

CHAPTER 311

COURTS

HOUSE BILL 09-1305

BY REPRESENTATIVE(S) Levy, Apuan, Benefield, Casso, Court, Ferrandino, Frangas, Hullinghorst, Judd, Kerr A., Labuda, McFadyen, Merrifield, Middleton, Miklosi, Pace, Peniston, Pommer, Primavera, Ryden, Scanlan, Schafer S., Solano, Todd, Vigil, King S., Carroll T.;
also SENATOR(S) Veiga, Romer, Bacon, Boyd, Carroll M., Foster, Heath, Hodge, Hudak, Isgar, Morse, Newell, Shaffer B., Tapia, Tochtrop, Williams.

AN ACT

CONCERNING LIMITATIONS ON THE REQUIREMENTS FOR COST BONDS IN CIVIL LAWSUITS.

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

SECTION 1. 13-16-101, Colorado Revised Statutes, is amended to read:

13-16-101. Security for costs. (1) In all actions on official bonds for the use of any persons, actions on the bonds of executors, administrators, or guardians, AND qui tam actions on any penal statute, ~~and in all cases in law and equity where the plaintiff, or the person for whose use an action is to be commenced, is not a resident of this state,~~ the person or plaintiff for whose use the action is to be commenced, before he OR SHE institutes such suit, shall file or cause to be filed with the clerk of the court in which the action is to be commenced an instrument in writing AS DESCRIBED IN SUBSECTION (3) OF THIS SECTION FOR SECURITY FOR THE PAYMENT OF COSTS OF SUIT.

(2) IN ALL CASES IN LAW AND EQUITY WHERE THE PLAINTIFF, OR THE PERSON FOR WHOSE USE AN ACTION IS TO BE COMMENCED, IS NOT A RESIDENT OF THIS STATE, UPON MOTION OF THE DEFENDANT OR ANY OFFICER OF THE COURT PURSUANT TO SECTION 13-16-102, THE COURT MAY REQUIRE THE NONRESIDENT PLAINTIFF TO GIVE AN INSTRUMENT IN WRITING FOR THE PAYMENT OF COSTS OF SUIT AS DESCRIBED IN SUBSECTION (3) OF THIS SECTION; EXCEPT THAT, TO ENSURE THAT ACCESS TO THE COURTS IS NOT UNREASONABLY DENIED, A COURT SHALL NOT REQUIRE AN INSTRUMENT IN WRITING FOR THE PAYMENT OF COSTS OF SUIT IN EXCESS OF FIVE THOUSAND DOLLARS.

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

(3) AS USED IN THIS SECTION AND SECTION 13-16-102, "INSTRUMENT IN WRITING" MEANS AN INSTRUMENT IN WRITING of some responsible person, being a resident of this state, to be approved by the clerk, whereby such person shall acknowledge himself OR HERSELF bound to pay, or cause to be paid, all costs which may accrue in such action either to the opposite party or to any of the officers of such courts, which instrument may be in form as follows:

A. B.)
vs.) Court.
C. D.)

I do hereby enter myself security for costs in this case, and acknowledge myself bound to pay, or cause to be paid, all costs which may accrue in this action, either to the opposite party or to any of the officers of this court pursuant to the laws of this state.

.....
Dated this day of, 20.. .

SECTION 2. 13-16-102, Colorado Revised Statutes, is amended to read:

13-16-102. Motion to require cost bond. If ~~such~~ AN action DESCRIBED IN SECTION 13-16-101 (2) is commenced BY A NONRESIDENT OF THIS STATE without filing ~~such~~ AN instrument of writing, or if at any time after the commencement of any suit by a resident of this state he OR SHE shall become nonresident, ~~or if, in any case,~~ AND the court is satisfied that ~~any~~ THE NONRESIDENT plaintiff is unable to pay the costs of suit, ~~or that he is so unsettled as to endanger the officers of the court with respect to their legal demands, it is the duty of the court~~ THE COURT MAY, on motion of the defendant or any officer of the court, ~~to rule~~ ORDER the NONRESIDENT plaintiff, on or before the day in such ~~rule~~ ORDER named, to give ~~security~~ AN INSTRUMENT IN WRITING for the payment of costs in ~~such~~ THE suit. TO ENSURE THAT ACCESS TO THE COURTS IS NOT UNREASONABLY DENIED, A COURT SHALL NOT REQUIRE AN INSTRUMENT IN WRITING FOR THE PAYMENT OF COSTS OF SUIT IN EXCESS OF FIVE THOUSAND DOLLARS. If ~~such~~ THE NONRESIDENT plaintiff neglects or refuses, on or before the day in such rule named, to file such instrument, the court, on motion, shall dismiss the suit. ~~In the case of a plaintiff who is not a resident of this state at the time of the commencement of such action, the attorney of the last named plaintiff shall pay all costs in said action, upon any such dismissal thereof.~~

SECTION 3. Act subject to petition - effective date - applicability. (1) This act shall take effect on September 1, 2009.

(2) However, if a referendum petition is filed against this act or an item, section, or part of this act during 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, then the act, item, section, or part, shall not take effect unless approved by the people at a biennial regular general election and shall take effect on the date specified in subsection (1) or on the date of the official declaration of the vote thereon by proclamation of the governor, whichever is later.

(3) The provisions of this act shall apply to civil actions filed on or after the applicable effective date of this act.

Approved: May 21, 2009