

HB1241\_L.004

## SENATE COMMITTEE OF REFERENCE REPORT

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 Chairman of Committee

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 Date
Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB09-1241 be amended as follows:

1 Amend reengrossed bill, page 2, after line 1, insert the following:

2 "SECTION 1. 15-1-401, Colorado Revised Statutes, is amended  
3 to read:

4 **15-1-401. Short title.** ~~This~~ SUBPARTS 1 THROUGH 6 OF THIS part  
5 4 shall be known and may be cited as the "Uniform Principal and Income  
6 Act".

7 **SECTION 2.** 15-1-403, Colorado Revised Statutes, is amended  
8 to read:

9 **15-1-403. Fiduciary duties - general principles.** (1) In  
10 allocating receipts and disbursements to or between principal and income,  
11 and with respect to any matter within the scope of subparts 2 and 3 of this  
12 part 4, a fiduciary:

13 (a) Shall administer a trust or estate in accordance with the terms  
14 of the trust or the will, even if there is a different provision in SUBPARTS  
15 1 THROUGH 6 OF this part 4;

16 (b) May administer a trust or estate by the exercise of a  
17 discretionary power of administration given to the fiduciary by the terms  
18 of the trust or the will, even if the exercise of the power produces a result  
19 different from a result required or permitted by SUBPARTS 1 THROUGH 6  
20 OF this part 4;



1 (c) Shall administer a trust or estate in accordance with SUBPARTS  
2 1 THROUGH 6 OF this part 4 if the terms of the trust or the will do not  
3 contain a different provision or do not give the fiduciary a discretionary  
4 power of administration; and

5 (d) Shall add a receipt or charge a disbursement to principal to the  
6 extent that the terms of the trust and SUBPARTS 1 THROUGH 6 OF this part  
7 4 do not provide a rule for allocating the receipt or disbursement to or  
8 between principal and income.

9 (2) In exercising the power to adjust under section 15-1-404 (1)  
10 or a discretionary power of administration regarding a matter within the  
11 scope of SUBPARTS 1 THROUGH 6 OF this part 4, whether granted by the  
12 terms of a trust, a will, or SUBPARTS 1 THROUGH 6 OF this part 4, a  
13 fiduciary shall administer a trust or estate impartially, based on what is  
14 fair and reasonable to all of the beneficiaries, except to the extent that the  
15 terms of the trust or the will clearly manifest an intention that the  
16 fiduciary shall or may favor one or more of the beneficiaries. A  
17 determination in accordance with SUBPARTS 1 THROUGH 6 OF this part 4  
18 is presumed to be fair and reasonable to all of the beneficiaries.

19 (3) The terms and conditions of a trust or a will shall govern all  
20 actions taken by a fiduciary with respect to any matter within the scope  
21 of SUBPARTS 1 THROUGH 6 OF this part 4. The provisions of SUBPARTS 1  
22 THROUGH 6 OF this part 4 are default provisions and may be expanded,  
23 restricted, eliminated, or otherwise altered by the provisions of a trust or  
24 a will. The provisions of SUBPARTS 1 THROUGH 6 OF this part 4 shall  
25 govern the administration of a trust or will by a fiduciary only if such trust  
26 or will contains no conflicting provision.

27 (4) Nothing in SUBPARTS 1 THROUGH 6 OF this part 4 shall be  
28 construed to limit or restrict a maker of a trust or will from making  
29 provisions in such trust or will that are different from the provisions in  
30 SUBPARTS 1 THROUGH 6 OF this part 4.

31 **SECTION 3.** 15-1-404 (2) (f) and (7), Colorado Revised Statutes,  
32 are amended to read:

33 **15-1-404. Trustee's power to adjust.** (2) In deciding whether  
34 and to what extent to exercise the power conferred by subsection (1) of

1 this section, a trustee shall consider all factors relevant to the trust and its  
2 beneficiaries, including the following factors to the extent they are  
3 relevant:

4 (f) The net amount allocated to income under the other sections  
5 of SUBPARTS 1 THROUGH 6 OF this part 4 and the increase or decrease in  
6 the value of the principal assets, which the trustee may estimate as to  
7 assets for which market values are not readily available;

8 (7) Nothing in this section or in SUBPARTS 1 THROUGH 6 OF this  
9 part 4 is intended to create or imply a duty to make an adjustment, and a  
10 trustee is not liable for not considering whether to make an adjustment or  
11 for choosing not to make an adjustment. In a proceeding with respect to  
12 a trustee's exercise or nonexercise of the power to make an adjustment  
13 under this section, the sole remedy is to direct, deny, or revise an  
14 adjustment between principal and income.

15 **SECTION 4.** 15-1-404.5 (4) (e) and (13) (b) (II), Colorado  
16 Revised Statutes, are amended to read:

17 **15-1-404.5. Conversion - unitrusts - administration.**

18 (4) **Administration of a unitrust.** During the time that a trust is a  
19 unitrust, the trustee shall administer the trust in accordance with the  
20 provisions of this subsection (4) as follows, unless otherwise expressly  
21 provided by the terms of the trust:  
22

23 (e) A change in the method of determining a reasonable current  
24 return by converting to a unitrust in accordance with this section and  
25 substituting the distribution amount for net trust accounting income is a  
26 proper change in the definition of trust income and shall be given effect  
27 notwithstanding any contrary provision of SUBPARTS 1 THROUGH 6 OF this  
28 part 4. The distribution amount shall in all cases be deemed a reasonable  
29 current return that fairly apportions the total return of a unitrust.

30 (13) **Application.** (b) This section shall be construed to apply to  
31 the administration of a trust that is administered in Colorado under  
32 Colorado law or that is governed by Colorado law with respect to the  
33 meaning and effect of its terms unless:

34 (II) The governing instrument expressly prohibits the use of this  
35 section by specific reference to one or more provisions of SUBPARTS 1

1 THROUGH 6 OF this part 4;

2           **SECTION 5.** 15-1-405 (1), Colorado Revised Statutes, is  
3 amended to read:

4           **15-1-405. Notice of action.** (1) A trustee may give a notice of  
5 proposed action regarding a matter governed by SUBPARTS 1 THROUGH 6  
6 OF this part 4 as provided in this section. For the purpose of this section,  
7 a proposed action includes a course of action and a decision not to take  
8 action.

9           **SECTION 6.** 15-1-409 (3), Colorado Revised Statutes, is  
10 amended to read:

11           **15-1-409. Apportionment of receipts and disbursements when**  
12 **decedent dies or income interest begins.** (3) An item of income or an  
13 obligation is due on the date the payer is required to make a payment. If  
14 a payment date is not stated, there is no due date for the purposes of  
15 SUBPARTS 1 THROUGH 6 OF this part 4. Distributions to shareholders or  
16 other owners from an entity to which section 15-1-411 applies are deemed  
17 to be due on the date fixed by the entity for determining who is entitled  
18 to receive the distribution or, if no date is fixed, on the declaration date  
19 for the distribution. A due date is periodic for receipts or disbursements  
20 that must be paid at regular intervals under a lease or an obligation to pay  
21 interest or if an entity customarily makes distributions at regular intervals.

22           **SECTION 7.** 15-1-414 (1) (a), Colorado Revised Statutes, is  
23 amended to read:

24           **15-1-414. Principal receipts.** (1) A trustee shall allocate to  
25 principal:

26           (a) To the extent not allocated to income under SUBPARTS 1  
27 THROUGH 6 OF this part 4, assets received from a transferor during the  
28 transferor's lifetime, a decedent's estate, a trust with a terminating income  
29 interest, or a payer under a contract naming the trust or its trustee as  
30 beneficiary;

31           **SECTION 8.** 15-1-421 (3) and (4), Colorado Revised Statutes,  
32 are amended to read:



1           **15-1-421. Minerals, water, and other natural resources.**  
2       (3) SUBPARTS 1 THROUGH 6 OF this part 4 **applies** APPLY whether or not  
3       a decedent or donor was extracting minerals, water, or other natural  
4       resources before the interest became subject to the trust.

5           (4) If a trust owns an interest in minerals, water, or other natural  
6       resources on July 1, 2001, the trustee may allocate receipts from the  
7       interest as provided in SUBPARTS 1 THROUGH 6 OF this part 4 or in the  
8       manner used by the trustee before July 1, 2001. If the trust acquires an  
9       interest in minerals, water, or other natural resources after July 1, 2001,  
10      the trustee shall allocate receipts from the interest as provided in  
11      SUBPARTS 1 THROUGH 6 OF this part 4."

12      Renumber succeeding sections accordingly.

13      Page 3, after line 23, insert the following:

14           **"SECTION 10.** 15-1-422 (3) and (4), Colorado Revised Statutes,  
15      are amended to read:

16           **15-1-422. Timber.** (3) SUBPARTS 1 THROUGH 6 OF this part 4  
17      **applies** APPLY whether or not a decedent or transferor was harvesting  
18      timber from the property before it became subject to the trust.

19           (4) If a trust owns an interest in timberland on July 1, 2001, the  
20      trustee may allocate net receipts from the sale of timber and related  
21      products as provided in SUBPARTS 1 THROUGH 6 OF this part 4 or in the  
22      manner used by the trustee before July 1, 2001. If the trust acquires an  
23      interest in timberland after July 1, 2001, the trustee shall allocate net  
24      receipts from the sale of timber and related products as provided in  
25      SUBPARTS 1 THROUGH 6 OF this part 4.

26           **SECTION 11.** 15-1-433, Colorado Revised Statutes, is amended  
27      to read:

28           **15-1-433. Severability.** If any provision of SUBPARTS 1 THROUGH  
29      6 OF this part 4 or its application to any person or circumstance is held  
30      invalid, the invalidity does not affect other provisions or applications of  
31      SUBPARTS 1 THROUGH 6 OF this part 4 that can be given effect without the  
32      invalid provision or application, and to this end the provisions of  
33      SUBPARTS 1 THROUGH 6 OF this part 4 are severable.



1           **SECTION 12.** 15-1-434 (1), (2), and (3), Colorado Revised  
2 Statutes, are amended to read:

3           **15-1-434. Effective date - application to existing trusts and**  
4 **estates - election.** (1) SUBPARTS 1 THROUGH 6 OF this part 4 shall take  
5 effect July 1, 2001.

6           (2) Subparts 1 through 6 of this part 4 shall apply to every trust or  
7 decedent's estate existing on and after July 1, 2001, except as otherwise  
8 expressly provided in the will or terms of the trust or in SUBPARTS 1  
9 THROUGH 6 OF this part 4. For each trust established under a will or trust  
10 agreement existing and irrevocable on July 1, 2001, the trustee may elect  
11 to apply the "Uniform Principal and Income Act" of this state in effect on  
12 June 30, 2001. The trustee shall make such election by July 1, 2002.

13           (3) Notwithstanding the provisions of subsection (2) of this  
14 section, SUBPARTS 1 THROUGH 6 OF this part 4 shall not apply to any trust  
15 or decedent's estate existing on July 1, 2001, in which no trustee has the  
16 authority to act under section 15-1-404 unless the trustees elect to apply  
17 SUBPARTS 1 THROUGH 6 OF this part 4. The trustees may make this  
18 election at any time."

19   Renumber succeeding sections accordingly.

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