

CHAPTER 13

COURTS

HOUSE BILL 02-1106

BY REPRESENTATIVE(S) Chavez, Grossman, Jahn, Mace, Madden, Mitchell, Saliman, Sanchez, Snook, and Vigil;
also SENATOR(S) Tate.

AN ACT

**CONCERNING THE ADMISSIBILITY OF TESTIMONY CONCERNING PRIOR STATEMENTS MADE BY
PERSONS INCAPABLE OF TESTIFYING.**

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

SECTION 1. 13-90-102, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

13-90-102. Testimony concerning oral statements made by person incapable of testifying - when allowed. (1) SUBJECT TO THE LAW OF EVIDENCE, IN ANY CIVIL ACTION BY OR AGAINST A PERSON INCAPABLE OF TESTIFYING, EACH PARTY AND PERSON IN INTEREST WITH A PARTY SHALL BE ALLOWED TO TESTIFY REGARDING AN ORAL STATEMENT MADE BY THE PERSON INCAPABLE OF TESTIFYING IF:

(a) THE STATEMENT WAS MADE UNDER OATH AT A TIME WHEN SUCH PERSON WAS COMPETENT TO TESTIFY;

(b) THE STATEMENT IS CORROBORATED BY MATERIAL EVIDENCE OF AN INDEPENDENT AND TRUSTWORTHY NATURE; OR

(c) THE OPPOSING PARTY INTRODUCES EVIDENCE OF RELATED COMMUNICATIONS.

(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) "PERSON INCAPABLE OF TESTIFYING" MEANS ANY DECEDENT OR ANY PERSON WHO IS OTHERWISE NOT COMPETENT TO TESTIFY.

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

(b) "PERSON IN INTEREST WITH A PARTY" MEANS A PERSON HAVING AN INTEREST IN THE OUTCOME OF THE CIVIL ACTION OR ANY OTHER INTEREST THAT MAKES THE PERSON'S TESTIMONY, STANDING ALONE, UNTRUSTWORTHY. "PERSON IN INTEREST WITH A PARTY" DOES NOT INCLUDE A PERSON WHOSE ONLY INTEREST IS AN EXPECTATION OF RECEIVING JUST COMPENSATION FOR THE VALUE OF SERVICES RENDERED AS A WITNESS.

SECTION 2. Effective date - applicability. This act shall take effect July 1, 2002, and shall apply to causes of action filed on or after said date.

SECTION 3. 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 13, 2002