

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

REVISED

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

LLS NO. 11-0535.01 Debbie Haskins

SENATE BILL 11-016

SENATE SPONSORSHIP

Grantham,

HOUSE SPONSORSHIP

Barker,

Senate Committees
Judiciary

House Committees
Judiciary

A BILL FOR AN ACT

101 **CONCERNING INCREASES IN THE AMOUNTS ALLOCATED TO CERTAIN**
102 **FAMILY MEMBERS DURING THE ADMINISTRATION OF A**
103 **DECEDENT'S ESTATE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

A decedent's surviving spouse is entitled to exempt property from the decedent's estate. On and after January 1, 2012, the dollar limit for exempt property to which a surviving spouse is entitled is increased from \$26,000 to \$78,000. On and after January 1, 2012, the dollar limit for the

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.

HOUSE
2nd Reading Unam ended
March 17, 2011

SENATE
3rd Reading Unam ended
February 22, 2011

SENATE
Am ended 2nd Reading
February 18, 2011

family allowance taken out of the estate for the maintenance of the family during the administration of the estate is increased from \$24,000 to \$72,000.

The current law provides for an annual cost of living adjustment for exempt property and for the family allowance. The bill suspends those cost of living adjustments for one year when the increase in the dollar amounts due to this bill takes effect.

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

2 **SECTION 1.** 15-11-403, Colorado Revised Statutes, is amended
3 to read:

4 **15-11-403. Exempt property.** (1) (a) PRIOR TO JANUARY 1,
5 2012, the decedent's surviving spouse is entitled to exempt property from
6 the estate in the form of cash in the amount of or other property of the
7 estate in the value of twenty-six thousand dollars in excess of any security
8 interests therein. If there is no surviving spouse, the decedent's dependent
9 children are entitled jointly to the same exempt property. Rights to
10 exempt property have priority over all claims against the estate, except
11 claims for the costs and expenses of administration, and reasonable
12 funeral and burial, interment, or cremation expenses, which shall be paid
13 in the priority and manner set forth in section 15-12-805. The right to
14 exempt property shall abate as necessary to permit payment of the family
15 allowance. These rights are in addition to any benefit or share passing to
16 the surviving spouse or dependent children by the decedent's will, unless
17 otherwise provided, by intestate succession, or by way of elective-share.

18 (b) ON AND AFTER JANUARY 1, 2012, THE DECEDENT'S SURVIVING
19 SPOUSE IS ENTITLED TO EXEMPT PROPERTY FROM THE ESTATE IN THE FORM
20 OF CASH IN THE AMOUNT OF OR OTHER PROPERTY OF THE ESTATE IN THE
21 VALUE OF THIRTY THOUSAND DOLLARS IN EXCESS OF ANY SECURITY
22 INTERESTS THEREIN. IF THERE IS NO SURVIVING SPOUSE, THE DECEDENT'S

1 DEPENDENT CHILDREN ARE ENTITLED JOINTLY TO THE SAME EXEMPT
2 PROPERTY. RIGHTS TO EXEMPT PROPERTY HAVE PRIORITY OVER ALL
3 CLAIMS AGAINST THE ESTATE, EXCEPT CLAIMS FOR THE COSTS AND
4 EXPENSES OF ADMINISTRATION, AND REASONABLE FUNERAL AND BURIAL,
5 INTERMENT, OR CREMATION EXPENSES, WHICH SHALL BE PAID IN THE
6 PRIORITY AND MANNER SET FORTH IN SECTION 15-12-805. THE RIGHT TO
7 EXEMPT PROPERTY SHALL ABATE AS NECESSARY TO PERMIT PAYMENT OF
8 THE FAMILY ALLOWANCE. THESE RIGHTS ARE IN ADDITION TO ANY
9 BENEFIT OR SHARE PASSING TO THE SURVIVING SPOUSE OR DEPENDENT
10 CHILDREN BY THE DECEDENT'S WILL, UNLESS OTHERWISE PROVIDED, BY
11 INTTESTATE SUCCESSION, OR BY WAY OF ELECTIVE-SHARE.

12 (2) The dollar amount stated in PARAGRAPH (a) OR (b) OF
13 subsection (1) of this section shall be increased or decreased based on the
14 cost of living adjustment as calculated and specified in section 15-10-112;
15 EXCEPT THAT, WHEN THE INCREASE IN THE DOLLAR AMOUNT STATED IN
16 PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION, AS ENACTED IN
17 SENATE BILL 11-016, ENACTED IN 2011, TAKES EFFECT, THE NEXT
18 REGULARLY SCHEDULED COST OF LIVING ADJUSTMENT WILL BE SUSPENDED
19 FOR ONE YEAR.

20 **SECTION 2.** 15-11-405 (1), Colorado Revised Statutes, is
21 amended to read:

22 **15-11-405. Source, determination, and documentation.**

23 (1) (a) (I) If the estate is otherwise sufficient, property specifically
24 devised or disposed of by memorandum under section 15-11-513 to any
25 person other than a person entitled to exempt property may not be used
26 to satisfy rights to exempt property. Subject to this restriction, the
27 surviving spouse, the guardians of minor children, or dependent children

1 who are adults may select property of the estate as their exempt property.
2 The personal representative may make these selections if the surviving
3 spouse, the dependent children, or the guardians of the minor children are
4 unable or fail to do so within a reasonable time or there is no guardian of
5 a minor child. The personal representative may execute an instrument or
6 deed of distribution to establish the ownership of property taken as
7 exempt property allowance. PRIOR TO JANUARY 1, 2012, the personal
8 representative may determine the family allowance in a lump sum not
9 exceeding twenty-four thousand dollars or periodic installments not
10 exceeding two thousand dollars per month for one year and may disburse
11 funds of the estate in payment of the family allowance. The personal
12 representative or an interested person aggrieved by any selection,
13 determination, payment, proposed payment, or failure to act under this
14 section may petition the court for appropriate relief, which may provide
15 a family allowance other than that which the personal representative
16 determined or could have determined.

17 (II) IF THE ESTATE IS OTHERWISE SUFFICIENT, PROPERTY
18 SPECIFICALLY DEVISED OR DISPOSED OF BY MEMORANDUM UNDER SECTION
19 15-11-513 TO ANY PERSON OTHER THAN A PERSON ENTITLED TO EXEMPT
20 PROPERTY MAY NOT BE USED TO SATISFY RIGHTS TO EXEMPT PROPERTY.
21 SUBJECT TO THIS RESTRICTION, THE SURVIVING SPOUSE, THE GUARDIANS
22 OF MINOR CHILDREN, OR DEPENDENT CHILDREN WHO ARE ADULTS MAY
23 SELECT PROPERTY OF THE ESTATE AS THEIR EXEMPT PROPERTY. THE
24 PERSONAL REPRESENTATIVE MAY MAKE THESE SELECTIONS IF THE
25 SURVIVING SPOUSE, THE DEPENDENT CHILDREN, OR THE GUARDIANS OF
26 THE MINOR CHILDREN ARE UNABLE OR FAIL TO DO SO WITHIN A
27 REASONABLE TIME OR THERE IS NO GUARDIAN OF A MINOR CHILD. THE

1 PERSONAL REPRESENTATIVE MAY EXECUTE AN INSTRUMENT OR DEED OF
2 DISTRIBUTION TO ESTABLISH THE OWNERSHIP OF PROPERTY TAKEN AS
3 EXEMPT PROPERTY ALLOWANCE. ON AND AFTER JANUARY 1, 2012, THE
4 PERSONAL REPRESENTATIVE MAY DETERMINE THE FAMILY ALLOWANCE IN
5 A LUMP SUM NOT EXCEEDING THIRTY THOUSAND DOLLARS OR PERIODIC
6 INSTALLMENTS NOT EXCEEDING TWO THOUSAND FIVE HUNDRED DOLLARS
7 PER MONTH FOR ONE YEAR AND MAY DISBURSE FUNDS OF THE ESTATE IN
8 PAYMENT OF THE FAMILY ALLOWANCE. THE PERSONAL REPRESENTATIVE
9 OR AN INTERESTED PERSON AGGRIEVED BY ANY SELECTION,
10 DETERMINATION, PAYMENT, PROPOSED PAYMENT, OR FAILURE TO ACT
11 UNDER THIS SECTION MAY PETITION THE COURT FOR APPROPRIATE RELIEF,
12 WHICH MAY PROVIDE A FAMILY ALLOWANCE OTHER THAN THAT WHICH
13 THE PERSONAL REPRESENTATIVE DETERMINED OR COULD HAVE
14 DETERMINED.

15 (b) The dollar amount stated in SUBPARAGRAPH (I) OR (II) OF
16 paragraph (a) of this subsection (1) shall be increased or decreased based
17 on the cost of living adjustment as calculated and specified in section
18 15-10-112; EXCEPT THAT, WHEN THE INCREASE IN THE DOLLAR AMOUNT
19 STATED IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS SUBSECTION
20 (1), AS ENACTED IN SENATE BILL 11-016, ENACTED IN 2011, TAKES
21 EFFECT, THE NEXT REGULARLY SCHEDULED COST OF LIVING ADJUSTMENT
22 WILL BE SUSPENDED FOR ONE YEAR.

23 **SECTION 3. Act subject to petition - effective date -**
24 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
25 following the expiration of the ninety-day period after final adjournment
26 of the general assembly (August 10, 2011, if adjournment sine die is on
27 May 11, 2011); except that, if a referendum petition is filed pursuant to

1 section 1 (3) of article V of the state constitution against this act or an
2 item, section, or part of this act within such period, then the act, item,
3 section, or part shall not take effect unless approved by the people at the
4 general election to be held in November 2012 and shall take effect on the
5 date of the official declaration of the vote thereon by the governor.

6 (2) The provisions of this act shall apply to estates for decedents
7 dying on or after January 1, 2012, or the applicable effective date of this
8 act, whichever is later.