

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

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 13-0573.01 Richard Sweetman x4333

**SENATE BILL 13-077**

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**SENATE SPONSORSHIP**

**Roberts,**

**HOUSE SPONSORSHIP**

**(None),**

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**Senate Committees**  
Judiciary

**House Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING CERTAIN PROVISIONS OF THE COLORADO PROBATE**  
102 **CODE.**

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**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>.)*

The bill clarifies provisions concerning the circumstances under which each party and person in interest with a party shall be allowed to testify regarding an oral statement of a person incapable of testifying when such statement is sought to be admitted into evidence.

The bill clarifies that, subject to certain limitations, a personal

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.*

representative, a person with priority for appointment as personal representative, and a court-appointed fiduciary:

- ! May ascertain the testator's probable intent or estate planning purpose on issues involving the decedent's estate; and
- ! Shall have standing to prosecute or defend that intent or purpose, at the expense of the estate, in probate proceedings.

Under current law, a personal representative must give certain information concerning his or her appointment to the heirs and devisees of the estate not later than 30 days after his or her appointment. The bill adds a requirement that this information must include a notice that any individual who has knowledge that there is a valid, unrevoked designated beneficiary agreement in which the decedent granted the right of intestate succession should give written notice of such knowledge to the personal representative of the decedent's estate. The bill also makes changes to this law to align it with a provision of the Colorado rules of probate procedure.

The bill amends the probate code to grant a higher statutory priority to payment of child support claims in decedent's estates.

The bill gives a trustee of an intentionally defective grantor trust the discretionary authority to reimburse the grantor for payment of the income taxes attributable to the trust. This authority does not subject the trust to the grantor's creditors or cause the trust to be included in the grantor's estate.

The bill allows a trustee to acquire or retain a life insurance policy on the life of a person for whom the trustee has an insurable interest as a trust asset; however, a trust may expressly provide that this provision does not apply to the trust. A trustee is not relieved of liability with respect to any life insurance policy purchased from an affiliated company, or with respect to which the trustee or any affiliated company of the trustee receives any commission, unless either:

- ! The trustee has given written notice of such intended purchase to all qualified beneficiaries of the trust or their legal representatives, and receives written consent to such purchase; or
- ! The trust agreement contains a provision that permits purchases of life insurance from an affiliate; however, consent shall be conclusively presumed by any qualified beneficiary who has not responded to written notice by the trustee within 30 days after the mailing of such notice to the qualified beneficiary at his or her last known address.

The bill clarifies the applicability of the effective date of the Colorado probate code to conform Colorado law to the Uniform Probate Code's effective date provisions.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 13-90-102 as  
3 follows:

4 **13-90-102. Testimony concerning oral statements made by**  
5 **person incapable of testifying - when allowed - definitions.** (1) Subject  
6 to the law of evidence, in any civil action ~~by or against~~ OR PROCEEDING  
7 IN WHICH AN ORAL STATEMENT OF a person incapable of testifying IS  
8 SOUGHT TO BE ADMITTED INTO EVIDENCE, each party and person in  
9 interest with a party shall be allowed to testify regarding ~~an~~ THE oral  
10 statement ~~made by the person incapable of testifying~~ if:

11 (a) The statement was made under oath at a time when such  
12 person was competent to testify;

13 (b) The TESTIMONY CONCERNING THE ORAL statement is  
14 corroborated by material evidence of ~~an independent and~~ A trustworthy  
15 nature; ~~or~~

16 (c) The opposing party introduces UNCORROBORATED evidence of  
17 related communications THROUGH A PARTY OR PERSON IN INTEREST WITH  
18 A PARTY; OR

19 (d) SUCH PARTY OR PERSON TESTIFIES AGAINST HIS OR HER OWN  
20 INTERESTS.

21 (2) Questions of admissibility that arise under this section shall be  
22 determined by the court as a matter of law.

23 (3) For purposes of this section:

24 (a) "CORROBORATED BY MATERIAL EVIDENCE" MEANS  
25 CORROBORATED BY EVIDENCE THAT SUPPORTS ONE OR MORE OF THE  
26 MATERIAL ALLEGATIONS OR ISSUES THAT ARE RAISED BY THE PLEADINGS

1 AND TO WHICH THE WITNESS WHOSE EVIDENCE MUST BE CORROBORATED  
2 WILL TESTIFY. SUCH EVIDENCE MAY COME FROM ANY OTHER COMPETENT  
3 WITNESS OR OTHER ADMISSIBLE SOURCE, INCLUDING TRUSTWORTHY  
4 DOCUMENTARY EVIDENCE, AND SUCH EVIDENCE NEED NOT BE SUFFICIENT  
5 STANDING ALONE TO SUPPORT THE VERDICT BUT MUST TEND TO CONFIRM  
6 AND STRENGTHEN THE TESTIMONY OF THE WITNESS AND SHOW THE  
7 PROBABILITY OF ITS TRUTH.

8 (b) "Person incapable of testifying" means any decedent or any  
9 person who is otherwise not competent to testify.

10 (c) "Person in interest with a party" means a person having ~~an~~ A  
11 DIRECT FINANCIAL interest in the outcome of the civil action OR  
12 PROCEEDING, or HAVING any other SIGNIFICANT AND NON-SPECULATIVE  
13 FINANCIAL interest that makes the person's testimony, standing alone,  
14 untrustworthy. IN A PROCEEDING TO CONSTRUE, CONTEST, MODIFY,  
15 PROBATE, REFORM, OR RESCIND A GOVERNING INSTRUMENT, AS DEFINED  
16 IN SECTION 15-10-201 (22), C.R.S., "person in interest with a party" does  
17 not include:

18 (I) AN ATTORNEY WHO PREPARED THE GOVERNING INSTRUMENT;

19 (II) A PERSONAL REPRESENTATIVE WHO IS NOT A SUCCESSOR OF  
20 THE DECEDENT; OR

21 (III) A person whose only interest is an expectation of ~~receiving~~  
22 just compensation for the value of services TO BE rendered ~~as a witness~~  
23 BY THE PERSON.

24 **SECTION 2.** In Colorado Revised Statutes, 15-10-201, **amend**  
25 **(56); and add (6.5) as follows:**

26 **15-10-201. General definitions.** Subject to additional definitions  
27 **contained in the subsequent articles that are applicable to specific articles,**

1 parts, or sections, and unless the context otherwise requires, in this code:

2 (6.5) "BUSINESS TRUST" MEANS, BUT IS NOT LIMITED TO,  
3 MASSACHUSETTS BUSINESS TRUSTS CREATED FOR BUSINESS OR  
4 INVESTMENT PURPOSES; DELAWARE STATUTORY TRUSTS; ILLINOIS LAND  
5 TRUSTS; MUTUAL FUND TRUSTS; COMMON TRUST FUNDS; VOTING TRUSTS;  
6 LIQUIDATION TRUSTS; REAL ESTATE INVESTMENT TRUSTS;  
7 ENVIRONMENTAL REMEDIATION TRUSTS; TRUSTS FOR THE PRIMARY  
8 PURPOSE OF PAYING DEBTS, DIVIDENDS, INTEREST, SALARIES, WAGES,  
9 COMPENSATION, ANNUITIES, PROFITS, PENSIONS OR EMPLOYEE BENEFITS  
10 OF ANY KIND; AND OTHER TRUSTS WITH PURPOSES THAT ARE THE SAME OR  
11 SIMILAR TO ANY OF THE TRUSTS ENUMERATED IN THIS SUBSECTION (6.5),  
12 REGARDLESS OF WHETHER SUCH OTHER TRUSTS ARE CREATED UNDER  
13 STATUTORY OR COMMON LAW, AND REGARDLESS OF WHETHER THE  
14 BENEFICIAL INTERESTS IN SUCH OTHER TRUSTS ARE EVIDENCED BY  
15 CERTIFICATES.

16 (56) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS  
17 SUBSECTION (56):

18 (I) "Trust" includes an express trust, private or charitable, with  
19 additions thereto, wherever and however created and any amendments to  
20 such trusts.

21 (II) "Trust" also includes a trust created or determined by  
22 judgment or decree under which the trust is to be administered in the  
23 manner of an express trust.

24 (b) (I) "Trust" excludes ~~other~~ constructive trusts and UNLESS A  
25 COURT, IN DETERMINING SUCH A TRUST, PROVIDES THAT THE TRUST IS TO  
26 BE ADMINISTERED AS AN EXPRESS TRUST.

27 (II) "TRUST" ALSO excludes resulting trusts; conservatorships;

1 personal representatives; accounts as defined in section 15-15-201 (1);  
2 custodial arrangements pursuant to the "Colorado Uniform Transfers to  
3 Minors Act", article 50 of title 11, C.R.S.; business trusts providing for  
4 certificates to be issued to beneficiaries; common trust funds; voting  
5 trusts; security arrangements; liquidation trusts; trusts for the primary  
6 purpose of paying debts, dividends, interest, salaries, wages, profits,  
7 pensions, or employee benefits of any kind; AS DEFINED IN SUBSECTION  
8 (6.5) OF THIS SECTION; and any arrangement under which a person is  
9 nominee or escrowee for another.

10 **SECTION 3.** In Colorado Revised Statutes, 15-10-603, **amend**  
11 **(3) (j) as follows:**

12 **15-10-603. Factors in determining the reasonableness of**  
13 **compensation and costs.** (3) The court shall consider all of the factors  
14 described in this subsection (3) in determining the reasonableness of any  
15 compensation or cost. The court may determine the weight to be given to  
16 each factor and to any other factor the court considers relevant in reaching  
17 its decision:

18 (j) The expertise, SPECIAL SKILLS, reputation, and ability of the  
19 person performing the services and, in the case of a fiduciary, whether  
20 and to what extent the fiduciary has had any prior experience in  
21 administering estates similar to those for which compensation is sought:

22 **SECTION 4.** In Colorado Revised Statutes, 15-12-703, **add** (6),  
23 (7), and (8) as follows:

24 **15-12-703. General duties - relation and liability to persons**  
25 **interested in estate - duty to search for a designated beneficiary**  
26 **agreement - standing to sue.** (6) SUBJECT TO THE GOOD FAITH  
27 STANDARD OF SECTION 15-10-602 (6), THE PROVISIONS OF SECTION

1 15-10-605, AND SUBSECTIONS (7) AND (8) OF THIS SECTION, PERSONAL  
2 REPRESENTATIVES, PERSONS WITH PRIORITY FOR APPOINTMENT AS  
3 PERSONAL REPRESENTATIVE, AND COURT-APPOINTED FIDUCIARIES MAY  
4 ASCERTAIN THE TESTATOR'S PROBABLE INTENT OR ESTATE PLANNING  
5 PURPOSE ON ISSUES INVOLVING THE DECEDENT'S ESTATE AND, WHERE NOT  
6 CONTRARY TO PUBLIC POLICY OR LAW, SHALL HAVE STANDING AND MAY  
7 PROSECUTE OR DEFEND THAT INTENT OR PURPOSE, AT THE EXPENSE OF THE  
8 ESTATE, IN PROCEEDINGS BROUGHT UNDER THIS CODE.

9 (7) WITHOUT LIMITING THE GENERAL APPLICABILITY OF  
10 SUBSECTION (6) OF THIS SECTION:

11 (a) (I) A PERSON SERVING AS PERSONAL REPRESENTATIVE OR A  
12 PERSON NOMINATED AS PERSONAL REPRESENTATIVE IN A WILL OR  
13 APPOINTED AS PUBLIC OR SPECIAL ADMINISTRATOR HAS STANDING, BUT NO  
14 DUTY, TO OFFER A WILL FOR PROBATE. IF SUCH PERSON DECLINES OR IS  
15 UNABLE TO OFFER THE WILL FOR PROBATE, ANY PERSON WHO IS A  
16 SUCCESSOR OF THE DECEDENT UNDER THE WILL MAY OFFER THE WILL FOR  
17 PROBATE AND DEFEND THE VALIDITY OF THE WILL IN PROCEEDINGS UNDER  
18 THIS CODE. IN EITHER CASE, THE PERSON MAY ACT NOTWITHSTANDING THE  
19 FACT THAT HE OR SHE MAY BE A DEVISEE UNDER THE WILL. THE WILL  
20 PROPONENT'S REASONABLE FEES AND COSTS ARE PAYABLE AS AN EXPENSE  
21 OF ADMINISTRATION.

22 (II) FOR PURPOSES OF THIS SUBSECTION (7), A PROPONENT OTHER  
23 THAN THE NOMINATED PERSONAL REPRESENTATIVE SHOULD BE TREATED  
24 AS A NOMINATED PERSONAL REPRESENTATIVE IN CASES WHERE THE  
25 NOMINATED PERSONAL REPRESENTATIVE HAS DECLINED OR IS UNABLE TO  
26 OFFER THE WILL FOR PROBATE. SUCH TREATMENT SHALL NOT CONFER  
27 UPON THE PROPONENT A HIGHER PRIORITY FOR APPOINTMENT THAN WAS

1 CONFERRED UPON SUCH PROPONENT PURSUANT TO SECTION 15-12-203  
2 BEFORE THE WILL WAS OFFERED FOR PROBATE.

3 (b) THE PERSONAL REPRESENTATIVE HAS STANDING TO OPPOSE, AT  
4 ESTATE EXPENSE, A PERSON'S CLAIM TO BE AN HEIR; AN OMITTED SPOUSE  
5 OR CHILD; A SPOUSE, INCLUDING A COMMON LAW SPOUSE; OR A DEVISEE.

6 (c) THE PERSONAL REPRESENTATIVE HAS STANDING TO OPPOSE, AT  
7 ESTATE EXPENSE, A SURVIVING SPOUSE'S ATTEMPT TO INVALIDATE A  
8 MARITAL AGREEMENT THAT LIMITS HIS OR HER SHARE IN THE ESTATE.

9 (d) WHERE A SURVIVING SPOUSE PETITIONS FOR AN ELECTIVE  
10 SHARE, THE COURT PROCEEDING IS AN ACTION BETWEEN THE SPOUSE AND  
11 THE INTERESTED PERSON OR PERSONS WHOSE INTERESTS MAY BE  
12 AFFECTED, AND THE PERSONAL REPRESENTATIVE IS A NEUTRAL PARTY TO  
13 THE PROCEEDING. IN SUCH A PROCEEDING, THE FEES AND COSTS  
14 REASONABLY INCURRED BY THE PERSONAL REPRESENTATIVE AND HIS OR  
15 HER AGENTS IN PROVIDING BASIC INFORMATION TO THE PARTIES  
16 REGARDING THE AUGMENTED ESTATE ARE PAYABLE AS AN ESTATE  
17 EXPENSE. THE PERSONAL REPRESENTATIVE MAY PREPARE A CALCULATION  
18 OF THE AUGMENTED ESTATE AT ESTATE EXPENSE.

19 (8) (a) IN ANY PROCEEDING BROUGHT UNDER THIS CODE WHERE  
20 ANY PERSONAL REPRESENTATIVE, PERSON WITH PRIORITY FOR  
21 APPOINTMENT AS A PERSONAL REPRESENTATIVE, NOMINATED PERSONAL  
22 REPRESENTATIVE, OR COURT-APPOINTED FIDUCIARY PURPORTS TO  
23 PARTICIPATE IN THE PROCEEDING AT ESTATE EXPENSE AND HAS A  
24 MATERIAL CONFLICT OF INTEREST, ANY INTERESTED PERSON MAY PETITION  
25 THE COURT PURSUANT TO SECTION 15-12-614 (1) (b) OR 15-12-713 FOR  
26 THE APPOINTMENT OF AN INDEPENDENT SPECIAL ADMINISTRATOR TO  
27 REPRESENT, TO THE EXTENT THE COURT DIRECTS, THE ESTATE'S INTERESTS



1 IN THE LITIGATION AT ESTATE EXPENSE.

2 (b) FOR PURPOSES OF THIS SUBSECTION (8), THE FACT THAT A  
3 PERSONAL REPRESENTATIVE, A PERSON WITH PRIORITY FOR APPOINTMENT  
4 AS A PERSONAL REPRESENTATIVE, A NOMINATED PERSONAL  
5 REPRESENTATIVE, OR A COURT-APPOINTED FIDUCIARY IS ALSO A  
6 SUCCESSOR OR A POTENTIAL SUCCESSOR OF THE ESTATE IS NOT, IN AND OF  
7 ITSELF, A MATERIAL CONFLICT OF INTEREST.

8 **SECTION 5.** In Colorado Revised Statutes, 15-12-705, **amend**  
9 (1); and **add** (3) as follows:

10 **15-12-705. Duty of personal representative - information to**  
11 **heirs and devisees.** (1) Not later than thirty days after appointment,  
12 every personal representative, except any special administrator, shall give  
13 information of his or her appointment to the heirs and devisees, including,  
14 if there has been no formal testacy proceeding and if the personal  
15 representative was appointed on the assumption that the decedent died  
16 intestate, the devisees in any will mentioned in the application for  
17 appointment of a personal representative. The information shall be  
18 delivered or sent by ordinary mail to each of the heirs and devisees whose  
19 address is reasonably available to the personal representative. The duty  
20 does not extend to require information to persons who have been  
21 adjudicated in a prior formal testacy proceeding to have no interest in the  
22 estate. The information shall:

23 (a) Include the name, ~~and~~ address, AND DATE OF APPOINTMENT of  
24 the personal representative;

25 (b) INCLUDE THE DATE OF DEATH OF THE DECEDENT;

26 (c) INDICATE WHETHER THE DECEDENT DIED INTESTATE OR  
27 TESTATE AND, IF THE DECEDENT DIED TESTATE, THE DATES OF THE WILL

1 AND ANY CODICILS THERETO, THE DATE OF ADMISSION TO PROBATE, AND  
2 WHETHER THE PROBATE WAS FORMAL OR INFORMAL;

3 ~~(b)~~ (d) Indicate that it is being sent to persons who have or may  
4 have some interest in the estate being administered;

5 ~~(c)~~ (e) Indicate whether bond has been filed;

6 (f) INDICATE WHETHER ADMINISTRATION IS SUPERVISED AND, IF  
7 ADMINISTRATION IS UNSUPERVISED, THAT THE COURT WILL CONSIDER  
8 ORDERING SUPERVISED ADMINISTRATION IF REQUESTED BY AN INTERESTED  
9 PERSON;

10 ~~(d)~~ (g) ~~Describe the court where~~ INDICATE THAT papers relating  
11 to the estate, INCLUDING AN INVENTORY OF ESTATE ASSETS, AS DESCRIBED  
12 IN SECTION 15-12-706, are EITHER on file WITH THE COURT OR AVAILABLE  
13 TO BE OBTAINED BY INTERESTED PERSONS FROM THE PERSONAL  
14 REPRESENTATIVE;

15 (h) INDICATE THAT INTERESTED PERSONS ARE ENTITLED TO  
16 RECEIVE AN ACCOUNTING;

17 ~~(e)~~ (i) Indicate that the surviving spouse, children under  
18 twenty-one years of age, and dependent children may be entitled to  
19 exempt property and a family allowance if a request for payment is made  
20 in the manner and within the time limits prescribed by statutes;

21 ~~(f)~~ (j) Indicate that the surviving spouse may have a right of  
22 election to take a portion of the augmented estate if a petition is filed  
23 within the time limits prescribed by statute;

24 ~~(g)~~ (k) Indicate that, because a court will not routinely review or  
25 adjudicate matters unless it is specifically requested to do so by a  
26 beneficiary, creditor, or other interested person, all interested persons,  
27 including beneficiaries and creditors, have the responsibility to protect

1 their own rights and interests in the estate in the manner provided by the  
2 provisions of this code by filing an appropriate pleading with the court by  
3 which the estate is being administered and serving it on all interested  
4 persons pursuant to section 15-10-401;

5 ~~(h)~~ (l) Indicate that all interested parties have the right to obtain  
6 information about the estate by filing a demand for notice pursuant to  
7 section 15-12-204; ~~and~~

8 ~~(i)~~ (m) Indicate that any individual who has knowledge that there  
9 is or may be an intention to use an individual's genetic material to create  
10 a child and that the birth of the child could affect the distribution of the  
11 decedent's estate should give written notice of such knowledge to the  
12 personal representative of the decedent's estate; AND

13 (n) INDICATE THAT ANY INDIVIDUAL WHO HAS KNOWLEDGE THAT  
14 THERE IS A VALID, UNREVOKED DESIGNATED BENEFICIARY AGREEMENT IN  
15 WHICH THE DECEDENT GRANTED THE RIGHT OF INTESTATE SUCCESSION  
16 SHOULD GIVE WRITTEN NOTICE OF SUCH KNOWLEDGE TO THE PERSONAL  
17 REPRESENTATIVE OF THE DECEDENT'S ESTATE.

18 (3) THE PERSONAL REPRESENTATIVE SHALL FILE WITH THE COURT  
19 A COPY OF THE INFORMATION PROVIDED AND A STATEMENT OF WHEN, TO  
20 WHOM, AND AT WHICH ADDRESS OR ADDRESSES IT WAS PROVIDED.

21 **SECTION 6. In Colorado Revised Statutes, 15-12-805, amend**  
22 **(1) (g); and add (1) (h) as follows:**

23 **15-12-805. Classification of claims. (1) The allowed claims**  
24 **against the estate of a decedent shall be paid by the personal**  
25 **representative in the following order:**

26 **(g) ~~All other claims~~ ANY CHILD SUPPORT CLAIMS OF THE**  
27 **DECEDENT THAT WERE DUE AND UNPAID AT DEATH IN ACCORDANCE WITH**

1 A VALID COURT ORDER OR AGREEMENT OF RECORD IN WHICH THE  
2 DECEDENT WAS A PARTY, AND ANY FUTURE CHILD SUPPORT OBLIGATIONS  
3 OF THE DECEDENT AS DETERMINED BY THE COURT;

4 (h) ALL OTHER CLAIMS.

5 **SECTION 7.** In Colorado Revised Statutes, 15-12-1201, **amend**  
6 **(1) introductory portion as follows:**

7 **15-12-1201. Collection of personal property by affidavit.**

8 (1) At any time ten or more days after the date of death of a decedent,  
9 any person indebted to the decedent or having possession of ANY  
10 PERSONAL PROPERTY, INCLUDING BUT NOT LIMITED TO FUNDS ON DEPOSIT  
11 AT ANY FINANCIAL INSTITUTION; tangible personal property; or an  
12 instrument evidencing a debt, obligation, stock, chose in action, or stock  
13 brand belonging to the decedent shall ~~make payment of the indebtedness~~  
14 ~~or deliver the tangible personal property or an instrument evidencing a~~  
15 ~~debt, obligation, stock, chose in action, or stock brand~~ PAY OR DELIVER  
16 SUCH PROPERTY to a person claiming to be the successor of the decedent  
17 upon being presented an affidavit made by or on behalf of the successor  
18 stating that:

19 **SECTION 8.** In Colorado Revised Statutes, 15-14-406, **amend**  
20 **(6); and repeal (7) as follows:**

21 **15-14-406. Original petition - persons under disability -**

22 **preliminaries to hearing.** ~~(6) The court may also appoint a physician,~~  
23 ~~psychologist, or other individual qualified to evaluate the alleged~~  
24 ~~impairment to conduct an examination of the respondent. WHILE A~~  
25 ~~PETITION TO ESTABLISH A CONSERVATORSHIP OR FOR ANOTHER~~  
26 ~~PROTECTIVE ORDER IS PENDING, AFTER PRELIMINARY HEARING AND~~  
27 ~~WITHOUT NOTICE TO OTHERS, THE COURT MAY ISSUE ORDERS TO PRESERVE~~

1 AND APPLY THE PROPERTY OF THE RESPONDENT AS MAY BE REQUIRED FOR  
2 THE SUPPORT OF THE RESPONDENT OR INDIVIDUALS WHO ARE IN FACT  
3 DEPENDENT UPON THE RESPONDENT. THE COURT MAY APPOINT A SPECIAL  
4 CONSERVATOR TO ASSIST IN THAT TASK.

5 (7) While a petition to establish a conservatorship or for another  
6 protective order is pending, after preliminary hearing and without notice  
7 to others, the court may issue orders to preserve and apply the property of  
8 the respondent as may be required for the support of the respondent or  
9 individuals who are in fact dependent upon the respondent. The court may  
10 appoint a special conservator to assist in that task.

11 **SECTION 9.** In Colorado Revised Statutes, add 15-14-406.5 as  
12 follows:

13 **15-14-406.5. Professional evaluation.** (1) AT OR BEFORE A  
14 HEARING UNDER THIS PART 4, THE COURT MAY ORDER A PROFESSIONAL  
15 EVALUATION IF THE RESPONDENT SO DEMANDS. IF THE COURT ORDERS THE  
16 EVALUATION, THE RESPONDENT MUST BE EXAMINED BY A PHYSICIAN,  
17 PSYCHOLOGIST, OR OTHER INDIVIDUAL APPOINTED BY THE COURT WHO IS  
18 QUALIFIED TO EVALUATE THE RESPONDENT'S ALLEGED IMPAIRMENT. THE  
19 EXAMINER SHALL PROMPTLY FILE A WRITTEN REPORT WITH THE COURT.  
20 UNLESS THE COURT DIRECTS OTHERWISE, THE REPORT MUST CONTAIN:

21 (a) A DESCRIPTION OF THE NATURE, TYPE, AND EXTENT OF THE  
22 RESPONDENT'S SPECIFIC COGNITIVE AND FUNCTIONAL LIMITATIONS, IF  
23 ANY;

24 (b) AN EVALUATION OF THE RESPONDENT'S MENTAL AND PHYSICAL  
25 CONDITION AND, IF APPROPRIATE, EDUCATIONAL POTENTIAL, ADAPTIVE  
26 BEHAVIOR, AND SOCIAL SKILLS;

27 (c) A PROGNOSIS FOR IMPROVEMENT AND A RECOMMENDATION AS

1 TO THE APPROPRIATE TREATMENT OF HABILITATION PLAN; AND  
2 (d) THE DATE OF ANY ASSESSMENT OR EXAMINATION UPON WHICH  
3 THE REPORT IS BASED.

4 **SECTION 10. In Colorado Revised Statutes, 15-14-429, amend**  
5 **(4) and (5) as follows:**

6 **15-14-429. Presentation and allowance of claims. (4) If it**  
7 **appears that the estate is likely to be exhausted before all existing claims**  
8 **are paid: the conservator shall distribute the estate in money or in kind in**  
9 **payment of claims in the following order:**

10 (a) ~~Costs and expenses of administration~~ THE CONSERVATOR MAY,  
11 WITHOUT A COURT ORDER, DISTRIBUTE THE ESTATE IN MONEY OR IN KIND  
12 IN PAYMENT OF CLAIMS IN THE FOLLOWING ORDER:

13 (I) COSTS AND EXPENSES OF ADMINISTRATION;

14 (II) CLAIMS OF THE FEDERAL OR STATE GOVERNMENT HAVING  
15 PRIORITY UNDER OTHER LAW;

16 (III) CLAIMS INCURRED BY THE CONSERVATOR FOR SUPPORT,  
17 CARE, EDUCATION, HEALTH, AND WELFARE PROVIDED TO THE PROTECTED  
18 PERSON OR INDIVIDUALS WHO ARE IN FACT DEPENDENT ON THE PROTECTED  
19 PERSON;

20 (IV) CLAIMS ARISING BEFORE THE CONSERVATORSHIP; AND

21 (V) ALL OTHER CLAIMS.

22 (b) ~~Claims of the federal or state government having priority~~  
23 ~~under other law~~ (I) AT ANY TIME DURING THE ADMINISTRATION, IF THE  
24 PAYMENT OF CLAIMS AS SET FORTH IN PARAGRAPH (a) OF THIS SUBSECTION  
25 (4) WOULD SUBSTANTIALLY DEplete THE CONSERVATORSHIP ESTATE AND  
26 LEAVE THE CONSERVATORSHIP ESTATE WITH INSUFFICIENT FUNDS TO PAY  
27 FOR THE PROTECTED PERSON'S BASIC LIVING AND HEALTH CARE EXPENSES,

1 THE CONSERVATOR MAY FILE A MOTION WITH THE COURT SEEKING  
2 PERMISSION TO WITHHOLD PAYMENT OF ALLOWED CLAIMS, BOTH THOSE  
3 EXISTING AND INCURRED AFTER THE DATE OF THE MOTION, AND PAY ONLY  
4 THE EXPENSES, CLAIMS, AND AMOUNTS REQUESTED BY THE CONSERVATOR  
5 REGARDLESS OF THE PRIORITY OF THE CLAIM, AS SET FORTH IN SAID  
6 PARAGRAPH (a).

7 (II) IF THE CONSERVATOR FILES A MOTION AS DESCRIBED IN  
8 SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), THE FACTORS TO BE  
9 CONSIDERED BY THE COURT INCLUDE, BUT ARE NOT LIMITED TO:

10 (A) THE CURRENT AND FUTURE PROJECTED CARE COSTS OF THE  
11 PROTECTED PERSON;

12 (B) THE CURRENT AND PROJECTED ASSETS OF THE PROTECTED  
13 PERSON, INCLUDING THE ASSETS OF THE CONSERVATORSHIP ESTATE;

14 (C) THE LIFE EXPECTANCY OF THE PROTECTED PERSON;

15 (D) THE CURRENT AND PROJECTED INCOME OF THE PROTECTED  
16 PERSON AND THE CONSERVATORSHIP ESTATE;

17 (E) THE PROTECTED PERSON'S ELIGIBILITY FOR BENEFITS TO COVER  
18 LIVING AND HEALTH CARE EXPENSES; AND

19 (F) WHETHER THERE ARE INDIVIDUALS WHO ARE IN FACT  
20 DEPENDENT ON THE PROTECTED PERSON.

21 (III) NOTICE OF A MOTION FILED UNDER THIS SECTION SHALL BE  
22 PROVIDED TO ALL INTERESTED PERSONS AND TO ALL CREDITORS WHOSE  
23 CLAIMS ARE AFFECTED.

24 (IV) IF ANY ORDER IS ENTERED RESTRICTING PAYMENTS ON ANY  
25 CREDITOR'S CLAIMS, THE CONSERVATOR SHALL PROVIDE INFORMATION IN  
26 THE ANNUAL REPORT REGARDING WHETHER THE ORDER RESTRICTING  
27 PAYMENT OF THE CREDITOR'S CLAIMS SHOULD BE MODIFIED.

1           ~~(c) Claims incurred by the conservator for support, care,~~  
2           ~~education, health, and welfare previously provided to the protected person~~  
3           ~~or individuals who are in fact dependent on the protected person;~~

4           ~~(d) Claims arising before the conservatorship; and~~

5           ~~(e) All other claims.~~

6           (5) UNLESS THE COURT ORDERS OTHERWISE, allowed claims within  
7           the same class shall be paid pro rata. Preference may not be given in the  
8           payment of a claim over any other claim of the same class, and a claim  
9           due and payable may not be preferred over a claim not due.

10           ==

11           **SECTION 11.** In Colorado Revised Statutes, **add** 15-16-502 as  
12 follows:

13           **15-16-502. Reimbursement for taxes.** (1) AS USED IN THIS  
14 SECTION:

15           (a) "INDEPENDENT TRUSTEE" MEANS A TRUSTEE WHO IS NOT  
16 RELATED OR SUBORDINATE TO THE SETTLOR WITHIN THE MEANING OF  
17 SECTION 672 (c) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986",  
18 AS AMENDED.

19           (b) "SETTLOR" MEANS THE GRANTOR OR ANOTHER PERSON  
20 TREATED AS THE OWNER OF ANY PORTION OF A TRUST UNDER SECTION 671  
21 OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

22           (2) AN INDEPENDENT TRUSTEE OF A TRUST, UNLESS OTHERWISE  
23 PROVIDED IN THE GOVERNING INSTRUMENT, MAY, FROM TIME TO TIME, IN  
24 THE TRUSTEE'S DISCRETION, DISTRIBUTE TO THE SETTLOR AN AMOUNT  
25 EQUAL TO ANY INCOME TAXES ON ANY PORTION OF THE TRUST'S TAXABLE  
26 INCOME FOR WHICH THE SETTLOR IS LIABLE.

27           (3) A TRUSTEE SHALL NOT EXERCISE OR PARTICIPATE IN THE



1 EXERCISE OF DISCRETION PURSUANT TO THIS SECTION THAT WOULD CAUSE  
2 THE INCLUSION OF THE TRUST ASSETS IN THE SETTLOR'S GROSS TAXABLE  
3 ESTATE FOR FEDERAL ESTATE TAX PURPOSES AT THE TIME OF EXERCISE OR  
4 IN A MANNER INCONSISTENT WITH THE QUALIFICATION OF ALL OR ANY  
5 PORTION OF THE TRUST FOR THE FEDERAL GIFT OR ESTATE TAX MARITAL  
6 DEDUCTION, TO THE EXTENT THE TRUST IS INTENDED TO QUALIFY FOR  
7 SUCH DEDUCTION.

8 (4) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO:

9 (a) ANY TRUST BY WHICH A FUTURE ESTATE IS INDEFEASIBLY  
10 VESTED IN THE UNITED STATES OR A POLITICAL SUBDIVISION THEREOF FOR  
11 EXCLUSIVELY PUBLIC PURPOSES;

12 (b) A CORPORATION ORGANIZED EXCLUSIVELY FOR RELIGIOUS,  
13 CHARITABLE, SCIENTIFIC, LITERARY, OR EDUCATIONAL PURPOSES,  
14 INCLUDING THE ENCOURAGEMENT OF ART AND THE PREVENTION OF  
15 CRUELTY TO CHILDREN OR ANIMALS, NO PART OF THE NET EARNINGS OF  
16 WHICH INURES TO THE BENEFIT OF ANY PRIVATE SHAREHOLDER OR  
17 INDIVIDUAL, AND NO SUBSTANTIAL PART OF THE ACTIVITIES OF WHICH IS  
18 CARRYING ON PROPAGANDA OR OTHERWISE ATTEMPTING TO INFLUENCE  
19 LEGISLATION;

20 (c) A TRUSTEE, OR A FRATERNAL SOCIETY, ORDER, OR  
21 ASSOCIATION OPERATING UNDER THE LODGE SYSTEM, PROVIDED THE  
22 PRINCIPAL OR INCOME OF SUCH TRUST IS TO BE USED BY SUCH TRUSTEE OR  
23 BY SUCH FRATERNAL SOCIETY, ORDER, OR ASSOCIATION EXCLUSIVELY FOR  
24 RELIGIOUS, CHARITABLE, SCIENTIFIC, LITERARY, OR EDUCATIONAL  
25 PURPOSES, OR FOR THE PREVENTION OF CRUELTY TO CHILDREN OR  
26 ANIMALS, AND NO SUBSTANTIAL PART OF THE ACTIVITIES OF SUCH  
27 TRUSTEE OR OF SUCH FRATERNAL SOCIETY, ORDER, OR ASSOCIATION IS

1 CARRYING ON PROPAGANDA OR OTHERWISE ATTEMPTING TO INFLUENCE  
2 LEGISLATION; OR

3 (d) ANY VETERANS' ORGANIZATION INCORPORATED BY AN ACT OF  
4 CONGRESS, OR OF ITS DEPARTMENT OR LOCAL CHAPTERS OR POSTS, NO  
5 PART OF THE NET EARNINGS OF WHICH INURES TO THE BENEFIT OF ANY  
6 PRIVATE SHAREHOLDER OR INDIVIDUAL.

7 (5) A CREDITOR OF THE SETTLOR OF AN IRREVOCABLE TRUST IS  
8 NOT ENTITLED TO ATTACH OR OTHERWISE REACH ANY TRUST PROPERTY  
9 DUE TO THE POWER GRANTED TO A TRUSTEE OR OTHER THIRD PARTY BY  
10 THE TERMS OF THE TRUST, COURT ORDER, AGREEMENT OF THE  
11 BENEFICIARIES, OR ANY OTHER PROVISION OF LAW, INCLUDING  
12 SUBSECTION (2) OF THIS SECTION, TO REIMBURSE THE SETTLOR OF THE  
13 TRUST AN AMOUNT FOR WHICH THE SETTLOR IS LIABLE FOR INCOME TAX  
14 ON THE TAXABLE INCOME OF THE TRUST.

15 (6) THE PROVISIONS OF THIS SECTION APPLY TO ALL TRUSTS  
16 UNLESS AN INDEPENDENT TRUSTEE OF A TRUST ELECTS OTHERWISE IN  
17 WRITING.

18 **SECTION 12.** In Colorado Revised Statutes, **add** part 6 of article  
19 16 of title 15 as follows:

20 PART 6

21 LIFE INSURANCE POLICY OWNED BY A TRUSTEE

22 **15-16-601. Life insurance policy owned by a trustee.**

23 (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND THE  
24 PROVISIONS OF THE COLORADO UNIFORM PRUDENT INVESTOR ACT,  
25 ARTICLE 1.1 OF THIS TITLE, A TRUSTEE MAY ACQUIRE OR RETAIN A LIFE  
26 INSURANCE POLICY ON THE LIFE OF A PERSON FOR WHOM THE TRUSTEE HAS  
27 AN INSURABLE INTEREST, AS DEFINED IN SECTION 15-16-501, AS A TRUST

1 ASSET. A TRUSTEE MAY CONTINUE TO OWN SUCH A LIFE INSURANCE  
2 POLICY WITHOUT LIABILITY FOR LOSS ARISING FROM THE TRUSTEE'S  
3 FAILURE TO:

4 (a) DETERMINE WHETHER THE POLICY IS OR REMAINS A PROPER  
5 INVESTMENT;

6 (b) INVESTIGATE THE FINANCIAL STRENGTH OF THE LIFE  
7 INSURANCE COMPANY;

8 (c) EXERCISE OR NOT EXERCISE ANY OPTION, RIGHT, OR PRIVILEGE  
9 AVAILABLE UNDER THE POLICY, INCLUDING FINANCING THE PAYMENT OF  
10 PREMIUMS, UNLESS THERE IS SUFFICIENT CASH OR THERE ARE OTHER  
11 READILY MARKETABLE TRUST ASSETS FROM WHICH TO PAY PREMIUMS,  
12 REGARDLESS OF WHETHER THE EXERCISE OR NONEXERCISE OF THESE  
13 POWERS RESULTS IN THE LAPSE OR TERMINATION OF THE POLICY;

14 (d) INQUIRE ABOUT OR INVESTIGATE THE HEALTH OR FINANCIAL  
15 CONDITION OF ANY INSURED UNDER THE POLICY; OR

16 (e) RETAIN THE POLICY WITHOUT REGARD TO ANY LACK OF  
17 DIVERSIFICATION OF TRUST ASSETS RESULTING FROM OWNERSHIP OF SUCH  
18 POLICY AND WITHOUT REGARD TO THE TERMS AND CONDITIONS OF THE  
19 POLICY.

20 (2) (a) THIS SECTION DOES NOT RELIEVE A TRUSTEE OF LIABILITY  
21 WITH RESPECT TO ANY LIFE INSURANCE POLICY PURCHASED FROM AN  
22 AFFILIATED COMPANY, OR WITH RESPECT TO WHICH THE TRUSTEE OR ANY  
23 AFFILIATED COMPANY OF THE TRUSTEE RECEIVES ANY COMMISSION,  
24 UNLESS EITHER:

25 (I) THE TRUSTEE HAS GIVEN WRITTEN NOTICE OF SUCH INTENDED  
26 PURCHASE TO ALL QUALIFIED BENEFICIARIES OF THE TRUST AS DEFINED IN  
27 SECTION 15-1-402 (10.5), OR TO THEIR LEGAL REPRESENTATIVES, AND

1 EITHERRECEIVES WRITTEN CONSENT TO SUCH PURCHASE FROM QUALIFIED  
2 BENEFICIARIES OR DOES NOT RECEIVE FROM A QUALIFIED BENEFICIARY A  
3 RESPONSE TO WRITTEN NOTICE BY THE TRUSTEE WITHIN THIRTY DAYS  
4 AFTER THE MAILING OF SUCH NOTICE TO THE QUALIFIED BENEFICIARY OR  
5 LEGAL REPRESENTATIVE AT HIS OR HER LAST KNOWN ADDRESS ; OR

6 (II) THE TRUST AGREEMENT CONTAINS A PROVISION THAT PERMITS  
7 PURCHASES OF LIFE INSURANCE FROM AN AFFILIATE.

8 (b) FOR PURPOSES OF THIS SECTION AN "AFFILIATED COMPANY"  
9 SHALL HAVE THE SAME MEANING AS SET FORTH IN 15 U.S.C. SEC. 80a-2 (a)  
10 (2).

11 (3) THIS SECTION APPLIES TO A TRUST ESTABLISHED BEFORE, ON,  
12 OR AFTER THE EFFECTIVE DATE OF THIS PART 6 AND TO A LIFE INSURANCE  
13 POLICY ACQUIRED, RETAINED, OR OWNED BY A TRUSTEE BEFORE, ON, OR  
14 AFTER THE EFFECTIVE DATE OF THIS PART 6.

15 (4) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, THIS  
16 SECTION DOES NOT APPLY TO ANY TRUST THAT EXPRESSLY PROVIDES THAT  
17 THIS SECTION SHALL NOT APPLY TO SUCH TRUST, OR TO ANY TRUST THAT  
18 OTHERWISE PROVIDES FOR A DIFFERENT STANDARD OF FIDUCIARY CARE OR  
19 OBLIGATION GREATER THAN THAT PROVIDED IN THIS SECTION.

20 **SECTION 13. In Colorado Revised Statutes, add part 7 to article**  
21 **16 of title 15 as follows:**

22 **PART 7**

23 **REVOCABLE TRUSTS**

24 **15-16-701. Reserved.**

25 **15-16-702. Revocation of amendment of revocable trust.**

26 **(1) UNLESS THE TERMS OF A TRUST EXPRESSLY PROVIDE THAT THE TRUST**  
27 **IS IRREVOCABLE, THE SETTLOR MAY REVOKE OR AMEND THE TRUST. THIS**

1 SUBSECTION (1) DOES NOT APPLY TO A TRUST CREATED UNDER AN  
2 INSTRUMENT EXECUTED BEFORE THE EFFECTIVE DATE OF THIS PART 7.

3 (2) UNLESS THE TERMS OF A TRUST EXPRESSLY PROVIDE  
4 OTHERWISE, IF A REVOCABLE TRUST IS CREATED OR FUNDED BY MORE  
5 THAN ONE SETTLOR:

6 (a) TO THE EXTENT THE TRUST CONSISTS OF COMMUNITY  
7 PROPERTY, THE TRUST MAY BE REVOKED BY EITHER SPOUSE ACTING  
8 ALONE, WITH REGARD TO THE PORTION OF THE TRUST PROPERTY  
9 ATTRIBUTABLE TO THAT SETTLOR'S CONTRIBUTION, BUT MAY BE AMENDED  
10 ONLY BY JOINT ACTION OF BOTH SPOUSES;

11 (b) TO THE EXTENT THE TRUST CONSISTS OF PROPERTY OTHER  
12 THAN COMMUNITY PROPERTY, EACH SETTLOR MAY REVOKE OR AMEND THE  
13 TRUST WITH REGARD TO THE PORTION OF THE TRUST PROPERTY  
14 ATTRIBUTABLE TO THAT SETTLOR'S CONTRIBUTION; AND

15 (c) UPON THE REVOCATION OR AMENDMENT OF THE TRUST BY  
16 FEWER THAN ALL OF THE SETTLORS, THE TRUSTEE SHALL PROMPTLY  
17 NOTIFY THE OTHER SETTLORS OF THE REVOCATION OR AMENDMENT.

18 (3) THE SETTLOR MAY REVOKE OR AMEND A REVOCABLE TRUST:

19 (a) BY SUBSTANTIAL COMPLIANCE WITH A METHOD PROVIDED IN  
20 THE TERMS OF THE TRUST; OR

21 (b) IF THE TERMS OF THE TRUST DO NOT PROVIDE A METHOD OR  
22 THE METHOD PROVIDED IN THE TERMS IS NOT EXPRESSLY MADE  
23 EXCLUSIVE, BY ANY OTHER METHOD MANIFESTING CLEAR AND  
24 CONVINCING EVIDENCE OF THE SETTLOR'S INTENT, WHICH MAY INCLUDE  
25 A LATER WILL OR CODICIL THAT EXPRESSLY REFERS TO THE TRUST OR  
26 SPECIFICALLY DEVISES PROPERTY THAT WOULD OTHERWISE HAVE PASSED  
27 ACCORDING TO THE TERMS OF THE TRUST.

1           (4) UPON REVOCATION OF A REVOCABLE TRUST, THE TRUSTEE  
2           SHALL DELIVER THE TRUST PROPERTY AS THE SETTLOR DIRECTS.

3           (5) A SETTLOR'S POWERS WITH RESPECT TO REVOCATION,  
4           AMENDMENT, OR DISTRIBUTION OF TRUST PROPERTY MAY BE EXERCISED  
5           BY AN AGENT UNDER A POWER OF ATTORNEY ONLY TO THE EXTENT  
6           EXPRESSLY AUTHORIZED BY THE TERMS OF THE TRUST OR THE POWER.

7           (6) UNLESS THE TERMS OF A TRUST EXPRESSLY PROVIDE  
8           OTHERWISE, OR THE POWER TO DO SO HAS BEEN EXPRESSLY GRANTED TO  
9           ANOTHER PERSON, A CONSERVATOR OF THE SETTLOR OR, IF NO  
10          CONSERVATOR HAS BEEN APPOINTED, A GUARDIAN OF THE SETTLOR, MAY  
11          EXERCISE THE SETTLOR'S POWERS WITH RESPECT TO REVOCATION,  
12          AMENDMENT, OR DISTRIBUTION OF TRUST PROPERTY, BUT ONLY WITH THE  
13          APPROVAL OF THE COURT SUPERVISING THE CONSERVATORSHIP OR  
14          GUARDIANSHIP.

15          (7) A TRUSTEE WHO DOES NOT KNOW THAT A TRUST HAS BEEN  
16          REVOKED OR AMENDED IS NOT LIABLE TO THE SETTLOR OR THE SETTLOR'S  
17          SUCCESSORS INTEREST FOR DISTRIBUTIONS MADE AND OTHER ACTIONS  
18          TAKEN ON THE ASSUMPTION THAT THE TRUST HAS NOT BEEN AMENDED OR  
19          REVOKED.

20          **15-16-703. Settlor's powers.** UNLESS THE TERMS OF THE TRUST  
21          EXPRESSLY PROVIDE OTHERWISE, WHILE A TRUST IS REVOCABLE, THE  
22          RIGHTS OF THE BENEFICIARIES ARE SUBJECT TO THE CONTROL OF, AND THE  
23          DUTIES OF THE TRUSTEE ARE OWED EXCLUSIVELY TO, THE SETTLOR.

24          **15-16-704. Limitation on action contesting validity of**  
25          **revocable trust.** (1) A PERSON MUST COMMENCE A JUDICIAL PROCEEDING  
26          TO CONTEST THE VALIDITY OF A TRUST THAT WAS REVOCABLE AT THE  
27          SETTLOR'S DEATH WITHIN THE EARLIER OF:

1           (a) THREE YEARS AFTER THE SETTLOR'S DEATH; OR

2           (b) ONE HUNDRED TWENTY DAYS AFTER THE TRUSTEE SENT THE  
3 PERSON A COPY OF THE TRUST INSTRUMENT AND A NOTICE INFORMING THE  
4 PERSON OF THE TRUST'S EXISTENCE, OF THE TRUSTEE'S NAME AND  
5 ADDRESS, AND OF THE TIME ALLOWED FOR COMMENCING A PROCEEDING.  
6 A TRUSTEE SHALL NOT BE LIABLE TO ANY PERSON FOR GIVING OR FAILING  
7 TO GIVE NOTICE UNDER THIS SECTION.

8           (c) THE APPLICABLE TIME LIMIT DESCRIBED IN THIS SUBSECTION (1)  
9 IS AN ABSOLUTE BAR THAT MAY NOT BE WAIVED OR TOLLED.

10           (2) UPON THE DEATH OF THE SETTLOR OF A TRUST THAT WAS  
11 REVOCABLE AT THE SETTLOR'S DEATH, THE TRUSTEE MAY PROCEED TO  
12 DISTRIBUTE THE TRUST PROPERTY IN ACCORDANCE WITH THE TERMS OF  
13 THE TRUST. THE TRUSTEE IS NOT SUBJECT TO LIABILITY FOR DOING SO  
14 UNLESS:

15           (a) THE TRUSTEE KNOWS OF A PENDING JUDICIAL PROCEEDING  
16 CONTESTING THE VALIDITY OF THE TRUST; OR

17           (b) A POTENTIAL CONTESTANT HAS NOTIFIED THE TRUSTEE OF A  
18 POSSIBLE JUDICIAL PROCEEDING TO CONTEST THE TRUST AND A JUDICIAL  
19 PROCEEDING IS COMMENCED WITHIN SIXTY DAYS AFTER THE CONTESTANT  
20 SENT THE NOTIFICATION.

21           (3) UNLESS A DISTRIBUTION OR PAYMENT NO LONGER CAN BE  
22 QUESTIONED BECAUSE OF ADJUDICATION, ESTOPPEL, OR LIMITATION, A  
23 BENEFICIARY OF A TRUST THAT IS DETERMINED TO HAVE BEEN INVALID, OR  
24 A DISTRIBUTEE OF PROPERTY IMPROPERLY DISTRIBUTED OR PAID, OR A  
25 CLAIMANT WHO IS IMPROPERLY PAID, IS LIABLE FOR THE RETURN OF THE  
26 PROPERTY IMPROPERLY RECEIVED AND ITS INCOME, IF ANY, SINCE THE  
27 DISTRIBUTION IF HE OR SHE HAS THE PROPERTY. IF HE OR SHE DOES NOT

1 HAVE THE PROPERTY, THEN HE OR SHE IS LIABLE FOR THE RETURN OF THE  
2 VALUE AS OF THE DATE OF HIS OR HER DISPOSITION OF THE PROPERTY  
3 IMPROPERLY RECEIVED, AND ITS INCOME AND GAIN, IF ANY RECEIVED BY  
4 HIM OR HER.

5 **SECTION 14.** In Colorado Revised Statutes, 15-10-201, amend  
6 (56); and add (6.5) as follows:

7 **15-10-201. General definitions.** Subject to additional definitions  
8 contained in the subsequent articles that are applicable to specific articles,  
9 parts, or sections, and unless the context otherwise requires, in this code:

10 (6.5) "BUSINESS TRUST" INCLUDES, BUT IS NOT LIMITED TO,  
11 MASSACHUSETTS BUSINESS TRUSTS CREATED FOR BUSINESS OR  
12 INVESTMENT PURPOSES; DELAWARE STATUTORY TRUSTS; ILLINOIS LAND  
13 TRUST; MUTUAL FUND TRUSTS; COMMON TRUST FUNDS; VOTING TRUSTS;  
14 LIQUIDATION TRUSTS; REAL ESTATE INVESTMENT TRUSTS; STRUCTURED  
15 SETTLEMENT TRUSTS; ENVIRONMENTAL REMEDIATION TRUSTS; TRUSTS  
16 FOR THE PRIMARY PURPOSE OF PAYING DEBTS, DIVIDENDS, INTEREST,  
17 SALARIES, WAGES, COMPENSATION, PROFITS, PENSIONS OR EMPLOYEE  
18 BENEFITS OF ANY KIND; AND OTHER TRUSTS WITH PURPOSES THAT ARE THE  
19 SAME OR SIMILAR TO ANY OF THE TRUSTS DESCRIBED IN THIS SUBSECTION  
20 (6.5), REGARDLESS OF WHETHER SUCH OTHER TRUSTS ARE CREATED  
21 UNDER STATUTORY OR COMMON LAW, AND REGARDLESS OF WHETHER THE  
22 BENEFICIAL INTERESTS IN SUCH OTHER TRUSTS ARE EVIDENCED BY  
23 CERTIFICATES.

24 (56) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS  
25 SUBSECTION (56):

26 (I) "Trust" includes an express trust, private or charitable, with  
27 additions thereto, wherever and however created and any amendments to



1 such trusts.

2 (II) "Trust" also includes a trust created or determined by  
3 judgment or decree under which the trust is to be administered in the  
4 manner of an express trust.

5 (b) (I) "Trust" excludes other constructive trusts and UNLESS A  
6 COURT, IN DETERMINING SUCH A TRUST, PROVIDES THAT THE TRUST IS TO  
7 BE ADMINISTERED AS AN EXPRESS TRUST.

8 (II) "TRUST" ALSO excludes resulting trusts; conservatorships;  
9 personal representatives; accounts as defined in section 15-15-201 (1);  
10 custodial arrangements pursuant to the "Colorado Uniform Transfers to  
11 Minors Act", article 50 of title 11, C.R.S.; business trusts providing for  
12 certificates to be issued to beneficiaries; common trust funds; voting  
13 trusts; security arrangements; liquidation trusts; trusts for the primary  
14 purpose of paying debts, dividends, interest, salaries, wages, profits,  
15 pensions, or employee benefits of any kind AS DEFINED IN SUBSECTION  
16 (6.5) OF THIS SECTION; and any arrangement under which a person is  
17 nominee or escrowee for another.

18 **SECTION 15.** In Colorado Revised Statutes, **amend** 15-17-101  
19 as follows:

20 **15-17-101. Time of taking effect - provisions for transition.**

21 (1) This code takes effect on July 1, 1974.

22 (2) Except as provided elsewhere in this code, INCLUDING BUT  
23 NOT LIMITED TO SECTIONS 15-11-601, 15-11-701, 15-11-1106, 15-16-702,  
24 AND 15-17-103, on the effective date of this code OR OF ANY AMENDMENT  
25 TO THIS CODE:

26 (a) The code OR THE AMENDMENT applies to ~~any wills of~~  
27 GOVERNING INSTRUMENTS EXECUTED BY decedents dying thereafter;

1 (b) The code OR THE AMENDMENT applies to any ~~estates or~~  
2 ~~proceedings whether in court or not, whether then pending or thereafter~~  
3 ~~commenced, regardless of the time of the death of decedent, or the time~~  
4 ~~of creation of any trust,~~ except to the extent that in the opinion of the  
5 court ~~in a court proceeding~~ the former law and procedure should be made  
6 applicable in a particular case in the interest of justice or because of  
7 infeasibility of application of the procedure of this code OR ANY  
8 AMENDMENT TO THIS CODE;

9 (c) Every personal representative ~~including a person administering~~  
10 ~~an estate of a minor or an incompetent,~~ OR OTHER FIDUCIARY holding an  
11 appointment on ~~that date~~ JULY 1, 1974, OR BEFORE THE EFFECTIVE DATE  
12 OF AN AMENDMENT TO THIS CODE continues to hold the appointment but  
13 has only the powers conferred by this code AND BY ANY AMENDMENT TO  
14 THIS CODE and is subject to the duties ~~and liabilities imposed with respect~~  
15 ~~to any act or omission occurring or done thereafter;~~ every trustee of a trust  
16 ~~existing on July 1, 1975, is subject to the duties and liabilities imposed by~~  
17 this code AND BY ANY AMENDMENT TO THIS CODE with respect to any act  
18 ~~or omission~~ occurring or done thereafter;

19 (d) An act done before July 1, 1974, OR BEFORE THE EFFECTIVE  
20 DATE OF AN AMENDMENT TO THIS CODE, in any proceeding ~~and any~~  
21 ~~accrued right~~ is not impaired by this code OR BY ANY AMENDMENT TO  
22 THIS CODE. If a right is acquired, extinguished, or barred upon the  
23 expiration of a prescribed period of time which has commenced to run by  
24 the provisions of any statute before July 1, 1974, OR BEFORE THE  
25 EFFECTIVE DATE OF AN AMENDMENT TO THIS CODE, the provisions OF  
26 THAT STATUTE shall remain in force with respect to that right;

27 (e) Any rule of construction or presumption provided in this code

1 OR IN ANY AMENDMENT TO THIS CODE applies to GOVERNING instruments  
2 executed ~~and multiple-party accounts opened~~ before July 1, 1974, OR  
3 BEFORE THE EFFECTIVE DATE OF AN AMENDMENT TO THIS CODE, unless  
4 there is a clear indication of a contrary intent.

5 (f) NO PROVISION OF THIS CODE OR OF ANY AMENDMENT TO THIS  
6 CODE SHALL APPLY RETROACTIVELY IF THE COURT DETERMINES THAT  
7 SUCH APPLICATION WOULD CAUSE THE PROVISIONS TO BE RETROSPECTIVE  
8 IN ITS OPERATION IN VIOLATION OF SECTION 11 OF ARTICLE II OF THE  
9 STATE CONSTITUTION; AND

10 (g) THE LAW IN EFFECT AT THE TIME OF DEATH IDENTIFIES THE  
11 HEIRS AND DETERMINES THE SHARES UNDER INTESTACY IN ACCORDANCE  
12 WITH SECTIONS 15-11-101 TO 15-11-103.

13 **SECTION 16.** In Colorado Revised Statutes, **repeal** 15-17-102.

14 **SECTION 17.** **Act subject to petition - effective date.** This act  
15 takes 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 7, 2013, if adjournment sine die is on May 8, 2013); 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 will not take effect  
21 unless approved by the people at the general election to be held in  
22 November 2014 and, in such case, will take effect on the date of the  
23 official declaration of the vote thereon by the governor.