

**First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 09-0591.01 Debbie Haskins

HOUSE BILL 09-1287

HOUSE SPONSORSHIP

McGihon,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING CHANGES TO THE "COLORADO PROBATE CODE".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Colorado Commission on Uniform State Laws. Makes changes to the "Colorado Probate Code", as drafted by the national conference of commissioners on uniform state laws.

Inflation Adjustments. Makes inflation adjustments to dollar amounts for the amount of the spousal share, the elective share, the spouse's share of exempt property, and the family allowance. Establishes a formula for an automatic annual adjustment of those dollar amounts thereafter.

Intestate Succession. Clarifies the requirement of survival by 120

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

hours as it applies to an heir who was born before the decedent's death and an individual who was in gestation at the decedent's death.

States that, for purposes of inheritance through intestate succession, a parent-child relationship exists:

- ! Between a child and the child's genetic parents, regardless of the parents' marital status;
- ! Between an adoptee and the adoptee's adoptive parent.

Bars a parent from inheriting from or through a child if the parental rights were terminated or the child died before reaching 18 years of age and there is clear and convincing evidence that the parental rights could have been terminated.

Addresses inheritance issues for children conceived through assisted reproduction where a child is conceived by a method of causing pregnancy other than sexual intercourse and the birth is to a woman other than a gestational carrier as follows:

- ! A third-party donor does not have a parent-child relationship with a child conceived as a result of assisted reproduction (child of assisted reproduction) despite a genetic relationship with the child;
- ! A parent-child relationship exists between a child of assisted reproduction and the child's birth mother;
- ! A parent-child relationship exists between a child of assisted reproduction and the husband of the child's birth mother if the husband's sperm were used during his lifetime by his wife for assisted reproduction and the husband is the genetic father of the child, unless the husband withdraws his consent;
- ! A parent-child relationship exists between a child of assisted reproduction and an individual other than the birth mother who consents to assisted reproduction by the birth mother with intent to be treated as the other parent of the child;
- ! A posthumously conceived gestational child is treated the same as if in gestation.

Gestational Agreements. Defines "gestational agreements" as agreements for assisted reproduction in which a woman agrees to carry a child to birth for an intended parent or intended parents. States that a parent-child relationship is conclusively established by a court order designating the parent or parents of a gestational child. States that a parent-child relationship between a child and the child's gestational carrier does not exist unless the gestational carrier is designated as a parent in a court order or the gestational carrier is the child's genetic parent and a parent-child relationship does not exist with an individual other than the gestational carrier. In the absence of a court order otherwise, the parent-child relationship exists between a gestational child

and an intended parent or intended parents who functioned as a parent of the child not later than 2 years after the child's birth. Addresses what happens if the intended parent dies while the gestational carrier is pregnant or if an individual's sperm or eggs were used after the individual's death or incapacity to conceive a child under a gestational agreement made after that individual's death or incapacity.

Elective Share. Revises the elective share of the surviving spouse to make the elective share 50% of the marital property portion of the augmented estate instead of based on a graduated schedule.

Wills. Allows the use of notarized wills as an alternative to wills that are attested by 2 witnesses.

Establishes a rule of construction providing that a class gift that uses a term of relationship to identify takers also includes a child of assisted reproduction and a gestational child and their respective descendant, if appropriate to the class. Provides that an adoptee and a child born to parents who are not married to each other, and the descendant of such children, are included in class gifts. States that terms of a relationship that do not differentiate between relationships by blood and from those by marriage, such as uncle or aunt are construed to exclude relatives by marriage, unless a contrary intent is expressed.

Allows a court to reform the terms of a governing instrument to conform to the transferor's intention if it is proved by clear and convincing evidence that the transferor's intent and the governing instrument were affected by a mistake of fact or law.

Allows a court to modify the terms of a governing instrument to achieve the transferor's tax objectives.

States that testimony is not needed to prove that a will is self-proved, unless there is evidence of fraud or forgery affecting the acknowledgment of affidavit of the bill. Creates a rebuttable presumption that a notarized will meets the requirements for execution of a will. Allows the attestation or testimony of an attesting witness to establish proper execution of a witnessed will.

Makes the provisions of the act applicable to governing instruments executed by decedents dying on or after July 1, 2010.

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

2 **SECTION 1.** Part 1 of article 10 of title 15, Colorado Revised
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
4 read:

5 **15-10-112. Cost of living adjustment of certain dollar**

1 **amounts.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT
2 OTHERWISE REQUIRES:

3 (a) "CPI" MEANS THE CONSUMER PRICE INDEX (ANNUAL AVERAGE)
4 FOR ALL URBAN CONSUMERS (CPI-U): UNITED STATES CITY AVERAGE --
5 ALL ITEMS, REPORTED BY THE BUREAU OF LABOR STATISTICS, UNITED
6 STATES DEPARTMENT OF LABOR OR ITS SUCCESSOR AGENCY OR, IF THE
7 INDEX IS DISCONTINUED, AN EQUIVALENT INDEX REPORTED BY A FEDERAL
8 AUTHORITY. IF NO SUCH INDEX IS REPORTED, THE TERM MEANS THE
9 SUBSTITUTE INDEX CHOSEN BY THE DEPARTMENT OF REVENUE; AND

10 (b) "REFERENCE BASE INDEX" MEANS THE CPI FOR THE CALENDAR
11 YEAR 2009.

12 (2) THE DOLLAR AMOUNTS STATED IN SECTIONS 15-11-102,
13 15-11-201 (2), 15-11-403, AND 15-11-405 APPLY TO THE ESTATE OF A
14 DECEDENT WHO DIED DURING OR AFTER 2010, BUT FOR THE ESTATE OF A
15 DECEDENT WHO DIED AFTER 2011, THESE DOLLAR AMOUNTS MUST BE
16 INCREASED OR DECREASED IF THE CPI FOR THE CALENDAR YEAR
17 IMMEDIATELY PRECEDING THE YEAR OF DEATH EXCEEDS OR IS LESS THAN
18 THE REFERENCE BASE INDEX. THE AMOUNT OF ANY INCREASE OR
19 DECREASE IS COMPUTED BY MULTIPLYING EACH DOLLAR AMOUNT BY THE
20 PERCENTAGE BY WHICH THE CPI FOR THE CALENDAR YEAR IMMEDIATELY
21 PRECEDING THE YEAR OF DEATH EXCEEDS OR IS LESS THAN THE REFERENCE
22 BASE INDEX. IF ANY INCREASE OR DECREASE PRODUCED BY THE
23 COMPUTATION IS NOT A MULTIPLE OF ONE HUNDRED DOLLARS, THE
24 INCREASE OR DECREASE IS ROUNDED DOWN, IF AN INCREASE, OR UP, IF A
25 DECREASE, TO THE NEXT MULTIPLE OF ONE HUNDRED DOLLARS, BUT FOR
26 THE PURPOSE OF SECTION 15-11-405, THE PERIODIC INSTALLMENT AMOUNT
27 IS THE LUMP-SUM AMOUNT DIVIDED BY TWELVE. IF THE CPI FOR 2009 IS

1 CHANGED BY THE BUREAU OF LABOR STATISTICS, THE REFERENCE BASE
2 INDEX MUST BE REVISED USING THE REBASING FACTOR REPORTED BY THE
3 BUREAU OF LABOR STATISTICS, OR OTHER COMPARABLE DATA IF A
4 REBASING FACTOR IS NOT REPORTED.

5 (3) BEFORE FEBRUARY 1, 2011, AND BEFORE FEBRUARY 1 OF EACH
6 SUCCEEDING YEAR, THE DEPARTMENT OF REVENUE SHALL PUBLISH A
7 CUMULATIVE LIST, BEGINNING WITH THE DOLLAR AMOUNTS EFFECTIVE FOR
8 THE ESTATE OF A DECEDENT WHO DIED IN 2011 OF EACH DOLLAR AMOUNT
9 AS INCREASED OR DECREASED UNDER THIS SECTION.

10 **SECTION 2.** 15-10-201, Colorado Revised Statutes, is amended
11 BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to
12 read:

13 **15-10-201. General definitions.** Subject to additional definitions
14 contained in the subsequent articles that are applicable to specific articles,
15 parts, or sections, and unless the context otherwise requires, in this code:

16 (44.5) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
17 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER
18 MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

19 (47.5) "SIGN" MEANS, WITH PRESENT INTENT TO AUTHENTICATE OR
20 ADOPT A RECORD OTHER THAN A WILL:

21 (a) TO EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR

22 (b) TO ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD
23 AN ELECTRONIC SYMBOL, SOUND, OR PROCESS.

24 **SECTION 3.** 15-11-102, Colorado Revised Statutes, is amended
25 to read:

26 **15-11-102. Share of spouse.** The various possible circumstances
27 describing the decedent, his or her surviving spouse, and their surviving

1 descendants, if any, are set forth in this section to be utilized in
2 determining the intestate share of the decedent's surviving spouse. If
3 more than one circumstance is applicable, the circumstance that produces
4 the largest share for the surviving spouse shall be applied. THE
5 INTESTATE SHARE OF A DECEDENT'S SURVIVING SPOUSE IS:

6 (1) THE ENTIRE INTESTATE ESTATE if:

7 (a) No descendant or parent of the decedent survives the decedent;
8 ~~then the surviving spouse receives the entire intestate estate; or~~

9 (b) All of the decedent's surviving descendants are also
10 descendants of the surviving spouse and there ~~are~~ IS no other ~~descendants~~
11 DESCENDANT of the surviving spouse who ~~survive~~ SURVIVES the
12 decedent; ~~then the surviving spouse receives the entire intestate estate;~~

13 (2) ~~If no descendant of the decedent survives the decedent, but a~~
14 ~~parent of the decedent survives the decedent, then the surviving spouse~~
15 ~~receives~~ The first ~~two~~ THREE hundred thousand dollars, plus three-fourths
16 of any balance of the intestate estate, IF NO DESCENDANT OF THE
17 DECEDENT SURVIVES THE DECEDENT, BUT A PARENT OF THE DECEDENT
18 SURVIVES THE DECEDENT;

19 (3) ~~If all of the decedent's surviving descendants are also~~
20 ~~descendants of the surviving spouse, and the surviving spouse has one or~~
21 ~~more surviving descendants who are not descendants of the decedent,~~
22 ~~then the surviving spouse receives~~ The first ~~one~~ TWO hundred fifty
23 TWENTY-FIVE thousand dollars, plus one-half of any balance of the
24 intestate estate, IF ALL OF THE DECEDENT'S SURVIVING DESCENDANTS ARE
25 ALSO DESCENDANTS OF THE SURVIVING SPOUSE AND THE SURVIVING
26 SPOUSE HAS ONE OR MORE SURVIVING DESCENDANTS WHO ARE NOT
27 DESCENDANTS OF THE DECEDENT;

1 (4) ~~If one or more of the decedent's surviving descendants are not~~
2 ~~descendants of the decedent's surviving spouse, and all of such surviving~~
3 ~~descendants who are children of the decedent are adults, then the~~
4 ~~surviving spouse receives~~ The first one hundred FIFTY thousand dollars,
5 plus one-half of any balance of the intestate estate, IF ONE OR MORE OF
6 THE DECEDENT'S SURVIVING DESCENDANTS ARE NOT DESCENDANTS OF THE
7 SURVIVING SPOUSE.

8 (5) ~~If one or more of the decedent's surviving descendants are not~~
9 ~~descendants of the decedent's surviving spouse, and if one or more of~~
10 ~~such descendants who are children of the decedent are minors, then the~~
11 ~~surviving spouse receives one-half of the intestate estate.~~

12 (6) THE DOLLAR AMOUNTS STATED IN THIS SECTION SHALL BE
13 INCREASED OR DECREASED BASED ON THE COST OF LIVING ADJUSTMENT AS
14 CALCULATED AND SPECIFIED IN SECTION 15-10-112.

15 **SECTION 4.** 15-11-103, Colorado Revised Statutes, is amended
16 to read:

17 **15-11-103. Share of heirs other than surviving spouse.** Any
18 part of the intestate estate not passing to the decedent's surviving spouse
19 under section 15-11-102, or the entire intestate estate if there is no
20 surviving spouse, passes in the following order to the individuals
21 ~~designated~~ who survive the decedent:

22 (1) To the decedent's descendants per capita at each generation;

23 (2) If there is no surviving descendant, to the decedent's parents
24 equally if both survive, or to the ~~decedent's~~ surviving parent IF ONLY ONE
25 SURVIVES;

26 (3) If there is no surviving descendant or ~~surviving~~ parent, to the
27 ~~surviving~~ descendants of the decedent's parents or either of them per

1 capita at each generation;

2 (4) If there is no surviving descendant, ~~surviving~~ parent, or
3 ~~surviving~~ descendant of a parent, ~~to the decedent's surviving~~ BUT THE
4 DECEDENT IS SURVIVED ON BOTH THE PATERNAL AND MATERNAL SIDES BY
5 ONE OR MORE grandparents or ~~any of them, in equal shares~~; DESCENDANTS
6 OF GRANDPARENTS:

7 (a) HALFTO THE DECEDENT'S PATERNAL GRANDPARENTS EQUALLY
8 IF BOTH SURVIVE, TO THE SURVIVING PATERNAL GRANDPARENT IF ONLY
9 ONE SURVIVES, OR TO THE DESCENDANTS OF THE DECEDENT'S PATERNAL
10 GRANDPARENTS OR EITHER OF THEM IF BOTH ARE DECEASED, THE
11 DESCENDANTS TAKING PER CAPITA AT EACH GENERATION; AND

12 (b) HALF TO THE DECEDENT'S MATERNAL GRANDPARENTS
13 EQUALLY IF BOTH SURVIVE, TO THE SURVIVING MATERNAL GRANDPARENT
14 IF ONLY ONE SURVIVES, OR TO THE DESCENDANTS OF THE DECEDENT'S
15 MATERNAL GRANDPARENTS OR EITHER OF THEM IF BOTH ARE DECEASED,
16 THE DESCENDANTS TAKING PER CAPITA AT EACH GENERATION;

17 (5) If there is no surviving descendant, ~~surviving~~ parent, ~~surviving~~
18 OR descendant of a parent, ~~or surviving grandparent, to the surviving~~
19 ~~descendants of the decedent's grandparents per capita at each generation~~;
20 BUT THE DECEDENT IS SURVIVED BY ONE OR MORE GRANDPARENTS OR
21 DESCENDANTS OF GRANDPARENTS ON THE PATERNAL BUT NOT THE
22 MATERNAL SIDE, OR ON THE MATERNAL BUT NOT THE PATERNAL SIDE, TO
23 THE DECEDENT'S RELATIVES ON THE SIDE WITH ONE OR MORE SURVIVING
24 MEMBERS IN THE MANNER AS DESCRIBED IN SUBSECTION (4) OF THIS
25 SECTION;

26 (6) If there is no ~~surviving heir~~ TAKER under subsections (1) to (5)
27 of this section, ~~and if a birth child or birth children file a claim for~~

1 inheritance with the court having probate jurisdiction for the decedent's
2 estate within ninety days of decedent's death, to the decedent's surviving
3 birth child or children per capita at each generation. For purposes of this
4 subsection (6), the term "birth child" means a child who was born to, but
5 adopted away from, his or her natural parent. BUT THE DECEDENT HAS:

6 (a) ONE DECEASED SPOUSE WHO HAS ONE OR MORE DESCENDANTS
7 WHO SURVIVE THE DECEDENT, THE ESTATE OR PART THEREOF PASSES TO
8 THAT SPOUSE'S DESCENDANTS PER CAPITA AT EACH GENERATION; OR

9 (b) MORE THAN ONE DECEASED SPOUSE WHO HAS ONE OR MORE
10 DESCENDANTS WHO SURVIVE THE DECEDENT, AN EQUAL SHARE OF THE
11 ESTATE OR PART THEREOF PASSES TO EACH SET OF DESCENDANTS PER
12 CAPITA AT EACH GENERATION.

13 (7) ~~If there is no surviving heir or birth child under subsections (1)~~
14 ~~to (6) of this section, and if a birth parent or birth parents file a claim for~~
15 ~~inheritance with the court having probate jurisdiction for the decedent's~~
16 ~~estate within ninety days of decedent's death, to the decedent's birth~~
17 ~~parents equally if both survive, or to the surviving birth parent. For~~
18 ~~purposes of this subsection (7), the term "birth parent" means the natural~~
19 ~~parent of a child who was born to, but adopted away from, the natural~~
20 ~~parent.~~

21 **SECTION 5.** 15-11-104, Colorado Revised Statutes, is amended
22 to read:

23 **15-11-104. Requirement of survival by one hundred twenty**
24 **hours - individual gestation.** (1) FOR PURPOSES OF INTESTATE
25 SUCCESSION AND EXEMPT PROPERTY, AND EXCEPT AS OTHERWISE
26 PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (1), THE FOLLOWING
27 RULES APPLY:

1 (a) An individual BORN BEFORE A DECEDENT'S DEATH who fails to
2 survive the decedent by one hundred twenty hours is deemed to have
3 predeceased the decedent. ~~for the purposes of exempt property, and~~
4 ~~intestate succession, and the decedent's heirs are determined accordingly.~~
5 ~~If the time of death of a decedent or of an individual who would~~
6 ~~otherwise be an heir, or the times of death of both, cannot be determined,~~
7 ~~and~~ IF it is not established by clear and convincing evidence that ~~the~~ AN
8 individual ~~who would otherwise be an heir~~ survived the decedent by
9 BORN BEFORE THE DECEDENT'S DEATH survived the decedent by one
10 hundred twenty hours, it is deemed that the individual failed to survive
11 for the required period.

12 (b) AN INDIVIDUAL IN GESTATION AT A DECEDENT'S DEATH IS
13 DEEMED TO BE LIVING AT THE DECEDENT'S DEATH IF THE INDIVIDUAL LIVES
14 ONE HUNDRED TWENTY HOURS AFTER BIRTH. IF IT IS NOT ESTABLISHED BY
15 CLEAR AND CONVINCING EVIDENCE THAT AN INDIVIDUAL IN GESTATION AT
16 THE DECEDENT'S DEATH LIVED ONE HUNDRED TWENTY HOURS AFTER
17 BIRTH, IT IS DEEMED THAT THE INDIVIDUAL FAILED TO SURVIVE FOR THE
18 REQUIRED PERIOD.

19 (2) This section is not to be applied if its application would result
20 in a taking of intestate estate by the state under section 15-11-105. ~~or~~
21 ~~when the provisions of section 15-11-712 relating to simultaneous death~~
22 ~~are applicable.~~

23 **SECTION 6. Repeal.** 15-11-108, Colorado Revised Statutes, is
24 repealed as follows:

25 **15-11-108. After-born heirs.** ~~Relatives of the decedent~~
26 ~~conceived before the decedent's death but born thereafter inherit as if they~~
27 ~~had been born in the lifetime of the decedent if the relative lives one~~

1 ~~hundred twenty hours or more after birth.~~

2 **SECTION 7.** 15-11-114, Colorado Revised Statutes, is amended
3 to read:

4 **15-11-114. Parent barred from inheriting in certain**
5 **circumstances.** ~~(1) Except as provided in subsections (2) and (3) of this~~
6 ~~section for the purposes of intestate succession by, through, or from a~~
7 ~~person, an individual is the child of his or her birth parents regardless of~~
8 ~~their marital status. The parent and child relationship may be established~~
9 ~~under the "Uniform Parentage Act", article 4 of title 19, C.R.S.~~

10 ~~(2) For purposes of intestate succession by, through, or from a~~
11 ~~person, an adopted individual is the child of his or her adopting parent or~~
12 ~~parents and not of his or her birth parents, except for inheritance rights as~~
13 ~~specified in section 15-11-103 (6) and (7), but the adoption of a child by~~
14 ~~the spouse of either birth parent has no effect on the relationship between~~
15 ~~the child and the birth parent whose spouse has adopted the child.~~

16 ~~(3) If the child has not been adopted, inheritance from or through~~
17 ~~a child by either birth parent or his or her parent's kindred is precluded~~
18 ~~unless that birth parent has acknowledged the child as his or hers, and has~~
19 ~~not refused to support the child.~~

20 (1) A PARENT IS BARRED FROM INHERITING FROM OR THROUGH A
21 CHILD OF THE PARENT IF:

22 (a) THE PARENT'S PARENTAL RIGHTS WERE TERMINATED AND THE
23 PARENT-CHILD RELATIONSHIP WAS NOT JUDICIALLY REESTABLISHED; OR

24 (b) THE CHILD DIED BEFORE REACHING EIGHTEEN YEARS OF AGE
25 AND THERE IS CLEAR AND CONVINCING EVIDENCE THAT IMMEDIATELY
26 BEFORE THE CHILD'S DEATH THE PARENTAL RIGHTS OF THE PARENT COULD
27 HAVE BEEN TERMINATED UNDER THE LAWS OF THIS STATE OTHER THAN

1 THIS CODE ON THE BASIS OF NONSUPPORT, ABANDONMENT, ABUSE,
2 NEGLECT, OR OTHER ACTIONS OR INACTIONS OF THE PARENT TOWARD THE
3 CHILD.

4 (2) FOR THE PURPOSE OF INTESTATE SUCCESSION FROM OR
5 THROUGH THE DECEASED CHILD, A PARENT WHO IS BARRED FROM
6 INHERITING UNDER THIS SECTION IS TREATED AS IF THE PARENT
7 PREDECEASED THE CHILD.

8 **SECTION 8.** Part 1 of article 11 of title 15, Colorado Revised
9 Statutes, is amended BY THE ADDITION OF A NEW SUBPART to
10 read:

11 **SUBPART 2**

12 **PARENT-CHILD RELATIONSHIP**

13 **15-11-115. Definitions.** IN THIS SUBPART 2:

14 (1) "ADOPTEE" MEANS AN INDIVIDUAL WHO IS ADOPTED.

15 (2) "ASSISTED REPRODUCTION" MEANS A METHOD OF CAUSING
16 PREGNANCY OTHER THAN SEXUAL INTERCOURSE.

17 (3) "DIVORCE" INCLUDES AN ANNULMENT, DISSOLUTION OF
18 MARRIAGE, AND DECLARATION OF INVALIDITY OF A MARRIAGE.

19 (4) "FUNCTIONED AS A PARENT OF THE CHILD" MEANS BEHAVING
20 TOWARD A CHILD IN A MANNER CONSISTENT WITH BEING THE CHILD'S
21 PARENT AND PERFORMING FUNCTIONS THAT ARE CUSTOMARILY
22 PERFORMED BY A PARENT, INCLUDING FULFILLING PARENTAL
23 RESPONSIBILITIES TOWARD THE CHILD, RECOGNIZING OR HOLDING OUT THE
24 CHILD AS THE INDIVIDUAL'S CHILD, MATERIALLY PARTICIPATING IN THE
25 CHILD'S UPBRINGING, AND RESIDING WITH THE CHILD IN THE SAME
26 HOUSEHOLD AS A REGULAR MEMBER OF THAT HOUSEHOLD.

27 (5) "GENETIC FATHER" MEANS THE MAN WHOSE SPERM FERTILIZED

1 THE EGG OF A CHILD'S GENETIC MOTHER. IF THE FATHER-CHILD
2 RELATIONSHIP IS ESTABLISHED UNDER THE PRESUMPTION OF PATERNITY
3 UNDER SECTION 19-4-204, C.R.S., AS AMENDED BY HOUSE BILL 09-1286,
4 ENACTED IN 2009, THE TERM MEANS ONLY THE MAN FOR WHOM THAT
5 RELATIONSHIP IS ESTABLISHED.

6 (6) "GENETIC MOTHER" MEANS THE WOMAN WHOSE EGG WAS
7 FERTILIZED BY THE SPERM OF A CHILD'S GENETIC FATHER.

8 (7) "GENETIC PARENT" MEANS A CHILD'S GENETIC FATHER OR
9 GENETIC MOTHER.

10 (8) "INCAPACITY" MEANS THE INABILITY OF AN INDIVIDUAL TO
11 FUNCTION AS A PARENT OF A CHILD BECAUSE OF THE INDIVIDUAL'S
12 PHYSICAL OR MENTAL CONDITION.

13 (9) "RELATIVE" MEANS A GRANDPARENT OR A DESCENDANT OF A
14 GRANDPARENT.

15 **15-11-116. Effect of parent-child relationship.** EXCEPT AS
16 OTHERWISE PROVIDED IN SECTION 15-11-119, IF A PARENT-CHILD
17 RELATIONSHIP EXISTS OR IS ESTABLISHED UNDER THIS SUBPART 2, THE
18 PARENT IS A PARENT OF THE CHILD AND THE CHILD IS A CHILD OF THE
19 PARENT FOR THE PURPOSE OF INTESTATE SUCCESSION.

20 **15-11-117. No distinction based on marital status.** EXCEPT AS
21 OTHERWISE PROVIDED IN SECTION 15-11-114, 15-11-119, 15-11-120, OR
22 15-11-121, A PARENT-CHILD RELATIONSHIP EXISTS BETWEEN A CHILD AND
23 THE CHILD'S GENETIC PARENTS, REGARDLESS OF THE PARENTS' MARITAL
24 STATUS.

25 **15-11-118. Adoptee and adoptee's adoptive parent or parents.**
26 (1) **Parent-child relationship between adoptee and adoptive parent**
27 **or parents.** A PARENT-CHILD RELATIONSHIP EXISTS BETWEEN AN

1 ADOPTEE AND THE ADOPTEE'S ADOPTIVE PARENT OR PARENTS.

2 (2) **Individual in process of being adopted by married couple**
3 **- stepchild in process of being adopted by stepparent.** FOR PURPOSES
4 OF SUBSECTION (1) OF THIS SECTION:

5 (a) AN INDIVIDUAL WHO IS IN THE PROCESS OF BEING ADOPTED BY
6 A MARRIED COUPLE WHEN ONE OF THE SPOUSES DIES IS TREATED AS
7 ADOPTED BY THE DECEASED SPOUSE IF THE ADOPTION IS SUBSEQUENTLY
8 GRANTED TO THE DECEDENT'S SURVIVING SPOUSE; AND

9 (b) A CHILD OF A GENETIC PARENT WHO IS IN THE PROCESS OF
10 BEING ADOPTED BY A GENETIC PARENT'S SPOUSE WHEN THE SPOUSE DIES
11 IS TREATED AS ADOPTED BY THE DECEASED SPOUSE IF THE GENETIC
12 PARENT SURVIVES THE DECEASED SPOUSE BY ONE HUNDRED TWENTY
13 HOURS.

14 (3) **Child of assisted reproduction or gestational child in**
15 **process of being adopted.** IF, AFTER A PARENT-CHILD RELATIONSHIP IS
16 ESTABLISHED BETWEEN A CHILD OF ASSISTED REPRODUCTION AND A
17 PARENT UNDER SECTION 15-11-120 OR BETWEEN A GESTATIONAL CHILD
18 AND A PARENT UNDER SECTION 15-11-121, THE CHILD IS IN THE PROCESS
19 OF BEING ADOPTED BY THE PARENT'S SPOUSE WHEN THAT SPOUSE DIES,
20 THE CHILD IS TREATED AS ADOPTED BY THE DECEASED SPOUSE FOR THE
21 PURPOSE OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION.

22 **15-11-119. Adoptee and adoptee's genetic parents.**

23 (1) **Parent-child relationship between adoptee and genetic parents.**
24 EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PARENT-CHILD
25 RELATIONSHIP DOES NOT EXIST BETWEEN AN ADOPTEE AND THE ADOPTEE'S
26 GENETIC PARENTS.

27 (2) **Stepchild adopted by stepparent.** A PARENT-CHILD

1 RELATIONSHIP EXISTS BETWEEN AN INDIVIDUAL WHO IS ADOPTED BY THE
2 SPOUSE OF EITHER GENETIC PARENT AND:

3 (a) THE GENETIC PARENT WHOSE SPOUSE ADOPTED THE
4 INDIVIDUAL; AND

5 (b) THE OTHER GENETIC PARENT, BUT ONLY FOR THE PURPOSE OF
6 THE RIGHT OF THE ADOPTEE OR A DESCENDANT OF THE ADOPTEE TO
7 INHERIT FROM OR THROUGH THE OTHER GENETIC PARENT.

8 **(2.5) Child of a second-parent adoption.** A PARENT-CHILD
9 RELATIONSHIP EXISTS BETWEEN AN INDIVIDUAL WHO IS ADOPTED BY A
10 SECOND PARENT AND:

11 (a) THE GENETIC PARENT WHO CONSENTED TO A SECOND-PARENT
12 ADOPTION; AND

13 (b) THE OTHER GENETIC PARENT, BUT ONLY FOR THE PURPOSE OF
14 THE RIGHT OF THE ADOPTEE OR A DESCENDANT OF THE ADOPTEE TO
15 INHERIT FROM OR THROUGH THE OTHER GENETIC PARENT.

16 **(3) Individual adopted by relative of genetic parent.** A
17 PARENT-CHILD RELATIONSHIP EXISTS BETWEEN BOTH GENETIC PARENTS
18 AND AN INDIVIDUAL WHO IS ADOPTED BY A RELATIVE OF A GENETIC
19 PARENT, OR BY THE SPOUSE OR SURVIVING SPOUSE OF A RELATIVE OF A
20 GENETIC PARENT, BUT ONLY FOR THE PURPOSE OF THE RIGHT OF THE
21 ADOPTEE OR A DESCENDANT OF THE ADOPTEE TO INHERIT FROM OR
22 THROUGH EITHER GENETIC PARENT.

23 **(4) Individual adopted after death of both genetic parents.** A
24 PARENT-CHILD RELATIONSHIP EXISTS BETWEEN BOTH GENETIC PARENTS
25 AND AN INDIVIDUAL WHO IS ADOPTED AFTER THE DEATH OF BOTH GENETIC
26 PARENTS, BUT ONLY FOR THE PURPOSE OF THE RIGHT OF THE ADOPTEE OR
27 A DESCENDANT OF THE ADOPTEE TO INHERIT THROUGH EITHER GENETIC

1 PARENT.

2 (5) **Child of assisted reproduction or gestational child who is**
3 **subsequently adopted.** IF, AFTER A PARENT-CHILD RELATIONSHIP IS
4 ESTABLISHED BETWEEN A CHILD OF ASSISTED REPRODUCTION AND A
5 PARENT OR PARENTS UNDER SECTION 15-11-120 OR BETWEEN A
6 GESTATIONAL CHILD AND A PARENT OR PARENTS UNDER SECTION
7 15-11-121, THE CHILD IS ADOPTED BY ANOTHER OR OTHERS, THE CHILD'S
8 PARENT OR PARENTS UNDER SECTION 15-11-120 OR 15-11-121 ARE
9 TREATED AS THE CHILD'S GENETIC PARENT OR PARENTS FOR THE PURPOSE
10 OF THIS SECTION.

11 **15-11-120. Child conceived by assisted reproduction other**
12 **than child born to gestational carrier. (1) Definitions.** IN THIS
13 SECTION:

14 (a) "BIRTH MOTHER" MEANS A WOMAN, OTHER THAN A
15 GESTATIONAL CARRIER UNDER SECTION 15-11-121, WHO GIVES BIRTH TO
16 A CHILD OF ASSISTED REPRODUCTION. THE TERM IS NOT LIMITED TO A
17 WOMAN WHO IS THE CHILD'S GENETIC MOTHER.

18 (b) "CHILD OF ASSISTED REPRODUCTION" MEANS A CHILD
19 CONCEIVED BY MEANS OF ASSISTED REPRODUCTION BY A WOMAN OTHER
20 THAN A GESTATIONAL CARRIER UNDER SECTION 15-11-121.

21 (c) "THIRD-PARTY DONOR" MEANS AN INDIVIDUAL WHO PRODUCES
22 EGGS OR SPERM USED FOR ASSISTED REPRODUCTION, WHETHER OR NOT
23 FOR CONSIDERATION. THE TERM DOES NOT INCLUDE:

24 (I) A HUSBAND WHO PROVIDES SPERM, OR A WIFE WHO PROVIDES
25 EGGS, THAT ARE USED FOR ASSISTED REPRODUCTION BY THE WIFE;

26 (II) THE BIRTH MOTHER OF A CHILD OF ASSISTED REPRODUCTION;

27 OR

1 (III) AN INDIVIDUAL WHO HAS BEEN DETERMINED UNDER
2 SUBSECTION (5) OR (6) OF THIS SECTION TO HAVE A PARENT-CHILD
3 RELATIONSHIP WITH A CHILD OF ASSISTED REPRODUCTION.

4 (2) **Third-party donor.** A PARENT-CHILD RELATIONSHIP DOES
5 NOT EXIST BETWEEN A CHILD OF ASSISTED REPRODUCTION AND A
6 THIRD-PARTY DONOR.

7 (3) **Parent-child relationship with birth mother.** A
8 PARENT-CHILD RELATIONSHIP EXISTS BETWEEN A CHILD OF ASSISTED
9 REPRODUCTION AND THE CHILD'S BIRTH MOTHER.

10 (4) **Parent-child relationship with husband whose sperm were**
11 **used during his lifetime by his wife for assisted reproduction.** EXCEPT
12 AS OTHERWISE PROVIDED IN SUBSECTIONS (9) AND (10) OF THIS SECTION,
13 A PARENT-CHILD RELATIONSHIP EXISTS BETWEEN A CHILD OF ASSISTED
14 REPRODUCTION AND THE HUSBAND OF THE CHILD'S BIRTH MOTHER IF THE
15 HUSBAND PROVIDED THE SPERM THAT THE BIRTH MOTHER USED DURING
16 HIS LIFETIME FOR ASSISTED REPRODUCTION.

17 (5) **Birth certificate - presumptive effect.** A BIRTH CERTIFICATE
18 IDENTIFYING AN INDIVIDUAL OTHER THAN THE BIRTH MOTHER AS THE
19 OTHER PARENT OF A CHILD OF ASSISTED REPRODUCTION PRESUMPTIVELY
20 ESTABLISHES A PARENT-CHILD RELATIONSHIP BETWEEN THE CHILD AND
21 THAT INDIVIDUAL.

22 (6) **Parent-child relationship with another.** EXCEPT AS
23 OTHERWISE PROVIDED IN SUBSECTIONS (7), (9), AND (10) OF THIS SECTION,
24 AND UNLESS A PARENT-CHILD RELATIONSHIP IS ESTABLISHED UNDER
25 SUBSECTION (4) OR (5) OF THIS SECTION, A PARENT-CHILD RELATIONSHIP
26 EXISTS BETWEEN A CHILD OF ASSISTED REPRODUCTION AND AN
27 INDIVIDUAL OTHER THAN THE BIRTH MOTHER WHO CONSENTED TO

1 ASSISTED REPRODUCTION BY THE BIRTH MOTHER WITH INTENT TO BE
2 TREATED AS THE OTHER PARENT OF THE CHILD. CONSENT TO ASSISTED
3 REPRODUCTION BY THE BIRTH MOTHER WITH INTENT TO BE TREATED AS
4 THE OTHER PARENT OF THE CHILD IS ESTABLISHED IF THE INDIVIDUAL:

5 (a) BEFORE OR AFTER THE CHILD'S BIRTH, SIGNED A RECORD THAT,
6 CONSIDERING ALL THE FACTS AND CIRCUMSTANCES, EVIDENCES THE
7 INDIVIDUAL'S CONSENT; OR

8 (b) IN THE ABSENCE OF A SIGNED RECORD UNDER PARAGRAPH (a)
9 OF THIS SUBSECTION (6):

10 (I) FUNCTIONED AS A PARENT OF THE CHILD NO LATER THAN TWO
11 YEARS AFTER THE CHILD'S BIRTH;

12 (II) INTENDED TO FUNCTION AS A PARENT OF THE CHILD NO LATER
13 THAN TWO YEARS AFTER THE CHILD'S BIRTH BUT WAS PREVENTED FROM
14 CARRYING OUT THAT INTENT BY DEATH, INCAPACITY, OR OTHER
15 CIRCUMSTANCES; OR

16 (III) INTENDED TO BE TREATED AS A PARENT OF A POSTHUMOUSLY
17 CONCEIVED CHILD, IF THAT INTENT IS ESTABLISHED BY CLEAR AND
18 CONVINCING EVIDENCE.

19 (7) **Record signed more than two years after the birth of the**
20 **child - effect.** FOR THE PURPOSE OF PARAGRAPH (a) OF SUBSECTION (6)
21 OF THIS SECTION, NEITHER AN INDIVIDUAL WHO SIGNED A RECORD MORE
22 THAN TWO YEARS AFTER THE BIRTH OF THE CHILD, NOR A RELATIVE OF
23 THAT INDIVIDUAL WHO IS NOT ALSO A RELATIVE OF THE BIRTH MOTHER,
24 INHERITS FROM OR THROUGH THE CHILD UNLESS THE INDIVIDUAL
25 FUNCTIONED AS A PARENT OF THE CHILD BEFORE THE CHILD REACHED
26 EIGHTEEN YEARS OF AGE.

27 (8) **Presumption - birth mother is married or surviving spouse.**

1 FOR THE PURPOSE OF PARAGRAPH (b) OF SUBSECTION (6) OF THIS SECTION,
2 THE FOLLOWING RULES APPLY:

3 (a) IF THE BIRTH MOTHER IS MARRIED AND NO DIVORCE
4 PROCEEDING IS PENDING, IN THE ABSENCE OF CLEAR AND CONVINCING
5 EVIDENCE TO THE CONTRARY, HER SPOUSE SATISFIES THE REQUIREMENTS
6 OF SUBPARAGRAPH (I) OR (II) OF PARAGRAPH (b) OF SUBSECTION (6) OF
7 THIS SECTION.

8 (b) IF THE BIRTH MOTHER IS A SURVIVING SPOUSE AND AT HER
9 DECEASED SPOUSE'S DEATH NO DIVORCE PROCEEDING WAS PENDING, IN
10 THE ABSENCE OF CLEAR AND CONVINCING EVIDENCE TO THE CONTRARY,
11 HER DECEASED SPOUSE SATISFIES THE REQUIREMENTS OF SUBPARAGRAPH
12 (II) OR (III) OF PARAGRAPH (b) OF SUBSECTION (6) OF THIS SECTION.

13 (9) **Divorce before placement of eggs, sperm, or embryos.** IF
14 A MARRIED COUPLE IS DIVORCED BEFORE PLACEMENT OF EGGS, SPERM, OR
15 EMBRYOS, A CHILD RESULTING FROM THE ASSISTED REPRODUCTION IS NOT
16 A CHILD OF THE BIRTH MOTHER'S FORMER SPOUSE, UNLESS THE FORMER
17 SPOUSE CONSENTED IN A RECORD THAT IF ASSISTED REPRODUCTION WERE
18 TO OCCUR AFTER DIVORCE, THE CHILD WOULD BE TREATED AS THE FORMER
19 SPOUSE'S CHILD.

20 (10) **Withdrawal of consent before placement of eggs, sperm,**
21 **or embryos.** IF, IN A RECORD, AN INDIVIDUAL WITHDRAWS CONSENT TO
22 ASSISTED REPRODUCTION BEFORE PLACEMENT OF EGGS, SPERM, OR
23 EMBRYOS, A CHILD RESULTING FROM THE ASSISTED REPRODUCTION IS NOT
24 A CHILD OF THAT INDIVIDUAL, UNLESS THE INDIVIDUAL SUBSEQUENTLY
25 SATISFIES SUBSECTION (6) OF THIS SECTION.

26 (11) **When posthumously conceived child treated as in**
27 **gestation.** IF, UNDER THIS SECTION, AN INDIVIDUAL IS A PARENT OF A

1 CHILD OF ASSISTED REPRODUCTION WHO IS CONCEIVED AFTER THE
2 INDIVIDUAL'S DEATH, THE CHILD IS TREATED AS IN GESTATION AT THE TIME
3 OF THE INDIVIDUAL'S DEATH FOR PURPOSES OF SECTION 15-11-104 (1) (b)
4 IF THE CHILD IS:

5 (a) IN UTERO NOT LATER THAN THIRTY-SIX MONTHS AFTER THE
6 INDIVIDUAL'S DEATH; OR

7 (b) BORN NOT LATER THAN FORTY-FIVE MONTHS AFTER THE
8 INDIVIDUAL'S DEATH.

9 **15-11-121. Child born to gestational carrier.** (1) IN THIS
10 SECTION:

11 (a) "GESTATIONAL AGREEMENT" MEANS AN ENFORCEABLE OR
12 UNENFORCEABLE AGREEMENT FOR ASSISTED REPRODUCTION IN WHICH A
13 WOMAN AGREES TO CARRY A CHILD TO BIRTH FOR AN INTENDED PARENT,
14 INTENDED PARENTS, OR AN INDIVIDUAL DESCRIBED IN SUBSECTION (5) OF
15 THIS SECTION.

16 (b) "GESTATIONAL CARRIER" MEANS A WOMAN WHO IS NOT AN
17 INTENDED PARENT WHO GIVES BIRTH TO A CHILD UNDER A GESTATIONAL
18 AGREEMENT. THE TERM IS NOT LIMITED TO A WOMAN WHO IS THE CHILD'S
19 GENETIC MOTHER.

20 (c) "GESTATIONAL CHILD" MEANS A CHILD BORN TO A
21 GESTATIONAL CARRIER UNDER A GESTATIONAL AGREEMENT.

22 (d) "INTENDED PARENT" MEANS AN INDIVIDUAL WHO ENTERED
23 INTO A VALIDATED GESTATIONAL AGREEMENT PROVIDING THAT THE
24 INDIVIDUAL WILL BE THE PARENT OF A CHILD BORN TO A GESTATIONAL
25 CARRIER BY MEANS OF ASSISTED REPRODUCTION. THE TERM IS NOT
26 LIMITED TO AN INDIVIDUAL WHO HAS A GENETIC RELATIONSHIP WITH THE
27 CHILD.

1 (2) **Court order adjudicating parentage - effect.** A
2 PARENT-CHILD RELATIONSHIP IS CONCLUSIVELY ESTABLISHED BY A COURT
3 ORDER DESIGNATING THE PARENT OR PARENTS OF A GESTATIONAL CHILD.

4 (3) **Gestational carrier.** A PARENT-CHILD RELATIONSHIP
5 BETWEEN A GESTATIONAL CHILD AND THE CHILD'S GESTATIONAL CARRIER
6 DOES NOT EXIST UNLESS THE GESTATIONAL CARRIER IS:

7 (a) DESIGNATED AS A PARENT OF THE CHILD IN A COURT ORDER
8 DESCRIBED IN SUBSECTION (2) OF THIS SECTION; OR

9 (b) THE CHILD'S GENETIC MOTHER AND A PARENT-CHILD
10 RELATIONSHIP DOES NOT EXIST UNDER THIS SECTION WITH AN INDIVIDUAL
11 OTHER THAN THE GESTATIONAL CARRIER.

12 (4) **Parent-child relationship with intended parent or parents.**
13 IN THE ABSENCE OF A COURT ORDER UNDER SUBSECTION (2) OF THIS
14 SECTION, A PARENT-CHILD RELATIONSHIP EXISTS BETWEEN A
15 GESTATIONAL CHILD AND AN INTENDED PARENT WHO:

16 (a) FUNCTIONED AS A PARENT OF THE CHILD NO LATER THAN TWO
17 YEARS AFTER THE CHILD'S BIRTH; OR

18 (b) DIED WHILE THE GESTATIONAL CARRIER WAS PREGNANT IF:

19 (I) THERE WERE TWO INTENDED PARENTS AND THE OTHER
20 INTENDED PARENT FUNCTIONED AS A PARENT OF THE CHILD NO LATER
21 THAN TWO YEARS AFTER THE CHILD'S BIRTH;

22 (II) THERE WERE TWO INTENDED PARENTS, THE OTHER INTENDED
23 PARENT ALSO DIED WHILE THE GESTATIONAL CARRIER WAS PREGNANT,
24 AND A RELATIVE OF EITHER DECEASED INTENDED PARENT OR THE SPOUSE
25 OR SURVIVING SPOUSE OF A RELATIVE OF EITHER DECEASED INTENDED
26 PARENT FUNCTIONED AS A PARENT OF THE CHILD NO LATER THAN TWO
27 YEARS AFTER THE CHILD'S BIRTH; OR

1 (III) THERE WAS NO OTHER INTENDED PARENT AND A RELATIVE OF
2 OR THE SPOUSE OR SURVIVING SPOUSE OF A RELATIVE OF THE DECEASED
3 INTENDED PARENT FUNCTIONED AS A PARENT OF THE CHILD NO LATER
4 THAN TWO YEARS AFTER THE CHILD'S BIRTH.

5 (5) **Gestational agreement after death or incapacity.** IN THE
6 ABSENCE OF A COURT ORDER UNDER SUBSECTION (2) OF THIS SECTION, A
7 PARENT-CHILD RELATIONSHIP EXISTS BETWEEN A GESTATIONAL CHILD AND
8 AN INDIVIDUAL WHOSE SPERM OR EGGS WERE USED AFTER THE
9 INDIVIDUAL'S DEATH OR INCAPACITY TO CONCEIVE A CHILD UNDER A
10 GESTATIONAL AGREEMENT ENTERED INTO AFTER THE INDIVIDUAL'S DEATH
11 OR INCAPACITY IF THE INDIVIDUAL INTENDED TO BE TREATED AS THE
12 PARENT OF THE CHILD. THE INDIVIDUAL'S INTENT MAY BE SHOWN BY:

13 (a) A RECORD SIGNED BY THE INDIVIDUAL WHICH CONSIDERING
14 ALL THE FACTS AND CIRCUMSTANCES EVIDENCES THE INDIVIDUAL'S
15 INTENT; OR

16 (b) OTHER FACTS AND CIRCUMSTANCES ESTABLISHING THE
17 INDIVIDUAL'S INTENT BY CLEAR AND CONVINCING EVIDENCE.

18 (6) **Presumption - gestational agreement after spouse's death**
19 **or incapacity.** EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (7) OF
20 THIS SECTION, AND UNLESS THERE IS CLEAR AND CONVINCING EVIDENCE
21 OF A CONTRARY INTENT, AN INDIVIDUAL IS DEEMED TO HAVE INTENDED TO
22 BE TREATED AS THE PARENT OF A GESTATIONAL CHILD FOR PURPOSES OF
23 PARAGRAPH (b) OF SUBSECTION (5) OF THIS SECTION IF:

24 (a) THE INDIVIDUAL, BEFORE DEATH OR INCAPACITY, DEPOSITED
25 THE SPERM OR EGGS THAT WERE USED TO CONCEIVE THE CHILD;

26 (b) WHEN THE INDIVIDUAL DEPOSITED THE SPERM OR EGGS, THE
27 INDIVIDUAL WAS MARRIED AND NO DIVORCE PROCEEDING WAS PENDING;

1 AND

2 (c) THE INDIVIDUAL'S SPOUSE OR SURVIVING SPOUSE FUNCTIONED
3 AS A PARENT OF THE CHILD NO LATER THAN TWO YEARS AFTER THE
4 CHILD'S BIRTH.

5 (7) **Subsection (6) presumption inapplicable.** THE
6 PRESUMPTION UNDER SUBSECTION (6) OF THIS SECTION DOES NOT APPLY
7 IF THERE IS:

8 (a) A COURT ORDER UNDER SUBSECTION (2) OF THIS SECTION; OR

9 (b) A SIGNED RECORD THAT SATISFIES PARAGRAPH (a) OF
10 SUBSECTION (5) OF THIS SECTION.

11 (8) **When posthumously conceived gestational child treated as**
12 **in gestation.** IF, UNDER THIS SECTION, AN INDIVIDUAL IS A PARENT OF A
13 GESTATIONAL CHILD WHO IS CONCEIVED AFTER THE INDIVIDUAL'S DEATH,
14 THE CHILD IS TREATED AS IN GESTATION AT THE TIME OF THE INDIVIDUAL'S
15 DEATH FOR PURPOSES OF SECTION 15-11-104 (1) (b) IF THE CHILD IS:

16 (a) IN UTERO NOT LATER THAN THIRTY-SIX MONTHS AFTER THE
17 INDIVIDUAL'S DEATH; OR

18 (b) BORN NOT LATER THAN FORTY-FIVE MONTHS AFTER THE
19 INDIVIDUAL'S DEATH.

20 (9) **No effect on other laws.** THIS SECTION DOES NOT AFFECT
21 LAWS OF THIS STATE OTHER THAN THIS CODE REGARDING THE
22 ENFORCEABILITY OR VALIDITY OF A GESTATIONAL AGREEMENT.

23 **15-11-122. Equitable adoption.** THIS SUBPART 2 DOES NOT
24 AFFECT THE DOCTRINE OF EQUITABLE ADOPTION.

25

26

27

SECTION 9. 15-11-201 (2), Colorado Revised Statutes, is

1 amended to read:

2 **15-11-201. Right to elective-share.** (2) (a) **Supplemental**
3 **elective-share amount.** If the sum of the amounts described in sections
4 15-11-202 (2) (d), 15-11-203 (1) (a), and that part of the elective-share
5 amount payable from the decedent's probate estate and nonprobate
6 transfers to others under section 15-11-203 (2) and (3) is less than fifty
7 thousand dollars, the surviving spouse is entitled to a supplemental
8 elective-share amount equal to fifty thousand dollars, minus the sum of
9 the amounts described in those sections. The supplemental elective-share
10 amount is payable from the decedent's probate estate and from recipients
11 of the decedent's nonprobate transfers to others in the order of priority set
12 forth in section 15-11-203 (2) and (3).

13 (b) THE DOLLAR AMOUNT STATED IN PARAGRAPH (a) OF THIS
14 SUBSECTION (2) SHALL BE INCREASED OR DECREASED BASED ON THE COST
15 OF LIVING ADJUSTMENT AS CALCULATED AND SPECIFIED IN SECTION
16 15-10-112.

17 **SECTION 10.** 15-11-403, Colorado Revised Statutes, is amended
18 to read:

19 **15-11-403. Exempt property.** (1) The decedent's surviving
20 spouse is entitled to exempt property from the estate in the form of cash
21 in the amount of or other property of the estate in the value of twenty-six
22 thousand dollars in excess of any security interests therein. If there is no
23 surviving spouse, the decedent's dependent children are entitled jointly to
24 the same exempt property. Rights to exempt property have priority over
25 all claims against the estate, except claims for the costs and expenses of
26 administration, and reasonable funeral and burial, interment, or cremation
27 expenses, which shall be paid in the priority and manner set forth in

1 section 15-12-805. The right to exempt property shall abate as necessary
2 to permit payment of the family allowance. These rights are in addition
3 to any benefit or share passing to the surviving spouse or dependent
4 children by the decedent's will, unless otherwise provided, by intestate
5 succession, or by way of elective-share.

6 (2) THE DOLLAR AMOUNT STATED IN SUBSECTION (1) OF THIS
7 SECTION SHALL BE INCREASED OR DECREASED BASED ON THE COST OF
8 LIVING ADJUSTMENT AS CALCULATED AND SPECIFIED IN SECTION
9 15-10-112.

10 **SECTION 11.** 15-11-405 (1), Colorado Revised Statutes, is
11 amended to read:

12 **15-11-405. Source, determination, and documentation.**

13 (1) (a) If the estate is otherwise sufficient, property specifically devised
14 or disposed of by memorandum under section 15-11-513 to any person
15 other than a person entitled to exempt property may not be used to satisfy
16 rights to exempt property. Subject to this restriction, the surviving
17 spouse, the guardians of minor children, or dependent children who are
18 adults may select property of the estate as their exempt property. The
19 personal representative may make these selections if the surviving spouse,
20 the dependent children, or the guardians of the minor children are unable
21 or fail to do so within a reasonable time or there is no guardian of a minor
22 child. The personal representative may execute an instrument or deed of
23 distribution to establish the ownership of property taken as exempt
24 property allowance. The personal representative may determine the
25 family allowance in a lump sum not exceeding twenty-four thousand
26 dollars or periodic installments not exceeding two thousand dollars per
27 month for one year and may disburse funds of the estate in payment of the

1 family allowance. The personal representative or an interested person
2 aggrieved by any selection, determination, payment, proposed payment,
3 or failure to act under this section may petition the court for appropriate
4 relief, which may provide a family allowance other than that which the
5 personal representative determined or could have determined.

6 (b) THE DOLLAR AMOUNT STATED IN PARAGRAPH (a) OF THIS
7 SUBSECTION (1) SHALL BE INCREASED OR DECREASED BASED ON THE COST
8 OF LIVING ADJUSTMENT AS CALCULATED AND SPECIFIED IN SECTION
9 15-10-112.

10 **SECTION 12.** 15-11-502 (1), Colorado Revised Statutes, is
11 amended to read:

12 **15-11-502. Execution - witnessed or notarized wills -**
13 **holographic wills.** (1) Except as OTHERWISE provided in subsection (2)
14 of this section and in sections 15-11-503, 15-11-506, and 15-11-513, a
15 will shall be:

16 (a) In writing;

17 (b) Signed by the testator, or in the testator's name by some other
18 individual in the testator's conscious presence and by the testator's
19 direction; and

20 (c) EITHER:

21 (I) Signed by at least two individuals, either prior to or after the
22 testator's death, each of whom signed within a reasonable time after he or
23 she witnessed either the testator's signing of the will as described in
24 paragraph (b) of this subsection (1) or the testator's acknowledgment of
25 that signature or acknowledgment of the will; OR

26 (II) ACKNOWLEDGED BY THE TESTATOR BEFORE A NOTARY PUBLIC
27 OR OTHER INDIVIDUAL AUTHORIZED BY LAW TO TAKE

1 ACKNOWLEDGMENTS.

2 **SECTION 13.** 15-11-504 (1) and (2), Colorado Revised Statutes,
3 are amended to read:

4 **15-11-504. Self-proved will.** (1) A will THAT IS EXECUTED WITH
5 ATTESTING WITNESSES may be simultaneously executed, attested, and
6 made self-proved by acknowledgment thereof by the testator and
7 affidavits of the witnesses, each made before an officer authorized to
8 administer oaths under the laws of the state in which execution occurs and
9 evidenced by the officer's certificate, under official seal, in substantially
10 the following form:

11 I, _____, the testator, sign my name to this instrument this
12 ____ day of ____, and being first duly sworn, do hereby declare to the
13 undersigned authority that I sign and execute this instrument as my will
14 and that I sign it willingly (or willingly direct another to sign for me), that
15 I execute it as my free and voluntary act for the purposes therein
16 expressed, and that I am eighteen years of age or older, of sound mind,
17 and under no constraint or undue influence.

18 _____
19 Testator

20 We, _____, _____ the witnesses, sign our names to this
21 instrument, being first duly sworn, and do hereby declare to the
22 undersigned authority that the testator signs and executes this instrument
23 as [his] [her] will and that [he] [she] signs it willingly (or willingly directs
24 another to sign for [him] [her]), and that [he] [she] executes it as [his]
25 [her] free and voluntary act for the purposes therein expressed, and that
26 each of us, in the conscious presence of the testator, hereby signs this will
27 as witness to the testator's signing, and that to the best of our knowledge

1 the testator is eighteen years of age or older, of sound mind, and under no
2 constraint or undue influence.

3 _____
4 Witness

5 _____
6 Witness

7 THE STATE OF _____
8 COUNTY OF _____

9 Subscribed, sworn to and acknowledged before me by
10 _____, the testator, and subscribed and sworn to before me by
11 _____ and _____, witnesses, this ____ day of _____,
12 _____.

13 (SEAL) (SIGNED) _____
14 _____
15 (Official capacity of officer)

16 (2) ~~An attested~~ A will THAT IS EXECUTED WITH ATTESTING
17 WITNESSES may be made self-proved at any time after its execution by the
18 acknowledgment thereof by the testator and the affidavits of the
19 witnesses, each made before an officer authorized to administer oaths
20 under the laws of the state in which the acknowledgment occurs and
21 evidenced by the officer's certificate, under the official seal, attached or
22 annexed to the will in substantially the following form:

23 THE STATE OF _____
24 COUNTY OF _____

25 We, _____, _____, and _____, the
26 testator and the witnesses, respectively, whose names are signed to the
27 attached or foregoing instrument, being first duly sworn, do hereby

1 declare to the undersigned authority that the testator signed and executed
2 the instrument as the testator's will and that [he] [she] had signed
3 willingly (or willingly directed another to sign for [him] [her]), and that
4 [he] [she] executed it as [his] [her] free and voluntary act for the purposes
5 therein expressed, and that each of the witnesses, in the conscious
6 presence of the testator, signed the will as witness and that to the best of
7 [his] [her] knowledge the testator was at that time eighteen years of age
8 or older, of sound mind, and under no constraint or undue influence.

9 _____
10 Testator

11 _____
12 Witness

13 _____
14 Witness

15 Subscribed, sworn to, and acknowledged before me by _____,
16 the testator, and subscribed and sworn to before me by _____
17 and _____, witnesses, this ____ day of _____,_____.

18 (SEAL) (SIGNED) _____
19 _____
20 (Official capacity of officer)

21 **SECTION 14.** 15-11-705, Colorado Revised Statutes, is amended
22 to read:

23 **15-11-705. Class gifts construed to accord with intestate**
24 **succession.** ~~(1) Adopted individuals and individuals born out of~~
25 ~~wedlock, and their respective descendants if appropriate to the class, are~~
26 ~~included in class gifts and other terms of relationship in accordance with~~
27 ~~the rules for intestate succession. Unless the context of the reference or~~

1 some other provision of the governing instrument indicates the testator's
2 contrary intent:

3 (a) ~~Terms of relationship that do not differentiate relationships by~~
4 ~~blood from those by affinity, such as "uncles", "aunts", "nieces", or~~
5 ~~"nephews", standing alone shall be construed to exclude relatives by~~
6 ~~affinity.~~

7 (b) ~~Terms of relationship that do not differentiate relationships by~~
8 ~~the half blood from those by the whole blood, such as "brothers",~~
9 ~~"sisters", "nieces", or "nephews", standing alone shall be construed to~~
10 ~~include both types of relationships.~~

11 (c) ~~Terms of relationship such as "children", "grandchildren",~~
12 ~~"issue", "descendants", "brothers", "sisters", "nieces", "nephews",~~
13 ~~"uncles", or "aunts" standing alone shall be construed to include~~
14 ~~individuals born out of wedlock.~~

15 (2) ~~(Reserved)~~

16 (3) ~~In addition to the requirements of subsection (1) of this~~
17 ~~section, in construing a dispositive provision of a transferor who is not the~~
18 ~~adopting parent, an adopted individual is not considered the child of the~~
19 ~~adopting parent unless the adopted individual was adopted while a minor.~~
20 ~~This subsection (3) shall be applied in a manner consistent with the~~
21 ~~application of section 15-11-114, which pertains to the parent and child~~
22 ~~relationship.~~

23 (1) **Definitions.** IN THIS SECTION:

24 (a) "ADOPTEE" HAS THE MEANING SET FORTH IN SECTION
25 15-11-115.

26 (b) "CHILD OF ASSISTED REPRODUCTION" HAS THE MEANING SET
27 FORTH IN SECTION 15-11-120.

1 (c) "DISTRIBUTION DATE" MEANS THE DATE WHEN AN IMMEDIATE
2 OR POSTPONED CLASS GIFT TAKES EFFECT IN POSSESSION OR ENJOYMENT.

3 (d) "FUNCTIONED AS A PARENT OF THE ADOPTEE" HAS THE
4 MEANING SET FORTH IN SECTION 15-11-115, SUBSTITUTING "ADOPTEE" FOR
5 "CHILD" IN THAT DEFINITION.

6 (e) "FUNCTIONED AS A PARENT OF THE CHILD" HAS THE MEANING
7 SET FORTH IN SECTION 15-11-115.

8 (f) "GENETIC PARENT" HAS THE MEANING SET FORTH IN SECTION
9 15-11-115.

10 (g) "GESTATIONAL CHILD" HAS THE MEANING SET FORTH IN
11 SECTION 15-11-121.

12 (h) "RELATIVE" HAS THE MEANING SET FORTH IN SECTION
13 15-11-115.

14 (2) **Terms of relationship.** A CLASS GIFT THAT USES A TERM OF
15 RELATIONSHIP TO IDENTIFY THE CLASS MEMBERS INCLUDES A CHILD OF
16 ASSISTED REPRODUCTION, A GESTATIONAL CHILD, AND, EXCEPT AS
17 OTHERWISE PROVIDED IN SUBSECTIONS (5) AND (6) OF THIS SECTION, AN
18 ADOPTEE AND A CHILD BORN TO PARENTS WHO ARE NOT MARRIED TO EACH
19 OTHER, AND THEIR RESPECTIVE DESCENDANTS IF APPROPRIATE TO THE
20 CLASS, IN ACCORDANCE WITH THE RULES FOR INTESTATE SUCCESSION
21 REGARDING PARENT-CHILD RELATIONSHIPS.

22 (3) **Relatives by marriage.** TERMS OF RELATIONSHIP IN A
23 GOVERNING INSTRUMENT THAT DO NOT DIFFERENTIATE RELATIONSHIPS BY
24 BLOOD FROM THOSE BY MARRIAGE, SUCH AS UNCLES, AUNTS, NIECES, OR
25 NEPHEWS, ARE CONSTRUED TO EXCLUDE RELATIVES BY MARRIAGE,
26 UNLESS:

27 (a) WHEN THE GOVERNING INSTRUMENT WAS EXECUTED, THE
28 CLASS WAS THEN AND FORESEEABLY WOULD BE EMPTY; OR

1 (b) THE LANGUAGE OR CIRCUMSTANCES OTHERWISE ESTABLISH
2 THAT RELATIVES BY MARRIAGE WERE INTENDED TO BE INCLUDED.

3 (4) **Half-blood relatives.** TERMS OF RELATIONSHIP IN A
4 GOVERNING INSTRUMENT THAT DO NOT DIFFERENTIATE RELATIONSHIPS BY
5 THE HALF BLOOD FROM THOSE BY THE WHOLE BLOOD, SUCH AS BROTHERS,
6 SISTERS, NIECES, OR NEPHEWS ARE CONSTRUED TO INCLUDE BOTH TYPES
7 OF RELATIONSHIPS.

8 (5) **Transferor not genetic parent.** IN CONSTRUING A
9 DISPOSITIVE PROVISION OF A TRANSFEROR WHO IS NOT THE GENETIC
10 PARENT, A CHILD OF A GENETIC PARENT IS NOT CONSIDERED THE CHILD OF
11 THE GENETIC PARENT UNLESS THE GENETIC PARENT, A RELATIVE OF THE
12 GENETIC PARENT, OR THE SPOUSE OR SURVIVING SPOUSE OF THE GENETIC
13 PARENT OR OF A RELATIVE OF THE GENETIC PARENT FUNCTIONED AS A
14 PARENT OF THE CHILD BEFORE THE CHILD REACHED EIGHTEEN YEARS OF
15 AGE.

16 (6) IN CONSTRUING A DISPOSITIVE PROVISION OF A TRANSFEROR
17 WHO IS NOT THE ADOPTIVE PARENT, AN ADOPTEE IS NOT CONSIDERED THE
18 CHILD OF THE ADOPTIVE PARENT UNLESS:

19 (a) THE ADOPTION TOOK PLACE BEFORE THE ADOPTEE REACHED
20 EIGHTEEN YEARS OF AGE;

21 (b) THE ADOPTIVE PARENT WAS THE ADOPTEE'S STEPPARENT OR
22 FOSTER PARENT; OR

23 (c) THE ADOPTIVE PARENT FUNCTIONED AS A PARENT OF THE
24 ADOPTEE BEFORE THE ADOPTEE REACHED EIGHTEEN YEARS OF AGE.

25 (7) **Class-closing rules.** THE FOLLOWING RULES APPLY FOR
26 PURPOSES OF THE CLASS-CLOSING RULES:

27 (a) A CHILD IN UTERO AT A PARTICULAR TIME IS TREATED AS
28 LIVING AT THAT TIME IF THE CHILD LIVES ONE HUNDRED TWENTY HOURS

1 AFTER BIRTH.

2 (b) IF A CHILD OF ASSISTED REPRODUCTION OR A GESTATIONAL
3 CHILD IS CONCEIVED POSTHUMOUSLY AND THE DISTRIBUTION DATE IS THE
4 DECEASED PARENT'S DEATH, THE CHILD IS TREATED AS LIVING ON THE
5 DISTRIBUTION DATE IF THE CHILD LIVES ONE HUNDRED TWENTY HOURS
6 AFTER BIRTH AND WAS IN UTERO NOT LATER THAN THIRTY-SIX MONTHS
7 AFTER THE DECEASED PARENT'S DEATH OR BORN NOT LATER THAN
8 FORTY-FIVE MONTHS AFTER THE DECEASED PARENT'S DEATH.

9 (c) AN INDIVIDUAL WHO IS IN THE PROCESS OF BEING ADOPTED
10 WHEN THE CLASS CLOSES IS TREATED AS ADOPTED WHEN THE CLASS
11 CLOSES IF THE ADOPTION IS SUBSEQUENTLY GRANTED.

12 **SECTION 15.** Part 8 of article 11 of title 15, Colorado Revised
13 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW
14 SECTIONS to read:

15 **15-11-806. Reformation to correct mistakes.** THE COURT MAY
16 REFORM THE TERMS OF A GOVERNING INSTRUMENT, EVEN IF
17 UNAMBIGUOUS, TO CONFORM THE TERMS TO THE TRANSFEROR'S INTENTION
18 IF IT IS PROVED BY CLEAR AND CONVINCING EVIDENCE THAT THE
19 TRANSFEROR'S INTENT AND THE TERMS OF THE GOVERNING INSTRUMENT
20 WERE AFFECTED BY A MISTAKE OF FACT OR LAW, WHETHER IN EXPRESSION
21 OR INDUCEMENT.

22 **15-11-807. Modification to achieve transferor's tax objectives.**
23 TO ACHIEVE THE TRANSFEROR'S TAX OBJECTIVES, THE COURT MAY MODIFY
24 THE TERMS OF A GOVERNING INSTRUMENT IN A MANNER THAT IS NOT
25 CONTRARY TO THE TRANSFEROR'S PROBABLE INTENTION. THE COURT MAY
26 PROVIDE THAT THE MODIFICATION HAS RETROACTIVE EFFECT.

27 **SECTION 16.** 15-12-406, Colorado Revised Statutes, is amended
28 to read:

1 **15-12-406. Formal testacy proceedings - contested cases.**

2 ~~(1) If evidence concerning execution of an attested will which is not~~
3 ~~self-proved is necessary in contested cases, the testimony of at least one~~
4 ~~of the attesting witnesses, if within the state, competent, and able to~~
5 ~~testify, is required. Due execution of an attested or unattested will may~~
6 ~~be proved by other evidence.~~

7 ~~(2) If the will is self-proved, compliance with signature and other~~
8 ~~requirements of execution are presumed subject to rebuttal without the~~
9 ~~testimony of any witness upon filing the will and the acknowledgment~~
10 ~~and affidavits annexed or attached thereto, unless there is proof of fraud~~
11 ~~or forgery affecting the acknowledgment or affidavit.~~

12 (1) IN A CONTESTED CASE IN WHICH THE PROPER EXECUTION OF A
13 WILL IS AT ISSUE, THE FOLLOWING RULES APPLY:

14 (a) IF THE WILL IS SELF-PROVED PURSUANT TO SECTION 15-11-504,
15 THE WILL SATISFIES THE REQUIREMENTS FOR EXECUTION WITHOUT THE
16 TESTIMONY OF ANY ATTESTING WITNESS, UPON FILING THE WILL AND THE
17 ACKNOWLEDGMENT AND AFFIDAVITS ANNEXED OR ATTACHED TO IT,
18 UNLESS THERE IS EVIDENCE OF FRAUD OR FORGERY AFFECTING THE
19 ACKNOWLEDGMENT OR AFFIDAVIT.

20 (b) IF THE WILL IS NOTARIZED PURSUANT TO SECTION 15-11-502
21 (1) (c) (II), BUT NOT SELF-PROVED, THERE IS A REBUTTABLE PRESUMPTION
22 THAT THE WILL SATISFIES THE REQUIREMENTS FOR EXECUTION UPON
23 FILING THE WILL.

24 (c) IF THE WILL IS WITNESSED PURSUANT TO SECTION 15-11-502 (1)
25 (c) (I), BUT NOT NOTARIZED OR SELF-PROVED, THE TESTIMONY OF AT
26 LEAST ONE OF THE ATTESTING WITNESSES IS REQUIRED TO ESTABLISH
27 PROPER EXECUTION IF THE WITNESS IS WITHIN THIS STATE, COMPETENT,
28 AND ABLE TO TESTIFY. PROPER EXECUTION MAY BE ESTABLISHED BY

1 OTHER EVIDENCE, INCLUDING AN AFFIDAVIT OF AN ATTESTING WITNESS.
2 AN ATTESTATION CLAUSE THAT IS SIGNED BY THE ATTESTING WITNESSES
3 RAISES A REBUTTABLE PRESUMPTION THAT THE EVENTS RECITED IN THE
4 CLAUSE OCCURRED.

5 **SECTION 17. Effective date - applicability.** (1) This act takes
6 effect on July 1, 2010.

7 (2) This act applies on or after July 1, 2010, to:

8 (a) Governing instruments executed by decedents dying on or after
9 July 1, 2010;

10 (b) Any proceedings in court then pending or thereafter
11 commenced regardless of the time of death of the decedent except to the
12 extent that, in the opinion of the court, the former procedure should be
13 made applicable in a particular case in the interest of justice or because
14 of infeasibility of application of the procedure of the "Colorado Probate
15 Code", articles 10 to 17 of title 15, Colorado Revised Statutes;

16 (c) An act done before the effective date of this act in any
17 proceeding and any accrued right is not impaired by this act. If a right is
18 acquired, extinguished, or barred upon the expiration of a prescribed
19 period of time which has commenced to run by the provisions of any
20 statute before the effective date of this act, the provisions shall remain in
21 force with respect to that right; and

22 (d) Any rule of construction or presumption provided in this act
23 applies to governing instruments executed before the effective date of this
24 act unless there is a clear indication of a contrary intent.

25 **SECTION 18. Safety clause.** The general assembly hereby finds,
26 determines, and declares that this act is necessary for the immediate
27 preservation of the public peace, health, and safety.