



Civil Law

During the 2019 legislative session, the General Assembly examined a number of measures related to civil law. Specifically, the legislature considered bills regarding consumer fraud, internet privacy, free-speech lawsuits, damages, child hearsay exceptions, and equal pay.

Consumer Fraud

Colorado lawmakers had not updated consumer protection laws in almost thirty years, and in 2019, decided it was time to make changes to improve the state's national standing in this area.

House Bill 19-1289 overhauls the state's consumer protection laws and gives prosecutors and private attorneys more latitude in bringing cases against companies with dubious business practices. Specifically, it removes requirements that prosecutors have to prove a significant public harm or impact before bringing forth a case, or prove a business *knowingly* acted maliciously toward consumers. The bill also added a catch-all provision to allow the Attorney General's Office to pursue deceptive practices before they are listed as being illegal under state law. Finally, the measure increased civil penalties for businesses found in violation of the law.

Images on Social Media or Websites

The internet, generally, and social media, specifically, continually raise policy questions

about privacy. Colorado lawmakers examined how the state could better regulate online activity related to private, intimate images and suicide.

Senate Bill 19-100 addresses an increasingly common occurrence of posting private images for harassment or pecuniary gain. The key features of this bill are: a cause of civil action for an unauthorized disclosure of private, intimate images; remedies for victims, including damages and attorney's fees; and, procedures that protect the victim's identity in court proceedings. The bill also specifies good faith exemptions and statutes of limitations.

House Bill 19-1334 aims to prevent the online spreading of images related to young people harming themselves. The measure makes posting such an image a civil infraction punishable by a fine of \$100 per violation, and the original poster can also be charged with a class 3 misdemeanor. The bill stipulates that it is not a crime if the posting is a fictional work or a documentary, related to a matter of public interest, or related to law enforcement, legal proceedings, or medical practices.

SLAPP Suits

House Bill 19-1324 adds Colorado to a list of about 30 states that have anti-SLAPP, or strategic lawsuits against public participation, statutes. The bill provides an expedited process for the early dismissal of civil cases that involve free-speech rights. The measure also allows for

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an interlocutory appeal, meaning a case can be halted and immediately appealed to a higher court before the expenses of the discovery process are incurred. Defendants who win motions to dismiss such a suit are entitled to full attorney's fees and court costs.

Damages

The limitations on the amount of damages for unlawfully serving alcohol, noneconomic loss or injury, and wrongful death were last adjusted for inflation in January, 2008, resulting in a decrease in the relative value of the damage awards. One reason this adjustment happened infrequently is due to state law requiring legislative approval to do so. *Senate Bill 19-109* not only aligns damages with current inflation rates, but it also mandates that this happens on an automatic, recurring basis. The bill specifically adjusts damage limitations for inflation in January, 2020, and each January every two years thereafter.

Child Hearsay Exceptions

A common concern about children testifying in court is that they may be too young to meaningfully understand what they are asked to do, in addition to the trauma caused by reliving a crime or other serious incident. In Colorado law, there are specified hearsay exceptions for children that allow a statement in lieu of a child's testimony on the stand. *Senate Bill 19-071* adds further statutory exceptions to this child hearsay rule. The bill expands the admission for out-of-court statements made by children under 13 years old for any civil, criminal or delinquency proceeding in which the child is a victim, or in which the child describes all or part of any unlawful sexual behavior.

Equal Pay for Equal Work

According to data from the United States Census Bureau, women in Colorado on average

make 15 percent less than their male counterparts. Colorado lawmakers have tried and failed for years to pass a pay parity law to address this discrepancy, and finally found success during the 2019 legislative session.

Senate Bill 19-085 addresses the gender wage gap by allowing employees who believe they are being paid less due to their gender to file a lawsuit within two years of the discovery. The bill further specifies that employers found to have paid someone less due to their gender must pay the amount the employee would have made in the previous three years if there had not been discrimination. Other provisions require employers to include the pay range in job postings, as well as ban employers from inquiring about current salary information. Further, the measure provides a good-faith exception if businesses complete a thorough pay audit within its workforce in the years before being sued. The law also bans any form of retaliation for discussing pay with other employees. The bill does not take effect until January 1, 2021, in order for businesses to prepare for the new law and come into compliance with it.