

**STATE
FISCAL IMPACT**

Drafting Number: LLS 14-0954 **Date:** April 7, 2014
Prime Sponsor(s): Rep. McLachlan **Bill Status:** House Judiciary
 Sen. Roberts **Fiscal Analyst:** Kristen Koehler (303-866-4918)

SHORT TITLE: CHANGES TO PROBATE CODE

Fiscal Impact Summary	FY 2014-2015	FY 2015-2016
State Revenue		
State Expenditures	Minimal impact. See State Expenditures section.	
FTE Position Change		
Appropriation Required: None		

Summary of Legislation

This bill makes several changes to the Colorado Probate Code, governing the control and distribution of assets in an estate. Among its changes, the bill:

- repeals and reenacts with amendments certain provisions related to the elective-share of a surviving spouse, to align statute with the Uniform Probate Code and reformat the elective-share calculation statutes;
- clarifies the procedure for a person to claim an asset devised to them when the asset is no longer in the estate at the time of distribution;
- updates certain terms to reflect current practice;
- makes clarifying changes to the small estate affidavit process;
- makes clarifying changes to the method by which a trust may be amended or revoked;
- adopts the statutory concepts of "trust advisors" and "directed trustees," allowing a trust creator to establish a trustee-beneficiary relationship among several people, each having distinct responsibilities and liabilities related to the trust; and
- makes conforming amendments.

State Expenditures

Overall, this bill is expected to minimally impact the workload and expenditures of state agencies beginning in FY 2014-15.

Judicial Department. Probate cases are handled by district courts. In general, the small estate affidavit by-passes the probate court completely. If the person to whom an affidavit was delivered refuses to pay, deliver, transfer, or issue the property to the successor to whom it rightfully belongs, the person making the refusal is responsible for all costs incurred by the successor in attempting to receive the property. This may result in cases being filed for refusing to recognize the affidavit; however, it is expected that any increase in case filings will be minimal and does not require new appropriations.

The bill also establishes the role of a directed trustee. There may be cases filed as a result of breached powers or omitted duties by or between the appointed parties; however, any increase in case filings is expected to be minimal and does not require new appropriations.

Health Care Policy and Financing. The establishment of directed trustees may impact the workload of the Department of Health Care Policy and Financing (HCPF) by requiring greater time to review special needs trusts that contain directed trustee provisions. HCPF also monitors special needs trusts on a periodic basis for accounting of disbursements, and occasionally takes legal action against trustees for improper disbursements. Finally, the bill allows multiple trustee-beneficiary relationships to be established and may increase the incidence of breached duties, resulting in increased legal action by HCPF. It is expected that any increased workload in HCPF will be minimal and does not require new appropriations.

Effective Date

The bill takes effect August 6, 2014, if the General Assembly adjourns on May 7, 2014, as scheduled, and no referendum petition is filed.

State and Local Government Contacts

Judicial
Human Services
Assessors

Law
Revenue
Public Trustees

Regulatory Agencies
Health Care Policy & Financing
Public Health & Environment