

CHAPTER 35

COURTS

HOUSE BILL 11-1117

BY REPRESENTATIVE(S) McCann and Court, Gardner B., Kagan, Kerr A., Lee, Liston, Looper, Ryden, Waller, Ferrandino, Fields, Gardner D., Gerou, Labuda, Schafer S., Todd, Tyler, Williams A., Wilson;
also SENATOR(S) King S., Carroll, Guzman, Jahn, Steadman, Tochtrop.

AN ACT**CONCERNING SUBPOENAS ISSUED BY ADMINISTRATIVE LAW JUDGES IN CAMPAIGN FINANCE PROCEEDINGS.**

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

SECTION 1. 1-45-111.5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

1-45-111.5. Duties of the secretary of state - enforcement - sanctions.

(4) (a) UPON FAILURE OF A WITNESS OR PARTY TO COMPLY WITH AN ADMINISTRATIVE SUBPOENA ISSUED IN RELATION TO AN ALLEGED CAMPAIGN FINANCE VIOLATION PURSUANT TO ARTICLE XXVIII OF THE STATE CONSTITUTION OR THIS ARTICLE, THE PARTY THAT REQUESTED THE ADMINISTRATIVE SUBPOENA OR THE ISSUING AGENCY MAY PETITION THE DISTRICT COURT, EX PARTE WITH A COPY OF THE PETITION SENT TO THE SUBPOENAED WITNESS OR PARTY AND THE ADMINISTRATIVE LAW JUDGE BY REGULAR MAIL, FOR AN ORDER DIRECTING THE WITNESS OR PARTY TO COMPLY WITH THE ADMINISTRATIVE SUBPOENA.

(b) IF THE PETITION REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (4) SHOWS TO THE DISTRICT COURT'S SATISFACTION THAT THE ADMINISTRATIVE SUBPOENA WAS PROPERLY SERVED PURSUANT TO RULE 4 OF THE COLORADO RULES OF CIVIL PROCEDURE, THE DISTRICT COURT SHALL ORDER THE SUBPOENAED WITNESS OR PARTY TO APPEAR BEFORE THE DISTRICT COURT AND SHOW CAUSE WHY THE WITNESS OR PARTY SHOULD NOT BE ORDERED TO COMPLY WITH THE ADMINISTRATIVE SUBPOENA. A COPY OF THE PETITION AND THE COURT ORDER SHALL BE SERVED, PURSUANT TO RULE 5 OF THE COLORADO RULES OF CIVIL PROCEDURE, ON THE WITNESS OR PARTY AT LEAST FIFTEEN DAYS BEFORE THE DATE DESIGNATED FOR THE WITNESS OR PARTY TO APPEAR BEFORE THE DISTRICT COURT.

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

(c) AT A SHOW CAUSE HEARING ORDERED BY THE DISTRICT COURT PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (4), THE COURT SHALL REVIEW THE ADMINISTRATIVE SUBPOENA AND ANY EVIDENCE PRESENTED BY THE PARTIES TO DETERMINE COMPLIANCE WITH THE COLORADO RULES OF CIVIL PROCEDURE. THE SUBPOENAED WITNESS OR PARTY SHALL BEAR THE BURDEN OF SHOWING GOOD CAUSE AS TO WHY HE OR SHE SHOULD NOT BE ORDERED TO COMPLY WITH THE ADMINISTRATIVE SUBPOENA.

(d) IF THE COURT DETERMINES THAT THE SUBPOENAED WITNESS OR PARTY IS REQUIRED TO COMPLY WITH THE ADMINISTRATIVE SUBPOENA:

(I) THE DISTRICT COURT SHALL ORDER COMPLIANCE FORTHWITH AND MAY IMPOSE REMEDIAL AND PUNITIVE FINES, INCLUDING ATTORNEYS' FEES AND COSTS, FOR THE WITNESS'S OR PARTY'S FAILURE TO COMPLY WITH THE ADMINISTRATIVE SUBPOENA; AND

(II) THE ADMINISTRATIVE LAW JUDGE SHALL SCHEDULE A HEARING ON THE COMPLAINT TO OCCUR ON A DAY AFTER THE OCCURRENCE OF THE REQUIRED DEPOSITION AND SUCH OTHER DISCOVERY AS MAY BE WARRANTED DUE TO SUCH DEPOSITION.

(e) IF THE SUBPOENAED WITNESS OR PARTY FAILS TO APPEAR AT THE SHOW CAUSE HEARING, THE DISTRICT COURT MAY ISSUE A BENCH WARRANT FOR THE ARREST OF THE SUBPOENAED WITNESS OR PARTY AND MAY IMPOSE OTHER SANCTIONS PURSUANT TO THE COLORADO RULES OF CIVIL PROCEDURE.

SECTION 2. 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 21, 2011