

CHAPTER 6

COURTS

HOUSE BILL 95-1090

BY REPRESENTATIVES Reeser and DeGette;
also SENATORS R. Powers and Bishop.

AN ACT**CONCERNING THE REPEAL OF PROVISIONS REGARDING COURTS IN TITLE 13, COLORADO REVISED STATUTES, THAT HAVE BEEN DECLARED UNCONSTITUTIONAL.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 13-21-102 (4), Colorado Revised Statutes, 1987 Repl. Vol., is repealed as follows:

13-21-102. Exemplary damages. (4) ~~One-third of all reasonable damages collected pursuant to this section shall be paid into the state general fund. The remaining two-thirds of such damages collected shall be paid to the injured party. Nothing in this subsection (4) shall be construed to give the general fund any interest in the claim for exemplary damages or in the litigation itself at any time prior to payment becoming due.~~

SECTION 2. 13-59-103, Colorado Revised Statutes, 1987 Repl. Vol., is repealed as follows:

13-59-103. Body execution in tort, when. ~~In any civil action in any court of record where it appears from the summons and other papers in the cause that the action is founded upon tort, and upon trial of the cause the finding is in favor of the plaintiff, and the verdict of the jury or the finding of the court, if tried without a jury, states that in committing the tort complained of any one or more of the defendants were guilty of either malice, fraud, willful deceit, or negligence consisting of a reckless or willful disregard of the rights or safety of others, then the plaintiff may have execution as provided in this article against the body of any defendant against whom such finding was had or any judgment rendered on any such finding. In no case shall an execution issue against the body of a person when the person has been~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

convicted in a criminal prosecution for the same wrong.

SECTION 3. 13-59-104, Colorado Revised Statutes, 1987 Repl. Vol., is repealed as follows:

13-59-104. Finding - term - release. ~~If the finding of the court or jury, as the case may be, in any such action, contains a statement as is provided in section 13-59-103, it is the duty of the court before which such case is tried to enter upon its docket, in the discretion of the court according to the aggravation of the circumstances as proved at the trial, the term for which a defendant may be committed to jail on a writ of execution against the body in such case. Such term shall not exceed one year in any case, and the execution and mittimus shall state the time so fixed by the court. No execution shall issue against the body if the amount of the judgment has been paid. Any person committed to jail by such process shall be released therefrom at once upon the payment of such judgment.~~

SECTION 4. 13-59-105, Colorado Revised Statutes, 1987 Repl. Vol., is repealed as follows:

13-59-105. Plaintiff to pay costs, unless. ~~All costs, charges, and expenses of such imprisonment shall be paid out of the county treasury of the county in which such action is tried and imprisonment had, when the party plaintiff before such imprisonment takes place, presents his affidavit that he is a poor person and not able to pay the costs of such imprisonment to the officer having the executions. Otherwise, all such costs shall be paid by the plaintiff. Judgment shall not be satisfied in whole or in part by any such imprisonment. The plaintiff may have execution against the goods and chattels, lands, and tenements of the defendant, whether against the body or not, and shall not take the body on execution but once in any such action.~~

SECTION 5. 13-25-127 (1) and (3), Colorado Revised Statutes, 1987 Repl. Vol., are amended to read:

13-25-127. Civil actions - degree of proof required. (1) Any provision of the law to the contrary notwithstanding and except as provided in ~~subsections~~ SUBSECTION (2) ~~and (3)~~ 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.

(3) ~~Execution against the body of a party against whom the claim is asserted shall be awarded only when the party asserting the claim proves beyond a reasonable doubt the commission of a tort under the circumstances set forth in section 13-59-103. Nothing in this subsection (3) shall be construed as preventing a party asserting the claim from being awarded money damages or other appropriate relief, other than execution against the body of a party against whom the claim is asserted, if he proves the commission of a tort by a preponderance of the evidence.~~

SECTION 6. 13-59-102, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

13-59-102. Execution against the body. No execution shall issue against the body of any defendant in a civil action. ~~except as provided in this article.~~

SECTION 7. 13-64-403 (1.5), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

13-64-403. Agreement for medical services - alternative arbitration procedures - form of agreement - right to rescind. (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 ~~(4)~~ (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.

SECTION 8. 18-1-103 (3), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

18-1-103. Scope and application of code. (3) The provisions of this code do not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered or enforced in a civil action for any conduct which this code makes punishable; and the civil injury is not merged in the offense. ~~It is not the intent or purpose of this code to repeal that portion of section 13-59-103, C.R.S., relating to the prohibition against an execution upon the body of a person in a tort action when that person has been convicted in a criminal prosecution for the same wrong.~~

SECTION 9. 24-75-201.7, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended to read:

24-75-201.7. Enforcement of state spending restriction - punitive or exemplary damages - property tax relief fund - creation. ~~Notwithstanding the provisions of section 13-21-102 (4), C.R.S.,~~ Any punitive or exemplary damages awarded to any party to a lawsuit brought to enforce the restriction on state spending as set forth in section 24-75-201.1 shall be deposited and credited to the property tax relief fund, which is hereby created in the state treasury. All moneys in the fund at the end of any fiscal year shall remain in the fund and shall not be transferred or credited to the state general fund or to any other state fund. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Moneys in said fund shall be used only in such manner as the general assembly deems appropriate as to provide property tax relief throughout the state and shall never be available for appropriation for any other state purpose.

SECTION 10. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 9, 1995