

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

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 07-0329.01 Richard Sweetman

HOUSE BILL 07-1003

HOUSE SPONSORSHIP

Roberts,

SENATE SPONSORSHIP

Penry,

House Committees
Judiciary

Senate Committees
Judiciary

A BILL FOR AN ACT

101 **CONCERNING THE COLORADO PROBATE CODE, AND, IN CONNECTION**
102 **THEREWITH, CLARIFYING THE PROCEDURE BY WHICH BANK**
103 **PERSONNEL MAY OPEN A DECEDENT'S SAFE DEPOSIT BOX TO**
104 **DETERMINE WHETHER A WILL IS INSIDE, AUTHORIZING A**
105 **CUSTODIAN OF AN ACCOUNT CREATED UNDER THE COLORADO**
106 **UNIFORM TRANSFERS TO MINORS ACT TO TRANSFER ACCOUNT**
107 **ASSETS TO A QUALIFIED MINOR'S TRUST, AUTHORIZING A PUBLIC**
108 **ADMINISTRATOR TO PETITION A COURT FOR APPOINTMENT TO**
109 **ACT AS A CONSERVATOR TO PROTECT THE ASSETS OF A MISSING**
110 **PERSON, AND AUTHORIZING A COURT TO APPOINT A SPECIAL**
111 **ADMINISTRATOR FOR THE PROPER ADMINISTRATION OF AN**
112 **ESTATE.**

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.

SENATE
Amended 2nd Reading
February 21, 2007

HOUSE
3rd Reading Unamended
January 29, 2007

HOUSE
Amended 2nd Reading
January 26, 2007

Bill Summary

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

Clarifies the procedure by which bank personnel may open a deceased person's safe deposit box to determine whether the decedent's will is located inside. Authorizes a custodian of an account created under the "Colorado Uniform Transfers to Minors Act" to transfer account assets to a qualified minor's trust. Authorizes a public administrator to petition a court for appointment to act as a conservator to protect the assets of a missing person when no other person has acted to do so. Authorizes a district court or the probate court, on its own motion, to formally appoint a special administrator when a special administrator is needed for the proper administration of an estate.

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

2 **SECTION 1.** 15-10-111, Colorado Revised Statutes, is amended
3 to read:

4 **15-10-111. Entry into safe deposit box of decedent -**
5 **definitions.** (1) Whenever a decedent at the time of his OR HER death
6 was a SOLE OR JOINT lessee ~~or owner~~ of a safe deposit box, the custodian
7 shall, prior to notice that a personal representative or special administrator
8 has been appointed, allow access to the box by:

9 (a) A successor of the decedent, if such decedent was the sole
10 lessee ~~or owner~~ of the box, upon presentation of an affidavit made
11 pursuant to section 15-12-1201 for the purpose of delivering the contents
12 of the box in accordance with said section; ~~and an official of the~~
13 ~~custodian or, if the custodian is an individual, the custodian or his~~
14 ~~attorney-in-fact shall be present during such entry solely to determine if~~
15 ~~the box contains an instrument purporting to be the will of the decedent;~~

1 or

2 (b) A person who is reasonably believed to be an heir at law or
3 devisee of the decedent, A PERSON NOMINATED AS A PERSONAL
4 REPRESENTATIVE PURSUANT TO THE PROVISIONS OF SECTION 15-12-203 (1)
5 (a), or the agent or attorney of such person for the purpose of determining
6 whether the box contains AN INSTRUMENT THAT APPEARS TO BE a will of
7 the decedent, deed to a burial plot, or burial instructions. ~~Such entry shall~~
8 ~~be made in the presence of an official of the custodian or, if the custodian~~
9 ~~is an individual, in the presence of the custodian or his attorney-in-fact.~~

10 (c) IF A PERSON DESCRIBED IN PARAGRAPH (a) OR (b) OF THIS
11 SUBSECTION (1) DESIRES ACCESS TO A SAFE DEPOSIT BOX BUT DOES NOT
12 POSSESS A KEY TO THE BOX, THE CUSTODIAN SHALL DRILL THE SAFE
13 DEPOSIT BOX AT THE PERSON'S EXPENSE. THE CUSTODIAN SHALL RETAIN,
14 IN A SECURE LOCATION AT THE PERSON'S EXPENSE, THE CONTENTS OF THE
15 BOX OTHER THAN THE PURPORTED WILL, DEED TO A BURIAL PLOT, OR
16 BURIAL INSTRUCTIONS. THE EXPENSES SHALL BE CONSIDERED AN ESTATE
17 ADMINISTRATION EXPENSE.

18 (d) A REPRESENTATIVE OF THE CUSTODIAN SHALL BE PRESENT
19 DURING THE ENTRY OF A SAFE DEPOSIT BOX PURSUANT TO THIS SECTION.

20 (e) NOTHING IN THIS SECTION AFFECTS THE RIGHTS AND
21 RESPONSIBILITIES OF A PUBLIC ADMINISTRATOR, AS DESCRIBED IN
22 SECTIONS 15-12-620 AND 15-12-621.

23 (1.5) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
24 REQUIRES:

25 (a) "CUSTODIAN" MEANS A BANK, SAVINGS AND LOAN
26 ASSOCIATION, CREDIT UNION, OR OTHER INSTITUTION ACTING AS A LESSOR
27 OF A SAFE DEPOSIT BOX, AS DEFINED IN SECTION 11-46-101, C.R.S., OR

1 SECTION 11-101-401, C.R.S.

2 (b) "REPRESENTATIVE OF A CUSTODIAN" MEANS AN AUTHORIZED
3 OFFICER OR EMPLOYEE OF A CUSTODIAN.

4 (2) If an instrument purporting to be a will ~~of the decedent~~ is
5 found in a safe deposit box as the result of an entry pursuant to subsection
6 (1) of this section, the purported will shall be removed ~~therefrom~~ by the
7 ~~custodian or the representative of the custodian. and by him shall be~~
8 ~~mailed by registered or certified mail or delivered in person to the clerk~~
9 ~~of the district or probate court of the county wherein the decedent was~~
10 ~~resident. If there is doubt as to the county of residence of such decedent,~~
11 ~~the purported will shall be lodged in the office of the clerk of the proper~~
12 ~~court of the county wherein the safe deposit box is located. If the safe~~
13 ~~deposit box contains a deed to a burial plot or burial instructions not a~~
14 ~~part of a purported will, such instruments may be removed by the~~
15 ~~presumed successor, heir at law, or devisee, or the agent or attorney of~~
16 ~~any such person.~~

17 (a) THE REPRESENTATIVE OF THE CUSTODIAN MAY COPY THE
18 PURPORTED WILL AT THE EXPENSE OF THE PERSON OR PERSONS
19 AUTHORIZED TO HAVE ACCESS TO THE SAFE DEPOSIT BOX UNDER THE
20 PROVISIONS OF SUBSECTION (1) OF THIS SECTION AND MAY DELIVER THE
21 COPY OF THE PURPORTED WILL TO THE PERSON OR TO THE PERSON'S AGENT
22 OR ATTORNEY. IN COPYING THE PURPORTED WILL, THE REPRESENTATIVE
23 OF THE CUSTODIAN SHALL NOT REMOVE ANY STAPLES OR OTHER
24 FASTENING DEVICES OR DISASSEMBLE THE PURPORTED WILL IN ANY WAY.

25 (b) THE CUSTODIAN SHALL MAIL THE PURPORTED WILL BY
26 REGISTERED OR CERTIFIED MAIL OR DELIVER THE PURPORTED WILL IN
27 PERSON TO THE CLERK OF THE DISTRICT OR PROBATE COURT OF THE

1 COUNTY IN WHICH THE DECEDENT WAS A RESIDENT. IF THE CUSTODIAN IS
2 UNABLE TO DETERMINE THE COUNTY OF RESIDENCE OF THE DECEDENT,
3 THE CUSTODIAN SHALL MAIL THE PURPORTED WILL BY REGISTERED OR
4 CERTIFIED MAIL OR DELIVER THE PURPORTED WILL IN PERSON TO THE
5 OFFICE OF THE CLERK OF THE PROPER COURT OF THE COUNTY IN WHICH
6 THE SAFE DEPOSIT BOX IS LOCATED.

7 (c) IF THE SAFE DEPOSIT BOX CONTAINS A DEED TO A BURIAL PLOT
8 OR BURIAL INSTRUCTIONS THAT ARE NOT A PART OF A PURPORTED WILL,
9 THE PERSON OR PERSONS AUTHORIZED TO HAVE ACCESS TO THE SAFE
10 DEPOSIT BOX UNDER THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION
11 MAY REMOVE THESE INSTRUMENTS.

12 (3) After the appointment of a personal representative or special
13 administrator for the decedent, the personal representative or special
14 administrator shall be permitted to enter the safe deposit box upon the
15 same terms and conditions as the decedent was permitted to enter during
16 his OR HER lifetime.

17 (4) If at the time of the decedent's death one or more other persons
18 were legally permitted to enter the safe deposit box, their permission to
19 enter shall continue, notwithstanding the death of the decedent.

20 (5) A CUSTODIAN SHALL NOT BE LIABLE TO A PERSON FOR AN
21 ACTION TAKEN PURSUANT TO THIS SECTION OR FOR A FAILURE TO ACT IN
22 ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION UNLESS THE
23 ACTION OR FAILURE TO ACT IS SHOWN TO HAVE RESULTED FROM THE
24 CUSTODIAN'S BAD FAITH, GROSS NEGLIGENCE, OR INTENTIONAL
25 MISCONDUCT.

26 **SECTION 2.** 11-50-102, Colorado Revised Statutes, is amended
27 BY THE ADDITION OF A NEW SUBSECTION to read:

1 **11-50-102. Definitions.** As used in this article, unless the context
2 otherwise requires:

3 (13.5) "QUALIFIED MINOR'S TRUST" MEANS A TRUST, INCLUDING A
4 TRUST CREATED BY A CUSTODIAN, OF WHICH A MINOR IS THE SOLE
5 CURRENT BENEFICIARY AND THAT SATISFIES THE REQUIREMENTS OF
6 SECTION 2503 (c) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986"
7 AND THE REGULATIONS IMPLEMENTING THAT SECTION.

8 **SECTION 3.** 11-50-114, Colorado Revised Statutes, is amended
9 BY THE ADDITION OF A NEW SUBSECTION to read:

10 **11-50-114. Powers of custodian.** (1.5) AT ANY TIME, A
11 CUSTODIAN MAY TRANSFER PART OR ALL OF A CUSTODIAL PROPERTY TO
12 A QUALIFIED MINOR'S TRUST WITHOUT A COURT ORDER. SUCH A TRANSFER
13 TERMINATES THE CUSTODIANSHIP TO THE EXTENT OF THE TRANSFER.

14 **SECTION 4.** 15-12-622, Colorado Revised Statutes, is amended
15 BY THE ADDITION OF A NEW SUBSECTION to read:

16 **15-12-622. Public administrator - acting as conservator or**
17 **trustee.** (4) **Missing persons.** A PUBLIC ADMINISTRATOR HAS STANDING
18 TO PETITION A COURT OF APPROPRIATE JURISDICTION FOR HIS OR HER
19 APPOINTMENT TO ACT AS A CONSERVATOR, TEMPORARY CONSERVATOR,
20 OR SPECIAL CONSERVATOR TO PROTECT A PERSON'S ASSETS AND MANAGE
21 THE PERSON'S ESTATE IF:

22 (a) THE PERSON IS MISSING, DETAINED, OR UNABLE TO RETURN TO
23 THE UNITED STATES; AND

24 (b) NO INTERESTED PERSON HAS INITIATED PROTECTIVE
25 PROCEEDINGS TO ACCOMPLISH THIS PURPOSE.

26 **SECTION 5.** 15-12-614 (1) (b), Colorado Revised Statutes, is
27 amended to read:

1 **15-12-614. Special administrator - appointment.** (1) A special
2 administrator may be appointed:

3 (b) In a formal proceeding by order of the court on the petition of
4 any interested person, OR BY THE COURT ON THE COURT'S OWN MOTION,
5 and finding, after notice and hearing, that appointment is necessary to
6 preserve the estate or to secure its proper administration including its
7 administration in circumstances where a general personal representative
8 cannot or should not act. If it appears to the court that an emergency
9 exists, appointment may be ordered without notice.

10 **SECTION 6. Effective date.** This act shall take effect July 1,
11 2007.

12 **SECTION 7. Safety clause.** The general assembly hereby finds,
13 determines, and declares that this act is necessary for the immediate
14 preservation of the public peace, health, and safety.