NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

HOUSE BILL 09-1287

BY REPRESENTATIVE(S) McGihon, Labuda;
also SENATOR(S) Mitchell.

CONCERNING CHANGES TO THE "COLORADO PROBATE CODE".

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

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

15-10-112. Cost of living adjustment of certain dollar amounts. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

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

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

(2) THE DOLLAR AMOUNTS STATED IN SECTIONS 15-11-102, 15-11-201 (2), 15-11-403, AND 15-11-405 APPLY TO THE ESTATE OF A DECEDENT WHO DIED DURING OR AFTER 2010, BUT FOR THE ESTATE OF A DECEDENT WHO DIED AFTER 2011, THESE DOLLAR AMOUNTS MUST BE INCREASED OR DECREASED IF THE CPI FOR THE CALENDAR YEAR IMMEDIATELY PRECEDING THE YEAR OF DEATH EXCEEDS OR IS LESS THAN THE REFERENCE BASE INDEX. THE AMOUNT OF ANY INCREASE OR DECREASE IS COMPUTED BY MULTIPLYING EACH DOLLAR AMOUNT BY THE PERCENTAGE BY WHICH THE CPI FOR THE CALENDAR YEAR IMMEDIATELY PRECEDING THE YEAR OF DEATH EXCEEDS OR IS LESS THAN THE REFERENCE BASE INDEX. IF ANY INCREASE OR DECREASE PRODUCED BY THE COMPUTATION IS NOT A MULTIPLE OF ONE HUNDRED DOLLARS, THE INCREASE OR DECREASE IS ROUNDED DOWN, IF AN INCREASE, OR UP, IF A DECREASE, TO THE NEXT MULTIPLE OF ONE HUNDRED DOLLARS, BUT FOR THE PURPOSE OF SECTION 15-11-405, THE PERIODIC INSTALLMENT AMOUNT IS THE LUMP-SUM AMOUNT DIVIDED BY TWELVE. IF THE CPI FOR 2009 IS CHANGED BY THE BUREAU OF LABOR STATISTICS, THE REFERENCE BASE INDEX MUST BE REVISED USING THE REBASING FACTOR REPORTED BY THE BUREAU OF LABOR STATISTICS, OR OTHER COMPARABLE DATA IF A REBASING FACTOR IS NOT REPORTED.

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

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

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

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

(47.5) "SIGN" MEANS, WITH PRESENT INTENT TO AUTHENTICATE OR

ADOPT A RECORD OTHER THAN A WILL:

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

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

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

15-11-102. Share of spouse. The various possible circumstances describing the decedent, his or her surviving spouse, and their surviving descendants, if any, are set forth in this section to be utilized in determining the intestate share of the decedent's surviving spouse. If more than one circumstance is applicable, the circumstance that produces the largest share for the surviving spouse shall be applied. THE INTESTATE SHARE OF A DECEDENT'S SURVIVING SPOUSE IS:

(1) THE ENTIRE INTESTATE ESTATE if:

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

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

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

(3) ~~If all of the decedent's surviving descendants are also descendants of the surviving spouse, and the surviving spouse has one or more surviving descendants who are not descendants of the decedent, then the surviving spouse receives~~ The first ~~one~~ TWO hundred ~~fifty~~ TWENTY-FIVE thousand dollars, plus one-half of any balance of the intestate estate, IF ALL

OF THE DECEDENT'S SURVIVING DESCENDANTS ARE ALSO DESCENDANTS OF THE SURVIVING SPOUSE AND THE SURVIVING SPOUSE HAS ONE OR MORE SURVIVING DESCENDANTS WHO ARE NOT DESCENDANTS OF THE DECEDENT;

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

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

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

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

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

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

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

(3) If there is no surviving descendant or ~~surviving~~ parent, to the ~~surviving~~ descendants of the decedent's parents or either of them per capita at each generation;

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

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

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

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

(6) If there is no ~~surviving heir~~ TAKER under subsections (1) to (5) of this section, ~~and if a birth child or birth children file a claim for inheritance with the court having probate jurisdiction for the decedent's estate within ninety days of decedent's death, to the decedent's surviving birth child or children per capita at each generation. For purposes of this subsection (6), the term "birth child" means a child who was born to, but adopted away from, his or her natural parent.~~ BUT THE DECEDENT HAS:

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

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

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

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

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

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

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

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

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

15-11-108. After-born heirs. ~~Relatives of the decedent conceived before the decedent's death but born thereafter inherit as if they had been born in the lifetime of the decedent if the relative lives one hundred twenty hours or more after birth.~~

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

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

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

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

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

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

(b) THE CHILD DIED BEFORE REACHING EIGHTEEN YEARS OF AGE AND THERE IS CLEAR AND CONVINCING EVIDENCE THAT IMMEDIATELY BEFORE THE CHILD'S DEATH THE PARENTAL RIGHTS OF THE PARENT COULD HAVE BEEN TERMINATED UNDER THE LAWS OF THIS STATE OTHER THAN THIS CODE ON THE BASIS OF NONSUPPORT, ABANDONMENT, ABUSE, NEGLECT, OR OTHER ACTIONS OR INACTIONS OF THE PARENT TOWARD THE CHILD.

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

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

SUBPART 2
PARENT-CHILD RELATIONSHIP

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

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

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

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

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

(5) "GENETIC FATHER" MEANS THE MAN WHOSE SPERM FERTILIZED THE EGG OF A CHILD'S GENETIC MOTHER. IF THE FATHER-CHILD RELATIONSHIP IS ESTABLISHED UNDER THE PRESUMPTION OF PATERNITY UNDER SECTION 19-4-105, C.R.S., THE TERM MEANS ONLY THE MAN FOR

WHOM THAT RELATIONSHIP IS ESTABLISHED.

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

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

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

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

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

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

15-11-118. Adoptee and adoptee's adoptive parent or parents. (1) **Parent-child relationship between adoptee and adoptive parent or parents.** A PARENT-CHILD RELATIONSHIP EXISTS BETWEEN AN ADOPTEE AND THE ADOPTEE'S ADOPTIVE PARENT OR PARENTS.

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

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

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

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

15-11-119. Adoptee and adoptee's genetic parents. (1) **Parent-child relationship between adoptee and genetic parents.** EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PARENT-CHILD RELATIONSHIP DOES NOT EXIST BETWEEN AN ADOPTEE AND THE ADOPTEE'S GENETIC PARENTS.

(2) **Stepchild adopted by stepparent.** A PARENT-CHILD RELATIONSHIP EXISTS BETWEEN AN INDIVIDUAL WHO IS ADOPTED BY THE SPOUSE OF EITHER GENETIC PARENT AND:

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

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

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

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

(b) THE OTHER GENETIC PARENT, BUT ONLY FOR THE PURPOSE OF THE RIGHT OF THE ADOPTEE OR A DESCENDANT OF THE ADOPTEE TO INHERIT

FROM OR THROUGH THE OTHER GENETIC PARENT.

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

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

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

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

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

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

(c) "THIRD-PARTY DONOR" MEANS AN INDIVIDUAL WHO PRODUCES EGGS OR SPERM USED FOR ASSISTED REPRODUCTION, WHETHER OR NOT FOR

CONSIDERATION. THE TERM DOES NOT INCLUDE:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) **Presumption - birth mother is married or surviving spouse.** FOR THE PURPOSE OF PARAGRAPH (b) OF SUBSECTION (6) OF THIS SECTION, THE FOLLOWING RULES APPLY:

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

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

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

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

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

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

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

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

(a) "GESTATIONAL AGREEMENT" MEANS AN ENFORCEABLE OR UNENFORCEABLE AGREEMENT FOR ASSISTED REPRODUCTION IN WHICH A WOMAN AGREES TO CARRY A CHILD TO BIRTH FOR AN INTENDED PARENT,

INTENDED PARENTS, OR AN INDIVIDUAL DESCRIBED IN SUBSECTION (5) OF THIS SECTION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 9. 15-11-201 (2), Colorado Revised Statutes, is amended to read:

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

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

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

15-11-403. Exempt property. (1) The decedent's surviving spouse is entitled to exempt property from the estate in the form of cash in the amount of or other property of the estate in the value of twenty-six thousand dollars in excess of any security interests therein. If there is no surviving spouse, the decedent's dependent children are entitled jointly to the same exempt property. Rights to exempt property have priority over all claims against the estate, except claims for the costs and expenses of administration, and reasonable funeral and burial, interment, or cremation expenses, which shall be paid in the priority and manner set forth in section 15-12-805. The right to exempt property shall abate as necessary to permit payment of the family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or dependent children by the decedent's will, unless otherwise provided, by intestate succession, or by way of elective-share.

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

SECTION 11. 15-11-405 (1), Colorado Revised Statutes, is

amended to read:

15-11-405. Source, determination, and documentation. (1) (a) If the estate is otherwise sufficient, property specifically devised or disposed of by memorandum under section 15-11-513 to any person other than a person entitled to exempt property may not be used to satisfy rights to exempt property. Subject to this restriction, the surviving spouse, the guardians of minor children, or dependent children who are adults may select property of the estate as their exempt property. The personal representative may make these selections if the surviving spouse, the dependent children, or the guardians of the minor children are unable or fail to do so within a reasonable time or there is no guardian of a minor child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as exempt property allowance. The personal representative may determine the family allowance in a lump sum not exceeding twenty-four thousand dollars or periodic installments not exceeding two thousand dollars per month for one year and may disburse funds of the estate in payment of the family allowance. The personal representative or an interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may provide a family allowance other than that which the personal representative determined or could have determined.

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

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

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

(a) In writing;

(b) Signed by the testator, or in the testator's name by some other

individual in the testator's conscious presence and by the testator's direction; and

(c) EITHER:

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

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

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

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

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

_____

Testator

We, _____, _____ the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as [his] [her] will and that [he] [she] signs it willingly (or willingly directs another to sign for [him] [her]), and that [he] [she] executes it as [his] [her] free and voluntary act for the purposes therein expressed, and that each of us, in the

conscious presence of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

_____
Witness

_____
Witness

THE STATE OF _____
COUNTY OF _____

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

(SEAL) (SIGNED)_____

_____
(Official capacity of officer)

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

THE STATE OF _____
COUNTY OF _____

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as the testator's will and that [he] [she] had signed willingly (or willingly directed another to sign for [him] [her]), and that [he] [she] executed it as [his] [her] free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the conscious presence of the testator, signed the will as witness and that to the best of [his] [her] knowledge the testator was at that time eighteen years of age or older, of

sound mind, and under no constraint or undue influence.

_____
Testator

_____
Witness

_____
Witness

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

(SEAL) (SIGNED)_____

_____
(Official capacity of officer)

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

15-11-705. Class gifts construed to accord with intestate succession. ~~(1) Adopted individuals and individuals born out of wedlock, and their respective descendants if appropriate to the class, are included in class gifts and other terms of relationship in accordance with the rules for intestate succession. Unless the context of the reference or some other provision of the governing instrument indicates the testator's contrary intent:~~

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

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

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

~~of wedlock.~~

~~(2) (Reserved)~~

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

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

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

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

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

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

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

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

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

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

(2) **Terms of relationship.** A CLASS GIFT THAT USES A TERM OF RELATIONSHIP TO IDENTIFY THE CLASS MEMBERS INCLUDES A CHILD OF ASSISTED REPRODUCTION, A GESTATIONAL CHILD, AND, EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (5) AND (6) OF THIS SECTION, AN

ADOPTEE AND A CHILD BORN TO PARENTS WHO ARE NOT MARRIED TO EACH OTHER, AND THEIR RESPECTIVE DESCENDANTS IF APPROPRIATE TO THE CLASS, IN ACCORDANCE WITH THE RULES FOR INTESTATE SUCCESSION REGARDING PARENT-CHILD RELATIONSHIPS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 16. 15-12-406, Colorado Revised Statutes, is amended

to read:

15-12-406. Formal testacy proceedings - contested cases. ~~(1) If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses, if within the state, competent, and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence.~~

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

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

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

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

(c) IF THE WILL IS WITNESSED PURSUANT TO SECTION 15-11-502 (1) (c) (I), BUT NOT NOTARIZED OR SELF-PROVED, THE TESTIMONY OF AT LEAST ONE OF THE ATTESTING WITNESSES IS REQUIRED TO ESTABLISH PROPER EXECUTION IF THE WITNESS IS WITHIN THIS STATE, COMPETENT, AND ABLE TO TESTIFY. PROPER EXECUTION MAY BE ESTABLISHED BY OTHER EVIDENCE, INCLUDING AN AFFIDAVIT OF AN ATTESTING WITNESS. AN ATTESTATION CLAUSE THAT IS SIGNED BY THE ATTESTING WITNESSES RAISES A REBUTTABLE PRESUMPTION THAT THE EVENTS RECITED IN THE CLAUSE OCCURRED.

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

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

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

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

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

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

SECTION 18. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Terrance D. Carroll SPEAKER OF THE HOUSE OF REPRESENTATIVES	Brandon C. Shaffer PRESIDENT OF THE SENATE
Marilyn Eddins CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES	Karen Goldman SECRETARY OF THE SENATE

APPROVED_____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO