

CHAPTER 68

COURTS

HOUSE BILL 08-1174

BY REPRESENTATIVE(S) McGihon;
also SENATOR(S) Gordon, and Shaffer.

AN ACT

CONCERNING THE ENACTMENT OF THE "UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT".

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

SECTION 1. Title 13, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 90.5
Interstate Depositions and Discovery Act

13-90.5-101. Short title. THIS ARTICLE MAY BE CITED AS THE "UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT".

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

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

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.

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.

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.

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.

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.

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.

SECTION 2. Repeal. 13-90-111, Colorado Revised Statutes, is repealed as follows:

13-90-111. Power of court to enforce attendance. ~~When a deposition of a witness, who resides or is found within this state, is authorized by any court of record in the United States which is outside the state of Colorado, the district court of the county where the witness resides or is found may issue a subpoena commanding such witness to appear and testify by deposition before a proper officer. The place of the deposition shall be the county of the witness's residence or such other convenient place as is fixed by order of court. The Colorado district court may compel testimony or punish disobedience of such witness in the same manner as such court may compel testimony, enforce subpoenas, or punish for contempt in like cases pending before said court. For the purpose of any depositions under this section, any questions of conflicts of law or procedure shall be governed by the applicable rule, procedure, or statute of Colorado.~~

SECTION 3. 13-90-112, Colorado Revised Statutes, is amended to read:

13-90-112. Power to enforce subpoena duces tecum. The provisions of ~~section 13-90-111~~ ARTICLE 90.5 OF THIS TITLE shall also apply to a subpoena duces tecum.

SECTION 4. Inclusion of official comments. There shall be included in the publication of the "Uniform Interstate Depositions and Discovery Act", as nonstatutory matter, following each section of the article, the full text of the official comments to that section contained in the official volume containing the November 7, 2007, official text of the "Uniform Interstate Depositions and Discovery Act" issued by the national conference of commissioners on uniform state laws, with any changes in the official comments or Colorado comments to correspond to Colorado changes in the uniform act. The revisor of statutes shall prepare the comments and, the committee on legal services shall approve the comments for publication.

SECTION 5. Application to pending actions. This act applies to requests for discovery in cases pending on or after the effective date of this act.

SECTION 6. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, 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.

Approved: March 26, 2008