated any differently from other persons** whose cause of action accrued at the same time and, therefore, could not establish disparate treatment for an equal protection claim. *Garhart v. Columbia/HealthONE, L.L.C.*, 95 P.3d 571 (Colo. 2004).

**A damage cap should be applied to the jury award before apportionment of the award pursuant to the jury's allocation of fault.** *Garhart v. Columbia/Healthone, L.L.C.*, 95 P.3d 571 (Colo. 2004).

**No challenge for cause for juror with specific knowledge of damages caps under HCAA** notwithstanding requirement in subsection (1) that prevents disclosure of such damage limitations to the jury. Trial court did not err in rejecting defendant's challenge for cause for prospective juror with special knowledge of the caps because this is not a ground set forth in C.R.C.P. 47 (e) for dismissal of a potential juror. *Dupont v. Preston*, 9 P.3d 1193 (Colo. App. 2000), *aff'd* on other grounds, 35 P.3d 433 (Colo. 2001).

**The \$250,000 cap on noneconomic damages in this section does not limit damages for physical impairment or disfigurement in a medical malpractice case**, and, therefore, it is proper for the court to instruct a jury to award a separate category of damages for physical impairment and disfigurement. *Preston v. Dupont*, 35 P.3d 433 (Colo. 2001).

**However, damages for physical impairment and disfigurement are subject to the HCAA's one million dollar damages limitation.** *Wallbank v. Rothenberg*, 74 P.3d 413 (Colo. App. 2003).

**Damages cap under the HCAA is not in conflict with the contract exception to the collateral source statute, § 13-21-111.6, and is thus applicable** in post-verdict proceedings to reduce damages in medical malpractice actions under this section. *Pressey v. Children's Hosp. Colo.*, 2017 COA 28, 488 P.3d 151.

**Applicable standard of review of a trial court determination of good cause and unfairness for purposes of the exception to the total damages cap is whether the trial court abused its discretion.** *Wallbank v. Rothenberg*, 140 P.3d 177 (Colo. App. 2006).

**Moving party bears burden of proving good cause and unfairness in order to exceed the cap on total damages.** *Wallbank v. Rothenberg*, 140 P.3d 177 (Colo. App. 2006).

**After making the necessary findings to exceed the statutory damages cap, a trial court may, but is not required to, award additional damages in the amount that the jury determined.** However, the court's discretion is not limitless. *Gresser v. Banner Health*, 2023 COA 108, 543 P.3d 1059, *aff'd*, 2025 CO 60M, 579 P.3d 882.

**The "good cause" and "unfairness" analysis required under subsection (1)(b) applies only to a trial court's decision to exceed the cap and not to the calculation**

**of additional damages.** *Gresser v. Banner Health*, 2023 COA 108, 543 P.3d 1059, *aff'd*, 2025 CO 60M, 579 P.3d 882.

**Trial court was correct to disregard evidence regarding injured patient's**

**insurance contract liabilities** in determining whether to exceed this section's one million dollar cap on damages. *Scholle v. Ehrichs*, 2024 CO 22, 546 P.3d 1170.

**13-64-302.5. Exemplary damages - legislative declaration - limitations - distribution of damages collected.**

(1) The general assembly hereby finds, determines, and declares that it is in the public interest to establish a consistent and uniformly applicable standard for the determination, amount, imposition, and distribution of exemplary monetary damages arising from civil actions and arbitration proceedings alleging professional negligence in the practice of medicine. It is the intent of the general assembly that any such exemplary damages serve the public purposes of deterring negligent acts and where appropriate provide a form of punishment that is in addition to the disciplinary and licensing sanctions available to the Colorado medical board.

(2) Notwithstanding any other provision of law to the contrary, the exemplary damages provided for in this section and authorized to be imposed upon a health-care professional shall be the only such damages imposed as a result of the negligence claim.

(3) In any civil action or arbitration proceeding alleging negligence against a health-care professional, exemplary damages may not be included in any initial claim for relief. A claim for such exemplary damages may be asserted by amendment to the pleadings only after the substantial completion of discovery and only after the plaintiff establishes *prima facie* proof of a triable issue. If the court or arbitrator allows such an amendment to the complaint under this subsection (3), it may also, in its discretion, permit additional discovery on the question of exemplary damages.

(4) (a) In any civil action or arbitration proceeding in which compensatory damages are assessed against a health-care professional, the judge or arbitrator, in his discretion, and only if it is shown at the trial or proceeding that the action complained of was attended by circumstances of fraud, malice, or willful and wanton conduct, may allow the trier of fact to impose reasonable exemplary damages, as provided in this subsection (4). The degree of proof shall be as provided in section 13-25-127 (2).

(b) The standards for awarding and the amount of exemplary damages, if imposed upon such health-care professional, shall be as provided in sections 13-21-102 and 13-25-127 (2).

(5) (a) No exemplary damages shall be imposed under subsection (4) of this section which were the result of the use of any drug or product approved for use by any state or federal

regulatory agency and used within the approved standards therefor, or used in accordance with standards of prudent health-care professionals.

(b) No exemplary damages shall be imposed under subsection (4) of this section which were the result of the use of any drug or product subject to the provisions of paragraph (a) of this subsection (5) when the clinically justified use of such drug or product is beyond the regulatory approvals or standards therefor and is in accordance with standards of prudent health-care professionals, and when such use has been agreed to pursuant to the written informed consent of the recipient.

(6) No exemplary damages shall be assessed against a health-care professional as a result of the acts of others unless he specifically directed the act to be done or ratified the same.

(7) For the purposes of this section, unless the context otherwise requires, "health-care professional" has the same meaning set forth in section 13-64-202 (4).

**Source:** **L. 90:** Entire section added, p. 883, § 1, effective July 1. **L. 91:** (5) amended, p. 376, § 1, effective July 1. **L. 2010:** (1) amended, (HB 10-1260), ch. 403, p. 1985, § 71, effective July 1.

#### ANNOTATION

**Trial court's failure to dismiss plaintiffs' claim for exemplary damages from plaintiffs' initial pleading was not reversible error** where claim was found to be sufficiently supported to allow its presentation in plaintiffs' case-in-chief. *Evans v. Colo. Permanente Med. Grp., P.C.*, 902 P.2d 867 (Colo. App. 1995), *aff'd in part, rev'd in part on other grounds*, 926 P.2d 1218 (Colo. 1996).

**This section plainly limits recovery only against a health care professional or a health care institution.** Because the nonparty at fault was neither of those, the court correctly refused to reduce the noneconomic damages award to the statutory limit prior to apportioning fault.

*Chavez v. Parkview Episcopal Med. Ctr.*, 32 P.3d 609 (Colo. App. 2001).

**Trial court did not err in denying plaintiff's request to amend complaint to seek exemplary damages** when materials presented amounted to a *prima facie* showing of negligence only. *Sheron v. Lutheran Med. Ctr.*, 18 P.3d 796 (Colo. App. 2000).

**While this section allows the court, in its discretion, to permit additional discovery on the question of exemplary damages,** it does not require the court to permit such discovery or to continue the trial at defendant's request. *Reigel v. SavaSeniorCare L.L.C.*, 292 P.3d 977 (Colo. App. 2011).

### **13-64-303. Judgments and settlements - reported - penalties.**

Any final judgment, settlement, or arbitration award against any health-care professional or health-care institution for medical malpractice shall be reported within fourteen days by the professional's or institution's medical malpractice insurance carrier in accordance with section 10-1-120, 10-1-120.5, 10-1-121, 10-1-124, 10-1-125, 10-1-125.3, or 10-1-125.7, or by the professional or institution if there is no commercial medical malpractice insurance coverage to the licensing agency of the health-care professional or health-care institution for review, investigation, and, where appropriate, disciplinary or other action. Any health-care professional, health-care institution, or insurance carrier that knowingly fails to report as required by this section shall be subject to a civil penalty of not more than two thousand five hundred dollars. Such penalty shall be determined and collected by the district court in the city and county of Denver. All penalties collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the general fund.

**Source:** **L. 88:** Entire article added, p. 619, § 1, effective July 1. **L. 2003:** Entire section amended, p. 623, § 38, effective July 1. **L. 2020:** Entire section amended, (HB 20-1216), ch. 190, p. 867, § 8, effective July 1; entire section amended, (HB 20-1219), ch. 300, p. 1498, § 9, effective September 1. **L. 2021:** Entire section amended, (SB 21-094), ch. 314, p. 1944, § 33, effective September 1.

**Editor's note:** Amendments to this section by HB 20-1216 and HB 20-1219 were harmonized.

**Cross references:** For the legislative declaration in HB 20-1216, see section 1 of chapter 190, Session Laws of Colorado 2020.

### **13-64-303.5. Exclusion - mental health-care facilities.**

The provisions of section 13-64-301 do not apply to any outpatient mental health-care facility, including a behavioral health safety net provider, and to any extended care facility or hospice with sixteen or fewer inpatient beds, including to nursing homes or rehabilitation facilities. The department of public health and environment shall by rule establish financial responsibility standards that are less than those prescribed in this section for classes of health-care institutions that have less risk of exposure to medical malpractice claims or for other reasons that render the limits provided in section 13-64-301 (1)(b) unreasonable or unattainable.

**Source:** **L. 89:** Entire section added, p. 762, § 2, effective July 1. **L. 94:** Entire section amended, p. 2730, § 346, effective July 1. **L. 2022:** Entire section amended, (HB 22-1278), ch. 222, p. 1588, § 218, effective July 1, 2024.

**Cross references:** For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

**13-64-304. Effective date - applicability of part.**

This part 3 shall take effect January 1, 1989, and shall apply to acts or omissions occurring on or after said date and to licenses, certification, or other authority granted on or after said date.

**Source:** **L. 88:** Entire article added, p. 620, § 1, effective July 1.

## PART 4

### PROCEDURES AND EVIDENCE IN MEDICAL MALPRACTICE ACTIONS

**Law reviews:** For article, "1988 Update on Colorado Tort Reform Legislation -- Part I", see 17 Colo. Law. 1719 (1988); for article, "1990 Update on Colorado Tort Reform Legislation", see 19 Colo. Law. 1529 (1990).

**13-64-401. Qualifications as expert witness in medical malpractice actions or proceedings.**

No person shall be qualified to testify as an expert witness concerning issues of negligence in any medical malpractice action or proceeding against a physician unless he not only is a licensed physician but can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the action or proceeding against the physician defendant, he was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the claim on the date of the incident. The court shall not permit an expert in one medical subspecialty to testify against a physician in another medical subspecialty unless, in addition to such a showing of substantial familiarity, there is a showing that the standards of care and practice in the two fields are similar. The limitations in this section



shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

**Source: L. 88:** Entire article added, p. 620, § 1, effective July 1.

#### ANNOTATION

**Doctrine of res ipsa loquitur cannot be used to avoid the requirements of this section,** at least when there is no evidence or inference that the defendant had any control over the instrumentality causing the injury. *Bilawsky v. Faseehudin*, 916 P.2d 586 (Colo. App. 1995).

**A physician with a different specialty than that of the defendant may, consistent**

**with this section, opine that the relevant standard of care is** a general standard of care common to the medical profession, applicable to any physician. *Panczner v. Fraser*, 374 F. Supp. 3d 1063 (D. Colo. 2019).

**Applied** in *Gasteazoro v. Catholic Health Init. Colo.*, 2014 COA 134, 408 P.3d 874.

#### **13-64-402. Collateral source evidence.**

(1) In any action in a court or arbitration proceeding for personal injury against a health-care provider for professional negligence, the plaintiff shall, within sixty days after the commencement thereof, serve written notice thereof to the third party payer or provider of any amount paid or payable as a medical benefit pursuant to any health, sickness, or accident insurance or plan, which provides health benefits, or any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or other health-care services, and shall file a copy thereof with the court or arbitrator. Such service shall be made pursuant to section 10-3-107 (1) or (1.5), C.R.S., or pursuant to the Colorado rules of civil procedure.

(2) If such third party payer or provider of such benefits has a right of subrogation for such payments, it shall file with the court or arbitrator written notice of such subrogated claim, without specifying a definite amount, within ninety days after receipt of the notice required in subsection (1) of this section, and transmit a copy thereof to the party plaintiff. Failure to file such written notice shall constitute a waiver of such right of subrogation as to such action.

(3) Before entering final judgment, the court shall determine the amount, if any, due the third party payer or provider and enter its judgment in accordance with such finding.

(4) The provisions of this section shall not apply to section 25.5-4-301, C.R.S.

**Source:** **L. 88:** Entire article added, p. 620, § 1, effective July 1. **L. 92:** Entire section amended, p. 269, § 1, effective April 16. **L. 2006:** (4) amended, p. 2001, § 47, effective July 1.

#### ANNOTATION

**Law reviews.** For article, "Recovery of Medical Expenses by Insured Medical Malpractice Victims", see 33 Colo. Law. 113 (July 2004).

**There is no indication that the provision in this section creating a mechanism for insurers to assert their subrogation rights for medical benefits paid to a plaintiff is meant to supplant a**

**prevailing party's right to recover costs.** Mullins v. Kessler, 83 P.3d 1203 (Colo. App. 2003).

**Court construed the Health Care Availability Act in harmony with § 13-16-105 and C.R.C.P. 54(d) to allow a prevailing defendant to recover costs in a medical negligence action.** Mullins v. Kessler, 83 P.3d 1203 (Colo. App. 2003).

#### **13-64-402.5. Evidence relating to legally protected health-care activity - legislative declaration.**

(1) It is the general assembly's intent to protect persons from liability in Colorado courts for taking actions specified in section 12-30-121, personally or professionally, that are not subject to discipline by a regulator pursuant to section 12-30-121.

(2) In any medical malpractice action brought in this state against a health-care provider licensed, registered, or certified in this state or in another state or United States territory, a court or arbitrator shall not allow evidence or witness testimony relating to professional discipline or criminal or civil charges in this state or in another state or United States territory, regardless of disposition or outcome, concerning the provision of, or assistance in the provision of, a legally protected health-care activity, as defined in section 12-30-121 (1)(d), so long as the care provided did not violate Colorado law.

**Source:** **L. 2023:** Entire section added, (SB 23-188), ch. 68, p. 245, § 8, effective April 14.

**Cross references:** For the legislative declaration in SB 23-188, see section 1 of chapter 68, Session Laws of Colorado 2023.

**13-64-403. Agreement for medical services - alternative arbitration procedures - form of agreement - right to rescind.**

(1) It is the intent of the general assembly that an arbitration agreement be a voluntary agreement between a patient and a health-care provider and no medical malpractice insurer shall require a health-care provider to utilize arbitration agreements as a condition of providing medical malpractice insurance to such health-care provider. Making the use of arbitration agreements a condition to the provision of medical malpractice insurance shall constitute an unfair insurance practice and shall be subject to the provisions, remedies, and penalties prescribed in part 11 of article 3 of title 10, C.R.S.

(1.5) Exemplary damages may be awarded in any arbitration proceeding held pursuant to this section in accordance with section 13-21-102 (1) to (3) and (6). Any award of exemplary damages in a proceeding held pursuant to this section may be modified by the district court upon petition to the district court alleging that the award of such damages was either excessive or inadequate.

(2) Any agreement for the provision of medical services which contains a provision for binding arbitration of any dispute as to professional negligence of a health-care provider that conforms to the provisions of this section shall not be deemed contrary to the public policy of this state, except as provided in subsection (10) of this section.

(3) Any such agreement shall have the following statement set forth as part of the agreement: "It is understood that any claim of medical malpractice, including any claim that medical services were unnecessary or unauthorized or were improperly, negligently, or incompetently rendered or omitted, will be determined by submission to binding arbitration in accordance with the provisions of part 2 of article 22 of this title, and not by a lawsuit or resort to court process except as Colorado law provides for judicial review of arbitration proceedings. The patient has the right to seek legal counsel concerning this agreement, and has the right to rescind this agreement by written notice to the physician within ninety days after the agreement has been signed and executed by both parties unless said agreement was signed in contemplation of the patient being hospitalized, in which case the agreement may be rescinded by written notice to the physician within ninety days after release or discharge from the hospital or other health-care institution. Both parties to this agreement, by entering into it, have agreed to the use of binding arbitration in lieu of having any such dispute decided in a court of law before a jury."

(4) Immediately preceding the signature lines for such an agreement, the following notice shall be printed in at least ten-point, bold-faced type:

**NOTE: BY SIGNING THIS AGREEMENT YOU ARE AGREEING TO HAVE ANY ISSUE OF MEDICAL MALPRACTICE DECIDED BY NEUTRAL BINDING ARBITRATION RATHER THAN BY A JURY OR COURT TRIAL.**

**YOU HAVE THE RIGHT TO SEEK LEGAL COUNSEL AND YOU HAVE THE RIGHT TO RESCIND THIS AGREEMENT WITHIN NINETY DAYS FROM THE DATE OF SIGNATURE BY BOTH PARTIES UNLESS THE AGREEMENT WAS SIGNED IN CONTEMPLATION OF HOSPITALIZATION IN WHICH CASE YOU HAVE NINETY DAYS AFTER DISCHARGE OR RELEASE FROM THE HOSPITAL TO RESCIND THE AGREEMENT.**

**NO HEALTH-CARE PROVIDER SHALL WITHHOLD THE PROVISION OF EMERGENCY MEDICAL SERVICES TO ANY PERSON BECAUSE OF THAT PERSON'S FAILURE OR REFUSAL TO SIGN AN AGREEMENT CONTAINING A PROVISION FOR BINDING ARBITRATION OF ANY DISPUTE ARISING AS TO PROFESSIONAL NEGLIGENCE OF THE PROVIDER.**

**NO HEALTH-CARE PROVIDER SHALL REFUSE TO PROVIDE MEDICAL CARE SERVICES TO ANY PATIENT SOLELY BECAUSE SUCH PATIENT REFUSED TO SIGN SUCH AN AGREEMENT OR EXERCISED THE NINETY-DAY RIGHT OF RESCISSION.**

(5) Once signed, the agreement shall govern all subsequent provision of medical services for which the agreement was signed until or unless rescinded by written notice. Written notice of such rescission may be given by a guardian or conservator of the patient if the patient is incapacitated or a minor. Where the agreement is one for medical services to a minor, it shall not be subject to disaffirmation by the minor if signed by the minor's parent or legal guardian.

(6) The patient shall be provided with a written copy of any agreement subject to the provisions of this section at the time that it is signed by the parties.

(7) No health-care provider shall refuse to provide medical care services to any patient solely because such patient refused to sign such an agreement or exercised the ninety-day right of rescission.

(8) No health-care provider shall withhold the provision of emergency medical services to any person because of that person's failure or refusal to sign an agreement containing a provision for binding arbitration of any dispute arising as to professional negligence of the provider.

(9) If a health-care provider refuses to provide medical care services to any patient in violation of subsection (7) of this section or withholds the provision of emergency medical services to any person in violation of subsection (8) of this section or fails to comply with the requirements of subsection (3) or (4) or both of this section, such refusal or withholding of services shall constitute unprofessional conduct as such term is used under the relevant licensing statute governing that particular care provider, and the appropriate authority which conducts disciplinary proceedings relating to such health-care provider shall consider and take appropriate disciplinary action against such health-care provider as provided under the relevant licensing statute.

(10) Even where it complies with the provisions of this section, such an agreement may nevertheless be declared invalid by a court if it is shown by clear and convincing evidence that:

(a) The agreement failed to meet the standards for such agreements as specified in this section; or

(b) The execution of the agreement was induced by fraud; or

(c) The patient executed the agreement as a direct result of the willful or negligent disregard of the patient's right to refrain from such execution; or

(d) The patient executing the agreement was not able to communicate effectively in spoken and written English, unless the agreement is written in his native language.

(11) No such agreement may be submitted to a patient for approval when the patient's condition prevents the patient from making a rational decision whether or not to execute such an agreement.

(12) For the purposes of this section:

(a) (I) "Health-care provider" means any person licensed or certified by the state of Colorado to deliver health care and any clinic, health dispensary, or health facility licensed by the state of Colorado. The term includes any professional corporation or other professional entity comprised of such health-care providers as permitted by the laws of this state.

(II) (A) Nothing in this subsection (12)(a) shall be construed to permit a professional service corporation, as described in section 12-240-138, to practice medicine.

(B) Nothing in this paragraph (a) shall be construed to otherwise create an exception to the corporate practice of medicine doctrine.

(b) "Professional negligence" means a negligent act or omission by a health-care provider in the rendering of professional services, which act or omission is the proximate cause of personal injury or wrongful death, as long as such services are within the scope of services for which the provider is licensed.

**Source:** **L. 88:** Entire article added, p. 620, § 1, effective July 1. **L. 89:** (1.5) added, p. 763, § 3, effective July 1. **L. 95:** (1.5) amended, p. 16, § 7, effective March 9. **L. 2003:** (12)(a) amended, p. 1600, § 5, effective July 1. **L. 2004:** (3) amended, p. 1731, § 2, effective August 4. **L. 2019:** (12)(a)(II)(A) amended, (HB 19-1172), ch. 136, p. 1667, § 74, effective October 1.

**Cross references:** For the legislative declaration contained in the 2003 act amending subsection (12)(a), see section 1 of chapter 240, Session Laws of Colorado 2003.

## ANNOTATION

**Law reviews.** For article, "Arbitration of Medical Malpractice Disputes", see 18 Colo. Law. 897 (1989). For article, "Mandatory Arbitration and the Medical Malpractice Plaintiff", see 27 Colo. Law. 77 (May 1998).

**When an arbitration provision does not comply with subsections (3) and (4), these subsections govern the arbitration provision and are not preempted by the Federal Arbitration Act.** Although the arbitration provision in the HMO contract does extend to wrongful death actions filed by a member's non-party spouse, the respondent is not bound by the arbitration provision because it does not comply with subsections (3) and (4). The Colorado Health Care Availability Act (HCAA) governs the arbitration provision because the McCarran-Ferguson Act exempts this provision from federal preemption by the Federal Arbitration Act. *Allen v. Pacheco*, 71 P.3d 375 (Colo. 2003) (disagreeing with the reasoning of the federal district court in *Morrison v. Colo. Permanente Med. Grp.* annotated below).

**A health care facility cannot enforce an arbitration agreement** if the health care facility does not substantially comply with this section by providing the patient with a written copy of the arbitration agreement that the patient signed and a representative of the health care facility does not sign the arbitration agreement itself. The health care facility must comply with both provisions in order to ensure that the patient entered into the arbitration agreement voluntarily. *Johnson v. Rowan Inc.*, 2021 COA 7, 488 P.3d 1174.

**Subsections (3) and (4) are inconsonant with, and therefore preempted by, the Federal Arbitration Act.** The Colorado Uniform Arbitration Act, § 13-22-210 et seq., places no text or form limitations on arbitration agreements. Thus, the effect of the provisions in subsection (3) and (4) is to place arbitration clauses in medical services agreements in a class apart not only from any contract but also from all other arbitration agreements. By doing so, the HCAA singularly limits their validity.

Morrison v. Colo. Permanente Med. Grp., 983 F. Supp. 937 (D. Colo. 1997).

**If dispute resolution procedures include arbitration of professional negligence claims** against health care providers who provide medical services, the patient must be notified of this fact in a manner consistent with the HCAA requirements. Evans v. Colo. Permanente Med. Grp., P.C., 902 P.2d 867 (Colo. App. 1995), *aff'd*, 926 P.2d 1218 (Colo. 1996).

**Fact that agreement to arbitrate was obtained by a health maintenance organization on behalf of a doctor and nurses** does not create a conflict with the Colorado Health Maintenance Organization Act; the HCAA applies to any agreement for the provision of medical services by a health care provider. Evans v. Colo. Permanente Med. Grp., P.C., 902 P.2d 867 (Colo. App. 1995), *aff'd*, 926 P.2d 1218 (Colo. 1996).

**A doctor, nurses, and a professional entity comprised of physicians are each a "health care provider"** within the meaning of subsection (12). Evans v. Colo. Permanente Med. Grp., P.C., 902 P.2d 867 (Colo. App. 1995), *aff'd in part, rev'd in part on other grounds*, 926 P.2d 1218 (Colo. 1996).

**Providing a copy of the agreement to the attorney-in-fact who signed the agreement on behalf of the patient satisfies subsection (6)'s requirement that the patient receive a copy of the agreement.** Moffett v. Life Care Ctrs. of Am., 187 P.3d 1140 (Colo. App. 2008), *aff'd on other grounds*, 219 P.3d 1068 (Colo. 2009).

**A person who holds a medical durable power of attorney, in selecting a long-term health care facility, has the power to execute applicable admissions forms, including arbitration agreements, unless that power is restricted by the principal.** Subsection (11) may not be construed in isolation from statutes governing powers of attorney. Moffett v. Life Care Ctrs. of Am., 187 P.3d 1140 (Colo. App. 2008), *aff'd*, 219 P.3d 1068 (Colo. 2009).

**An agent's actual authority to make health care decisions for a patient and to sign the documents necessary to admit the patient to a health care facility does not encompass the authority to bind the patient to an arbitration agreement, unless** the patient has granted the agent an unlimited power of attorney or otherwise clearly granted the agent the specific authority to bind the patient to an arbitration agreement. Fresquez v. Trinidad Inn, Inc., 2022 COA 96, 521 P.3d 399.

**The plain language of subsection (4) does not dictate the required level of compliance, strict or substantial.** Colorow Health Care, LLC v. Fischer, 2018 CO 52M, 420 P.3d 259.

**Substantial, not strict, compliance with the typeface requirements in subsection (4)** is consistent with the specific purpose of this section (ensuring that patients enter arbitration agreements voluntarily) and the general purpose of the HCAA (keeping medical malpractice costs low). Colorow Health Care, LLC v. Fischer, 2018 CO 52M, 420 P.3d 259.

**Based on the three-factor test in *Bickel v. City of Boulder*, 885 P.2d 215 (Colo. 1994), arbitration agreement between patient and health care provider that was the proper sized font but not boldface type substantially complied with subsection (4):** (1) the extent of the health

care provider's noncompliance was minimal; (2) the purpose behind the section — voluntariness — was achieved; and (3) the provider made a good faith effort to comply with the statute. *Colorow Health Care, LLC v. Fischer*, 2018 CO 52M, 420 P.3d 259.

#### **13-64-404. Effective date - applicability of part.**

This part 4 shall take effect July 1, 1988, and shall apply to acts or omissions occurring on or after said date and shall apply to agreements for medical services containing a binding arbitration provision on or after said date.

**Source: L. 88:** Entire article added, p. 623, § 1, effective July 1.

## **PART 5**

### **LIMITATION ON ACTIONS BROUGHT**

**Law reviews:** For article, "1988 Update on Colorado Tort Reform Legislation -- Part I", see 17 Colo. Law. 1719 (1988); for article, "1990 Update on Colorado Tort Reform Legislation", see 19 Colo. Law. 1529 (1990).

#### **13-64-501. Definitions.**

As used in this part 5, unless the context otherwise requires:

(1) "Health-care institution" means any licensed or certified hospital, health-care facility, dispensary, or other institution for the treatment or care of the sick or injured.

(2) "Health-care professional" means any person licensed in this state or any other state to practice medicine, chiropractic, or nursing.

**Source: L. 88:** Entire article added, p. 623, § 1, effective July 1.



**13-64-502. Limitation on actions.**

(1) No claimant, including an infant or his personal representative, parents, or next of kin, may recover for any damage or injury arising from genetic counseling and screening and prenatal care, or arising from or during the course of labor, delivery, or the period of postnatal care in a health care institution, where such damage or injury was the result of genetic disease or disorder or other natural causes, unless the claimant can establish by a preponderance of the evidence that the damage or injury could have been prevented or avoided by ordinary standard of care of the physician or other health care professional or health care institution.

(2) (a) Medical records of or any other medical information concerning a person whose alleged death or injury is the subject matter of a civil action under subsection (1) of this section shall be discoverable by a party defendant under the provisions of the Colorado rules of civil procedure and shall not be inadmissible in evidence because of the provisions of section 13-90-107 (1)(d).

(b) Medical records and information concerning such person's genetic siblings, parents, and grandparents may be discoverable as provided in paragraph (a) of this subsection (2) if the defendant, after reasonable efforts, is unable to obtain appropriate releases and makes a showing to the court of the possible relevancy of such records or information. In such case, the court may order the production of such records. If deemed necessary, the court may hold an in camera proceeding on the relevancy of such records. No liability shall attach to any physician, health care professional, or health care institution as a result of the release of such medical records or information.

**Source: L. 88:** Entire article added, p. 623, § 1, effective July 1. **L. 89:** Entire section R&RE, p. 763, § 4, effective July 1.

**ANNOTATION**

**Parents can recover damages against medical professionals who negligently misrepresented to woman patient that she was not a genetic carrier of Duchenne Muscular Dystrophy (DMD), and the**

woman relied on this information to conceive twins but would have not conceived had she known she was a carrier of DMD. *Maldonado v. GeneDx, Inc.*, 2024 COA 121, 564 P.3d 672.

**13-64-503. Effective date - applicability of part.**

This part 5 shall take effect July 1, 1988, and shall apply to acts or omissions occurring on or after said date.

**Source: L. 88:** Entire article added, p. 623, § 1, effective July 1.

## **ARTICLE 65**

### **Compensation for Certain Exonerated Persons**

- |            |                                                                                                                            |                                                                                                                        |
|------------|----------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| 13-65-101. | Definitions.                                                                                                               | monetary compensation -<br>financial literacy training                                                                 |
| 13-65-102. | Process for petitioning for<br>compensation - eligibility<br>to petition - actual<br>innocence required -<br>jurisdiction. | - penalty for lack of a<br>qualified health plan -<br>expungement of records -<br>damages awarded in civil<br>actions. |
| 13-65-103. | Compensation for certain<br>exonerated persons -                                                                           |                                                                                                                        |

#### **13-65-101. Definitions.**

As used in this article 65, unless the context otherwise requires:

(1) (a) "Actual innocence" means a finding by clear and convincing evidence by a district court pursuant to section 13-65-102 that a person is actually innocent of a crime such that:

- (I) His or her conviction was the result of a miscarriage of justice;
- (II) He or she presented reliable evidence that he or she was factually innocent of any participation in the crime at issue;
- (III) He or she did not solicit, pursuant to 18-2-301, C.R.S., the commission of the crime at issue or any crime factually related to the crime at issue;
- (IV) He or she did not conspire, pursuant to 18-2-202, C.R.S., to commit the crime at issue or any crime factually related to the crime at issue;
- (V) He or she did not act as a complicitor, pursuant to 18-1-603, C.R.S., in the commission of the crime at issue or any crime factually related to the crime at issue;
- (VI) He or she did not act as an accessory, pursuant to 18-8-105, C.R.S., in the commission of the crime at issue or any crime factually related to the crime at issue; and
- (VII) He or she did not attempt to commit, pursuant to 18-2-101, C.R.S., the crime at issue or any crime factually related to the crime at issue.

(b) A court may not reach a finding of actual innocence pursuant to this section merely:

(I) Because the court finds the evidence legally insufficient to support the petitioner's conviction;

(II) Because the court reversed or vacated the petitioner's conviction because of a legal error unrelated to the petitioner's actual innocence or because of uncorroborated witness recantation alone; or

(III) On the basis of uncorroborated witness recantation alone.

(c) As used in this subsection (1), "reliable evidence" may include but is not limited to exculpatory scientific evidence, trustworthy eyewitness accounts, and critical physical evidence.

(2) "Custodial child" means any individual:

(a) Who was conceived or adopted prior to the date upon which the exonerated person was incarcerated for the act or offense that served as the basis for his or her conviction, which conviction and incarceration is the subject of his or her petition;

(b) Whose principal residence is the home of an exonerated person;

(c) Who receives more than half of his or her financial support from the exonerated person each year; and

(d) Who is either:

(I) Less than nineteen years of age at the end of the current year; or

(II) Less than twenty-four years of age at the end of the current year and a full-time student.

(3) "Exonerated person" means a person who has been determined by a district court pursuant to section 13-65-102 to be actually innocent.

(4) "Immediate family member" means a spouse, a parent, a child, a grandparent, or a sibling of a deceased person who would be eligible for relief pursuant to section 13-65-102 if he or she were alive. The provisions of article 11 of title 15, C.R.S., shall govern which immediate family member or members have proper standing to act as a petitioner.

(5) "Incarceration" means a person's custody in a county jail or a correctional facility while he or she serves a sentence issued pursuant to a felony conviction in this state or pursuant to the person's adjudication as a juvenile delinquent for the commission of one or more offenses that would be felonies if committed by a person eighteen years of age or older. For the purposes of this section, "incarceration" includes placement as a juvenile to the custody of the state department of human services or a county department of human or social services pursuant to such an adjudication.

(6) "Personal financial management instruction course" means a personal financial management instruction course that has been approved by the United States trustee's office pursuant to 11 U.S.C. sec. 111.

(7) "Petition" means a petition for compensation based on actual innocence filed pursuant to the provisions of section 13-65-102.

(8) "Petitioner" means a person who petitions for relief pursuant to section 13-65-102. "Petitioner" includes the immediate family members of a deceased person who would be eligible for relief pursuant to section 13-65-102 if he or she were alive.

(9) "Qualified health plan" means a health plan that satisfies the definition of a qualified health plan set forth in the federal "Patient Protection and Affordable Care Act", P.L. 111-148, 42 U.S.C. 18021 (a)(1).

(10) "State's duty of monetary compensation" means the total amount of monetary compensation owed by the state to an exonerated person.

**Source:** L. 2013: Entire article added, (HB 13-1230), ch. 409, p. 2413, § 2, effective June 5.  
L. 2018: IP and (5) amended, (SB 18-092), ch. 38, p. 399, § 11, effective August 8.

**Cross references:** For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

**13-65-102. Process for petitioning for compensation - eligibility to petition - actual innocence required - jurisdiction.**

(1) (a) Notwithstanding the provisions of article 10 of title 24, C.R.S., a person who has been convicted of a felony in this state and sentenced to a term of incarceration as a result of that conviction and has served all or part of such sentence, or an immediate family member of such person, may be eligible for compensation as set forth in this article upon a finding that the person was actually innocent of the crime for which he or she was convicted.

(b) A petition for compensation based on actual innocence filed pursuant to this section is a civil claim for relief.

(2) A petition may be filed pursuant to this section only:

(a) When no further criminal prosecution of the petitioner for the crimes charged, or for crimes arising from the same criminal episode in the case that is the subject of the petition, has

been initiated by the district attorney or the attorney general and subsequent to one of the following:

(I) A court vacating or reversing all convictions in the case based on reasons other than legal insufficiency of evidence or legal error unrelated to the petitioner's actual innocence and following an order of dismissal of all charges; or

(II) A court vacating or reversing all convictions in the case based on reasons other than legal insufficiency of evidence or legal error unrelated to the petitioner's actual innocence and following an acquittal of all charges after retrial; and

(b) Either:

(I) If the conditions described in paragraph (a) of this subsection (2) are met on or after June 5, 2013, not more than two years after said conditions are met; or

(II) If the conditions described in paragraph (a) of this subsection (2) are met before June 5, 2013, not more than two years after June 5, 2013.

(3) The district court shall not declare a person to be actually innocent unless, based on evidence supporting the petitioner's allegation of innocence, including but not limited to an analysis of the person's DNA profile, the court determines that:

(a) The person committed neither the act or offense that served as the basis for the conviction and incarceration that is the subject of the petition, nor any lesser included offense thereof; and

(b) The person meets the definition of actual innocence in section 13-65-101 (1).

(4) (a) A petitioner is not eligible for compensation pursuant to this article if:

(I) He or she does not meet the definition of actual innocence in section 13-65-101 (1);

(II) He or she committed or suborned perjury during any proceedings related to the case that is the subject of the claim; or

(III) To avoid prosecution in another case for which the petitioner has not been determined to be actually innocent, he or she pled guilty in the case that served as the basis for the conviction and incarceration that is the subject of the petition.

(b) Notwithstanding subparagraphs (I) to (III) of paragraph (a) of this subsection (4), conduct described in said subparagraphs shall not include a confession or an admission that was later determined by a court of competent jurisdiction, or by stipulation of the parties, to be false or coerced by any governmental agent.

(5) (a) A petitioner shall file his or her petition in the district court in the county in which the case originated, to the district court judge who presided over the original proceeding if such

judge is available; except that, if either party objects to such judge presiding over this civil claim for relief, then another district judge of the district court shall preside over the matter.

(b) The petition shall name the state of Colorado as the respondent. The attorney general and the district attorney of the judicial district in which the case originated shall each have a separate and concurrent authority to intervene as parties to a petition, and a copy of the petition shall be served on the attorney general and the district attorney.

(c) A petition shall contain a recitation of facts necessary to an understanding of the petitioner's claim of actual innocence. The petition may be supported by DNA evidence, if applicable, expert opinion, previously unknown or unavailable evidence, and the existing court record. The petitioner shall attach to the petition:

(I) A copy of any expert report relied upon by the petitioner to support his or her claim of actual innocence;

(II) Any documentation supporting the recitation of facts in the claim;

(III) A record from the county jail, state correctional facility, or other state facility documenting the amount of time that the petitioner was incarcerated; and

(IV) A sworn affidavit of the petitioner asserting his or her actual innocence as defined in section 13-65-101 (1).

(d) Upon receipt of a petition, the attorney general and the district attorney shall each have sixty days to file a response in the district court. A joint response may be filed. The court may grant the responding party, for good cause shown, no more than one extension of time, not exceeding forty-five days, in which to file a response. The response shall contain a statement that:

(I) Based upon the petition and verifiable and substantial evidence of actual innocence, no further criminal prosecution of the petitioner for the crimes charged can or will be initiated by the district attorney or the attorney general, that no questions of fact remain as to the petitioner's actual innocence, and that the petitioner is eligible to seek compensation under the provisions of this section; or

(II) The responding party contests the nature, significance, or effect of the evidence of actual innocence, the facts related to the petitioner's alleged wrongful conviction, or whether the petitioner is eligible to seek compensation under the provisions of this section. The response shall include a recitation of facts necessary to an understanding as to why the petition is being contested.

(e) If the responding party contests the actual innocence of the petitioner, the district court may order that the responding party be allowed to retest any evidence at issue in the claim if such

evidence remains to be tested and testing such evidence will not consume the remainder of the sample.

(f) (I) If a petition is contested, the petitioner shall ensure that the district court has, or has available, the transcript from the original trial if the petitioner was convicted at trial, the post-conviction motion or appeal that resulted in a dismissal of the case that is the subject of the petition and the transcript of any hearings associated with such motion or appeal; and any other pleadings or transcripts from proceedings that the petitioner seeks the district court to consider.

(II) The district court shall use any transcripts that are within the court records for the judicial district of any proceeding involving the case that is the subject of the petition that the petitioner or the respondent wants the district court to consider.

(g) Except as otherwise provided in this section, the Colorado rules of civil procedure shall apply to petitions filed pursuant to this section. The district court may consider any relevant evidence regardless of whether it was admissible in, or excluded from, the criminal trial in which the petitioner was convicted. No evidence shall be excluded on grounds that it was seized or obtained in violation of the United States constitution or the state constitution. The district court may consider the ongoing investigation and prosecution of any other individual for the crimes committed when determining the timing and scope of the hearing if the claim is uncontested or the trial if the claim is contested.

(6) As soon as practicable given the unique circumstances of claims filed pursuant to this section, the district court shall act as follows:

(a) Upon receipt of an uncontested response to a petition, the district court shall issue a final order on the petition, finding that the petitioner is actually innocent. If the district court issues a final order pursuant to this paragraph (a), the district court shall include directions to the state court administrator to act as described in section 13-3-114.

(b) Upon receipt of a response contesting the petitioner's declaration of actual innocence or his or her eligibility for compensation regardless of petitioner's claim of actual innocence, or both, the district court shall set the matter for a trial to the district court or, at the written election of either party, to a trial to a jury of six, at which trial the burden shall be on the petitioner to show by clear and convincing evidence that he or she is actually innocent of all crimes that are the subject of the petition, and that he or she is eligible to receive compensation pursuant to this article. A trial to a jury of six must result in a unanimous verdict. Following a trial to the district court, the court shall issue a final order on the petition, which order shall include findings of fact as to whether the petitioner has established by clear and convincing evidence that he or she is actually innocent and whether the petitioner is eligible for compensation under this article. If the court finds that the petitioner is actually innocent and eligible for compensation pursuant to this article, the district court shall issue a final order awarding the petitioner compensation pursuant

to section 13-65-103. Upon a finding by a jury of actual innocence, the district court shall also issue an order awarding the petitioner compensation pursuant to section 13-65-103.

(7) (a) Either party has a right to an appeal.

(b) If the petitioner appeals the amount of compensation awarded, the state court administrator shall not delay in paying the petitioner pursuant to the directions of the district court while the appeal is pending.

(c) If the attorney general or a district attorney appeals the outcome of the trial described in subsection (6) of this section, the state court administrator shall not delay in paying the petitioner pursuant to the directions of the district court while the appeal is pending.

(d) In the event that the attorney general or district attorney prevails in an appeal, the court may take such action as is necessary to recover the amount of any compensation awarded to the petitioner pursuant to section 13-65-103.

**Source: L. 2013:** Entire article added, (HB 13-1230), ch. 409, p. 2415, § 2, effective June 5.

#### ANNOTATION

**A defendant whose felony convictions are vacated but who remains convicted of a misdemeanor in the same case is not eligible for compensation.** The term "all convictions" in subsection (2)(a) is an unambiguous term intended to be broader than mere felony convictions. If the legislature had intended a court to consider only the felonies vacated or reversed in a case in order for a petition for compensation to qualify for a district court's further consideration, it would have said so. Abu-

Nantambu-El v. State, 2018 COA 30, 433 P.3d 101.

**An error as to whether jurors unanimously agree on the act committed by a defendant,** not whether the defendant is actually innocent, is a legal error unrelated to actual innocence. If a conviction is reversed based on a legal error, the defendant is ineligible to file a petition for compensation under this section. Coyle v. State, 2021 COA 54, 492 P.3d 366.

**13-65-103. Compensation for certain exonerated persons - monetary compensation - financial literacy training - penalty for lack of a qualified health plan - expungement of records - damages awarded in civil actions.**

(1) Except as otherwise provided in this article, a district court shall direct the state court administrator to compensate an exonerated person, or an immediate family member of an



exonerated person, who is determined by a district court pursuant to section 13-65-102 to be actually innocent and eligible to receive compensation pursuant to this article.

(2) A district court that directs the state court administrator to compensate an exonerated person or an immediate family member of an exonerated person pursuant to this section shall reduce the directions to writing and include within the directions:

(a) The exonerated person's name;

(b) The date upon which the order is issued;

(c) The felony or felonies, if any, of which the exonerated person has been exonerated and each conviction or adjudication of the exonerated person, if any, that has been vacated or reversed;

(d) The date upon which the exonerated person was convicted or adjudicated and the dates during which the exonerated person was incarcerated as a result of such conviction or adjudication;

(e) A statement that the exonerated person, or the immediate family member of the exonerated person, is entitled to compensation from the state, which compensation shall include:

(I) An award of monetary compensation, as described in subsection (3) of this section;

(II) Tuition waivers at state institutions of higher education for the exonerated person and for any children and custodial children of his or hers who were conceived or legally adopted before the exonerated person was incarcerated or placed in state custody for the offense of which he or she has been exonerated, as described in section 23-1-132, C.R.S.; except that:

(A) No other immediate family members of the exonerated person shall be eligible for such tuition waivers; and

(B) Notwithstanding any other provision of this section, neither an exonerated person nor a child or custodial child of an exonerated person shall be eligible for a tuition waiver pursuant to this subparagraph (II) unless the exonerated person was wrongfully incarcerated for at least three years.

(III) Compensation for child support payments owed by the exonerated person that became due during his or her incarceration or placement in state custody, and interest on child support arrearages that accrued during his or her incarceration or placement in state custody but which have not been paid;

(IV) Reasonable attorney fees for bringing a claim under this section; and

(V) The amount of any fine, penalty, court costs, or restitution imposed upon and paid by the exonerated person as a result of his or her wrongful conviction or adjudication. This

subparagraph (V) shall not be interpreted to require the reimbursement of restitution payments by any party to whom the exonerated person made restitution payments as a result of his or her wrongful conviction or adjudication.

(f) A statement notifying the person and the state court administrator that, pursuant to section 13-3-114 (4), the exonerated person is required to complete a personal financial management instruction course before the state court administrator may issue to the exonerated person more than one annual payment of monetary compensation or a lump-sum payment, as described by section 13-3-114 (8);

(g) A statement notifying the exonerated person and the state court administrator that, pursuant to section 13-3-114, in each year in which an exonerated person receives any annual payment from the state court administrator, the exonerated person's annual payment shall be reduced by ten thousand dollars if the exonerated person fails to present to the state court administrator a policy or certificate showing that the exonerated person has purchased or otherwise acquired a qualified health plan for himself or herself and his or her dependents that is valid for at least six months.

(3) (a) Except as limited by the provisions of this article, an exonerated person shall receive monetary compensation in an amount of seventy thousand dollars for each year that he or she was incarcerated for the felony of which he or she has been exonerated. In addition to this amount, an exonerated person shall receive compensation in an amount of:

(I) Fifty thousand dollars for each year that he or she was incarcerated and sentenced to execution pursuant to part 12 of article 1.3 of title 18, C.R.S.; and

(II) Twenty-five thousand dollars for each year that he or she served on parole, on probation, or as a registered sex offender after a period of incarceration as a result of the felony of which he or she has been exonerated and not for any other criminal offense.

(b) Except as limited by the provisions of this article, in addition to the amount described in paragraph (a) of this subsection (3), an exonerated person shall receive compensation in a prorated amount that is proportionate to the length of:

(I) Each partial year that he or she was incarcerated or placed in state custody;

(II) Each partial year that he or she was incarcerated and sentenced to execution pursuant to part 12 of article 1.3 of title 18, C.R.S.; and

(III) Each partial year that he or she served on parole, on probation, or as a registered sex offender after a period of incarceration as a result of the felony of which he or she has been exonerated and not for any other criminal offense.

(4) A court that directs the state court administrator to compensate an exonerated person or an immediate family member of an exonerated person shall submit copies of the directions to:

- (a) The exonerated person or immediate family member of the exonerated person;
- (b) The state court administrator;
- (c) The attorney general;
- (d) The district attorney of the judicial district in which the case originated;
- (e) The state department of corrections;
- (f) The state department of labor and employment;
- (g) The state department of revenue; and
- (h) The Colorado commission on higher education.

(5) Notwithstanding any provision of this article to the contrary, a court shall not direct the state court administrator to compensate any exonerated person or immediate family member of an exonerated person for any period of incarceration during which the person was concurrently serving a sentence for an offense of which he or she has not been exonerated.

(6) The amount of monetary compensation awarded to an exonerated person pursuant to this section shall not be subject to:

- (a) Any cap applicable to private parties in civil lawsuits; or
- (b) Any state income tax, except as to those portions of the judgment awarded as attorneys' fees for bringing a claim under this section as described in section 39-22-104 (4)(q), C.R.S.

(7) (a) A court that directs the state court administrator to compensate an exonerated person or an immediate family member of an exonerated person shall order all records relating to the exonerated person's wrongful conviction or adjudication to be expunged as if such events had never taken place and such records had never existed. The court shall direct such an expungement order to every person or agency that may have custody of any part of any records relating to the exonerated person's wrongful conviction or adjudication.

(b) If a court issues an expungement order pursuant to paragraph (a) of this subsection (7), a court, law enforcement agency, or other state agency that maintains records relating to the exonerated person's wrongful conviction or adjudication shall physically seal such records and thereafter treat the records as confidential. Records that have been sealed pursuant to this subsection (7) shall be made available to a court or a law enforcement agency, including but not limited to a district attorney's office or the attorney general, upon a showing of good cause.

(8) (a) A court that directs the state court administrator to compensate an exonerated person or an immediate family member of an exonerated person shall reduce the exonerated person's award of monetary compensation, as described in paragraph (b) of this subsection (8), if, prior to the issuance of the award:

(I) The exonerated person prevails in or settles a civil action against the state or against any other government body in a civil action concerning the same acts that are the bases for the petition for compensation; and

(II) The judgment rendered in the civil action or the settlement of the civil action includes an award of monetary damages to the exonerated person.

(b) Under the circumstances described in paragraph (a) of this subsection (8), the court shall reduce an exonerated person's award of monetary compensation by an amount that is equal to the amount of monetary damages that the exonerated person is awarded and collects in the civil action; except that a court shall not offset any amount exceeding the total amount of monetary compensation awarded to the exonerated person pursuant to this section.

(9) (a) Except when procured by fraud, a court's finding that a person is actually innocent and eligible for compensation pursuant to this article shall be deemed a final and conclusive disposition of the matter of the exonerated person's wrongful incarceration or placement in state custody.

(b) A court's finding that a person is actually innocent and eligible for compensation pursuant to this article shall not be interpreted to limit the person's ability to pursue an action for damages against an entity that is not an employee, agent, or agency of the state government.

**Source: L. 2013:** Entire article added, (HB 13-1230), ch. 409, p. 2419, § 2, effective June 5. **L. 2017:** (2)(f) amended, (SB 17-125), ch. 109, p. 396, § 2, effective April 4. **L. 2018:** (2)(f) amended, (HB 18-1375), ch. 274, p. 1696, § 10, effective May 29.

## **JURIES AND JURORS**

### **ARTICLE 70**

#### **Juries and Jurors - General Provisions and Fees**

**13-70-101 to 13-70-106. (Repealed)**

**Source: L. 89:** Entire article repealed, p. 776, § 9, effective January 1, 1990.

**Editor's note:** This article was numbered as article 7 of chapter 78 in C.R.S. 1963. For amendments to this article prior to its repeal in 1990, consult the Colorado statutory research

explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

## **ARTICLE 71**

### **Colorado Uniform Jury Selection and Service Act**

|            |                                                                |              |                                                                     |
|------------|----------------------------------------------------------------|--------------|---------------------------------------------------------------------|
| 13-71-101. | Short title.                                                   | 13-71-116.5. | Postponement related to co-employee jury service.                   |
| 13-71-102. | Definitions.                                                   |              |                                                                     |
| 13-71-103. | Number of trial jurors.                                        | 13-71-117.   | Assignment of courthouse location.                                  |
| 13-71-104. | Eligibility for juror service - prohibition of discrimination. | 13-71-118.   | Telephone notice.                                                   |
|            |                                                                | 13-71-119.   | Deferments and excuses - limitations.                               |
| 13-71-105. | Qualifications for juror service.                              | 13-71-119.5. | Persons entitled to be excused from jury service.                   |
| 13-71-106. | Jury commissioners.                                            |              |                                                                     |
| 13-71-107. | Master juror list.                                             | 13-71-120.   | Length of juror service.                                            |
| 13-71-108. | Master juror wheel.                                            | 13-71-121.   | Extended trials.                                                    |
| 13-71-109. | Random selection from master juror list.                       | 13-71-122.   | Failure to appear - delinquency notice.                             |
| 13-71-110. | Juror selection and summoning.                                 | 13-71-123.   | Enforcement of juror duties.                                        |
| 13-71-111. | Contents of juror summons.                                     | 13-71-124.   | Delegation of authority to jury commissioner.                       |
| 13-71-112. | Emergency summonses.                                           | 13-71-125.   | Compensation and reimbursement.                                     |
| 13-71-113. | Modification of juror service.                                 |              |                                                                     |
| 13-71-114. | Cancellation of juror service.                                 | 13-71-126.   | Compensation of employed jurors during first three days of service. |
| 13-71-115. | Juror questionnaires.                                          |              |                                                                     |
| 13-71-116. | Trial juror's right to one postponement - definition.          | 13-71-127.   | Financial hardship of employer or self-employed juror.              |

|              |                                                                        |            |                                                                                                                     |
|--------------|------------------------------------------------------------------------|------------|---------------------------------------------------------------------------------------------------------------------|
| 13-71-128.   | Reimbursement of unemployed jurors during first three days of service. | 13-71-135. | Juror orientation program.                                                                                          |
| 13-71-129.   | Compensation of jurors after first three days of service.              | 13-71-136. | Availability of juror list.                                                                                         |
| 13-71-129.5. | Public transportation for jurors.                                      | 13-71-137. | Duties and responsibilities of auxiliary services providers for jurors who are deaf, hard of hearing, or deafblind. |
| 13-71-130.   | Limitations on juror compensation.                                     | 13-71-138. | Preservation of juror records.                                                                                      |
| 13-71-131.   | Special awards of compensation and reimbursement.                      | 13-71-139. | Challenge of juror pool.                                                                                            |
| 13-71-132.   | Juror service acknowledgment information - requests - payment.         | 13-71-140. | Irregularity in selecting, summoning, and managing jurors.                                                          |
| 13-71-133.   | Enforcement of employer's duty to compensate jurors.                   | 13-71-141. | Authority to contract and accept gifts.                                                                             |
| 13-71-134.   | Penalties and enforcement remedies for harassment by employer.         | 13-71-142. | Alternate jurors.                                                                                                   |
|              |                                                                        | 13-71-143. | Grand jurors - vacancies.                                                                                           |
|              |                                                                        | 13-71-144. | Jury fees to be assessed in civil cases.                                                                            |
|              |                                                                        | 13-71-145. | Expense of meals and provisions to be taxed.                                                                        |

**13-71-101. Short title.**

This article shall be known and may be cited as the "Colorado Uniform Jury Selection and Service Act".

**Source: L. 89:** Entire article R&RE, p. 765, § 1, effective January 1, 1990.

**Editor's note:** This section is similar to former § 13-71-101 as it existed prior to 1989.

**ANNOTATION**

-1390-

**Applied** in *People v. Sepeda*, 196 Colo. 13, 581 P.2d 723 (1978).

### **13-71-102. Definitions.**

As used in this article, unless the context otherwise requires:

- (1) "Clerk" and "clerk of the court" include any deputy clerk or the jury commissioner.
- (2) "Court" means a district or county court of this state and includes any judge of the court.
- (2.5) "Juror service" means the period of time during which a person is committed to serving upon a jury, from the time the person reports and checks in on his or her designated reporting date through and until he or she is released by the court or by the jury commissioner. "Juror service" includes any time that a person spends in the jury selection process and any time that a person spends in a trial.
- (3) "Juror wheel" means any electronic automated system for the storage of the names or identifying numbers of prospective jurors.
- (4) "Master juror list" means the voter registration lists for the county, which shall be supplemented with names from other sources prescribed pursuant to section 13-71-107 in order to foster the policy and protect the rights secured by this article.
- (5) "Master juror wheel" means the juror wheel in which are placed names or identifying numbers of prospective jurors taken from the master list.
- (6) "Voter registration lists" means the official records of persons registered to vote in the most recent general election.

**Source:** L. 89: Entire article R&RE, p. 765, § 1, effective January 1, 1990. L. 2011: (2.5) added, (HB 11-1153), ch. 70, p. 189, § 1, effective August 10.

**Editor's note:** This section is similar to former § 13-71-104 as it existed prior to 1989.

### **13-71-103. Number of trial jurors.**

A jury in civil cases shall consist of six persons, unless the parties agree to a smaller number, which shall be not less than three.

**Source: L. 89:** Entire article R&RE, p. 766, § 1, effective January 1, 1990.

**Editor's note:** This section is similar to former § 13-70-102 as it existed prior to 1989.

**13-71-104. Eligibility for juror service - prohibition of discrimination.**

(1) Juror service is a duty that every qualified person has an obligation to perform when selected.

(2) All trial and grand jurors shall be selected at random from a fair cross section of the population of the area served by the court. All selected and summoned jurors shall serve, except as otherwise provided in this article or by court rule.

(3) (a) A person shall not be exempted or excluded from serving as a trial juror or grand juror because of race, color, religion, sex, sexual orientation, gender identity, gender expression, marital status, national origin, ancestry, economic status, or occupation.

(b) A person with a disability shall serve except:

(I) As otherwise provided in section 13-71-105 or 13-71-119.5; or

(II) Where the court finds that such person's disability prevents the person from performing the duties and responsibilities of a juror.

(c) Before dismissing a person with a disability pursuant to paragraph (b) of this subsection (3), the court shall interview the person to determine the reasonable accommodations, if any, consistent with federal and state law, that the court may make available to permit the person to perform the duties of a juror.

(4) The court shall strictly enforce the provisions of this article; except that the supreme court may provide by rule for the exclusion in a criminal trial of a juror who is employed by a public law enforcement agency or public defender's office.

**Source: L. 89:** Entire article R&RE, p. 766, § 1, effective January 1, 1990. **L. 96:** Entire section amended, p. 737, § 8, effective July 1. **L. 98:** Entire section amended, p. 304, § 1, effective April 17; entire section amended, p. 464, § 1, effective January 1, 1999. **L. 2000:** (2) amended, p. 32, § 1, effective August 2. **L. 2004:** (1) and (3) amended, p. 276, § 1, effective August 4. **L. 2008:** (3)(a) amended, p. 1600, § 20, effective May 29. **L. 2021:** (3)(a) amended, (HB 21-1108), ch. 156, p. 891, § 18, effective September 7.



**Editor's note:** (1) This section is similar to former § 13-71-103 as it existed prior to 1989.

(2) Amendments to this section by Senate Bill 98-136 and Senate Bill 98-066 were harmonized.

**Cross references:** For the legislative declaration contained in the 2008 act amending subsection (3)(a), see section 1 of chapter 341, Session Laws of Colorado 2008. For the legislative declaration in HB 21-1108, see section 1 of chapter 156, Session Laws of Colorado 2021.

## ANNOTATION

**Law reviews.** For article, "Batson — Aging Well or in Need of Revision?", see 51 Colo. Law. 22 (Apr. 2022).

**Annotator's note.** Since § 13-71-104 is similar to § 13-71-103 as it existed prior to the 1989 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

**A waiver of a peremptory challenge, without more, does not support a prima facie case of discrimination under Batson v. Kentucky.** Although waiver of a peremptory challenge, without more, is insufficient to establish a prima facie case of discrimination under *Batson v. Kentucky*, 476 U.S. 79 (1986), waiver, accompanied by something more, can support a prima facie case. *People v. Lucero*, 2014 COA 53, 353 P.3d 874.

The distinction between the "action" of exercising a peremptory challenge and the "inaction" of waiving a peremptory challenge is an artificial construct that does not support a constitutional distinction.

*Batson* and its progeny preclude the use of peremptory challenges to "exclude" potential jurors based solely on the jurors' race, gender, or ethnicity. *People v. Lucero*, 2014 COA 53, 353 P.3d 874.

**Although discrimination — whether based on disability or some other characteristic — in jury selection might sometimes result in fundamental unfairness, that does not mean it always will.** The remaining jury pool may be completely unbiased and fair to the defendant, so that the defendant still receives a fair trial despite the arbitrary or discriminatory exclusion of certain jurors. *Meadows v. Lind*, 996 F.3d 1067 (10th Cir. 2021).

**Trial court has discretion** concerning a prospective juror's ability to render satisfactory jury service when questions of the juror's ability to serve are raised because of a physical disability, and absent an abuse of discretion, the trial court's decision will not be disturbed on appeal. *State v. Janes*, 942 P.2d 1331 (Colo. App. 1997); *People v. Coughlin*, 304 P.3d 575 (Colo. App. 2011).

**Although the better practice is for the trial court to interview the prospective juror and enter findings pursuant to this section,** trial court did not abuse its discretion by excusing the prospective juror for cause without entering such findings when juror had reported an attention deficit disorder and potential difficulty understanding testimony without taking notes. In light of the trial court's ban on note taking, the court properly determined that the potential juror's condition prevented her from performing the duties and responsibilities of a juror as required under this section. *People v. Pineda*, 40 P.3d 60 (Colo. App. 2001).

**Elements of fair cross-section requirement.** To establish a prima facie violation of the fair cross-section requirement, defendant must show that: (1) The group alleged to be excluded is a distinct group in the community; (2) the representation of this group in venires is not fair and reasonable in relation to the number of such persons in the community; and (3) this underrepresentation is due to systematic exclusion of the group in the jury-selection process. *State v. Janes*, 942 P.2d 1331 (Colo. App. 1997).

**Defendant had no standing** to assert rights of excluded juror under federal Americans with Disabilities Act where juror herself had asked to be excused due to physical disability. *State v. Janes*, 942 P.2d 1331 (Colo. App. 1997).

**Defendant failed to prove racial discrimination despite fact that no persons with Spanish surnames were on**

**grand jury.** Prosecution succeeded in offering race-neutral explanation for jury selection process. *People v. Cerrone*, 867 P.2d 143 (Colo. App. 1993), *aff'd*, 900 P.2d 45 (Colo. 1995).

**Prosecution's failure to voir dire juror and use of peremptory challenge to exclude juror from service can demonstrate intent to discriminate because of race.** The use of peremptory challenges to exclude jurors because of race violates the equal protection clause. To establish discriminatory use of peremptory challenges, the defendant must make a prima facie showing the challenges were used to discriminate against a juror because of race. The party using the peremptory challenge must have a non-racial reason for using the challenge. However, failure to voir dire can demonstrate intent to exclude jurors on the basis of race. Applying non-racial criteria for peremptory challenge differently to different jurors can also indicate a peremptory challenge used to discriminate because of race. *People v. Gabler*, 958 P.2d 505 (Colo. App. 1997).

**The state's actions were inherently discriminatory in excluding an economic class from the opportunity to participate in grand jury service based on generalized assumptions concerning hourly wage earners.** Although the state's actions were discriminatory and violated the requirements of this section, they did not prejudice the defendants who, following indictment by the grand jury, were afforded full procedural protections in their trials before petit juries. *Cerrone v. People*, 900 P.2d 45 (Colo. 1995).

**Statute does not "eliminate" § 16-10-103.** This statute was enacted after the passage of § 16-10-103 and general assembly is assumed to have been aware of that statute at that time, both statutes should be read together so as to give effect to each,

particular statutes prevail over general and statutory repeal by implication is not favored, and § 16-10-103 applies only in criminal trials while this statute applies generally to all jury trials. *People v. Veloz*, 946 P.2d 525 (Colo. App. 1997).

### **13-71-105. Qualifications for juror service.**

(1) Any person who is a United States citizen and resides in a county or lives in such county more than fifty percent of the time, whether or not registered to vote, shall be qualified to serve as a trial or grand juror in such county. Citizenship and residency status on the date that the jury service is to be performed shall control.

(2) A prospective trial or grand juror shall be disqualified, based on the following grounds:

(a) Being under the age of eighteen;

(b) Inability to read, speak, and understand the English language;

(c) Inability, by reason of a physical or mental disability, to render satisfactory juror service. Any person claiming this disqualification shall submit a letter, if the jury commissioner requests it, from a licensed physician, licensed physician assistant authorized under section 12-240-107 (6), licensed advanced practice registered nurse, or authorized Christian science practitioner, stating the nature of the disability and an opinion that such disability prevents the person from rendering satisfactory juror service. The physician, physician assistant, licensed advanced practice registered nurse, or authorized Christian science practitioner shall apply the following guideline: A person shall be capable of rendering satisfactory juror service if the person is able to perform a sedentary job requiring close attention for three consecutive business days for six hours per day, with short breaks in the morning and afternoon sessions.

(d) Sole responsibility for the daily care of an individual with a permanent disability living in the same household to the extent that the performance of juror service would cause a substantial risk of injury to the health of the individual with a disability. Jurors who are regularly employed at a location other than their households may not be disqualified for this reason. Any person claiming this disqualification shall, if the jury commissioner requests it, submit a letter from a licensed physician, licensed physician assistant authorized under section 12-240-107 (6), licensed advanced practice registered nurse, or authorized Christian science practitioner stating the name, address, and age of the individual with a disability, the nature of care provided by the prospective juror, and an opinion that the performance of juror service would cause a substantial risk of injury to the individual with a disability.

(e) Residence outside of the county with no intention of returning to the county at any time during the succeeding twelve months;

(f) Selection and service as an impaneled trial or grand juror in any municipal, tribal, military, state, or federal court within the preceding twelve months or being scheduled for juror service within the next twelve months. Any person claiming this disqualification must submit a letter or other formal acknowledgment from the appropriate authority verifying his or her prior or pending juror service.

(g) Appearance as a prospective juror in state court in accordance with the provisions of section 13-71-120 within the current calendar year. Any person claiming this disqualification shall submit a letter or other formal acknowledgment from the appropriate authority verifying such prior juror appearance. This exemption, however, does not apply in emergency circumstances as provided for in section 13-71-112.

(h) (Deleted by amendment, L. 2000, p. 32, § 2, effective August 2, 2000.)

(3) A prospective grand juror shall be disqualified if he or she has previously been convicted of a felony in this state, any other state, the United States, or any territory under the jurisdiction of the United States.

**Source:** L. 89: Entire article R&RE, p. 766, § 1, effective January 1, 1990. L. 98: (2)(g) and (2)(h) added, p. 464, § 2, effective January 1, 1999. L. 2000: (2)(f), (2)(g), and (2)(h) amended, p. 32, § 2, effective August 2. L. 2002: (3) added, p. 761, § 12, effective July 1. L. 2004: (2)(f) amended, p. 277, § 2, effective August 4. L. 2008: (2)(c) and (2)(d) amended, p. 124, § 4, effective January 1, 2009. L. 2011: (2)(f) and (2)(g) amended, (HB 11-1153), ch. 70, p. 189, § 2, effective August 10. L. 2014: (2)(d) amended, (SB 14-118), ch. 250, p. 984, § 17, effective August 6. L. 2016: (2)(c) and (2)(d) amended, (SB 16-158), ch. 204, p. 724, § 10, effective August 10. L. 2019: (2)(c) and (2)(d) amended, (HB 19-1172), ch. 136, p. 1667, § 75, effective October 1.

**Editor's note:** This section is similar to former § 13-71-109 as it existed prior to 1989.

**Cross references:** For the legislative declaration in SB 16-158, see section 1 of chapter 204, Session Laws of Colorado 2016.

## ANNOTATION

**Law reviews.** For article, "Judicial Restrictions on Voir Dire: Have We Gone Too Far?", see 97 Denv. L. Rev. 327 (2020).

**The U.S. Constitution does not forbid states to prescribe relevant qualifications for their jurors.** The states remain free to confine the selection to citizens, to persons meeting specified qualifications of age and educational attainment, and to those possessing good intelligence, sound judgment, and fair character. *People v. Lee*, 93 P.3d 544 (Colo. App. 2003).

**The fourteenth amendment of the federal constitution and the equal protection clause do not apply to peremptory challenges to persons with disabilities.** The fourteenth amendment of the federal constitution and the equal protection clause prohibit the use of peremptory challenges to discriminate against potential jurors based on race or gender. However, excluding jurors on the basis of a physical disability, even if it is assumed such physical disability is within the meaning of the Americans with Disabilities Act, is not prohibited. *Donelson v. Fritz*, 70 P.3d 539 (Colo. App. 2002).

**Section applicable to municipal courts of record.** The statutory disqualifications for jury service in this section should be applied since there are no other references in the statutes to jury qualifications or disqualifications. *City of Aurora v. Rhodes*, 689 P.2d 603 (Colo. 1984).

With respect to the requirement that the juror be a "resident of the county", a juror summoned to a municipal court qualifies as long as he resides in that part of the county

located within the territorial limits of the municipality. *City of Aurora v. Rhodes*, 689 P.2d 603 (Colo. 1984).

**Trial court has discretion** concerning a prospective juror's ability to render satisfactory jury service when questions of the juror's ability to serve are raised because of a physical disability, and absent an abuse of discretion, the trial court's decision will not be disturbed on appeal. *State v. Janes*, 942 P.2d 1331 (Colo. App. 1997).

**Failure of juror to meet qualification is not absolute prohibition.** The failure of a prospective juror to meet a qualification for jury service operates as a basis of a challenge for cause rather than as an absolute prohibition to service. Accordingly, that challenge is waived if counsel does not use reasonable diligence on voir dire to determine if a challenge for cause exists. *People v. Crespino*, 635 P.2d 918 (Colo. App. 1981).

Failure of prospective juror to meet a qualification for jury service operates as a basis of a challenge for cause rather than as an absolute prohibition to service. *People v. Orozco*, 49 P.3d 1212 (Colo. App. 2002).

**Inability to understand English grounds for disqualification.** If a juror is, in fact, unable to read, speak, and understand the English language, then she will be disqualified by this section. However, whether the juror was so impaired is a fact question for the trial court. *People v. Rodriguez*, 638 P.2d 802 (Colo. App. 1981); *People v. Duncan*, 33 P.3d 1180 (Colo. App. 2001); *People v. Lee*, 93 P.3d 544 (Colo. App. 2003).

**Findings on juror's ability to understand English binding on appeal.**

Where the trial court finds that a juror is able to understand, speak and read the English language adequately and where such findings are not refuted in the record, they are binding on appeal. *People v. Rodriguez*, 638 P.2d 802 (Colo. App. 1981); *People v. Duncan*, 33 P.3d 1180 (Colo. App. 2001).

**Trial court abused its discretion by requiring a qualification to be satisfied by reliance upon the abilities of other jurors.**

Requiring one juror to depend on other jurors in order to understand the proceedings diminishes the role of the dependent juror and undermines the defendant's right to have the charges decided by 12 independent jurors. *People v. Orozco*, 49 P.3d 1212 (Colo. App. 2002).

**Presumptions regarding judge's findings.**

Where there is sufficient evidence to support the trial judge's findings as to the English language skills of a juror without regard to the judge's personal knowledge of the juror, it is presumed that the trial judge disregarded any incompetent evidence in making his determination. *People v. Rodriguez*, 638 P.2d 802 (Colo. App. 1981).

**Tests for competency set forth in this section operate as basis for challenging juror for cause.** *People v. Lewis*, 180 Colo. 423, 506 P.2d 125 (1973).

**Defendant waives objection to juror when he has knowledge but does not challenge.** Where defense counsel does not on voir dire ask questions dealing with previous criminal record of jurors and defendant possesses information of juror's

felony record before jury renders verdict, but does not move for new trial until after guilty verdict, defendant waives objections to competency of juror. *People v. Lewis*, 180 Colo. 423, 506 P.2d 125 (1973).

Knowing that a juror was in the Air Force, counsel should, at the very least, have taken the opportunity on voir dire to inquire further into why he considered himself a resident. His failure to exercise this opportunity constitutes a waiver of the residency requirement. *People v. Crespin*, 635 P.2d 918 (Colo. App. 1981).

**Statute no longer disqualifies convicted felons** whose voting rights have not been restored from serving on a jury. *People v. Ellis*, 148 P.3d 205 (Colo. App. 2006).

**Defendant had no standing to assert rights of excluded juror** under federal Americans with Disabilities Act where juror herself had asked to be excused due to physical disability. *State v. Janes*, 942 P.2d 1331 (Colo. App. 1997).

**Juror opposed to capital punishment may be excluded.** It is not error to exclude from the jury those persons who state that they would not be able to consider and impose the death penalty under any circumstances because of religious, ethical, or moral scruples against the death penalty. *People v. Craig*, 179 Colo. 115, 498 P.2d 942 (1972).

**Juror's religious reservation on judging another cannot be a ground for challenge** under C.R.C.P. 47(e)(1). *Action Realty v. Brethouwer*, 633 P.2d 522 (Colo. App. 1981).

**A person is domiciled in a given county if the home or place in which his or her habitation is fixed and to which he or she has the present intention of returning after a departure or absence is situated there, regardless of the duration of the absence.** People v. White, 242 P.3d 1121 (Colo. 2010).

**Juror was qualified under this section to serve as a trial juror** since juror had

lived in the county more than fifty percent of the time for the preceding four years, although juror paid Ohio income tax and voted in Ohio, juror had lived in the county for four and one-half years, had his car registered in Colorado, was employed by the United States Air Force, and was awaiting relocation at the time of his jury service. People v. Williams, 827 P.2d 612 (Colo. App. 1992).

### **13-71-106. Jury commissioners.**

The chief judge of each judicial district shall appoint a jury commissioner for each county within that judicial district. Each jury commissioner shall be compensated as determined by the supreme court pursuant to section 13-3-105, but no court employee who serves as a jury commissioner shall receive any compensation in addition to a regular salary.

**Source: L. 89:** Entire article R&RE, p. 767, § 1, effective January 1, 1990.

**Editor's note:** This section is similar to former § 13-71-105 as it existed prior to 1989.

### **13-71-107. Master juror list.**

(1) Each year, the state court administrator shall obtain from the secretary of state a voter registration list for each county in the state. The state court administrator shall also obtain licensed driver lists from the department of revenue, and, where available, the department of revenue shall match said driver's license records with the most recent address of the individual used for income tax purposes and supply any additional income tax address to the court administrator. The state court administrator may obtain other lists of residents of the state as necessary and desirable. The voter registration lists, as supplemented and modified by other lists, may be used to compile the master juror list for the following year. A copy of the master juror list that does not contain addresses of the jurors shall be open to the public for examination as a public record.

(2) Any person who has custody, possession, or control of any list to be used in compiling the master juror list shall furnish, upon request, a copy of that list to the state court administrator.

**Source:** L. 89: Entire article R&RE, p. 767, § 1, effective January 1, 1990. L. 98: (1) amended, p. 465, § 3, effective January 1, 1999. L. 2002: (1) amended, p. 986, § 1, effective June 1.

**Editor's note:** This section is similar to former § 13-71-106 as it existed prior to 1989.

#### ANNOTATION

**Use of voter registration lists as sole source of names for jury duty is constitutionally permissible.** Craig v. Wyse, 373 F. Supp. 1008 (D. Colo. 1974).

**Unless use of voter registration lists results in systematic exclusion of cognizable group or class of qualified citizens,** in which case they are not constitutionally permissible as sole source of names for jury duty. Craig v. Wyse, 373 F. Supp. 1008 (D. Colo. 1974).

**Persons constitutionally excluded from jury selection process.** Persons under the age of 21, who had not lived in Colorado for one year, who had not lived in their precinct for at least 32 days, and who had not registered to vote or had not voted in the last election, can be excluded from the jury selection process without rendering the process unconstitutional. Craig v. Wyse, 373 F. Supp. 1008 (D. Colo. 1974).

#### **13-71-108. Master juror wheel.**

(1) The state court administrator shall use an electronic automated system to compile and maintain a master juror wheel. The wheel shall consist of names, addresses, dates of birth, identifying numbers, and jury histories for prospective jurors taken from the master juror list. Each year, the master juror wheel shall be emptied and refilled in compliance with the provisions of this article. Jurors receiving cancellations or postponements of juror appearance and service may be replaced on the master juror wheel for the succeeding year and shall receive new summonses for their new dates in the succeeding year.

(2) In order to more equitably distribute the responsibility for juror appearance and service throughout the qualified population of each county and to avoid repeatedly summoning the same individuals for jury appearance and service, the state court administrator shall implement reasonable procedures to match prior year records of juror selection, appearance, and service in the state courts with the prospective juror names included in the master juror wheel. To the extent practical, the prior juror selection and service records shall be used to prioritize the juror names



in the master juror wheel. To the extent practical, individuals with the least amount of jury appearances or service in the most recent years shall be summoned prior to individuals who have appeared or served more recently.

**Source:** **L. 89:** Entire article R&RE, p. 767, § 1, effective January 1, 1990. **L. 98:** Entire section amended, p. 465, § 4, effective January 1, 1999. **L. 2000:** Entire section amended, p. 33, § 3, effective August 2.

**Editor's note:** This section is similar to former § 13-71-107 as it existed prior to 1989.

#### **13-71-109. Random selection from master juror list.**

If all prospective jurors on the master juror list are not needed, selection of the names or identifying numbers of prospective jurors to be placed on the master juror wheel shall be by a random selection method which ensures equal probability of selection.

**Source:** **L. 89:** Entire article R&RE, p. 767, § 1, effective January 1, 1990.

**Editor's note:** This section is similar to former § 13-71-108 as it existed prior to 1989.

#### **13-71-110. Juror selection and summoning.**

A jury commissioner shall specify the number of trial jurors needed for each day's juror pool or for selection of a grand jury within that commissioner's county. The state court administrator shall then randomly select the specified number of jurors required from the master juror wheel and shall issue a summons to each selected prospective juror, either personally or by mail addressed to the usual residence or post-office address of the prospective juror.

**Source:** **L. 89:** Entire article R&RE, p. 767, § 1, effective January 1, 1990.

**Editor's note:** This section is similar to former § 13-71-110 as it existed prior to 1989.

### **13-71-111. Contents of juror summons.**

(1) The juror summons shall state: Whether the anticipated service is that of a trial or grand juror; the beginning date of the juror service; the name, address, hour, and room number, if any, of the courthouse or office to which the juror shall report on the first day of service; the fact that a knowing failure to obey the summons without justifiable excuse is a violation of section 18-8-612, and a class 2 misdemeanor punishable as provided in section 18-1.3-501; and such other information and instructions as are deemed appropriate by the state court administrator or the jury commissioner.

(2) Every prospective juror shall also receive with the summons:

(a) Notice of the qualifications for juror service; and

(b) Instructions to jurors for retrieving juror service acknowledgment information, as described in section 13-71-132.

**Source:** **L. 89:** Entire article R&RE, p. 768, § 1, effective January 1, 1990. **L. 2002:** Entire section amended, p. 1488, § 124, effective October 1. **L. 2004:** Entire section amended, p. 277, § 3, effective August 4. **L. 2011:** Entire section amended, (HB 11-1153), ch. 70, p. 190, § 3, effective August 10. **L. 2021:** (1) amended, (SB 21-271), ch. 462, p. 3159, § 159, effective March 1, 2022.

**Editor's note:** This section is similar to former § 13-71-110 (3) as it existed prior to 1989.

**Cross references:** For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

### **13-71-112. Emergency summonses.**

In order to meet emergency needs of the court, the state court administrator or a jury commissioner, by any means of notice including notice by telephone, may summon additional trial or grand jurors to appear for juror service at a time certain and shall inform the juror at which courthouse to appear.

**Source:** **L. 89:** Entire article R&RE, p. 768, § 1, effective January 1, 1990.

**Editor's note:** This section is similar to former § 13-71-110 (4) as it existed prior to 1989.

**13-71-113. Modification of juror service.**

In order to meet the urgent needs of the court, a jury commissioner may modify the date, location, or other condition of trial or grand juror service and may notify the prospective juror of the modification by telephone or other appropriate means.

**Source: L. 89:** Entire article R&RE, p. 768, § 1, effective January 1, 1990.

**13-71-114. Cancellation of juror service.**

Whenever it appears that the number of jurors scheduled to appear is in excess of the number needed, a jury commissioner may cancel the trial or grand juror service of a prospective juror and may notify the juror by telephone or other appropriate means. Any juror whose service has been canceled is not considered disqualified under section 13-71-105 (2)(f) but may be randomly reselected for further service within the succeeding twelve months.

**Source: L. 89:** Entire article R&RE, p. 768, § 1, effective January 1, 1990.

**13-71-115. Juror questionnaires.**

(1) On or before the first day of the term of trial or grand juror service, each juror shall be given a juror questionnaire requesting the following information about the juror: Name, sex, date of birth, age, residence, and marital status; the number and ages of children; educational level and occupation; whether the juror is regularly employed, self-employed, or unemployed; spouse's occupation; previous juror service; present or past involvement as a party or witness in a civil or criminal proceeding; and such other information as the jury commissioner deems appropriate after consulting with the judges in the judicial district. The questionnaire shall contain a declaration by the juror that the information supplied is, to the best of the juror's knowledge, true and an acknowledgment that a willful misrepresentation of a material fact is a class 2 misdemeanor punishable as provided in section 18-1.3-501. Immediately below the declaration, the questionnaire shall contain a place for the signature of the juror. A notice that the completed questionnaire is not a public record shall appear prominently on its face.

(2) Unless the court orders otherwise, the jury commissioner shall provide copies of the appropriate completed questionnaires to the trial judge and counsel for use during jury selection. With the exception of the names of qualified jurors and disclosures made during jury selection, information on the questionnaires shall be held in confidence by the court, the parties, trial counsel, and their agents. Upon the completion of jury selection, the parties and their counsel shall return all copies of the completed questionnaires to the court for immediate destruction. The original completed questionnaires for all prospective jurors shall be sealed in an envelope and retained in the court's file but shall not constitute a public record.

(3) If a person's answers to a questionnaire indicate that the person is disqualified or disabled from performing jury service pursuant to section 13-71-104 (3), 13-71-105, or 13-71-119.5 or, in the opinion of the court, state grounds sufficient to be excused from jury service pursuant to section 13-71-119.5, the person's name shall not be included in the juror pool and the court shall notify the person that he or she is excused from jury service.

**Source:** L. 89: Entire article R&RE, p. 768, § 1, effective January 1, 1990. L. 93: (1) amended, p. 515, § 2, effective July 1. L. 2002: (1) amended, p. 1488, § 125, effective October 1. L. 2004: (3) added, p. 278, § 5, effective August 4. L. 2021: (1) amended, (SB 21-271), ch. 462, p. 3159, § 160, effective March 1, 2022.

**Editor's note:** This section is similar to former § 13-71-108 as it existed prior to 1989.

**Cross references:** For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

## ANNOTATION

**Although the general rule of this section requires certain information to be made available to defense counsel,** the defendant was not prejudiced by the trial court's refusal to supply defense counsel with the addresses of the jurors. *People v. Vigil*, 718 P.2d 496 (Colo. 1986).

**Erroneous destruction of juror questionnaires is not per se prejudice.** The

defendant must establish some sort of prejudice in conjunction with the destruction of the juror questionnaires to show prejudice to the appeal. *People v. Blankenship*, 30 P.3d 698 (Colo. App. 2000).

**Trial court did not abuse its discretion by declining to include a requested race/ethnicity question on the jury questionnaire.** This section does not require

or otherwise address whether a prospective juror may be requested to indicate their racial or ethnic identity and there is no state appellate decision requiring a trial court to

inquire about a prospective juror's race or ethnicity. *People v. Toro-Ospina*, 2023 COA 45, 535 P.3d 132.

### **13-71-116. Trial juror's right to one postponement - definition.**

(1) A trial juror shall have the right to one postponement of the term of juror service. The postponement must not last more than six months, but may extend into the next calendar year; except that, if a trial juror is a Colorado resident and a student enrolled in an institution of higher education outside the state of Colorado and attends classes at the institution in person, the postponement must not last more than twelve months but may extend into the next calendar year. To exercise this right, the juror shall notify the jury commissioner by telephone or in writing requesting an alternate date to which juror service may be postponed. A jury commissioner, in the jury commissioner's discretion, may set the date to which the juror's service is postponed. A jury commissioner shall notify the juror by telephone or in writing of the new date.

(2) As used in this section, "institution of higher education" means any out-of-state postsecondary public or private educational institution that provides not less than a one-year program of training to prepare students for gainful employment.

**Source:** **L. 89:** Entire article R&RE, p. 769, § 1, effective January 1, 1990. **L. 2000:** Entire section amended, p. 33, § 4, effective August 2. **L. 2011:** Entire section amended, (HB 11-1153), ch. 70, p. 190, § 4, effective August 10. **L. 2022:** Entire section amended, (HB 22-1032), ch.77, p. 388, § 1, effective August 10.

**Editor's note:** This section is similar to former § 13-71-112 as it existed prior to 1989.

### **13-71-116.5. Postponement related to co-employee jury service.**

Upon notice by an employee, a jury commissioner shall postpone and reschedule the service of a summoned juror who is regularly employed by an employer with five or fewer full-time employees or their equivalent if, during the same period, another employee of the employer has been summoned for jury service. A postponement issued pursuant to this section shall not affect a person's right to a postponement of jury service pursuant to section 13-71-116.

**Source: L. 2004:** Entire section added, p. 277, § 4, effective August 4.

**13-71-117. Assignment of courthouse location.**

Every trial and grand juror shall be notified on the summons, or otherwise, to perform juror service at a designated court location within each county. The jury commissioner or the court may permit a juror to serve at a different courthouse location within the county upon a finding that service at the original location would be a hardship.

**Source: L. 89:** Entire article R&RE, p. 769, § 1, effective January 1, 1990.

**Editor's note:** This section is similar to former § 13-71-110 (3) as it existed prior to 1989.

**13-71-118. Telephone notice.**

The jury commissioner or the court may permit a trial or grand juror to be available for juror service or continued juror service upon telephone notice. Such a juror shall provide the court with a telephone number at which the juror may be reached, with certainty, and shall agree to resume juror service, if necessary, not more than one hour after receiving telephone notice.

**Source: L. 89:** Entire article R&RE, p. 769, § 1, effective January 1, 1990.

**13-71-119. Deferments and excuses - limitations.**

(1) It shall be the policy of this article that every trial juror shall be prepared to serve three trial days except as otherwise provided in this section or in section 13-71-104, 13-71-105, or 13-71-119.5.

(2) The court or the jury commissioner may defer or advance the term of service of the trial or grand juror upon a finding as provided in section 13-71-104, 13-71-105, or 13-71-119.5. The court may excuse a juror from grand juror service upon a finding of hardship or inconvenience, taking into consideration the length of grand juror service. The court may excuse a juror from trial juror service upon a finding of extreme hardship. The court may dismiss a trial or grand juror at any time in the best interest of justice.

(3) The court, after a hearing, may excuse and discharge an impaneled juror prior to jury deliberation upon a finding of extreme hardship, and such discharge shall not be grounds for objection or a mistrial as long as the statutorily or constitutionally required number of jurors remain able to proceed with the trial and deliberation. The court, after a hearing, may excuse and discharge a juror participating in jury deliberation only upon a finding of an emergency or for any other compelling reason. If the statutorily or constitutionally required number of jurors does not remain to hear evidence or to participate in jury deliberation after the discharge of a juror, the trial may continue with the lesser number of jurors only upon agreement of all parties on the record. The court may discharge an impaneled juror who has not appeared for juror service upon a finding that there is a strong likelihood that an unreasonable delay in the trial would occur if the court were to await the appearance of the juror. The court may exercise any authority granted in this section at any time before or during a juror's term of service.

**Source:** **L. 89:** Entire article R&RE, p. 769, § 1, effective January 1, 1990. **L. 2004:** Entire section amended, p. 278, § 6, effective August 4.

**Editor's note:** This section is similar to former § 13-71-111 as it existed prior to 1989.

## ANNOTATION

**Annotator's note.** Since § 13-71-119 is similar to § 13-71-112 as it existed prior to the 1989 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

**Jurors excused only for statutory reasons.** Jury service being an obligation of citizenship, the court should not excuse a person otherwise qualified for jury service

for any reason short of the statutory criteria. *People ex rel. Faulk v. District Court*, 667 P.2d 1384 (Colo. 1983).

**"Undue hardship" may include undue financial burden.** What constitutes "undue hardship" sufficient to excuse a juror lies within the discretion of the trial court, and includes one for whom jury service would impose an undue financial burden. *People v. Reese*, 670 P.2d 11 (Colo. App. 1983).

### **13-71-119.5. Persons entitled to be excused from jury service.**

(1) The general assembly finds and declares that it is the policy of this state that all qualified citizens have an obligation to serve on juries when summoned by the courts of this state unless excused in accordance with the provisions of this article.

(2) (a) (I) A person shall be excused temporarily from service as a juror if his or her jury service would cause undue or extreme physical hardship to him or her or to another person under his or her direct care or supervision.

(II) The provisions of this subsection (2) shall apply notwithstanding the fact that the person does not have sole responsibility for the care of another person as described in section 13-71-105 (2)(d).

(b) A judge or jury commissioner of the court for which a person was summoned for jury service shall determine whether jury service would cause the prospective juror or another person under his or her direct care undue or extreme physical hardship.

(c) A person who requests to be excused under this subsection (2) shall take all actions necessary to obtain a determination on the request before the date on which the person is scheduled to appear for jury duty.

(d) For purposes of this subsection (2), undue or extreme physical hardship shall be limited to circumstances in which a person:

(I) Would be required to abandon a person under his or her direct care or supervision because of the inability to obtain an appropriate substitute care provider during the period of jury service; or

(II) Would suffer physical hardship possibly resulting in illness or disease.

(e) A person who requests to be excused under the provisions of this subsection (2) may provide the judge or jury commissioner documentation that supports the request to be excused, including but not limited to medical statements, proof of dependency or guardianship, or other similar documents. The judge or jury commissioner may excuse a person if the documentation clearly supports the request to be excused. The documents comprising the documentation described in this subsection (2) shall not be deemed public records and shall not be disclosed to the public.

(2.5) A person who is breast-feeding a child and is temporarily unable to or chooses not to leave the child in order to serve on a jury must be excused temporarily from service as a juror for up to two consecutive twelve-month postponements. The judge or jury commissioner may request a medical statement in support of the postponement. A medical statement provided pursuant to this subsection (2.5) is not a public record and must not be disclosed to the public.

(3) A person who is temporarily excused pursuant to this section shall become eligible for qualification as a juror when the temporary excuse expires, as determined by the court. A person may be permanently excused only if the judge or jury commissioner determines that the grounds for being excused from jury service are permanent in nature.



(4) The provisions of this section shall not apply to impaneled jurors or to deliberating jurors described in section 13-71-119.

**Source:** **L. 2004:** Entire section added, p. 277, § 4, effective August 4. **L. 2008:** (2)(e) amended, p. 1883, § 19, effective August 5. **L. 2015:** (2)(e) amended and (2.5) added, (HB 15-1164), ch. 86, p. 248, § 1, effective April 8.

### **13-71-120. Length of juror service.**

Trial juror service shall be for a one-day term unless a juror is assigned to or impaneled on an incompleated trial when the one-day term ends, or unless the court orders otherwise. Nothing shall prevent a trial juror from serving on more than one jury or participating in more than one trial during the term; except that a trial juror whose deliberation ended with a verdict shall not be required to participate in a second trial even though the juror may not have completed the first day of juror service at the time of the commencement of the second trial. Jurors awaiting assignment to a trial shall be discharged as early as possible after it has been determined that their services will not be needed. Grand juror service shall be for a term of twelve months unless the court discharges the jurors earlier or enlarges such term upon a finding that the efficient administration of justice so requires; except that in no event shall a grand jury serve for longer than eighteen months.

**Source:** **L. 89:** Entire article R&RE, p. 769, § 1, effective January 1, 1990. **L. 99:** Entire section amended, p. 54, § 1, effective March 15.

**Editor's note:** This section is similar to former § 13-71-116 as it existed prior to 1989.

### **ANNOTATION**

**Section not violated when same jury renders multiple verdicts in a bifurcated trial.** Unlike severance, which results in multiple trials and entry of multiple judgments, bifurcation results in a single trial divided into phases and entry of a single

judgment. The jurors who deliberated during the first phase of the bifurcated trial did not participate in a second trial in violation of this section by rendering a verdict in the second phase of the bifurcated trial. *People v. Barajas*, 2021 COA 98, 497 P.3d 1078.

**13-71-121. Extended trials.**

Before a jury is impaneled, the court shall inform the jurors if a trial is expected to last more than three trial days and may excuse a juror from performing juror service in that trial upon a finding of hardship or inconvenience, taking into account the expected length of the trial. Any juror so excused shall otherwise complete the term of juror service.

**Source: L. 89:** Entire article R&RE, p. 770, § 1, effective January 1, 1990. **L. 2000:** Entire section amended, p. 33, § 5, effective August 2.

**Editor's note:** This section is similar to former § 13-71-116 as it existed prior to 1989.

**13-71-122. Failure to appear - delinquency notice.**

The jury commissioner may send a delinquency notice by certified or first-class mail to any trial or grand juror who has failed to appear for juror service. The purposes of delinquency notices shall be only to notify the jurors of their delinquent status and to rectify the problem by appropriate means. The jury commissioner shall have discretionary authority to resolve delinquent juror problems.

**Source: L. 89:** Entire article R&RE, p. 770, § 1, effective January 1, 1990.

**Editor's note:** This section is similar to former § 13-71-117 as it existed prior to 1989.

**13-71-123. Enforcement of juror duties.**

The court shall take whatever action may be appropriate to enforce the provisions of this article. Upon a finding that a juror will not appear to perform or complete juror service or in response to the court's order, the court may take such action as is likely to compel the juror to appear.

**Source: L. 89:** Entire article R&RE, p. 770, § 1, effective January 1, 1990.

**13-71-124. Delegation of authority to jury commissioner.**

The state court administrator or the court may delegate to jury commissioners such authority as is appropriate for the efficient administration of this article.

**Source: L. 89:** Entire article R&RE, p. 770, § 1, effective January 1, 1990.

**13-71-125. Compensation and reimbursement.**

The compensation and reimbursement policy of this article shall be to prevent, insofar as possible, financial hardship for any juror because of the performance of juror service. Where financial hardship exists, the court shall attempt to place the juror in the same financial position as such juror would have been were it not for the performance of juror service.

**Source: L. 89:** Entire article R&RE, p. 770, § 1, effective January 1, 1990.

**13-71-126. Compensation of employed jurors during first three days of service.**

All regularly employed trial or grand jurors shall be paid regular wages, but not to exceed fifty dollars per day unless by mutual agreement between the employee and employer, by their employers for the first three days of juror service or any part thereof. Regular employment shall include part-time, temporary, and casual employment if the employment hours may be determined by a schedule, custom, or practice established during the three-month period preceding the juror's term of service.

**Source: L. 89:** Entire article R&RE, p. 770, § 1, effective January 1, 1990.

**13-71-127. Financial hardship of employer or self-employed juror.**

The court shall excuse an employer or a self-employed juror from the duty of compensation for trial or grand juror service upon a finding that it would cause financial hardship. When such a finding is made, a juror shall receive reasonable compensation in lieu of wages from the state for the first three days of juror service or any part thereof. Such award shall not exceed fifty dollars per day of juror service. A court hearing on an employer's extreme financial hardship shall occur

no later than thirty days after the tender of the juror service acknowledgment information to the employer. The request for a court hearing shall be made in writing to the jury commissioner.

**Source: L. 89:** Entire article R&RE, p. 770, § 1, effective January 1, 1990. **L. 2011:** Entire section amended, (HB 11-1153), ch. 70, p. 190, § 5, effective August 10.

**13-71-128. Reimbursement of unemployed jurors during first three days of service.**

Each trial or grand juror who is unemployed may apply to the jury commissioner on the first day of juror service and shall be reimbursed by the state for reasonable travel, child care, and other necessary out-of-pocket expenses, except food, for the first three days of juror service or any part thereof. The state court administrator shall establish guidelines for the reimbursement of unemployed trial and grand jurors. No award for an unemployed juror shall exceed fifty dollars per day of juror service, and the court shall approve, prior to reimbursement, any award which is outside the guidelines. Any juror who is not regularly employed, including, but not limited to, retired persons, homemakers, students, unemployed persons, and persons receiving unemployment benefits, shall be entitled to reimbursement under this section. Juror service shall not cause a person to lose unemployment benefits.

**Source: L. 89:** Entire article R&RE, p. 771, § 1, effective January 1, 1990.

**13-71-129. Compensation of jurors after first three days of service.**

The state shall pay each trial or grand juror who serves more than three days for the fourth day of service and each day thereafter at the rate of fifty dollars per day. A trial or grand juror receiving payment under this section shall not be entitled to additional reimbursement for travel or other out-of-pocket expenses.

**Source: L. 89:** Entire article R&RE, p. 771, § 1, effective January 1, 1990.

**13-71-129.5. Public transportation for jurors.**

In all judicial districts with one or more publicly owned or operated systems of public transportation, the office of the state court administrator shall work with officials of the public transportation system or systems to create and implement a plan whereby each juror may obtain

transportation at no cost to the juror to the vicinity of the courthouse or other place of juror service, and return, using the regular routes and schedules of the public transportation system.

**Source: L. 97:** Entire section added, p. 1057, § 1, effective May 27.

**13-71-130. Limitations on juror compensation.**

The state shall compensate and credit each juror for only those days on which the juror appeared as directed to perform juror service. Holidays and business days on which a trial has been recessed are excluded.

**Source: L. 89:** Entire article R&RE, p. 771, § 1, effective January 1, 1990.

**13-71-131. Special awards of compensation and reimbursement.**

Notwithstanding any other provisions of this article, the court is authorized to make special awards of compensation and reimbursement to any juror based upon unusual circumstances or to effect the purposes of this article. By appropriate order, the court may make special arrangements for physically impaired and elderly jurors and may provide for the other needs of jurors. The court shall provide for reasonable costs of jury sequestration.

**Source: L. 89:** Entire article R&RE, p. 771, § 1, effective January 1, 1990.

**13-71-132. Juror service acknowledgment information - requests - payment.**

(1) The juror service acknowledgment shall contain the following information: The name of the juror; the jury commissioner contact information and the number of days of juror service performed; a declaration of the duty of the employer to compensate an employed juror for the first three days, or any part thereof, of juror service; the right of an employer to be excused from such duty by the court upon a showing of extreme financial hardship; and any other information deemed appropriate by the jury commissioner. The jury commissioner shall retain juror service acknowledgment information for each juror and make it available electronically via the internet for twelve months after the juror completes his or her service.

(2) If a juror requests juror service acknowledgment information relating to his or her juror service at any time during the twelve-month period described in subsection (1) of this section, the jury commissioner shall provide the information within sixty days after the request.

(3) Trial juror payments for each juror's service shall be processed by the state by check or electronic funds transfer within ten days after the conclusion of the juror's service. The state shall process grand juror payments at least on a monthly basis. Each payment shall include all compensation for juror service and reimbursement for authorized expenses incurred by the juror during the previous time period. The state court administrator shall prepare and disburse these payments based upon information received from jury commissioners.

**Source:** L. 89: Entire article R&RE, p. 771, § 1, effective January 1, 1990. L. 2011: Entire section amended, (HB 11-1153), ch. 70, p. 191, § 6, effective August 10.

### **13-71-133. Enforcement of employer's duty to compensate jurors.**

Any employer who fails to compensate an employed juror under the applicable provisions of this article and who has not been excused from such duty of compensation shall be liable to the employed juror. If the employer fails to compensate a juror within thirty days after tender of the juror service acknowledgment information, the juror may commence a civil action in any court having jurisdiction over the parties. Extreme financial hardship on the part of the employer shall not be a defense to such an action. The court may award treble damages and reasonable attorney fees to the juror upon a finding of willful misconduct by the employer.

**Source:** L. 89: Entire article R&RE, p. 772, § 1, effective January 1, 1990. L. 2011: Entire section amended, (HB 11-1153), ch. 70, p. 191, § 7, effective August 10.

### **13-71-134. Penalties and enforcement remedies for harassment by employer.**

(1) An employer shall not deprive an employed juror of employment or any incidents or benefits thereof, nor shall an employer harass, threaten, or coerce an employee because the employee receives a juror summons, responds thereto, performs any obligation or election of juror service as a trial or grand juror, or exercises any right under any section of this article. An employer shall make no demands upon any employed juror which will substantially interfere with the effective performance of juror service. The employed juror may commence a civil action for such damages or injunctive relief or both, as may be appropriate, for a violation of this section. The court may award treble damages and reasonable attorney fees to the juror upon a

finding of willful misconduct by the employer. Any trial of such an action shall be to the court without a jury.

(2) Any employer who willfully violates this section commits willful harassment of a juror by an employer, as defined in section 18-8-614, C.R.S., which is a class 2 misdemeanor punishable as provided in section 18-1.3-501, C.R.S.

**Source:** L. 89: Entire article R&RE, p. 772, § 1, effective January 1, 1990. L. 2002: (2) amended, p. 1489, § 126, effective October 1.

**Cross references:** For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

#### ANNOTATION

**Defendant waived the right to the defense that a corporation, and not the individual defendant, was the employer.** The defendant failed to assert that she was not an "employer" until after the conclusion of the trial. *Levy-Wegrzyn v. Ediger*, 899 P.2d 230 (Colo. App. 1994).

**Plaintiff is entitled to reasonable attorney fees for defending the judgment**

**on appeal.** The fundamental purpose of awarding attorney fees is to make the plaintiff whole and this purpose would be frustrated by a requirement that plaintiff pay attorney fees to defend the employer's appeal. *Levy-Wegrzyn v. Ediger*, 899 P.2d 230 (Colo. App. 1994).

#### **13-71-135. Juror orientation program.**

The office of the state court administrator shall establish guidelines for the orientation of prospective jurors.

**Source:** L. 89: Entire article R&RE, p. 772, § 1, effective January 1, 1990.

**13-71-136. Availability of juror list.**

(1) Absent a court order to the contrary, upon request, the jury commissioner shall make available for inspection by parties, counsel, or their agents a list of prospective jurors containing the jurors' names. The jury commissioner shall assure that the juror resides in the proper county.

(2) Absent a court order to the contrary, upon request, the jury commissioner shall make available for inspection by counsel or pro se parties a list of prospective jurors containing the jurors' names and addresses.

(3) Upon request, the jury commissioner shall make available for inspection by members of the public a list of prospective jurors containing only the jurors' name and juror number.

**Source:** L. 89: Entire article R&RE, p. 773, § 1, effective January 1, 1990. L. 98: Entire section amended, p. 465, § 5, effective January 1, 1999.

**ANNOTATION**

**Although the general rule of this section requires certain information to be made available to defense counsel, the defendant was not prejudiced by the trial**

court's refusal to supply defense counsel with the addresses of the jurors. *People v. Vigil*, 718 P.2d 496 (Colo. 1986).

**13-71-137. Duties and responsibilities of auxiliary services providers for jurors who are deaf, hard of hearing, or deafblind.**

(1) The court may provide, through the list of available resources coordinated through the division for the deaf, hard of hearing, and deafblind pursuant to section 26-21-106 (4), a qualified provider of auxiliary services, as defined in section 13-90-202 (3), to assist during a trial a juror who is deaf, hard of hearing, or deafblind. In the presence of the jury, the court shall instruct the qualified auxiliary services provider to make true and complete translations of all court proceedings to the juror who is deaf, hard of hearing, or deafblind to the best of the qualified auxiliary services provider's ability.

(2) The qualified interpreter is subject to the same orders and admonitions given to the jurors. The court shall permit a qualified auxiliary services provider to be present and assist a juror who is deaf, hard of hearing, or deafblind during the deliberations of the jury. In the presence of the jury, the court shall instruct the qualified auxiliary services provider to refrain from participating in any manner in the deliberation of the jury and to refrain from having any communications with any member of the jury regarding deliberation, except for true and



complete translations of jurors' remarks made during deliberation. A jury verdict reached in the presence of a qualified auxiliary services provider, during deliberation, is valid.

**Source:** **L. 89:** Entire article R&RE, p. 773, § 1, effective January 1, 1990. **L. 2006:** Entire section amended, p. 1091, § 12, effective May 25. **L. 2007:** Entire section amended, p. 2026, § 28, effective June 1. **L. 2018:** Entire section amended, (HB 18-1108), ch. 303, p. 1832, § 1, effective August 8. **L. 2025:** Entire section amended, (HB 25-1154), ch. 230, p. 1084, § 18, effective May 22.

### **13-71-138. Preservation of juror records.**

All official records and papers compiled and maintained by the state court administrator concerning jurors shall be preserved for three years after the calendar year to which they apply. Official records shall include records in automated form on magnetic tapes and disks.

**Source:** **L. 89:** Entire article R&RE, p. 773, § 1, effective January 1, 1990.

### **13-71-139. Challenge of juror pool.**

(1) Any party to a civil or criminal action may challenge by written motion the composition of the juror pool for substantial failure to comply with the requirements of this article. The written motion shall be filed prior to the swearing in of the jury selected to try the case and shall be accompanied by one or more affidavits specifying the supporting facts and demographic data. If the court finds that the affidavit or affidavits, if true, demonstrate such a substantial failure, the moving party shall be entitled to present testimony by any person responsible for the implementation of this article, any records used in the selection and summoning of jurors, and any other relevant evidence. If the court determines, by a preponderance of the evidence, that in selecting the jury there has been a substantial failure to comply with this article, the court shall discharge the jury panel and stay proceedings pending the summoning of a new juror pool.

(2) The procedures described in this section shall be the exclusive means by which a party may challenge a jury on the ground that the juror pool was not selected in conformity with this article.

**Source:** **L. 89:** Entire article R&RE, p. 773, § 1, effective January 1, 1990. **L. 90:** (1) amended, p. 983, § 2, effective April 24.

## ANNOTATION

**Annotator's note.** Since § 13-17-139 is similar to § 13-71-113 as it existed prior to the 1989 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

**This section is the exclusive means of challenging a jury panel** not selected in conformity with this article. *People v. Green*, 759 P.2d 814 (Colo. App. 1988).

**Applied** in *People v. Cornelius*, 41 Colo. App. 182, 585 P.2d 295 (1978); *People v. Moody*, 630 P.2d 74 (Colo. 1981).

### **13-71-140. Irregularity in selecting, summoning, and managing jurors.**

The court shall not declare a mistrial or set aside a verdict based upon allegations of any irregularity in selecting, summoning, and managing jurors, or in limiting the length of any term of juror service, or based upon any other defect in any procedure performed under this article unless the moving party objects to such irregularity or defect as soon as possible after its discovery and demonstrates specific injury or prejudice.

**Source: L. 89:** Entire article R&RE, p. 773, § 1, effective January 1, 1990.

### **13-71-141. Authority to contract and accept gifts.**

The state court administrator, and district administrators with the approval of the state court administrator, may enter into contracts and agreements with, and accept gifts, grants, contributions, and bequests of funds from, any department, agency, or political subdivision of the federal, state, county, or municipal government or from any individual, foundation, corporation, association, or public authority to implement the provisions of this article or to improve the jury system.

**Source: L. 89:** Entire article R&RE, p. 774, § 1, effective January 1, 1990.

### **13-71-142. Alternate jurors.**

In all civil and criminal trials, the court may call and impanel alternate jurors to replace jurors who are disqualified or who the court may determine are unable to perform their duties prior to deliberation. Alternate jurors shall be summoned in the same manner, have the same qualifications, be subject to the same examination and challenges, take the same oath, and have the same functions, powers, and privileges as regular jurors. An alternate juror who does not replace a regular juror shall be discharged at the time the jury retires to consider its verdict, unless otherwise provided by law, by agreement of the parties, or by order of the court. The seating of an alternate juror entitles each party to an additional peremptory challenge, which may be exercised as to any prospective jurors.

**Source:** **L. 89:** Entire article R&RE, p. 774, § 1, effective January 1, 1990. **L. 90:** Entire section amended, p. 923, § 1, effective March 27. **L. 91:** Entire section amended, p. 428, § 2, effective May 24.

### **ANNOTATION**

**The purpose of seating an alternate juror** is to have available another juror when, through unforeseen circumstances, a juror is unable to continue to serve. *People v. Abbott*, 690 P.2d 1263 (Colo. 1984); *Hardesty v. Pino*, 222 P.3d 336 (Colo. App. 2009).

**A trial court is in the best position to evaluate whether a juror is unable to serve**, and its decision to excuse a juror will not be disturbed absent a gross abuse of discretion. *People v. Abbott*, 690 P.2d 1263 (Colo. 1984); *Hardesty v. Pino*, 222 P.3d 336 (Colo. App. 2009).

**A trial court is not required to conduct a more thorough investigation** to make a factual determination regarding an absent

juror's physical inability to continue. *Hardesty v. Pino*, 222 P.3d 336 (Colo. App. 2009).

**Where some unforeseen circumstance unrelated to the merits of a case hampers a juror's continued ability to sit**, replacing a juror with an alternate is in the nature of an administrative task. *People v. Anderson*, 183 P.3d 649 (Colo. App. 2007); *Hardesty v. Pino*, 222 P.3d 336 (Colo. App. 2009).

**No error when court did not specifically instruct reconstituted jury** that it must restart jury deliberation, completely disregarding the deliberations involving the replaced juror. *Springs v. Perry*, 8 P.3d 517 (Colo. App. 2000).

**13-71-143. Grand jurors - vacancies.**

Vacancies which exist on a grand jury panel shall be filled in accordance with section 13-72-106.

**Source: L. 89:** Entire article R&RE, p. 774, § 1, effective January 1, 1990.

**13-71-144. Jury fees to be assessed in civil cases.**

(1) (a) *[Editor's note: This version of subsection (1)(a) is effective until July 1, 2027.]* On and after July 1, 2019, any party demanding a trial by jury as provided by statute shall pay to the clerk of the court a fee of two hundred thirty-one dollars in district court cases at the time the demand is made pursuant to the Colorado rules of civil procedure.

(1) (a) *[Editor's note: This version of subsection (1)(a) is effective July 1, 2027.]* On and after July 1, 2027, any party demanding a trial by jury as provided by statute shall pay to the clerk of the court a fee of two hundred twenty-six dollars in district court cases at the time the demand is made pursuant to the Colorado rules of civil procedure.

(b) *[Editor's note: This version of subsection (1)(b) is effective until July 1, 2027.]* On and after July 1, 2008, any party demanding a trial by jury as provided by statute shall pay to the clerk of the court a fee of ninety-eight dollars in county court cases at the time the demand is made pursuant to the Colorado rules of civil procedure.

(b) *[Editor's note: This version of subsection (1)(b) is effective July 1, 2027.]* On and after July 1, 2027, any party demanding a trial by jury as provided by statute shall pay to the clerk of the court a fee of ninety-three dollars in county court cases at the time the demand is made pursuant to the Colorado rules of civil procedure.

(c) Each party to an action who does not affirmatively waive, in writing, the right to a trial by jury on all issues which are so triable shall pay the jury fee. Failure to pay the jury fee at the time of filing the demand, and no later than ten days after the service of the last pleading directed to any issue triable by a jury, shall constitute a waiver of a jury trial by the demanding, nonpaying party.

(2) (a) Each fee collected pursuant to subsection (1)(a) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) *[Editor's note: This version of subsection (2)(a)(II) is effective until July 1, 2027.]* On and after July 1, 2019, one hundred sixty-five dollars shall be deposited in the judicial

stabilization cash fund created in section 13-32-101 (6), five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, forty-one dollars shall be deposited in the office of public guardianship cash fund established pursuant to section 13-94-108 (1), and twenty dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(II) ***[Editor's note: This version of subsection (2)(a)(II) is effective July 1, 2027.]*** On and after July 1, 2027, one hundred sixty-five dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6), forty-one dollars shall be deposited in the office of public guardianship cash fund established pursuant to section 13-94-108 (1), and twenty dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(b) ***[Editor's note: This version of the introductory portion to subsection (2)(b) is effective until July 1, 2027.]*** Each fee collected pursuant to paragraph (b) of subsection (1) of this section shall be transmitted to the state treasurer and divided as follows:

(b) ***[Editor's note: This version of the introductory portion to subsection (2)(b) is effective July 1, 2027.]*** Each fee collected pursuant to subsection (1)(b) of this section shall be transmitted to the state treasurer and divided as follows:

(I) Repealed.

(II) ***[Editor's note: This version of subsection (2)(b)(II) is effective until July 1, 2027.]*** On and after July 1, 2009, eighty-four dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6), five dollars shall be deposited in the court security cash fund established pursuant to section 13-1-204, and nine dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(II) ***[Editor's note: This version of subsection (2)(b)(II) is effective July 1, 2027.]*** On and after July 1, 2027, eighty-four dollars shall be deposited in the judicial stabilization cash fund created in section 13-32-101 (6) and nine dollars shall be deposited in the justice center cash fund created in section 13-32-101 (7)(a).

(3) (Deleted by amendment, L. 2008, p. 2142, § 12, effective June 4, 2008.)

(4) ***[Editor's note: Subsection (4) is effective July 1, 2027.]*** Beginning July 1, 2027, the court shall collect, on behalf of the court security authority, the court security surcharge described in section 13-1-505 on each filing specified in subsection (1) of this section in the amount of ten dollars. The court shall transmit the court security surcharge in the manner specified in section 13-1-505 (2).

**Source:** L. 89: Entire article R&RE, p. 774, § 1, effective January 1, 1990. L. 2003: Entire section amended, p. 574, § 6, effective March 18. L. 2007: Entire section amended, p. 1269, § 6,

effective May 25; entire section amended, p. 1537, § 27, effective May 31. **L. 2008:** Entire section amended, p. 2142, § 12, effective June 4. **L. 2019:** (1)(a), IP(2)(a), and (2)(a)(II) amended, (HB 19-1045), ch. 366, p. 3366, § 7, effective July 1. **L. 2026:** (1)(a), (1)(b), (2)(a)(II), IP(2)(b), and (2)(b)(II) amended and (4) added, (HB 26-1422), ch. 331, p. 1958, § 23, effective July 1, 2027.

**Editor's note:** (1) Amendments to this section by House Bill 07-1054 and Senate Bill 07-118 were harmonized, resulting in the renumbering of subsection (2) in House Bill 07-1054 to subsection (3).

(2) Subsection (2)(a)(I)(B) provided for the repeal of subsection (2)(a)(I), effective July 1, 2010, and subsection (2)(b)(I)(B) provided for the repeal of subsection (2)(b)(I), effective July 1, 2010. (See L. 2008, p. 2142.)

**Cross references:** For the legislative declaration contained in the 2008 act amending this section, see section 1 of chapter 417, Session Laws of Colorado 2008.

#### ANNOTATION

**Court has no discretion to extend the statutory jury fee deadline** under the rules of civil procedure. When a statute sets forth a particular deadline or procedure, court-

promulgated rules do not apply. *Premier Members Fed. Credit Union v. Block*, 2013 COA 128, 312 P.3d 276.

#### **13-71-145. Expense of meals and provisions to be taxed.**

In all civil cases if any expenses are incurred in furnishing meals or provisions to jurors impaneled to try such causes, such expenses shall be taxed as costs in the suit against the unsuccessful party. When collected, the same shall be paid to the clerk of the court for deposit in the state general fund or to reimburse an employer in an amount not to exceed fifty dollars per day for the first three days served by the employee. In the first instance the same shall be paid by the court pursuant to the provisions of section 13-3-106.

**Source: L. 89:** Entire article R&RE, p. 774, § 1, effective January 1, 1990.

## ARTICLE 72

### Grand Jurors

|            |                                          |            |                                                                             |
|------------|------------------------------------------|------------|-----------------------------------------------------------------------------|
| 13-72-101. | Grand jurors - term - additional juries. | 13-72-106. | Attendance excused - discharged - prospective jurors.                       |
| 13-72-102. | Number of jurors.                        | 13-72-107. | Juror giving information - oath.                                            |
| 13-72-103. | Selection of jury panel.                 | 13-72-108. | Sealing of indictment.                                                      |
| 13-72-104. | Foreman appointed - duties.              | 13-72-109. | Impaneling of judicial district grand jury - county grand jury unnecessary. |
| 13-72-105. | Oath of foreman - jurors.                |            |                                                                             |

#### **13-72-101. Grand jurors - term - additional juries.**

(1) Grand juries shall not be drawn, summoned, or required to attend the sitting of any court in any county in this state unless specially ordered by the court having jurisdiction to make such an order and except as provided in subsection (2) of this section. The length of term served by a grand jury shall be as provided in section 13-71-120.

(2) In counties with a population of one hundred thousand persons or more, according to the latest federal census, a grand jury shall be drawn and summoned by the court to attend the sitting of said court at the first term of such court in each year.

(3) In all other counties, the grand jury shall be called and shall sit at such times and for such periods as the court may order on its own motion or upon motion by the district attorney of the judicial district in which the county is located.

(4) Upon motion of the district attorney and for good cause shown, the court may cause to be drawn and summoned an additional grand jury.

(5) A grand jury shall be impaneled, sworn and charged in, and report to such court, as the judges of the judicial district among themselves agree or as they may by rule provide.

**Source:** L. 70: R&RE, p. 244, § 1. C.R.S. 1963: § 78-6-1. L. 84: (5) added, p. 476, § 2, effective February 6. L. 89: (1) amended, p. 774, § 2, effective January 1, 1990. L. 99: (1) amended, p. 54, § 2, effective March 15.

## ANNOTATION

**Annotator's note.** Since § 13-72-101 is similar to repealed § 78-6-1, C.R.S. 1963, a relevant case construing that provision has been included in the annotations to this section.

**This section provides for the statutory grand jury.** *Buchler v. District Court*, 158 Colo. 205, 405 P.2d 950 (1965).

**Grand jury is an adjunct of the court.** *Losavio v. Kikel*, 187 Colo. 148, 529 P.2d 306 (1974).

**This section fixes the time when such grand jury shall be impaneled.** *Buchler v. District Court*, 158 Colo. 205, 405 P.2d 950 (1965).

**Service for full 18 months legislative intent.** By enacting this section, the general assembly intended to allow a grand jury to serve for a full 18 months. *Losavio v. Kikel*, 187 Colo. 148, 529 P.2d 306 (1974).

**Indictment against a defendant is not void** merely because the grand jury returned the same at a term of court subsequent to the term in which it was organized. *Buchler v. District Court*, 158 Colo. 205, 405 P.2d 950 (1965).

Where a lawfully impaneled grand jury holds over into a term of court subsequent to the one in which it was organized, and at such succeeding term of court is still recognized by the court as a lawful body, it is a good and sufficient grand jury de facto and indictments returned by it are not void, but valid; and such is especially true where a de jure grand jury has not in the meantime

been impaneled. *Buchler v. District Court*, 158 Colo. 205, 405 P.2d 950 (1965).

**Court has authority to ensure that grand jury's function is reasonably facilitated.** *Losavio v. Kikel*, 187 Colo. 148, 529 P.2d 306 (1974).

**Court's power relative to grand jury includes**, among other things, authority to protect the grand jury from working unreasonable hours, meeting in unreasonable places, or from service under otherwise unreasonable conditions. *Losavio v. Kikel*, 187 Colo. 148, 529 P.2d 306 (1974).

**Power of court to discharge grand jury does not justify judicial interference** with the internal affairs and investigations of a legally constituted grand jury. *Losavio v. Kikel*, 187 Colo. 148, 529 P.2d 306 (1974).

**Court may not dictate nor inquire into areas which are being investigated by grand jury**, for to authorize such an endeavor would contravene the very purpose for which the system was devised. *Losavio v. Kikel*, 187 Colo. 148, 529 P.2d 306 (1974).

**Grand jury mandatory in counties of at least 100,000.** The court must convene a grand jury if the county in which the grand jury is to conduct an investigation is populated by at least 100,000 inhabitants. *Losavio v. Kikel*, 187 Colo. 148, 529 P.2d 306 (1974).

**Additional grand jury at court's discretion.** The court may exercise its



discretion in ruling on a district attorney's motion to summon an additional grand jury and should not grant the request unless good cause has been shown. *Losavio v. Kikel*, 187 Colo. 148, 529 P.2d 306 (1974).

**Grand jury should not be utilized as handmaiden to district attorney.** *Losavio v. Kikel*, 187 Colo. 148, 529 P.2d 306 (1974).

**Denial of petition to impanel is not abuse of discretion.** *Ross v. Ogburn*, 646 P.2d 390 (Colo. 1982).

**Motion when one grand jury inadequate to handle volume and burden of investigations.** If a district attorney feels that one grand jury is inadequate to handle

the volume and the burden of investigations which he has ordered, he may make a motion to the court to summon an additional grand jury. *Losavio v. Kikel*, 187 Colo. 148, 529 P.2d 306 (1974).

**Grand jury should not be used in routine cases or for political or other improper purposes.** *Losavio v. Kikel*, 187 Colo. 148, 529 P.2d 306 (1974).

**Information rather than grand jury in ordinary criminal cases.** Criminal justice system in Colorado is not geared to the use of the grand jury in every criminal case, as the district attorney should utilize the information as the charging document in the ordinary case. *Losavio v. Kikel*, 187 Colo. 148, 529 P.2d 306 (1974).

### **13-72-102. Number of jurors.**

A grand jury shall consist of twelve persons, and the assent of nine jurors shall be necessary for the returning of a true bill; but, upon motion of the district attorney and for good cause shown, the court may cause to be convened, impaneled, and sworn a grand jury consisting of twenty-three members, and the assent of twelve members shall be necessary for the returning of a true bill when said grand jury consists of twenty-three members. At any meeting of the grand jury at least nine grand jurors shall constitute a quorum.

**Source:** L. 70: R&RE, p. 244, § 1. C.R.S. 1963: § 78-6-2. L. 89: Entire section amended, p. 778, § 1, effective July 1.

### **13-72-103. Selection of jury panel.**

In drawing the list of jurors, the court shall select from no less than seventy-five names thereon and from such additional lists of names as the court may order, or from such lesser number as may be called to serve as jurors, the names of either twelve or twenty-three persons who shall constitute a grand jury and four alternate grand jurors. The members of the county grand jury shall be selected by the chief judge with the advice of the district attorney. The court may close

to the public part or all of the selection process when reasonably necessary to protect the grand jury process or the security of the grand jurors. The length of term served by a county grand jury shall be as provided in section 13-71-120. The court, upon its own motion or at the request of the district attorney, shall enter an order to preserve the confidentiality of all information that might identify grand jurors when reasonably necessary to protect the grand jury process or the security of the grand jurors. In the absence of such an order, upon request, the jury commissioner shall make available for inspection by members of the public a list of grand jurors containing only the grand jurors' names and juror numbers. The court may strike the name of any juror who appears to the court to be incompetent or unqualified to serve.

**Source:** **L. 70:** R&RE, p. 245, § 1. **C.R.S. 1963:** § 78-6-3. **L. 79:** Entire section amended, p. 628, § 1, effective May 25. **L. 89:** Entire section amended, p. 778, § 2, effective July 1. **L. 91:** Entire section amended, p. 429, § 3, effective May 24. **L. 99:** Entire section amended, p. 55, § 3, effective March 15.

#### ANNOTATION

|                                           |                 |     |          |                                           |
|-------------------------------------------|-----------------|-----|----------|-------------------------------------------|
| <b>Law</b>                                | <b>reviews.</b> | For | article, | exclusion of persons from a grand jury on |
| "Pronouncements of the U.S. Supreme Court |                 |     |          | the basis of race, see 15 Colo. Law. 1611 |
| Relating to the Criminal Law Field: 1985- |                 |     |          | (1986).                                   |
| 1986", which discusses a case relating to |                 |     |          |                                           |

#### **13-72-104. Foreman appointed - duties.**

Before a grand jury at any term of court is sworn or affirmed, the court shall appoint a foreman of such jury and an alternate foreman to act in the absence of the foreman, and such foreman or alternate foreman has power to administer an oath or affirmation to any and all witnesses who may be required to testify before such jury. He shall also endorse upon every bill that may be presented to a grand jury the finding of such jury that the same is "a true bill" or "not a true bill", as the case may be, and sign his name thereto before the same is returned into court.

**Source:** **L. 70:** R&RE, p. 245, § 1. **C.R.S. 1963:** § 78-6-4. **L. 89:** Entire section amended, p. 778, § 3, effective July 1.

#### ANNOTATION

**Under this section until the bill is indorsed "a true bill", and signed and presented, it is not an indictment. Bd. of**

County Comm'rs v. Graham, 4 Colo. 201 (1878) (decided under repealed laws antecedent to CSA, C. 95, § 61).

### **13-72-105. Oath of foreman - jurors.**

(1) Before a grand jury enters upon its duties, an oath or affirmation shall be administered to the foreman, as follows:

"You, as foreman of this inquest, do solemnly swear or affirm that you will diligently inquire into, and true presentment make, of all such matters and things as shall be given you in charge, or shall otherwise come to your knowledge touching the present service; you will present no person through malice, hatred, or ill will, and that you will leave no one unpresented through fear, favor, or affection, or for any fee or reward or the hope or promise thereof; that you will keep secret your own counsel and that of your fellows touching the present service, and that in all your presentments, you will present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God."

(2) An oath or affirmation shall be administered to the other grand jurors as follows:

"You and each of you do solemnly swear or affirm that you will well and truly keep and observe the oath that" A.B., "your foreman, has just taken before you, so help you God."

**Source: L. 70: R&RE, p. 245, § 1. C.R.S. 1963: § 78-6-5.**

### **ANNOTATION**

**Annotator's note.** Since § 13-72-105 is similar to repealed laws antecedent to CSA, C. 95, § 62, a relevant case construing those provisions has been included in the annotations to this section.

**Generally mere juror prejudice will not invalidate an indictment.** The general rule is that neither the bias nor prejudice of a grand juror, nor his interest in a prosecution, other than a direct pecuniary interest, nor the fact that he has formed, or expressed an opinion will so disqualify him as to render

invalid indictments returned by the grand jury. But this would not be true where jurors had determined, through malice or bribery, to violate their oaths. *Joslyn v. People*, 67 Colo. 297, 184 P. 375 (1919).

**If juror enters into agreement to violate oath, he is in contempt.** Under this section if, before taking oath, a juror has entered into an agreement or conspiracy to violate it, and as a grand juror he is engaged in consummating that agreement or conspiracy, he is clearly in contempt and may be

punished. *Joslyn v. People*, 67 Colo. 297, 184 P. 375 (1919).

**13-72-106. Attendance excused - discharged - prospective jurors.**

At any time for cause shown, the court may excuse a grand juror permanently and, if so excused, the court shall select a replacement grand juror from one of the four alternate grand jurors chosen pursuant to section 13-72-103. The excuse or discharge of a grand juror shall be in accordance with the procedures specified in the "Colorado Uniform Jury Selection and Service Act", article 71 of this title. The discharge of any such grand juror shall in no way or manner affect any indictment found by the grand jury as it was composed either before or after such charge.

**Source:** L. 70: R&RE, p. 245, § 1. **C.R.S. 1963:** § 78-6-6. **L. 89:** Entire section amended, p. 779, § 4, effective July 1; entire section amended, p. 775, § 3, effective January 1, 1990.

**Editor's note:** Amendments to this section by House Bill 89-1252 and Senate Bill 89-041 were harmonized.

**13-72-107. Juror giving information - oath.**

When any member of a grand jury gives information touching any matter pending before such jury, he shall take an oath or affirmation in the same manner as other witnesses.

**Source:** L. 70: R&RE, p. 245, § 1. **C.R.S. 1963:** § 78-6-7.

**13-72-108. Sealing of indictment.**

The court, upon motion of the district attorney, shall order the indictment to be sealed and no person may disclose the existence of the indictment until the defendant is in custody or has been admitted to bail except when necessary for the issuance or execution of a warrant or summons.

**Source:** L. 93: Entire section added, p. 516, § 3, effective July 1.

**13-72-109. Impaneling of judicial district grand jury - county grand jury unnecessary.**

If a judicial district grand jury is impaneled pursuant to article 74 of this title, there is no need to impanel a county grand jury pursuant to this article.

**Source: L. 93:** Entire section added, p. 516, § 3, effective July 1.

**ARTICLE 73**

**Statewide Grand Juries**

|              |                                                                   |            |                                                                                                                                |
|--------------|-------------------------------------------------------------------|------------|--------------------------------------------------------------------------------------------------------------------------------|
| 13-73-100.3. | Definitions.                                                      | 13-73-104. | Summoning of jurors.                                                                                                           |
| 13-73-101.   | Petition for impaneling -<br>determination by chief<br>judge.     | 13-73-105. | Judicial supervision.                                                                                                          |
| 13-73-102.   | Powers and duties -<br>applicable law - rules and<br>regulations. | 13-73-106. | Presentation of evidence.                                                                                                      |
| 13-73-103.   | List of prospective jurors -<br>selection - membership -<br>term. | 13-73-107. | Return of indictment or<br>presentment - designation<br>of venue - consolidation<br>of indictments - sealing of<br>indictment. |
|              |                                                                   | 13-73-108. | Costs and expenses.                                                                                                            |

**13-73-100.3. Definitions.**

As used in this article 73, unless the context otherwise requires:

- (1) "County grand jury" means a grand jury impaneled pursuant to article 72 of this title 13.
- (2) "Judicial district grand jury" means a grand jury impaneled pursuant to article 74 of this title 13.

**Source: L. 2025:** Entire section added, (SB 25-275), ch. 377, p. 2042, § 62, effective August 6.

**13-73-101. Petition for impaneling - determination by chief judge.**

(1) The general assembly finds that the state grand jury exists because of the need to investigate and prosecute crime without regard to county or judicial district boundaries in cases involving organized crime, criminal activity in more than one judicial district, or unusual difficulties in the investigation or adjudication of a matter or cases in which the attorney general has authority to prosecute. The state grand jury is intended, therefore, to be a law enforcement tool with statewide jurisdiction.

(2) When the attorney general deems it to be in the public interest to convene a grand jury that has jurisdiction extending beyond the boundaries of any single county, the attorney general may petition the chief judge of any district court for an order in accordance with the provisions of this article 73. Said chief judge may, for good cause shown, order the impaneling of a state grand jury that shall have statewide jurisdiction. In making a determination as to the need for impaneling a state grand jury, the judge shall require a showing that the matter cannot be effectively handled by a county grand jury or judicial district grand jury.

**Source:** L. 71: p. 880, § 1. C.R.S. 1963: § 78-8-1. L. 96: Entire section amended, p. 738, § 12, effective July 1. L. 97: (1) amended, p. 1552, § 4, effective July 1. L. 2025: (2) amended, (SB 25-275), ch. 377, p. 2042, § 63, effective August 6.

**ANNOTATION**

**Denial of petition to impanel is not abuse of discretion.** Ross v. Ogburn, 646 P.2d 390 (Colo. 1982).

**Grand jury may return indictment based on facts inquired into.** A properly impaneled grand jury may return an indictment based on facts discovered by it during investigation of matters it is authorized to inquire into when the facts supporting the indictment show the commission of offenses beyond its authorization. People v. Hower, 626 P.2d 734 (Colo. App. 1981).

**The statutory powers granted to the attorney general under § 24-31-101 are**

**not enlarged by this article.** People ex rel. Tooley v. District Court, 190 Colo. 486, 549 P.2d 774 (1976).

Neither by express provision nor by implication did the general assembly grant the attorney general the right to prosecute all indictments returned by a state grand jury. People ex rel. Tooley v. District Court, 190 Colo. 486, 549 P.2d 774 (1976).

**This section expressly gives the attorney general the power to petition the chief judge of a district court for the impanelment of a state grand jury, and no executive order by the governor is required.**

People v. Valdez, 928 P.2d 1387 (Colo. App. 1996).

**Impaneling of statewide grand jury was proper** where district court chief judge found that attorney general had made a showing of good cause, matter could not be effectively handled by county grand jury,

and it was in the public interest to convene statewide grand jury. People v. Cerrone, 867 P.2d 143 (Colo. App. 1993), aff'd on other grounds, 900 P.2d 45 (Colo. 1995).

**Applied** in In re P.R. v. District Court, 637 P.2d 346 (Colo. 1981).

### **13-73-102. Powers and duties - applicable law - rules and regulations.**

A state grand jury shall have the same powers and duties and shall function in the same manner as a county grand jury, except that its jurisdiction shall extend throughout the state. The law applicable to county grand juries shall apply to state grand juries except when such law is inconsistent with the provisions of this article. The supreme court may promulgate such procedural rules as it deems necessary to govern the procedures of state grand juries.

**Source: L. 71: p. 880, § 1. C.R.S. 1963: § 78-8-2.**

### **13-73-103. List of prospective jurors - selection - membership - term.**

The state court administrator, upon receipt of an order of a chief judge of the district court granting a petition to impanel a state grand jury, shall prepare a list of prospective state grand jurors drawn from existing jury lists of the several counties. In preparing the list of prospective state grand jurors, the state court administrator need not include names of jurors from every county within the state, but the state court administrator may select jurors from counties near the county in which the chief judge requesting the list presides. The chief judge granting the order shall impanel the state grand jury from the list compiled by the state court administrator. A state grand jury shall be composed of twelve or twenty-three members, as provided in section 13-72-102, but not more than one-fourth of the members of the state grand jury shall be residents of any one county. The members of the state grand jury shall be selected by the chief judge with the advice of the attorney general. The chief judge may close to the public part or all of the selection process when reasonably necessary to protect the grand jury process or the security of the grand jurors. The length of term served by a state grand jury shall be as provided in section 13-71-120. The court, upon its own motion or at the request of the attorney general, shall enter an order to preserve the confidentiality of all information that might identify state grand jurors when reasonably necessary to protect the state grand jury process or the security of the state grand jurors. In the absence of such an order, upon request, the state court administrator shall make

available for inspection by members of the public a list of state grand jurors containing only the state grand jurors' names and juror numbers.

**Source:** L. 71: p. 880, § 1. C.R.S. 1963: § 78-8-3. L. 99: Entire section amended, p. 55, § 4, effective March 15.

#### **13-73-104. Summoning of jurors.**

The jury commissioner of the court in which the petition for impaneling the state grand jury is filed shall cause said prospective jurors to be summoned for service in the manner provided in section 13-71-110.

**Source:** L. 71: p. 881, § 1. C.R.S. 1963: § 78-8-4. L. 89: Entire section amended, p. 775, § 4, effective January 1, 1990.

#### **13-73-105. Judicial supervision.**

Judicial supervision of the state grand jury shall be maintained by the chief judge who issued the order impaneling such grand jury, and all indictments, reports, and other formal returns of any kind made by such grand jury shall be returned to that judge.

**Source:** L. 71: p. 881, § 1. C.R.S. 1963: § 78-8-5.

#### **13-73-106. Presentation of evidence.**

The presentation of the evidence must be made to the state grand jury by the attorney general or his or her designee.

**Source:** L. 71: p. 881, § 1. C.R.S. 1963: § 78-8-6. L. 2016: Entire section amended, (HB 16-1094), ch. 94, p. 266, § 8, effective August 10.

### **ANNOTATION**



**No authority of attorney general or designee to confer full grand jury subpoena power on police officers.**

Responsibility to present evidence to statewide grand jury pursuant to this section combined with authority to appoint deputies

pursuant to § 24-31-103 does not give the attorney general or his designee authority to confer full grand jury subpoena power on police officers by naming them as strike force investigators. *People v. Corr*, 682 P.2d 20 (Colo. 1984).

**13-73-107. Return of indictment or presentment - designation of venue - consolidation of indictments - sealing of indictment.**

(1) Any indictment by a state grand jury shall be returned to the chief judge who is supervising the statewide grand jury without any designation of venue. Thereupon, the chief judge shall, by order, designate any county in the state as the county of venue for the purpose of trial. Once venue is designated by the chief judge, a change of venue may be granted only as provided by article 6 of title 16, C.R.S. The chief judge may, by order, direct the consolidation of an indictment returned by a county grand jury with an indictment returned by a state grand jury and fix venue for trial.

(2) The court, upon motion of the attorney general, shall order the indictment to be sealed and no person may disclose the existence of the indictment until the defendant is in custody or has been admitted to bail except when necessary for the issuance or execution of a warrant or summons.

**Source:** L. 71: p. 881, § 1. C.R.S. 1963: § 78-8-7. L. 93: Entire section amended, p. 516, § 4, effective July 1. L. 96: (1) amended, p. 739, § 13, effective July 1.

**13-73-108. Costs and expenses.**

The costs and expenses incurred in impaneling a state grand jury and in the performance of its functions and duties shall be paid by the state out of funds appropriated to the judicial department.

**Source:** L. 71: p. 881, § 1. C.R.S. 1963: § 78-8-8.

## ARTICLE 74

### Judicial District Grand Juries

- |            |                                                                   |            |                                                                                                                  |
|------------|-------------------------------------------------------------------|------------|------------------------------------------------------------------------------------------------------------------|
| 13-74-101. | Petition for impaneling -<br>determination by chief<br>judge.     | 13-74-105. | Judicial supervision.                                                                                            |
| 13-74-102. | Powers and duties -<br>applicable law - rules and<br>regulations. | 13-74-106. | Presentation of evidence.                                                                                        |
| 13-74-103. | List of prospective jurors -<br>selection - membership -<br>term. | 13-74-107. | Return of indictment -<br>designation of venue -<br>consolidation of<br>indictments - sealing of<br>indictments. |
| 13-74-104. | Summoning of jurors.                                              | 13-74-108. | Costs and expenses.                                                                                              |
|            |                                                                   | 13-74-109. | Applicability.                                                                                                   |
|            |                                                                   | 13-74-110. | Procedural matters.                                                                                              |

#### **13-74-101. Petition for impaneling - determination by chief judge.**

When the district attorney deems it to be in the public interest to convene a grand jury which has jurisdiction extending beyond the boundaries of any single county, he may petition the chief judge of any district court for an order in accordance with the provisions of this article. Said chief judge shall, for good cause shown, order the impaneling of a judicial district grand jury which shall have judicial districtwide jurisdiction. If a judicial district grand jury is impaneled pursuant to this article, there is no need to impanel a county grand jury pursuant to article 72 of this title.

**Source:** **L. 83:** Entire article added, p. 633, § 1, effective July 1. **L. 89:** Entire section amended, p. 779, § 5, effective July 1. **L. 93:** Entire section amended, p. 516, § 5, effective July 1.

#### **13-74-102. Powers and duties - applicable law - rules and regulations.**

A judicial district grand jury shall have the same powers and duties and shall function in the same manner as a county grand jury; except that its jurisdiction shall extend throughout the judicial district. The law applicable to county grand juries shall apply to judicial district grand juries except when such law is inconsistent with the provisions of this article. The supreme court

may promulgate such procedural rules as it deems necessary to govern the procedures of judicial district grand juries.

**Source: L. 83:** Entire article added, p. 633, § 1, effective July 1.

**13-74-103. List of prospective jurors - selection - membership - term.**

The state court administrator, upon receipt of an order of a chief judge of the district court granting a petition to impanel a judicial district grand jury, shall prepare a list of prospective judicial district grand jurors drawn from existing jury lists of the several counties within the district. In preparing the list of prospective judicial district grand jurors, the state court administrator need not include names of jurors from every county within the district, but the state court administrator may select jurors from counties near the county in which the chief judge requesting the list presides. The chief judge granting the order shall impanel the judicial district grand jury from the list compiled by the state court administrator. A judicial district grand jury shall be composed of twelve or twenty-three members, as provided in section 13-72-102. The members of the judicial district grand jury shall be selected by the chief judge with the advice of the district attorney. The chief judge may close to the public part or all of the selection process when reasonably necessary to protect the grand jury process or the security of the grand jurors. The length of term served by a judicial district grand jury shall be as provided in section 13-71-120. The court, upon its own motion or at the request of the district attorney, shall enter an order to preserve the confidentiality of all information that might identify judicial district grand jurors when reasonably necessary to protect the judicial district grand jury process or the security of the judicial district grand jurors. In the absence of such an order, upon request, the state court administrator shall make available for inspection by members of the public a list of judicial district grand jurors containing only the judicial district grand jurors' names and juror numbers.

**Source: L. 83:** Entire article added, p. 634, § 1, effective July 1. **L. 99:** Entire section amended, p. 56, § 5, effective March 15.

**ANNOTATION**

**Although the chief judge, instead of issuing an order each year to provide names to the district grand jury venire, gave a standing order to the state court administrator,** the steps taken substantially

satisfied the required procedures, therefore the appellant suffered no prejudice. In re 2000-2001 Dist. Grand Jury, 77 P.3d 779 (Colo. App. 2003), aff'd on other grounds, 97 P.3d 921 (Colo. 2004).

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**13-74-104. Summoning of jurors.**

The jury commissioner of the court in which the petition for impaneling the judicial district grand jury is filed shall cause said prospective jurors to be summoned for service in the manner provided in section 13-71-110.

**Source:** **L. 83:** Entire article added, p. 634, § 1, effective July 1. **L. 89:** Entire section amended, p. 775, § 5, effective January 1, 1990.

**13-74-105. Judicial supervision.**

Judicial supervision of the judicial district grand jury shall be maintained by the chief judge who issued the order impaneling such grand jury, and all indictments, reports, and other formal returns of any kind made by such grand jury shall be returned to that judge.

**Source:** **L. 83:** Entire article added, p. 634, § 1, effective July 1.

**13-74-106. Presentation of evidence.**

The presentation of the evidence shall be made to the judicial district grand jury by the district attorney or his designee.

**Source:** **L. 83:** Entire article added, p. 634, § 1, effective July 1.

**13-74-107. Return of indictment - designation of venue - consolidation of indictments - sealing of indictments.**

(1) Any indictment by a judicial district grand jury shall be returned to the chief judge without any designation of venue. Thereupon, the judge shall, by order, designate the county of venue for the purpose of trial. The judge may, by order, direct the consolidation of an indictment returned by a county grand jury with an indictment returned by a judicial district grand jury and fix venue for trial.

(2) The court, upon motion of the district attorney, shall order the indictment to be sealed and no person may disclose the existence of the indictment until the defendant is in custody or has been admitted to bail except when necessary for the issuance or execution of a warrant or summons.

**Source:** **L. 83:** Entire article added, p. 634, § 1, effective July 1. **L. 93:** Entire section amended, p. 517, § 6, effective July 1.

**13-74-108. Costs and expenses.**

The costs and expenses incurred in impaneling a judicial district grand jury and in the performance of its functions and duties shall be paid by the state out of funds appropriated to the judicial department.

**Source:** **L. 83:** Entire article added, p. 634, § 1, effective July 1.

**13-74-109. Applicability.**

The provisions of this article shall apply to all judicial districts.

**Source:** **L. 83:** Entire article added, p. 634, § 1, effective July 1. **L. 91:** Entire section amended, p. 429, § 4, effective May 24.

**13-74-110. Procedural matters.**

Procedural matters not specifically addressed by the provisions of this article shall be governed by the provisions of article 72 of this title and other applicable Colorado statutes and by the Colorado rules of criminal procedure relating to grand juries.

**Source:** **L. 89:** Entire section added, p. 779, § 6, effective July 1.

## **LIMITATION OF ACTIONS**

### **ARTICLE 80**

#### **Limitations - Personal Actions**

|              |                                                                                                                                    |              |                                                                                                              |
|--------------|------------------------------------------------------------------------------------------------------------------------------------|--------------|--------------------------------------------------------------------------------------------------------------|
| 13-80-101.   | General limitation of actions<br>- three years.                                                                                    | 13-80-105.   | Limitation of actions against<br>land surveyors.                                                             |
| 13-80-102.   | General limitation of actions<br>- two years.                                                                                      | 13-80-105.5. | Limitation of actions against<br>a real estate appraiser -<br>definitions.                                   |
| 13-80-102.5. | Limitation of actions -<br>medical or health care.                                                                                 | 13-80-106.   | Limitation of actions against<br>manufacturers or sellers<br>of products.                                    |
| 13-80-103.   | General limitation of actions<br>- one year.                                                                                       | 13-80-107.   | Limitation of actions against<br>manufacturers, sellers, or<br>lessors of new<br>manufacturing<br>equipment. |
| 13-80-103.5. | General limitation of actions<br>- six years.                                                                                      | 13-80-107.5. | Limitation of actions for<br>uninsured or underinsured<br>motorist insurance -<br>definitions.               |
| 13-80-103.6. | General limitation of actions<br>- domestic violence - six<br>years - definition.                                                  | 13-80-108.   | When a cause of action<br>accrues.                                                                           |
| 13-80-103.7. | General limitation of actions<br>- sexual misconduct -<br>third-party liability -<br>definition.                                   | 13-80-109.   | Limitations apply to<br>noncompulsory<br>counterclaims and setoffs.                                          |
| 13-80-103.8. | Limitation of civil forfeiture<br>actions related to criminal<br>acts.                                                             | 13-80-110.   | Causes barred in state of<br>origin.                                                                         |
| 13-80-103.9. | Limitation of actions - failure<br>to perform a background<br>check by a public entity -<br>injury to a child.                     | 13-80-111.   | Commencement of new<br>action upon involuntary<br>dismissal.                                                 |
| 13-80-104.   | Limitation of actions against<br>architects, contractors,<br>builders or builder<br>vendors, engineers,<br>inspectors, and others. | 13-80-112.   | When action survives death.                                                                                  |
|              |                                                                                                                                    | 13-80-113.   | New promise - effect of<br>payment.                                                                          |

|            |                                              |            |                                                                                                             |
|------------|----------------------------------------------|------------|-------------------------------------------------------------------------------------------------------------|
| 13-80-114. | Promise by one of parties in joint interest. | 13-80-118. | Absence or concealment of a party subject to suit.                                                          |
| 13-80-115. | Endorsement by payee - effect.               | 13-80-119. | Damages sustained during commission of a felonious act or in flight from the commission of a felonious act. |
| 13-80-116. | Action against joint debtors or obligors.    |            |                                                                                                             |
| 13-80-117. | No dismissal for nonjoinder.                 |            |                                                                                                             |

**13-80-101. General limitation of actions - three years.**

(1) The following civil actions, regardless of the theory upon which suit is brought, or against whom suit is brought, shall be commenced within three years after the cause of action accrues, and not thereafter:

(a) All contract actions, including personal contracts and actions under the "Uniform Commercial Code", except as otherwise provided in section 13-80-103.5;

(b) Repealed.

(c) All actions for fraud, misrepresentation, concealment, or deceit except those in section 13-80-102 (1)(j);

(d) and (e) Repealed.

(f) All actions for breach of trust or breach of fiduciary duty;

(g) All claims under the "Uniform Consumer Credit Code", except section 5-5-201 (5), C.R.S.;

(h) All actions of replevin or for taking, detaining, or converting goods or chattels, except as otherwise provided in section 13-80-103.5;

(i) All actions under the "Motor Vehicle Financial Responsibility Act", article 7 of title 42, C.R.S.;

(j) All actions under part 6 of article 4 of title 10, C.R.S.;

(k) All actions accruing outside this state if the limitation of actions of the place where the cause of action accrued is greater than that of this state;

(l) All actions of debt under section 40-30-102, C.R.S.;

(m) All actions for recovery of erroneous or excessive refunds of any tax under section 39-21-102, C.R.S.;

(n) (I) All tort actions for bodily injury or property damage arising out of the use or operation of a motor vehicle including all actions pursuant to paragraph (j) of this subsection (1).

(II) The provisions of this paragraph (n) do not apply to any action for strict liability, absolute liability, or failure to instruct or warn governed by the provisions of section 13-80-102 (1)(b) or section 13-80-106.

(o) and (p) Repealed.

**Source:** **L. 86:** Entire article R&RE, p. 695, § 1, effective July 1; (1)(b) repealed and (1)(c) amended, pp. 708, 707, §§ 4, 1, effective July 1. **L. 87:** (1)(a) and (1)(c) amended and (1)(l) and (1)(m) added, p. 567, §1, effective July 1; (1)(c) amended, p. 538, § 10, effective July 1; (1)(e) repealed, p. 600, § 38, effective July 10. **L. 91:** (1)(a) amended, p. 270, § 7, effective July 1. **L. 92:** (1)(d) repealed, p. 244, § 3, effective July 1. **L. 94:** (1)(n) added, p. 2824, § 1, effective July 1. **L. 99:** (1)(o) added, p. 215, § 3, effective July 1; (1)(p) added, p. 593, § 2, effective July 1. **L. 2000:** (1)(g) amended, p. 1872, § 108, effective August 2; (1)(c) amended, p. 3, § 4, effective July 1, 2001. **L. 2003:** (1)(j) amended, p. 1572, § 8, effective July 1. **L. 2011:** (1)(o)(I), (1)(o)(II)(C), and (1)(p) repealed, (HB 11-1303), ch. 264, p. 1153, § 21, effective August 10. **L. 2013:** (1)(o)(II) repealed, (HB 13-1300), ch. 316, p. 1674, § 34, effective August 7. **L. 2017:** (1)(c) amended, (SB 17-294), ch. 264, p. 1390, § 27, effective May 25.

**Editor's note:** The provisions of this section are similar to provisions of several former sections as they existed prior to 1986. For a detailed comparison, see the comparative tables located in the back of the index.

**Cross references:** For the "Uniform Commercial Code", see title 4.

## ANNOTATION

I. General Consideration.

IX. Paragraph (n).

IV. Paragraph (d).

### I. GENERAL CONSIDERATION.

V. Paragraph (f).

**Law reviews.** For article, "Federal Practice and Procedure", see 56 Den. L.J. 491 (1979). For article, "Securities", see 59 Den. L.J. 367 (1982). For article, "Will Contests — Some Procedural Aspects", see

VI. Paragraph (h).

VII. Paragraph (j).

VIII. Paragraph (k).



15 Colo. Law. 787 (1986). For article, "Tort Reform's Impact on Contract Law", see 15 Colo. Law. 2206 (1986). For article, "Construction Defect Statutes of Limitation and Repose Update, Part I", see 49 Colo. Law. 26 (Dec. 2020). For article, "Legal Malpractice Under Colorado Law", see 52 Colo. Law. 26 (Apr. 2023).

**Annotator's note.** For cases concerning when a cause of action accrues under this section, see the annotations to § 13-80-108.

**Purpose of statute of limitations** is to promote justice, discourage unnecessary delay and forestall the prosecution of stale claims. Colo. State Bd. of Med. Exam'rs v. Jorgensen, 198 Colo. 275, 599 P.2d 869 (1979).

**The phrase "and not thereafter" in subsection (1) acts as an exception to the general rule** that statutory time periods are extended when they expire on a weekend or legal holiday. Gomez v. Walker, 2023 COA 79, 540 P.3d 936.

**Uncertainty as to the precise extent of damage neither precludes the filing of a suit nor delays the accrual of a claim for purposes of the statute of limitations.** Palisades Nat'l Bank v. Williams, 816 P.2d 961 (Colo. App. 1991); Broker House Int'l, Ltd. v. Bendelow, 952 P.2d 860 (Colo. App. 1998); Grant v. Pharmacia & Upjohn Co., 314 F.3d 488 (10th Cir. 2002).

**Uninsured driver's cause of action for reimbursement of medical expenses paid to such uninsured driver's passenger against insurer of vehicle which caused accident pursuant to § 10-4-713 does not**

**accrue until actual payment of medical expenses.** Sakala v. Safeco Ins. Co., 833 P.2d 879 (Colo. App. 1992).

**Coverage for underinsured motorist benefits accrues** under the terms of the policy when settlement under the tortfeasor's liability policy is obtained, not on the date of the accident. State Farm Mut. Auto Ins. v. Springle, 870 P.2d 578 (Colo. App. 1993).

**The statute of limitations does not run against the state unless the law expressly states otherwise.** Grogan v. Taylor, 877 P.2d 1374 (Colo. App. 1993), rev'd on other grounds, 900 P.2d 60 (Colo. 1995).

**Applied** in Kanarado Mining & Dev. Co. v. Sutton, 36 Colo. App. 375, 539 P.2d 1325 (1975); D'Amico v. Smith, 42 Colo. App. 369, 600 P.2d 84 (1979); Lucas v. Abbott, 198 Colo. 477, 601 P.2d 1376 (1979); Soehner v. Soehner, 642 P.2d 27 (Colo. App. 1981); Malandris v. Merrill Lynch, Pierce, Fenner & Smith Inc., 703 F.2d 1152 (10th Cir. 1981); Barker v. Jeremiasen, 676 P.2d 1259 (Colo. App. 1984); Brown v. Am. Family Ins. Group, 989 P.2d 196 (Colo. App. 1999); Oaster v. Robertson, 173 F. Supp. 3d 1150 (D. Colo. 2016).

## **II. PARAGRAPH (a).**

A. Applicability.

B. Nonapplicability.

A. Applicability.

**Law reviews.** For article, "State Statutes of Limitation Contrasted and Compared", see 3 Rocky Mt. L. Rev. 106 (1931).

**Annotator's note.** Since § 13-80-101 (1)(a) is similar to former § 13-80-107 as it existed prior to the 1986 repeal and reenactment of this article, relevant cases construing that provision have been included with the annotations to this paragraph (a).

**This provision applies only to personal actions.** Folda Real Estate Co. v. Jacobsen, 75 Colo. 16, 223 P. 748 (1924).

**This provision applies only to actions on contract.** Bonfils v. Pub. Utils. Comm'n, 67 Colo. 563, 189 P. 775 (1920); People ex rel. Fed. Land Bank v. Ginn, 106 Colo. 417, 106 P.2d 479 (1940).

**Such as where a breach of the covenant of seisin,** if any, occurred at the time of the giving of the deed in 1921, and action thereon was not commenced until 1926, the right of action was barred by this section. Stone v. Rozich, 88 Colo. 399, 297 P. 999 (1931).

**Covenant of seisin is broken, if at all, when made.** The general rule is that a covenant of seisin is broken, if at all, when it is made, hence a counterclaim for breach of the covenant of seisin asserted in a foreclosure action more than three years after delivery of the conveyance in which the alleged breach occurred is barred by this section. Bernklau v. Stevens, 150 Colo. 187, 371 P.2d 765 (1962).

**Mandamus to enforce a private right is barred** by lapse of time only where an ordinary action upon such right is barred by statute. Berkey v. Bd. of County Comm'rs, 48 Colo. 104, 110 P. 197 (1910).

**It bars action three years after it accrues.** Since a covenant is a personal action, it seems, therefore, to come within the class of actions described in this provision and is barred in three years from the date the cause of action accrues. Hayden v. Patterson, 39 Colo. 15, 88 P. 437 (1906).

**Infringing contractual rights covered by former § 13-80-110.** Statutory claim alleging a tortious discriminatory wrong, infringing contractual rights, was covered by the provisions of former § 13-80-110 (now § 13-80-102 (1)(a)). Zuniga v. AMFAC Foods, Inc., 580 F.2d 380 (10th Cir. 1978).

**A purchase and sale contract for corporate stock is governed by this provision.** An action against executors of a deceased stockholder on alleged contract for the purchase and transfer of corporate stock, brought more than eight years after right of transfer accrued, was barred by this provision. Goeddel v. Aircraft Fin., Inc., 152 Colo. 419, 382 P.2d 812 (1963).

**As is a claim based on a contract filed in an estate** more than seven years after the breach thereof, was barred by the statute of limitations. Koon v. Barmettler, 134 Colo. 221, 301 P.2d 713 (1956).

**Where a contract contains a continuing duty to perform, generally a new claim accrues for each separate breach of the contract,** and the plaintiff may assert a claim for damages from the date of the first breach within the period of limitation. Neuromonitoring Assocs. v. Centura Health, 2012 COA 136, 351 P.3d 486.

Although defendants' breaching conduct began more than three years before plaintiffs commenced their action, the entire action was not barred by the three-year breach of contract limitation period but instead was timely as to breaches occurring within the three-year period preceding the filing of the action. *Neuromonitoring Assocs. v. Centura Health*, 2012 COA 136, 351 P.3d 486.

**Promissory estoppel claims arising from the failure of a retiree's health insurance policy to cover a heart transplant were contract claims** and, accordingly, were barred by the three-year statute of limitations. *Berg v. State Bd. of Agric.*, 919 P.2d 254 (Colo. 1996).

**Contractor's claims for breach of contract, quantum meruit, rescission, and restitution for mistake are governed by the provisions of this section** rather than the two-year limitation provision for tort claims in § 13-80-102. *CAMAS Colo., Inc. v. Bd. of County Comm'rs*, 36 P.3d 135 (Colo. App. 2001).

**Breach of contract claims brought under 29 U.S.C. § 301 are governed by the provisions of this section.** *United Food & Commercial Workers Int'l Union v. Kaiser Found. Health Plan*, 739 F. Supp. 3d 860 (D. Colo. 2024).

**This provision is sufficiently broad to encompass an action on an implied warranty** of fitness of a house. *F & S Constr. Co. v. Berube*, 322 F.2d 782 (10th Cir. 1963); *Miehle Co. v. Smith-Brooks Printing Co.*, 303 F. Supp. 501 (D. Colo. 1969).

**The implied warranty must arise from an express contract.** Where admission document mentions only general duty nursing and does not refer to conditions of hospital or fitness of premises for plaintiff, there may be implied warranty that hospital is fit for intended use by patient, but no implied warranty arises from terms of admission document. Therefore, general statute of limitations relating to express contracts is inapplicable. *Adams v. Poudre Valley Hosp. Dist.*, 31 Colo. App. 252, 502 P.2d 1127 (1972).

**A suit for specific performance based on contract is governed by this provision.** Notwithstanding plaintiff's use of the term specific performance, when the action, from the facts as pled, is on a breach of contract wherein the plaintiff seeks a liquidated, determinable amount of money due him from the defendant, this action is governed by the statute permitting an action to be commenced within six years for actions of debt founded upon any contract and is not governed by the three-year statute of limitations. *Uhl v. Fox*, 31 Colo. App. 13, 498 P.2d 1177 (1972).

**If the contractual shortening of a statute of limitations is prohibited, the contractual and statutory limitations periods are incompatible and, therefore, in conflict.** *Grant Family Farms, Inc. v. Colo. Farm Bureau Mut. Ins. Co.*, 155 P.3d 537 (Colo. App. 2006).

**Subsection (1)(a) contains no language prohibiting the contractual shortening of the three-year limitations period;** therefore, a contractual period shorter than

the three-year period is not in conflict with subsection (1)(a). *Grant Family Farms, Inc. v. Colo. Farm Bureau Mut. Ins. Co.*, 155 P.3d 537 (Colo. App. 2006).

**Under § 13-80-108 (6), discovery of breach--not knowledge of damages, nor any derivative notion of certainty of harm and incentive to sue--determines the accrual of a cause of action for breach of contract.** *City & County of Denver v. Bd. of Cnty. Comm'rs*, 2024 CO 5, 543 P.3d 371.

**Under statute of limitations applicable to actions for trespass, cause of action in seepage cases accrues when damaged land is first visibly affected.** *Hickman v. N. Sterling Irrig. Dist.*, 748 P.2d 1349 (Colo. App. 1987).

**It was not until a judgment was rendered against insured** that the insured or its assignee could have brought a failure to indemnify action against the insurer since that assignee had not sustained any damage until it had obtained a judgment against the insured from whom it was unable to collect. *Flatiron Paving v. Great Sw. Fire*, 812 P.2d 668 (Colo. App. 1990).

**Action was within the three-year period following the accrual of claims** where judgment against insured was dated November 19, 1984, and insured's assignee's action against insurer was commenced May 14, 1987. *Flatiron Paving v. Great Sw. Fire*, 812 P.2d 668 (Colo. App. 1990).

**This provision applies to a claim for breach of express warranty to repair or replace** even if the party against whom the claim is asserted is protected by the

"contractor's statute", § 18-80-104. *Hersh Cos. v. Highline Vill. Assocs.*, 30 P.3d 221 (Colo. 2001).

**Statute of limitations under this section for action in breach of warranty** did not start to run until plaintiffs knew, or should have known, of the government's adverse possession of the property. *Upton v. Griffiths*, 831 P.2d 504 (Colo. App. 1992).

**"Liquidated debt" and "unliquidated, determinable amount" construed.** For purposes of determining whether this section or § 13-80-103.5 applies, a debt is deemed "liquidated" if the amount due is capable of ascertainment by reference to an agreement or by simple computation. A debtor's dispute of or defenses against such claim, or any setoff or counterclaim interposed, does not affect this result. Similarly, if a contract fixes a price per unit of performance, a claim based thereon is "determinable" even though the number of units performed must be proven and is subject to dispute. *Rotenberg v. Richards*, 899 P.2d 365 (Colo. App. 1995).

**A claim based on quantum meruit is not liquidated or determinable**, because it seeks only reasonable compensation for services rendered, in an amount to be determined by the fact-finder. *Rotenberg v. Richards*, 899 P.2d 365 (Colo. App. 1995).

Applied in *Torres-Vallejo v. CreativExteriors, Inc.*, 220 F. Supp. 3d 1074 (D. Colo. 2016).

**Where a statute requires presentment of a claim to a county and prohibits suit until the claim has been rejected, the**

**statute of limitations is tolled** between the time the claim is filed and the time it is acted upon by the county where there is no suggestion that contractor failed to prosecute its claims in good faith and with diligence. *CAMAS Colo., Inc. v. Bd. of County Comm'rs*, 36 P.3d 135 (Colo. App. 2001).

**Applied** in *Voodoo Leatherworks, LLC v. Waste Connections US, Inc.*, 618 F. Supp. 3d 1126 (D. Colo. 2022).

#### B. Nonapplicability.

**This provision does not apply to an action against a stockholder for an assessment upon his stock.** *Sweet v. Barnard*, 66 Colo. 526, 182 P. 22 (1919).

**Nor to a proceeding before the utilities commission to recover excessive charges.** This provision has no application to a proceeding before the utilities commission demanding reparation for an excessive charge by a common carrier. The proceeding is not an action within the meaning of the statute. *Bonfils v. Pub. Utils. Comm'n*, 67 Colo. 563, 189 P. 775 (1920).

**A claim of divorced wife for support money for minor child** held not barred under this provision. *Burke v. Burke*, 127 Colo. 257, 255 P.2d 740 (1953).

**This provision is not applicable to action on debt founded upon a contract.** Notwithstanding plaintiff's use of the term specific performance, when the action, from the facts as pled, is on a breach of contract wherein the plaintiff seeks a liquidated, determinable amount of money due him from the defendant, this action is governed by the statute permitting an action to be

commenced within six years for actions of debt founded upon any contract and is not governed by the three-year statute of limitations. *Uhl v. Fox*, 31 Colo. App. 13, 498 P.2d 1177 (1972).

**Nor an action alleging negligence and implied warranty.** Under Colorado law, actions alleging negligence and implied warranty were subject to six-year statute of limitations, rather than three-year statute. *Miehle Co. v. Smith-Brooks Printing Co.*, 303 F. Supp. 501 (D. Colo. 1969).

**This provision nonapplicable to an action on the official bond of a county clerk** and recorder founded upon his alleged negligence in erroneously transcribing the legal description of real property contained in a deed of trust on the records in his office was an ex delicto action, hence this section did not apply. *People ex rel. Fed. Land Bank v. Ginn*, 106 Colo. 417, 106 P.2d 479 (1940).

**Nor any action where the state is a party or considerably interested.** The statute may not be invoked against the state, and even though the state as such was not a party to this action, it is unquestionably true that a considerable part of the money stolen belonged to the state. *Mass. Bonding & Ins. Co. v. Bd. of County Comm'rs*, 100 Colo. 398, 68 P.2d 555 (1937).

**The specific statute of limitations provision in § 38-26-105 controls over the general civil action provision in this section,** because the provisions of § 38-26-105 specifically apply to the construction project that is the subject of the plaintiff's action. *Pat's Constr. Serv., Inc. v. Ins. Co. of the W.*, 141 P.3d 885 (Colo. App. 2005).

**The statute of limitations does not apply to an action to quiet title brought by a person in possession of real property.** *Martinez v. Archuleta-Padia*, 143 P.3d 1112 (Colo. App. 2006).

### **III. PARAGRAPH (c).**

A. In General.

B. Applicability.

A. In General.

**Annotator's note.** Since § 13-80-101 (1)(c) is similar to former §§ 13-80-108 (1)(a) and 13-80-109 as said sections existed prior to the 1986 repeal and reenactment of this article, relevant cases construing those provisions have been included with the annotations to this paragraph (c).

**Within limit of this provision doctrine of laches applies.** This provision fixes a limitation beyond which the courts cannot extend the time, but within this limit the peculiar doctrine of courts of equity should prevail as to laches. *Great W. Mining Co. v. Woodmas*, 14 Colo. 90, 23 P. 908 (1890).

**Federal courts apply doctrine in analogy to statutes of limitations.** The federal courts, sitting in equity, are not bound by the statutes of limitations of the states, but they apply the doctrine of laches in analogy to them. If a suit discloses no extraordinary facts or circumstances, they apply the bar of laches at the expiration of the time prescribed by the statute of the state for the limitation of an action at law of like character, but if unusual conditions of extraordinary circumstances make it inequitable to allow the prosecution of a suit

after a briefer, or to forbid its maintenance after a longer period than that fixed by the statute, the chancellor will not be bound by the statute, but will determine the extraordinary case in accordance with the equities which condition it. *Redd v. Brun*, 157 F. 190 (8th Cir. 1907); *Martin v. Brown*, 294 F. 436 (8th Cir. 1923).

**In federal diversity suits this provision applies at law and equity.** When jurisdiction of the federal court is based solely on the diversity of citizenship of the parties, this provision is applicable to equitable as well as to legal actions. Under such circumstances recovery cannot be had in the federal court if the law of the forum would bar recovery had the action been brought in the state court. *Cont'l Bank & Trust Co. v. Tri-State Gen. Agency, Inc.*, 185 F. Supp. 208 (D. Colo. 1960).

**This section in no way bars the admission of evidence.** The rule in Colorado is that parties who rely upon fraud and upon failure to discover it in order to avoid the bar must allege and prove not only when the fraud was discovered, but the facts and circumstances under which it was obtained. Defendant could not be liable for fraudulent acts discovered over three years from the date on which the action was begun. The statute of limitations goes to the cause of action and not to the evidence in support of it. The statute does not bar the admission of evidence of continuing representations as in this case. *J. F. White Eng'r Corp. v. Gen. Ins. Co. of Am.*, 351 F.2d 231 (10th Cir. 1965).

**It was the intent of the general assembly** in enacting this section to control all actions brought by a patient arising out of the patient-physician relationship. Koch v. Sadler, 759 P.2d 792 (Colo. App. 1988).

**The statute of limitations for a lawsuit brought under § 38-10-117 is three years.** In re Walden, 207 B.R. 1 (Bankr. D. Colo. 1997).

#### B. Applicability.

**This provision applies only to personal actions.** Folda Real Estate Co. v. Jacobsen, 75 Colo. 16, 223 P. 748 (1924).

**This section applies to actions under section 10(b) of the federal Securities Exchange Act.** An action under section 10(b) of the Securities Exchange Act of 1934 arising from alleged violation of rule 10b-5(1) and (3) might, on certain facts, more accurately be deemed similar to an action "based upon implied or constructive fraud", for which subsection (1) provides a three-year statute of limitations. Trussell v. United Underwriters, Ltd., 228 F. Supp. 757 (D. Colo. 1964).

**Either because violation is constructive fraud.** Most acts violative of section 10(b) of the Securities Exchange Act would be readily cognizable in Colorado as "constructive fraud", or indeed, as traditional common-law fraud. Trussell v. United Underwriters, Ltd., 228 F. Supp. 757 (D. Colo. 1964).

**Or is subject to the residuary clause.** Subsequent to this enactment the three-year residuary statute of limitations might arguably have applied to an action under

section 10(b) of the Securities Exchange Act of 1934. Trussell v. United Underwriters, Ltd., 228 F. Supp. 757 (D. Colo. 1964).

**This provision applies to private suits under section 10 (b) of the federal Securities Exchange Act.** There is no federal statute of limitations applicable to actions brought under section 10(b) of the Securities Exchange Act of 1934. The limitations statute of the forum state in which the alleged prohibited acts occurred applies to a private suit for damages under section 10(b), the Colorado statute of limitation for fraud, which requires that suit be brought within three years after discovery of fraud by the aggrieved party, applies. deHaas v. Empire Petroleum Co., 435 F.2d 1223 (10th Cir. 1970).

**Former § 13-80-108 applied to actions under section 10(b) of the federal Securities Exchange Act** since there is no federal statute of limitations on these actions. Laymon v. McComb, 524 F. Supp. 1091 (D. Colo. 1981).

**There is no federal statute of limitations applicable to provisions of sections 10(b) and 10b-5 of the Securities Exchange Act of 1934** and section 17 of the Securities Act of 1933. Aldrich v. McCulloch Props., Inc., 627 F.2d 1036 (10th Cir. 1980).

**Federal law may control tolling of limitations when state statute applicable.** Though the limitations period for an action brought in federal district court based on claims arising under section 17 of the Securities Act of 1933 and sections 10(b) and 20 of the Securities Exchange Act of

1934 is supplied by the law of Colorado, the circumstances which will toll the running of the statute are matters of federal law. *Ohio v. Peterson*, Lowry, Rall, Barber & Ross, 472 F. Supp. 402 (D. Colo. 1979), *aff'd*, 651 F.2d 687 (10th Cir. 1981).

**Federal law governs tolling of the statute.** Although the limitation period is supplied by the forum state of Colorado, it is a matter of federal law as to the circumstances that will toll a state statute applied to private actions under the securities laws. Under the federal doctrine of tolling as applied to fraud actions where the party injured by the fraud remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered, though there be no special circumstances or efforts on the part of the party committing the fraud to conceal it from the knowledge of the other party. *deHaas v. Empire Petroleum Co.*, 435 F.2d 1223 (10th Cir. 1970).

**Former § 13-80-108 applied to civil claims under the federal Racketeer Influenced and Corrupt Organizations Act.** *Victoria Oil Co. v. Lancaster Corp.*, 587 F. Supp. 429 (D. Colo. 1984).

**Statute of limitations questions may be appropriately resolved by a Fed. R. Civ. P. 12 (b) motion.** *Aldrich v. McCulloch Props., Inc.*, 627 F.2d 1036 (10th Cir. 1980).

**This provision is applicable to transfers of land obtained by undue influence.** If a grantee obtains transfers of land by exerting undue influence over the grantor, and the transfers were due to no other cause, this

section of the statute of limitations would apply. *James v. James*, 75 Colo. 164, 225 P. 208 (1924); *Blizzard v. Penley*, 186 F. Supp. 746 (D. Colo. 1960).

**Action for damages for fraudulent conspiracy** is barred after three years by this section. *Pipe v. Smith*, 5 Colo. 146 (1879); *Farncomb v. City & County of Denver*, 64 Colo. 13, 171 P. 66 (1917); *Littlejohn v. Grand Int'l Bhd. of Locomotive Eng'rs*, 92 Colo. 275, 20 P.2d 311 (1933).

**An action to set aside a decree obtained without notice**, which to the prejudice of the plaintiff substantially modifies and changes the rights of the parties as set forth in a former decree entered in an adjudication of priorities to the use of water, is not brought for the purpose of determining the priority of appropriation to water but is purely one for relief on the ground of fraud, and if any statute of limitation is applicable it is this provision. *Peck Lateral Ditch Co. v. Pella Irrigating Ditch Co.*, 19 Colo. 222, 34 P. 988 (1893).

**An action upon a promissory note to recover a personal judgment**, and, incidentally, to foreclose a lien on shares of stock, although involving the sufficiency of the assignment of such stock, is not an action for relief on the ground of fraud and so barred by this section. *Murto v. Lemon*, 19 Colo. App. 314, 75 P. 160 (1904); *Equitable Sec. Co. v. Johnson*, 36 Colo. 377, 85 P. 840 (1906).

**This provision applies to frauds perpetrated by those not bearing a fiduciary relation to the party defrauded.**



Morgan v. King, 27 Colo. 539, 63 P. 416 (1900).

**This provision does not apply to an action to have the foreclosure of a trust deed set aside for fraud.** Barlow v. Hitzler, 40 Colo. 109, 90 P. 90 (1907).

**Real estate statutes of limitations are elsewhere.** The subsequent passage of specific limitation statutes to real estate actions contained in § 38-41-101 et seq. seems conclusive that these sections do not, and never were intended to, apply as limitations upon actions of that kind. Munson v. Marks, 52 Colo. 553, 124 P. 187 (1912).

**Thus where a plaintiff asked for a money judgment for damages resulting from fraud in a real estate transaction,** it is held that this provision did not apply. Ahart v. Sutton, 79 Colo. 145, 244 P. 306 (1926).

**This provision has no application to a bill to remove a cloud upon title.** Elder v. Richmond Gold & Silver Mining Co., 58 F. 536 (8th Cir. 1893); Morgan v. King, 27 Colo. 539, 63 P. 416 (1900); Ballard v. Golob, 34 Colo. 417, 83 P. 376 (1905); Munson v. Marks, 52 Colo. 553, 124 P. 187 (1912); Munson v. Keim, 53 Colo. 576, 127 P. 1026 (1912).

**Section possibly applicable to § 11-51-123.** It is apparent that, under one or another of three statutes, a three-year statute of limitations was provided by Colorado law for civil actions arising out of § 11-51-123. Ohio v. Peterson, Lowry, Rall, Barber &

Ross, 472 F. Supp. 402 (D. Colo. 1979), aff'd, 651 F.2d 687 (10th Cir. 1981).

**Former § 13-80-108 inapplicable to breach of fiduciary duties.** Former § 13-80-108 was not applicable to claims premised on breach of fiduciary duties, or constructive trust, or negligence. Morgan v. Dain Bosworth, 545 F. Supp. 953 (D. Colo. 1982); Elk River Assocs. v. Huskin, 691 P.2d 1148 (Colo. App. 1984).

**Paragraph (c) applies to cases brought under the federal Commodity Exchange Act.** Ebrahimi v. E.F. Hutton & Co., Inc., 852 F.2d 516 (10th Cir. 1988).

**Neither § 13-80-102 (a) nor § 13-80-102 (g) applies to a claim brought under § 43 (a) of the federal Lanham Act.** Instead, Colorado's three-year statute of limitations for fraud, misrepresentation, concealment, and deceit, paragraph (c) of this section, governs such claims. Full Draw Prods. v. Easton Sports, Inc., 85 F. Supp. 2d 1001 (D. Colo. 2000).

**Paragraph (c) applies to fraudulent conveyance actions,** and the action accrues on the date that such fraud is discovered or should have been discovered by the exercise of reasonable diligence. In re Munoz, 111 B.R. 928 (Bankr. D. Colo. 1990).

**Paragraph (c) does not apply to motions for relief from judgment on grounds of fraud under C.R.C.P. 60(b)(2).** In re Adoption of P.H.A., 899 P.2d 345 (Colo. App. 1995).

**Mere knowledge that product was defective is not knowledge which would enable plaintiff to discover fraud in**

**connection with transaction.** Balistreri Greenhouses v. Roper Corp., 767 P.2d 736 (Colo. App. 1988).

**Whether a claim is barred by the statute of limitations is normally a jury fact question,** but if the complaint shows the action was brought after the statute of limitations period and the defendant has pled the statute of limitations, the plaintiff has the burden to show tolling of the statute of limitations. First Interstate Bank v. Berenbaum, 872 P.2d 1297 (Colo. App. 1993).

#### **IV. PARAGRAPH (d).**

**Discovery rule is applicable to wrongful death actions.** Rauschenberger v. Radetsky, 745 P.2d 640 (Colo. 1987).

**This section, and not the California statute of limitations for tort actions, through operation of the borrowing statute, § 13-80-110, applies** to action filed by Colorado resident against a Colorado resident that resulted from an accident that took place in California, if the action is within the scope of the Colorado no fault act. Grulke v. Erickson, 920 P.2d 845 (Colo. App. 1995).

#### **V. PARAGRAPH (f).**

**Law reviews.** For article, "Conclusiveness of United States Oil Shale Placer Mining Claim Patents", see 43 Den. L. Ctr. J. 24 (1966).

**Annotator's note.** Since § 13-80-101 (1)(f) is similar to former § 13-80-114 as it existed prior to the 1986 repeal and reenactment of this article, relevant cases

construing that provision have been included with the annotations to this paragraph (f).

**This provision applies only to personal actions.** Folda Real Estate Co. v. Jacobsen, 75 Colo. 16, 223 P. 748 (1924).

**This provision is applicable in a suit to enforce a trust, constructive or otherwise.** Morgan v. King, 27 Colo. 539, 63 P. 416 (1900); James v. James, 75 Colo. 164, 225 P. 208 (1924); Vandewiele v. Vandewiele, 110 Colo. 556, 136 P.2d 523 (1943).

**To suit against purchaser from trustee who conveyed in contravention of trust.** One who purchases property from a trustee who conveys in contravention of his trust is a trustee by construction of law, and in no sense the trustee of an express trust. He holds in hostility to all the world, and whoever would assert the fiduciary character of his holding must bring his action within the limitation prescribed by this provision. Harding v. Burris, 52 Colo. 132, 119 P. 1063 (1911).

**In suit to compel specific performance by trustees,** this provision is applicable. Farris v. Wirt, 16 Colo. App. 1, 63 P. 946 (1901).

**When the action is leased on an existing trust,** this provision applies. Indem. Ins. Co. of N. Am. v. Smith, 101 Colo. 61, 70 P.2d 109 (1930).

**For applicability to guardian's handling of a minor's estate,** see Parsons v. Shackelford, 117 Colo. 545, 188 P.2d 437 (1948).

**The existence of a fiduciary relationship between directors and stockholders** makes this provision applicable. *Hall v. Swan*, 117 Colo. 349, 188 P.2d 437 (1947); *Polk v. Hergert Land & Cattle Co.*, 5 P.3d 402 (Colo. App. 2000).

**This provision applies to an action to foreclose a deed of trust.** *Rowe v. Mulvane*, 25 Colo. App. 502, 139 P. 1041 (1914).

**Daughter's claim for breach of fiduciary duty** alleging that she was rightful owner of winning lottery ticket taken by mother was proper under this provision but time-barred due to three-year statute of limitations. *Curtis v. Counce*, 32 P.3d 585 (Colo. App. 2001).

**This provision does not apply to action to remove cloud of title.** *Manson v. Marks*, 52 Colo. 553, 124 P. 187 (1912); *Empire Ranch & Cattle Co. v. Zehr*, 54 Colo. 185, 129 P. 828 (1913).

**Nor to an action against a stockholder for an assessment.** *Sweet v. Barnard*, 66 Colo. 526, 182 P. 22 (1919).

**This section does not apply in a case where partnership property is held in trust**, the trust being partly discharged and never denied. *Heuschkel v. Wagner*, 78 Colo. 61, 239 P. 873 (1925).

**The existence of a fiduciary relationship of a financial planner or investment adviser is a material fact** that must be determined before the limitation on a breach of fiduciary duty can be determined. *Johnston v. Cigna Corp.*, 916 P.2d 643 (Colo. App. 1996).

**A claim for relief under (f) accrues** when the breach is discovered or should have been discovered by the exercise of reasonable diligence. *Anderson v. Somatogen, Inc.*, 940 P.2d 1079 (Colo. App. 1996); *Prospect Dev. v. Holland & Knight*, 2018 COA 107, 433 P.3d 146.

**Because record established that plaintiff knew or should have known of the existence of the alleged breach of fiduciary duty by defendant over three years prior to filing her claim** for breach of fiduciary duty, the trial court did not err in granting defendant's motion for summary judgment and dismissing plaintiff's claims. *Colburn v. Kopit*, 59 P.3d 295 (Colo. App. 2002).

## **VI. PARAGRAPH (h).**

**Under paragraph (h), actions for replevin or for taking, detaining, or converting goods or chattels must be commenced within three years after the cause of action accrues.** A cause of action for wrongful possession of personal property, goods, or chattels accrues at the time the wrongful possession is discovered or should have been discovered through reasonable diligence. *In re Estate of Krotiuk*, 12 P.3d 302 (Colo. App. 2000).

Trial court found that, by the exercise of reasonable diligence, claimant should have discovered alleged wrongful possession of rugs in 1992 when they were not returned with paintings. Because claimant did not file return of the rugs until 1997, two years after the statute of limitations had run, no error by trial court in granting partial summary judgment for estate as to that part of claim.

In re Estate of Krotiuk, 12 P.3d 302 (Colo. App. 2000).

**Reference in paragraph (h) to § 13-80-103.5 does not pertain to the phrase "all actions to recover a liquidated debt or an unliquidated, determinable amount of money due to the person bringing the action";** such language pertains to actions for breach of contract. *Curtis v. Counce*, 32 P.3d 585 (Colo. App. 2001).

## **VII. PARAGRAPH (j).**

**Paragraph (j) applies to tort action brought by automobile accident victim against driver of another vehicle under the Colorado Auto Accident Reparations Act.** Applicability of paragraph (j) is not limited to actions brought by insured against insurer and the more specific language of paragraph (j) controls over the more general two-year statute of limitations. *Cox v. Jones*, 802 P.2d 1125 (Colo. App. 1990), *aff'd*, 828 P.2d 218 (Colo. 1992).

**Plaintiff's claim was intertwined with the no fault act and subject to the three-year statute of limitations in subsection (1)(j),** rather than the general two-year limitation, where plaintiff was obligated to pay and did pay benefits required under the act, the plaintiff's action was specifically authorized by the act, and the action was brought because the vehicle driven by the defendant was not insured as required under the act. *Amco Ins. Co. v. Rockwell*, 940 P.2d 1096 (Colo. App. 1997).

**Statute of limitations for personal injury action arising under the Colorado Auto Accident Reparations Act** begins to

run on the date that both the physical injury and its cause are known or should have been known by exercise of reasonable diligence, even though action may not be filed until it is reasonably expected that medical expenses will exceed \$2,500. *Jones v. Cox*, 828 P.2d 218 (Colo. 1992).

**Three-year statute of limitation applies to personal injury actions filed by an insured motorist against an insured motorist** involved in an automobile accident and such statute of limitation begins to run from the date the plaintiff knows or should know of the physical injury and its cause. *Lee v. Bettale*, 829 P.2d 1301 (Colo. 1992).

**Where actual payment was an element of plaintiff's claim under § 10-4-713 (2)(a),** the plaintiff's right to bring a direct action for reimbursement did not accrue until the benefits were actually paid. The statute of limitations began to run on the date of payment and not on the date of the accident. *Sakala v. Safeco Ins. Co.*, 833 P.2d 879 (Colo. App. 1992).

**Paragraph (j) applies to tort actions brought against a sheriff's department arising from an alleged automobile accident involving a departmental vehicle.** Because statutes of limitation are in derogation of a valid claim, the longer period of limitations in paragraph (j) should prevail over the shorter period in § 13-80-103 (1)(c) which could arguably be applicable in this situation. *Reider v. Dawson*, 856 P.2d 31 (Colo. App. 1992), *aff'd*, 872 P.2d 212 (Colo. 1994).

**When a claim under the Colorado Auto Accident Reparations Act involves a**

**public entity** the time limit for filing an action is governed by this section rather than § 13-80-102, the governmental immunity section. Reg'l Transp. Dist. v. Voss, 890 P.2d 663 (Colo. 1995).

#### **VIII. PARAGRAPH (k).**

**Law reviews.** For article, "Statutes of Limitation in the Conflict of Laws Borrowing Statutes", see 32 Rocky Mt. L. Rev. 287 (1960).

**Annotator's note.** Since § 13-80-101 (1)(k) is similar to former § 13-80-119 as it existed prior to the 1986 repeal and reenactment of this article, relevant cases construing that provision have been included with the annotations to this paragraph (k).

**This provision does not violate full faith and credit clause of constitution.** The constitutional provision requiring full faith and credit to be given the judgments of other states is not violated by a statute imposing a reasonable period of limitation upon the bringing of suits on such judgments. A six-year period of limitation is not unreasonable. Kelly v. Heller, 74 Colo. 470, 222 P. 648 (1924).

**This provision does not bar** a cause of action which accrued without the state more than six years before the commencement of the action, but only that it shall be lawful to plead the same in bar of the action. Smith v. Kent Oil Co., 128 Colo. 80, 261 P.2d 149 (1953).

**This provision and former § 13-80-118 (now § 13-80-110) should be construed together** as an entirety. Simon v. Wilnes, 97 Colo. 78, 47 P.2d 406 (1935).

**The statute of limitation in former § 13-80-119 was not applicable** to filings under the uniform enforcement of foreign judgments act, § 13-53-101 et seq. Hunter Tech., Inc. v. Scott, 701 P.2d 645 (Colo. App. 1985).

**This provision does not preclude plaintiff from collecting on a previously obtained judgment.** The applicable statute is § 13-52-102 (1), which gives the plaintiff six years from the date of judgment to foreclose on the judgment lien. Indep. Bank v. Pandey, 2015 COA 3, 383 P.3d 64, aff'd, 2016 CO 49, 372 P.3d 1047.

#### **IX. PARAGRAPH (n).**

**Section 2-4-108 is not applicable in determining the computation of the statute of limitations in this section.** Gomez v. Walker, 2023 COA 79, 540 P.3d 936.

**Motorcycle is a motor vehicle for purposes of the phrase "arises out of the use or operation of a motor vehicle" in subsection (1)(n).** Gonzales v. City & County of Denver, 998 P.2d 51 (Colo. App. 1999), aff'd, 17 P.3d 137 (Colo. 2001).

**The phrase "use . . . of a motor vehicle" includes a person who is hired to inspect and repair a motor vehicle** even though the vehicle is stationary. Nesjan v. J & A Distrib., Inc., 2025 COA 81, 580 P.3d 596.

**Where injury to plaintiff arose out of his own operation of motorcycle, plaintiff's tort action arose out of the use or operation of a motor vehicle and three-year statute of limitation under subsection (1)(n) applies rather than two-year limit**

**under § 13-80-102 (1)(a).** Court declined to read a limitation into the statute that subsection (1)(n) of this section only applied to injuries arising out of the alleged

tortfeasor's use or operation of a motor vehicle. *Gonzales v. City & County of Denver*, 998 P.2d 51 (Colo. App. 1999), *aff'd*, 17 P.3d 137 (Colo. 2001).

**13-80-102. General limitation of actions - two years.**

(1) The following civil actions, regardless of the theory upon which suit is brought, or against whom suit is brought, must be commenced within two years after the cause of action accrues, and not thereafter:

(a) Tort actions, including but not limited to actions for negligence, trespass, malicious abuse of process, malicious prosecution, outrageous conduct, interference with relationships, and tortious breach of contract; except that this paragraph (a) does not apply to any tort action arising out of the use or operation of a motor vehicle as set forth in section 13-80-101 (1)(n);

(b) All actions for strict liability, absolute liability, or failure to instruct or warn;

(c) All actions, regardless of the theory asserted, against any veterinarian;

(d) All actions for wrongful death, except as described in subsection (2) of this section;

(e) Repealed.

(f) All actions against any public or governmental entity or any employee of a public or governmental entity for which insurance coverage is provided pursuant to article 14 of title 24, C.R.S.;

(g) All actions upon liability created by a federal statute where no period of limitation is provided in said federal statute;

(h) All actions against any public or governmental entity or any employee of a public or governmental entity, except as otherwise provided in this section or section 13-80-103;

(i) All other actions of every kind for which no other period of limitation is provided;

(j) All actions brought under section 42-6-204, C.R.S.;

(k) All actions brought under section 13-21-109 (2).

(2) A civil action for a wrongful death against a defendant who committed vehicular homicide, as described in section 18-3-106, and, as part of the same criminal episode, committed the offense of leaving the scene of a crash that resulted in the death of a person, as described in section 42-4-1601 (2)(c), regardless of the theory upon which suit is brought, or against whom

suit is brought, must be commenced within four years after the cause of action accrues, and not thereafter.

**Source:** **L. 86:** Entire article R&RE, p. 696, § 1, effective July 1; (1)(j) added, p. 707, § 2, effective July 1. **L. 87:** (1)(b) amended and (1)(e) repealed, pp. 567, 569, §§ 2, 8, effective July 1. **L. 88:** (1)(c) amended, p. 627, § 2, effective July 1. **L. 89:** (1)(k) added, p. 757, § 4, effective July 1. **L. 94:** (1)(a) amended, p. 2824, § 2, effective July 1; (1)(j) amended, p. 2549, § 33, effective January 1, 1995. **L. 2014:** IP(1) and (1)(d) amended and (2) added, (SB 14-213), ch. 344, p. 1536, § 3, effective July 1. **L. 2026:** (2) amended, (HB 26-1237), ch. 117, p. 463, § 6, effective August 12.

**Editor's note:** The provisions of this section are similar to provisions of several former sections as they existed prior to 1986. For a detailed comparison, see the comparative tables located in the back of the index.

## ANNOTATION

I. General Consideration.

II. Paragraph (a).

III. Paragraph (c).

IV. Paragraph (d).

V. Paragraph (g).

VI. Paragraph (h).

VII. Paragraph (i).

"Sticking Points — Part 2: A Survey of Remedies for Vaccination Injuries", see 50 Colo. Law. 32 (Nov. 2021). For article, "Legal Malpractice Under Colorado Law", see 52 Colo. Law. 26 (Apr. 2023).

**Annotator's note.** For cases concerning when a cause of action accrues under this section, see the annotations to § 13-80-108.

**Applicability of amendment.** In order to determine whether an amendment, which required discovery of negligence and the seriousness and character of injuries, applied to a case, it was necessary to determine whether a cause of action had accrued prior to the effective date of the amendment. *Valenzuela v. Mercy Hosp.*, 34 Colo. App. 5, 521 P.2d 1287 (1974).

**Cause of action barred by effect of amendment.** Where a plaintiff did not file

### I. GENERAL CONSIDERATION.

**Law reviews.** For note, "Medical Products and Services Liability: Public Policy Requires Legislative Innovation and Judicial Restraint", see 53 Den. L. J. 387 (1976). For article, "Federal Practice and Procedure", see 56 Den. L.J. 491 (1979). For article, "Federal Practice and Procedure", see 58 Den. L.J. 371 (1981). For article,

her action within one year of the effective date of an amendment, her cause of action was barred, even though under the statute in effect at the time of the incident would have allowed her to bring the action until 1985. *Licano v. Krausnick*, 663 P.2d 1066 (Colo. App. 1983).

**Statute of limitations not violative of due process unless time fixed amounts to denial of justice.** The general rule is that a statute of limitations, including a statute which is to be applied retroactively, does not violate due process unless the time fixed by the statute is manifestly so limited as to amount to a denial of justice. *Mishek v. Stanton*, 200 Colo. 514, 616 P.2d 135 (1980).

**The statute of limitations was not tolled** by the pendency of a prior action commenced in another state which was dismissed and transferred to Colorado. *Cook v. G.D. Searle & Co., Inc.*, 759 F.2d 800 (10th Cir. 1985).

**Existence of statute which prohibited filing of claim did not toll statute of limitations** under doctrine of equitable tolling although statute was eventually held unconstitutional. *Overheiser v. Safeway Stores, Inc.*, 814 P.2d 12 (Colo. App. 1991).

**Where plaintiffs' affidavits demonstrated that some, although not all, of defendants' acts complained of occurred within limitation period**, but complaint did not identify them, trial court should have permitted filing of amended complaint because original complaint put defendant sufficiently on notice of ongoing

nature of claims. *Cassidy v. Smith*, 817 P.2d 555 (Colo. App. 1991).

**Because statutes of limitation are in derogation of a presumptively valid claim**, a longer period of limitations should prevail if two statutes are arguably applicable. *Amco Ins. Co. v. Rockwell*, 940 P.2d 1096 (Colo. App. 1997).

**A claim that is accompanied by an insufficient funds check for payment of fees is not considered filed for purposes of this statute.** The claim is not considered filed for purposes of the statute of limitations until the filing fee is actually paid. *Broker House Int'l, Ltd. v. Bendelow*, 952 P.2d 860 (Colo. App. 1998).

**Applied** in *Denny v. Hutchinson Sales Corp.*, 649 F.2d 816 (10th Cir. 1981); *Weedin v. United States*, 509 F. Supp. 1052 (D. Colo. 1981); *Yarbro v. Hilton Hotels Corp.*, 655 P.2d 822 (Colo. 1982); *Banks v. St. Mary's Hosp. & Med. Ctr.*, 558 F. Supp. 1334 (D. Colo. 1983); *State v. Young*, 665 P.2d 108 (Colo. 1983); *Marriott v. Goldstein*, 662 P.2d 496 (Colo. App. 1983); *Jones v. Consol. Freightways Corp.*, 776 F.2d 1458 (1985); *Deutsche Bank Trust Co. Ams. v. Samora*, 2013 COA 81, 321 P.3d 590; *Oaster v. Robertson*, 173 F. Supp. 3d 1150 (D. Colo. 2016).

## **II. PARAGRAPH (a).**

**Law reviews.** For article, "New Role for Nonparties in Tort Actions — The Empty Chair", see 15 Colo. Law. 1650 (1986). For article, "Tort Reform's Impact on Contract Law", see 15 Colo. Law. 2206 (1986). For article, "Tortious Interference With



Inheritance", see 42 Colo. Law. 59 (May 2013).

**Annotator's note.** Since § 13-80-102 (1)(a) is similar to former § 13-80-110 as it existed prior to the 1986 repeal and reenactment of this article, relevant cases construing that provision have been included with the annotations to this paragraph (a).

**Two-year limitation period is not unconstitutional.** As applied to automobile accident case, period is not unreasonably short and does not deny litigants access to courts; nor did reduction from former six-year limitation period violate equal protection guarantees. *Dove v. Delgado*, 808 P.2d 1270 (Colo. 1991).

**The state cannot claim exemption from the statute of limitations by relying on the doctrine of nullum tempus occurrit regi (time does not run against the king).** *Shootman v. Dept. of Transp.*, 926 P.2d 1200 (Colo. 1996).

**Injuries caused by defendant's reckless disregard of plaintiff's safety.** If the evidence establishes that the injuries were the result of acts of the defendant which were in reckless disregard of plaintiff's safety, it can be said that plaintiff has established a claim which is subject to the statute of limitations. *Hackbart v. Cincinnati Bengals, Inc.*, 601 F.2d 516 (10th Cir. 1979).

**Infringing contractual rights covered by former § 13-80-110.** Statutory claim alleging a tortious discriminatory wrong, infringing contractual rights, was covered by the provisions of former § 13-80-110.

*Zuniga v. AMFAC Foods, Inc.*, 580 F.2d 380 (10th Cir. 1978).

**Claim for bad-faith breach of an insurance contract is subject to two-year limitation period set forth in this section.** *Harmon v. Fred S. James & Co.*, 899 P.2d 258 (Colo. App. 1994).

**Claim for violation of the Employment Retirement Income Security Act (ERISA) is subject to the two-year limitation period set forth in subsection (1)(a).** Wrongful discharge is the most appropriate analogue to ERISA claims. In this state wrongful discharge is characterized as a tort. Tort claims are subject to the two-year limitations period found in subsection (1)(a). Therefore, a two-year limitations period is appropriate for an ERISA claim. *Kennedy v. Colo. RS, LLC*, 872 F. Supp. 2d 1146 (D. Colo. 2012).

**No tolling under course-of-treatment exception or "continuing violation" doctrine in a bad-faith breach of workers' compensation insurance case,** because insurer's failure to pay benefits when due puts claimant on notice of the fact of injury and its cause even if there is only a single episode of unreasonable behavior. *Harmon v. Fred S. James & Co.*, 899 P.2d 258 (Colo. App. 1994).

**Irrigation pipeline constituted a continuing trespass.** Accordingly, plaintiff's trespass claim was not barred by the statute of limitations. *Sanderson v. Heath Mesa Homeowners Ass'n*, 183 P.3d 679 (Colo. App. 2008).

**Day of the act or event from which period runs not to be included in computation.** In computing any period of time prescribed or allowed by statute, the day of the act or event from which the designated period of time begins to run is not to be included, but the last day of the period is to be included. *Cade v. Regensberger*, 804 P.2d 238 (Colo. App. 1990).

**A cause of action must be filed on or before the specified anniversary date following the accrual of the action.** The rules of statutory construction preclude a method of computation of years that would require counting of days. *Williams v. Crop Prod. Servs., Inc.*, 2015 COA 64, 361 P.3d 1075.

**Neither C.R.C.P. 6(a) nor § 24-11-110 extends the two-year statute of limitations under subsection (1)(a) of this section when the expiration day falls on a Saturday, Sunday, or legal holiday.** *Morin v. ISS Facility Servs., Inc.*, 2021 COA 55, 487 P.3d 1289.

**The procedural computation of time for Colorado state courts' civil proceedings specified in C.R.C.P 6(a)(1) does not govern the computation of time periods provided in this section.** *Williams v. Crop Prod. Servs., Inc.*, 2015 COA 64, 361 P.3d 1075.

**Claims arising before July 1, 1986, covered by former § 13-80-110.** *Cassidy v. Smith*, 817 P.2d 555 (Colo. App. 1991).

**Discovery rule applies to professional negligence claims pursuant to this section.**

*Prospect Dev. v. Holland & Knight*, 2018 COA 107, 433 P.3d 146.

**Discovery rule did not apply** to claims for negligence and outrageous conduct arising from alleged sexual assault on minors. Despite therapists' and plaintiffs' statements that plaintiffs did not realize the full import of defendant's actions until plaintiffs sought counseling years after the assaults, plaintiffs' admissions of emotional upset at time of assaults and knowledge that defendant's actions were improper and illegal indicated that plaintiffs were on adequate notice of the essential elements of the tort. Therefore, cause of action accrued when plaintiffs reached the age of majority and statutory limitation would apply to their claims. *Cassidy v. Smith*, 817 P.2d 555 (Colo. App. 1991).

**If a plaintiff files a motion to amend accompanied by an amended complaint pursuant to C.R.C.P. 15(a), and if the motion, amended complaint, and summons are served on a defendant before expiration of the statute of limitations,** then the statute of limitations is tolled until the trial court rules on plaintiff's motions. *Moore v. Grossman*, 824 P.2d 7 (Colo. App. 1991) (decided under law in effect prior to amendment of this subsection (3)(c)).

**Claim against title company did not arise when conduct occurred but when plaintiffs discovered injury and could tie the actions by the title company to the injury.** Plaintiffs were not entitled to six-year statute of limitations pursuant to former § 13-80-110, but were limited to two years

by this section. Callaham v. First Am. Title Ins. Co., 837 P.2d 769 (Colo. App. 1992).

**Plaintiff knew, or should have known by the exercise of reasonable diligence,** of the injury to his reputation and the cause of that injury; consequently, because the complaint was filed more than two years after plaintiff learned of the statements, the trial court properly dismissed plaintiff's claims for libel, slander, and outrageous conduct as barred by subsection (1)(a) of this section and § 13-80-103 (1)(a). Taylor v. Goldsmith, 870 P.2d 1264 (Colo. App. 1994).

**Because record established that plaintiff knew or should have known of the existence of the alleged negligence and outrageous conduct by defendant over three years prior to filing her claim** for negligence and outrageous conduct, the trial court did not err in granting defendant's motion for summary judgment and dismissing plaintiff's claims. Colburn v. Kopit, 59 P.3d 295 (Colo. App. 2002).

**The statute of limitations for an action against an attorney for legal malpractice begins to run at the time the client discovers,** or through reasonable diligence should have discovered, the negligent act of the attorney. Once a client becomes aware of her attorney's negligence, and damages in the form of legal fees are incurred to ameliorate the impact of that negligence, she has suffered injury for purposes of the accrual of a legal claim. Client need not await the outcome of her appeal before being charged with knowledge of attorney's

negligence. Jacobson v. Shine, 859 P.2d 911 (Colo. App. 1993).

**A pending appeal in the underlying litigation that is the basis for a legal malpractice claim does not toll the statute of limitations.** Thus, where plaintiff's attorney admitted, during a pretrial hearing held in the underlying litigation, that he may have committed malpractice, the statute of limitations began to run even though the plaintiff's attorney filed a subsequent appeal in the underlying litigation. Broker House Int'l, Ltd. v. Bendelow, 952 P.2d 860 (Colo. App. 1998).

**Statute of limitations not equitably tolled.** Malpractice claim against an accountant was not equitably tolled when the accountant was a witness in a case before the internal revenue service. Noel v. Hoover, 12 P.3d 328 (Colo. App. 2000).

**Statute of limitation not tolled on a legal malpractice claim while a criminal defendant either pursues a direct appeal or seeks postconviction relief.** Defendant must file and preserve his claim within the limitations period, but may seek a stay in the civil action until the criminal case is resolved. Morrison v. Goff, 74 P.3d 409 (Colo. App. 2003), *aff'd*, 91 P.3d 1050 (Colo. 2004).

Holding is consistent with the doctrine of equitable tolling which permits tolling of statute of limitations only where the defendant's wrongful conduct prevented the plaintiff from asserting the claim in a timely manner or truly exceptional circumstances prevented the plaintiff from filing the claim despite diligent efforts. Morrison v. Goff, 74

P.3d 409 (Colo. App. 2003), *aff'd*, 91 P.3d 1050 (Colo. 2004).

Approach furthers the statute of limitations' goals of promoting justice, preventing unnecessary delay, and avoiding the litigation of stale claims. Approach also protects attorneys from being forced to defend stale malpractice claims and furthers judicial economy by expediting the litigation of claims. *Morrison v. Goff*, 91 P.3d 1050 (Colo. 2004).

**Wife's legal malpractice claim that attorney negligently stipulated to a modification of a temporary order** to allow a trustee in liquidation to take possession and sell stock held as marital property to satisfy a judgment against husband arose when federal bankruptcy court denied wife's claim to interest in the stock proceeds and not when the federal district court affirmed the denial on appeal. *Jacobson v. Shine*, 859 P.2d 911 (Colo. App. 1993).

**Actions against home inspectors must be brought** within two years after the buyer discovers or should have discovered a problem arising from a faulty inspection. *Gleason v. Becker-Johnson Assocs., Inc.*, 916 P.2d 662 (Colo. App. 1996).

**Outrageous conduct is a separate tort, even though it may be premised on conduct amounting to a battery.** Therefore, the applicable statute of limitations under this section is two years from the date of accrual for outrageous conduct, rather than the one year limit under § 13-80-103 for battery. *Winkler v. Rocky*

*Mtn. Conference*, 923 P.2d 152 (Colo. App. 1995).

**Further, where a claim may be pursued on two theories having different limitations,** the longer limitation applies. *Winkler v. Rocky Mtn. Conference*, 923 P.2d 152 (Colo. App. 1995).

**The statute of limitations in this section,** and not that in § 16-5-401 (1)(a) applies to a theft claim brought under § 18-4-405. *Michaelson v. Michaelson*, 923 P.2d 237 (Colo. App. 1995).

**Neither subsection (1)(a) nor subsection (1)(g) applies to a claim under § 43 (a) of the federal Lanham Act.** Instead, Colorado's three-year statute of limitations for fraud, misrepresentation, concealment, and deceit, § 13-80-101 (1)(c), governs such claims. *Full Draw Prods. v. Easton Sports, Inc.*, 85 F. Supp. 2d 1001 (D. Colo. 2000).

**Plaintiff's claim was intertwined with the no fault act and subject to the three-year statute of limitations in § 13-80-101 (1)(j),** rather than the general two-year limitation under subsection (1)(a), where plaintiff was obligated to pay and did pay benefits required under the act, the plaintiff's action was specifically authorized by the act, and the action was brought because the vehicle driven by the defendant was not insured as required under the act. *Amco Ins. Co. v. Rockwell*, 940 P.2d 1096 (Colo. App. 1997).

**Where injury to plaintiff arose out of his own operation of motorcycle, plaintiff's tort action arose out of the use or operation of a motor vehicle and three-**

**year statute of limitation under § 13-80-101 (1)(n) applies rather than two-year limit under subsection (1)(a).** Gonzales v. City & County of Denver, 998 P.2d 51 (Colo. App. 1999), *aff'd*, 17 P.3d 137 (Colo. 2001).

### **III. PARAGRAPH (c).**

**Law reviews.** For note, "Pleading a Claim Barred by Statute of Limitations by Way of Recoupment", see 7 Rocky Mt. L. Rev. 204 (1935). For article, "Torts", see 31 Dicta 456 (1954). For article, "Medical Malpractice in Colorado", see 36 Dicta 339 (1959). For article, "One Year Review of Civil Procedure and Appeals", see 38 Dicta 133 (1961). For comment on McCarty v. Goldstein, appearing below, see 35 U. Colo. L. Rev. 606 (1963).

**Annotator's note.** Since § 13-80-102 (1)(c) is similar to former § 13-80-105 as it existed prior to the 1986 repeal and reenactment of this article, relevant cases construing that provision have been included with the annotations to this paragraph (c).

**This provision is not "special legislation" prohibited by § 25 of art. V, Colo. Const.** McCarty v. Goldstein, 151 Colo. 154, 376 P.2d 691 (1962).

**It is general and uniform in operation.** This section providing that no action shall be maintained to recover damages from persons licensed to practice certain of the healing professions, including dentistry, unless such action be instituted within two years after the action accrued, is not special legislation prohibited by § 25 of art. V, Colo. Const., it being general and uniform in its

operation upon all in like situation. McCarty v. Goldstein, 151 Colo. 154, 376 P.2d 691 (1962).

**It is not discriminatory and does not deny equal protection of the law** to attorneys, scientists, engineers, nurses, x-ray technicians, and other professional persons who should be entitled to equal protection of the law. McCarty v. Goldstein, 151 Colo. 154, 376 P.2d 691 (1962).

**This statute is enacted for the purpose** of promoting justice, discouraging unnecessary delay, and forestalling the prosecution of stale claims, not for the benefit of the negligent. It should not be construed to defeat justice. The negligence is equally damaging and the victim equally helpless regardless of the motive for concealment. Rosane v. Senger, 112 Colo. 363, 149 P.2d 372 (1944).

**This statute has exactly the same effect as would a contract of employment** which provided that no action could be maintained against the doctors unless brought within two years from the date of the performance of the operation. Any excuse which would defeat such express contract is equally effective to toll the statute and impossible to give notice as such. Rosane v. Senger, 112 Colo. 363, 149 P.2d 372 (1944).

**An action for malpractice is neither a purely tortious nor a contractual action,** but a hybrid, for which a specific limitation has been prescribed by this section. Maercklein v. Smith, 129 Colo. 72, 266 P.2d 1095 (1954).

**Limitation statutes relating to assault, assault and battery, malicious injury, and fraud have no application** to actions for malpractice based on negligence of a physician or surgeon. *Maercklein v. Smith*, 129 Colo. 72, 266 P.2d 1095 (1954).

**Where express contract exists between plaintiff and defendant, plaintiff's action thereon is not barred by two-year** statute of limitations, but six-year statute dealing with express contracts is applicable. *Adams v. Poudre Valley Hosp. Dist.*, 31 Colo. App. 252, 502 P.2d 1127 (1972).

**If there is an express contract, patient must prove it.** In an action against physicians and surgeons for damages for alleged malpractice, if the patient made a contract with the physician and a surgeon, the terms of the contract must be disclosed and proven. The burden of proof hereof rests upon plaintiff. *Maercklein v. Smith*, 129 Colo. 72, 266 P.2d 1095 (1954).

**A hospital's general duty of nursing is not an express contract.** Where admission document mentions only general duty nursing and does not refer to conditions of hospital or fitness of premises for plaintiff, there may be implied warranty that hospital is fit for intended use by patient, but no implied warranty arises from terms of admission document. Therefore, general statute of limitation relating to express contracts is inapplicable. *Adams v. Poudre Valley Hosp. Dist.*, 31 Colo. App. 252, 502 P.2d 1127 (1972).

**This section is aimed solely at the maintaining of an action.** *Wyatt v. Burnett*, 95 Colo. 414, 36 P.2d 768 (1934).

**Patient may use claim as a defense against doctor's suit.** The defense of reduction of recoupment, which arises out of the same transaction as the claim, survives as long as the cause of action upon the claim exists, although an affirmative action on the subject of it may be barred by the statute of limitations. A counterclaim, if barred by the statute, is available only for recoupment although for that purpose it may be used as long as plaintiff's cause of action exists. *Wyatt v. Burnett*, 95 Colo. 414, 36 P.2d 768 (1934).

#### **IV. PARAGRAPH (d).**

**Discovery rule is applicable to wrongful death actions.** *Rauschenberger v. Radetsky*, 745 P.2d 640 (Colo. 1987).

**Applied** in *Aberkalns v. Blake*, 633 F. Supp. 2d 1231 (D. Colo. 2009).

#### **V. PARAGRAPH (g).**

**Law reviews.** For article, "Civil Rights", which discusses Tenth Circuit decisions dealing with the applicable statute of limitations for actions brought under 42 U.S.C. § 1983, see 62 Den. U. L. Rev. 67 (1985).

**Annotator's note.** Since § 13-80-102 (1)(g) is similar to former § 13-80-106 as it existed prior to the 1986 repeal and reenactment of this article, relevant cases construing that provision have been included with the annotations to this paragraph (g).

**Applicability to actions under 42 U.S.C. § 1983.** All civil rights claims are to be generally, uniformly characterized, regardless of discrete facts involved, as

actions for injury to personal rights. *Wilson v. Garcia*, 731 F.2d 640 (10th Cir. 1984), *aff'd*, 471 U.S. 261 (1985). (For previous cases dealing with the statute of limitations in actions brought under 42 U.S.C. § 1983, see *Mucci v. Falcon Sch. Dist. No. 49*, 655 P.2d 422 (Colo. App. 1982), and *McKay v. Hammond*, 730 F.2d 1367 (10th Cir. 1984).)

**Former section unconstitutionally discriminatory.** The special two-year statute of limitations made applicable to actions upon a liability created by a federal statute for which actions no period of limitations is provided in such statute would seem to be, on its face, an unconstitutional discrimination against a multitude of federal claims to which a shorter statute of limitations was purportedly applied for no other reason than that they were federal claims, leaving a three-year statute of limitations for residuary state claims. *Wolf Sales Co. v. Rudolph Wurlitzer Co.*, 105 F. Supp. 506 (D. Colo. 1952); *Trussell v. United Underwriters, Ltd.*, 228 F. Supp. 757 (D. Colo. 1964).

**Residuary statute should be used.** The residuary three-year statute of limitations in former § 13-80-108(1)(b) (now subsection (1)(i)) must take precedence over the two-year statute of limitations in former § 13-80-106. *Trussell v. United Underwriters, Ltd.*, 228 F. Supp. 757 (D. Colo. 1964).

**Nothing in the Occupational Safety and Health Act suggests congressional intention to adopt state statutes of limitations.** *Marshall v. Intermountain Elec. Co.*, 614 F.2d 260 (10th Cir. 1980).

**Absence of public interest may involve state statutes.** An action which, although brought in the name of the United States, involves no public rights or interests may be subject to a state statute of limitations. *Marshall v. Intermountain Elec. Co.*, 614 F.2d 260 (10th Cir. 1980).

**Where action is brought by government to enforce private as well as public rights,** state statutes of limitations do not apply to bar the action even though no federal period of limitations is provided. However, unlike the rule relating to actions brought exclusively for the benefit of the federal government, the doctrine of laches may be applied in these hybrid cases to limit relief. *Marshall v. Intermountain Elec. Co.*, 614 F.2d 260 (10th Cir. 1980).

**Federal law may control tolling of limitations when state statute applicable.** Though the limitations period for an action brought in federal district court based on claims arising under section 17 of the Securities Act of 1933 and §§ 10(b) and 20 of the Securities Exchange Act of 1934 is supplied by the law of Colorado, the circumstances which will toll the running of the statute are matters of federal law. *Ohio v. Peterson, Lowry, Rall, Barber & Ross*, 472 F. Supp. 402 (D. Colo. 1979), *aff'd*, 651 F.2d 687 (10th Cir. 1981).

**Action based on federal gasoline controls.** This section applies to an action based on violations of federal regulation of gasoline prices and allocation control. *Siegel Oil Co. v. Gulf Oil Corp.*, 556 F. Supp. 302 (D. Colo. 1982), *aff'd*, 701 F.2d 149 (Temp. Em. Ct. App. 1983).

**Former § 13-80-106 held to apply to federal discrimination action.** McKinney v. Armco Recreational Prods., Inc., 419 F. Supp. 464 (D. Colo. 1976).

**In an action based on federal civil rights law, court applied period of limitations of this section.** Salazar v. Dowd, 256 F. Supp. 220 (D. Colo. 1966); Merrigan v. Affiliated Bankshares of Colo., Inc., 775 F. Supp. 1408 (D. Colo. 1991), *aff'd*, 956 F.2d 278 (10th Cir. 1992); Workman v. Jordan, 32 F.3d 475 (10th Cir. 1994).

The applicable statute of limitations for a §1983 action, even one asserted against a law enforcement officer, is the two-year limitation period established under subsection (1)(g). Nieto v. State, 952 P.2d 834 (Colo. App. 1997), *aff'd in part, rev'd in part* on other grounds, 993 P.2d 493 (Colo. 2000).

**Two-year statute of limitations applies to actions arising under title II of the federal Americans with Disabilities Act.** Hughes v. Colo. Dept. of Corr., 594 F. Supp. 2d 1226 (D. Colo. 2009).

**Former § 13-80-108 applied to actions under section 10(b) of the federal Securities Exchange Act** since there is no federal statute of limitations on these actions. Laymon v. McComb, 524 F. Supp. 1091 (D. Colo. 1981).

**There is no federal statute of limitations applicable to provisions of sections 10(b) and 10b-5 of the Securities Exchange Act of 1934 and section 17 of the Securities Act of 1933.** Aldrich v.

McCulloch Props., Inc., 627 F.2d 1036 (10th Cir. 1980).

**Former § 13-80-108 applied to civil claims under the federal Racketeer Influenced and Corrupt Organizations Act.** Victoria Oil Co. v. Lancaster Corp., 587 F. Supp. 429 (D. Colo. 1984).

**Statute of limitations questions may be appropriately resolved on rule 12 (b), Fed. R. Civ. P. motion.** Aldrich v. McCulloch Props., Inc., 627 F.2d 1036 (10th Cir. 1980).

**Continuing violation of civil rights statute not barred.** Alleged discrimination in writing physical damage insurance, a violation of the civil rights statute, was a continuing violation when the policy was renewed in 1971 and 1972, and the statute of limitations contained in this section did not bar the claim based on such discrimination. Ben v. Gen. Motors Acceptance Corp., 374 F. Supp. 1199 (D. Colo. 1974).

**Neither subsection (1)(a) nor subsection (1)(g) applies to a claim under § 43 (a) of the federal Lanham Act.** Instead, Colorado's three-year statute of limitations for fraud, misrepresentation, concealment, and deceit, § 13-80-101 (1)(c), governs such claims. Full Draw Prods. v. Easton Sports, Inc., 85 F. Supp. 2d 1001 (D. Colo. 2000).

## **VI. PARAGRAPH (h).**

**Subsection (1)(h) applies to all actions against governmental entities, regardless of the theory upon which suit is brought.** Bad Boys of Cripple Creek Mining Co. v. City of Cripple Creek, 996 P.2d 792 (Colo. App. 2000).



A claim for inverse condemnation against a city is a civil action against a governmental entity and is governed by subsection (1)(h). *Bad Boys of Cripple Creek Mining Co. v. City of Cripple Creek*, 996 P.2d 792 (Colo. App. 2000).

**The two-year limitation period of subsection (1)(h) for claims to be brought against a governmental entity is not applicable to the contract claims brought by employees and former employees against a city.** To do so would allow a governmental entity to bring a contract claim against a nongovernmental entity within a three-year or longer period while a nongovernmental entity would be required to bring a similar claim against a governmental entity within a two-year period. *Fishburn v. City of Colo. Springs*, 919 P.2d 847 (Colo. App. 1995).

**The six-year limitation period of § 13-80-103.5 (1)(a) applies even against a governmental entity to recover a liquidated debt or an unliquidated, determinable amount of money due.** *Fishburn v. City of Colo. Springs*, 919 P.2d 847 (Colo. App. 1995).

**Negligence action against a city based on respondeat superior is not barred under subsection (1)(h) even though the underlying negligence action against the city's employee is barred under § 13-80-103 (1)(c).** *Gallegos v. City of Monte Vista*, 976 P.2d 299 (Colo. App. 1998).

## **VII. PARAGRAPH (i).**

**Annotator's note.** Since § 13-80-102 (1)(i) is similar to § 13-80-108 as it existed

prior to the 1986 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this paragraph (i).

**This section is the general statute of limitations** applying to all actions or proceedings for which a special period is not provided. *Bd. of Trustees of Policemen's Pension Fund v. Koman*, 133 Colo. 598, 298 P.2d 737 (1956).

**When damages being apportioned under the Workers' Compensation Act** arise from settlement of a tort case, and the apportionment case is a separate cause of action, the act does not govern the time frame and conditions under which the offset must be determined. Accordingly, the two-year catch-all statute of limitations, pursuant to subsection (1)(i), applies. *Harrison v. Pinnacol Assurance*, 107 P.3d 969 (Colo. App. 2004).

**Claims for disability retirement benefits.** The statute of limitations in former § 13-80-108 (1)(b) (now this paragraph (i)) governed cases involving claims for disability retirement benefits from the public employees' retirement association in the absence of a special statute of limitations in the act which provided for such claims. *Flanigan v. Pub. Employees' Retirement Ass'n*, 191 Colo. 198, 551 P.2d 702 (1976).

**This section governs time period in which to file for pensions.** The general assembly has not enacted a special limitation on the time for filing pension claims, hence, this section governs. *Bd. of Trustees of Policemen's Pension Fund v. Koman*, 133 Colo. 598, 298 P.2d 737 (1956).

**The right to receive a pension may be barred by this section.** The right to receive a pension is a very different right from the right to receive payment once the basic right to receive the pension itself has been determined. Once the right to receive a pension has been determined, then the receipt of the pension is a continuing one. The basic or primary right (to receive the pension) is not a continuing one and may be barred by laches or by a statute of limitations. *Bd. of Trustees of Policemen's Pension Fund v. Koman*, 133 Colo. 598, 298 P.2d 737 (1956).

**This paragraph governs 42 U.S.C. § 1983 actions.** The two-year residual statute is best suited to govern actions that confer a general remedy for injuries to personal rights, and, therefore, this paragraph applies to civil rights actions under § 1983. *Arvia v. Black*, 722 F. Supp. 644 (D. Colo. 1989); *Blake v. Dickason*, 997 F.2d 749 (10th Cir. 1993); *Workman v. Jordan*, 32 F.3d 475 (10th Cir. 1994).

**This section applies to personal actions brought under 42 U.S.C. § 1983** as such claims are subject to this state's residual statute of limitation. *Dillingham v. Univ. of Colo. Bd. of Regents*, 790 P.2d 851 (Colo. App. 1989); *Riel v. Reed*, 760 F. Supp. 852 (D. Colo. 1990); *Stump v. Gates*, 777 F.

Supp. 808 (D. Colo. 1991); *Blake v. Dickason*, 997 F.2d 749 (10th Cir. 1993).

**The two-year statute of limitations applies to claims brought under 42 U.S.C. § 1983.** *Siblerud v. Colo. State Bd. of Agric.*, 896 F. Supp. 1506 (D. Colo. 1995).

**Malicious prosecution claims under § 1983 do not accrue** until the underlying criminal convictions are terminated in the plaintiff's favor because a plaintiff neither knows nor has reason to know of an injury that constitutes the basis of a claim until such termination. *Allen v. City of Aurora*, 892 P.2d 333 (Colo. App. 1994).

**Action for partnership accounting falls under two-year period of limitations.** No statute of limitations specifically addresses an action for partnership accounting. *Tafoya v. Perkins*, 932 P.2d 836 (Colo. App. 1996).

**Recording of a spurious lien does not automatically constitute the accrual of the property owner's action against the holder of the lien.** Reasonable diligence for purposes of the statute of limitations does not require property owners to check the public records each year to ascertain whether anyone has forged a deed. *Fiscus v. Liberty Mortgage Corp.*, 2014 COA 79, 373 P.3d 644, *aff'd* on other grounds, 2016 CO 31, 379 P.3d 278.

### **13-80-102.5. Limitation of actions - medical or health care.**

(1) Except as otherwise provided in this section or section 25.5-4-307, C.R.S., no action alleging negligence, breach of contract, lack of informed consent, or other action arising in tort or contract to recover damages from any health-care institution, as defined in paragraph (a) of subsection (2) of this section, or any health-care professional, as defined in paragraph (b) of

subsection (2) of this section, shall be maintained unless such action is instituted within two years after the date that such action accrues pursuant to section 13-80-108 (1), but in no event shall an action be brought more than three years after the act or omission which gave rise to the action.

(2) For the purposes of this section:

(a) "Health-care institution" means any hospital, health-care facility, dispensary, clinic, or other institution which is licensed or certified as such under the laws of this state.

(b) "Health-care professional" means any physician, nurse, dentist, chiropractor, pharmacist, optometrist, psychologist, podiatrist, physical therapist, or other health-care practitioner who is licensed to perform such profession under the laws of this state.

(3) The limitation of actions provided in subsection (1) of this section does not apply under the following circumstances:

(a) If the act or omission which gave rise to the cause of action was knowingly concealed by the person committing such act or omission, in which case the action may be maintained if instituted within two years after the person bringing the action discovered, or in the exercise of reasonable diligence and concern should have discovered, the act or omission; or

(b) If the act or omission consisted of leaving an unauthorized foreign object in the body of the patient, in which case the action may be maintained if instituted within two years after the person bringing the action discovered, or in the exercise of reasonable diligence and concern should have discovered, the act or omission; or

(c) If both the physical injury and its cause are not known or could not have been known by the exercise of reasonable diligence; or

(d) If the action is brought by or on behalf of:

(I) A minor under eight years of age who was under six years of age on the date of the occurrence of the act or omission for which the action is brought, in which case the action may be maintained at any time prior to his attaining eight years of age; or

(II) A person otherwise under disability as defined in section 13-81-101, in which case the action may be maintained within the time period as provided in section 13-81-103.

(e) If the claim arises against a health care provider pursuant to section 13-21-132.

**Source: L. 88:** Entire section added, p. 626, § 1, effective July 1. **L. 2013:** (1) amended, (SB 13-205), ch. 276, p. 1440, § 1, effective August 7. **L. 2020:** IP(3) amended and (3)(e) added, (HB 20-1014), ch. 238, p. 1154, § 2, effective September 14.

## ANNOTATION

**Law reviews.** For article, "1988 Update on Colorado Tort Reform Legislation -- Part I", see 17 Colo. Law. 1790 (1988). For article, "Sticking Points -- Part 2: A Survey of Remedies for Vaccination Injuries", see 50 Colo. Law. 32 (Nov. 2021).

**Annotator's note.** For annotations relating to the statute of repose, formerly found in § 13-80-105 prior to the 1986 repeal and reenactment of this article and now found in this section, see the annotations for § 13-80-108 under the headings "VII. Injuries." and "IX. Former Statute of Repose."

**Given the express language of the knowing concealment exception,** it is necessary for a patient to demonstrate only that a negligent act or omission has been committed by the physician and then knowingly concealed, but not necessary to show that the patient also suspected or discovered that concealment. *Boyett v. Smith*, 888 P.2d 294 (Colo. App. 1994), *aff'd*, 908 P.2d 508 (Colo. 1995) (decided under former § 13-80-105 as it existed prior to the 1986 repeal and reenactment of this article).

**Applicability to minors.** Subsection (3)(d)(I) applies only if the child is represented by a legal guardian at the time the alleged negligence occurs. Otherwise, the child may file suit at any time before age 18 or within two years after a legal guardian is appointed. This result is required to harmonize this section with the disability statutes, § 13-81-101, *et seq.*, and applies to both the two-year limitation period and the three-year period of repose set forth in subsection (1). *Hane by and through Jabalera v. Tubman*, 899 P.2d 332 (Colo. App. 1995).

**There is no exception to the statute of limitations under this section for actions derivative of those brought by a person under disability.** *Bartlett v. Elgin*, 973 P.2d 694 (Colo. App. 1998), *aff'd*, 994 P.2d 411 (Colo. 1999).

**The language of this section is unambiguous,** thus because defendant was not a "health care professional", the general limitations for tort actions under §§ 13-80-101 and 13-80-102 applied. *Colburn v. Kopit*, 59 P.3d 295 (Colo. App. 2002).

### **13-80-103. General limitation of actions - one year.**

(1) The following civil actions, regardless of the theory upon which suit is brought, or against whom suit is brought, shall be commenced within one year after the cause of action accrues, and not thereafter:

(a) The following tort actions: Assault, battery, false imprisonment, false arrest, libel, and slander;

- (b) All actions for escape of prisoners;
- (c) All actions against sheriffs, coroners, police officers, firefighters, national guardsmen, or any other law enforcement authority;
- (d) All actions for any penalty or forfeiture of any penal statutes;
- (e) All actions under the "Motor Vehicle Repair Act of 1977", article 9 of title 42, C.R.S.;
- (f) and (g) Repealed.
- (h) All actions against a person alleging liability for a penalty for commission of a class A or a class B traffic infraction, as defined in section 42-4-1701; and
- (i) All actions against a person alleging liability for a penalty for commission of a civil infraction, as described in section 16-2.3-101.

**Source:** **L. 86:** Entire article R&RE, p. 696, § 1, effective July 1; (1)(f) added, p. 707, § 3, effective July 1. **L. 87:** (1)(f) amended and (1)(g) added, p. 538, § 11, effective July 1; (1)(f) amended and (1)(g) added, p. 567, § 3, effective July 1; (1)(h) added, p. 1495, § 2, effective July 1. **L. 94:** (1)(e) and (1)(h) amended, p. 2550, § 34, effective January 1, 1995. **L. 2000:** (1)(f) repealed, p. 3, § 5, effective July 1, 2001. **L. 2017:** (1)(g) repealed, (SB 17-294), ch. 264, p. 1391, § 28, effective May 25. **L. 2022:** (1)(i) added, (HB 22-1229), ch. 68, p. 340, § 7, effective March 1.

**Editor's note:** (1) The provisions of this section are similar to provisions of several former sections as they existed prior to 1986. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Section 47 of chapter 68 (HB 22-1229), Session Laws of Colorado 2022, provides that the act adding subsection (1)(i) is effective March 1, 2022, but the governor did not approve the act until April 7, 2022.

## ANNOTATION

I. General Consideration.

III. Paragraph (c).

IV. Paragraph (d).

## I. GENERAL CONSIDERATION.

**Law reviews.** For article, "One Year Review of Civil Procedure and Appeals", see 38 Dicta 133 (1961).

**Annotator's note.** For cases concerning when a cause of action accrues under this section, see the annotations to § 13-80-108.

**Held constitutional.** This section does not violate due process and is not unconstitutionally vague because of its failure to include or incorporate a definition of the term "any other law enforcement authority." *Delta Sales Yard v. Patten*, 870 P.2d 554 (Colo. App. 1993).

**A statute of limitations is enacted for the purpose of promoting justice,** discouraging unnecessary delay, and forestalling the prosecution of stale claims. *Klamm Shell v. Berg*, 165 Colo. 540, 441 P.2d 10 (1968).

**Assertion of defense held timely filed.** Where plaintiffs file an amended complaint and defendants interpose the affirmative defense of statute of limitations for the first time in their amended answer to the amended complaint, the defense is timely filed. *Griffen v. Pate*, 644 P.2d 51 (Colo. App. 1981).

**CRS 53, § 135-4-2 (now § 2-5-124), had the effect of reenacting former §§ 13-80-102, 13-80-116, and 13-81-103(1)(c)** despite repealing clause of 1939 act originally enacting § 13-81-103. *Kuckler v. Whisler*, 191 Colo. 260, 552 P.2d 18 (1976).

**Filing of an equal employment opportunity commission action does not operate to toll the one-year limit** of former section. *Bennett v. Furr's Cafeterias, Inc.*, 549 F. Supp. 887 (D. Colo. 1982).

**For inapplicability of this section when gist of cause of action is conspiracy,** see

*Clark v. Machette*, 92 Colo. 365, 21 P.2d 182 (1933).

**Applied** in *Williams v. Burns*, 463 F. Supp. 1278 (D. Colo. 1979); *Ellis v. Rocky Mt. Empire Sports, Inc.*, 43 Colo. App. 166, 602 P.2d 895 (1979); *Griffin v. Pate*, 644 P.2d 51 (Colo. App. 1981); *Harding Glass Co. v. Jones*, 640 P.2d 1123 (Colo. 1982); *Berry v. Colo. Dept. of Rev.*, 656 P.2d 721 (Colo. App. 1982); *Marlandris v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 703 F.2d 1152 (10th Cir. 1981); *Russell v. McMillen*, 685 P.2d 255 (Colo. App. 1984).

## **II. PARAGRAPH (a).**

A. Assault and Battery.

B. False Arrest.

C. Libel.

**Annotator's note.** Since § 13-80-103 (1)(a) is similar to former § 13-80-102 as it existed prior to the 1986 repeal and reenactment of this article, relevant cases construing that provision have been included with the annotations to this paragraph (a).

A. Assault and Battery.

**Where evidence shows no negligence, action must be for assault and subject to this section.** Where plaintiff brings action to recover for injuries received as result of being beaten by defendant, and where complaint alleges negligence on part of defendant, but evidence indicates that beating was intentional and that no element of negligence was involved, action is founded on assault and is subject to one-year statute of limitations. *Maes v. Tuttoilmondo*, 31 Colo. App. 248, 502 P.2d 427 (1972).

**Statute will not apply when defendant's assault causes delay.** To apply the one-year statute of limitations rigidly to a situation where a plaintiff is rendered insane as a result of an assault and battery which condition prevents a timely filing of an action against the intentional tortfeasor would result in callous injustice. Rather than promoting justice, the statute of limitations would then become an effective instrument for injustice. When this situation occurs, trial courts properly may turn to estoppel or fashion an equitable exception to the statutory limitation period. *Klamm Shell v. Berg*, 165 Colo. 540, 441 P. 2d 10 (1968).

**One-year limitation period did not apply** to complaint alleging negligent supervision arising out of a fight at a company-sponsored Christmas party. *Bradley v. Guess*, 797 P.2d 749 (Colo. App. 1989).

**Statute not tolled.** The fact that a professional team did not permit service of process on a team member at the team facility during the season or the preseason training camp did not toll the statute of limitations for an alleged assault and battery. *MacMillian v. Bruce*, 900 P.2d 131 (Colo. 1995).

**Outrageous conduct is a separate tort, even though it may be premised on conduct amounting to a battery.** Therefore, the applicable statute of limitations under § 13-80-102 is two years from the date of accrual for outrageous conduct, rather than the one year limit under this section for battery. *Winkler v. Rocky*

*Mtn. Conference*, 923 P.2d 152 (Colo. App. 1995).

**Further, where a claim may be pursued on two theories having different limitations,** the longer limitation applies. *Winkler v. Rocky Mtn. Conference*, 923 P.2d 152 (Colo. App. 1995).

#### B. False Arrest.

**An action for damages for malicious prosecution is** not an action for false arrest and barred by the one-year statute of this section. *Lowen v. Hilton*, 142 Colo. 200, 351 P.2d 881 (1960).

#### C. Libel.

**By this section actions for slander and libel must be commenced within one year** after the cause of action accrues or they are barred. *Bush v. McMann*, 12 Colo. App. 504, 55 P. 956 (1899).

**Even "new" claims must be asserted within the one year.** In action for libel, where counts one and two in amended complaint constitute "new" claims, and are not asserted against defendant within one year after the cause of action accrued, the courts are now barred by the provision of this section. *Walker v. Associated Press*, 160 Colo. 361, 417 P.2d 486 (1966).

**Libel claim barred if filed after statute has run.** The relation back doctrine, in C.R.C.P. 15(c) does not permit a party to maintain a claim for libel filed after the statute of limitations in this section has run. *Even v. Longmont United Hosp. Ass'n*, 629 P.2d 1100 (Colo. App. 1981).

**Each publication of a defamatory statement must be pled as a separate claim** for limitations purposes under this section. *Corporon v. Safeway Stores, Inc.*, 708 P.2d 1385 (Colo. App. 1985).

**Plaintiff knew, or should have known by the exercise of reasonable diligence**, of the injury to his reputation and the cause of that injury; consequently, because the complaint was filed more than two years after plaintiff learned of the statements, the trial court properly dismissed plaintiff's claims for libel, slander, and outrageous conduct as barred by subsection (1)(a) and § 13-80-102 (1)(a). *Taylor v. Goldsmith*, 870 P.2d 1264 (Colo. App. 1994).

**Trial court erred in determining that plaintiff's complaint is barred by the statute of limitations** when complaint alleges facts that show complaint was filed within the statutory time limitations. *Burke v. Greene*, 963 P.2d 1119 (Colo. App. 1998).

### **III. PARAGRAPH (c).**

**Annotator's note.** Since § 13-80-103 (1)(c) is similar to former § 13-80-103 as it existed prior to the 1986 repeal and reenactment of this article, relevant cases construing that provision have been included with the annotations to this paragraph (c).

**This section is framed in the interest of the official named and his bondsmen.** *People ex rel. Tritch v. Cramer*, 15 Colo. 155, 25 P. 302 (1890).

**The purpose of this section is to prevent annoyance and injustice through the prosecution against the officers** mentioned of stale demands predicated upon official

neglect or other misconduct. *People ex rel. Tritch v. Cramer*, 15 Colo. 155, 25 P. 302 (1890).

**If possible, it should be so construed as also to protect litigants from remediless wrongs.** *People ex rel. Tritch v. Cramer*, 15 Colo. 155, 25 P. 302 (1890).

**When the wrong committed by the sheriff furnishes the real and substantial foundation** of the cause of action this section is applicable. *People v. Putnam*, 52 Colo. 517, 122 P. 796 (1912).

**A cause of action only accrues when a sheriff's negligence or misconduct prevents or retards** the vindication of a private right. *People ex rel. Tritch v. Cramer*, 15 Colo. 155, 25 P. 302 (1890).

**The term "sheriff" is used in its generic sense** and includes the whole class of officers performing the duties of the office of sheriff and includes deputy sheriff. *Bailey v. Clausen*, 192 Colo. 297, 557 P.2d 1207 (1976).

**"Any other law enforcement authority" encompasses** all peace officers included in the compilation of state-recognized law enforcement authorities contained in § 18-1-901. *Delta Sales Yard v. Patten*, 870 P.2d 554 (Colo. App. 1993), *aff'd*, 892 P.2d 297 (Colo. 1995).

**Because peace officers are granted the authority to enforce state law, they are "law enforcement authorities"** for purposes of subsection (1)(c). Under § 16-2.5-135 the executive director of the department of corrections, a warden, a corrections officer employed by the



department, or other department employee assigned by the executive director, is a peace officer while engaged in the performance of his or her duties pursuant to title 17. Therefore, the executive director of the department, a warden of a correctional facility, a correctional facility hearing officer, and corrections officers are law enforcement authorities for purposes of subsection (1)(c). *Garcia v. Harms*, 2014 COA 154, 410 P.3d 561.

**Paragraph applicable to sheriff's actions regardless of whether they are secured by bond.** *Cain v. Guzman*, 761 P.2d 295 (Colo. App. 1988).

**Receipt of investigative report is not the time at which cause of action accrues** where party alleging injury filed notice stating injury occurred on a different, earlier date and complaint substantiated the earlier date. *Mosher v. City of Lakewood*, 807 P.2d 1235 (Colo. App. 1991).

**Internal investigation by city would not have resulted in any civil relief to plaintiff and exhaustion of those procedures was not required as a necessary condition precedent to the institution of a legal action against the defendants.** *Mosher v. City of Lakewood*, 807 P.2d 1235 (Colo. App. 1991).

**One-year statute of limitation did apply to claims against police officer whose police dog attacked neighbor.** Even though officer was off-duty at time, he was still acting in his official capacity because he was required by departmental policy to keep the police dog at his home. *Kliewer* by and

through *Kliewer v. Sopata*, 797 F. Supp. 1569 (D. Colo. 1992).

**Section 13-80-101 (1)(j) applies to tort actions brought against a sheriff's department arising from an alleged automobile accident involving a departmental vehicle.** Because statutes of limitation are in derogation of a valid claim, the longer period of limitations in § 13-80-103 (1)(j) should prevail over the shorter period in paragraph (c) which could arguably be applicable in this situation. *Reider v. Dawson*, 856 P.2d 31 (Colo. App. 1992), *aff'd*, 872 P.2d 212 (Colo. 1994).

**Even though an underlying negligence action against a city's employee is barred under subsection (1)(c),** a negligence action against the city based on respondeat superior is not barred under § 13-80-102 (1)(h). *Gallegos v. City of Monte Vista*, 976 P.2d 299 (Colo. App. 1998).

**Trial court erred in applying the one-year statute of limitations to a § 1983 action asserted against a corrections employee.** The appropriate period is the 2-year limitation period of § 13-80-102. *Nieto v. State*, 952 P.2d 834 (Colo. App. 1997), *aff'd in part, rev'd in part on other grounds*, 993 P.2d 493 (Colo. 2000).

#### **IV. PARAGRAPH (d).**

**Annotator's note.** Since § 13-80-103 (1)(d) is similar to former § 13-80-104 as it existed prior to the 1986 repeal and reenactment of this article, relevant cases construing that provision have been included with the annotations to this paragraph (d).

**Action must be brought within one year after commission of offense.** Where an action was not brought until the expiration of one year after the offense was committed, plaintiff had no cause of action for the "penalty". Atchison, T. & S. F. R. R. v. Tanner, 19 Colo. 559, 36 P. 541 (1894); Morris v. Bd. of County Comm'rs, 25 Colo. App. 416, 139 P. 582 (1914).

**Statute of limitations is jurisdictional.** The statute authorizing forfeiture for a public nuisance is penal in nature. In an action premised on a penal statute as opposed to a civil claim, the statute of limitations is jurisdictional in nature, in that it specifies the time period during which a cause of action exists. Since the statute of limitations is jurisdictional, it may be raised at any stage of the proceeding, including a motion to dismiss. People v. Steinberg, 672 P.2d 543 (Colo. App. 1983).

**In order for this section to apply,** the action must have been brought to enforce a "penalty" provided for by statute. Sherwood v. Graco, Inc., 427 F. Supp. 155 (D. Colo. 1977); Dorney v. Harris, 482 F. Supp. 323 (D. Colo. 1980).

**This section held not to apply to a forfeiture of workers' compensation benefits under § 8-42-402** because such forfeiture applied automatically upon conviction. Wolford v. Pinnacol Assurance, 81 P.3d 1079 (Colo. App. 2003), rev'd on other grounds, 107 P.3d 947 (Colo. 2005).

**Exemplary damages in this state constitute a penalty** provided for by statute. Sherwood v. Graco, Inc., 427 F. Supp. 155 (D. Colo. 1977).

**The one-year limitation of this section applies to prayers for punitive damages.** Sherwood v. Graco, Inc., 427 F. Supp. 155 (D. Colo. 1977); Dorney v. Harris, 482 F. Supp. 323 (D. Colo. 1980).

**Special one-year limitation in section applies to actions created by penal statutes,** not prayers for damages arising out of claims for relief not based on penal statutes. Wise v. Olan Mills, Inc., 495 F. Supp. 257 (D. Colo. 1980).

**Prayer for punitive or exemplary damages is not "claim" at all,** in the sense of a claim for relief or cause of action to which a statute of limitations is directed. Wise v. Olan Mills, Inc., 495 F. Supp. 257 (D. Colo. 1980).

A claim for punitive damages is not barred by this section where the claim is based on an underlying tort claim, and is not just a suit for a penalty. Alley v. Gubser Dev. Co., 569 F. Supp. 36 (D. Colo. 1983).

Claim for exemplary damages premised on § 13-21-102 is not an action for a penalty or forfeiture within the meaning of this section and is thus not barred. Adams v. Paine, Webber, Jackson & Curtis, Inc., 686 P.2d 797 (Colo. App. 1983).

This section does not apply to exemplary damage claims. Moon v. Platte Valley Bank, 634 P.2d 1036 (Colo. App. 1981).

Claim for punitive damages under § 13-21-102, being ancillary to an independent civil claim for actual damages, is not an action for the recovery of a penalty of a penal statute within the intentment of the one year limitation period of this section.

Palmer v. A.H. Robins Co., Inc., 684 P.2d 187 (Colo. 1984).

**Claim must sustain cause independent of tort action.** Where plaintiff's claim for exemplary damages was incapable of sustaining an independent cause of action but instead was dependent upon the underlying tort claim, plaintiff's claim for punitive damages was not a suit or action for a penalty or forfeiture. Dorney v. Harris, 482 F. Supp. 323 (D. Colo. 1980).

**Claim alleging violation of fiduciary duties not action for penalty or forfeiture.** Plaintiff's claim for relief alleging violation of fiduciary duties by the defendant, and seeking punitive damages for actions allegedly attended by circumstances of fraud, insult, and wanton and reckless disregard of the plaintiff's rights was not an action for a penalty or forfeiture within the meaning of this section. Res. Exploration & Mining, Inc. v. Itel Corp., 492 F. Supp. 515 (D. Colo. 1980).

**Nor claim based upon § 13-21-102.** This section does not apply to exemplary damage claims. Moon v. Platte Valley Bank, 634 P.2d 1036 (Colo. App. 1981).

**Punitive damages.** Claims for punitive damages under § 13-21-102, being ancillary to an independent civil claim for actual damages, is not an action for the recovery of a penalty of a penal statute within the intendment of the limitation period of this section. Palmer v. A.H. Robins Co., Inc., 684 P.2d 187 (Colo. 1984).

**Penalty may be provided for in separate statute.** Where the general

assembly has selected a one-year limitation period for statutes providing for penalties, it is inconsequential whether the penalty is provided for within the statute establishing the underlying cause of action, or in a separate statute which is parasitic to the existence of the underlying cause of action. The legislative intent to penalize and the legislative intent to limit the time within which such penalty actions may be brought remain the same. Sherwood v. Graco, Inc., 427 F. Supp. 155 (D. Colo. 1977).

While this section has been applied to statutes which contain both a substantive cause of action and a penalty provision for noncompliance, there is no indication that it is limited to such applications. Sherwood v. Graco, Inc., 427 F. Supp. 155 (D. Colo. 1977).

**This section applies to recovery of penalty for unjust discrimination in freight charges.** Section 40-31-102 providing for the recovery of a penalty for unjust discrimination in the matter of freight charges was held subject to this section. Goodridge v. Union Pac. Ry., 35 F. 35 (8th Cir. 1888).

**This section applies to a claim pursuant to § 1132(c) of the federal Employee Retirement Income Security Act of 1974,** since the most analogous state law claim is a claim for civil penalties pursuant to a penal statute. Adams v. Cyprus Amax Mineral Co., 44 F. Supp. 2d 1126 (D. Colo. 1999).

**For inapplicability of this section to a private treble damage suit under federal antitrust laws,** see Wolf Sales Co. v.

Rudolph Wurlitzer Co., 105 F. Supp. 506 (D. Colo. 1952).

**This section does not apply to proceeding before public utilities commission seeking reparation for excessive charges** for service. Bonfils v. Pub. Utils. Comm'n, 67 Colo. 563, 189 P. 775 (1920).

**This section does not apply to penalties for nonpayment of taxes.** Penalties that are added to taxes as damages or interest on account of nonpayment are not such penalties as are contemplated by this section. Pinnacle Gold Mining Co. v. People, 58 Colo. 86, 143 P. 837 (1914).

**This section does not apply to an action on behalf of the state under § 6-1-112.** Section 6-1-115 controls as the more specific statute. State ex rel. Weiser v. Castle Law Group, 2019 COA 49, 457 P.3d 699.

**Statute is not suspended by institution of suit by foreign corporation which failed to pay privilege tax.** The attempted institution of an action in the courts of Colorado by a corporation organized under the laws of another state, which has not paid the privilege fee imposed by the statute, has not the effect to stay the course of the statute of limitations. When the statutory period has elapsed the action is barred even though during the whole of that period the action appeared upon the docket of the court as a pending action, and the corporation afterwards paid the tax. W. Elec. Co. v. Pickett, 51 Colo. 415, 118 P. 988 (1911).

**A general denial presents the defense of the limitation prescribed by this section.**

W. Elec. Co. v. Pickett, 51 Colo. 415, 118 P. 988 (1911).

**Rule that statute is deemed waived if not pleaded does not apply.** The general rule in civil actions that the statute of limitations is a special privilege, and must be pleaded in apt time, or is deemed waived, does not apply to penal actions. Atchison, T. & S. F. R. R. v. Tanner, 19 Colo. 559, 36 P. 541 (1894).

**If plaintiff fails to bring suit in a year, he has no cause of action.** When a penal statute gives plaintiff the right to recover a penalty by suing for it, this section makes his cause of action dependent upon his bringing suit within a certain period; so that if he fails to bring his suit within such period he has no cause of action remaining. Atchison, T. & S. F. R. R. v. Tanner, 19 Colo. 559, 36 P. 541 (1894).

**The treble damages provision of § 38-12-103,** being penal in nature, is governed by the one-year statute of limitations; however, the recovery of the actual security deposit and the award of attorney's fees, being remedial in nature, are limited by the six-year statute of limitations. Carlson v. McCoy, 193 Colo. 391, 566 P.2d 1073 (1977).

**The limitation period for actions for a penalty or forfeiture under penal statutes does not run against the state,** in accordance with the general rule that statutes of limitation do not run against the state unless the statute specifically or by necessary implication so provides. Gibbs v. Colo. Mined Land Reclamation Bd., 883 P.2d 592 (Colo. App. 1994).

**The legislature did not intend for the one-year statute of limitations found in subsection (1)(d) to apply to § 10-3-1116 (1).** The three-part test described in *Kruse v. McKenna*, 178 P.3d 1198 (Colo. 2008), is not applicable when the intent of the

legislature is clear that a particular cause of action is or is not governed by a certain statute of limitations. *Rooftop Restoration, Inc. v. Am. Family Mut. Ins. Co.*, 2018 CO 44, 418 P.3d 1173.

### **13-80-103.5. General limitation of actions - six years.**

(1) The following actions shall be commenced within six years after the cause of action accrues and not thereafter:

(a) All actions to recover a liquidated debt or an unliquidated, determinable amount of money due to the person bringing the action, all actions for the enforcement of rights set forth in any instrument securing the payment of or evidencing any debt, and all actions of replevin to recover the possession of personal property encumbered under any instrument securing any debt; except that actions to recover pursuant to section 38-35-124.5 (3), C.R.S., shall be commenced within one year;

(b) All actions for arrears of rent;

(c) All actions brought under section 13-21-109, except actions brought under section 13-21-109 (2);

(d) All actions by the public employees' retirement association to collect unpaid contributions from employers for persons who are not members or inactive members at the time the association first notifies an employer of its claim for unpaid contributions. This paragraph (d) shall apply to causes of action as provided in section 24-51-402 (2), C.R.S.

(e) Repealed.

**Source:** **L. 86:** Entire article R&RE, p. 697, § 1, effective July 1. **L. 87:** (1)(a) amended, p. 568, § 4, effective July 1. **L. 89:** (1)(c) added, p. 757, § 5, effective July 1. **L. 95:** (1)(d) added, p. 562, § 20, effective May 22. **L. 2001:** (1)(e) added, p. 326, § 2, effective July 1. **L. 2002:** (1)(a) amended, p. 1331, § 1, effective July 1. **L. 2006:** (1)(e) amended, p. 2001, § 48, effective July 1. **L. 2013:** (1)(e) repealed, (SB 13-205), ch. 276, p. 1440, § 2, effective August 7.

**Editor's note:** This section is similar to former § 13-80-110 as it existed prior to 1986.

## ANNOTATION

### I. General Consideration.

### II. Applicable Actions.

#### I. GENERAL CONSIDERATION.

**Law reviews.** For article, "State Statutes of Limitation Contrasted and Compared", see 3 Rocky Mt. L. Rev. 106 (1931). For note, "Necessity for Filing Secured Claims in Bankruptcy Proceedings", see 3 Rocky Mt. L. Rev. 209 (1931). For article, "One Year Review of Agency, Partnerships, Corporations, and Municipal Corporations", see 41 Den. L. Ctr. J. 61 (1964). For note, "Rural Poverty and the Law in Southern Colorado", see 47 Den. L.J. 82 (1970). For article, "Inverse Condemnation — A Viable Alternative", see 51 Den. L.J. 529 (1974). For article, "Federal Practice and Procedure", see 56 Den. L.J. 491 (1979). For article, "Will Contests — Some Procedural Aspects", see 15 Colo. Law. 787 (1986).

**Annotator's note.** (1) Since § 13-80-103.5 is similar to former § 13-80-110 as it existed prior to the 1986 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations of this section.

(2) For cases concerning when a cause of action accrues under this section, see the annotations to § 13-80-108.

**The statute of limitations is intended to make parties** more vigilant in asserting their supposed rights, and to deter them from bringing actions on state claims when witnesses may have died or moved away, or their recollection become impaired, or when

other evidences may have disappeared, so that the truth of matters in controversy might be difficult of ascertainment. *Toothaker v. City of Boulder*, 13 Colo. 219, 22 P. 468 (1889).

**It is to be construed liberally.** It is the settled law in Colorado that courts look with favor upon statutes of limitation and construe them liberally. *Chuchuru v. Chutchurru*, 185 F.2d 62 (10th Cir. 1950).

**The statute of limitations is regarded as a statute of repose,** having regard to the peace and welfare of society, "not enacted to protect persons from claims fictitious in their origin, but from ancient claims, whether well or ill-founded, which may have been discharged, but the evidence of discharge lost". *Hittson v. Davenport*, 3 Colo. 597 (1877); *Patterson v. Ft. Lyon Canal Co.*, 36 Colo. 175, 84 P. 807 (1906).

**It is a bar to the remedy and not to the right.** *Brereton v. Benedict*, 41 Colo. 16, 92 P. 238 (1907); *Holmquist v. Gilbert*, 41 Colo. 113, 92 P. 232 (1907); *Foot v. Burr*, 41 Colo. 192, 92 P. 236 (1907); *Brown v. Bell*, 46 Colo. 163, 103 P. 380 (1909); *Cooley v. Rowan*, 71 Colo. 17, 203 P. 669 (1922); *Wyatt v. Burnett*, 95 Colo. 414, 36 P.2d 768 (1934); *Rogers v. Rogers*, 96 Colo. 473, 44 P.2d 909 (1935); *Kiles v. Trinchera Irrigation Dist.*, 136 F.2d 894 (10th Cir. 1943).

**Running of statute does not extinguish debt.** While the statute of limitations may cause the remedy on a debt to be lost, it does not extinguish the debt. *Estate of Ramsey v.*

State, Dept. of Rev., 42 Colo. App. 163, 591 P.2d 591 (1979).

**A statute of limitations drafted to relate to special cases controls over a general statute of limitations.** Mohawk Green Apts. v. Kramer, 709 P.2d 955 (Colo. App. 1985).

**Statute of limitations is personal bar** which may be raised or waived by the defendant. Estate of Ramsey v. State, Dept. of Rev., 42 Colo. App. 163, 591 P.2d 591 (1979).

**Statute of limitations may be waived.** The statute of limitations is a personal defense of which a defendant may or may not avail himself at his pleasure. Williams v. Carr, 4 Colo. App. 368, 36 P. 646 (1894); Owers v. Olathe Silver Mining Co., 6 Colo. App. 1, 39 P. 980 (1895); Foot v. Burr, 41 Colo. 192, 92 P. 236 (1907).

**And is deemed waived if not pleaded.** The statute of limitations may be waived, and where not pleaded in the first instance, it is presumed to have been waived. Owers v. Olathe Silver Mining Co., 6 Colo. App. 1, 39 P. 980 (1895); Chivington v. Colo. Springs Co., 9 Colo. 597, 14 P. 212 (1886); Atchinson T. & S. F. R. R. v. Tanner, 19 Colo. 559, 36 P. 541 (1894); Brown v. Bell, 46 Colo. 163, 103 P. 380 (1909).

**Waiver for indefinite time permanently removing bar of statute is void.** Agreement in a promissory note, that "we, the makers hereby waive all benefits of the statute of limitations", being a waiver for an indefinite time, and permanently removing the statute of limitations from operation, is void, and does not preclude the maker from

interposing the statute of limitations as a defense. First Nat'l Bank v. Mock, 70 Colo. 517, 203 P. 272 (1921).

**Attorney may not waive.** The maker of a promissory note barred by the statute of limitations directs an attorney to attend a sale of land under a trust deed given to secure the note, and "protect his interest". He has no authority to waive the statute of limitations for his client. Ferris v. Curtis, 53 Colo. 340, 127 P. 236 (1912); First Nat'l Bank v. Mock, 70 Colo. 517, 203 P. 272 (1921).

**Statutes of limitations are not retroactive unless expressly so providing.** Since statutes of limitations are remedial only, it is competent for the general assembly to make them operate retroactively, but it must do so by expressly so providing. Edelstein v. Carlile, 33 Colo. 54, 78 P. 680 (1904); Bonfils v. Pub. Utils. Comm'n, 67 Colo. 563, 189 P. 775 (1920); Jones v. O'Connell, 87 Colo. 103, 285 P. 762 (1930).

**Action cannot be revived by general assembly after bar has attached.** When the bar of a statute of limitations has once attached, the action cannot be revived by an act of the general assembly. Mass. Mut. Life Ins. Co. v. Colo. Loan & Trust Co., 20 Colo. 1, 36 P. 793 (1894).

**Twenty-year period prescribed for execution upon judgments in § 13-52-102 and not the six-year period in this section is the applicable statute of limitations for child support arrearages.** In re Aragon, 773 P.2d 1110 (Colo. App. 1989).

**Statute of limitations runs against a city acting in its proprietary capacity** in an action to recover unpaid utilities charges due to an error in billing procedure. *Colo. Springs v. Timberlane Assoc.*, 807 P.2d 1177 (Colo. App. 1990), *aff'd* on other grounds, 824 P.2d 776 (Colo. 1992).

**Function in which government is acting is not dispositive of whether limited sovereign immunity attaches.** City is not immune from statute of limitations in action upon contract claim. *Colo. Springs v. Timberlane Assoc.*, 824 P.2d 776 (Colo. 1992).

**The six-year limitation period of subsection (1)(a)** applies even against a governmental entity to recover a liquidated debt or an unliquidated, determinable amount of money due. *Fishburn v. City of Colo. Springs*, 919 P.2d 847 (Colo. App. 1995).

**The two-year limitation period of § 13-80-102 (1)(h) for claims to be brought against a governmental entity is not applicable to the contract claims brought by employees and former employees against the city.** Because to do so would allow a governmental entity to bring a contract claim against a nongovernmental entity within a three-year or longer period while a nongovernmental entity would be required to bring a similar claim against a governmental entity within a two-year period. *Fishburn v. City of Colo. Springs*, 919 P.2d 847 (Colo. App. 1995).

**State statute of limitation rather than federal statute of limitation governs** an action filed by a private party who is the

assignee of a promissory note held by the Federal Deposit Insurance Corporation as receiver. *Tivoli Ventures, Inc. v. Tallman*, 852 P.2d 1310 (Colo. App. 1992).

**An equitable tolling of a statute of limitations is limited** to situations in which either the defendant has wrongfully impeded the plaintiff's ability to bring the claim or truly extraordinary circumstances prevented the plaintiff from filing his or her claim despite diligent efforts. Neither the actions of the defendants nor the lawsuit against the third party in this case in any way impeded the litigant's right to file suit. *Dean Witter Reynolds, Inc. v. Hartman*, 911 P.2d 1094 (Colo. 1996).

**Statute of limitations may be tolled** if plaintiffs can prove defendant fraudulently concealed material elements giving rise to their claims. *Patterson v. BP Am. Prod. Co.*, 2015 COA 28, 360 P.3d 211.

**When a creditor on multiple debts applies an undesignated partial payment by the debtor to a debt on which the statute of limitations has not yet run, the payment tolls the statute of limitations on that debt.** *Drake v. Tyner*, 914 P.2d 519 (Colo. App. 1996).

**Applied** in *Kanarado Mining & Dev. Co. v. Sutton*, 36 Colo. App. 375, 539 P.2d 1325 (1975); *Carpenters & Millwrights Health Benefit Trust Fund v. Gardineer Dry Walling Co.*, 573 F.2d 1172 (10th Cir. 1978); *Duncan v. Schuster-Graham Homes, Inc.*, 194 Colo. 441, 578 P.2d 637 (1978); *Tamblyn v. Mickey & Fox, Inc.*, 195 Colo. 354, 578 P.2d 641 (1978); *Hayden v. Bd. of County Comm'rs*, 41 Colo. App. 102, 580 P.2d 830



(1978); *McClanahan v. Am. Gilsonite Co.*, 494 F. Supp. 1334 (D. Colo. 1980); *Malandris v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 703 F.2d 1152 (10th Cir. 1981); *Republic Nat'l Bank v. Meridian Props., Inc.*, 530 F. Supp. 169 (D. Colo. 1982); *Siegel Oil Co. v. Gulf Oil Corp.*, 556 F. Supp. 302 (D. Colo. 1982); *B.C. Inv. Co. v. Throm*, 650 P.2d 1333 (Colo. App. 1982); *Whatley v. Skaggs Cos.*, 707 F.2d 1129 (10th Cir. 1983); *William B. Tanner Co. v. Mesa Broad. Co.*, 571 F. Supp. 28 (D. Colo. 1983); *United Bank of Denver Nat'l Ass'n v. Wright*, 660 P.2d 510 (Colo. App. 1983); *Smith v. Union Supply Co.*, 675 P.2d 333 (Colo. App. 1983); *Simpson v. Milne*, 677 P.2d 365 (Colo. App. 1983); *Magna Assocs. v. Torgrove*, 585 F. Supp. 585 (D. Colo. 1984); *Martinez v. Cont'l Enter.*, 697 P.2d 789 (Colo. App. 1984); *Martinez v. Cont'l Enter.*, 730 P.2d 308 (Colo. 1986), *aff'd in part, rev'd in part on other grounds*, 697 P.2d 789 (Colo. App. 1984); *Denver Classroom v. Sch. Dist. No. 1*, 2017 COA 2, 434 P.3d 680, *aff'd*, 2019 CO 5, 433 P.3d 38; *Carson v. Ocwen Loan Servicing, LLC*, 365 F. Supp. 3d 1163 (D. Colo. 2019).

## II. APPLICABLE ACTIONS.

**A statute of limitations is applied only to cases clearly within its provisions.** *Glenn v. Mitchell*, 71 Colo. 394, 207 P. 84 (1922); *Wyatt v. Burnett*, 95 Colo. 414, 36 P.2d 768 (1934).

**Where there is a conflict over the applicable statute of limitations, the more specific statute of limitations should apply.** *Gunderson v. Weidner Holdings, LLC*, 2019 COA 186, 463 P.3d 315.

**This section is a general statute of limitations on the enforcement of debts**, including debts evidenced by a promissory note secured by a deed of trust. After a party reduces a promissory note to judgment, the more specific six- and 15-year limitations periods established by §§ 13-52-102 and 38-29-205 apply to the resulting judgment lien and original deed of trust respectively. The merger of the promissory note into the judgment does not discharge the debt or extinguish the lien of the deed of trust. *Mortg. Invs. Corp. v. Battle Mtn. Corp.*, 70 P.3d 1176 (Colo. 2003).

A payable-on-demand promissory note that is a negotiable instrument is subject to the uniform commercial code's statute of limitations instead of this section. § 4-3-118 is a more specific statute of limitations, reserved for negotiable instruments. *Gunderson v. Weidner Holdings, LLC*, 2019 COA 186, 463 P.3d 315.

**Application to foreign corporation.** Former § 13-80-110 could not be applied to subject a foreign corporation to greater liabilities than were imposed upon a similarly situated domestic corporation. *Casselman v. Denver Tramway Corp.*, 39 Colo. App. 306, 568 P.2d 84 (1977), *rev'd on other grounds*, 195 Colo. 241, 577 P.2d 293 (1978).

Since this state has by § 7-8-122 (1) adopted a two-year statute of limitations applicable to dissolved domestic corporations, it would be both illogical and unconstitutional to apply to a foreign corporation, which has been dissolved pursuant to the laws under which it is

governed by its state of incorporation, and which has received a certificate of withdrawal from this state, a statute of limitations which would subject it to liability for a period longer than that which this state would apply to a dissolved domestic corporation. *Casselman v. Denver Tramway Corp.*, 39 Colo. App. 306, 568 P.2d 84 (1977), rev'd on other grounds, 195 Colo. 241, 577 P.2d 293 (1978).

**This statute is a meritorious defense to an action on a promissory note.** *First Nat'l Bank v. Mock*, 70 Colo. 517, 203 P. 272 (1921).

**A lender may abandon the acceleration of a promissory note by a clear affirmative act.** Such abandonment restores the note's original maturity date for purposes of accrual of the statute of limitations. *Bank of N.Y. Mellon v. Peterson*, 2018 COA 174M, 442 P.3d 1006.

**This statutory section only applies when there is a contract between the parties.** *Pound v. Fletter*, 39 P.3d 1241 (Colo. App. 2001).

**Action for money loaned may be brought within six years from last interest payment.** The statute of limitations is not a bar to an action for money loaned when brought within six years from the date of the last payment of interest. *Purdy v. Deprez*, 39 Colo. 68, 88 P. 972 (1907).

**It applies to action to recover usurious interest.** The applicable statute of limitations for the common-law remedy of money had and received to recover usurious interest paid then is six years. *Dennis v.*

*Bradbury*, 236 F. Supp. 683 (D. Colo. 1964), aff'd and reh'g denied, 368 F.2d 905 (10th Cir. 1966).

**Reimbursement under lease.** Where a long-term lease agreement is executed, and where the lessor subsequently pays the applicable sales taxes and invoices the amount paid to the lessee, but the lessee refuses to make reimbursement, this section is the applicable statutory section. *Columbine Beverage Co. v. Cont'l Can Co.*, 662 P.2d 1094 (Colo. App. 1982).

**Subsection (1)(a) applies to an employee's private civil action for violations of the Colorado minimum wage order's meal and rest period regulations.** *Sobolewski v. Boselli & Sons, LLC*, 342 F. Supp. 3d 1178 (D. Colo. 2018).

**In an action by a builder against the owners for damages for breach of contract prior to completion of construction,** where the builder sought a liquidated determinable amount of money due it from the owners, i.e., 10 percent of the estimated cost of the house, it was an action of debt founded upon a contract included within the meaning of this section. *Comfort Homes, Inc. v. Peterson*, 37 Colo. App. 516, 549 P.2d 1087 (1976).

**Statute inapplicable to claims for replevin, conversion, theft, and breach of bailment brought by daughter against mother with respect to mother's taking of winning lottery ticket;** this section applicable only to claims based in contract. *Curtis v. Counce*, 32 P.3d 585 (Colo. App. 2001).

**"Liquidated debt" and "unliquidated, determinable amount" construed.** A debt is deemed "liquidated" if the amount due is capable of ascertainment by reference to an agreement or by simple computation. A debtor's dispute of or defenses against such claim, or any setoff or counterclaim interposed, does not affect this result. Similarly, if a contract fixes a price per unit of performance, a claim based thereon is "determinable" even though the number of units performed must be proven and is subject to dispute. *Rotenberg v. Richards*, 899 P.2d 365 (Colo. App. 1995).

Applied in *Interbank Inv. v. Vail Valley Consol. Water*, 12 P.3d 1224 (Colo. App. 2000); *Portercare Adventist Health Sys. v. Lego*, 2012 CO 58, 286 P.3d 525; *Barnett v. Surefire Med., Inc.*, 342 F. Supp. 3d 1167 (D. Colo. 2018); *Torres-Vallejo v. CreativExteriors, Inc.*, 220 F. Supp. 3d 1074 (D. Colo. 2016).

**A hospital bill is a "liquidated debt"** if the amount owed is ascertainable either by reference to the agreement or by simple computation using extrinsic evidence if necessary and is governed by the six-year statute of limitations prescribed by this section. *Portercare Adventist Health Sys. v. Lego*, 2012 CO 58, 286 P.3d 525.

**A claim based on quantum meruit is not liquidated or determinable**, because it seeks only reasonable compensation for services rendered, in an amount to be determined by the fact-finder. *Rotenberg v. Richards*, 899 P.2d 365 (Colo. App. 1995).

Applied in *Torres-Vallejo v. CreativExteriors, Inc.*, 220 F. Supp. 3d 1074 (D. Colo. 2016).

**Because the amounts plaintiff sought were not ascertainable by reference to the professional services contract or by simple computation, they were not "liquidated or determinable" within the meaning of subsection (1)(a).** Consequently, the six-year limitation period under subsection (1)(a) did not apply. The three-year limitation period under § 13-80-101 (1)(a) applied instead. *Neuromonitoring Assocs. v. Centura Health*, 2012 COA 136, 351 P.3d 486.

**Statute does not apply to amount owed from partnership accounting.** Because the amount due from the partnership accounting was not capable of ascertainment by reference to the partnership agreement or by a simple computation derived from the agreement, the statute does not apply. *Tafoya v. Perkins*, 932 P.2d 836 (Colo. App. 1996).

**Action under former § 10-4-708 of Colorado Auto Accident Reparations Act covered by this section as an action in debt or in assumpsit.** *Winstead v. Criterion Ins. Co.*, 781 P.2d 170 (Colo. App. 1989).

**An action for negligent misrepresentation** is based upon simple negligence, and thus such an action was governed by the former six-year statute of limitations rather than the three-year statute of limitations generally applicable for fraud. *Ebrahimi v. E.F. Hutton & Co., Inc.*, 794 P.2d 1015 (Colo. App. 1989).

**Claim for breach of contract against construction contractor is not governed by two-year statute of limitations for actions against contractors and builders** (now § 13-80-104) but by six-year statute of limitations for contract actions in this section, but claim against contractor for damages caused by delays in construction is covered by two-year statute. *Frisco Motel P'ship v. H.S.M. Corp.*, 791 P.2d 1195 (Colo. App. 1989).

**ERISA action to recover pension and benefit contributions is analogous to state breach of contract action** and subject to the six year statute of limitations under this section. *Trustees of Health Ben. Trust v. Lillard & Clark*, 780 F. Supp. 738 (D. Colo. 1990); *Aull v. Cavalcade Pension Plan*, 988 F. Supp. 1360 (D. Colo. 1997).

**The Colorado statute of limitations for the enforcement of rights which are set forth in an instrument securing the payment of a debt** is six years after the claim for relief accrues and a claim for relief on a promissory note accrues the day after the note matures. *Tivoli Ventures, Inc. v. Bumann*, 870 P.2d 1244 (Colo. 1994).

**The statute of limitations applies to each installment due on a note separately and does not begin to run on any one installment until that installment is due.** Right to foreclose on note is not extinguished because certain payments are more than six years overdue and foreclosure proceedings are just begun. *Application of Church*, 833 P.2d 813 (Colo. App. 1992).

**Bankruptcy discharge of a debtor's personal liability does not commence the**

**six-year limitations period in subsection (1)(a).** When a security agreement is to be repaid in installments and no affirmative act by the creditor manifests its clear intent to accelerate, the six-year statute of limitations under subsection (1)(a) begins to run when an installment payment is missed and runs separately against each missed installment, regardless of bankruptcy. *US Bank Nat'l Ass'n v. Silvernagel*, 2023 CO 17, 528 P.3d 163.

**If a money obligation is payable in installments, a separate cause of action arises on each installment** and the statute of limitations begins to run against each installment when it becomes due, regardless of whether the holder possesses the option to declare all installments payable in the event of default on a single payment. *Application of Church*, 833 P.2d 813 (Colo. App. 1992).

**When a promissory note is to be repaid in installments**, is not accelerated by the creditor, and contains a maturity date on which all unpaid payments are to be made, the six-year statute of limitations under this section begins to run on the maturity date. *Castle Rock Bank v. Team Transit, LLC*, 2012 COA 125, 292 P.3d 1077.

**In the case of a default on installment payments**, the statute of limitations must be deemed to commence running on the date of the cure as to any installment payments due prior to that date. *Parker v. Luttrell*, 926 P.2d 179 (Colo. App. 1996).

**Once an installment security agreement is validly accelerated, the entirety of the remaining balance becomes due**, and, therefore, the cause of action to collect the

entire debt accrues. *Hassler v. Account Brokers of Larimer Cty.*, 2012 CO 24, 274 P.3d 547; *In re Eastman*, 588 B.R. 600 (Bankr. D. Colo. 2018).

**Because the statute of limitations under this section had not run as of the date when the FDIC's claim for relief on promissory note accrued**, the federal statute of limitations preempted this section as a result of the FDIC's receivership. *Tivoli Ventures, Inc. v. Bumann*, 870 P.2d 1244 (Colo. 1994).

**Assignment of a promissory note by the FDIC to private party** allows the assignee to seek recovery pursuant to the federal statute of limitations, facilitates expunging the federal system of failed bank assets, and is consistent with the intent and language of the federal statute as well as the requirements of the common law. *Tivoli Ventures, Inc. v. Bumann*, 870 P.2d 1244 (Colo. 1994).

**This section does not apply to a contract action for insurance coverage** in which no third party was damaged. *Union Pac. R.R. Co. v. Certain Underwriters at Lloyd's, London*, 37 P.3d 524 (Colo. App. 2001).

**The statute of limitations does not apply to an action to quiet title brought by a person in possession of real property.** *Martinez v. Archuleta-Padia*, 143 P.3d 1112 (Colo. App. 2006).

**The defense of laches is available to bar timely filed claims where statute of limitations restarted under the partial payment doctrine.** Laches does not conflict with the statute of limitations, and case law recognizes the application of equitable remedies to legal claims. *Hickerson v. Vessels*, 2014 CO 2, 316 P.3d 620.

#### **13-80-103.6. General limitation of actions - domestic violence - six years - definition.**

(1) Notwithstanding any other statute of limitations specified in this article 80, or any other provision of law that can be construed to reduce the statutory period set forth in this section, any civil action to recover damages caused by an act of domestic violence, as defined in section 14-10-103, must be commenced within six years after a disability has been removed for a person under disability, as the term is defined in subsection (2) of this section, or within six years after a cause of action accrues, whichever occurs later, and not thereafter; except that in no event may any civil action commence more than twenty years after the cause of action accrues.

(2) (a) For the purpose of this section, "person under disability" means any person who:

(I) Has a behavioral or mental health disorder; an intellectual and developmental disability, as defined in section 25.5-10-202 (26); or a brain injury, as defined in section 26-1-301 (1.5); and

(II) Is psychologically or emotionally unable to acknowledge the act of domestic violence and the resulting harm that is the basis of the civil action.

(b) For the purpose of this section, where the plaintiff is a victim of a series of domestic violence offenses, the plaintiff need not establish which act of a series of acts caused the plaintiff's injury, and the statute of limitations set forth in this section commences with the last in the series of acts, subject to the provisions of this section regarding disability.

(c) A person under disability has the burden of proving that:

(I) The act of domestic violence that is the basis of the civil action occurred; and

(II) He or she was psychologically or emotionally unable to acknowledge the act of domestic violence and the resulting harm.

**Source: L. 2018:** Entire section added, (HB 18-1398), ch. 350, p. 2075, § 1, effective August 8. **L. 2019:** (2)(a)(I) amended, (HB 19-1147), ch. 178, p. 2033, § 11, effective August 2. **L. 2024:** (1) amended, (HB 24-1350), ch. 344, p. 2346, § 10, effective August 7. **L. 2026:** (1) amended, (HB 26-1309), ch. 163, p. 983, § 8, effective May 27.

**Cross references:** For the legislative declaration in HB 24-1350, see section 1 of chapter 344, Session Laws of Colorado 2024. For the legislative declaration in HB 26-1309, see section 1 of chapter 163, Session Laws of Colorado 2026.

## ANNOTATION

**Applied** in *Mullenix v. Laplante*, 568 F. Supp. 3d 1147 (D. Colo. 2021).

### **13-80-103.7. General limitation of actions - sexual misconduct - third-party liability - definition.**

(1) (a) Notwithstanding any other statute of limitations specified in this article 80, or any other provision of law that can be construed to limit the time period to commence an action described in this section, any civil action based on sexual misconduct, including any derivative claim, may be commenced at any time without limitation.

(b) This subsection (1) applies to causes of action accruing on or after January 1, 2022, and to causes of action accruing before January 1, 2022, if the applicable statute of limitations, as it existed prior to January 1, 2022, has not yet run on January 1, 2022.

(2) As used in this section, unless the context otherwise requires, "sexual misconduct" means any conduct that forms the basis of a civil action that is engaged in for the purpose of the sexual arousal, gratification, or abuse of any person, and that constitutes any of the following:

(a) A first degree misdemeanor or a felony offense described in part 3 or 4 of article 3 of title 18 or a felony offense described in article 6 or 7 of title 18;

(b) Human trafficking for sexual servitude, as described in section 18-3-504;

(c) A federal sex offense as defined in the federal "Sex Offender Registration and Notification Act", 34 U.S.C. sec. 20911 (5)(A)(iii);

(d) Obscene visual representations of the sexual abuse of children, as described in 18 U.S.C. sec. 1466A;

(e) Transfer of obscene material to minors, as described in 18 U.S.C. sec. 1470; or

(f) Attempt or conspiracy to commit sex trafficking of children or by force, fraud, or coercion, as described in 18 U.S.C. sec. 1594.

(3) to (5) (Deleted by amendment, L. 2022.)

(6) (a) This section also applies to any cause of action arising from factual circumstances that include sexual misconduct that is brought against a person or entity that is not the perpetrator of the sexual misconduct.

(b) This subsection (6) applies to causes of action accruing on or after January 1, 2022, and to causes of action accruing before January 1, 2022, if the applicable statute of limitations, as it existed prior to January 1, 2022, has not yet run on January 1, 2022.

**Source:** **L. 90:** Entire section added, p. 885, § 1, effective April 16. **L. 93:** Entire section amended, p. 1908, § 1, effective July 1. **L. 2017:** (3.5)(a) amended, (HB 17-1046), ch. 50, p. 156, § 4, effective March 16; (3.5)(a) amended, (SB 17-242), ch. 263, p. 1293, § 110, May 25. **L. 2021:** Entire section amended, (SB 21-073), ch. 28, p. 117, § 1, effective January 1, 2022.

**Cross references:** For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

## ANNOTATION

**Statute of limitations set forth in this section is restricted to claims brought** **against a perpetrator** and does not encompass claims against parties other than

a perpetrator of a sexual offense. *Sandoval v. Archdiocese of Denver*, 8 P.3d 598 (Colo. App. 2000).

**Claims of intentional sexual assault or battery** committed during the provision of medical services are subject to the six-year statute of limitation of this section, unless the sexual touching occurred in a negligent manner. *Hurtado v. Brady*, 165 P.3d 871 (Colo. App. 2007).

**This section does not purport to define when an action for sexual assault on a**

**child "accrues"**, but rather establishes the six-year limitation period and provides that the period runs from accrual or from the date of removal of disability. *Sailsbery v. Parks*, 983 P.2d 137 (Colo. App. 1999).

**"Legal disability" in subsection (3.5)(a) denotes an inability to bring a lawsuit based on some recognized policy of the law.** *T.D. v. Wiseman*, 2017 COA 111, 415 P.3d 852.

### **13-80-103.8. Limitation of civil forfeiture actions related to criminal acts.**

(1) The following actions shall be commenced within five years after the cause of action accrues, and not thereafter:

- (a) All actions brought pursuant to section 12-145-113 (2);
- (b) All actions brought pursuant to part 3 of article 13 of title 16, C.R.S.;
- (c) All actions brought pursuant to part 5 of article 13 of title 16, C.R.S.;
- (d) All civil actions brought pursuant to article 17 of title 18, C.R.S.;
- (e) All civil actions brought pursuant to section 42-5-107, C.R.S.

(2) A cause of action shall be deemed to have accrued pursuant to subsection (1) of this section at such time as the alleged offense or conduct giving rise to the claim was discovered. If, when a cause of action accrues against a person pursuant to subsection (1) of this section, such person is out of this state and not subject to service of process or has concealed himself, or the property which is the subject of such a cause of action is concealed or absent from this state, the period limited for the commencement of the action by the statute of limitations pursuant to this section shall not begin to run until such person comes into this state or such property is no longer out of this state or concealed. If, after the cause of action accrues, such person departs from this state and is not subject to service of process or conceals himself, the time of his absence while not subject to service of process or the time of his concealment while not subject to service of process, or any period of time the property which is the subject of such cause of action is removed from this state, shall not be computed as a part of the period within which the action must be brought.



(3) For purposes of computing time pursuant to this section, possession or control of the following forms of property by any person subject to a cause of action pursuant to subsection (1) of this section shall be deemed to be a continuing offense or continuing conduct:

(a) All currency, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for any alleged offense or conduct giving rise to a cause of action;

(b) All proceeds of any alleged offense or conduct giving rise to a cause of action;

(c) All currency, negotiable instruments, or securities intended to be used to facilitate any alleged offense or conduct giving rise to a cause of action;

(d) All property derived from or realized through any alleged offense or conduct giving rise to a cause of action.

**Source: L. 90:** Entire section added, p. 984, § 3, effective April 24. **L. 2019:** (1)(a) amended, (HB 19-1172), ch. 136, p. 1668, § 76, effective October 1.

**13-80-103.9. Limitation of actions - failure to perform a background check by a public entity - injury to a child.**

(1) As used in this section, unless the context otherwise requires:

(a) "Child" means a person under eighteen years of age.

(b) "Education employment required background check" means complying with sections 22-2-119 and 22-32-109.7, C.R.S.

(c) "Sexual offense against a child" shall include all offenses listed in section 18-3-411 (1), C.R.S.

(2) Notwithstanding any other statute of limitations specified in this article or any other provision of law, a civil action, as described in subsection (3) of this section, against a school district or charter school for failure to perform an education employment required background check may be brought at any time within two years after the age of majority of the plaintiff.

(3) In bringing a civil action for failure to perform an education employment required background check pursuant to this section, a plaintiff shall make a prima facie showing of the following facts and circumstances:

(a) The school district or charter school, in hiring an individual to work with children or in a setting with children, or the department of education did not perform an education employment

required background check of the individual, and the failure to conduct the required background check was the result of the school district's or charter school's deliberate indifference or reckless disregard of its obligations to conduct the background check as provided by law; ordinary negligence or unintentional oversight is not sufficient.

(b) The individual, at the time of hiring, had a criminal record that included one or more convictions for the offense of sexual assault as described in section 18-3-402, C.R.S., for a sexual offense against a child, or for child abuse as described in section 18-6-401, C.R.S., or the individual had been dismissed or had resigned from a school district under the circumstances described in section 22-32-109.7 (1)(b), C.R.S.; and

(c) The individual committed one of the following offenses against a child with whom the individual came in contact in the course of his or her employment with the school district or charter school:

(I) Sexual assault as described in section 18-3-402, C.R.S.;

(II) Sexual offense against a child; or

(III) Child abuse as described in section 18-6-401, C.R.S.

(4) An action may not be brought pursuant to subsection (3) of this section if the defendant is deceased or is incapacitated to the extent that the school district or charter school is incapable of rendering a defense to the action.

**Source: L. 2008:** Entire section added, p. 2225, § 3, effective June 5.

**13-80-104. Limitation of actions against architects, contractors, builders or builder vendors, engineers, inspectors, and others.**

(1) (a) Notwithstanding any statutory provision to the contrary, all actions against any architect, contractor, builder or builder vendor, engineer, or inspector performing or furnishing the design, planning, supervision, inspection, construction, or observation of construction of any improvement to real property shall be brought within the time provided in section 13-80-102 after the claim for relief arises, and not thereafter, but in no case shall such an action be brought more than six years after the substantial completion of the improvement to the real property, except as provided in subsection (2) of this section.

(b) (I) Except as otherwise provided in subparagraph (II) of this paragraph (b), a claim for relief arises under this section at the time the claimant or the claimant's predecessor in interest discovers or in the exercise of reasonable diligence should have discovered the physical manifestations of a defect in the improvement which ultimately causes the injury.

(II) Notwithstanding the provisions of paragraph (a) of this subsection (1), all claims, including, but not limited to indemnity or contribution, by a claimant against a person who is or may be liable to the claimant for all or part of the claimant's liability to a third person:

(A) Arise at the time the third person's claim against the claimant is settled or at the time final judgment is entered on the third person's claim against the claimant, whichever comes first; and

(B) Shall be brought within ninety days after the claims arise, and not thereafter.

(c) Such actions shall include any and all actions in tort, contract, indemnity, or contribution, or other actions for the recovery of damages for:

(I) Any deficiency in the design, planning, supervision, inspection, construction, or observation of construction of any improvement to real property; or

(II) Injury to real or personal property caused by any such deficiency; or

(III) Injury to or wrongful death of a person caused by any such deficiency.

(2) In case any such cause of action arises during the fifth or sixth year after substantial completion of the improvement to real property, said action shall be brought within two years after the date upon which said cause of action arises.

(3) The limitations provided by this section shall not be asserted as a defense by any person in actual possession or control, as owner or tenant or in any other capacity, of such an improvement at the time any deficiency in such an improvement constitutes the proximate cause of the injury or damage for which it is proposed to bring an action.

**Source:** L. 86: Entire article R&RE, p. 697, § 1, effective July 1. L. 2001: (1)(b) amended, p. 390, § 2, effective August 8.

**Editor's note:** This section is similar to former § 13-80-127 as it existed prior to 1986.

## ANNOTATION

**Law reviews.** For article, "The Two-Year Construction Statute of Limitations", see 15 Colo. Law. 402 (1986). For article, "Let the Builder-Vender Beware: Defenses and Damages in Home Builder Litigation — Part

II", see 16 Colo. Law. 629 (1987). For article, "Defining 'Substantial Completion' in Construction Defect Actions", see 27 Colo. Law. 73 (Oct. 1998). For article, "Statutes of Limitations and Repose in

Construction Defect Cases Part I", see 33 Colo. Law. 73 (May 2004). For article, "Statutes of Limitations and Repose in Construction Defect Cases Part II", see 33 Colo. Law. 67 (June 2004). For note, "Restore Colorado's Repair Doctrine for Construction-Defect Claims", see 83 U. Colo. L. Rev. 875 (2012). For article, "Mitigating Potential Condo Conversion and Renovation Construction Defect Liabilities: Part 1", see 48 Colo. Law. 28 (Apr. 2019). For article, "Construction Defect Statutes of Limitation and Repose Update, Part I", see 49 Colo. Law. 26 (Dec. 2020). For article, "Construction Defect Statutes of Limitation and Repose Update, Part 2", see 50 Colo. Law. 30 (Jan. 2021). For article, "The Past, Present, and Future of Residential Construction Defect Action Reform in Colorado", see 54 Colo. Law. 28 (Jan.-Feb. 2025).

**Annotator's note.** Since § 13-80-104 is similar to former § 13-80-127 as it existed prior to the 1986 repeal and reenactment of this article, relevant cases construing that provision have been included with the annotations to this section.

**Former § 13-80-127 deemed unconstitutional.** Former section was unconstitutional because it granted immunity from suit to certain classes of defendants without any reasonable basis for the classification. *McClanahan v. Am. Gilsonite Co.*, 494 F. Supp. 1334 (D. Colo. 1980).

**Statutory distinctions neither discriminatory nor arbitrary.** In view of the differences between construction

professionals and materialmen, the legislative judgment to grant one group immunity from suit after a reasonable period of time while denying it to the other is neither invidiously discriminatory nor wholly arbitrary. *Cudahy Co. v. Ragnar Benson, Inc.*, 514 F. Supp. 1212 (D. Colo. 1981).

**Former § 13-80-127 constitutional.** Requiring claims against builder-vendors to be filed within two years after the claim for relief arises did not violate federal or state constitutional equal protection guarantees. *Criswell v. M.J. Brock & Sons, Inc.*, 681 P.2d 495 (Colo. 1984).

**Not retroactive.** Former § 13-80-127 was not enacted until 1969, and there is nothing in it which indicates that it was to be given retroactive application. *Greene v. Green Acres Constr. Co.*, 36 Colo. App. 439, 543 P.2d 108 (1975).

**Period for suit against architect reasonable.** It is not unreasonable for the general assembly to limit to 10 years (now 6 years) the period in which suits may be commenced against architects for design defects, in view of the legislative intent to avoid stale claims and the likelihood that most types of defects would reasonably be discovered within 10 years (now 6 years) of substantial completion. Since this section is rationally related to a permissible state objective, it does not violate due process. *Yarbro v. Hilton Hotels Corp.*, 655 P.2d 822 (Colo. 1982).

**Applicability of section.** The plain language of this section reflects a legislative intent to apply a shorter limitations period

only to claims for personal injury or damage to property other than the defective improvement itself; in cases where the claim relates to the defective improvement itself, the general statutes of limitations appropriate to contract, negligence, warranty, etc., are applicable. *Tamblyn v. Mickey & Fox, Inc.*, 195 Colo. 354, 578 P.2d 641 (1978); *Duncan v. Schuster-Graham Homes, Inc.*, 194 Colo. 441, 578 P.2d 637 (1978).

Statute of limitations specifically drafted to relate to special cases controls over a general statute of limitations and, therefore, this section and not the general statute of limitations controls the time limits for filing. *Stanske v. Wazee Elec. Co.*, 690 P.2d 1291 (Colo. App. 1984), *aff'd*, 722 P.2d 402 (Colo. 1986); *Mohawk Green Apts. v. Kramer*, 709 P.2d 955 (Colo. App. 1985).

For purposes of deciding applicability of former § 13-80-127, the principal factor to be considered in determining whether something constitutes an improvement to real property is intention of owner. *Enright v. City of Colo. Springs*, 716 P.2d 148 (Colo. App. 1985).

In the absence of a formal complaint, arbitration proceeding, or settlement of a dispute where a homeowner has bargained for repair work in exchange for a release of a homebuilder's liability, a homebuilder's repair of damages to a home is not resolution of a "claim" for purposes of triggering the 90-day statute of limitations set forth in subsection (1)(b)(II), and that statute of limitations therefore does not apply to such a homebuilder's related claims

against subcontractors. *Richmond Am. Homes of Colo., Inc. v. Steel Floors, LLC*, 187 P.3d 1199 (Colo. App. 2008).

**Interaction with notice-of-claim requirements in the Construction Defect Action Reform Act (CDARA).** CDARA contemplates the situation in which a plaintiff may file a claim in court before sending a notice of claim to a prospective defendant; in that situation the action is stayed pending compliance with § 13-20-803.5. The case commences when the complaint is filed, and at that point the limitation period stops running. *Curry v. Zag Built LLC*, 2018 COA 66, 433 P.3d 125.

Failure to comply with the notice-of-claim process in § 13-20-803.5 is not the equivalent of failure to pay the required docket fee, which is a prerequisite to filing of the complaint. *Curry v. Zag Built LLC*, 2018 COA 66, 433 P.3d 125.

**This section does not deprive a court of jurisdiction to hear a time-barred claim,** and reliance on the limitation period must be pleaded and proven as an affirmative defense. *Dunton v. Whitewater W. Recreation, Ltd.*, 942 P.2d 1348 (Colo. App. 1997).

**This section does not expressly prohibit a party from contracting around, or waiving, its protections.** *S. Conejos Sch. Dist. RE-10 v. Wold Architects Inc.*, 2023 COA 85, 541 P.3d 17.

**Contract term that extended the time for accrual of construction defect claims beyond that identified in subsection (1)(b) did not violate any state statute or public**

**policy and was therefore enforceable.** S. Conejos Sch. Dist. RE-10 v. Wold Architects Inc., 2023 COA 85, 541 P.3d 17.

**Sophisticated contracting parties may agree to extend the accrual period identified in subsection (1)(b) without violating public policy.** In a contract that extended the accrual period under subsection (1)(b), a school district and an architect were sophisticated parties that sought to allocate business risks, and there was no reason to disturb that risk allocation. S. Conejos Sch. Dist. RE-10 v. Wold Architects Inc., 2023 COA 85, 541 P.3d 17.

**Since structure causing injuries to plaintiff was not a product but an improvement to real property,** neither city nor contractor could be held liable on a theory of strict liability. Enright v. City of Colo. Springs, 716 P.2d 148 (Colo. App. 1985).

**Former statute of repose barred claim.** Installation of electrical system to grain elevator is integral part of improvement to real property and is kind of activity intended to be protected under former statute of repose. Stanske v. Wazee Elec. Co., 722 P.2d 402 (Colo. 1986).

**Architect may be covered by section even though unlicensed when services first rendered.** An architect still comes within the protections of this section even though he is not licensed to practice architecture in Colorado at the time design services are first rendered, but becomes licensed in Colorado before the substantial completion of the structure. Yarbrow v. Hilton Hotels Corp., 655 P.2d 822 (Colo. 1982).

**This section only applies to claims against building professionals based on injuries caused by defects in building construction improvements.** D.R. Horton, Inc. v. Travelers Indem. Co., 860 F. Supp. 2d 1246 (D. Colo. 2012).

**Section extends to those involved in the actual process of construction, and a designation alone does not determine whether a defendant is protected.** A court must examine the defendant's activities using an "activities analysis", which includes an examination of the label placed on a party involved in the building process and whether that party's actions fall within the statute's protected class of activities. Two Denver Highlands v. Stanley Structures, 12 P.3d 819 (Colo. App. 2000).

**Claims not limited to deficiencies in structure.** This section does not limit claims for deficiencies in the structure itself, as opposed to consequential property damage; thus, a factory owner could sue the designer of a refrigeration unit four years after an accident for the cost of repair of the deficiencies in the system itself. Cudahy Co. v. Ragnar Benson, Inc., 514 F. Supp. 1212 (D. Colo. 1981).

**Claim relating to defective improvements not barred** by two-year statute of limitations where claim was filed within proper time period under former statute of limitations and where claim was filed within time allowed in applicability clause for amendments to two-year statute of limitations. Johnson v. Graham, 679 P.2d 1090 (Colo. App. 1983).

Action on breach of warranty claim for defects in workmanship is controlled by two-year statute of limitations since defect was discovered more than two years prior to commencement of action, even though warranty was valid for ten years. *Mohawk Green Apts. v. Kramer*, 709 P.2d 955 (Colo. App. 1985).

**Grading of lot** is essential and integral to the construction and completion of a house and is part of the improvements to the real property. Therefore, the builder's alleged improper grading of the lot is a "deficiency in an improvement to real property", and buyer's claims are within the scope of this section. *Embree v. Am. Cont'l Corp.*, 684 P.2d 951 (Colo. App. 1984).

Since phrase **"improvement to real property"** is not defined, assumption is that general assembly intended to give it its usual and ordinary meaning and, therefore, indicator light installed as part of overall electrical system is an improvement to property within this section. *Stanske v. Wazee Elec. Co.*, 690 P.2d 1291 (Colo. App. 1984), *aff'd*, 722 P.2d 402 (Colo. 1986); *Anderson v. M.W. Kellogg Co.*, 766 P.2d 637 (Colo. 1988); *Two Denver Highlands v. Dillingham*, 932 P.2d 827 (Colo. App. 1996).

The determination whether the construction was an improvement to real property is a matter of law. *Two Denver Highlands v. Dillingham*, 932 P.2d 827 (Colo. App. 1996).

The principal factor in determining whether an activity constitutes an improvement to real property is the

intention of the owner. *Two Denver Highlands v. Dillingham*, 932 P.2d 827 (Colo. App. 1996).

**Concrete used to build garage is an improvement to real property.** The owner intended to improve the real property by building a parking garage. The concrete was an essential and predominant part of the garage. *Two Denver Highlands v. Dillingham*, 932 P.2d 827 (Colo. App. 1996).

**Section inapplicable to damage claims to defective improvements.** The two-year statute of limitations for actions concerning the construction of improvements to real property does not apply to claims for damage to improvements which are themselves defective. *Olson Plumbing & Heating, Inc. v. Douglas Jardine, Inc.*, 626 P.2d 750 (Colo. App. 1981).

**Section 13-21-204 applies to all wrongful death actions absent exception.** The language of § 13-21-204 is plainly all-inclusive, and must be construed to apply to all wrongful death actions in the absence of an express exception in this section. *McClanahan v. Am. Gilsonite Co.*, 494 F. Supp. 1334 (D. Colo. 1980).

**Relation back doctrine of rule 15(c), Fed. R. App. P. does not apply in wrongful death action unless** the added party was given notice within the period provided by this section. *McClanahan v. Am. Gilsonite Co.*, 494 F. Supp. 1334 (D. Colo. 1980).

**Strict construction.** This section is in derogation of prior common law; therefore

the terms must be considered to be exclusive and must be construed strictly. *Ciancio v. Serafini*, 40 Colo. App. 168, 574 P.2d 876 (1977).

**Subsection (1)(a) must be strictly construed because it is in derogation of the common law.** Prior to the enactment of statutes of limitations relating to construction, builders and contractors were subject to potentially indefinite liability. *Gleason v. Becker-Johnson Assocs., Inc.*, 916 P.2d 662 (Colo. App. 1996).

This section therefore applies only to the actual process of construction and not to an unrelated activity such as a "pre-buy" inspection. *Gleason v. Becker-Johnson Assocs., Inc.*, 916 P.2d 662 (Colo. App. 1996).

**A survey which is not part of an improvement or building project** does not constitute an "improvement to real property" and actions accruing because of negligence in performing such surveys are not within the purview of this section. *Ciancio v. Serafini*, 40 Colo. App. 168, 574 P.2d 876 (1977).

**Plaintiffs' lack of knowledge of the identity of the engineering defendants** at the time they were first aware that there was damage to the house does not toll the statute. *Tamblyn v. Mickey & Fox, Inc.*, 39 Colo. App. 319, 568 P.2d 491 (1977), rev'd on other grounds, 195 Colo. 354, 578 P.2d 641 (1978).

**Action by subsequent home owner.** A subsequent home owner may maintain an action against a builder for negligence

resulting in latent defects which the subsequent purchaser was unable to discover prior to purchase, if the action is filed within the statute of limitations set out in this section. *Cosmopolitan Homes, Inc. v. Weller*, 663 P.2d 1041 (Colo. 1983).

**For implied warranty of fitness and habitability for purchasers of new homes,** see *Cosmopolitan Homes, Inc. v. Weller*, 663 P.2d 1041 (Colo. 1983).

**Time for discovery of defect is applied** in *Criswell v. M.J. Brock & Sons, Inc.*, 681 P.2d 495 (Colo. 1984); *Hipco v. Varco-Pruden*, 687 P.2d 540 (Colo. App. 1984).

**The issue of whether plaintiff, in the exercise of reasonable diligence, should have discovered a defect is generally a question of fact,** and summary judgment therefore is inappropriate. *Wildridge Venture v. Ranco Roofing, Inc.*, 971 P.2d 282 (Colo. App. 1998).

**"Substantial completion" is construed** to require no greater state of "completion" of an improvement, at the most, than is required by § 38-22-109 (4). *May Dept. Stores v. Univ. Hills*, 789 P.2d 434 (Colo. App. 1989).

**A claim for relief does not arise until** the damaged party possesses reasonable notice or knowledge of not only the existence but also the substantial nature of a defective improvement, both of which factors are issues of material fact which preclude summary judgment. *Weiss v. Am. Cont'l Corp.*, 765 P.2d 595 (Colo. App. 1988) (decided under former § 13-80-127



prior to the deletion of the reference to the substantial or significant nature of a defect).

**Accrual of a claim for relief under this section differs from accrual under § 13-80-108 (1).** Accrual under this section depends upon discovery of the manifestation of the defect and not its cause. *Broomfield Senior Living v. R.G. Brinkmann*, 2017 COA 31, 413 P.3d 219.

**Breach of warranty claim distinguished.** Subsection (1)(b) was not intended to limit claims for breach of warranties to repair and replace. Instead, breach of warranty claims accrue when the breach is or should have been discovered. *Broomfield Senior Living v. R.G. Brinkmann*, 2017 COA 31, 413 P.3d 219.

**Claim for relief arises at time claimant discovers, or should have discovered** the physical manifestations of a defect in the improvement that ultimately causes the injury. *Two Denver Highlands v. Stanley Structures*, 12 P.3d 819 (Colo. App. 2000).

**Under this section, claim for relief arises,** not on the date of injury, but when the physical manifestation of the defect "which ultimately causes the injury" is discovered. *Smith v. Exec. Custom Homes, Inc.*, 209 P.3d 1175 (Colo. App. 2009), *aff'd*, 230 P.3d 1186 (Colo. 2010).

**This section's notice of claim and tolling provisions** preclude equitable tolling under the "repair doctrine". *Smith v. Exec. Custom Homes, Inc.*, 230 P.3d 1186 (Colo. 2010).

**Real estate developer not included under classes of persons listed in section.**

*Calvaresi v. Nat'l Dev. Co.*, 772 P.2d 640 (Colo. App. 1988).

**This section begins to run at the same time for all claims of injury caused by defects in design and construction of improvements to real property,** including claims based upon theories of indemnity and contribution. The general assembly intended to abolish the distinction, established by the Supreme Court in *Duncan v. Shuster-Graham Homes, Inc.* (578 P.2d 637 (Colo. 1978)) between the time of accrual for underlying claims involving construction defects, and claims for indemnification arising therefrom. *Nelson, Haley, et al. v. Garney Cos.*, 781 P.2d 153 (Colo. App. 1989).

**Subsection (1)(b)(II) is a statute of limitations tolling provision, not a ripeness provision,** that does not bar cross-claims and third-party claims for indemnity or contribution in construction defect lawsuits. Thus, a defendant in a construction defect lawsuit may utilize C.R.C.P. 13 and 14 to bring an indemnity or contribution claim against a party or add a party allegedly responsible for the defect no later than 90 days after termination of the construction defect lawsuit. *CLPF-Parkridge v. Harwell Invs.*, 105 P.3d 658 (Colo. 2005).

**The 90-day limitation in subsection (1)(b)(II) applies to a construction professional who is a defendant in the underlying lawsuit and sets forth the time period following a settlement or judgment in which the construction professional may file a separate lawsuit seeking indemnification or contribution.** *Fire Ins.*

Exch. v. Monty's Heating & Air Conditioning, 179 P.3d 43 (Colo. App. 2007).

**Because the phrase "all claims" in subsection (1)(b)(II) does not include a subrogation claim against a construction professional, the 90-day limitation does not apply.** Rather, the two-year statute of limitations governs such claims. Fire Ins. Exch. v. Monty's Heating & Air Conditioning, 179 P.3d 43 (Colo. App. 2007).

**This section does not alter application of the doctrine of claim preclusion** where a contractor asserts an indemnification claim against a subcontractor in a construction defect case. Layton Constr. Co. v. Shaw Contract Flooring, 2016 COA 155, 409 P.3d 602.

**The 90-day provision in subsection (1)(b)(II) does not require a contractor to wait until after it has been found liable to sue subcontractors for indemnification.** Layton Constr. Co. v. Shaw Contract Flooring, 2016 COA 155, 409 P.3d 602.

**The 90-day period set forth in subsection (1)(b)(II)(B) does not toll the six-year statute of repose.** Although developer brought action against defendants seeking contribution and indemnity within 90 days after settlement of suit against developer, developer's suit was time-barred by the six-year statute of repose set forth in subsection (2). Thermo Dev., Inc. v. Cent. Masonry Corp., 195 P.3d 1166 (Colo. App. 2008); Sierra Pac. Indus., Inc. v. Bradbury, 2016 COA 132, 409 P.3d 551.

**Neither this statute of repose nor the statute of limitations in § 13-80-102 can bar third-party claims** if the claims were brought within the time frame outlined in subsection (1)(b)(II) of this section. Goodman v. Heritage Builders, Inc., 2017 CO 13M, 390 P.3d 398.

The 90-day period set forth in subsection (1)(b)(II)(B) affects only when a claim "arises", and must be brought, for purposes of the two-year statute of limitations and does not relate to the six-year statute of repose. Thermo Dev., Inc. v. Cent. Masonry Corp., 195 P.3d 1166 (Colo. App. 2008).

A statute of limitations takes effect when a claim arises, while a statute of repose bars the bringing of a suit after a set period of time, regardless whether an injury has occurred or a claim has arisen. Thermo Dev., Inc. v. Cent. Masonry Corp., 195 P.3d 1166 (Colo. App. 2008).

The reference in subsection (1)(b)(II) to subsection (1)(a) pertains only to the two-year statute of limitations set forth in § 13-80-102, not to the six-year statute of repose. Thermo Dev., Inc. v. Cent. Masonry Corp., 195 P.3d 1166 (Colo. App. 2008).

**This section does not apply to claims** based on injuries to real property allegedly caused by negligent acts that occurred during construction activities, but which did not result in a defect in the improvement itself. This section, read and considered as a whole, was intended to apply only to negligence in planning, design, construction, supervision, or inspection that results in a defect in an improvement created by a building professional and not to all injuries

stemming from such professional's negligent conduct. *Irwin v. Elam Const., Inc.*, 793 P.2d 609 (Colo. App. 1990); *Two Denver Highlands v. Dillingham*, 932 P.2d 827 (Colo. App. 1996).

**This section did not apply to movers** since it does not specifically refer to movers, and the movers' efforts in moving a monument does not constitute an improvement to real property. *Flatiron Paving v. Great Sw. Fire*, 812 P.2d 668 (Colo. App. 1990).

**It may be arguable that discovery of the damage resulting from a construction defect caused a claim for relief to arise** under this section prior to its 1979 amendment, while knowledge of the nature of the defect itself was required after the amendment. Nevertheless, absent actual knowledge, it was, in either case, the "reasonable person" standard that was to be applied in determining the existence of the requisite constructive knowledge. *Villa Sierra Condo. v. Field Corp.*, 787 P.2d 661 (Colo. App. 1990).

**This section limits actions against a contractor arising from defects in an improvement** due to negligence in planning, design, construction, supervision, or inspection. *Irwin v. Elam Const., Inc.*, 793 P.2d 609 (Colo. App. 1990).

This section does not apply to all injuries caused by a contractor's negligent conduct. *Irwin v. Elam Const., Inc.*, 793 P.2d 609 (Colo. App. 1990); *Oliver v. Homestake Enters., Inc.*, 800 P.2d 1331 (Colo. App. 1990), rev'd on other grounds, 817 P.2d 979 (Colo. 1991).

**Subcontractors are included within the statute.** Defendant is a subcontractor whose activities in preparing and installing concrete related to the process of building a structure. The activities of the defendant fall within those protected by the statute. *Two Denver Highlands v. Dillingham*, 932 P.2d 827 (Colo. App. 1996).

**Application of former § 13-80-127 is fact-specific**, requiring an examination of the nature of the claim to determine whether it alleges misconduct arising out of an activity the statute was designed to protect. *Stanske v. Wazee Elec. Co.*, 722 P.2d 402 (Colo. 1986); *Homestake Enters., Inc. v. Oliver*, 817 P.2d 979 (Colo. 1991).

**Claim for breach of contract against construction contractor is not governed by two-year statute of limitations for actions against contractors and builders** in this section but by six-year statute of limitations for contract actions (now § 13-80-103.5), but claim against contractor for damages caused by delays in construction is covered by two-year statute. *Frisco Motel P'ship v. H.S.M. Corp.*, 791 P.2d 1195 (Colo. App. 1989).

**Relying on the plain language of this section, salon's fire was a "physical manifestation of a defect"**. The damage caused by salon's fire, the "injury" in this case, served as the initial discovery of the defect. It was not necessary to know that the defect caused the fire for the fire to be the defect's physical manifestation. *United Fire Group v. Powers Elec., Inc.*, 240 P.3d 569 (Colo. App. 2010).

**The existence of a subrogation claim does not alter this section's statute of limitations for construction defects.** United Fire Group v. Powers Elec., Inc., 240 P.3d 569 (Colo. App. 2010).

**Any claim that salon had against electrician arose on the day of the fire because the salon discovered the fire on that day.** Therefore, under subsection (1)(b)(I), the insurer's claim arose on the same day that the salon's claim arose. United Fire Group v. Powers Elec., Inc., 240 P.3d 569 (Colo. App. 2010).

**Claim for negligence in installing and operating sprinkler system alleged a "defect" or "deficiency" within the meaning of former § 13-80-127,** where system was turned on during freezing weather while construction was still in progress and plaintiff, walking on adjoining sidewalk, was injured by fall on ice which formed as a result. Therefore, two-year limitation period applied to bar plaintiff's claim against contractor. Homestake Enters., Inc. v. Oliver, 817 P.2d 979 (Colo. 1991).

**Under this section, the limitations period on an indemnification claim begins to run at the same time as that for the underlying claim.** This statute modifies common law rule that actions for indemnification accrue when the indemnitor actually pays the liability not when the underlying claim accrues. Nelson, Haley, Patterson & Quirk, Inc. v. Garney Cos., Inc., 781 P.2d 153 (Colo. App. 1989); Md. Cas. Co. v. Formwork Servs., Inc., 812 F. Supp. 1127 (D. Colo. 1993).

**A presumption arises that § 13-80-127 is the controlling limitations statute if it was in effect when the action commenced,** unless § 13-80-104 has express language otherwise. Wood Bros. Homes, Inc. v. Howard, 862 P.2d 925 (Colo. 1993) (decided under former § 13-80-127).

**Applied** in City of Aurora v. Bechtel Corp., 599 F.2d 382 (10th Cir. 1979); Williams v. Genesee Dev. Co. No. 2, 759 P.2d 823 (Colo. App. 1988).

### **13-80-105. Limitation of actions against land surveyors.**

(1) Notwithstanding any statutory provision to the contrary, all actions against any land surveyor brought to recover damages resulting from any alleged negligent or defective land survey shall be brought within the time provided in section 13-80-101 after the person bringing the action either discovered or in the exercise of reasonable diligence and concern should have discovered the negligence or defect which gave rise to such action, and not thereafter, but in no case shall such an action be brought more than ten years after the completion of the survey upon which such action is based.

(2) For purposes of this section, "land survey" or "improvement survey" means any survey conducted by or under the direction and control of a land surveyor licensed pursuant to the provisions of part 3 of article 120 of title 12 and includes but is not limited to professional land

surveying, as defined in section 12-120-302 (5). Nothing in this section shall be construed as extending the period or periods provided by the laws of Colorado or by agreement of the parties for bringing any action, nor shall this section be construed as creating any claim for relief not existing or recognized on or before July 1, 1979.

(3) (a) The limitations set forth in subsections (1) and (2) of this section shall not apply to any survey unless the documentary evidence of such land survey contains, clearly depicted thereon, the following statement:

**NOTICE:** According to Colorado law you **must** commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

(b) If any survey is performed that does not require documentation, the limitations set forth in subsections (1) and (2) of this section shall nevertheless apply if, not more than ninety days after the completion of the survey, written notice of the provisions of this article is provided to all persons holding an interest in the property upon which such survey is conducted.

**Source:** **L. 86:** Entire article R&RE, p. 698, § 1, effective July 1. **L. 87:** (2) amended, p. 1577, § 19, effective July 10. **L. 2006:** (3)(b) amended, p. 339, § 3, effective August 7. **L. 2019:** (2) amended, (HB 19-1172), ch. 136, p. 1668, § 77, effective October 1.

**Editor's note:** This section is similar to former § 13-80-127.3 as it existed prior to 1986.

#### ANNOTATION

**This section contains a 10-year statute of repose that sets a date after which a claim may be barred whether or not an injury has been discovered previously.** Cornforth v. Larsen, 49 P.3d 346 (Colo. App. 2002).

**Under the plain language of this section, in order for the 10-year statute of repose to apply, a survey must contain the notice required by subsection (3).** If a survey does not contain the notice, the 10-year statute of response has no application

and a plaintiff may sue a land surveyor v. Larsen, 49 P.3d 346 (Colo. App. 2002).  
outside of the 10-year time frame. Cornforth

**13-80-105.5. Limitation of actions against a real estate appraiser - definitions.**

(1) Notwithstanding any statutory provision to the contrary, an action against a real estate appraiser or individual performing a real estate appraisal practice must be brought within five years after the date of report.

(2) (a) The limitation set forth in subsection (1) of this section does not apply to an action against a real estate appraiser or individual performing a real estate appraisal practice if the action is brought by:

(I) A consumer who is an original party to the residential mortgage loan or residential real estate transaction for which the real estate appraiser or individual performing a real estate appraisal practice completed an appraisal report or performed an appraisal service that forms the basis of the action; or

(II) A mortgage originator who must repurchase a loan from an entity holding the loan or the mortgage security, and a defect in the completed appraisal report or the appraisal service performed as part of the mortgage origination process forms the basis of the action.

(b) Subsection (2)(a)(I) of this section does not create a new private right of action.

(3) Notwithstanding any statutory provision to the contrary, an action for fraud or knowing and intentional misrepresentation brought against a real estate appraiser or an individual performing a real estate appraisal practice must be brought within the time provided in section 13-80-101.

(4) Notwithstanding any statutory provision to the contrary, an action for a discriminatory housing practice brought against a real estate appraiser or an individual performing a real estate appraisal practice must be brought within the time provided in part 5 of article 34 of title 24 or in applicable federal law.

(5) As used in this section, unless the context otherwise requires:

(a) "Date of report" means the date when an appraisal report is completed and transmitted to the client.

(b) "Real estate appraisal practice" means real estate valuation services performed by an individual acting as an appraiser, including, but not limited to, appraisal and appraisal review.

**Source: L. 2025:** Entire section added, (SB 25-035), ch. 319, p. 1670, § 1, effective August 6.

### **13-80-106. Limitation of actions against manufacturers or sellers of products.**

(1) Notwithstanding any other statutory provisions to the contrary, all actions except those governed by section 4-2-725, C.R.S., brought against a manufacturer or seller of a product, regardless of the substantive legal theory or theories upon which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of any product, or the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product shall be brought within two years after the claim for relief arises and not thereafter.

(2) If any person entitled to bring any action mentioned in this section is under the age of eighteen years, mentally incompetent, imprisoned, or absent from the United States at the time the cause of action accrues and is without spouse or natural or legal guardian, such person may bring said action within the time limit specified in this section after the disability is removed. If such person has a legal representative, such person's representative shall bring the action within the period of limitation imposed by this section.

**Source: L. 86:** Entire article R&RE, p. 698, § 1, effective July 1.

**Editor's note:** This section is similar to former § 13-80-127.5 as it existed prior to 1986.

### **ANNOTATION**

**Law reviews.** For article, "Sticking Points — Part 2: A Survey of Remedies for Vaccination Injuries", see 50 Colo. Law. 32 (Nov. 2021).

**Annotator's note.** Since § 13-80-106 is similar to former § 13-80-127.5 as it existed prior to the 1986 repeal and reenactment of this article, relevant cases construing that provision have been included with the annotations to this section.

**Section held not to violate equal protection guarantees of United States and Colorado Constitutions.** Persichini v. Brad Ragan, Inc., 735 P.2d 168 (Colo. 1987).

**By enacting this statute, the legislature made manifest its intent to encompass all forms of product liability actions against manufacturers of products regardless of the substantive legal theory or theories upon which the action is brought.**

Persichini v. Brad Ragan, Inc., 735 P.2d 168 (Colo. 1987); Boyd v. A.O. Smith Harvestore Prods., 776 P.2d 1125 (Colo. App. 1989).

**Colorado law does not impose upon a natural parent a legal duty to prosecute any personal injury claim on behalf of their minor child.** Squires v. Goodwin, 829 F. Supp. 2d 1041 (D. Colo. 2011).

**The statute of limitations begins to run when the child reaches the age of eighteen** and is then competent to file a lawsuit in his or her own right. Squires v. Goodwin, 829 F. Supp. 2d 1041 (D. Colo. 2011).

**Definition of "legal guardian"** does not include natural parents or next friends of any person under disability unless appointed by a court. Squires v. Goodwin, 829 F. Supp. 2d 1041 (D. Colo. 2011).

**Where claim is based on allegedly improper design and construction of improvement to real property** and not on allegedly defective product, former § 13-80-127 controls the time limits for filing and not former § 13-80-127.5. Stanske v. Wazee Elec. Co., 722 P.2d 402 (Colo. 1986).

**Statute by its terms does not apply to claims arising from injuries caused by hidden defects in equipment.** Urban v. Beloit Corp., 711 P.2d 685 (Colo. 1985).

**Claims for breach of warranty governed by § 4-2-725** since they are causes of action based upon contract. Ayala v. Joy Mfg. Co., 580 F. Supp. 521 (D. Colo. 1984).

**Actions or claims for breach of express and implied warranties** under the UCC are governed by the limitation period in § 4-2-725 and not this section. Wieser v. Firestone Tire & Rubber Co., 596 F. Supp. 1473 (D. Colo. 1984).

**Liability of materialmen.** Materialmen are in a position distinct from the architect, contractor, engineer or inspector in that the materialman provides manufactured goods and should be held accountable under the general tort rules governing liability for defects in those products. Yarbrow v. Hilton Hotels Corp., 655 P.2d 822 (Colo. 1982).

**Claims against company found not barred** by three-year statute of limitations. Alley v. Gubser Dev. Co., 569 F. Supp. 36 (D. Colo. 1983).

**Applicability of statutes of limitations.** In the absence of a clear expression of legislative intent to the contrary, a statute of limitations specifically addressing a particular class of cases will control over a more general or catch-all statute of limitations. Persichini v. Brad Ragan, Inc., 735 P.2d 168 (Colo. 1987).

**This section was adopted as a part of a legislative package that provided for actions based upon injury or damage caused by defective products.** Stanske v. Wazee Elec. Co., 722 P.2d 402 (Colo. 1986); Boyd v. A.O. Smith Harvestore Prods., 776 P.2d 1125 (Colo. App. 1989).

**Buyers' deceit and negligent misrepresentation claims against a manufacturer,** were founded on a fundamental design defect theory within the



intendment of this section. *Boyd v. A.O. Smith Harvestore Prods.*, 776 P.2d 1125 (Colo. App. 1989).

**Buyers' claim for relief arose** when they knew or should have known that damage to their corn was caused by a defect in the silo. *Boyd v. A.O. Smith Harvestore Prods.*, 776 P.2d 1125 (Colo. App. 1989).

**Negligently showing a film as part of selling tires for large earth movers qualifies tire supplier as a "seller"** of a product within the intendment of this section. *Persichini v. Brad Ragan, Inc.*, 735 P.2d 168 (Colo. 1987).

**The second anniversary of the injury is within the two year filing period created**

**by this section.** *Simon v. Wisconsin Marine Inc.*, 947 F.2d 446 (10th Cir. 1991).

**Discovery of an initial asbestos-related disease did not trigger the running of a statute of limitations on a separate, distinct, and later manifested disease caused by the same asbestos exposure.** *Miller v. Armstrong World Industries, Inc.*, 949 F.2d 1088 (10th Cir. 1991) (decided under law in effect prior to 1986 repeal and reenactment).

**Applied** in *Haberkorn v. Haberkorn v. ROHM-GMBH*, 709 P.2d 44 (Colo. App. 1985).

**13-80-107. Limitation of actions against manufacturers, sellers, or lessors of new manufacturing equipment.**

(1) (a) Notwithstanding any statutory provision to the contrary, all actions for or on account of personal injury, death, or property damage brought against a person or entity on account of the design, assembly, fabrication, production, or construction of new manufacturing equipment, or any component part thereof, or involving the sale or lease of such equipment shall be brought within the time provided in section 13-80-102 and not thereafter.

(b) Except as provided in paragraph (c) of this subsection (1), no such action shall be brought on a claim arising more than seven years after such equipment was first used for its intended purpose by someone not engaged in the business of manufacturing, selling, or leasing such equipment, except when the claim arises from injury due to hidden defects or prolonged exposure to hazardous material.

(c) The time limitation specified in paragraph (b) of this subsection (1) shall not apply if the manufacturer, seller, or lessor intentionally misrepresented or fraudulently concealed any material fact concerning said equipment which is a proximate cause of the injury, death, or property damage.

(2) As used in this section, "manufacturing equipment" means equipment used in the operation or process of producing a new product, article, substance, or commodity for the

purposes of commercial sale and different from and having a distinctive name, character, or use from the raw or prepared materials used in the operation or process.

(3) The provisions of subsection (1) of this section shall not apply to a claim against a manufacturer, seller, or lessor, who, in an express written warranty, warranted manufacturing equipment to be free of defects in design, manufacture, or materials for a period of time greater than that set forth in paragraph (b) of subsection (1) of this section, if the injury complained of occurred and the claim for relief arose during the period of the express written warranty.

(4) The provisions of subsection (1) of this section shall not be applicable to indemnity actions brought by a manufacturer, seller, or lessor of manufacturing equipment or any other product against any other person who is or may be liable to said manufacturer, seller, or lessor for all or a portion of any judgment rendered against said manufacturer, seller, or lessor.

**Source:** **L. 86:** Entire article R&RE, p. 699, § 1, effective July 1. **L. 87:** (1)(a) amended, p. 568, § 5, effective July 1; (1)(a) amended, p. 594, § 19, effective July 10.

**Editor's note:** This section is similar to former § 13-80-127.6 as it existed prior to 1986.

## ANNOTATION

**Annotator's note.** Since § 13-80-107 is similar to former § 13-80-127.6, as it existed prior to the 1986 repeal and reenactment of this article, relevant cases construing that provision have been included with the annotations to this section.

**This section is substantive law, not procedural,** since it is directed to the products liability action created in part 4 of article 21 of this title and qualifies the right to bring an action. *Nieman v. Press & Equip. Sales Co.*, 588 F. Supp. 650 (S. D. Ohio 1984) (decided under former § 13-80-127.6).

**Section held constitutional under the equal protection clause of fourteenth**

**amendment.** *Anderson v. M.W. Kellogg Co.*, 766 P.2d 637 (Colo. 1988); *Eaton v. Jarvis*, 965 F.2d 922 (10th Cir. 1992).

**Test for this section is whether the defect was not readily apparent or discoverable by a reasonably prudent user.** From the legislative history of this section, the legislature did not intend to include the failure to warn within the exception it created for hidden defects under this section. *Anderson v. M.W. Kellogg Co.*, 766 P.2d 637 (Colo. 1988).

**The statute does not apply to bar an action when the claim arises from injury due to hidden defects.** *Niemet v. Gen. Elec. Co.*, 843 P.2d 87 (Colo. App. 1992).

**Hidden defect exception to the statute of repose operates to prevent the statute from barring plaintiff's action** when malfunctioning transformer contained a defect that was present at the time of manufacture and the defect was not discovered, and could not have been discovered, until the entire transformer was cut in half. *Niemet v. Gen. Elec. Co.*, 843 P.2d 87 (Colo. App. 1992).

**Whether a product is unreasonably dangerous because of a defect generally is a question of fact**, and the appropriate standard for determination of issue is based upon actual awareness of dangerous condition of machine. *Wayda v. Comet Intern. Corp.*, 738 P.2d 391 (Colo. App. 1987).

**Subsection (1)(b) creates a statute of repose rather than a statute of limitations.** A statute of repose may bar a claim before an injury occurs because it sets a time after the sale or first use of a product beyond which the manufacturer cannot be held liable. *Anderson v. M.W. Kellogg Co.*, 766 P.2d 637 (Colo. 1988); *Villalobos v.*

*Heidelberger Druckmaschinen  
Artiengesellschaft*, 869 F. Supp. 1355 (D. Colo. 1994).

**Defendant that did not manufacture, sell, or lease the equipment in question may not avail itself of the statute of repose created in subsection (1)(b).** *Villalobos v. Heidelberger Druckmaschinen  
Artiengesellschaft*, 869 F. Supp. 1355 (D. Colo. 1994).

**Statute of repose began to run when the "new manufacturing equipment" was first installed and used as intended, not when the alleged defective component was first used.** *Eaton v. Jarvis*, 965 F.2d 922 (10th Cir. 1992).

**Printing press falls within the definition of "manufacturing equipment"** since the end-product of the press has a character and use distinct from the raw materials used in the printing operation and the final product is prepared exclusively for commercial sale. *Villalobos v. Heidelberger Druckmaschinen  
Artiengesellschaft*, 869 F. Supp. 1355 (D. Colo. 1994).

### **13-80-107.5. Limitation of actions for uninsured or underinsured motorist insurance - definitions.**

(1) Except as described in section 13-80-102 (2), but notwithstanding any other statutory provision to the contrary, all actions or arbitrations under sections 10-4-609 and 10-4-610, C.R.S., pertaining to insurance protection against uninsured or underinsured motorists shall be commenced within the following time limitations and not thereafter:

(a) An action or arbitration of an "uninsured motorist" insurance claim, as defined in sections 10-4-609 and 10-4-610, C.R.S., shall be commenced or demanded by arbitration demand within three years after the cause of action accrues; except that, if the underlying bodily injury liability claim against the uninsured motorist is preserved by commencing an action against the uninsured

motorist within the time limit specified in sections 13-80-101 (1)(n) and 13-80-102 (1)(d), then an action or arbitration of an uninsured motorist claim shall be timely if such action is commenced or such arbitration is demanded within two years after the insured knows that the particular tortfeasor is not covered by any applicable insurance. In no event shall the insured have less than three years after the cause of action accrues within which to commence such action or demand arbitration.

(b) An action or arbitration of an "underinsured motorist" insurance claim, as defined in section 10-4-609 (4), C.R.S., shall be commenced or demanded by arbitration demand within three years after the cause of action accrues; except that, if the underlying bodily injury liability claim against the underinsured motorist is preserved by commencing an action against the underinsured motorist or by payment of either the liability claim settlement or judgment within the time limit specified in sections 13-80-101 (1)(n) and 13-80-102 (1)(d), then an action or arbitration of an underinsured motorist claim shall be timely if such action is commenced or such arbitration is demanded within two years after the insured received payment of the settlement or judgment on the underlying bodily injury liability claim. In no event shall the insured have less than three years after the cause of action accrues within which to commence such action or demand arbitration.

(2) As used in this section, unless the context otherwise requires:

(a) "Action" means a lawsuit commenced in a court of competent jurisdiction; and

(b) "Arbitration demand" means a written demand for arbitration delivered to the insurer that reasonably identifies the person making the claim, the identity of the uninsured or underinsured motorist, if known, and the fact that an uninsured or underinsured motorist insurance arbitration is being demanded.

(3) An uninsured or underinsured motorist cause of action accrues after both the existence of the death, injury, or damage giving rise to the claim and the cause of the death, injury, or damage are known or should have been known by the exercise of reasonable diligence.

**Source: L. 94:** Entire section added, p. 2825, § 3, effective July 1. **L. 2014:** IP(1) amended, (SB 14-213), ch. 344, p. 1537, § 4, effective July 1. **L. 2015:** IP(1) amended, (SB 15-264), ch. 259, p. 950, § 32, effective August 5.

#### ANNOTATION

**The three-year period in which to commence an action against the uninsured and the two-year period to commence an uninsured motorist claim may run concurrently** if the plaintiff knew or, in the exercise of reasonable diligence,

should have known that there was no applicable insurance at the time of the accident. The requirement that a plaintiff use due diligence does not reward self-denial or self-indulgence; therefore, the uninsured's oral advisement at the time of the accident that he or she does not have insurance is enough to commence the two-year limitation period in which to bring a claim against an uninsured motorist carrier. *Sulca v. Allstate Ins. Co.*, 77 P.3d 897 (Colo. App. 2003).

**Two-year period began to run at time of accident**, when uninsured driver admitted to having been uninsured or, at the latest, when the insured told his or her doctor he or she was involved in uninsured motorist litigation. Therefore, failure to join the insurer as a defendant until more than two years later required dismissal of the claim against the insurer. *Trigg v. State Farm Mut. Auto. Ins. Co.*, 129 P.3d 1099 (Colo. App. 2005).

"Relation back" doctrine based on mistake of identity did not apply where plaintiff sued the uninsured motorist for negligence and later added the plaintiff's insurer based on a separate transaction or conduct arising from the insurance contract. *Trigg v. State Farm Mut. Auto. Ins. Co.*, 129 P.3d 1099 (Colo. App. 2005).

**The two-year period described in the second clause of subsection (1)(a) cannot apply to shorten the length of time to sue an insurer**; it can only be applied to lengthen the three-year limitations period by as much as two years if the insured has preserved its rights by suing the driver and the injured person learned the driver was

uninsured and filed suit against the insurer within two years after learning of that status. *Rider v. State Farm Mut. Auto. Ins. Co.*, 205 P.3d 519 (Colo. App. 2009).

**The statute of limitations in subsection (1)(a) does not begin to run** when the insured consults with an attorney or an attorney informs the insured that he or she has a claim, but when an insured knew, or should have known in the exercise of reasonable diligence, that there was no applicable insurance. *Olson v. State Farm Mut. Auto. Ins. Co.*, 174 P.3d 849 (Colo. App. 2007).

**Language of statute conditions the two-year limitations period** applicable to uninsured motorist claims on the insured's awareness of the tortfeasor's lack of any applicable liability insurance whatsoever, and it clearly conditions the limitations period applicable to underinsured motorist claims on something other than the insured's awareness that the liability insurance coverage of the tortfeasor makes him or her underinsured relative to the injured party. An action against an underinsured motorist may be brought within two years after the insured victim receives payment of a settlement or judgment on a bodily injury claim. *Pham v. State Farm Auto. Ins.*, 2013 CO 17, 296 P.3d 1038.

**A demand satisfying the statute of limitations described in subsection (1)(b) can be made only under a preexisting mandatory arbitration agreement** and not where the parties' agreement acknowledges only that arbitration may occur by consent. *Cork v. Sentry Ins.*, 194 P.3d 422 (Colo.

App. 2008); Wilkins v. Am. Family Mut. Ins. Co., 603 F. Supp. 3d 1022 (D. Colo. 2022).

**Subsection (1)(b) requires payment of a liability claim settlement within the three-year limitations period.** Stoesz v. State Farm Mut. Auto. Ins. Co., 2015 COA 86, 410 P.3d 561.

**A settlement agreement does not constitute "payment" for purposes of extending the limitation period** for an additional two years. Stoesz v. State Farm Mut. Auto. Ins. Co., 2015 COA 86, 410 P.3d 561.

**An uninsured motorist does not receive payment of a settlement for purposes of**

**the statute of limitations until he or she is legally entitled to the funds** through acceptance of the settlement agreement. Kovac v. Farmers Ins. Exch., 2017 COA 7M, 401 P.3d 112.

**An underinsured motorist did not receive payment of the settlement until she executed the settlement agreement and endorsed the check.** Eckard v. State Farm Mut. Auto. Ins. Co., 25 F.4th 1275 (10th Cir. 2022).

**A "civil action" is a lawsuit that has actually been commenced** in a court of competent jurisdiction. Ortiz v. Davis, 902 P.2d 905 (Colo. App. 1995).

### **13-80-108. When a cause of action accrues.**

(1) Except as provided in subsection (12) of this section, a cause of action for injury to person, property, reputation, possession, relationship, or status shall be considered to accrue on the date both the injury and its cause are known or should have been known by the exercise of reasonable diligence.

(2) A cause of action for wrongful death shall be considered to accrue on the date of death.

(3) A cause of action for fraud, misrepresentation, concealment, or deceit shall be considered to accrue on the date such fraud, misrepresentation, concealment, or deceit is discovered or should have been discovered by the exercise of reasonable diligence.

(4) A cause of action for debt, obligation, money owed, or performance shall be considered to accrue on the date such debt, obligation, money owed, or performance becomes due.

(5) A cause of action for balance due on an open account for goods or services shall accrue at the time of the last item of goods or services proved in such account.

(6) A cause of action for breach of any express or implied contract, agreement, warranty, or trust shall be considered to accrue on the date the breach is discovered or should have been discovered by the exercise of reasonable diligence.

(7) A cause of action for wrongful possession of personal property, goods, or chattels shall accrue at the time the wrongful possession is discovered or should have been discovered by the exercise of reasonable diligence.

(8) A cause of action for losses or damages not otherwise enumerated in this article shall be deemed to accrue when the injury, loss, damage, or conduct giving rise to the cause of action is discovered or should have been discovered by the exercise of reasonable diligence.

(9) A cause of action for penalties shall be deemed to accrue when the determination of overpayment or delinquency for which such penalties are assessed is no longer subject to appeal.

(10) A cause of action for recovery of erroneous or excessive refunds of any tax administered under section 39-21-102, C.R.S., shall accrue on the date the department of revenue issues said refund.

(11) A cause of action for a penalty for commission of a class A or a class B traffic infraction, as defined in section 42-4-1701, C.R.S., shall be deemed to accrue on the date the traffic infraction was committed.

(11.5) A cause of action for a penalty for commission of a civil infraction, as described in section 16-2.3-101, is deemed to accrue on the date the civil infraction was committed.

(12) A cause of action for bodily injury or property damage arising out of the use or operation of a motor vehicle accrues on the date that both the existence of the injury or damage and the cause of the injury or damage are known or should have been known by the exercise of reasonable diligence.

(13) A cause of action by the public employees' retirement association against an employer for unpaid contributions shall accrue on the date the nonpayment of contributions is discovered or should have been discovered by the exercise of reasonable diligence. This subsection (13) shall apply to causes of action as provided in section 24-51-402 (2), C.R.S.

**Source:** **L. 86:** Entire article R&RE, p. 699, § 1, effective July 1. **L. 87:** (10) added, p. 568, § 6, effective July 1; (11) added, p. 1495, § 3, effective July 1. **L. 94:** (1) amended and (12) added, p. 2826, § 4, effective July 1; (11) amended, p. 2550, § 35, effective January 1, 1995. **L. 95:** (13) added, p. 562, § 21, effective May 22. **L. 2022:** (11.5) added, (HB 22-1229), ch. 68, p. 340, § 8, effective March 1.

**Editor's note:** Section 47 of chapter 68 (HB 22-1229), Session Laws of Colorado 2022, provides that the act adding subsection (11.5) is effective March 1, 2022, but the governor did not approve the act until April 7, 2022.

## ANNOTATION

- I. General Consideration.
- II. Fraud, Misrepresentation.
- III. Debt, Obligation.
- IV. Balance due on Open Account.
- V. Breach of Contract, Agreement.
- VI. Wrongful Possession of Personal Property, Goods.
- VIII. Tolling of Statute of Limitations.
- IX. Former Statute of Repose.

### I. GENERAL CONSIDERATION.

**Law reviews.** For note, "Restore Colorado's Repair Doctrine for Construction-Defect Claims", see 83 U. Colo. L. Rev. 875 (2012). For article, "Sticking Points — Part 2: A Survey of Remedies for Vaccination Injuries", see 50 Colo. Law. 32 (Nov. 2021). For article, "Legal Malpractice Under Colorado Law", see 52 Colo. Law. 26 (Apr. 2023).

**Substitution of parties is not new cause of action.** The substitution of an insurer for an insured as party plaintiff does not constitute the filing of a new cause of action, and the substituted party benefits from the filing date of the original complaint and is not barred by the statute of limitations of the original complaint was timely filed. *Travelers Ins. Co. v. Gasper*, 630 P.2d 97 (Colo. App. 1981).

A "cause of action" "accrues" based upon the happening of certain extrajudicial

events. *Ortinez v. Davis*, 902 P.2d 905 (Colo. App. 1995).

**Severing bad faith tort claims** from an administrative proceeding is consistent with the statutory definition of accrual in subsection (1). *Brodeur v. Am. Home Assurance Co.*, 169 P.3d 139 (Colo. 2007).

**Critical inquiry of when an action accrues is knowledge of facts essential to the cause of action, not knowledge of the legal theory upon which the action may be brought.** *Morris v. Geer*, 720 P.2d 994 (Colo. App. 1986); *Winkler v. Rocky Mtn. Conference*, 923 P.2d 152 (Colo. App. 1995); *Murry v. GuideOne Specialty Mut. Ins. Co.*, 194 P.3d 489 (Colo. App. 2008).

**Inquiry notice does not trigger the discovery rule**, and suspicion of a possible connection does not necessarily put a reasonable person on notice of the nature, extent, and cause of an injury. *Salazar v. Am. Sterilizer Co.*, 5 P.3d 357 (Colo. App. 2000).

**This section applies in determining when a cause of action "accrues" in an action for sexual assault on a child.** *Sailsbery v. Parks*, 983 P.2d 137 (Colo. App. 1999).

**Section 13-80-103.7 does not purport to define when an action for sexual assault on a child "accrues"**, but rather establishes the six-year limitation period and provides that the period runs from accrual or from the



date of removal of disability. *Sailsbery v. Parks*, 983 P.2d 137 (Colo. App. 1999).

**Trial court erred in granting summary judgment where a genuine issue of material fact as to when plaintiff knew or should have known of her injuries and their cause remained.** *Sailsbery v. Parks*, 983 P.2d 137 (Colo. App. 1999).

**When the statutory scheme of this article is considered as a whole, it manifests a clear intent** to prescribe a six-year limitation period for actions to recover a determinable amount of money owed, whether by contractual agreement or not, which, under subsection (4), accrues on the date the debt becomes due. By contrast, all other actions for breach of contract are subject to a three-year limitation period which, under subsection (6), does not accrue until the breach is, or reasonably should have been, discovered. To the extent these two provisions are not reconcilable by construing the scheme as a whole, subsection (4) as the more specific of the two prevails. *BP Am. Prod. Co. v. Patterson*, 185 P.3d 811 (Colo. 2008).

## **II. FRAUD, MISREPRESENTATION.**

**Annotator's note.** Relevant cases construing the accrual of causes of action under former § 13-80-109 as it existed prior to the 1986 repeal and reenactment of this article have been included with the annotations to subsection (3).

**The three-year statute of limitations begins to run when the defrauded person has knowledge of facts** which, in the exercise of proper prudence and diligence,

would enable him to discover the fraud perpetuated against him. *Norton v. Leadville Corp.*, 43 Colo. App. 527, 610 P.2d 1348 (1979); *Morgan v. Dain Bosworth*, 545 F. Supp. 953 (D. Colo. 1982).

The limitations period in this section begins to run when the aggrieved party discovers, or should have discovered by the exercise of reasonable diligence, the facts constituting the fraud. *Laymon v. McComb*, 524 F. Supp. 1091 (D. Colo. 1981); *Polk v. Hergert Land & Cattle Co.*, 5 P.3d 402 (Colo. App. 2000).

The limitations period is tolled until the aggrieved party learns of the fraud or should have discovered it by the exercise of reasonable diligence. *Hackbart v. Holmes*, 675 F.2d 1114 (10th Cir. 1982); *Noland v. Gurley*, 566 F. Supp. 210 (D. Colo. 1983).

**Allegations of wrongdoing constituted material facts regarding when statute begins to run.** Where the plaintiff's affidavit alleges that the defendant made misleading and deceptive statements which allayed any suspicions that the plaintiffs might have had about possible securities law violations, and that the defendant's opposition to the plaintiffs' attempts to conduct discovery to determine the defendant's true financial status prevented discovery of the alleged wrongdoing until 1978, these allegations, if true, constitute material facts regarding when the statute of limitations began to run with respect to the plaintiffs' claims under section 17 of the Securities Act of 1933 and common-law fraud. *Norton v. Leadville Corp.*, 43 Colo. App. 527, 610 P.2d 1348 (1979).

**Bad faith tort claims are distinct and separate actions available to workers' compensation claimants in addition to remedies under the Workers' Compensation Act,** and the resolution of bad faith tort claims is independent from the resolution of workers' compensation claims. There is no requirement under this section that any element of a workers' compensation claimant's bad faith tort claim be acknowledged or affirmed by an administrative body or other authority before a bad faith tort claim can be pursued. *Brodeur v. Am. Home Assurance Co.*, 169 P.3d 139 (Colo. 2007).

**Subsection (3) is inactive until discovery of the fraud.** *Hunter v. Williams*, 96 Colo. 435, 44 P.2d 509 (1935); *Miller v. Goff*, 100 Colo. 545, 68 P.2d 915 (1937).

**Where one is kept in ignorance, by false statements of another,** of the true situation concerning a claim which he is entitled to assert against him, the statute of limitations does not begin to run against the deceived party and in favor of the wrongdoer until the former has discovered the truth. *Alfred v. Esser*, 91 Colo. 466, 15 P.2d 714 (1932); *Rogers v. Rogers*, 96 Colo. 473, 44 P.2d 909 (1935).

**The statute of limitations begins to run when the defrauded person has knowledge of facts** which in the exercise of proper prudence and diligence would enable him to discover the fraud perpetrated against him. *Greco v. Pullara*, 166 Colo. 465, 444 P.2d 383 (1968); *Herald Co. v. Seawell*, 472 F.2d 1081 (10th Cir. 1972); *Hansen v. Lederman*, 759 P.2d 810 (Colo. App. 1988);

*In re Munoz*, 111 B.R. 928 (Bankr. D. Colo. 1990); *Chidester v. E. Gas & Fuel Assoc.*, 859 P.2d 222 (Colo. App. 1992); *First Interstate Bank v. Berenbaum*, 872 P.2d 1297 (Colo. App. 1993); *In re Walden*, 207 B.R. 1 (Bankr. D. Colo. 1997).

This statute bars a suit three years after knowledge of facts which would awaken a person of ordinary prudence to an inquiry, which, if pursued with reasonable diligence, would lead to a discovery of the facts constituting the fraud as effectually as it limits suits commenced three years after the discovery of the facts constituting the fraud. *Swift v. Smith*, 79 F. 709 (8th Cir. 1897); *Redd v. Brun*, 157 F. 190 (8th Cir. 1907).

**The possession of means of detecting fraud is same as knowledge.** Courts of equity will not interfere if a party slumbers on his rights or the means of detecting fraud. The full possession of the means of detecting a fraud is the same as knowledge. *Pipe v. Smith*, 5 Colo. 146 (1879); *Bowman v. May*, 102 Colo. 417, 80 P.2d 327 (1938); *Wright v. Nelson*, 125 Colo. 217, 242 P.2d 243 (1952).

**Where misrepresentations known three years before suit action is barred.** Action to rescind contract for the purchase of corporate stock procured by false representations held barred by this section, where all the actionable misrepresentations were known to plaintiff more than three years prior to the commencement of his action. *Morgan v. King*, 27 Colo. 539, 63 P. 416 (1900); *Donovan v. Nat'l Glass Casket Co.*, 75 Colo. 262, 226 P. 295 (1924);

Williams v. Williams, 83 Colo. 180, 263 P. 725 (1927).

**Jury must find fraud could not have been discovered within three years.** The jury was properly instructed on the requisites for proving fraud, and, if proved, on the necessity of finding that it could not with reasonable diligence have been discovered prior to three years before suit was commenced. Knisley v. Parsons, 172 Colo. 533, 474 P.2d 599 (1970).

**Statute does not begin to run until cause of action has accrued.** Under this section requiring bills for relief on the grounds of fraud, to be filed within three years after the discovery of the fraud the statute of limitations does not begin to run until the cause of action has accrued, although the party applying for relief may have discovered the fraud before the time the cause of action accrued. Rose v. Dunklee, 12 Colo. App. 403, 56 P. 342 (1899); Arnett v. Berg, 18 Colo. App. 341, 71 P. 636 (1903).

**When an action is not a new action but is merely an amendment to an earlier complaint,** it relates back to the original complaint. Platte Valley Motor Co. v. Wagner, 130 Colo. 365, 278 P.2d 870 (1954).

**Recording of a deed is constructive notice only to persons claiming under same grantor and same chain of title.** The recording of a voluntary conveyance is not constructive notice to creditors of the voluntary character of the instrument, or of the insolvency of the grantor, so as to start the statute of limitations against an action to

set aside the conveyance as in fraud of creditors. Rose v. Dunklee, 12 Colo. App. 403, 56 P. 342 (1899); Greco v. Pullara, 166 Colo. 465, 444 P.2d 383 (1968).

**For stockholders not having knowledge of fraudulent stock transfer,** see Irvin v. W. End Dev. Co., 342 F. Supp. 687 (D. Colo. 1972).

**Runs from time stockholders knew of stock trust violation.** Where the actual sale of stock was concealed from the stockholders until 1965, but the stockholders when they learned of the sale of stock had no reason to object because they were unaware of the restriction on its sale, and they had no knowledge of the restriction until they received copies of the articles of incorporation in 1970, the statute of limitations could not begin to run until the appellees knew in 1970 of the trust which was violated. Irwin v. W. End Dev. Co., 481 F.2d 34 (10th Cir. 1973).

**Whether a claim is barred by the statute of limitations is normally a jury fact question,** but if the complaint shows the action was brought after the statute of limitations period and the defendant has pled the statute of limitations, the plaintiff has the burden to show tolling of the statute of limitations. First Interstate Bank v. Berenbaum, 872 P.2d 1297 (Colo. App. 1993).

**A presumption exists that a corporation has knowledge** of the content of its files and records, and the presumption may be the basis of a judgment unless contrary evidence exists. First Interstate Bank v. Berenbaum, 872 P.2d 1297 (Colo. App. 1993).

**In dispute between mother and daughter over mother's acquisition of winning lottery ticket, despite fact that money obligation was paid in installments, there was no breach of an agreement that one party would make installment payments to another,** thus three-year statute of limitations from date that daughter discovered or should have discovered the injury applied. *Curtis v. Counce*, 32 P.3d 585 (Colo. App. 2001).

**Plaintiff's fraud claims were time-barred.** Because conservation deed, which was in plaintiff's chain of title at time of purchase, does not permit open and unfettered access to subject property, it gave actual or constructive notice that defendant's representation was false. As such, statute of limitations ran against plaintiffs before they commenced action. *Bolinger v. Neal*, 259 P.3d 1259 (Colo. App. 2010).

### **III. DEBT, OBLIGATION.**

**Annotator's note.** Relevant cases construing the accrual of causes of action under former § 13-80-110 as it existed prior to the 1986 repeal and reenactment of this article have been included with the annotations to subsection (4).

**Cause of action against stockholders for unpaid balance of stock arose when assessment was made** and statute began to run then. *Felker v. Sullivan*, 34 Colo. 212, 83 P. 213 (1905); *Sweet v. Barnard*, 66 Colo. 526, 182 P. 22 (1919).

**On a county warrant.** The statute of limitations does not begin to run against an action on a county warrant until the

conditions upon which it is payable have arisen. *Forbes v. Bd. of County Comm'rs*, 23 Colo. 344, 47 P.388 (1897).

**On insufficiently funded pension plan.** The date on which the "debt, obligation, money owed, or performance be[came] due" was the date on which the employer transferred insufficient funds to the pension plan. It was on that date, therefore, that the employees' cause of action accrued. *Aull v. Cavalcade Pension Plan*, 988 F. Supp. 1360 (D. Colo. 1997).

**County orders containing no day for payment** are payable on demand, and their presentation for payment to the county treasurer, and his indorsement of the fact, constitute demand, acceptance, and promise to pay the amount in money. This gives the holder an immediate right of action, and the statute of limitations commences to run from that date. *Schloss v. Bd. of County Comm'rs*, 1 Colo. App. 145, 28 P. 18 (1891).

**On municipal bonds.** It would be a harsh and thoroughly impracticable rule to establish that the holder of a claim against a municipality is bound by any consideration of contract to pay the same, as long as the municipality itself recognizes such express contract as a valid and binding obligation. The effect of such a rule would be to permit the municipality to lull the holders of its obligations into inaction, and thereby, taking advantage of its own wrong, deprive them of a valuable right. Therefore, a bondholder had a lawful right to institute suit to recover upon the implied obligation at any time within six years after the district repudiated

the express obligation. *Geer v. Sch.* Dist. No. 11, 111 F. 682 (8th Cir. 1901).

**Default in interest payment on note does not precipitate claim.** For purposes of the statute of limitations, default in payment of interest does not precipitate a claim on the note even though the note contains an acceleration clause where the holder may elect whether to accelerate payment and chooses not to do so. *Temple v. Frank*, 41 Colo. App. 332, 585 P.2d 311 (1978).

**When a promissory note is to be repaid in installments**, is not accelerated by the creditor, and contains a maturity date on which all unpaid payments are to be made, the six-year statute of limitations under § 13-80-103.5 begins to run on the maturity date. *Castle Rock Bank v. Team Transit, LLC*, 2012 COA 125, 292 P.3d 1077.

**Claims of royalty owners for underpayment of natural gas royalties accrued when the payments were due under subsection (4)**, not when the underpayment was or reasonably should have been discovered under subsection (6). *BP Am. Prod. Co. v. Patterson*, 185 P.3d 811 (Colo. 2008).

**Uninsured driver's cause of action for reimbursement of medical expenses paid to such uninsured driver's passenger against insurer of vehicle which caused accident pursuant to § 10-4-713 does not accrue until actual payment of medical expenses.** *Sakala v. Safeco Ins. Co.*, 833 P.2d 879 (Colo. App. 1992).

**Coverage for underinsured motorist benefits accrues** under the terms of the

policy when settlement under the tortfeasor's liability policy is obtained, not on the date of the accident. *State Farm Mut. Auto Ins. v. Springle*, 870 P.2d 578 (Colo. App. 1993).

**Pursuant to the terms of the parties' agreement, the notice of default, and § 5-5-111, plaintiff had no right to accelerate the obligation or obtain possession of the mobile home until October 29, 1992, 20 days after the required notice was given.** Accordingly, plaintiff's replevin claim did not accrue until that date. Because plaintiff commenced its action on October 6, 1998, which was within six years of that accrual date, the action was timely. *Green Tree Fin. v. Short*, 10 P.3d 721 (Colo. App. 2000).

**Once an installment security agreement is validly accelerated, the entirety of the remaining balance becomes due pursuant to subsection (4)**, and, therefore, the cause of action to collect the entire debt accrues. *Hassler v. Account Brokers of Larimer Cty.*, 2012 CO 24, 274 P.3d 547.

**When a security agreement is to be repaid in installments and no affirmative act by the creditor manifests its clear intent to accelerate**, the debt becomes due under subsection (4) when each installment is missed, and the six-year statute of limitations under § 13-80-103.5 (1)(a) begins to run when each installment payment is missed and runs separately against each missed installment. *US Bank Nat'l Ass'n v. Silvernagel*, 2023 CO 17, 528 P.3d 163.

**Bankruptcy discharge of a debtor's personal liability does not accelerate the obligation on a security agreement that is**

**to be repaid in installments.** To invoke an acceleration clause, a lender must take an affirmative action that clearly manifests its intent to accelerate. *US Bank Nat'l Ass'n v. Silvernagel*, 2023 CO 17, 528 P.3d 163.

**After a lender abandons a debt acceleration by a clear and affirmative act, the lender can subsequently reaccelerate** the debt by a clear, unequivocal, and affirmative act. If default is then not cured by a specific date, the debt is reaccelerated on that date, which is the start of a new six-year limitations period. *Igou v. Bank of Am., N.A.*, 2020 COA 15, 459 P.3d 776.

#### **IV. BALANCE DUE ON OPEN ACCOUNT.**

**Statute begins to run from the last item on the account.** *Walsh v. Welsh*, 46 Colo. 344, 104 P. 399 (1909); *Lanke v. Am. Med. & Dental Ass'n*, 97 Colo. 521, 50 P.2d 790 (1935) (decided under former § 13-80-111).

#### **V. BREACH OF CONTRACT, AGREEMENT.**

**Annotator's note.** Relevant cases construing the accrual of causes of actions under former §§ 13-80-110 and 13-80-114 as said sections existed prior to the 1986 repeal and reenactment of this article have been included with the annotations to subsection (6).

**Under subsection (6), discovery of breach — not knowledge of damages, nor any derivative notion of certainty of harm and incentive to sue — determines the accrual of a cause of action for breach of**

**contract.** *City & County of Denver v. Bd. of Cnty. Comm'rs*, 2024 CO 5, 543 P.3d 371.

**When the undisputed facts demonstrate that a plaintiff discovered** or reasonably should have discovered the defendant's conduct as of a particular date, the issue of when the cause of action accrued may be determined as a matter of law. *Anderson v. Somatogen, Inc.*, 940 P.2d 1079 (Colo. App. 1996).

**Claim on contract formerly accrued upon failure to perform required act.** A claim for relief in actions arising out of nonperformance of contract obligations accrued at the time of failure to perform the act required under the contract. *Goeddel v. Aircraft Fin., Inc.*, 152 Colo. 419, 382 P.2d 812 (1963).

**Where contract for sale of land provided that if the vendor failed to procure patent purchaser should receive back all money paid** on the contract, limitation would begin to run against an action by the purchaser to recover back money paid, from the time a patent to the land was issued to another party and not from the time the money was paid. *Platte Land Co. v. Hubbard*, 12 Colo. App. 465, 56 P. 64 (1899).

**Claims on executory agreement may accrue yearly.** Where defendant's obligations under an agreement were executory in nature, maturing into enforceable duties on a yearly basis, plaintiff's claim for relief from defendant's failure to perform accrued with each delinquent performance. *D'Amico v. Smith*, 42 Colo. App. 369, 600 P.2d 84 (1979).

**Where by agreement personal services are to be compensated only at the death of the party receiving them,** the action accrues upon his death, and the statute runs from the same date. Norton's Estate v. McAlister, 22 Colo. App. 293, 123 P. 963 (1912).

**Claimant's cause of action to establish constructive trust accrues,** for purposes of the statute of limitations, when the claimant is aware, or reasonably should be aware, of facts which would make a reasonable person suspicious of the wrongdoing asserted as the basis of the trust. Lucas v. Abbott, 198 Colo. 477, 601 P.2d 1376 (1979).

Claim to enforce a trust does not accrue upon a constructive trust until the claimant acquires or should have acquired knowledge of the existence of the trust. Abbott v. Lucas, 44 Colo. App. 415, 615 P.2d 37 (1978), *aff'd*, 198 Colo. 477, 601 P.2d 1376 (1979).

**Action accrues upon failure to pay installment of interest on note secured by trust deed if creditor elects to foreclose.** A deed of trust securing promissory notes and providing that, upon default of any installment of interest, the whole principal and interest to the time of sale "may at once become due and payable, and the said premises be sold with the same effect as if the indebtedness had matured", if the creditor, after such default, elects to take advantage thereof and direct a sale of the premises pursuant to the power, the cause of action upon the note accrues, and the statute runs, from the time of the default. Lovell v. Goss, 45 Colo. 304, 101 P. 72 (1909).

**The statutes of limitations on an action against the estate arising under resulting trusts** could not begin to run against claimant until there was a repudiation of the trusts. There being no repudiation of either trust created, the statutes of limitations did not begin to run against the claimant until decedent's death. First Nat'l Bank v. Harry W. Rabb Found., 29 Colo. App. 34, 479 P.2d 986 (1970).

**Full possession of the means of detecting a fraud is equivalent to knowledge** for the purpose of invoking this section. Parsons v. Shackelford, 117 Colo. 545, 188 P.2d 587 (1948).

**Refusal of trustee to convey to beneficiary lands which he holds for him is a repudiation** of the trust, setting in motion the statute of limitations. Schlosser v. Schlosser, 62 Colo. 270, 162 P. 153 (1916).

**Accrual of action under contract giving option to purchase stock.** Under a contract giving an option for the purchase of corporate stock, no cause of action would arise for a breach until the party had attempted to exercise his option and the other had refused to sell. Upon such refusal a cause of action accrued, and an action for specific performance commenced within five years thereafter would not be barred by this section. Johnson v. Johnson, 87 Colo. 207, 286 P. 109 (1930).

**In action to quiet title to water rights sold under trust deed,** the cause of action does not accrue until after sale by the trustee and final refusal of the irrigation company to continue to deliver the water. Hastings &

Heyden Realty Co. v. Gest, 70 Colo. 278, 201 P. 37 (1921).

**In suit to cancel excess water rights.** Where plaintiff and others bought certain water rights under deeds providing that when rights were sold and in force equal to the estimated capacity of the system of supply water, the title to the canal system should pass to the owners and holders of such water rights, plaintiff's right of action to have excess rights canceled accrued immediately after the contracts and deeds conveying such excess rights were issued, and was barred after five years thereafter by this section. *Patterson v. Ft. Lyon Canal Co.*, 36 Colo. 175, 84 P. 807 (1906).

**In case of constructive trust statute begins to run from knowledge of trust.** In equity, the suitor must allege and prove excuse for delay and want of diligence, especially where it is sought to enforce a constructive trust. Such delay and want of diligence is within this section; but the time begins to run from actual or constructive knowledge of the trust. *Cliff v. Cliff*, 23 Colo. App. 183, 128 P. 860 (1912).

**Statute does not begin to run until recordation of trust deed.** Under this section the bar of the statute does not begin to run until a tax deed is recorded, for the reason that it is only after it has been filed for record that any title of the owner is conveyed. *Morris v. St. Louis Nat'l Bank*, 17 Colo. 231, 29 P. 802 (1892); *Sayre v. Sage*, 47 Colo. 559, 108 P. 160 (1910).

**Commission of wrongful act by executor starts running of statute against surety.** In Colorado all that is required to

expose the surety to liability on the executor's bond is the commission of the wrongful act. The wrongful act occurred when the executor placed the purchasers in possession without payment of the full purchase price, and that wrongful act was judicially recognized in 1955, not in 1965 when the decree of surcharge was entered, and the action is barred. *People ex rel. Barker v. Transamerica Ins. Co.*, 385 F.2d 61 (10th Cir. 1967).

**Where an action is brought on an official bond** for breach of duty the statute formerly began to run at the time of the occurrence of the consequential injury caused by the officer's breach of duty, and not at the time of the breach. *People ex rel. Fed. Land Bank v. Ginn*, 106 Colo. 417, 106 P.2d 479 (1940).

**Discovery of erroneous levy.** In an action by the personal representatives of a taxpayer against a board of county commissioners to recover taxes he had paid for 13 years on lands assessed to him on the mistaken premise that he was the owner thereof, it was held that the representatives were entitled to recover, and the six-year statute of limitations did not apply where almost immediately on discovery of the erroneous levy a refund was demanded and on refusal thereof the action was promptly begun. *Bd. of Comm'rs v. Doherty*, 114 Colo. 594, 168 P.2d 556 (1946).

**Discovery of erroneous drafting of deed.** An action against a title company for drafting a warranty deed that did not reserve mineral rights, as the sellers had requested in accordance with the contract of sale, did not



accrue until the lessee of an oil and gas lease on the property learned of the sale and began sending royalty payments to the buyer instead of the sellers. The principle that the signer of a document is presumed to know its contents did not defeat the discovery rule in this case because: (a) the document was prepared by the title company in the course of its business, not by the sellers themselves; and (b) the sellers did not seek to invalidate the deed but only sought damages from the title company for failing to follow the sellers' instructions. *Bell v. Land Title Guar. Co.*, 2018 COA 70, 422 P.3d 613.

**A cause of action for breach of trust accrues** on date the breach is discovered or should have been discovered by the exercise of reasonable diligence and, therefore, cause of action accrued when plaintiff went to her bank and discovered that the defendant had withdrawn plaintiff's money. *Eads v. Dearing*, 874 P.2d 474 (Colo. App. 1993).

**The injury resulting from a breach of fiduciary duty, triggering accrual of the claim, is the violation of trust not any attendant financial harm.** A claim for breach of confidentiality does not require proof of economic loss; the injury is the disclosure of protected information. Indeed, the purpose of such a claim is to remedy not a lost contractual expectation but rather the loss of secrecy. *Grynberg v. Shell Expl. B.V.*, 433 F. Supp. 2d 1229 (D. Colo. 2006), *aff'd*, 538 F.3d 1336 (10th Cir. 2008).

**A claim for breach of contract accrues on the date the breach is discovered or should have been discovered through reasonable diligence.** *Farmers Ins. Exch. v.*

*Am. Mfrs. Mut. Ins. Co.*, 897 P.2d 880 (Colo. App. 1995).

**A claim for breach of warranty does not accrue until the plaintiff discovers or should have discovered the defendant's refusal or inability to comply with the warranties made.** *Hersh Cos. v. Highline Vill. Assocs.*, 30 P.3d 221 (Colo. 2001); *Stiff v. BilDen Homes, Inc.*, 88 P.3d 639 (Colo. App. 2003).

**A cause of action for bad-faith breach of insurance contract accrues upon first instance of unreasonable behavior.** *Harmon v. Fred S. James & Co.*, 899 P.2d 258 (Colo. App. 1994).

**Statute of limitations for an action contesting a rate increase commences to run when the rate is enacted** not when each bill is sent. *Bennett Bear Creek Water & San. v. Denver*, 907 P.2d 648 (Colo. App. 1995), *aff'd in part, rev'd in part on other grounds*, 928 P.2d 1254 (Colo. 1996); *Voodoo Leatherworks, LLC v. Waste Connections US, Inc.*, 618 F. Supp. 3d 1126 (D. Colo. 2022).

**Claims of royalty owners for underpayment of natural gas royalties accrued when the payments were due under subsection (4),** not when the underpayment was or reasonably should have been discovered under subsection (6). *BP Am. Prod. Co. v. Patterson*, 185 P.3d 811 (Colo. 2008).

**Withdrawing attorney's claim in quantum meruit against former co-counsel** laboring under a contingent fee agreement cannot accrue earlier than the

time when recovery occurs in the underlying litigation because that is the earliest time when the unjustness of any retention of the benefit can be determined. *Hannon Law Firm v. Melat, Pressman & Higbie*, 293 P.3d 55 (Colo. App. 2011), *aff'd*, 2012 CO 61, 287 P.3d 842.

**Trial court and jury properly rejected seller's assertion that broker's breach of contract action against seller accrued upon seller's termination of the parties' listing agreement and recording of the property deed** because seller's actions did not put broker on notice of the facts underlying the breach of contract claim against seller. *Int'l Network, Inc. v. Woodard*, 2017 COA 44, 405 P.3d 424.

## **VI. WRONGFUL POSSESSION OF PERSONAL PROPERTY, GOODS.**

**The statute of limitations does not begin to run in favor of a bailee until he converts the property to his own use.** *Austin v. Van Loon*, 36 Colo. 196, 85 P. 183 (1906) (decided under former § 13-80-110).

**Cause of action for conversion accrued** when it was discovered, not on the dates of forged endorsements. *Stjernholm v. Life Ins. Co. of N. Amer.*, 782 P.2d 810 (Colo. App. 1989).

## **VII. INJURIES.**

A. In General.

B. Discovery.

C. Fraudulent Concealment.

A. In General.

**Annotator's note.** Relevant cases construing the accrual of causes of actions under former §§ 13-80-102, 13-80-105, 13-80-108, and 13-80-110 as said sections existed prior to the 1986 repeal and reenactment of this article have been included with the annotations to subsections (1) and (8) dealing with injuries.

**The claim accrues at the time of the disabling injury.** *Bd. of Trustees of Policemen's Pension Fund v. Koman*, 133 Colo. 598, 298 P.2d 737 (1956).

**The cause of action accrues in a libel case when the libel is published.** *Evans v. Republican Publ'g Co.*, 20 Colo. App. 281, 78 P. 311 (1904); *Spears Free Clinic & Hosp. for Poor Children v. Maier*, 128 Colo. 263, 261 P.2d 488 (1953).

**Period begins to run on date libel occurs.** The one-year statutory period for the initiation of a libel action begins to run on the date the alleged libel occurs. *Dillingham v. Greeley Publ'g Co.*, 661 P.2d 700 (Colo. App. 1983), *rev'd on other grounds*, 701 P.2d 27 (Colo. 1985).

**Where plaintiffs suffered no damages until adverse claim of government was determined** to be valid and plaintiffs were found to be trespassers, with the consequent damages resulting from their being required to remove their house from government land, the statute of limitations did not begin to run until the judgment became final. *Doyle v. Linn*, 37 Colo. App. 214, 547 P.2d 257 (1975).

**Action by railroad employees seeking reinstatement to their jobs and damages** accrued when the employees resigned their positions with the railroad. *Copsy v. Bhd. of Locomotive Engineers*, 767 P.2d 676 (10th Cir. 1985).

**Damages from water seepage.** The action is barred after the lapse of six years from the first visible and sensible appearance of the injury caused by seepage from an irrigation ditch. *Middelkamp v. Bessemer Irrigating Co.*, 46 Colo. 102, 103 P. 280 (1909); *Rose v. Agric. Ditch & Reservoir Co.*, 70 Colo. 446, 202 P. 112 (1921); *Zimmerman v. Hinderlider*, 105 Colo. 340, 97 P.2d 443 (1939).

**In action to recover for damage to land by reason of use of natural channel by reservoir company** for carrying water, the statute of limitations began to run when the company commenced using the channel as a carrier, since the land was immediately damaged by such use. *Seven Lakes Reservoir Co. v. Majors*, 69 Colo. 590, 196 P. 334 (1921).

**In a suit by a guest against a landlord for conversion of baggage**, the action did not accrue until demand, the refusal of which constituted conversion, at which time the statute of limitations began to run. See *Carper v. Risdon*, 19 Colo. App. 530, 76 P. 744 (1904); *Austin v. Van Loon*, 36 Colo. 196, 85 P. 183 (1906); *Dutton Hotel Co. v. Fitzpatrick*, 69 Colo. 229, 193 P. 549 (1920).

**In an action by the owner of abutting property for permanent damages occasioned by the construction and operation of a railroad** through a public

street in an ordinary and lawful manner, the statute of limitations begins to run from time the railroad company first occupied the street for such purposes. *Union Pac. Ry. v. Foley*, 19 Colo. 280, 35 P. 542 (1893).

**Action for wrongful discharge is an action in tort which accrues when the injury of losing the job occurs** and not when notice of termination is given. *Lorenz v. Martin Marietta Corp., Inc.*, 802 P.2d 1146 (Colo. App. 1990), *aff'd*, 823 P.2d 100 (Colo. 1992).

**Cause of action for personal injuries under Colorado Auto Accident Reparations Act** accrues on the date that both the physical injury and its cause are known or should have been known by exercise of reasonable diligence. Such actions may be filed as soon as it is reasonably expected that claimant's medical expenses will exceed \$2,500. *Jones v. Cox*, 828 P.2d 218 (Colo. 1992).

Although the police investigation report may provide helpful information regarding the claim, the claim itself accrues when the plaintiff is aware of his injuries and their cause. The police department's failure to provide copies of the investigation report does not postpone accrual of the claim. *Reider v. Dawson*, 856 P.2d 31 (Colo. App. 1992), *aff'd*, 872 P.2d 212 (Colo. 1994).

A cause of action for injury to property shall be considered to accrue on the date both the injury and its cause are known or should have been known by the exercise of reasonable diligence. *Bad Boys of Cripple Creek Mining Co. v. City of Cripple Creek*, 996 P.2d 792 (Colo. App. 2000).

Plaintiffs' cause of action for inverse condemnation accrued when the city began using the property with plaintiffs' knowledge. *Bad Boys of Cripple Creek Mining Co. v. City of Cripple Creek*, 996 P.2d 792 (Colo. App. 2000).

A cause of action accrues when the insured knew, or should have known in the exercise of reasonable diligence, of the injury and its cause, not when the insured consults with an attorney or an attorney informs the insured that he or she has a claim. *Olson v. State Farm Mut. Auto. Ins. Co.*, 174 P.3d 849 (Colo. App. 2007).

#### B. Discovery.

**"Injury" in statute of limitations means legal injury** and, therefore, statute of limitations in claim for lack of informed consent begins to run when claimant has knowledge of facts which would put reasonable person on notice of nature of injury and that injury was caused by wrongful conduct of another. *Mastro v. Brodie*, 682 P.2d 1162 (Colo. 1984).

**A plaintiff cannot commence an action until he knows he has a cause.** To say that a cause of action accrues to a person when she may maintain an action thereon and, at the same time, that it accrues before she has or can reasonably be expected to have knowledge of any wrong inflicted upon her is patently inconsistent and unrealistic. She cannot maintain an action before she knows she has one. *Owens v. Brochner*, 172 Colo. 525, 474 P.2d 603 (1970).

**In a professional negligence case the cause of action "accrues" when the**

**patient discovers or**, in the exercise of reasonable diligence, should have discovered the doctor's negligence. *Owens v. Brochner*, 172 Colo. 525, 474 P.2d 603 (1970); *Nitka v. Bell*, 29 Colo. App. 504, 487 P.2d 379 (1971).

**In a professional negligence case the cause of action does not accrue** until the plaintiff, as a lay person, discovers, or in the exercise of reasonable diligence should have discovered, that the physician was negligent according to the standards prevailing in the community for members of his profession. *Short v. Downs*, 36 Colo. App. 109, 537 P.2d 754 (1975).

Critical fact is the plaintiff's knowledge of facts essential to cause of action. *Morris v. Geer*, 720 P.2d 994 (Colo. App. 1986).

In a legal malpractice action, once a client becomes aware of the attorney's negligence and incurs damage in the form of legal fees to ameliorate the impact of that negligence, he or she has suffered injury for the purpose of accrual of a legal claim. Moreover, a client's cause of action can accrue before the attorney ceases representation. *Miller v. Byrne*, 916 P.2d 566 (Colo. App. 1995).

**Professional negligence in drafting of deed.** An action against a title company for drafting a warranty deed that did not reserve mineral rights, as the sellers had requested in accordance with the contract of sale, did not accrue until the lessee of an oil and gas lease on the property learned of the sale and began sending royalty payments to the buyer instead of the sellers. The principle that the signer of a document is presumed to know its contents did not defeat the discovery rule

in this case because: (a) the document was prepared by the title company in the course of its business, not by the sellers themselves; and (b) the sellers did not seek to invalidate the deed but only sought damages from the title company for failing to follow the sellers' instructions. *Bell v. Land Title Guar. Co.*, 2018 COA 70, 422 P.3d 613.

**When limitations period begins.** The limitations period in former § 13-80-108 began to run when the aggrieved party discovered, or should have discovered by the exercise of reasonable diligence, the facts constituting the fraud. *Laymon v. McComb*, 524 F. Supp. 1091 (D. Colo. 1981); *Polk v. Hergert Land & Cattle Co.*, 5 P.3d 402 (Colo. App. 2000).

The limitations period was tolled until the aggrieved party learns of the fraud or should have discovered it by the exercise of reasonable diligence. *Hackbart v. Holmes*, 675 F.2d 1114 (10th Cir. 1982); *Noland v. Gurley*, 566 F. Supp. 210 (D. Colo. 1983).

Limitations period did not begin until the trial court determined that the defendant law firm was bound by the offer of settlement and had received an overpayment. Prior to that holding, plaintiff had no right to apply for relief. *Berger v. Dixon & Snow, P.C.*, 868 P.2d 1149 (Colo. App. 1993).

**The requisite knowledge under the general discovery rule includes** knowledge of facts that would put a reasonable person on notice of the nature and extent of an injury and that the injury was caused by the wrongful conduct of another. *Yund v. Bridgestone/Firestone, Inc.*, 200 F. Supp. 2d 997 (S.D. Ind. 2002).

**Accrual in construction defect cases** is subject to § 13-80-104 (1)(b)(I), which requires only discovery of the physical manifestation of the defect and not its cause. *Broomfield Senior Living v. R.G. Brinkmann*, 2017 COA 31, 413 P.3d 219.

**Breach of warranty claim distinguished.** Breach of warranty claims accrue when the breach is or should have been discovered under subsection (6). *Broomfield Senior Living v. R.G. Brinkmann*, 2017 COA 31, 413 P.3d 219.

**Accrual in malpractice claim against engineer or architect.** In an action for professional malpractice against an engineer or architect brought under the six-year statute of limitations contained in this section, the cause of action does not accrue until the plaintiff knows, or should know, in the exercise of reasonable diligence, all material facts essential to show the elements of that cause of action. *City of Aurora v. Bechtel Corp.*, 599 F.2d 382 (10th Cir. 1979).

**Action for infringement of copyright and theft of trade secret** occurred at time when the plaintiff discovered, or in the exercise of reasonable diligence, should have discovered the facts giving rise to his claim. *DeGette v. Mine Co. Rest., Inc.*, 751 F.2d 1143 (10th Cir. 1985).

**Two-year provision did not begin to run** when owner or property first discovered physical processes leading up to injury, but only when he discovered, or in exercise of reasonable diligence should have discovered, alleged "defect" in improvement

that produced injury. *Fin. Assocs. v. G.E. Johnson Const.*, 723 P.2d 135 (Colo. 1986).

**Statute begins to run when unauthorized foreign object is discovered in plaintiff's body.** Where doctors left a large gauze pad inside the incision and body of plaintiff more than 10 years before action was brought and in the interim plaintiff, in order to ascertain the cause of her constant pain and suffering, consulted and was treated by various surgeons and physicians, and when her condition became extremely grave a laparotomy was performed and the gauze pad discovered and removed, this being the first notice to plaintiff of the negligence, carelessness, and recklessness of defendants, it was held that an action, started within two years of this discovery, was not barred by this section. *Rosane v. Senger*, 112 Colo. 363, 149 P.2d 372 (1944).

**Unauthorized foreign object** is an object left inadvertently in a patient's body and which has no therapeutic or diagnostic purpose or effect. *Austin v. Litvak*, 682 P.2d 41 (Colo. 1984).

Items not customarily left in a patient's body do not constitute "unauthorized foreign objects" under § 13-80-105 if all of the following are present: (1) The device is intentionally placed in the body or is intentionally allowed to remain therein; (2) the device is allowed to remain in the patient's body with the knowledge and consent of the patient; and (3) its remaining in the patient's body has a therapeutic or diagnostic purpose. If any one of these three elements is missing, the item is an unauthorized foreign object. *Nieto v.*

*Chavez*, 721 P.2d 1223 (Colo. App. 1986) (decided under law in effect prior to 1986 repeal and reenactment).

Rods surgically inserted in patient's back with patient's knowledge did not constitute "unauthorized foreign objects". *Hoary v. Lowe*, 734 P.2d 154 (Colo. App. 1987).

**This is a jury question.** Whether or not the plaintiff actually knew or had reason to know of the cause of her injuries prior to the date of the alleged discovery is a question for the jury. *Davis v. Bonebrake*, 135 Colo. 506, 313 P.2d 982 (1957); *Owens v. Brochner*, 172 Colo. 525, 474 P.2d 603 (1970); *Nitka v. Bell*, 29 Colo. App. 504, 487 P.2d 379 (1971).

The determination of when a plaintiff discovered or should have discovered the seriousness and character of his injuries and the negligence giving rise to his cause of action is an unresolved question of fact, and is therefore, a question for the jury to determine, and summary judgment is improper. *DiChellis v. Peterson Chiropractic Clinic*, 630 P.2d 103 (Colo. App. 1981); *Phillips v. Beethe*, 679 P.2d 126 (Colo. App. 1984); *Mastro v. Brodie*, 682 P.2d 1162 (Colo. 1984).

**And question of timing of discovery of damage for trier of fact.** The question of whether or not the plaintiff actually discovered, or should have discovered, that damage occurred and that it probably resulted from professional malpractice is a question which should be left for the trier of fact or, in appropriate cases, summary judgment. *City of Aurora v. Bechtel Corp.*, 599 F.2d 382 (10th Cir. 1979).

**Question of fact.** The time when a plaintiff discovered, or through the use of reasonable diligence should have discovered, the negligent conduct giving rise to the cause of action is normally a question of fact that must be resolved by the trier of fact. *Winkler v. Rocky Mtn. Conference*, 923 P.2d 152 (Colo. App. 1995); *Murry v. GuideOne Specialty Mut. Ins. Co.*, 194 P.3d 489 (Colo. App. 2008).

Whether a medical malpractice action is barred by the statute of limitations is dependent upon the determination of a question of fact as to when the action occurred. *Short v. Downs*, 36 Colo. App. 109, 537 P.2d 754 (1975).

Issue may be decided as a matter of law where undisputed facts clearly show that plaintiff discovered, or reasonably should have discovered, negligent conduct as of a particular date. *Morris v. Geer*, 720 P.2d 994 (Colo. App. 1986); *Reider v. Dawson*, 856 P.2d 31 (Colo. App. 1992), *aff'd*, 872 P.2d 212 (Colo. 1994); *Winkler v. Rocky Mtn. Conference*, 923 P.2d 152 (Colo. App. 1995); *Murry v. GuideOne Specialty Mut. Ins. Co.*, 194 P.3d 489 (Colo. App. 2008).

**Question of timing of discovery not determination as matter of law.** Whether a plaintiff should have discovered the basis of his suit under the doctrine of equitable tolling does not lend itself to determination as a matter of law. *Aldrich v. McCulloch Props., Inc.*, 627 F.2d 1036 (10th Cir. 1980).

**Summary judgment on issue of diligence improper.** Since the issue of proper diligence under Colorado law should apparently be left to a jury, summary

judgment on that claim is improper. *Morgan v. Dain Bosworth*, 545 F. Supp. 953 (D. Colo. 1982).

**Statutes of repose, also known as "strict" statutes of limitation, are not subject to the discovery rule codified in this section.** Such a statute bars a claim after the specified period regardless of the date on which the claimant discovers the error or omission that gave rise to the claim. *Kuhn v. State Dept. of Rev.*, 897 P.2d 792 (Colo. 1995).

**Accrual of personal injury claim based on negligence.** A personal injury claim based on alleged negligence accrues on the date both the injury and its cause are known or should have been known by the exercise of reasonable diligence. *Cade v. Regensberger*, 804 P.2d 238 (Colo. App. 1990).

**In cases involving personal injury, a plaintiff's claim for relief accrues on the date the fact of injury and its cause are known or should have been known,** and a plaintiff's uncertainty as to the full extent of the damage does not prevent the filing of a timely complaint. *Taylor v. Goldsmith*, 870 P.2d 1264 (Colo. App. 1994).

**Accrual of claim based upon libel or slander.** Subsection (1) supersedes the accrual rule stated in decisions prior to 1986 and a claim for relief based upon injury to reputation is now considered to accrue on the date both the injury and its cause are known or should have been known by the exercise of reasonable diligence. *Taylor v. Goldsmith*, 870 P.2d 1264 (Colo. App. 1994).

**Once plaintiff knew her injuries were caused by her use of a keyboard, she then had two years to discover the keyboard manufacturer with reasonable diligence.** Where the identity of the defendant could be discovered through reasonable diligence, the action was properly barred if not filed within the two-year limitation period. *Yoder v. Honeywell, Inc.*, 900 F. Supp. 240 (D. Colo. 1995).

**Receipt of a neurologist's letter stating that a plaintiff's injuries could have been caused by exposure to a toxic substance did not constitute discovery of the cause of her injuries,** and the plaintiff proceeded with reasonable diligence when suit was filed less than two years after her receipt of a toxicologist's letter stating that her condition was caused by exposure to a toxic substance. *Salazar v. Am. Sterilizer Co.*, 5 P.3d 357 (Colo. App. 2000).

**Plaintiff knew, or should have known by the exercise of reasonable diligence,** of the injury to his reputation and the cause of that injury; consequently, because the complaint was filed more than two years after plaintiff learned of the statements, the trial court properly dismissed plaintiff's claims for libel, slander, and outrageous conduct as barred by §§ 13-80-102 (1)(a) and 13-80-103 (1)(a). *Taylor v. Goldsmith*, 870 P.2d 1264 (Colo. App. 1994).

**Action against insurance company for bad faith failure to settle resulting in excess liability judgment** accrued only after excess liability was ultimately established. *Vanderloop v. Progressive Cas. Ins. Co.*, 769 F. Supp. 1172 (D. Colo. 1991).

**Plaintiff's tortious interference with contract claim accrued from the date the fact of injury or damage was evident, although the nature of the contracts at issue left the precise extent of the injury or damage uncertain.** *Sterenbuch v. Goss*, 266 P.3d 428 (Colo. App. 2011).

**Because plaintiff asserted that respondents were handling claim in bad faith in a letter dated more than two years before filing bad faith claim,** the letter evidences that petitioner's bad faith tort claims accrued no later than the date of the letter and the filing exceeded the statute of limitations. *Brodeur v. Am. Home Assurance Co.*, 169 P.3d 139 (Colo. 2007).

Plaintiff's death does not extend the bad faith tort claim accrual date beyond the initial acknowledgment by plaintiff's attorney of bad faith. *Brodeur v. Am. Home Assurance Co.*, 169 P.3d 139 (Colo. 2007).

**Claim based on negligence of attorney in drafting contract** accrued when client bank knew or reasonably should have known all facts essential to claim and had already incurred some damage as a result, regardless of whether action was classified as arising in tort or in contract. It was not necessary to await suit by other party to contract, or to ascertain the precise extent of damage, before limitation period began to run. *Palisades Nat. Bank v. Williams*, 816 P.2d 961 (Colo. App. 1991).

**"Discovery rule" did not apply** to claims for negligence and outrageous conduct arising from alleged sexual assault on minors. Despite therapists' and plaintiffs' statements that plaintiffs did not realize the



full import of defendant's actions until they sought counseling years after the assaults, plaintiffs' admissions of emotional upset at time of assaults and knowledge that defendant's actions were improper and illegal indicated that plaintiffs were on adequate notice of the essential elements of the tort. Therefore, cause of action accrued when plaintiffs reached the age of majority. *Cassidy v. Smith*, 817 P.2d 555 (Colo. App. 1991).

**Plaintiff knew or should have known both the injury and its cause by the exercise of reasonable diligence.** It is not true that, once the affidavit of a psychologist is injected into a case, there is automatically an issue of fact regarding timing. The court found it very important that plaintiff did not argue that he ever repressed his memory that events of alleged sexual abuse by a priest happened but merely his knowledge that the events constituted abuse which harmed him. According to the court, the idea that a person of plaintiff's background and education could be aware of such events and his own troubled psychological state and not tie them together was inconceivable as a matter of law. Consequently, the court granted summary judgment based on the statute of limitations. *Ayon v. Gourley*, 47 F. Supp. 2d 1246 (D. Colo. 1998).

**Outrageous conduct is a separate tort, even though it may be premised on conduct amounting to a battery.** Therefore, the applicable statute of limitations under § 13-80-102 is two years from the date of accrual for outrageous conduct, rather than the one year limit under § 13-80-103 for battery. *Winkler v. Rocky*

*Mtn. Conference*, 923 P.2d 152 (Colo. App. 1995).

**Further, where a claim may be pursued on two theories having different limitations,** the longer limitation applies. *Winkler v. Rocky Mtn. Conference*, 923 P.2d 152 (Colo. App. 1995).

**Applied** in *Miller v. Celotex Corp.*, 708 F. Supp. 306 (D. Colo. 1989) (decided under former § 13-80-127.5); *Stiff v. BilDen Homes, Inc.*, 88 P.3d 639 (Colo. App. 2003).

#### C. Fraudulent Concealment.

**Law reviews.** For note, "Concealment of a Cause of Action as Tolling the Two-Year Statute of Limitation in Malpractice", see 17 *Rocky Mt. L. Rev.* 124 (1944).

**Running of statute is delayed when defendant conceals from the plaintiff the existence of the cause.** Where the defendants had concealed from the plaintiff the existence of a cause of action during the time that the period of limitations was running, the supreme court held that one may not be permitted to take advantage of his own wrong, and that the alleged cause of action was not barred by the statute of limitations. *Klamm Shell v. Berg*, 165 Colo. 540, 441 P.2d 10 (1968).

**As when doctor assures the patient that nothing is wrong.** The fraudulent concealment issue would be applicable, where a plaintiff discovers an injury and then is reassured by the doctor that nothing is wrong. *Owens v. Brochner*, 172 Colo. 525, 474 P.2d 603 (1970).

**The Colorado court does not require a showing of all of the elements of fraud** in order to support a finding of "fraudulent concealment" as negligence is equally damaging and the victim equally helpless regardless of the motive for concealment. *Murphy v. Dyer*, 260 F. Supp. 822 (D. Colo. 1966).

**The statute of limitations is not intended to require the commencement of an action** when the injured party is justifiably ignorant of the existence of one. The law does not impose upon the injured party a constructive knowledge of facts — i.e., standards of practice, medical causation — which are, indeed, unknown to the court itself without the assistance of expert testimony. *Nitka v. Bell*, 29 Colo. App. 504, 487 P.2d 379 (1971).

**Fraudulent concealment provision of former § 13-80-105 required two wrongs:** The original negligent act and the subsequent concealment of same. *Adams v. Richardson*, 714 P.2d 921 (Colo. App. 1986).

**Knowing concealment and foreign object exceptions apply only to three-year statute of repose and not to two-year statute of limitations** in former § 13-80-105. *Mastro v. Brodie*, 682 P.2d 1162 (Colo. 1984).

## **VIII. TOLLING OF STATUTE OF LIMITATIONS.**

**Annotator's note.** Relevant cases construing the tolling of the statute of limitations under former § 13-80-110 as said section existed prior to the 1986 repeal and

reenactment of this article have been included with the annotations to this section.

**Plaintiff has burden of establishing factual basis for tolling of statute.** While the statute of limitations is an affirmative defense, when the dates given in the complaint make clear that the right sued upon has been extinguished, the plaintiff has the burden of establishing a factual basis for tolling the statute. *Aldrich v. McCulloch Props., Inc.*, 627 F.2d 1036 (10th Cir. 1980).

**Federal law may control tolling of limitations when state statute applicable.** Though the limitations period for an action brought in federal district court based on claims arising under section 17 of the Securities Act of 1933 and sections 10(b) and 20 of the Securities Exchange Act of 1934 is supplied by the law of Colorado, the circumstances which will toll the running of the statute are matters of federal law. *Ohio v. Peterson, Lowry, Rall, Barber & Ross*, 472 F. Supp. 402 (D. Colo. 1979), *aff'd*, 651 F.2d 687 (10th Cir. 1981).

**Time consumed by pendency of action not deductible.** A party cannot deduct from the period of the statute of limitations applicable to his case the time consumed by the pendency of an action in which he sought to have the matter adjudicated, but which was dismissed without prejudice to him. *Commercial Equity Corp. v. Majestic Sav. & Loan Ass'n*, 620 P.2d 56 (Colo. App. 1980).

**Commencement of action within statutory period arrests running of statute.** It seems to be the well established rule in all jurisdictions that the

commencement of an action within the statutory period to enforce a claim or demand arrests the running of the general statute of limitations against the same. *Bd. of County Comm'rs v. Flanagan*, 21 Colo. App. 467, 122 P. 801 (1912); *Kingsley v. Clark*, 57 Colo. 352, 141 P. 464 (1914).

**Filing and withdrawal of claim against estate does not constitute commencement of an action** to prevent the statute of limitations from running. *Morse v. Clark*, 10 Colo. 216, 14 P. 327 (1887).

**A lender may abandon the acceleration of a promissory note by a clear affirmative act.** Such abandonment restores the note's original maturity date for purposes of accrual of the statute of limitations. *Bank of N.Y. Mellon v. Peterson*, 2018 COA 174M, 442 P.3d 1006.

**The commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would have been parties** had the suit been permitted to continue as a class action. Once the statute of limitations has been tolled, it remains tolled for all members of the putative class until class certification is denied. *State Farm Mut. Auto. Ins. Co. v. Boellstorff*, 540 F.3d 1223 (10th Cir. 2008) (citing *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974) and *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345 (1983)).

**Only the first class action tolls the statute of limitations.** If a plaintiff has been a member of the class in two lawsuits, only the first tolls the statute of limitations. The filing of successive class actions cannot serve to perpetually toll the running of the

statute of limitations. *Jackson v. Am. Family Mut. Ins. Co.*, 258 P.3d 328 (Colo. App. 2011).

**The presentation to the county commissioners of a claim against the county**, and diligent and active effort by the claimant to induce action by the board, stays the course of the general statute of limitations. *Bd. of County Comm'rs v. Flanagan*, 21 Colo. App. 467, 122 P. 801 (1912).

**In workmen's compensation cases the earliest disability for which compensation is either awarded or paid** will arrest the running of any statute of limitations. *London Guarantee & Accident Co. v. Sauer*, 92 Colo. 565, 22 P.2d 624 (1933).

**An indorsement of payment on a promissory note** made by or under authority of the maker and within the time fixed by the statute of limitations, interrupts the running of the statute. *Christensen v. Woods Mercantile Co.*, 104 Colo. 463, 91 P.2d 999 (1939).

**Book entries corresponding to the date and amount of an indorsement of payment on a promissory note** are not sufficient alone to interrupt the running of the statute of limitations or to revive a barred debt. *Christensen v. Woods Mercantile Co.*, 104 Colo. 463, 91 P.2d 999 (1939).

**Where claim against estate consists of promissory notes, they must be filed to arrest statute.** Where a claim against the estate of a decedent consists in his promissory notes, the notes themselves must

be filed in the county court in which administration is pending, and the filing of a list or statement of the notes is not a compliance with the statute and has no effect to stay the operation of the statute of limitations. *Gordon-Tiger Mining & Reduction Co. v. Loomer*, 50 Colo. 409, 115 P. 717 (1911).

**A promise of the administrator to look after a claim** for the expenses of administration and bring it forward has no effect to stay the course of the statute. *Gordon-Tiger Mining & Reduction Co. v. Loomer*, 50 Colo. 409, 115 P. 717 (1911).

**Ignorance of the law** respecting the remedy which it provides does not prevent the statute from running. *Pipe v. Smith*, 5 Colo. 146 (1879).

**The burden is on the party suing on a debt** apparently barred by the statute of limitations to show that the statute has been tolled. *Capek v. Monahan*, 117 Colo. 131, 184 P.2d 501 (1947).

**Statute of limitations not tolled between time of injury and time when investigative report released** since report would not result in any civil relief to plaintiff. *Mosher v. City of Lakewood*, 807 P.2d 1235 (Colo. App. 1991).

**A change in the law does not revive claims otherwise barred by a statute of limitations.** *Kuhn v. State Dept. of Rev.*, 897 P.2d 792 (Colo. 1995).

**No tolling under course-of-treatment exception or "continuing violation" doctrine in a bad-faith breach of workers' compensation insurance case**, because

insurer's failure to pay benefits when due puts claimant on notice of the fact of injury and its cause even if there is only a single episode of unreasonable behavior. *Harmon v. Fred S. James & Co.*, 899 P.2d 258 (Colo. App. 1994).

**"Continuing violation" doctrine does not apply to shareholder action** based on breach of fiduciary duty by directors of corporation. *Polk v. Hergert Land & Cattle Co.*, 5 P.3d 402 (Colo. App. 2000).

## **IX. FORMER STATUTE OF REPOSE.**

**Annotator's note.** Relevant cases construing the statute of repose under former § 13-80-105 as said section existed prior to the 1986 repeal and reenactment of this article have been included with the annotations to this section.

**Former statute of repose did not deny equal protection.** *Adams v. Richardson*, 714 P.2d 921 (Colo. App. 1986).

**Tolling provisions of § 13-81-103 applied to former § 13-80-105** relating to limitation and repose periods applicable to medical malpractice claims. *Southard v. Miles*, 714 P.2d 891 (Colo. 1986).

**Former statute of repose applied to continuing acts or omissions;** however, statute of repose does not bar recovery for acts or emissions that occurred during the last three years preceding institution of suit. *Comstock v. Collier*, 694 P.2d 1282 (Colo. App. 1984), modified in part, rev'd in part on other grounds, 737 P.2d 845 (Colo. 1987).

**Negligent misdiagnosis is exception to former three-year statute of repose.** Legislative scheme which permits foreign object and knowing concealment claimants to invoke the discovery rule to the three-year statute of repose in former § 13-80-105 but denies such discovery rule to negligent misdiagnosis claimants is unconstitutional as a denial of equal protection and the appropriate remedy is to make claims based

on negligent misdiagnosis another exception to the former three-year statute of repose. *Austin v. Litvak*, 682 P.2d 41 (Colo. 1984).

Whether claim alleged a misdiagnosis claim is applied in *Comstock v. Collier*, 737 P.2d 845 (Colo. 1987).

**Applied** in *Hoary v. Lowe*, 734 P.2d 154 (Colo. App. 1987).

### **13-80-109. Limitations apply to noncompulsory counterclaims and setoffs.**

Except for causes of action arising out of the transaction or occurrence which is the subject matter of the opposing party's claim, the limitation provisions of this article shall apply to the case of any debt, contract, obligation, injury, or liability alleged by a defending party as a counterclaim or setoff. A counterclaim or setoff arising out of the transaction or occurrence which is the subject matter of the opposing party's claim shall be commenced within one year after service of the complaint by the opposing party and not thereafter.

**Source: L. 86:** Entire article R&RE, p. 700, § 1, effective July 1.

**Editor's note:** This section is similar to former § 13-80-112 as it existed prior to 1986.

## **ANNOTATION**

**The language of this provision makes it clear that its purpose is** to allow a party against whom a claim has initially been asserted to plead a stale claim only in response to the claim asserted against that party and only if it arises out of the same transaction or occurrence, or the same series thereof. *Duell v. United Bank of Pueblo, N.A.*, 892 P.2d 336 (Colo. App. 1994); *Atlantic Richfield Co. v. Farm Credit Bank of Wichita*, 226 F.3d 1138 (10th Cir. 2000).

**Under Colorado law, the filing of a complaint does toll the statute of limitations on counterclaims arising out of the same transaction or occurrence.** The amount of time a defendant has to file such a counterclaim is measured with reference to the plaintiff's complaint, giving the defendant one year, but no more, to file the counterclaim. *Full Draw Prods. v. Easton Sports, Inc.*, 85 F. Supp. 2d 1001 (D. Colo. 2000).

**This section provides that the limitation provisions of this article shall apply to any debt or contract alleged by way of setoff.** Bernklau v. Stevens, 150 Colo. 187, 371 P.2d 765 (1962) (decided under former § 13-80-112).

**Counterclaims for damages arising from transaction that was the subject of an action to stay arbitration were compulsory and revived under this section.** E-21 Eng'g v. Steve Stock & Assocs., 252 P.3d 36 (Colo. App. 2010).

**Under this section, a plaintiff cannot revive time-barred claims** simply by repleading them as counterclaims to a defendant's compulsory counterclaim. Duell v. United Bank of Pueblo, N.A., 892 P.2d 336 (Colo. App. 1994).

**This section does not apply in declaratory judgment actions for nonliability on limitations grounds.** The suggestion that a plaintiff in one action can "revive" his concededly stale claims by

filing them as counterclaims in a parallel action brought by the defendant solely for the purpose of having those claims declared stale is illogical and unsound. Hamilton v. Cunningham, 880 F. Supp. 1407 (D. Colo. 1995).

**Action for declaratory judgment of nonliability based on statute of limitations grounds is not a "claim" triggering the counterclaim revival statute.** Such an interpretation of the statute would lead to an absurd result. Tidwell v. Bevan Props., Ltd., 262 P.3d 964 (Colo. App. 2011).

**Notwithstanding the time limitation set forth in this section, defendant's counterclaims are timely because they relate back, under C.R.C.P. 15(c), to his initial answer, which was filed within the limitation period.** Makeen v. Hailey, 2015 COA 181, 381 P.3d 337.

**Applied in** Plains Metro. Dist. v. Ken-Caryl Ranch, 250 P.3d 697 (Colo. App. 2010).

### **13-80-110. Causes barred in state of origin.**

If a cause of action arises in another state or territory or in a foreign country and, by the laws thereof, an action thereon cannot be maintained in that state, territory, or foreign country by reason of lapse of time, the cause of action shall not be maintained in this state.

**Source: L. 86:** Entire article R&RE, p. 700, § 1, effective July 1.

## **ANNOTATION**

**Law reviews.** For article, "A Decade of Colorado Law: Conflict of Laws, Security,

Contracts, and Equity", see 23 Rocky Mt. L. Rev. 247 (1951). For article, "Conflict of

Laws, Constitutional Law, Elections", see 30 Dicta 449 (1953). For article, "Statutes of Limitation in the Conflict of Laws Borrowing Statutes", see 32 Rocky Mt. L. Rev. 287 (1960).

**Annotator's note.** Since § 13-80-110 is similar to former § 13-80-118 as it existed prior to the 1986 repeal and reenactment of this article, relevant cases construing that provision have been included with the annotations to this section.

**This section evidenced the purpose of the general assembly** to afford to a debtor sued in Colorado relief from a creditor seeking judgment on a debt barred in the jurisdiction where the cause arose. *Simon v. Wilnes*, 97 Colo. 78, 47 P.2d 406 (1935).

**This section does not violate the "full faith and credit" clause** in § 1 of art. IV, U.S. Const. *Kelly v. Heller*, 74 Colo. 470, 222 P. 648 (1924).

**"Arises in another state" must mean in the courts of that state.** It cannot mean a right of action not cognizable by the courts of that state. *Folda Real Estate Co. v. Jacobsen*, 75 Colo. 16, 223 P. 748 (1924).

**This section provides in substance** that an action shall not be maintained in this state on a claim arising in another state and barred by the laws thereof. *Smith v. Kent Oil Co.*, 128 Colo. 80, 261 P.2d 149 (1953).

**If an action is not barred in the state where the cause of action arose** because of the defendant's absence therefrom, it is not

barred in Colorado. *Schoenfeld v. Neher*, 428 F.2d 152 (10th Cir. 1970).

**In the absence of a showing, there is a presumption that the law of another jurisdiction is the same as the common law of Colorado**, but no presumption that it is the same as Colorado statute law. *Smith v. Kent Oil Co.*, 128 Colo. 80, 261 P.2d 149 (1953).

**Specific adoption of the choice of law provision under the Uniform Interstate Family Support Act by both Colorado, in § 14-5-604, and Texas overrides application of the general borrowing limitations statute set forth in this section.** *In re Morris*, 32 P.3d 625 (Colo. App. 2001).

**Neither the borrowing statute nor the Uniform Conflict of Laws - Limitations Act (UCL-LA), §§ 13-82-101 to 13-82-107, is more specific than the other.** Because each statute uses different factors to assign a limitations period, the court is prevented from directly comparing them in order to read one as an exception to the other. *Jenkins v. Pan. Canal Ry. Co.*, 208 P.3d 238 (Colo. 2009).

**Because it was enacted more recently, the borrowing statute, and not the UCL-LA, controls.** Based on the general assembly's prescribed rules of statutory construction, because the conflicts between the statutes cannot be resolved on specificity and the borrowing statute is the more recent enactment, the borrowing statute applies to plaintiffs' claims. *Jenkins v. Pan. Canal Ry. Co.*, 208 P.3d 238 (Colo. 2009).

**13-80-111. Commencement of new action upon involuntary dismissal.**

(1) If an action is commenced within the period allowed by this article and is terminated because of lack of jurisdiction or improper venue, the plaintiff or, if he dies and the cause of action survives, the personal representative may commence a new action upon the same cause of action within ninety days after the termination of the original action or within the period otherwise allowed by this article, whichever is later, and the defendant may interpose any defense, counterclaim, or setoff which might have been interposed in the original action.

(2) This section shall be applicable to all actions which are first commenced in a federal court as well as those first commenced in the courts of Colorado or of any other state.

**Source: L. 86:** Entire article R&RE, p. 700, § 1, effective July 1.

**Editor's note:** This section is similar to former § 13-80-128 as it existed prior to 1986.

**ANNOTATION**

**Annotator's note.** Since § 13-80-111 is similar to former § 13-80-128 as it existed prior to the 1986 repeal and reenactment of this article, relevant cases construing that provision have been included with the annotations to this section.

**Purpose of section.** The remedial revival statute reflects a legislative intent to enable litigants to avoid hardships which might result from strict adherence to the provisions of statutes of limitations. *Soehner v. Soehner*, 642 P.2d 27 (Colo. App. 1981).

**Section inapplicable to wrongful death actions.** By its own terms, this section does not apply to wrongful death actions. *Ritter v. Aspen Skiing Corp.*, 519 F. Supp. 907 (D. Colo. 1981); *Phillips v. Beethe*, 679 P.2d 126 (Colo. App. 1984).

**And to actions under the Federal Arbitration Act,** as a result of preemption by 9 U.S.C. § 12. *Chilcott Entm't v. John G. Kinnard Co., Inc.*, 10 P.3d 723 (Colo. App. 2000).

**But does apply to medical malpractice claims.** This section applies to actions set forth in this article and medical malpractice is one of those claims. *Phillips v. Beethe*, 679 P.2d 126 (Colo. App. 1984).

**Statute should be liberally interpreted;** therefore, the term "a new action" should not be interpreted to mean only one new action. *Sharp Bros. Contr. v. Westvaco Corp.*, 817 P.2d 547 (Colo. App. 1991).

**Remedial revival statute tolls the running of the statute of limitations when the original action is terminated for lack of jurisdiction.** Failure to file a nonresident



cost bond, however, does not affect either subject matter jurisdiction or jurisdiction over the person and, therefore, the remedial revival statute was inapplicable to plaintiff's second complaint. *Nguyen v. Swedish Med. Ctr.*, 890 P.2d 255 (Colo. App. 1995).

**But the remedial revival statute does not toll the statute of limitations** where plaintiff's action is not timely filed because plaintiff attempted to pay the filing fees with an insufficient funds check. In such case, the action was not dismissed for lack of jurisdiction. *Broker House Int'l, Ltd. v. Bendelow*, 952 P.2d 860 (Colo. App. 1998).

**The remedial revival statute does not toll the statute of limitations** where plaintiff's complaint is dismissed due to a lack of capacity to sue, because, in such case, the action is not dismissed for lack of jurisdiction. *SMLL, L.L.C. v. Peak Nat'l Bank*, 111 P.3d 563 (Colo. App. 2005).

**This section contemplates only revival of an untimely claim when the previous dismissal resulted from a curable defect.** Because this section is not itself a source of subject matter jurisdiction, it cannot be used to revive a nonjusticiable claim. *W. Colo. Motors, LLC v. Gen. Motors*, 2019 COA 77, 444 P.3d 847.

Because the subject matter defect in plaintiff's original action could not be cured by refile, the statute did not apply. *W. Colo. Motors, LLC v. Gen. Motors*, 2019 COA 77, 444 P.3d 847.

**"Cause of action" as used in this section is ambiguous.** Because the statute is remedial in nature, it should be liberally

construed to effectuate its purpose of avoiding the hardships that would result from strict adherence to statutes of limitations and ensuring that cases are decided on the merits. *W. Colo. Motors, LLC v. Gen. Motors*, 2019 COA 77, 444 P.3d 847.

**This section should be applied to preserve a cause of action only when plaintiffs have pursued their claims diligently and defendants have knowledge of the claims.** *W. Colo. Motors, LLC v. Gen. Motors*, 2019 COA 77, 444 P.3d 847.

**Section does not apply to revive a claim against a defendant who was not a party to the original action.** *Grenillo v. Hansen*, 2020 COA 82, 467 P.3d 1286.

Plaintiff's claim for breach of contract could not be revived as the same cause of action when the original action sought only statutorily authorized injunctive relief. Plaintiff's failure to bring the breach of contract claim for over three years even though plaintiff was fully aware of the alleged breach showed a lack of diligence, and the substantive differences in the statutory and breach of contract claims deprived the defendant of notice of the breach of contract claim. *W. Colo. Motors, LLC v. Gen. Motors*, 2019 COA 77, 444 P.3d 847.

**Trial court properly dismissed case on statute of limitations grounds.** Trial court had subject matter jurisdiction over deceased defendant named in original complaint and personal jurisdiction over defendant after complaint was amended. Therefore, remedial revival statute could not

be invoked because case was not "terminated because of lack of jurisdiction or improper venue" within the meaning of the statute, rather it was dismissed based on the statute of limitations. *Currier v. Sutherland*, 218 P.3d 709 (Colo. 2009).

**Remedial revival statute cannot be invoked, and untimely amended complaints do not relate back to original complaint.** *Currier v. Sutherland*, 218 P.3d 709 (Colo. 2009).

### **13-80-112. When action survives death.**

If any person entitled to bring any action dies before the expiration of the time limited therefor and if the cause of action does by law survive, the action may be commenced by the personal representative of the deceased person at any time within one year after the date of death and not afterwards if barred by provision of this article.

**Source: L. 86:** Entire article R&RE, p. 701, § 1, effective July 1.

### **ANNOTATION**

**For inapplicability of this section to actions not abated or discontinued by plaintiff's death,** see *Barlew v. Hitzler*, 40

*Colo.* 109, 90 P. 90 (1907) (decided under former § 13-80-117).

### **13-80-113. New promise - effect of payment.**

No acknowledgment or promise shall be evidence of a new or continuing contract sufficient to take a case out of the operation of the statute of limitations, unless it is in writing signed by the party to be charged; but this section shall not alter the effect of a payment of principal or interest.

**Source: L. 86:** Entire article R&RE, p. 701, § 1, effective July 1.

**Editor's note:** This section is similar to former § 13-80-125 as it existed prior to 1986.

### **ANNOTATION**

**Law reviews.** For article, "A Victim of 'Permissive Counterclaims'", see 18 Dicta 83 (1941). For comment on Fastenau v. Asher, appearing below, see 24 Rocky Mt. L. Rev. 119 (1951).

**Annotator's note.** Since § 13-80-113 is similar to former § 13-80-125 as it existed prior to the 1986 repeal and reenactment of this article, relevant cases construing that provision have been included with the annotations to this section.

**This section affects only the mode of proof** and does not alter the substantive law. Van Diest v. Towle, 116 Colo. 204, 179 P.2d 984 (1947).

**This section applies only to actions in personam.** Fastenau v. Asher, 124 Colo. 161, 235 P.2d 587 (1951).

**The promise to pay must be express.** To remove the bar of the statute of limitations so that a debt otherwise barred may be recovered upon a new promise, there must be an express promise to pay it. Thomas v. Carey, 26 Colo. 485, 58 P. 1093 (1899).

**It must be a full recognition of the indebtedness and a promise to pay it.** Although, after a new promise, the action can be maintained upon the original consideration, recovery can only be had upon the new contract to pay, hence, it must have the necessary elements of a contract. It must be a full recognition of the indebtedness evidenced by the note, and a promise to pay that particular debt. Sears v. Hicklin, 3 Colo. App. 331, 33 P. 137 (1893).

**The debtor may impose conditions.** Where the debtor was under no legal

obligation whatever to pay the debt, whatever promise he made was entirely voluntary; and the authorities universally recognize his right to impose any condition which he might deem proper. Richardson v. Bricker, 7 Colo. 58, 1 P. 433, 49 Am. R. 344 (1883).

**This section does not interfere with general rule as to effect of payment.** This section clearly evidences the legislative intent not to interfere with the general rule that the payment of interest, before the running of the statute, removes the demand therefrom, and that proof of payment may be by parol. Lieske v. Swan, 93 Colo. 396, 26 P.2d 807 (1933).

**An offer in compromise is not an admission of the debt** so as to remove the bar of the statute. Van Diest v. Towle, 116 Colo. 204, 179 P.2d 984 (1947).

**Nor are references to debt only for purpose of identifying collateral.** References to a debt in correspondence about exchange of the collateral on the debt pursuant to a corporate reorganization did not constitute an acknowledgment of the debt, where the reference was made to the debt only for the purpose of identifying the collateral. Van Diest v. Towle, 116 Colo. 204, 179 P.2d 984 (1947).

**Alleged promise to pay a debt** is not evidence of a new or continuing contract sufficient to bar application of the statute of limitations unless it is in writing. An oral acknowledgment of an existing debt and forbearance to bring suit alone are insufficient to invoke equitable estoppel. Equitable estoppel requires evidence that the

defendant's actions adversely affected filing the plaintiff's claim. Samples-Ehrlich v. Simon, 876 P.2d 108 (Colo. App. 1994).

**Applied** in Berthoud Nat. Bank v. Dunn, 762 P.2d 759 (Colo. App. 1988); Mountainwood Condo. v. Cal-Colorado, 765 P.2d 1066 (Colo. App. 1988).

**13-80-114. Promise by one of parties in joint interest.**

No joint debtor, obligor, or his personal representative or successor shall lose the benefit of the provisions of this article so as to be chargeable by reason only of any acknowledgment, promise, or payment made by any other of them.

**Source: L. 86:** Entire article R&RE, p. 701, § 1, effective July 1.

**Editor's note:** This section is similar to former §§ 13-80-120 and 13-80-124 as they existed prior to 1986.

**ANNOTATION**

**Payments of one indorser of a promissory note operate only** to avoid the bar of the statute of limitations as to himself not as to a joint maker. Coulter v. Bank of

Clear Creek County, 18 Colo. App. 444, 72 P. 602 (1903); Torbit v. Heath, 11 Colo. App. 492, 53 P. 615 (1898) (decided under former § 13-80-124).

**13-80-115. Endorsement by payee - effect.**

Nothing in this article shall alter, take away, or lessen the effect of a payment of any principal or interest made by any person; but no endorsement or memorandum of any such payment, written or made upon any promissory note, bill of exchange, or other writing, by or on behalf of the party to whom such payment is made, or purports to be made, shall be deemed sufficient proof of the payment so as to take the case out of operation of the provisions of this article.

**Source: L. 86:** Entire article R&RE, p. 701, § 1, effective July 1.

**Editor's note:** This section is similar to former § 13-80-123 as it existed prior to 1986.

## ANNOTATION

**Annotator's note.** Since § 13-80-115 is similar to former § 13-80-123 as it existed prior to the 1986 repeal and reenactment of this article, relevant cases construing that provision have been included with the annotations to this section.

**This section establishes a rule of evidence** and not a rule of pleading. Meyer v. Binkleman, 5 Colo. 262 (1880); MacGinnis v. Pickett, 109 Colo. 169, 123 P.2d 410 (1942).

**It was not intended to lessen the effect of a payment,** but to require proof that a payment was in fact made, whenever it shall be relied upon to revive an action otherwise barred. Without such a requirement there would practically be no bar to an action upon a promissory note, for the simple indorsement of a credit without payment in fact, would always operate to revive the cause of action. Under this section, however, the plaintiff must not only state a subsisting cause of action, but he must prove such a cause. Meyer v. Binkleman, 5 Colo. 262 (1880); MacGinnis v. Pickett, 109 Colo. 169, 123 P.2d 410 (1942).

**A voluntary payment by the defendant who owes the principal debt,** or is bound for it, will stop the running of the statute. Nat'l State Bank v. Rowland, 1 Colo. App. 468, 29 P. 465 (1892); Adams v. Tucker, 6 Colo. App. 393, 40 P. 783 (1895); Dodger v. East, 100 Colo. 36, 64 P.2d 1270 (1937).

**Since it amounts to acknowledgment from which new promise is implied.** The

principle upon which a part payment by a debtor will prevent his availing himself of the bar of the statute is that such a payment amounts to an acknowledgment of the debt, and from an absolute acknowledgment the law implies a new promise founded upon the old consideration. Sears v. Hicklin, 3 Colo. App. 331, 33 P. 137 (1893).

**To pay subsisting debt then due.** The authorities generally declare that the new promise implied by a part payment is a promise to pay a subsisting debt then due; not a debt which might thereafter become due under the terms of the contract. Buckingham v. Orr, 6 Colo. 587 (1883).

**The mere indorsement of a partial payment upon a note will not** in and of itself toll the running of the statute of limitations. Christensen v. Hugh M. Woods Mercantile Co., 104 Colo. 403, 91 P.2d 999 (1934); MacGinnis v. Pickett, 109 Colo. 169, 123 P.2d 410 (1942).

**There must be payment and clear acknowledgment of additional debt.** In order to avert the bar of the statute of limitations a payment of a portion of an admitted debt must be made and accepted by the creditor and accompanied by circumstances amounting to an unqualified acknowledgment of more being due from which a promise must be inferred to pay the remainder. Holmquist v. Gilbert, 41 Colo. 113, 92 P. 232 (1907); Ferris v. Curtis, 53 Colo. 340, 127 P. 236 (1912).

**Payment must be voluntary and by the debtor to the creditor.** *Sears v. Hicklin*, 3 Colo. App. 331, 33 P. 137 (1893).

**For payment of interest being sufficient acknowledgment of debt**, see *Purdy v. Deprez*, 39 Colo. 68, 88 P. 972 (1906).

**Indorsement on note of amount standing to maker's credit on books of bank is ineffective.** The indorsement on the promissory note of a debtor to a banking corporation, without the assent of the maker, of a balance to the maker's credit standing on the books of the corporation, does not constitute a voluntary payment on the note, and is not effective to stop the running of the statute of limitations as to the note. *Nat'l*

*State Bank v. Rowland*, 1 Colo. App. 468, 29 P. 465 (1892).

**Indorsement of partial payment on note is insufficient.** "Generally speaking, the rule is well established that the mere indorsement of a partial payment upon a note will not in and of itself toll the running of the statute of limitations." *MacGinnis v. Pickett*, 109 Colo. 169, 123 P.2d 410 (1942).

**Burden of proof is upon plaintiff.** In an action on a promissory note the burden of proving part payment so as to remove the bar of the statute of limitations is upon the plaintiff. *Manby v. Sweet Inv. Co.*, 78 Colo. 371, 242 P. 51 (1925); *MacGinnis v. Pickett*, 109 Colo. 169, 123 P.2d 410 (1942).

### **13-80-116. Action against joint debtors or obligors.**

If, in an action against joint debtors or obligors, the plaintiff is barred by the provisions of this article as to one or more of the debtors or obligors, but is entitled to recover against any other of them by virtue of a new acknowledgment, promise, or payment, the plaintiff shall be entitled to proceed as against that defendant.

**Source: L. 86:** Entire article R&RE, p. 701, § 1, effective July 1.

**Editor's note:** This section is similar to former § 13-80-121 as it existed prior to 1986.

### **13-80-117. No dismissal for nonjoinder.**

In an action on contract, it shall not be a defense that the plaintiff failed to join a person against whom claim is barred by this article.

**Source: L. 86:** Entire article R&RE, p. 701, § 1, effective July 1.

**Editor's note:** This section is similar to former § 13-80-122 as it existed prior to 1986.

**13-80-118. Absence or concealment of a party subject to suit.**

If, when a cause of action accrues against a person, the person is out of this state and not subject to service of process or has concealed himself, the period limited for the commencement of the action by any statute of limitations shall not begin to run until he comes into this state or while he is so concealed. If, after the cause of action accrues, he departs from this state and is not subject to service of process or conceals himself, the time of his absence while not subject to service of process or the time of his concealment while not subject to service of process shall not be computed as a part of the period within which the action must be brought.

**Source: L. 86:** Entire article R&RE, p. 701, § 1, effective July 1.

**Editor's note:** This section is similar to former § 13-80-126 as it existed prior to 1986.

**ANNOTATION**

**Law reviews.** For article, "Enforcement of Justice Court Judgments", see 12 Dicta 274 (1935). For note, "Does Physical Non-Presence Toll the Statute of Limitations?", see 13 Rocky Mt. L. Rev. 152 (1941). For article, "Another Decade of Colorado Conflicts", see 33 Rocky Mt. L. Rev. 139 (1961).

**Annotator's note.** Since § 13-80-118 is similar to former § 13-80-126 as it existed prior to this 1986 repeal and reenactment of this article, relevant cases construing that provision have been included with the annotations to this section.

**This section tolls statute of limitations until defendant enters Colorado.** A suit on

a foreign judgment based upon a cause of action accruing more than six years prior to the filing of an action thereon in Colorado, and more than three months after the entry thereof, would be barred by the provisions of § 13-80-121, except for the provisions of this section, which tolled the running of the statute until defendant came into the state of Colorado. *Blackmon v. Klein*, 144 Colo. 461, 357 P.2d 91 (1960).

**Plaintiff must show statute has been tolled.** The statute of limitations having been pleaded in bar and prima facie appearing to be a bar from the note set out in the complaint, the burden shifted to plaintiff to establish that the statute had been tolled.

Smith v. Kent Oil Co., 128 Colo. 80, 261 P.2d 149 (1953); Norton v. Dartmouth Skis, Inc., 147 Colo. 436, 364 P.2d 866 (1961).

**This section is limited in its provisions to causes of action in personam,** and is wholly inapplicable to actions in rem or actions quasi in rem. Fastenau v. Asher, 124 Colo. 161, 235 P.2d 587 (1951).

**This section specifically fixes time when period of limitation begins to run.** Jones v. O'Connell, 87 Colo. 103, 285 P. 762 (1930).

**This section is clearly a statute of limitations.** Jones v. O'Connell, 87 Colo. 103, 285 P. 762 (1930).

**Mere fact that person moved to another state did not constitute an effort to conceal himself or herself in an effort to avoid service.** McGee v. Hardina, 140 P.3d 165 (Colo. App. 2005).

**It applies only to absence from state of Colorado.** This section applies to absence from the state of Colorado, not to absence from another state or from a territory or foreign country. If the section were intended to cover the latter situation, it would have

said "out of the state, territory, or foreign country where the cause of action accrued", and "depart from such state, territory, or foreign country". Simon v. Wilnes, 97 Colo. 78, 47 P.2d 406 (1935)(concurring opinion).

**Amendment to former § 13-80-126 not retroactive.** Because this section is a tolling statute and is remedial in nature, it should not be given retroactive application; thus, in any suit where the cause of action accrued prior to the effective date of the amendment of the former section, the action should be controlled by this section as it read prior to the amendment. United Bank of Denver Nat'l Ass'n v. Wright, 660 P.2d 510 (Colo. App. 1983).

**This section does not toll limitation period for wrongful death action.** The Colorado wrongful death act is not a "statute of limitations but a statute of creation." Thus this action will not toll the two-year period in which one has to commence a wrongful death action. Nelson v. Hall, 573 F. Supp. 1097 (D. Colo. 1983).

**Applied** in Kendall v. Costa, 659 P.2d 715 (Colo. App. 1982).

### **13-80-119. Damages sustained during commission of a felonious act or in flight from the commission of a felonious act.**

(1) No person, his or her estate, or his or her personal representative shall have a right to recover damages sustained during the commission of or during immediate flight from an act that is defined by any law of this state or the United States to be a felony, if the conditions stipulated in this section apply.

(2) (a) The court shall dismiss the action for damages and award attorney fees and costs to the person against whom the action was brought if the person bringing the action, on whose behalf an action has been brought, or in the case of a wrongful death action, the decedent, has



been convicted of the felony or has been adjudicated a delinquent as a result of the commission of the act, unless the damage was caused by the willful and deliberate act of another person; except that such exception shall not apply if the person who caused the injuries acted:

(I) Under a reasonable belief that physical force was reasonable and appropriate to prevent injury to himself or herself or to others, using a degree of force that he or she reasonably believed necessary for that purpose; or

(II) Under a reasonable belief that physical force was reasonable and appropriate to prevent the commission of a felony, using a degree of force that he or she reasonably believed necessary for that purpose; or

(III) As a peace officer, as such person is described in section 16-2.5-101, C.R.S., acting within the scope of the officer's employment and acting pursuant to section 18-1-707, C.R.S.

(a.5) The court shall dismiss the action for damages and award attorney fees and costs to the person against whom the action was brought if the person against whom the action was brought is found not guilty of criminal charges for causing the injuries sustained by the person who committed the felony or act that is defined as a felony, or in the case of a wrongful death action for causing the decedent's death, as a result of the commission of the act, unless the damage was caused by the willful and deliberate act of another person; except that such exception shall not apply if the person who caused the injuries acted:

(I) Under a reasonable belief that physical force was reasonable and appropriate to prevent injury to himself or herself or to others, using a degree of force that he or she reasonably believed necessary for that purpose; or

(II) Under a reasonable belief that physical force was reasonable and appropriate to prevent the commission of a felony, using a degree of force that he or she reasonably believed necessary for that purpose; or

(III) As a peace officer, as such person is described in section 16-2.5-101, C.R.S., acting within the scope of the officer's employment and acting pursuant to section 18-1-707, C.R.S.

(a.6) For purposes of paragraph (a.5) of this subsection (2), a finding of not guilty of criminal charges does not include a finding of not guilty by reason of insanity or a finding of not guilty by reason of impaired mental condition.

(b) If paragraph (a.5) of this subsection (2) does not apply and if the person bringing the action for damages or on whose behalf an action has been brought is not convicted of a felony or adjudicated a delinquent as a result of the commission of the act or in the case of a wrongful death action, the court shall submit to the jury hearing the damages claim the issue of whether or not, by a preponderance of the evidence, the person committed an act that is defined by any law of this state or the United States to be a felony. The court shall dismiss the action and award

attorney fees and costs to the person against whom the action was brought if the court or jury determines that the damage was sustained during the commission of or during immediate flight from an act that is defined by any law of this state or the United States to be a felony, unless the damage was caused by the willful and deliberate act of another person; except that such exception shall not apply if the person who caused the injury acted:

(I) Under a reasonable belief that physical force was reasonable and appropriate to prevent injury to himself or herself or to others, using a degree of force that he or she reasonably believed necessary for that purpose; or

(II) Under a reasonable belief that physical force was reasonable and appropriate to prevent the commission of a felony, using a degree of force that he or she reasonably believed necessary for that purpose; or

(III) As a peace officer, as such person is described in section 16-2.5-101, C.R.S., acting within the scope of the officer's employment and acting pursuant to section 18-1-707, C.R.S.

**Source:** **L. 87:** Entire section added, p. 568, § 7, effective July 1. **L. 93:** Entire section amended, p. 464, § 1, effective July 1. **L. 98:** Entire section amended, p. 386, § 1, effective August 5. **L. 2003:** (2)(a)(III), (2)(a.5)(III), and (2)(b)(III) amended, p. 1620, § 32, effective August 6.

## ANNOTATION

**The legislative intent underlying the statute** here at issue is to allow a citizen to prevent the commission of a felony, or flight by the felon, by the use of physical force, so long as the citizen reasonably believes that such use is reasonable and appropriate and the degree of force used is reasonable without incurring liability from any injury sustained by the other party. *Molnar v. Law*, 776 P.2d 1156 (Colo. App. 1989).

**It is irrelevant whether the injury is sustained** as the result of the deliberate application of reasonable force or by the negligent use of physical force that is otherwise reasonable and appropriate under

the circumstances. *Molnar v. Law*, 776 P.2d 1156 (Colo. App. 1989).

**The issue of reasonableness of defendant's actions under the statute was one for resolution by the jury.** *Molnar v. Law*, 776 P.2d 1156 (Colo. App. 1989).

**It is unreasonable and contrary to legislative intent** to interpret the statute to mean protection for the citizen ceased at the very moment that his actions were successful in causing the cessation of the unlawful actions by the other party. Until the incident is brought to a close, it cannot be said, at least as a matter of law, that the citizen is not still in the act of preventing

injury to himself or others or of preventing the commission of a felony. *Molnar v. Law*, 776 P.2d 1156 (Colo. App. 1989).

**Court did not abuse its discretion in granting attorney fees** to the defendant since the requirements of this section were satisfied. *Molnar v. Law*, 776 P.2d 1156 (Colo. App. 1989).

**Dismissal of state common-law claims and award of attorney fees based on this section inappropriate** where no finding was made that person acted in reasonable belief that actions were required to prevent the commission of a felony. *Crouse v. City of Colo. Springs*, 766 P.2d 655 (Colo. 1988) (decided under former § 13-80-129).

## ARTICLE 81

### Limitations - Persons Under Disability

- |              |                                      |            |                                      |
|--------------|--------------------------------------|------------|--------------------------------------|
| 13-81-101.   | Definitions.                         | 13-81-105. | Failure of trustee to take action.   |
| 13-81-101.5. | Appointment of legal representative. | 13-81-106. | Removal of disability - effect.      |
| 13-81-102.   | Right of legal representative.       | 13-81-107. | Action prosecuted to final decision. |
| 13-81-103.   | Statute begins to run - when.        |            |                                      |
| 13-81-104.   | Right of trustee.                    |            |                                      |

#### **13-81-101. Definitions.**

As used in this article, unless the context otherwise requires:

(1) "Applicable statute of limitations" means any statute of limitations which would apply in a similar case to a person not a person under disability.

(2) "Legal representative" means a guardian, conservator, personal representative, executor, or administrator duly appointed by a court having jurisdiction of any person under disability or his estate.

(3) "Person under disability" means any person who is a minor under eighteen years of age, a mental incompetent, or a person under other legal disability and who does not have a legal guardian.

(4) "Take action" means the bringing, commencement, maintenance, or prosecution of any action, suit, or proceeding to enforce any right, or the assertion of any such right in any other manner, affirmatively or by way of defense. "Take action" shall also include exercising the right to elect to receive a lump-sum payment on behalf of the plaintiff in a civil action for purposes of

section 13-64-205 (1)(f) when the legal representative determines that the election is in the best interest of the plaintiff.

**Source:** **L. 39:** p. 449, § 1. **CSA:** C. 102, § 28. **CRS 53:** § 87-3-1. **C.R.S. 1963:** § 87-2-1. **L. 76:** (3) amended, p. 528, § 3, effective May 27. **L. 77:** (3) amended, p. 818, § 3, effective July 1. **L. 86:** (2) and (3) amended, p. 701, § 3, effective July 1. **L. 2007:** (4) amended, p. 172, § 3, effective August 3.

**Cross references:** (1) For use of the term "mentally or mental incompetent", see § 27-10.5-135.

(2) For the legislative declaration contained in the 2007 act amending subsection (4), see section 1 of chapter 49, Session Laws of Colorado 2007.

#### ANNOTATION

**Law reviews.** For article, "What Constitutes 'Benefits' for Urban Drainage Projects", see 51 Den. L. J. 551 (1974). For article, "1988 Update on Colorado Tort Reform Legislation — Part I", see 17 Colo. Law. 1719 (1988).

**"Legal representative" does not include a natural parent who has not been court appointed as guardian.** Tenney v. Flaxer, 727 P.2d 1079 (Colo. 1986).

**Each alternative part of subsection (3) is left intact and given full effect and**

construed in pari materia with § 13-80-105. Haberkorn by Haberkorn v. ROHM-GMBH, 709 P.2d 44 (Colo. App. 1985).

**Nonresidence of plaintiff standing alone does not constitute a legal disability** within the meaning of this article. Chuchuru v. Chutchurru, 185 F.2d 62 (10th Cir. 1950).

**Applied** in McClanahan v. Am. Gilsonite Co., 494 F. Supp. 1334 (D. Colo. 1980); Adams County Sch. Dist. No. 1 v. District Court, 199 Colo. 284, 611 P.2d 963 (1980).

#### **13-81-101.5. Appointment of legal representative.**

Any real party in interest, including the party against whom an action may be brought, may apply to the court for the appointment of a legal representative.

**Source:** **L. 86:** Entire section added, p. 702, § 4, effective July 1.

## ANNOTATION

**Law reviews.** For article, "1986 Colorado Tort Reform Legislation", see 15 Colo. Law. 1363 (1986).

### **13-81-102. Right of legal representative.**

(1) When there is a legal representative appointed for a person under disability, all rights to take action, except rights of the person under disability against the legal representative himself or herself, vest in said legal representative for the benefit of the person under disability, and the legal representative has authority to take action thereon in his or her own name.

(2) A legal representative may:

(a) Elect, on behalf of a plaintiff in a civil action, a form of funding of a judgment for periodic payments, as described in section 13-64-207;

(b) Elect to receive the immediate payment to the plaintiff of the present value of the future damage award in a lump-sum amount, in lieu of periodic payments;

(c) Petition a court of competent jurisdiction to establish a disability trust pursuant to section 15-14-412.8, C.R.S., funded by the proceeds of a settlement or judgment received by, or on behalf of, a person under disability who is under sixty-five years of age and who is disabled, as defined in Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1382c (a)(3); or

(d) Petition a court of competent jurisdiction to establish a pooled trust account pursuant to section 15-14-412.9, C.R.S., funded by the proceeds of a settlement or judgment received by, or on behalf of, a person under disability who is disabled, as defined in Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1382c (a)(3).

**Source:** L. 39: p. 449, § 2. **CSA:** C. 102, § 29. **CRS 53:** § 87-3-2. **C.R.S. 1963:** § 87-2-2. **L. 2007:** Entire section amended, p. 172, § 4, effective August 3.

**Cross references:** For the legislative declaration contained in the 2007 act amending this section, see section 1 of chapter 49, Session Laws of Colorado 2007.

## ANNOTATION

-1549-

**Law reviews.** For article, "What Projects", see 51 Den. L.J. 551 (1974).  
Constitutes 'Benefits' for Urban Drainage

**13-81-103. Statute begins to run - when.**

(1) When in any of the statutes of the state of Colorado a limitation is fixed upon the time within which a right of action, right of redemption, or any other right may be asserted either affirmatively or by way of defense or an action, suit, or proceeding based thereon may be brought, commenced, maintained, or prosecuted and the true owner of said right is a person under disability at the time such right accrues, then:

(a) If such person under disability is represented by a legal representative at the time the right accrues, or if a legal representative is appointed for such person under disability at any time after the right accrues and prior to the termination of such disability, the applicable statute of limitations shall run against such person under disability in the same manner, for the same period, and with the same effect as it runs against persons not under disability. Such legal representative, or his successor in trust, in any event shall be allowed not less than two years after his appointment within which to take action on behalf of such person under disability, even though the two-year period expires after the expiration of the period fixed by the applicable statute of limitations.

(b) If the person under disability dies before the termination of his disability and before the expiration of the period of limitation in paragraph (a) of this subsection (1) and the right is one which survives to the executor or administrator of a decedent, such executor or administrator shall take action within one year after the death of such person under disability;

(c) If the disability of any person is terminated before the expiration of the period of limitation in paragraph (a) of this subsection (1) and no legal representative has been appointed for him, such person shall be allowed to take action within the period fixed by the applicable statute of limitations or within two years after the removal of the disability, whichever period expires later.

(2) After the expiration of the period fixed in paragraph (a), (b), or (c) of subsection (1) of this section, neither the person under disability, nor his legal representative, nor anyone for him shall be permitted or allowed to take action based on any such right.

**Source: L. 39:** p. 449, § 3. **CSA:** C. 102, § 30. **CRS 53:** § 87-3-3. **C.R.S. 1963:** § 87-2-3.

**ANNOTATION**

**Law reviews.** For article, "Due Process in Involuntary Civil Commitment and Incompetency Adjudication Proceedings: Where Does Colorado Stand?", see 46 Den. L.J. 516 (1969). For note, "Medical Products and Services Liability: Public Policy Requires Legislative Innovation and Judicial Restraint", see 53 Den. L. J. 387 (1976). For article, "1988 Update on Colorado Tort Reform Legislation — Part I", see 17 Colo. Law. 1790 (1988).

**This section specifically applies to all limitations of time** contained in any of the statutes of the state of Colorado. Ball v. Indus. Comm'n, 30 Colo. App. 583, 503 P.2d 1040 (1972).

**Section does not affect jurisdiction.** The provisions of subsection (1)(c) are not intended to affect the jurisdiction of a court to act, but rather are intended as a statutory toll to statutes of limitations. In re Estate of Daigle, 634 P.2d 71 (Colo. 1981).

**Statute does not run without legal representative.** If a person under a disability is without a "legal representative", statutes of limitation do not run against him. Price v. Sommermeyer, 41 Colo. App. 147, 584 P.2d 1220 (1978), aff'd, 198 Colo. 548, 603 P.2d 135 (1979); Barnhill v. Pub. Serv. Co., 649 P.2d 716 (Colo. App. 1982), aff'd, 690 P.2d 1248 (Colo. 1984); Nicola v. City of Grand Junction, 2023 COA 111, 544 P.3d 120.

Definition of "legal representative" includes a guardian appointed by a court having jurisdiction of any person under disability, but does not include a natural

parent not so appointed. Tenney v. Flaxer, 727 P.2d 1079 (Colo. 1986).

**Once a defendant raises the statute of limitations as an affirmative defense, the burden shifts to the plaintiff to show that the statute has been tolled by proving that no legal representative had been appointed for him.** Goldsmith v. Learjet, Inc., 90 F.3d 1490 (10th Cir. 1996).

**The time limitation of § 8-53-119 is tolled by this section.** Ball v. Indus. Comm'n, 30 Colo. App. 583, 503 P.2d 1040 (1972).

**The time limitation of § 13-21-204 is tolled by this statute.** The statute of limitations for wrongful death actions is not a "nonclaim statute" which prohibits filing of a lawsuit after a specific period of time, and, therefore, it is subject to the tolling provision of this section for persons under a disability. Pub. Serv. Co. v. Barnhill, 690 P.2d 1248 (Colo. 1984).

**Tolling provisions of this section apply** to both the limitation and repose periods applicable to former § 13-80-105 (now § 13-80-102) medical malpractice claims. Southard v. Miles, 714 P.2d 891 (Colo. 1986).

**Subsection (1)(b) applies only when** a person who was under a disability at the time of their death (1) had a legal representative and (2) died after the expiration of the applicable statute of limitations but less than two years after the legal representative was appointed. Nicola v. City of Grand Junction, 2023 COA 111, 544 P.3d 120.

**If the person under a disability dies before the applicable statute of limitations expires,** § 13-80-112, rather than this section, applies. *Nicola v. City of Grand Junction*, 2023 COA 111, 544 P.3d 120.

**Minors are "persons under disability" for purposes of section.** *McClanahan v. Am. Gilsonite Co.*, 494 F. Supp. 1334 (D. Colo. 1980); *Tenney v. Flaxer*, 727 P.2d 1079 (Colo. 1986); *Estate of Stevenson v. Hollywood Bar*, 832 P.2d 718 (Colo. 1992).

**The statute of limitations begins to run when a minor's disability is removed** and the applicable statute of limitations is the longer of (1) the full length of the statute of limitations normally accorded an accident victim, or (2) two years from the victim's eighteenth birthday. *Kinslow v. Mohammadi*, 2024 CO 19, 546 P.3d 130.

**If workmen's compensation claimant was under disability at time his right to compensation occurred,** and continued to be under disability at time he filed petition to reopen claim, the statute of limitations could not run against employee for whom a legal representative had not been appointed. *Jaimes v. Brookhart Lumber Co.*, 727 P.2d 1119 (Colo. App. 1986).

**Industrial commission was not proper forum in which to raise or decide the issue** of whether workmen's compensation claimant was under a disability for purposes of tolling workmen's compensation statute of limitations. An interested person must petition the court for a specific finding as to the existence of a legal disability. *James v. Brookhart Lumber Co.*, 727 P.2d 1119 (Colo. App. 1986).

**For claim of mental incompetent for injuries sustained as result of medical malpractice** the medical negligence statute of limitations is tolled until mental incompetency is removed or until legal representative is appointed, in which event action must be filed within two years. *Tenney v. Flaxer*, 727 P.2d 1079 (Colo. 1986).

**For excluding § 13-80-101 et seq. from the operation of this section,** see *Johnson v. Dodrill*, 265 F. Supp. 243 (D. Colo. 1967).

**This statute, which tolls statute of limitations for persons under disability,** does not apply to the notice of claim provisions of the Colorado Governmental Immunity Act. *McMahon v. Denver Water Bd.*, 780 P.2d 28 (Colo. App. 1989); *Brown v. Teitelbaum*, 830 P.2d 1081 (Colo. App. 1991); *Hergenreter v. Morgan County Sch. Dist.*, 888 P.2d 346 (Colo. App. 1994).

**Substantial compliance with the 180-day notice provision is a condition precedent to any "action" brought under the Governmental Immunity Act,** therefore, the time for filing minors' notice is not extended pursuant to the tolling provisions of this section until two years after the minors' legal representative is appointed. *Brown v. Teitelbaum*, 830 P.2d 1081 (Colo. App. 1991).

**This statute was applicable** to claims for negligence and outrageous conduct arising from alleged sexual assault on minors. Plaintiffs' admissions of emotional upset at time of assaults and knowledge that defendant's actions were improper and illegal indicated that plaintiffs were on



adequate notice of the essential elements of the tort when plaintiffs reached the age of majority. *Cassidy v. Smith*, 817 P.2d 555 (Colo. App. 1991).

**There is no conflict between the provisions of this section and § 13-22-101 (1)(c).** This section addresses how the statute of limitations applies to a suit while the other section addresses how a suit may be brought. *Elgin v. Bartlett*, 994 P.2d 411 (Colo. 1999).

**A genuine issue of material fact as to whether the statute of limitations was tolled because husband was "under disability" existed, and thus summary**

**judgment on husband's claim against the sheriff was improper.** *Terry v. Sullivan*, 58 P.3d 1098 (Colo. App. 2002).

**Derivative claims are subject to the same defenses available to the underlying claim; nevertheless, derivative claims are distinct causes of action** separate from the claims of the injured person, and statute of limitations is not tolled for a derivative claim based on the tolling of the underlying claim. *Terry v. Sullivan*, 58 P.3d 1098 (Colo. App. 2002).

**Applied** in *Adams County Sch. Dist. No. 1 v. District Court*, 199 Colo. 284, 611 P.2d 963 (1980).

#### **13-81-104. Right of trustee.**

If by virtue of any agreement, trust indenture, will, or other instrument in writing a trustee or other representative is or has been designated and appointed for any such person under disability and by the terms of such agreement, trust indenture, will, or other instrument in writing said trustee or other representative is vested with the right and power to take action, then the right to take action for any right which a person under disability may have arising in any way from said trust or agency shall vest in the trustee or other representative, and the applicable statute of limitations shall run against such person under disability and against such trustee or other representative as to all rights to take such action in the same manner, for the same period, and with the same effect as it runs against persons not under disability. After the expiration of the period fixed by such applicable statute of limitations, neither the person under disability, nor his trustee or other representative, nor anyone for him shall be permitted or allowed to take action based on any such right.

**Source: L. 39:** p. 450, § 4. **CSA:** C. 102, § 31. **CRS 53:** § 87-3-4. **C.R.S. 1963:** § 87-2-4.

#### **13-81-105. Failure of trustee to take action.**

When a legal representative, or trustee, or other representative appointed under any agreement, trust indenture, will, or other instrument in writing has been duly appointed for any person under

disability and such legal representative, or trustee, or other representative does not promptly, after demand therefor by the person under disability or anyone for him, take action, then such person under disability by next friend may take action before the expiration of the periods fixed in this article for the taking of such action by any person under disability, or his legal representative, or trustee, or other representative, but not thereafter.

**Source: L. 39:** p. 451, § 5. **CSA:** C. 102, § 32. **CRS 53:** § 87-3-5. **C.R.S. 1963:** § 87-2-5.

#### **13-81-106. Removal of disability - effect.**

If before the expiration of the period fixed by the applicable statute of limitations the disability of any person under disability is removed, the fact of such removal shall not in any way affect or stop the running of the applicable statute of limitations, except as provided in section 13-81-103 (1)(c).

**Source: L. 39:** p. 451, § 6. **CSA:** C. 102, § 33. **CRS 53:** § 87-3-6. **C.R.S. 1963:** § 87-2-6.

### **ANNOTATION**

**Applied** in *In re Estate of Daigle*, 634 P.2d 71 (Colo. 1981).

#### **13-81-107. Action prosecuted to final decision.**

If any action or proceeding is begun within the period fixed by the applicable statute of limitations or the periods provided for in this article, then such action or proceeding may be prosecuted to final decision notwithstanding the fact that the period of limitation shall expire after the commencement and during the prosecution of such action or proceeding.

**Source: L. 39:** p. 451, § 7. **CSA:** C. 102, § 34. **CRS 53:** § 87-3-7. **C.R.S. 1963:** § 87-2-7.

## **ARTICLE 82**

### **Uniform Conflict of Laws - Limitation Periods**

|            |                                             |            |                                                       |
|------------|---------------------------------------------|------------|-------------------------------------------------------|
| 13-82-101. | Short title.                                | 13-82-105. | Rules applicable to computation of limitation period. |
| 13-82-102. | Uniformity of application and construction. | 13-82-106. | Unfairness.                                           |
| 13-82-103. | Definitions.                                | 13-82-107. | Existing and future claims.                           |
| 13-82-104. | Conflict of laws - limitation periods.      |            |                                                       |

**13-82-101. Short title.**

This article shall be known and may be cited as the "Uniform Conflict of Laws - Limitations Act".

**Source: L. 84:** Entire article added, p. 477, § 1, effective July 1.

**ANNOTATION**

|                                                                               |                    |                                                        |
|-------------------------------------------------------------------------------|--------------------|--------------------------------------------------------|
| <b>This article effectively treats limitation periods as substantive law.</b> | <b>Mtn. States</b> | <b>Adjustment v. Cooke, 2016 COA 80, 412 P.3d 819.</b> |
|-------------------------------------------------------------------------------|--------------------|--------------------------------------------------------|

**13-82-102. Uniformity of application and construction.**

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

**Source: L. 84:** Entire article added, p. 477, § 1, effective July 1.

**ANNOTATION**

|                                                                                                                                           |                                                                                                                  |
|-------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|
| <b>Neither § 13-80-110 nor the Uniform Conflict of Laws - Limitations Act (UCL-LA) is more specific than the other.</b>                   | <b>order to read one as an exception to the other. Jenkins v. Pan. Canal Ry. Co., 208 P.3d 238 (Colo. 2009).</b> |
| <b>Because each statute uses different factors to assign a limitations period, the court is prevented from directly comparing them in</b> | <b>Because it was enacted more recently, § 13-80-110 and not the UCL-LA, controls.</b>                           |
|                                                                                                                                           | <b>Based on the general assembly's prescribed</b>                                                                |

rules of statutory construction, because the conflicts between the statutes cannot be resolved on specificity and the borrowing statute is the more recent enactment, the

borrowing statute applies to the plaintiffs' claims. *Jenkins v. Pan. Canal Ry. Co.*, 208 P.3d 238 (Colo. 2009).

### **13-82-103. Definitions.**

As used in this article, unless the context otherwise requires:

(1) "Claim" means a right of action that may be asserted in a civil action or proceeding and includes a right of action created by statute.

(2) "State" means a state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country, or a political subdivision of any of them.

**Source: L. 84:** Entire article added, p. 477, § 1, effective July 1.

### **13-82-104. Conflict of laws - limitation periods.**

(1) Except as provided in section 13-82-106, if a claim is substantively based:

(a) Upon the law of one other state, the limitation period of that state applies; or

(b) Upon the law of more than one state, the limitation period of one of those states chosen by the law of conflict of laws of this state applies.

(2) The limitation period of this state applies to all other claims.

**Source: L. 84:** Entire article added, p. 477, § 1, effective July 1.

### **ANNOTATION**

**Applied** in *Brown v. Globe Union, Div. of Johnson Controls*, 661 F. Supp. 1188 (D.

Colo. 1987); *Mtn. States Adjustment v. Cooke*, 2016 COA 80, 412 P.3d 819.

**13-82-105. Rules applicable to computation of limitation period.**

If the statute of limitations of another state applies to the assertion of a claim in this state, the other state's relevant statutes and other rules of law governing tolling and accrual apply in computing the limitation period, but its statutes and other rules of law governing conflict of laws do not apply.

**Source: L. 84:** Entire article added, p. 478, § 1, effective July 1.

**13-82-106. Unfairness.**

If the court determines that the limitation period of another state applicable under sections 13-82-104 and 13-82-105 is substantially different from the limitation period of this state and has not afforded a fair opportunity to sue upon or imposes an unfair burden in defending against the claim, the limitation period of this state applies.

**Source: L. 84:** Entire article added, p. 478, § 1, effective July 1.

**ANNOTATION**

**Where length of foreign government's statute of limitations was not so fundamentally unfair or unjust** as to be repugnant to Colorado's public policy, section does not provide a basis for non-recognition of a final, conclusive foreign judgment. *Milhoux v. Linder*, 902 P.2d 856 (Colo. App. 1995).

**The plain language of this section limits its applicability to cases in which a court determines under the Uniform Conflict of Laws-Limitations Act (and not § 13-80-110)** that a claim is barred by the limitations period of another state. *Jenkins v. Haymore*, 208 P.3d 265 (Colo. App. 2007), *aff'd*, 208 P.3d 238 (Colo. 2009).

**Contractual choice-of-law provision** was clear and unambiguous that the state in which plaintiff's predecessor in interest was headquartered when the contract was executed was the parties' designation as their choice-of-law state. *Mtn. States Adjustment v. Cooke*, 2016 COA 80, 412 P.3d 819.

The fact that a contractual choice-of-law provision does not include words such as "shall", "exclusively", or "only" does not necessarily make the provision permissive; no specific language is required to make such a provision mandatory. *Mtn. States Adjustment v. Cooke*, 2016 COA 80, 412 P.3d 819.

**13-82-107. Existing and future claims.**

(1) This article applies to claims:

(a) Accruing after July 1, 1984; or

(b) Asserted in a civil action or proceeding more than one year after July 1, 1984, but it does not revive a claim barred before July 1, 1984.

**Source: L. 84:** Entire article added, p. 478, § 1, effective July 1.

**PRIORITY OF ACTIONS**

**ARTICLE 85**

**Priority of Certain Civil Actions**

|            |                           |            |                             |
|------------|---------------------------|------------|-----------------------------|
| 13-85-101. | Legislative declaration.  | 13-85-104. | Appellate review of certain |
| 13-85-102. | Definitions.              |            | actions entitled to         |
| 13-85-103. | Civil actions entitled to |            | priority.                   |
|            | priority.                 |            |                             |

**13-85-101. Legislative declaration.**

The general assembly hereby determines, finds, and declares that traffic congestion and other transportation difficulties in the Denver metropolitan area seriously threaten the public health and welfare. In an effort to reduce air pollution and stimulate the economic development of the Denver metropolitan area, the general assembly has directed the regional transportation district to proceed with the planning, construction, and operation of a fixed guideway mass transit system. Since the success of the mass transit system depends on its prompt construction and commencement of operation, the general assembly finds that it is necessary to avoid any possible delays in such construction and operation. To that end, the general assembly further finds that the trial of lawsuits arising out of the planning, development, financing, or construction of these projects should be given priority in the district and appellate courts of this state.

**Source: L. 88:** Entire article added, p. 628, § 1, effective July 1. **L. 93:** Entire section amended, p. 1775, § 34, effective June 6.

#### **13-85-102. Definitions.**

As used in this article, unless the context otherwise requires:

(1) "Fixed guideway mass transit system" means the fixed guideway mass transit system authorized by section 32-9-107.5, C.R.S.

(2) Repealed.

(3) "Regional transportation district" means the regional transportation district established by article 9 of title 32, C.R.S.

(4) Repealed.

**Source: L. 88:** Entire article added, p. 628, § 1, effective July 1. **L. 94:** (2) and (4) repealed, p. 1325, § 5, effective May 25.

#### **13-85-103. Civil actions entitled to priority.**

The trial of all civil actions pertaining to or arising out of the planning, development, financing, or construction of the mass transportation system in the Denver metropolitan area, or any election pertaining to said project, or any action against or pertaining to the authority of the regional transportation district to plan, develop, finance, or construct said system shall be entitled to priority in the county and district courts of this state.

**Source: L. 88:** Entire article added, p. 629, § 1, effective July 1. **L. 93:** Entire section amended, p. 1776, § 35, effective June 6. **L. 94:** Entire section amended, p. 1325, § 6, effective May 25.

#### **13-85-104. Appellate review of certain actions entitled to priority.**

Appellate review in the district court, court of appeals, and supreme court of those actions entitled to priority pursuant to section 13-85-103 shall be entitled to priority in said courts.

**Source: L. 88:** Entire article added, p. 629, § 1, effective July 1.

## **WITNESSES**

### **ARTICLE 90**

#### **Witnesses**

|                              |                                                                                                           |                                                                                         |                                                  |
|------------------------------|-----------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|--------------------------------------------------|
| PART 1<br>GENERAL PROVISIONS |                                                                                                           | 13-90-111.                                                                              | Power of court to enforce attendance. (Repealed) |
| 13-90-101.                   | Who may testify - interest.                                                                               | 13-90-112.                                                                              | Power to enforce subpoena duces tecum.           |
| 13-90-101.5.                 | Remote testimony by forensic scientists.                                                                  | 13-90-113.                                                                              | Interpreters - compensation.                     |
| 13-90-102.                   | Testimony concerning oral statements made by person incapable of testifying - when allowed - definitions. | 13-90-114.                                                                              | Paid by state.                                   |
|                              |                                                                                                           | 13-90-115.                                                                              | Service of subpoena.                             |
|                              |                                                                                                           | 13-90-116.                                                                              | Examination of party to record by adverse party. |
| 13-90-103.                   | Book account, how identified. (Repealed)                                                                  | 13-90-117.                                                                              | Affirmation - form - perjury.                    |
|                              |                                                                                                           | 13-90-117.5.                                                                            | Oath or affirmation taken by a child.            |
| 13-90-104.                   | Conversation of deceased partner.                                                                         | 13-90-118.                                                                              | Witness immunity.                                |
| 13-90-105.                   | Incompetent not restored by release.                                                                      | 13-90-119.                                                                              | Privilege for newsperson.                        |
| 13-90-106.                   | Who may not testify.                                                                                      | PART 2<br>APPOINTMENT OF INTERPRETERS<br>FOR PERSONS WHO ARE DEAF OR<br>HARD OF HEARING |                                                  |
| 13-90-107.                   | Who may not testify without consent - definitions.                                                        | 13-90-201.                                                                              | Legislative declaration.                         |
| 13-90-108.                   | Offer taken as consent.                                                                                   | 13-90-202.                                                                              | Definitions.                                     |
| 13-90-109.                   | Estates of deceased persons, infants, and persons who have been declared mentally incompetent.            | 13-90-203.                                                                              | Powers and duties of the enterprise - rules.     |
| 13-90-110.                   | Religious opinions of witness.                                                                            | 13-90-204.                                                                              | Appointment of auxiliary services providers.     |



|            |                                              |            |                                                         |
|------------|----------------------------------------------|------------|---------------------------------------------------------|
| 13-90-205. | Coordination of auxiliary services requests. | 13-90-207. | Requirements to be met prior to commencing proceedings. |
| 13-90-206. | Use of an intermediary interpreter.          | 13-90-208. | Waiver.                                                 |
|            |                                              | 13-90-209. | Privileged communications.                              |
|            |                                              | 13-90-210. | Compensation.                                           |

## PART 1

### GENERAL PROVISIONS

#### **13-90-101. Who may testify - interest.**

All persons, without exception, other than those specified in sections 13-90-102 to 13-90-108 may be witnesses. Neither parties nor other persons who have an interest in the event of an action or proceeding shall be excluded; nor those who have been convicted of crime; nor persons on account of their opinions on matters of religious belief. In every case the credibility of the witness may be drawn in question, as now provided by law, but the conviction of any person for any felony may be shown for the purpose of affecting the credibility of such witness. The fact of such conviction may be proved like any other fact, not of record, either by the witness himself, who shall be compelled to testify thereto, or by any other person cognizant of such conviction as impeaching testimony or by any other competent testimony. Evidence of a previous conviction of a felony where the witness testifying was convicted five years prior to the time when the witness testifies shall not be admissible in evidence in any civil action.

**Source:** L. 1883: p. 289, § 1. G.S. § 3647. R.S. 08: § 7266. C.L. § 6555. CSA: C. 177, § 1. L. 41: p. 924, § 1. CRS 53: § 153-1-1. C.R.S. 1963: § 154-1-1.

### ANNOTATION

I. General Consideration.

II. Prior Felony Conviction.

#### **I. GENERAL CONSIDERATION.**

**Law reviews.** For article, "Fearing Hell as Essential to Validity of Affidavit", see 18

Dicta 144 (1941). For note, "Impeachment of Nonreligious Witnesses", see 13 Rocky Mt. L. Rev. 336 (1941). For article, "The Right to Practice Law as Dependent on Fear of Hell", see 19 Dicta 206 (1942). For article, "Bishop Rice's Last Battle for Civil Rights", see 22 Dicta 139 (1945). For note,

"Some Problems Relating to Testamentary Witnesses", see 23 Rocky Mt. L. Rev. 458 (1951). For article, "Evidence in Estate Proceedings", see 24 Rocky Mt. L. Rev. 437 (1952). For article, "One Year Review of Wills, Estates, and Trusts", see 38 Dicta 115 (1960). For comment, "Reporter's Privilege: Pankratz v. District Court", see 58 Den. L.J. 681 (1981). For article, "Termination of a Personal Representative", see 19 Colo. Law. 213 (1990). For article, "The Defendant's Decision Not to Testify", see 19 Colo. Law. 1589 (1990). For article, "Admissibility of Prior Felony Convictions for Impeachment Purposes", see 32 Colo. Law. 79 (Nov. 2003). For article, "Age Requirements in Colorado: A Guide for Estate Planners", see 34 Colo. Law. 87 (Aug. 2005).

**Annotator's note.** Cases material to § 13-90-101 decided prior to its earliest source, L. 1883, p. 289, § 1, have also been included in the annotations to this section.

**This section is constitutional.** *People v. Honey*, 198 Colo. 64, 596 P.2d 751 (1979).

Section does not violate § 21 of art. VI, Colo. Const., as an intrusion into matters exclusively judicial. Legislative policymaking and judicial rulemaking powers may overlap to some extent as long as there is no substantial conflict between statute and rule. *People v. McKenna*, 196 Colo. 367, 585 P.2d 275 (1978); *People v. Diaz*, 985 P.2d 83 (Colo. App. 1999).

**For constitutionality of this section,** see *Trackman v. People*, 22 Colo. 83, 43 P. 662 (1896).

**The right to testify in the courts of the state is not a privilege or immunity protected by the fourteenth amendment,** and the state general assembly has the power to declare who shall be competent to testify, and to regulate the production of evidence in the state courts. *Estate of Freeman v. Young*, 172 Colo. 322, 473 P.2d 704 (1970).

**This section does not endow party witnesses in a civil action with a fundamental right to testify.** Rather, it simply renders a party competent to testify and the testimony of all witnesses remains subject to the applicable rules of evidence. *Williams v. Chrysler Ins. Co.*, 928 P.2d 1375 (Colo. App. 1996).

**The general assembly has the right to control the general competency of witnesses** and the subjects of their testimony; but a court cannot be empowered to make a party a competent witness contrary to the general law. *Estate of Freeman v. Young*, 172 Colo. 322, 473 P.2d 704 (1970).

**Language of this section is mandatory and not discretionary.** *Havens v. Hardesty*, 43 Colo. App. 162, 600 P.2d 116 (1979).

**It removes the disqualification of witnesses** on the ground of interest, or the conviction of crime, except as set forth in the following sections. *Palmer v. Hanna*, 6 Colo. 55 (1881); *Estate of Freeman v. Young*, 172 Colo. 322, 473 P.2d 704 (1970).

**There is a presumption that a witness is competent to testify.** *People v. Piro*, 671 P.2d 1341 (Colo. App. 1983).

**Rule excluding parties interested in outcome of suit abolished.** General common-law rule, that the testimony of all parties to a lawsuit and of all persons who stood to gain or lose by the outcome of the case was excluded as incompetent has been abolished in Colorado. *Wise v. Hillman*, 625 P.2d 364 (Colo. 1981).

**The parties to an action are competent witnesses in their own behalf,** and they are thus placed on an equality. *Whitsett v. Kershow*, 4 Colo. 419 (1878); *Levy v. Dwight*, 12 Colo. 101, 20 P. 12 (1888).

**Defendant testifying on own behalf is witness.** When a defendant takes the stand in his own defense, he becomes a witness within the meaning of this section. *People v. Evans*, 630 P.2d 94 (Colo. App. 1981).

**It was the intention of the general assembly, by this section, to entirely remove the disqualification theretofore resting upon husband and wife** on account of the marriage relation, or, as stated by Chancellor Kent, on account of public policy. *Butler v. Phillips*, 38 Colo. 378, 88 P. 480 (1906).

**Husband may testify in suit involving wife's property.** Under this and the following section the husband may be permitted to testify in a cause wherein the separate property of the wife is concerned. *Hanna v. Barker*, 6 Colo. 303 (1882).

**There still are certain exceptions.** At common law, a party to a suit could not testify at all in his own behalf, and while this statute has changed this rule of the common law, certain exceptions are still provided for.

*Cliff v. Cliff*, 23 Colo. App. 183, 128 P. 860 (1912).

**Objection to competency of witnesses must be made in trial court.** An objection to the admission or exclusion of evidence on the ground of the competency of a witness must be made in the trial court. Otherwise, it will not be considered on review. *Holm v. People*, 72 Colo. 257, 210 P. 698 (1922).

**This section has no application to proceeding inquiring into a party's mental health.** In the special statutory proceeding to inquire into the mental health of a party, the provisions of this section have no application to such proceedings being neither civil nor criminal, and in no sense adversary, a wife may testify as to the mental condition of her husband as illustrated by his acts. *Sabon v. People*, 142 Colo. 323, 350 P.2d 576 (1960).

**Prosecuting attorney as witness.** In Colorado, a prosecuting attorney is competent to be a witness for the state, but ordinarily he should withdraw from active participation in a case when he learns he will be a witness. *People v. Hauschel*, 37 Colo. App. 114, 550 P.2d 876 (1976).

Where the district attorney's participation in the trial was limited, and pursuant to court order, after he testified he took no further part in the trial, nor was the nature of the district attorney's testimony here as significant or damning as that in *People v. Spencer*, 182 Colo. 189, 512 P.2d 260 (1973), the district attorney's indiscretion did not rise to the seriousness of constituting a denial of a fair trial, and thus the refusal to grant a mistrial after his testimony was not

reversible error. *People v. Hauschel*, 37 Colo. App. 114, 550 P.2d 876 (1976).

**Testimony properly allowed despite witness's hearing deficiency.** Although defendant's mother was incapacitated by reason of a hearing loss, her testimony was properly allowed where the record reveals that although the witness had a hearing deficiency and several questions had to be repeated her answers were responsive to the questions asked, which clearly indicates that she perceived the meaning of the questions. *People v. Forbes*, 185 Colo. 410, 524 P.2d 1377 (1974).

**Impeachment of defendant may not be accomplished by attacking witness's general character.** While evidence of prior misconduct, including misdemeanor convictions, may be admitted to attack the veracity of specific testimony by a defendant, impeachment of a defendant may not be accomplished by attacking the general character of the witness. *People v. Sasson*, 628 P.2d 120 (Colo. App. 1980).

**Witness is presumed to be competent,** and whether or not a witness is competent is within the sound discretion of the trial court, and its ruling may be disturbed only upon a finding of clear abuse of discretion. *People v. Woertman*, 786 P.2d 443 (Colo. App. 1989).

**Cross-examination regarding prior misdemeanor conviction was proper** in trial for violation of custody where prior conviction was for violation of custody and was directly relevant to defendant's state of mind and tended to refute defendant's own testimony that he had no prior arrest record.

*People v. Metcalf*, 926 P.2d 133 (Colo. App. 1996).

**Grand jury proceedings constitute judicial proceedings which entitle witnesses to absolute immunity from subsequent civil liability for his or her testimony.** *Wagner v. Bd. of County Comm'rs*, 933 P.2d 1311 (Colo. 1997).

**For history of section,** see *People v. Yeager*, 182 Colo. 397, 513 P.2d 1057 (1973).

**Applied** in *Williams v. People*, 157 Colo. 443, 403 P.2d 436 (1965); *People v. Lambert*, 194 Colo. App. 421, 572 P.2d 847 (1977); *People v. Stinson*, 632 P.2d 631 (Colo. App. 1981); *People v. Jones*, 675 P.2d 9 (Colo. 1984).

## **II. PRIOR FELONY CONVICTION.**

**Section is constitutional.** Section which specifically allows previous felony conviction to be shown for the purpose of affecting the credibility of a witness is constitutional. *Velarde v. People*, 179 Colo. 207, 500 P.2d 125 (1972); *People v. McKenna*, 196 Colo. 367, 585 P.2d 275 (1978); *People v. Thompson*, 197 Colo. 299, 592 P.2d 803 (1979); *People v. Griffith*, 197 Colo. 544, 595 P.2d 231 (1979).

**Section does not deprive defendant of due process of law under amendment XIV, U.S. Const., and § 25 of art. II, Colo. Const.,** in that it precludes the exercise of any judicial discretion in admitting prior felony convictions for purposes of impeachment. *People v. Meyers*, 617 P.2d 808 (Colo. 1980).

**Distinction in handling defendant's evidence not violative of equal protection guarantees.** Distinction between admitting evidence of prior felony convictions when a defendant chooses to testify, and excluding such evidence when the defendant has chosen not to take the witness stand does not violate equal protection guarantees. *People v. Layton*, 200 Colo. 59, 612 P.2d 83 (1980); *People v. Diaz*, 985 P.2d 83 (Colo. App. 1999).

This section does treat those defendants who choose to testify on their behalf differently than those defendants who do not take the witness stand, but these two classes of defendants are not similarly situated. *People v. Layton*, 200 Colo. 59, 612 P.2d 83 (1980).

**This section is not violative of defendant's right to due process** and does not impermissibly chill the exercise of his right to testify on his own behalf. *People v. Henry*, 195 Colo. 309, 578 P.2d 1041 (1978); *People v. Diaz*, 985 P.2d 83 (Colo. App. 1999).

It is within the province of the Colorado general assembly to make provision for use of prior convictions in the event a defendant-witness testifies. The Colorado statutory procedure does not impermissibly affect a defendant's due process rights and right to testify in his own behalf, and thus impeachment of a defendant-witness by showing prior convictions is not unconstitutional. *Hubbard v. Wilson*, 401 F. Supp. 495 (D. Colo. 1975).

**Fact that this does not apply to criminal actions does not violate equal**

**protection.** The argument that this section should also be applied to criminal actions, and that if the limitation does not apply to criminal prosecutions then there has been a violation of his constitutional right to equal protection of the laws as guaranteed by the Colorado and United States Constitutions is without merit. *Nunez v. People*, 173 Colo. 236, 477 P.2d 366 (1970); *Garcia v. People*, 174 Colo. 372, 483 P.2d 1347 (1971).

Criminal defendant was not denied equal protection of the laws because his testimony was impeached by a felony conviction committed more than five years prior to his court testimony, even though this statute does not provide for impeachment by felony convictions over five years old in civil cases. *People v. Casey*, 185 Colo. 58, 521 P.2d 1250 (1974).

Statute which permits impeachment in a criminal case by felony conviction over five years old, while such is not permissible in a civil proceeding, does not deny equal protection of the law. *People v. Davis*, 183 Colo. 228, 516 P.2d 120 (1973); *People v. Velarde*, 196 Colo. 254, 586 P.2d 6 (1978).

Fact that this statute limits, for purpose of impeachment in civil actions, evidence of a conviction of a witness to those felonies occurring within five years of the time of his testifying, whereas, in criminal cases there is no time limitation, does not deny equal protection of the law to criminal defendants. *People v. Yeager*, 182 Colo. 397, 513 P.2d 1057 (1973).

**Distinction has a reasonable basis.** It cannot be said that the general assembly's distinction between impeachment tools

permitted in civil and criminal actions is without a reasonable basis, considering the grave consequences of criminal proceedings where both the personal freedom of the accused and the interests of society as a whole are weighed in a delicate balance. *Lee v. People*, 170 Colo. 268, 460 P.2d 796 (1969).

**Evidence of prior criminal convictions admissible for impeachment purposes.** Notwithstanding its inherent prejudiciality, evidence of prior criminal convictions may properly be admitted to impeach the credibility of a defendant's testimony. *People v. Chavez*, 621 P.2d 1362 (Colo. 1981); *People v. McGhee*, 677 P.2d 419 (Colo. App. 1983); *People v. Hardy*, 677 P.2d 429 (Colo. App. 1983); *Molnar v. Law*, 776 P.2d 1156 (Colo. App. 1989); *People v. Ziglar*, 45 P.3d 1266 (Colo. 2002).

While this section does not permit the use of a witness's prior misdemeanor conviction for impeachment purposes, it was never intended to prohibit testimony tending to show motive, bias, prejudice or interest of a witness in the outcome of a trial. *People v. Jones*, 635 P.2d 904 (Colo. App. 1981).

To warrant suppression of a prior conviction, the accused must make a prima facie showing of a constitutional violation, and the mere showing of uncertainty as to whether a violation has occurred is insufficient. *People v. Lemons*, 824 P.2d 56 (Colo. App. 1991).

**A balancing test is not required prior to admitting evidence of felony convictions for purposes of impeachment of an accused,** given that this state has not

adopted a rule of evidence similar to Fed. R. Evid. 609. *People v. Diaz*, 985 P.2d 83 (Colo. App. 1999).

**Evidence of defendant's prior misdemeanor convictions not admissible.** *People v. Sasson*, 628 P.2d 120 (Colo. App. 1980).

**Evidence of prior misdemeanor convictions involving false statements to police held admissible for impeachment purposes** where focus was on the specific instances of lying, not on the convictions themselves, and jury was instructed to consider the evidence only for the limited purpose of evaluating defendant's credibility. *People v. Gillis*, 883 P.2d 554 (Colo. App. 1994).

**Military conviction admissible for impeachment.** A military conviction for an offense that would be punishable as a felony under the law of Colorado is admissible for impeachment under this section. *People v. Apodaca*, 668 P.2d 941 (Colo. App. 1982), *aff'd in part, rev'd on other grounds*, 712 P.2d 467 (Colo. 1985).

A court does not err in allowing the people to attack the defendant's credibility by questioning him about a prior Air Force court martial conviction for assault with intent to commit rape. *People v. Ortega*, 672 P.2d 215 (Colo. App. 1983).

**Whether a military conviction qualifies as a felony conviction** under Colorado's impeachment statute should be resolved on the basis of the following two-part test: (1) Whether the maximum penalty applicable to the military offense is substantially

equivalent to the punishment reserved for a felony offense in Colorado; and (2) whether the same criminal conduct if committed in Colorado, would be classified as a felony under Colorado law. *Apodaca v. People*, 712 P.2d 467 (Colo. 1985).

Defendant's conviction of rape under Article 120 of the Uniform Code of Military Justice qualifies as a felony conviction within the intentment of this section since the maximum sentence, life imprisonment, is a penalty applicable for the most serious felonies in Colorado and the offense of rape, if committed in Colorado, would constitute either the class 2 or class 3 felony of sexual assault in the first degree, or the class 4 felony of sexual assault in the second degree. *Apodaca v. People*, 712 P.2d 467 (Colo. 1985).

Defendant's prior military conviction is admissible to impeach the defendant only if the court has ruled that the conviction was obtained in a constitutionally valid manner. *Apodaca v. People*, 712 P.2d 467 (Colo. 1985).

**Prior felony conviction which had been expunged** after three years of probation was not a "prior felony conviction" within the meaning of this section. *People v. Wright*, 678 P.2d 1072 (Colo. App. 1984).

**A juvenile adjudication may not be used for impeachment purposes**, as a juvenile adjudication is not a criminal proceeding. *People v. Apodaca*, 668 P.2d 941 (Colo. App. 1982), *aff'd in part, rev'd on other grounds*, 712 P.2d 467 (Colo. 1985); *People v. Armand*, 873 P.2d 7 (Colo. App. 1993).

Trial court committed reversible error in allowing the impeachment of defendant's credibility with a New York youthful offender adjudication that is defined as not being a judgment of conviction for a crime or any other offense. *People v. D'Apice*, 735 P.2d 882 (Colo. App. 1986).

**This section limits inquiry concerning any felony conviction to a proceeding five years in civil actions.** *Nunez v. People*, 173 Colo. 236, 477 P.2d 366 (1970); *Taylor v. People*, 176 Colo. 316, 490 P.2d 292 (1971).

**This is exclusionary in character.** *Pasternak v. Pan Am. Petroleum Corp.*, 417 F.2d 1292 (10th Cir. 1969).

**This section is not applicable to federal courts.** The fact that certain evidence might be inadmissible under a state exclusionary rule or a state statute is not controlling in the federal courts. While state rules of admissibility are controlling in the federal courts, state exclusionary rules are not, and evidence of a conviction five and one-half years prior to the date of testifying must be received even though the state courts would hold otherwise. *Pasternak v. Pan Am. Petroleum Corp.*, 417 F.2d 1292 (10th Cir. 1969).

**A "conviction" based on a plea of nolo contendere is within the meaning** of that word as it is used in this section. *Lacey v. People*, 166 Colo. 152, 442 P.2d 402 (1968); *Reynolds v. People*, 172 Colo. 137, 471 P.2d 417 (1970).

**A "conviction" based on a guilty plea is also admissible.** *People v. Gallegos*, 950 P.2d 629 (Colo. App. 1997).

**So is a conviction in a sister state or in a federal court** for the purpose of affecting the credibility of a witness, unless the statute authorizing the use of such evidence precludes a so-called foreign conviction. The Colorado statute contains no such limiting language. *Lacey v. People*, 166 Colo. 152, 442 P.2d 402 (1968).

**This section permits use of only final convictions, for purpose of impeachment.** *People v. Goff*, 187 Colo. 57, 530 P.2d 512 (1974).

**Policy behind requirement that judgment of conviction be final before it is utilized** for impeachment purposes is to guarantee that an accused will be subject to impeachment only after the trial judge has passed upon a motion for a new trial and has imposed sentence. *People v. Goff*, 187 Colo. 57, 530 P.2d 512 (1974).

**Conviction for impeachment purposes does not require imposition of sentence.** Since it is immaterial whether guilt is established by a verdict of guilty, supported by a denial of a motion for new trial, or be a plea of guilty, that a conviction for impeachment purposes does not require the imposition of sentence is as applicable to convictions arising from the acceptance of a guilty plea as it is to convictions following a guilty verdict. *People v. Baca*, 44 Colo. App. 167, 610 P.2d 1083 (1980).

**Conviction may be used for impeachment purposes at a later proceeding even if the appeal of the conviction is pending.** *People v. McNeely*, 68 P.3d 540 (Colo. App. 2002).

**Use of untested, unsentenced jury verdict prohibited.** A jury verdict which has not been tested by a motion for a new trial and has not been then supported by the imposition of sentence cannot be used for the purpose of impeachment. *People v. Goff*, 187 Colo. 57, 530 P.2d 512 (1974).

**Portion of rule in People v. Goff does not stand alone.** That portion of the rule in *People v. Goff*, supra, requiring sentencing as a condition precedent to subsequent use of a conviction for impeachment purposes, does not stand alone and does not go to the heart of the "truth-finding function" or raise "serious questions about the accuracy of guilty verdicts". *People v. Johnson*, 192 Colo. 483, 560 P.2d 465 (1977).

**The essential function of the rule articulated in People v. Goff**, supra, i.e., that a jury verdict which has not been tested by motion for new trial "and has not been supported by the imposition of sentence" cannot be used for impeachment purposes, was to ensure that impeachment would not be based upon a conviction which had not withstood the test of judicial scrutiny and the review provided by a motion for a new trial. *People v. Johnson*, 192 Colo. 483, 560 P.2d 465 (1977).

**A felony conviction, after denial of a motion for a new trial but prior to sentencing**, may be used for impeachment purposes. *People v. Johnson*, 192 Colo. 483, 560 P.2d 465 (1977).

**Credibility of "remote" conviction jury question.** A previous felony conviction of a witness, whatever its age, may be shown to affect credibility, and the effect on



credibility of a "remote" conviction must be left to the judgment of the jury. *People v. Yeager*, 182 Colo. 397, 513 P.2d 1057 (1973).

**Use of prior felony convictions for impeachment of witnesses is not discretionary with trial judge.** *People v. Yeager*, 182 Colo. 397, 513 P.2d 1057 (1973); *People v. Wright*, 678 P.2d 1072 (Colo. App. 1984); *Molnar v. Law*, 776 P.2d 1156 (Colo. App. 1989); *People v. Gallegos*, 950 P.2d 629 (Colo. App. 1997).

The decisions of Colorado supreme court interpreting this section have not granted the trial judge discretion to foreclose the use of prior felony convictions to impeach a defendant's testimony. *People v. Hubbard*, 184 Colo. 225, 519 P.2d 951 (1974); *People v. Medina*, 40 Colo. App. 490, 583 P.2d 293 (1978); *People v. Velarde*, 196 Colo. 254, 586 P.2d 6 (1978); *People v. Renstrom*, 657 P.2d 461 (Colo. App. 1982); *People v. Gallegos*, 950 P.2d 629 (Colo. App. 1997).

The nature of the conviction can be established by a brief recital of the circumstances. Only the extent of the examination into those circumstances is within the trial court's discretion. *People v. Gallegos*, 950 P.2d 629 (Colo. App. 1997).

**Felony conviction obtained by a guilty plea is admissible to the same extent as one obtained by a jury verdict.** *People v. Gallegos*, 950 P.2d 629 (Colo. App. 1997).

**This section makes no exception for guilty pleas by an alleged accomplice** that are based on the same incident leading to the

charges against the defendant. *People v. Gallegos*, 950 P.2d 629 (Colo. App. 1997).

Where witness plead guilty to a felony drug offense after being found by the court to be a person in need of treatment and after having the proceedings suspended without an imposition of a sentence, court had no discretion to prohibit the use of the felony conviction to impeach the witness's testimony, despite the fact that the felony conviction might be set aside after successful completion of the rehabilitation program. *People v. Silva*, 987 P.2d 909 (Colo. App. 1999).

Where, before the defendant testified in his defense, he moved that the court prohibit the prosecution from showing on cross-examination that he had been previously convicted of a felony, the court correctly denied the motion to suppress as it was without discretion to prohibit such evidence. *People v. Bueno*, 183 Colo. 304, 516 P.2d 434 (1973).

**Judge may determine whether questioning is in good faith.** Questions posed to a defendant who has taken the stand in his own behalf about prior felonies must be asked by the prosecuting attorney in good faith; and it is within the judge's discretion to determine whether good faith is present. *People v. Thompson*, 182 Colo. 198, 511 P.2d 909 (1973).

**One convicted of a felony is a competent witness** in a criminal case as well as in a civil action, whose credibility is a matter for the jury to determine. *Trackman v. People*, 22 Colo. 83, 43 P. 662 (1896).

**Right to testify deemed subject to impeachment.** While the possibility of impeachment by prior conviction may present a defendant with a difficult strategic decision on whether to testify, the constitutional right to testify does not include a right to foreclose impeachment by evidence of a prior conviction. *People v. Montez*, 197 Colo. 126, 589 P.2d 1368 (1979).

A prosecutor may utilize a defendant's prior felony convictions for impeachment purposes if the defendant elects to testify in his own behalf. *People v. Griffith*, 197 Colo. 544, 595 P.2d 231 (1979).

**Ruling on defendant's motion to suppress prior conviction evidence.** A timely judicial ruling on a defendant's motion to suppress prior conviction evidence for the purpose of impeachment serves the vital function of providing the defendant with the meaningful opportunity to make the type of informed decision contemplated by the fundamental nature of the right to testify in one's own defense. *Apodaca v. People*, 712 P.2d 467 (Colo. 1985).

The trial court's refusal to rule on the defendant's motion to prohibit prosecutorial use of defendant's 1976 military conviction until such time as the prosecution actually sought to impeach the defendant constituted an impermissible burden on the defendant's constitutional right to testify in his own defense. *Apodaca v. People*, 712 P.2d 467 (Colo. 1985).

**Evidentiary hearing required on admissibility of prior conviction evidence.**

Trial court must hold evidentiary hearing on defendant's ineffective assistance of counsel claim regarding prior conviction evidence offered for the purpose of defendant's impeachment. *Bales v. People*, 713 P.2d 1280 (Colo. 1986).

**Weaknesses and misdeeds which may not be used for impeachment purposes.** Even though conviction of a felony may be made the subject of cross-examination for impeachment purposes, supposed weaknesses or misdeeds attributed to the witness which fall short of criminal conviction and which attempt to discredit or impeach a witness by impugning the witness's character may not be utilized for this purpose. *People v. Roberts*, 37 Colo. App. 490, 553 P.2d 93 (1976).

In this state, it is improper to ask questions pertaining to a witness's purported drug addiction merely for purposes of attacking the credibility of the witness. *People v. Roberts*, 37 Colo. App. 490, 553 P.2d 93 (1976).

**It is permissible to prove a former conviction of crime as bearing upon the credibility of a witness,** but the showing must be limited to evidence of conviction. Questions as to indictment, arrest, commission of offenses, or immoral acts are not permitted. *Dennison v. People*, 65 Colo. 15, 174 P. 595 (1918); *Tarling v. People*, 69 Colo. 477, 194 P. 939 (1921); *Hoffman v. People*, 72 Colo. 552, 212 P. 848 (1923); *Hendricks v. People*, 78 Colo. 264, 241 P. 734 (1925).

This section permits the showing of prior felony convictions for the purpose of

impeaching the credibility of any witness, including a defendant. *People v. Huguley*, 39 Colo. App. 481, 568 P.2d 1177 (1977), rev'd on other grounds, 195 Colo. 259, 577 P.2d 746 (1978).

**Whether the nature of the crime was elicited from defendant or codefendant is immaterial** if the fact of the conviction is otherwise admissible. *Hampton v. People*, 146 Colo. 570, 362 P.2d 864 (1961).

**A wide latitude is allowed in the cross-examination of witnesses** upon matters which bear upon their credibility. *Tarling v. People*, 69 Colo. 477, 194 P. 939 (1921); *Davis v. People*, 77 Colo. 546, 238 P. 25 (1925).

**A witness may be asked on cross-examination if he has been convicted of a crime.** *Dively v. People*, 74 Colo. 268, 220 P. 991 (1923).

**Scope of questioning as to prior conviction limited.** The court has discretion to limit cross-examination as to prior felony convictions to exclude detailed cross-questioning concerning the facts involved in the appellant's prior conviction. *People v. Medina*, 40 Colo. App. 490, 583 P.2d 293 (1978); *People v. Renstrom*, 657 P.2d 461 (Colo. App. 1982); *People v. Gallegos*, 950 P.2d 629 (Colo. App. 1997).

**Cross-examination held proper.** Where the record discloses that the cross-examination was directed at another, permissible purpose, i.e., attempting to prove that the witnesses were under the influence of the narcotic substance at the time of the occurrence as to which they were

testifying, or at the time of testifying at trial, matters which might affect the witnesses' ability to perceive, remember, or testify as to a particular event, then the cross-examination was properly related to a material matter, and did not constitute impermissible impeachment of credibility. *People v. Roberts*, 37 Colo. App. 490, 553 P.2d 93 (1976).

**In impeaching a witness, the inquiry ought to be directed to the witness's credibility rather than to his moral character.** *People v. Couch*, 179 Colo. 324, 500 P.2d 967 (1972).

**The nature and name of the crime may be brought out.** The inquiry is not confined to the mere fact of conviction of some crime, but the nature or name of the particular crime of which the witness was convicted may be brought out. *Davis v. People*, 77 Colo. 546, 238 P. 25 (1925); *Hendricks v. People*, 78 Colo. 264, 241 P. 734 (1925); *Hampton v. People*, 146 Colo. 570, 362 P.2d 864 (1961).

Where the district attorney asked only if defendant had pled guilty to the charge of possession of burglar tools in a prior unrelated case, the inquiry was not beyond the proper scope concerning a prior felony conviction where evidence of the nature of the offense is permissible. *People v. Bueno*, 183 Colo. 304, 516 P.2d 434 (1973).

**This section does not prohibit showing the number and place of convictions.** Questions, such as are complained of, have generally been held proper. It was not error to allow them in the instant case. *Dively v. People*, 74 Colo. 268, 220 P. 991 (1923).

**Counsel may offer proof if prior conviction denied.** The only way that counsel can establish good faith in asking questions about prior felonies if the defendant denies prior felony convictions is to make an offer of proof to the court. *People v. Thompson*, 182 Colo. 198, 511 P.2d 909 (1973).

**Question as to prior conviction when it is known there was none is reversible error.** Asking defendant, who had taken the stand in his own defense, whether he had ever been arrested for a felony when the district attorney knew that there was no prior felony conviction was reversible error. *People v. Robles*, 183 Colo. 4, 514 P.2d 630 (1973).

**The general rule is that evidence of arrests and of pending charges against a witness before conviction is not admissible** as bearing upon the witness's credibility for the reason that want of credibility may not logically be inferred from naked accusations of which the law presumes a person innocent until convicted, but the rule was never intended to prohibit testimony tending to show motive, bias, prejudice, or interest of a witness in the outcome of the trial. *People v. King*, 179 Colo. 94, 498 P.2d 1142 (1972).

A witness in a criminal trial may only be impeached by showing a prior felony conviction, and it is immaterial what the grounds for arrest or the original charges were. *People v. Robles*, 183 Colo. 4, 514 P.2d 630 (1973).

**Absent special circumstances, a defendant may be impeached with felony**

**convictions that occurred after the offense for which he or she is being tried.** *People v. Bradley*, 25 P.3d 1271 (Colo. App. 2001).

**Where evidence is offered to show the motive of a paid informant witness and** that he is interested in the outcome of the case by reason of pending criminal charges against him, the prosecution of which may or may not be pursued by reason of the testimony he has given on behalf of the people, such evidence is competent and to deny its admissibility would erode defendant's right of confrontation. *People v. King*, 179 Colo. 94, 498 P.2d 1142 (1972).

**Or when he may be testifying in hope of leniency for him.** A trial court should allow broad cross-examination of a prosecution witness with respect to the witness's motive for testifying, especially where such witness is charged with or threatened with criminal prosecution for other alleged offenses not connected with the case in which he testifies, and where his testimony against the defendant might be influenced by a promise of, or hope or expectation of, immunity or leniency with respect to the pending charges against him, as a consideration for testifying against the defendant. *People v. King*, 179 Colo. 94, 498 P.2d 1142 (1972).

**When a defendant offers himself as a witness in his own behalf, he is subject to the general rules of examination** applicable to other witnesses, including examination as to matters which tend to show him unworthy of belief. *Tarling v. People*, 69 Colo. 477, 194 P. 939 (1921); *Routa v. People*, 117 Colo. 564, 192 P.2d 436 (1948); *Mitchell v. People*, 137 Colo. 5,

320 P.2d 342 (1958); Hampton v. People, 146 Colo. 570, 362 P.2d 864 (1961); Candelaria v. People, 177 Colo. 136, 493 P.2d 355 (1972); People v. Medina, 40 Colo. App. 490, 583 P.2d 293 (1978); People v. Renstrom, 657 P.2d 461 (Colo. App. 1982).

**Evidence of defendant's prior conviction may be considered only regarding his credibility.** The defendant voluntarily testified during the trial and his credibility thereupon became an issue in the case. On cross-examination the defendant admitted that he had been convicted of a felony. Such evidence was for the purpose of affecting the credibility of the defendant so limited by the court's instructions to the jury, was clearly within the ambit of this section. Diaz v. People, 161 Colo. 172, 420 P.2d 824 (1966); Taylor v. People, 176 Colo. 71, 490 P.2d 292 (1971).

A defendant who elects to be a witness in his own behalf in a criminal case subjects his credibility to question, like any other witness, and he may therefore be examined on the matter of previous felony convictions. People v. Thompson, 182 Colo. 198, 511 P.2d 909 (1973).

**Evidence cannot be used in an attempt to show common scheme.** The district attorney in bringing out defendant's prior felony assault conviction in a forgery trial was not attempting to show common scheme, device, or plan, but was doing so in an effort to attack his credibility as a witness in the case, as is permitted by this section. Lacey v. People, 166 Colo. 152, 442 P.2d 402 (1968).

**A criminal contempt is such a crime as may be shown** on cross-examination under our statute, to impeach the credibility of a defendant who takes the stand in his own behalf. Dockerty v. People, 96 Colo. 338, 44 P. 2d 1013 (1935).

**Colorado law determines what is a "felony".** The sections now limits evidence of this nature to felony convictions. There is no such thing as a felony in New Jersey; crimes in that state are classified as either misdemeanors, or high misdemeanors. This "labeling" or "classifying" of crimes by New Jersey is not controlling. In interpreting a Colorado statute, reference should be made to § 4 of art. XVIII, Colo. Const., which defines the term "felony". The word "felony" as used in our statute includes any crime in a sister state which carries with it as a possible penalty, incarceration in the state penitentiary. Lacey v. People, 166 Colo. 152, 442 P.2d 402 (1968).

**Classification of crimes based on classification at time offense committed.** For purposes of the impeachment statute, the classification of a felony hinges on its classification at the time of the commission of the offense. People v. Anders, 38 Colo. App. 185, 559 P.2d 239 (1976).

A subsequent reclassification of defendant's prior offense from a felony to a misdemeanor does not change the fact that the defendant did, at the time, commit a felony. People v. Anders, 38 Colo. App. 185, 559 P.2d 239 (1976).

**For waiver of protection of this section when no objection is made to evidence of convictions more than five years prior, see**

Yarber v. City & County of Denver, 116 Colo. 540, 182 P.2d 897 (1947).

**A felony conviction which has been set aside under the Federal Youth Correction Act, 18 USC §§ 5005-5026, is no longer a viable conviction and cannot be used for purposes of impeachment.** People v. Jones, 743 P.2d 44 (Colo. App. 1987).

**Conviction arising from same set of facts as civil action may be used for impeachment.** Clark v. Buhring, 761 P.2d 266 (Colo. App. 1988).

**The advisement by the trial court of the defendant's right to testify was inadequate** when the court failed to inform defendant that the decision to testify was personal to the defendant and failed to advise defendant as to the limited evidentiary use of any admission by the defendant. People v. Chavez, 832 P.2d 1026 (Colo. App. 1991), aff'd, 853 P.2d 1149 (Colo. 1993).

**Applied** in Cheney v. Hailey, 686 P.2d 808 (Colo. App. 1984).

#### **13-90-101.5. Remote testimony by forensic scientists.**

Upon the request of a party and consent of both parties, a judge shall allow a forensic scientist to testify remotely in a criminal proceeding.

**Source: L. 2026:** Entire section added, (SB 26-095), ch. 133, p. 593, § 5, effective May 19.

#### **13-90-102. Testimony concerning oral statements made by person incapable of testifying - when allowed - definitions.**

(1) Subject to the law of evidence, in any civil action or proceeding in which an oral statement of a person incapable of testifying is sought to be admitted into evidence, each party and person in interest with a party shall be allowed to testify regarding the oral statement if:

- (a) The statement was made under oath at a time when such person was competent to testify;
- (b) The testimony concerning the oral statement is corroborated by material evidence of a trustworthy nature;
- (c) The opposing party introduces uncorroborated evidence of related communications through a party or person in interest with a party; or
- (d) Such party or person testifies against his or her own interests.

(2) Questions of admissibility that arise under this section shall be determined by the court as a matter of law.

(3) For purposes of this section:

(a) "Corroborated by material evidence" means corroborated by evidence that supports one or more of the material allegations or issues that are raised by the pleadings and to which the witness whose evidence must be corroborated will testify. Such evidence may come from any other competent witness or other admissible source, including trustworthy documentary evidence, and such evidence need not be sufficient standing alone to support the verdict but must tend to confirm and strengthen the testimony of the witness and show the probability of its truth.

(b) "Person incapable of testifying" means any decedent or any person who is otherwise not competent to testify.

(c) "Person in interest with a party" means a person having a direct financial interest in the outcome of the civil action or proceeding, or having any other significant and non-speculative financial interest that makes the person's testimony, standing alone, untrustworthy. In a proceeding to construe, contest, modify, probate, reform, or rescind a governing instrument, as defined in section 15-10-201 (22), C.R.S., "person in interest with a party" does not include:

(I) An attorney who prepared the governing instrument;

(II) A personal representative who is not a successor of the decedent; or

(III) A person whose only interest is an expectation of just compensation for the value of services to be rendered by the person.

**Source:** L. 1870: p. 63, § 2. G.L. § 2952. G.S. § 3641. L. 07: p. 629, § 1. R.S. 08: § 7267. L. 11: p. 676, § 1. C.L. § 6556. CSA: C. 177, § 2. CRS 53: § 153-1-2. C.R.S. 1963: § 154-1-2. L. 69: p. 1244, § 1. L. 73: p. 1651, § 23. L. 75: IP(1) amended, p. 925, § 19, effective July 1. L. 77: (1.5) added, p. 822, § 1, effective July 1. L. 81: (1)(a) amended, p. 899, § 1, effective July 1. L. 87: (1)(f) amended, p. 1577, § 20, effective July 10. L. 94: IP(1) and (1)(g) amended, p. 1040, § 19, effective July 1, 1995. L. 2002: Entire section R&RE, p. 31, § 1, effective July 1. L. 2013: Entire section amended, (SB 13-077), ch. 190, p. 766, § 1, effective August 7.

## ANNOTATION

### I. General Consideration.

#### I. GENERAL CONSIDERATION.

**Law reviews.** For article, "The Right to Practice Law as Dependent on Fear of Hell", see 19 Dicta 206 (1942). For note, "Some

Problems Relating to Testamentary Witnesses", see 23 Rocky Mt. L. Rev. 458 (1951). For comment on Risbry v. Swan, appearing below, see 24 Rocky Mt. L. Rev. 372 (1952). For article, "Evidence in Estate Proceedings", see 24 Rocky Mt. L. Rev. 437

(1952). For article, "Reciprocal Wills and Contracts to Will", see 29 Rocky Mt. L. Rev. 453 (1957). For article, "One Year Review of Contracts", see 35 Dicta 18 (1958). For note, "The Colorado Dead Man Statute", see 43 Den. L.J. 349 (1966). For article, "Termination of a Personal Representative", see 19 Colo. Law. 213 (1990). For article, "Prenuptial Agreements and the Dead Man's Statute", see 23 Colo. Law. 357 (1994). For article, "Colorado Dead Man's Statute: Time for Repeal or Reform?", see 29 Colo. Law. 45 (Jan. 2000). For article, "The New Colorado Dead Man's Statute", see 31 Colo. Law. 119 (July 2002). For article, "Lights, Camera, Action—Video Will Executions", see 42 Colo. Law. 45 (Jan. 2013). For article, "The 2013 Revised Colorado Dead Man's Statute", see 42 Colo. Law. 45 (Sept. 2013).

**Annotator's note.** The following annotations include cases decided under prior versions of this section.

**Constitutionality.** The constitutionality of dead man's statute has been upheld as not violative of constitutionally protected rights to due process, equal protection, and is not a legislative usurpation of judicial function of determining a witness's competency and credibility. *Music City, Inc. v. Estate of Duncan*, 185 Colo. 245, 523 P.2d 983 (1974).

The dead man's statute involves neither a suspect classification nor an infringement of a fundamental right. *Lopata v. Metzel*, 641 P.2d 952 (Colo. 1982).

**This section is commonly known as the dead man's statute.** *Estate of Thomas v.*

*Davis*, 144 Colo. 358, 356 P.2d 963 (1960); *Estate of Freeman v. Young*, 172 Colo. 322, 473 P.2d 704 (1970).

**It contains several exceptions to § 13-90-101.** *Palmer v. Hanna*, 6 Colo. 55 (1881).

**And is a limitation on that section.** This section is a limitation on § 13-90-101, which permits, with certain exceptions, all persons who have an interest in the event of an action to be witnesses. *Patterson v. Pitoniak*, 173 Colo. 454, 480 P.2d 579 (1971); *First Nat'l Bank of Colo. Springs v. Morris*, 721 P.2d 1192 (Colo. App. 1985).

**This section is clear, specific, and incapable of misconstruction.** *Fetta v. Vandevier*, 3 Colo. App. 419, 34 P. 168 (1893); *Brantner v. Papish*, 109 Colo. 437, 126 P.2d 1032 (1942).

**And free from all possible doubt as to its purpose.** Its terms are plain, clear, and direct. It evidently means just what it says and says just what it means, and needs no construction. *Cree v. Becker*, 49 Colo. 268, 112 P. 783 (1910).

**Purpose is to protect estates from claims of strangers.** The purpose of this section in preventing a party to an action, suit, or proceeding, or person directly interested in the result thereof, from testifying in his own behalf, is to protect the undisputed heirs of an intestate from claims against the estate, or for any part thereof, by persons who do not claim as undisputed heirs or distributees, but as strangers to the estate, or to that part of it, which they claim. *Cliff v. Cliff*, 23 Colo. App. 183, 128 P. 860 (1912); *Nat'l State Bank v. Brayman*, 30



Colo. App. 554, 497 P.2d 710 (1972), rev'd on other grounds, 180 Colo. 304, 505 P.2d 11 (1973).

The policy underlying this section is to guard against perjury by prohibiting living interested witnesses from testifying when the deceased cannot refute the testimony and thus to protect the decedent's estate against unjust claims. *DeLeon v. Tompkins*, 40 Colo. App. 241, 576 P.2d 563 (1977), rev'd on other grounds, 197 Colo. 569, 595 P.2d 242 (1979); *Coon v. Berger*, 41 Colo. App. 358, 588 P.2d 386 (1978), aff'd, 199 Colo. 133, 606 P.2d 68 (1980); *First Nat. Bank of Colo. Springs v. Morris*, 721 P.2d 1192 (Colo. App. 1985); *In re Estate of Crenshaw*, 100 P.3d 568 (Colo. App. 2004) (decided prior to 2002 repeal and reenactment).

The purpose of this section is to protect decedents' estates and mental incompetents from false claims as these parties are in need of protection because they are at a disadvantage in a lawsuit due to their inability to answer the allegations of their opponents. *Lopata v. Metzel*, 641 P.2d 952 (Colo. 1982).

**By excluding their testimony when the adverse party is an executor or administrator.** The true object and purpose of this section, as ascertained from the language used and from the decision of the courts upon similar statutes, seem to be to absolutely exclude the testimony of a party to an action, when the adverse party is an executor or administrator, except as such party may be made competent to testify by the action of such executor or administrator.

*Levy v. Dwight*, 12 Colo. 101, 20 P. 12 (1888).

**Purpose of dead man's statute** is to attempt to maintain equality between parties at trial through limitations upon admissibility of evidence, thereby promoting justice. *Berger v. Coon*, 199 Colo. 133, 606 P.2d 68 (1980).

This section's purpose is to promote equal justice between the parties at trial by excluding evidence which might otherwise be relevant, in other words, it is intended to place parties on an equal footing. *Wise v. Hillman*, 625 P.2d 364 (Colo. 1981).

Case law has held the purpose of the statute to be to protect decedent's estates and mental incompetents from false claims. *In re Estate of Hill*, 713 P.2d 928 (Colo. App. 1985).

**It performs traditional function of guarding against perjury** by protecting the mentally incompetent and the estates of decedents from unjust claims. *Wise v. Hillman*, 625 P.2d 364 (Colo. 1981).

**Section cannot apply where proceeding cannot increase or decrease estate size.** Where the result of a proceeding can neither increase nor diminish the estate, the dead man's statute cannot be said to apply. *Nat'l State Bank v. Brayman*, 30 Colo. App. 554, 497 P.2d 710 (1972), rev'd on other grounds, 180 Colo. 304, 505 P.2d 11 (1973).

**Section does apply when a witness stands to share in the estate to the detriment of other heirs.** When the purpose of a witness as the purported common law spouse of the decedent is to gain a share of

the estate, witness should not be allowed to testify regarding the marriage with decedent, the validity of which would diminish the interest of some heirs. In re Estate of Crenshaw, 100 P.3d 568 (Colo. App. 2004) (decided prior to 2002 repeal and reenactment).

**Person may not claim section in part and waive in part.** He for whose protection the statute was enacted may not juggle with it. He may not claim it in part and waive it in part as suits his convenience. Otherwise this act, passed for the purpose of preventing fraud, might become the instrument of fraud. Hillman v. Bray Lines, 41 Colo. App. 493, 591 P.2d 1332 (1978), aff'd sub nom. Wise v. Hillman, 625 P.2d 364 (Colo. 1981).

**Dead man's statute does not preclude a claimant's testimony** as to transactions occurring outside the presence of the mental incompetent concerning which the mental incompetent could not testify of her own knowledge had she been competent. In re Estate of Hill, 713 P.2d 928 (Colo. App. 1985).

**This section should be liberally construed.** The spirit of this section is to exclude the testimony of a party when the opposite party is deceased, and cannot give his testimony upon the matters in controversy, and the statute should receive a liberal construction, and the spirit, rather than the technical letter, should govern in its application. Levy v. Dwight, 12 Colo. 101, 20 P. 12 (1888).

**In order to place the parties on an equality.** The object and spirit of the provision of this section, which excludes a

living party from testifying in his own behalf when the adverse party is an executor or administrator, is to place the parties on an equality. This object can be attained by giving to the language used in this section such meaning as will make it harmonize with other statutes and with the usual and well understood practice of courts in the introduction of evidence. Whitsett v. Kershow, 4 Colo. 419 (1878); Levy v. Dwight, 12 Colo. 101, 20 P. 12 (1888).

**This section must be judiciously applied.** Beneficent as the statutory rule is, which precludes parties and persons interested in an action from testifying therein when the opposite party sues or defends as an administrator, the rule must be judiciously applied, or it may work great wrong and injury. Prewitt v. Lambert, 19 Colo. 7, 34 P. 684 (1893); Brantner v. Papish, 109 Colo. 437, 126 P.2d 1032 (1942).

**Section should not be so restricted as to fail in its intention.** Although this section may, in some instances, work a hardship and prevent parties from establishing honest defenses, it is a salutary one and necessary for the protection of estates, widows, and minor heirs, who, without some rule of evidence of this kind, would find themselves at the mercy of any unprincipled debtor, and while the rule need not be unnecessarily extended, it should not be so restricted as to fail in its intention. Williams v. Carr, 4 Colo. App. 363, 36 P. 644 (1894).

**This section applies in equity and at law.** The statutory prohibition against a party to an action or directly interested

therein testifying of his own motion or in his own behalf, when the adverse party sues or defends as the executor or administrator of a deceased person, is the same in equity as at law. *Williams v. Carr*, 4 Colo. App. 368, 36 P. 646 (1894).

**This section does not properly apply unless it unquestionably appears that the party is suing or defending as executor or administrator.** *Prewitt v. Lambert*, 19 Colo. 7, 34 P. 684 (1893).

**Which fact must be established by positive averment and proof.** When a person sued individually for the conversion of property undertakes to defend as administrator, he must establish by positive averment and proof his status as administrator and that he is possessed of, or entitled to, such property, and chargeable therewith in such capacity, by some appropriate preliminary trial, before the opposite party, or other interested parties, can properly be excluded as witnesses upon the merits of the case. *Prewitt v. Lambert*, 19 Colo. 7, 34 P. 684 (1893).

**Disqualifying interest determined at time of testimony.** The disqualifying interest within the meaning of the dead man's statute is determined as of the time the testimony sought to be excluded is offered. *Gaddis v. McDonald*, 633 P.2d 1102 (Colo. App. 1981); *David v. Powder Mt. Ranch*, 656 P.2d 716 (Colo. App. 1982).

**Interest must be shown.** The interest of a witness must be shown before the bar of the statute may be invoked. *David v. Powder Mt. Ranch*, 656 P.2d 716 (Colo. App. 1982).

**This section does not apply to an executrix defending in her individual right.** One who, being sued both in her individual capacity and as executrix, defends solely in her individual right, cannot exclude the testimony of plaintiff under this section. *Gabrin v. Brister*, 65 Colo. 407, 177 P. 134 (1918); *Lamborn v. Kirkpatrick*, 97 Colo. 421, 50 P.2d 542 (1935).

**This section does not permit an executor to join an uninterested person as a party defendant** and thereby deny him the right to testify. *Klein v. Munz*, 87 Colo. 223, 286 P. 112 (1930).

**The combined effect of this and the preceding section is to enlarge common-law competency** so as to embrace all persons, except those within this section and as to those to leave competency as at common law. "Competency as witnesses of persons not parties to the record is presumed until the contrary appears, and the onus is upon the objector to show the incompetency." *Jones v. Henshall*, 3 Colo. App. 448, 34 P. 254 (1893); *King Shoe Co. v. Chittenden*, 16 Colo. App. 441, 66 P. 173 (1901).

**In some cases an administrator is not an adverse party.** In a suit to impress a trust upon a decedent's estate as a result of a contract to execute reciprocal wills, the administrator being under no obligation to defend the issues raised is not, under a proper interpretation of this section an adverse party, and is without right to interpose an objection to evidence offered by the plaintiff as a witness in her own

behalf. *Risbry v. Swan*, 124 Colo. 567, 239 P.2d 600 (1951).

**State not "adverse party".** In a suit in which it is sought to impress a trust upon a decedent's estate, the state of Colorado has presently no enforceable claim against the estate, and strictly construed, may well be said at the present time not to fall even within the classification of "adverse party" since it becomes entitled to no right of enforcement until the court in whose hands the estate is being administered shall enter a proper decree directing the personal representative to pay the money over to the state treasurer pursuant to the escheat statute. *Risbry v. Swan*, 124 Colo. 567, 239 P.2d 600 (1951).

**Objection may be waived.** The exception engrafted upon the general competency of all parties, that where one is dead and is represented in the suit, then the living party shall not be permitted to testify, is only a regulation to secure mutuality in the action itself. The admission of such testimony affects no one but the parties, and none but the parties are interested in the exercise of the power given to exclude this testimony. *Faden v. Midcap's Estate*, 112 Colo. 573, 152 P.2d 682 (1944); *Risbry v. Swan*, 124 Colo. 567, 239 P.2d 600 (1951).

**Even though minors are interested in estate.** Representative may waive objection to incompetency although minors may be interested in the estate. *Faden v. Midcap's Estate*, 112 Colo. 573, 152 P.2d 682 (1944).

**Admitting evidence of a conversation with a party since deceased is not reversible error where it did not affect the**

**issue on trial.** *Tourtelotte v. Brown*, 18 Colo. App. 335, 71 P. 638 (1903).

**Grand jury testimony was not released merely to circumvent the evidencing problems encountered by operation of the Dead Man's Statute.** *In re Lynde*, 922 F.2d 1448 (10th Cir. 1991).

**Applied in** *In re Estate of Abbott*, 39 Colo. App. 536, 571 P.2d 311 (1977); *Taylor v. Barnes*, 41 Colo. App. 246, 586 P.2d 238 (1978); *Tompkins v. DeLeon*, 197 Colo. 569, 595 P.2d 242 (1979); *Murphy v. Glenn*, 964 P.2d 581 (Colo. App. 1998); *Glover v. Innis*, 252 P.3d 1204 (Colo. App. 2011).

## **II. DISQUALIFIED WITNESSES.**

A. Certain Plaintiffs and Defendants.

B. Interested Parties.

A. Certain Plaintiffs and Defendants.

**The competency or incompetency of a plaintiff's proffered testimony in his own behalf is determined by this section.** *Miller v. Hepner*, 136 Colo. 48, 314 P.2d 604 (1957).

**The protection of this section extends only to adverse parties within the designated class,** and not to their co-parties not within such class. *Nesbitt v. Swallow*, 63 Colo. 194, 164 P. 1163 (1917); *Gabrin v. Brister*, 65 Colo. 407, 177 P. 134 (1918); *Watson v. Woodley*, 71 Colo. 391, 207 P. 335 (1922); *Steward v. Burt*, 73 Colo. 468, 216 P. 258 (1923); *Sauer v. First Nat'l Bank*, 75 Colo. 119, 224 P. 227 (1924); *Haffner v. Van Blarcom*, 84 Colo. 565, 272 P. 621 (1928).

**An "adverse party" is any person** whose personal or property or other rights may be adversely affected by the operation of the judgment. In re Stepp's Estate, 101 Colo. 506, 75 P.2d 146 (1937).

**A party to an action is incompetent to testify of his own motion, or in his own behalf, when the adverse party sues as executor or administrator.** Williams v. Carr, 4 Colo. App. 363, 36 P. 644 (1894); Rogers v. McMillen, 6 Colo. App. 14, 39 P. 891 (1895); Cree v. Becker, 49 Colo. 268, 112 P. 783 (1910).

**Or when any person appears and sues or defends as heir.** Whitsett v. Kershow, 4 Colo. 419 (1878); Gilham v. French, 6 Colo. 196 (1882); Fetta v. Vandevier, 3 Colo. App. 419, 34 P. 168 (1893); Lancaster v. Coale, 27 Colo. App. 495, 150 P. 821 (1915).

**Unless he comes within some of the exceptions expressed in this section.** Fetta v. Vandevier, 3 Colo. App. 419, 34 P. 168 (1893); Carpenter v. Ware, 4 Colo. App. 458, 36 P. 298 (1894).

**This does not affect the rights of executors to become parties.** The fact that, by making the executors of a vendor parties to an action, defendants were rendered incompetent to testify as witnesses in their own behalf, does not affect the right of the executors to become parties. Butler v. Rockwell, 14 Colo. 125, 23 P. 462 (1890).

**Witness may be incompetent against executor, but competent against other defendants.** In an action where one is defending as an heir or legal representative, a witness who is incompetent against the

heir or representative, under the statute, may be competent to testify against other defendants in the action, who are not representatives or heirs. Nesbitt v. Swallow, 63 Colo. 194, 164 P. 1163 (1917); Gabrin v. Brister, 65 Colo. 407, 177 P. 134 (1918); Watson v. Woodley, 71 Colo. 391, 207 P. 335 (1922).

**The dead man's statute is not applicable where a party is not suing or defending as an heir.** Askins v. Easterling, 141 Colo. 83, 347 P.2d 126 (1959).

**Such as a grantor and grantee.** The dead man's statute has no application where parties are suing or defending as grantor and grantee and not as heirs. Askins v. Easterling, 141 Colo. 83, 347 P.2d 126 (1959); Linker v. Linker, 28 Colo. App. 136, 470 P.2d 882 (1970).

**Or as a corporate stockholder.** This section does not apply where the objecting party is suing, not as an heir but as a stockholder in a corporation; and whether she inherited or purchased the stock is unimportant. Allen v. Fleming, 97 Colo. 204, 48 P.2d 810 (1935).

**This section is not altered, when a general objection is made before the witness is sworn,** whether the testimony elicited was upon the direct or cross-examination. Whitsett v. Kershow, 4 Colo. 419 (1878).

**If a party is incompetent the character of his testimony and the subject matter about which he testifies are totally unimportant.** If the evidence which he gives is relevant to any issue made in the

case, it is error to permit him to give it at his own instance, and if the objection be properly interposed in apt time, it must be sustained. *Jones v. Henshall*, 3 Colo. App. 448, 34 P. 254 (1893); *Brown v. First Nat'l Bank*, 49 Colo. 393, 113 P. 483 (1911).

**Examination of one witness who is incompetent under section operates as waiver of incompetency as to other adverse witnesses** where the testimony of the adverse witness is offered after the examination of the first witness and relates to matters testified to by the first witness. *Wise v. Hillman*, 625 P.2d 364 (Colo. 1981).

**This section prohibits the surviving party's testifying in a suit by the executor of the deceased party's estate.** *Oswald v. Dawn*, 143 Colo. 487, 354 P.2d 505 (1960).

**Also plaintiff in suit for services to a decedent.** In an action for the value of care and services rendered a deceased defendant, it is error under this section, to permit a plaintiff to testify in his own behalf over the objection of defendant, defending the action as administratrix. *Temple v. Magruder*, 36 Colo. 390, 85 P. 832 (1906); *Young v. Burke*, 139 Colo. 305, 338 P.2d 284 (1959).

**And a claimant, as injured passenger in automobile collision,** who brought suit against operator of another motor vehicle was precluded by this section from testifying as to anything that occurred prior to date of decedent's death. *Gushurst v. Benham*, 160 Colo. 428, 417 P.2d 777 (1966); *Nat'l State Bank v. Brayman*, 30 Colo. App. 554, 497 P.2d 710 (1972), rev'd on other grounds, 180 Colo. 304, 505 P.2d 11 (1973).

**Also, a plaintiff in a new trial on issue of damages.** Where the supreme court had ruled in previous opinion that unless the plaintiff consented to reduction of the award for exemplary damages within 10 days after the issuance of the remittitur, the judgment would be reversed as to issue of damages, and a new trial ordered on that issue alone, and nothing transpired for approximately three and one-half years or until shortly after the defendant's death when the plaintiff applied to set damages issue for trial, under the circumstances the trial court did not err in ruling that the plaintiff was precluded from testifying under the provisions of this section, the "dead man's statute". *Bennett v. Kresse*, 174 Colo. 200, 483 P.2d 384 (1971).

**In addition, no self-serving statement by disqualified claimant is competent evidence.** In a proceeding upon the allowance of a claim against the estate of a decedent, a deposition taken by the administrator was introduced and read by claimant. Attached to the deposition as an exhibit was a letter written by the claimant to the deponent after the death of the decedent, in which was set forth in detail the amount and character of the services rendered upon which the claim against the estate was based, and such letter was allowed in evidence over the objection of the administrator. Held, that the claimant being disqualified as a witness under this section no self-serving statement made by him in the form of a letter could be competent evidence. *Butler v. Phillips*, 38 Colo. 378, 88 P. 480 (1906).

**The administratrix of the estate of a deceased person is incompetent to testify,**

in a hearing to set aside the allowance of a claim against the estate, regarding matters which occurred prior to the death of claimant. *Lego v. Olson*, 110 Colo. 508, 136 P.2d 277 (1943).

**Beneficiaries under a will are incompetent to testify** in contested proceedings to have admitted to probate over the objection of heirs of the testator. In *re Shapter's Estate*, 35 Colo. 578, 85 P. 688 (1906); In *re Eder's Estate*, 94 Colo. 173, 29 P.2d 631 (1934); In *re Livingston's Estate*, 102 Colo. 148, 77 P.2d 649 (1938); *Cole v. Christopher*, 121 Colo. 461, 217 P.2d 620 (1950).

**Widow claiming interest in estate is incompetent.** In an action by a widow against the administrator of her deceased husband, the plaintiff proposed to testify, of her own motion, that certain property sold in the lifetime of her husband belonged to her; that she consented to the sale, and permitted the husband to take the money, with the understanding that he was to reinvest it in another homestead, which was to belong to her, but which was never done. Under this section such testimony is specifically prohibited. *Palmer v. Hanna*, 6 Colo. 55 (1881); *Carpenter v. Ware*, 4 Colo. App. 458, 36 P. 298 (1894); *Stratton v. Rice*, 66 Colo. 407, 181 P. 529 (1919); *Walker v. Walker*, 131 Colo. 328, 281 P.2d 1010 (1955).

**As is child seeking statutory allowance from father's estate.** A minor child, unless within some of the exceptions enumerated in this section is incompetent to testify in proceedings wherein he is seeking a statutory allowance from the estate of his

deceased father. *Lyons v. Egan*, 110 Colo. 227, 132 P.2d 794 (1942).

**The executor of a will is a party to a will contest, and, therefore, not a competent witness,** under this section. In *re Shapter's Estate*, 35 Colo. 578, 85 P. 688 (1906).

**Plaintiff in action on promissory note is incompetent.** In an action against the administrator of an estate on a promissory note of the deceased, the plaintiff cannot testify on his own motion or in his own behalf. *Reiter v. Pollard*, 75 Colo. 203, 225 P. 222 (1924).

**As is surviving partner proving partnership.** In an action against two persons alleged to be co-partners for the collection of a claim against the firm, wherein service of summons is made on one only, who answers denying the partnership and his own liability as well, but dies before trial of the issues, and his administratrix is substituted as defendant, the alleged surviving partner is not a competent witness for the plaintiffs under the statute to prove the partnership. No acknowledgment by a surviving partner, made after the death of his co-partner, will revive a debt against the estate of the deceased partner. *Cooper v. Wood*, 1 Colo. App. 101, 27 P. 884 (1891); *Hottel v. Mason*, 16 Colo. 43, 26 P. 335 (1891).

**A disqualified person is not to be censured for failing to offer to testify.** *Irvine v. Minshull*, 60 Colo. 112, 152 P. 1150 (1915).

B. Interested Parties.

**This section has no application to witnesses who have no interest in the result of the litigation.** Kitts v. Hill, 89 Colo. 186, 300 P. 610 (1931); Lamborn v. Kirkpatrick, 97 Colo. 421, 50 P.2d 542 (1935); In re Stepp's Estate, 101 Colo. 506, 75 P.2d 146 (1937).

**Nor to a witness whose testimony cannot be prejudicial.** It is unnecessary to determine whether or not a witness is disqualified by virtue of the provisions of this section where his testimony is of a character that cannot possibly be prejudicial to the interests of the executrix or the estate which she represents. Cone v. Eldridge, 51 Colo. 564, 119 P. 616 (1911).

**Such witnesses are competent to testify under the preceding section.** Further, being competent under the common law to testify, and common-law competency not being abridged by our statute, his deposition should have been received. The deposition went to material matters. Prejudicial error was committed in its rejection. King Shoe Co. v. Chittenden, 16 Colo. App. 441, 66 P. 173 (1901).

**The interest of a defendant or witness must be shown before the bar of the statute may be invoked.** Klein v. Munz, 87 Colo. 223, 286 P. 112 (1930).

**The test of the interest of a witness is whether he will gain or lose by the direct legal operation of the judgment.** Popejoy v. Bahr, 67 Colo. 385, 176 P. 947 (1919); Norris v. Bradshaw, 92 Colo. 34, 18 P.2d 467 (1932); In re Eder's Estate, 94 Colo.

173, 29 P.2d 631 (1934); Denver Nat'l Bank v. McLagan, 133 Colo. 487, 298 P.2d 386 (1956); Sussman v. Barash, 157 Colo. 124, 401 P.2d 608 (1965); David v. Powder Mt. Ranch, 656 P.2d 716 (Colo. App. 1982).

**Test of interest is made at time testimony is offered.** The decisive test is when, in point of time, the interest is to be determined. The competency of a witness, insofar as his interest is concerned, generally depends on the facts as they exist at the time when his testimony is offered, rather than at the time of the filing of the petition. Miller v. Hepner, 136 Colo. 48, 314 P.2d 604 (1957); Zietz v. Estate of Turner, 168 Colo. 499, 452 P.2d 1 (1969); In re Estate of Granberry, 30 Colo. App. 590, 498 P.2d 960 (1972).

**The interest of a witness in the result of litigation is made to appear by a consideration of the rights created or extinguished by its issue.** Cordingly v. Kennedy, 239 F. 645 (8th Cir. 1917).

**Consent will not remove the disability of interest.** The disability, under this peculiar statute, so far as interest is concerned, is not one which is removable by the consent of the party offering it as in the case of interest at the common law. Williams v. Carr, 4 Colo. App. 368, 36 P. 646 (1894).

**Testimony will not be barred when interest is merely an expectancy.** This section does not bar testimony of claimant regarding a conversation that claimant had with deceased to the effect that deceased was holding land in trust for claimant's mother when at the time the action was begun the claimant's mother was living and



claimant's interest in the property was only an expectancy. In re Estate of Granberry, 30 Colo. App. 590, 498 P.2d 960 (1972).

**Wife of defendant is not directly interested.** The fact that a witness is the wife of the defendant would not, of itself, make her directly interested in the event of the suit, within the meaning of the statute, so as to exclude her testimony. Butler v. Phillips, 38 Colo. 378, 88 P. 480 (1906); White v. Christopherson, 46 Colo. 46, 102 P. 747 (1909); Norris v. Bradshaw, 92 Colo. 34, 18 P.2d 467 (1932).

**Husband need not have direct interest.** Where husband of claimant had no "direct interest" in the outcome of the litigation, his testimony did not offend this section. Gushurst v. Benham, 160 Colo. 428, 417 P.2d 777 (1966).

**Mere fact that witness is mother of party does not render her incompetent.** There was no testimony to suggest that the mother was directly interested in the outcome of the lawsuit, brought by her son, other than the normal interest a parent has for the welfare of a child. At the time of the trial, she was 70 years of age, and had never received support from the plaintiff, and was competent to testify in support of the agreement benefitting her son. Zietz v. Estate of Turner, 168 Colo. 449, 452 P.2d 1 (1969).

**Agent is not necessarily interested.** So far as the evidence discloses, deponent had no direct interest in the event of the action. King Shoe Co. v. Chittenden, 16 Colo. App. 441, 66 P. 173 (1901).

**Under this section a stockholder in a corporation is not a competent witness** to establish a claim of such corporation against a decedent's estate. Brown v. First Nat'l Bank, 49 Colo. 393, 113 P. 483 (1911); Gilmour v. Hawley Merchandise Co., 21 Colo. App. 307, 121 P. 765 (1912).

A stockholder of a claimant corporation is an interested party within the meaning of the dead man's statute, and therefore incompetent to testify. Music City, Inc. v. Estate of Duncan, 185 Colo. 245, 523 P.2d 983 (1974).

**The mere fact that witnesses to a will were employees of a corporation in which the testatrix had an interest,** and as such employees might be eligible to receive a bonus from the company if and when any such should be paid, did not render them incompetent to testify as to the execution of the will, their interest, if any, being too remote and too indirect to disqualify them. Estate of Ainsworth, 102 Colo. 392, 79 P.2d 1045 (1938).

**Attorneys are competent to testify.** The statutory provision that no person directly interested in the event of a civil action may testify therein when the adverse party sues or defends as an executor, does not apply to the attorney of a party because of the ordinary and usual fee he would receive for acting as such attorney. Estate of Leibold, 102 Colo. 408, 79 P.2d 1049 (1938).

Decedent's attorney was not incompetent to testify in proceeding to establish lost will because, as attorney for the estate, he had a financial interest in the estate. In re Estate of

Enz, 33 Colo. App. 24, 515 P.2d 1133 (1973).

**Attorney for proponents of will may testify.** An attorney for proponents of a will is not disqualified as a witness to testify in court relative thereto merely because of fees he may be entitled to receive because of his employment as counsel. In re Eder's Estate, 94 Colo. 173, 29 P.2d 631 (1934); Denver Nat'l Bank v. McLagan, 133 Colo. 487, 298 P.2d 386 (1956).

**As to father of defendant in ejectment action.** Defendant in ejectment claimed under a conveyance from the wife of plaintiff, the validity of which was contested. The father of the defendant claiming other lands, under a different conveyance contested upon the same grounds asserted in the present action, was held competent. Allen v. Shires, 47 Colo. 433, 107 P. 1070 (1910).

**And wife of a legatee.** The wife of a legatee is a competent attesting witness under this section when examined for and with his consent. White v. Bower, 56 Colo. 575, 136 P. 1053 (1913).

**Also, brothers and sisters of a devisee are competent witnesses to sustain a will.** Butler v. Phillips, 38 Colo. 378, 88 P. 480 (1906); White v. Christopherson, 46 Colo. 46, 102 P. 747 (1909); In re Hatfield's Will, 21 Colo. App. 443, 122 P. 63 (1912); Burnham v. Grant, 24 Colo. App. 131, 134 P. 254 (1913).

**Generally, one entering into a contract for the benefit of a third person may testify** as to it in an action by the

beneficiary, against the estate of the other party. Sussman v. Barash, 157 Colo. 124, 401 P.2d 608 (1965).

**As may a witness concerned in another suit.** A witness is not excluded under this section, where he has no interest in the suit in which his testimony is offered, even though he is concerned in a different suit, involving the validity of a contract, upon which depends the suit in which he is offered. Love v. Cotten, 65 Colo. 593, 179 P. 806 (1919).

**So may part owner of chattel in replevin proceedings.** One not a party to an action of replevin by an administrator is not disqualified, under this section, as a witness for the defendant, by reason of the fact that he is the owner of some of the chattel. Popejoy v. Bahr, 67 Colo. 385, 176 P. 947 (1919).

**Interested person incompetent to lay foundation for admission of book accounts.** An interested person, within the meaning of this section, is not a competent witness for laying a foundation for admission of book accounts into evidence under § 13-90-103. Music City, Inc. v. Estate of Duncan, 185 Colo. 245, 523 P.2d 983 (1974).

**Witness relieved of liability by judgment against executor.** One who is not a party to an action against an executor is not disqualified as a witness for the plaintiff by the mere fact the he may be, himself, relieved of liability by a judgment against the executor. He is not "directly interested", within the meaning of the statute. Selkregg

v. Thomas, 27 Colo. App. 259, 149 P. 273 (1915).

### III. EXCEPTIONS.

A. In General.

B. Witnesses Called by Adverse Party.

C. Facts Occurring After Death of Decedent.

D. Conversations or Transactions with Decedent.

E. Deposition of Deceased Entered in Evidence.

F. Conversations in Presence of Certain People.

G. Previous Testimony in Probate Proceedings.

A. In General.

**Competency attends where voluntary testimony is given without objection.** A claimant, if called by the representative of the estate for that purpose, is competent to testify of and concerning his claim, and competency also attends where, proceeding without objection, claimant voluntarily testifies in that behalf. The latter consideration is emphasized when the representative of the estate has conducted an exhaustive cross-examination of claimant on the merits of his claim. Faden v. Midcap's Estate, 112 Colo. 573, 152 P.2d 682 (1944).

**The provisions of this section relating to the manner in which incompetency can be removed are not uncertain or ambiguous** as to what must be done to render such incompetent witness competent,

to the extent therein provided. Levy v. Dwight, 12 Colo. 101, 20 P. 12 (1888).

**There is no reason for judicial interpretation of the legislative intent.** The general assembly having said that the living party may testify, under certain circumstances, when the adverse party is an executor or administrator, it must be held to have expressed its full intention in that regard, and there is no call for a judicial interpretation of the legislative intention when such intention is clearly expressed. Levy v. Dwight, 12 Colo. 101, 20 P. 12 (1888).

**No judicial exceptions may be created.** The circumstance that the action is upon a bond in which one still living but not joined was surety, affords no ground to make an exception to the rule prescribed by this section. Cree v. Becker, 49 Colo. 268, 112 P. 783 (1910).

**It is only under one of the exceptions that testimony may be admissible where witness is a party to the action or directly interested.** This section prohibits a party to the action, or any person directly interested in the event thereof, from giving testimony of his own motion or in his own behalf, when the adverse party sues or defends as the administrator of a deceased person, unless the testimony is admissible under one of the exceptions enumerated in this section. Brown v. First Nat'l Bank, 49 Colo. 393, 113 P. 483 (1911).

**Whether witness is within exceptions should appear before he is admitted to testify.** Under this section when a party is offered as a witness, and before he is

admitted to testify, it should be made to appear from his status in the case whether he is brought within any of the enumerated exceptions to the disqualifying section of the statute. *Whitsett v. Kershow*, 4 Colo. 419 (1878).

**Proponent of will may testify to contradict testimony of drawing attorney.** In a will contest, testimony of the proponent concerning the preparation of the will by an attorney, such testimony being in direct conflict with that of the attorney respecting the circumstances surrounding the drawing and execution of the will, was not barred by the "dead man's" statute. *Ofstad v. Sarconi*, 131 Colo. 541, 285 P.2d 828 (1955).

**Dead man's statute was not a bar to testimony concerning conversations party had with attorney** when record clearly indicates conversations occurred outside presence of decedent. *Difede v. Mtn. States Tel. & Tel.*, 763 P. 2d 298 (Colo. App. 1988), rev'd on other grounds, 780 P.2d 533 (Colo. 1989).

**Use by defendant of deposition statements made by plaintiff regarding conversations she had with decedent constitutes waiver of right to bar testimony** regarding same conversations. *Crandell v. Resley*, 804 P.2d 272 (Colo. App. 1990).

#### B. Witnesses Called by Adverse Party.

**Disqualified witness called by adverse party is thereby rendered competent for all purposes.** When a disqualified witness is called by the adverse party and examined by him as a witness upon certain matters

pertinent to some of the issues in the case, such witness is thereby rendered competent for all purposes. *Warren v. Adams*, 19 Colo. 515, 36 P. 604 (1894); *Jerome v. Bohn*, 21 Colo. 322, 40 P. 570 (1895); *Allen v. Shires*, 47 Colo. 433, 107 P. 1070 (1910); *Zackheim v. Zackheim*, 75 Colo. 161, 225 P. 268 (1924); *Stender v. Cunningham*, 123 Colo. 5, 225 P.2d 52 (1950); *Estate of Thomas v. Davis*, 144 Colo. 358, 356 P.2d 963 (1960).

**Objection to competency is not waived where witness is not called by adverse party but is cross-examined to show interest.** Where a witness was not called by the adverse party under § 13-90-116, but was cross-examined only to such extent as would fully disclose that he was a party directly interested in the result of the controversy, which was made clearly to appear, this does not waive objection to competency. *Cordingly v. Kennedy*, 239 F. 645 (8th Cir. 1917).

**Waiver of defense where incompetent testifies.** The examination of one witness who is incompetent under this section operates as a waiver of incompetency as to other adverse witnesses, at least where the testimony of the adverse witness relates to subjects covered by the first witness. *Hillman v. Bray Lines*, 41 Colo. App. 493, 591 P.2d 1332 (1978), aff'd sub nom. *Wise v. Hillman*, 625 P.2d 364 (Colo. 1981).

#### C. Facts Occurring After Death of Decedent.

**It is not error to receive testimony of plaintiffs to facts occurring subsequent to the decease of the defendants' ancestor.** *Fillmore v. Wells*, 10 Colo. 228, 15 P. 343 (1887).

**Or testimony as to facts occurring after death of testator.** In a proceeding contesting the admission of a will to probate, witnesses are competent to testify to facts occurring after the death of the testator regardless of their interest in the outcome of the proceeding. In re Eder's Estate, 94 Colo. 173, 29 P.2d 631 (1934).

**Such as conversation between witness and administrator.** In an action against an administrator, a conversation between the administrator and a party to the suit who has since died, which did not relate to matters transpiring prior to the death of the administrator's decedent, is not prohibited from admission in evidence by this section. Tourtelotte v. Brown, 18 Colo. App. 335, 71 P. 638 (1903).

**Heirs cannot testify as to statements of testator made before his decease.** Testimony of a daughter and her husband concerning statements of the father made before his decease as to the disposition of his property held, under the disclosed facts, to be inadmissible; further held, that the witnesses were incompetent to testify as to such statements, and the admission of the evidence was reversible error. Norris v. Bradshaw, 92 Colo. 34, 18 P.2d 467 (1932).

D. Conversations or Transactions with Decedent.

**The exception as to conversations and transactions with the deceased does not extend to deposit slips, and checks,** in the handwriting of the deceased, dated at times when, according to the assertions of the claimant, he was in another state. Stratton v. Rice, 66 Colo. 407, 181 P. 529 (1919).

E. Deposition of Deceased Entered in Evidence.

**Use of decedent's prior recorded testimony.** Either party may offer decedent's prior recorded testimony into evidence, and thereafter claimant, by virtue of such offer, may become a competent witness on his own behalf. Coon v. Berger, 41 Colo. App. 358, 588 P.2d 386 (1978), aff'd, 199 Colo. 133, 606 P.2d 68 (1980).

**Deposition of deceased may be read by either party.** When one party sues or defends as an executor or administrator of a deceased person, by excluding the testimony of the adverse party the parties are placed on an equality; but, if the deposition of the deceased party has been taken, "it may be read in any stage of the same action or proceeding by either party and shall then be deemed evidence of the party reading it". Levy v. Dwight, 12 Colo. 101, 20 P. 12 (1888).

**If read by the representative of deceased, the living party may testify in his own behalf.** If the testimony of a deceased party, given on a former trial, is offered in evidence by the administrator of such deceased party, the reason for the exclusion of the testimony of the living party is taken away; and to place the parties on an equality, as is the intention of the statute, the living party must be allowed to testify in his own behalf as to the matters testified to by the deceased party on the former trial. Levy v. Dwight, 12 Colo. 101, 20 P. 12 (1888).

**Otherwise he is incompetent to testify.** By the plain provisions of this subdivision,

appellee could not be made a witness in his own behalf, unless the deposition of the deceased defendant be read in evidence. He was rendered incompetent to testify in the case by the death of the adverse party, and must remain incompetent until his incompetency was removed in the manner provided by the statute. *Levy v. Dwight*, 12 Colo. 101, 20 P. 12 (1888).

**If offered by the living party it is regarded as the testimony of his own witness.** The testimony of the deceased, given at a former trial, may be offered in evidence by the living party, and then it is to be regarded as the testimony of his own witness, and subject to all the rules applicable to the testimony of any other witness in his behalf; but the introduction of such testimony by the living party will not make such party a competent witness in his own behalf. *Levy v. Dwight*, 12 Colo. 101, 20 P. 12 (1888).

**The testimony of the living party is to be in rebuttal of the deposition.** The fair implication arising from the restriction of this subdivision is that the testimony of the living party is to be in rebuttal of the deposition of the deceased party; that it is optional with the executor or administrator to introduce the deposition in evidence, or to withhold it from introduction. *Levy v. Dwight*, 12 Colo. 101, 20 P. 12 (1888).

**The mere existence of a deposition is not sufficient to entitle living party to testify.** To hold that the requirement of this subdivision is complied with by showing the existence of a deposition of a deceased party that can be read in evidence would be

judicial legislation. *Levy v. Dwight*, 12 Colo. 101, 20 P. 12 (1888).

**Rebuttable by testimony limited to matters relevant to decedent's statement.** In a retrial of a malpractice action against an attorney who has since died, the clients are not prevented from testifying if the decedent's prior court testimony is first admitted into evidence and their testimony is limited to relevant and competent matters encompassed within the decedent's prior testimony. *Berger v. Coon*, 199 Colo. 133, 606 P.2d 68 (1980).

**This provision is limited to depositions of deceased persons and does not expressly include lunatics or distracted persons.** *Fleming v. Miller*, 84 Colo. 27, 267 P. 1064 (1928).

F. Conversations in Presence of Certain People.

**Testimony of conversation made in presence of decedent's wife admissible.** Under this section, testimony offered by a plaintiff of conversations and agreements with a deceased in the presence of his wife who is a beneficiary of his estate and who is present at the trial is competent and admissible. *Miller v. Hepner*, 136 Colo. 48, 314 P.2d 604 (1957).

**Heirs may testify to deceased's conversations after their sixteenth birthday.** Any conversation or admission, or as to all matters and things connected with the subject matter of will contest may be testified to by the heirs of deceased where such conversations or admissions occurred after the heirs became "over the age of

sixteen years". Brantner v. Papish, 109 Colo. 437, 126 P.2d 1032 (1942).

**Person before whom deceased spoke must be present at the trial.** The purpose of the exclusionary provision in the sixth subdivision is to prevent the despoiling of estates by testimony relating to transactions with persons who, by death, have been rendered unable to contradict such testimony. Where, however, an heir of the deceased was present at the transaction and was also present at the trial, it was considered that the heir would have a sufficient interest in preserving the assets of the estate to check any attempt to establish a fictitious claim against the estate or to its assets. Norris v. Bradshaw, 92 Colo. 34, 18 P.2d 467 (1932).

**The words "member of the family" of the deceased, in the sense here used, include** only such persons living with the deceased, as would inherit from him by the laws of descent. Others, such as heirs, legatees, and devisees, who do not live with deceased so as to constitute members of his family, are specially mentioned in the

statute. Fagan v. Troutman, 25 Colo. App. 251, 138 P. 442 (1914).

#### G. Previous Testimony in Probate Proceedings.

**Under paragraph (g), brothers of the testator were held properly admitted** to deny statements made by the testator touching alleged troubles and controversies with them, the statements having been made in the presence of the proponent of the will, and the principal beneficiary thereunder. James v. James, 64 Colo. 133, 170 P. 285 (1918).

**Under paragraph (g), the testimony of a widow in the county court,** when cited and examined under § 15-10-106, was admissible in her behalf. Lane v. Lane, 57 Colo. 419, 140 P. 804 (1914).

**Executor may also testify.** This subsection is a further exception to the dead man's statute which specifically permits the executor named in a will to testify in a will contest. Estate of Freeman v. Young, 172 Colo. 322, 473 P.2d 704 (1970).

### **13-90-103. Book account, how identified. (Repealed)**

**Source:** L. 1870: p. 64, § 3. G.L. § 2953. G.S. § 3642. L. 07: p. 630, § 1. R.S. 08: § 7268. C.L. § 6557. CSA: C. 177, § 3. CRS 53: § 153-1-3. C.R.S. 1963: § 154-1-3. L. 77: Entire section repealed, p. 293, § 5, effective May 26.

### **13-90-104. Conversation of deceased partner.**

In any action, suit, or proceeding by or against any surviving partner or joint contractor, no adverse party or person adversely interested in the event thereof is a competent witness to testify,

by virtue of section 13-90-101, to any admission or conversation by any deceased partner or joint contractor, unless one or more of the surviving partners or joint contractors were also present at the time of such admission or conversation.

**Source:** L. 1870: p. 64, § 4. G.L. § 2954. G.S. § 3643. R.S. 08: § 7269. C.L. § 6558. CSA: C. 177, § 4. CRS 53: § 153-1-4. C.R.S. 1963: § 154-1-4.

**Cross references:** For the nature of the joint liability of the partnership, see §§ 7-60-111 and 7-60-115.

### ANNOTATION

**Purpose is to protect surviving copartner.** The purpose of this section is wise and wholesome, to the end that a surviving copartner may be protected from injury and wrong, which otherwise might easily be perpetrated. *Watkins v. Adams*, 53 Colo. 290, 125 P. 122 (1912).

**In an action against the survivors of a partnership the plaintiff is not a competent witness** to testify to a contract made, or conversation had with the deceased partner, not in the presence of any of the

survivors. *Watkins v. Adams*, 53 Colo. 290, 125 P. 122 (1912).

**Unless one of the surviving partners was present.** This section clearly indicates, that where the suit is brought against any surviving partner or joint contractor, that the testimony relative to any admission or conversation by the deceased person or joint contractor shall not be admitted unless some one or more of the surviving partners or joint contractors were present at the time of the admission or conversation. *Savard v. Herbert*, 1 Colo. App. 445, 29 P. 461 (1892).

### **13-90-105. Incompetent not restored by release.**

In any civil action, suit, or proceeding, no person who would, if a party thereto, be incompetent to testify therein under the provisions of section 13-90-102 shall become competent by reason of any assignment or release of his claim made for the purpose of allowing such person to testify.



**Source:** L. 1870: p. 65, § 7. G.L. § 2957. G.S. § 3644. R.S. 08: § 7270. C.L. § 6559. CSA: C. 177, § 5. CRS 53: § 153-1-5. C.R.S 1963: § 154-1-5. L. 77: Entire section amended, p. 293, § 6, effective May 26.

#### ANNOTATION

**Effect of this section is to bar party in interest from disclaiming interest in the lawsuit in order to establish competency as a witness.** In re Estate of Gardner, 31 Colo. App. 361, 505 P.2d 50 (1972).

**This heir, despite disclaimer of interest, may not testify as to mental incompetency**

**of deceased.** Caveator and heir, who would take if attack on will was successful, could not, in view of dead man's statute objection, testify as to the alleged mental incompetence of testator at time will is executed, notwithstanding caveator's disclaimer of any interest in the estate. In re Estate of Gardner, 31 Colo. App. 361, 505 P.2d 50 (1972).

#### **13-90-106. Who may not testify.**

(1) The following persons shall not be witnesses:

(a) Persons who are of unsound mind at the time of their production for examination;

(b) (I) Children under ten years of age who appear incapable of receiving just impressions of the facts respecting which they are examined or of relating them truly.

(II) This proscription does not apply to a child under ten years of age, in any civil or criminal proceeding for child abuse, sexual abuse, a sexual offense pursuant to part 4 of article 3 of title 18, C.R.S., or incest, when the child is able to describe or relate in language appropriate for a child of that age the events or facts respecting which the child is examined.

**Source:** L. 1883: p. 290, § 2. G.S. § 3648. R.S. 08: § 7273. C.L. § 6562. CSA: C. 177, § 8. CRS 53: § 153-1-6. C.R.S. 1963: § 154-1-6. L. 83: (1)(b) amended, p. 635, § 1, effective April 22. L. 89: (1)(b)(II) amended, p. 862, § 1, effective April 12. L. 2003: (1)(b)(II) amended, p. 1433, § 24, effective April 29.

#### ANNOTATION

I. General Consideration.

III. Incompetency of a Child.

II. Mental Incompetency.

## **I. GENERAL CONSIDERATION.**

**Applied** in *People v. Norwood*, 37 Colo. App. 157, 547 P.2d 273 (1975); *People v. Trujillo*, 40 Colo. App. 220, 577 P.2d 297 (1977).

## **II. MENTAL INCOMPETENCY.**

**Every person of unsound mind is not incompetent to testify as a witness.** *Howard v. Hester*, 139 Colo. 255, 338 P.2d 106 (1959).

**Fact that a child is under care of a psychologist is merely one factor for the court to consider** and does not necessarily affect the child's competency to testify. *People v. Piro*, 671 P.2d 1341 (Colo. App. 1983).

**In determining whether a compelling reason exists for a psychological examination of a witness**, the trial court must balance the possible emotional trauma and embarrassment to, or intimidation of, the witness against the likelihood of the examination producing relevant, as distinguished from speculative, evidence. *People v. Piro*, 671 P.2d 1341 (Colo. App. 1983).

**Decision to order involuntary psychiatric examination of a witness** for purpose of determining competency to testify is within the sound discretion of the trial court and should only be granted where a compelling reason for it exists. Where defendant's only grounds for challenging competence of witness because of mental state pertained to credibility rather than competence, court did not err in denying

motion. *People v. McGhee*, 677 P.2d 419 (Colo. App. 1983).

**An adjudication of insanity only raises a rebuttable presumption of incompetency.** *People v. Coca*, 39 Colo. App. 264, 564 P.2d 431 (1977).

An adjudication of insanity is sufficient to create a prima facie showing of incompetency, shifting the burden of proof of competency to the proponent of the testimony. *People v. Coca*, 39 Colo. App. 264, 564 P.2d 431 (1977).

**There need not be a formal adjudication of sanity prior to testifying.** *People v. Coca*, 39 Colo. App. 264, 564 P.2d 431 (1977).

**The mere fact that an individual has been adjudicated as a feeble-minded person does not disqualify him as a witness.** *Howard v. Hester*, 139 Colo. 255, 338 P.2d 106 (1959).

Adjudication of insanity does not conclusively render a witness incompetent. *People v. Coca*, 39 Colo. App. 264, 564 P.2d 431 (1977).

**The matter of permitting an aged person to testify rests largely in a trial court's discretion**, and its determination will not be disturbed in the absence of a clear abuse of discretion. *Howard v. Hester*, 139 Colo. 255, 338 P.2d 106 (1959); *Garrison v. People*, 158 Colo. 348, 408 P.2d 60 (1965).

**A witness's intoxication, alone, is not sufficient to determine that the witness is incompetent to testify.** There is nothing in

the record that indicated the witness lacked the capacity to observe, recollect, communicate, and understand the oath to tell the truth. The witness was thoroughly cross-examined by defense counsel and the court informed the jury of the witness's intoxication status. There was no error in allowing the witness's testimony. *People v. Alley*, 232 P.3d 272 (Colo. App. 2010).

**Further, a witness's intoxication, alone, does not require the court to conduct a competency hearing.** The court has wide latitude to determine whether to admit an intoxicated witness's testimony, and it is the jury's role to determine the witness's credibility. *People v. Alley*, 232 P.3d 272 (Colo. App. 2010).

**If a witness has the capacity to observe, recollect, and communicate he is competent,** and his mental deficiency is considered only insofar as it affects the weight to be given his testimony. *Howard v. Hester*, 139 Colo. 255, 338 P.2d 106 (1959).

A person adjudged incompetent may testify so long as the trial court determines through appropriate voir dire examination and proper testimony in camera that, regardless of sanity, the witness appreciates and understands the nature and obligation of the oath and is capable of accurate recollection and narration. *People v. Coca*, 39 Colo. App. 264, 564 P.2d 431 (1977).

**When no question is raised as to competency, weight of testimony is for jury.** The plaintiffs did not examine the witness on voir dire, nor did they object to her testimony on the grounds that she was of unsound mind. Testimony that the witness

was a retarded individual and frequently told untrue stories was for impeachment purposes. No question was raised as to the admissibility. Under this state of the record the weight of the witness's testimony was for the jury alone. *Kirk v. Himes*, 170 Colo. 378, 461 P.2d 444 (1969).

**Abuse of discretion.** Where the court concluded that the witness, who had previously been adjudicated insane, was competent, without making any inquiries of the witness to determine present competency, the ruling constituted an abuse of discretion. *People v. Coca*, 39 Colo. App. 264, 564 P.2d 431 (1977).

**Sufficiency of verdict and medical report in release hearing.** The difference between release and insanity proceedings militates against viewing the jury verdict and medical report in the release hearing as sufficient in themselves to support a finding of competency to testify. *People v. Coca*, 39 Colo. App. 264, 564 P.2d 431 (1977).

**The court of appeals will not attempt to ascertain from the transcript alone** whether the witness was competent at trial. *People v. Coca*, 39 Colo. App. 264, 564 P.2d 431 (1977).

**For determination of "unsound mind" by review of transcripts,** see *People v. District Court*, 647 P.2d 1206 (Colo. 1982).

### III. INCOMPETENCY OF A CHILD.

**Law reviews.** For article, "Children as Witnesses: Competency and Rules Favoring Their Testimony", see 12 Colo. Law. 1982 (1983). For article, "The Child Witness", see 22 Colo. Law. 1201 (1993). For article,

"Children as Witnesses", see 31 Colo. Law. 15 (Oct. 2002).

**There is no per se rule against conducting a child competency hearing in front of the jury, but the better practice is to excuse the jury.** The defendant was not prejudiced by holding the hearing in front of the jury. *People v. Wittrein*, 221 P.3d 1076 (Colo. 2009).

**The provision of this section does not apply to all children under 10 years of age**, but only to those under that age who "appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly". *Victor v. Smilanich*, 54 Colo. 479, 131 P. 392 (1913).

**Child six and one-half years has been permitted to testify.** Where it appeared that a boy of six and a half years understood that he was required to tell the truth, and could be punished if he did not, that he had a fair understanding of the obligation of an oath, and of the facts which he detailed, held, that no abuse of discretion was committed in receiving his testimony. *Victor v. Smilanich*, 54 Colo. 479, 131 P. 392 (1913).

**The trial court committed no error in permitting a boy seven and one-half years of age to testify** where, after extensive examination, the court determined that the boy was competent and was capable of receiving just impressions of fact and truthfully relating the same. *Berger v. People*, 122 Colo. 367, 224 P.2d 228 (1950).

**Some eight-year-olds may testify.** Where the record shows lengthy cross-examinations

of the eight-year-old witness, both during the initial voir dire and during her testimony in open court, and her testimony was clear and not obviously coached or rehearsed, the trial court did not abuse its discretion in finding that the witness was competent to testify in an indecent liberties action. *Jordan v. People*, 161 Colo. 54, 419 P.2d 656 (1966).

**If a witness has the ability to observe and relate facts accurately and understand the moral obligation to tell the truth**, then he will be held competent to testify regardless of the fact that he may not know or be able to give an adequate technical, legal definition of the term "oath". *Marn v. People*, 175 Colo. 242, 486 P.2d 424 (1971).

**Competency of such children is addressed to court's discretion.** This language clearly implies that the competency of a child as a witness under the prescribed age, is a question addressed to the sound discretion of the trial court to determine. *Victor v. Smilanich*, 54 Colo. 479, 131 P. 392 (1913); *Pillod v. People*, 119 Colo. 116, 200 P.2d 919 (1948); *Wesner v. People*, 126 Colo. 400, 250 P.2d 124 (1952); *Hood v. People*, 130 Colo. 531, 277 P.2d 223 (1954); *Harris v. People*, 174 Colo. 483, 484 P.2d 1223 (1971); *People v. Lancaster*, 43 Colo. App. 328, 605 P.2d 67 (1979), *aff'd*, 200 Colo. 448, 615 P.2d 720 (1980); *People v. Hise*, 738 P.2d 13 (Colo. App. 1986); *People v. District Court*, 791 P.2d 682 (Colo. 1990); *People v. Vialpando*, 804 P.2d 219 (Colo. App. 1990); *People v. Seacrist*, 874 P.2d 438 (Colo. App. 1993).

**Court's determination will not be disturbed unless abused.** When, therefore, the trial court has determined this question, it will not be disturbed on review, unless it appears from the examination of the child on the voir dire, or from his testimony, that the trial court clearly abused its discretion. *Victor v. Smilanich*, 54 Colo. 479, 131 P. 392 (1913); *Holm v. People*, 72 Colo. 257, 210 P. 698 (1922); *Brasher v. People*, 81 Colo. 113, 253 P. 827 (1927); *Marn v. People*, 175 Colo. 242, 486 P.2d 424 (1971).

**Each case turns on its own facts.** The competency of a witness in any case turns upon the facts in the particular inquiry. *Hood v. People*, 130 Colo. 531, 277 P.2d 223 (1954).

**An objection to the admission or exclusion of evidence on the ground of the competency of a witness must be made in the trial court.** Otherwise, it will not be considered on review. *Holm v. People*, 72 Colo. 257, 210 P. 698 (1922); *Pillod v. People*, 119 Colo. 116, 200 P.2d 920 (1948); *Harris v. People*, 174 Colo. 483, 484 P.2d 1223 (1971).

**Limited voir dire examination not prejudicial.** If, on a limited examination of a child witness by the court, the child was permitted to testify and its testimony discloses that on the whole she was capable of receiving just impressions of the facts respecting which she was examined, and that she related them truthfully, and it is further disclosed that she had an idea of the obligation of an oath in connection therewith, then it is at once apparent that the quick judgment of the trial court was correct

and no prejudice to the defendant occurred by the brief voir dire examination. *Wesner v. People*, 126 Colo. 400, 250 P.2d 124 (1952).

**Declarant's testimonial incapacity due to age does not vitiate admission of declarant's assertion** under the *res gestae* exception to the hearsay rule. *Lancaster v. People*, 200 Colo. 448, 615 P.2d 720 (1980).

**Statements admitted under excited utterance exception to hearsay rule.** Even if a child's age makes him incompetent to testify, this incapacity does not vitiate the admission of his statements under the excited utterance exception to the hearsay rule. *People v. Ortega*, 672 P.2d 215 (Colo. App. 1983).

**Inconsistencies in testimony go to weight of evidence, not victim's competency to testify.** *People v. Galloway*, 726 P.2d 249 (Colo. App. 1986).

**Child under ten years of age is competent to testify as witness** if the child is able to describe or relate in language appropriate for a child that age the events or facts about which the child is being examined. *People v. Bowers*, 801 P.2d 511 (Colo. 1990); *People v. Trujillo*, 923 P.2d 277 (Colo. App. 1996).

**Child presumed competent.** As with other witnesses, defendant has the burden of establishing that a child witness is incompetent. *People v. Gillispie*, 767 P.2d 778 (Colo. App. 1988).

**Finding that child is incompetent to testify** pursuant to this section does not automatically preclude admission of child's hearsay statements if such statements fall

within exception to hearsay rule; however such finding is significant where the hearsay exception requires the child to have the ability to understand the purpose of questioning and to relate accurate information. *Oldsen v. People*, 732 P.2d 1132 (Colo. 1986).

**Finding child incompetent to testify due to child's reluctance to answer questions in courtroom setting** does not automatically impair the guarantees of reliability of child's hearsay statement and render such statement inadmissible. *People v. Bowers*, 801 P.2d 511 (Colo. 1990).

**A child is not competent to testify in a sexual assault proceeding** if he or she is unable to describe or relate in language appropriate for a child of that age the events or facts respecting which the child is examined. *People v. District Court*, 776 P.2d 1083 (Colo. 1989); *People v. Diefenderfer*, 784 P.2d 741 (Colo. 1989).

**This section does not require that all of the child's testimony be in language that is appropriate to the child's age.** Where most of the child's testimony was in age-appropriate language, the court did not abuse its discretion in allowing the child to testify even though she used the phrase "sex abuser", which was not appropriate to her age. *People v. Seacrist*, 874 P.2d 438 (Colo. App. 1993).

**Purpose of adoption of subsection (1)(b)(II)** was to allow juries to assess the weight and credibility of the testimony of victims of child abuse. *People v. District Court*, 791 P.2d 682 (Colo. 1990).

**The lesser standard established in subsection (1)(b)(II) does not apply only to the sexual assault victim**, but may be used to allow any child to testify in a sexual assault case if the child's testimony satisfies the statutory requirements. *People v. Seacrist*, 874 P.2d 438 (Colo. App. 1993).

**A child need not be able to understand what it means to take an oath to tell the truth** and need not be able to explain what it means to tell the truth in order to be judged competent to testify under subsection (1)(b)(II). *People v. District Court*, 791 P.2d 682 (Colo. 1990).

**Questioning a child-witness about the actual events of the charged offense is not required** before a determination of his or her competency can be made. *People v. Trujillo*, 923 P.2d 277 (Colo. App. 1996).

**The manner and scope of examination at competency hearings** should be left to the sound discretion of the trial court. *People v. Trujillo*, 923 P.2d 277 (Colo. App. 1996).

**Trial court did not abuse discretion in limiting defendant's cross-examination of child-witness** at the competency hearing about the alleged acts of sexual assault or in finding her competent to testify at trial where the victim was able to relate the events or facts upon which she was examined. *People v. Trujillo*, 923 P.2d 277 (Colo. App. 1996).

**Six-year-old child determined competent to testify in criminal sexual abuse proceeding.** *People v. Stackhouse*, 2012 COA 202, 411 P.3d 708, *aff'd* on other grounds, 2015 CO 48, 386 P.3d 440.

**13-90-107. Who may not testify without consent - definitions.**

(1) There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person must not be examined as a witness in the following cases:

(a) (I) Except as otherwise provided in section 14-13-310 (4), C.R.S., a husband shall not be examined for or against his wife without her consent nor a wife for or against her husband without his consent; nor during the marriage or afterward shall either be examined without the consent of the other as to any communications made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, a criminal action or proceeding for a crime committed by one against the other, or a criminal action or proceeding against one or both spouses when the alleged offense occurred prior to the date of the parties' marriage. However, this exception shall not attach if the otherwise privileged information is communicated after the marriage.

(II) The privilege described in this paragraph (a) does not apply to class 1, 2, or 3 felonies as described in section 18-1.3-401 (1)(a)(IV) and (1)(a)(V), C.R.S., or to level 1 or 2 drug felonies as described in section 18-1.3-401.5 (2)(a), C.R.S. In this instance, during the marriage or afterward, a husband shall not be examined for or against his wife as to any communications intended to be made in confidence and made by one to the other during the marriage without his consent, and a wife shall not be examined for or against her husband as to any communications intended to be made in confidence and made by one to the other without her consent.

(III) Communications between a husband and wife are not privileged pursuant to this paragraph (a) if such communications are made for the purpose of aiding the commission of a future crime or of a present continuing crime.

(IV) The burden of proving the existence of a marriage for the purposes of this paragraph (a) shall be on the party asserting the claim.

(V) Notice of the assertion of the marital privilege shall be given as soon as practicable but not less than ten days prior to assertion at any hearing.

(a.5) (I) Except as otherwise provided in section 14-13-310 (5), C.R.S., a partner in a civil union shall not be examined for or against the other partner in the civil union without the other partner's consent, nor during the civil union or afterward shall either be examined without the consent of the other as to any communications made by one to the other during the civil union; except that this exception does not apply to a civil action or proceeding by one against the other, a criminal action or proceeding for a crime committed by one against the other, or a criminal action or proceeding against one or both partners when the alleged offense occurred prior to the

date of the parties' certification of the civil union. However, this exception shall not attach if the otherwise privileged information is communicated after the certification of the civil union.

(II) The privilege described in this paragraph (a.5) does not apply to class 1, 2, or 3 felonies as described in section 18-1.3-401 (1)(a)(IV) and (1)(a)(V), C.R.S., or to level 1 or 2 drug felonies as described in section 18-1.3-401.5 (2)(a), C.R.S. In this instance, during the civil union or afterward, a partner in a civil union shall not be examined for or against the other partner in the civil union as to any communications intended to be made in confidence and made by one to the other during the civil union without the other partner's consent.

(III) Communications between partners in a civil union are not privileged pursuant to this paragraph (a.5) if such communications are made for the purpose of aiding the commission of a future crime or of a present continuing crime.

(IV) The burden of proving the existence of a civil union for the purposes of this paragraph (a.5) shall be on the party asserting the claim.

(V) Notice of the assertion of the privilege described in this paragraph (a.5) shall be given as soon as practicable but not less than ten days prior to assertion at any hearing.

(VI) For the purposes of this paragraph (a.5), "partner in a civil union" means a person who has entered into a civil union established in accordance with the requirements of article 15 of title 14, C.R.S.

(b) An attorney or licensed legal paraprofessional shall not be examined without the consent of the attorney's or licensed legal paraprofessional's client as to any communication made by the client to the attorney or licensed legal paraprofessional or to any advice given to the client by the client's attorney or licensed legal paraprofessional in the course of professional employment; nor shall an attorney's or licensed legal paraprofessional's secretary, paralegal, legal assistant, stenographer, or clerk be examined without the consent of the attorney or licensed legal paraprofessional concerning any fact, the knowledge of which is acquired in the person's capacity as the attorney's or licensed legal paraprofessional's employee.

(c) A clergy member, minister, priest, or rabbi shall not be examined without both his or her consent and also the consent of the person making the confidential communication as to any confidential communication made to him or her in his or her professional capacity in the course of discipline expected by the religious body to which he or she belongs.

(d) A physician, surgeon, or registered professional nurse duly authorized to practice his or her profession pursuant to the laws of this state or any other state shall not be examined without the consent of his or her patient as to any information acquired in attending the patient that was necessary to enable him or her to prescribe or act for the patient, but this paragraph (d) shall not apply to:



(I) A physician, surgeon, or registered professional nurse who is sued by or on behalf of a patient or by or on behalf of the heirs, executors, or administrators of a patient on any cause of action arising out of or connected with the physician's or nurse's care or treatment of such patient;

(II) A physician, surgeon, or registered professional nurse who was in consultation with a physician, surgeon, or registered professional nurse being sued as provided in subparagraph (I) of this paragraph (d) on the case out of which said suit arises;

(III) A review of a physician's or registered professional nurse's services by any of the following:

(A) The governing board of a hospital licensed pursuant to part 1 of article 3 of title 25, C.R.S., where said physician or registered professional nurse practices or the medical staff of such hospital if the medical staff operates pursuant to written bylaws approved by the governing board of such hospital;

(B) An organization authorized by federal or state law or contract to review physicians' or registered professional nurses' services or an organization which reviews the cost or quality of physicians' or registered professional nurses' services under a contract with the sponsor of a nongovernment group health-care program;

(C) The Colorado medical board, the state board of nursing, or a person or group authorized by such board to make an investigation in its behalf;

(D) A peer review committee of a society or association of physicians or registered professional nurses whose membership includes not less than one-third of the medical doctors or doctors of osteopathy or registered professional nurses licensed to practice in this state and only if the physician or registered professional nurse whose services are the subject of review is a member of such society or association and said physician or registered professional nurse has signed a release authorizing such review;

(E) A committee, board, agency, government official, or court to which appeal may be taken from any of the organizations or groups listed in this subparagraph (III);

(IV) A physician or any health-care provider who was in consultation with the physician who may have acquired any information or records relating to the services performed by the physician specified in subparagraph (III) of this paragraph (d);

(V) A registered professional nurse who is subject to any claim or the nurse's employer subject to any claim therein based on a nurse's actions, which claims are required to be defended and indemnified by any insurance company or trust obligated by contract;

(VI) A physician, surgeon, or registered professional nurse who is being examined as a witness as a result of his consultation for medical care or genetic counseling or screening

pursuant to section 13-64-502 in connection with a civil action to which section 13-64-502 applies.

(e) A public officer shall not be examined as to communications made to him in official confidence, when the public interests, in the judgment of the court, would suffer by the disclosure.

(f) (I) A certified public accountant shall not be examined without the consent of his or her client as to any communication made by the client to him or her in person or through the media of books of account and financial records or his or her advice, reports, or working papers given or made thereon in the course of professional employment; nor shall a secretary, stenographer, clerk, or assistant of a certified public accountant be examined without the consent of the client concerned concerning any fact, the knowledge of which he or she has acquired in such capacity.

(II) No certified public accountant in the employ of the state auditor's office shall be examined as to any communication made in the course of professional service to the legislative audit committee either in person or through the media of books of account and financial records or advice, reports, or working papers given or made thereon; nor shall a secretary, clerk, or assistant of a certified public accountant who is in the employ of the state auditor's office be examined concerning any fact, the knowledge of which such secretary, clerk, or assistant acquired in such capacity, unless such information has been made open to public inspection by a majority vote of the members of the legislative audit committee.

(III) (A) **Subpoena powers for public entity audit and reviews.** Subparagraph (I) of this paragraph (f) shall not apply to the Colorado state board of accountancy, nor to a person or group authorized by the board to make an investigation on the board's behalf, concerning an accountant's reports, working papers, or advice to a public entity that relate to audit or review accounting activities of the certified public accountant or certified public accounting firm being investigated.

(B) For the purposes of this subparagraph (III), a "public entity" shall include a governmental agency or entity; quasi-governmental entity; nonprofit entity; or public company that is considered an "issuer", as defined in section 2 of the federal "Sarbanes-Oxley Act of 2002", 15 U.S.C. sec. 7201.

(IV) (A) **Subpoena powers for private entity audit and reviews.** Subparagraph (I) of this paragraph (f) shall not apply to the Colorado state board of accountancy, nor to a person or group authorized by the board to make an investigation on the board's behalf, concerning an accountant's reports or working papers of a private entity that is not publicly traded and relate to audit or review attest activities of the certified public accountant or certified public accounting firm being investigated. This subparagraph (IV) shall not be construed to authorize the Colorado state board of accountancy or its agent to subpoena or examine income tax returns.

(B) At the request of either the client of the certified public accountant or certified public accounting firm or the certified public accountant or certified public accounting firm subject to the subpoena pursuant to this subsection (1)(f)(IV), a second certified public accounting firm or certified public accountant with no interest in the matter may review the report or working papers for compliance with the provisions of article 100 of title 12. The second certified public accounting firm or certified public accountant conducting the review must be approved by the board prior to beginning its review. The approval of the second certified public accounting firm or certified public accountant shall be in good faith. The written report issued by a second certified public accounting firm or certified public accountant shall be in lieu of a review by the board. Such report shall be limited to matters directly related to the work performed by the certified public accountant or certified public accounting firm being investigated and should exclude specific references to client financial information. The party requesting that a second certified public accounting firm or certified public accountant review the reports and working papers shall pay any additional expenses related to retaining the second certified public accounting firm or certified public accountant by the party who made the request. The written report of the second certified public accounting firm or certified public accountant shall be submitted to the board. The board may use the findings of the second certified public accounting firm or certified public accountant as grounds for discipline pursuant to article 100 of title 12.

(V) Disclosure of information under subsection (1)(f)(III) or (1)(f)(IV) of this section shall not waive or otherwise limit the confidentiality and privilege of such information nor relieve any certified public accountant, any certified public accounting firm, the Colorado state board of accountancy, or a person or group authorized by such board of the obligation of confidentiality. Disclosure that is not in good faith of such information shall subject the board, a member thereof, or its agent to civil liability pursuant to section 12-100-104 (4).

(VI) Any certified public accountant or certified public accounting firm that receives a subpoena for reports or accountant's working papers related to the audit or review attest activities of the accountant or accounting firm pursuant to subparagraph (III) or (IV) of this paragraph (f) shall notify his or her client of the subpoena within three business days after the date of service of the subpoena.

(VII) Subparagraph (III) or (IV) of this paragraph (f) shall not operate as a waiver, on behalf of any third party or the certified public accountant or certified public accounting firm, of due process remedies available under the "State Administrative Procedure Act", article 4 of title 24, C.R.S., the open records laws, article 72 of title 24, C.R.S., or any other provision of law.

(VIII) Prior to the disclosure of information pursuant to subparagraph (III) or (IV) of this paragraph (f), the certified public accountant, certified public accounting firm, or client thereof shall have the opportunity to designate reports or working papers related to the attest function under subpoena as privileged and confidential pursuant to this paragraph (f) or the open records laws, article 72 of title 24, C.R.S., in order to assure that the report or working papers shall not

be disseminated or otherwise republished and shall only be reviewed pursuant to limited authority granted to the board under subparagraph (III) or (IV) of this paragraph (f).

(IX) No later than thirty days after the board of accountancy completes the investigation for which records or working papers are subpoenaed pursuant to subparagraph (III) or (IV) of this paragraph (f), the board shall return all original records, working papers, or copies thereof to the certified public accountant or certified public accounting firm.

(X) Nothing in subparagraphs (III) and (IV) of this paragraph (f) shall cause the accountant-client privilege to be waived as to customer financial and account information of depository institutions or to the regulatory examinations and other regulatory information relating to depository institutions.

(XI) For the purposes of subparagraphs (III) to (X) of this paragraph (f), "entity" shall have the same meaning as in section 7-90-102 (20), C.R.S.

(g) A licensed psychologist, professional counselor, marriage and family therapist, social worker, or addiction counselor, an unlicensed psychotherapist, a certified addiction counselor, a psychologist candidate registered pursuant to section 12-245-304 (3), a marriage and family therapist candidate registered pursuant to section 12-245-504 (4), a licensed professional counselor candidate registered pursuant to section 12-245-604 (4), or a person described in section 12-245-217 shall not be examined without the consent of the licensee's, certificate holder's, registrant's, candidate's, or person's client as to any communication made by the client to the licensee, certificate holder, registrant, candidate, or person or the licensee's, certificate holder's, registrant's, candidate's, or person's advice given in the course of professional employment; nor shall any secretary, stenographer, or clerk employed by a licensed psychologist, professional counselor, marriage and family therapist, social worker, or addiction counselor, an unlicensed psychotherapist, a certified addiction counselor, a psychologist candidate registered pursuant to section 12-245-304 (3), a marriage and family therapist candidate registered pursuant to section 12-245-504 (4), a licensed professional counselor candidate registered pursuant to section 12-245-604 (4), or a person described in section 12-245-217 be examined without the consent of the employer of the secretary, stenographer, or clerk concerning any fact, the knowledge of which the employee has acquired in such capacity; nor shall any person who has participated in any psychotherapy, conducted under the supervision of a person authorized by law to conduct such therapy, including group therapy sessions, be examined concerning any knowledge gained during the course of such therapy without the consent of the person to whom the testimony sought relates.

(h) A qualified interpreter, pursuant to section 13-90-202, who is called upon to testify concerning the communications he interpreted between a hearing-impaired person and another person, one of whom holds a privilege pursuant to this subsection (1), shall not be examined without the written consent of the person who holds the privilege.

(i) A confidential intermediary, as defined in section 19-1-103, must not be examined as to communications made to the intermediary in official confidence when the public interests, in the judgment of the court, would suffer by the disclosure of such communications.

(j) (I) (A) If any person or entity performs a voluntary self-evaluation, the person, any officer or employee of the entity or person involved with the voluntary self-evaluation, if a specific responsibility of such employee was the performance of or participation in the voluntary self-evaluation or the preparation of the environmental audit report, or any consultant who is hired for the purpose of performing the voluntary self-evaluation for the person or entity may not be examined as to the voluntary self-evaluation or environmental audit report without the consent of the person or entity or unless ordered to do so by any court of record, or, pursuant to section 24-4-105, C.R.S., by an administrative law judge. For the purposes of this paragraph (j), "voluntary self-evaluation" and "environmental audit report" have the meanings provided for the terms in section 13-25-126.5 (2).

(B) This paragraph (j) does not apply if the voluntary self-evaluation is subject to an exception allowing admission into evidence or discovery pursuant to the provisions of section 13-25-126.5 (3) or (4).

(II) This paragraph (j) applies to voluntary self-evaluations that are performed on or after June 1, 1994.

(k) (I) A victim's advocate shall not be examined as to any communication made to such victim's advocate by a victim of domestic violence, as defined in section 18-6-800.3 (1), C.R.S., or a victim of sexual assault, as described in sections 18-3-401 to 18-3-405.5, 18-6-301, and 18-6-302, C.R.S., in person or through the media of written records or reports without the consent of the victim.

(II) For purposes of this paragraph (k), a "victim's advocate" means a person at a battered women's shelter or rape crisis organization or a comparable community-based advocacy program for victims of domestic violence or sexual assault and does not include an advocate employed by any law enforcement agency:

(A) Whose primary function is to render advice, counsel, or assist victims of domestic or family violence or sexual assault; and

(B) Who has undergone not less than fifteen hours of training as a victim's advocate or, with respect to an advocate who assists victims of sexual assault, not less than thirty hours of training as a sexual assault victim's advocate; and

(C) Who supervises employees of the program, administers the program, or works under the direction of a supervisor of the program.

(I) (I) A parent may not be examined as to any communication made in confidence by the parent's minor child to the parent when the minor child and the parent were in the presence of an attorney representing the minor child, or in the presence of a physician who has a confidential relationship with the minor child pursuant to paragraph (d) of this subsection (1), or in the presence of a mental health professional who has a confidential relationship with the minor child pursuant to paragraph (g) of this subsection (1), or in the presence of a clergy member, minister, priest, or rabbi who has a confidential relationship with the minor child pursuant to paragraph (c) of this subsection (1). The exception may be waived by express consent to disclosure by the minor child who made the communication or by failure of the minor child to object when the contents of the communication are demanded. This exception does not relieve any physician, mental health professional, or clergy member, minister, priest, or rabbi from any statutory reporting requirements.

(II) This exception does not apply to:

(A) Any civil action or proceeding by one parent against the other or by a parent or minor child against the other;

(B) Any proceeding to commit either the minor child or parent, pursuant to title 27, C.R.S., to whom the communication was made;

(C) Any guardianship or conservatorship action to place the person or property or both under the control of another because of an alleged mental or physical condition of the minor child or the minor child's parent;

(D) Any criminal action or proceeding in which a minor's parent is charged with a crime committed against the communicating minor child, the parent's spouse, the parent's partner in a civil union, or a minor child of either the parent or the parent's spouse or the parent's partner in a civil union;

(E) Any action or proceeding for termination of the parent-child legal relationship;

(F) Any action or proceeding for voluntary relinquishment of the parent-child legal relationship; or

(G) Any action or proceeding on a petition alleging child abuse, dependency or neglect, abandonment, or non-support by a parent.

(III) For purposes of this paragraph (I):

(A) "Minor child" means any person under the age of eighteen years.

(B) "Parent" includes the legal guardian or legal custodian of a minor child as well as adoptive parents.

(C) "Partner in a civil union" means a person who has entered into a civil union in accordance with the requirements of article 15 of title 14, C.R.S.

(m) (I) A law enforcement or firefighter peer support team member, emergency medical service provider or rescue unit peer support team member, or district attorney or public defender peer support team member must not be examined without the consent of the person to whom peer support services have been provided as to any communication made by the person to the peer support team member under the circumstances described in subsection (1)(m)(IV) of this section; nor is a recipient of peer support services to be examined as to any such communication without the recipient's consent.

(I.5) and (I.6) (Deleted by amendment, L. 2024.)

(II) Recipients of group peer support services must not be examined as to any knowledge gained from other recipients of group peer support services without the consent of the person to whom the knowledge relates.

(III) As used in this subsection (1)(m):

(A) "Communication" means an oral statement, written statement, note, record, report, or document made during, or arising out of, a meeting with a peer support team member.

(B) "District attorney or public defender peer support team member" means an employee of a district attorney's office or a public defender's office who has been trained in peer support skills and who is officially designated by a district attorney or the state public defender as a member of a district attorney's office peer support team or an office of the state public defender peer support team.

(C) "Emergency medical service provider or rescue unit peer support team member" means an emergency medical service provider, as defined in section 25-3.5-103, a regular or volunteer member of a rescue unit, as defined in section 25-3.5-103, or other person who has been trained in peer support skills and who is officially designated by the supervisor of an emergency medical service agency as defined in section 25-3.5-103 or a chief of a rescue unit as a member of an emergency medical service provider's peer support team or rescue unit's peer support team.

(D) "Group peer support services" means peer support interactions comprised of at least one peer support member and more than one recipient of group peer support services and includes any group meeting conducted or facilitated by one or more peer support team members for the purpose of peer support or incident debriefing.

(E) "Law enforcement or firefighter peer support team member" means a peace officer, civilian employee, or volunteer member of a law enforcement agency or a regular or volunteer member of a fire department or other person who has been trained in peer support skills and who is officially designated by a police chief, the chief of the Colorado state patrol, a sheriff, or a fire

chief as a member of a law enforcement agency's peer support team or a fire department's peer support team.

(IV) This subsection (1)(m) applies only to communications made during interactions conducted by a peer support team member:

(A) Acting in the person's official capacity as a law enforcement or firefighter peer support team member, emergency medical service provider or rescue unit peer support team member, or district attorney or public defender peer support team member; and

(B) Functioning within the written peer support guidelines that are in effect for the person's respective law enforcement agency, fire department, emergency medical service agency, rescue unit, district attorney's office, or public defender's office.

(V) This subsection (1)(m) does not apply in cases in which:

(A) A law enforcement or firefighter peer support team member, emergency medical service provider or rescue unit peer support team member, or district attorney or public defender peer support team member was a witness or a party to an incident which prompted the delivery of peer support services;

(B) Information received by a peer support team member is indicative of actual or suspected child abuse, as described in section 18-6-401; actual or suspected child neglect, as described in section 19-3-102; or actual or suspected crimes against at-risk persons, as described in section 18-6.5-103;

(C) Due to intoxication by alcohol, being under the influence of drugs, or incapacitation by substances as described in section 27-81-111, the person receiving peer support is a clear and immediate danger to the person's self or others;

(D) There is reasonable cause to believe that the person receiving peer support has a mental health disorder and, due to the mental health disorder, is an imminent threat to himself or herself or others or is gravely disabled as defined in section 27-65-102; or

(E) There is information indicative of any criminal conduct.

(2) The medical records produced for use in the review provided for in subparagraphs (III), (IV), and (V) of paragraph (d) of subsection (1) of this section shall not become public records by virtue of such use. The identity of any patient whose records are so reviewed shall not be disclosed to any person not directly involved in such review process, and procedures shall be adopted by the Colorado medical board or state board of nursing to ensure that the identity of the patient shall be concealed during the review process itself.

(3) The provisions of subsection (1)(d) of this section shall not apply to physicians required to make reports in accordance with section 12-240-139. In addition, the provisions of subsections



(1)(d) and (1)(g) of this section shall not apply to physicians or psychologists eligible to testify concerning a criminal defendant's mental condition pursuant to section 16-8-103.6. Physicians and psychologists testifying concerning a criminal defendant's mental condition pursuant to section 16-8-103.6 do not fall under the attorney-client privilege in subsection (1)(b) of this section.

**Source:** L. 1883: p. 290, § 3. G.S. § 3649. R.S. 08: § 7274. L. 11: p. 679, § 1. C.L. § 6563. L. 29: p. 642, § 1. CSA: C. 177, § 9. CRS 53: §153-1-7. L. 61: p. 603, § 16. C.R.S. 1963: § 154-1-7. L. 67: p. 809, § 12. L. 76: (1)(d) R&RE and (2) added, pp. 525, 526, §§ 2, 3, effective July 1. L. 81: (1)(b) amended, p. 900, § 1, effective May 26. L. 83: (1)(d) and (2) amended, p. 636, § 1, effective May 25; (1)(a) amended, p. 663, § 1, effective July 1. L. 84: (1)(g) amended, p. 1118, § 8, effective June 7. L. 87: (1)(h) added, p. 572, § 2, effective April 23; (3) added, p. 623, § 5, effective July 1. L. 88: (1)(a) and (1)(c) amended, pp. 708, 630, §§ 3, 1, effective July 1. L. 89: (1)(i) added, p. 943, § 2, effective March 27; (1)(d)(VI) added, p. 763, § 5, effective July 1. L. 93: (1)(f) amended, p. 15, § 3, effective March 2; (1)(g) amended, p. 363, § 1, effective April 12. L. 94: (1)(j) added, p. 1869, § 2, effective June 1; (1)(k) added, p. 2031, § 7, effective July 1. L. 95: (1)(k) amended, p. 948, § 4, effective July 1; (3) amended, p. 1249, § 2, effective July 1. L. 96: (1)(a)(II) amended, p. 1842, § 6, effective July 1. L. 98: (1)(g) amended, p. 1158, § 29, effective July 1; (1)(i) amended, p. 819, § 16, effective August 5. L. 99: (1)(j)(II) amended, p. 301, § 2, effective April 14. L. 2000: (1)(a)(I) amended, p. 1537, § 3, effective July 1. L. 2002: (1)(c) and (1)(l)(I) amended, pp. 1146, 1145, §§ 3, 2, effective June 3; (1)(l) added, p. 399, § 1, effective August 7; (1)(a)(II) amended, p. 1489, § 127, effective October 1. L. 2003: (1)(f) amended, p. 1391, § 1, effective August 6. L. 2004: (1)(g) amended, p. 919, § 25, effective July 1. L. 2005: (1)(m) added, p. 89, § 1, effective July 1. L. 2006: (1)(m)(IV)(D) amended, p. 1396, § 38, effective August 7. L. 2010: (1)(m)(IV)(C) and (1)(m)(IV)(D) amended, (SB 10-175), ch. 188, p. 782, § 18, effective April 29; IP(1)(d), (1)(d)(III)(C), and (2) amended, (HB 10-1260), ch. 403, p. 1985, § 72, effective July 1. L. 2011: (1)(g) amended, (SB 11-187), ch. 285, p. 1327, § 68, effective July 1. L. 2013: (1)(a.5) and (1)(l)(III)(C) added and (1)(l)(II)(D) amended, (SB 13-011), ch. 49, p. 161, § 10, effective May 1; (1)(g) amended, (HB 13-1104), ch. 77, p. 248, § 4, effective August 7; (1)(m)(I.5) and (1)(m)(II)(A.5) added and (1)(m)(III)(A), (1)(m)(III)(B), and (1)(m)(IV)(A) amended, (SB 13-038), ch. 67, p. 220, § 1, effective August 7. L. 2014: (1)(a)(II) and (1)(a.5)(II) amended, (SB 14-163), ch. 391, p. 1968, § 2, effective June 6. L. 2017: (1)(m)(I), (1)(m)(I.5), IP(1)(m)(III), IP(1)(m)(IV), and (1)(m)(IV)(B) amended, (HB 17-1032), ch. 35, p. 106, § 1, effective March 16; IP(1)(m)(IV) and (1)(m)(IV)(D) amended, (SB 17-242), ch. 263, p. 1294, § 111, effective May 25. L. 2019: (1)(f)(IV)(B), (1)(f)(V), (1)(g), and (3) amended, (HB 19-1172), ch. 136, p. 1668, § 78, effective October 1. L. 2020: (1)(m)(IV)(C) amended, (SB 20-007), ch. 286, p. 1415, § 47, effective July 13; (1)(g) amended, (HB 20-1206), ch. 304, p. 1549, § 62, effective July 14. L. 2021: IP(1) and (1)(i) amended, (SB 21-059), ch. 136, p. 711, § 17, effective October 1. L. 2022: (1)(m)(I.6) and (1)(m)(II)(A.3) added and IP(1)(m)(II), (1)(m)(III),

and (1)(m)(IV)(A) amended, (SB 22-188), ch. 200, p. 1342, § 2, effective August 10. **L. 2024:** (1)(b) amended, (HB 24-1291), ch. 131, p. 468, § 10, effective August 7; (1)(m) amended, (SB 24-063), ch. 31, p. 97, § 1, effective August 7.

**Cross references:** (1) For circumstances in which the statutory privilege will not be allowed, see §§ 18-3-102 (4), 18-3-411 (5), 18-6-401 (3), 18-6-401.1, and 18-6.5-104.

(2) For the legislative declaration contained in the 2002 act amending subsection (1)(a)(II), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

(3) For statutory provisions addressing the licensure of persons to practice law or for the special admission of counselors from other states, see article 93 of title 13; for statutory provisions addressing the licensure of persons to practice medicine, see article 240 of title 12; for statutory provisions addressing the licensure of persons to practice certified public accounting, see article 100 of title 12; for statutory provisions addressing the licensure of persons to practice psychology, social work, marriage and family therapy, and professional counseling, see article 245 of title 12; for statutory provisions addressing unlicensed psychotherapy, see part 7 of article 245 of title 12 and § 22-60.5-210.

## ANNOTATION

I. General Consideration.

IV. Clergy.

V. Physician.

VI. Public Officer.

VII. Accountant.

VIII. Psychiatrist.

IX. Psychologist.

X. Victim's Advocate.

Colo. L. Rev. 349 (1965). For note on privileged communications in Colorado, see 37 U. Colo. L. Rev. 388 (1965). For comment, "Reporter's Privilege: Pankratz v. District Court", see 58 Den. L.J. 681 (1981). For article, "The Perjurious Defendant: A Proposed Solution to the Defense Lawyer's Conflicting Ethical Obligations to the Court and to His Client", see 59 Den. L.J. 75 (1981). For article, "The Authorization to Release Medical Information Form: Its Genesis and Usage", see 11 Colo. Law. 1179 (1982). For article, "Attorney-Client Privilege — the Colorado Law", see 12 Colo. Law. 766 (1983). For comment, "Colorado's Approach to Searches and Seizures in Law Offices", see 54 U. Colo. L.

### I. GENERAL CONSIDERATION.

**Law reviews.** For article, "One Year Review of Domestic Relations", see 35 Dicta 36 (1958). For article, "The Physician-Patient Privilege in Colorado", see 37 U.

Rev. 571 (1983). For article, "Attorney Disclosure: The Model Rules in the Corporate/Securities Area", see 12 Colo. Law. 1975 (1983). For article, "Incest and Ethics: Confidentiality's Severest Test", see 61 Den. L.J. 619 (1984). For case note, "Caldwell v. District Court: Colorado Looks at the Crime and Fraud Exception to the Attorney-Client Privilege", see 55 U. Colo. L. Rev. 319 (1984). For article, "Ethical Problems in Bankruptcy", see 14 Colo. Law. 2147 (1985). For comment, "Limiting Prosecutorial Discovery Under the Sixth Amendment Right to Effective Assistance of Counsel: Hutchinson v. People", see 66 Den. U. L. Rev. 123 (1988). For article, "A Trial Lawyer's View of Attorney's Fees Awards", see 17 Colo. Law. 465 (1988). For article, "Suggested Modifications to the Durable Power of Attorney Form", see 17 Colo. Law. 2135 (1988). For article, "Colorado's New Spousal Privilege", see 18 Colo. Law. 451 (1989). For article, "Divorce and Family Mediation: Must it be Confidential?", see 18 Colo. Law. 925 (1989). For comment, "Attorney-Client Confidences: Punishing the Innocent", see 61 U. Colo. L. Rev. 185 (1990). For article, "The Use of Mental Health Treatment Records to Impeach Credibility", see 23 Colo. Law. 839 (1994). For article, "Admissibility of Mental and Physical Health Records and Testimony", see 29 Colo. Law. 61 (Dec. 2000). For article, "Beyond the Client: The Protection of the Corporate Attorney-Client Privilege", see 35 Colo. Law. 31 (June 2006). For article, "New CRCP 45 Impacts Medical Records Subpoenas and Tracks Federal Rule", see 42 Colo. Law. 23 (Jan. 2013). For article, "Colorado Civil Union Act", see 42

Colo. Law. 91 (July 2013). For article, "The Changes to Colorado and Federal Civil Rule 45", see 42 Colo. Law. 57 (Dec. 2013). For article, "Managing Risks When Working with Experts and Consultants", see 46 Colo. Law. 61 (June 2017). For article, "Attorney-Client Privilege and the Work Product Doctrine: Is Confidentiality Lost in Email?", see 46 Colo. Law. 32 (Nov. 2017). For article, "Trial Counsel's Continued Duty of Confidentiality in Postconviction Proceedings", see 48 Colo. Law. 32 (Dec. 2019). For article, "Common Law Marriage: A New Definition of an Age-Old Concept", see 50 Colo. Law. 18 (Dec. 2021). For article, "At the Intersection: Handling Dependency and Neglect and Juvenile Delinquency Issues in Family Law Cases", see 51 Colo. Law. 28 (Feb. 2022). For article, "Privileged Communication with Current and Former Corporate Employees", see 51 Colo. Law. 42 (May 2022). For article, "The Legal Ethics of Generative AI--Part 3", see 52 Colo. Law. 30 (Oct. 2023).

**Separate classifications of persons are included under the terms of this section** and in each classification it is provided that such persons "shall not be examined" as a witness. *Weck v. District Court*, 158 Colo. 521, 408 P.2d 987 (1965).

**The privilege is inviolable.** The privilege created by this section for the benefit of the persons who may seek their protection, is equally inviolable whether created by statute or constitutional provision. *Weck v. District Court*, 158 Colo. 521, 408 P.2d 987 (1965).

**Testimonial exclusionary rules and privileges contravene fundamental**

**principle that** the public has a right to every man's evidence. *Trammel v. United States*, 445 U.S. 40 (1980).

**Thus, testimonial exclusionary rules must be strictly construed** and accepted only to the very limited extent that permitting a refusal to testify or excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth. *Trammel v. United States*, 445 U.S. 40 (1980).

Privileges are strictly construed and the burden of proving that a communication is protected by a privilege is upon the person asserting the privilege. *People v. Agado*, 964 P.2d 565 (Colo. App. 1998).

**Applicable in criminal cases.** There is nothing in the language of this section which provides or even suggests that the privilege it affords does not apply in criminal cases. *People v. Reynolds*, 195 Colo. 386, 578 P.2d 647 (1978).

**Psychotherapist-patient privilege does not apply to documents required for licensure.** Privilege applies to courtroom testimonials, not to documentation submitted by a treatment facility to the licensing agency as required by rules. *Adolescent & Family Inst. v. Dept. of Human Servs.*, 2013 COA 44, 316 P.3d 4.

**No privilege for financial reports made to department of revenue.** There is no testimonial privilege protecting against the disclosure of financial reports made to the department of revenue comparable to the privileges for other certain confidential

communications made under this section. *Losavio v. Robb*, 195 Colo. 533, 579 P.2d 1152 (1978).

**No privilege for a statement defendant made to parents following murder.** Court declines to adopt parent-child privilege. *People v. Agado*, 964 P.2d 565 (Colo. App. 1998).

**Pleading held implied waiver of privilege.** When the privilege holder pleads a physical or mental condition as the basis of a claim or as an affirmative defense, the only reasonable conclusion is that he thereby impliedly waives any claim of confidentiality respecting that same condition. The privilege holder under these circumstances has utilized his physical or mental condition as the predicate for some form of judicial relief, and his legal position as to that condition is irreconcilable with a claim of confidentiality. *Clark v. District Court*, 668 P.2d 3 (Colo. 1983); *Rohda v. Franklin Life Ins. Co.*, 689 F. Supp. 1034 (D. Colo. 1988); *People v. Kelley*, 2023 CO 32, 530 P.3d 407.

**Only the privilege holder may impliedly waive the physician-patient privilege.** The proper inquiry is whether the privilege holder has injected his or her physical or mental condition into the case as the basis of a claim or an affirmative defense. Denying the opposing party's allegations does not suffice to establish a waiver. *Gadeco, LLC v. Grynberg*, 2018 CO 22, 415 P.3d 323.

**Extent of waiver.** Although plaintiff had waived the patient-physician privilege in a civil action against the defendant, she was

not a party in the criminal action involving said defendant and did not expressly waive her privilege or impliedly waive her privilege by injecting her mental or physical condition into that case. *Rohda v. Franklin Life Ins. Co.*, 689 F. Supp. 1034 (D. Colo. 1988).

**Choice of law.** Where it is asserted that the law of another state should govern a claim of privilege, Restatement (Second) Conflict of Laws § 139(2) provides an appropriate framework for analysis. *People v. Thompson*, 950 P.2d 608 (Colo. App. 1997).

**No "special" reason exists for applying the law of another state** merely because such other state had the most significant relationship with the communication, regardless of the interests of the forum state. *People v. Thompson*, 950 P.2d 608 (Colo. App. 1997).

**Applied** in *People v. Norwood*, 37 Colo. App. 157, 547 P.2d 273 (1975); *People v. Rosenthal*, 617 P.2d 551 (Colo. 1980); *People v. Buhrle*, 744 P.2d 747 (Colo. 1987); *Colo. Bd. of Nursing v. Bethesda Hosp.*, 809 P.2d 1051 (Colo. App. 1990); *People v. Bachofer*, 192 P.3d 454 (Colo. App. 2008).

## **II. SPOUSE.**

### **A. In General.**

### **B. Crime by One Spouse Against the Other.**

#### **A. In General.**

**Section perpetuates the common-law doctrine.** Although in federal criminal prosecutions, the witness-spouse alone may

invoke the marital privilege, this section perpetuates the common-law doctrine of witness disqualification in the case of non-consensual spousal testimony regardless of its content. *People v. Lucero*, 707 P.2d 1040 (Colo. App. 1985), *aff'd in part, rev'd in part on other grounds*, 747 P.2d 660 (Colo. 1987).

**Spousal privilege is not based on a constitutional right.** Therefore, subsection (1)(a)(II), which alters the nature of the privilege in certain cases, is constitutional. *People v. Thompson*, 950 P.2d 608 (Colo. App. 1997).

**It was not intended to be declaratory of the common law merely.** *Dill v. People*, 19 Colo. 469, 36 P. 229, 41 Am. St. R. 254 (1894); *Vasquez v. Esquibel*, 141 Colo. 5, 346 P.2d 293 (1959).

**In federal prosecutions, witness's spouse alone has privilege to refuse to testify adversely;** the witness may be neither compelled to testify nor foreclosed from testifying. *Trammel v. United States*, 445 U.S. 40 (1980).

**The purpose of this provision is primarily the protection of the home.** To permit the prohibition to work a gross injustice to an injured wife by allowing its aid to be invoked by an outsider who has intermeddled in family affairs when the husband, as here, does not raise the question, would be to use the statute to defeat the very purpose of its enactment. *McAllister v. McAllister*, 72 Colo. 28, 209 P. 788 (1922).

**And the sanctity and tranquility of the marital relationship.** The reason for the

rule at common law disqualifying the wife is to protect the sanctity and tranquility of the marital relationship. *Archina v. People*, 135 Colo. 8, 307 P.2d 1083 (1957); *Petro-Lewis Corp. v. District Court*, 727 P.2d 41 (Colo. 1986).

**Thus, ostensible wives are competent to testify.** *Archina v. People*, 135 Colo. 8, 307 P.2d 1083 (1957).

**For living together, whatever their intentions for the future, is not enough;** in order to invoke this section, there must be a valid contract of marriage in existence at the time the testimony is offered. *Archina v. People*, 135 Colo. 8, 307 P.2d 1083 (1957); *Lewis v. People*, 174 Colo. 334, 483 P.2d 949 (1971).

Where witness's uncontradicted testimony showed witness's and defendant's mutual consent to be married and their open assumption of the marital relationship, such evidence establishes the existence of a common-law marriage. As such, the marital privilege could be asserted and the trial court erred by admitting testimony which should have been excluded on the basis of the defendant's assertion of the privilege. *People v. Lucero*, 707 P.2d 1040 (Colo. App. 1985). See *In re Hogsett*, 2021 CO 1, 478 P.3d 713 (refining test for establishing common law marriage first articulated in *People v. Lucero* to reflect changed circumstances since that decision, including the recognition of same-sex marriage); *In re Estate of Yudkin*, 2021 CO 2, 478 P.3d 732 (applying updated common law marriage test and emphasizing that no one factor is dispositive, but depends on the totality of the

circumstances); *In re LaFleur*, 2021 CO 3, 479 P.3d 869 (recognizing same-sex common law marriages predating Colorado's recognition of formal same-sex marriages).

A decree granting dissolution of a marriage is final when entered and dissolves the marital status of the parties even if the order is not treated as final for the purpose of appellate review. *People v. Inman*, 950 P.2d 640 (Colo. App. 1997).

**And this section applies only to matters occurring during the time the parties were married.** There is no privilege for statements made by an intended spouse before the marriage, nor for statements made by a former spouse after dissolution of the marriage. Therefore, defendant could not object to testimony by his ex-wife concerning his words and deeds before they were married or after the entry of the decree dissolving their marriage, notwithstanding that final orders were not issued immediately. *People v. Inman*, 950 P.2d 640 (Colo. App. 1997).

**This section contemplates the existence of a valid marriage.** Where both parties to a purported common-law marriage admit prior marriages which to their knowledge remain undissolved, such evidence is competent to support the trial court's finding that no marriage exists for the purpose of invoking the privilege. *People v. Maes*, 43 Colo. App. 426, 609 P.2d 1105 (1979).

**This section contains the only limitation on the ground of public policy.** This section providing that the wife shall not be examined for or against her husband without his consent and vice versa, contains the only

limitation on the ground of public policy, and is controlling on the subject, and not the common law. *White v. Bower*, 56 Colo. 575, 136 P. 1053 (1913).

**It prohibits merely the examination of either husband or wife** as to any communication made by one to the other during the marriage. To extend this prohibition to the exclusion of communications themselves, is to give it a liberal construction, and thus prevent the ascertainment of the truth as to a material issue in the case. *Keeler v. Russum*, 68 Colo. 196, 189 P. 255 (1920).

**This section should be so construed as to work no injustice**, if susceptible of such construction. *Keeler v. Russum*, 68 Colo. 196, 189 P. 255 (1920).

**The marital communications privilege is personal to the spouses and may not be invoked by a third party.** *W. Fire Truck, Inc. v. Emergency One, Inc.*, 134 P.3d 570 (Colo. App. 2006).

**The authorities are to the effect that this section should be strictly construed**, because the tendency of the privilege is to prevent the full disclosure of the truth. *Keeler v. Russum*, 68 Colo. 196, 189 P. 255 (1920); *Petro-Lewis Corp. v. District Court*, 727 P.2d 41 (Colo. 1986).

**It is error to compel both husband and wife to testify, against their objection**, in a cause seeking to impeach a conveyance by one to the other, as fraudulent against creditors. *Jasper v. Bicknell*, 68 Colo. 308, 191 P. 115 (1920).

**Once husband testifies, wife is subject to questioning.** In an action against husband and wife for the possession of real estate, the husband by answer, disclaimed any interest in the property. On the trial the court refused plaintiff permission to cross-examine the wife under the statute, without the consent of her husband, because of this section. This was error. *Horn v. Hurwitz*, 76 Colo. 389, 231 P. 1116 (1925).

**Unauthorized disclosure by the husband does not waive the wife's privilege.** Objecting to a copy of the letter is not a waiver of the wife's privilege. *Dalton v. People*, 68 Colo. 44, 189 P. 37 (1920).

**Defendant's remarks to wife in courtroom held privileged.** A municipal judge had no authority, without the consent of the defendant or his wife, to order him to reveal what he had told her. *Thrap v. People*, 192 Colo. 341, 558 P.2d 576 (1977).

Where, although others were in the courtroom, there was no evidence that anyone else overheard the content of the defendant's comment to his wife, absent such evidence, which might have shown waiver of the privilege, the circumstances justified a reasonable expectation of privacy in this husband-wife communication. *Thrap v. People*, 192 Colo. 341, 558 P.2d 576 (1977).

**Marital privilege extends to in-court testimony**, as well as depositions, interrogatories, requests for admissions, and other forms of testimonial discovery. *Petro-Lewis Corp. v. District Court*, 727 P.2d 41 (Colo. 1986).

**Discovery relating to party's liability held not privileged despite consequent unfavorable disclosure of facts relating to spouse's liability.** Where discovery requests do not relate solely to a spouse's liability, a party may be compelled to comply with all such proper requests for discovery which pertain to that party's liability, even though some responses may be adverse to the party's spouse. *Petro-Lewis Corp. v. District Court*, 727 P.2d 41 (Colo. 1986).

**Discovery must be determined on an ad hoc basis.** Where the marital privilege is in issue, discovery must be determined on an ad hoc basis. *Petro-Lewis Corp. v. District Court*, 727 P.2d 41 (Colo. 1986).

**Marital privilege does not extend** to communications made in the presence of a third party. *S.C. Ins. Co. v. Fisher*, 698 P.2d 1369 (Colo. App. 1984).

**Spousal privilege does not extend to communications made for the purpose of aiding the commission of a future crime or continuing a present continuing crime.** Statements made during an ongoing pattern of criminal activity are not subject to spousal privilege. *People v. James*, 40 P.3d 36 (Colo. App. 2001).

**It seems clear that this section is not applicable to a mental health proceeding,** and it cannot be said that the wife was testifying against the husband as prohibited by that section. An action in the county court to inquire into the mental health of a party can best be described as a special statutory proceeding, and is neither a criminal case nor a civil action. *Sabon v. People*, 142 Colo. 323, 350 P.2d 576 (1960).

**A husband may testify without the consent of the wife in a civil action by one against the other.** *Boyd v. McElroy*, 105 Colo. 527, 100 P.2d 624 (1940).

**State agent's testimony on interspousal conversation not violative of section.** Testimony given by an agent of the state who lawfully monitored a conversation between husband and wife in the visiting room of a jail does not violate this section. *People v. Blehm*, 44 Colo. App. 472, 623 P.2d 411 (1980).

**For history of marital communications privilege and rule of spousal disqualification as a witness,** see *Trammel v. United States*, 445 U.S. 40 (1980).

**Mother's invocation of privilege** prohibited non-custodial father from calling mother's current spouse as a witness during a custody modification hearing in regard to the mother's care and treatment of her child. *In re Bozarth*, 779 P.2d 1346 (Colo. 1989).

**Permitting commentary on a defendant's invocation of the privilege** is no less damaging to the privilege than allowing remarks alluding to an accused's invocation of the fifth amendment. *People v. Harris*, 729 P.2d 1000 (Colo. App. 1986), *aff'd*, 762 P.2d 651 (Colo. 1988).

**The marital privilege may be waived by the acts or omissions of trial counsel.** By accusing the defendant's wife of the murders in his opening statement, defense counsel invited a response which necessarily could come only from wife. *Cummings v. People*, 785 P.2d 920 (Colo. 1990).



**Scope of privilege** is not limited to confidential communications. *Cummings v. People*, 785 P.2d 920 (Colo. 1990).

**Where the witness-spouse has failed to claim a marital privilege and make a timely objection to his or her testimony**, the witness-spouse has waived the privilege, and on appeal, the defendant spouse may not successfully contest the issue pursuant to subsection (1)(a)(II). *People v. Wickham*, 53 P.3d 691 (Colo. App. 2001).

**Counsel for the witness-spouse waived the privilege for her by accepting immunity and allowing her to testify** where the defendant was charged with a class one felony and only the witness-spouse was entitled to raise the marital privilege. *People v. Wickham*, 53 P.3d 691 (Colo. App. 2001).

**Spousal disqualification and spousal testimonial privileges were waived by a husband in a personal injury action** where the husband called the wife as a witness to testify as to the husband's medical condition and the legitimacy and severity of the husband's injuries. As a result, the wife could be cross-examined about the fraudulent nature of the husband's personal injury claim against his employer. *Burlington N. R.R. Co. v. Hood*, 802 P.2d 458 (Colo. 1990).

**Failure by a husband to assert claim of a spousal testimonial privilege during the deposition of the husband's wife in a personal injury case clearly indicates a waiver of confidentiality** and the spouse may be questioned at trial about the fraudulent nature of the husband's personal

injury claim. *Burlington N. R.R. Co. v. Hood*, 802 P.2d 458 (Colo. 1990).

**However, where the crime at issue is a class 3 or more serious felony, under subsection (1)(a)(II) it is the witness-spouse who holds the privilege, not the defendant-spouse.** *People v. Delgado*, 890 P.2d 141 (Colo. App. 1994); *People v. Thompson*, 950 P.2d 608 (Colo. App. 1997).

**Portions of written communications between the defendant and his wife were for the purpose of aiding the crime of witness tampering and were held to be admissible and not confidential.** *People v. Fox*, 862 P.2d 1000 (Colo. App. 1993).

B. Crime by One Spouse Against the Other.

**This paragraph does not limit the right of the husband or wife to testify to criminal prosecutions for crimes involving personal violence**, either actual or constructive; the language is unqualified that the husband or wife may testify against the other "in a criminal action or proceeding for a crime committed by one against the other". This language is broad enough to include any crime, whether of violence to the person, or other crime committed by the husband or wife directly affecting the other. *Dill v. People*, 19 Colo. 469, 36 P. 229 (1894).

**"Crime" includes private wrong in public crime.** The word crime in that clause of this section which permits the husband or wife to testify against the other in a "criminal action or proceeding for a crime committed by one against the other", means the private wrong or injury included in such

public crime. The word must have such meaning, or the statute is meaningless. *Dill v. People*, 19 Colo. 469, 36 P. 229 (1894); *Wilkinson v. People*, 86 Colo. 406, 282 P. 257 (1929).

**Exception applies for crime committed against spouse and companion.** Where the defendant is prosecuted for crimes committed in one criminal episode against his wife and a companion, the statutory exception to the spousal exclusionary rule applies, whether the charges are tried separately or in one proceeding. *People v. McGregor*, 635 P.2d 912 (Colo. App. 1981).

**Spouse may testify as to personal injury inflicted by the other spouse.** The rule as to privileged communications does not preclude evidence by one spouse as to a personal injury or violence inflicted on him or her by the other, or as to ill-treatment to which he or she was subjected by the other spouse. *Sabon v. People*, 142 Colo. 323, 350 P.2d 576 (1960).

**Perjury in divorce proceeding is a crime against spouse.** Where a husband is indicted for wilful and corrupt perjury in making a false affidavit in a suit for divorce against his wife, the wife is a competent witness for the state on the trial of such indictment. *Dill v. People*, 19 Colo. 469, 36 P. 229 (1894).

**As is bigamy.** The wife is a competent witness against the husband in a prosecution for bigamy. The offense is a crime against the wife within the meaning of this section. *Schell v. People*, 65 Colo. 116, 173 P. 1141 (1918).

**And rape.** The innocent wife is not precluded by this section from testifying against her husband who stands charged with the crime of rape. She is a competent witness with or without his consent, and her evidence is not within the prohibition of the statute. *Wilkinson v. People*, 86 Colo. 406, 282 P. 257 (1929).

**The murder by one spouse of the other's child is a crime committed by one spouse against the other** and the reason for the rule and protection of this section is annihilated. *O'Loughlin v. People*, 90 Colo. 368, 10 P.2d 543 (1932); *Archina v. People*, 135 Colo. 8, 307 P.2d 1083 (1957); *Balltrip v. People*, 157 Colo. 108, 401 P.2d 259 (1965).

**As is the rape of a stepchild.** The supreme court has held the spouse to be a competent witness in prosecutions for murder of a stepchild, rape of a stepchild. A prosecution for taking indecent liberties is no less a crime against the wife and the wife was a competent witness to testify against her husband. *Jordan v. People*, 161 Colo. 54, 419 P.2d 656 (1966).

**As is child abuse.** The marital privilege cannot be invoked to exclude a spouse's testimony in a case involving child abuse. *People v. Corbett*, 656 P.2d 687 (Colo. 1983).

**Applied** in *People v. Unrein*, 677 P.2d 951 (Colo. App. 1983).

### **III. ATTORNEY.**

A. In General.

B. "Crime-Fraud" Exception.

A. In General.

**Attorney-client privilege originated in common law**, and it is now codified in most jurisdictions. *Losavio v. District Court*, 188 Colo. 127, 533 P.2d 32 (1975).

**The purpose of this paragraph is to protect the client against publicity** as to admissions or statements made by him to his attorney while the relation of client and attorney exists between them, and is undoubtedly for the benefit of the client. In *re Shapter's Estate*, 35 Colo. 578, 85 P. 688 (1906); *Sholine v. Harris*, 22 Colo. App. 63, 123 P. 330 (1912).

**Client protected by not permitting his communications to be disclosed without his consent.** The object of this section is to extend to the client the privilege that his communication shall not be disclosed without his consent. *Fearnley v. Fearnley*, 44 Colo. 417, 98 P. 819 (1908).

**This paragraph protects client and not attorney.** Paragraph (b) is intended for the benefit of the client, not the attorney. *Denver Tramway Co. v. Owens*, 20 Colo. 107, 36 P. 848 (1894); *Mauro v. Tracy*, 152 Colo. 106, 380 P.2d 570 (1963).

The legislative intent behind paragraph (b) was to protect the client and not the attorney. *People v. Silvola*, 190 Colo. 363, 547 P.2d 1283 (1976).

**Ensures candid and open attorney-client discussion.** The purpose of the attorney-client privilege is to secure the orderly administration of justice by insuring candid and open discussion by the client to the attorney without fear of disclosure.

*Losavio v. District Court*, 188 Colo. 127, 533 P.2d 32 (1975).

The purpose of the privilege is to encourage full and frank communications between attorneys and their clients which promote the administration of justice and preserve the dignity of the individual. *People v. Swearingen*, 649 P.2d 1102 (Colo. 1982).

**Attorney-client privilege is personal with client.** *Losavio v. District Court*, 188 Colo. 127, 533 P.2d 32 (1975).

The attorney-client privilege exists for the personal benefit and protection of the client. *A v. District Court*, 191 Colo. 10, 550 P.2d 315 (1976); *Lanari v. People*, 827 P.2d 495 (Colo. 1992).

**Hence, the privilege may be waived only by the client.** *Losavio v. District Court*, 188 Colo. 127, 533 P.2d 32 (1975); *Lanari v. People*, 827 P.2d 495 (Colo. 1992).

The attorney-client privilege may be expressly or implicitly waived, but only by the client. *A v. District Court*, 191 Colo. 10, 550 P.2d 315 (1976).

**Attorney-client relationship must exist for privilege to apply.** Documents made for an insurance company acting as the agent of an attorney are also covered by the privilege, but the attorney-client relationship between the insurance company and its lawyer must exist at the time the documents are created for the privilege to apply. *Kay Labs., Inc. v. District Court*, 653 P.2d 721 (Colo. 1982).

**Privilege is available to corporations.** The privilege exists "without regard to the

noncorporate or corporate character of the client", and, therefore, the attorney-client privilege is available to corporations. A v. District Court, 191 Colo. 10, 550 P.2d 315 (1976).

**Attorney-client privilege does not survive a corporation's dissolution** if (1) there are no ongoing post-dissolution proceedings, and (2) no one with the authority to invoke or waive the privilege on the corporation's behalf remains. Kissinger & Fellman, PC v. Affiniti Colo., LLC, 2019 COA 147, 461 P.3d 606.

**Rule of protection ceases if client testifies as to admissions.** When the client sees fit to voluntarily appear in a court of justice and testify under oath as to statements or admissions, there is no longer any reason for the application of the rule, and we believe it is the universal practice, when such a situation exists, to permit the attorney to be examined fully in relation thereto. Sholine v. Harris, 22 Colo. App. 63, 123 P. 330 (1912).

**This is because this section gives a personal privilege, and if the client makes the disclosure himself, it ceases to be a secret.** The defendant testified to what transpired between her husband, the attorney, and herself. By so doing she made it public, and thereby waived her right to object to the attorney giving his own account of the matter. Fearnley v. Fearnley, 44 Colo. 417, 98 P. 819 (1908); Mauro v. Tracy, 152 Colo. 106, 380 P.2d 570 (1963).

**The attorney may thereafter be examined in regard thereto.** Fearnley v. Fearnley, 44 Colo. 417, 98 P. 819 (1908).

**As defendant put in issue what advice he did or did not receive from counsel, he waived the attorney-client privilege** with respect to his discussions with counsel on these topics. People v. Sickich, 935 P.2d 70 (Colo. App. 1996).

**The seal of silence is not removed by breach of professional relations.** The general rule undoubtedly is that a breach of professional relations between attorney and client, whatever may be the cause, does not of itself remove the seal of silence from the lips of the attorney in respect to matters received by him in confidence from his client. Denver Tramway Co. v. Owens, 20 Colo. 107, 36 P. 848 (1894).

**The attorney-client privilege and the work-product exemption are distinct but related theories,** arising out of similar policy interests. A v. District Court, 191 Colo. 10, 550 P.2d 315 (1976).

Generally, the attorney-client privilege protects communications between the attorney and the client, and the promotion of such confidences is said to exist for the benefit of the client. On the other hand, the work-product exemption generally applies to "documents and tangible things . . . prepared in anticipation of litigation or for trial", and its goal is to ensure the privacy of the attorney from opposing parties and counsel. A v. District Court, 191 Colo. 10, 550 P.2d 315 (1976); Law Offices of Bernard D. Morley, P.C. v. MacFarlane, 647 P.2d 1215 (Colo. 1982).

**Attorney-client privilege not absolute.** Neither the attorney-client privilege nor the work-product exemption is absolute. The

social policies underlying each doctrine may sometimes conflict with other prevailing public policies and, in such circumstances, the attorney-client privilege and the work-product doctrine must give way. *Law Offices of Bernard D. Morley, P.C. v. MacFarlane*, 647 P.2d 1215 (Colo. 1982); *People v. Salazar*, 835 P.2d 592 (Colo. App. 1992).

Neither the attorney-client privilege nor the work-product doctrine creates an absolute immunity for statements made to attorneys or to their agents. *Kay Labs., Inc. v. District Court*, 653 P.2d 721 (Colo. 1982).

There are recognized exceptions to the privilege, and the privilege may be waived in certain circumstances. The exceptions, however, are simply exceptions. To drive the privilege away, there must be something to give color to the charge; there must be prima facie evidence that it has some foundation in fact. The rule is that attorney-client communications are privileged and protected from discovery by opposing parties. *People v. Madera*, 112 P.3d 688 (Colo. 2005).

**Courts have found implied waiver of the attorney-client privilege when a defendant places the allegedly privileged communication at issue in the litigation, because any other rule would enable the client to use as a sword the protection that is awarded him or her as a shield.** *People v. Madera*, 112 P.3d 688 (Colo. 2005).

**Implied waiver may occur when the defendant raises a claim of ineffective assistance of counsel as to any communications relevant to that claim.**

*People v. Madera*, 112 P.3d 688 (Colo. 2005).

Implied waiver in these circumstances is comparable to a situation where the trial court gives the holder of the privilege a choice: If you want to litigate this claim, then you must waive your privilege to the extent necessary to give your opponent a fair opportunity to defend against it. *People v. Madera*, 112 P.3d 688 (Colo. 2005).

**The trial court must enter appropriate orders clearly delineating the contours of the limited waiver before the privilege holder discloses communications that would be privileged attorney-client communications but for the privilege holder's assertion of an ineffective assistance of counsel claim.** *People v. Madera*, 112 P.3d 688 (Colo. 2005).

**The court must impose a waiver no broader than needed to ensure the fairness of the proceedings before it.** Rather than endorsing a blanket waiver, courts have adopted a three-pronged test for implied waiver of the attorney-client privilege that asks whether: (1) Assertion of the privilege was a result of some affirmative act, such as filing suit, by the asserting party; (2) through this affirmative act, the asserting party put the protected information at issue by making it relevant to the case; and (3) application of the privilege would have denied the opposing party access to information vital to his or her defense. *People v. Madera*, 112 P.3d 688 (Colo. 2005).

**Different types of ineffective assistance of counsel claims would raise very**

**different implied waivers of the attorney-client privilege**, and the documents that would be relevant to the claims would be very different as well. *People v. Madera*, 112 P.3d 688 (Colo. 2005).

**In camera review is appropriate when a party opposing assertion of the attorney-client privilege makes some showing that an exception to the attorney-client privilege applies** or that the privilege has been waived either explicitly or impliedly. *People v. Madera*, 112 P.3d 688 (Colo. 2005).

**Before engaging in an in camera review of an attorney's file, the judge should require a showing of a factual basis adequate to support a good faith belief** by a reasonable person that in camera review of the materials may reveal evidence to establish the claim that the attorney-client privilege does not protect all of the documents in the file. *People v. Madera*, 112 P.3d 688 (Colo. 2005).

**A trial court must focus on the facts and circumstances of each case to determine the scope of the implied waiver.** Before granting a request for in camera inspection of an attorney's case file, the trial court must determine (1) as precisely as possible, the information sought to be discovered, (2) whether the information is relevant to a matter at issue, (3) whether the information could be obtained by any other means, (4) whether the information is privileged, (5) if it is privileged, whether the privilege has been waived, and (6) if it is privileged, but has been waived, either explicitly or impliedly, the scope of the

waiver. By using this analytical framework, a trial court can determine whether the moving party has shown a reasonable good faith belief that in camera inspection will reveal that the documents sought fall within an exception to the attorney-client privilege or that the defendant waived the privilege. *People v. Madera*, 112 P.3d 688 (Colo. 2005).

**The six-part analytical framework set out in *People v. Madera*, annotated above, and used in a criminal case where prosecution sought in camera review of defense counsel's entire file is inapposite in civil cases** where a party wishes to assert a privilege in response to a discovery request. Civil and criminal cases have different procedures for ensuring that the discovery of allegedly protected records doesn't improperly exceed the scope of the implied waiver of the privilege. *People in Interest of J.P.*, 2023 CO 57, 538 P.3d 337.

**C.R.C.P. 26(b)(5)(A) and *Alcon v. Spicer*, 113 P.3d 735 (Colo. 2005), properly applied in dependency and neglect proceedings after the county asserted attorney-client privilege in response to a respondent father's discovery request.** *People in Interest of J.P.*, 2023 CO 57, 538 P.3d 337.

In civil cases, when a party wishes to assert a privilege in response to a discovery request, the rules of civil procedure require notification to the other party via a privilege log that identifies the documents withheld and explains the privilege claim. The documents must be described in the log with sufficient detail so that the opposing party

and, if necessary, the trial court can assess the claim of privilege as to each withheld communication. After reviewing the privilege log, if the party seeking discovery persists in its contention that the asserted privilege does not apply, the party may request an in camera inspection of the challenged documents entered on the privilege log. If the trial court finds that the privilege log produced does not permit a proper assessment of the privilege claim, it can perform an in camera review. *People in Interest of J.P.*, 2023 CO 57, 538 P.3d 337.

**By entering a plea agreement**, defendant does not waive his or her attorney-client privilege. *People v. Trujillo*, 144 P.3d 539 (Colo. 2006).

**Agreeing to provide truthful testimony** does not effect a waiver of attorney-client privilege. *People v. Trujillo*, 144 P.3d 539 (Colo. 2006).

**Informational memo to insurer's general counsel** prepared by outside counsel acting as a claims investigator not exempt from discovery under attorney-client privilege or work product doctrine. *Nat. Farmers Union Prop. & Cas. v. District Court*, 718 P.2d 1044 (Colo. 1986).

Where a lawyer is acting in an investigative capacity and not as a legal counselor with reference to whether an insurance claim should be paid, then neither the privilege created in this section nor the work product privilege protects communications from a lawyer to an insurance carrier. *Munoz v. State Farm Mut. Auto. Ins. Co.*, 968 P.2d 126 (Colo. App. 1998).

**Client waives privilege when she orders production of letters to attorney.** When plaintiff took the witness stand and asked that her letters to her alleged attorney be produced in order that she might refresh her memory from them, she impliedly gave her consent to their introduction and waived the privilege, if any there were. *Hill v. Hill*, 106 Colo. 492, 107 P.2d 597 (1940).

**Trial court properly admitted a letter containing defendant's inculpatory statements.** In authorizing his attorney to deliver the letter to the victim's family, the defendant waived attorney client privilege and the letter was properly admitted as evidence. *People v. Medina*, 72 P.3d 405 (Colo. App. 2003).

**Disclosing privileged communications to a third party.** Statements made to opposing counsel regarding the underlying crime charged should not be construed as a waiver of attorney-client privilege, merely because the subject matter of the statements may also have been discussed in the privileged communications. *People v. Trujillo*, 144 P.3d 539 (Colo. 2006).

**Although the underlying facts are not privileged, attorney-client privilege applies to protect a client's confidential communications of those facts to trial counsel.** *Jordan v. Terumo BCT, Inc.*, 2024 CO 38, 550 P.3d 628.

**Judge may warn client that his testimony may waive privilege.** Where the record reflects that the trial judge granted the defendant an opportunity to consider that his testimony as to his attorney's incompetence would waive the attorney-

client privilege, and defendant elected to remain silent after advice of his present lawyer, the trial judge correctly pinpointed the issue without coercing a decision, because had the appellant testified as to the alleged incompetence of his counsel, it would have been proper for his counsel to testify as to his version of the event or transaction that led to that all-too-frequent charge of incompetence. *Morse v. People*, 180 Colo. 49, 501 P.2d 1328 (1972).

**Determination of whether an alleged inadvertent disclosure is considered a waiver of the privilege, during the course of judicial discovery, relies on several factors:** (1) The extent to which reasonable precautions were taken to prevent the disclosure of privileged information; (2) the number of inadvertent disclosures made in relation to the total number of documents produced; (3) the extent to which the disclosure, albeit inadvertent, has, nevertheless, caused such a lack of confidentiality that no meaningful confidentiality can be restored; (4) the extent to which the disclosing party has sought remedial measures in a timely fashion; and (5) considerations of fairness to both parties under the circumstances. *Floyd v. Coors Brewing Co.*, 952 P.2d 797 (Colo. App. 1997); *In re Amich*, 192 P.3d 422 (Colo. App. 2007).

**Attorney may defend his ethics and conduct.** It would be a strange rule which would prevent an attorney whose ethics and professional conduct are questioned from filing an affidavit in which his position in the matter is set forth. *Browning v. Potter*, 129 Colo. 448, 271 P.2d 418 (1954).

**Where both client and law firm are defendants in same action, trial court is within its discretion to protect client's privileged information by bifurcating trial.** The trial court, after finding that crime-fraud exception did not apply, may order a bifurcated trial so as not to allow the plaintiff to use privileged information proffered by the law firm in its own defense against the client. *Colo. Coffee Bean v. Peaberry Coffee*, 251 P.3d 9 (Colo. App. 2010).

**By testifying to alleged incompetence of his trial counsel, defendant waives attorney-client privilege.** Further, if the defendant testifies as to the incompetence of his trial counsel, it would be proper for the trial counsel to testify as to his version of the events and transactions which led to the charge of incompetence. *People v. Mullins*, 188 Colo. 29, 532 P.2d 736 (1975).

**This paragraph should be fairly construed and applied.** When a party invokes the protection of paragraph (b), it should not be unduly extended or restricted, but should be fairly construed and applied according to the plain import of its terms so as to effectuate its intent and purpose. *Denver Tramway Co. v. Owens*, 20 Colo. 107, 36 P. 848 (1894).

**Privileged communications made between defendant and his attorneys remain privileged after defendant's death.** Knowing that communications will remain confidential even after death encourages the client to communicate fully and frankly with counsel. Clients may be concerned about reputation, civil liability, or possible harm to



friends or family. Posthumous disclosure of such communications may be as feared as disclosure during the client's lifetime. *Wesp v. Everson*, 33 P.3d 191 (Colo. 2001).

**But by nominating a personal representative, a client impliedly waives any claim of attorney-client privilege with respect to** communications necessary for estate administration, unless the client expressly manifested the intent to maintain the privilege. *In re Estate of Rabin*, 2020 CO 77, 474 P.3d 1211.

**It does not apply after client's death.** While a client is living an attorney could not testify as to privileged communication without his consent, the rule is otherwise after his death in regard to matters in dispute arising in probate between devisees and heirs. *In re Shapter's Estate*, 35 Colo. 578, 85 P. 688 (1906).

**Testamentary exception allowing attorney who drafted the will of a deceased client to disclose attorney-client communications** concerning the will and transactions leading to its execution in a suit between the testator's heirs, devisees, or other parties who claim by succession from the testator does not apply in tort case brought against testator by his heir. *Wesp v. Everson*, 33 P.3d 191 (Colo. 2001).

**Communications made to an attorney for the purpose of being conveyed by him to others** are stripped of the idea of a confidential disclosure, and, therefore, are not privileged. *Hill v. Hill*, 106 Colo. 492, 107 P.2d 597 (1940); *S.C. Ins. Co. v. Fisher*, 698 P.2d 1369 (Colo. App. 1984).

**An attorney is a competent witness in behalf of his client** in the very cause which he prosecutes or defends. *Sholine v. Harris*, 22 Colo. App. 63, 123 P. 330 (1912).

**In a lunacy inquisition** an attorney who has had charge of defendant's legal business may testify as to his inability to properly manage his affairs. Such testimony does not violate this section. *Hawkyard v. People*, 115 Colo. 35, 169 P.2d 178 (1946).

**Client's perjury not grounds for attorney's breach of confidences.** An attorney may not breach his duty of maintaining his client's confidences even when he knows his client has previously perjured himself. *People v. Schultheis*, 44 Colo. App. 452, 618 P.2d 710 (1980), rev'd on other grounds, 638 P.2d 8 (Colo. 1981).

**Court may not compel attorney's disclosure.** The trial court may explore the adequacy of trial counsel's representations regarding his grounds for withdrawal, but in the course of this inquiry, the court may not compel the attorney to disclose any confidential communications. *People v. Schultheis*, 44 Colo. App. 452, 618 P.2d 710 (1980), rev'd on other grounds, 638 P.2d 8 (Colo. 1981).

**In determining whether or not an attorney should be required or permitted to testify** to a conversation between himself and another person without the consent of the latter, the test is: Had such person at the time of the conversation employed the attorney in his professional capacity in respect to the subject matter of the conversation? If yes, the testimony would not be admissible; otherwise, it would be.

Denver Tramway Co. v. Owens, 20 Colo. 107, 36 P. 848 (1894).

**Privilege is established by client seeking professional advice from lawyer.** Losavio v. District Court, 188 Colo. 127, 533 P.2d 32 (1975).

**Employment is established if consultation is had by person seeking professional advice.** If a person, in respect to his business affairs or troubles of any kind, consults with an attorney in his professional capacity with the view to obtaining professional advice or assistance, and the attorney voluntarily permits or acquiesces in such consultation, then the professional employment must be regarded as established; and the communication made by the client or advice given by the attorney under such circumstances is privileged. Denver Tramway Co. v. Owens, 20 Colo. 107, 36 P. 848 (1894).

**Even if it is the person's preliminary statement of his case.** An attorney is employed — that is, he is engaged in his professional capacity as a lawyer or counselor — when he is listening to his client's preliminary statement of his case, or when he is giving advice thereon, just as truly as when he is drawing his client's pleadings, or advocating his client's cause in open court. It is the consultation between attorney and client which is privileged, and which must ever remain so, even though the attorney, after hearing the preliminary statement, should decline to be retained further in the cause, or the client, after hearing the attorney's advice, should decline

to further employ him. Denver Tramway Co. v. Owens, 20 Colo. 107, 36 P. 848 (1894).

**A communication said to be within the privilege must relate to subject matter of the employment.** Losavio v. District Court, 188 Colo. 127, 533 P.2d 32 (1975).

**Communications which pertain only to attorney's employment probably would not be privileged.** Losavio v. District Court, 188 Colo. 127, 533 P.2d 32 (1975).

**Privilege extends only to confidential matters communicated by or to client** in the course of gaining counsel, advice, or direction with respect to the client's rights or obligations. Losavio v. District Court, 188 Colo. 127, 533 P.2d 32 (1975); People v. Tippet, 733 P.2d 1183 (Colo. 1987); DCP Midstream, LP v. Anadarko Petroleum Corp., 2013 CO 36, 303 P.3d 1187.

Where attorney testified as to existence of a written stipulation the contents of which were known by third parties, the attorney did not testify as to confidential communications. People v. Tippet, 733 P.2d 1183 (Colo. 1987).

The privilege applies only to statements made in circumstances giving rise to a reasonable expectation that the statements will be treated as confidential. Lanari v. People, 827 P.2d 495 (Colo. 1992); People in Interest of E.H., 837 P.2d 284 (Colo. App. 1992).

Where the evidence to be obtained from prior counsel was not of a confidential nature, the attorney-client privilege did not protect its disclosure. People v. Williamson, 839 P.2d 519 (Colo. App. 1992).

**Just because report is made upon advice of counsel does not make it privileged.** The practice of making a hospital incident report may have resulted from the advice of counsel, but it is plain that these incident reports were not prepared for the attorney. They were prepared for certain administrative officials of the hospital and they were available to the hospital's attorney. To entitle the party to the protection accorded to privileged communications, the communications must have been made to the attorney acting in the character of legal advisor, and made by the client for the purpose of professional advice or aid upon the subject of his rights and liabilities. *Bernardi v. Cmty. Hosp. Ass'n*, 166 Colo. 280, 443 P.2d 708 (1968).

**To conclude that legal advice loses its privileged character when it is based on public information would render the attorney-client privilege meaningless in many circumstances.** Attorneys regularly base legal advice on public information. What matters is that the legal advice is given in response to a confidential client communication, irrespective of whether that advice is informed by publicly available information. *DCP Midstream, LP v. Anadarko Petroleum Corp.*, 2013 CO 36, 303 P.3d 1187.

**Applicability of privilege to physical evidence.** Protection for confidential communications does not apply to physical evidence unless the evidence is created in the course of the lawyer-client consultation. *People v. Swearingen*, 649 P.2d 1102 (Colo. 1982).

**Privilege before grand jury decided by trial court.** An attorney-witness must, except in the most exceptional of circumstances, honor a properly issued subpoena by appearing before the grand jury. It is then for the trial court to determine whether a specific interrogatory posed by the grand jury or the district attorney calls for an answer which falls within or without the privilege; or, whether the information sought to be elicited is so inextricably intertwined with confidential communications that, if untangled, that which is not within the privilege would be meaningless without that which is privileged. In the latter event the privilege should also be respected. *Losavio v. District Court*, 188 Colo. 127, 533 P.2d 32 (1975).

**Sunshine act impact.** The sunshine act cannot and does not repeal by implication the statute concerning the attorney-client evidentiary privilege. Thus the provision concerning executive sessions involving "attorney-client communications" in the laws of the regents is upheld. *Associated Students of Univ. of Colo. v. Regents of Univ. of Colo.*, 189 Colo. 482, 543 P.2d 59 (1975).

**Applicability to attorney's employees.** Paragraph (b) can only be reasonably interpreted as extending privilege to an attorney's employees if the attorney is also so privileged. *People v. Silvola*, 190 Colo. 363, 547 P.2d 1283 (1976); *Sequa v. Lititech, Inc.*, 807 F. Supp. 653 (D. Colo. 1992).

The last clause in paragraph (b) concerning employees refers to cases where

the lawyer himself is unable to testify because of the attorney-client privilege. *People v. Silvola*, 190 Colo. 363, 547 P.2d 1283 (1976).

Once an attorney can no longer claim privilege, he likewise can no longer prevent his employees from testifying. *People v. Silvola*, 190 Colo. 363, 547 P.2d 1283 (1976).

**Determination of whether an attorney-client privilege exists between a governmental entity's legal counsel and the governmental entity's independent contractor is based on a four-part test.** (1) The information-giver must be an employee, agent, or independent contractor with a significant relationship not only to the governmental entity but also to the transaction that is the subject of the governmental entity's need for legal services. If the first requirement is satisfied, the party seeking to exercise the privilege must also show: (2) The communication was made for the purpose of seeking or providing legal assistance; (3) the subject matter of the communication was within the scope of the duties provided to the entity by its employee, agent, or independent contractor; and, (4) the communication was treated as confidential and disseminated only to those persons with a specific need to know its contents. *Alliance Constr. Sols., Inc. v. Dept. of Corr.*, 54 P.3d 861 (Colo. 2002).

**Privilege does not encompass handwriting expert's testimony** since it was based on his observations derived from sources other than the client's confidential

communications. *People v. Perez*, 701 P.2d 104 (Colo. App. 1985), rev'd on other grounds, 745 P.2d 650 (Colo. 1987).

**Attorney-client privilege relates to communications made by insured to his insurance company** where the insurance company is bound by the terms of the insurance contract to represent him. *Bellmann v. District Court*, 187 Colo. 350, 531 P.2d 632 (1975).

**Colorado recognizes the "co-defendant" or "joint clients" application of the attorney-client privilege.** Matters learned of during a meeting with a co-defendant and a joint attorney concerning an issue of common interest or joint defense are subject to the attorney-client privilege. *Gordon v. Boyles*, 9 P.3d 1106 (Colo. 2000).

**Burden of establishing a waiver of the attorney-client privilege** is on the party seeking to overcome the privilege. *Miller v. District Court*, 737 P.2d 834 (Colo. 1987); *Mtn. States Tel. & Tel. Co. v. DiFede*, 780 P.2d 533 (Colo. 1989); *People v. Sickich*, 935 P.2d 70 (Colo. App. 1996); *People v. Madera*, 112 P.3d 688 (Colo. 2005).

**Evaluation of mother's relationship with her children not privileged under attorney-client privilege** since mother requested court to appoint the psychologist and since the psychologist was appointed and hired under circumstances which prevented the creation of any attorney-client privilege. *People in Interest of O.J.S.*, 844 P.2d 1230 (Colo. App. 1992).

**Burden of proving that a communication is protected** by the

attorney-client privilege is upon the person asserting the privilege. *People v. Salazar*, 835 P.2d 592 (Colo. App. 1992).

**By placing in issue a confidential communication going directly to the claim or defense**, a party impliedly waives the attorney-client privilege with respect to that communication. *Mtn. States Tel. & Tel. v. DiFede*, 780 P.2d 533 (Colo. 1989).

**Client did not assert a claim or defense that either focused or depended on advice given by her counsel or that placed any privileged communications at issue.** Therefore, client did not impliedly waive the attorney-client privilege. *Rademacher v. Greschler*, 2020 CO 4, 455 P.3d 769.

**The defendant impliedly waived the attorney-client privilege** with respect to information obtained by the prosecution during an interview with a psychiatrist because defendant listed the psychiatrist as a potential witness. *Lanari v. People*, 827 P.2d 495 (Colo. 1992).

**Defendant's assertion of a mental status defense** does not indicate an implied waiver of the attorney-client privilege. *Miller v. District Court*, 737 P.2d 834 (Colo. 1987).

**Affidavit did not place privileged communications at issue and, therefore, did not result in an implied waiver of the attorney-client privilege.** The mere denial of an allegation in an affidavit does not waive the attorney-client privilege. The affidavit did not concern any privileged information. And the affidavit was not in support of any claim or defense that depends on privileged information or attorney advice.

*State Farm Fire & Cas. Co. v. Griggs*, 2018 CO 50, 419 P.3d 572.

**Statements made initially in confidence to an attorney lose the shield of the attorney-client privilege** if the statements are subsequently disclosed to third parties. *Lanari v. People*, 827 P.2d 495 (Colo. 1992).

**The presence of a third party during attorney-client communications will ordinarily destroy the attorney-client privilege unless the third party's presence is reasonably necessary to the consultation.** *Fox v. Alfini*, 2018 CO 94, 432 P.3d 596.

The presence of the client's parents at the client's consultation with her attorney was not reasonably necessary to the client's communication with the attorney where there was evidence that the client did not have diminished capacity to the extent necessitating the presence of her parents to assist her in the communication. *Fox v. Alfini*, 2018 CO 94, 432 P.3d 596.

**Communications made at joint meetings with defendant, his wife, and counsel, were not privileged, however,** suicide letters which disclose communications made at joint meetings do not waive all other communications which would have been privileged absent the suicide letters and the statements made therein; absent proof of another basis to pierce the protection of the attorney-client privilege, all other communications between defendant and his counsel remain privileged. *Wesp v. Everson*, 33 P.3d 191 (Colo. 2001).

**Testimony by attorney concerning amounts received from client is not within privilege** where the nature of the representation is known to all parties and payment of fees does not necessarily reflect the subject matter of a previously undisclosed, protected communication. In re Schneider, 831 P.2d 919 (Colo. App. 1992).

**Once the privilege has been waived in one proceeding**, it cannot be reasserted with respect to the same communications in a different proceeding. People in Interest of E.H., 837 P.2d 284 (Colo. App. 1992).

**An attorney's consent to the interview of his former legal secretary is required only when privileged information is sought.** Sequa v. Lititech, Inc., 807 F. Supp. 653 (D. Colo. 1992).

**A plain reading of this section and § 16-8-103.6** is that the attorney-client and the physician-patient privileges do not apply to communications made to physicians or psychologists who are eligible to testify concerning a defendant's mental condition once the defendant enters a mental condition plea or defense. Gray v. District Court, 884 P.2d 286 (Colo. 1994).

A defendant who places his or her mental condition at issue waives the attorney-client and the physician-patient privileges. The prosecution may use the testimony of a physician retained by the defense even though the defense does not intend to use the physician at trial. In addition, the prosecution may use pre-offense or post-offense information concerning the defendant's mental condition. Gray v. District Court, 884 P.2d 286 (Colo. 1994).

**There is no piercing of attorney-client privilege when the application of the privilege results in manifest injustice.** Wesp v. Everson, 33 P.3d 191 (Colo. 2001).

**Guardian ad litem (GAL) may testify without the consent of the child regarding the child's communications to the GAL.** The GAL does not have an attorney-client relationship with a child who is the subject of a dependency and neglect proceeding, and the evidentiary privilege in subsection (1)(b) does not preclude the GAL's testimony in a criminal action against stepfather. The GAL is statutorily tasked with assessing and making recommendations to the court concerning the best interests of the child, and neither the statutes requiring the appointment of a GAL nor chief justice directive 04-06 creates an attorney-client relationship. People v. Gabriesheski, 262 P.3d 653 (Colo. 2011).

**Title opinions, like any document sought in discovery, may contain privileged attorney-client communications** if the parameters of that doctrine are met. A "title opinion" is a statement of opinion written by an attorney, often in the form of a letter, as to the state of the title to land, mineral, or working interests. DCP Midstream, LP v. Anadarko Petroleum Corp., 2013 CO 36, 303 P.3d 1187.

#### B. "Crime-Fraud" Exception.

**"Crime-fraud" exception to privilege.** The "crime-fraud" or "criminal purposes" exception has developed as a limitation on the applicability of the attorney-client privilege and the work-product exemption.

Law Offices of Bernard D. Morley, P.C. v. MacFarlane, 647 P.2d 1215 (Colo. 1982).

The crime-fraud exception provides that communications between a client and his attorney are not privileged if they are made for the purpose of aiding the commission of a future crime or of a present continuing crime. *Law Offices of Bernard D. Morley, P.C. v. MacFarlane*, 647 P.2d 1215 (Colo. 1982).

**"Future crimes" exception to the attorney-client privilege extends** to communications between attorney and client for the purpose of aiding and continuing or future civil wrong. *Caldwell v. District Court*, 644 P.2d 26 (Colo. 1982).

This exception is also applicable to advice or aid secured in the perpetration of a fraud. *Caldwell v. District Court*, 644 P.2d 26 (Colo. 1982).

**To invoke the crime-fraud exception and defeat attorney-client privilege**, first the party must make a threshold showing to support a good faith belief by a reasonable person that wrongful conduct sufficient to invoke the exception occurred. Second, the party must demonstrate probable cause to believe that a crime or fraud was being attempted or committed and that the communication was made in furtherance of the crime or fraud. *In re 2015 2016 Jefferson County Grand Jury*, 2018 CO 9, 410 P.3d 53.

**Client must know of unlawfulness of conduct.** In order for the crime or fraud exception to the attorney-client privilege to apply, the client must know or reasonably should know of the unlawfulness of his

conduct. *Caldwell v. District Court*, 644 P.2d 26 (Colo. 1982).

**Prima facie showing required to invoke exception.** A prima facie showing — one which gives a foundation in fact for the assertion of ongoing or future criminal conduct — is sufficient to invoke the applicability of the crime-fraud exception. *Law Offices of Bernard D. Morley, P.C. v. MacFarlane*, 647 P.2d 1215 (Colo. 1982).

There must be a prima facie showing that the "crime-fraud" exception applies before the communication is stripped of its privilege. *People v. Board*, 656 P.2d 712 (Colo. App. 1982).

**Applicability of exception is within trial court's discretion.** Whether the prosecution has established a proper foundation in fact for the application of the crime-fraud exception is best left for determination by the trial court, whose exercise of discretion will not be overturned unless the record shows an abuse of that discretion. *People v. Board*, 656 P.2d 712 (Colo. App. 1982).

**For procedure for determining whether civil fraud exception is applicable**, see *Caldwell v. District Court*, 644 P.2d 26 (Colo. 1982).

**Client's communication to attorney of proposed infraction of law does not come within privilege.** *Losavio v. District Court*, 188 Colo. 127, 533 P.2d 32 (1975).

#### IV. CLERGY.

**The purpose of subsection (1)(c)** is to protect an accused from the indirect violation of his state constitutional right

against self-incrimination. *Ferrell v. Vogt*, 161 Colo. 549, 423 P.2d 844 (1967).

**Statements made to clergyman merely as a gentleman are not privileged.** Statements made to a clergyman, not in his professional character, nor in the course of any clerical discipline enjoined by the church, but voluntarily, as if made to any other gentleman, are not privileged under this section. *Milburn v. Haworth*, 47 Colo. 593, 108 P. 155 (1910); *People v. Police*, 651 P.2d 430 (Colo. App. 1982).

**Conversation between defendant and chaplain about defendant's assault charge does not satisfy "confidential communication" requirement of this section.** *People v. Trammell*, 2014 COA 34, 345 P.3d 945.

**Because two of the four statutory elements of privileged communication were not met, defendant failed to demonstrate that trial court erred in admitting chaplain's testimony.** *People v. Trammell*, 2014 COA 34, 345 P.3d 945.

## **V. PHYSICIAN.**

**This section is in derogation of the common law** and was adopted to achieve the purpose of placing a patient in a position in which he or she would be more inclined to make a full disclosure to the doctor and to prevent the patient from being humiliated and embarrassed by disclosure of information about the patient by his or her doctor. *Cnty. Hosp. Ass'n v. District Court*, 194 Colo. 98, 570 P.2d 243 (1977).

**Policy of the law is to preserve information procured from a patient by a**

physician for the purpose of treating him as a secret between them and inviolate except with the consent of the patient. *Riss & Co. v. Galloway*, 108 Colo. 93, 114 P.2d 550 (1941).

**This relationship involves private matters.** The relationship between a physician and his patient and any information acquired from that relationship are extremely private matters warranting a high degree of protection. *Stauffer v. Karabin*, 30 Colo. App. 357, 492 P.2d 862 (1971).

**The provisions of this paragraph are clear, intelligible and easily understood,** cannot be said to be in any sense unreasonable or absurd, are subversive of no legal private rights, and are not inconsistent with themselves or with any other law. Under such circumstances, however fully we might agree with counsel that they should be extended and broadened, the courts are without power in that regard. The remedy is with the general assembly alone. *Head Camp, Pac. Jurisdiction, Woodmen of the World v. Loehner*, 17 Colo. App. 247, 68 P. 136 (1902).

**The privilege is personal to the patient.** *Stauffer v. Karabin*, 30 Colo. App. 357, 492 P.2d 862 (1971).

**Or to his estate.** *Stauffer v. Karabin*, 30 Colo. App. 357, 492 P.2d 862 (1971).

**Physician-patient privilege continues after the patient's death.** *In re Estate of Ashworth*, 2024 CO 39, 549 P.3d 1003.

**It does not matter how the information may be acquired.** Whether it comes to the



surgeon in the shape of oral statements, or by reason of his examination, he cannot be interrogated respecting it. *Colo. Fuel & Iron Co. v. Cummings*, 8 Colo. App. 541, 46 P. 875 (1896).

**The information must be necessary for physician to act for patient.** Where the accused refused to permit the physician who attended him for the wound in question to remove the bullet, and refused to tell him how he received the wound, allowing the testimony of the physician as to this matter was no violation of this section. *Cook v. People*, 60 Colo. 263, 153 P. 214 (1915); *Cont'l Inv. Co. v. Garcher*, 83 Colo. 239, 264 P. 723 (1928).

**Statutory privilege did not apply to statements that were not necessary to enable nurse to prescribe or act for defendant.** *People v. Garrison*, 109 P.3d 1009 (Colo. App. 2004).

**Observations that a physician assistant was required to make in order to prescribe or act for the patient would have been privileged, however,** § 12-36-135, which requires physicians to report and testify in episodes of domestic violence or gunshot wounds, abrogated the privilege. Physician assistant could testify over the objection of the patient about photographs of the patient's wounds taken by physician assistant for an investigating officer at the time of the patient's initial treatment in emergency room. *People v. Covington*, 19 P.3d 15 (Colo. 2001).

**Statements made by one to a doctor are not ipso facto privileged,** but are privileged only if they meet all of the several

requirements contained in this section. *Nelson v. Grissom*, 152 Colo. 502, 382 P.2d 991 (1963).

**Information given in connection with application for admission to hospital.** Any information given by a party to a doctor who attended him as his physician and gave him treatment, in connection with his application for admission to a hospital for a nervous disorder, was a privileged communication. *Gerick v. Brock*, 120 Colo. 394, 210 P.2d 214 (1949).

**Privilege exists even if doctor is employed by patient's employer.** Defendant and another company, employing many workmen, established a hospital for the use of both in the care and treatment of their employees. It was supported, in whole or in part, by deductions from the monthly wages of the employees of both companies for a "hospital fund", which was devoted to the maintenance of the building, hire of physicians, etc. The plaintiff was an employee of the defendant, and, after sustaining an injury, put himself under the charge of the doctor employed by the company. The relation of physician and patient existed between them, and the physician could not, without the plaintiff's consent, be examined concerning the nature and character of the injuries, the knowledge of which he acquired while the plaintiff was under his treatment. *Colo. Fuel & Iron Co. v. Cummings*, 8 Colo. App. 541, 46 P. 875 (1896).

**Results of alcohol blood test are not privileged.** In an action for damages for personal injuries, the testimony of a

physician at the hospital where defendant was taken in an unconscious condition, to the effect that a blood sample taken from one of the veins in defendant's arm at the request of a public officer showed sufficient blood alcohol to cause a state of drunkenness in the average person, was properly admitted, it appearing that the physician was not acting for defendant personally, or that the information obtained was necessary to enable him to prescribe or act for the patient. *Hanlon v. Woodhouse*, 113 Colo. 504, 160 P.2d 998 (1945).

**Even when patient lacks ability to consent.** Where the defendant was charged with causing injury while driving under the influence of intoxicating liquor, the trial court denied the motion to suppress the blood sample where the defendant was in a semiconscious condition and was unable to consent or to refuse to give his consent. *People v. Fidler*, 175 Colo. 90, 485 P.2d 725 (1971).

**For admissibility of urine sample,** see *People v. Kokesch*, 175 Colo. 206, 486 P.2d 429 (1971).

**This paragraph (V) does not extend to names, addresses, and telephone numbers.** *Wolf v. People*, 117 Colo. 279, 187 P.2d 926 (1947); *People v. Perez*, 129 P.3d 1090 (Colo. App. 2005).

**If the disclosure reveals the ailments but not the patient's identity,** then such disclosure would appear not to violate the privilege. *Cnty. Hosp. Ass'n v. District Court*, 194 Colo. 98, 570 P.2d 243 (1977).

**Neither is the privilege violated when the disclosure reveals the patient's identity but not the ailment.** In re Search Warrant for 2045 Franklin, Denver, 709 P.2d 597 (Colo. App. 1985).

**Communications made to physician pursuant to § 14-10-127 not privileged.** Since the information was necessary to make an evaluation concerning custody and not for treatment, the physician-patient privilege is inapplicable. *Anderson v. Glismann*, 577 F. Supp. 1506 (D. Colo. 1984).

**Communication made to physician to procure controlled substance for illegitimate purpose is not privileged under § 18-18-415 (1)(b);** thus, no waiver is required to introduce the communication at trial. *People v. Harte*, 131 P.3d 1180 (Colo. App. 2005).

**Although a physician's original prescription order constitutes a medical record created in the course of treatment,** it is included in the exception to the privilege established in § 18-18-415 (1)(b). Thus, defendant who altered the original prescription for a controlled substance was unable to shield the original prescription by claiming physician-patient privilege. *People v. Moon*, 2015 COA 23, 411 P.3d 130.

**The Colorado medicaid fraud control unit** is an "organization authorized by federal or state law or contract to review physicians' ... services" as contemplated by subsection (1)(d)(III)(B) and therefore the privilege does not apply. In re Search Warrant for 2045 Franklin, Denver, 709 P.2d 597 (Colo. App. 1985).

**The public policy of maintaining and ensuring an efficiently operating medicaid program** outweighs the privacy interests inherent in the physician-patient relationship insofar as utilization of the medicaid program is concerned. In re Search Warrant for 2045 Franklin, Denver, 709 P.2d 597 (Colo. App. 1985).

A recipient of medical services who has chosen to participate in the medicaid program waives the privilege to the extent necessary for the state to verify the services billed by the provider. In re Search Warrant for 2045 Franklin, Denver, 709 P.2d 597 (Colo. App. 1985).

**Disclosure by a physician should be prevented unless waived.** Stauffer v. Karabin, 30 Colo. App. 357, 492 P.2d 862 (1971).

**Physician-patient privilege is impliedly waived if a patient's records are required to administer the patient's estate.** In re Estate of Ashworth, 2024 CO 39, 549 P.3d 1003.

**Trial court to determine whether exception applies.** Even if the physician-patient privilege is applicable, the trial court should determine whether one of the prescribed statutory exceptions applies. Sherman v. District Court, 637 P.2d 378 (Colo. 1981).

**In camera hearing as to nature of information sought from physician.** Before ruling on a claim of physician-patient privilege, the trial court should determine whether the particular information sought from the doctor was in fact necessary for

treatment of the patient, and an in camera hearing is normally appropriate to allow consideration of this preliminary fact question outside the presence of the jury. People v. Reynolds, 195 Colo. 386, 578 P.2d 647 (1978).

**Improper admission is reversible error.** Where there is improper testimony precluded by this statute which could have influenced the verdict in an action, the admission of such evidence is reversible error. Stauffer v. Karabin, 30 Colo. App. 357, 492 P.2d 862 (1971); People v. Covington, 988 P.2d 657 (Colo. App. 1999), rev'd on other grounds, 19 P.3d 15 (Colo. 2001).

**The law will provide protection at the time disclosure is attempted,** rather than merely providing a remedy after violation. Stauffer v. Karabin, 30 Colo. App. 357, 492 P.2d 862 (1971).

**Patient may expressly or impliedly waive privilege.** In order to protect the confidential relationship existing between physician and patient, and to encourage full disclosure between the two, our statute provides that a patient may invoke a claim of privilege and prohibit a physician from testifying. Such a rule is not an absolute one. In certain instances a patient may expressly or impliedly waive such a claim of privilege. Kelley v. Holmes, 28 Colo. App. 79, 470 P.2d 590 (1970).

Where defendant's abusive language, loud demeanor and offensive behavior could be readily observed and heard by anyone present in the emergency room, such conduct constitutes an implied waiver of any

physician-patient privilege with respect to the doctor's observation of the defendant's behavior. *People v. Deadmond*, 683 P.2d 763 (Colo. 1984).

A defendant waives the physician-patient privilege with regard to a particular subject matter when his own testimony directly raises that factual issue. *People v. Deadmond*, 683 P.2d 763 (Colo. 1984).

**Physician-patient privilege is not implicitly waived** when medical records, statutorily required to be supplied, are filed with an insurance company. *Devenyns v. Hartig*, 983 P.2d 63 (Colo. App. 1998).

**This paragraph does not apply when patient fails to object to disclosure.** This paragraph does not apply when patient is before the court, is cognizant of the proceeding, and makes no objection to the disclosure. *Wolf v. People*, 117 Colo. 279, 187 P.2d 926 (1947).

**Patient held not to have waived privilege by mere failure to ask whether all aspects of her examination were in furtherance of medical treatment, including photographs taken by a physician's assistant on behalf of an investigating officer.** It is the burden of the party seeking to overcome the privilege to establish a valid waiver of the privilege, and because the record was not clear that the patient understood why pictures were being taken of her injuries, the burden was not established. *People v. Covington*, 988 P.2d 657 (Colo. App. 1999), rev'd on other grounds, 19 P.3d 15 (Colo. 2001).

**Once the issue of injury is raised by a party** he is deemed to have waived his claim of privilege. *Kelley v. Holmes*, 28 Colo. App. 79, 470 P.2d 590 (1970).

**Where a plaintiff testifies as to the details of the service and treatment rendered to him by physicians,** and of the charges made therefor, he waives the protection of this section as to the matters testified to by him; it was not error to admit the testimony of the physicians concerned in rebuttal of such evidence. *Mauro v. Tracy*, 152 Colo. 106, 380 P.2d 570 (1963).

**If privilege was not already waived, admission of physician's testimony was harmless error** where physician testified that a cut on the defendant's hand could have been caused either by a knife, as asserted by the prosecution, or by a piece of broken glass, as asserted by the defense, and this testimony concerned the same subject matter as defendant's disclosure to his wife in his confession. *People v. Thompson*, 950 P.2d 608 (Colo. App. 1997).

**Waiver as to all doctors consulted about the injuries.** The nature and extent of plaintiff's injuries was in issue. Plaintiff produced evidence as to the seriousness of his injuries. Once plaintiff had raised this issue, he has waived the physician-patient privilege, not only to the doctors he has called, but as to all physicians consulted concerning these injuries. *Kelley v. Holmes*, 28 Colo. App. 79, 470 P.2d 590 (1970).

**Plaintiff in personal injury action impliedly waives physician-patient privilege** only for matters that are relevant in determining the cause and extent of

injuries which form the basis of the complaint. *Samms v. District Court, Fourth Jud. Dist.*, 908 P.2d 520 (Colo. 1995); *Devenyns v. Hartig*, 983 P.2d 63 (Colo. App. 1998); *Alcon v. Spicer*, 113 P.3d 735 (Colo. 2005); *Cardenas v. Jerath*, 180 P.3d 415 (Colo. 2008).

**Only the privilege holder may impliedly waive the physician-patient privilege.** The proper inquiry is whether the privilege holder has injected his or her physical or mental condition into the case as the basis of a claim or an affirmative defense. Denying the opposing party's allegations does not suffice to establish a waiver. *Gadeco, LLC v. Grynberg*, 2018 CO 22, 415 P.3d 323.

Defense attorney must provide plaintiff with reasonable notice of an informal discussion with plaintiff's physician, and plaintiff's physician may decline to participate in such informal discussion. *Samms v. District Court, Fourth Jud. Dist.*, 908 P.2d 520 (Colo. 1995).

**When a patient institutes a lawsuit against a physician and the suit arises out of the physician's professional care, the physician-patient privilege does not apply and thus the patient's entire electronic medical file is not subject to the privilege.** A review of the patient's complete medical record is relevant to the physician's ability to prepare a defense. *Ortega v. Colo. Permanente Med. Group, P.C.*, 265 P.3d 444 (Colo. 2011).

**Exception to the physician-patient privilege in subsection (1)(d)(II) for a medical provider who was in consultation**

**with a defendant applies to a medical provider engaged in a unified course of treatment with a defendant.** Holding in *Samms v. Dist. Ct.*, annotated above, requiring notice of informal discussions with nonparty medical providers does not apply when the medical providers are engaged in a unified course of treatment that forms the basis of the malpractice action. *Reutter v. Weber*, 179 P.3d 977 (Colo. 2007).

**However, for the exception to the physician-patient privilege in (1)(d)(II) to apply for medical providers in consultation with party medical providers,** the non-party medical providers must be providing care "collectively and collaboratively" with the party medical providers. *Bailey v. Hermacinski*, 2018 CO 14, 413 P.3d 157.

**Simply providing care** for complaints and conditions arising out of the original acts of negligence is insufficient to be considered to be "in consultation with" and thus the exception does not apply. *Bailey v. Hermacinski*, 2018 CO 14, 413 P.3d 157.

**Privilege does not shield guardian/conservator husband from being deposed in medical malpractice case concerning incapacitated wife's family medical history.** *Hartmann v. Nordin*, 147 P.3d 43 (Colo. 2006).

**Privilege does shield guardian/conservator husband from being deposed about his health and ability to care for incapacitated wife** because husband's health and ability to care for wife are not relevant to wife's medical

malpractice claims. *Hartmann v. Nordin*, 147 P.3d 43 (Colo. 2006).

**This paragraph does not include a nurse or medical technician.** *Block v. People*, 125 Colo. 36, 240 P.2d 512 (1951).

**Hospital and medical records fall within the scope of physician-patient privilege.** *Devenyns v. Hartig*, 983 P.2d 63 (Colo. App. 1998).

**Defendant's medical records protected by physician-patient privilege and do not fall within the child-abuse exception** to the physician-patient privilege. The medical records were created as health care professionals were treating defendant and contained information to allow the treatment providers to "prescribe or act" on defendant's behalf as a patient. *People v. Soron*, 2026 CO 3, 581 P.3d 778.

**The child abuse exception does not apply** because § 18-6-401 (3) expressly states that the child abuse exception applies to "testimony", not to documents. *People v. Soron*, 2026 CO 3, 581 P.3d 778.

**Medical records that contain information provided by a patient to a physician during the course of receiving treatment for an injury** are protected by the physician-patient privilege. Information that may be shared by a patient with a treating physician regarding how an injury occurred must be obtained through the discovery process. *Trenshaw v. Jennings*, 2025 CO 23, 568 P.3d 413.

**Hospital records held either confidential records or hearsay**, and in either event were inadmissible for

impeachment or any other purpose. *Young v. McLaughlin*, 126 Colo. 188, 247 P.2d 813 (1952).

**Privilege prohibits pretrial discovery of confidential information.** The physician-patient and psychologist-patient privileges, once they attach, prohibit not only testimonial disclosures in court but also pretrial discovery of information within the scope of the privilege. *Clark v. District Court*, 668 P.2d 3 (Colo. 1983).

**Hospital records subject to physician-patient privilege** prohibits pretrial discovery and testimony disclosures of information within the scope of the privilege, and where there is neither an express nor an implied waiver and there is no showing of a particularized need the privilege is absolute. *People v. Overton*, 759 P.2d 772 (Colo. App. 1988).

**Privilege applies only to a physician, surgeon, or registered professional nurse** duly authorized to practice and does not apply to medical technicians. *Belle Bonfils Mem'l Blood Ctr. v. District Court*, 763 P.2d 1003 (Colo. 1988).

**A plain reading of this section and § 16-8-103.6** is that the attorney-client and the physician-patient privileges do not apply to communications made to physicians or psychologists who are eligible to testify concerning a defendant's mental condition once the defendant enters a mental condition plea or defense. *Gray v. District Court*, 884 P.2d 286 (Colo. 1994).

A defendant who places his or her mental condition at issue waives the attorney-client

and the physician-patient privileges. The prosecution may use the testimony of a physician retained by the defense even though the defense does not intend to use the physician at trial. In addition, the prosecution may use pre-offense or post-offense information concerning the defendant's mental condition. *Gray v. District Court*, 884 P.2d 286 (Colo. 1994).

**Attorney-client privilege did not attach to expert evaluation conducted by expert appointed under § 19-3-607 (1) at request of mother in action for termination of parental rights.** *D.A.S. v. People*, 863 P.2d 291 (Colo. 1993).

**Personal injury plaintiff with generic claims for mental suffering has not placed her mental condition at issue** where the mental suffering alleged is incident to the plaintiff's physical injuries and does not exceed the suffering and loss an ordinary person would likely experience. Therefore, the trial court may not find an implied waiver of the plaintiff's physician-patient or psychotherapist-client privileges based on a claim for mental suffering damages and trial court erred in ordering that records related to plaintiff's psychiatric and marriage counseling be disclosed. *Johnson v. Trujillo*, 977 P.2d 152 (Colo. 1999); *Hoffman v. Brookfield Republic, Inc.*, 87 P.3d 858 (Colo. 2004).

Bare allegations of mental anguish, emotional distress, pain and suffering, and loss of enjoyment of life asserted in a complaint do not rise to the level of injecting plaintiff's prior mental and physical conditions into the case such that he or she

completely waived the physician-patient privilege. *Weil v. Dillon Cos., Inc.*, 109 P.3d 127 (Colo. 2005).

While plaintiff impliedly made a limited release of his or her medical records by filing the lawsuit, his or her generic claims for pain and suffering and loss of quality of life incident to the injuries he or she sustained do not amount to a complete release of his or her prior medical records. Therefore, the trial court erred when it required plaintiff to make a complete disclosure of his or her medical records so that defendant would know his or her quality of life prior to the injury. *Weil v. Dillon Cos., Inc.*, 109 P.3d 127 (Colo. 2005).

## **VI. PUBLIC OFFICER.**

**Conversations among the district attorney, his deputies and his assistants taking place prior to the impaneling of the grand jury** and concerning the upcoming grand jury investigation are made in "official confidence" within the meaning of subsection (1)(e). *People v. District Court*, 193 Colo. 528, 568 P.2d 445 (1977).

**This paragraph is not applicable to an employee of the district court**, who, though designated as an "officer", is not in fact a "public officer" within the meaning and intent of the statute. The purpose of the statute was to protect matters relating to "affairs of state" and "state secrets" within the different branches of the government. *Saucerman v. Saucerman*, 170 Colo. 318, 461 P.2d 18 (1969).

**Confidential communications made to a probation officer in the performance of**

**investigatory duties** enjoined upon him by court order may be privileged in the event the public interest demands that the confidence thereof be preserved. *Saucerman v. Saucerman*, 170 Colo. 318, 461 P.2d 18 (1969).

**This paragraph makes the trial court the sole judge as to when the public interests would suffer by the disclosure.**

When a public officer is called upon on the witness stand to disclose such communications, his opinion that such disclosure is improper, and the reasons therefor, are matters to be presented to the court and are for the determination of the court — not the witness. *Lindsey v. People ex rel. Rush*, 66 Colo. 343, 181 P. 531 (1919).

**If there are exceptions to this paragraph they are only such as fall** within those stated by Stephens' Evidence, art. 112, p. 163: "The executive of the nation, or of a state, and cabinet officers (and perhaps others falling in the same general class) are entitled, in the exercise of their discretion, to determine how far in a judicial inquiry they will produce papers or answer questions as to public affairs." *Lindsey v. People ex rel. Rush*, 181 P. 531 (1919).

## **VII. ACCOUNTANT.**

**Law reviews.** For article, "Colorado's Accountant-Client Privilege", see 24 Colo. Law. 283 (1995).

**General assembly clearly intended the accountant-client privilege** to apply without exception to all communications

between client and the certified public accountant and the accountant's employees specified in the statute. There is no legislative expression which would indicate that the general assembly intended to qualify the privilege. *Colo. State Bd. of Accountancy v. Raisch*, 931 P.2d 498 (Colo. App. 1996), *aff'd*, 960 P.2d 102 (Colo. 1998).

**The privilege created by this section is not the privilege of the accountant but that of the client.** *Weck v. District Court*, 158 Colo. 521, 408 P.2d 987 (1965).

**All certified and uncertified work is privileged.** The general assembly's purpose was to preserve the confidential relations set out in the statute. This purpose would not be served by holding that only certified work remains privileged. *Pattie Lea, Inc. v. District Court*, 161 Colo. 493, 423 P.2d 27 (1967).

**The accountant-client privilege under this section does apply to an accountant's work papers, reports, and financial statements, and to communications between accountants and their client and between each of them and third persons, which result in financial statements and an audit report thereon to bar their disclosure to shareholders of the corporation in an action by the shareholders against former officers and directors of the corporation and against the accountants, which action is based upon negligence, gross negligence, fraud, and conspiracy in the preparation and audit of the corporation's financial statements.** *Weck v. District Court*, 158 Colo. 521, 408 P.2d 987 (1965).



**Certified public accountants hired by a corporation are hired for the benefit of all of its stockholders** and such employment forbids concealment from the stockholders of information given the accountant by the corporation. *Pattie Lea, Inc. v. District Court*, 161 Colo. 493, 423 P.2d 27 (1967).

**Privilege is invalid in a stockholder derivative suit.** The respondent is a stockholder in three of the corporations who are defendants in the original suit in the trial court. The certified public accountant-client privilege does not protect a corporation from being required to disclose to its own stockholders in a derivative suit brought in good faith against the corporation, communications made by the corporation to its certified public accountant. A corporate entity acts only for its stockholders and no greater liberality will be applied to facts which determine privilege in the case of a corporation than would be applied in the case of a natural person or association of persons. *Pattie Lea, Inc. v. District Court*, 161 Colo. 493, 423 P.2d 27 (1967).

**Where accountant-client privilege should not apply.** Where the question involved is whether the corporation was governed properly or inimically to shareholder interests is a central issue of the case, shareholders should be allowed disclosure, and the accountant-client privilege should not apply. *Neusteter v. District Court*, 675 P.2d 1 (Colo. 1984).

**Information certified public accountant received as corporate director is subject to disclosure.** Insofar as a certified public accountant may be in possession of any

information which he received as a director, he is subject to the same evidentiary rules as any other corporate director. If faced with the problem, the trial court will correctly distinguish the privileged from the nonprivileged information. The witness is subject to questioning as to nonprivileged information to the same extent as any other witness. *Pattie Lea, Inc. v. District Court*, 161 Colo. 493, 423 P.2d 27 (1967).

**However, a certified public accountant's subsequent employment by a corporation does not waive privilege.** A witness does not waive his right to claim a privilege by accepting employment by a corporation several years prior to the commencement of an action in which an attempt is made to compel him to testify notwithstanding the privilege created by this paragraph. *Weck v. District Court*, 158 Colo. 521, 408 P.2d 987 (1965).

**Where an accountant was appointed by the court to audit the books of a corporation half-owned by the defendant and defendant neither ordered, controlled, nor paid for the accountant's services, defendant could not invoke accountant-client privilege.** *People v. Zimbelman*, 194 Colo. 384, 572 P.2d 830 (1977).

**This paragraph concerning testimony of accountants held to have no application to a criminal case** in which it appeared that the accountant testifying was not employed by, and was not a client of, defendant. *Hopkins v. People*, 89 Colo. 296, 1 P.2d 937 (1931).

## VIII. PSYCHIATRIST.

**Law reviews.** For article, "New Definitions of Therapist Confidentiality", see 18 Colo. Law. 251 (1989). For comment, "The Guardian Ad Litem as the Child's Privilege Holder", see 87 U. Colo. L. Rev. 205 (2016).

**It is error to deny one the opportunity to show that hospital records and the testimony of a psychiatrist were not privileged,** and were otherwise competent. Nelson v. Grissom, 152 Colo. 502, 382 P.2d 991 (1963).

**Respondent-patient entitled to assert privilege where she sought voluntary treatment.** Where respondent sought voluntary treatment and her psychiatrist petitioned alleging that she would not remain in a voluntary treatment program, the respondent was entitled to assert her statutory physician-patient privilege if her psychiatrist was called upon as a witness to testify about any information he acquired in attending the respondent which was necessary for him to prescribe or act for her during the period of her voluntary treatment. People v. Taylor, 618 P.2d 1127 (Colo. 1980).

**Psychiatrist-patient privilege did not apply** to statements made to a police detective. Williams v. People, 687 P.2d 950 (Colo. App. 1984).

**Where a psychiatrist was retained by defense counsel to evaluate the defendant's condition,** the defendant's confidential communications to the psychiatrist were privileged under this

section. Miller v. District Court, 737 P.2d 834 (Colo. 1987).

**Defendant's statement to psychiatrist that was provided to the prosecution under Crim. P. 16 loses its confidential nature** and cross-examination of the defendant concerning such statements as prior inconsistent statements is proper impeachment, even if the psychiatrist did not testify at the defendant's trial. Use of such statements do not violate the attorney-client privilege or the right to effective assistance of counsel. People v. Lanari, 811 P.2d 399 (Colo. App. 1989), aff'd, 827 P.2d 495 (Colo. 1992).

Where an immunity agreement has been drafted by the government, basic considerations of fairness dictate that any ambiguity as to the scope of the governmental promise be resolved in favor of the defendant. Given reasonable alternative interpretations as to the scope of the governmental promise, the court will choose the interpretation favoring the defendant so long as that interpretation has a reasonable foundation in the document itself and in the circumstances surrounding its execution. People v. Romero, 745 P.2d 1003 (Colo. 1987).

**"Use immunity" distinguished.** "Use immunity" results in prohibiting the state from making use of any statements made by the defendant during the time covered by the agreement, and also bars state use of any evidence derived directly or indirectly from those statements. People v. Romero, 745 P.2d 1003 (Colo. 1987).

**A plain reading of this section and § 16-8-103.6** is that the attorney-client and the physician-patient privileges do not apply to communications made to physicians or psychologists who are eligible to testify concerning a defendant's mental condition once the defendant enters a mental condition plea or defense. *Gray v. District Court*, 884 P.2d 286 (Colo. 1994).

A defendant who places his or her mental condition at issue waives the attorney-client and the physician-patient privileges. The prosecution may use the testimony of a physician retained by the defense even though the defense does not intend to use the physician at trial. In addition, the prosecution may use pre-offense or post-offense information concerning the defendant's mental condition. *Gray v. District Court*, 884 P.2d 286 (Colo. 1994).

When a patient alleges a physical or mental condition as a basis for a claim of damages and thereby injects the issue into the case, the patient waives his or her physician-patient privilege with respect to the medical condition. *Samms v. District Court*, 908 P.2d 520 (Colo. 1995); *Middleton v. Beckett*, 960 P.2d 1213 (Colo. App. 1998).

**Threatening communications made to a mental health provider that trigger the "duty to warn" statute are not confidential as a matter of law.** Therefore, when the mental health provider discharges his or her duty to warn based on those communications, the threatening communications are not protected by the psychologist-patient privilege, and the

therapist may testify to those threatening communications. *People v. Kailey*, 2014 CO 50, 333 P.3d 89.

**Psychotherapist-patient privilege is not automatically waived if a juvenile defendant requests a reverse-transfer hearing pursuant to § 19-2-517 (3)(b)(VI).** Because the proper inquiry to determine whether there was a waiver of privilege is whether a party injected his or her physical or mental health condition into the case, simply requesting a reverse-transfer hearing does not waive the privilege. Section 19-2-517 (3)(b)(VI) only requires that the trial court consider mental health records "made available", that is, voluntarily waived by the privilege holder. *People v. Johnson*, 2016 CO 69, 381 P.3d 316.

## **IX. PSYCHOLOGIST.**

**The purpose of the statutory psychologist-patient privilege** is to aid in the effective diagnosis and treatment of mental illness by encouraging the patient to fully disclose information to the psychologist without fear of embarrassment or humiliation caused by disclosure of such confidential information. *People v. District Court*, 719 P.2d 722 (Colo. 1986); *People v. Tauer*, 847 P.2d 259 (Colo. App. 1993); *People v. Dill*, 904 P.2d 1367 (Colo. App. 1995), *aff'd*, 927 P.2d 1315 (Colo. 1996); *Berg v. Shapiro*, 948 P.2d 59 (Colo. App. 1997).

**The psychologist-patient privilege provides that a licensed psychologist may not be examined without the consent of the client as to any communications made by the client to the psychologist or the**

**psychologist's advice to the client.** In order to compel discovery of the psychologist's records, there must be a waiver. The waiver may be implied if the privilege holder places their mental condition at issue. The privilege holder did not waive the privilege. *People v. Hogan*, 114 P.3d 42 (Colo. App. 2004).

**Psychologist-patient privilege did not apply** to statements made to a police detective. *Williams v. People*, 687 P.2d 950 (Colo. 1984).

**Psychologist-patient privilege did not apply to preclude discovery** of data underlying a psychological consultant firm's report regarding the general relationship between the medical staff and the administration of a hospital. *Berg v. Shapiro*, 948 P.2d 59 (Colo. App. 1997).

**Psychologist-patient privilege did not apply to mandatory production of relevant confidential documents** and other information used by a governing board in determining the propriety of a psychologist's actions. *Colo. Bd. of Psychologist Exam'rs v. I.W.*, 140 P.3d 186 (Colo. App. 2006).

**Probate court did not err in ruling exception to privilege was applicable** to preclude respondent's assertion of the psychologist-client privilege in a proceeding for long-term treatment certification. *People v. Hynes*, 917 P.2d 328 (Colo. App. 1996).

**A session with a psychologist "to find out if there was truth to the allegations" is a psychologist session that falls within the ambit of the psychologist-patient privilege.** *People v. Marsh*, 396 P.3d 1

(Colo. App. 2011), *aff'd*, 2017 CO 10M, 389 P.3d 100.

**A corporation cannot be a client of a psychologist and thus cannot assert the psychologist-patient privilege.** *Berg v. Shapiro*, 948 P.2d 59 (Colo. App. 1997).

**Focus of 1993 amendments to subsection (1)(g)** was to extend the applicability of the privilege to other types of health care providers, not to alter the scope of the privilege. *People v. Hynes*, 917 P.2d 328 (Colo. App. 1996).

**Privilege prohibits pretrial discovery of confidential information.** The physician-patient and psychologist-patient privileges, once they attach, prohibit not only testimonial disclosures in court but also pretrial discovery of information within the scope of the privilege. *Clark v. District Court*, 668 P.2d 3 (Colo. 1983).

**The court of appeals erred in conducting an in camera review of the victim's mental health records** since the victim did not waive her psychologist-patient privilege. Without a waiver, the records are not subject to review. *People v. Wittrein*, 221 P.3d 1076 (Colo. 2009).

**Psychologist-patient privilege applies to the records of a therapist** who is an unlicensed psychologist when such therapy is conducted under the supervision of a person authorized by law to conduct such therapy. *People v. District Court*, 719 P.2d 722 (Colo. 1986).

**When physician-patient and psychologist-patient privileges are not waived,** applicability of the privileges is not

conditional on a judicial balancing of interests once privileges attach. Clark v. District Court, 668 P.2d 3 (Colo. 1983).

**Mere filing of a pleading by a person protected by psychologist-patient privilege does not operate as a waiver.** The appropriate inquiry under such circumstances should be whether the privilege holder has injected his physical or mental condition into the case as the basis of a claim or an affirmative defense. People v. District Court, 719 P.2d 722 (Colo. 1986); Hoffman v. Brookfield Republic, Inc., 87 P.3d 858 (Colo. 2004).

**When privilege holder does not place** his or her physical or mental condition at issue and does not assert his or her physical or mental condition as an affirmative defense, privilege holder's answer cannot be fairly construed as a manifestation of his or her intent to forego confidentiality attaching to his or her communications to a treating psychologist or psychiatrist and is not inconsistent with a claim of privilege with respect to these communications. Clark v. District Court, 668 P.2d 3 (Colo. 1983); Hoffman v. Brookfield Republic, Inc., 87 P.3d 858 (Colo. 2004).

**Psychotherapist-patient privilege is not automatically waived if a juvenile defendant requests a reverse-transfer hearing pursuant to § 19-2-517 (3)(b)(VI).** Because the proper inquiry to determine whether there was a waiver of privilege is whether a party injected his or her physical or mental health condition into the case, simply requesting a reverse-transfer hearing does not waive the privilege. Section 19-2-

517 (3)(b)(VI) only requires that the trial court consider mental health records "made available", that is, voluntarily waived by the privilege holder. People v. Johnson, 2016 CO 69, 381 P.3d 316.

**Court must balance the competing interests** of protecting the confidentiality of plaintiffs' communications with their treating therapists against defendant's interest in obtaining sufficient evidence to contest damage claims for mental suffering and emotional distress and should consider the flexible array of protective orders suggested by C.R.C.P. 26(c) to accommodate the needs of the party seeking discovery while protecting the legitimate interests of the parties opposing discovery. Bond v. Denver Dist. Ct., 682 P.2d 33 (Colo. App. 1984).

**Defendant's constitutional right to confront adverse witnesses does not supersede a victim's rights under this section.** The vague assertion that the victim may have made statements to her therapist that might possibly differ from the victim's anticipated trial testimony does not provide a sufficient basis to justify ignoring the victim's right to rely upon her statutory privilege. People v. District Court, 719 P.2d 722 (Colo. 1986); People v. Tauer, 847 P.2d 259 (Colo. App. 1993).

**By taking advantage of opportunity to have an expert appointed by the court pursuant to § 19-3-607,** an individual submits to the disclosure of the evaluation to all parties and waives any psychologist-patient privilege which may have attached. People in Interest of T.S.B., 757 P.2d 1112

(Colo. App. 1988), *aff'd*, 785 P.2d 132 (Colo. 1990).

**Testimony of victim in criminal case as to emotional effects of alleged assault did not operate as waiver of psychologist-patient privilege.** *People v. Silva*, 782 P.2d 846 (Colo. App. 1989).

**Psychologist-client privilege** created in this section does not apply to information obtained and records prepared in evaluating a person who has been involuntarily detained pending judicial review of a psychologist's certification. *People v. District Court*, 797 P.2d 1259 (Colo. 1990).

**Prior to 1989 amendment of § 19-3-311, plain language of said section did not abolish psychologist-patient privilege** for communications between social worker and client concerning child abuse or neglect. *People v. Bowman*, 812 P.2d 725 (Colo. App. 1991).

**In order to harmonize potential statutory conflict between § 19-3-304 concerning required reporting of child abuse and this section prior to 1989 amendment to § 19-3-311, § 19-3-304** required psychologists to report suspected child abuse to the appropriate authorities while subsection (1)(g) prohibited psychologists from testifying against their clients without consent. *People v. Bowman*, 812 P.2d 725 (Colo. App. 1991).

**Improper admission of privileged communications between social worker and defendant constituted harmless error** due to other overwhelming evidence against

defendant offered at trial. *People v. Bowman*, 812 P.2d 725 (Colo. App. 1991).

**Trial court's admission of child abuse reports by psychologist based upon privileged communications between psychologist and defendant** did not constitute error because allowing privilege to prevent use of child abuse reports would defeat one of purposes of reports to aid in the investigation and prosecution of child abusers. *People v. Bowman*, 812 P.2d 725 (Colo. App. 1991).

**Tainted-fruit rationale applied to unauthorized disclosure.** Where defendant sought records of alleged victim's psychologist based on information provided by the psychologist to a police officer in violation of the psychologist-patient privilege and included by the officer in his report, the records remained privileged notwithstanding the defendant's assertion that the psychologist was an "essential witness" to his defense. "The holder of the privilege should not suffer the consequences of either an accidental or intentional revelation of privileged matters by the treating professional." *People v. Tauer*, 847 P.2d 259 (Colo. App. 1993).

**A plain reading of this section and § 16-8-103.6** is that the attorney-client and the physician-patient privileges do not apply to communications made to physicians or psychologists who are eligible to testify concerning a defendant's mental condition once the defendant enters a mental condition plea or defense. *Gray v. District Court*, 884 P.2d 286 (Colo. 1994).

A defendant who places his or her mental condition at issue waives the attorney-client and the physician-patient privileges. The prosecution may use the testimony of a physician retained by the defense even though the defense does not intend to use the physician at trial. In addition, the prosecution may use pre-offense or post-offense information concerning the defendant's mental condition. *Gray v. District Court*, 884 P.2d 286 (Colo. 1994).

**Section 19-3-311 abrogates the psychologist-patient privilege**, but only for communication that is the basis for a report of alleged child abuse to the county department of social services or local law enforcement. *Dill v. People*, 927 P.2d 1315 (Colo. 1996).

**Testimony of psychologist concerning report of alleged child abuse filed with law enforcement was not a waiver of the psychologist-patient privilege** because § 19-3-311 abrogates that privilege. *Dill v. People*, 927 P.2d 1315 (Colo. 1996).

**Trial court properly refused defendant in sexual abuse proceeding access to psychologist's notes and reports** from ongoing counseling sessions because they were protected under the psychologist-patient privilege. *People v. Dill*, 904 P.2d 1367 (Colo. App. 1995), *aff'd*, 927 P.2d 1315 (Colo. 1996).

**Personal injury plaintiff with generic claims for mental suffering has not placed her mental condition at issue** where the mental suffering alleged is incident to the plaintiff's physical injuries and does not exceed the suffering and loss an ordinary

person would likely experience. Therefore, the trial court may not find an implied waiver of the plaintiff's physician-patient or psychotherapist-client privileges based on a claim for mental suffering damages and trial court erred in ordering that records related to plaintiff's psychiatric and marriage counseling be disclosed. *Johnson v. Trujillo*, 977 P.2d 152 (Colo. 1999).

**Absent a clear waiver of psychologist-patient privilege**, a trial court may not review even in camera documents related to a patient's treatment. *People v. Sisneros*, 55 P.3d 797 (Colo. 2002).

**A conflict between the interests of a parent and his or her child may preclude the parent from waiving the child's psychologist-patient privilege.** Since the child's mother was in the middle of a conflict between her child and her father and she was antagonistic toward the prosecution, she lacked the authority to waive the privilege. The decision of whether to waive the privilege was properly given to the child's guardian ad litem. *People v. Marsh*, 396 P.3d 1 (Colo. App. 2011), *aff'd*, 2017 CO 10M, 389 P.3d 100.

**Guardian ad litem holds a child's psychotherapist-patient privilege in a dependency and neglect proceeding** when neither the child nor the child's parent has the authority to hold the privilege because he or she is a party to the proceeding. The guardian ad litem, not the department of human services or the juvenile court, holds the privilege on behalf of the "best interests of the child". *L.A.N. v. L.M.B.*, 2013 CO 6, 292 P.3d 942.

**Threatening communications made to a mental health provider that trigger the "duty to warn" statute are not confidential as a matter of law.** Therefore, when the mental health provider discharges his or her duty to warn based on those communications, the threatening communications are not protected by the psychologist-patient privilege, and the therapist may testify to those threatening communications. *People v. Kailey*, 2014 CO 50, 333 P.3d 89.

#### **X. VICTIM'S ADVOCATE.**

**Law reviews.** For article, "The Use of Victim Advocates and Expert Witnesses in Battered Women Cases", see 30 Colo. Law. 43 (Dec. 2001).

**The victim advocate privilege in subsection (1)(k)(I) extends to records of service or assistance provided by the victim's advocate,** because the records are a part of "any communication" made to the advocate by the domestic violence victim. *People v. Turner*, 109 P.3d 639 (Colo. 2005).

**A defendant may not obtain records of any assistance, advice, or other communication** provided by a victim's advocate to a victim unless the defendant demonstrates that the victim has waived the privilege. *People v. Turner*, 109 P.3d 639 (Colo. 2005).

**The mere endorsement of a domestic violence expert by the prosecution cannot operate to waive the privilege.** *People v. Turner*, 109 P.3d 639 (Colo. 2005).

#### **13-90-108. Offer taken as consent.**

The offer of a person of himself as a witness shall be deemed a consent to the examination. The offer of a wife, husband, attorney, clergyman, physician, surgeon, certified public accountant, or certified psychologist as a witness shall be deemed a consent to the examination, within the meaning of section 13-90-107 (1)(a) to (1)(d), (1)(f), and (1)(g).

**Source: L. 1883:** p. 291, § 4. **G.S. § 3650. R.S. 08:** § 7275. **C.L. § 6564. CSA:** C. 177, § 10. **CRS 53:** §153-1-8. **C.R.S. 1963:** § 154-1-8. **L. 73:** p. 1419, § 112.

#### **ANNOTATION**

**Law reviews.** For article, "Attorney-Client Privilege — the Colorado Law", see 12 Colo. Law. 766 (1983).

**Express directions concerning the manner in which the protection of § 13-90-107 shall be waived** are contained in this

section. *Weck v. District Court*, 158 Colo. 521, 408 P.2d 987 (1965).

**An effective waiver requires voluntary action based upon knowledge of consequences.** *Weck v. District Court*, 158 Colo. 521, 408 P.2d 987 (1965).



**Stockholders may not waive corporation's privilege.** It does not lie within the power of a stockholder, or a minority of stockholders, or a majority of the stockholders to function in such manner as to bring about this statutory waiver. The discretion to waive the protection afforded by the statute can only be exercised by the governing officials of the corporation, namely, the officers or the board of directors *Weck v. District Court*, 158 Colo. 521, 408 P.2d 987 (1965).

**Subsequent employment with corporation does not waive privilege.** A witness does not waive his right to claim a privilege by accepting employment by a corporation several years prior to the commencement of an action in which an attempt is made to compel him to testify notwithstanding the privilege created by § 13-90-107(1)(f). *Weck v. District Court*, 158 Colo. 521, 408 P.2d 987 (1965).

**13-90-109. Estates of deceased persons, infants, and persons who have been declared mentally incompetent.**

Nothing in this article 90 in any manner affects the laws now existing relating to the settlement of estates of deceased persons, infants, or persons who have been declared mentally incompetent or to the acknowledgment or proof of deeds and other conveyances relating to real estate, in order to entitle the same to be recorded, or to the attestation of the execution of the last wills and testaments or of any other instrument required by law to be attested.

**Source:** L. 1870: p. 65, § 8. G.L. § 2958. G.S. § 3645. R.S. 08: § 7271. C.L. § 6560. CSA: C. 177, § 6. CRS 53: § 153-1-9. C.R.S. 1963: § 154-1-9. L. 75: Entire section amended, p. 925, § 20, effective July 1. L. 2017: Entire section amended, (HB 17-1046), ch. 50, p. 157, § 5, effective March 16.

**ANNOTATION**

**Law reviews.** For article, "One Year Review of Contracts", see 34 Dicta 85 (1957).

**Competency of attesting witnesses to a will is based on general competency to be a witness in court.** It was argued that by virtue of this section, common-law disability is still in force in Colorado, but the court did

not agree with this contention, holding competency of attesting witnesses to wills must be tested by the general law relating to competency of witnesses as provided by the statute, and not by the common law. The test is, whether under the statute, she would have been a competent witness in court, at the time of attesting the will, to testify to the

facts of its execution. *White v. Bower*, 56

Colo. 575, 136 P. 1053 (1913).

### **13-90-110. Religious opinions of witness.**

No person shall be deemed incompetent to testify as a witness on account of his opinion in relation to the Supreme Being or a future state of rewards and punishments; nor shall any witness be questioned in regard to his religious opinions.

**Source:** L. 1872: p. 95, § 1. G.L. omitted. G.S. § 3646. R.S. 08: § 7272. C.L. § 6561. CSA: C. 177, § 7. CRS 53: § 153-1-10. C.R.S. 1963: § 154-1-10.

### **ANNOTATION**

**Law reviews.** For article, "Dying Declarations", see 16 Dicta 379 (1939). For article, "Fearing Hell as Essential to Validity of Affidavit", see 18 Dicta 144 (1941). For note, "Impeachment of Non-Religious Witnesses", see 13 Rocky Mt. L. Rev. 336 (1941). For article, "The Right to Practice Law as Dependent on Fear of Hell", see 19 Dicta 206 (1942).

**When evidence of religious beliefs admissible.** This section was not violated in felony child abuse case where defendant raised religious healing as an affirmative defense and was cross-examined as to his

religious beliefs. The examination was probative of something other than the veracity of such witness and the court properly instructed the jury to consider testimony only for limited purposes. *People v. Lybarger*, 790 P.2d 855 (Colo. App. 1989), rev'd on other grounds, 807 P.2d 570 (Colo. 1991).

**This section and CRE 610 do not apply to statements made by a prosecutor in closing argument.** A prosecutor is not a witness, and his or her statements made in closing argument are not evidence. *People v. Krutsinger*, 121 P.3d 318 (Colo. App. 2005).

### **13-90-111. Power of court to enforce attendance. (Repealed)**

**Source:** L. 1887: p. 447, § 1. R.S. 08: § 7279. C.L. § 6565. CSA: C. 177, § 11. CRS 53: § 153-1-11. C.R.S. 1963: § 154-1-11. L. 85: Entire section R&RE, p. 584, § 1, effective May 24. L. 2008: Entire section repealed, p. 198, § 2, effective August 5.

**13-90-112. Power to enforce subpoena duces tecum.**

The provisions of article 90.5 of this title shall also apply to a subpoena duces tecum.

**Source:** L. 1887: p. 448, § 2. R.S. 08: § 7280. C.L. § 6566. CSA: C. 177, § 12. CRS 53: § 153-1-12. C.R.S. 1963: § 154-1-12. L. 2008: Entire section amended, p. 198, § 3, effective August 5.

**ANNOTATION**

**Section gives Colorado courts control over discovery by foreign litigants.** This section and § 13-90-111, while providing a means for ensuring the testimony of potential Colorado deponents by parties to a suit outside Colorado, also ensure a degree of supervision and control over discovery by the courts in Colorado by requiring a commission or dedimus potestatem from the foreign court which has jurisdiction over the

underlying suit. Such a requirement thus serves not only as a check on unfettered and unwarranted discovery in Colorado by foreign litigants, but also protects the interests of the parties to the litigation against whom the discovered material is sought to be used. *Falzon v. Home Ins. Co.*, 661 P.2d 696 (Colo. App. 1982).

**Applied** in *Metro. Life Ins. Co. v. Kaufman*, 104 Colo. 13, 87 P.2d 758 (1939).

**13-90-113. Interpreters - compensation.**

Except as provided in section 13-90-210, when the judge of any court of record in this state has occasion to appoint an interpreter for his court, it is his duty to fix the compensation to be paid such interpreter for each day his services are required.

**Source:** L. 1891: p. 246, § 1. R.S. 08: § 7281. C.L. § 6567. CSA: C. 177, § 13. CRS 53: § 153-1-13. C.R.S. 1963: § 154-1-13. L. 87: Entire section amended, p. 573, § 3, effective April 23.

**13-90-114. Paid by state.**

Except as provided in section 13-90-210, it is the duty of the state court administrator to audit the accounts of such interpreter, except for the Denver county court, as allowed by the judges of the courts of record of a county and to cause warrants to be drawn upon the state controller in

payment thereof, in accordance with section 13-3-104, and the rules and regulations of the state court administrator.

**Source:** L. 1891: p. 246, § 2. R.S. 08: § 7282. C.L. § 6568. CSA: C. 177, § 14. CRS 53: § 153-1-14. C.R.S. 1963: § 154-1-14. L. 73: p. 1419, § 113. L. 87: Entire section amended, p. 573, § 4, effective April 23.

### **13-90-115. Service of subpoena.**

The service of any subpoena in any of the courts of record in this state may be made by any person over the age of eighteen years not a party to the action or proceeding. Proof of service so made shall be by the affidavit of the person making the same showing the time, place, and manner in which and the person upon whom such service has been made.

**Source:** L. 1881: p. 105, § 1. R.S. 08: § 7283. C.L. § 6569. CSA: C. 177, § 15. CRS 53: § 153-1-15. C.R.S. 1963: § 154-1-15.

**Cross references:** For matters involving service of subpoenas, see C.R.C.P. 45.

### **13-90-116. Examination of party to record by adverse party.**

A party to the record of any civil action or proceeding, or a person for whose immediate benefit such action or proceeding is prosecuted or defended, or the directors, officers, superintendent, or managing agents of any corporation which is a party to the record in such action or proceeding may be examined upon the trial thereof, or upon deposition, or both, as if under cross-examination at the instance of the adverse party and for that purpose may be compelled in the same manner and subject to the same rules for examination as any other witness to testify, but the party calling for such examination shall not be concluded thereby but may rebut it by counter testimony.

**Source:** L. 1899: p. 178, § 1. R.S. 08: § 7284. C.L. § 6570. L. 33: p. 899, § 1. CSA: C. 177, § 16. CRS 53: § 153-1-16. C.R.S. 1963: § 154-1-16.

## ANNOTATION

### I. General Consideration.

#### I. GENERAL CONSIDERATION.

**Law reviews.** For article, "Cross Examination Under the Statute", see 9 Dicta 198 (1932). For article, "Depositions of Parties on Oral Interrogatories, Within the State of Colorado", see 10 Dicta 256 (1933).

**This section is remedial.** It grants a right not given under the common law, but does not abridge any right granted thereunder. *Purse v. Purcell*, 43 Colo. 50, 95 P. 291 (1908); *Taylor v. Briggs Land Inv. Co.*, 92 Colo. 119, 18 P.2d 452 (1933).

**It gives adverse party a statutory right.** The right given by this section is a statutory right of far greater value to the adversary than the right to examine a party as his own witness. *Reiter v. Pollard*, 75 Colo. 203, 225 P. 222 (1924).

**It does not take from either party any legal right** they had before to use the admissions of parties in interest made in opposition to principles for which they were then contending. *Grand Lodge A. O. U. W. v. Taylor*, 24 Colo. App. 106, 131 P. 783 (1913).

**It does not limit the right of a party to cross-examine his adversary who offers himself as a witness** in his own behalf. *Purse v. Purcell*, 43 Colo. 50, 95 P. 291 (1908).

**It does not provide for such cross-examination other than upon a trial**, and must be so limited. *Taylor v. Briggs Land Inv. Co.*, 92 Colo. 119, 18 P.2d 452 (1933).

**The word "trial" as used in this section is to be construed as it is commonly understood** as applied to a civil action or proceeding, for the reason that the statute confines it to this. *Taylor v. Briggs Land Inv. Co.*, 92 Colo. 119, 18 P.2d 452 (1933).

**"Trial" is defined as the examination before a competent tribunal**, according to the laws of the land, of the facts put in issue in a cause, for the purpose of determining such issue. *Taylor v. Briggs Land Inv. Co.*, 92 Colo. 119, 18 P.2d 452 (1933); *Jones v. Cutting*, 92 Colo. 123, 18 P.2d 454 (1933).

**This section does not contain any reference whatsoever to the taking of a deposition before a notary.** *Taylor v. Briggs Land Inv. Co.*, 92 Colo. 119, 18 P.2d 452 (1933); *Jones v. Cutting*, 92 Colo. 123, 18 P.2d 454 (1933).

**It therefore does not authorize a cross examination before a notary public.** *Taylor v. Briggs Land Inv. Co.*, 92 Colo. 119, 18 P.2d 452 (1933).

**It is inapplicable if witness proves not to be adverse.** If a party called as an adverse witness appears to the trial court not to be adverse, he should not be held to come within this section and the matter should be left largely to the discretion of the court. *W. Inv. & Land Co. v. First Nat'l Bank*, 64 Colo. 37, 172 P. 6 (1918).

**"Managing agent" is not limited to one general manager.** Certainly the president of a corporation which was the general underwriting agent for an insurance company, and as such had charge of that

branch of the company's business in four states, would be a "managing agent" within the meaning of this section. Otherwise, the term must be limited to one general manager and we think it clear that the general assembly never intended any such limitation. *London Guarantee & Accident Co. v. Officer*, 78 Colo. 441, 242 P. 989 (1925).

**Error in calling local agent is cured by the subsequent calling of such agent by other party.** Where the local agent of a defendant corporation was called as a witness under this section, authorizing the calling of a managing agent of a party corporation and examining him as on cross-examination, such error, if any, in calling such agent, is cured where he is afterwards called by the corporation and the same facts brought out on cross-examination. *Diamond Rubber Co. v. Harryman*, 41 Colo. 415, 92 P. 922 (1907).

**Where witness is not in any of the listed categories, this section does not apply.** Where a witness is neither a director, officer, superintendent, or managing agent of Safeway Stores, Inc., as those words are used in C.R.C.P. 43 or this section, nor is there any showing that the witness is an "unwilling or hostile witness" to the end that under C.R.C.P. 43 he could be interrogated by leading questions, there is no error in refusing to permit plaintiff s to cross-examine the witness as a part of their case in chief. *Dale v. Safeway Stores, Inc.*, 152 Colo. 581, 383 P.2d 795 (1963).

## **II. THE EXAMINATION.**

### **A. In General.**

### **B. Scope.**

#### **A. In General.**

**Under this section the competency established at one trial obtains at subsequent trials of the same cause.** *Finch v. McCrimmon*, 100 Colo. 315, 67 P.2d 623 (1937).

**If a disqualified witness is called, the disqualification is waived.** One who calls a disqualified witness, even for cross-examination, under this section waives the disqualification and makes him a witness for all purposes. *Allen v. Shires*, 47 Colo. 433, 107 P. 1070 (1910).

**The purpose for which he is called makes no difference** in the application of the principle. *Allen v. Shires*, 47 Colo. 433, 107 P. 1070 (1910).

**If witness has already been examined by adverse party it is not error to refuse to permit him called again.** The refusal of the trial court to permit plaintiff to call as a witness the engineer of defendant company, as the company's representative for the purpose of cross-examining him, even if proper to do so under this section, was not prejudicial error where he was actually called as a witness for both parties and subjected to a most rigid and prolonged examination, and cross-examination by counsel for plaintiff. *Hottel v. Poudre Valley Reservoir Co.*, 41 Colo. 370, 92 P. 918 (1907).

**The party called for such examination shall not be concluded thereby,** but may rebut it by counter testimony. *Cordingly v. Kennedy*, 239 F. 645 (8th Cir. 1917).

**There is no error in the refusal of the trial court to bring in new parties** so that they may be cross-examined under this section, when it appears that such parties have no interest in the issues between the major parties. *Tolland Co. v. First State Bank*, 95 Colo. 321, 35 P.2d 867 (1934).

**A defendant who has suffered a default, may, under this section, be called and examined by plaintiff.** *W. Inv. & Land Co. v. First Nat'l Bank*, 64 Colo. 37, 172 P. 6 (1918).

#### B. Scope.

**Witness' own counsel cannot examine beyond scope of examination by adversary.** While this section does not permit defendant's examination by his own counsel to proceed beyond the scope of his examination as conducted by his adversary, nor permit leading questions to be propounded to him by his counsel, it does not by its terms, nor by a proper construction, deny his right to at once give further testimony within the limit indicated. *Merritt v. Hummer*, 21 Colo. App. 568, 122 P. 816 (1912).

**It is error to refuse examination within proper limits.** Where plaintiff's counsel called the defendant as a witness and examined him under this section and at the conclusion of defendant's examination by plaintiff's counsel, his own counsel asked and was denied the privilege of examining him at that time, the trial court holding that this section gave the defendant no right to testify further until plaintiff had closed his case, and he, the defendant, had been regularly called to the stand in his own

defense, this was error. *Buckhorn Plaster Co. v. Consol. Plaster Co.*, 47 Colo. 516, 108 P. 27 (1910); *Merritt v. Hummer*, 21 Colo. App. 568, 122 P. 816 (1912).

**A party is bound by the adverse testimony of his own witness,** and favorable evidence elicited by leading questions or distinctly cross-examining methods should be stricken on motion. In the case under consideration the evidence was fully developed by the adverse party's examination of the same witness, hence should stand. *London Guarantee & Accident Co. v. Officer*, 78 Colo. 441, 242 P. 989 (1925).

**Plaintiff bound by testimony of witnesses not called for cross-examination.** In an action against a corporation, some of the witnesses for plaintiff — officials and employees of defendant — not being called for cross-examination under this section, plaintiff was bound by their testimony. *Rio Grande Fuel Co. v. Colo. Cent. Power Co.*, 99 Colo. 395, 63 P.2d 470 (1936).

**A witness called under this section is competent "for all purposes" within meaning of § 13-90-102.** A witness called by an administrator under the provisions of this section which permits the interrogation of an adverse party as on cross-examination, removes the bar of § 13-90-102 and makes the witness a competent witness "for all purposes". *Warren v. Adams*, 19 Colo. 515, 36 P. 604 (1894); *Zackheim v. Zackheim*, 75 Colo. 161, 225 P. 268 (1924); *Finch v. McCrimmon*, 100 Colo. 315, 67 P.2d 623 (1937).

**A party to the record may be examined by his adversary as if under cross-examination,** and the fact that a defendant called the plaintiff as his own witness did not cure the error committed in denying him the right to call him for cross-examination. *Reiter v. Pollard*, 75 Colo. 203, 225 P. 222 (1924).

**An intervenor need not be given right to examine as to wholly irrelevant matter.** There was no error in refusing an intervenor an opportunity to cross-examine the president of plaintiff corporation under this section, where such cross-examination

would have been directed to matters wholly irrelevant to the issues. *Howry v. Sigel-Campion Livestock Comm'n Co.*, 80 Colo. 143, 249 P. 658 (1926).

**Refusal to permit defendant to cross-examine complainant about his homosexual relationship with witness was not reversible error,** inasmuch as testimony elicited during such cross examination would only have discredited and impeached complainant by impugning his moral character. *People v. Couch*, 179 Colo. 324, 500 P.2d 967 (1972).

### **13-90-117. Affirmation - form - perjury.**

(1) A witness who desires it, at his option, instead of taking an oath may make his solemn affirmation or declaration by assenting when addressed in the following form:

"You do solemnly affirm that the evidence you shall give in this issue (or matter), pending between ..... and ..... shall be the truth, the whole truth, and nothing but the truth."

(2) Assent to this affirmation shall be made by answer: "I do."

(3) A false affirmation or declaration is perjury in the first degree.

**Source: L. 1887:** p. 191, § 336. **Code 08:** § 370. **Code 21:** § 371. **Code 35:** § 371. **CRS 53:** § 153-1-17. **C.R.S. 1963:** § 154-1-17. **L. 72:** p. 574, § 67.



### **13-90-117.5. Oath or affirmation taken by a child.**

In lieu of an oath or affirmation, any child who testifies in any proceeding pursuant to section 13-90-106 (1)(b)(II) shall be asked the following: "Do you promise to tell the truth?". The court, in its discretion, may accept any indication of assent to this question by the child.

**Source: L. 90:** Entire section added, p. 985, § 4, effective April 24.

### **13-90-118. Witness immunity.**

(1) Whenever a witness refuses, on the basis of the privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to a court or grand jury of the state of Colorado involving any laws of the state and the person presiding over the proceeding communicates to the witness an order as specified in subsection (2) of this section, the witness may not refuse to comply with the order on the basis of the privilege against self-incrimination; except that no testimony or other information compelled under the order, or any information directly or indirectly derived from such testimony or other information, may be used against the witness in any criminal case, except a prosecution for perjury or false statement or otherwise failing to comply with the order.

(2) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before or ancillary to a court or grand jury of the state of Colorado, the district court for the judicial district in which the proceeding is or may be held, or the county court in which a misdemeanor proceeding is or may be held, may issue, upon request of any district attorney, attorney general, or special prosecutor of the state of Colorado, an order requiring such individual to give testimony or provide other information which he or she refuses to give or provide on the basis of the privilege against self-incrimination, such order to become effective as provided in subsection (1) of this section.

(3) A district attorney, attorney general, or special prosecutor of the state of Colorado may request an order as specified in subsection (2) of this section when in his or her judgment the testimony or other information from such individual may be necessary to the public interest and such individual has refused or is likely to refuse to testify or provide other information on the basis of the privilege against self-incrimination.

**Source: L. 69:** p. 1245, § 1. **C.R.S. 1963:** § 154-1-18. **L. 72:** p. 574, § 68. **L. 83:** Entire section R&RE, p. 638, § 1, effective July 1. **L. 2004:** Entire section amended, p. 1378, § 4, effective July 1.

## ANNOTATION

**Law reviews.** For article, "Witness Immunity Under Colorado Law", see 27 Colo. Law. 37 (Dec. 1998).

**Supreme court may review immunity proceedings.** Where the Colorado supreme court retained jurisdiction to review the rulings of the trial court in "immunity proceedings", it was not intended that the court grant carte blanche interlocutory review of every procedural ruling of the trial court in the conduct of those proceedings, but review is properly limited to matters bearing upon the substantive determination of the grant of immunity relied upon by petitioner in avoidance of prosecution. *Wheeler v. District Court*, 180 Colo. 275, 504 P.2d 1094 (1973).

**Immunity granted under this section is necessarily transactional.** *Wheeler v. District Court*, 184 Colo. 193, 519 P.2d 327 (1974); *People v. Lucero*, 196 Colo. 276, 584 P.2d 1208 (1978); *Steinberger v. District Court*, 198 Colo. 59, 596 P.2d 755 (1979).

**"Transaction immunity" defined.** Transaction immunity may be simply described as that which precludes prosecution for any transaction or affair about which a witness testifies. Use immunity, by contrast, is a grant with limitations. Rather than barring a subsequent related prosecution, it acts only to suppress, in any such prosecution, the witness's testimony and evidence derived directly or indirectly from that testimony. *Steinberger v.*

*District Court*, 198 Colo. 59, 596 P.2d 755 (1979).

**Immunity granted by this statute is no longer transactional.** Since the statute protects the witness from use of the compelled testimony in subsequent criminal proceedings, a defendant who, subsequent to conviction but prior to sentencing, was granted immunity and compelled to testify against his codefendant was not deprived of his privilege against self-incrimination. *People v. Lederer*, 717 P.2d 1017 (Colo. App. 1986).

**In order to constitute proper request for witness immunity,** defense counsel must explicitly request that the court grant a witness "immunity" at the time the witness is being questioned, and after the witness has claimed his fifth amendment privilege. *People v. Macias*, 44 Colo. App. 203, 616 P.2d 150 (1980).

**Decision to grant immunity rests within discretion of prosecution.** *People v. Macias*, 44 Colo. App. 203, 616 P.2d 150 (1980); *People v. Russom*, 107 P.3d 986 (Colo. App. 2004).

This section vests the office of the prosecutor with sole discretionary authority to apply its provisions to any witness. *People v. Harding*, 671 P.2d 975 (Colo. App. 1983).

Courts possess no inherent power to grant immunity described in this section and may not grant it except upon request of

prosecuting attorney. *People v. Merrill*, 816 P.2d 958 (Colo. App. 1991); *People v. Raibon*, 843 P.2d 46 (Colo. App. 1992); *People v. Eggert*, 923 P.2d 230 (Colo. App. 1995).

No error in grant of immunity when the prosecution believed that witness's testimony was necessary in the interest of justice and the record clearly showed that the testimony is essential to the prosecution's case. *People v. Russom*, 107 P.3d 986 (Colo. App. 2004).

**Police officer possesses the necessary apparent authority to make promises of immunity** which bind his principal, the government. *People v. Manning*, 672 P.2d 499 (Colo. 1983).

**To assess whether a person accused of criminal conduct may enforce an offer of immunity by an official not listed in this section, three inquiries must be made:** (1) Whether the defendant's privilege against self-incrimination is implicated; (2) whether the defendant reasonably and detrimentally relied upon the government official's promise by performing his or her side of the bargain; and (3) whether a remedy short of actual enforcement of the promise would approximate fundamental fairness. *Hopp & Flesch v. Backstreet*, 123 P.3d 1176 (Colo. 2005).

**Defendant who was compelled by court order** to provide incriminating testimony in a civil case after having been convicted and sentenced was not entitled to postconviction relief of his criminal sentence based on transactional immunity but was only entitled to use immunity, and since the testimony

had not affected the judge's sentencing decision, trial court was correct in denying motion for postconviction relief. *People v. Singer*, 688 P.2d 248 (Colo. App. 1984).

**Witness compelled to testify after conviction but before sentencing gains immunity.** Since a recital of the sentence is an essential part of a judgment of conviction, a court which compels a witness to testify after her own conviction but before sentencing, by operation of this immunity statute, has aborted the prosecution and precluded itself from imposing a sentence or entering a final judgment of conviction. *Steinberger v. District Court*, 198 Colo. 59, 596 P.2d 755 (1979).

**Defendant, who was granted immunity but still refused to testify, was not protected** from prosecution under this section. *People v. Castango*, 674 P.2d 978 (Colo. App. 1983).

**Certain language from former federal statute.** Language in section beginning with "but no such witness may be prosecuted" is almost a verbatim copy of the former federal immunity statute, 18 U.S.C. § 2514. *Wheeler v. District Court*, 184 Colo. 193, 519 P.2d 327 (1974).

**Grand jury witness's right to suppress intercepted communications.** A grand jury witness has a statutory right to seek the suppression of intercepted communications as well as evidence derived therefrom, and this right is not impaired by the court's grant of transactional immunity since, while such immunity adequately safeguards the witness's privilege against self-incrimination, it does not protect the

witness's privacy interest in the contents of the intercepted communications. In re P.R. v. District Court, 637 P.2d 346 (Colo. 1981).

**Immunized grand jury testimony** cannot be used in an affidavit supporting a search warrant against the person giving the immunized testimony. Such use falls directly within the provision protecting the defendant from penalty on account of the testimony given. People v. Henson, 705 P.2d 996 (Colo. App. 1985).

**Extent of immunity.** When the extent of a grant of immunity is ambiguous and the actions or degree of participation covered by the grant of immunity are not ascertainable, the grant of immunity must extend to the defendant's participation in the entire transaction. People v. Romero, 712 P.2d 1081 (Colo. App. 1985), rev'd, 745 P.2d 1003 (Colo. 1987).

**Loss of immunity.** When a defendant has acted with reasonable and detrimental reliance on a governmental promise involving a grant of immunity, the government must be stopped from going back on its promise. People v. Romero, 712 P.2d 1081 (Colo. App. 1985), rev'd, 745 P.2d 1003 (Colo. 1987).

**Once a criminal defendant demonstrates that he has been compelled to testify under a grant of use immunity, the prosecution is prohibited from using the compelled testimony in any respect** and the prosecution has the duty to prove that evidence it proposes to use is derived from an independent source. People v. Reali, 895 P.2d 161 (Colo. App. 1994).

**Where prosecutors were exposed to defendant's immunized testimony but defendant had previously made a detailed statement concerning her part in the crime** and defendant's counsel provided additional information to the prosecutors that was not referred to in the detailed statement, possible prosecutorial use of information from the immunized testimony was not a structural defect in the trial and a harmless error analysis was appropriate. In conducting such analysis court was entitled to consider the fact that defendant's participation in the crime was not seriously contested at trial. People v. Reali, 895 P.2d 161 (Colo. App. 1994); People v. Reali, 950 P.2d 645 (Colo. App. 1997).

**Mere fact that witness observed the defendant at a hearing in which the defendant gave immunized testimony does not constitute a use of that testimony.** Defendant could have been compelled to appear before the witness and to speak even in the absence of the grant of immunity since the right against self-incrimination does not extend to non-testimonial actions. People v. Reali, 895 P.2d 161 (Colo. App. 1994).

**Refusal to testify after receiving immunity deemed contempt.** A witness who, despite receiving immunity, persists before a trial court judge in refusing on fifth amendment grounds to supply grand jury testimony, commits contempt and may be punished summarily. People v. Lucero, 196 Colo. 276, 584 P.2d 1208 (1978).

**A witness who refused to testify after being granted immunity was guilty of**

**contempt.** People v. Mulberry, 919 P.2d 835 (Colo. App. 1995).

prosecution against him. People v. Mulberry, 919 P.2d 835 (Colo. App. 1995).

**Immunity granted a defendant under this section was universal and therefore all jurisdictions** were precluded from using defendant's testimony in subsequent

**Applied** in Westerberg v. District Court, 181 Colo. 10, 506 P.2d 746 (1973); People v. Marquez, 644 P.2d 59 (Colo. App. 1981).

### **13-90-119. Privilege for newsperson.**

(1) As used in this section, unless the context otherwise requires:

(a) "Mass medium" means any publisher of a newspaper or periodical; wire service; radio or television station or network; news or feature syndicate; or cable television system.

(b) "News information" means any knowledge, observation, notes, documents, photographs, films, recordings, videotapes, audiotapes, and reports, and the contents and sources thereof, obtained by a newsperson while engaged as such, regardless of whether such items have been provided to or obtained by such newsperson in confidence.

(c) "Newsperson" means any member of the mass media and any employee or independent contractor of a member of the mass media who is engaged to gather, receive, observe, process, prepare, write, or edit news information for dissemination to the public through the mass media.

(d) "Press conference" means any meeting or event called for the purpose of issuing a public statement to members of the mass media, and to which members of the mass media are invited in advance.

(e) "Proceeding" means any civil or criminal investigation, discovery procedure, hearing, trial, or other process for obtaining information conducted by, before, or under the authority of any judicial body of the state of Colorado. Such term shall not include any investigation, hearing, or other process for obtaining information conducted by, before, or under the authority of the general assembly.

(f) "Source" means any person from whom or any means by or through which news information is received or procured by a newsperson, while engaged as such, regardless of whether such newsperson was requested to hold confidential the identity of such person or means.

(2) Notwithstanding any other provision of law to the contrary and except as provided in subsection (3) of this section, no newsperson shall, without such newsperson's express consent, be compelled to disclose, be examined concerning refusal to disclose, be subjected to any legal presumption of any kind, or be cited, held in contempt, punished, or subjected to any sanction in any judicial proceedings for refusal to disclose any news information received, observed,

procured, processed, prepared, written, or edited by a newsperson, while acting in the capacity of a newsperson; except that the privilege of nondisclosure shall not apply to the following:

- (a) News information received at a press conference;
- (b) News information which has actually been published or broadcast through a medium of mass communication;
- (c) News information based on a newsperson's personal observation of the commission of a crime if substantially similar news information cannot reasonably be obtained by any other means;
- (d) News information based on a newsperson's personal observation of the commission of a class 1, 2, or 3 felony.

(3) Notwithstanding the privilege of nondisclosure granted in subsection (2) of this section, any party to a proceeding who is otherwise authorized by law to issue or obtain subpoenas may subpoena a newsperson in order to obtain news information by establishing by a preponderance of the evidence, in opposition to a newsperson's motion to quash such subpoena:

- (a) That the news information is directly relevant to a substantial issue involved in the proceeding;
- (b) That the news information cannot be obtained by any other reasonable means; and
- (c) That a strong interest of the party seeking to subpoena the newsperson outweighs the interests under the first amendment to the United States constitution of such newsperson in not responding to a subpoena and of the general public in receiving news information.

(4) The privilege of nondisclosure established by subsection (2) of this section may be waived only by the voluntary testimony or disclosure of a newsperson that directly addresses the news information or identifies the source of such news information sought. A publication or broadcast of a news report through the mass media concerning the subject area of the news information sought, but which does not directly address the specific news information sought, shall not be deemed a waiver of the privilege of nondisclosure as to such specific news information.

(5) In any trial to a jury in an action in which a newsperson is a party as a result of such person's activities as a newsperson and in which the newsperson has invoked the privilege created by subsection (2) of this section, the jury shall be neither informed nor allowed to learn that such newsperson invoked such privilege or has thereby declined to disclose any news information.

(6) Nothing in this section shall preclude the issuance of a search warrant in compliance with the federal "Privacy Protection Act of 1980", 42 U.S.C. sec. 2000aa.

**Source: L. 90:** Entire section added, p. 1262, § 1, effective April 16.

**Cross references:** For governmental access to news information, see article 72.5 of title 24.

## ANNOTATION

**Law reviews.** For article, "New Shield Law Prohibits Most Subpoenas to Reporters", see 20 Colo. Law. 891 (1991).

**The anti-defamation league, which publishes numerous periodicals, books, and pamphlets and regularly engages in news gathering activities, is a "newsperson" pursuant to this section.** Quigley v. Rosenthal, 43 F. Supp. 2d 1163 (D. Colo. 1999).

**Anti-defamation league defendants entitled to invoke the privilege for a newsperson with regard to the record of anti-Semitic complaints filed with their office.** The information sought is not relevant to a substantial issue in the case, as required by subsection (3). Quigley v. Rosenthal, 43 F. Supp. 2d 1163 (D. Colo. 1999).

**Section applies when newsperson assists law enforcement officers.** Where police officers rode in news helicopter and pilot overflew a building suspected of containing marijuana plants, all at the officers' request, trial court did not err in quashing subpoena whereby defendant sought pilot's testimony as to helicopter's altitude and flight path at the time marijuana

plants were observed. People v. Henderson, 847 P.2d 239 (Colo. App. 1993).

**Reporter who piloted helicopter that flew police over private residence where marijuana plants were growing was protected under newsperson's privilege** where reporter was full-time employee of a television station whose reports were regularly featured on news broadcasts and station assigned reporter to observe and gather information on police attempts to uncover illegal drug activity. Henderson v. People, 879 P.2d 383 (Colo. 1994).

**The newsperson's privilege is a qualified privilege** and may be overcome by establishing the three factors in subsection (3)(a) through (c). In addition, if the newsperson is a defendant in the action where the disclosure is sought, as a part of the subsection (3)(c) analysis, there must be a satisfactory showing of the probable falsity of defendant's statements. Gordon v. Boyles, 9 P.3d 1106 (Colo. 2000).

**"Probable falsity" requirement of Gordon v. Boyles annotated above does not apply to a case that does not involve confidential sources or confidential information.** Brokers' Choice of Am., Inc.

## PART 2

### APPOINTMENT OF INTERPRETERS FOR PERSONS WHO ARE DEAF OR HARD OF HEARING

**Editor's note:** This part 2 was numbered as article 3 of chapter 16, C.R.S. 1963. The substantive provisions of this part 2 were repealed and reenacted in 1987, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 2 prior to 1987, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editors' notes following those sections that were relocated.

#### **13-90-201. Legislative declaration.**

The general assembly hereby finds and declares that it is the policy of this state to secure the rights of persons who are deaf, hard of hearing, or deafblind and who consequently cannot equally participate in or benefit from proceedings of the courts or any board, commission, agency, or licensing or law enforcement authority of the state unless qualified auxiliary services are available to assist them.

**Source:** **L. 87:** Entire part R&RE, p. 570, § 1, effective April 23. **L. 2006:** Entire section amended, p. 1086, § 1, effective May 25. **L. 2009:** Entire section amended, (SB 09-144), ch. 219, p. 992, § 8, effective August 5. **L. 2018:** Entire section amended, (HB 18-1108), ch. 303, p. 1833, § 2, effective August 8.

#### **13-90-202. Definitions.**

As used in this part 2, unless the context otherwise requires:

- (1) "Appointing authority" means the presiding officer or similar official of any court, board, commission, agency, or licensing or law enforcement authority of the state.
- (2) "Assistive listening device" means an amplification system that operates in conjunction with a hearing aid to increase the volume of sounds for the hearing aid only.



(3) "Auxiliary services" means those aids and services that assist in effective communication with a person who is deaf, hard of hearing, or deafblind, including:

- (a) The services of a qualified interpreter;
- (b) The provision of a qualified communication access realtime translation (CART) reporter;
- (c) The provision of an assistive listening device; or
- (d) The acquisition or modification of equipment or devices to assist in effective communication with a person who is deaf, hard of hearing, or deafblind.

(4) Repealed.

(5) "Communication access realtime translation (CART) reporter" means a word-for-word speech-to-text translation service for the deaf, hard of hearing, or deafblind.

(6) "Deaf, hard of hearing, or deafblind" means a person who has a functional hearing loss of sufficient severity to prevent aural comprehension, even with the assistance of hearing aids.

(6.3) "Division" means the division for the deaf, hard of hearing, and deafblind in the department of human services created in section 26-21-106 (1).

(7) "Effective communication" means those methods of communication that are individualized and culturally appropriate to a person who is deaf, hard of hearing, or deafblind so that he or she can easily access all auditory information.

(7.3) "Enterprise" means the communication services for people with disabilities enterprise created in section 26-21-103.5.

(8) "Qualified interpreter" means a person who has a valid certification of competency accepted by the division and includes oral interpreters, sign language interpreters, and intermediary interpreters.

(9) "State court system" means the system of courts, or any part thereof, established pursuant to articles 1 to 9 of this title 13 and article VI of the state constitution. "State court system" does not include the municipal courts or any part thereof.

**Source:** **L. 87:** Entire part R&RE, p. 570, § 1, effective April 23. **L. 94:** (4) amended, p. 2642, § 93, effective July 1. **L. 2006:** Entire section amended, p. 1086, § 2, effective May 25. **L. 2009:** (1) amended and (9) added, (SB 09-144), ch. 219, p. 992, § 9, effective August 5. **L. 2018:** (3) to (7) and (9) amended, (HB 18-1108), ch. 303, p. 1833, § 3, effective August 8. **L. 2025:** (4) repealed, (6.3) and (7.3) added, and (8) amended, (HB 25-1154), ch. 230, p. 1084, § 19, effective May 22.

**Cross references:** For the legislative declaration contained in the 1994 act amending subsection (4), see section 1 of chapter 345, Session Laws of Colorado 1994.

### **13-90-203. Powers and duties of the enterprise - rules.**

The board of directors of the enterprise shall adopt rules pursuant to article 4 of title 24 as necessary for the implementation of this part 2. The rule-making process shall be open and available for input from the public, including interpreters and consumers of interpreter services.

**Source:** L. 87: Entire part R&RE, p. 571, § 1, effective April 23. L. 94: Entire section amended, p. 2642, § 94, effective July 1. L. 2006: Entire section amended, p. 1087, § 3, effective May 25. L. 2025: Entire section amended, (HB 25-1154), ch. 230, p. 1085, § 20, effective May 22.

**Cross references:** For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994.

### **13-90-204. Appointment of auxiliary services providers.**

(1) An appointing authority shall provide a qualified auxiliary services provider to interpret the proceedings to a person who is deaf, hard of hearing, or deafblind and to interpret the statements of the person who is deaf, hard of hearing, or deafblind in the following instances:

(a) When a person who is deaf, hard of hearing, or deafblind is present and participating as the principal party of interest or a witness at any civil or criminal proceeding, including but not limited to any criminal or civil court proceeding in the state court system; a court-ordered or court-provided alternative dispute resolution, mediation, arbitration, or treatment; an administrative, commission, or agency hearing; or a hearing of a licensing authority of the state;

(b) When a person who is deaf, hard of hearing, or deafblind is involved in any stage of grand jury or jury proceedings as a potential or selected juror;

(c) When a juvenile whose parent or parents are deaf, hard of hearing, or deafblind is brought before a court for any reason;

(d) When a person who is deaf, hard of hearing, or deafblind is arrested and taken into custody for an alleged violation of a criminal law of the state or any of its political subdivisions.

Such appointment shall be made prior to any attempt to notify the arrestee of his or her constitutional rights and prior to any attempt to interrogate or to take a statement from the person; except that a person who is deaf, hard of hearing, or deafblind and who is otherwise eligible for release shall not be held pending the arrival of a qualified interpreter.

(e) (Deleted by amendment, L. 2006, p. 1088, § 4, effective May 25, 2006.)

(f) When effective communication cannot be established without an auxiliary service and when an alleged victim or witness is a person who is deaf, hard of hearing, or deafblind, who uses sign language for effective communication, and who is questioned or otherwise interviewed by a person having a law enforcement or prosecutorial function in any criminal investigation, except where the length, importance, or complexity of the communication does not warrant provision of an auxiliary service. Assessment of whether the length, importance, or complexity of the communication warrants provision of an auxiliary service shall be made in accordance with United States department of justice regulations effectuating Title II of the federal "Americans with Disabilities Act of 1990", as from time to time may be amended, Pub.L. 101-336, codified at 42 U.S.C. sec. 12101 et seq., including regulations, analysis, and technical assistance.

(g) (Deleted by amendment, L. 2007, p. 2026, § 29, effective June 1, 2007.)

(1.5) Nothing in this part 2 shall be construed to provide less than is required by Title II of the federal "Americans with Disabilities Act of 1990", as from time to time may be amended, Pub.L. 101-336, codified at 42 U.S.C. sec. 12101 et seq., and its implementing regulations.

(2) Nothing contained in this section shall be construed to preclude the use of services of an interpreter in civil proceedings.

**Source:** **L. 87:** Entire part R&RE, p. 571, § 1, effective April 23. **L. 2006:** (1) amended, p. 1088, § 4, effective May 25. **L. 2007:** (1)(f) and (1)(g) amended and (1.5) added, p. 2026, § 29, effective June 1. **L. 2009:** (1)(a) amended, (SB 09-144), ch. 219, p. 992, § 10, effective August 5. **L. 2018:** IP(1), (1)(a) to (1)(d), and (1)(f) amended, (HB 18-1108), ch. 303, p. 1834, § 4, effective August 8.

**Editor's note:** This section is similar to former § 13-90-201 as it existed prior to 1987.

#### ANNOTATION

**Annotator's note.** Since § 13-90-204 is the 1987 repeal and reenactment of this part similar to § 13-91-201 as it existed prior to 2, a relevant case construing that provision

has been included in the annotations to this section.

**Effect of violation of statute.** Assuming that accuracy is the central purpose of the statute, if a qualified interpreter who was not appointed by a court was translating, the failure to appoint an interpreter should not result in suppression; but if the interpreter was not able to accurately communicate with the defendant, the defendant's statements must be suppressed. *People v. Harper*, 726 P.2d 1129 (Colo. 1986).

**Definition of arrest.** Whether a person is in custody turns on an objective assessment of whether a reasonable person in the defendant's circumstances would have believed that he was free to leave the officer's presence, not on the officer's subjective state of mind. *People v. Harper*, 726 P.2d 1129 (Colo. 1986).

**Only one interpreter required** by statute, and defendant's assertion that second interpreter was necessary to assist communications between the defendant and his counsel because appointed interpreter was occupied with interpreting ongoing proceedings was without merit. *People v. Hammons*, 771 P.2d 1 (Colo. App. 1988).

**Police officer's request for blood or breath testing for alcohol is not interrogation because any person operating a motor vehicle must comply with breath and blood testing.** Therefore, defendant is not entitled to a qualified interpreter or auxiliary service when a police officer requests a blood or breath sample as part of an investigation of driving under the influence. *Shiplet v. Colo. Dept. of Rev.*, 266 P.3d 408 (Colo. App. 2011).

### **13-90-205. Coordination of auxiliary services requests.**

(1) The division, in collaboration with the judicial department, shall establish, monitor, coordinate, and publish a list of available resources regarding communication accessibility for individuals who are deaf, hard of hearing, or deafblind, including qualified auxiliary services providers, for use by an appointing authority pursuant to section 13-90-204. The list must contain the names of private individual providers and agencies that secure qualified auxiliary services for assignment.

(2) Whenever a qualified auxiliary service is required pursuant to section 13-90-204, the appointing authority shall secure the auxiliary service through the list of available resources made available and coordinated by the division in accordance with subsection (1) of this section.

(3) The division shall provide auxiliary services for a proceeding described by section 13-90-204 (1)(a), (1)(b), or (1)(c). The division does not have additional responsibilities beyond the requirements of subsection (1) of this section for a proceeding described in section 13-90-204 (1)(d) or (1)(f).

**Source:** **L. 87:** Entire part R&RE, p. 571, § 1, effective April 23. **L. 94:** (1) amended, p. 2642, § 95, effective July 1. **L. 2006:** Entire section amended, p. 1089, § 5, effective May 25. **L. 2018:** Entire section amended, (HB 18-1108), ch. 303, p. 1835, § 5, effective August 8. **L. 2025:** Entire section amended, (HB 25-1154), ch. 230, p. 1085, § 21, effective May 22.

**Cross references:** For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 345, Session Laws of Colorado 1994.

### **13-90-206. Use of an intermediary interpreter.**

If the qualified interpreter makes a determination that he or she is unable to render a satisfactory interpretation without the aid of an intermediary interpreter, the appointing authority may appoint an intermediary interpreter to assist the qualified interpreter.

**Source:** **L. 87:** Entire part R&RE, p. 572, § 1, effective April 23. **L. 2006:** Entire section amended, p. 1089, § 6, effective May 25.

### **13-90-207. Requirements to be met prior to commencing proceedings.**

(1) Prior to commencing any proceedings pursuant to section 13-90-204 requiring a qualified auxiliary services provider, the following conditions shall be met:

(a) A qualified interpreter shall take an oath that he or she shall make a true interpretation in an understandable manner to the best of his or her skills, but such oath shall only be required if the entity presiding over the proceeding has been given, by statute, the authority to administer such an oath.

(b) The qualified auxiliary services provider shall be in full view and spatially situated to assure effective communication with the person or persons who are deaf, hard of hearing, or deafblind.

(c) The appointing authority shall make a reasonable attempt to provide a qualified auxiliary services provider that is effective to the person who is deaf, hard of hearing, or deafblind.

**Source:** **L. 87:** Entire part R&RE, p. 572, § 1, effective April 23. **L. 2006:** (1) amended, p. 1089, § 7, effective May 25. **L. 2018:** IP(1), (1)(b), and (1)(c) amended, (HB 18-1108), ch. 303, p. 1835, § 6, effective August 8.

**Editor's note:** This section is similar to former § 13-90-203 as it existed prior to 1987.

#### **13-90-208. Waiver.**

The right of a person who is deaf, hard of hearing, or deafblind to a qualified auxiliary service may not be waived except in writing by the person who is deaf, hard of hearing, or deafblind. Prior to executing a waiver, a person who is deaf, hard of hearing, or deafblind may have access to counsel for advice and shall have actual, full knowledge of the right to effective communication. The waiver is subject to the approval of counsel, if any, to the person who is deaf, hard of hearing, or deafblind and is also subject to the approval of the appointing authority. In no event is the failure of the person who is deaf, hard of hearing, or deafblind to request a qualified auxiliary service deemed a waiver of this right.

**Source: L. 87:** Entire part R&RE, p. 572, § 1, effective April 23. **L. 2006:** Entire section amended, p. 1090, § 8, effective May 25. **L. 2018:** Entire section amended, (HB 18-1108), ch. 303, p. 1835, § 7, effective August 8.

#### **13-90-209. Privileged communications.**

If a qualified interpreter is called upon to interpret privileged communications pursuant to section 13-90-107, the interpreter shall not testify without the written consent of the person who holds the privilege.

**Source: L. 87:** Entire part R&RE, p. 572, § 1, effective April 23.

#### **13-90-210. Compensation.**

Per the funding available to the division, a qualified auxiliary services provider provided pursuant to section 13-90-204 shall be compensated for their services, including waiting time and necessary travel and subsistence expenses. The amount of compensation shall be based on a fee schedule for qualified auxiliary services providers established by the division.

**Source:** L. 87: Entire part R&RE, p. 572, § 1, effective April 23. L. 2006: Entire section amended, p. 1090, § 9, effective May 25. L. 2025: Entire section amended, (HB 25-1154), ch. 230, p. 1085, § 22, effective May 22.

## 13-90.5 ARTICLE 90.5

### Uniform Interstate Depositions and Discovery Act

- |                                    |                                                          |
|------------------------------------|----------------------------------------------------------|
| 13-90.5-101. Short title.          | 13-90.5-105. Deposition, production, and inspection.     |
| 13-90.5-102. Definitions.          |                                                          |
| 13-90.5-103. Issuance of subpoena. | 13-90.5-106. Application to court.                       |
| 13-90.5-104. Service of subpoena.  | 13-90.5-107. Uniformity of application and construction. |

### PREFATORY NOTE

#### 1. History of Uniform Acts

The National Conference of Commissioners on Uniform State Laws has twice promulgated acts dealing with interstate discovery procedures.

In 1920, the Uniform Foreign Depositions Act was adopted by NCCUSL. The pertinent section of that act provides:

*Whenever any mandate, writ or commission is issued from any court of record in any foreign jurisdiction, or whenever upon notice or agreement it is required to take the testimony of a witness in this state, the witness may be compelled to appear and testify in the same manner and by the same process as employed for taking testimony in matters pending in the courts of this state.*

The UFDA was originally adopted in 13 states. The states and territories which

currently have the act include Florida, Georgia, Louisiana, Maryland, Nevada, New Hampshire, Ohio, Oklahoma, South Dakota, Tennessee, Virginia, Wyoming, and the Virgin Islands.

In 1962, the Uniform Interstate and International Procedure Act was adopted by NCCUSL. The act was designed to supercede any previous interstate jurisdiction acts, including the UFDA, and was more extensive than the UFDA, having provisions on personal jurisdiction, service methods, deposition methods, and other topics. Section 3.02(a) of the act provides:

*[A court][The \_\_\_\_\_ court] of this state may order a person who is domiciled or is found within this state to give his testimony or statement or to produce documents or other things for use in a proceeding in a tribunal outside this state. The order may be made*

*upon the application of any interested person or in response to a letter rogatory and may prescribe the practice and procedure, which may be wholly or in part the practice and procedure of the tribunal outside this state, for taking the testimony or statement or producing the documents or other things. To the extent that the order does not prescribe otherwise, the practice and procedure shall be in accordance with that of the court of this state issuing the order. The order may direct that the testimony or statement be given, or document or other thing produced, before a person appointed by the court. The person appointed shall have power to administer any necessary oath.*

The UIIPA was originally adopted by 6 states. The states, districts, and territories which currently have the act include Arkansas, District of Columbia, Louisiana, Massachusetts, Pennsylvania, and the Virgin Islands.

In 1977 the National Conference of Commissioners on Uniform State Laws withdrew the UIIPA from recommendation "due to its being obsolete." Until now, no other uniform act for interstate depositions has been proposed.

## **2. Common issues**

While every state has a rule governing foreign depositions, those rules are hardly uniform. These differences are extensively detailed in *Interstate Deposition Statutes: Survey and Analysis*, 11 U. Balt. L. Rev 1, 1981. Some of the more important differences among the various states are the following:

a. In what kind of proceeding may depositions be taken?

Many states restrict depositions to those that will be used in the "courts" or "judicial proceedings" of the other state. Some states allow depositions for any "proceeding." The UFDA and UIIPA take a similar approach.

b. Who may seek depositions?

A few states limit discovery to only the parties in the action or proceeding. Other states simply use the term "party" without any further qualifier, which may be interpreted broadly to include any interested party. Still other states expressly allow any person who would have the power to take a deposition in the trial state to take a deposition in the discovery state. The UIIPA allows any "interested party" to seek discovery. The UFDA does not state who may seek discovery.

c. What matters can be covered in a subpoena?

The UFDA expressly applies only to the "testimony" of witnesses. The UIIPA expressly applies to "testimony or documents or other things." Several states follow the UIIPA approach, while others seem to limit production to documents but not physical things, and still others are silent on the subject, although some of those states recognize that the power to produce documents is implicit. Rule 45 of the FRCP is more explicit, and provides that a subpoena may be issued to a witness "to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the



possession, custody or control of that person, or to permit inspection of premises..."

d. What is the procedure for obtaining a deposition subpoena?

Under the UFDA, a party must file the same notice of deposition that would be used in the trial state and then serve the witness with a subpoena under the law of the trial state. If a motion to compel is necessary, it must be filed in the discovery state (the deponent's home court). Other states require that a notice of deposition be shown to a clerk or judge in the discovery state, after which a subpoena will automatically issue. Still other states require a letter rogatory requesting the trial state to issue a subpoena. Under the UIIPA, either an application or letter rogatory is required. About 20 states require an attorney in the discovery state to file a miscellaneous action to establish jurisdiction over the witness so that the witness can then be subpoenaed.

e. What is the procedure for serving a deposition subpoena?

The UFDA provides that the witness "may be compelled to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in this state." The UIIPA provides that methods of service includes service "in the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction." State rules usually follow the procedure of the UFDA and UIIPA.

f. Which jurisdiction has power to enforce or quash a subpoena?

Most states give the discovery state power to issue, refuse to issue, or quash a subpoena.

g. Where can the deponent be deposed?

Some states limit the place where a deposition can be taken to the discovery state, and some limit it to the deponent's home county. The UFDA and UIIPA are silent on this issue.

h. What witness fees are required?

A few states require the payment of witness fees. While most states are silent on the issue, it is probably assumed that the witness fee rules generally existing in the discovery state apply. These usually include fees and mileage, and are usually required to be paid at the time the witness testifies.

i. Which jurisdiction's discovery procedure applies?

A significant issue is whether the trial state's or discovery state's discovery procedure controls, and on what issues. The general Restatement rule is that the forum state's (the discovery state's) procedure applies. The UIIPA, as well as many states, provides that the discovery state can use the procedure of either the trial or discovery state, with a presumption for the procedure of the discovery state. Some states reverse this presumption, while others are unclear, and still others are silent on the issue.

Another significant issue is whether the trial state's or discovery state's courts can issue protective orders. Both states have

interests: the trial state's courts have an interest in protecting witnesses and litigants from improper practices, and the discovery state's courts have an obvious interest in protecting its residents from unreasonable and overly burdensome discovery requests. Most states expressly or implicitly allow the discovery state's courts to issue protective orders.

j. Which jurisdiction's evidence law applies?

Evidentiary disputes usually center on relevance and privilege issues. Most states indicate that the discovery state should rule on all relevance issues. Other states indicate that relevance issues should be resolved before a subpoena issues, which would necessarily mean that such issues be decided by the trial state. If the discovery state makes such determinations, it is unclear which state's evidence law should apply (if there is a difference).

Perhaps the most difficult issues are whether the trial state or discovery state should determine issues of privilege, and which state's privilege law will apply. Here both jurisdictions have important interests: the trial state has an interest in obtaining all information relevant to the lawsuit consistent with its laws, while the discovery state has an interest in protecting its residents from intrusive foreign laws. The Restatement (Second) Conflict of Laws provides that the state which has the "most significant relationship" to the communication at issue applies its laws. The issue is further compounded by the general rule that once the privilege is waived, it is

generally waived. If the deponent does not object at the deposition and testifies about privileged communications, the privilege will usually be waived.

### **3. This act**

A uniform act needs to set forth a procedure that can be easily and efficiently followed, that has a minimum of judicial oversight and intervention, that is cost-effective for the litigants, and is fair to the deponents. And it should be patterned after Rule 45 of the FRCP, which appears to be universally admired by civil litigators for its simplicity and efficiency.

The Drafting Committee believes that the proposed uniform act meets these requirements, should be supported by the various constituencies that have an interest in how interstate discovery is conducted in state courts, and should be adopted by most of the states. The act is simple and efficient: it establishes a simple clerical procedure under which a trial state subpoena can be used to issue a discovery state subpoena. The act has minimal judicial oversight: it eliminates the need for obtaining a commission, letters rogatory, filing a miscellaneous action, or other preliminary steps before obtaining a subpoena in the discovery state. The act is cost effective: it eliminates the need to obtain local counsel in the discovery state to obtain an enforceable subpoena. And the act is fair to deponents: it provides that motions brought to enforce, quash, or modify a subpoena, or for protective orders, shall be brought in the discovery state and will be governed by the discovery state's laws.

**13-90.5-101. Short title.**

This article may be cited as the "Uniform Interstate Depositions and Discovery Act".

**Source: L. 2008:** Entire article added, p. 196, § 1, effective August 5.

**13-90.5-102. Definitions.**

As used in this article, unless the context otherwise requires:

- (1) "Foreign jurisdiction" means a state other than this state.
- (2) "Foreign subpoena" means a subpoena issued under authority of a court of record of a foreign jurisdiction.
- (3) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.
- (4) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.
- (5) "Subpoena" means a document, however denominated, issued under authority of a court of record requiring a person to:
  - (a) Attend and give testimony at a deposition;
  - (b) Produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or
  - (c) Permit inspection of premises under the control of the person.

**Source: L. 2008:** Entire article added, p. 196, § 1, effective August 5.

**OFFICIAL COMMENT**

This Act is limited to discovery in state courts, the District of Columbia, Puerto Rico, the United States Virgin Islands, and the territories of the United States. The committee decided not to extend this Act to include foreign countries including the Canadian provinces. The committee felt that international litigation is sufficiently different and is governed by different principles, so that discovery issues in that arena should be governed by a separate act.

The term "Subpoena" includes a subpoena duces tecum. The description of a subpoena

in the Act is based on the language of Rule 45 of the FRCP.

The term "Subpoena" does not include a subpoena for the inspection of a person (subsection (3)(C) is limited to inspection of premises). Medical examinations in a personal injury case, for example, are separately controlled by state discovery rules (the corresponding federal rule is Rule 35 of the FRCP). Since the plaintiff is already subject to the jurisdiction of the trial state, a subpoena is never necessary.

### **13-90.5-103. Issuance of subpoena.**

(1) To request issuance of a subpoena under this section, a party must submit a foreign subpoena to the district court for the county in which discovery is sought to be conducted in this state. A request for the issuance of a subpoena under this section does not constitute an appearance in the courts of this state.

(2) When a party submits a foreign subpoena to a clerk of court in this state, the clerk, in accordance with that court's procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

(3) A subpoena under subsection (2) of this section must:

(a) Incorporate the terms used in the foreign subpoena; and

(b) Contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

**Source: L. 2008:** Entire article added, p. 197, § 1, effective August 5.

### **OFFICIAL COMMENT**

The term "Court of Record" was chosen to exclude non-court of record proceedings from the ambit of the Act. The committee

concluded that extending the Act to such proceedings as arbitrations would be a significant expansion that might generate

resistance to the Act. A "Court of Record" includes anyone who is authorized to issue a subpoena under the laws of that state, which usually includes an attorney of record for a party in the proceeding.

The term "Presented" to a clerk of court includes delivering to or filing. Presenting a subpoena to the clerk of court in the discovery state, so that a subpoena is then issued in the name of the discovery state, is the necessary act that invokes the jurisdiction of the discovery state, which in turn makes the newly issued subpoena both enforceable and challengeable in the discovery state.

The committee envisions the standard procedure under this section will become as follows, using as an example a case filed in Kansas (the trial state) where the witness to be deposed lives in Florida (the discovery state): A lawyer of record for a party in the action pending in Kansas will issue a subpoena in Kansas (the same way lawyers in Kansas routinely issue subpoenas in pending actions). That lawyer will then check with the clerk's office, in the Florida county or district in which the witness to be deposed lives, to obtain a copy of its subpoena form (the clerk's office will usually have a Web page explaining its forms and procedures). The lawyer will then prepare a Florida subpoena so that it has the same terms as the Kansas subpoena. The lawyer will then hire a process server (or local counsel) in Florida, who will take the completed and executed Kansas subpoena and the completed but not yet executed Florida subpoena to the clerk's office in Florida. In addition, the lawyer might

prepare a short transmittal letter to accompany the Kansas subpoena, advising the clerk that the Florida subpoena is being sought pursuant to Florida statute \_\_\_\_ (citing the appropriate statute or rule and quoting Sec. 3). The clerk of court, upon being given the Kansas subpoena, will then issue the identical Florida subpoena ("issue" includes signing, stamping, and assigning a case or docket number). The process server (or other agent of the party) will pay any necessary filing fees, and then serve the Florida subpoena on the deponent in accordance with Florida law (which includes any applicable local rules).

The advantages of this process are readily apparent. The act of the clerk of court is ministerial, yet is sufficient to invoke the jurisdiction of the discovery state over the deponent. The only documents that need to be presented to the clerk of court in the discovery state are the subpoena issued in the trial state and the draft subpoena of the discovery state. There is no need to hire local counsel to have the subpoena issued in the discovery state, and there is no need to present the matter to a judge in the discovery state before the subpoena can be issued. In effect, the clerk of court in the discovery state simply reissues the subpoena of the trial state, and the new subpoena is then served on the deponent in accordance with the laws of the discovery state. The process is simple and efficient, costs are kept to a minimum, and local counsel and judicial participation are unnecessary to have the subpoena issued and served in the discovery state.

This Act will not change or repeal the law in those states that still require a commission or letters rogatory to take a deposition in a foreign jurisdiction. The Act does, however, repeal the law in those discovery states that still require a commission or letter rogatory from a trial state before a deposition can be taken in those states. It is the hope of the Conference that this Act will encourage states that still require the use of commissions or letters rogatory to repeal those laws.

The Act requires that, when the subpoena is served, it contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record and of any party not represented by counsel. The committee believes that this requirement

imposes no significant burden on the lawyer issuing the subpoena, given that the lawyer already has the obligation to send a notice of deposition to every counsel of record and any unrepresented parties. The benefits in the discovery state, by contrast, are significant. This requirement makes it easy for the deponent (or, as will frequently be the case, the deponent's lawyer) to learn the names of and contact the other lawyers in the case. This requirement can easily be met, since the subpoena will contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record and of any party not represented by counsel (which is the same information that will ordinarily be contained on a notice of deposition and proof of service).

#### **13-90.5-104. Service of subpoena.**

A subpoena issued by a clerk of court under section 13-90.5-103 must be served in compliance with section 13-90-115, rule 45 of the Colorado rules of civil procedure, and any other applicable statutes or rules of this state.

**Source: L. 2008:** Entire article added, p. 197, § 1, effective August 5.

#### **13-90.5-105. Deposition, production, and inspection.**

Section 13-90-112, rule 37 of the Colorado rules of civil procedure, and any other applicable statutes or rules of this state apply to subpoenas issued under section 13-90.5-103.

**Source: L. 2008:** Entire article added, p. 197, § 1, effective August 5.

### **OFFICIAL COMMENT**

The Act requires that the discovery permitted by this section must comply with the laws of the discovery state. The discovery state has a significant interest in these cases in protecting its residents who become non-party witnesses in an action pending in a foreign jurisdiction from any unreasonable or unduly burdensome discovery request. Therefore, the committee

believes that the discovery procedure must be the same as it would be if the case had originally been filed in the discovery state.

The committee believes that the fee, if any, for issuing a subpoena should be sufficient to cover only the actual transaction costs, or should be the same as the fee for local deposition subpoenas.

### **13-90.5-106. Application to court.**

An application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under section 13-90.5-103 must comply with the rules or statutes of this state and be submitted to the district court for the county in which discovery is to be conducted.

**Source: L. 2008:** Entire article added, p. 197, § 1, effective August 5.

## **OFFICIAL COMMENT**

The act requires that any application to the court for a protective order, or to enforce, quash, or modify a subpoena, or for any other dispute relating to discovery under this Act, must comply with the law of the discovery state. Those laws include the discovery state's procedural, evidentiary, and conflict of laws rules. Again, the discovery state has a significant interest in protecting its residents who become non-party witnesses in an action pending in a foreign jurisdiction from any unreasonable or unduly burdensome discovery requests, and this is easily accomplished by requiring that any discovery motions must be decided under the laws of the discovery state. This protects the deponent by requiring that all

applications to the court that directly affect the deponent must be made in the discovery state.

The term "modify" a subpoena means to alter the terms of a subpoena, such as the date, time, or location of a deposition.

Evidentiary issues that may arise, such as objections based on grounds such as relevance or privilege, are best decided in the discovery state under the laws of the discovery state (including its conflict of laws principles).

Nothing in this act limits any party from applying for appropriate relief in the trial state. Applications to the court that affect only the parties to the action can be made in

the trial state. For example, any party can apply for an order in the trial state to bar the deposition of the out-of-state deponent on grounds of relevance, and that motion would be made and ruled on before the deposition subpoena is ever presented to the clerk of court in the discovery state.

If a party makes or responds to an application to enforce, quash, or modify a

subpoena in the discovery state, the lawyer making or responding to the application must comply with the discovery state's rules governing lawyers appearing in its courts. This act does not change existing state rules governing out-of-state lawyers appearing in its courts. (See Model Rule 5.5 and state rules governing the unauthorized practice of law.)

### **13-90.5-107. Uniformity of application and construction.**

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**Source: L. 2008:** Entire article added, p. 197, § 1, effective August 5.

## **ADVOCATES**

### **ARTICLE 91**

#### **Office of the Child's Representative**

- |            |                                                                            |                                                                                             |
|------------|----------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| 13-91-101. | Short title.                                                               | counsel for youth programs.                                                                 |
| 13-91-102. | Legislative declaration.                                                   |                                                                                             |
| 13-91-103. | Definitions.                                                               | 13-91-106. Guardian ad litem fund - court-appointed special advocate (CASA) fund - created. |
| 13-91-104. | Office of the child's representative - board - qualifications of director. | 13-91-107. Repeal of article. (Repealed)                                                    |
| 13-91-105. | Duties of the office of the child's representative - guardian ad litem and |                                                                                             |

#### **13-91-101. Short title.**

This article shall be known and may be cited as the "Office of the Child's Representative Act".



**Source: L. 2000:** Entire article added, p. 1766, § 1, effective July 1.

**13-91-102. Legislative declaration.**

(1) (a) The general assembly hereby finds that the legal representation of and non-legal advocacy on behalf of children is a critical element in giving children a voice in the Colorado court system. The general assembly further finds that the representation of children is unique in that children often have no resources with which to retain the services of an attorney or advocate, they are unable to efficiently provide or communicate to such an attorney or advocate the information needed to effectively serve the best interests or desires of that child, and they lack the ability and understanding to effectively evaluate and, if necessary, complain about the quality of representation they receive. Accordingly, the general assembly finds that the representation of children necessitates significant expertise as well as a substantial investment in time and fiscal resources. The general assembly finds that, to date, the state has been sporadic, at best, in the provision of qualified services and financial resources to this disadvantaged and voiceless population.

(b) Accordingly, the general assembly hereby determines and declares that it is in the best interests of the children of the state of Colorado, in order to reduce needless expenditures, establish enhanced funding resources, and improve the quality of representation and advocacy provided to children in the Colorado court system, that an office of the child's representative be established in the state judicial department.

(2) It is the intent of the general assembly that an office of the child's representative shall be established pursuant to this article and operational over the course of a two-year period. It is further the intent of the general assembly that a board and a director of the office shall be appointed as specified in section 13-91-104 and that the operational structure of the office shall be established during fiscal year 2000-01. The costs associated with the establishment of the office, including the associated FTE, shall be paid for by a transfer from the state judicial, trial courts, mandated costs line item. In addition, it is the intent of the general assembly that, for fiscal year 2001-02 and fiscal years thereafter, an appropriation shall be made to the office of the child's representative in the state judicial department for the purpose of payment of all financial obligations previously covered by the judicial department, trial courts, mandated costs line item relating to the provision of those legal services to children that are addressed in this article.

**Source: L. 2000:** Entire article added, p. 1766, § 1, effective July 1.

### **13-91-103. Definitions.**

As used in this article 91, unless the context otherwise requires:

(1) "Board" means the child's representative board appointed pursuant to section 13-91-104 (2)(a).

(1.5) "Child" means a person who is under eighteen years of age.

(2) "Contract entity" means a nonprofit entity with which the state judicial department may contract for the coordination and support of CASA activities in the state of Colorado.

(2.5) "Counsel for youth" means an attorney-at-law who provides specialized client-directed legal representation for a child or youth and who owes the same duties, including undivided loyalty, confidentiality, and competent representation, to the child or youth as is due an adult client. Counsel for youth may be appointed by the court to represent a child or youth in a proceeding pursuant to article 1, 3, or 7 of title 19, or may be assigned by the office of the child's representative pursuant to article 7 of title 19. "Counsel for youth" does not mean defense counsel for a juvenile pursuant to article 2.5 of title 19.

(3) "Court-appointed special advocate" or "CASA volunteer" means a trained volunteer appointed by the court pursuant to the provisions of part 2 of article 1 of title 19, section 14-10-116, or title 15 in a judicial district to aid the court by providing independent and objective information, as directed by the court, regarding children and youth involved in actions brought pursuant to section 14-10-116 or title 15 or 19.

(4) "Guardian ad litem" or "GAL" means a person appointed by a court to act in the best interests of a child involved in a proceeding under title 19, C.R.S., or the "School Attendance Law of 1963", set forth in article 33 of title 22, C.R.S., and who, if appointed to represent a child in a dependency or neglect proceeding pursuant to article 3 of title 19, C.R.S., shall be an attorney-at-law licensed to practice in Colorado.

(5) "Local CASA program" means a CASA program established pursuant to part 2 of article 1 of title 19, C.R.S.

(6) "Representative of a child" means an attorney appointed by a court pursuant to section 14-10-116, C.R.S., to represent the best interests of a minor or dependent child.

(7) "Youth" means an individual who is less than twenty-one years of age or such greater age of foster care eligibility as required by federal law.

**Source: L. 2000:** Entire article added, p. 1767, § 1, effective July 1. **L. 2003:** (3) amended, p. 753, § 1, effective March 25. **L. 2021:** IP amended and (2.5) and (7) added, (HB 21-1094), ch. 340, p. 2220, § 8, effective June 25. **L. 2022:** (2.5) amended, (HB 22-1038), ch. 92, p. 431, § 2,

effective January 9, 2023. **L. 2024:** (3) amended, (HB 24-1377), ch. 254, p. 1674, § 1, effective August 7. **L. 2025:** (1) amended and (1.5) added, (SB 25-275), ch. 377, p. 2043, § 64, effective August 6.

**Cross references:** For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022.

#### **13-91-104. Office of the child's representative - board - qualifications of director.**

(1) The office of the child's representative is hereby created and established as an agency of the judicial department of state government. It shall be the responsibility of the office of the child's representative to work cooperatively with local judicial districts, attorneys, and any contract entity in order to form a partnership between those entities and persons and the state for the purpose of ensuring the provision of uniform, high-quality legal representation and non-legal advocacy to children involved in judicial proceedings in Colorado.

(2) (a) The Colorado supreme court shall appoint a nine-member child's representative board. No more than five members of the board shall be from the same political party. The members of the board shall be representative of each of the congressional districts in the state. Three members of the board shall be attorneys admitted to practice law in this state who have experience in representing children as guardians ad litem or as legal representatives of children. Three members of the board shall be citizens of Colorado not admitted to practice law in this state, who shall have experience at advocating for children in the court system. Three members of the board shall be citizens of the state who are not attorneys and who have not served as CASA volunteers or child and family investigators.

(b) Members of the board shall serve for terms of four years; except that, of the members first appointed, five shall serve for terms of two years. Vacancies on the board shall be filled by the supreme court for the remainder of any unexpired term. In making appointments to the board, the supreme court shall consider place of residence, gender, race, and ethnic background. The supreme court shall establish procedures for the operation of the board.

(c) Members of the board shall serve without compensation but shall be reimbursed for actual and reasonable expenses incurred in the performance of their duties.

(d) Any expenses incurred for the board shall be paid from the general operating budget of the office of the child's representative.

(3) The board has the following responsibilities:

(a) (I) To appoint, and discharge for cause, a person to serve as the director of the office of the child's representative, referred to in this section as the "director".

(II) The director shall have been licensed to practice law for at least five years prior to appointment, and either be licensed to practice law in Colorado at the time of appointment or be able to become licensed to practice law in Colorado within six months after appointment, and shall be familiar with the unique demands of representing a child in the court system. The director shall devote the director's full time to the performance of the director's duties and shall not engage in the private practice of law.

(III) The compensation of the director shall be fixed by the general assembly and may not be reduced during the term of the director's appointment.

(b) To fill any vacancy in the directorship for the remainder of the unexpired term;

(c) To work cooperatively with the director to provide governance to the office of the child's representative, to provide fiscal oversight of the general operating budget of the office of the child's representative, to participate in funding decisions relating to the provision of GAL, CASA, and representative of the child services throughout the state, and to assist with the duties of the office of the child's representative concerning GAL and CASA training, as needed.

**Source:** **L. 2000:** Entire article added, p. 1768, § 1, effective July 1. **L. 2002:** (2)(a) amended, p. 944, § 3, effective August 7. **L. 2003:** (2)(a) amended, p. 753, § 2, effective March 25. **L. 2005:** (2)(a) amended, p. 962, § 8, effective July 1. **L. 2024:** IP(3) and (3)(a)(II) amended, (HB 24-1102), ch. 63, p. 212, § 1, effective August 7. **L. 2025:** (2)(a) amended, (SB 25-275), ch. 377, p. 2043, § 65, effective August 6.

**Cross references:** For the legislative declarations contained in the 2005 act amending subsection (2)(a), see sections 1 and 3 of chapter 244, Session Laws of Colorado 2005.

### **13-91-105. Duties of the office of the child's representative - guardian ad litem and counsel for youth programs.**

(1) In addition to any responsibilities assigned to it by the chief justice, the office of the child's representative shall:

(a) Enhance the provision of GAL or counsel for youth services in Colorado by:

(I) Ensuring the provision and availability of high-quality, accessible training throughout the state for persons seeking to serve as guardians ad litem or counsel for youth, as well as to judges and magistrates who regularly hear matters involving children and families;

(II) Making recommendations to the chief justice concerning the establishment, by rule or chief justice directive, of the minimum training requirements that an attorney seeking to serve as a guardian ad litem or counsel for youth shall meet;

(III) Making recommendations to the chief justice concerning the establishment, by rule or chief justice directive, of standards to which attorneys serving as guardians ad litem or counsel for youth must be held, including but not limited to minimum practice standards. Minimum practice standards must include:

(A) Incorporation of the federal guidelines for persons serving as guardians ad litem or counsel for youth, as set forth in the federal department of health and human services' "Adoption 2002" guidelines, and incorporation of the guidelines for guardians ad litem or counsel for youth adopted by the Colorado bar association in 1993;

(B) Minimum duties of guardians ad litem or counsel for youth in representing children involved in judicial proceedings;

(C) Minimum responsibilities of guardians ad litem or counsel for youth in representing children involved in judicial proceedings; and

(D) A determination of an appropriate maximum-caseload limitation for persons serving as guardians ad litem or counsel for youth;

(IV) Overseeing the practice of guardians ad litem or counsel for youth to ensure compliance with all relevant statutes, orders, rules, directives, policies, and procedures;

(V) Working cooperatively with local judicial districts, attorneys, and children and youth impacted by the child welfare and justice system to form partnerships for the purposes of ensuring high-quality legal representation for children and youth in Colorado.

(VI) Establishing fair and realistic state rates by which to compensate state-appointed guardians ad litem or counsel for youth that take into consideration the caseload limitations placed on guardians ad litem or counsel for youth and that are sufficient to attract and retain high-quality, experienced attorneys to serve as guardians ad litem or counsel for youth;

(VII) Seeking to enhance existing funding sources for the provision of high-quality guardian ad litem or counsel for youth services in Colorado;

(VIII) Studying the availability of or developing new funding sources for the provision of guardian ad litem or counsel for youth services in Colorado, including but not limited to long-term pooling of funds programs;

(IX) Accepting grants, gifts, donations, and other nongovernmental contributions to be used to fund the work of the office of the child's representative relating to guardians ad litem or counsel for youth. Such grants, gifts, donations, and other nongovernmental contributions must be credited to the guardian ad litem fund, created in section 13-91-106 (1). Money in the fund is subject to annual appropriation by the general assembly for the purposes of this subsection (1)(a) and for the purposes of enhancing the provision of guardian ad litem or counsel for youth services in Colorado.

(X) Effective July 1, 2001, allocating money appropriated to the office of the child's representative in the state judicial department for the provision of GAL or counsel for youth services;

(b) Provide support for the CASA program in Colorado in the manner described in section 19-1-213;

(c) Enhance the provision of services in Colorado by attorneys appointed to serve as legal representatives of children pursuant to section 14-10-116, C.R.S., when the costs of such appointments are borne by the state, by:

(I) Ensuring the provision and availability of high-quality, accessible training throughout the state for attorneys seeking to serve as legal representatives of children, as well as to judges and magistrates who regularly hear domestic matters under article 10 of title 14, C.R.S.;

(II) Making recommendations to the chief justice concerning the establishment, by rule or chief justice directive, of the minimum training requirements that an attorney seeking to serve as a legal representative of a child must meet;

(III) Making recommendations to the chief justice concerning the establishment, by rule or chief justice directive, of standards to which attorneys serving as legal representatives of children must be held;

(IV) Overseeing the practice of legal representatives of children appointed pursuant to section 14-10-116, C.R.S., to ensure compliance with all relevant statutes, orders, rules, directives, policies, and procedures;

(V) Seeking to enhance existing funding sources for and studying the availability of or developing new funding sources for the provision of services by attorneys serving as court-appointed legal representatives of children;

(VI) Effective July 1, 2001, allocating moneys appropriated to the office of the child's representative in the state judicial department for the provision of services by attorneys serving as court-appointed legal representatives of children;

(d) Enforce, as appropriate, the provisions of this section;

(e) Work cooperatively with the judicial districts to establish pilot programs designed to enhance the quality of child representatives at the local level;

(f) Develop measurement instruments designed to assess and document the effectiveness of various models of representation and the outcomes achieved by representatives and advocates for children, including collaborative models with local CASA programs;

(g) (Deleted by amendment, L. 2009, (SB 09-048), ch. 120, p. 500, § 1, effective August 5, 2009.)

(h) Cause a program review and outcome-based evaluation of the performance of the office of the child's representative to be conducted annually to determine whether the office is effectively and efficiently meeting the goals of improving child and family well-being and the duties set forth in this section, the reports for which shall be submitted to the members of the general assembly and the state court administrator's office, together with the reports specified in paragraph (i) of this subsection (1); and

(i) Notwithstanding section 24-1-136 (11)(a)(I), report the activities of the office of the child's representative to the members of the general assembly and to the state court administrator's office, together with the reports specified in paragraph (h) of this subsection (1), on or before September 1, 2001, and on or before September 1 of each year thereafter.

(2) The rate contracted for attorney time pursuant to subsection (1)(a)(VI) of this section for fiscal year 2023-24 is one hundred dollars per hour. The hourly rate must be increased annually by no more than five dollars each year until the hourly rate is at least seventy-five percent of the rate set pursuant to the federal "Criminal Justice Act Revision of 1986", 18 U.S.C. sec. 3006A, as amended, for indigent representation in federal court. The hourly rate may be adjusted in subsequent fiscal years to maintain the hourly rate at or above seventy-five percent of the rate set pursuant to the federal "Criminal Justice Act Revision of 1986", 18 U.S.C. sec. 3006A, as amended, for indigent representation in federal court.

(3) Colorado relies primarily on an independent contractor model of legal representation for children and youth provided in accordance with this section. While the office of the child's representative currently provides legal representation for children and youth in some case types and in one county through state employees and will continue to explore the use of a state employee staff model of legal representation for children and youth where feasible, Colorado's need for legal representation for children and youth cannot be filled or provided statewide solely by employees of the office of the child's representative. The director or the director's designee is authorized to sign a certification for any current or past independent contractor that certifies that the contractor appears to be eligible for federal public service loan forgiveness as allowed by federal law or regulations. With the authorization of an independent contractor who is providing or has provided legal representation on behalf of the office, the director or the director's designee may share information, including the contractor's name, the contractor's social security number

or federal employer identification number, and the total number of hours billed by the contractor by calendar year, with other independent judicial agencies for the purpose of certifying apparent past, current, and future eligibility for public service loan forgiveness allowed by federal law or regulations.

**Source:** **L. 2000:** Entire article added, p. 1769, § 1, effective July 1. **L. 2003:** (1)(b)(VII) amended, p. 754, § 3, effective March 25. **L. 2005:** (1)(c) amended, p. 961, § 5, effective July 1. **L. 2009:** (1)(g), (1)(h), and (1)(i) amended, (SB 09-048), ch. 120, p. 500, § 1, effective August 5. **L. 2015:** (1)(c) amended, (HB 15-1153), ch. 124, p. 387, § 1, effective January 1, 2016. **L. 2017:** (1)(i) amended, (SB 17-241), ch. 171, p. 623, § 3, effective April 28. **L. 2019:** (1)(b) amended, (HB 19-1282), ch. 312, p. 2815, § 2, effective May 28. **L. 2021:** (1)(a) amended, (HB 21-1094), ch. 340, p. 2220, § 9, effective June 25. **L. 2022:** (1)(a)(V) amended, (HB 22-1038), ch. 92, p. 431, § 3, effective January 9, 2023. **L. 2023:** (2) added, (SB 23-227), ch. 77, p. 280, § 2, effective August 7. **L. 2024:** (3) added, (HB 24-1374), ch. 181, p. 979, § 2, effective May 15.

**Cross references:** For the legislative declarations contained in the 2005 act amending subsection (1)(c), see sections 1 and 3 of chapter 244, Session Laws of Colorado 2005. For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022. For the legislative declaration in HB 24-1374, see section 1 of chapter 181, Session Laws of Colorado 2024.

**13-91-106. Guardian ad litem fund - court-appointed special advocate (CASA) fund - created.**

(1) There is created in the state treasury the guardian ad litem fund, referred to in this subsection (1) as the "fund". The fund consists of general fund money as may be appropriated by the general assembly and any money received pursuant to section 13-91-105 (1)(a)(IX). The money in the fund is subject to annual appropriation by the general assembly to the state judicial department for allocation to the office of the child's representative for the purposes of funding the work of the office of the child's representative relating to the provision of guardian ad litem or counsel for youth services and for the provision of guardian ad litem or counsel for youth services in Colorado. All interest derived from the deposit and investment of money in the fund must be credited to the fund. Any money not appropriated remains in the fund and must not be transferred or revert to the general fund of the state at the end of any fiscal year.

(2) Repealed.



**Source:** **L. 2000:** Entire article added, p. 1772, § 1, effective July 1. **L. 2003:** (2) amended, p. 754, § 4, effective March 25. **L. 2009:** (1) amended, (SB 09-208), ch. 149, p. 620, § 11, effective April 20. **L. 2015:** (1) amended, (SB 15-264), ch. 259, p. 950, § 33, effective August 5. **L. 2019:** (2) amended, (HB 19-1282), ch. 312, p. 2815, § 3, effective May 28. **L. 2021:** (1) amended, (HB 21-1094), ch. 340, p. 2222, § 10, effective June 15.

**Editor's note:** (1) For the amendments in HB 19-1282 in effect from May 28, 2019, to July 31, 2019, see chapter 312, Session Laws of Colorado 2019. (L. 2019, p. 2815.)

(2) Subsection (2)(c) provided for the repeal of subsection (2), effective July 31, 2019. (See L. 2019, p. 2815.)

### **13-91-107. Repeal of article. (Repealed)**

**Source:** **L. 2000:** Entire article added, p. 1773, § 1, effective July 1. **L. 2010:** Entire section repealed, (SB 10-043), ch. 145, p. 492, § 1, effective April 20.

## **ARTICLE 92**

### **Office of the Respondent Parents' Counsel**

|            |                                                     |            |                                                          |
|------------|-----------------------------------------------------|------------|----------------------------------------------------------|
| 13-92-101. | Legislative declaration.                            |            | duties - qualifications of director.                     |
| 13-92-102. | Definitions.                                        |            |                                                          |
| 13-92-103. | Respondent parents' counsel - commission - office - | 13-92-104. | Duties of the office of the respondent parents' counsel. |

### **13-92-101. Legislative declaration.**

(1) The general assembly finds and declares that:

(a) Respondent parents' counsel plays a critical role in helping achieve the best outcomes for children involved in dependency and neglect proceedings by providing effective legal representation for parents in dependency and neglect proceedings, protecting due process and statutory rights, presenting balanced information to judges, and promoting the preservation of family relationships when appropriate;

(b) There is a need to establish additional and equitable funding to compensate respondent parents' counsel; and

(c) A clear set of practice standards for respondent parents' counsel needs to be established and made available to all parties involved in dependency and neglect proceedings.

(2) Therefore, the general assembly declares that it is in the best interests of the children and parents of the state of Colorado to have an independent office to oversee the respondent parents' counsel to improve the quality of legal representation for parents involved in dependency and neglect proceedings and who often do not have the financial means to afford legal representation.

(3) It is the intent of the general assembly to establish a respondent parents' counsel governing commission by July 1, 2015, and the office of the respondent parents' counsel in the state judicial department, beginning January 1, 2016. It is the further intent of the general assembly that all existing and new state paid respondent parent counsel appointments be transferred on July 1, 2016, to the operational structure recommended in the final report to the office of the state court administrator by the respondent parents' counsel work group, due on or before September 30, 2014, and set forth in section 13-92-103 (1)(b).

(4) (a) To implement the recommendations from the respondent parents' counsel work group, as referenced in subsection (3) of this section, the state judicial department shall include an appropriate fiscal request to the joint budget committee on or before November 1, 2014.

(b) The costs associated with the establishment of the office, including any associated FTE, shall be paid for by a transfer from the state judicial department mandated costs line item. It is the further intent of the general assembly that, for fiscal year 2015-16 and fiscal years thereafter, an appropriation shall be made to the office of the respondent parents' counsel for the purpose of payment of all financial obligations previously covered by the state judicial department mandated costs line item relating to the provision of services provided by the respondent parents' counsel as set forth in this article.

**Source: L. 2014:** Entire article added, (SB 14-203), ch. 281, p. 1139, § 1, effective August 6.  
**L. 2015:** (3) amended, (HB 15-1149), ch. 116, p. 350, § 1, effective April 24.

### **13-92-102. Definitions.**

As used in this article, unless the context otherwise requires:

(1) "Child" means a person under eighteen years of age.

(1.5) "Commission" means the respondent parents' counsel governing commission established in section 13-92-103.

- (2) "Department" means the judicial department.
- (2.5) "Director" means the director of the office of the respondent parents' counsel.
- (3) "Office" means the office of the respondent parents' counsel established in section 13-92-103.
- (4) "Parent" means a natural parent of a child, as may be established pursuant to article 4 of title 19, C.R.S., a parent by adoption, or a legal guardian.

**Source: L. 2014:** Entire article added, (SB 14-203), ch. 281, p. 1140, § 1, effective August 6.  
**L. 2015:** (1.5) and (2.5) added, (HB 15-1149), ch. 116, p. 350, § 2, effective April 24.

**13-92-103. Respondent parents' counsel - commission - office - duties - qualifications of director.**

(1) (a) On and after January 1, 2016, the office of the respondent parents' counsel is created within the judicial department. It is the responsibility of the office to work cooperatively with local judicial districts and attorneys to form a partnership between those entities and persons, parents, and the state for the purpose of ensuring the provision of uniform, high-quality legal representation for parents involved in judicial dependency and neglect proceedings in Colorado and who lack the financial means to afford legal representation.

(b) As of July 1, 2016, all existing respondent parent counsel appointments must be transferred to the office and, after July 1, 2016, the office shall make all new respondent parent counsel appointments.

(2) (a) The Colorado supreme court shall appoint a nine-member respondent parents' counsel governing commission on or before July 1, 2015. In appointing the membership of the commission, the court shall, to the extent practicable, include persons from throughout the state and persons with disabilities and take into consideration race, gender, and the ethnic diversity of the state. The court shall make the appointments as follows:

- (I) No more than five members of the commission may be from the same political party;
- (II) The members must represent each of the congressional districts in the state;
- (III) At least six members must be attorneys admitted to practice law in this state, three of whom have experience in serving as a respondent parent counsel;
- (IV) The remaining three members may be selected as appropriate, but the supreme court is encouraged to appoint at least one member who was a former respondent parent; and

(V) Commission members must not currently be under contract with the office or employed by the state department of human services, a county department of human or social services, or be serving currently as a city or county attorney, judge, magistrate, court-appointed special advocate, guardian ad litem, or counsel for youth.

(b) Commission members serve for terms of four years; except that, of the members first appointed, five shall serve for terms of two years. The supreme court shall fill any vacancies on the commission for the remainder of any unexpired term.

(c) The supreme court shall establish procedures for the operation of the commission.

(d) Commission members shall serve without compensation but must be reimbursed for actual and reasonable expenses incurred in the performance of their duties.

(e) Expenses incurred by the commission must be paid from the general operating budget of the office of the respondent parents' counsel.

(3) The commission has the following duties:

(a) On or before January 1, 2016, and as necessary thereafter, to appoint, and discharge for cause, a person to serve as the director of the office;

(b) To fill any vacancy in the directorship; and

(c) To work cooperatively with the director to provide governance to the office, to provide fiscal oversight of the general operating budget of the office, to participate in funding decisions relating to the provision of respondent parent counsel, and to assist with the duties of the office concerning respondent parent counsel training, as needed.

(4) (a) The director must have at least five years of experience as a licensed attorney prior to appointment, and either be licensed to practice law in Colorado at the time of appointment or be able to become licensed to practice law in Colorado within six months after appointment, and be familiar with the unique demands of representing respondent parents in dependency and neglect cases in Colorado. The director shall devote the director's full time to the performance of the director's duties as director and shall not engage in the private practice of law.

(b) The general assembly shall fix the director's compensation, which may not be reduced during his or her appointment.

**Source: L. 2014:** Entire article added, (SB 14-203), ch. 281, p. 1140, § 1, effective August 6. **L. 2015:** Entire section amended, (HB 15-1149), ch. 116, p. 351, § 3, effective April 24. **L. 2016:** IP(2)(a) amended, (SB 16-189), ch. 210, p. 758, § 23, effective June 6. **L. 2022:** IP(2)(a) and (2)(a)(V) amended, (HB 22-1038), ch. 92, p. 439, § 17, effective January 9, 2023. **L. 2024:** (4)(a) amended, (HB 24-1102), ch. 63, p. 212, § 2, effective August 7.

**Cross references:** For the legislative declaration in HB 22-1038, see section 1 of chapter 92, Session Laws of Colorado 2022.

**13-92-104. Duties of the office of the respondent parents' counsel.**

(1) The office has the following duties, at a minimum:

(a) Enhancing the provision of respondent parent counsel services in Colorado by:

(I) Ensuring the provision and availability of high-quality legal representation for parents involved in dependency and neglect proceedings brought pursuant to article 3 of title 19, C.R.S., and as provided for in section 19-3-202, C.R.S.; and

(II) Making recommendations for minimum practice standards to which attorneys serving as respondent parent counsel shall be held;

(b) Establishing fair and realistic state rates by which to compensate respondent parent counsel. The state rates must take into consideration any caseload limitations placed upon respondent parent counsel and must be sufficient to attract and retain high-quality, experienced attorneys to serve as respondent parent counsel.

(c) Enforcing, as appropriate, the provisions of this section;

(d) Working cooperatively with the judicial districts to establish pilot programs, as appropriate, designed to enhance the quality of respondent parent counsel at the local level; and

(e) Annually reviewing and evaluating the office's performance to determine whether the office is effectively and efficiently meeting the goals of improving child and family well-being and the duties set forth in this section. The report must be submitted on or before January 1, 2017, and annually thereafter, to the state court administrator's office.

(2) The rate contracted for attorney time pursuant to subsection (1)(b) of this section for fiscal year 2023-24 is one hundred dollars per hour. The hourly rate must be increased annually by no more than five dollars each year until the hourly rate is at least seventy-five percent of the rate set pursuant to the federal "Criminal Justice Act Revision of 1986", 18 U.S.C. sec. 3006A, as amended, for indigent representation in federal court. The hourly rate may be adjusted in subsequent fiscal years to maintain the hourly rate at or above seventy-five percent of the rate set pursuant to the federal "Criminal Justice Act Revision of 1986", 18 U.S.C. sec. 3006A, as amended, for indigent representation in federal court.

(3) Employees of the office are prohibited from providing direct legal representation to respondent parents. For the purpose of determining eligibility for federal public service loan

forgiveness, an independent contractor, including an attorney, a social worker, a family advocate, or a parent advocate, who is providing or has provided legal services to respondent parents pursuant to the contractor's contract has a conflict that prohibits the contractor from providing these services as a state employee. The director or the director's designee is authorized to sign a certification for any current or past independent contractor that certifies that the contractor appears to be eligible for federal public service loan forgiveness as allowed by federal law or regulations. With the authorization of an independent contractor, the director or the director's designee may share information, including the contractor's name, the contractor's social security number or federal employer identification number, and the total number of hours billed by the contractor by calendar year, with other judicial agencies for the purpose of certifying apparent past, current, and future eligibility for public service loan forgiveness allowed by federal law or regulations.

**Source:** **L. 2014:** Entire article added, (SB 14-203), ch. 281, p. 1141, § 1, effective August 6. **L. 2017:** (1)(e) amended, (SB 17-241), ch. 171, p. 624, § 4, effective January 2, 2020. **L. 2023:** (2) added, (SB 23-227), ch. 77, p. 280, § 3, effective August 7. **L. 2024:** (3) added, (HB 24-1374), ch. 181, p. 980, § 3, effective May 15.

**Cross references:** For the legislative declaration in HB 24-1374, see section 1 of chapter 181, Session Laws of Colorado 2024.

## ARTICLE 93

### Attorneys-at-law

|                    |                                                    |            |                                                          |
|--------------------|----------------------------------------------------|------------|----------------------------------------------------------|
| PART 1             |                                                    | 13-93-106. | Persons forbidden to practice.                           |
| GENERAL PROVISIONS |                                                    | 13-93-107. | Judge not to act as attorney.                            |
| 13-93-101.         | License to practice necessary.                     | 13-93-108. | Practicing law without<br>license deemed contempt.       |
| 13-93-102.         | No discrimination - issuance<br>of license.        | 13-93-109. | Special admission of<br>counselors from other<br>states. |
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- 13-93-111. Solicitation of accident victims - waiting period - definition.
- 13-93-112. Attorney not to be surety.
- 13-93-113. Judge not to have law partner.
- 13-93-114. Attorney's lien - notice of claim filed.
- 13-93-115. Other property to which lien attaches.

## PART 2

### LAW STUDENT PRACTICE

- 13-93-201. Legal aid dispensaries - law students practice.
- 13-93-202. Practice by law student intern.
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## PART 3

### LICENSED LEGAL PARAPROFESSIONALS

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## PART 4

### COLORADO LEGAL PRACTICE INTEGRITY AND FEE-SHARING PROHIBITION ACT

- 13-93-401. Short title.

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## PART 1

### GENERAL PROVISIONS

#### **13-93-101. License to practice necessary.**

(1) No person shall be permitted to practice as an attorney- or counselor-at-law or to commence, conduct, or defend any action, suit, or plaint in which he or she is not a party concerned in any court of record within this state, either by using or subscribing his or her own name or the name of any other person, without having previously obtained a license or other authorization to practice law pursuant to the supreme court's rules governing admission to the practice of law in Colorado.

(2) Upon request of the supreme court or its office of attorney regulation counsel, the Colorado bureau of investigation shall conduct a state and national fingerprint-based criminal history record check, utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. Upon completion of the criminal history record check, the bureau shall provide the results to the requesting agency.

(3) Upon request of the supreme court or a representative of its office of attorney regulation counsel, the applicant shall also provide a name-based judicial record check, as defined in section 22-2-119.3 (6)(d), if the applicant has a record of arrest without a disposition.

(4) Local law enforcement agencies shall cooperate with any supreme court request for records related to criminal history.

**Source:** L. 2017: Entire article added with relocations, (SB 17-227), ch. 192, p. 698, § 1, effective August 9. L. 2019: (3) amended, (HB 19-1166), ch. 125, p. 544, § 17, effective April 18. L. 2022: (3) amended, (HB 22-1270), ch. 114, p. 518, § 18, effective April 21.

**Editor's note:** This section is similar to former § 12-5-101 as it existed prior to 2017.



## ANNOTATION

I. General Consideration.

II. Attorney-client Relations.

III. Construction of License Provision.

V. Disbarment for Misbehavior.

VI. Restraining Illegal Practice of Law.

### I. GENERAL CONSIDERATION.

**Law reviews.** For article, "Justice Court Practice by the Laity", see 9 Dicta 65 (1932). For note, "May an Attorney Unlicensed in Colorado Incorporate a Company Here?", see 9 Rocky Mt. L. Rev. 285 (1937). For article, "Statutes and Cases Concerning Unauthorized Practice of Law in Colorado", see 24 Dicta 257 (1947).

**Annotator's note.** Since § 13-93-101 is similar to former § 12-5-101 and laws antecedent to that section, relevant cases construing those provisions have been included in the annotations to this section.

**It is within the authority of the supreme court to promulgate rules governing the admission and regulation of lawyers.** An attorney licensed to practice law in another state may not engage in the practice of law in Colorado without obtaining a license or authorization from the supreme court. Unauthorized Prac. of Law v. Bodhaine, 738 P.2d 376 (Colo. 1987).

### II. ATTORNEY-CLIENT RELATIONS.

**Annotator's note.** For other annotations concerning attorney-client relations, see the annotations for the Colorado Rules of

Professional Conduct contained in the appendix to chapters 18 to 20 of the Colorado Rules of Civil Procedure.

**An attorney must be held to the exercise of a reasonable degree of care and skill,** and to possess the knowledge requisite to a proper performance of the duties of his profession, failing which, he must respond in damages to his client to the extent of the injury, caused by such failure. Radetsky v. Montgomery, 94 Colo. 411, 30 P.2d 858 (1934).

**The highest degree of fairness and good faith is required** from an attorney. Lewis v. Helm, 40 Colo. 17, 90 P. 97 (1907).

**The courts will closely scrutinize the dealings between attorneys and their clients,** and will relieve the latter from any undue consequences resulting from them whenever the good faith of the contract does not clearly appear. Lewis v. Helm, 40 Colo. 17, 90 P. 97 (1907).

**Contracts with the client are construed most favorably to the interest of the client.** Keeler v. Hoyt, 57 Colo. 120, 140 P. 191 (1914).

**The attorney is held to a strict compliance** with his undertaking. Keeler v. Hoyt, 57 Colo. 120, 140 P. 191 (1914).

**The plaintiff is entitled to dismiss his action even though he has stipulated with his attorney** that the latter shall receive, as his fee, a share of whatever is obtained by the litigation or the settlement thereof.

McPhail v. Spore, 62 Colo. 307, 162 P. 151 (1916).

**If the attorney is entitled to an action for the discontinuance of** which he complains he is not to recover under the contract. McPhail v. Spore, 62 Colo. 307, 162 P. 151 (1916).

**An attorney employed merely to try a litigated case has no implied authority to prosecute an appeal** or writ of error or do anything on behalf of his client looking to the review of the judgment. Tobler v. Nevitt, 45 Colo. 231, 100 P. 416, (1909).

**A recital in the record that the attorney appeared for defendant is only prima facie evidence of authority to appeal.** Great W. Mining Co. v. Woodmas of Alston Mining Co., 12 Colo. 46, 20 P. 771 (1888).

**It is within the general powers of an attorney at law to submit the suit of his client to arbitration.** Lee v. Grimes, 4 Colo. 185 (1878).

**An attorney has no authority to waive the statute of limitations** for his client. Ferris v. Curtis, 53 Colo. 340, 127 P. 236 (1912).

**It is the duty of counsel in a criminal case to watch the progress of the trial,** be informed as to what forms of verdict are submitted to the jury, and request proper forms. Loos v. People, 84 Colo. 166, 268 P. 536 (1928).

**A regularly licensed attorney must be held to know better than to inject into a legal argument** irrelevant and scandalous denunciations of his opponent. People ex rel.

Skelton v. Brown, 17 Colo. 431, 30 P. 338 (1892).

**A legal argument may consist of an appeal to reason or authority.** People ex rel. Skelton v. Brown, 17 Colo. 431, 30 P. 338 (1892).

**The advocate, either orally or in writing, may freely exercise his talents,** and employ all the resources of his learning and logic which the scope of the questions afford. People ex rel. Skelton v. Brown, 17 Colo. 431, 30 P. 338 (1892).

**The advocate is not at liberty to go outside the record** for purposes of scandal and abuse. People ex rel. Skelton v. Brown, 17 Colo. 431, 30 P. 338 (1892).

**In an action against an attorney for damages for his alleged negligence in failing to collect an amount due on account stated,** the debtor being insolvent nothing could be collected from her, therefore plaintiff suffered no damage even if the attorney was negligent. Lawson v. Sigfrid, 83 Colo. 116, 262 P. 1018 (1927).

**In the absence of special authorization an attorney at law cannot accept anything but money** in payment of a promissory note placed in his hands for collection, and, if he agrees otherwise, the agreement is void and not binding upon the client. McCaffrey v. Mitchell, 98 Colo. 467, 56 P.2d 926, 57 P.2d 900 (1936).

**Where an attorney advised his client as to the necessity of purchasing an outstanding title against lands claimed by her,** and she refused to do so, whereupon the attorney purchased such title himself, he

does not hold the title in trust for the client. *Webber v. Wannemaker*, 39 Colo. 425, 89 P. 780 (1907).

### III. CONSTRUCTION OF LICENSE PROVISION.

**Law reviews.** For comment on *United Sec. Corp. v. Pantex Pressing Mach., Inc.*, appearing below, see 8 Rocky Mt. L. Rev. 289 (1936).

**This section is directed towards persons unlicensed to practice law appearing in courts of record.** *United Sec. Corp. v. Pantex Pressing Mach., Inc.*, 98 Colo. 79, 53 P.2d 653 (1935).

**Under this section proceedings instituted and prosecuted by an unlicensed attorney are without authority,** and a judgment resulting from such proceedings is void. *Bennie v. Triangle Ranch Co.*, 73 Colo. 586, 216 P. 718 (1923).

**The license furnishes the evidence that the law demands for the security of the public** first that the holder thereof is a person of probity of character, and second, that he is skilled in the law, and, therefore, qualified to practice as an attorney and counselor. *Hittson v. Browne*, 3 Colo. 304 (1877).

**In an action by an attorney for his fee, where no issue is raised by the pleadings on the point of plaintiff's right to practice law,** evidence that he was not licensed to practice in the state at the time the services were rendered is inadmissible. *Bachman v. O'Reilly*, 14 Colo. 433, 24 P. 546 (1890).

**The license to an attorney is "for and during his good behavior"**, and this condition would be implied, or attached, in the absence of any statute upon that subject. *People ex rel. Bar Ass'n v. Weeber*, 26 Colo. 229, 57 P. 1079 (1899).

**The supreme court, having power by express law to grant a license to practice law, has an inherent right** to see that the license is not abused or perverted to a use not contemplated by the grant. *People ex rel. Attorney Gen. v. MacCabe*, 18 Colo. 186, 32 P. 280 (1893).

**Where an attorney from another state having settled here and applied for license, was advised by the district judge that he was entitled to appear in the courts,** though the license had not yet issued, and acting upon this advice, and in constant expectation of receiving his license, he accepted employment as an attorney, but upon being informed that an information in contempt had been exhibited against him, he ceased to practice or hold himself out as an attorney, it was held that, though guilty of a contempt, the case did not require the imposition of any penalty. *People ex rel. Bar Ass'n v. Ellis*, 44 Colo. 176, 96 P. 783 (1908).

**On the question whether one who was not a licensed attorney at the time of his election was eligible to the office of district attorney,** the court was equally divided. *People v. Hallett*, 1 Colo. 352 (1871).

**Applied** in *People ex rel. Bar Ass'n v. Taylor*, 56 Colo. 441, 138 P. 762 (1914).

#### IV. PRACTICING LAW.

##### A. In General.

##### B. Practicing Law Before Administrative Commission.

##### C. Drafting Legal Documents.

##### A. In General.

**There is no all inclusive definition of what constitutes** the practice of law. Denver Bar Ass'n v. Pub. Utils. Comm'n, 154 Colo. 273, 391 P.2d 467 (1964).

**Generally one who acts in a representative capacity in protecting, enforcing, or defending the legal rights and duties of another** and in counseling, advising and assisting him in connection with these rights and duties is engaged in the practice of law. Denver Bar Ass'n v. Pub. Utils. Comm'n, 154 Colo. 273, 391 P.2d 467 (1964).

**Services of an attorney not licensed in Colorado** are compensable as attorney fees where no court appearances made and the work performed consisted of obtaining a variance from a municipal zoning code. Catoe v. Knox, 709 P.2d 964 (Colo. App. 1985).

Consulting services performed by an out-of-state lawyer do not constitute unauthorized practice of law under canon 3 of the Colorado code of professional responsibility and therefore may be compensated as attorney fees. Dietrich Corp. v. King Res. Co., 596 F.2d 422 (10th Cir. 1979).

**The collection agency was not practicing law** where it had not agreed to furnish, nor had it furnished, legal advice or legal services to the creditors, but, rather, as assignee of the accounts and notes, it was the one entitled to bring the action to collect alleged indebtednesses, and it engaged its own counsel. Thibodeaux v. Creditors Serv., Inc., 191 Colo. 215, 551 P.2d 714 (1976).

**An independent civil action is not the only means by which an attorney can enforce the statutory charging lien.** Gee v. Crabtree, 192 Colo. 550, 560 P.2d 835 (1977).

**General partners appearing pro se may not represent partnership.** A partnership must be considered as an entity separate and apart from the general partners for purposes of defining parties who may appear for others in courts of record. E & A Assoc. v. First Nat. Bank of Denver, 899 P.2d 243 (Colo. App. 1994).

**Preparation and submission of pleadings, the cross-examination of witnesses in a trial court, and presentation of argument to the court all constitute the practice of law.** People v. LaPorte Church of Christ, 830 P.2d 1150 (Colo. App. 1992).

**A pastor who is not an attorney is prohibited from representing in court the church which he pastors.** Preparation and submission of pleadings, cross-examination of witnesses, and presentation of argument to the court constitutes the unauthorized practice of law. People v. LaPorte Church of Christ, 830 P.2d 1150 (Colo. App. 1992).

**Pastor who was neither a corporate officer nor an attorney could not represent defendant church** on appeal from an order assessing fees for violating the financial disclosure requirements of the Colorado Reform Act under alternate theories that defendant church was a defacto corporation or an unincorporated association. *People v. LaPorte Church of Christ*, 830 P.2d 1150 (Colo. App. 1992).

**A nonlawyer conservator or guardian in this state is a statutory legal representative only** and is therefore prohibited from practicing law and serving as legal counsel in court. The powers granted to conservators under § 15-14-425 and to guardians under §§ 15-14-315 and 15-14-315.5 do not establish an exception to this section regarding the practice of law. In *re Kanefsky*, 260 P.3d 327 (Colo. App. 2010).

#### B. Practicing Law Before Administrative Commission.

**Law reviews.** For note, "May a Layman Appear Before the Colorado Public Utilities Commission", see 9 Rocky Mt. L. Rev. 188 (1937).

**The following would constitute the practice of law before administrative commissions:** (1) Where one instructs and advises another in regard to the applicable law on an agency matter so that he may properly pursue his affairs and be informed as to his rights and obligations. (2) Where one prepares for another documents requiring familiarity with legal principles beyond the ken of the ordinary layman. (3) Where one prepares for another, for filing

before the administrative agency, applications, pleadings, or other procedural papers requiring legal knowledge and technique. (4) Where one appears for another before an administrative tribunal in adversary or public proceedings involving the latter's rights of life, liberty or property according to the law of the land. (5) Where one, on behalf of another, examines and cross-examines witnesses and makes objections or resists objections to the introduction of testimony, the exercise of which requires legal training, knowledge, and skill. (6) Where one represents another in a rate-making or rate-revision case and the question of deprivation of property without due process of law is present. *Denver Bar Ass'n v. P.U.C.*, 154 Colo. 273, 391 P.2d 467 (1964).

**As an arm of the general assembly, the public utilities commission (PUC)** may authorize by rule certain things, the doing of which does not constitute the practice of law. *Denver Bar Ass'n v. P.U.C.*, 154 Colo. 273, 391 P.2d 467 (1964).

**Among the more common of these activities, in which laymen may represent others, are:** (1) The completion of forms which do not require any knowledge and skill beyond that possessed by the ordinarily experienced and intelligent layman. (2) Representation of another in a hearing relating to the making or revision of rates, except where the question of deprivation without due process of law is present. (3) Performing the services of engineers, experts, accountants and clerks. (4) Acting in an agency proceeding involving the adoption of a rule of future action which

affects a group and where no vested rights of liberty or property are at stake. *Denver Bar Ass'n v. P.U.C.*, 154 Colo. 273, 391 P.2d 467 (1964).

**As to matters in which no legal principle is involved and the subject matter of the hearing has a value or represents an amount insufficient to warrant the employment of an attorney,** permission is granted until withdrawn by the supreme court to permit laymen to represent others in accordance with rule 7(b) of the PUC even though such representation may constitute practicing law. *Denver Bar Ass'n v. P.U.C.*, 154 Colo. 273, 391 P.2d 467 (1964).

**Although the PUC is an administrative agency of the general assembly, its actions would be characterized as judicial** where it resolves disputes of adjudicative facts, and persons appearing in representative capacities in respect thereto would be practicing law. *Denver Bar Ass'n v. P.U.C.*, 154 Colo. 273, 391 P.2d 467 (1964).

**The PUC's actions may be legislative or nonjudicial, and** persons appearing in representative capacities in respect to these matters would not be practicing law. *Denver Bar Ass'n v. P.U.C.*, 154 Colo. 273, 391 P.2d 467 (1964).

**Whether one in representing another before the PUC under its rule 7(b), is practicing law depends** upon the circumstances of the particular case there under consideration. *Denver Bar Ass'n v. P.U.C.*, 154 Colo. 273, 391 P.2d 467 (1964).

**The character of the act done, rather than that it is performed before the commission,** is the factor which is decisive of whether it constitutes the practice of law. *Denver Bar Ass'n v. P.U.C.*, 154 Colo. 273, 391 P.2d 467 (1964).

**A ruling that under all circumstances a lay person could act in a representative capacity before the commission** pursuant to the authority contained in its rule 7(b) was error and the judgment was reversed. *Denver Bar Ass'n v. P.U.C.*, 154 Colo. 273, 391 P.2d 467 (1964).

**A natural person may appear in his own behalf and represent himself,** notwithstanding he may not be a lawyer. *Denver Bar Ass'n v. P.U.C.*, 154 Colo. 273, 391 P.2d 467 (1964).

**Generally, a corporation may appear in a court of record only through an attorney.** Subject to certain exceptions, proceedings commenced or prosecuted and pleadings filed by a corporation without an attorney are a nullity and will be stricken. In *re Estate of Nagel*, 950 P.2d 693 (Colo. App. 1997).

Pleadings executed and filed by a non-attorney employee on behalf of a corporation are void as a general rule; there is no statutory exception to the general rule, and the court declined to create a judicial exception. In *re Estate of Nagel*, 950 P.2d 693 (Colo. App. 1997).

#### C. Drafting Legal Documents.

**The drafting of documents, when merely incidental to the work of a distinct occupation,** is not the practice of law,

although the documents have legal consequences. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

**There are instruments that no one but a well-trained lawyer should ever undertake to draw.** *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

**There are other documents common in the commercial world, and fraught with substantial legal consequences,** that lawyers seldom are employed to draw, and that in the course of recognized occupations other than the practice of law are often drawn by laymen. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

**The actual practices of the community have an important bearing** on the scope of the practice of law. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

**When a person who gives legal advice to those for whom he draws instruments, or holds himself out as competent to do so, does work of a legal nature,** when the instruments he prepares either define, set forth, limit, terminate, specify, claim or grant legal rights. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

**The drawing of wills, as a practice, is the practice of law.** *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

**A layman or a corporation may prepare instruments to which he or it is a party without being guilty of the unauthorized practice of law.** *Title Guar. Co. v. Denver Bar Ass'n*, 135 Colo. 423, 312 P.2d 1011 (1957).

**A person who is not a member of the bar may draw instruments such as simple deeds, mortgages, promissory notes, and bills of sale** when these instruments are incident to transactions in which such person is interested, provided no charge is made therefor. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

**The preparation of receipts and options, deeds, promissory notes, deeds of trust, mortgages, releases of encumbrances, leases, notice terminating tenancies, demands to pay rent or vacate by completing standard and approved printed forms, coupled with the giving of explanation or advice as to the legal effect thereof, constitutes the practice of law.** *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

**Preparation of closing documents, real estate deeds, releases, deeds of trust, and promissory notes, where title insurance is not applied for or written** has nothing whatsoever to do with the business of abstracting or insuring titles to real estate. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

**Preparation of closing documents, real estate deeds, releases, deeds of trust, and**

**promissory notes constitutes the practice of law** and a power not granted to title insurance companies expressly or by implication under the corporation laws of this state. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

**Preparation of closing documents, real estate deeds, releases, deeds of trust, and promissory notes is not necessary to the abstract or title insurance business**, it is a separate, distinct and other business, much of which constitutes practice of law. *Title Guar. Co. v. Denver Bar Ass'n*, 135 Colo. 423, 312 P.2d 1011 (1957).

**It would not be in the interest of the public welfare to restrain brokers from drafting the ordinary instruments necessary to effectuate the closing of the ordinary real estate transaction** in which they are acting. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

**Ordinary conveyancing, part of the every day business of the realtor, may also be done by others without wrongful invasion of the lawyers' field** and consequently is something of which the legal profession cannot claim that the public welfare requires restraint by judicial decree. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

## **V. DISBARMENT FOR MISBEHAVIOR.**

**Annotator's note.** For other annotations concerning the disbarment of attorneys, see the annotations for chapter 20 of the

Colorado Rules of Civil Procedure and for the Code of Professional Responsibility contained in the appendix to chapters 18 to 20 of the Colorado Rules of Civil Procedure.

**While a lawyer is admitted into a federal court by way of a state court**, he is not automatically sent out of the federal court by the same route. *Gately v. Sutton*, 310 F.2d 107 (10th Cir. 1962).

**The two judicial systems of courts, the state judicatures and the federal judiciary, have autonomous control** over the conduct of their officers, among whom, in the present context, lawyers are included. *Gately v. Sutton*, 310 F.2d 107 (10th Cir. 1962).

**The federal courts do not have jurisdiction to review an order of the Colorado supreme court disbarring** an attorney in that state for personal and professional misconduct. *Gately v. Sutton*, 310 F.2d 107 (10th Cir. 1962).

**The federal courts have no jurisdiction to issue writs of mandamus to direct state courts or their judicial officers** in the performance of their duties, including disbarment proceedings. *Gately v. Sutton*, 310 F.2d 107 (10th Cir. 1962).

**The limits of review of a disbarment by the Colorado supreme court are violations, in the course of disbarment proceedings, of the due process or equal protection clauses of the fourteenth amendment, and a petition for a writ of certiorari to the supreme court of the United States** is the only method by which review



may be had. *Gately v. Sutton*, 310 F.2d 107 (10th Cir. 1962).

## **VI. RESTRAINING ILLEGAL PRACTICE OF LAW.**

**Law reviews.** For article, "Unauthorized Practice of Law", see 10 Dicta 284 (1933).

**Annotator's note.** For other annotations concerning the unauthorized practice of law, see the annotations for Chapter 19 of the Colorado Rules of Civil Procedure and for the Colorado Rules of Professional Conduct contained in the appendix to chapters 18 to 20 of the Colorado Rules of Civil Procedure.

**Duly licensed members of the bar may invoke the jurisdiction of the courts** to restrain the illegal practice of law by others. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

**Attorneys, as officers of the court, may, both for themselves and all the affected members of their profession, institute and maintain a suit** to challenge or enjoin the unlawful intrusion into their office and professional field by one who is not licensed to do so. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

**The fact that no property or pecuniary interest of the plaintiff is involved is not an answer to a suit for an injunction** to enjoin the practice of a profession without a license, where the action is in behalf of the public. *Conway-Bogue Realty Inv. Co. v.*

*Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

**In general a court of equity will grant an injunction only where there is eminent danger** or irreparable injury or damage to the plaintiff. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

**In order to restrain an unlicensed person from practicing a profession it is not necessary to prove irreparable injury** or the threat thereof, where the suit is in behalf of the public. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

**Plaintiffs, the Denver and Colorado bar associations, the chairmen of the unauthorized practices committee of each association and licensed attorneys** who appear for themselves and all other licensed attorneys and on behalf of the public are entitled to an injunction to prevent the unlawful intrusion into their office and professional field of defendant. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

**In such a case, the extent of the damage to the property right is unimportant.** *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

**The existence or threat of real damage is enough to warrant relief.** *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

**13-93-102. No discrimination - issuance of license.**

A person shall not deny an individual a license to practice on account of race, creed, color, religion, disability, age, sex, sexual orientation, gender identity, gender expression, marital status, national origin, or ancestry.

**Source:** **L. 2017:** Entire article added with relocations, (SB 17-227), ch. 192, p. 699, § 1, effective August 9. **L. 2021:** Entire section amended, (HB 21-1108), ch. 156, p. 891, § 19, effective September 7.

**Editor's note:** This section is similar to former § 12-5-102 as it existed prior to 2017.

**Cross references:** For the legislative declaration in HB 21-1108, see section 1 of chapter 156, Session Laws of Colorado 2021.

**ANNOTATION**

|                                                                                       |                                                                                              |
|---------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| <b>For a case relating to the admission of women to practice decided prior to the</b> | <b>specific provision of this section,</b> see In re Thomas, 16 Colo. 441, 27 P. 707 (1891). |
|---------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|

**13-93-103. License fee.**

The license fee for admission to practice law in this state shall be as prescribed by the supreme court under rules for admission to the bar.

**Source:** **L. 2017:** Entire article added with relocations, (SB 17-227), ch. 192, p. 699, § 1, effective August 9.

**Editor's note:** This section is similar to former § 12-5-103 as it existed prior to 2017.

**13-93-104. Clerk of supreme court keeps roll of attorneys.**

It is the duty of the clerk of the supreme court to make and keep a roll or record of the persons who have been regularly licensed and admitted to practice as attorneys- and counselors-at-law within this state and who have taken the prescribed oath.

**Source: L. 2017:** Entire article added with relocations, (SB 17-227), ch. 192, p. 699, § 1, effective August 9.

**Editor's note:** This section is similar to former § 12-5-107 as it existed prior to 2017.

**ANNOTATION**

**Law reviews.** For note, "Rural Poverty and the Law in Southern Colorado", see 47 Den. L.J. 82 (1970).

**13-93-105. Supreme court may strike name.**

No person whose name is not subscribed to or written on the said roll, with the day and year when the same was subscribed thereto or written thereon, shall be admitted to practice as an attorney- or counselor-at-law within this state under the penalty mentioned in section 13-93-108, anything in this article 93 to the contrary notwithstanding; and the justices of the supreme court in open court, at their discretion, shall have power to strike the name of any attorney- or counselor-at-law from the roll for malconduct in his or her office.

**Source: L. 2017:** Entire article added with relocations, (SB 17-227), ch. 192, p. 699, § 1, effective August 9.

**Editor's note:** This section is similar to former § 12-5-108 as it existed prior to 2017.

**ANNOTATION**

I. General Consideration.

II. Grounds for Striking Name or  
Disbarment.

-1707-

III. Pleading and Practice.

IV. Review of Disbarment.

### **I. GENERAL CONSIDERATION.**

**Law reviews.** For article, "Unauthorized Practice of Law", see 10 Dicta 284 (1933).

**Annotator's note.** (1) Since § 13-93-105 is similar to § 12-5-108 as it existed prior to the 2017 amendments relocating article 5 of title 12 to this article 93, relevant cases construing that provision have been included in the annotations to this section.

(2) For other annotations concerning disbarment, see the annotations for chapters 18 to 20 of the Colorado Rules of Civil Procedure and the Colorado Rules of Professional Conduct contained in the appendix to those chapters.

**The section is declaratory of the common law** on the subject. In re Walkey, 26 Colo. 161, 56 P. 576 (1899).

**This section not only vests this court with a discretion which may be exercised,** but, by implication, it enjoins a solemn duty upon the court, which, in a proper case, must be exercised. People ex rel. Elliott v. Green, 7 Colo. 237, 3 P. 65 (1883).

**The two judicial systems of courts, the state judiciatures and the federal judiciary, have autonomous control over the conduct of their officers,** among whom, in the present context, lawyers are included. Gately v. Sutton, 310 F.2d 107 (10th Cir. 1962).

### **II. GROUNDS FOR STRIKING NAME OR DISBARMENT.**

**Any misconduct of an attorney which would render his continuance in practice incompatible with the proper respect of the court** for itself, or a proper regard for the integrity of the profession, is sufficient under this section to cause his disbarment. People ex rel. Colo. Bar Ass'n v. Weeber, 26 Colo. 229, 57 P. 1079 (1899).

**Conduct involving moral turpitude.** Violation by attorneys of law intended for the protection of the public, or misapplication by them of funds in violation of the law, whether or not a loss results in the last analysis, constitutes conduct involving moral turpitude. People v. Salazar, 185 Colo. 331, 524 P.2d 298 (1974).

**The right of the court to strike his name from its rolls exists for acts of misbehavior** other than the commission of a crime. People ex rel. Colo. Bar Ass'n v. Weeber, 26 Colo. 229, 57 P. 1079 (1899).

**The court might disbar him for committing a crime,** even though he was not convicted. People ex rel. Colo. Bar Ass'n v. Weeber, 26 Colo. 229, 57 P. 1079 (1899).

**Where an information in disbarment proceedings charged the respondent with the crime of embracery,** an answer setting up his acquittal upon a criminal charge based upon the same facts was not a defense to the proceeding for disbarment, and a demurrer to the answer was sustained. People ex rel. Colo. Bar Ass'n v. Thomas, 36 Colo. 126, 91 P. 36 (1906).

**When an attorney has by his conduct shown himself unworthy of his office, it becomes the duty of the court to revoke the authority it gave him upon his admission.** People ex rel. Maupin v. Keegan, 18 Colo. 237, 32 P. 424 (1893).

**The conviction of a felony is ground for disbarment.** People ex rel. Colo. Bar Ass'n v. Bryce, 36 Colo. 125, 84 P. 816 (1906); People ex rel. Attorney Gen. v. Cowen, 88 Colo. 571, 298 P. 957 (1931); People ex rel. Attorney Gen. v. Kaufman, 90 Colo. 8, 5 P.2d 1114 (1931); People ex rel. Attorney Gen. v. Bentall, 97 Colo. 526, 51 P.2d 352 (1935).

**An attorney will be disbarred under this section for procuring witnesses to a forged will.** People ex rel. Colo. Bar Ass'n v. Boutcher, 89 Colo. 497, 4 P.2d 910 (1931).

**An attorney may be disbarred or suspended for publishing advertisements soliciting divorce cases.** People ex rel. Attorney Gen. v. MacCabe, 18 Colo. 186, 32 P. 280 (1892).

**Where an attorney at law receives money as collections for his clients by virtue of his employment as an attorney, and refuses and neglects to pay the same over to them upon demand and tender of his fees and expenses, his name will be stricken from the roll of attorneys in this state in disbarment proceedings.** People ex rel. Colo. Bar Ass'n v. Nicholas, 36 Colo. 42, 84 P. 67 (1906); People ex rel. Colo. Bar Ass'n v. Kohn, 59 Colo. 353, 149 P. 249 (1915); People ex rel. Colo. Bar Ass'n v. Cary, 80 Colo. 443, 251 P. 597 (1926); People ex rel.

Colo. Bar Ass'n v. Winograd, 87 Colo. 384, 287 P. 864 (1930); People ex rel. Colo. Bar Ass'n v. Hillyer, 88 Colo. 428, 297 P. 1004 (1931).

**For obtaining money under false pretenses,** taking advantage of those who employed him in his professional capacity to defraud them of money which came into his hands by virtue of such employment, and making misrepresentations to a client for the purpose of inducing him to advance money which he appropriated to his own use, the respondent will be disbarred. People ex rel. Colo. Bar Ass'n v. Sindlinger, 28 Colo. 258, 64 P. 191 (1901).

**Attorney's actions in utilizing lien to overreach and force payment of more than he was owed** warranted his disbarment. People v. Radinsky, 182 Colo. 259, 512 P.2d 627 (1973).

**Subornation of perjury is another ground for disbarment.** People ex rel. Colo. Bar Ass'n v. McCann, 80 Colo. 220, 249 P. 1093 (1926).

**Abuse of process is a ground for disbarment.** Civil liabilities may not be enforced by threats of criminal prosecution any more than by threats of physical violence, and conduct of an attorney which has the appearance of resort to such methods is as bad, in law, as the thing itself. People ex rel. Colo. Bar Ass'n v. ...., 90 Colo. 440, 9 P.2d 611 (1932).

**Contempt of court is ground for disbarment.** Under this section it is not necessary that the indignity of insult to a judge should occur in open court, nor that it

constitute a statutory contempt of court, in order to confer on this court jurisdiction to disbar therefor. People ex rel. Elliott v. Green, 7 Colo. 237, 3 P. 65 (1883).

**Regardless of the power to punish for contempt**, there can be no doubt of the existence of a power to strike an offending attorney from the roll. People ex rel. Elliott v. Green, 7 Colo. 237, 3 P. 65 (1883).

**If subsequent to admission an attorney is guilty of such conduct** that he no longer possesses the qualification of good moral character, his name may be stricken from the rolls under the provisions of this section. People ex rel. Colo. Bar Ass'n v. Sindlinger, 28 Colo. 258, 64 P. 191 (1901).

**An attorney who, in a business transaction, is guilty of conduct involving moral turpitude** will be disbarred. People ex rel. Colo. Bar Ass'n v. Humbert, 51 Colo. 60, 117 P. 139 (1911).

**An attorney who used his position as a director or officer of a bank to arrange financial transactions** in a way prohibited by law is properly subject to disbarment. People v. Salazar, 185 Colo. 331, 524 P.2d 298 (1974).

**Where an attorney having advised, and consented to, the illegal payment of dividends** for the purpose of defrauding the public by the promotion of sales of stock, and being one of the promoters of a company operated as a stock selling swindle, is held guilty of unprofessional conduct, his name stricken from the roll of attorneys of Colorado. People ex rel. Colo.

Bar Ass'n v. Allen, 88 Colo. 283, 295 P. 1107 (1930).

**Where attorney had commingled funds in direct violation of the code of professional responsibility** and had used his clients' funds for his own personal purposes, disbarment was warranted. People v. Sarvas, 185 Colo. 329, 524 P.2d 304 (1974).

**Attorney's action in making alterations in court papers with intent to deceive** the court is ground for disbarment. People v. Atencio, 185 Colo. 326, 524 P.2d 613 (1974).

**Where an attorney attempted to reap a benefit for his client through the alteration or destruction** of written evidence, such conduct was characterized as reprehensible. People ex rel. Colo. Bar Ass'n v. Attorney at Law, 88 Colo. 325, 295 P. 917 (1931).

**An attorney who was instrumental in employing persons to wrongfully break into a clubhouse** and remove goods therefrom was held guilty of unprofessional conduct and publicly reprimanded. People ex rel. Colo. Bar Ass'n v. White, 89 Colo. 306, 1 P.2d 577 (1931).

**Where an attorney approached another with an offer, for a money consideration**, to influence jurors to vote for an acquittal in a criminal case, he was disbarred and his name stricken from the roll of attorneys. People ex rel. Attorney Gen. v. Powell, 87 Colo. 387, 287 P. 858 (1930).

**Attorney's action in negligently failing to take measures to procure his client's**

release from jail after he had represented to client that he would do so is ground for disbarment. *People v. Atencio*, 185 Colo. 326, 524 P.2d 613 (1974).

### **III. PLEADING AND PRACTICE.**

**It is the privilege, if not the duty, of every attorney to call to the attention of the supreme court** any act of a licensed attorney which may fairly be considered to disqualify him. *People ex rel. Colo. Bar Ass'n v. Class*, 70 Colo. 381, 201 P. 883 (1921).

**It is not the proper practice to entertain disbarment proceedings** while the conduct complained of is already being investigated in an appropriate action. *People ex rel. Eli v. Benson*, 24 Colo. 358, 51 P. 481 (1897).

**Where the alleged wrong is committed during or in connection with the judicial trial of an action,** the disbarment proceedings should be postponed, or its hearing suspended until the termination of the action. *People ex rel. Eli v. Benson*, 24 Colo. 358, 51 P. 481 (1897).

**Previous good standing and reputation is entitled to much consideration.** *People ex rel. Eli v. Benson*, 24 Colo. 358, 51 P. 481 (1897).

**In a proceeding to disbar upon charges made by the client, the burden is on the client** to prove an attorney's guilt. *People ex rel. Colo. Bar Ass'n v. Johnson*, 40 Colo. 460, 90 P. 1038 (1907).

**As accusations of this kind are easy to make and difficult to defend, the court will not be quick to take the naked charge**

**as a proof of guilt,** and, acting upon that, not only deprive a member of the bar of the means of making a livelihood, but disgrace him as well. *People ex rel. Colo. Bar Ass'n v. Johnson*, 40 Colo. 460, 90 P. 1038 (1907).

**In disbarment proceedings, the burden, under the rule to show cause, is cast upon the respondent** to justify his alleged unprofessional conduct. *People ex rel. Colo. Bar Ass'n v. Lindsey*, 86 Colo. 458, 283 P. 539 (1929).

**In disbarment proceedings, if respondent fails to deny the charges made against him,** he in legal effect admits them to be true. *People ex rel. Attorney Gen. v. Powell*, 87 Colo. 387, 287 P. 858 (1930); *People ex rel. Attorney Gen. v. Cowen*, 88 Colo. 571, 298 P. 957 (1931).

**In disbarment proceedings where the petition is upon the relation of the Colorado bar association,** neither the petition of the association nor the information of the attorney general is required to be under oath. *People ex rel. Colo. Bar Ass'n v. Mead*, 29 Colo. 344, 68 P. 241 (1902).

**In disbarment proceedings the practice is to have the evidence taken and reported by a referee.** *People ex rel. Colo. Bar Ass'n v. Mead*, 29 Colo. 344, 68 P. 241 (1902).

**The charges should be established by clear, satisfactory and convincing evidence.** *People ex rel. Eli v. Benson*, 24 Colo. 358, 51 P. 481 (1897); *People ex rel. Colo. Bar Ass'n v. Tanquary*, 48 Colo. 122, 109 P. 260 (1910).

**The fact that an attorney has been acquitted on an embezzlement charge does not affect the question** as to whether he has been guilty of unprofessional conduct for which he should be disbarred. People ex rel. Colo. Bar Ass'n v. Mead, 29 Colo. 344, 68 P. 241 (1902).

**The fact that an attorney, who was convicted of a felony in a sister state, was restored to his civil rights** by a pardon of the governor, is not a defense to disbarment proceedings against him for the same offense. People ex rel. Colo. Bar Ass'n v. Burton, 39 Colo. 164, 88 P. 1063 (1907).

**The court may consider the conduct of such attorney, and if satisfied** that it has been of a nature to require his disbarment, may disbar him. People ex rel. Colo. Bar Ass'n v. Burton, 39 Colo. 164, 88 P. 1063 (1907).

**If an attorney honestly believes he is the owner of money in the hands of an officer taken from a person charged with robbery** and held pending a prosecution, and believes it is not the money of the person alleged to have been robbed, although he is altogether wrong upon all points in his attempt to get the money, he is not guilty of attempting to defraud the claimant of the money, or of abuse of the process of the courts such as to cause his disbarment. People ex rel. Eli v. Benson, 24 Colo. 358, 51 P. 481 (1897).

**In a disbarment proceeding against an attorney for refusing to pay over money collected for his client, it was no defense** that the money was collected for the guardian of minor children, and that

respondent loaned the money to prevent the husband of his client from getting and using the money for his personal benefit, even if such defense were true. People ex rel. Carr v. Selig, 25 Colo. 505, 55 P. 722 (1898).

**An attorney at law who refuses to pay over money collected for a client cannot relieve himself from the consequences** of the violation of professional duty by paying over the money after the commencement of disbarment proceedings, though in a proper case it may be considered in mitigation of the punishment. People ex rel. Carr v. Selig, 25 Colo. 505, 55 P. 722 (1898).

**While ratification of an unauthorized act of an attorney by his client is for some purposes equivalent, in law, to antecedent authority,** the principle has no application in disbarment proceedings where the character of the act must be considered as at the time it was committed. People ex rel. Colo. Bar Ass'n v. Hillyer, 88 Colo. 428, 297 P. 1004 (1931).

**If improper and immoral at that time, it does not become proper and moral** by reason of a subsequent forgiveness by the victim. People ex rel. Colo. Bar Ass'n v. Hillyer, 88 Colo. 428, 297 P. 1004 (1931).

**Where lawyer with prior censures and suspension for dereliction of duty** failed to prepare will of aged person for at least eight months after being employed to do so and failed to file written objections to disbarment, disbarment was warranted. People v. James, 180 Colo. 133, 502 P.2d 1105 (1972).



**Where respondent fails to appear and answer,** the proper motion to be filed by petitioner is for default and judgment, and not for judgment on the pleadings. *People ex rel. Attorney Gen. v. Kaufman*, 90 Colo. 8, 5 P.2d 1114 (1931).

**An attorney, by reason of his conduct subsequent to disbarment,** may be held not entitled to reinstatement. *People ex rel. Colo. Bar Ass'n v. Lindsey*, 93 Colo. 41, 23 P.2d 118 (1933).

#### **IV. REVIEW OF DISBARMENT.**

**The federal courts do not have jurisdiction to review an order of the Colorado supreme court disbarring** an attorney in that state for personal and professional misconduct. *Gately v. Sutton*, 310 F.2d 107 (10th Cir. 1962).

**The federal courts have no jurisdiction to issue writs of mandamus to direct state**

**courts or their judicial officers in the performance of their duties,** including disbarment proceedings. *Gately v. Sutton*, 310 F.2d 107 (10th Cir. 1962).

**While a lawyer is admitted into a federal court by way of a state court,** he is not automatically sent out of the federal court by the same route. *Gately v. Sutton*, 310 F.2d 107 (10th Cir. 1962).

**Where the limits of review of a disbarment by the Colorado supreme court are violations, in the course of disbarment proceedings, of the due process or equal protection clauses of the fourteenth amendment,** a petition for a writ of certiorari to the supreme court of the United States is the only method by which review may be had. *Gately v. Sutton*, 310 F.2d 107 (10th Cir. 1962).

#### **13-93-106. Persons forbidden to practice.**

No coroner, sheriff, deputy sheriff, or jailer, though qualified, shall be permitted to practice as an attorney in the county in which he or she is commissioned or appointed, nor shall any clerk of the supreme court or district court be permitted to practice as an attorney- or counselor-at-law in the court in which he or she is clerk.

**Source: L. 2017:** Entire article added with relocations, (SB 17-227), ch. 192, p. 699, § 1, effective August 9.

**Editor's note:** This section is similar to former § 12-5-109 as it existed prior to 2017.

### **13-93-107. Judge not to act as attorney.**

It is unlawful for judges of the district, county, and municipal courts to counsel or advise in or write any petition or answer or other pleadings in any proceeding, or to perform any service as attorney- or counselor-at-law, or to be interested in any profits or emoluments arising out of any practice in any of said courts, except costs in their own courts; except that county judges in counties of such classes as may be specified by the laws relating to county courts, if licensed attorneys, may practice in courts other than the county court and in matters that have not come before the county court; and further, municipal judges, if licensed attorneys, may practice in courts other than the municipal court and in matters that have not come before the municipal court.

**Source: L. 2017:** Entire article added with relocations, (SB 17-227), ch. 192, p. 699, § 1, effective August 9.

**Editor's note:** This section is similar to former § 12-5-110 as it existed prior to 2017.

### **ANNOTATION**

**Annotator's note.** Since § 13-93-107 is similar to former § 12-5-110 and laws antecedent to that section, relevant cases construing those provisions have been included in the annotations to this section.

**The appearance of a judge for one of the parties in an election contest before the general assembly** is not a violation of this section. Such appearance does not constitute practicing law. *People ex rel. Colo. Bar Ass'n v. Class*, 70 Colo. 381, 201 P. 883 (1921); *People ex rel. Colo. Bar Ass'n v. Class*, 70 Colo. 381, 201 P. 883 (1921).

**Judges may not express opinions on legal questions** not judicially before them, in view of this section. *Laizure v. Baker*, 91 Colo. 292, 14 P.2d 486 (1932).

**This section was not repealed by the declaratory judgment act.** *Gabriel v. Bd. of Regents of Univ. of Colo.*, 83 Colo. 582, 267 P. 407 (1928); *City & County of Denver v. Lynch*, 92 Colo. 102, 18 P.2d 907 (1932).

**The trial court judge of a criminal action is in no sense a proper party** to an appeal of the criminal action to the supreme court of Colorado. *People v. Hopkins*, 70 Colo. 163, 197 P. 1020 (1921).

**The brief submitted by such judge is considered by the court solely as amicus curiae.** *People v. Hopkins*, 70 Colo. 163, 197 P. 1020 (1921).

### **13-93-108. Practicing law without license deemed contempt.**

Any person who, without having a license from the supreme court of this state so to do, advertises, represents, or holds himself or herself out in any manner as an attorney, attorney-at-law, or counselor-at-law or who appears in any court of record in this state to conduct a suit, action, proceeding, or cause for another person is guilty of contempt of the supreme court of this state and of the court in which said person appears and shall be punished therefor according to law. Nothing in this section shall prevent the special admission of counselors residing in other states, as provided in section 13-93-109.

**Source: L. 2017:** Entire article added with relocations, (SB 17-227), ch. 192, p. 699, § 1, effective August 9.

**Editor's note:** This section is similar to former § 12-5-112 as it existed prior to 2017.

#### **ANNOTATION**

I. General Consideration.

II. Judicial Department Controls Practice of Law.

III. Practicing Law Without License.

IV. Drafting Legal Documents.

V. Enjoining Unlawful Practice of Law.

#### **I. GENERAL CONSIDERATION.**

**Law reviews.** For article, "Justice Court Practice by the Laity", see 9 Dicta 65 (1932). For article, "Who May Practice, and What Constitutes the Practice of Law", see 9 Dicta 251 (1932). For article, "Effective and Ethical Use of Legal Assistants", see 15 Colo. Law. 659 (1986). For article, "Can Robot Lawyers Close the Access to Justice Gap?", see 53 Colo. Law. 40 (Dec. 2024).

**Annotator's note.** Since § 13-93-108 is similar to former § 12-5-112 and laws antecedent to that section, relevant cases construing those provisions have been included in the annotations to this section.

**This section is not obnoxious to § 21 of art. V, Colo. Const.,** providing that no bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title. *People ex rel. Colo. Bar Ass'n v. Erbaugh*, 42 Colo. 480, 94 P. 349 (1908).

**Applied in** *Unauthorized Prac. of Law Comm. v. Grimes*, 654 P.2d 822 (Colo. 1982); *Holter v. Moore & Co.*, 702 F.2d 854 (10th Cir. 1983); *Unauthorized Prac. of Law Comm. v. Grimes*, 759 P.2d 1 (Colo. 1988).

## **II. JUDICIAL DEPARTMENT CONTROLS PRACTICE OF LAW.**

**It is inherent in the judicial department of government under the constitution to control the practice of the law,** the admission to the bar of persons found qualified to act as attorneys at law and the removal from that position of those once admitted and found to be unfaithful to their trust. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

**While the judicial department cannot be circumscribed or restricted in the performance of these duties,** appropriate and essential assistance in discharging them may be afforded by the enactment of statutes. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

**As a general proposition, valid permission to practice law cannot be given by the general assembly** except subject to the requirements for admission to the bar established by the judicial department. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

**This section is not a grant of power to the supreme court or a limitation** upon its inherent powers. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

**The judiciary has inherent and plenary powers, with or without legislative enactment, to regulate and control the practice of law** to the extent that is

reasonably necessary to the proper functioning of the judiciary. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

## **III. PRACTICING LAW WITHOUT LICENSE.**

**Law reviews.** For article, "Unauthorized Practice of Law", see 10 Dicta 284 (1933). For comment on *United Sec. Corp. v. Pantex Pressing Mach., Inc.*, 98 Colo. 79, 53 P.2d 653 (1935), appearing below, see 8 Rocky Mt. L. Rev. 289 (1936). For note, "May a Layman Appear Before the Colorado Public Utilities Commission", see 9 Rocky Mt. L. Rev. 188 (1937). For comment on *People ex rel. Attorney Gen. v. Newer*, appearing below, see 29 Dicta 153 (1952).

**The basic and initial question** in determining whether a particular activity amounts to the unauthorized practice of law is whether the individual's appearance is in a representative capacity to protect, enforce, or defend the rights or duties of someone else. *Watt, Tieder, Killian & Hoffar v. U.S. Fidelity & Guaranty Co.*, 847 P.2d 170 (Colo. App. 1992).

**It will be observed that the gist of the offense against which the statute is directed** is one not licensed as an attorney holding himself out in any manner as being licensed, or committing the overt act of appearing in a court of record to conduct legal proceedings for another. *People ex rel. Attorney Gen. v. Wicks*, 101 Colo. 397, 74 P.2d 665 (1937).

**One who, not having a license from the supreme court as provided by statute,**

**advertises himself as a "lawyer", is guilty** of a contempt under this section. People ex rel. Colo. Bar Ass'n v. Taylor, 56 Colo. 441, 138 P. 762 (1914).

**Under this section, one who, through the medium of state, city and telephone directories, falsely holds himself out as an attorney at law, is guilty of contempt.** People ex rel. Colo. Bar Ass'n v. Norton, 44 Colo. 253, 104 P. 605 (1908); People ex rel. Colo. Bar Ass'n v. Humbert, 86 Colo. 426, 282 P. 263 (1929).

**One, who, not being licensed to practice law, caused his name to be printed in the city directory, on his office signs, business cards, and letterheads,** followed by the words "Attorney, Solicitor of American and Foreign Patents", or by the words "Attorney, Patent Law and Counsel in Patent Causes", and who, in reply to a letter as to a divorce, replied on one of such letterheads, without stating that he was not engaged in the practice of law, violates this section. People ex rel. Colo. Bar Ass'n v. Erbaugh, 42 Colo. 480, 94 P. 349 (1908).

**One may hold himself out as an attorney by writing, cards, signs, stationery, etc., but certainly may also,** and perhaps even more effectively, hold himself out by his conduct. People ex rel. Dunbar v. Schmitt, 126 Colo. 546, 251 P.2d 915 (1952).

**Where one engages in the business of advising others on those important and complicated legal problems usually falling within the practice of the profession, pretending that he is qualified to do so, does it openly and constantly, year after year, by**

conversation and writing, and charges and collects substantial fees therefor, he could no more effectively hold himself out as having the knowledge and the necessary authority to so act. People ex rel. Dunbar v. Schmitt, 126 Colo. 546, 251 P.2d 915 (1952).

**Evidence showing unauthorized practice.** People ex rel. Dunbar v. Schmitt, 126 Colo. 546, 251 P.2d 915 (1953).

**The evidence adduced at the hearing established beyond a reasonable doubt** that the respondent held himself out as being able to perform the services of incorporating business ventures generally required to be performed by a licensed attorney, that the respondent was not licensed to practice law in the state of Colorado, and that he prepared articles of incorporation for which he charged and received a fee in violation of this statute. People ex rel. Dunbar v. McClellan, 164 Colo. 202, 434 P.2d 126 (1967).

**Since notaries public are by statute empowered to perform certain acts including** making "declarations and protests" and taking "affidavits and depositions", where a notary advertises, "legal papers made", such fact is not sufficient or any proof that he intended to exceed the authority conferred upon him as a notary or of an intent to practice law. People ex rel. Attorney Gen. v. Wicks, 101 Colo. 397, 74 P.2d 665 (1937).

**As to matters in which no legal principle is involved and the subject matter of the hearing has a value or represents an amount insufficient to warrant the employment of an attorney,**

permission is granted until withdrawn by the supreme court to permit laymen to represent others before the public utilities commission (PUC) in accordance with rule 7(b) of the PUC even though such representation may constitute practicing law. *Denver Bar Ass'n v. Pub. Utils. Comm'n*, 154 Colo. 273, 391 P.2d 467 (1964).

**Where a considerable portion of respondent's time had been devoted to consulting with inmates of Colorado State Hospital,** investigations of the legal proceedings resulting in their commitment to the institution, and advice and activities designed to bring about a release of the patients from further detention at said hospital, respondent was practicing law in violation of this section. *People ex rel. Zimmerman v. Flanders*, 121 Colo. 25, 212 P.2d 502 (1949).

**The drawing of wills, as a practice, is the practice of law.** *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

**Where a cashier of a county bank drafted, prepared and caused to be executed a will,** he engaged in the practice of the law in Colorado without having the requisite license therefor and was held guilty of contempt of the supreme court. *People ex rel. Attorney Gen. v. Woodall*, 128 Colo. 563, 265 P.2d 232 (1954).

**For case where party was punished for contempt of the authority of the supreme court for holding himself out as an attorney at law,** see *People ex rel. Attorney Gen. v. Brown*, 126 Colo. 222, 247 P.2d 682 (1952).

**Under this section, a resident of Colorado licensed to practice law in another state,** by accepting employment as an attorney in Colorado without a license to practice, is guilty of contempt. *People ex rel. Attorney Gen. v. Thomas*, 87 Colo. 547, 290 P. 283 (1930).

**At the time respondent accepted the legal employment, he disclosed he was not a resident of the state in which he was authorized to practice law, Ohio, but was a resident of the state of Colorado,** by his own admission, for a substantial period of time he had engaged in the practice of law in the state of Colorado without having a license from the supreme court so to do, in violation of the provisions of this section. *People ex rel. Attorney Gen. v. Fitkin*, 170 Colo. 388, 461 P.2d 436 (1969).

**Services of an attorney not licensed in Colorado** are compensable as attorney fees where no court appearances made and the work performed consisted of obtaining a variance from a municipal zoning code. *Catoe v. Knox*, 709 P.2d 964 (Colo. App. 1985).

Consulting services performed by an out-of-state lawyer do not constitute unauthorized practice of law under canon 3 of the Colorado code of professional responsibility and therefore may be compensated as attorney fees. *Dietrich Corp. v. King Res. Co.*, 596 F.2d 422 (10th Cir. 1979).

**Because a partnership is not a separate legal entity,** but is only treated as such under partnership statutes for certain limited purposes, trial court should reconsider its

finding of contempt based on theory that a Virginia partnership and individuals representing it in Colorado courts were engaged in the unauthorized practice of law. Watt, Tieder, Killian & Hoffar v. U.S. Fidelity & Guaranty Co., 847 P.2d 170 (Colo. App. 1992).

**A partnership must be considered as an entity separate and apart from the general partners for purposes of defining parties who may appear for others in courts of record.** E & A Assoc. v. First Nat. Bank of Denver, 899 P.2d 243 (Colo. App. 1994) (disapproving any inference to the contrary in Watt, Tieder case, also annotated under this section).

**Where respondent violated this section, but it is apparent he did not do so intentionally,** the duty of the court does not require his punishment. People ex rel. Colo. Bar Ass'n v. Ellis, 44 Colo. 176, 96 P. 783 (1908).

**A person is not amenable to discipline for contempt of court for practicing law without a license, for his belief that he had the right to do certain things,** which might be construed as practicing law, his intent to do them, or even for an overt act, where the doing of such act was neither charged nor admitted. People ex rel. Attorney Gen. v. Wicks, 101 Colo. 397, 74 P.2d 665 (1937).

**Applied** in People ex rel. Attorney Gen. v. Gregory, 135 Colo. 438, 312 P.2d 512 (1957).

#### **IV. DRAFTING LEGAL DOCUMENTS.**

**The drafting of documents, when merely incidental to the work of a distinct occupation,** is not the practice of law, although the documents have legal consequences. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

**There are instruments that no one but a well trained lawyer** should ever undertake to draw. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

**There are other instruments common in the commercial world, and fraught with substantial legal consequences, that lawyers seldom are employed to draw,** and that in the course of recognized occupations other than the practice of law are often drawn by laymen. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

**The actual practices of the community have an important bearing on the scope of the practice of law.** Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

**A person who gives legal advice to those for whom he draws instruments, or holds himself out as competent to do so, does work of a legal nature,** when the instruments he prepares either define, see forth, limit, terminate, specify, claim or grant legal rights. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

However, a person who is not a member of the bar may draw instruments such as simple deeds, mortgages, promissory notes, and bills of sale when these instruments are incident to transactions in which such person is interested, provided no charge is made therefor. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

The preparation of simple real estate instruments, done without separate charge therefor by licensed real estate brokers only in connection with their established business, and in behalf of their customers and in connection with a bona fide real estate transaction which they are handling as brokers, should not be enjoined as unauthorized practices of law. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

It would not be in the interest of the public welfare to restrain brokers from drafting the ordinary instruments necessary to effectuate the closing of the ordinary real estate transaction in which they are acting. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

Ordinary conveyancing, being part of the every day business of the realtor, may also be done by others without wrongful invasion of the lawyers' field and consequently is something of which the legal profession cannot claim that the public welfare requires restraint by judicial decree. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

## V. ENJOINING UNLAWFUL PRACTICE OF LAW.

It is quite generally held that the right to practice law conferred by the state is a special privilege in the nature of a franchise and that the holder thereof may be protected from the invasion of the right thus vested in him. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

The adequate remedy for such invasion is by injunction, and that is so whether the transgressor is an individual or a corporation, though, as to the latter, as contended, quo warranto would lie. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

The right to practice law exists by virtue of a license from the state, and it may be protected from unlawful encroachment by injunction, though the act complained of is a violation of statute which prescribes a penalty. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

With or without statutory authorization or sanction, in a proper case, a person engaged in the unlawful practice may be punished for contempt and may also be enjoined from further similar unlawful action. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

Duly licensed members of the bar may invoke the jurisdiction of the courts to restrain the illegal practice of law by others.



Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

**Attorneys, as officers of the court, may, both for themselves and all the affected members of their profession, institute and maintain a suit** to challenge or enjoin the unlawful intrusion into their office and professional field by one who is not licensed to do so. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

**In general a court of equity will grant an injunction only where** there is imminent danger or irreparable injury or damage to the plaintiff. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

**In order to restrain an unlicensed person from practicing a profession, it is not necessary to prove irreparable injury** or the threat thereof where the suit is in behalf of the public. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

**Plaintiffs, the Denver and Colorado Bar Associations, the chairmen of the**

**unauthorized practices committee of each association and licensed attorneys who appear for themselves and all other licensed attorneys** and on behalf of the public are entitled to an injunction to prevent the unlawful intrusion into their office and professional field of defendant. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

**In such a case, the extent of the damage to the property right is unimportant.** Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

**The existence or threat of real damage is enough to warrant relief.** Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

**The fact that no property or pecuniary interest of the plaintiff is involved is not an answer to a suit for an injunction to enjoin the practice of a profession without a license,** where the action is in behalf of the public. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

### **13-93-109. Special admission of counselors from other states.**

Whenever any counselor-at-law residing in any of the adjacent states or territories has business in any of the courts of this state, he or she may be admitted, on motion, for the purpose of transacting such business and none other.

**Source: L. 2017:** Entire article added with relocations, (SB 17-227), ch. 192, p. 700, § 1, effective August 9.

**Editor's note:** This section is similar to former § 12-5-113 as it existed prior to 2017.

#### ANNOTATION

**Annotator's note.** Since § 13-93-109 is similar to former § 12-1-18, CRS 53, a relevant case construing that provision has been included in the annotations to this section.

**Where an attorney from a sister state is admitted to the bar of Colorado for the purpose of representing a defendant in a trial for murder in the first degree,** the fact that such counsel does not have an associate resident counsel with him in the case does not nullify the arraignment of

defendant or his plea of not guilty. *Martinez v. People*, 134 Colo. 82, 299 P.2d 510 (1956).

**Where an attorney from a sister state is voluntarily chosen by a defendant to represent him, and the supreme court authorizes his admission to the Colorado bar** for the purpose of conducting the defense, counsel has full power and authority to represent defendant. *Martinez v. People*, 134 Colo. 82, 299 P.2d 510 (1956).

#### **13-93-110. Notice of charges - time to show cause.**

Every attorney, before his or her name is stricken off the roll, shall receive a written notice from the clerk of the supreme court stating distinctly the grounds of complaint or the charges exhibited against him or her, and after the notice he or she shall be heard in his or her defense and allowed reasonable time to collect and prepare testimony for his or her justification. Any attorney whose name, at any time, is stricken from the roll by order of the court shall be considered as though his or her name had never been written thereon until such time as the said justices, in open court, authorize him or her to sign or subscribe the same.

**Source: L. 2017:** Entire article added with relocations, (SB 17-227), ch. 192, p. 700, § 1, effective August 9.

**Editor's note:** This section is similar to former § 12-5-114 as it existed prior to 2017.

#### ANNOTATION

**Annotator's note.** Since § 13-93-110 is similar to former § 12-5-114 and laws antecedent to that section, relevant cases construing those provisions have been included in the annotations to this section.

**This section does not direct how such notice shall be served.** In re Walkey, 26 Colo. 161, 56 P. 576 (1899).

**In the absence of specific directions regarding such service, any method adopted** from which it appears that respondent received the required notice will be sufficient. In re Walkey, 26 Colo. 161, 56 P. 576 (1899).

**This section makes ample provision for restoring to the bar any attorney whose name may have been stricken** from the roll

by order of the supreme court. People ex rel. Elliott v. Green, 7 Colo. 237, 3 P. 65 (1883).

**The court has no power to restore the petitioner to the rolls until** it be shown that restitution has been made to the client of the moneys detained. Ex parte Browne, 2 Colo. 553 (1875).

**Evidence insufficient to warrant reinstatement to the bar.** In re Petition of Howard, 178 Colo. 350, 497 P.2d 1023 (1972).

**Whether or not leniency shall be exercised, and how soon, must depend,** to a great extent, on the respondent himself. People ex rel. Elliott v. Green, 7 Colo. 237, 3 P. 65 (1883).

### **13-93-111. Solicitation of accident victims - waiting period - definition.**

(1) Except as permitted by section 13-21-301 (3) or 10-3-1104 (1)(h), no person shall engage in solicitation for professional employment or for any release or covenant not to sue concerning personal injury or wrongful death from an individual with whom the person has no family or prior professional relationship unless the incident for which employment is sought occurred more than thirty days prior to the solicitation.

(2) No person shall accept a referral for professional employment concerning personal injury or wrongful death from any person who engaged in solicitation of an individual with whom the person had no family or prior professional relationship unless the incident for which employment is sought occurred more than thirty days prior to the solicitation.

(3) As used in this section, "solicitation" means an initial contact initiated in person, through any form of written communication, or by telephone, telegraph, or facsimile, any of which is directed to a specific individual, unless requested by the individual, a member of the individual's family, or the authorized representative of the individual. "Solicitation" shall not include radio, television, newspaper, or yellow pages advertisements.

(4) Any agreement made in violation of this section is voidable at the option of the individual suffering the personal injury or death or the individual's personal or other authorized representative.

**Source: L. 2017:** Entire article added with relocations, (SB 17-227), ch. 192, p. 700, § 1, effective August 9.

**Editor's note:** This section is similar to former § 12-5-115.5 as it existed prior to 2017.

**13-93-112. Attorney not to be surety.**

No attorney- or counselor-at-law shall become surety in any bond or recognizance of any sheriff or coroner, in any bond or recognizance for the appearance of any person charged with any public offense, or upon any bond or recognizance authorized by any statute to be taken for the payment of any sum of money into court in default of the principal, without the consent of a judge of the district court first had approving said surety.

**Source: L. 2017:** Entire article added with relocations, (SB 17-227), ch. 192, p. 700, § 1, effective August 9.

**Editor's note:** This section is similar to former § 12-5-117 as it existed prior to 2017.

**ANNOTATION**

**Annotator's note.** Since § 13-93-112 is similar to former § 12-5-117 and laws antecedent to that section, relevant cases construing those provisions have been included in the annotations to this section.

**Where by leave of court, an attorney signs a certiorari bond as surety, he is**

**estopped to deny** his obligation on the ground that he was an attorney at the time of signing. *Ullery v. Kokott*, 15 Colo. App. 138, 61 P. 189 (1900).

**Applied** in *Bottom v. People*, 63 Colo. 114, 164 P. 697 (1917).

**13-93-113. Judge not to have law partner.**

A judge shall not have a partner acting as attorney or counsel in any court in his or her judicial district, county, or precinct.

**Source: L. 2017:** Entire article added with relocations, (SB 17-227), ch. 192, p. 701, § 1, effective August 9.

**Editor's note:** This section is similar to former § 12-5-118 as it existed prior to 2017.

### **13-93-114. Attorney's lien - notice of claim filed.**

All attorneys- and counselors-at-law shall have a lien on any money, property, choses in action, or claims and demands in their hands, on any judgment they may have obtained or assisted in obtaining, in whole or in part, and on any and all claims and demands in suit for any fees or balance of fees due or to become due from any client. In the case of demands in suit and in the case of judgments obtained in whole or in part by any attorney, such attorney may file, with the clerk of the court wherein such cause is pending, notice of his or her claim as lienor, setting forth specifically the agreement of compensation between such attorney and his or her client, which notice, duly entered of record, shall be notice to all persons and to all parties, including the judgment creditor, to all persons in the case against whom a demand exists, and to all persons claiming by, through, or under any person having a demand in suit or having obtained a judgment that the attorney whose appearance is thus entered has a first lien on such demand in suit or on such judgment for the amount of his or her fees. Such notice of lien shall not be presented in any manner to the jury in the case in which the same is filed. Such lien may be enforced by the proper civil action.

**Source: L. 2017:** Entire article added with relocations, (SB 17-227), ch. 192, p. 701, § 1, effective August 9.

**Editor's note:** This section is similar to former § 12-5-119 as it existed prior to 2017.

## **ANNOTATION**

I. General Consideration.

II. Attorney's Liens in Colorado.

III. Nature of Lien.

IV. Applicability and Scope of Lien.

VI. Possessory Lien Extinguished by Settlement.

### **I. GENERAL CONSIDERATION.**

**Law reviews.** For article, "A Decade of Colorado Law: Conflict of Laws, Security,

Contracts and Equity", see 23 Rocky Mt. L. Rev. 247 (1951). For article, "Mechanics' Liens Relative to Oil and Gas Operations — Part II", see 34 Dicta 373 (1957). For article, "The Treatment of Attorney's Liens in Colorado", see 16 Colo. Law. 623 (1987). For article, "Perfection and Enforcement of Attorney's Liens in Colorado", see 26 Colo. Law. 57 (Mar. 1997). For article, "Ethical Considerations of Attorney's Liens", see 31 Colo. Law. 51 (Apr. 2002). For article, "Recording Charging Liens Against Real Property: When, Not Whether", see 31 Colo. Law. 121 (Oct. 2002). For article, "Improper Recording of an Attorney's Charging Lien", see 32 Colo. Law. 61 (Feb. 2003). For article, "The Duty of Loyalty and Preparations to Compete", see 34 Colo. Law. 67 (Nov. 2005). For article, "Ethics in Family Law and the New Rules of Professional Conduct", see 37 Colo. Law. 47 (Oct. 2008).

**Annotator's note.** (1) Since § 13-93-114 is similar to former § 12-5-119, relevant cases construing that provision have been included in the annotations to this section.

(2) Cases material to former § 12-5-119 decided prior to its earliest source, L. 03, p. 145, § 1, have been included in the annotations to this section.

**Validity and extent of attorney's lien in bankruptcy** is determined by state law. In re Life Imaging Corp., 31 B.R. 101 (Bankr. D. Colo. 1983).

**Unfounded claim of lien violates professional code.** The assertion of an attorney's lien in circumstances where the attorney has no statutory or legal foundation

for a lien and, in fact, has an uncertain claim to the fee being claimed through the lien violates the code of professional responsibility. People v. Razatos, 636 P.2d 666 (Colo. 1981); People v. Smith, 830 P.2d 1003 (Colo. 1992); People v. Mills, 861 P.2d 708 (Colo. 1993) (decided under DR 1-102 (A)(5)).

## II. ATTORNEY'S LIENS IN COLORADO.

**Law reviews.** For article, "Update on Colorado Appellate Decisions in Colorado Workers' Compensation Law", see 30 Colo. Law. 69 (Apr. 2001).

**Under Colorado law, the common law attorney's lien is not preserved, and no lien exists apart from statute.** Donaldson v. Gaudio, 260 F.2d 333 (10th Cir.), aff'd In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo. 1958).

**No attorney's lien exists apart from this statute.** In re Rosenberg, 690 P.2d 1293 (Colo. App. 1984).

**Attorney's lien was not valid on funds paid directly to law firm by its client for legal services,** and therefore fell within the trustee's avoidance power as a preferential transfer. In re Inv. Bankers, Inc., 136 B.R. 1008 (Bankr. D. Colo. 1989).

**There is no common-law attorney's lien in Colorado,** and no lien exists apart from this section. Ranes v. Molen, 31 B.R. 70 (Bankr. D. Colo. 1983).

**It was clear that an attorney's lien existed either by state statute or by the common law.** In re Forrest A. Heath Co.,

159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**The federal courts have consistently applied the law of the state** in determining whether or not an attorney's lien exists in a given situation. In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**Homestead exemption statute includes attorney's liens within its ambit and the attorney's lien does not attach to the homestead.** If the debtor has any net equity remaining after the sale of the property in question, the creditor's attorney's lien attaches to that net equity and his claim is unsecured for any amount over that sum. In re Dickinson, 185 B.R. 840 (Bankr. D. Colo. 1995).

**Attorney's charging lien is not subject to a homestead exemption that may be claimed upon sale proceeds of an exempt homestead under §§ 38-41-201 and 38-41-207.** A proceeding to enforce an attorney's charging lien is not a levy upon property under either a writ of execution or a writ of attachment. In re Benbow, 496 B.R. 605 (Bankr. D. Colo. 2013).

**A debtor may not claim any portion of the proceeds from any real property to which an attorney's charging lien attaches as exempt property** under the Colorado homestead exemption. In re Benbow, 496 B.R. 605 (Bankr. D. Colo. 2013).

**Where an attorney's right to a lien exists by virtue of a statute, such right**

**cannot be extended** beyond the fair intendment of such statute. In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**Colorado has two statutory provisions pertaining to attorney's liens**, former § 12-1-10 (CRS 53) (now this section) and former § 12-1-11 (CRS 53) (now § 13-93-115). In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**Attorneys have two kinds of liens peculiar to them in their relationship** with their client. In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**One kind of lien is a lien which an attorney has upon all the papers of his client in his possession**, by virtue of which he may retain all of such papers until full payment is made for his services, and it is called a "retaining lien". In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**An attorney also has a lien upon any money, property, choses in action or claims and demands in his hands and on any judgment he may have obtained**, and that is denominated a "charging lien". In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**It was not the intention of the general assembly to abolish the well-established**

**distinction between the two classes of liens** (i.e. retaining liens and charging liens), and to create a lien upon a judgment and its proceeds to secure the payment of attorney's fees earned in matters not at all connected with the suit in which the judgment is rendered. In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**This is true even though former § 12-1-10 (CRS 53) (now this section) and former § 12-1-11 (CRS 53) (now § 13-93-115) did not separate the two classes of liens as clearly as might be desired.** Donaldson v. Gaudio, 260 F.2d 333 (10th Cir.), aff'g In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo. 1958).

**The Colorado supreme court has declared that former § 12-1-10 (CRS 53) (now this section) and former § 12-1-11 (CRS 53) (now § 13-93-115) established two distinct classes of liens**, each with its own limitation: a general retaining, or possessory lien, and a special, particular, or charging lien. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir.), aff'g In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo. 1958).

**Because "claims and demands in suit" is listed separately from judgments**, it is clear that it is not necessary to obtain a judgment in order for an attorney's lien to attach to the settlement proceeds. Cope v. Woznicki, 140 P.3d 239 (Colo. App. 2006).

**Language in fee contract** which would have granted an attorney's lien against all assets owned by the client covered not only

a retaining lien but also a charging lien and, thus, attorney waived the right to assert both types of liens when client had deleted such language from the contract. In re Rosenberg, 690 P.2d 1293 (Colo. App. 1984).

**Plain language of this section indicates that a retaining lien may exist for fees "due or to become due from any client."**

If an attorney who possessed funds of a client had a present interest only in fees already earned, this statutory language would be superfluous. Therefore, bankruptcy attorneys are entitled to prepetition cash retainers for their services following a chapter 11 petition. In re Printcrafters, Inc., 233 B.R. 113 (Bankr. D. Colo. 1999).

**There is no authority in Colorado for an equitable lien** apart from former § 12-1-10 (CRS 53) (now this section) and former § 12-1-11 (CRS 53) (now § 13-93-115). In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**This is in accord with the general rule that where a charging lien is created by statute**, the right to the lien exists only in cases specifically provided for by such statute. In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**A lien on the proceeds of litigation should be declared in favor of an attorney in a cause where equitable considerations** require that such lien be recognized. de Bit v. Howard, 107 Colo. 51, 108 P.2d 1053 (1940).



**The purpose of the charging lien is to satisfy the attorney's equitable claim for services rendered;** therefore, the attorney's lien may attach even though the attorney did not negotiate the settlement. *Cope v. Woznicki*, 140 P.3d 239 (Colo. App. 2006).

**Where attorneys do not have nor have they ever had any of the property in their possession upon which they are claiming an attorney's lien,** they are not entitled to a lien on the subject property under this section. *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), *aff'd sub nom. Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

**Therefore, where an attorney's representation is merely as attorney in fact, there is no basis upon which he can rightfully claim** either a general or special attorney's lien because there were no funds coming into his hands in the course of his professional employment. *Moore v. People*, 125 Colo. 306, 243 P.2d 425 (1952).

**This section is not to be so construed as to prohibit the client from abandoning his claim,** or adjusting the controversy with his adversary, acting in good faith, and with no intention of defeating the lien of the attorney. *Gooding v. Lyon*, 63 Colo. 328, 166 P. 564 (1917).

**Applied** in *Graeber v. McMullin*, 56 F.2d 497 (10th Cir. 1932); *People ex rel. Eaton v. El Paso County Court*, 74 Colo. 123, 219 P. 215 (1923).

### **III. NATURE OF LIEN.**

**All attorneys and counselors at law shall have a lien on any money, property,**

**choses in action, or claims and demands in their hands,** for any fees or balance of fees due or to become due from any client. *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), *aff'd sub nom. Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

**All attorneys and counselors at law shall have a lien on any judgment they may have obtained or assisted in obtaining** in whole or in part, due or to become due from any client. *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), *aff'd sub nom. Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

**This section gives to attorneys a lien on all claims and demands in suit and a lien upon all judgments obtained** for any fees or balance of fees due or to become due from any client. *Miller v. Houston*, 27 Colo. App. 89, 146 P. 786 (1915).

**The attorney's lien, whether under this section or at common law,** is equitable in its nature. *Fillmore v. Wells*, 10 Colo. 228, 15 P. 343 (1887).

**The lien is not property in the thing which gives a right of action at law.** *Fillmore v. Wells*, 10 Colo. 228, 15 P. 343 (1887).

**The lien is a charge upon the thing which is protected in equity.** *Fillmore v. Wells*, 10 Colo. 228, 15 P. 343 (1887).

**The lien is enforceable by a suit in equity directly against the property burdened therewith,** and the amount of the attorney's compensation, together with the controversies relating to the contract of employment, may be determined in such

suit. Fillmore v. Wells, 10 Colo. 228, 15 P. 343 (1887).

**This section provides no method of formally asserting the lien** in the first instance. Colo. State Bank v. Davidson, 7 Colo. App. 91, 42 P. 687 (1895).

**The lien attaches, upon the recovery of the judgment, by virtue of the statute itself** and without action of any kind on the part of the attorney. Colo. State Bank v. Davidson, 7 Colo. App. 91, 42 P. 687 (1895).

**When an attorney has obtained a judgment for his client, this section immediately operates to invest him with a lien** thereon to the extent of his reasonable fees remaining due and unpaid for his professional services in obtaining the same. Johnson v. McMillan, 13 Colo. 423, 22 P. 769 (1889).

**The employment of an attorney operates as an equitable assignment of the client's right** to the extent of the agreed compensation, in view of this section. Dankwardt v. Kermode, 68 Colo. 225, 187 P. 519 (1920).

**"Charging lien".** A "charging lien" attaches to all the fruits due a client after a suit is commenced, and it attaches immediately upon the obtaining of the judgment. The lien, as between the attorney and the client, is automatic and nothing more need be done to cause the lien to be enforceable against the client. If the attorney files a notice with the court, the lien then becomes enforceable against third parties.

Ranes v. Molen, 31 B.R. 70 (Bankr. D. Colo. 1983).

**Charging lien not created** where money paid to attorney on behalf of debtor in settlement of a lawsuit against a third party remained in attorney's possession when compensable work had been completed. In re Oiltech, Inc., 38 B.R. 484 (Bankr. D. Nev. 1984).

**"Any judgment" defined.** "Any judgment", as used in the first sentence, means the fruits of any judgment, including the realty in which a client's interest is preserved. Dolan v. Flett, 41 Colo. App. 40, 582 P.2d 694 (1978).

**Attachment and enforceability of lien.** The statutory charging lien attaches immediately upon the obtainment of a judgment and, as between attorney and client, nothing more need be done to cause the lien to be enforceable; the lien becomes enforceable against third parties when notice is provided. Dolan v. Flett, 41 Colo. App. 40, 582 P.2d 694 (1978).

**Enforceability of attorney's retaining lien against third parties, unlike a charging lien, is not conditioned upon the requirement of notice.** In re Oiltech, Inc., 38 B.R. 484 (Bankr. D. Nev. 1984).

**Lien on fund allocated to payment of bankruptcy creditor.** An attorney representing a creditor in a bankruptcy proceeding has a lien on the fund allocated to the payment of his client's claim. In re Campbell, 26 B.R. 145 (Bankr. D. Colo. 1983).

**Creditor's statutory attorney's lien obtained pursuant to former § 12-5-119 (now this section) and former § 12-5-120 (now § 13-93-115) was not merged into the judgment lien he subsequently obtained.** In re Dickinson, 185 B.R. 840 (Bankr. D. Colo. 1995).

**Where there is a hospital lien and an attorney lien,** the effect of the statute is that the attorney is compensated "off the top" absent a contractual arrangement otherwise, before the client receives his share of the proceeds from the tort settlement. Trevino v. HHL Fin. Servs., Inc., 928 P.2d 766 (Colo. App. 1996), aff'd on other grounds, 945 P.2d 1345 (Colo. 1997).

#### **IV. APPLICABILITY AND SCOPE OF LIEN.**

**A lien cannot be created by the mere fact that an attorney is entitled to be paid for his services.** In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

An attorney has no legal basis for the assertion of a lien simply to secure a fee obligation where the money being claimed is not in his hands nor involved in a suit. People v. Razatos, 636 P.2d 666 (Colo. 1981).

**To allow such a lien would be to give the attorney creditor a preferred position which the law does not intend.** In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**Where no suit was ever commenced by an attorney, no claim as lienor could have been filed.** In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**In order to determine the applicability of this section, the words "in suit" must be carefully considered and understood.** In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**It is clear from the sentence structure of this section that if there had been an intent to grant a charging lien on all claims** turned over to the attorney even before suit is commenced it would necessitate the use of punctuation after the word "claims" or some method to distinguish it from "demands in suit". Donaldson v. Gaudio, 260 F.2d 333 (10th Cir.), aff'd sub nom. In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo. 1958).

**The choice of punctuation lends emphasis to the view that the term "in suit" is intended to modify the word "claims" as well as "demands",** and this construction is supported by the prior clause which refers to "claims and demands in their hands". Donaldson v. Gaudio, 260 F.2d 333 (10th Cir.), aff'd In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo. 1958).

**Where no judgment was ever obtained by an attorney, this section is not applicable.** In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**If a lien is not allowed for services in connection with matters that did not go to suit where a subsequent judgment was recovered** for the same client, it would clearly be inconsistent to allow the lien to attach where there was no subsequent judgment. In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**A "charging" lien is not allowed to attach prior to the commencement of the suit.** In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**Where the parties to a writ of error had stipulated to a discontinuance thereof, the court was without jurisdiction to declare a lien upon the properties** recovered in favor of the attorneys of the successful party, for securing the fees to which they may be entitled pursuant to contract with the client since the lien, under this section, must be predicated upon a judgment of a court of competent jurisdiction. Lane v. Lyon, 57 Colo. 166, 140 P. 197 (1914).

**A claim does not become "in suit" through threat of actions nor preparatory services** rendered in contemplation of suit. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir.), aff'g In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo. 1958).

**A claim is not "in suit" before a justice until he has issued summons thereon and delivered the same to an officer to be served,** or by the appearance and agreement of the parties without summons and the case

docketed, authorizing a justice to receive money only when tendered to him on any claim in a suit before him. In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**The term "suit" is a very comprehensive one and is said to apply to any proceeding in a court of justice** by which an individual pursues that remedy which the law affords him. In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**The modes of proceeding may be various, but, if the right is litigated between the parties** in the court of justice, the proceeding is a suit. In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**This section recognizes no distinction between judgments for money or personal property** and decrees of judgments by which the ownership or possession of land is awarded to plaintiff or his interest therein is preserved. Fillmore v. Wells, 10 Colo. 228, 15 P. 343 (1887).

**It gives the attorney a lien upon any judgment obtained by him** and belonging to his client. Fillmore v. Wells, 10 Colo. 228, 15 P. 343 (1887).

**The attorney's lien attaches under this section, even though the land recovered by the judgment becomes part of a trust estate** belonging to wards, and suit may be brought directly against this part of the trust

estate without first obtaining individual judgments against the guardians. *Fillmore v. Wells*, 10 Colo. 228, 15 P. 343 (1887).

**The phrase "first lien" creates a lien that takes priority over all other charges or encumbrances on the same property.** *N. Valley Bank v. McGloin*, Davenport, 251 P.3d 1250 (Colo. App. 2010).

**Attorney's lien, as a statutory first lien, has priority over a previously perfected security interest.** *N. Valley Bank v. McGloin*, Davenport, 251 P.3d 1250 (Colo. App. 2010).

**There is nothing in this section which indicates a purpose to exclude causes of action for personal injuries.** *Miller v. Houston*, 27 Colo. App. 89, 146 P. 786 (1915); *Dankwardt v. Kermode*, 68 Colo. 225, 187 P. 519 (1920).

**An attorney who, upon the retainer of the complaining party and upon an agreement that he shall receive as his compensation** a specified share of the recovery, has instituted an action for a tort and has notified the defendant of his claim for a lien is entitled to a lien upon the cause of action for the value of his services. *Miller v. Houston*, 27 Colo. App. 89, 146 P. 786 (1915).

**The attorney's lien reaches all fees due for services rendered**, whether the amount of such fees has been agreed upon or is to be settled in suit as upon a quantum meruit. *Fillmore v. Wells*, 10 Colo. 228, 15 P. 343 (1887).

**An attorney has a retaining lien on retained funds to the extent of and for so**

**long as fees and expenses are owed by the client.** *In re Printcrafters, Inc.*, 208 B.R. 968 (Bankr. D. Colo. 1997).

**Unreimbursed costs of litigation advanced by attorney are included in attorney's lien.** *Kallsen v. Big Horn Harvestore Sys.*, 761 P.2d 291 (Colo. App. 1988).

**The attorney's lien is not limited to compensation for services rendered by the attorney** in procuring the judgment upon which he relies. *Fillmore v. Wells*, 10 Colo. 228, 15 P. 343 (1887).

**The lien cannot be defeated by the setoff of a judgment** against his client growing out of independent transactions prior to the attorney's employment. *Dankwardt v. Kermode*, 68 Colo. 225, 187 P. 519 (1920).

Because the opposing party had notice of the attorney lien prior to its motion to offset, the attorney lien takes priority over the opposing party's right to offset opposing judgments and obtain a single net judgment in its favor. *Stiner v. Planned Mgmt. Servs.*, 923 P.2d 186 (Colo. App. 1995).

**Where an attorney represented parties under an agreement by which he was to receive 33 1/3% of all money or the value of any property received in settlement** or payment of their claim against third persons and a settlement of \$5,000 was arrived at and the third persons agreed to pay the living expenses of his clients until the obligation was fully discharged, it was held that the payment of such living expenses for four years constituted valuable property to

which the attorney's lien attached even though no money had been paid on the obligation. *de Bit v. Howard*, 107 Colo. 51, 108 P.2d 1053 (1940).

**Attorney's lien upon award to client cannot exceed amount of award.** In *re Stewart*, 632 P.2d 287 (Colo. App. 1981).

**Since no prepetition fees were owed at the time of the bankruptcy filing, under Colorado law there was no retaining lien.** In *re Printcrafters, Inc.*, 208 B.R. 968 (Bankr. D. Colo. 1997).

**Misconduct in other cases not to affect assertion of lien.** Misconduct in a particular case, if suspension or disbarment is not involved, should not result in the loss of an attorney's ability to assert his lien in other cases where professional misconduct is not involved. *People ex rel. MacFarlane v. Harthun*, 195 Colo. 38, 581 P.2d 716 (1978).

**Lien not extinguished by bankruptcy.** Under 11 U.S.C. § 101, an attorney's lien in Colorado is a "statutory" lien, and not a "judicial" lien and, thus, cannot be avoided by a bankruptcy debtor under 11 U.S.C. § 522(f). *Ranes v. Molen*, 31 B.R. 70 (Bankr. D. Colo. 1983).

An attorney's lien which is valid under state law is not extinguished when the client files bankruptcy. Further, there is no provision in the bankruptcy code for the voiding of a valid statutory attorney's lien. In *re Life Imaging Corp.*, 31 B.R. 101 (Bankr. D. Colo. 1983).

## **V. ENFORCEMENT.**

### **A. In General.**

### **B. Notice.**

#### **A. In General.**

**The lien under this section is a security, the benefit of which the attorney may or may not avail himself.** *Boston & Colo. Smelting Co. v. Pless*, 9 Colo. 112, 10 P. 652 (1885).

**Of course, he is not entitled to it unless there remains due him unpaid fees.** *Boston & Colo. Smelting Co. v. Pless*, 9 Colo. 112, 10 P. 652 (1885).

**An attorney may waive his right to the benefit of his lien** under this section. *Fillmore v. Wells*, 10 Colo. 228, 15 P. 343 (1887).

**If, without notice that he intends to enforce the lien, an innocent third person purchases the realty covered by the judgment** or the judgment debtor make a bona fide settlement of the judgment, the attorney cannot hold the realty on the one hand or look to the debtor on the other. *Fillmore v. Wells*, 10 Colo. 228, 15 P. 343 (1887).

**Lien may also be enforced in civil action giving rise to claim.** The attorney's charging lien may not only be asserted but may be enforced in the civil action which gave rise to the lien claim or, in the alternative, in an independent action. Both are "proper civil actions" within the meaning of this section. *Gee v. Crabtree*, 192 Colo. 550, 560 P.2d 835 (1977); *In re Mann*, 697 P.2d 778 (Colo. App. 1984); *In re Shapard*, 129 P.3d 1007 (Colo. App. 2004); *Martinez v. Mintz Law Firm, LLC*, 2016 CO 43, 371 P.3d 671.

To restrict the means of enforcement of an attorney's lien solely to independent civil actions would be a waste of judicial time as well as contrary to the legislative intent reflected by the statutory language. The trial judge who hears the proceedings which gave rise to the lien is in a position to determine whether the amount asserted as a lien is proper and can determine the means for the enforcement of the lien. *Gee v. Crabtree*, 192 Colo. 550, 560 P.2d 835 (1977).

An attorney who holds funds against which another attorney's charging lien is asserted can challenge the lien by filing a motion in that action. *Martinez v. Mintz Law Firm, LLC*, 2016 CO 43, 371 P.3d 671.

The trial court may not adjudicate the rights of persons not actually or constructively before it; therefore it erred in divorce action by giving priority to parents' interest in parties' residence over the husband's attorney's charging lien in the proceeds from the sale of the residence. In re *Weydert*, 703 P.2d 1336 (Colo. App. 1985).

Filing a notice of an attorney's lien merely places others on notice that the attorney claims an interest in the funds subject to the lien and does not constitute the commencement of a "proper civil action" for the purpose of enforcing the lien. In re *Mitchell*, 55 P.3d 183 (Colo. App. 2002).

**An attorney must enforce a charging lien within the limitation period applicable to enforcement of the underlying debt.** *Gold v. Duncan Ostrander & Dingess, P.C.*, 143 P.3d 1192 (Colo. App. 2006).

**In a dissolution-of-marriage proceeding, the amount and allocation of fees between parties may not be challenged independently by lien claimant.** In re *Shapard*, 129 P.3d 1007 (Colo. App. 2004).

**There is no right to a jury trial in action to establish an attorney's lien** since it is equitable in nature, and counterclaim for breach of contract does not change nature of the action. In re *Rosenberg*, 690 P.2d 1293 (Colo. App. 1984).

**Court erred in enjoining enforcement of attorney's lien where it failed to give notice to all the parties involved and where it failed to determine the validity of the lien and whether there existed any property which could be reached to enforce it.** *Seitz v. Seitz*, 33 Colo. App. 180, 516 P.2d 654 (1973).

**Attorney lien statute does not create implied exception to protections offered to workers' compensation benefits**, because the workers' compensation statute unequivocally exempts workers' compensation benefits from any remedy ordinarily available to satisfy a debt, with only one explicit exception. *James E. Freemyer, P.C. v. Indus. Claim Appeals Office*, 32 P.3d 564 (Colo. App. 2000).

**Attorney's charging lien may attach to an award of spousal maintenance.** The plain language of the statute permits an attorney's lien on any judgment the attorney may have obtained or assisted in obtaining. *Samuel J. Stoorman & Assocs. v. Dixon*, 2017 CO 42, 394 P.3d 691.

B. Notice.

**This section goes no further than to give the attorney the right to file a notice of lien**, which filing only perfects his right, if any, in the subject matter of the action. In re Crabtree, 37 Colo. App. 149, 546 P.2d 505 (1975), rev'd on other grounds, 192 Colo. 550, 560 P.2d 835 (1977).

**If the attorney expects satisfaction of his claim out of the judgment, he must so notify the judgment debtor**, and the notice must be followed, within a reasonable time, by suit. Colo. State Bank v. Davidson, 7 Colo. App. 91, 42 P. 687 (1895).

**The notice must be followed within a reasonable time by suit.** Colo. State Bank v. Davidson, 7 Colo. App. 91, 42 P. 687 (1895).

**The judgment debtor must be notified of the attorney's intention** to take advantage of the statute. Boston & Colo. Smelting Co. v. Pless, 9 Colo. 112, 10 P. 652 (1885).

**In order to render the lien valid as against the judgment debtor, he must have notice that their fees were unpaid** in whole or in part, and that they relied upon the judgment as security therefor. Boston & Colo. Smelting Co. v. Pless, 9 Colo. 112, 10 P. 652 (1885); Fillmore v. Wells, 10 Colo. 228, 15 P. 343 (1887); Johnson v. McMillan, 13 Colo. 423, 22 P. 769 (1889).

**Since no particular form of notice is provided in this section**, the common law rule of notice prevails. Boston & Colo. Smelting Co. v. Pless, 9 Colo. 112, 10 P. 652 (1885); Fillmore v. Wells, 10 Colo. 228, 15

P. 343 (1887); Johnson v. McMillan, 13 Colo. 423, 22 P. 769 (1889).

**In the case of demands in suit and in the case of judgments obtained in whole or in part by any attorney**, an attorney may file with the clerk of the court wherein such cause is pending, notice of his claim as lienor. In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**The statutory notice to the judgment debtor of the intention of such attorney to claim a lien on the judgment is unnecessary** where the debtor has actual knowledge of such claim. Aleman v. Annable, 110 Colo. 61, 129 P.2d 987 (1942).

**The notice that this section provides "may" be filed with the clerk of the court is not a prerequisite** to the validity of the lien. Collins v. Thuringer, 92 Colo. 433, 21 P.2d 709 (1933).

**As between attorney and client, the lien is valid without notice.** Collins v. Thuringer, 92 Colo. 433, 21 P.2d 709 (1933).

**The provision in this section concerning notice is intended to give constructive notice**, so as to preserve the attorney's lien in the event that the judgment debtor should settle the judgment without having actual notice of the lien claim or some third person, without having such actual notice, should acquire an interest in the judgment or in its proceeds. Collins v. Thuringer, 92 Colo. 433, 21 P.2d 709 (1933).



**In the former statute there was no provision permitting an attorney to file a notice of his lien claim and making it constructive notice thereof.** Fillmore v. Wells, 10 Colo. 228, 15 P. 343 (1887); Collins v. Thuringer, 92 Colo. 433, 21 P.2d 709 (1933).

**Perfection of an attorney's lien as to third parties is not retroactive** so as to have priority over bona fide purchaser for value. In re Mailin Oil Co., 67 B.R. 284 (Bankr. D. Colo. 1986).

**Priority of liens.** Where notice of the attorney's lien was properly filed before the entry of judgment and before the state's assertion of a lien, the attorney's lien had priority. Matter of Estate of Benney, 771 P.2d 7 (Colo. App. 1988).

**If a judgment debtor, without notice that the attorney intends to enforce his lien, should make a bona fide settlement of the judgment or if an innocent third person, without such notice, should purchase the fruits of the judgment or should acquire an interest in the judgment, the attorney's lien would be lost.** Collins v. Thuringer, 92 Colo. 433, 21 P.2d 709 (1933).

**Lien can be enforced against settlement funds** once the settlement agreement has been carried out, but only to the extent that the client has an interest in the funds. Any allegations regarding a breach of the settlement agreement must be disposed of before the court can enter an order enforcing the attorney's lien. MCI Constructors v. District Court, 799 P.2d 40 (Colo. 1990).

## **VI. POSSESSORY LIEN EXTINGUISHED BY SETTLEMENT.**

**The general, retaining, or possessory lien attaches to all papers, books, documents, securities, and money** coming into an attorney's possession in the course of his professional employment. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir.), aff'g In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo. 1958).

**The attorney has a right to retain them in his possession until the general balance due him for legal services is paid,** whether such services grew out of the special matters then in his hands or other legal matters. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir.), aff'g In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo. 1958).

**It does not create an equitable charge which follows the proceeds received in settlement of a claim,** such as where a "claim" of the bankrupt against the leaders was extinguished by the agreed settlement. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir.), aff'g In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo. 1958).

**Where a settlement extinguished the claim by necessity, it also extinguished any "possessory" lien** which attached to the claim itself. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir.), aff'g In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo. 1958).

**Moreover, even if it were held that a possessory lien attaches to any claim turned over to an attorney when that claim is placed in his hands,** such a lien does not continue after the claim is

extinguished so as to be transferred as an equitable charge against property received in settlement. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir.) aff'g *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo. 1958).

**To do so would violate the distinction between the "possessory" and "charge"**

**liens** and go contrary to the caution expressed that the two must not be confused. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir.), aff'g *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo. 1958).

### **13-93-115. Other property to which lien attaches.**

An attorney has a lien for a general balance of compensation upon any papers of his or her client that have come into his or her possession in the course of his or her professional employment and upon money due to his or her client in the hands of the adverse party in an action or proceeding in which the attorney was employed from the time of giving notice of the lien to that party.

**Source: L. 2017:** Entire article added with relocations, (SB 17-227), ch. 192, p. 701, § 1, effective August 9.

**Editor's note:** This section is similar to former § 12-5-120 as it existed prior to 2017.

## **ANNOTATION**

**Law reviews.** For article, "The Treatment of Attorney's Liens in Colorado", see 16 Colo. Law. 623 (1987). For article, "Perfection and Enforcement of Attorney's Liens in Colorado", see 26 Colo. Law. 57 (Mar. 1997). For article, "Ethical Considerations of Attorney's Liens", see 31 Colo. Law. 51 (Apr. 2002). For article, "Recording Charging Liens Against Real Property: When, Not Whether", see 31 Colo. Law. 121 (Oct. 2002).

**Annotator's note.** Since § 13-93-115 is similar to former § 12-5-120 and laws

antecedent to that section, relevant cases construing those provisions have been included in the annotations to this section.

**It was not the intention of the general assembly to abolish the well-established distinction between the two classes of liens** (i.e. retaining liens and charging liens) and to create a lien upon a judgment and its proceeds to secure the payment of attorney's fees earned in matters not at all connected with the suit in which the judgment is rendered. *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), aff'd sub nom.

Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**Under Colorado law, the common law attorney's lien is not preserved** and no lien exists apart from statute. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir.), aff'g In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo. 1958).

**Colorado has two statutory provisions pertaining to attorney's liens**, former § 12-1-10 (CRS 53) (now § 13-93-114) and former § 12-1-11 (CRS 53) (now this section). In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**Former § 12-1-10 (CRS 53) (now § 13-93-114) and former § 12-1-11 (CRS 53) (now this section) did not separate the two classes of liens as clearly as might be desired.** Donaldson v. Gaudio, 260 F.2d 333 (10th Cir.), aff'g In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo. 1958).

**The Colorado supreme court has declared that former § 12-1-10 (CRS 53) (now § 13-93-114) and former § 12-1-11 (CRS 53) (now this section) established two distinct classes of liens**, each with its own limitation. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir.), aff'g In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo. 1958).

**Where an attorney's right to a lien exists by virtue of a statute**, such right cannot be extended beyond the fair intendment of such statute. In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd

sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**There is no authority in Colorado for an equitable lien** apart from former § 12-1-10 (CRS 53) (now § 13-93-114) and former § 12-1-11 (CRS 53) (now this section). In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**This is in accord with the general rule that where a charging lien is created by statute**, the right to the lien exists only in cases specifically provided for by such statute. In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio 260 F.2d 333 (10th Cir. 1958).

**Charging lien not created** where money paid to attorney on behalf of debtor in settlement of a lawsuit against a third party remained in attorney's possession when compensable work had been completed. In re Oiltech, Inc., 38 B.R. 484 (Bankr. D. Nev. 1984).

**The right to the special, particular, or charging lien rests, not on possession, but on the equity of an attorney** to be paid his fees and disbursements out of the judgment obtained as a result of his service and skill. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir.), aff'g In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo. 1958).

**This section intended to confer a right to a charging lien only when a claim becomes a "claim in suit".** Donaldson v. Gaudio, 260 F.2d 333 (10th Cir.), aff'g In re

Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo. 1958).

**A "charging lien" could not attach for services in matters not involved in the suit.** Donaldson v. Gaudio, 260 F.2d 333 (10th Cir.), aff'g In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo. 1958).

**A charging lien under this section can be waived.** Thus, attorney waived lien by virtue of assurances made by the attorney's associate to third parties to whom papers belonged that the papers would be returned to the parties. It was irrelevant whether the papers belonged to the attorney's client or to third parties. People v. Brown, 840 P.2d 1085 (Colo. 1992).

**A lien cannot be created by the mere fact that an attorney is entitled to be paid for his services,** for to allow such a lien would be to give this creditor a preferred position which the law does not intend. In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**Federal court has no jurisdiction to adjudicate amount of fees properly owing** between an attorney and his clients with respect to matters unrelated to litigation before the court. Jenkins v. Weinshienk, 670 F.2d 915 (10th Cir. 1982).

**Adjudication of existence of lien separate from adjudication of amount.** Adjudicating the amount of fees owing between lawyer and client is not essential to determining the existence of an attorney's retaining lien. Jenkins v. Weinshienk, 670 F.2d 915 (10th Cir. 1982).

An attorney has no legal basis for the assertion of a lien simply to secure a fee obligation. People v. Razatos, 636 P.2d 666 (Colo. 1981).

**To allow such a lien would be to give this attorney creditor a preferred position** which the law does not intend. In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

**In order for an attorney to assert a retaining lien,** the client must owe the attorney a general balance of compensation. People v. Garnett, 725 P.2d 1149 (Colo. 1986).

**In deciding whether to enforce a retaining lien, a court should first determine the relationship between the party seeking the documents and the attorney** and whether the party against whom the lien is asserted owes any fees to the attorney. Norton v. Ruebel, 2024 COA 108, 562 P.3d 96.

**An attorney does not waive a retaining lien in its entirety by releasing a portion of the files covered by the lien** to a client or a third party. Norton v. Ruebel, 2024 COA 108, 562 P.3d 96.

**Validity and extent of attorney's lien in bankruptcy** is determined by state law. In re Life Imaging Corp., 31 B.R. 101 (Bankr. D. Colo. 1983).

**Lien not extinguished by bankruptcy.** Under 11 U.S.C. § 101, an attorney's lien in Colorado is a "statutory" and not a "judicial" lien, which cannot be avoided by a bankruptcy debtor under 11 U.S.C. § 522(f).

Ranes v. Molen, 31 B.R. 70 (Bankr. D. Colo. 1983).

An attorney's lien which is valid under state law is not extinguished when the client files bankruptcy. Further, there is no provision in the bankruptcy code for the voiding of a valid statutory attorney's lien. In re Life Imaging Corp., 31 B.R. 101 (Bankr. D. Colo. 1983).

**Creditor's statutory attorney's lien obtained pursuant to former § 12-5-119 (now § 13-93-114) and former § 12-5-120 (now this section) was not merged into the judgment lien he subsequently obtained.** In re Dickinson, 185 B.R. 840 (Bankr. D. Colo. 1995).

**Attorney's interest in bankruptcy debtor's files.** An attorney is entitled to adequate protection of interest in a bankruptcy debtor's files if it is required to turn them over to the debtor. A form of adequate protection is to require the debtor to make cash payments to the attorney to the extent that the use of the property results in a decrease in the value of the attorney's interest in the property. The decrease in value of the attorney's interest is that portion of unpaid attorney's fees attributable to the creation of the specific documents involved. In re Life Imaging Corp., 31 B.R. 101 (Bankr. D. Colo. 1983).

When substitute collateral is posted to replace books, records, and files which were the subject of an attorney's lien, the lien attaching to such collateral is of the same character as and is to be accorded no greater dignity than the lien on the original property.

In re Oiltech, Inc., 38 B.R. 484 (Bankr. D. Nev. 1984).

In order to determine the amount of the attorney's lien, evidentiary hearing is required to determine the value to the debtor of the books, records, and files once held by the attorney. In re Oiltech, Inc., 38 B.R. 484 (Bankr. D. Nev. 1984).

**Lien attaches to client's papers once attorney has completed compensable work.** People ex rel. MacFarlane v. Harthun, 195 Colo. 38, 581 P.2d 716 (1978).

**Homestead exemption statute includes attorney's liens within its ambit and the attorney's lien does not attach to the homestead.** If the debtor has any net equity remaining after the sale of the property in question, the creditor's attorney's lien attaches to that net equity and his claim is unsecured for any amount over that sum. In re Dickinson, 185 B.R. 840 (Bankr. D. Colo. 1995).

**Lien continues during litigation over amount.** The retaining lien exists if any fees are owed and apparently continues during litigation over the amount owing. Jenkins v. Weinshienk, 670 F.2d 915 (10th Cir. 1982).

**Unconditional assurances that documents will be returned constitute an express waiver of lien.** People v. Brown, 840 P.2d 1085 (Colo. 1992).

**Priority of liens.** Where notice of the attorney's lien was properly filed before the entry of judgment and before the state's assertion of a lien, the attorney's lien had priority. Matter of Estate of Benney, 771 P.2d 7 (Colo. App. 1988).

**Enforceability of attorney's retaining lien against third parties, unlike a charging lien, is not conditioned upon the requirement of notice.** In re Oiltech, Inc., 38 B.R. 484 (Bankr. D. Nev. 1984).

**Attorney's lien begins to accrue from the moment of commencement of services** and may then be enforced against any monies or property due and owing the attorney's client who receives judgment and is a lien on those items. In re Smith, 687 P.2d 519 (Colo. App. 1984).

**Exception.** In proceeding on counterclaim by attorney for recovery of attorney fees, trial court did not abuse discretion nor exceed jurisdiction by ordering production of files in attorney's possession relating to legal work done for client, even though files were subject to retaining lien. Jenkins v. District Court, 676 P.2d 1201 (Colo. 1984).

**For discussion of exceptions to retaining lien,** see Jenkins v. Weinshienk, 670 F.2d 915 (10th Cir. 1982).

**Misconduct in other cases not to affect assertion of lien.** Misconduct in a particular case, if suspension or disbarment is not involved, should not result in the loss of an attorney's ability to assert his lien in other cases where professional misconduct is not involved. People ex rel. MacFarlane v. Harthun, 195 Colo. 38, 581 P.2d 716 (1978).

**Case involving misconduct affected.** When an attorney is discharged or removed from a particular case for professional misconduct in the handling of his client's affairs, he has no right to assert a "retaining

lien" as to that client's papers which are in his possession and must return those papers to that client upon request. People ex rel. MacFarlane v. Harthun, 195 Colo. 38, 581 P.2d 716 (1978).

**Wrongful assertion of attorney's lien may constitute misconduct.** Wrongfully asserting an attorney's lien under this section on stock certificates in the attorney's possession, where no "general balance of compensation" was owed, constitutes professional misconduct. People ex rel. Goldberg v. Gordon, 199 Colo. 296, 607 P.2d 995 (Colo. 1980).

**Unfounded claim of lien violates professional code.** The assertion of an attorney's lien in circumstances where the attorney has no statutory or legal foundation for a lien and, in fact, has an uncertain claim to the fee being claimed through the lien violates the code of professional responsibility. People v. Razatos, 636 P.2d 666 (Colo. 1981); People v. Smith, 830 P.2d 1003 (Colo. 1992); People v. Brown, 840 P.2d 1085, (Colo. 1992); People v. Mills, 861 P.2d 708 (Colo. 1993) (decided under DR 1-102 (A)(5)).

**Even assuming that an attorney-client relationship had been created between attorney and client's wife for purposes of this section, section does not authorize an attorney to assert a retaining lien on a client's United States passport.** There is nothing in this section that would permit an attorney to assert a possessory, or retaining, interest in a United States passport in order to assure payment for legal services. A passport is a sui generis type of federal

property that does not fall within a client's "papers" on which a retaining lien may be asserted under this section. Matter of Attorney G., 2013 CO 27, 302 P.3d 248.

**Applied** in Holter v. Moore & Co., 702 F.2d 854 (10th Cir. 1983).

## PART 2

### LAW STUDENT PRACTICE

#### **13-93-201. Legal aid dispensaries - law students practice.**

Students of any law school that maintains a legal-aid dispensary where poor or legally underserved persons receive legal advice and services shall, when representing the dispensary and its clients, be authorized to advise clients on legal matters and appear in court or before any arbitration panel as if licensed to practice law.

**Source: L. 2017:** Entire article added with relocations, (SB 17-227), ch. 192, p. 701, § 1, effective August 9.

**Editor's note:** This section is similar to former § 12-5-116 as it existed prior to 2017.

### ANNOTATION

**Law reviews.** For article, "Providing Legal Services for the Poor: A Dilemma and an Opportunity", see 11 Colo. Law. 666 (1982). For article, "Problems in Clinical Integration: A Case Study of the Integrated Clinical Program of the University of Denver College of Law", see 59 Den. L.J. 459 (1982).

**A law student acting on behalf of the legal aid society for an alien satisfies the requirements of a "counsel"** and is

authorized to act as an attorney in a deportation hearing as an accredited representative of a social service organization. Pilapil v. Immigration & Naturalization Serv., 424 F.2d 6 (10th Cir. 1970).

**However, despite the language of this section,** law students authorized to appear in court must have the approval of the judge of the court in which they propose to appear. People v. Coria, 937 P.2d 386 (Colo. 1997).

**13-93-202. Practice by law student intern.**

(1) An eligible law student intern, as specified in section 13-93-203, may appear and participate in any civil proceeding in any municipal, county, or district court or before any administrative agency in this state or in any county or municipal court criminal proceeding, except when the defendant has been charged with a felony, or in any juvenile proceeding in any municipal or county court or before any magistrate in any juvenile or other proceeding or any parole revocation under the following circumstances:

(a) If the person on whose behalf he or she is appearing has indicated his or her consent to that appearance and the law student intern is under the supervision of a supervising lawyer, as specified in section 13-93-205;

(b) When representing the office of the state public defender and its clients, if the person on whose behalf he or she is appearing has indicated his or her consent to that appearance and the law student intern is under the supervision of the public defender or one of his or her deputies; and

(c) On behalf of the state or any of its departments, agencies, or institutions, a county, a city, or a town, with the written approval and under the supervision of the attorney general, attorney for the state, county attorney, district attorney, city attorney, town attorney, or authorized legal services organization. A general approval for the law student intern to appear, executed by the appropriate supervising attorney pursuant to this subsection (1)(c), shall be filed with the clerk of the applicable court and brought to the attention of the judge thereof.

(2) The consent or approval referred to in subsection (1) of this section, except a general approval, shall be made in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal.

(3) In addition to the activities authorized in subsection (1) of this section, an eligible law student intern may engage in other activities under the general supervision of a supervising lawyer, including but not limited to the preparation of pleadings, briefs, and other legal documents that must be approved and signed by the supervising lawyer and assistance to indigent inmates of correctional institutions who have no attorney of record and who request such assistance in preparing applications and supporting documents for postconviction relief.

**Source: L. 2017:** Entire article added with relocations, (SB 17-227), ch. 192, p. 701, § 1, effective August 9.

**Editor's note:** This section is similar to former § 12-5-116.1 as it existed prior to 2017.



## ANNOTATION

**The sixth amendment requires that a licensed lawyer be present in the courtroom when a law student represents a criminal defendant during a critical stage of a criminal case.** If the supervising lawyer is not in the courtroom during those critical stages, no licensed lawyer is present, and the defendant is denied his or her constitutional right to counsel guaranteed by the sixth amendment. Such a complete deprivation of counsel is a structural error,

requiring reversal without regard to any showing of prejudice. *People v. McGlaughlin*, 2018 COA 114, 428 P.3d 691.

**Issues of adequacy of representation involving violations of the rules governing student practice, other than the supervising attorney's presence, are properly analyzed under the test for ineffective assistance of counsel announced in *Strickland*.** *People v. McGlaughlin*, 2018 COA 114, 428 P.3d 691.

### **13-93-203. Eligibility requirements for law student intern practice.**

(1) In order to be eligible to make an appearance and participate pursuant to section 13-93-202, a law student must:

- (a) Be duly enrolled in or a graduate of any accredited law school;
- (b) Have completed a minimum of two years of legal studies;
- (c) Have the certification of the dean of such law school that he or she has no personal knowledge of or knows of nothing of record that indicates that the student is not of good moral character and, in addition, that the law student has completed the requirements specified in subsection (1)(b) of this section and is a student in good standing;
- (d) Be introduced to the court or administrative tribunal in which he or she is appearing as a law student intern by a lawyer authorized to practice law in this state;
- (e) Neither ask nor receive any compensation or remuneration of any kind for his or her services from the person on whose behalf he or she renders services; but such limitation shall not prevent the law student intern from receiving credit for participation in the program upon prior approval of the law school, nor shall it prevent the law school, the state, a county, a city, a town, or the office of the district attorney or the public defender from paying compensation to the law school intern, nor shall it prevent any agency from making such charges for its services as it may otherwise properly require; and

(f) State that he or she has read, is familiar with, and will be governed in the conduct of his or her activities under section 13-93-202 by the code of professional responsibility adopted by the supreme court.

**Source: L. 2017:** Entire article added with relocations, (SB 17-227), ch. 192, p. 702, § 1, effective August 9.

**Editor's note:** This section is similar to former § 12-5-116.2 as it existed prior to 2017.

**13-93-204. Certification of law student intern by law school dean - filing - effective period - withdrawal by dean or termination.**

(1) The certification by the law school dean, pursuant to section 13-93-203 (1)(c), required in order for a law student intern to appear and participate in proceedings:

(a) Shall be filed with the clerk of the supreme court and, unless it is sooner withdrawn, shall remain in effect until the announcement of the results of the first bar examination following the student's graduation. For any student who passes said bar examination, the certification shall continue in effect until the date he or she is admitted to the bar.

(b) May be withdrawn by the dean at any time by mailing a notice to that effect to the clerk of the supreme court, and such withdrawal may be without notice or hearing and without any showing of cause; and

(c) May be terminated by the supreme court at any time without notice or hearing and without any showing of cause.

**Source: L. 2017:** Entire article added with relocations, (SB 17-227), ch. 192, p. 703, § 1, effective August 9.

**Editor's note:** This section is similar to former § 12-5-116.3 as it existed prior to 2017.

**13-93-205. Qualifications of supervising lawyer.**

(1) A supervising lawyer, under whose supervision an eligible law student intern appears and participates pursuant to section 13-93-202, shall be authorized to practice law in this state and:

- (a) Shall be a lawyer in the public sector as provided in section 13-93-202 (1)(b) and (1)(c);
- (b) Shall assume personal professional responsibility for the conduct of the law student intern; and
- (c) Shall assist the law student intern in his or her preparation to the extent the supervising lawyer considers it necessary.

**Source: L. 2017:** Entire article added with relocations, (SB 17-227), ch. 192, p. 703, § 1, effective August 9.

**Editor's note:** This section is similar to former § 12-5-116.4 as it existed prior to 2017.

**13-93-206. Other rights not affected by provisions for practice by law student intern.**

Nothing contained in sections 13-93-201 to 13-93-205 shall affect the right of any person who is not admitted to practice law to do anything that he or she might lawfully do prior to the adoption of these sections.

**Source: L. 2017:** Entire article added with relocations, (SB 17-227), ch. 192, p. 703, § 1, effective August 9.

**Editor's note:** This section is similar to former § 12-5-116.5 as it existed prior to 2017.

## PART 3

### LICENSED LEGAL PARAPROFESSIONALS

**13-93-301. License to practice necessary.**

(1) An individual shall not practice as a legal paraprofessional without having previously obtained a license to perform certain types of legal services as a licensed legal paraprofessional pursuant to the supreme court's rules governing licensed legal paraprofessionals.

(2) Upon request of the supreme court or a representative of its office of attorney regulation counsel, the Colorado bureau of investigation shall conduct a state and national fingerprint-based criminal history record check of an applicant utilizing records of the Colorado bureau of

investigation and the federal bureau of investigation. Upon completion of the criminal history record check, the Colorado bureau of investigation shall provide the results to the requesting agency.

(3) Upon request of the supreme court or a representative of its office of attorney regulation counsel, an applicant shall provide a name-based judicial record check, as defined in section 22-2-119.3 (6)(d), if the applicant has a record of arrest without a disposition.

(4) Local law enforcement agencies shall cooperate with any supreme court request for records related to an applicant's criminal history.

**Source: L. 2024:** Entire part added, (HB 24-1291), ch. 131, p. 461, § 1, effective August 7.

### **13-93-302. Scope of authority to practice.**

(1) A licensed legal paraprofessional's scope of practice is limited to representing a client in:

(a) A legal separation, declaration of invalidity of marriage, or dissolution of marriage or civil union;

(b) An initial allocation or modification of an allocation of parental responsibility matter, including parentage determinations;

(c) A matter involving establishment or modification of child support or maintenance;

(d) Seeking, modifying, or terminating a civil protection order pursuant to article 14 of this title 13;

(e) A matter involving a name change pursuant to section 13-15-101; and

(f) A matter involving a request for an amended birth certificate to change the sex designation of an adult pursuant to section 25-2-113.8.

(2) A licensed legal paraprofessional shall not:

(a) Engage in any tasks or activities that are prohibited by the Colorado supreme court pursuant to court rules;

(b) Represent a client in matters governed by article 2.5, 3, 3.1, 3.3, 4.5, 5, 5.5, or 7 of title 19; or

(c) Represent a client in an immigration matter pursuant to section 6-1-727 unless authorized pursuant to federal law to represent an individual in immigration matters.

**Source: L. 2024:** Entire part added, (HB 24-1291), ch. 131, p. 462, § 1, effective August 7.

**13-93-303. No discrimination - issuance of license.**

An individual shall not deny another individual a license to practice law as a legal paraprofessional on account of race, creed, color, religion, disability, age, sex, sexual orientation, gender identity, gender expression, marital status, national origin, or ancestry.

**Source: L. 2024:** Entire part added, (HB 24-1291), ch. 131, p. 462, § 1, effective August 7.

**13-93-304. License fee.**

The license fee for a license to practice law as a legal paraprofessional in this state is set by the supreme court's rules governing licensed legal paraprofessionals.

**Source: L. 2024:** Entire part added, (HB 24-1291), ch. 131, p. 462, § 1, effective August 7.

**13-93-305. Clerk of supreme court keeps roll of licensed legal paraprofessionals.**

The clerk of the supreme court shall make and keep a roll or record of individuals who are licensed to practice law as a licensed legal paraprofessional within this state and who have taken the prescribed oath.

**Source: L. 2024:** Entire part added, (HB 24-1291), ch. 131, p. 462, § 1, effective August 7.

**13-93-306. Supreme court may strike name.**

An individual who is not listed in the roll created pursuant to section 13-93-305 shall not be admitted to practice as a licensed legal paraprofessional within this state and is subject to the penalty described in section 13-93-309. The justices of the supreme court in open court, at the justices' discretion, may strike the name of any licensed legal paraprofessional from the roll for misconduct in the legal paraprofessional's office.

**Source: L. 2024:** Entire part added, (HB 24-1291), ch. 131, p. 463, § 1, effective August 7.

**13-93-307. Individuals forbidden to practice.**

A coroner, sheriff, deputy sheriff, or jailer, though qualified, shall not practice as a licensed legal paraprofessional in the county in which the individual is commissioned or appointed, and a clerk of the supreme court or district court shall not practice as a licensed legal paraprofessional in the court in which the individual is the clerk.

**Source: L. 2024:** Entire part added, (HB 24-1291), ch. 131, p. 463, § 1, effective August 7.

**13-93-308. Judge not to act as licensed legal paraprofessional.**

- (1) It is unlawful for judges of the district, county, and municipal courts to:
  - (a) Counsel or advise in or write any petition or answer or other pleadings in any proceeding as a licensed legal paraprofessional;
  - (b) Perform any service as a licensed legal paraprofessional; or
  - (c) Be interested in any profits or emoluments arising out of any practice in any of the courts, except costs in the judge's own courts.
- (2) Subsection (1) of this section does not apply to:
  - (a) A county court judge who is also a licensed legal paraprofessional who practices in counties of certain classes as specified by the laws relating to county courts in courts other than the judge's county court and in matters that have not come before the county court; and
  - (b) A municipal judge who is also a licensed legal paraprofessional who practices in courts other than the judge's municipal court and in matters that have not come before the municipal court.

**Source: L. 2024:** Entire part added, (HB 24-1291), ch. 131, p. 463, § 1, effective August 7.

**13-93-309. Practicing law without license deemed contempt.**

An individual who, without having obtained a license from the supreme court of this state, advertises, represents, or holds the individual's self out in any manner as a licensed legal

paraprofessional or who appears in any court of record in this state to conduct a suit, action, proceeding, or cause for another individual is guilty of contempt of the supreme court of this state and of the court in which the individual appears and must be punished according to law.

**Source: L. 2024:** Entire part added, (HB 24-1291), ch. 131, p. 463, § 1, effective August 7.

**13-93-310. Notice of charges - time to show cause.**

Before a licensed legal paraprofessional's name is stricken off the roll created in section 13-93-305, the clerk of the supreme court shall provide written notice to the licensed legal paraprofessional stating distinctly the grounds of complaint or the charges exhibited against the licensed legal paraprofessional. After receiving the notice, the licensed legal paraprofessional may request a hearing and must be allowed reasonable time to collect and prepare testimony for the licensed legal paraprofessional's defense. Any licensed legal paraprofessional whose name, at any time, is stricken from the roll by order of the court is considered as though the licensed legal paraprofessional's name had never been written on the roll until a time when the justices, in open court, authorize the licensed legal paraprofessional to be listed on the roll.

**Source: L. 2024:** Entire part added, (HB 24-1291), ch. 131, p. 464, § 1, effective August 7.

**13-93-311. Licensed legal paraprofessional not to be surety.**

A licensed legal paraprofessional shall not become surety in any bond or recognizance of any sheriff or coroner, in any bond or recognizance for the appearance of any person charged with any public offense, or upon any bond or recognizance authorized by any statute to be taken for the payment of any sum of money into court in default of the principal, without the consent of a judge of the district court first having approved the surety.

**Source: L. 2024:** Entire part added, (HB 24-1291), ch. 131, p. 464, § 1, effective August 7.

**13-93-312. Judge not to have law partner.**

A judge shall not have a partner acting as attorney, counsel, or licensed legal paraprofessional in any court in the judge's judicial district, county, municipality, or precinct.

**Source: L. 2024:** Entire part added, (HB 24-1291), ch. 131, p. 464, § 1, effective August 7.

**13-93-313. Licensed legal paraprofessional's lien - notice of claim filed.**

A licensed legal paraprofessional has a lien on any money, property, choses in action, or claims and demands in the licensed legal paraprofessional's hands, on any judgment the licensed legal paraprofessional may have obtained or assisted in obtaining, in whole or in part, and on any and all claims and demands in suit for any fees or balance of fees due or to become due from any client. In the case of demands in suit and in the case of judgments obtained in whole or in part by any licensed legal paraprofessional, the licensed legal paraprofessional may file, with the clerk of the court when a cause is pending, notice of the licensed legal paraprofessional's claim as lienor, setting forth specifically the agreement of compensation between the licensed legal paraprofessional and the licensed legal paraprofessional's client, which notice, duly entered of record, is notice to all persons and to all parties, including the judgment creditor, to all persons in the case against whom a demand exists, and to all persons claiming by, through, or under any person having a demand in suit or having obtained a judgment that the licensed legal paraprofessional whose appearance has been entered has a first lien on the demand in suit or on the judgment for the amount of the licensed legal paraprofessional's fees. The notice of lien shall not be presented in any manner to the jury in the case in which the same is filed. The lien may be enforced by the proper civil action.

**Source: L. 2024:** Entire part added, (HB 24-1291), ch. 131, p. 464, § 1, effective August 7.

**13-93-314. Other property to which lien attaches.**

A licensed legal paraprofessional has a lien for a general balance of compensation upon any papers of the licensed legal paraprofessional's client that have come into the licensed legal paraprofessional's possession in the course of the licensed legal paraprofessional's professional employment and upon money due to the licensed legal paraprofessional's client in the hands of the adverse party in an action or proceeding in which the licensed legal paraprofessional was employed from the time of giving notice of the lien to that party.

**Source: L. 2024:** Entire part added, (HB 24-1291), ch. 131, p. 465, § 1, effective August 7.



**PART 4**

**COLORADO LEGAL PRACTICE INTEGRITY AND FEE-SHARING  
PROHIBITION ACT**

**Editor's note:** Section 2(2) of chapter 403 (HB 26-1421), Session Laws of Colorado 2026, provides that the act adding this part 4 applies to conduct occurring and contracts and agreements entered into or renewed on or after August 12, 2026.

**13-93-401. Short title.**

The short title of this part 4 is the "Colorado Legal Practice Integrity and Fee-sharing Prohibition Act".

**Source: L. 2026:** Entire part added, (HB 26-1421), ch. 403, p. 2517, § 1, effective August 12.

**13-93-402. Legislative declaration.**

(1) The general assembly finds that:

(a) The rules of the Colorado supreme court governing the practice of law underscore that the independent professional judgment of lawyers is essential to the fair administration of justice and restrict the sharing of legal fees with nonlawyers and nonlawyer ownership or control of a law firm;

(b) Financial arrangements that provide nonlawyers with an economic interest in law firms and their fees, revenues, or case outcomes, however structured, threaten a lawyer's duties of loyalty to their client, confidentiality, and professional independence;

(c) Even minimal nonlawyer ownership or profit participation in law firms compromises public trust in the legal profession;

(d) Alternative business structures have increasingly been used to circumvent longstanding prohibitions on nonlawyer ownership of law firms and the concomitant sharing of attorney fees; and

(e) Colorado has a compelling interest in regulating the provision of legal services affecting Colorado clients, regardless of where a lawyer or law firm is located.

(2) The general assembly therefore declares that the purposes of this part 4 are to:

- (a) Prohibit nonlawyer ownership and fee sharing in the provision of legal services to third parties;
  - (b) Prevent contractual formalities or out-of-state entities from circumventing this prohibition;
  - (c) Protect clients and the integrity of the legal profession in Colorado; and
  - (d) Provide effective additional enforcement mechanisms for professionals and clients in Colorado.
- (3) It is not the intent of the general assembly to:
- (a) Prohibit or restrict the ability of creditors or lawful assignees of claims to enforce the claims, including through the use of lawyers; or
  - (b) Alter longstanding practices related to debt collection if legal services are rendered in compliance with applicable rules of professional conduct.

**Source: L. 2026:** Entire part added, (HB 26-1421), ch. 403, p. 2517, § 1, effective August 12.

### **13-93-403. Definitions.**

As used in this part 4, unless the context otherwise requires:

- (1) "Alternative business structure" means an entity or organizational structure, wherever organized or denominated, that:
- (a) Either:
    - (I) Economically participates in, provides, or holds itself out as providing legal services to third parties or that exercises control over the provision of legal services to third parties; or
    - (II) Shares in profits or percentages of legal fees or amounts awarded to or received by a lawyer or law firm as a result of the provision of legal services, directly or indirectly, regardless of whether the entity or organizational structure exercises any control over legal services; and
  - (b) Is owned by, is controlled by, or economically participates in or is fee sharing with, directly or indirectly, one or more nonlawyers.
- (2) (a) "Economically participates in" includes exercising authority or control over legal representation, legal strategy, legal fee determination, settlement decisions, or the allocation of legal fees; fee-sharing arrangements; equity interests; profit- or revenue-sharing arrangements; equity options; warrants; convertible or contingent equity interests; phantom equity; or any other

arrangement, however structured or described, that provides a nonlawyer with a financial interest in legal fees, law firm revenue, or law firm profitability.

(b) "Economically participates in" does not include a financial interest arising solely from the ownership or assignment of a claim if the person does not direct or control the professional judgment of a lawyer.

(3) (a) "Law firm" means a partnership, professional company, sole proprietorship, employer of a lawyer who is directly employed as in-house counsel or licensed under a single-client certification, or other entity through which a lawyer, LLP, or combination of lawyers, LLPs, or both provide legal services, which entity:

(I) Operates for profit in compliance with rule 5.4 of the Colorado rules of professional conduct and rule 265 of the Colorado rules of civil procedure; and

(II) Complies with Colorado law and supreme court rules governing law firm ownership and fee sharing.

(b) "Law firm" does not include an alternative business structure or managed services organization.

(4) (a) "Lawyer" means an individual who is licensed to practice law in any jurisdiction in the United States.

(b) "Lawyer" does not include an LLP.

(5) (a) "Legal fee" means any payment, compensation, remuneration, or other financial consideration charged, assessed, collected, or received for the provision of legal services, regardless of how the payment is described, structured, or allocated.

(b) "Legal fee" includes:

(I) Contingent fees, flat fees, hourly fees, hybrid fees, success fees, performance-based compensation, or any other arrangement that compensates a lawyer or law firm based on the provision of legal services to a client;

(II) Any portion of a settlement, verdict, judgment, award, recovery, or payment received on behalf of a client that is allocated to the lawyer or law firm as compensation for legal services;

(III) Any amount paid by a client or third party for legal representation, legal counseling, legal advocacy, legal investigation, legal analysis, negotiation, demand services, or litigation-related activities;

(IV) Retainers, deposits, advanced fees, or security amounts intended to secure payment for legal services, whether refundable or nonrefundable; and

(V) Any revenue or financial benefit derived from legal services, including revenue collected through affiliated entities, subsidiaries, technology platforms, service providers, or fee collection intermediaries.

(c) "Legal fee" does not include:

(I) Payments made solely for nonlegal goods or services, including purely administrative, clerical, or operational support, if the payments are reasonably separable from compensation for legal services;

(II) Ordinary course reimbursements of costs or expenses advanced by the lawyer or law firm, including court filing fees, expert fees, transcript costs, and other pass-through expenses not constituting compensation for legal services;

(III) Lawful wages, salaries, benefits, or discretionary bonuses paid to a nonlawyer employee of a law firm for services rendered in the ordinary course of their employment;

(IV) Amounts recovered on a claim by a person that owns or has been assigned the claim if the recovery does not constitute compensation for legal services; or

(V) Any statutory or contractual entitlement to attorney fee reimbursement held by a law firm's client or direct employer.

(6) "Legal services" means any of the following while acting in a representative capacity concerning a legal right arising in whole or in part in Colorado:

(a) Protecting, defending, or enforcing the legal rights or duties of another person;

(b) Representing another person before a tribunal or, on behalf of another person, drafting pleadings or other papers for a proceeding before a tribunal;

(c) Counseling, advising, or assisting another person in connection with that person's legal rights or duties;

(d) Exercising legal judgment in preparing legal documents for another person;

(e) Exercising legal judgment to advise another person about the legal effect of a proposed action or decision;

(f) Exercising legal judgment to advise another person about legal remedies or possible courses of legal action available to that person;

(g) Exercising legal judgment to select a legal document for another person or to prepare a legal document for another person other than solely as a typist or scrivener;

(h) Exercising legal judgment to represent or advocate for another person in a negotiation, settlement, conference, mediation, or alternative dispute resolution proceeding; and

- (i) Soliciting fees for services involving the exercise of legal judgment.
- (7) "Licensed legal paraprofessional" or "LLP" means a licensed legal paraprofessional licensed under part 3 of this article 93.
- (8) "Managed services organization" means a person other than a lawyer, LLP, or law firm that provides administrative, operational, financial, marketing, management, or other nonlegal business services to a lawyer or law firm.
- (9) "Nonlawyer" means an individual who is not licensed to practice law in any United States jurisdiction or is not authorized to practice law by the Colorado supreme court.
- (10) (a) "Nonprofit organization" means a charitable organization, as defined in section 39-26-102 (2.5).  
  
(b) A nonprofit organization is not an alternative business structure and does not economically participate in the provision of legal services solely by virtue of the nonprofit organization's relationship with a lawyer or law firm, including where the lawyer or law firm earns legal fees.
- (11) "Substantial business in Colorado" means that a law firm generates more than ten percent of the law firm's annual revenue from legal services performed for clients.

**Source: L. 2026:** Entire part added, (HB 26-1421), ch. 403, p. 2518, § 1, effective August 12.

#### **13-93-404. Prohibition on nonlawyer ownership and fee sharing with nonlawyers.**

- (1) A lawyer or law firm shall not, in connection with providing legal services:
  - (a) Share with, pay to, allocate to, distribute to, or provide any portion of legal fees or revenues, whether gross or net, or any other financial benefit derived from legal services, directly or indirectly, however denominated or structured, to any alternative business structure or nonlawyer, other than lawful wages, salaries, benefits, or discretionary bonuses paid to nonlawyer employees of the law firm for services rendered in the ordinary course of their employment;
  - (b) Enter into any financial, contractual, ownership, management, marketing, co-counsel, referral, or fee-allocation arrangement with an alternative business structure, which arrangement relates to providing legal services;
  - (c) Form a partnership, limited liability company, corporation, or other entity recognized under Colorado law with a nonlawyer if any of the activities of the entity consist of providing legal services; or

(d) Practice with or in the form of a professional company that is authorized to provide legal services for profit if:

(I) A nonlawyer owns any interest in the professional company; except that a fiduciary representative of the estate of a lawyer or LLP may hold the stock or interest of the lawyer or LLP for a reasonable time during administration of the estate; or

(II) A nonlawyer has the right to direct or control the professional judgment of a lawyer.

(2) How a compensation arrangement is characterized does not affect whether this section applies to the compensation arrangement.

(3) Nothing in this section:

(a) Prevents a client from directing the client's lawyer;

(b) Prohibits an arrangement in which all of the following are satisfied:

(I) The contract for the arrangement provides for a specific, predetermined dollar amount for clearly defined legal services;

(II) A payment is not made, directly or indirectly, for the referral of legal services or the purchase of a lead for a potential client or case;

(III) The fee under the arrangement is not contingent upon, tied to, or otherwise dependent on the economic outcome of any matter or the amount recovered and is not adjusted, refunded, credited, or otherwise modified based on the economic outcome or recovery;

(IV) The primary purpose of the arrangement is not the pursuit or recovery of monetary damages on behalf of a client; and

(V) The fee under the arrangement is solely for identified services and is not part of, conditioned upon, or combined with any other arrangement that provides for compensation based on referrals, case outcomes, or the client's recovery; or

(c) Limits or reduces the right of a client or employer of a lawyer to seek and collect or settle a payment on account of a statutory or contractual entitlement to attorney fee reimbursement.

**Source: L. 2026:** Entire part added, (HB 26-1421), ch. 403, p. 2522, § 1, effective August 12.

### **13-93-405. Restrictions on arrangements with managed services organizations.**

(1) A lawyer or law firm providing legal services shall not compensate or engage a managed services organization in any manner unless the compensation paid to the managed services

organization is not contingent upon or calculated as a percentage of legal fees, revenues, or profits and is not determined by reference to recoveries, settlements, judgment awards, or case outcomes.

(2) Nothing in this section prohibits compensation, including flat fee or hourly payments, or engagement of managed services organizations that is not expressly prohibited by this section.

**Source: L. 2026:** Entire part added, (HB 26-1421), ch. 403, p. 2523, § 1, effective August 12.

#### **13-93-406. Enforcement - private right of action - remedies.**

(1) A person described in subsection (2) of this section may enforce this part 4 by bringing a civil action in a court of competent jurisdiction.

(2) The following persons may enforce this part 4:

(a) A person to whom a lawyer or law firm provides legal services, which legal services are alleged to be in violation of this part 4; or

(b) Except as set forth in subsection (3) of this section, a law firm doing substantial business in Colorado that has suffered or may suffer a loss in revenue due to violations of this part 4 by another law firm, which law firm doing substantial business in Colorado may only seek injunctive or declaratory relief and disgorgement pursuant to subsection (5)(b) of this section.

(3) A law firm described in subsection (2)(b) of this section may bring a civil action to enforce this part 4 only if the law firm has provided written notice of the alleged violation to the attorney general and the attorney general has not commenced a civil action against the alleged violator before or within sixty days after receipt of the notice.

(4) (a) The following remedies are available for violations of this part 4:

(I) For a person described in subsection (2)(a) of this section, and in addition to any other remedies available for a violation of this part 4, economic damages in the amount of the legal fees paid to the lawyer, law firm, or other person in violation of this part 4;

(II) Injunctive relief;

(III) Declaratory relief; and

(IV) Any other relief the circumstances may require.

(b) A prevailing plaintiff is entitled to recover any reasonable attorney fees and costs paid to enforce a violation of this part 4.

(5) (a) A lawyer, law firm, or other person that receives or pays funds in violation of this part 4 is liable for damages in the amount of the funds received or paid in violation of this part 4.

(b) If a court determines that a lawyer, law firm, or other person has violated this part 4, the court shall order the funds described in subsection (5)(a) of this section to be disgorged and paid to the state treasurer for deposit into the general fund; except that any amounts awarded as economic damages to a plaintiff pursuant to this section shall be offset against the amount of disgorgement.

(6) A contract or agreement in violation of this part 4 is deemed void.

**Source: L. 2026:** Entire part added, (HB 26-1421), ch. 403, p. 2523, § 1, effective August 12.

### **13-93-407. Applicability - repeal.**

(1) Nothing in this part 4 shall be construed to prohibit:

(a) The pledging of future revenues, legal fees, or recoveries as collateral for a loan; or

(b) Lawful wages, salaries, benefits, or discretionary bonuses paid to nonlawyer employees of a law firm for services rendered in the ordinary course of their employment;

(c) Nonrecourse funding provided to a lawyer or law firm with respect to specific, identified legal representations, in which:

(I) The funding is provided solely for the fees or expenses of specific, identified legal representations that have commenced or for which the lawyer or law firm has been retained and not for the solicitation or acquisition of future clients or matters;

(II) The return of the person providing the funding is limited to a multiple of the funded amount or a rate of interest on the funded amount and does not constitute a share of legal fees, law firm revenue, and law firm profits; and

(III) The person providing the funding has no right to participate in or receive any portion of legal fees, law firm revenue, or law firm profits except from the proceeds of the specific, identified legal representations; or

(d) The provision of legal services provided solely in connection with administrative matters arising under federal law or before a federal agency.

(2) Nothing in this part 4 limits the Colorado supreme court's rule-making, decisional, or enforcement authority as to the practice of law in Colorado, including as to the unauthorized practice of law and professional independence of lawyers and LLPs.



(3) (a) Nothing in this part 4 prohibits a lawyer or law firm that provides legal services to a nonprofit organization or individuals who receive benefits from the nonprofit organization from remitting to a nonprofit organization that provides or supports legal services or access-to-justice services any fees or revenues earned from its representation.

(b) A nonprofit organization that provides or supports legal services or access-to-justice services is not subject to this part 4.

(4) This part 4 is repealed, effective September 1, 2029.

**Source: L. 2026:** Entire part added, (HB 26-1421), ch. 403, p. 2524, § 1, effective August 12.

## ARTICLE 94

### Office of Public Guardianship

|              |                                                                                            |            |                                                                                   |
|--------------|--------------------------------------------------------------------------------------------|------------|-----------------------------------------------------------------------------------|
| 13-94-101.   | Short title.                                                                               |            | understanding - annual report - repeal.                                           |
| 13-94-102.   | Legislative declaration.                                                                   |            |                                                                                   |
| 13-94-103.   | Definitions.                                                                               | 13-94-106. | Costs - waiver of court costs and filing fees - bond not required.                |
| 13-94-104.   | Public guardianship commission created - repeal. (Repealed)                                | 13-94-107. | Director shall develop rules.                                                     |
| 13-94-104.1. | Office of public guardianship board - members - duties - appointment of director - repeal. | 13-94-108. | Office of public guardianship cash fund - created - gifts, grants, and donations. |
| 13-94-105.   | Office of public guardianship - director - duties - memorandum of                          | 13-94-109. | No entitlement created.                                                           |
|              |                                                                                            | 13-94-110. | Immunity.                                                                         |
|              |                                                                                            | 13-94-111. | Repeal - wind-up. (Repealed)                                                      |

#### 13-94-101. Short title.

The short title of this article 94 is the "Office of Public Guardianship Act".

**Source: L. 2017:** Entire article added, (HB 17-1087), ch. 319, p. 1714, § 1, effective June 5.

**13-94-102. Legislative declaration.**

(1) The general assembly finds and declares that:

(a) Due to incapacity, some adults in Colorado are unable to meet essential requirements for their health or personal care;

(b) Private guardianship is not an option for such an adult when:

(I) No responsible family members or friends are available and appropriate to serve as a guardian; and

(II) He or she lacks adequate resources to compensate a private guardian and pay the costs associated with an appointment proceeding;

(c) Volunteer and public service programs are currently inadequate to provide legal guardianship services to indigent and incapacitated adults in Colorado;

(d) Colorado courts struggle to address the needs of indigent and incapacitated adults who lack the resources to provide for their own guardianship needs; and

(e) Without a system providing legal guardianship services to indigent and incapacitated adults, the courts are left with few options for addressing these adults' needs.

(2) In establishing the office of public guardianship, the general assembly intends:

(a) That the office will:

(I) Provide guardianship services to indigent and incapacitated adults who:

(A) Have no responsible family members or friends who are available and appropriate to serve as a guardian;

(B) Lack adequate resources to compensate a private guardian and pay the costs associated with an appointment proceeding; and

(C) Are not subject to a petition for appointment of guardian filed by a county adult protective services unit or otherwise authorized by section 26-3.1-104.

(II) Repealed.

(b) Repealed.

(3) In creating the office of public guardianship, it is also the intention of the general assembly to:

(a) Treat liberty and autonomy as paramount values for all state residents;

- (b) Authorize public guardianship only to the extent necessary to provide for health or safety when the legal conditions for appointment of a guardian are met;
- (c) Permit incapacitated adults to participate as fully as possible in all decisions that affect them;
- (d) Assist incapacitated adults to regain or develop their capacities to the maximum extent possible;
- (e) Promote the availability of guardianship services for adults who need them and for whom adequate services may otherwise be unavailable;
- (f) Maintain and not alter or expand judicial authority to determine that any adult is incapacitated; and
- (g) Maintain and not alter or expand any authority vested in the state department of human services and county departments of human or social services.

**Source: L. 2017:** Entire article added, (HB 17-1087), ch. 319, p. 1714, § 1, effective June 5. **L. 2021:** (2)(b) amended, (SB 21-267), ch. 276, p. 1598, § 1, effective June 21. **L. 2023:** (2)(a)(I)(C) amended and (2)(a)(II) and (2)(b) repealed, (SB 23-064), ch. 282, p. 1661, § 1, effective May 30.

### **13-94-103. Definitions.**

- (1) Except as otherwise indicated in this section, the definitions set forth in section 15-14-102 apply to this article 94.
- (2) As used in this article 94, unless the context otherwise requires:
  - (a) "Board" means the board of directors for the office of public guardianship created pursuant to section 13-94-104.1.
  - (a.5) "Client" means a person receiving guardianship services from the office.
  - (b) "Direct care provider" means a health-care facility, as defined in section 15-14-505 (5), or a health-care provider, as defined in section 15-14-505 (6).
  - (c) "Director" means the director of the office, appointed by the board pursuant to section 13-94-104.1.
  - (d) "Guardian" means an individual employed by the office to provide guardianship services on behalf of the office to one or more adults.

(e) "Office" means the office of public guardianship created in section 13-94-105.

(f) "Public guardianship services" means the services provided by a guardian appointed under this article 94 who is compensated by the office.

**Source: L. 2017:** Entire article added, (HB 17-1087), ch. 319, p. 1716, § 1, effective June 5.  
**L. 2023:** (2)(a), (2)(c), (2)(d), and (2)(e) amended and (2)(a.5) added, (SB 23-064), ch. 282, p. 1661, § 2, effective May 30.

#### **13-94-104. Public guardianship commission created - repeal. (Repealed)**

**Source: L. 2017:** Entire article added, (HB 17-1087), ch. 319, p. 1716, § 1, effective June 5.  
**L. 2019:** (3) amended, (HB 19-1045), ch. 366, p. 3362, § 1, effective July 1. **L. 2023:** (2) amended, (3) and (4) repealed, and (5) added, (SB 23-064), ch. 282, p. 1662, § 3, effective May 30.

**Editor's note:** Subsection (5) provided for the repeal of this section, effective August 31, 2023. (See L. 2023, p. 1662.)

#### **13-94-104.1. Office of public guardianship board - members - duties - appointment of director - repeal.**

(1) (a) On September 1, 2023, the board of directors for the office of public guardianship is created within the judicial department. The board includes seven members, appointed as follows:

(I) The chief justice of the Colorado supreme court shall appoint three members who are attorneys admitted to practice law in this state; and

(II) The governor shall appoint four non-attorney members as follows:

(A) Three members who have lived experience with a family member who is an at-risk adult or who have expertise and experience in advocating for the at-risk adult population, including advocacy and representation in the areas of aging, mental health, substance use disorders, homelessness, veterans issues, intellectual and developmental disabilities, health care, and law enforcement and criminal justice. At least one of the members appointed pursuant to this subsection (1)(a)(II)(A) must be a person with lived experience with a family member who is an at-risk adult.

(B) One member who has not served directly in an advocacy role for at-risk adults.

(b) (I) Each of the members appointed by the chief justice must reside in a different congressional district, and no more than two members appointed by the chief justice may be from the same political party.

(II) Each of the members appointed by the governor must reside in a different congressional district, and no more than three members appointed by the governor may be from the same political party.

(c) In making appointments to the board, the chief justice and the governor shall consider place of residence, including rural or urban residency; disability; sex; race; and ethnic background.

(d) Each member of the board serves without compensation but is entitled to receive reimbursement from the office of public guardianship cash fund created in section 13-94-108 for actual and necessary expenses the member incurs in the performance of the member's duties.

(2) (a) Each member of the board serves at the pleasure of the member's appointing authority. Except for the initial appointments made pursuant to subsection (2)(b) of this section, each member's term of appointment is four years. A member shall not serve more than two consecutive terms.

(b) (I) The chief justice and governor shall make initial appointments to the board no later than August 1, 2023, as follows:

(A) The chief justice and governor shall each appoint one member to a term of four years from among the membership of the public guardianship commission created in section 13-94-104 as it exists on May 30, 2023;

(B) The chief justice and governor shall each appoint one member to a term of two years;

(C) The chief justice and governor shall each appoint one member to a term of three years; and

(D) The governor shall appoint one member to a term of four years.

(II) This subsection (2)(b) is repealed, effective December 31, 2027.

(3) The board shall:

(a) Appoint the director of the office of public guardianship, who serves at the pleasure of the board;

(b) Establish bylaws and operating policies for the board; and

(c) Work collaboratively with the director to provide governance of the office, fiscal oversight of the general operating budget of the office, and programmatic oversight, as established in the bylaws and operating procedures of the board.

(4) Repealed.

**Source: L. 2023:** Entire section added, (SB 23-064), ch. 282, p. 1662, § 4, effective May 30.

**Editor's note:** Subsection (4)(b) provided for the repeal of subsection (4), effective June 30, 2024. (See L. 2023, p. 1662.)

**13-94-105. Office of public guardianship - director - duties - memorandum of understanding - annual report - repeal.**

(1) (a) The office of public guardianship is created within the judicial department to serve indigent and incapacitated adults in need of guardianship in every judicial district in the state no later than December 31, 2030.

(b) The director shall administer the office and shall coordinate the office's efforts with county departments of human and social services within each judicial district in which the office provides services to clients.

(c) (I) The office shall maintain operations in each judicial district in which it is operating on May 30, 2023; shall begin to operate in other judicial districts beginning July 1, 2025; and shall operate in every judicial district in the state no later than December 31, 2030.

(II) This subsection (1)(c) is repealed, effective June 30, 2031.

(d) Repealed.

(1.5) In addition to any other duties or responsibilities set forth in this article 94, the office:

(a) May:

(I) Initiate petitions for guardianship; and

(II) Take any action on behalf of an indigent and incapacitated person that a private guardian may take, except as otherwise limited by law or court order; and

(b) Shall use the eligibility criteria and prioritization described in subsection (2)(b) of this section to serve individuals with the greatest needs when the number of cases in which services

have been requested exceeds the number of cases in which public guardianship can provide services.

(1.6) The office may establish, maintain, and adjust staffing levels, including guardians, case aides, and administrative support, as necessary to:

(a) Screen and accept referrals arising from competency proceedings under article 8.5 of title 16;

(b) Provide emergency public guardianship services pursuant to section 15-14-312 (6), article 8.5 of title 16, article 10 of title 25.5, and article 65 of title 27 for indigent individuals found incompetent to proceed;

(c) Identify and support timely transitions to civil placement, treatment, and services in order to prevent unnecessary incarceration or hospitalization; and

(d) Support long-term guardianship services when necessary.

(2) In addition to carrying out any duties assigned by the board, the director shall ensure that the office provides, at a minimum, the following services to each judicial district in which the office operates:

(a) A review of referrals to the office;

(b) Adoption of eligibility criteria and prioritization to enable the office to serve individuals with the greatest needs when the number of cases in which services have been requested exceeds the number of cases in which public guardianship services can be provided;

(c) Appointment and post-appointment public guardianship services of a guardian for each indigent and incapacitated adult in need of public guardianship;

(d) Support for modification or termination of public guardianship services;

(e) Recruitment, training, and oversight of guardians;

(f) Maintaining a process for receipt and consideration of, and response to, complaints against the office, including investigation in cases in which investigation appears warranted in the judgment of the director;

(g) Implementation and maintenance of a public guardianship data management system;

(h) Office management, financial planning, and budgeting for the office to ensure compliance with this article 94;

(i) Identification and establishment of relationships with stakeholder agencies, nonprofit organizations, companies, individual care managers, and direct-care providers to provide services within the financial constraints established for the office;

(j) Identification and establishment of relationships with local, state, and federal governmental agencies so that guardians may apply for public benefits on behalf of wards to obtain funding and service support, if needed; and

(k) Public education and outreach regarding the role of the office.

(3) (a) (I) The office shall employ guardians to provide guardianship services to the office's clients. Except as provided in subsection (3)(b)(II) of this section, a guardian must be certified by a state or national organization that certifies guardians. The director shall include in the rules developed pursuant to section 13-94-107 a list of the organizations whose certifications the office recognizes.

(II) The office may hire as a guardian a person who is not certified. If the office hires a person who is not certified, the person shall obtain certification within two years after being hired.

(b) The director shall adopt professional standards of practice and a code of ethics for guardians, including a policy concerning conflicts of interest. The director may adopt professional standards of practice and a code of ethics developed by a national association of guardians.

(c) The office shall provide training to all guardians that includes, at a minimum, instruction in the following areas:

(I) The professional standards of practice and code of ethics adopted by the director;

(II) Standards for agencies and programs providing guardianship services developed by a national association of guardians and approved by the director;

(III) Federal and state laws applicable to providing guardianship services;

(IV) Characteristics of the populations served by the office and appropriate terminology to be used when working with the populations served by the office;

(V) State and local social services and resources;

(VI) Active listening skills;

(VII) Best practices in confidentiality, decision-making, ethics, and medical decision-making; and

(VIII) Planning supports that include less restrictive alternatives such as limited guardianships and supportive decision-making.

(d) Prior to employing a person, the office of public guardianship shall submit the name of the person to be hired, as well as any other required identifying information, to the department of human services for a check of the Colorado adult protective services data system pursuant to



section 26-3.1-111 to determine if the person is substantiated in a case of mistreatment of an at-risk adult.

(4) On or before January 1 of each year, the director shall submit to the judiciary committees of the senate and the house of representatives, or any successor committees, a report concerning the activities of the office. The report, at a minimum, must summarize the office's work over the prior state fiscal year in providing guardianship services for indigent and incapacitated adults and identify any notable efficiencies and obstacles that the office incurred in providing guardianship services during the prior state fiscal year. The office shall not include any personal identifying information about any client in its annual report. Notwithstanding section 24-1-136 (11)(a)(I), the annual report required in this subsection (4) continues indefinitely.

(4.5) No later than June 30, 2030, but no earlier than July 1, 2027, the state auditor shall conduct or cause to be conducted a performance audit of the office.

(5) In addition to performing the duties described in this section, the director, in consultation with the board, shall develop, periodically evaluate, and, if the director and board determine it is necessary, update a strategy to wind up the office's affairs in the event that the office is discontinued. The strategy must include consideration of how to meet the guardianship needs of adults who will no longer be able to receive guardianship services from the office.

(6) Repealed.

(6.7) The office is an included agency for the purposes of article 100 of this title 13 and receives administrative and fiscal support services from the office of administrative services for independent agencies. The office and judicial department shall operate pursuant to the memorandum of understanding between the office and the judicial department in effect on the day before May 30, 2023, until the office begins receiving administrative and fiscal support services from the office of administrative services for independent agencies. The office and judicial department may amend the existing memorandum of understanding.

(7) Repealed.

**Source: L. 2017:** Entire article added, (HB 17-1087), ch. 319, p. 1717, § 1, effective June 5. **L. 2019:** (1), IP(4), and (5) amended, (HB 19-1045), ch. 366, p. 3362, § 2, effective July 1. **L. 2020:** (6) added, (HB 20-1302), ch. 265, p. 1274, § 8, effective September 14. **L. 2023:** (1)(d) repealed, (SB 23-228), ch. 96, p. 362, § 3, effective April 20; (1), IP(2), (2)(c), (2)(e), (2)(f), (2)(j), (2)(k), (3), (4), and (5) amended, (1.5), (4.5), (6.5), (6.7), and (7) added, and (6) repealed, (SB 23-064), ch. 282, p. 1664, § 5, effective May 30. **L. 2026:** (1.6) added, (SB 26-149), ch. 142, p. 788, § 28, effective May 21.

**Editor's note:** Subsection (7)(b) provided for the repeal of subsection (7), effective June 30, 2024. (See L. 2023, p. 1664.)

**13-94-106. Costs - waiver of court costs and filing fees - bond not required.**

(1) The court shall waive court costs and filing fees in any proceeding in which an indigent and incapacitated adult is receiving public guardianship services from the office and shall waive filing fees for petitions for guardianship filed by the office in a case that involves a person who is eligible for guardianship services from the office.

(2) A court shall not require the office or a guardian employed by the office to post a bond as a condition for appointment as a guardian or to provide services pursuant to this article 94.

**Source:** L. 2017: Entire article added, (HB 17-1087), ch. 319, p. 1719, § 1, effective June 5.  
L. 2023: Entire section amended, (SB 23-064), ch. 282, p. 1669, § 6, effective May 30.

**13-94-107. Director shall develop rules.**

(1) The director shall develop rules to implement this article 94. The rules, at a minimum, must include policies concerning:

- (a) Conflicts of interest for guardians employed pursuant to this article 94;
- (b) The solicitation and acceptance of gifts, grants, and donations pursuant to section 13-94-108 (3); and
- (c) A list of the organizations that certify guardians and whose certifications are recognized by the office.

**Source:** L. 2017: Entire article added, (HB 17-1087), ch. 319, p. 1719, § 1, effective June 5.  
L. 2023: Entire section amended, (SB 23-064), ch. 282, p. 1669, § 7, effective May 30.

**13-94-108. Office of public guardianship cash fund - created - gifts, grants, and donations.**

(1) The office of public guardianship cash fund, referred to in this section as the "fund", is created in the state treasury. The fund consists of any money appropriated to the fund by the general assembly.

(2) The money in the fund is annually appropriated to the judicial department to pay the expenses of the office. All interest and income derived from the investment and deposit of money in the fund is credited to the fund. Any unexpended and unencumbered money remaining in the fund at the end of a fiscal year must remain in the fund and not be credited or transferred to the general fund or any other fund.

(3) The office may seek, accept, and expend gifts, grants, or donations from private or public sources for the purposes of this article 94; except that the office may not accept a gift, grant, or donation that is subject to conditions that are inconsistent with this article 94 or any other law of the state.

**Source: L. 2017:** Entire article added, (HB 17-1087), ch. 319, p. 1720, § 1, effective June 5. **L. 2021:** (2) amended, (SB 21-267), ch. 276, p. 1598, § 2, effective June 21. **L. 2023:** Entire section amended, (SB 23-064), ch. 282, p. 1669, § 8, effective May 30.

#### **13-94-109. No entitlement created.**

Public guardianship services are dependent upon the availability of funding, and nothing in this article 94 creates an entitlement.

**Source: L. 2017:** Entire article added, (HB 17-1087), ch. 319, p. 1720, § 1, effective June 5.

#### **13-94-110. Immunity.**

As an agency of the judicial department, the office is a public entity, as defined in section 24-10-103 (5), for the purposes of the "Colorado Governmental Immunity Act", article 10 of title 24.

**Source: L. 2017:** Entire article added, (HB 17-1087), ch. 319, p. 1720, § 1, effective June 5.

#### **13-94-111. Repeal - wind-up. (Repealed)**

**Source: L. 2017:** Entire article added, (HB 17-1087), ch. 319, p. 1720, § 1, effective June 5. **L. 2019:** Entire section amended, (HB 19-1045), ch. 366, p. 3363, § 3, effective July 1. **L. 2021:**

Entire section amended, (SB 21-267), ch. 276, p. 1598, § 3, effective June 21. **L. 2023:** Entire section repealed, (SB 23-064), ch. 282, p. 1670, § 9, effective May 30.

## **ARTICLE 95**

### **Office of the Statewide Behavioral Health Court Liaison**

|            |                                                                                               |            |                                                                                              |
|------------|-----------------------------------------------------------------------------------------------|------------|----------------------------------------------------------------------------------------------|
| 13-95-101. | Legislative declaration and intent.                                                           | 13-95-105. | Bridges of Colorado - programs - administration.                                             |
| 13-95-102. | Definitions.                                                                                  |            |                                                                                              |
| 13-95-103. | Office of bridges of Colorado - administrative support - director - confidentiality - repeal. | 13-95-106. | Bridges court liaisons - bridges wraparound care coordinators - duties and responsibilities. |
| 13-95-104. | Bridges of Colorado commission - creation - membership - duties.                              | 13-95-107. | Bridges program participant services funding.                                                |
|            |                                                                                               | 13-95-108. | Gifts, grants, and donations.                                                                |
|            |                                                                                               | 13-95-109. | Reporting requirements.                                                                      |

#### **13-95-101. Legislative declaration and intent.**

(1) The general assembly finds and declares that:

(a) Colorado's citizens who are living with mental health and substance use disorders are overrepresented in the criminal justice system, and they are at a significantly greater risk of incurring criminal justice involvement, longer terms of involvement, and harsher consequences of that involvement when compared to the general public;

(b) Colorado must make a commitment to ensure that all individuals within the criminal justice system are treated fairly and humanely, regardless of their behavioral health history or mental state; and

(c) There is a significant need for enhanced communication among health-care systems, behavioral health systems, and criminal justice entities, including law enforcement, defense attorneys, district attorneys, county attorneys, judges, and probation, to foster collaboration that provides all individuals with a fair chance of living a healthy and productive life.

(2) The general assembly further finds that:

(a) Colorado has an obligation to ensure that entities within the criminal justice system are equipped with a greater understanding of behavioral health treatment options in the community; and

(b) Community mental health providers, including community mental health centers, are a critical component of achieving positive outcomes for individuals living with mental health, behavioral health, and substance use disorders and have long held an essential role in engaging criminal justice entities.

(3) The general assembly therefore finds that it is critical to create a network of professionals who can comprehensively bridge the criminal justice system and the community behavioral health systems across the state in order to:

(a) Promote positive outcomes for individuals living with mental health or co-occurring behavioral health conditions;

(b) Inform criminal justice entities about community treatment options; and

(c) Connect individuals to behavioral health services.

(4) Therefore, the general assembly declares that the office of bridges of Colorado provides a method for collaboration and consultation among behavioral health providers, district attorneys, county attorneys, and defense attorneys about available community-based behavioral health services and supports, competency evaluations, restoration to competency services, and other relevant decisions and issues facing individuals with mental health or co-occurring behavioral health challenges, including mental health disabilities, who are involved with the criminal or juvenile justice system, including appropriateness for community treatment and resource availability.

**Source: L. 2023:** Entire article added, (SB 23-229), ch. 119, p. 433, § 1, effective April 27. **L. 2024:** (4) amended, (HB 24-1355), ch. 471, p. 3305, § 2, effective August 7.

**Editor's note:** This section is similar to former § 16-11.9-201 as it existed prior to 2023.

### **13-95-102. Definitions.**

As used in this article 95, unless the context otherwise requires:

(1) "Behavioral health challenge" refers to mental health and co-occurring challenges that may or may not have been previously diagnosed, including substance use challenges and mental disabilities.

(2) "Behavioral health services" or "behavioral health systems" means service systems that encompass prevention and promotion of emotional health, prevention and treatment services for behavioral health challenges, and recovery support.

(2.5) "Bridges court liaison" means a person who is hired or contracted by the office as a court liaison pursuant to this article 95.

(2.6) "Bridges court liaison program" or "court liaison program" means the court liaison program created pursuant to section 13-95-105.

(2.7) "Bridges wraparound care coordinator" means a person who is hired or contracted by the office as a wraparound care coordinator pursuant to section 13-95-105 (2).

(2.8) "Bridges wraparound care program" means the bridges wraparound care program created pursuant to section 16-8.6-103.

(3) "Co-occurring challenge" means a disorder that may or may not have been previously diagnosed that commonly coincides with behavioral health challenges and may include, but is not limited to, substance abuse and substance use disorders, intellectual and developmental disabilities, fetal alcohol syndrome, and traumatic brain injury.

(4) "Commission" means the bridges of Colorado commission created in section 13-95-104.

(5) Repealed.

(6) "Director" means the director of the office described in section 13-95-103.

(7) "Mental disability" means a psychiatric disability, developmental disability, learning disability, or cognitive impairment, including a traumatic brain injury and dementia diseases and related disabilities as defined in section 25-1-502.

(8) "Office" means the office of bridges of Colorado established in section 13-95-103.

(9) "Participant" means an individual with behavioral health challenges who is involved with the criminal or juvenile justice system and for whom a bridges court liaison or bridges wraparound care coordinator has been appointed pursuant to a court order.

(10) Repealed.

(11) "Social determinants of health" means the non-medical factors that influence health outcomes, including health-care access and quality, education access and quality, social and community context, economic stability, housing, and transportation.

(12) "State court administrator" means the state court administrator established pursuant to section 13-3-101.

**Source: L. 2023:** Entire article added, (SB 23-229), ch. 119, p. 434, § 1, effective April 27. **L. 2024:** (2.5), (2.6), (2.7), and (2.8) added, (4), (8), and (9) amended, and (5) and (10) repealed, (HB 24-1355), ch. 471, p. 3305, § 3, effective August 7.

**Editor's note:** This section is similar to former § 16-11.9-202 as it existed prior to 2023.

**13-95-103. Office of bridges of Colorado - administrative support - director - confidentiality - repeal.**

(1) (a) There is created the office of bridges of Colorado as an independent agency in the judicial department. The office has the powers and duties described in this article 95. The purpose of the office is to identify and dedicate behavioral health professionals to provide services through the bridges court liaison program and the bridges wraparound care program in each state judicial district.

(b) The office shall provide services, as described in sections 13-95-104, 13-95-105, and article 8.6 of title 16, to individuals accused of crimes or delinquent acts. The office shall provide services to participants independently of any political considerations or private interests.

(c) (I) The head of the office is the director. Except for the initial director of the office described in subsection (1)(c)(II) of this section, the commission shall appoint the director. The director shall employ or contract with persons necessary to discharge the functions of the office in accordance with this article 95.

(II) (A) Notwithstanding the appointment authority described in subsection (1)(c)(I) of this section, the individual who, on April 27, 2023, is serving as director of the statewide behavioral health court liaison program, as it existed prior to its repeal in 2023, is the director of the office for a term expiring June 30, 2026. After the initial term of appointment, the commission may appoint the individual as director pursuant to subsection (1)(c)(I) of this section. The commission may remove the director serving pursuant to this subsection (1)(c)(II)(A) for cause.

(B) This subsection (1)(c)(II) is repealed, effective December 31, 2026.

(2) (a) The office and commission shall not disclose information provided by an individual participating in the bridges court liaison program or bridges wraparound care program even if the information is relied upon when compiling information for a court report or other report requested or required by the court, unless:

(I) The disclosure is made in connection with and included in a report filed with the court or as required pursuant to court-ordered action by a bridges court liaison or a bridges wraparound care coordinator;

(II) The defense counsel and the individual participating in the bridges court liaison program or bridges wraparound care program agree to the disclosure; or

(III) The disclosure is required in order to comply with mandatory reporting requirements pursuant to sections 18-6.5-108 and 19-3-304.

(b) A bridges court liaison and a bridges wraparound care coordinator shall only disclose information reported to the court by the bridges court liaison or bridges wraparound care coordinator pursuant to a court order, but the information must be restricted if the information is otherwise limited by court rules.

(c) A report requested or required by the court may be suppressed or sealed based on the contents of the report.

(d) This subsection (2) does not:

(I) Prevent the office from disclosing that a bridges court liaison or bridges wraparound care coordinator was appointed to a case or has access to the contents of an order that directs the office to take action, as long as the court order is not otherwise restricted from disclosure; or

(II) Limit the rights of a valid subpoena, an individual participating in the bridges court liaison program or bridges wraparound care program, the defense attorney, a person who requests the program participant's medical records upon submitting an authorization that complies with the federal "Health Insurance Portability and Accountability Act of 1996", 42 U.S.C. sec. 1320d, as amended, or a court order authorizing the inspection of the program participant's medical records or mental health data pursuant to section 24-72-204 (3)(a)(I).

(3) (a) As an included agency for the purposes of article 100 of this title 13, the office receives administrative and fiscal support services from the office of administrative services for independent agencies.

(b) Repealed.

(4) (a) The office and judicial department shall enter into a memorandum of understanding to provide the office, including the office's employees or contractors, electronic read-only access to the name index and register of actions for those case types necessary to carry out the office's statutory purpose and the duties of the office's court appointment. The memorandum of understanding must also delineate a filing process for the office, including the office's employees and contractors, to submit reports to the court.

(b) The judicial department shall provide transition services to establish the office until the department and the office determine that the transition is complete.

(5) The office shall pay the expenses of the bridges of Colorado commission, established in section 13-95-104.



**Source: L. 2023:** Entire article added, (SB 23-229), ch. 119, p. 435, § 1, effective April 27. **L. 2024:** (1)(a), (1)(b), (1)(c)(II)(A), (4)(a), and (5) amended and (2) added, (HB 24-1355), ch. 471, p. 3305, § 4, effective August 7.

**Editor's note:** Subsection (3)(b)(II) provided for the repeal of subsection (3)(b), effective June 30, 2024. (See L. 2023, p. 435.)

**13-95-104. Bridges of Colorado commission - creation - membership - duties.**

- (1) There is created in the office the bridges of Colorado commission to support the office.
- (2) (a) The commission is comprised of the following members:
  - (I) The executive director of the Colorado district attorneys' council, or the executive director's designee;
  - (II) The state public defender, or the state public defender's designee;
  - (III) The commissioner of the behavioral health administration, or the commissioner's designee;
  - (IV) The director of the office within a state department responsible for assisting civil and forensic mental health patients, or the director's designee;
  - (V) The state court administrator, or the state court administrator's designee; and
  - (VI) The following members, appointed by the chief justice of the Colorado supreme court:
    - (A) A representative from a disability rights organization that provides services to the populations served by the office;
    - (B) A representative from a behavioral health, disability, or criminal justice advocacy organization that advocates for the populations served by the office;
    - (C) A representative from an organization that provides housing or other resources to the populations served by the office; and
    - (D) Three Colorado residents, at least two of whom are individuals with lived experience reflective of the populations served by the office.
- (b) The chief justice shall make appointments to the commission pursuant to subsection (2)(a)(VI) of this section no later than July 1, 2023.

(c) Members appointed by the chief justice must not be employed or under contract with the office or the office within a state department responsible for assisting civil and forensic mental health patients. To represent the diversity of the communities served by the office, when making designations or appointments to the commission, the designating and appointing authorities shall consider a designee's or appointee's place of residence or employment, gender and gender identity, sexual orientation, ability, race, ethnic background, and lived experience.

(d) (I) Except for the initial appointments made pursuant to subsection (2)(d)(II) of this section, the term of appointment for each member appointed by the chief justice pursuant to subsection (2)(a)(VI) of this section is three years. The chief justice may reappoint a member for additional terms.

(II) Repealed.

(e) Each member of the commission serves without compensation but is entitled to reimbursement for actual and reasonable expenses incurred in the performance of the member's duties.

(3) The director shall call the first meeting of the commission to occur no later than July 31, 2023.

(4) The director and the commission shall establish procedures for the operation of the commission.

(5) The commission shall:

(a) Appoint the director of the office. The commission may remove a director for cause.

(b) Work cooperatively with the director to provide guidance to the office; provide fiscal oversight of the general operating budget of the office; participate in funding decisions relating to the provision of services; and assist with the duties of the office concerning office training and public outreach, as needed.

**Source: L. 2023:** Entire article added, (SB 23-229), ch. 119, p. 437, § 1, effective April 27. **L. 2024:** (1), (2)(a)(VI), (2)(c), and (5)(b) amended, (HB 24-1355), ch. 471, p. 3307, § 5, effective August 7.

**Editor's note:** Subsection (2)(d)(II)(B) provided for the repeal of subsection (2)(d)(II), effective December 31, 2025. (See L. 2023, p. 437.)

**13-95-105. Bridges of Colorado - programs - administration.**

(1) The office shall operate the bridges court liaison program and the bridges wraparound care program in each judicial district in the state. The office shall provide personnel and program resources equitably in each judicial district and shall ensure that the program services in each judicial district are consistent with the policies, procedures, and best practices as established by the office and commission, and are aligned with statewide goals and legislative intent.

(2) The office shall facilitate communication and collaboration between judicial and behavioral health systems by:

(a) Hiring, or entering into contracts for, individuals to serve as:

(I) Bridges court liaisons who provide bridges court liaison program services to courts and participants in judicial districts; and

(II) Bridges wraparound care coordinators who provide wraparound care program services to courts and participants in judicial districts pursuant to article 8.6 of title 16; and

(b) Providing consultation and training to criminal and juvenile justice personnel regarding behavioral health and program best practices.

(3) (Deleted by amendment, L. 2024).

(4) The office shall provide information to the state department of human services about where persons who have been referred to the bridges wraparound care program live or intend to live, as described in section 27-60-105.5 (4).

**Source:** **L. 2023:** Entire article added, (SB 23-229), ch. 119, p. 438, § 1, effective April 27. **L. 2024:** Entire section amended, (HB 24-1355), ch. 471, p. 3308, § 6, effective August 7. **L. 2025:** (4) added, (SB 25-041), ch. 357, p. 1922, § 2, effective August 6.

**Editor's note:** Subsections (1), (2), and (3) are similar to former § 16-11.9-203 (1)(a), (1)(b), and (2), respectively, as they existed prior to 2023.

**13-95-106. Bridges court liaisons - bridges wraparound care coordinators - duties and responsibilities.**

(1) A bridges court liaison hired or contracted pursuant to this article 95 has the following duties and responsibilities:

(a) Conducting intake, screening, and assessment, with participants, for behavioral health history and needs and social determinants of health needs;

(b) Determining appropriate referral and treatment options, when necessary, and making direct connections to, and supporting engagement with, services for participants, including other criminal or juvenile justice diversion programs for individuals with behavioral health challenges, which may include alternatives to competency services, prosecution, and custody or confinement; if a participant is convicted, alternatives to sentences to confinement while promoting public safety; and other diversion-oriented programs, including problem-solving courts, competency dockets, treatment, sober or supportive housing, and peer mentor programs;

(c) Using the competency information from the statewide court data system, as updated pursuant to section 13-3-101 (17), to identify individuals who have not been appointed a bridges court liaison but for whom an appointment to the bridges court liaison program may be beneficial. If an individual is identified for whom services may be appropriate, the bridges court liaison may recommend to the judicial officer, defense attorney, and district attorney working on the case that a bridges court liaison be appointed for the individual.

(d) Addressing system gaps and barriers and promoting positive outcomes for participants in cases to which the bridges court liaison is assigned;

(e) Keeping judges; district attorneys or county attorneys, as applicable; and defense attorneys informed about available community-based behavioral health services for the participant in a case, and, if applicable, case planning for possible release from custody for a participant who has been ordered to undergo a competency evaluation or receive competency restoration services pursuant to article 8.5 of title 16 and article 2.5 of title 19.

(f) Facilitating communication and collaboration between behavioral health systems and criminal justice entities;

(g) Providing information to criminal and juvenile justice personnel regarding behavioral health and community treatment options and bridges court liaison program best practices;

(h) Coordinating with service providers, including the office within a state department responsible for assisting civil and forensic mental health patients and jail-based behavioral health providers, to ensure continuity of care and service delivery in a manner that avoids duplication and bifurcation of services; and

(i) Following the policies, procedures, best practices, and guidance of the bridges court liaison program, as established by the office and commission.

(2) A bridges wraparound care coordinator hired or contracted pursuant to section 13-95-105 (2) has the duties and responsibilities described in section 16-8.6-106.

(3) A bridges court liaison hired or contracted pursuant to this article 95 and a bridges wraparound care coordinator hired or contracted pursuant to section 13-95-105 (2) shall:

(a) Keep judges, district attorneys, county attorneys, and defense attorneys informed about available community-based behavioral health services, including services for defendants who have been ordered to undergo a competency evaluation or receive competency restoration services pursuant to article 8.5 of title 16 and article 2.5 of title 19;

(b) Make efforts to connect participants to, and support engagement with, behavioral health services and services for social determinants of health and to promote positive outcomes for individuals living with behavioral health challenges, including:

- (I) Mental health treatment and care;
  - (II) Treatment and care for mental disabilities;
  - (III) Substance use disorder intervention and recovery services;
  - (IV) Housing, including supportive housing;
  - (V) Transportation;
  - (VI) Basic needs assistance;
  - (VII) Employment assistance, if applicable; and
  - (VIII) Health insurance coverage, including medicare or medicaid eligibility and enrollment;
- and

(c) Make efforts to collaborate with service providers, including the office within a state department responsible for assisting civil and forensic mental health patients and jail-based behavioral health providers, to ensure continuity of care and service delivery in a manner that avoids duplication and bifurcation of services.

(4) If a court appoints a bridges court liaison or a bridges wraparound care coordinator for an individual, the statewide court data system must include a record of the appointment and actions related to the appointment on the individual's case records.

(5) A bridges court liaison or a bridges wraparound care coordinator appointed in a case is a resource for the court and the parties to the case. A bridges court liaison and a bridges wraparound care coordinator are not independent parties in a case, and a bridges court liaison shall not serve in a role intended to monitor compliance with a court order by a party or other individual associated with a case.

(6) The office may continue to serve a participant with a bridges court liaison or a bridges wraparound care coordinator for up to ninety days after final disposition of the case for which the bridges court liaison or bridges wraparound care coordinator was appointed.

**Source: L. 2023:** Entire article added, (SB 23-229), ch. 119, p. 439, § 1, effective April 27. **L. 2024:** Entire section amended, (HB 24-1355), ch. 471, p. 3309, § 7, effective August 7.

**Editor's note:** Subsections IP(1), (1)(a), (1)(c), (1)(f), (1)(h), and (2) are similar to former § 16-11.9-204 IP(1), (1)(b), IP(1)(c), (1)(d), (1)(e), and (2), respectively, as they existed prior to 2023.

#### **13-95-107. Bridges program participant services funding.**

(1) Subject to annual appropriation by the general assembly, the office may expend appropriated program money to provide, or contract for the provision of, behavioral health services, basic necessities, transitional housing, and other services to support the social determinants of health for participants.

(2) Requests for money must be submitted through the appointed bridges court liaison or other employee or designee of the office.

(3) The office shall make payments to the entity providing services to participants and shall not make payments directly to a participant.

**Source: L. 2023:** Entire article added, (SB 23-229), ch. 119, p. 441, § 1, effective April 27. **L. 2024:** (2) amended, (HB 24-1355), ch. 471, p. 3311, § 8, effective August 7.

#### **13-95-108. Gifts, grants, and donations.**

The office may seek, accept, and expend gifts, grants, or donations from private or public sources for the purposes of this article 95.

**Source: L. 2023:** Entire article added, (SB 23-229), ch. 119, p. 441, § 1, effective April 27.

#### **13-95-109. Reporting requirements.**

(1) On or before November 1 of each year, the office shall report to the joint budget committee, or any successor committee, about the office's work and administration of the bridges

court liaison program and bridges wraparound care program during the prior year. The report must include:

(a) The number and competency status of cases in the past year when a bridges court liaison was appointed and outcomes in those cases related to the legislative intent and statewide goals of the office, as set forth in this article 95, including data related to alternatives to competency services, alternatives to custody, and alternatives to criminal justice system involvement;

(b) Information concerning the use of money from the bridges of Colorado program participant service fund, including a summary of how money from the fund is being used to alleviate system gaps and barriers to services; and

(c) The number of participants and status of cases in the past year when a bridges wraparound care coordinator was appointed and the outcomes of the cases related to the legislative intent and statewide goals of the office, as set forth in article 8.6 of title 16, including data related to alternatives to competency services, alternatives to custody, and alternatives to criminal justice system involvement.

(2) Notwithstanding section 24-1-136 (11)(a)(I), the reporting requirement described in this section continues indefinitely.

**Source: L. 2023:** Entire article added, (SB 23-229), ch. 119, p. 441, § 1, effective April 27. **L. 2024:** (1) amended, (HB 24-1355), ch. 471, p. 3311, § 9, effective August 7.

## ARTICLE 100

### Office of Administrative Services for Independent Agencies

|             |                                                   |                                                                            |
|-------------|---------------------------------------------------|----------------------------------------------------------------------------|
| 13-100-101. | Legislative declaration.                          | agencies - created -                                                       |
| 13-100-102. | Definitions.                                      | repeal.                                                                    |
| 13-100-103. | Office of administrative services for independent | 13-100-104. Budget requests and annual statewide compensation adjustments. |

#### **13-100-101. Legislative declaration.**

(1) The general assembly finds, determines, and declares that:

(a) The provision of administrative support services for independent agencies created in the judicial department and associated appropriations should be as efficient as possible;

(b) Since 2015, five additional independent agencies, not including the office of administrative services for independent agencies, have been added to the judicial department. Since their inception, none of these five independent agencies and the independent ethics commission, established in 2007, have received direct appropriations or other direct funding necessary to deliver internal support of the administrative services outlined in section 13-100-103 (8)(a).

(c) The intent of the general assembly when creating each independent agency was that the judicial department, through the office of the state court administrator, could most efficiently provide centralized administrative support services to the independent agencies. However, the judicial department has increasingly limited or restricted administrative support services to these independent agencies, and the independent agencies have not received access to statewide systems and structures of support that are generally provided to state programs.

(d) It is critical that the office of administrative services for independent agencies be established for the provision of centralized administrative support services for current and future independent agencies that are in need of administrative support from the office of administrative services for independent agencies. Furthermore, it is imperative that the judicial department, through the office of the state court administrator, provide these administrative support services for the office of administrative services for independent agencies and the included agencies until the transition of services is complete, and effectively partner with the office of administrative services for independent agencies and support the transition of services described in this article 100 until the transition of services is complete.

**Source:** Entire article R&RE, (SB 24-217), ch. 308, p. 2076, § 1, effective May 31.

### **13-100-102. Definitions.**

As used in this article 100, unless the context otherwise requires:

- (1) "Budget request amendment" has the same meaning set forth in section 2-3-208.
- (2) "Compensation template" means the statewide system used to budget, by state agency, for employee benefits and salary as determined by the governor's office of state planning and budgeting and the department of personnel.
- (3) "Included agencies" means the independent agencies within the judicial department that the office provides administrative and fiscal support services to pursuant to this article 100 and includes the office of the child protection ombudsman, the independent ethics commission, the office of public guardianship, the commission on judicial discipline, the office of alternative defense counsel, the office of the child's representative, the office of the respondent parents'



counsel, the office of the statewide behavioral health court liaison, the office of the judicial discipline ombudsman, and any other independent agency added to the judicial department on or after July 1, 2024. The office of state public defender is not an included agency.

(4) "Office" means the office of administrative services for independent agencies created in section 13-100-103.

(5) "Technical support liaison" means an individual employed by a statewide central services agency in the executive branch or equivalent office or unit in the judicial branch that the agency, office, or unit designates as the liaison to provide technical support to the office.

**Source: L. 2024:** Entire article R&RE, (SB 24-217), ch. 308, p. 2077, § 1, effective May 31.

**Editor's note:** This section is similar to former § 13-100-101 as it existed prior to 2024.

**13-100-103. Office of administrative services for independent agencies - created - repeal.**

(1) There is created in the judicial department the office of administrative services for independent agencies to act as an independent agency that provides centralized administrative and fiscal support services for the included agencies.

(2) (a) On or before June 30, 2025, the office and the judicial department shall enter into a memorandum of understanding that contains, at a minimum, requirements related to the establishment of fiscal rules and ongoing access to, or the use of, judicial department systems, contracts, or resources that are in the interest of providing administrative and fiscal support services efficiently and at low cost to the state, which includes the judicial department's systems for administering payroll, benefits, and leave for employees of the agencies served by the office.

(b) Beginning January 1, 2026, if the included agencies' use of the judicial department's systems, contracts, or resources creates additional costs to the judicial department, those costs must be identified, quantified, negotiated, and incorporated into the memorandum of understanding, and paid for by the office.

(c) The office may negotiate shared resources for the included agencies, and the included agencies may participate in an office-negotiated agreement or may negotiate their own agreements independently of the office concerning the shared resources.

(3) The office consists of a director and any other staff position deemed necessary by the director within existing appropriations.

(4) The office is governed by an advisory board that consists of the director of each included agency and the director of any independent agency that is added to the judicial department on or after July 1, 2024. The director of an included agency may appoint a designee to serve on the advisory board on the director's behalf. In order to maintain board discussion and decision continuity and consistency, a designee is a full voting member of the board, must serve for at least one full fiscal year, and may not be replaced during that period by either a substitute designee or by the director, unless the designee is no longer employed by the included agency.

(5) Through June 30, 2025, the chairperson of the advisory board is the director of the office of the child protection ombudsman. Thereafter, the advisory board shall appoint its chair and officers, as necessary.

(6) (a) The advisory board is responsible for the following:

(I) On or before July 1, 2024, hiring an office director, by majority vote of the advisory board; and

(II) Securing a review of the functions and performance of the office and the director that occurs at least biannually beginning no later than July 1, 2026, to be performed by a third party and used by the board to effectively provide credible, documented, and supported supervisory oversight by the advisory board, as necessary.

(b) The advisory board may remove the director with or without cause by a two-thirds vote of the advisory board.

(c) The chair, acting for the advisory board, may contract with a human resources consultant to provide recruiting assistance to hire an office director, as necessary.

(7) The office director shall:

(a) On or before October 1, 2024, in consultation with the technical support liaisons pursuant to subsection (9) of this section, establish a workload capacity and staff resource plan for the office for fiscal years 2024-25 and 2025-26;

(b) On or before November 1, 2024, prepare a budget request for the office that includes necessary budget request amendments to fund the workload capacity and staff resource plan for fiscal years 2024-25 and 2025-26;

(c) On or before October 1, 2024, begin recruiting and hiring staff positions;

(d) Work in partnership with the judicial department to guide and support the transition of services provided to the included agencies until the transition to the office is completed;

(e) Administer the office in accordance with a memorandum of understanding with the judicial department pursuant to subsection (2) of this section and memorandums of understanding with each of the included agencies pursuant to subsection (10) of this section;

(f) On or before June 30, 2025, and on or before June 30 of each year thereafter, if necessary, update the office operating policies; and

(g) Meet with each director of the included agencies individually at least once per month to maintain consistent and regular communication regarding the provision of services provided by the office to each included agency.

(8) Once the transition of services is completed, the office is responsible for providing the following to the included agencies:

(a) Budget; accounting; payroll, including time and leave tracking; and human resources services, including policy guidance, documentation assistance, and coordination of records for all specialized leave situations;

(b) Centralized budget support that preserves the included agencies' independence concerning budget request amendments and provides a consolidated and streamlined budget submission process for all included agencies pursuant to section 13-100-104;

(c) Guidance, but not the execution or primary provision of direct services, for contracts, purchasing, and procurement, except as otherwise specified within an included agency's memorandum of understanding;

(d) Maintenance of a single, consolidated compensation plan for all occupational classes in the included agencies pursuant to section 13-100-104. The included agencies retain independence in defining each included agency's organizational staff positions, structures, and personnel rules.

(e) Beginning July 1, 2025, information technology technical consultation for, or assistance with, the following:

(I) Information technology systems' access to statewide networks and systems and compliance with security standards established by the governor's office of information technology for included agency information technology systems; and

(II) Information technology vendor and consultant procurement.

(9) (a) To establish the workload capacity and staff resource plan required in subsection (7)(a) of this section and maintain an ongoing statewide systems support network for the office, the office director must be assigned technical support liaisons from executive branch agencies involved in the primary provision of statewide support services policy and systems. This technical support network is primarily intended to assist the director in establishing workload capacity metrics for the initial staff resource plan for the office. Technical support liaisons must be assigned from the following state agencies:

(I) A budget systems access and support liaison from the office of state planning and budgeting;

(II) Human resources, payroll, accounting, and procurement liaisons from the department of personnel; and

(III) A statewide information technology network, security, and systems support liaison or liaisons, as necessary, from the governor's office of information technology.

(b) The state court administrator's office is encouraged to assign equivalent technical support liaisons across these administrative support functions in order to enhance the transition of support services to the office, maintain an ongoing judicial systems support network for the office, and encourage clear communication and understanding of judicial department systems and policies.

(10) (a) On or before June 30, 2025, the director shall enter into a memorandum of understanding with each included agency. Each memorandum of understanding must establish a timeline for the provision of services and expectations for discrete support services. The memorandum of understanding serves as a statement of rights and responsibilities for the included agency and the office.

(b) Included agencies shall not receive additional direct appropriations for the provision of services described in subsection (8) of this section.

(11) (a) (I) The judicial department shall provide the office with office space in the Ralph L. Carr Colorado judicial center. Beginning January 1, 2026, the judicial department may require leased space payments for the office or for included agencies, consistent with established judicial center tenant policies.

(II) Included agencies that currently occupy office space in the Ralph L. Carr Colorado judicial center must remain located in the Ralph L. Carr Colorado judicial center.

(b) Through December 31, 2025, the judicial department shall provide the office with access to, or the use of, department systems, contracts, and resources that are related to providing administrative and fiscal support services efficiently and at low cost to the state, which must include judicial department systems for administering payroll, benefits, and leave for included agency employees.

(c) Beginning January 1, 2026, if the included agencies' use of the judicial department's systems, contracts, or resources creates additional costs to the judicial department, those costs must be identified, quantified, negotiated, and incorporated into the memorandum of understanding and paid for by the office.

(12) (a) The judicial department shall work in partnership with the office to guide and support the transition of support services provided to the included agencies. The judicial

department is responsible for effectuating a successful transfer of support services to the office in a way that enables the office to independently deliver support services.

(b) The judicial department shall provide the office with accounting support, information technology support, human resources and payroll services, and similar support services, without cost to the office until the transition of services is complete.

(c) Notwithstanding any provision of law for the included agencies and memoranda of understanding between the judicial department and each included agency, and notwithstanding more limited interpretations of required administrative support services provisions by the judicial department, the judicial department, through the office of the state court administrator, shall provide the services detailed in subsection (8)(a) of this section to the included agencies until the transition of services is complete.

(d) The director shall notify the revisor of statutes in the office of legislative legal services in writing that the transition of services is complete using the email address [revisorofstatutes.ga@coleg.gov](mailto:revisorofstatutes.ga@coleg.gov).

(e) This subsection (12) is repealed upon receipt of the notification described in subsection (12)(d) of this section that the transition of services is complete.

**Source: L. 2024:** Entire article R&RE, (SB 24-217), ch. 308, p. 2078, § 1, effective May 31.

**Editor's note:** This section is similar to former § 13-100-102 as it existed prior to 2024.

#### **13-100-104. Budget requests and annual statewide compensation adjustments.**

(1) (a) The office shall submit a single, consolidated base budget, pursuant to the requirements of section 2-3-208, that includes the base budget information from each included agency, if provided.

(b) The office shall submit a single, consolidated budget request, pursuant to the requirements of section 2-3-208, that includes budget request amendments from each included agency, if provided.

(2) The office shall coordinate all state budget process communications with the joint budget committee and the office of state planning and budgeting for the included agencies.

(3) The office shall use standard joint budget committee and office of state planning and budgeting budget schedules and budget data systems to prepare budget documents.

(4) The office shall maintain a consolidated compensation schedule for each staff position in the included agencies. The consolidated compensation schedule must include the following information for each staff position:

- (a) Included agency job title;
- (b) Equivalent job classification that the position is anchored to in the executive branch, judicial branch, or office of state public defender compensation plan;
- (c) Current salary range for the equivalent job classification;
- (d) Current salary and percentile position in range; and
- (e) The state fiscal year in which the staff position was added.

(5) (a) The office shall submit a single, consolidated statewide compensation and benefits budget amendment request that accounts for all included agencies as generated by each included agency compensation template or any future equivalent replacement system used and defined by the office of state planning and budgeting and the department of personnel.

(b) Agency compensation template formulas and calculation structure must not be modified in creating compensation and benefits budget amendment requests.

(c) If any agency compensation template includes a manual adjustment to reflect positions that are approved but unfilled, vacant, or have been eliminated or reclassified, at the time the payroll data download is used to populate the template, the manual adjustments or changes must be documented in the compensation adjustment request narrative, by position for each discrete manual adjustment included. Each reclassification that adjusts a position to a different equivalent job classification defined in subsection (4)(b) of this section must be specifically explained in the request narrative.

**Source: L. 2024:** Entire article R&RE, (SB 24-217), ch. 308, p. 2082, § 1, effective May 31.  
**L. 2026:** (1) amended, (HB 26-1408), ch. 287, p. 1582, § 2, effective June 1.