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SENATE BILL 19-105

BY SENATOR(S) Rodriguez, Crowder, Gardner;
also REPRESENTATIVE(S) Tipper, Buentello, Cutter, Exum, Gray,
Herod, Kipp, McLachlan, Michaelson Jenet, Snyder, Titone, Becker.

CONCERNING THE "COLORADO UNIFORM DIRECTED TRUST ACT".

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

SECTION 1. In Colorado Revised Statutes, **repeal and reenact, with amendments**, part 8 of article 16 of title 15 as follows:

PART 8
COLORADO UNIFORM
DIRECTED TRUST ACT

15-16-801. Short title. THIS SHORT TITLE OF THIS PART 8 IS THE "COLORADO UNIFORM DIRECTED TRUST ACT".

15-16-802. Definitions. AS USED IN THIS PART 8, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BREACH OF TRUST" INCLUDES A VIOLATION BY A TRUST

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

DIRECTOR OR TRUSTEE OF A DUTY IMPOSED ON THAT DIRECTOR OR TRUSTEE BY THE TERMS OF THE TRUST, THIS PART 8, OR LAW OF THIS STATE OTHER THAN THIS PART 8 PERTAINING TO TRUSTS.

(2) "DIRECTED TRUST" MEANS A TRUST FOR WHICH THE TERMS OF THE TRUST GRANT A POWER OF DIRECTION.

(3) "DIRECTED TRUSTEE" MEANS A TRUSTEE THAT IS SUBJECT TO A TRUST DIRECTOR'S POWER OF DIRECTION.

(4) "PERSON" MEANS AN INDIVIDUAL, ESTATE, BUSINESS OR NONPROFIT ENTITY, PUBLIC CORPORATION, GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR OTHER LEGAL ENTITY.

(5) "POWER OF DIRECTION" MEANS A POWER OVER A TRUST GRANTED TO A PERSON BY THE TERMS OF THE TRUST TO THE EXTENT THE POWER IS EXERCISABLE WHILE THE PERSON IS NOT SERVING AS A TRUSTEE. THE TERM INCLUDES A POWER OVER THE INVESTMENT, MANAGEMENT, OR DISTRIBUTION OF TRUST PROPERTY OR OTHER MATTERS OF TRUST ADMINISTRATION. THE TERM EXCLUDES THE POWERS DESCRIBED IN SECTION 15-16-805 (2).

(6) "SETTLOR" MEANS A PERSON, INCLUDING A TESTATOR, THAT CREATES, OR CONTRIBUTES PROPERTY TO, A TRUST. IF MORE THAN ONE PERSON CREATES OR CONTRIBUTES PROPERTY TO A TRUST, EACH PERSON IS A SETTLOR OF THE PORTION OF THE TRUST PROPERTY ATTRIBUTABLE TO THAT PERSON'S CONTRIBUTION EXCEPT TO THE EXTENT ANOTHER PERSON HAS THE POWER TO REVOKE OR WITHDRAW THAT PORTION.

(7) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS, OR ANY OTHER TERRITORY OR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES.

(8) "TERMS OF A TRUST" MEANS:

(a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (8)(b) OF THIS SECTION, THE MANIFESTATION OF THE SETTLOR'S INTENT REGARDING A TRUST'S PROVISIONS AS:

(I) EXPRESSED IN THE TRUST INSTRUMENT; OR

(II) AS MAY BE ESTABLISHED BY OTHER EVIDENCE IN A JUDICIAL PROCEEDING; OR

(b) THE TRUST'S PROVISIONS AS ESTABLISHED, DETERMINED, OR AMENDED BY:

(I) A TRUSTEE OR TRUST DIRECTOR IN ACCORDANCE WITH APPLICABLE LAW;

(II) COURT ORDER;

(III) A NONJUDICIAL SETTLEMENT AGREEMENT; OR

(IV) BY ALTERNATIVE DISPUTE RESOLUTION.

(9) "TRUST DIRECTOR" MEANS A PERSON THAT IS GRANTED A POWER OF DIRECTION BY THE TERMS OF A TRUST TO THE EXTENT THE POWER IS EXERCISABLE WHILE THE PERSON IS NOT SERVING AS A TRUSTEE. THE PERSON IS A TRUST DIRECTOR WHETHER OR NOT THE TERMS OF THE TRUST REFER TO THE PERSON AS A TRUST DIRECTOR AND WHETHER OR NOT THE PERSON IS A BENEFICIARY OR SETTLOR OF THE TRUST.

(10) "TRUSTEE" INCLUDES AN ORIGINAL, ADDITIONAL, AND SUCCESSOR TRUSTEE, AND A COTRUSTEE.

(11) "WILLFUL MISCONDUCT" MEANS INTENTIONAL WRONGDOING AND NOT MERE NEGLIGENCE, GROSS NEGLIGENCE, OR RECKLESSNESS.

(12) "WRONGDOING" MEANS MALICIOUS CONDUCT OR CONDUCT DESIGNED TO DEFRAUD OR SEEK AN UNCONSCIONABLE ADVANTAGE.

15-16-803. Application - principal place of administration.

(1) THIS PART 8 APPLIES TO A TRUST, WHENEVER CREATED, THAT HAS ITS PRINCIPAL PLACE OF ADMINISTRATION IN THIS STATE, SUBJECT TO THE FOLLOWING RULES:

(a) IF THE TRUST WAS CREATED BEFORE THE EFFECTIVE DATE OF THIS PART 8, THIS PART 8, AS AMENDED IN 2019, APPLIES ONLY TO A DECISION OR

ACTION OCCURRING ON OR AFTER THE EFFECTIVE DATE OF THIS PART 8.

(b) IF THE PRINCIPAL PLACE OF ADMINISTRATION OF THE TRUST IS CHANGED TO THIS STATE ON OR AFTER THE EFFECTIVE DATE OF THIS PART 8, THIS PART 8 APPLIES ONLY TO A DECISION OR ACTION OCCURRING ON OR AFTER THE DATE OF THE CHANGE.

(2) WITHOUT PRECLUDING OTHER MEANS TO ESTABLISH A SUFFICIENT CONNECTION WITH THE DESIGNATED JURISDICTION IN A DIRECTED TRUST, TERMS OF THE TRUST THAT DESIGNATE THE PRINCIPAL PLACE OF ADMINISTRATION OF THE TRUST ARE VALID AND CONTROLLING IF:

(a) A TRUSTEE'S PRINCIPAL PLACE OF BUSINESS IS LOCATED IN OR A TRUSTEE IS A RESIDENT OF THE DESIGNATED JURISDICTION;

(b) A TRUST DIRECTOR'S PRINCIPAL PLACE OF BUSINESS IS LOCATED IN OR A TRUST DIRECTOR IS A RESIDENT OF THE DESIGNATED JURISDICTION;

(c) ALL OR PART OF THE ADMINISTRATION OCCURS IN THE DESIGNATED JURISDICTION; OR

(d) THE TRUST IS DULY REGISTERED WITH A COURT IN THE DESIGNATED JURISDICTION.

15-16-804. Common law and principles of equity. THE COMMON LAW AND PRINCIPLES OF EQUITY SUPPLEMENT THIS PART 8, EXCEPT TO THE EXTENT MODIFIED BY THIS PART 8 OR LAW OF THIS STATE OTHER THAN THIS PART 8.

15-16-805. Exclusions - definition. (1) IN THIS SECTION, "POWER OF APPOINTMENT" MEANS A POWER THAT ENABLES A PERSON ACTING IN A NONFIDUCIARY CAPACITY TO DESIGNATE A RECIPIENT OF AN OWNERSHIP INTEREST IN OR ANOTHER POWER OF APPOINTMENT OVER TRUST PROPERTY.

(2) THIS ACT DOES NOT APPLY TO A:

(a) POWER OF APPOINTMENT;

(b) POWER TO APPOINT OR REMOVE A TRUSTEE OR TRUST DIRECTOR;

(c) POWER OF A SETTLOR OVER A TRUST TO THE EXTENT THE SETTLOR HAS A POWER TO REVOKE THE TRUST;

(d) POWER OF A BENEFICIARY OVER A TRUST TO THE EXTENT THE EXERCISE OR NONEXERCISE OF THE POWER AFFECTS THE BENEFICIAL INTEREST OF:

(I) THE BENEFICIARY; OR

(II) ANOTHER BENEFICIARY REPRESENTED BY THE BENEFICIARY UNDER SECTIONS 15-5-301 TO 15-5-305 WITH RESPECT TO THE EXERCISE OR NONEXERCISE OF THE POWER;

(e) POWER OVER A TRUST IF:

(I) THE TERMS OF THE TRUST PROVIDE THAT THE POWER IS HELD IN A NONFIDUCIARY CAPACITY; AND

(II) THE POWER MUST BE HELD IN A NONFIDUCIARY CAPACITY TO ACHIEVE THE SETTLOR'S TAX OBJECTIVES UNDER THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND REGULATIONS ISSUED THEREUNDER, AS AMENDED; OR

(f) A POWER UNDER SECTION 15-5-409.5 (1)(d) TO ENFORCE THE INTENDED USE OF THE PRINCIPAL AND INCOME OF A TRUST AUTHORIZED BY SECTION 15-5-408 FOR THE CARE OF DESIGNATED DOMESTIC OR PET ANIMALS AND THE ANIMALS' OFFSPRING IN GESTATION, IF THE POWER IS HELD BY A PERSON HAVING CUSTODY OF AN ANIMAL FOR WHICH CARE IS PROVIDED BY THE TRUST OR BY A REMAINDER BENEFICIARY OF THE TRUST, UNLESS THE TERMS OF THE TRUST SPECIFICALLY PROVIDE THAT THE POWER HELD BY THE CUSTODIAN OR REMAINDER BENEFICIARY IS SUBJECT TO THIS PART 8.

(3) UNLESS THE TERMS OF A TRUST PROVIDE OTHERWISE, A POWER GRANTED TO A PERSON TO DESIGNATE A RECIPIENT OF AN OWNERSHIP INTEREST IN OR POWER OF APPOINTMENT OVER TRUST PROPERTY THAT IS EXERCISABLE WHILE THE PERSON IS NOT SERVING AS A TRUSTEE IS A POWER OF APPOINTMENT AND NOT A POWER OF DIRECTION.

15-16-806. Powers of trust director. (1) SUBJECT TO SECTION 15-16-807, THE TERMS OF A TRUST MAY GRANT A POWER OF DIRECTION TO

A TRUST DIRECTOR.

(2) UNLESS THE TERMS OF A TRUST PROVIDE OTHERWISE:

(a) A TRUST DIRECTOR MAY EXERCISE ANY FURTHER POWER APPROPRIATE TO THE EXERCISE OR NONEXERCISE OF A POWER OF DIRECTION GRANTED TO THE DIRECTOR UNDER SUBSECTION (1) OF THIS SECTION; AND

(b) TRUST DIRECTORS WITH JOINT POWERS MUST ACT BY MAJORITY DECISION.

15-16-807. Limitations on powers of trust director. (1) A TRUST DIRECTOR IS SUBJECT TO THE SAME RULES AS A TRUSTEE IN A LIKE POSITION AND UNDER SIMILAR CIRCUMSTANCES IN THE EXERCISE OR NONEXERCISE OF A POWER OF DIRECTION REGARDING:

(a) A PAYBACK PROVISION IN THE TERMS OF THE TRUST NECESSARY FOR COMPLIANCE WITH THE REIMBURSEMENT REQUIREMENTS OF MEDICAID LAW IN SECTION 1917 OF THE FEDERAL "SOCIAL SECURITY ACT", 42 U.S.C. SEC. 1396p (d)(4)(A), AS AMENDED, AND REGULATIONS ISSUED THEREUNDER, AS AMENDED; AND

(b) A CHARITABLE INTEREST IN THE TRUST, INCLUDING NOTICE REGARDING THE INTEREST TO THE ATTORNEY GENERAL.

15-16-808. Duty and liability of trust director. (1) SUBJECT TO SUBSECTION (2) OF THIS SECTION, WITH RESPECT TO A POWER OF DIRECTION OR A FURTHER POWER UNDER SECTION 15-16-806 (2)(a):

(a) A TRUST DIRECTOR HAS THE SAME FIDUCIARY DUTY AND LIABILITY IN THE EXERCISE OR NONEXERCISE OF THE POWER:

(I) IF THE POWER IS HELD INDIVIDUALLY, AS A SOLE TRUSTEE IN A LIKE POSITION AND UNDER SIMILAR CIRCUMSTANCES; OR

(II) IF THE POWER IS HELD JOINTLY WITH A TRUSTEE OR ANOTHER TRUST DIRECTOR, AS A COTRUSTEE IN A LIKE POSITION AND UNDER SIMILAR CIRCUMSTANCES; AND

(b) THE TERMS OF THE TRUST MAY VARY THE DIRECTOR'S DUTY OR

LIABILITY TO THE SAME EXTENT THE TERMS OF THE TRUST COULD VARY THE DUTY OR LIABILITY OF A TRUSTEE IN A LIKE POSITION AND UNDER SIMILAR CIRCUMSTANCES.

(2) UNLESS THE TERMS OF A TRUST PROVIDE OTHERWISE, IF A TRUST DIRECTOR IS LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED OR PERMITTED BY LAW OTHER THAN THIS PART 8 TO PROVIDE HEALTH CARE IN THE ORDINARY COURSE OF THE DIRECTOR'S BUSINESS OR PRACTICE OF A PROFESSION, TO THE EXTENT THE DIRECTOR ACTS IN THAT CAPACITY, THE DIRECTOR HAS NO DUTY OR LIABILITY UNDER THIS PART 8.

(3) THE TERMS OF A TRUST MAY IMPOSE A DUTY OR LIABILITY ON A TRUST DIRECTOR IN ADDITION TO THE DUTIES AND LIABILITIES UNDER THIS SECTION.

15-16-809. Duty and liability of directed trustee. (1) SUBJECT TO SUBSECTION (2) OF THIS SECTION, A DIRECTED TRUSTEE SHALL TAKE REASONABLE ACTION TO COMPLY WITH A TRUST DIRECTOR'S EXERCISE OR NONEXERCISE OF A POWER OF DIRECTION OR FURTHER POWER UNDER SECTION 15-16-806 (2)(a) AND THE TRUSTEE IS NOT LIABLE FOR THE ACTION.

(2) A DIRECTED TRUSTEE MUST NOT COMPLY WITH A TRUST DIRECTOR'S EXERCISE OR NONEXERCISE OF A POWER OF DIRECTION OR FURTHER POWER UNDER SECTION 15-16-806 (2)(a) TO THE EXTENT THAT BY COMPLYING THE TRUSTEE WOULD ENGAGE IN WILLFUL MISCONDUCT.

(3) AN EXERCISE OF A POWER OF DIRECTION UNDER WHICH A TRUST DIRECTOR MAY RELEASE A TRUSTEE OR ANOTHER TRUST DIRECTOR FROM LIABILITY FOR BREACH OF TRUST IS NOT EFFECTIVE IF:

(a) THE BREACH INVOLVED THE TRUSTEE'S OR OTHER DIRECTOR'S WILLFUL MISCONDUCT;

(b) THE RELEASE WAS INDUCED BY IMPROPER CONDUCT OF THE TRUSTEE OR OTHER DIRECTOR IN PROCURING THE RELEASE; OR

(c) AT THE TIME OF THE RELEASE, THE DIRECTOR DID NOT KNOW THE MATERIAL FACTS RELATING TO THE BREACH.

(4) A DIRECTED TRUSTEE THAT HAS REASONABLE DOUBT ABOUT ITS

DUTY UNDER THIS SECTION MAY PETITION THE COURT FOR INSTRUCTIONS.

(5) THE TERMS OF A TRUST MAY IMPOSE A DUTY OR LIABILITY ON A DIRECTED TRUSTEE IN ADDITION TO THE DUTIES AND LIABILITIES UNDER THIS SECTION.

15-16-810. Duty to provide information to trust director or trustee. (1) SUBJECT TO SECTION 15-16-811, A TRUSTEE SHALL PROVIDE INFORMATION TO A TRUST DIRECTOR TO THE EXTENT THE INFORMATION IS REASONABLY RELATED BOTH TO:

- (a) THE POWERS OR DUTIES OF THE TRUSTEE; AND
- (b) THE POWERS OR DUTIES OF THE DIRECTOR.

(2) SUBJECT TO SECTION 15-16-811, A TRUST DIRECTOR SHALL PROVIDE INFORMATION TO A TRUSTEE OR ANOTHER TRUST DIRECTOR TO THE EXTENT THE INFORMATION IS REASONABLY RELATED BOTH TO:

- (a) THE POWERS OR DUTIES OF THE DIRECTOR; AND
- (b) THE POWERS OR DUTIES OF THE TRUSTEE OR OTHER DIRECTOR.

(3) A TRUSTEE THAT ACTS IN RELIANCE ON INFORMATION PROVIDED BY A TRUST DIRECTOR IS NOT LIABLE FOR A BREACH OF TRUST TO THE EXTENT THE BREACH RESULTED FROM THE RELIANCE, UNLESS BY SO ACTING THE TRUSTEE ENGAGES IN WILLFUL MISCONDUCT.

(4) A TRUST DIRECTOR THAT ACTS IN RELIANCE ON INFORMATION PROVIDED BY A TRUSTEE OR ANOTHER TRUST DIRECTOR IS NOT LIABLE FOR A BREACH OF TRUST TO THE EXTENT THE BREACH RESULTED FROM THE RELIANCE, UNLESS BY SO ACTING THE TRUST DIRECTOR ENGAGES IN WILLFUL MISCONDUCT.

(5) A TRUSTEE SHALL PROVIDE A COPY OF THE TERMS OF THE TRUST TO A TRUST DIRECTOR.

15-16-811. No duty to monitor, inform, or advise. (1) UNLESS THE TERMS OF A TRUST PROVIDE OTHERWISE:

(a) A TRUSTEE DOES NOT HAVE A DUTY TO:

(I) MONITOR A TRUST DIRECTOR; OR

(II) INFORM OR GIVE ADVICE TO A SETTLOR, BENEFICIARY, TRUSTEE, OR TRUST DIRECTOR CONCERNING AN INSTANCE IN WHICH THE TRUSTEE MIGHT HAVE ACTED DIFFERENTLY THAN THE DIRECTOR; AND

(b) BY TAKING AN ACTION DESCRIBED IN SUBSECTION (1)(a) OF THIS SECTION, A TRUSTEE DOES NOT ASSUME A DUTY EXCLUDED BY SUBSECTION (1)(a) OF THIS SECTION.

(2) UNLESS THE TERMS OF A TRUST PROVIDE OTHERWISE:

(a) A TRUST DIRECTOR DOES NOT HAVE A DUTY TO:

(I) MONITOR A TRUSTEE OR ANOTHER TRUST DIRECTOR; OR

(II) INFORM OR GIVE ADVICE TO A SETTLOR, BENEFICIARY, TRUSTEE, OR ANOTHER TRUST DIRECTOR CONCERNING AN INSTANCE IN WHICH THE DIRECTOR MIGHT HAVE ACTED DIFFERENTLY THAN A TRUSTEE OR ANOTHER TRUST DIRECTOR; AND

(b) BY TAKING AN ACTION DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION, A TRUST DIRECTOR DOES NOT ASSUME THE DUTY EXCLUDED BY SUBSECTION (2)(a) OF THIS SECTION.

(3) UNLESS THE TERMS OF A TRUST PROVIDE OTHERWISE, SECTION 15-5-1012 DOES NOT APPLY TO A TRUST DIRECTOR.

15-16-812. Application to cotrustee. THE TERMS OF A TRUST MAY RELIEVE A COTRUSTEE FROM DUTY AND LIABILITY WITH RESPECT TO ANOTHER COTRUSTEE'S EXERCISE OR NONEXERCISE OF A POWER OF THE OTHER COTRUSTEE TO THE SAME EXTENT THAT IN A DIRECTED TRUST A DIRECTED TRUSTEE IS RELIEVED FROM DUTY AND LIABILITY WITH RESPECT TO A TRUST DIRECTOR'S POWER OF DIRECTION UNDER SECTIONS 15-16-809 TO 15-16-811.

15-16-813. Limitations of action against trust director. (1) AN ACTION AGAINST A TRUST DIRECTOR FOR BREACH OF TRUST MUST BE

COMMENCED WITHIN THE SAME LIMITATIONS PERIOD AS AN ACTION AGAINST A TRUSTEE FOR A SIMILAR BREACH OF TRUST AS PRESCRIBED BY SECTION 15-5-1005.

(2) A REPORT OR ACCOUNTING HAS THE SAME EFFECT ON THE LIMITATIONS PERIOD FOR AN ACTION AGAINST THE DIRECTOR THAT THE REPORT OR ACCOUNTING WOULD HAVE IF THE DIRECTOR WERE A TRUSTEE AS PRESCRIBED BY SECTION 15-5-1005.

15-16-814. Defenses in action against trust director. IN AN ACTION AGAINST A TRUST DIRECTOR FOR BREACH OF TRUST, THE DIRECTOR MAY ASSERT THE SAME DEFENSES A TRUSTEE IN A LIKE POSITION AND UNDER SIMILAR CIRCUMSTANCES COULD ASSERT IN AN ACTION FOR BREACH OF TRUST AGAINST THE TRUSTEE.

15-16-815. Jurisdiction over trust director. (1) BY ACCEPTING APPOINTMENT AS A TRUST DIRECTOR OF A TRUST SUBJECT TO THIS PART 8, THE DIRECTOR SUBMITS TO PERSONAL JURISDICTION OF THE COURTS OF THIS STATE REGARDING ANY MATTER RELATED TO A POWER OR DUTY OF THE DIRECTOR.

(2) THIS SECTION DOES NOT PRECLUDE OTHER METHODS OF OBTAINING JURISDICTION OVER A TRUST DIRECTOR.

15-16-816. Office of trust director. (1) UNLESS THE TERMS OF A TRUST PROVIDE OTHERWISE, THE RULES APPLICABLE TO A TRUSTEE APPLY TO A TRUST DIRECTOR REGARDING THE FOLLOWING MATTERS:

- (a) ACCEPTANCE UNDER SECTION 15-5-701;
- (b) GIVING OF BOND TO SECURE PERFORMANCE UNDER SECTION 15-5-702;
- (c) REASONABLE COMPENSATION UNDER SECTIONS 15-5-1004, 15-10-501 (3), AND 15-10-601;
- (d) RESIGNATION UNDER SECTION 15-5-705;
- (e) REMOVAL UNDER SECTION 15-5-706;

(f) VACANCY AND APPOINTMENT OF SUCCESSOR UNDER SECTION 15-5-704; AND

(g) THE RIGHT TO PETITION THE COURT FOR INSTRUCTIONS UNDER SECTION 15-5-201 (3).

15-16-817. Uniformity of application and construction. IN APPLYING AND CONSTRUING THIS UNIFORM ACT, CONSIDERATION MUST BE GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

15-16-818. Relation to electronic signatures in global and national commerce act. THIS PART 8 MODIFIES, LIMITS, OR SUPERSEDES THE FEDERAL "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT", 15 U.S.C. SEC. 7001 ET SEQ., BUT DOES NOT MODIFY, LIMIT, OR SUPERSEDE SECTION 101 (c) OF THAT ACT, 15 U.S.C. SEC. 7001 (c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES DESCRIBED IN SECTION 103 (b) OF THAT ACT, 15 U.S.C. SEC. 7003 (b).

SECTION 2. In Colorado Revised Statutes, 15-5-105, **amend** (2) introductory portion as follows:

15-5-105. Default and mandatory rules. (2) SUBJECT TO SECTIONS 15-16-809, 15-16-810, AND 15-16-811, the terms of a trust prevail over any provision of this code except:

SECTION 3. In Colorado Revised Statutes, 15-5-201, **amend** (3)(a) and (3)(b) as follows:

15-5-201. Role of court in administration of trust. (3) A judicial proceeding involving a trust may relate to any matter involving the trust's administration. Such matters may include, but are not limited to, proceedings involving:

(a) The appointment or removal of a trustee OR TRUST DIRECTOR;

(b) Review of a trustee's fees OR TRUST DIRECTOR'S FEES and review and settling of interim or final accountings;

SECTION 4. In Colorado Revised Statutes, 15-5-203, **amend** (1)

as follows:

15-5-203. Subject matter jurisdiction. (1) The district court or, in the city and county of Denver, the probate court, has exclusive jurisdiction of proceedings in this state brought by a trustee, TRUST DIRECTOR, or beneficiary concerning the administration of a trust.

SECTION 5. In Colorado Revised Statutes, 15-5-204, **amend** (2)(b) as follows:

15-5-204. Venue. (2) If a trust has no trustee, a judicial proceeding for the appointment of a trustee must be commenced in the following order of priority:

(b) ~~Either~~ ANY OF THE FOLLOWING:

(I) A county in which a beneficiary resides; ~~or~~

(II) A county in which the trust property, or some portion of the trust property, is located; OR

(III) A COUNTY IN WHICH A TRUST DIRECTOR RESIDES OR HAS A PRINCIPAL PLACE OF BUSINESS.

SECTION 6. In Colorado Revised Statutes, **amend** 15-5-417 as follows:

15-5-417. Combination and division of trusts. After notice to the qualified beneficiaries AND TRUST DIRECTORS, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the trust.

SECTION 7. In Colorado Revised Statutes, **amend** 15-5-603 as follows:

15-5-603. Settlor's powers. ~~Unless the terms of the trust expressly provide otherwise, while a trust is revocable, the rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.~~ (1) TO THE EXTENT A TRUST IS REVOCABLE BY A

SETTLOR, A TRUSTEE MAY FOLLOW A DIRECTION OF THE SETTLOR THAT IS CONTRARY TO THE TERMS OF THE TRUST. TO THE EXTENT A TRUST IS REVOCABLE BY A SETTLOR IN CONJUNCTION WITH A PERSON OTHER THAN A TRUSTEE OR PERSON HOLDING AN ADVERSE INTEREST, THE TRUSTEE MAY FOLLOW A DIRECTION FROM THE SETTLOR AND THE OTHER PERSON HOLDING THE POWER TO REVOKE, EVEN IF THE DIRECTION IS CONTRARY TO THE TERMS OF THE TRUST.

(2) TO THE EXTENT A TRUST IS REVOCABLE, RIGHTS OF THE BENEFICIARIES ARE SUBJECT TO THE CONTROL OF, AND THE DUTIES OF THE TRUSTEE ARE OWED EXCLUSIVELY TO, THE SETTLOR.

(3) DURING THE PERIOD THE POWER MAY BE EXERCISED, THE HOLDER OF A POWER OF WITHDRAWAL HAS THE RIGHTS OF A SETTLOR OF A REVOCABLE TRUST UNDER THIS SECTION TO THE EXTENT OF THE PROPERTY SUBJECT TO THE POWER.

SECTION 8. In Colorado Revised Statutes, 15-5-703, **amend** (3) and (7) introductory portion as follows:

15-5-703. Cotrustees. (3) SUBJECT TO SECTION 15-16-812, a cotrustee shall participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(7) SUBJECT TO SECTION 15-16-812, each trustee shall exercise reasonable care to:

SECTION 9. In Colorado Revised Statutes, 15-10-201, **amend** the introductory portion and (27) as follows:

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

(27) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, TRUST DIRECTORS, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or

protected person, which may be affected by the proceeding. It also includes persons having priority for an appointment as a personal representative and other fiduciaries representing the interested person. The meaning as it relates to particular persons may vary from time to time and ~~shall be~~ IS determined according to the particular purposes of, and matter involved in, any proceeding.

SECTION 10. In Colorado Revised Statutes, 15-10-501, **amend** (3) as follows:

15-10-501. Court powers - definitions - application.

(3) **Application.** The provisions of this part 5 ~~shall~~ apply to any fiduciary over whom a court has obtained jurisdiction, including but not limited to a personal representative, special administrator, guardian, conservator, special conservator, trustee, TRUST DIRECTOR, agent under a power of attorney, and custodian, including a custodian of assets or accounts created under the "Colorado Uniform Transfers to Minors Act", article 50 of title 11. ~~C.R.S.~~

SECTION 11. In Colorado Revised Statutes, 15-10-504, **amend** (2) and (4); and **add** (5) as follows:

15-10-504. Surcharge - contempt - sanctions against fiduciaries.

(2) **Surcharge.** (a) If a court, after a hearing, determines that a breach of fiduciary duty has occurred or an exercise of power by a fiduciary has been improper, AFTER APPLYING THE STANDARDS OF CARE APPLICABLE TO EACH FIDUCIARY IN A PROCEEDING, the court may surcharge the fiduciary for any damage or loss to the estate, beneficiaries, or interested persons. Such damages may include compensatory damages, interest, and attorney fees and costs. WHEN ALLOCATING ANY SUCH DAMAGES AMONG FIDUCIARIES, THE COURT SHALL CONSIDER THE STANDARDS OF CARE APPLICABLE TO THE FIDUCIARIES IN THE PROCEEDING.

(b) In awarding attorney fees and costs pursuant to this section, a court may consider the provisions of part 6 of this ~~article~~ ARTICLE 10 AND SHALL CONSIDER THE STANDARDS OF CARE APPLICABLE TO THE FIDUCIARIES IN THE PROCEEDING.

(4) **Sanctions.** If a court determines that a breach of fiduciary duty has occurred or an exercise of power by a fiduciary has been improper, the court, after a hearing, may order such other sanctions as the court deems

appropriate, BUT THE COURT SHALL TAKE INTO ACCOUNT THE STANDARDS OF CARE APPLICABLE TO EACH FIDUCIARY IN THE PROCEEDING.

(5) **Remedies.** IF REMEDIES ARE SOUGHT AGAINST A DIRECTED TRUSTEE FOR COMPLYING WITH THE DIRECTION OF A TRUST DIRECTOR UNDER THE "COLORADO UNIFORM DIRECTED TRUST ACT", PART 8 OF ARTICLE 16 OF THIS TITLE 15, OR COMPARABLE ARRANGEMENT CREATED UNDER THE TERMS OF A TRUST, THE COURT SHALL TAKE INTO ACCOUNT THE STANDARDS OF CARE APPLICABLE TO EACH FIDUCIARY IN THE PROCEEDING WHEN APPORTIONING DAMAGES, FEES, COSTS, OR FAULT AMONG THE FIDUCIARIES.

SECTION 12. In Colorado Revised Statutes, 15-10-601, **amend** (2)(a) as follows:

15-10-601. Definitions. As used in this part 6, unless the context otherwise requires:

(2) "Fiduciary" means:

(a) A personal representative, guardian, conservator, TRUST DIRECTOR, or trustee;

SECTION 13. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless

approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Leroy M. Garcia
PRESIDENT OF
THE SENATE

KC Becker
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO