

LEGISLATIVE UPDATE

Sixty-Seventh Colorado General Assembly
January 7, 2009 through May 6, 2009

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Internet Link for All 2009 House and Senate Bills: <http://www.leg.state.co.us>

I. HOUSE BILLS

A. House Bill 1198 - PASSED

Title: Uniform Power of Attorney Act

Status: Signed by the Governor on April 9, 2009

Highlights: As Relevant to Family Law Only; for All Other Provisions
See House Bill

Summary: 1. New Section 15-14-710. Termination of Agent's
authority.

(2) An agent's authority terminates when:

(c) An action is filed for the dissolution or annulment of the
agent's marriage to the principal or their legal separation,
unless the power of attorney otherwise provides; or

~~REPEALED - C.R.S. §15-14-605. [Dissolution of marriage.
If an agency instrument appoints the principal's spouse as
agent and a court enters a decree of dissolution of marriage
or legal separation between the principal and spouse after
the agency instrument is signed, the spouse shall be
deemed to have died at the time of the decree for purposes
of the agency.]~~

2. Effective Date. Sections 2 through 19 of the act take effect on January 1, 2010, and the remainder of the act shall take effect upon passage, i.e. April 9, 2009

B. House Bill 1287 - PASSED

Title: Concerning Changes to the "Colorado Probate Code".

Status: Passed House and Senate; Signed by the Speaker of the House May 13, 2009; sent to Senate for signature, then will be sent to Governor for signature

Highlights: Changes to Colorado Probate Code effective July 1, 2010

C. House Bill 1286- NOT PASSED; WILL BE REINTRODUCED IN 2010

Title: Concerning the Repeal and Reenactment of the Uniform Parentage Act

Status: Postponed Indefinitely; to be re-introduced next legislative session in 2010; See separate handout

Summary: Colorado Commission on Uniform State Laws. Repeals and reenacts the "Uniform Parentage Act", which is contained in the "Colorado Children's Code", to update the statutes on establishing legal parentage of children to reflect modern technologies used for conception and for genetic testing, as recommended by the national conference of commissioners on uniform state laws.

Defines how a mother-child relationship and a father-child relationship are established.

Specifies that a knowing and voluntary acknowledgment of paternity is the equivalent of a judgment of paternity for enforcement purposes. Requires a court to give full faith and credit to an acknowledgment of paternity from another state. States that such an acknowledgment is effective so long as there is not another presumed, acknowledged, or adjudicated father. Allows for rescission of acknowledgment of paternity if a proceeding is filed within 2 years of the acknowledgement. Allows for a counterpart denial of

paternity by a presumed father that has the effect of a judgment of nonpaternity if another man has acknowledged paternity or is adjudicated to be the natural father. Also allows for the filing of a denial of paternity, which may be rescinded or challenged.

Establishes a separate procedure for genetic testing allowing a court to order testing without a paternity action. Makes a reasonable probability of sexual contact between the putative father and the mother a sufficient basis to initiate a proceeding for genetic testing. Allows a putative father to initiate the proceeding to obtain the tests to prove that he is not the genetic father. Sets forth standards for genetic testing. Makes the standard for presumption of paternity for genetic testing of a presumed father 99% probability of paternity based on appropriate calculations of the "combined paternity index". Provides that the presumption is rebuttable by further genetic evidence that excludes the putative father or that identifies another man as the genetic father.

Authorizes a court to compel genetic testing of a man's blood relatives if he is not available for testing. Makes the standard for genetic testing for blood relatives 97% or higher. Authorizes a child support-enforcement agency to order genetic testing. Allocates costs for genetic testing. Protects the confidentiality of the genetic-testing results.

In a paternity proceeding, rebuttal of a presumption of paternity, acknowledged paternity, or prior adjudicated paternity, requires genetic information that, within the accepted probabilities, excludes the presumed father from paternity or establishes another man as the father of the child.

States that jurisdiction to bring an action is governed by the "Uniform Interstate Family Support Act". States that if there is no presumed, acknowledged, or adjudicated father, an action to determine paternity may be brought at any time. If there is a presumed father, establishes a statute of limitations for initiating a paternity action of 2 years following the birth of the child. Allows an action to disprove the presumed father's paternity to be brought at any time if the presumed father and mother did not cohabit or have sexual

intercourse during the time of conception and the presumed father did not treat the child as his own. Authorizes a court to deny a motion for genetic testing.

Allows a refusal to submit to genetic testing to ripen into an adjudication of paternity for the putative father who refuses. Specifies that only genetic evidence overcomes a presumption of paternity. States that no child (as a party) is bound by an adjudication of paternity unless the adjudication of paternity was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown.

Provides for determining paternity when there is assisted reproduction. States that if a couple consents to any sort of assisted reproduction and the woman gives birth to the resulting child, they are the legal parents of the child. Specifies that the donor of either sperm or eggs used in an assisted reproduction may not be a legal parent under any circumstances.

States that a gestational agreement may be entered into between a woman and the intended parents obligating that woman to carry a child for the intended parents when the conception is accomplished with assisted reproduction. Specifies that the woman who carries the child to birth pursuant to a gestational agreement is not the legal mother of that child. Provides that, if the woman who carries the child to birth is married, her husband has no parental rights or obligation with respect to the child and that only the intended parents are the legal parents of the child.

Specifies that a gestational agreement must be validated by a court before it is enforceable. Directs the court to verify the birth mother's qualifications to carry the child and the intended parents' qualifications to be parents. Permits the birth mother to be compensated. Allows any party to the agreement to terminate the agreement under certain conditions.

Makes conforming amendments. Makes the act effective July 1, 2010.

II. SENATE BILLS

A. Senate Bill 68 and 38- PASSED

Title: Concerning Funding to Support Domestic Abuse Services, and Making an Appropriation Therefor.

Status: Senate Bill 68 Passed House and Senate awaiting Governor's signature; Senate Bill 38 signed by Governor on April 16, 2009.

Highlights: Senate bill 68 increases filing fees in dissolution of marriage, legal separation, declaration of invalidity, declaratory judgment actions concerning status of marriage proceedings and marriage license fees; Provides that the monies generated from increased domestic relations filing fees and marriage license fees shall be used to reimburse domestic abuse programs that provide services per C.R.S. §26-7.5-103 to married, separated, or divorced persons or their families; and credits fees collected to various other state funding resources.

Senate Bill 38 amends C.R.S. §13-32-101 to include legal separation, declaration of invalidity, declaratory judgment actions concerning status of marriage proceedings in addition to dissolution of marriage proceedings for which fees are charged.

Summary: 1. Amends C.R.S. §26-7.5-101, et. seq.;

Legislative declaration. The general assembly hereby finds that a significant number of homicides, aggravated assaults, and assaults and batteries, and other types of abuse and coercive control occur within the home; between adult family members; that the reported incidence of domestic abuse represents only a portion of the total number of incidents of domestic abuse; that a large percentage of police officer deaths in the line of duty result from police intervention in domestic abuse situations; and that domestic abuse is a complex problem affecting families from all social and economic backgrounds. It is the purpose of this article to

encourage the development of domestic abuse programs by units of local government and nongovernmental agencies.

2. Amends C.R.S. §13-32-101. Docket fees in civil actions.

a. On and after July 1, 2009, filing fees for Petitioner in a proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage and in an action for a declaratory judgment concerning the status of marriage shall be \$230.00 (increased from \$220.00)

b. On and after July 1, 2008 2009, filing fees for Respondent in a proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage and an action for a declaratory judgment concerning the status of marriage, shall be \$116.00 (increased from \$106.00).

c. Provides for the division of filing fees collected from Petitioner to various existing and newly created Funds as follows:

(1) \$3.00 shall be deposited in the vital statistics records cash fund per 25-2-121, C.R.S.; and

(2) \$5.00 shall be deposited in the displaced homemaker fund created in section 8-15.5-108, C.R.S.;

(3) \$5.00 shall be deposited in the Colorado domestic abuse program fund created in section 39-22-802 (1), C.R.S.; and

(4) \$5.00Five dollars shall be deposited in the family violence justice fund created in section 14-4-107 (1), C.R.S.

d. Provides for the division of filing fees collected from Respondent to various existing and newly created Funds as follows:

(1) Prior to July 1, 2010, \$45.00 shall be deposited in the general fund, \$30.00s shall be deposited in the judicial stabilization cash fund; \$5.00 shall be deposited in the court security cash fund; \$26.00 shall be deposited in the justice center cash fund; \$5.00 shall be deposited in the Colorado domestic abuse program fund; and \$5.00 shall be deposited in the family violence justice fund.

(2) On and after July 1, 2010, \$75.00 shall be deposited in the judicial stabilization cash fund; \$5.00 shall be deposited in the court security cash fund; \$26.00 shall be deposited in the justice center cash fund; \$5.00 shall be deposited in the Colorado domestic abuse program fund; \$5.00 shall be deposited in the family violence justice fund.

3. Amends C.R.S. §14-2-106. License to marry.

Increases the marriage license application fee from \$7.00 to \$27.00. Provides that \$20.00 of the fee is to be transmitted by the county clerk and recorder to the state treasurer and credited by the treasurer to the Colorado domestic abuse program fund created in section 39-22-802 (1), C.R.S., and an additional amount established pursuant to section 25-2-121, C.R.S., to be credited to the vital statistics records cash fund pursuant to section 25-2-121, C.R.S.

B. Senate Bill 69- PASSED

Title: Concerning Court-appointed Parenting Coordinators

Status: Signed by the Governor on April 16, 2009

Highlights: Modifies Section 14-10-128.1 extending immunity to Parenting Coordinators in certain circumstances

Summary: Amends C.R.S. §14-10-128.1 (7) and (8),

1. Appointment of parenting coordinator.

(7) (a) A parenting coordinator appointed by the court pursuant to this section shall be immune from civil liability in any claim for injury that arises out of :

-an act or omission of the parenting coordinator occurring on or after the effective date of this paragraph (a)
-during the performance of his or her duties or during the performance of any act that a reasonable parenting coordinator would believe was within the scope of his or her duties unless the act or omission causing the injury was willful and wanton.

(b) Nothing in this subsection (7) shall be construed to bar a party from asserting a claim:

(I) Based upon a parenting coordinator's failure to comply with the provision set forth in subsection (8) of this section;

(II) Related to the reasonableness or accuracy of any fee charged or time billed by a parenting coordinator; or

(III) Based upon a negligent act or omission involving the operation of a motor vehicle by a parenting coordinator.

(c) (I) In a judicial proceeding, administrative proceeding, or other similar proceeding between the parties to the action, a parenting coordinator shall not be competent to testify and may not be required to produce records as to any statement, conduct, or decision, that occurred during the parenting coordinator's appointment, to the same extent as a judge of a court of this state acting in a judicial capacity.

Nothing in this subsection (7) shall be construed to prohibit a parenting coordinator from testifying or producing records to the extent testimony or production of records by the parenting coordinator is necessary in an action by the parenting coordinator to collect fees from a party to the action.

(II) This paragraph (c) shall not apply:

(A) To the extent testimony or production of records by the parenting coordinator is necessary to determine a claim of

the parenting coordinator against a party; or

(B) To the extent testimony or production of records by the parenting coordinator is necessary to determine a claim of a party against a parenting coordinator; or

(C) When both parties have agreed, in writing, to authorize the parenting coordinator to testify.

(d) If a person commences a civil action against a parenting coordinator arising from the services of the parenting coordinator, or if a person seeks to compel a parenting coordinator to testify or produce records in violation of paragraph (c) of this subsection (7), and the court determines that the parenting coordinator is immune from civil liability or that the parenting coordinator is not competent to testify, the court shall award to the parenting coordinator reasonable attorney fees and reasonable expenses of litigation.

(8) The parenting coordinator shall comply with any applicable provisions set forth in chief justice directives and any other practice or ethical standards established by rule, statute, guideline, or licensing board that regulates the parenting coordinator.

2. **Effective Date.** This act shall take effect upon passage (April 16, 2009) and shall apply to claims arising, motions to compel testimony or produce records filed, or subpoenas issued on or after said date.

C. Senate Bill 88- PASSED .

Title: Concerning the Extension of State Employee Group Benefits to Domestic Partners of State Employees

Status: Sent to the Governor on May 6, 2009

Highlights: Extends State Employee Group Benefits to Domestic Partners of State Employees

Summary: Amends C.R.S. §24-50-603 by the addition of a new subsection

1. Legislative declaration. (1) The general assembly hereby finds and determines that:

(a) Most nonelderly adults in the United States receive health care coverage through their own employment or through the employment-based coverage of a family member, typically a spouse;

(b) As a matter of customary compensation practice, many employers offer employment-based health insurance to spouses of employees;

(c) Same-sex couples are at a significant disadvantage, however, because they cannot legally marry in Colorado and are unable to claim benefits for a same-sex domestic partner from many employers;

(d) The exclusion of domestic partners as dependents under an employer-sponsored health insurance plan makes unmarried couples and their children more likely to be uninsured than the average nonelderly person;

(e) More and more employers are recognizing this inequity and are starting to offer health benefits to their employees' domestic partners, including many local governments and higher education institutions in Colorado;

(f) Employers who offer domestic partner benefits are at a competitive advantage over those employers who do not offer such benefits as they are able to offer a more comprehensive benefits package, as part of the overall compensation, to recruit and retain skilled employees;

(g) The state must remain a competitive employer in the market, recruiting and retaining the best employees for state government positions by offering an attractive and comprehensive compensation and benefits package; and

(h) It is therefore important for the state to offer domestic partner benefits to its state employees in order to give the state a competitive edge in attracting and retaining qualified individuals for employment with the state.

2. Amends C.R.S. §24-50-603 (5)(c) and (6.5).

a. §24-50-603 (5)(c): Includes in the definition of a dependent: An employee's domestic partner who has submitted required documentation demonstrating a domestic partnership with an employee

b. §24-50-603 (6.5): Domestic partner means an adult, at least eighteen years of age:

-Who is of the same gender as the employee;
-With whom the employee has shared an exclusive, committed relationship for at least one year with the intent for the relationship to last indefinitely;

-Who is not related to the employee by blood to a degree that would prohibit marriage pursuant to section 14-2-110, C.R.S.; and

-Who is not married to another person.

3. **Effective Date**: Takes effect August 5, 2009, except that, if a referendum petition is timely filed against this act or an item, section, or part of this act within the ninety days after adjournment, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

D. Senate Bill 268- PASSED .

Title: Concerning Clarifying the Appointment of State-paid Professionals in Cases involving Children, and Making an Appropriation in Connection Therewith.

Status: Signed by the Governor on May 1, 2009

Highlights: As relevant to Family Law cases: Amends statutory appointments of Child's Legal Representative, Child and Family Investigators such that no order can enter for state pay unless both parties to a case are determined to be indigent after considering the combined income and assets of the parties; and requires the court to make every reasonable effort to apportion costs between the parties to minimize the costs, fees, and disbursements to be borne by the state.

Also amends C.R.S. §19-1-111, regarding the appointment and termination of a Guardian ad Litem in juvenile delinquency cases.

Summary: 1. Amends C.R.S. §14-10-116 and 14-10-116.5 as follows:

a. In a proceeding for dissolution of marriage or legal separation, prior to the entry of a decree of dissolution or legal separation, the court shall not enter an order requiring the state to bear the costs, fees, or disbursements related to the appointment of a child's legal representative or child and family investigator unless both parties are determined to be indigent after considering the combined income and assets of the parties.

b. If the appointment of a child's legal representative or child and family investigator occurs in a case involving unmarried parties, including those proceedings that occur after the entry of a decree for dissolution of marriage or of legal separation, the court shall make every reasonable effort to apportion costs between the parties in a manner that will minimize the costs, fees, and disbursements that shall be borne by the state.

c. Effective Date: May 1, 2009