

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 11-0158.01 Jane Ritter

SENATE BILL 11-165

SENATE SPONSORSHIP

Guzman,

HOUSE SPONSORSHIP

Kerr A.,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE "COLORADO UNIFORM ESTATE TAX**
102 **APPORTIONMENT ACT".**

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>.)

Colorado Commission on Uniform State Laws. The bill establishes the "Colorado Uniform Estate Tax Apportionment Act" (act). Provisions of the act include apportionment by will or other dispositive instrument; statutory apportionment of estate taxes; credits and deferrals; advancement of tax as related to insulated property; apportionment and

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
3rd Reading Unamended
March 8, 2011

SENATE
2nd Reading Unamended
March 4, 2011

1 PROPERTY OR RECIPIENTS FROM LIABILITY FOR ESTATE TAX. AN
2 APPORTIONMENT PROVISION MAY INCLUDE, BUT IS NOT EQUIVALENT TO,
3 A PROVISION AFFECTING RIGHTS OF RECOVERY OR REIMBURSEMENT UNDER
4 FEDERAL ESTATE TAX LAW.

5 (3) "ESTATE TAX" MEANS A FEDERAL, STATE, OR FOREIGN TAX
6 IMPOSED BECAUSE OF THE DEATH OF AN INDIVIDUAL AND INTEREST AND
7 PENALTIES ASSOCIATED WITH THE TAX. THE TERM DOES NOT INCLUDE AN
8 INHERITANCE TAX, INCOME TAX, OR GENERATION-SKIPPING TRANSFER TAX
9 OTHER THAN A GENERATION-SKIPPING TRANSFER TAX INCURRED ON A
10 DIRECT SKIP TAKING EFFECT ON DEATH.

11 (4) "GROSS ESTATE" MEANS, WITH RESPECT TO AN ESTATE TAX,
12 ALL INTERESTS IN PROPERTY SUBJECT TO THE ESTATE TAX.

13 (5) "PERSON" HAS THE SAME MEANING AS SET FORTH IN SECTION
14 15-10-201 (38).

15 (6) "RATABLE" MEANS APPORTIONED OR ALLOCATED PRO RATA
16 ACCORDING TO THE RELATIVE VALUES OF INTERESTS TO WHICH THE TERM
17 IS TO BE APPLIED. "RATABLY" HAS A CORRESPONDING MEANING.

18 (7) "TIME-LIMITED INTEREST" MEANS AN INTEREST IN PROPERTY
19 THAT TERMINATES ON A LAPSE OF TIME OR ON THE OCCURRENCE OR
20 NONOCCURRENCE OF AN EVENT OR THAT IS SUBJECT TO THE EXERCISE OF
21 DISCRETION THAT COULD TRANSFER A BENEFICIAL INTEREST TO ANOTHER
22 PERSON. THE TERM DOES NOT INCLUDE A COTENANCY UNLESS THE
23 COTENANCY ITSELF IS A TIME-LIMITED INTEREST.

24 (8) "VALUE" MEANS, WITH RESPECT TO AN INTEREST IN PROPERTY,
25 FAIR MARKET VALUE AS FINALLY DETERMINED FOR PURPOSES OF THE
26 ESTATE TAX THAT IS TO BE APPORTIONED, REDUCED BY ANY OUTSTANDING
27 DEBT SECURED BY THE INTEREST WITHOUT REDUCTION FOR TAXES PAID OR

1 REQUIRED TO BE PAID OR FOR ANY SPECIAL VALUATION ADJUSTMENT.

2 **15-12-1403. Apportionment by will or other dispositive**
3 **instrument.** (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF
4 THIS SECTION, THE FOLLOWING RULES APPLY:

5 (a) TO THE EXTENT THAT A PROVISION OF A DECEDENT'S WILL
6 EXPRESSLY AND UNAMBIGUOUSLY DIRECTS THE APPORTIONMENT OF AN
7 ESTATE TAX, THE TAX SHALL BE APPORTIONED ACCORDINGLY.

8 (b) ANY PORTION OF AN ESTATE TAX NOT APPORTIONED PURSUANT
9 TO PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL BE APPORTIONED IN
10 ACCORDANCE WITH ANY PROVISION OF A REVOCABLE TRUST OF WHICH THE
11 DECEDENT WAS THE SETTLOR THAT EXPRESSLY AND UNAMBIGUOUSLY
12 DIRECTS THE APPORTIONMENT OF AN ESTATE TAX. IF CONFLICTING
13 APPORTIONMENT PROVISIONS APPEAR IN TWO OR MORE REVOCABLE TRUST
14 INSTRUMENTS, THE PROVISION IN THE MOST RECENTLY DATED
15 INSTRUMENT PREVAILS. FOR PURPOSES OF THIS PARAGRAPH (b):

16 (I) A TRUST IS REVOCABLE IF IT WAS REVOCABLE IMMEDIATELY
17 AFTER THE TRUST INSTRUMENT WAS EXECUTED, EVEN IF THE TRUST
18 SUBSEQUENTLY BECOMES IRREVOCABLE; AND

19 (II) THE DATE OF AN AMENDMENT TO A REVOCABLE TRUST
20 INSTRUMENT IS THE DATE OF THE AMENDED INSTRUMENT ONLY IF THE
21 AMENDMENT CONTAINS AN APPORTIONMENT PROVISION.

22 (c) IF ANY PORTION OF AN ESTATE TAX IS NOT APPORTIONED
23 PURSUANT TO PARAGRAPH (a) OR (b) OF THIS SUBSECTION (1), AND A
24 PROVISION IN ANY OTHER DISPOSITIVE INSTRUMENT EXPRESSLY AND
25 UNAMBIGUOUSLY DIRECTS THAT ANY INTEREST IN THE PROPERTY
26 DISPOSED OF BY THE INSTRUMENT IS OR IS NOT TO BE APPLIED TO THE
27 PAYMENT OF THE ESTATE TAX ATTRIBUTABLE TO THE INTEREST DISPOSED

1 OF BY THE INSTRUMENT, THE PROVISION CONTROLS THE APPORTIONMENT
2 OF THE TAX TO THAT INTEREST.

3 (2) SUBJECT TO SUBSECTIONS (3) AND (4) OF THIS SECTION, AND
4 UNLESS THE DECEDENT EXPRESSLY AND UNAMBIGUOUSLY DIRECTS TO THE
5 CONTRARY, THE FOLLOWING RULES APPLY:

6 (a) IF AN APPORTIONMENT PROVISION SPECIFICALLY DIRECTS THAT
7 A PERSON RECEIVING AN INTEREST IN A PROPERTY UNDER AN INSTRUMENT
8 IS TO BE EXONERATED FROM THE RESPONSIBILITY TO PAY AN ESTATE TAX
9 THAT WOULD OTHERWISE BE APPORTIONED THE INTEREST:

10 (I) THE TAX ATTRIBUTABLE TO THE EXONERATED INTEREST SHALL
11 BE APPORTIONED AMONG OTHER PERSONS RECEIVING INTERESTS IN THE
12 APPORTIONABLE ESTATE PASSING UNDER THE SAME INSTRUMENT; OR

13 (II) THE DEFICIENCY SHALL BE APPORTIONED RATABLY AMONG
14 OTHER PERSONS RECEIVING INTERESTS IN THE APPORTIONABLE ESTATE
15 THAT ARE NOT EXONERATED FROM APPORTIONMENT OF THE TAX IF THE
16 VALUES OF THE OTHER INTERESTS ARE LESS THAN THE TAX ATTRIBUTABLE
17 TO THE EXONERATED INTEREST.

18 (b) IF AN APPORTIONMENT PROVISION DIRECTS THAT AN ESTATE
19 TAX IS TO BE APPORTIONED TO A SPECIFIC INTEREST IN PROPERTY,
20 RECIPIENTS OF OTHER INTERESTS IN THE APPORTIONABLE ESTATE ARE
21 INDIRECTLY EXONERATED FROM THE RESPONSIBILITY TO PAY SUCH TAX;
22 HOWEVER, SUCH INDIRECT EXONERATION DOES NOT PRECLUDE THE
23 APPLICATION OF SECTION 15-12-1404 IF THE VALUE OF THE INTEREST TO
24 WHICH THE TAX IS APPORTIONED IS INSUFFICIENT TO PAY THE TAX IN FULL.

25 (c) IF AN APPORTIONMENT PROVISION DIRECTS THAT AN ESTATE
26 TAX IS TO BE APPORTIONED TO A SPECIFIC INTEREST IN PROPERTY, A
27 PORTION OF WHICH QUALIFIES FOR A MARITAL OR CHARITABLE

1 DEDUCTION, THE ESTATE TAX SHALL FIRST BE APPORTIONED RATABLY
2 AMONG THE HOLDERS OF THE PORTION THAT DOES NOT QUALIFY FOR A
3 MARITAL OR CHARITABLE DEDUCTION AND THEN APPORTIONED RATABLY
4 AMONG THE HOLDERS OF THE DEDUCTIBLE PORTION TO THE EXTENT THAT
5 THE VALUE OF THE NONDEDUCTIBLE PORTION IS INSUFFICIENT.

6 (d) EXCEPT AS OTHERWISE PROVIDED FOR IN PARAGRAPH (e) OF
7 THIS SUBSECTION (2), IF AN APPORTIONMENT PROVISION DIRECTS THAT AN
8 ESTATE TAX BE APPORTIONED TO PROPERTY IN WHICH ONE OR MORE
9 TIME-LIMITED INTERESTS EXIST, OTHER THAN INTERESTS IN SPECIFIED
10 PROPERTY UNDER SECTION 15-12-1407, THE TAX SHALL BE APPORTIONED
11 TO THE PRINCIPAL OF THAT PROPERTY, REGARDLESS OF THE
12 DEDUCTIBILITY OF SOME OF THE INTERESTS IN THAT PROPERTY.

13 (e) IF AN APPORTIONMENT PROVISION DIRECTS THAT AN ESTATE
14 TAX IS TO BE APPORTIONED TO THE HOLDERS OF INTERESTS IN PROPERTY
15 IN WHICH ONE OR MORE TIME-LIMITED INTERESTS EXIST AND A CHARITY
16 HAS AN INTEREST THAT OTHERWISE QUALIFIES FOR AN ESTATE TAX
17 CHARITABLE DEDUCTION, THE TAX SHALL FIRST BE APPORTIONED, TO THE
18 EXTENT FEASIBLE, TO INTERESTS IN PROPERTY THAT HAVE NOT BEEN
19 DISTRIBUTED TO PERSONS ENTITLED TO RECEIVE THE INTERESTS.

20 (3) A PROVISION THAT APPORTIONS AN ESTATE TAX IS INEFFECTIVE
21 TO THE EXTENT THAT IT INCREASES THE TAX APPORTIONED TO A PERSON
22 HAVING AN INTEREST IN THE GROSS ESTATE OVER WHICH THE DECEDENT
23 HAS NO POWER TO TRANSFER IMMEDIATELY BEFORE THE DECEDENT
24 EXECUTED THE INSTRUMENT IN WHICH THE APPORTIONMENT DIRECTION
25 WAS MADE. FOR PURPOSES OF THIS SUBSECTION (3), A TESTAMENTARY
26 POWER OF APPOINTMENT IS A POWER TO TRANSFER THE PROPERTY THAT IS
27 SUBJECT TO THE POWER.

1 (4) AN APPORTIONMENT PROVISION EXPRESSLY DIRECTING ESTATE
2 TAXES TO BE PAID FROM THE "RESIDUE" OF THE SUBJECT PROBATE OR
3 TRUST ESTATE, OR USING LANGUAGE OF SIMILAR EFFECT, SHALL BE
4 SUBJECT TO THE FOLLOWING CONSTRUCTION:

5 (a) IF THE GROSS ESTATE INCLUDES ASSETS NOT PASSING UNDER
6 THE DISPOSITIVE INSTRUMENT AND THE BENEFICIARIES OF THOSE ASSETS
7 AND THE BENEFICIARIES OF THE RESIDUE ARE DIFFERENT PERSONS, THIS
8 PART 14 SHALL APPLY UNLESS THERE IS AN EXPRESS AND UNAMBIGUOUS
9 STATEMENT THAT THE ESTATE TAX ATTRIBUTABLE TO THE ASSETS SHALL
10 ALSO BE PAID FROM THE RESIDUE.

11 (b) IF THE DISPOSITIVE INSTRUMENT CONTAINS PRE-RESIDUARY
12 GIFTS AND THE RESIDUARY ESTATE IS INSUFFICIENT TO PAY ALL ESTATE
13 TAXES DUE, THE APPORTIONMENT PROVISION DIRECTING PAYMENT FROM
14 THE RESIDUE SHALL BE EFFECTIVE WITH RESPECT TO THE RESIDUE AS
15 PROVIDED FOR PURSUANT TO PARAGRAPH (b) OF SUBSECTION (2) OF THIS
16 SECTION, AND THIS PART 14 SHALL APPLY ONLY TO SPECIFY THE SOURCE
17 OF PAYMENT FOR ESTATE TAX THAT CANNOT BE PAID FROM THE RESIDUE.
18 IN THIS EVENT, NEITHER SECTION 15-12-902 NOR ANY OTHER STATUTORY
19 OR COMMON LAW RULE OF ABATEMENT SHALL AFFECT THE
20 APPORTIONMENT OF ESTATE TAX AMONG THE PRE-RESIDUARY GIFTS.

21 (c) WHEN A GIFT QUALIFYING FOR AN ESTATE TAX MARITAL OR
22 CHARITABLE DEDUCTION IS MADE FROM A PORTION OF THE RESIDUE, THE
23 PROVISIONS OF PARAGRAPH (c) OF SUBSECTION (2) OF THIS SECTION SHALL
24 APPLY, UNLESS THERE IS AN EXPRESS AND UNAMBIGUOUS STATEMENT IN
25 THE DISPOSITIVE INSTRUMENT OF AN INTENT TO NOT FULLY UTILIZE THE
26 AVAILABLE MARITAL OR CHARITABLE DEDUCTION. FOR THIS PURPOSE, A
27 DIRECTION TO PAY ESTATE TAX FROM THE RESIDUE WITHOUT

1 "APPORTIONMENT" OR "RIGHT OF CONTRIBUTION", OR LANGUAGE OF
2 SIMILAR EFFECT, DOES NOT CONSTITUTE AN EXPRESS AND UNAMBIGUOUS
3 STATEMENT SUFFICIENT TO AVOID THE APPLICATION OF PARAGRAPH (c) OF
4 SUBSECTION (2) OF THIS SECTION.

5 (5) AN EXPRESS AND UNAMBIGUOUS APPORTIONMENT OF ESTATE
6 TAX PURSUANT TO THIS SECTION DOES NOT, BY ITSELF, AFFECT RIGHTS OF
7 RECOVERY THAT MAY BE AVAILABLE TO A FIDUCIARY UNDER FEDERAL
8 TAX LAW. AN INTENT TO WAIVE A RIGHT OF RECOVERY PROVIDED IN
9 SECTIONS 2206, 2207, 2207A, AND 2207B OF THE INTERNAL REVENUE
10 CODE OF 1986, AS AMENDED, SHALL BE EXPRESSLY STATED IN THE
11 DISPOSITIVE INSTRUMENT IN THE MANNER DESCRIBED IN SUCH SECTIONS.

12 **15-12-1404. Statutory apportionment of estate taxes.** (1) TO
13 THE EXTENT THAT APPORTIONMENT OF AN ESTATE TAX IS NOT
14 CONTROLLED BY AN INSTRUMENT DESCRIBED IN SECTION 15-12-1403, AND
15 EXCEPT AS OTHERWISE PROVIDED FOR IN SECTIONS 15-12-1406 AND
16 15-12-1407, THE FOLLOWING RULES APPLY:

17 (a) SUBJECT TO PARAGRAPHS (b) TO (d) OF THIS SUBSECTION (1),
18 THE ESTATE TAX SHALL BE APPORTIONED RATABLY TO EACH PERSON THAT
19 HAS AN INTEREST IN THE APPORTIONABLE ESTATE.

20 (b) A GENERATION-SKIPPING TRANSFER TAX INCURRED ON A
21 DIRECT SKIP TAKING EFFECT AT DEATH SHALL BE CHARGED TO THE PERSON
22 TO WHICH THE INTEREST IN PROPERTY IS TRANSFERRED.

23 (c) IF PROPERTY IS INCLUDED IN THE DECEDENT'S GROSS ESTATE
24 BECAUSE OF SECTION 2044 OF THE INTERNAL REVENUE CODE OF 1986, AS
25 AMENDED, OR ANY SIMILAR ESTATE TAX PROVISION, THE DIFFERENCE
26 BETWEEN THE TOTAL ESTATE TAX FOR WHICH THE DECEDENT'S ESTATE IS
27 LIABLE AND THE AMOUNT OF ESTATE TAX FOR WHICH THE DECEDENT'S

1 ESTATE WOULD HAVE BEEN LIABLE IF THE PROPERTY HAD NOT BEEN
2 INCLUDED IN THE DECEDENT'S GROSS ESTATE SHALL BE APPORTIONED
3 RATABLY AMONG THE HOLDERS OF INTERESTS IN THE PROPERTY. THE
4 BALANCE OF THE TAX, IF ANY, SHALL BE APPORTIONED RATABLY TO EACH
5 OTHER PERSON HAVING AN INTEREST IN THE APPORTIONABLE ESTATE.

6 (d) EXCEPT AS OTHERWISE PROVIDED FOR IN SECTION 15-12-1403
7 (2) (d), AND EXCEPT AS TO PROPERTY TO WHICH SECTION 15-12-1407
8 APPLIES, AN ESTATE TAX APPORTIONED TO PERSONS HOLDING INTERESTS
9 IN PROPERTY SUBJECT TO A TIME-LIMITED INTEREST SHALL BE
10 APPORTIONED, WITHOUT FURTHER APPORTIONMENT, TO THE PRINCIPAL OF
11 THAT PROPERTY.

12 **15-12-1405. Credits and deferrals.** (1) EXCEPT AS OTHERWISE
13 PROVIDED FOR IN SECTIONS 15-12-1406 AND 15-12-1407, THE FOLLOWING
14 RULES APPLY TO CREDITS AND DEFERRALS OF ESTATE TAXES:

15 (a) A CREDIT RESULTING FROM THE PAYMENT OF GIFT TAXES OR
16 FROM ESTATE TAXES PAID ON PROPERTY PREVIOUSLY TAXED INURES
17 RATABLY TO THE BENEFIT OF ALL PERSONS TO WHICH THE ESTATE TAX IS
18 APPORTIONED.

19 (b) A CREDIT FOR STATE OR FOREIGN ESTATE TAXES INURES
20 RATABLY TO THE BENEFIT OF ALL PERSONS TO WHICH THE ESTATE TAX IS
21 APPORTIONED, EXCEPT THAT THE AMOUNT OF CREDIT FOR A STATE OR
22 FOREIGN TAX PAID BY A BENEFICIARY OF THE PROPERTY ON WHICH THE
23 STATE OR FOREIGN TAX WAS IMPOSED, DIRECTLY OR BY A CHARGE
24 AGAINST THE PROPERTY, INURES TO THE BENEFIT OF THE BENEFICIARY.

25 (c) IF PAYMENT OF A PORTION OF AN ESTATE TAX IS DEFERRED
26 BECAUSE OF THE INCLUSION IN THE GROSS ESTATE OF A PARTICULAR
27 INTEREST IN PROPERTY, THE BENEFIT OF THE DEFERRAL INURES RATABLY

1 TO THE PERSONS TO WHOM THE ESTATE TAX ATTRIBUTABLE TO THE
2 INTEREST IS APPORTIONED. THE BURDEN OF ANY INTEREST CHARGES
3 INCURRED ON A DEFERRAL OF TAXES AND THE BENEFIT OF ANY TAX
4 DEDUCTION ASSOCIATED WITH THE ACCRUAL OR PAYMENT OF THE
5 INTEREST CHARGE IS ALLOCATED RATABLY AMONG THE PERSONS
6 RECEIVING AN INTEREST IN THE PROPERTY.

7 **15-12-1406. Insulated property, advancement of tax -**
8 **definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT
9 OTHERWISE REQUIRES:

10 (a) "ADVANCED FRACTION" MEANS A FRACTION THAT HAS AS ITS
11 NUMERATOR THE AMOUNT OF THE ADVANCED TAX AND AS ITS
12 DENOMINATOR THE VALUE OF THE INTERESTS IN INSULATED PROPERTY TO
13 WHICH THAT TAX IS ATTRIBUTABLE.

14 (b) "ADVANCED TAX" MEANS THE AGGREGATE AMOUNT OF ESTATE
15 TAX ATTRIBUTABLE TO INTERESTS IN INSULATED PROPERTY THAT IS
16 REQUIRED TO BE ADVANCED BY UNINSULATED HOLDERS UNDER
17 SUBSECTION (3) OF THIS SECTION.

18 (c) "INSULATED PROPERTY" MEANS PROPERTY SUBJECT TO A
19 TIME-LIMITED INTEREST THAT IS INCLUDED IN THE APPORTIONABLE ESTATE
20 BUT IS UNAVAILABLE FOR PAYMENT OF AN ESTATE TAX BECAUSE OF
21 IMPOSSIBILITY OR IMPRACTICABILITY.

22 (d) "UNINSULATED HOLDER" MEANS A PERSON WHO HAS AN
23 INTEREST IN UNINSULATED PROPERTY.

24 (e) "UNINSULATED PROPERTY" MEANS PROPERTY INCLUDED IN THE
25 APPORTIONABLE ESTATE, OTHER THAN INSULATED PROPERTY.

26 (2) IF ESTATE TAX IS TO BE ADVANCED PURSUANT TO SUBSECTION
27 (3) OF THIS SECTION BY PERSONS HOLDING INTERESTS IN UNINSULATED

1 PROPERTY SUBJECT TO A TIME-LIMITED INTEREST OTHER THAN PROPERTY
2 TO WHICH SECTION 15-12-1407 APPLIES, THE ESTATE TAX SHALL BE
3 ADVANCED, WITHOUT FURTHER APPORTIONMENT, FROM THE PRINCIPAL OF
4 THE UNINSULATED PROPERTY.

5 (3) SUBJECT TO SECTIONS 15-12-1409 (2) AND 15-12-1409 (4), AN
6 ESTATE TAX ATTRIBUTABLE TO INTERESTS IN INSULATED PROPERTY SHALL
7 BE ADVANCED RATABLY BY UNINSULATED HOLDERS. IF THE VALUE OF AN
8 INTEREST IN UNINSULATED PROPERTY IS LESS THAN THE AMOUNT OF
9 ESTATE TAXES OTHERWISE REQUIRED TO BE ADVANCED BY THE HOLDER
10 OF THAT INTEREST, THE DEFICIENCY SHALL BE ADVANCED RATABLY BY
11 THE PERSON HOLDING INTERESTS IN ANY PROPERTY THAT IS EXCLUDED
12 FROM THE APPORTIONABLE ESTATE AS DEFINED IN SECTION 15-12-1402 (1)
13 (b) AS IF THOSE INTERESTS WERE IN UNINSULATED PROPERTY.

14 (4) A COURT HAVING JURISDICTION TO DETERMINE THE
15 APPORTIONMENT OF AN ESTATE TAX MAY REQUIRE A BENEFICIARY OF AN
16 INTEREST IN INSULATED PROPERTY TO PAY ALL OR PART OF THE ESTATE
17 TAX OTHERWISE APPORTIONED TO THE INTEREST IF THE COURT FINDS THAT
18 IT WOULD BE SUBSTANTIALLY MORE EQUITABLE FOR THAT BENEFICIARY
19 TO BEAR THE TAX LIABILITY PERSONALLY THAN FOR THAT PART OF THE
20 TAX TO BE ADVANCED BY UNINSULATED HOLDERS.

21 (5) WHEN A DISTRIBUTION OF INSULATED PROPERTY IS MADE,
22 EACH UNINSULATED HOLDER MAY RECOVER FROM THE DISTRIBUTE A
23 RATABLE PORTION OF THE ADVANCED FRACTION OF THE PROPERTY
24 DISTRIBUTED. TO THE EXTENT THAT UNDISTRIBUTED INSULATED
25 PROPERTY CEASES TO BE INSULATED, EACH UNINSULATED HOLDER MAY
26 RECOVER FROM THE PROPERTY A RATABLE PORTION OF THE ADVANCED
27 FRACTION OF THE TOTAL UNINSULATED PROPERTY.

1 (6) UPON A DISTRIBUTION OF INSULATED PROPERTY FOR WHICH
2 THE DISTRIBUTEES BECOMES OBLIGATED TO MAKE A PAYMENT TO
3 UNINSULATED HOLDERS PURSUANT TO SUBSECTION (4) OF THIS SECTION,
4 A COURT MAY AWARD AN UNINSULATED HOLDER A RECORDABLE LIEN ON
5 THE DISTRIBUTEES' PROPERTY TO SECURE THE DISTRIBUTEES' OBLIGATION
6 TO THAT UNINSULATED HOLDER.

7 **15-12-1407. Apportionment and recapture of special elective**
8 **benefits.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
9 REQUIRES:

10 (a) "SPECIAL ELECTIVE BENEFIT" MEANS A REDUCTION IN AN
11 ESTATE TAX OBTAINED BY AN ELECTION FOR:

12 (I) A REDUCED VALUATION OF SPECIFIED PROPERTY THAT IS
13 INCLUDED IN THE GROSS ESTATE;

14 (II) A DEDUCTION FROM THE GROSS ESTATE, OTHER THAN A
15 MARITAL OR CHARITABLE DEDUCTION, ALLOWED FOR SPECIFIED
16 PROPERTY; OR

17 (III) AN EXCLUSION FROM THE GROSS ESTATE OF SPECIFIED
18 PROPERTY.

19 (b) "SPECIFIED PROPERTY" MEANS PROPERTY FOR WHICH AN
20 ELECTION HAS BEEN MADE FOR A SPECIAL ELECTIVE BENEFIT.

21 (2) IF AN ELECTION IS MADE FOR ONE OR MORE SPECIAL ELECTIVE
22 BENEFITS, AN INITIAL APPORTIONMENT OF A HYPOTHETICAL ESTATE TAX
23 SHALL BE COMPUTED AS IF NO ELECTION FOR ANY OF SUCH BENEFITS HAD
24 BEEN MADE. THE AGGREGATE REDUCTION IN ESTATE TAX RESULTING
25 FROM ALL ELECTIONS MADE SHALL BE ALLOCATED AMONG HOLDERS OF
26 INTERESTS IN THE SPECIFIED PROPERTY IN THE PROPORTION THAT THE
27 AMOUNT OF DEDUCTION, REDUCED VALUATION, OR EXCLUSION

1 ATTRIBUTABLE TO EACH HOLDER'S INTEREST BEARS TO THE AGGREGATE
2 AMOUNT OF DEDUCTIONS, REDUCED VALUATIONS, AND EXCLUSIONS
3 OBTAINED BY THE DECEDENT'S ESTATE FROM THE ELECTIONS. IF THE
4 ESTATE TAX INITIALLY APPORTIONED TO THE HOLDER OF AN INTEREST IN
5 SPECIFIED PROPERTY IS REDUCED TO ZERO, ANY EXCESS AMOUNT OF
6 REDUCTION REDUCES RATABLY THE ESTATE TAX APPORTIONED TO OTHER
7 PERSONS THAT RECEIVE INTERESTS IN THE APPORTIONABLE ESTATE.

8 (3) AN ADDITIONAL ESTATE TAX IMPOSED TO RECAPTURE ALL OR
9 PART OF A SPECIAL ELECTIVE BENEFIT SHALL BE CHARGED TO ANY PERSON
10 WHO IS LIABLE FOR THE ADDITIONAL TAX PURSUANT TO THE LAW
11 PROVIDING FOR THE RECAPTURE.

12 **15-12-1408. Securing payment of estate tax from property in**
13 **possession of fiduciary.** (1) A FIDUCIARY MAY DEFER A DISTRIBUTION
14 OF PROPERTY UNTIL THE FIDUCIARY IS SATISFIED THAT ADEQUATE
15 PROVISION FOR PAYMENT OF THE ESTATE TAX HAS BEEN MADE.

16 (2) A FIDUCIARY MAY WITHHOLD FROM A DISTRIBUTE AN
17 AMOUNT EQUAL TO THE AMOUNT OF ESTATE TAX APPORTIONED TO AN
18 INTEREST OF THE DISTRIBUTE.

19 (3) AS A CONDITION TO A DISTRIBUTION, A FIDUCIARY MAY
20 REQUIRE THE DISTRIBUTE TO PROVIDE A BOND OR OTHER SECURITY FOR
21 THE PORTION OF THE ESTATE TAX APPORTIONED TO THE DISTRIBUTE.

22 **15-12-1409. Collection of estate tax by fiduciary.** (1) A
23 FIDUCIARY RESPONSIBLE FOR PAYMENT OF AN ESTATE TAX MAY COLLECT
24 FROM ANY PERSON THE TAX APPORTIONED TO AND THE TAX REQUIRED TO
25 BE ADVANCED BY THAT PERSON.

26 (2) EXCEPT AS OTHERWISE PROVIDED FOR IN SECTION 15-12-1406,
27 ANY ESTATE TAX DUE FROM A PERSON THAT CANNOT BE COLLECTED FROM

1 THAT PERSON MAY BE COLLECTED BY THE FIDUCIARY FROM OTHER
2 PERSONS IN THE FOLLOWING ORDER OF PRIORITY:

3 (a) A PERSON HAVING AN INTEREST IN THE APPORTIONABLE
4 ESTATE THAT IS NOT EXONERATED FROM THE TAX;

5 (b) ANY OTHER PERSON HAVING AN INTEREST IN THE
6 APPORTIONABLE ESTATE; AND

7 (c) A PERSON HAVING AN INTEREST IN THE GROSS ESTATE.

8 (3) A DOMICILIARY FIDUCIARY MAY RECOVER FROM AN ANCILLARY
9 PERSONAL REPRESENTATIVE THE ESTATE TAX APPORTIONED TO THE
10 PROPERTY CONTROLLED BY THE ANCILLARY PERSONAL REPRESENTATIVE.

11 (4) THE TOTAL TAX COLLECTED FROM A PERSON PURSUANT TO THIS
12 PART 14 MAY NOT EXCEED THE VALUE OF THAT PERSON'S INTEREST.

13 **15-12-1410. Right of reimbursement.** (1) A PERSON REQUIRED
14 PURSUANT TO SECTION 15-12-1409 TO PAY AN ESTATE TAX GREATER THAN
15 THE AMOUNT DUE FROM THE PERSON PURSUANT TO SECTIONS 15-12-1403
16 AND 15-12-1404 HAS A RIGHT TO REIMBURSEMENT FROM ANOTHER
17 PERSON TO THE EXTENT THAT THE OTHER PERSON HAS NOT PAID THE TAX
18 REQUIRED BY SECTIONS 15-12-1403 AND 15-12-1404 AND A RIGHT TO
19 REIMBURSEMENT RATABLY FROM OTHER PERSONS TO THE EXTENT THAT
20 EACH HAS NOT CONTRIBUTED A PORTION OF THE AMOUNT COLLECTED
21 PURSUANT TO SECTION 15-12-1409 (2).

22 (2) A FIDUCIARY MAY ENFORCE THE RIGHT OF REIMBURSEMENT
23 UNDER SUBSECTION (1) OF THIS SECTION ON BEHALF OF THE PERSON THAT
24 IS ENTITLED TO THE REIMBURSEMENT AND SHALL TAKE REASONABLE
25 STEPS TO DO SO IF SO REQUESTED BY THE PERSON.

26 **15-12-1411. Action to determine or enforce part.** A FIDUCIARY,
27 TRANSFEREE, OR BENEFICIARY OF THE GROSS ESTATE MAY MAINTAIN AN

1 ACTION FOR DECLARATORY JUDGMENT TO HAVE A COURT DETERMINE AND
2 ENFORCE THIS PART 14.

3 **15-12-1412. Uniformity of application and construction.** IN
4 APPLYING AND CONSTRUING THIS PART 14, CONSIDERATION SHALL BE
5 GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT
6 TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

7 **15-12-1413. Severability.** IF ANY PROVISION OF THIS PART 14 OR
8 THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE IS HELD
9 INVALID, THE INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR
10 APPLICATIONS OF THIS PART 14 THAT CAN BE GIVEN EFFECT WITHOUT THE
11 INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF
12 THIS PART 14 ARE SEVERABLE.

13 **15-12-1414. Delayed application.** (1) SECTIONS 15-12-1403 TO
14 15-12-1407 SHALL NOT APPLY TO THE ESTATE OF A DECEDENT WHO DIES
15 ON OR WITHIN THREE YEARS AFTER THE EFFECTIVE DATE OF THIS PART 14,
16 NOR TO THE ESTATE OF A DECEDENT WHO DIES MORE THAN THREE YEARS
17 AFTER THE EFFECTIVE DATE OF THIS PART 14 IF THE DECEDENT
18 CONTINUOUSLY LACKED TESTAMENTARY CAPACITY FROM THE EXPIRATION
19 OF THE THREE-YEAR PERIOD AFTER THE EFFECTIVE DATE OF THIS PART 14
20 UNTIL THE DATE OF DEATH.

21 (2) FOR THE ESTATE OF A DECEDENT WHO DIES ON OR AFTER THE
22 EFFECTIVE DATE OF THIS PART 14 TO WHICH SECTIONS 15-12-1403 TO
23 15-12-1407 DO NOT APPLY, ESTATE TAXES SHALL BE APPORTIONED
24 PURSUANT TO THE LAW IN EFFECT IMMEDIATELY BEFORE THE EFFECTIVE
25 DATE OF THIS PART 14.

26 (3) THE PROVISIONS OF THIS PART 14 MAY BE ADOPTED AS
27 APPLICABLE LAW IN A GOVERNING INSTRUMENT AT ANY TIME ON OR AFTER

1 THE EFFECTIVE DATE OF THIS PART 14. THE PROVISIONS OF THIS PART 14
2 MAY BE INCORPORATED BY REFERENCE, IN WHOLE OR IN PART, INTO A
3 GOVERNING INSTRUMENT AT ANY TIME.

4 **SECTION 2. Inclusion of official comments.** There shall be
5 included in the publication of the "Colorado Uniform Estate Tax
6 Apportionment Act", as nonstatutory matter, following each section of the
7 part, the full text of the official comments to that section contained in the
8 official volume containing the 2003 official text of the "Uniform Estate
9 Tax Apportionment Act" issued by the national conference of
10 commissioners on uniform state laws, with any changes in the official
11 comments or Colorado comments to correspond to Colorado changes in
12 the uniform act. The revisor of statutes shall prepare the comments for
13 approval by the committee on legal services for publication.

14 **SECTION 3. Act subject to petition - effective date.** This act
15 shall take effect at 12:01 a.m. on the day following the expiration of the
16 ninety-day period after final adjournment of the general assembly (August
17 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a
18 referendum petition is filed pursuant to section 1 (3) of article V of the
19 state constitution against this act or an item, section, or part of this act
20 within such period, then the act, item, section, or part shall not take effect
21 unless approved by the people at the general election to be held in
22 November 2012 and shall take effect on the date of the official
23 declaration of the vote thereon by the governor.