BUSINESS

Labor and Employment

SB 14-005 *(Enacted)*
Wage Protection Act

HB 14-1015 *(Enacted)*
Extend Transitional Jobs Program

HB 14-1040 *(Postponed Indefinitely)*
Drug Testing Criminal Provisions

HB 14-1377 *(Lost in the Senate)*
Colorado Retirement Security Task Force

Consumer Protection

HB 14-1199 *(Enacted)*
Consumer Goods Service Contracts Regulatory Changes

HB 14-1285 *(Lost in Senate)*
Taxpayer Protection Act Disclosures

Licensing and Professional Occupations

SB 14-125 *(Enacted)*
Transportation Network Companies Regulation

SB 14-133 *(Enacted)*
Mandatory Licensure Private Investigators

HB 14-1272 *(Postponed Indefinitely)*
Certification of Home Inspectors

Liquor

SB 14-054 *(Enacted)*
Alcohol Beverage License Suspension Fines

HB 14-1034 *(Enacted)*
Wine Packaging Permits

HB 14-1038 *(Postponed Indefinitely)*
Tastings Alcohol Beverages Other Manufacturers

HB 14-1132 *(Lost in House)*
Hours Alcohol Sales On-Premises Consumption

HB 14-1346 *(Postponed Indefinitely)*
Nonresident Distribution of Hard Cider in Colorado

Procurement

HB 14-1016 *(Enacted)*
Procurement Technical Assistance Program

HB 14-1070 *(Postponed Indefinitely)*
Bidding for County Government Procurement Contracts

HB 14-1316 *(Lost in Senate)*
Procurement Availability Utilization Analysis

Telecommunications and Technology

HB 14-1327 *(Enacted)*
Measures to Expand Deployment of Communication Networks

HB 14-1328 *(Enacted)*
Connect Colorado Broadband Act

HB 14-1329 *(Enacted)*
Deregulate Internet Protocol Emerging Technology Telecommunications

HB 14-1330 *(Enacted)*
Updating Telecommunications Technology Language

HB 14-1331 *(Enacted)*
Regulate Basic Local Exchange Service

The Colorado legislature considered several important bills related to labor and employment, consumer protection, licensing and professional occupations, liquor law, procurement, and telecommunications and technology during the second session of the 69th General Assembly.

Prepared by Legislative Council Staff

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Labor and Employment

Two bills related to labor and employment were enacted in the 2014 General Assembly: the Wage Protection Act and the extension of the ReHire Colorado program; while another bill that would have created a Retirement Security Task Force was lost.

Under current law, employers are required to compensate their employees what they are owed for work performance. Employees can report employers who are not in compliance with the law to the Division of Labor in the Colorado Department of Labor and Employment. The division currently receives about 4,000 wage complaints annually, which it works to mediate. If the mediation is unsuccessful, employees may pursue their wage issue in small claims court. **Senate Bill 14-005** authorizes the Division of Labor to establish an administrative process to handle wage claim cases and requires the division to investigate and adjudicate all wage claim cases up to $7,500 per employee after January 1, 2015. The bill outlines employer record-keeping and mailing requirements, required notices to be sent from the division during the investigation and adjudication process, a fine schedule, an appeals process, and a new misdemeanor offense for an employer's failure to obey a subpoena issued by a hearings officer.

The Transitional Jobs Program (known as ReHire Colorado) was created under House Bill 13-1004 to provide unemployed and underemployed adults an opportunity to experientially learn, model, and practice successful workplace behaviors that help them to obtain long-term unsubsidized employment. The Department of Human Services received $2.4 million and 2.0 FTE for the program in FY 2013-14 to reimburse employers for wage-related costs, make payments to local agency contractors, and for staff and administrative costs. The program was scheduled for repeal on December 30, 2014. **House Bill 14-1015** extends ReHire Colorado through June 30, 2017, except that no new transitional jobs may be offered after December 31, 2016.

House Bill 14-1040, which was postponed indefinitely, would have established two new unclassified petty offenses and fine penalties for employees who are legally required to undergo drug testing as a condition of their employment and who knowingly defraud the administration of the drug test. The employee would have been subject to a fine of $1,000 for a first offense, $2,500 for a second offense, and $5,000 for a third or subsequent offense. Any other person who is not required to undergo drug testing as a condition of his or her job and who knowingly defrauds a drug test would have been subject to a fine of $500 for a first offense, $1,000 for a second offense, and $2,500 for a third or subsequent offense. The bill also defined actions that would have constituted defrauding the administration of a drug test, including the submission of urine that is from a person other than the person taking the drug test.

House Bill 14-1377, which was lost in the Senate, concerned the creation of a Colorado Retirement Security Task Force in the Legislative Department. The task force would have analyzed options to promote retirement security for Coloradans. The bill specified various areas of study for the task force, including, but not limited to:

- existing barriers to retirement;
- lack of access to employer-sponsored retirement plans;
- the types of employer-sponsored retirement plans and individual retirement products currently offered in the state;
- options that may include a definite contribution structure for retirement savings;

- estimates of the average amount of retirement wealth state residents have upon retirement; and
- estimates of the average amount of retirement wealth recommended for a financially secure retirement in the state.

The task force was to develop recommendations for establishing a statewide secure retirement plan for private sector employees, and also analyze any potential state savings in public assistance expenditures that a potential statewide secure retirement plan may provide. The task force would have met from August 1, 2014, through December 2015, and submitted a final report by December 1, 2015. The task force was repealed on June 30, 2016.

Consumer Protection

The legislature considered two bills regarding consumer protections in 2014: a bill to provide limited state regulation of consumer goods service contracts passed, while another bill that would have required tax preparers to make certain disclosures to their clients was lost.

House Bill 14-1199 is based on the National Association of Insurance Commissioners' Service Contracts Model Act. The bill provides for the limited regulation of consumer goods service contracts, in which a consumer pays a premium for the repair, replacement, or maintenance of, or indemnification for, a tangible product with a value of at least $100. The bill regulates only certain aspects of a service contract provider's operations, and does not regulate warranties, home warranty service contracts, motor vehicle service contracts, and certain other service contracts. Under the bill, service contract providers are required to register with the Division of Insurance (DOI) in the Department of Regulatory Agencies (DORA), and pay an annual fee sufficient to defray the DOI's direct and indirect costs under the bill. The service contract providers must:

- provide consumers with a copy of the service contract and, if the consumer enters into a contract, a receipt of purchase;
- disclose the price and specific terms of a service contract;
- cancel the service contract in certain circumstances and after following specific procedures;
- maintain adequate financial capacity to fulfill their obligations, according to certain options provided in the bill;
- avoid presenting the company or its products as insurance; and
- keep certain records until the company's obligations in Colorado are fully discharged.

The bill also requires companies that reinsure consumer good service contracts to fully cover the obligations of the service contract provider and to pay insurance premium taxes on reinsurance premiums. The bill provides for enforcement of its provisions by the DOI.

Currently, the Internal Revenue Service certifies and regulates enrolled agents, while state licensing authorities, such as the Board of Accountancy under the DORA in Colorado, regulate certified public accountants or attorneys. These regulated professionals are estimated to serve less than 20 percent of the market for paid tax preparers. **House Bill 14-1285**, which was lost in the Senate, would have amended the Colorado Consumer Protection Act (CCPA) to include the Colorado Taxpayer Protection Act. Under the bill, the CCPA would have required a disclosure of fees and qualifications by persons paid to complete all or most of an income tax return or a claim for an income tax refund (a tax preparer). The disclosure was required to be provided on a form

produced and posted by the Department of Revenue (DOR) on its website, and to be signed by the tax preparer's client. Under the bill's CCPA provisions, violations of disclosure requirements constitute a deceptive trade practice, with civil penalties of up to $50 (or $100, if the violation is against an elderly person) for each client that did not receive a disclosure or provide a signature on the form. Civil penalties were to be deposited in the General Fund and could not exceed $25,000 for any one tax preparer. The bill also established criminal penalties if a tax preparer provided fraudulent information on a disclosure form. For each client receiving such fraudulent information, the tax preparer committed a class 2 misdemeanor. The bill did not apply to certified public accountants, licensed attorneys, enrolled agents, and government employees performing job duties.

Licensing and Professional Occupations

In 2014, the legislature considered five bills related to licensing and professional occupations. A bill that regulates transportation network companies and another bill that makes it mandatory for private investigators to be licensed by the state passed. A bill that would have made it a crime to defraud an employer's drug test, a bill that would have put a 5 percent cap on retainage in private construction contracts, and a bill that would have created a certification for home inspectors were all postponed indefinitely.

Transportation network companies (TNCs), such as Uber and Lyft, use a digital network to connect riders to drivers. Drivers use their personal cars for fares and connect with passengers via smartphone apps. **Senate Bill 14-125** creates a limited regulatory structure for these companies. TNCs are exempt from the regulation for common carriers, contract carriers, and motor carriers but must be permitted by the Public Utilities Commission (PUC) in the DORA as long as they meet certain requirements. These include:

- filing a certificate of insurance with the PUC for at least $1 million primary liability coverage per occurrence for incidents occurring while a network driver has a rider;
- requiring personal automotive liability insurance for all drivers that recognizes the driver is in a TNC;
- conducting, or having a certified mechanic conduct, a vehicle safety inspection prior to providing service and at least once per year thereafter;
- obtaining criminal history record checks, driving history reports, and proof of medical fitness to drive on prospective drivers;
- prohibiting the use of drivers with certain felony convictions, moving violations or who are under 21;
- providing prospective drivers and riders with specific disclosures about rates, receipts, drivers' information, and insurance limitations; and
- an annual permit fee of $111,250.

Each TNC must require its drivers to display an exterior marking indicating that the vehicle is for hire; however, the driver cannot provide services unless the TNC has matched the driver to a rider — in other words, hailing is not permitted. Once matched to a rider, a TNC driver must provide service regardless of race, ethnicity, gender, sexual orientation, gender identity, or disability. A rider's mobility equipment must be stored in the vehicle for the duration of the ride unless no storage is available. In that instance, the driver must refer the rider to another driver with a vehicle that can accommodate the mobility equipment. Violations of these requirements are subject to a maximum of $550 in civil penalties.

The PUC may promulgate rules concerning administration, fees, safety requirements, and financial responsibility requirements. After the first year, fees must be set and adjusted by rule to cover the PUC's direct and indirect costs for regulation of TNCs. The PUC may take an enforcement action against a TNC. A TNC that fails to comply with a PUC order, decision, or rule is subject to a penalty of up to $11,000 per offense depending on the violation. The PUC cannot assess a penalty against a TNC driver. The Division of Insurance must conduct a study to assess whether the levels of insurance coverage required by the new law are sufficient. The division will present its findings to the House and Senate Business committees and the House and Senate Transportation committees by January 15, 2015.

In 2011, House Bill 11-1195 provided for the voluntary licensure of private investigators (PIs). At the end of 2012, the DORA informed the Joint Budget Committee staff that the program was beginning to experience a deficit fund balance primarily due to the voluntary nature of the program. DORA's only available response was to increase fees to pay for program expenses. As fees were increased to address the fund balance deficit, the number of private investigators choosing to voluntarily obtain a license fell further, leading to a cycle of increasing deficits, higher fees, and fewer licensed PIs. **Senate Bill 14-133** repeals voluntary licensure and replaces it with mandatory licensure. The director of the Division of Professions and Occupations in DORA is authorized to adopt rules, establish fees, and take disciplinary actions concerning the licensure of PIs. By June 1, 2015, PIs conducting business in the state must meet the qualifications in the bill and obtain a license. Only licensed PIs may use the titles of "private investigator," "licensed private investigator," "licensed private detective," or "private detective." Conducting private investigations or holding oneself out as a PI without a license is punishable as a class 2 misdemeanor for the first offense and as a class 1 misdemeanor for second and subsequent offenses. The bill creates two categories for licensure based on the level of experience of the PI. The bill also exempts various persons and professions from the licensure requirement. PIs must maintain a surety bond in an amount determined by the director by rule. The licensing of PIs is repealed on September 1, 2020, following a sunset review. In addition, the bill specifies that any cash fund deficit in DORA remaining from the voluntary program be paid through fees on PIs under the mandatory program over the life of the program.

Home inspectors provide independent and objective visual evaluations of a home's physical structure and systems. **House Bill 14-1272**, which was postponed indefinitely, would have created a certification program for home inspectors in the Division of Real Estate in DORA. On or before July 1, 2015, the director of the division would have established a certification program and adopted rules and standards pertaining to education and continuing education, evaluating applications, and disciplinary action. Home inspector applicants would have been required to obtain a fingerprint-based criminal history background check conducted by the Colorado Bureau of Investigation within the Department of Public Safety.

Liquor

During the 2014 session, the General Assembly considered five bills that addressed liquor policies. A bill that allows state and local liquor licensing authorities to accept a fine in lieu of license suspension and a bill that allows a licensed wine manufacturer to package wine from another wine manufacturer passed. A bill that would have allowed a licensed manufacturer of spirits to conduct tastings and sell spirits from other Colorado manufacturers failed, as did a bill that would have allowed local governments to reduce or expand hours at licensed premises for on-site consumption. A bill that would have allowed nonresident manufacturers or importers of malt liquor to import and sell cider of their own manufacture to a licensed wholesaler also failed.

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Under current law, an alcoholic beverage licensee or permit holder may petition the state or local liquor licensing authority for permission to pay a fine in lieu of a suspension of 14 days or less under certain circumstances. This option is allowed no more than once every two years. **Senate Bill 14-054** gives state and local liquor licensing authorities the ability to accept a fine in lieu of a suspension of any number of days so long as the license or permit has not been revoked during the previous two years.

Currently, only licensed wineries are permitted to bottle the wine they produce. **House Bill 14-1034** creates the wine packaging permit to be issued by the DOR that allows a licensed winery to package wine manufactured by another winery. The permit also allows a wine wholesaler to package wine. Prior to packaging, federal excise taxes on the wine must be paid. After packaging, the wine must be returned to the original winery, or to the original winery's licensed wholesaler. The packaging winery cannot sell or distribute the packaged wine to a licensed retailer or directly to a consumer. The bill sets the annual fee for the wine packaging permit at $200.

Colorado law permits a licensed manufacturer of spiritous liquors (spirits) to conduct tastings and sell only the spirits it manufactures on its licensed premises and at one additional sales room location. **House Bill 14-1038**, which was postponed indefinitely, would have allowed a licensed manufacturer to conduct tastings and sell spirits of other Colorado manufacturers, and to offer tastings of raw ingredients used to manufacture its products.

Alcoholic beverages for on-site consumption can be sold any day of the week between the hours of 7:00 a.m. and 2:00 a.m. **House Bill 14-1132**, which was lost in the House, would have allowed a local government to set the hours for sales of alcoholic beverages for on-site consumption at licensed establishments within its jurisdiction. Under the bill, local jurisdictions could have reduced hours of operation, or extended hours up to and including 24 hours a day.

Hard cider is an alcoholic beverage containing at least 0.5 percent and less than 7 percent alcohol by volume made by the fermentation of apple or pear juice. It is generally treated as a vinous liquor under Colorado law. Under current law, hard cider manufactured out-of-state must be imported by a licensed wine and spirits importer. **House Bill 14-1346**, which was postponed indefinitely, would have allowed a nonresident manufacturer of malt liquor or a malt liquor importer that is licensed by June 1, 2014 to:

- import and sell its own hard cider to a licensed wholesaler;
- maintain stocks of hard cider and operate warehouses in which it has a financial interest by procuring a wholesaler's liquor license; and
- solicit orders from retail licensees and fill orders through licensed wholesalers.

Procurement

During the 2014 legislative session, the General Assembly considered three bills related to procurement. A bill that creates a state Procurement Technical Assistance Program passed. A bill that would have required county governments to hold a competitive bid process for contracts of $100,000 or more was postponed indefinitely. Similarly, a bill that would have studied disparities in the state procurement program was lost in the Senate.

Federal procurement technical assistance is funded through the budget of the U.S. Department of Defense (DoD). The Defense Logistics Agency, as part of DoD, awarded $32.5 million in procurement technical assistance funds in federal fiscal year 2013. These awards are made pursuant to cooperative agreements with states and other agencies, and involve both defense and other federal contracting opportunities. Under House Bill 13-1301, the Office of Economic Development and International Trade (OEDIT) was responsible for the Procurement Technical Assistance Task Force and a contract for procurement technical assistance with federal matching funds. **House Bill 14-1016** provides additional detail and definition but concerns Procurement Technical Assistance Program (PTAP) activities that are substantially similar in scope to those under HB13-1301. The bill establishes the PTAP, allowing Colorado to participate in federal procurement technical assistance, with federal funds that match state contributions to a program that follows federal guidelines. The state participates by entering into a contractual partnership between the OEDIT and at least one nonprofit entity that is designated by the federal Defense Logistics Agency to provide technical assistance in Colorado. The state may contract with its contract partner for up to six years. Under the bill, OEDIT will coordinate the program and make PTAP information part of the OEDIT's annual report to the General Assembly. The bill anticipates an annual budget of $800,000 for procurement technical assistance, consisting of $400,000 each from the state and the federal government.

House Bill 14-1070, which was postponed indefinitely, would have required county governments to hold a competitive bid process if a single construction contract was reasonably expected to cost $100,000 or more. The bid process would have included any form of competitive contracting method that the county chose. Invitations for bids, including the contractual terms of the project, would have been required to be issued with adequate public notice. Bids would have been required to be opened in the presence of two or more people on the date and time specified on the bid invitation. All bid rejections would have been documented and all materials open to public inspection. Exceptions to the requirement may have occurred if the county did not receive any bids, or had received only one bid; if the county had rejected all bids; or if the project had involved an emergency that threatened the public's well-being. Under the bill, construction contracts could not have been split into two or more separate projects to avoid the bid process. The bill would have applied contracts issued on or after July 1, 2014.

House Bill 14-1316, which was lost in the Senate, directed the DPA to conduct a study to determine whether disparities exist between the participation of historically underutilized businesses and other businesses in the state procurement system. The study's final report was required to be completed, posted online by the Minority Business Office, and submitted to members of the General Assembly by December 1, 2015. The executive director of the DPA was required to include the findings of the study and any additional recommendations in his or her State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act hearing. The executive director of the DPA was also required to develop a method for tracking state contracts with historically underutilized businesses, and to publish this information online beginning on January 1, 2015.

Telecommunications and Technology

For the past three years, legislation that sought to reform the state's telecommunications laws and practices has been lost. This year, a package of five telecommunications reform bills passed through the General Assembly with broad support. The legislation includes:

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- tax incentives and cost-sharing strategies for broadband deployment (House Bill 14-1327);
- the reallocation of funding dedicated to rural areas for basic local exchange service to broadband deployment, and the creation of a board to award funds (House Bill 14-1328);
- the deregulation of certain telecommunication products, services and providers, while continuing the PUC's authority over some consumer protection services (House Bill 14-1329);
- updates to telecommunications-related definitions (House Bill 14-1330); and
- modifications to the statutory framework for local telephone service regulation (House Bill 14-1331).

A detailed description of these bills follows.

House Bill 14-1327 creates incentives and cost-sharing strategies to encourage the deployment of broadband networks including a rebate on state sales and use taxes paid on broadband equipment installed in target areas of the state and the requirement that state and local government agencies provide joint trenching opportunities. The bill also clarifies that broadband service providers may utilize public rights-of-way for broadband facilities to the same extent as other telecommunication providers.

House Bill 14-1328 creates the 16-member Broadband Deployment Board (BDB) in the DORA to administer the newly-created Broadband Fund (BDF), from which grants are awarded for broadband development in unserved areas of the state. Funding to the BDF is provided by transferring an amount from surcharges in the High Cost Support Mechanism (HCSM), as allocated by the PUC. The board sunsets on July 1, 2024.

House Bill 14-1329 deregulates certain telecommunication products, services, and providers. Specifically, the bill eliminates the authority of the PUC in DORA to regulate:

- advanced telephone services (e.g., call waiting, three-way calling) and premium (optional) telephone services;
- internet-protocol-enabled service and voice-over-internet protocol service (commonly referenced collectively as VoIP);
- most long-distance services (interLATA and intraLATA tolling);
- private line service with fewer than 24 lines;
- certain operator services; and
- any telecommunication product or service not otherwise defined or classified in statute for the purposes of PUC regulation.

The PUC retains authority to regulate "cramming" (unauthorized charges) and "slamming" (unauthorized changes of a carrier) by long-distance carriers. The bill also clarifies that it does not affect the scope or effect of PUC authority relative to the wholesale telecommunications market, federal telecommunications programs, or basic emergency service (commonly known as 9-1-1).

House Bill 14-1330 amends statutory terms used in telecommunications regulation. Definitions are added or modified to reflect current practices related to competitive markets and types of telecommunications service providers. The bill also eliminates obsolete definitions and references, such as transitional provisions for the implementation of competitive markets following the federal Telecommunications Act of 1996.

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House Bill 14-1331 modifies the statutory framework for the regulation of local telephone service. The bill limits, but retains, authority for the PUC to regulate basic emergency service and the providers of basic local exchange service. Emergency service is subject to regulation unless the PUC approves a reclassification. In the case of basic service, the bill provides that:

- the HCSM applies to landline and VoIP service even if the service is otherwise deregulated, and basic service providers continue to pay HCSM, emergency service, and telecommunications relay service charges;
- until July 1, 2016, rates are subject to PUC control and the incumbent local exchange carrier serves as a provider of last resort;
- on and after July 1, 2016, the PUC may regulate and control rates, providers of last resort, discontinuation of service, and general compliance only within those areas without effective competition that receive HCSM subsidies; and
- after July 1, 2018, the PUC may regulate basic service in accordance with findings made in a public hearing.

With the exception of wholesale telecommunications regulation, dispute resolution between carriers, and requirements related to emergency service, the bill eliminates the PUC's authority to regulate: long-distance telecommunications; the white page directory and other listed telephone number services; operator services; advanced features (e.g., call waiting, three-way calling) and premium services; "touch-tone" dialing; private telecommunications networks; and telecommunications services and products not otherwise classified under PUC statutes.