AGENDA

Colorado Commission on Uniform State Laws

November 30, 2015, 1:00 p.m.
Committee Room: HCR 0112

1. Call to Order

2. Proposed 2016 legislative agenda
   a. Uniform Fiduciary Access to Digital Assets, LLS 16-0126
   b. Uniform Voidable Transactions Act Amendments (2014), LLS 16-0127
   c. Uniform Recognition of Substitute Decision-Making Documents Act, LLS 16-0128
   d. Revised Uniform Athlete Agents Act, LLS 16-0129
   e. Uniform Commercial Real Estate Receivership Act, LLS 16-0131
   f. Revised Uniform Residential Landlord and Tenant Act, LLS 16-0132
   g. Uniform Trust Decanting Act, LLS 16-0133
   h. Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act, LLS 16-0134

3. Election of Chairperson for 2016

4. Next CCUSL meeting

5. Other business and public comment
BILL TOPIC: "Revised Uniform Fiduciary Access To Digital Assets"

A BILL FOR AN ACT

Concerning the "Revised Uniform Fiduciary Access to Digital Assets 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 enacts the "Revised Uniform Fiduciary Access to Digital Assets Act", as amended, as Colorado law. The bill sets forth the conditions under which certain fiduciaries may access:

- The content of an electronic communication of a principal or decedent;

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.
A catalog of electronic communications sent or received by a principal or decedent; and

Any other digital asset in which a principal has a right or interest or in which a decedent had a right or interest at death.

As to tangible personal property capable of receiving, storing, processing, or sending a digital asset, a fiduciary with authority over the property of a decedent, protected person, principal, or settlor may access the property and any digital asset stored in it and is an authorized user for purposes of computer fraud and unauthorized computer access laws.

A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good-faith compliance with the provisions of the bill.

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

SECTION 1. In Colorado Revised Statutes, add part 15 to article 1 of title 15 as follows:

PART 15

REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

15-1-1501. Short title. This part 15 may be cited as the "REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT".

15-1-1502. Definitions. In this part 15:

(1) "ACCOUNT" MEANS AN ARRANGEMENT UNDER A TERMS-OF-SERVICE AGREEMENT IN WHICH A CUSTODIAN CARRIES, MAINTAINS, PROCESSES, RECEIVES, OR STORES A DIGITAL ASSET OF THE USER OR PROVIDES GOODS OR SERVICES TO THE USER.

(2) "AGENT" MEANS AN ATTORNEY-IN-FACT GRANTED AUTHORITY UNDER A DURABLE OR NONDURABLE POWER OF ATTORNEY.

(3) "CARRIES" MEANS ENGAGES IN THE TRANSMISSION OF AN ELECTRONIC COMMUNICATION.

(4) "CATALOGUE OF ELECTRONIC COMMUNICATIONS" MEANS
INFORMATION THAT IDENTIFIES EACH PERSON WITH WHICH A USER HAS
HAD AN ELECTRONIC COMMUNICATION, THE TIME AND DATE OF THE
COMMUNICATION, AND THE ELECTRONIC ADDRESS OF THE PERSON.

(5) "Conservator" means a person appointed by a court to
manage the estate of a living individual. The term includes a
limited conservator.

(6) "Content of an electronic communication" means
information concerning the substance or meaning of the
communication which:

(a) Has been sent or received by a user;

(b) Is in electronic storage by a custodian providing an
electronic-communication service to the public or is carried or
maintained by a custodian providing a remote-computing service
to the public; and

(c) Is not readily accessible to the public.

(7) "Court" means the district court, except in the city
and county of Denver where it is the probate court.

(8) "Custodian" means a person that carries, maintains,
processes, receives, or stores a digital asset of a user.

(9) "Designated recipient" means a person chosen by a user
using an on-line tool to administer digital assets of the user.

(10) "Digital asset" means an electronic record in which
an individual has a right or interest. The term does not include
an underlying asset or liability unless the asset or liability is
itself an electronic record.

(11) "Electronic" means relating to technology having
electrical, digital, magnetic, wireless, optical,
ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

(12) "Electronic communication" has the meaning set forth in 18 U.S.C. sec. 2510(12), as amended.

(13) "Electronic-communication service" means a custodian that provides to a user the ability to send or receive an electronic communication.

(14) "Fiduciary" means an original, additional, or successor personal representative, conservator, agent, or trustee.

(15) "Information" means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.

(16) "On-line tool" means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

(17) "Person" means an individual; estate; business or nonprofit entity; public corporation; government or governmental subdivision, agency, or instrumentality; or other legal entity.

(18) "Personal representative" means an executor, administrator, special administrator, or person that performs substantially the same function under law of this state other than this part 15.

(19) "Power of attorney" means a record that grants an agent authority to act in the place of a principal.
(20) "Principal" means an individual who grants authority to an agent in a power of attorney.

(21) "Protected person" means an individual for whom a conservator has been appointed. The term includes an individual for whom an application for the appointment of a conservator is pending.

(22) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) "Remote-computing service" means a custodian that provides to a user computer-processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. sec. 2510(14), as amended.

(24) "Terms-of-service agreement" means an agreement that controls the relationship between a user and a custodian.

(25) "Trustee" means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. The term includes a successor trustee.

(26) "User" means a person that has an account with a custodian.

(27) "Will" includes a codicil, testamentary instrument that only appoints an executor, and instrument that revokes or revises a testamentary instrument.

15-1-1503. Applicability. (1) This part 15 applies to:

(a) A fiduciary acting under a will or power of attorney executed before, on, or after the effective date of this part 15;
(b) A PERSONAL REPRESENTATIVE ACTING FOR A DECEDED WHO DIED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS PART 15;
(c) A CONSERVATORSHIP PROCEEDING COMMENCED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS PART 15; AND
(d) A TRUSTEE ACTING UNDER A TRUST CREATED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS PART 15.

(2) This Part 15 applies to a custodian if the user resides in this state or resided in this state at the time of the user’s death.

(3) This Part 15 does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer’s business.

15-1-1504. User direction for disclosure of digital assets. (1) A user may use an on-line tool to direct the custodian to disclose or to not disclose some or all of the user’s digital assets, including the content of electronic communications. If the on-line tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an on-line tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record.

(2) If a user has not used an on-line tool to give direction under subsection (1) of this section or if the custodian has not provided an on-line tool, the user may allow or prohibit in a will, trust, power of attorney, or other record, disclosure to a fiduciary of some or all of the user’s digital assets, including the content of electronic communications sent or received by the user.

(3) A user’s direction under subsection (1) or (2) of this
SECTION OVERRIDES A CONTRARY PROVISION IN A TERMS-OF-SERVICE AGREEMENT THAT DOES NOT REQUIRE THE USER TO ACT AFFIRMATIVELY AND DISTINCTLY FROM THE USER'S ASSENT TO THE TERMS OF SERVICE.

15-1-1505. Terms-of-service agreement. (1) This part 15 does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

(2) This part 15 does not give a fiduciary any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary acts or represents.

(3) A fiduciary's access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not provided direction under section 15-1-1504.

15-1-1506. Procedure for disclosing digital assets. (1) When disclosing digital assets of a user under this part 15, the custodian may at its sole discretion:

(a) Grant a fiduciary or designated recipient full access to the user's account;

(b) Grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

(c) Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.
(2) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this part 15.

(3) A custodian need not disclose under this part 15 a digital asset deleted by a user.

(4) If a user directs or a fiduciary requests a custodian to disclose under this part 15 some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

(a) a subset limited by date of the user's digital assets;
(b) all of the user's digital assets to the fiduciary or designated recipient;
(c) none of the user's digital assets; or
(d) all of the user's digital assets to the court for review in camera.

15-1-1507. Disclosure of content of electronic communications of deceased user. (1) If a deceased user consented or a court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives the custodian:

(a) a written request for disclosure in physical or electronic form;
(b) A CERTIFIED COPY OF THE DEATH CERTIFICATE OF THE USER;
(c) A CERTIFIED COPY OF THE LETTER OF APPOINTMENT OF THE
REPRESENTATIVE OR A SMALL-ESTATE AFFIDAVIT OR COURT ORDER;
(d) UNLESS THE USER PROVIDED DIRECTION USING AN ON-LINE
TOOL, A COPY OF THE USER'S WILL, TRUST, POWER OF ATTORNEY, OR
OTHER RECORD EVIDENCING THE USER'S CONSENT TO DISCLOSURE OF THE
CONTENT OF ELECTRONIC COMMUNICATIONS; AND
(e) IF REQUESTED BY THE CUSTODIAN:
   (I) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE
SUBSCRIBER OR ACCOUNT IDENTIFIER ASSIGNED BY THE CUSTODIAN TO
IDENTIFY THE USER'S ACCOUNT;
   (II) EVIDENCE LINKING THE ACCOUNT TO THE USER; OR
   (III) A FINDING BY THE COURT THAT:
      (A) THE USER HAD A SPECIFIC ACCOUNT WITH THE CUSTODIAN,
IDENTIFIABLE BY THE INFORMATION SPECIFIED IN SUBPARAGRAPH (I) OF
THIS PARAGRAPH (e);
      (B) DISCLOSURE OF THE CONTENT OF ELECTRONIC
COMMUNICATIONS OF THE USER WOULD NOT VIOLATE 18 U.S.C. SEC. 2701,
ET SEQ., AS AMENDED; 47 U.S.C. SEC. 222, AS AMENDED; OR OTHER
APPLICABLE LAW;
      (C) UNLESS THE USER PROVIDED DIRECTION USING AN ON-LINE
TOOL, THE USER CONSENTED TO DISCLOSURE OF THE CONTENT OF
Electronic Communications; OR
      (D) DISCLOSURE OF THE CONTENT OF ELECTRONIC
COMMUNICATIONS OF THE USER IS REASONABLY NECESSARY FOR
ADMINISTRATION OF THE ESTATE.

15-1-1508. Disclosure of other digital assets of deceased user.
(1) Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user, if the representative gives the custodian:

(a) A written request for disclosure in physical or electronic form;

(b) A certified copy of the death certificate of the user;

(c) A certified copy of the letter of appointment of the representative or a small-estate affidavit or court order; and

(d) If requested by the custodian:

(I) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(II) Evidence linking the account to the user;

(III) An affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or

(IV) A finding by the court that:

(A) The user had a specific account with the custodian, identifiable by the information specified in subparagraph (I) of this paragraph (d); or

(B) Disclosure of the user's digital assets is reasonably necessary for administration of the estate.

15-1-1509. Disclosure of content of electronic communications
of principal. (1) To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian:

(a) A written request for disclosure in physical or electronic form;
(b) An original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;
(c) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and
(d) If requested by the custodian:
   (I) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or
   (II) Evidence linking the account to the principal.

15-1-1510. Disclosure of other digital assets of principal.

(1) Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:
(a) A written request for disclosure in physical or electronic form;

(b) An original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;

(c) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(d) If requested by the custodian:

(I) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(II) Evidence linking the account to the principal.

15-1-1511. Disclosure of digital assets held in trust when trustee is original user. Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

15-1-1512. Disclosure of contents of electronic communications held in trust when trustee not original user.

(1) Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the
TRUSTEE GIVES THE CUSTODIAN:

(a) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR ELECTRONIC FORM;

(b) A CERTIFIED COPY OF THE TRUST INSTRUMENT OR A REGISTRATION OF THE TRUST UNDER PART 1 OF ARTICLE 16 OF THIS TITLE THAT INCLUDES CONSENT TO DISCLOSURE OF THE CONTENT OF ELECTRONIC COMMUNICATIONS TO THE TRUSTEE;

(c) A CERTIFICATION BY THE TRUSTEE, UNDER PENALTY OF PERJURY, THAT THE TRUST EXISTS AND THE TRUSTEE IS A CURRENTLY ACTING TRUSTEE OF THE TRUST; AND

(d) IF REQUESTED BY THE CUSTODIAN:

(I) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE SUBSCRIBER OR ACCOUNT IDENTIFIER ASSIGNED BY THE CUSTODIAN TO IDENTIFY THE TRUST’S ACCOUNT; OR

(II) EVIDENCE LINKING THE ACCOUNT TO THE TRUST.

15-1-1513. Disclosure of other digital assets held in trust when trustee not original user. (1) UNLESS OTHERWISE ORDERED BY THE COURT, DIRECTED BY THE USER, OR PROVIDED IN A TRUST, A CUSTODIAN SHALL DISCLOSE, TO A TRUSTEE THAT IS NOT AN ORIGINAL USER OF AN ACCOUNT, A CATALOGUE OF ELECTRONIC COMMUNICATIONS SENT OR RECEIVED BY AN ORIGINAL OR SUCCESSOR USER AND STORED, CARRIED, OR MAINTAINED BY THE CUSTODIAN IN AN ACCOUNT OF THE TRUST AND ANY DIGITAL ASSETS, OTHER THAN THE CONTENT OF ELECTRONIC COMMUNICATIONS, IN WHICH THE TRUST HAS A RIGHT OR INTEREST IF THE TRUSTEE GIVES THE CUSTODIAN:

(a) A WRITTEN REQUEST FOR DISCLOSURE IN PHYSICAL OR ELECTRONIC FORM;
(b) A certified copy of the trust instrument or a registration of the trust under Part 1 of Article 16 of this title;
(c) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and
(d) If requested by the custodian:
(1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or
(II) Evidence linking the account to the trust.

15-1-1514. Disclosure of digital assets to conservator of protected person. (1) After an opportunity for a hearing under Article 14 of this title, the court may grant a conservator access to the digital assets of a protected person.
(2) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a conservator the catalogue of electronic communications sent or received by a protected person and any digital assets, other than the content of electronic communications, in which the protected person has a right or interest if the conservator gives the custodian:
(a) A written request for disclosure in physical or electronic form;
(b) A certified copy of the court order that gives the conservator authority over the digital assets of the protected person; and
(c) If requested by the custodian:
(I) A number, username, address, or other unique
SUBSCRIBER OR ACCOUNT IDENTIFIER ASSIGNED BY THE CUSTODIAN TO 
IDENTIFY THE ACCOUNT OF THE PROTECTED PERSON; OR 

(II) EVIDENCE LINKING THE ACCOUNT TO THE PROTECTED PERSON. 

(3) A CONSERVATOR WITH GENERAL AUTHORITY TO MANAGE THE 
ASSETS OF A PROTECTED PERSON MAY REQUEST A CUSTODIAN OF THE 
DIGITAL ASSETS OF THE PROTECTED PERSON TO SUSPEND OR TERMINATE 
AN ACCOUNT OF THE PROTECTED PERSON FOR GOOD CAUSE. A REQUEST 
MADE UNDER THIS SECTION MUST BE ACCOMPANIED BY A CERTIFIED COPY 
OF THE COURT ORDER GIVING THE CONSERVATOR AUTHORITY OVER THE 
PROTECTED PERSON'S PROPERTY. 

15-1-1515. Fiduciary duty and authority. (1) The legal 
duties imposed on a fiduciary charged with managing tangible 
property apply to the management of digital assets, including: 

(a) The duty of care; 

(b) The duty of loyalty; and 

(c) The duty of confidentiality. 

(2) A FIDUCIARY'S AUTHORITY WITH RESPECT TO A DIGITAL ASSET 
of a user: 

(a) Except as otherwise provided in section 15-1-1504, is 
subject to the applicable terms of service; 

(b) Is subject to other applicable law, including copyright 
law; 

(c) Is limited by the scope of the fiduciary's duties; and 

(d) May not be used to impersonate the user. 

(3) A FIDUCIARY WITH AUTHORITY OVER THE PROPERTY OF A 
DECEDENT, PROTECTED PERSON, PRINCIPAL, OR SETTLOR HAS THE RIGHT 
to access any digital asset in which the decedent, protected
PERSON, PRINCIPAL, OR SETTLOR HAD A RIGHT OR INTEREST AND THAT IS
NOT HELD BY A CUSTODIAN OR SUBJECT TO A TERMS-OF-SERVICE
AGREEMENT.

(4) A FIDUCIARY ACTING WITHIN THE SCOPE OF THE FIDUCIARY'S
DUTIES IS AN AUTHORIZED USER OF THE PROPERTY OF THE DECEdent,
PROTECTED PERSON, PRINCIPAL, OR SETTLOR FOR THE PURPOSE OF
APPLICABLE COMPUTER-FRAUD AND UNAUTHORIZED-COMPUTER-ACCESS
LAWS, INCLUDING ARTICLE 5.5 OF TITLE 18, C.R.S.

(5) A FIDUCIARY WITH AUTHORITY OVER THE TANGIBLE, PERSONAL
PROPERTY OF A DECEdent, PROTECTED PERSON, PRINCIPAL, OR SETTLOR:
(a) HAS THE RIGHT TO ACCESS THE PROPERTY AND ANY DIGITAL
ASSET STORED IN IT; AND
(b) IS AN AUTHORIZED USER FOR THE PURPOSE OF
COMPUTER-FRAUD AND UNAUTHORIZED-COMPUTER-ACCESS LAWS,
INCLUDING ARTICLE 5.5 OF TITLE 18, C.R.S.

(6) A CUSTODIAN MAY DISCLOSE INFORMATION IN AN ACCOUNT TO
A FIDUCIARY OF THE USER WHEN THE INFORMATION IS REQUIRED TO
TERMINATE AN ACCOUNT USED TO ACCESS DIGITAL ASSETS LICENSED TO
THE USER.

(7) A FIDUCIARY OF A USER MAY REQUEST A CUSTODIAN TO
TERMINATE THE USER'S ACCOUNT. A REQUEST FOR TERMINATION MUST BE
IN WRITING, IN EITHER PHYSICAL OR ELECTRONIC FORM, AND
ACCOMPANIED BY:
(a) IF THE USER IS DECEASED, A CERTIFIED COPY OF THE DEATH
CERTIFICATE OF THE USER;
(b) A CERTIFIED COPY OF THE LETTER OF APPOINTMENT OF THE
REPRESENTATIVE OR A SMALL-ESTATE AFFIDAVIT OR COURT ORDER,
COURT ORDER, POWER OF ATTORNEY, OR TRUST GIVING THE FIDUCIARY
AUTHORITY OVER THE ACCOUNT; AND

(c) IF REQUESTED BY THE CUSTODIAN:

(I) A NUMBER, USERNAME, ADDRESS, OR OTHER UNIQUE
SUBSCRIBER OR ACCOUNT IDENTIFIER ASSIGNED BY THE CUSTODIAN TO
IDENTIFY THE USER’S ACCOUNT;

(II) EVIDENCE LINKING THE ACCOUNT TO THE USER; OR

(III) A FINDING BY THE COURT THAT THE USER HAD A SPECIFIC
ACCOUNT WITH THE CUSTODIAN, IDENTIFIABLE BY THE INFORMATION
SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (c).

15-1-1516. Custodian compliance and immunity. (1) NOT
LATER THAN SIXTY DAYS AFTER RECEIPT OF THE INFORMATION REQUIRED
UNDER SECTIONS 15-1-1507 TO 15-1-1514, A CUSTODIAN SHALL COMPLY
WITH A REQUEST UNDER THIS PART 15 FROM A FIDUCIARY OR DESIGNATED
RECIPIENT TO DISCLOSE DIGITAL ASSETS OR TERMINATE AN ACCOUNT. IF
THE CUSTODIAN FAILS TO COMPLY, THE FIDUCIARY OR DESIGNATED
RECIPIENT MAY APPLY TO THE COURT FOR AN ORDER DIRECTING
COMPLIANCE.

(2) AN ORDER UNDER SUBSECTION (1) OF THIS SECTION DIRECTING
COMPLIANCE MUST CONTAIN A FINDING THAT COMPLIANCE IS NOT IN
VIOLATION OF 18 U.S.C. SEC. 2702, AS AMENDED.

(3) A CUSTODIAN MAY NOTIFY THE USER THAT A REQUEST FOR
DISCLOSURE OR TO TERMINATE AN ACCOUNT WAS MADE UNDER THIS PART
15.

(4) A CUSTODIAN MAY DENY A REQUEST UNDER THIS PART 15
FROM A FIDUCIARY OR DESIGNATED RECIPIENT FOR DISCLOSURE OF
DIGITAL ASSETS OR TO TERMINATE AN ACCOUNT IF THE CUSTODIAN IS
1 Aware of any lawful access to the account following the receipt of the fiduciary's request.

2 (5) This Part 15 does not limit a custodian's ability to obtain, or to require a fiduciary or designated recipient requesting disclosure or termination under this Part 15 to obtain, a court order that:

3 (a) Specifies that an account belongs to the protected person or principal;

4 (b) Specifies that there is sufficient consent from the protected person or principal to support the requested disclosure; and

5 (c) Contains a finding required by law other than this Part 15.

6 (6) A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this Part 15.

15-1-1517. 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.

SECTION 2. Inclusion of official comments. The revisor shall include in the publication of the "Revised Uniform Fiduciary Access to Digital assets Act", as nonstatutory matter, following each section of the part, the full text of the official comments to that section contained in the official volume containing the 2015 official text of "Revised Uniform Fiduciary Access to Digital Assets Act" issued by the Uniform Law Commission, with any changes in the official comments or Colorado comments to correspond to Colorado changes in the uniform act. The revisor of statutes shall prepare the comments for approval by the committee on legal services for publication.

<Does the Commission want a safety clause or the 90-day petition language?>
A BILL FOR AN ACT

Concerning the enactment of amendments to the "Colorado Uniform Fraudulent Transfer Act" recommended by the Uniform Law Commission, and, in connection therewith, changing the name of the "Colorado Uniform Fraudulent Transfer Act" to the "Colorado Uniform Voidable Transactions 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. In 2014 the

Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.
The uniform law commission approved a set of amendments to the "Colorado Uniform Fraudulent Transfer Act" (act). The amendments changed the title of the act to the "Colorado Uniform Voidable Transactions Act". The amendment project was instituted to address a small number of narrowly defined issues and was not a comprehensive revision. The principal features of the amendments are:

- **Choice of law.** The amendments add a new provision that sets forth a choice of law rule applicable to claims for relief of the nature governed by the act.

- **Evidentiary matters.** New provisions add uniform rules allocating the burden of proof and defining the standard of proof with respect to claims for relief and defenses under the act.

- **Deletion of the special definition of "insolvency" for partnerships.** The act as originally written set forth a special definition of "insolvency" applicable to partnerships. The amendments delete the original language with the result that the general definition of insolvency now applies to partnerships. One reason for this change is that the original provision gave a partnership full credit for the net worth of each of its general partners. That makes sense only if each general partner is liable for all debts of the partnership, but such is not necessarily the case under modern partnership statutes. A more fundamental reason is that the general definition of insolvency does not credit a nonpartnership debtor with any part of the net worth of its guarantors. To the extent that a general partner is liable for the debts of the partnership, that liability is analogous to that of a guarantor. There is no good reason to define insolvency differently for a partnership debtor than for a nonpartnership debtor whose debts are guaranteed by contract.

- **Defenses.** The amendments refine in relatively minor respects several provisions relating to defenses available to a transferee or obligee as follows:
  - As originally written, the act created a complete defense to an action for a fraudulent transfer (which renders voidable a transfer made or obligation incurred with actual intent to hinder, delay, or defraud any creditor of the debtor) if the transferee or obligee takes in good faith and for a reasonably equivalent value. The amendments add to the act the further requirement that the reasonably equivalent value must be given to the debtor.
  - The act created, in a provision derived from the
federal "Bankruptcy Code", a defense for a subsequent transferee (that is, a transferee other than the first transferee) that takes in good faith and for value, and for any subsequent good-faith transferee from a person. The amendments clarify the meaning of the defense by rewording it to follow more closely the wording of the federal "Bankruptcy Code", which is substantially unchanged as of 2014. Among other things, the amendments make clear that the defense applies to recovery of or from the transferred property or its proceeds, by levy or otherwise, as well as to an action for a money judgment.

The act as originally written created a defense to an action for a fraudulent transfer or to avoid a transfer if the transfer results from enforcement of a security interest in compliance with the secured transactions provisions of the "Uniform Commercial Code". The amendments exclude from that defense acceptance of collateral in full or partial satisfaction of the obligation it secures (a remedy sometimes referred to as "strict foreclosure").

- **Series organizations.** A new provision of the act provides that each "protected series" of a "series organization" is to be treated as a person for purposes of the act only, even if it is not treated as a person for other purposes. This change responds to the emergence of the series organization as a significant form of business organization and the need to recognize this form of business organization only for purposes of this act.

- **Medium neutrality.** In order to accommodate modern technology, the references in the act to a "writing" have been replaced with "record" and related changes have been made.

- **Style.** The amendments make a number of stylistic changes that are not intended to change the meaning of the act. For example, the amended act consistently uses the word "voidable" to denote a transfer or obligation for which the act provides a remedy. As originally written, the act sometimes inconsistently used the word "fraudulent". No change in meaning is intended. Likewise, the retitling of the act is not intended to change its meaning.

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1  *Be it enacted by the General Assembly of the State of Colorado:*
SECTION 1. In Colorado Revised Statutes, amend 38-8-101 as follows:

38-8-101. Short title. THE SHORT TITLE OF this article, shall be known and may be WHICH WAS FORMERLY cited as the "Colorado Uniform Fraudulent Transfer Act", IS THE "COLORADO UNIFORM VOIDABLE TRANSACTIONS ACT".

SECTION 2. In Colorado Revised Statutes, 38-8-102, amend (1) (a) introductory portion, (1) (a) (II), (1) (b) introductory portion, (1) (b) (I), (1) (d), (3), and (10); and add (7.5), (9.5), (11.5), and (12.5) as follows:

38-8-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Affiliate" means:

(a) A person who THAT directly or indirectly owns, controls, or holds with power to vote twenty percent or more of the outstanding voting securities of the debtor, other than a person who THAT holds the securities:

   (II) Solely to secure a debt, if the person has not IN FACT exercised the power to vote;

(b) A corporation, twenty percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who THAT directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person who THAT holds the securities:

   (I) As a fiduciary or agent without sole DISCRETIONARY power to vote the securities; or
A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(3) "Claim", except as used in "CLAIM FOR RELIEF", means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(7.5) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(9.5) "Organization" means a person other than an individual.

(10) "Person" means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust or any other public corporation, government or governmental subdivision, agency, or instrumentality, or other legal or commercial entity.

(11.5) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(12.5) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound, or process.

SECTION 3. In Colorado Revised Statutes, 38-8-103, amend (1) and (2); and repeal (3) as follows:
38-8-103. Insolvency. (1) A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than all the sum of the debtor's assets. At a fair valuation.

(2) A debtor who is generally not paying his debts as they become due, other than as a result of a bona fide dispute, is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

(3) A partnership is insolvent under subsection (1) of this section if the sum of the partnership's debts is greater than the aggregate of all of the partnership's assets, at a fair valuation, and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

SECTION 4. In Colorado Revised Statutes, 38-8-104, amend (2) as follows:

38-8-104. Value. (2) For the purposes of sections 38-8-105, 38-8-105 (1) (b) and 38-8-106, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive sale, foreclosing on assets subject to a lien, or pursuant to the execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

SECTION 5. In Colorado Revised Statutes, 38-8-105, amend (1) introductory portion, (1) (b) (II), and (2) (k); and add (3) as follows:

38-8-105. Transfer or obligation voidable as to present or future creditor. (1) A transfer made or obligation incurred by a debtor
is fraudulent VOIDABLE as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(II) Intended to incur, or believed or reasonably should have believed that the DEBTOR would incur, debts beyond his ability to pay as they became due.

(2) In determining actual intent under paragraph (a) of subsection (1) of this section, consideration may be given, among other factors, to whether:

(k) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

(3) A CREDITOR MAKING A CLAIM FOR RELIEF UNDER SUBSECTION (1) OF THIS SECTION HAS THE BURDEN OF PROVING THE ELEMENTS OF THE CLAIM FOR RELIEF BY A PREPONDERANCE OF THE EVIDENCE.

SECTION 6. In Colorado Revised Statutes, amend 38-8-106 as follows:

38-8-106. Transfer or obligation voidable as to present creditor. (1) A transfer made or obligation incurred by a debtor is fraudulent VOIDABLE as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(2) A transfer made by a debtor is fraudulent VOIDABLE as to a
creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(3) Subject to section 38-8-103 (2), a creditor making a claim for relief under subsection (1) or (2) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

SECTION 7. In Colorado Revised Statutes, 38-8-107, amend (1) (a) (I), (4), and (5) (b) as follows:

38-8-107. When transfer is made or obligation is incurred.

(1) For the purposes of this article:

(a) A transfer is made:

(I) With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(4) A transfer is not made until the debtor has acquired rights in the asset transferred; AND

(5) An obligation is incurred:

(b) If evidenced by a writing, when the writing executed record signed by the obligor is delivered to or for the benefit of the obligee.

SECTION 8. In Colorado Revised Statutes, 38-8-108, amend (1) (b) and (1) (c) as follows:
38-8-108. Remedies of creditor. (1) In an action for relief against a transfer or obligation under this article, a creditor, subject to the limitations in section 38-8-109, may obtain:

(b) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by the Colorado rules of civil procedure IF AVAILABLE UNDER APPLICABLE LAW;

(c) With respect to a transfer made or obligation incurred that is fraudulent VOIDABLE under section 38-8-105 (1) (a), a judgment for one and one-half the value of the asset transferred or for one and one-half the amount necessary to satisfy the creditor's claim, whichever is less, together with the creditor's actual costs; except that any judgment entered against a person under this paragraph (c) is in lieu of, not in addition to, a judgment against the same person under section 38-8-109 (2). No judgment may be entered pursuant to this paragraph (c) against a person other than the debtor unless that person also acts with wrongful intent as defined in section 38-8-105 (1) (a); otherwise, judgment for money damages against a person other than the debtor may be entered only as provided in section 38-8-109. No judgment may be entered under this paragraph (c) unless a court of competent jurisdiction enters or has entered a judgment or order establishing the validity of the creditor's claim against the debtor.

SECTION 9. In Colorado Revised Statutes, 38-8-109, amend (1), (2), (4) (a), (4) (b), (5) (b), and (6) (a); and add (7) and (8) as follows:

38-8-109. Defenses, liability, and protection of transferee or obligee. (1) A transfer or obligation is not voidable under section 38-8-105 (1) (a) against a person who THAT took in good faith and for a
reasonably equivalent value GIVEN THE DEBTOR or against any subsequent transferee or obligee.

(2) TO THE EXTENT A TRANSFER IS AVOIDABLE IN AN ACTION BY A CREDITOR UNDER SECTION 38-8-108 (1) (a), THE FOLLOWING RULES APPLY:

(a) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under section 38-8-108 (1) (a); the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (3) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(a) (I) The first transferee of the asset or the person for whose benefit the transfer was made; or

(b) (II) Any subsequent AN IMMEDIATE OR MEDIATE transferee OF THE FIRST TRANSFEREE, other than:

(A) A good-faith transferee or obligee who THAT took for value; or

(B) AN IMMEDIATE OR MEDIATE GOOD-FAITH TRANSFEREE OF A PERSON DESCRIBED IN SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (II).

(b) RECOVERY PURSUANT TO SECTION 38-8-108 (1) (a) OR (2) OF THIS SECTION OR FROM THE ASSET TRANSFERRED OR ITS PROCEEDS, BY LEVY OR OTHERWISE, IS AVAILABLE ONLY AGAINST A PERSON DESCRIBED IN SUBPARAGRAPH (I) OR (II) OF PARAGRAPH (a) OF THIS SUBSECTION (2).

(4) Notwithstanding voidability of a transfer or an obligation under this article, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(a) A lien on or a right to retain any AN interest in the asset
transferred;

(b) Enforcement of any obligation incurred; or

(5) A transfer is not voidable under section 38-8-105 (1) (b) or 38-8-106 if the transfer results from:

(b) Enforcement of a security interest in compliance with the provisions of the "Uniform Commercial Code - Secured Transactions", article 9 of title 4, C.R.S., OTHER THAN ACCEPTANCE OF COLLATERAL IN FULL OR PARTIAL SATISFACTION OF THE OBLIGATION IT SECURES.

(6) A transfer is not voidable under section 38-8-106 (2):

(a) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, unless EXCEPT TO THE EXTENT the new value was secured by a valid lien;

(7) THE FOLLOWING RULES DETERMINE THE BURDEN OF PROVING MATTERS REFERRED TO IN THIS SECTION:

(a) A PARTY THAT SEEKS TO INVOCO SUBSECTION (1), (4), (5), OR (6) OF THIS SECTION HAS THE BURDEN OF PROVING THE APPLICABILITY OF THAT SUBSECTION.

(b) EXCEPT AS PROVIDED IN PARAGRAPHS (c) AND (d) OF THIS SUBSECTION (7), THE CREDITOR HAS THE BURDEN OF PROVING EACH APPLICABLE ELEMENT OF SUBSECTION (2) OR (3) OF THIS SECTION.

(c) THE TRANSFEREE HAS THE BURDEN OF PROVING THE APPLICABILITY TO THE TRANSFEREE OF SUB-SUBPARAGRAPH (A) OR (B) OF SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION.

(d) A PARTY THAT SEEKS ADJUSTMENT UNDER SUBSECTION (3) OF THIS SECTION HAS THE BURDEN OF PROVING THE ADJUSTMENT.

(8) THE STANDARD OF PROOF REQUIRED TO ESTABLISH MATTERS REFERRED TO IN THIS SECTION IS PREPONDERANCE OF THE EVIDENCE.
SECTION 10. In Colorado Revised Statutes, amend 38-8-110 as follows:

38-8-110. Extinguishment of claim for relief. (1) A cause of action for relief with respect to a fraudulent transfer or obligation under this article is extinguished unless action is brought:

(a) Under section 38-8-105 (1) (a), within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(b) Under section 38-8-105 (1) (b) or 38-8-106 (1), within four years after the transfer was made or the obligation was incurred; or

(c) Under section 38-8-106 (2), within one year after the transfer was made or the obligation was incurred.

SECTION 11. In Colorado Revised Statutes, add 38-8-110.3, 38-8-110.5, and 38-8-113 as follows:

38-8-110.3. Governing law. (1) In this section, the following rules determine a debtor’s location:

(a) A debtor who is an individual is located at the individual’s principal residence.

(b) A debtor that is an organization and has only one place of business is located at its place of business.

(c) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(2) A claim for relief in the nature of a claim for relief under this article is governed by the local law of the jurisdiction in which the property is located when the transfer
IS MADE OR THE OBLIGATION IS INCURRED, UNLESS THE PROPERTY IS
LOCATED IN COLORADO, IN WHICH CASE A CLAIM FOR RELIEF IN THE
NATURE OF A CLAIM FOR RELIEF UNDER THIS ARTICLE IS GOVERNED BY THE
LAW OF COLORADO.

38-8-110.5. Application to series organizations - definitions.

(1) In this section:

(a) "Protected Series" means an arrangement, however
denominated, created by a series organization that is not
established, formed, organized, or created in this state and
that, pursuant to the law under which the series organization
is organized, has the characteristics set forth in this section.

(b) "Series organization" means an organization that is
not established, formed, organized, or created in this state and
that, pursuant to the law under which it is organized, has the
following characteristics:

(I) The organic record of the organization provides for
creation by the organization of one or more protected series,
however denominated, with respect to specified property of the
organization, and for records to be maintained for each
protected series that identify the property of or associated with
the protected series.

(II) Debt incurred or existing with respect to the
activities of, property of, or associated with, a particular
protected series is enforceable against the property of, or
associated with, the protected series only and not against the
property of, or associated with, the organization or other
protected series of the organization.
(III) Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only and not against the property of, or associated with a protected series of, the organization. A series organization and each protected series of the organization is a separate person for purposes of this article, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization.

(2) A series organization and each protected series of the organization is a separate person for purposes of this article only, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization.

(3) This section does not authorize the establishment, formation, organization, or creation of a series organization or protected series pursuant to Colorado law or the recognition of a series organization or protected series for any purpose other than this article.

38-8-113. Relation to electronic signatures in federal "Electronic Signatures in Global and National Commerce Act". This article 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 supersedes 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 12. In Colorado Revised Statutes, 2-5-102, amend (7) as follows:

2-5-102. Inclusions - nonstatutory. (7) There shall be included in the publication of the "Colorado Uniform Fraudulent Transfer Act" "COLORADO UNIFORM VOIDABLE TRANSACTIONS ACT", as nonstatutory matter, following each section of the article, the full text of the official comments to that section contained in the official volume containing the 1984 official text of the "Uniform Fraudulent Transfer Act" "COLORADO UNIFORM VOIDABLE TRANSACTIONS ACT" issued by the national conference of commissioners on uniform state laws, INCLUDING CHANGES TO THE OFFICIAL COMMENTS MADE BY THE 2014 AMENDMENTS TO THE UNIFORM ACT, with any changes in the official comments or Colorado comments to correspond to Colorado changes in the uniform act. The comments shall be prepared by the revisor of statutes and approved for publication by the committee on legal services.

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 5, 2015, if adjournment sine die is on May 6, 2015); 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 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.
Colorado Commission on Uniform State Laws

A BILL FOR AN ACT

CONCERNING THE "COLORADO UNIFORM RECOGNITION OF SUBSTITUTE DECISION-MAKING DOCUMENTS 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 adopts, with amendments, the "Uniform Recognition of Substitute Decision-making Documents Act" as Colorado law.

The bill establishes the circumstances under which a substitute decision-making document (document) is valid in this state. A person may assume in good faith that a document is genuine, valid, and still in
effect and that the decision-maker's authority is genuine, valid, and still in effect.

A person who is asked to accept a document shall do so within a reasonable amount of time. The person may not require an additional or different form of document for authority granted in the document presented. A person who refuses to accept a substitute document is subject to:

- A court order mandating acceptance of the document; and
- Liability for reasonable attorney's fees and costs incurred in an action or proceeding that mandates acceptance of the document.

A person is not required to accept a substitute document under certain described conditions.

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

SECTION 1. In Colorado Revised Statutes, add article 23 to title 15 as follows:

ARTICLE 23

Substitute Decision-making Documents

15-23-101. Short title. The short title of this article is the "COLORADO UNIFORM RECOGNITION OF SUBSTITUTE DECISION-MAKING DOCUMENTS ACT".

15-23-102. Definitions. As used in this article, unless the context requires otherwise:

(1) "DECISION-MAKER" means a person authorized to act for an individual under a substitute decision-making document, whether denominated a decision-maker, agent, attorney-in-fact, proxy, or representative, or by another title. The term includes an original decision-maker, a co-decision-maker, a successor decision-maker, and a person to whom a decision-maker's authority is delegated.

(2) "GOOD FAITH" means honesty in fact.
(3) "Health care" means a service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition.

(4) "Person" means an individual; estate; business or nonprofit entity; public corporation; government or governmental subdivision, agency, or instrumentality; or other legal entity.

(5) "Personal care" means an arrangement or service to provide an individual shelter, food, clothing, transportation, education, recreation, social contact, or assistance with the activities of daily living.

(6) "Property" means anything that may be subject to ownership, whether real or personal or legal or equitable, or any interest or right therein.

(7) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(8) (a) "Substitute decision-making document" means a record created by an individual to authorize a decision-maker to act for the individual with respect to health care or personal care.

(b) Notwithstanding paragraph (a) of this subsection (8), "substitute decision-making document" does not include a record created by an individual to authorize a decision-maker to act for the individual with respect to financial matters.


(1) A substitute decision-making document executed
OUTSIDE THIS STATE IS VALID IN THIS STATE IF, WHEN THE DOCUMENT WAS EXECUTED, THE EXECUTION COMPLIED WITH:

(a) The law of the jurisdiction indicated in the document or, if no jurisdiction is indicated, the law of the jurisdiction in which the document was executed; or

(b) The law of this state.

(2) Except as otherwise provided by law, a photocopy or electronically transmitted copy of an original substitute decision-making document has the same effect as the original.

15-23-104. Meaning and effect of substitute decision-making document. The meaning and effect of a substitute decision-making document and the authority of the decision-maker are determined by the law of the jurisdiction indicated in the document or, if no jurisdiction is indicated, the law of the jurisdiction in which the document was executed.


(1) Except as otherwise provided by law, a person who in good faith accepts a substitute decision-making document without actual knowledge that the document is void, invalid, or terminated, or that the authority of the purported decision-maker is void, invalid, or terminated, may assume without inquiry that the document is genuine, valid, and still in effect and that the decision-maker's authority is genuine, valid, and still in effect.

(2) A person who is asked to accept a substitute decision-making document may request and without further investigation rely on:
(a) The decision-maker's assertion of a fact concerning the individual for whom a decision will be made, the decision-maker, or the document;

(b) A translation of the document if the document contains, in whole or in part, language other than English; and

(c) An opinion of counsel regarding any matter of law concerning the document if the person provides in a record the reason for the request.

15-23-106. Obligation to accept substitute decision-making document. (1) Except as otherwise provided in subsection (2) of this section or by another law of this state, a person who is asked to accept a substitute decision-making document shall accept within a reasonable time a document that purportedly meets the validity requirements of section 15-23-103. The person may not require an additional or different form of document for authority granted in the document presented.

(2) A person who is asked to accept a substitute decision-making document is not required to accept the document if:

(a) The person otherwise would not be required in the same circumstances to act if requested by the individual who executed the document;

(b) The person has actual knowledge of the termination of the decision-maker's authority or the document;

(c) The person's request under section 15-23-105(2) for the decision-maker's assertion of fact, a translation, or an opinion of counsel is refused;
(d) The person in good faith believes that the document is not valid or the decision-maker does not have the authority to request a particular action; or

(e) The person makes, or has actual knowledge that another person has made, a report to a law enforcement agency or to a county department of social services stating a belief that the individual for whom a decision will be made may be subject to abuse, neglect, exploitation, or abandonment by the decision-maker or a person acting for or with the decision-maker.

(3) A person who, in violation of this section, refuses to accept a substitute decision-making document is subject to:

(a) A court order mandating acceptance of the document;

and

(b) Liability for reasonable attorney's fees and costs incurred in an action or proceeding that mandates acceptance of the document.

15-23-107. Remedies under other law. The remedies under this article are not exclusive and do not abrogate any other right or remedy available under the law of this state.

15-23-108. Uniformity of application and construction. In applying and construing this uniform act, courts shall give consideration to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

15-23-109. Relation to the federal "Electronic Signatures in Global and National Commerce Act". This article modifies, limits, or supersedes the federal "Electronic Signatures in Global and National Commerce Act".

15-23-110. Applicability. THIS ARTICLE APPLIES TO A SUBSTITUTE DECISION-MAKING DOCUMENT CREATED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE.

SECTION 2. Inclusion of official comments. The revisor of statutes shall include in the publication of the "Colorado Uniform Recognition of Substitute Decision-making Documents Act", as nonstatutory matter, following each section of the act, the full text of the official comments to that section contained in the official volume containing the 2014 official text of the "Uniform Recognition of Substitute Decision-making Documents Act" issued by the Uniform Law Commission, with any changes in the official comments or Colorado comments to correspond to Colorado changes in the uniform act. The revisor shall prepare the comments for approval by the committee on legal services.

SECTION 3. 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 10, 2016, if adjournment sine die is on May 11, 2016); 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 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.
BILL TOPIC: "Revised Uniform Athlete Agents Act 2015"

A BILL FOR AN ACT

Concerning the "Revised Uniform Athlete Agents Act (2015)".

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 enacts the "Revised Uniform Athlete Agents Act (2015)" as drafted by the national conference of commissioners on uniform state laws. The "Revised Uniform Athlete Agents Act (2015)" replaces the "Uniform Athlete Agents Act" drafted by the national conference of commissioners on uniform state laws. New provisions for registration and renewal of
registration for athlete agents are established.

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

2 SECTION 1. In Colorado Revised Statutes, **repeal and reenact**, with amendments, part 2 of article 16 of title 23 as follows:

3 PART 2

4 REVISED UNIFORM ATHLETE AGENTS ACT (2015)

5 **23-16-201. Short title.** This part 2 may be cited as the "REVISED UNIFORM ATHLETE AGENTS ACT (2015)".

6 **23-16-202. Definitions.** As used in this part 2, unless the context otherwise requires:

7 (1) "Agency contract" means an agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional-sports-services contract or an endorsement contract.

8 (2) "Athlete agent":

9 (a) Means an individual, whether or not registered under this part 2, who:

10 (I) Directly or indirectly recruits or solicits a student athlete to enter into an agency contract or, for compensation, procures employment or offers, promises, attempts, or negotiates to obtain employment for a student athlete as a professional athlete or member of a professional sports team or organization;

11 (II) For compensation or in anticipation of compensation related to a student athlete’s participation in athletics:

12 (A) Serves the student athlete in an advisory capacity on
A matter related to finances, business pursuits, or career management decisions, unless the individual is an employee of an educational institution and is acting exclusively as an employee of the institution for the benefit of the institution; or

(B) Manages the business affairs of the student athlete by providing assistance with bills, payments, contracts, or taxes; or

(III) In anticipation of representing a student athlete for a purpose related to the student athlete’s participation in athletics:

(A) Gives consideration to the student athlete or another person;

(B) Serves the student athlete in an advisory capacity on a matter related to finances, business pursuits, or career management decisions; or

(C) Manages the business affairs of the student athlete by providing assistance with bills, payments, contracts, or taxes; but

(b) Does not include an individual who:

(I) Acts solely on behalf of a professional sports team or organization; or

(II) Is a licensed, registered, or certified professional and offers or provides services to a student athlete that are customarily provided by members of the profession, unless the individual:

(A) Also recruits or solicits the student athlete to enter into an agency contract;
(B) Also, for compensation, procures employment or offers, promises, attempts, or negotiates to obtain employment for the athlete as a professional athlete or member of a professional sports team or organization; or

(C) Receives consideration for providing the services, which consideration is calculated using a different method than for an individual who is not a student athlete.

(3) "Athletic director" means the individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.

(4) "Educational institution" means a public or private elementary school, secondary school, technical or vocational school, community college, college, or university.

(5) "Endorsement contract" means an agreement under which a student athlete is employed or receives consideration to use on behalf of the other party any value that the student athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance.

(6) "Enrolled" means registered for courses and attending athletic practice or class. "Enrolls" has a corresponding meaning.

(7) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student athlete are established by a national
ASSOCIATION THAT PROMOTES OR REGULATES COLLEGIATE ATHLETICS.

(8) "INTERSCHOLASTIC SPORT" means a sport played between educational institutions that are not community colleges, colleges, or universities.

(9) "LICENSED, REGISTERED, OR CERTIFIED PROFESSIONAL" means an individual licensed, registered, or certified as an attorney, dealer in securities, financial planner, insurance agent, real estate broker or sales agent, tax consultant, accountant, or member of a profession, other than that of athlete agent, who is licensed, registered, or certified by the state or a nationally recognized organization that licenses, registers, or certifies members of the profession on the basis of experience, education, or testing.

(10) "PERSON" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(11) "PROFESSIONAL-SPORTS-SERVICES CONTRACT" means an agreement under which an individual is employed as a professional athlete or agrees to render services as a player on a professional sports team or with a professional sports organization.

(12) "RECORD" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "RECRUIT OR SOLICIT" means to attempt to influence the choice of an athlete agent by a student athlete or, if the
STUDENT ATHLETE IS A MINOR, A PARENT OR GUARDIAN OF THE ATHLETE. THE TERM DOES NOT INCLUDE GIVING ADVICE ON THE SELECTION OF A PARTICULAR ATHLETE AGENT IN A FAMILY, COACHING, OR SOCIAL SITUATION UNLESS THE INDIVIDUAL GIVING THE ADVICE DOES SO BECAUSE OF THE RECEIPT OR ANTICIPATED RECEIPT OF AN ECONOMIC BENEFIT, DIRECTLY OR INDIRECTLY, FROM THE ATHLETE AGENT.

(14) "Registration" means registration as an athlete agent under this Part 2.

(15) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound, or process.

(16) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(17) "Student athlete" means an individual who is eligible to attend an educational institution and engages in, is eligible to engage in, or may be eligible in the future to engage in, any interscholastic or intercollegiate sport. "Student athlete" does not include an individual permanently ineligible to participate in a particular interscholastic or intercollegiate sport for purposes of that sport.

23-16-203. Authority - procedure. The provisions of the "State Administrative Procedure Act", established in article 4 of title 24, C.R.S., apply to this Part 2. The Secretary of State
MAY ADOPT RULES PURSUANT TO THE REQUIREMENTS OF THE "STATE ADMINISTRATIVE PROCEDURE ACT" TO IMPLEMENT THE PROVISIONS OF THIS PART 2.

23-16-204. Athlete agent - registration required - void contract. (1) EXCEPT AS OTHERWISE PROVIDED FOR IN SUBSECTION (2) OF THIS SECTION, AN INDIVIDUAL MAY NOT ACT AS AN ATHLETE AGENT IN THIS STATE WITHOUT HOLDING A VALID CERTIFICATE OF REGISTRATION UNDER THIS PART 2.

(2) PRIOR TO BEING ISSUED A CERTIFICATE OF REGISTRATION UNDER THIS PART 2, AN INDIVIDUAL MAY ACT AS AN ATHLETE AGENT IN THIS STATE FOR ALL PURPOSES, EXCEPT SIGNING AN AGENCY CONTRACT, IF:

(a) A STUDENT ATHLETE OR ANOTHER PERSON ACTING ON BEHALF OF THE STUDENT ATHLETE INITIATES COMMUNICATION WITH THE INDIVIDUAL; AND

(b) NOT LATER THAN SEVEN DAYS AFTER AN INITIAL ACTION THAT REQUIRES THE INDIVIDUAL TO REGISTER AS AN ATHLETE AGENT, THE INDIVIDUAL SUBMITS AN APPLICATION FOR REGISTRATION AS AN ATHLETE AGENT IN THIS STATE.

(3) AN AGENCY CONTRACT THAT RESULTS FROM CONDUCT IN VIOLATION OF THIS SECTION IS VOID, AND THE ATHLETE AGENT OR INDIVIDUAL SHALL RETURN ANY CONSIDERATION RECEIVED UNDER THE CONTRACT.

23-16-205. Registration as athlete agent - application - requirements - reciprocal registration. (1) AN APPLICANT FOR REGISTRATION AS AN ATHLETE AGENT SHALL SUBMIT AN APPLICATION FOR REGISTRATION TO THE SECRETARY OF STATE IN A FORM PRESCRIBED BY
THE SECRETARY OF STATE. THE APPLICANT MUST BE AN INDIVIDUAL, AND
THE APPLICANT SHALL SIGN THE APPLICATION UNDER PENALTY OF
PERJURY. THE APPLICATION MUST CONTAIN AT LEAST THE FOLLOWING
INFORMATION:

(a) The name and date and place of birth of the applicant
and the following contact information for the applicant:

(I) The address of the applicant’s principal place of
business;

(II) Work and mobile telephone numbers; and

(III) Any means of communicating electronically,
including a facsimile number, electronic-mail address, and
personal and business or employer web sites;

(b) The name of the applicant's business or employer, if
applicable, including for each business or employer its mailing
address, telephone number, organization form, and the nature
of the business;

(c) Each social media account with which the applicant or
the applicant's business or employer is affiliated;

(d) Each business or occupation in which the applicant
engaged within five years prior to the date of the application,
including self-employment and employment by others, and any
professional or occupational license, registration, or
certification held by the applicant during that time;

(e) A description of the applicant’s:

(I) Formal training as an athlete agent;

(II) Practical experience as an athlete agent; and

(III) Educational background relating to the applicant’s
ACTIVITIES AS AN ATHLETE AGENT;

(f) The name of each student athlete for whom the applicant acted as an athlete agent within the five years prior to the date of the application or, if the student athlete is a minor, the name of his or her parent or guardian, together with the student athlete's sport and last-known team;

(g) The name and address of each person who:

(I) Is a partner, member, officer, manager, associate, or profit sharer or directly or indirectly holds an equity interest of five percent or greater of the athlete agent's business if it is not a corporation; and

(II) Is an officer or director of a corporation employing the athlete agent or a shareholder having an interest of five percent or greater in the corporation;

(h) A description of the status of any application by the applicant, or any person named pursuant to paragraph (g) of this subsection (1), for a state or federal business, professional, or occupational license, other than as an athlete agent, from a state or federal agency, including any denial, refusal to renew, suspension, withdrawal, or termination of the license and any reprimand or censure related to the license;

(i) Whether the applicant, or any person named pursuant to paragraph (g) of this subsection (1), has pleaded guilty or no contest to, has been convicted of, or has charges pending for, a crime that would involve moral turpitude or be a felony if committed in this state and, if so, identification of:

(I) The crime;
(II) THE LAW ENFORCEMENT AGENCY INVOLVED; AND

(III) IF APPLICABLE, THE DATE OF THE CONVICTION AND THE FINE OR PENALTY IMPOSED;

(j) WHETHER, WITHIN FIFTEEN YEARS PRIOR TO THE DATE OF APPLICATION, THE APPLICANT, OR ANY PERSON NAMED PURSUANT TO PARAGRAPH (g) OF THIS SUBSECTION (1), HAS BEEN A DEFENDANT OR RESPONDENT IN A CIVIL PROCEEDING, INCLUDING A PROCEEDING SEEKING AN ADJUDICATION AND, IF SO, THE DATE AND A FULL EXPLANATION OF EACH PROCEEDING;

(k) WHETHER THE APPLICANT, OR ANY PERSON NAMED PURSUANT TO PARAGRAPH (g) OF THIS SUBSECTION (1), HAS AN UNSATISFIED JUDGMENT OR A JUDGMENT OF CONTINUING EFFECT, INCLUDING SPOUSAL MAINTENANCE OR A DOMESTIC ORDER IN THE NATURE OF CHILD SUPPORT, WHICH IS NOT CURRENT AT THE DATE OF THE APPLICATION;

(l) WHETHER, WITHIN TEN YEARS PRIOR TO THE DATE OF APPLICATION, THE APPLICANT, OR ANY PERSON NAMED PURSUANT TO PARAGRAPH (g) OF THIS SUBSECTION (1), WAS ADJUDICATED BANKRUPT OR WAS AN OWNER OF A BUSINESS THAT WAS ADJUDICATED BANKRUPT;

(m) WHETHER THERE HAS BEEN ANY ADMINISTRATIVE OR JUDICIAL DETERMINATION THAT THE APPLICANT, OR ANY PERSON NAMED PURSUANT TO PARAGRAPH (g) OF THIS SUBSECTION (1), MADE A FALSE, MISLEADING, DECEPTIVE, OR FRAUDULENT REPRESENTATION;

(n) EACH INSTANCE IN WHICH CONDUCT OF THE APPLICANT, OR ANY PERSON NAMED PURSUANT TO PARAGRAPH (g) OF THIS SUBSECTION (1), RESULTED IN THE IMPOSITION OF A SANCTION, SUSPENSION, OR DECLARATION OF INELIGIBILITY TO PARTICIPATE IN AN INTERSCHOLASTIC, INTERCOLLEGIATE, OR PROFESSIONAL ATHLETIC EVENT ON A STUDENT
ATHLETE OR A SANCTION ON AN EDUCATIONAL INSTITUTION;

(o) Each sanction, suspension, or disciplinary action taken against the applicant, or any person named pursuant to paragraph (g) of this subsection (1), arising out of occupational or professional conduct;

(p) Whether there has been a denial of an application for, suspension or revocation of, refusal to renew, or abandonment of, the registration of the applicant, or any person named pursuant to paragraph (g) of this subsection (1), as an athlete agent in any state;

(q) Each state in which the applicant is currently registered as an athlete agent or has applied to be registered as an athlete agent;

(r) If the applicant is certified or registered by a professional league or players association:

(I) The name of the league or association;

(II) The date of certification or registration, and the date of expiration of the certification or registration, if any; and

(III) If applicable, the date of any denial of an application for, suspension or revocation of, refusal to renew, withdrawal of, or termination of, the certification or registration or any reprimand or censure related to the certification or registration; and

(s) Any additional information required by the secretary of state.

(2) Instead of proceeding as provided in subsection (1) of this section, an individual registered as an athlete agent in

-11-
ANOTHER STATE MAY APPLY FOR REGISTRATION AS AN ATHLETE AGENT IN THIS STATE BY SUBMITTING THE FOLLOWING INFORMATION TO THE SECRETARY OF STATE:

(a) A COPY OF THE APPLICATION FOR REGISTRATION IN THE OTHER STATE;

(b) A STATEMENT THAT IDENTIFIES ANY MATERIAL CHANGE IN THE INFORMATION ON THE APPLICATION IN THE OTHER STATE OR VERIFIES THERE IS NO MATERIAL CHANGE IN SUCH INFORMATION, SIGNED UNDER PENALTY OF PERJURY; AND

(c) A COPY OF THE CERTIFICATE OF REGISTRATION FROM THE OTHER STATE.

(3) THE SECRETARY OF STATE SHALL ISSUE A CERTIFICATE OF REGISTRATION TO AN INDIVIDUAL WHO APPLIES FOR REGISTRATION PURSUANT TO SUBSECTION (2) OF THIS SECTION IF THE SECRETARY OF STATE DETERMINES:

(a) THE APPLICATION AND REGISTRATION REQUIREMENTS OF THE OTHER STATE ARE SUBSTANTIALLY SIMILAR TO OR MORE RESTRICTIVE THAN THOSE OF THIS PART 2; AND

(b) THE REGISTRATION HAS NOT BEEN REVOKED OR SUSPENDED AND NO ACTION INVOLVING THE INDIVIDUAL'S CONDUCT AS AN ATHLETE AGENT IS PENDING AGAINST THE INDIVIDUAL OR THE INDIVIDUAL'S REGISTRATION IN ANY STATE.

(4) FOR PURPOSES OF IMPLEMENTING SUBSECTION (3) OF THIS SECTION, THE SECRETARY OF STATE SHALL:

(a) COOPERATE WITH NATIONAL ORGANIZATIONS CONCERNED WITH ATHLETE AGENT ISSUES AND AGENCIES IN OTHER STATES WHICH REGISTER ATHLETE AGENTS TO DEVELOP A COMMON REGISTRATION FORM
AND DETERMINE WHICH STATES HAVE LAWS THAT ARE SUBSTANTIALLY SIMILAR TO OR MORE RESTRICTIVE THAN THOSE OF THIS PART 2; AND

(b) Exchange information, including information related to actions taken against registered athlete agents or their registrations, with those organizations and agencies.

23-16-206. Certificate of registration - issuance or denial - renewal. (1) Except as otherwise provided in subsection (2) of this section, the secretary of state shall issue a certificate of registration to an applicant for registration who complies with the provisions of section 23-16-205 (1).

(2) The secretary of state may refuse to issue a certificate of registration to an applicant for registration under section 23-16-205 (1) if the secretary of state determines that the applicant has engaged in conduct that significantly adversely reflects on the applicant's fitness to act as an athlete agent. In making the determination, the secretary of state may consider whether the applicant has:

(a) Pleaded guilty or no contest to, has been convicted of, or has charges pending for, a crime that would involve moral turpitude or be a felony if committed in this state;

(b) Made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;

(c) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(d) Engaged in conduct prohibited by section 23-16-214;

(e) Had a registration as an athlete agent suspended,
REVOKED, OR DENIED IN ANY STATE;

(f) BEEN REFUSED RENEWAL OF REGISTRATION AS AN ATHLETE AGENT IN ANY STATE;

(g) ENGAGED IN CONDUCT RESULTING IN IMPOSITION OF A SANCTION, SUSPENSION, OR DECLARATION OF INELIGIBILITY TO PARTICIPATE IN AN INTERSCHOLASTIC, INTERCOLLEGIATE, OR PROFESSIONAL ATHLETIC EVENT ON A STUDENT ATHLETE OR A SANCTION ON AN EDUCATIONAL INSTITUTION; OR

(h) ENGAGED IN CONDUCT THAT ADVERSELY REFLECTS ON THE APPLICANT'S CREDIBILITY, HONESTY, OR INTEGRITY.

(3) IN MAKING A DETERMINATION PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE SECRETARY OF STATE SHALL CONSIDER:

(a) HOW RECENTLY THE CONDUCT OCCURRED;

(b) THE NATURE OF THE CONDUCT AND THE CONTEXT IN WHICH IT OCCURRED; AND

(c) OTHER RELEVANT CONDUCT OF THE APPLICANT.

(4) AN ATHLETE AGENT REGISTERED UNDER SUBSECTION (1) OF THIS SECTION MAY APPLY TO RENEW THE REGISTRATION BY SUBMITTING AN APPLICATION FOR RENEWAL IN A FORM PRESCRIBED BY THE SECRETARY OF STATE. THE APPLICANT SHALL SIGN THE APPLICATION FOR RENEWAL UNDER PENALTY OF PERJURY AND INCLUDE CURRENT INFORMATION ON ALL MATTERS REQUIRED IN AN ORIGINAL APPLICATION FOR REGISTRATION.

(5) AN ATHLETE AGENT REGISTERED PURSUANT TO SECTION 23-16-205(3) MAY RENEW THE REGISTRATION BY PROCEEDING PURSUANT TO SUBSECTION (4) OF THIS SECTION OR, IF THE REGISTRATION IN THE OTHER STATE HAS BEEN RENEWED, BY SUBMITTING TO THE SECRETARY OF STATE COPIES OF THE APPLICATION FOR RENEWAL IN THE OTHER STATE.
AND THE RENEWED REGISTRATION FROM THE OTHER STATE. THE SECRETARY OF STATE SHALL RENEW THE REGISTRATION IF THE SECRETARY OF STATE DETERMINES:

(a) THE REGISTRATION REQUIREMENTS OF THE OTHER STATE ARE SUBSTANTIALLY SIMILAR TO OR MORE RESTRICTIVE THAN THOSE OF THIS PART 2; AND

(b) THE RENEWED REGISTRATION HAS NOT BEEN SUSPENDED OR REVOKED AND NO ACTION INVOLVING THE INDIVIDUAL'S CONDUCT AS AN ATHLETE AGENT IS PENDING AGAINST THE INDIVIDUAL OR THE INDIVIDUAL'S REGISTRATION IN ANY STATE.

(6) A CERTIFICATE OF REGISTRATION OR RENEWAL OF REGISTRATION UNDER THIS PART 2 IS VALID FOR TWO YEARS.

23-16-207. Suspension, revocation, or refusal to renew registration. (1) THE SECRETARY OF STATE MAY LIMIT, SUSPEND, REVOKE, OR REFUSE TO RENEW A REGISTRATION OF AN INDIVIDUAL REGISTERED UNDER SECTION 23-16-206 (1) FOR CONDUCT THAT WOULD HAVE JUSTIFIED REFUSAL TO ISSUE A CERTIFICATE OF REGISTRATION UNDER SECTION 23-16-206 (2).

(2) THE SECRETARY OF STATE MAY SUSPEND OR REVOKE THE REGISTRATION OF AN INDIVIDUAL REGISTERED UNDER SECTION 23-16-205 (3) OR RENEWED UNDER SECTION 23-16-206 (5) FOR ANY REASON FOR WHICH THE SECRETARY OF STATE COULD HAVE REFUSED TO GRANT OR RENEW REGISTRATION OR FOR CONDUCT THAT WOULD JUSTIFY REFUSAL TO ISSUE A CERTIFICATE OF REGISTRATION UNDER SECTION 23-16-206 (2).

23-16-208. Temporary registration. THE SECRETARY OF STATE MAY ISSUE A TEMPORARY CERTIFICATE OF REGISTRATION AS AN ATHLETE AGENT WHILE AN APPLICATION FOR REGISTRATION OR RENEWAL OF
REGISTRATION IS PENDING.

23-16-209. Registration and renewal fees. An application for registration or renewal of registration as an athlete agent must be accompanied by a fee in the amount determined by rule of the secretary of state.

23-16-210. Required form of agency contract. (1) An agency contract must be in a record signed by the parties.

(2) An agency contract must contain:

(a) A statement that the athlete agent is registered as an athlete agent in this state and a list of any other states in which he or she is registered as an athlete agent;

(b) The amount and method of calculating the consideration to be paid by the student athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

(c) The name of any person not listed in the athlete agent's application for registration or renewal of registration who will be compensated because the student athlete signed the contract;

(d) A description of any expenses the student athlete agrees to reimburse;

(e) A description of the services to be provided to the student athlete by the athlete agent;

(f) The duration of the contract; and

(g) The date of execution.
(3) Subject to subsection (7) of this section, an agency contract must contain a conspicuous notice in boldface type and in substantially the following form:

WARNING TO STUDENT ATHLETE

IF YOU SIGN THIS CONTRACT:

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER SIGNING THIS CONTRACT OR BEFORE THE NEXT SCHEDULED ATHLETIC EVENT IN WHICH YOU PARTICIPATE, WHICHEVER OCCURS FIRST, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR THAT YOU HAVE ENTERED INTO THIS CONTRACT AND PROVIDE THE NAME AND CONTACT INFORMATION OF THE ATHLETE AGENT; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY AS A STUDENT ATHLETE IN YOUR SPORT.

(4) An agency contract must be accompanied by a separate record signed by the student athlete or, if the student athlete is a minor, his or her parent or guardian, acknowledging that signing the contract may result in the loss of the student athlete's eligibility to participate in the student athlete's sport.

(5) A student athlete or, if the student athlete is a minor, his or her parent or guardian, may void an agency contract that does not conform to this section. If the contract is voided, the
STUDENT ATHLETE IS NOT REQUIRED TO RETURN ANY CONSIDERATION RECEIVED FROM THE ATHLETE AGENT UNDER THE CONTRACT TO INDUCE ENTERING INTO THE CONTRACT.

(6) At the time an agency contract is executed, the athlete agent shall give the student athlete or, if the student athlete is a minor, his or her parent or guardian, a copy in a record of the contract and the separate acknowledgment required by subsection (4) of this section.

(7) If a student athlete is a minor, an agency contract must be signed by the student athlete's parent or guardian and the notice required by subsection (3) must be revised accordingly.

23-16-211. Notice to educational institution. (1) As used in this section, "communicating or attempting to communicate" means contacting or attempting to contact by an in-person meeting, a record, or any other method that conveys or attempts to convey a message.

(2) Within seventy-two hours after entering into an agency contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contact to the athletic director of the educational institution at which the student athlete is enrolled or at which the athlete agent has reasonable grounds to believe the athlete intends to enroll.

(3) Within seventy-two hours after entering into an agency contract or before the next scheduled athletic event in
WHICH THE STUDENT ATHLETE MAY PARTICIPATE, WHICHEVER OCCURS FIRST, THE STUDENT ATHLETE SHALL INFORM THE ATHLETIC DIRECTOR OF THE EDUCATIONAL INSTITUTION AT WHICH THE ATHLETE IS ENROLLED THAT HE OR SHE HAS ENTERED INTO AN AGENCY CONTRACT AND THE NAME AND CONTACT INFORMATION OF THE ATHLETE AGENT.

(4) If an athlete agent enters into an agency contract with a student athlete and the student athlete subsequently enrolls at an educational institution, the athlete agent shall notify the athletic director of the educational institution of the contract’s existence within seventy-two hours after the athlete agent knew or should have known of the student athlete’s enrollment.

(5) If an athlete agent has a relationship with a student athlete before the student athlete enrolls in an educational institution and receives an athletic scholarship from the educational institution, the athlete agent shall notify the educational institution of the relationship within ten days after the student athlete’s enrollment if the athlete agent knows or should have known of the enrollment and:

(a) The relationship was motivated in whole or in part by the intention of the athlete agent to recruit or solicit the student athlete to enter into an agency contract in the future; or

(b) The athlete agent directly or indirectly recruited or solicited the student athlete to enter into an agency contract before the enrollment.

(6) An athlete agent shall give notice in a record to the
ATHLETIC DIRECTOR OF ANY EDUCATIONAL INSTITUTION AT WHICH A
STUDENT ATHLETE IS ENROLLED BEFORE THE ATHLETE AGENT
COMMUNICATES OR ATTEMPTS TO COMMUNICATE WITH:

(a) The student athlete or, if the student athlete is a
minor, his or her parent or guardian, to influence the student
athlete or his or her parent or guardian to enter into an agency
contract; or

(b) Another individual with the intent of having that
individual influence the student athlete or, if the student
athlete is a minor, his or her parent or guardian, to enter into
an agency contract.

(7) If a communication or an attempt to communicate with
an athlete agent is initiated by a student athlete or another
individual on behalf of the student athlete, the athlete agent
shall notify in a record the athletic director of any
educational institution at which the student athlete is
enrolled. The notification must be made within ten days after
the communication or attempt to communicate.

(8) An educational institution that becomes aware of a
violation of this part 2 by an athlete agent shall provide notice
of the violation to the secretary of state and any professional
league or players association with which the educational
institution is aware the athlete agent is licensed or registered.

23-16-212. Student athlete's right to cancel. (1) A student
athlete or, if the student athlete is a minor, his or her parent or
guardian, may:

(a) Cancel an agency contract by giving notice in a
RECORD OF CANCELLATION TO THE ATHLETE AGENT WITHIN FOURTEEN DAYS AFTER THE CONTRACT IS SIGNED; AND

(b) Not waive the right to cancel an agency contract.

(2) If a student athlete, parent, or guardian cancels an agency contract, the student athlete, parent, or guardian is not required to pay any consideration under the contract or return any consideration received from the athlete agent to influence the student athlete to enter into the agency contract.

23-16-213. Required records. (1) An athlete agent shall create and retain the following records for a period of five years:

(a) The name and address of each individual represented by the athlete agent;

(b) Each agency contract entered into by the athlete agent; and

(c) The direct costs incurred by the athlete agent in the recruitment or solicitation of each student athlete to enter into an agency contract.

(2) The records described in subsection (1) of this section are open to inspection by the secretary of state during normal business hours.

23-16-214. Prohibited conduct. (1) An athlete agent, with the intent to influence a student athlete or, if the student athlete is a minor, his or her parent or guardian, to enter into an agency contract, may not take any of the following actions or encourage any other individual to take or assist any other
INDIVIDUAL IN TAKING ANY OF THE FOLLOWING ACTIONS ON BEHALF OF THE ATHLETE AGENT:

(a) Give materially false or misleading information or make a materially false promise or representation;

(b) Furnish anything of value to a student athlete before the student athlete enters into the agency contract; or

(c) Furnish anything of value to any individual other than the student athlete or another registered athlete agent.

(2) An athlete agent may not intentionally do any of the following actions or encourage any other individual to do any of the following actions on behalf of the athlete agent:

(a) Initiate contact, directly or indirectly, with a student athlete or, if the student athlete is a minor, his or her parent or guardian, to recruit or solicit the student athlete or his or her parent or guardian to enter into an agency contract unless the athlete agent is properly registered pursuant to this Part 2;

(b) Fail to create, retain, or permit inspection of the records required to be retained by Section 23-16-213;

(c) Fail to register when required by Section 23-16-204;

(d) Provide materially false or misleading information in an application for registration or renewal of registration;

(e) Predate or postdate an agency contract; or

(f) Fail to notify a student athlete or, if the student athlete is a minor, his or her parent or guardian, before the student athlete or his or her parent or guardian signs an agency contract for a particular sport that the signing may make the student athlete ineligible to participate as a student-athlete.
ATHLETE IN THAT SPORT.

23-16-215. Criminal penalties. An athlete agent who violates section 23-16-214 is guilty of a class 2 misdemeanor, as provided in section 18-1.3-501, C.R.S., for a first offense and is guilty of a class 6 felony, as provided in section 18-1.3-401, C.R.S., for a second or subsequent offense.

23-16-216. Civil remedy. (1) An educational institution or student athlete may bring an action for damages against an athlete agent if the educational institution or student athlete is adversely affected by an act or omission of the athlete agent in violation of this part 2. An educational institution or student athlete is adversely affected by an act or omission of an athlete agent only if, because of the act or omission, the educational institution or an individual who was a student athlete at the time of the act or omission and who was also enrolled in the educational institution:

(a) Is suspended or disqualified from participation in an interscholastic or intercollegiate sports event by or under the rules of a state or national federation or association that promotes or regulates interscholastic or intercollegiate sports; or

(b) Suffers financial damage.

(2) A plaintiff that prevails in an action under this section may recover costs and reasonable attorney’s fees. An athlete agent found liable under this section forfeits any right of payment for anything of benefit or value provided to the student athlete and shall refund any consideration paid to the
ARTHLETE AGENT BY OR ON BEHALF OF THE STUDENT ATHLETE.

(3) A VIOLATION OF THIS PART 2 IS AN UNFAIR TRADE OR DECEPTIVE PRACTICE PURSUANT TO THE LAWS OF THIS STATE.

23-16-217. Civil penalty. On motion of the attorney general or the district attorney, the court may impose a civil penalty of not less than twenty-five thousand dollars but not more than fifty thousand dollars for a violation of this Part 2. Moneys collected under this section shall be transmitted to the state treasurer and credited to the general fund.

23-16-218. 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.


23-16-220. Severability. If any provision of this Part 2 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Part 2, which can be given effect without the invalid provision or application, and to this end the provisions of this Part 2 are severable.

SECTION 2. In Colorado Revised Statutes, amend 23-16-104 as
23-16-104. Agent contracts - contents - notice - termination.

(1) In addition to the requirements specified in section 23-16-209 for contracts with athlete agents, any agent contract entered into between an athlete agent and a student athlete shall also include:

(a) and (b) (Deleted by amendment, L. 2008, p. 1015, § 4, effective July 1, 2008.)

(c) Any guarantees provided by the athlete agent to the student athlete;

(d) In addition to the warning required to be given to the student athlete as specified in section 23-16-209 (c), the following statement in at least ten-point type that is bold-faced, capitalized, underlined, or otherwise conspicuously set out from surrounding written material:

WARNING TO STUDENT ATHLETE:

DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ IT OR IF IT CONTAINS BLANK SPACES. DO NOT SIGN THIS CONTRACT IF IT DOES NOT SPECIFY ALL OF THE GUARANTEES MADE TO YOU BY THE ATHLETE AGENT. IF YOU DECIDE THAT YOU DO NOT WISH TO PURCHASE THE SERVICES OF THE ATHLETE AGENT, YOU MAY CANCEL THIS CONTRACT BY NOTIFYING THE ATHLETE AGENT IN WRITING OF YOUR DESIRE TO CANCEL THE CONTRACT WITHIN FOURTEEN DAYS AFTER THE DATE ON WHICH YOU SIGN THIS CONTRACT.

(2) to (4) (Deleted by amendment, L. 2008, p. 1015, § 4, effective
SECTION 3. Inclusion of official comments. The revisor shall include in the publication of the "Revised Uniform Athlete Agents Act (2015)", as nonstatutory matter, following each section of the part, the full text of the official comments to that section contained in the official volume containing the 2015 official text of the "Revised Uniform Athlete Agents Act (2015)" issued by the uniform law commission, with any changes in the official comments or Colorado comments to correspond to Colorado changes in the uniform act. The revisor of statutes shall prepare the comments for approval by the committee on legal services for publication.

SECTION 4. 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 10, 2016, if adjournment sine die is on May 11, 2016); 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 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.
A BILL FOR AN ACT

CONCERNING THE "UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP 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 enacts the "Uniform Commercial Real Estate Receivership Act" (the Act). The Act applies to receivers appointed for commercial real estate only and establishes a standard set of procedures and rules for the receiver's appointment, rights, and duties.

Capital letters indicate new material to be added to existing statute. Dashes through the words indicate deletions from existing statute.
Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, add article 46 to title 38 as follows:

ARTICLE 46
Uniform Commercial Real Estate Receivership Act

38-46-101. Short title. This article may be cited as the "Uniform Commercial Real Estate Receivership Act".

38-46-102. Definitions. In this article:

(1) "Affiliate" means:

(a) With respect to an individual:

(I) A companion of the individual;

(II) A lineal ancestor or descendant, whether by blood or adoption, of:

(A) The individual; or

(B) A companion of the individual;

(III) A companion of an ancestor or descendant described in subparagraph (II) of this paragraph (a);

(IV) A sibling, aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew of the individual, whether related by the whole or the half blood or adoption, or a companion of any of them; or

(V) Any other individual occupying the residence of the individual; and

(b) With respect to a person other than an individual:

(I) Another person that directly or indirectly controls,
IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH THE PERSON;

(II) AN OFFICER, DIRECTOR, MANAGER, MEMBER, PARTNER, EMPLOYEE, OR TRUSTEE OR OTHER FIDUCIARY OF THE PERSON; OR

(III) A COMPANION OF, OR AN INDIVIDUAL OCCUPYING THE RESIDENCE OF, AN INDIVIDUAL DESCRIBED IN SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH (b).

(2) "COMPANION" MEANS:

(a) THE SPOUSE OF AN INDIVIDUAL;

(b) THE DOMESTIC PARTNER OF AN INDIVIDUAL; OR

(c) ANOTHER INDIVIDUAL IN A CIVIL UNION WITH AN INDIVIDUAL.

(3) "COURT" MEANS A DISTRICT COURT.

(4) "EXECUTORY CONTRACT" MEANS A CONTRACT, INCLUDING A LEASE, UNDER WHICH EACH PARTY HAS AN UNPERFORMED OBLIGATION AND THE FAILURE OF A PARTY TO COMPLETE PERFORMANCE WOULD CONSTITUTE A MATERIAL BREACH.

(5) "GOVERNMENTAL UNIT" MEANS AN OFFICE, DEPARTMENT, DIVISION, BUREAU, BOARD, COMMISSION, OR OTHER AGENCY OF THIS STATE OR A SUBDIVISION OF THIS STATE.

(6) "LIEN" MEANS AN INTEREST IN PROPERTY WHICH SECURES PAYMENT OR PERFORMANCE OF AN OBLIGATION.

(7) "MORTGAGE" MEANS A RECORD, HOWEVER DENOMINATED, THAT CREATES OR PROVIDES FOR A CONSENSUAL LIEN ON REAL PROPERTY OR RENTS, EVEN IF IT ALSO CREATES OR PROVIDES FOR A LIEN ON PERSONAL PROPERTY.

(8) "MORTGAGEE" MEANS A PERSON ENTITLED TO ENFORCE AN OBLIGATION SECURED BY A MORTGAGE.

(9) "MORTGAGOR" MEANS A PERSON THAT GRANTS A MORTGAGE
OR A SUCCESSOR IN OWNERSHIP OF THE REAL PROPERTY DESCRIBED IN THE
MORTGAGE.

(10) "Owner" means the person for whose property a
receiver is appointed.

(11) "Person" means an individual, estate, business or
nonprofit entity, public corporation, government or
governmental subdivision, agency, or instrumentality, or other
legal entity.

(12) "Proceeds" means the following property:

(a) Whatever is acquired on the sale, lease, license,
exchange, or other disposition of receivership property;

(b) Whatever is collected on, or distributed on account
of, receivership property;

(c) Rights arising out of receivership property;

(d) To the extent of the value of receivership property,
claims arising out of the loss, nonconformity, or interference
with the use of, defects or infringement of rights in, or damage
to the property; or

(e) To the extent of the value of receivership property
and to the extent payable to the owner or mortgagee, insurance
payable by reason of the loss or nonconformity of, defects or
infringement of rights in, or damage to the property.

(13) "Property" means all of a person's right, title, and
interest, both legal and equitable, in real and personal
property, tangible and intangible, wherever located and
however acquired. The term includes proceeds, products,
offspring, rents, or profits of or from the property.
(14) "Receiver" means a person appointed by the court as the court's agent, and subject to the court's direction, to take possession of, manage, and, if authorized by this article or court order, transfer, sell, lease, license, exchange, collect, or otherwise dispose of receivership property.

(15) "Receivership" means a proceeding in which a receiver is appointed.

(16) "Receivership property" means the property of an owner which is described in the order appointing a receiver or a subsequent order. The term includes any proceeds, products, offspring, rents, or profits of or from the property.

(17) "Record", used as a noun, means information that is inscribed on a tangible medium or that is stored on an electronic or other medium and is retrievable in perceivable form.

(18) "Rents" means:

(a) sums payable for the right to possess or occupy, or for the actual possession or occupation of, real property of another person;

(b) sums payable to a mortgagor under a policy of rental-interruption insurance covering real property;

(c) claims arising out of a default in the payment of sums payable for the right to possess or occupy real property of another person;

(d) sums payable to terminate an agreement to possess or occupy real property of another person;

(e) sums payable to a mortgagor for payment or reimbursement of expenses incurred in owning, operating, and
MAINTAINING REAL PROPERTY OR CONSTRUCTING OR INSTALLING
IMPROVEMENTS ON REAL PROPERTY; OR

(f) OTHER SUMS PAYABLE UNDER AN AGREEMENT RELATING TO
THE REAL PROPERTY OF ANOTHER PERSON WHICH CONSTITUTE RENTS
UNDER LAW OF THIS STATE OTHER THAN THIS ARTICLE.

(19) "SECURED OBLIGATION" MEANS AN OBLIGATION THE
PAYMENT OR PERFORMANCE OF WHICH IS SECURED BY A SECURITY
AGREEMENT.

(20) "SECURITY AGREEMENT" MEANS AN AGREEMENT THAT
CREATES OR PROVIDES FOR A LIEN.

(21) "SIGN" MEANS, WITH PRESENT INTENT TO AUTHENTICATE OR
ADOPT A RECORD:

(a) TO EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR

(b) TO ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD
AN ELECTRONIC SOUND, SYMBOL, OR PROCESS.

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

38-46-103. Notice and opportunity for hearing. (1) EXCEPT AS
OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION, THE COURT
MAY ISSUE AN ORDER UNDER THIS ARTICLE ONLY AFTER NOTICE AND
OPPORTUNITY FOR A HEARING APPROPRIATE IN THE CIRCUMSTANCES.

(2) THE COURT MAY ISSUE AN ORDER UNDER THIS ARTICLE:

(a) WITHOUT PRIOR NOTICE IF THE CIRCUMSTANCES REQUIRE
ISSUANCE OF AN ORDER BEFORE NOTICE IS GIVEN;

(b) AFTER NOTICE AND WITHOUT A PRIOR HEARING IF THE
CIRCUMSTANCES REQUIRE ISSUANCE OF AN ORDER BEFORE A HEARING IS HELD; OR

(c) After notice and without a hearing if no interested party timely requests a hearing.

38-46-104. Scope - exclusions. (1) Except as otherwise provided in subsection (2) or (3) of this section, this article applies to a receivership for an interest in real property and any personal property related to or used in operating the real property.

(2) This article does not apply to a receivership for an interest in real property improved by one to four dwelling units unless:

(a) The interest is used for agricultural, commercial, industrial, or mineral-extraction purposes, other than incidental uses by an owner occupying the property as the owner’s primary residence;

(b) The interest secures an obligation incurred at a time when the property was used or planned for use for agricultural, commercial, industrial, or mineral-extraction purposes;

(c) The owner planned or is planning to develop the property into one or more dwelling units to be sold or leased in the ordinary course of the owner’s business; or

(d) The owner is collecting or has the right to collect rents or other income from the property from a person other than an affiliate of the owner.

(3) This article does not apply to a receivership authorized by law of this state other than this article in which
THE RECEIVER IS A GOVERNMENTAL UNIT OR AN INDIVIDUAL ACTING IN AN
OFFICIAL CAPACITY ON BEHALF OF THE UNIT EXCEPT TO THE EXTENT
PROVIDED BY THE OTHER LAW.

(4) THIS ARTICLE DOES NOT LIMIT THE AUTHORITY OF A COURT TO
APPOINT A RECEIVER UNDER LAW OF THIS STATE OTHER THAN THIS
ARTICLE.

(5) UNLESS DISPLACED BY A PARTICULAR PROVISION OF THIS
ARTICLE, THE PRINCIPLES OF LAW AND EQUITY SUPPLEMENT THIS ARTICLE.

38-46-105. Power of court. The court that appoints a
receiver under this article has exclusive jurisdiction to direct
the receiver and determine any controversy related to the
receivership or receivership property.

38-46-106. Appointment of receiver. (1) The court may
appoint a receiver:

(a) Before judgment, to protect a party that
demonstrates an apparent right, title, or interest in real
property that is the subject of the action, if the property or its
revenue-producing potential:

(I) is being subjected to or is in danger of waste, loss,
dissipation, or impairment; or

(II) has been or is about to be the subject of a voidable
transaction;

(b) After judgment:

(I) To carry the judgment into effect; or

(II) To preserve nonexempt real property pending appeal
or when an execution has been returned unsatisfied and the
owner refuses to apply the property in satisfaction of the
JUDGMENT;

(c) In an action in which a receiver for real property may be appointed on equitable grounds; or

(d) During the time allowed for redemption, to preserve real property sold in an execution or foreclosure sale and secure its rents to the person entitled to the rents.

(2) In connection with the foreclosure or other enforcement of a mortgage, the court may appoint a receiver for the mortgaged property if:

(a) Appointment is necessary to protect the property from waste, loss, transfer, dissipation, or impairment;

(b) The mortgagor agreed in a signed record to appointment of a receiver on default;

(c) The owner agreed, after default and in a signed record, to appointment of a receiver;

(d) The property and any other collateral held by the mortgagee are not sufficient to satisfy the secured obligation;

(e) The owner fails to turn over to the mortgagee proceeds or rents the mortgagee was entitled to collect; or

(f) The holder of a subordinate lien obtains appointment of a receiver for the property.

(3) The court may condition appointment of a receiver without prior notice under Section 38-46-103 (2) (a) or without a prior hearing under Section 38-46-103 (2) (b) on the giving of security by the person seeking the appointment for the payment of damages, reasonable attorney's fees, and costs incurred or suffered by any person if the court later concludes that the
APPOINTMENT WAS NOT JUSTIFIED. IF THE COURT LATER CONCLUDES THAT THE APPOINTMENT WAS JUSTIFIED, THE COURT SHALL RELEASE THE SECURITY.

38-46-107. Disqualification from appointment as receiver - disclosure of interest. (1) The court may not appoint a person as receiver unless the person submits to the court a statement under penalty of perjury that the person is not disqualified.

(2) Except as otherwise provided in subsection (3) of this section, a person is disqualified from appointment as receiver if the person:

(a) Is an affiliate of a party;

(b) Has an interest materially adverse to an interest of a party;

(c) Has a material financial interest in the outcome of the action, other than compensation the court may allow the receiver;

(d) Has a debtor-creditor relationship with a party; or

(e) Holds an equity interest in a party, other than a noncontrolling interest in a publicly traded company.

(3) A person is not disqualified from appointment as receiver solely because the person:

(a) Was appointed receiver or is owed compensation in an unrelated matter involving a party or was engaged by a party in a matter unrelated to the receivership;

(b) Is an individual obligated to a party on a debt that is not in default and was incurred primarily for personal, family, or household purposes; or
(c) Maintains with a party a deposit account as defined in section 4-9-102 (29), C.R.S.

(4) A person seeking appointment of a receiver may nominate a person to serve as receiver, but the court is not bound by the nomination.

38-46-108. Receiver's bond - alternative security. (1) Except as otherwise provided in subsection (2) of this section, a receiver shall post with the court a bond that:

(a) Is conditioned on the faithful discharge of the receiver's duties;

(b) Has one or more sureties approved by the court;

(c) Is in an amount the court specifies; and

(d) Is effective as of the date of the receiver's appointment.

(2) The court may approve the posting by a receiver with the court of alternative security, such as a letter of credit or deposit of funds. The receiver may not use receivership property as alternative security. Interest that accrues on deposited funds must be paid to the receiver on the receiver's discharge.

(3) The court may authorize a receiver to act before the receiver posts the bond or alternative security required by this section.

(4) A claim against a receiver's bond or alternative security must be made not later than one year after the date the receiver is discharged.

38-46-109. Status of receiver as lien creditor. (1) On appointment of a receiver, the receiver has the status of a lien creditor.
CREDITOR UNDER:

(a) Article 9 of Title 4, C.R.S., as to receivership property that is personal property or fixtures; and

(b) Article 35 of Title 38, C.R.S., as to receivership property that is real property.

38-46-110. Security agreement covering after-acquired property. Except as otherwise provided by law of this state other than this article, property that a receiver or owner acquires after appointment of the receiver is subject to a security agreement entered into before the appointment to the same extent as if the court had not appointed the receiver.

38-46-111. Collection and turnover of receivership property.

(1) Unless the court orders otherwise, on demand by a receiver:

(a) A person that owes a debt that is receivership property and is matured or payable on demand or on order shall pay the debt to or on the order of the receiver, except to the extent the debt is subject to setoff or recoupment; and

(b) Subject to subsection (3) of this section, a person that has possession, custody, or control of receivership property shall turn the property over to the receiver.

(2) A person that has notice of the appointment of a receiver and owes a debt that is receivership property may not satisfy the debt by payment to the owner.

(3) If a creditor has possession, custody, or control of receivership property and the validity, perfection, or priority of the creditor's lien on the property depends on the creditor's possession, custody, or control, the creditor may retain
POSESSION, CUSTODY, OR CONTROL UNTIL THE COURT ORDERS ADEQUATE PROTECTION OF THE CREDITOR'S LIEN.

(4) UNLESS A BONA FIDE DISPUTE EXISTS ABOUT A RECEIVER'S RIGHT TO POSSESSION, CUSTODY, OR CONTROL OF RECEIVERSHIP PROPERTY, THE COURT MAY SANCTION AS CIVIL CONTEMPT A PERSON'S FAILURE TO TURN THE PROPERTY OVER WHEN REQUIRED BY THIS SECTION.

38-46-112. Powers and duties of receiver. (1) Except as limited by court order or law of this state other than this article, a receiver may:

(a) Collect, control, manage, conserve, and protect receivership property;

(b) Operate a business constituting receivership property, including preservation, use, sale, lease, license, exchange, collection, or disposition of the property in the ordinary course of business;

(c) In the ordinary course of business, incur unsecured debt and pay expenses incidental to the receiver's preservation, use, sale, lease, license, exchange, collection, or disposition of receivership property;

(d) Assert a right, claim, cause of action, or defense of the owner which relates to receivership property;

(e) Seek and obtain instruction from the court concerning receivership property, exercise of the receiver's powers, and performance of the receiver's duties;

(f) On subpoena, compel a person to submit to examination under oath, or to produce and permit inspection and copying of designated records or tangible things, with respect to
RECEIVERSHIP PROPERTY OR ANY OTHER MATTER THAT MAY AFFECT
ADMINISTRATION OF THE RECEIVERSHIP;

(g) ENGAGE A PROFESSIONAL AS PROVIDED IN SECTION 38-46-115;
(h) APPLY TO A COURT OF ANOTHER STATE FOR APPOINTMENT AS
ANCILLARY RECEIVER WITH RESPECT TO RECEIVERSHIP PROPERTY
LOCATED IN THAT STATE; AND

(i) EXERCISE ANY POWER CONFERRED BY COURT ORDER, THIS
ARTICLE, OR LAW OF THIS STATE OTHER THAN THIS ARTICLE.

(2) WITH COURT APPROVAL, A RECEIVER MAY:

(a) INCUR DEBT FOR THE USE OR BENEFIT OF RECEIVERSHIP
PROPERTY OTHER THAN IN THE ORDINARY COURSE OF BUSINESS;
(b) MAKE IMPROVEMENTS TO RECEIVERSHIP PROPERTY;
(c) USE OR TRANSFER RECEIVERSHIP PROPERTY OTHER THAN IN
THE ORDINARY COURSE OF BUSINESS AS PROVIDED IN SECTION 38-46-116;
(d) ADOPT OR REJECT AN EXECUTORY CONTRACT OF THE OWNER
AS PROVIDED IN SECTION 38-46-117;
(e) PAY COMPENSATION TO THE RECEIVER AS PROVIDED IN SECTION
38-46-121, AND TO EACH PROFESSIONAL ENGAGED BY THE RECEIVER AS
PROVIDED IN SECTION 38-46-115;
(f) RECOMMEND ALLOWANCE OR DISALLOWANCE OF A CLAIM OF
A CREDITOR AS PROVIDED IN SECTION 38-46-120; AND

(g) MAKE A DISTRIBUTION OF RECEIVERSHIP PROPERTY AS
PROVIDED IN SECTION 38-46-120.

(3) A RECEIVER SHALL:

(a) PREPARE AND RETAIN APPROPRIATE BUSINESS RECORDS,
INCLUDING A RECORD OF EACH RECEIPT, DISBURSEMENT, AND DISPOSITION
OF RECEIVERSHIP PROPERTY;
(b) Account for receivership property, including the proceeds of a sale, lease, license, exchange, collection, or other disposition of the property;

(c) File with the clerk and recorder a copy of the order appointing the receiver and, if a legal description of the real property is not included in the order, the legal description;

(d) Disclose to the court any fact arising during the receivership which would disqualify the receiver under section 38-46-107; and

(e) Perform any duty imposed by court order, this article, or law of this state other than this article.

(4) The powers and duties of a receiver may be expanded, modified, or limited by court order.

38-46-113. Duties of owner. (1) An owner shall:

(a) Assist and cooperate with the receiver in the administration of the receivership and the discharge of the receiver's duties;

(b) Preserve and turn over to the receiver all receivership property in the owner's possession, custody, or control;

(c) Identify all records and other information relating to the receivership property, including a password, authorization, or other information needed to obtain or maintain access to or control of the receivership property, and make available to the receiver the records and information in the owner's possession, custody, or control;

(d) On subpoena, submit to examination under oath by the
RECEIVER CONCERNING THE ACTS, CONDUCT, PROPERTY, LIABILITIES, AND
FINANCIAL CONDITION OF THE OWNER OR ANY MATTER RELATING TO THE
RECEIVERSHIP PROPERTY OR THE RECEIVERSHIP; AND

(f) PERFORM ANY DUTY IMPOSED BY COURT ORDER, THIS ARTICLE,
OR LAW OF THIS STATE OTHER THAN THIS ARTICLE.

(2) IF AN OWNER IS A PERSON OTHER THAN AN INDIVIDUAL, THIS
SECTION APPLIES TO EACH OFFICER, DIRECTOR, MANAGER, MEMBER,
PARTNER, TRUSTEE, OR OTHER PERSON EXERCISING OR HAVING THE POWER
TO EXERCISE CONTROL OVER THE AFFAIRS OF THE OWNER.

(3) IF A PERSON KNOWINGLY FAILS TO PERFORM A DUTY IMPOSED
BY THIS SECTION, THE COURT MAY:

(a) AWARD THE RECEIVER ACTUAL DAMAGES CAUSED BY THE
PERSON'S FAILURE, REASONABLE ATTORNEY FEES, AND COSTS; AND

(b) SANCTION THE FAILURE AS CIVIL CONTEMPT.

38-46-114. Stay - injunction. (1) Except as otherwise
provided in subsection (4) of this section or ordered by the
court, an order appointing a receiver operates as a stay,
applicable to all persons, of an act, action, or proceeding:

(a) To obtain possession of, exercise control over, or
enforce a judgment against receivership property; and

(b) To enforce a lien against receivership property to the
extent the lien secures a claim against the owner which arose
before entry of the order.

(2) Except as otherwise provided in subsection (4) of this
section, the court may enjoin an act, action, or proceeding
against or relating to receivership property if the injunction is
necessary to protect the property or facilitate administration
OF THE RECEIVERSHIP.

(3) A PERSON WHOSE ACT, ACTION, OR PROCEEDING IS StayED OR ENJOINED UNDER THIS SECTION MAY APPLY TO THE COURT FOR RELIEF FROM THE STAY OR INJUNCTION FOR CAUSE.

(4) AN ORDER UNDER SUBSECTION (1) OR (2) OF THIS SECTION DOES NOT OPERATE AS A STAY OR INJUNCTION OF:

(a) AN ACT, ACTION, OR PROCEEDING TO FORECLOSE OR OTHERWISE ENFORCE A MORTGAGE BY THE PERSON SEEKING APPOINTMENT OF THE RECEIVER;

(b) AN ACT, ACTION, OR PROCEEDING TO PERFECT, OR MAINTAIN OR CONTINUE THE PERFECTION OF, AN INTEREST IN RECEIVERSHIP PROPERTY;

(c) COMMENCEMENT OR CONTINUATION OF A CRIMINAL PROCEEDING;

(d) COMMENCEMENT OR CONTINUATION OF AN ACTION OR PROCEEDING, OR ENFORCEMENT OF A JUDGMENT OTHER THAN A MONEY JUDGMENT IN AN ACTION OR PROCEEDING, BY A GOVERNMENTAL UNIT TO ENFORCE ITS POLICE OR REGULATORY POWER; OR

(e) ESTABLISHMENT BY A GOVERNMENTAL UNIT OF A TAX LIABILITY AGAINST THE OWNER OR RECEIVERSHIP PROPERTY OR AN APPEAL OF THE LIABILITY.

(5) THE COURT MAY VOID AN ACT THAT VIOLATES A STAY OR INJUNCTION UNDER THIS SECTION.

(6) IF A PERSON KNOWINGLY VIOLATES A STAY OR INJUNCTION UNDER THIS SECTION, THE COURT MAY:

(a) AWARD ACTUAL DAMAGES CAUSED BY THE VIOLATION, REASONABLE ATTORNEY FEES, AND COSTS; AND
(b) SANCTION THE VIOLATION AS CIVIL CONTEMPT.


(1) WITH COURT APPROVAL, A RECEIVER MAY ENGAGE AN ATTORNEY, ACCOUNTANT, APPRAISER, AUCTIONEER, BROKER, OR OTHER PROFESSIONAL TO ASSIST THE RECEIVER IN PERFORMING A DUTY OR EXERCISING A POWER OF THE RECEIVER. THE RECEIVER SHALL DISCLOSE TO THE COURT:

(a) THE IDENTITY AND QUALIFICATIONS OF THE PROFESSIONAL;
(b) THE SCOPE AND NATURE OF THE PROPOSED ENGAGEMENT;
(c) ANY POTENTIAL CONFLICT OF INTEREST; AND
(d) THE PROPOSED COMPENSATION.

(2) A PERSON IS NOT DISQUALIFIED FROM ENGAGEMENT UNDER THIS SECTION SOLELY BECAUSE OF THE PERSON'S ENGAGEMENT BY, REPRESENTATION OF, OR OTHER RELATIONSHIP WITH THE RECEIVER, A CREDITOR, OR A PARTY. THIS ARTICLE DOES NOT PREVENT THE RECEIVER FROM SERVING IN THE RECEIVERSHIP AS AN ATTORNEY, ACCOUNTANT, AUCTIONEER, OR BROKER WHEN AUTHORIZED BY LAW.

(3) A RECEIVER OR PROFESSIONAL ENGAGED UNDER SUBSECTION (1) OF THIS SECTION SHALL FILE WITH THE COURT AN ITEMIZED STATEMENT OF THE TIME SPENT, WORK PERFORMED, AND BILLING RATE OF EACH PERSON THAT PERFORMED THE WORK AND AN ITEMIZED LIST OF EXPENSES. THE RECEIVER SHALL PAY THE AMOUNT APPROVED BY THE COURT.

38-46-116. Use or transfer of receivership property not in ordinary course of business. (1) IN THIS SECTION, "GOOD FAITH" MEANS HONESTY IN FACT AND THE OBSERVANCE OF REASONABLE COMMERCIAL STANDARDS OF FAIR DEALING.

(2) WITH COURT APPROVAL, A RECEIVER MAY USE RECEIVERSHIP
PROPERTY OTHER THAN IN THE ORDINARY COURSE OF BUSINESS.

(3) WITH COURT APPROVAL, A RECEIVER MAY TRANSFER RECEIVERSHIP PROPERTY OTHER THAN IN THE ORDINARY COURSE OF BUSINESS BY SALE, LEASE, LICENSE, EXCHANGE, OR OTHER DISPOSITION. UNLESS THE AGREEMENT OF SALE PROVIDES OTHERWISE, A SALE UNDER THIS SECTION IS FREE AND CLEAR OF A LIEN OF THE PERSON THAT OBTAINED APPOINTMENT OF THE RECEIVER, ANY SUBORDINATE LIEN, AND ANY RIGHT OF REDEMPTION BUT IS SUBJECT TO A SENIOR LIEN.

(4) A LIEN ON RECEIVERSHIP PROPERTY WHICH IS EXTINGUISHED BY A TRANSFER UNDER SUBSECTION (3) OF THIS SECTION ATTACHES TO THE PROCEEDS OF THE TRANSFER WITH THE SAME VALIDITY, PERFECTION, AND PRIORITY THE LIEN HAD ON THE PROPERTY IMMEDIATELY BEFORE THE TRANSFER, EVEN IF THE PROCEEDS ARE NOT SUFFICIENT TO SATISFY ALL OBLIGATIONS SECURED BY THE LIEN.

(5) A TRANSFER UNDER SUBSECTION (3) OF THIS SECTION MAY OCCUR BY MEANS OTHER THAN A PUBLIC AUCTION SALE. A CREDITOR HOLDING A VALID LIEN ON THE PROPERTY TO BE TRANSFERRED MAY PURCHASE THE PROPERTY AND OFFSET AGAINST THE PURCHASE PRICE PART OR ALL OF THE ALLOWED AMOUNT SECURED BY THE LIEN, IF THE CREDITOR TENDERS FUNDS SUFFICIENT TO SATISFY IN FULL THE REASONABLE EXPENSES OF TRANSFER AND THE OBLIGATION SECURED BY ANY SENIOR LIEN EXTINGUISHED BY THE TRANSFER.

(6) A REVERSAL OR MODIFICATION OF AN ORDER APPROVING A TRANSFER UNDER SUBSECTION (3) OF THIS SECTION DOES NOT AFFECT THE VALIDITY OF THE TRANSFER TO A PERSON THAT ACQUIRED THE PROPERTY IN GOOD FAITH OR REVIVE AGAINST THE PERSON ANY LIEN EXTINGUISHED BY THE TRANSFER, WHETHER THE PERSON KNEW BEFORE THE TRANSFER OF
THE REQUEST FOR REVERSAL OR MODIFICATION, UNLESS THE COURT STAYED THE ORDER BEFORE THE TRANSFER.

38-46-117. Executory contract. (1) In this section, "timeshare interest" means an interest having a duration of more than three years which grants its holder the right to use and occupy an accommodation, facility, or recreational site, whether improved or not, for a specific period less than a full year during any given year.

(2) Except as otherwise provided in subsection (8) of this section, with court approval, a receiver may adopt or reject an executory contract of the owner relating to receivership property. The court may condition the receiver's adoption and continued performance of the contract on terms appropriate under the circumstances. If the receiver does not request court approval to adopt or reject the contract within a reasonable time after the receiver's appointment, the receiver is deemed to have rejected the contract.

(3) A receiver's performance of an executory contract before court approval under subsection (2) of this section of its adoption or rejection is not an adoption of the contract and does not preclude the receiver from seeking approval to reject the contract.

(4) A provision in an executory contract which requires or permits a forfeiture, modification, or termination of the contract because of the appointment of a receiver or the financial condition of the owner does not affect a receiver's power under subsection (2) of this section to adopt the contract.
5 A RECEIVER'S RIGHT TO POSSESS OR USE RECEIVERSHIP PROPERTY PURSUANT TO AN EXECUTORY CONTRACT TERMINATES ON REJECTION OF THE CONTRACT UNDER SUBSECTION (2) OF THIS SECTION. REJECTION IS A BREACH OF THE CONTRACT EFFECTIVE IMMEDIATELY BEFORE APPOINTMENT OF THE RECEIVER. A CLAIM FOR DAMAGES FOR REJECTION OF THE CONTRACT MUST BE SUBMITTED BY THE LATER OF:

(a) The time set for submitting a claim in the receivership;

or

(b) Thirty days after the court approves the rejection.

6 If at the time a receiver is appointed, the owner has the right to assign an executory contract relating to receivership property under law of this state other than this article, the receiver may assign the contract with court approval.

7 If a receiver rejects under subsection (2) of this section an executory contract for the sale of receivership property that is real property in possession of the purchaser or a real-property timeshare interest, the purchaser may:

(a) Treat the rejection as a termination of the contract, and in that case the purchaser has a lien on the property for the recovery of any part of the purchase price the purchaser paid;

or

(b) Retain the purchaser's right to possession under the contract, and in that case the purchaser shall continue to perform all obligations arising under the contract and may offset any damages caused by nonperformance of an obligation of the owner after the date of the rejection, but the purchaser has no right or claim against other receivership property or the
RECEIVER ON ACCOUNT OF THE DAMAGES.

(8) A RECEIVER MAY NOT REJECT AN UNEXPIRED LEASE OF REAL PROPERTY UNDER WHICH THE OWNER IS THE LANDLORD IF:

(a) THE TENANT OCCUPIES THE LEASED PREMISES AS THE TENANT'S PRIMARY RESIDENCE;

(b) THE RECEIVER WAS APPOINTED AT THE REQUEST OF A PERSON OTHER THAN A MORTGAGEE; OR

(c) THE RECEIVER WAS APPOINTED AT THE REQUEST OF A MORTGAGEE AND:

(I) THE LEASE IS SUPERIOR TO THE LIEN OF THE MORTGAGE;

(II) THE TENANT HAS AN ENFORCEABLE AGREEMENT WITH THE MORTGAGEE OR THE HOLDER OF A SENIOR LIEN UNDER WHICH THE TENANT'S OCCUPANCY WILL NOT BE DISTURBED AS LONG AS THE TENANT PERFORMS ITS OBLIGATIONS UNDER THE LEASE;

(III) THE MORTGAGEE HAS CONSENTED TO THE LEASE, EITHER IN A SIGNED RECORD OR BY ITS FAILURE TIMELY TO OBJECT THAT THE LEASE VIOLATED THE MORTGAGE; OR

(IV) THE TERMS OF THE LEASE WERE COMMERCIALLY REASONABLE AT THE TIME THE LEASE WAS AGREED TO AND THE TENANT DID NOT KNOW OR HAVE REASON TO KNOW THAT THE LEASE VIOLATED THE MORTGAGE.

38-46-118. Defenses and immunities of receiver. (1) A RECEIVER IS ENTITLED TO ALL DEFENSES AND IMMUNITIES PROVIDED BY LAW OF THIS STATE OTHER THAN THIS ARTICLE FOR AN ACT OR OMISSION WITHIN THE SCOPE OF THE RECEIVER'S APPOINTMENT.

(2) A RECEIVER MAY BE SUED PERSONALLY FOR AN ACT OR OMISSION IN ADMINISTERING RECEIVERSHIP PROPERTY ONLY WITH APPROVAL OF THE COURT THAT APPOINTED THE RECEIVER.
38-46-119. Interim report of receiver. (1) A RECEIVER MAY FILE OR, IF ORDERED BY THE COURT, SHALL FILE AN INTERIM REPORT THAT INCLUDES:

(a) THE ACTIVITIES OF THE RECEIVER SINCE APPOINTMENT OR A PREVIOUS REPORT;

(b) RECEIPTS AND DISBURSEMENTS, INCLUDING A PAYMENT MADE OR PROPOSED TO BE MADE TO A PROFESSIONAL ENGAGED BY THE RECEIVER;

(c) RECEIPTS AND DISPOSITIONS OF RECEIVERSHIP PROPERTY;

(d) FEES AND EXPENSES OF THE RECEIVER AND, IF NOT FILED SEPARATELY, A REQUEST FOR APPROVAL OF PAYMENT OF THE FEES AND EXPENSES; AND

(e) ANY OTHER INFORMATION REQUIRED BY THE COURT.

38-46-120. Notice of appointment - claim against receivership - distribution to creditors. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (6) OF THIS SECTION, A RECEIVER SHALL GIVE NOTICE OF APPOINTMENT OF THE RECEIVER TO CREDITORS OF THE OWNER BY:

(a) DEPOSIT FOR DELIVERY THROUGH FIRST-CLASS MAIL OR OTHER COMMERCIALLY REASONABLE DELIVERY METHOD TO THE LAST-KNOWN ADDRESS OF EACH CREDITOR; AND

(b) PUBLICATION AS DIRECTED BY THE COURT.

(2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (6) OF THIS SECTION, THE NOTICE REQUIRED BY SUBSECTION (1) OF THIS SECTION MUST SPECIFY THE DATE BY WHICH EACH CREDITOR HOLDING A CLAIM AGAINST THE OWNER WHICH AROSE BEFORE APPOINTMENT OF THE RECEIVER MUST SUBMIT THE CLAIM TO THE RECEIVER. THE DATE SPECIFIED MUST BE AT LEAST NINETY DAYS AFTER THE LATER OF NOTICE UNDER PARAGRAPH (a)
OF SUBSECTION (1) OF THIS SECTION OR LAST PUBLICATION UNDER PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION. THE COURT MAY EXTEND THE PERIOD FOR SUBMITTING THE CLAIM. UNLESS THE COURT ORDERS OTHERWISE, A CLAIM THAT IS NOT SUBMITTED TIMELY IS NOT ENTITLED TO A DISTRIBUTION FROM THE RECEIVERSHIP.

(3) A CLAIM SUBMITTED BY A CREDITOR UNDER THIS SECTION MUST:

(a) STATE THE NAME AND ADDRESS OF THE CREDITOR;

(b) STATE THE AMOUNT AND BASIS OF THE CLAIM;

(c) IDENTIFY ANY PROPERTY SECURING THE CLAIM;

(d) BE SIGNED BY THE CREDITOR UNDER PENALTY OF PERJURY;

AND

(e) INCLUDE A COPY OF ANY RECORD ON WHICH THE CLAIM IS BASED.

(4) AN ASSIGNMENT BY A CREDITOR OF A CLAIM AGAINST THE OWNER IS EFFECTIVE AGAINST THE RECEIVER ONLY IF THE ASSIGNEE GIVES TIMELY NOTICE OF THE ASSIGNMENT TO THE RECEIVER IN A SIGNED RECORD.

(5) AT ANY TIME BEFORE ENTRY OF AN ORDER APPROVING A RECEIVER'S FINAL REPORT, THE RECEIVER MAY FILE WITH THE COURT AN OBJECTION TO A CLAIM OF A CREDITOR, STATING THE BASIS FOR THE OBJECTION. THE COURT SHALL ALLOW OR DISALLOW THE CLAIM ACCORDING TO LAW OF THIS STATE OTHER THAN THIS ARTICLE.

(6) IF THE COURT CONCLUDES THAT RECEIVERSHIP PROPERTY IS LIKELY TO BE INSUFFICIENT TO SATISFY CLAIMS OF EACH CREDITOR HOLDING A PERFECTED LIEN ON THE PROPERTY, THE COURT MAY ORDER THAT:
1  (a) The receiver need not give notice under subsection (1)
2  of this section of the appointment to all creditors of the owner,
3  but only such creditors as the court directs; and
4  
5  (b) Unsecured creditors need not submit claims under this
6  section.
7  
8  (7) Subject to section 38-46-121:
9  
10  (a) A distribution of receivership property to a creditor
11  holding a perfected lien on the property must be made in
12  accordance with the creditor's priority under law of this state
13  other than this article; and
14  
15  (b) A distribution of receivership property to a creditor
16  with an allowed unsecured claim must be made as the court
17  directs according to law of this state other than this article.
18  
19  38-46-121. Fees and expenses. (1) The court may award a
20  receiver from receivership property the reasonable and
21  necessary fees and expenses of performing the duties of the
22  receiver and exercising the powers of the receiver.
23  
24  (2) The court may order one or more of the following to
25  pay the reasonable and necessary fees and expenses of the
26  receivership, including reasonable attorney fees and costs:
27  
28  (a) A person that requested the appointment of the
29  receiver, if the receivership does not produce sufficient funds to
30  pay the fees and expenses; or
31  
32  (B) A person whose conduct justified or would have
33  justified the appointment of the receiver under section 38-46-106
34  (a) (1).
35  
36  38-46-122. Removal of receiver - replacement - termination of
receivership. (1) The court may remove a receiver for cause.

(2) The court shall replace a receiver that dies, resigns, or is removed.

(3) If the court finds that a receiver that resigns or is removed, or the representative of a receiver that is deceased, has accounted fully for and turned over to the successor receiver all receivership property and has filed a report of all receipts and disbursements during the service of the replaced receiver, the replaced receiver is discharged.

(4) The court may discharge a receiver and terminate the court's administration of the receivership property if the court finds that appointment of the receiver was improvident or that the circumstances no longer warrant continuation of the receivership. If the court finds that the appointment was sought wrongfully or in bad faith, the court may assess against the person that sought the appointment:

   (a) The fees and expenses of the receivership, including reasonable attorney fees and costs; and

   (b) Actual damages caused by the appointment, including reasonable attorney fees and costs.

38-46-123. Final report of receiver - discharge. (1) On completion of a receiver's duties, the receiver shall file a final report including:

   (a) A description of the activities of the receiver in the conduct of the receivership;

   (b) A list of receivership property at the commencement of the receivership and any receivership property received
DURING THE RECEIVERSHIP;

(c) A LIST OF DISBURSEMENTS, INCLUDING PAYMENTS TO PROFESSIONALS ENGAGED BY THE RECEIVER;

(d) A LIST OF DISPOSITIONS OF RECEIVERSHIP PROPERTY;

(e) A LIST OF DISTRIBUTIONS MADE OR PROPOSED TO BE MADE FROM THE RECEIVERSHIP FOR CREDITOR CLAIMS;

(f) IF NOT FILED SEPARATELY, A REQUEST FOR APPROVAL OF THE PAYMENT OF FEES AND EXPENSES OF THE RECEIVER; AND

(g) ANY OTHER INFORMATION REQUIRED BY THE COURT.

(2) IF THE COURT APPROVES A FINAL REPORT FILED UNDER SUBSECTION (1) OF THIS SECTION AND THE RECEIVER DISTRIBUTES ALL RECEIVERSHIP PROPERTY, THE RECEIVER IS DISCHARGED.

38-46-124. Receivership in another state - ancillary proceeding. (1) The court may appoint a receiver appointed in another state, or that person's nominee, as an ancillary receiver with respect to property located in this state or subject to the jurisdiction of the court for which a receiver could be appointed under this article, if:

(a) The person or nominee would be eligible to serve as receiver under section 38-46-107; and

(b) The appointment furthers the person's possession, custody, control, or disposition of property subject to the receivership in the other state.

(2) The court may issue an order that gives effect to an order entered in another state appointing or directing a receiver.

(3) Unless the court orders otherwise, an ancillary
RECEIVER APPOINTED UNDER SUBSECTION (1) OF THIS SECTION HAS THE
RIGHTS, POWERS, AND DUTIES OF A RECEIVER APPOINTED UNDER THIS
ARTICLE.

38-46-125. Effect of enforcement by mortgagee. (1) A request
by a mortgagee for appointment of a receiver, the appointment
of a receiver, or application by a mortgagee of receivership
property or proceeds to the secured obligation does not:

(a) Make the mortgagee a mortgagee in possession of the
real property;
(b) Make the mortgagee an agent of the owner;
(c) Constitute an election of remedies that precludes a
later action to enforce the secured obligation;
(d) Make the secured obligation unenforceable; or
(e) Limit any right available to the mortgagee with
respect to the secured obligation.

38-46-126. 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.

38-46-127. Relation to electronic signatures in global and
national commerce act. This article 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).

38-46-128. Transition. This article does not apply to a
SECTION 2. Inclusion of official comments. The revisor shall include in the publication of the "Uniform Commercial Real Estate Receivership Act", as nonstatutory matter, following each section of the article, the full text of the official comments to that section contained in the official volume containing the 2015 official text of the "Uniform Commercial Real Estate Receivership Act" issued by the Uniform Law Commission, with any changes in the official comments or Colorado comments to correspond to Colorado changes in the uniform act. The revisor of statutes shall prepare the comments for approval by the committee on legal services for.

SECTION 3. Act subject to petition - effective date - applicability. (1) This act takes effect September 1, 2016; 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 the ninety-day period after final adjournment of the general assembly, 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 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to appointments of receivers on or after the applicable effective date of this act.

<Does the commission want a safety clause or the above petition language?>
BILL TOPIC: "Uniform Residential Landlord And Tenant Act 2015"

A BILL FOR AN ACT

101 CONCERNING ENACTMENT OF THE "REVISED UNIFORM RESIDENTIAL
102 LANDLORD AND TENANT ACT (2015)".

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 enacts the "Uniform Residential Landlord and Tenant Act (2015)", drafted by the national conference of commissioners on uniform state laws. <\{Use a condensed version of summary provided by CUSL.\}>

Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.
Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, repeal and reenact, with amendments, article 12 of title 38 as follows:

ARTICLE 12
Revised Uniform Residential Landlord and Tenant Act (2015)

PART 1
GENERAL PROVISIONS

38-12-101. Short title. The short title of this article is the "Revised Uniform Residential Landlord and Tenant Act (2015)".

38-12-102. Definitions. In this article:

(1) "Action" means an action for damages, possession, ejectment, quiet title, specific performance, or other judicial proceeding in which rights under a lease or this article are determined.

(2) "Actual damages" means compensation for direct, consequential, or incidental injuries or losses. The term includes:

(A) Amounts payable to a landlord or tenant under the lease for a violation of the lease; and

(B) Diminution in the value of a dwelling unit.

(3) "Bank" means an organization that engages in the business of banking and is federally insured. The term includes a savings bank, savings and loan association, credit union, and trust company.

(4) "Building, housing, fire, or health code" includes any law concerning fitness for habitation or the construction, maintenance, operation, occupancy, use, or appearance of the
(5) "Contact person" means a person designated by a tenant under section 38-12-109 (b).

(6) "Criminal act" or "criminal activity" means:

(A) The manufacture, sale, distribution, use, or possession of a controlled substance on or in the vicinity of the premises which is criminal under law other than this article; or

(B) Activity that is criminal under law other than this article and threatens the health or safety of an individual on the premises or the landlord or landlord's agent on or off the premises.

(7) "Diminution in the value of a dwelling unit" means a reduction from rent that reflects the extent to which a noncompliant condition of the premises impairs the tenant's use and enjoyment of the unit, as determined by a court based on evidence that need not include expert testimony.

(8) "Dwelling unit" means property leased to a tenant for use as a home, residence, or sleeping place by an individual or two or more individuals who maintain a common household, regardless of their relationship to each other. The term includes:

(A) A single-family residence, together with fixtures and appurtenances, the land on which it is located, and any other structure on the land; and

(B) A structure or part of a structure in which the tenant resides, together with fixtures and appurtenances, and any other area of the land on which the structure is located to
WHICH THE TENANT IS GIVEN AN EXCLUSIVE RIGHT OF POSSESSION DURING
THE TERM OF THE LEASE, INCLUDING A DESIGNATED PARKING SPACE OR
STORAGE AREA.

(9) "Electronic" means relating to technology having
electrical, digital, magnetic, wireless, optical,
electromagnetic, or similar capability.

(10) "Essential service" means heat, hot and cold running
water, sewage or septic disposal, and electricity. The term
includes gas or air conditioning if required to be supplied to a
tenant by the lease or law other than this article that, if not
supplied to the tenant, would create a serious threat to the
health, safety, or property of the tenant or immediate family
member.

(11) "Fees" means amounts payable by a tenant to a
landlord that the landlord has no obligation to account for or
return to the tenant except as otherwise provided in section
38-12-405 (b). The term does not include rent or a security
deposit.

(12) "Funds" means money, checks, bank-account credits,
certificates of deposit, or the like.

(13) "Good faith" means honesty in fact and the
observance of reasonable commercial standards of fair dealing.

(14) "Guest" means an individual, other than the landlord
or landlord's agent, invited on the premises by a tenant or
immediate family member.

(15) "Immediate family member" means any of the
following who habitually resides in a dwelling unit with a
TENANT:

(A) AN INDIVIDUAL RELATED TO THE TENANT BY BLOOD, ADOPTION, MARRIAGE, CIVIL UNION, OR DOMESTIC PARTNERSHIP;

(B) AN INDIVIDUAL HAVING AN INTIMATE RELATIONSHIP WITH THE TENANT; OR

(C) A FOSTER CHILD, STEPCHILD, OR WARD OF THE TENANT OR AN INDIVIDUAL NAMED IN SUBPARAGRAPH (A) OR (B) OF THIS PARAGRAPH (15).

(16) "LANDLORD" MEANS:

(A) THE OWNER OF A DWELLING UNIT RENTED TO A TENANT;

(B) A SUCCESSOR IN INTEREST TO THE LANDLORD;

(C) A SUBLESSOR, ONLY IF THE LANDLORD DID NOT CONSENT TO THE SUBLEASE; AND

(D) A PERSON THAT MANAGES THE UNIT OR ENTERS A LEASE ON BEHALF OF THE OWNER OF THE UNIT AND FAILS TO COMPLY WITH SECTION 38-12-108 (c) AND (d), EXCEPT WITH RESPECT TO EVENTS OCCURRING AFTER:

(i) THE TENANT IS GIVEN NOTICE IN A RECORD THAT COMPLIES WITH SECTION 38-12-108 (c) AND (d); OR

(ii) THE DATE OF TERMINATION OF THE PERSON'S AUTHORITY TO ACT ON BEHALF OF THE OWNER IF THAT AUTHORITY IS TERMINATED.

(17) "LAW" INCLUDES FEDERAL OR STATE STATUTES, CASE LAW, ADMINISTRATIVE ACTION, AND LEGISLATIVE ACTS OF LOCAL GOVERNMENTS.

(18) "LEASE" MEANS A CONTRACT, ORAL OR IN A RECORD, BETWEEN A LANDLORD AND TENANT IN WHICH THE LANDLORD RENTS A DWELLING UNIT TO THE TENANT FOR A TENANCY FOR A FIXED TERM OR A
PERIODIC TENANCY. THE TERM INCLUDES AN AMENDMENT TO THE LEASE, RULES ADOPTED BY THE LANDLORD THAT WERE DISCLOSED TO THE TENANT UNDER SECTION 38-12-108 (b) (4), AND, SUBJECT TO SECTION 38-12-304, RULES ADOPTED BY THE LANDLORD AFTER COMMENCEMENT OF THE TERM OF THE LEASE.

(19) "NOTICE IN A RECORD" MEANS NOTICE THAT COMPLIES WITH SECTION 38-12-107 (b).

(20) "OWNER" MEANS A PERSON VESTED WITH ALL OR PART OF:
(A) LEGAL TITLE TO THE PREMISES; OR
(B) BENEFICIAL OWNERSHIP AND A RIGHT TO PRESENT USE AND ENJOYMENT OF THE PREMISES.

(21) "PERIODIC RENT" MEANS THE AMOUNT PAYABLE EACH MONTH UNDER A TENANCY FOR A FIXED TERM OR A PERIODIC TENANCY FOR MONTH TO MONTH OR PAYABLE EACH WEEK UNDER A PERIODIC TENANCY FOR WEEK TO WEEK. IF RENT IS PAYABLE ANNUALLY, PERIODIC RENT IS THE AMOUNT OF THE ANNUAL RENT DIVIDED BY TWELVE.

(22) "PERIODIC TENANCY" MEANS A TENANCY CREATED UNDER A LEASE OR ARISING BY OPERATION OF LAW FOR EITHER MONTH TO MONTH OR WEEK TO WEEK.

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

(24) "PREMISES" MEANS A DWELLING UNIT AND, TO THE EXTENT OWNED BY THE LANDLORD, ANY STRUCTURE OF WHICH THE UNIT IS A PART. THE TERM INCLUDES ANY AREA AND STRUCTURE OWNED BY THE LANDLORD THAT ARE ASSOCIATED WITH THE STRUCTURE IN WHICH THE
DWELLING UNIT IS LOCATED AND HELD OUT BY THE LANDLORD FOR THE USE OF TENANTS GENERALLY.

(25) "PREPAID RENT" MEANS RENT PAID TO A LANDLORD BEFORE THE FIRST DAY OF THE RENTAL PERIOD TO WHICH IT IS TO BE APPLIED.

(26) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

(27) "RENT", USED AS A NOUN, MEANS A PAYMENT FOR THE RIGHT TO POSSESSION OF A DWELLING UNIT. THE TERM DOES NOT INCLUDE A SECURITY DEPOSIT OR FEES.

(28) "REPAIRS" INCLUDES REMEDIATIONS.

(29) "SECURITY DEPOSIT" MEANS FUNDS PROVIDED TO A LANDLORD TO SECURE PAYMENT OR PERFORMANCE OF A TENANT'S OBLIGATIONS UNDER A LEASE OR THIS ARTICLE AND THE IDENTIFIABLE PROCEEDS OF THE FUNDS, HOWEVER DENOMINATED. THE TERM DOES NOT INCLUDE RENT OR FEES.

(30) "SECURITY INTEREST" MEANS AN INTEREST IN PERSONAL PROPERTY THAT SECURES PAYMENT OR PERFORMANCE OF A TENANT'S OBLIGATIONS UNDER A LEASE OR THIS ARTICLE.

(31) "SIGN" MEANS, WITH PRESENT INTENT TO AUTHENTICATE OR ADOPT A RECORD:

(A) TO EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR

(B) TO ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD AN ELECTRONIC SYMBOL, SOUND, OR PROCESS. FOR PURPOSES OF THIS PARAGRAPH (31), "SYMBOL" INCLUDES AN ELECTRONIC-MAIL ADDRESS OR OTHER IDENTIFYING HEADER.

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

(33) "TENANCY FOR A FIXED TERM" MEANS A TENANCY UNDER A LEASE FOR A FIXED OR COMPUTABLE PERIOD, REGARDLESS OF THE LENGTH OF THE PERIOD.

(34) "TENANT" MEANS:

(A) A PERSON THAT IS A PARTY TO A LEASE OF A DWELLING UNIT AND IS ENTITLED TO POSSESSION OF THE UNIT;

(B) AN ASSIGNEE OR SUBLESSEE OF A PERSON DESCRIBED IN SUBPARAGRAPH (A) OF THIS PARAGRAPH (34) WHO HAS POSSESSION OF THE UNIT WITH THE LANDLORD'S CONSENT; AND

(C) AN INDIVIDUAL AUTHORIZED TO OCCUPY THE UNIT BY A PERSON DESCRIBED IN SUBPARAGRAPH (A) OR (B) OF THIS PARAGRAPH (34) THAT IS NOT AN INDIVIDUAL.

(35) "TENANT REPRESENTATIVE" MEANS:

(A) A PERSONAL REPRESENTATIVE OF A DECEASED TENANT'S ESTATE; OR

(B) BEFORE THE APPOINTMENT OF A PERSONAL REPRESENTATIVE, A CONTACT PERSON, OR, IN THE ABSENCE OF A CONTACT PERSON, A PERSON THE LANDLORD REASONABLY BELIEVES TO BE AN HEIR OF THE TENANT UNDER THE APPLICABLE INTESTATE SUCCESSION LAW.

(36) "UNEARNED RENT" MEANS RENT, INCLUDING PREPAID RENT, THAT A TENANT PAID TO A LANDLORD FOR THE RIGHT TO POSSESSION OF THE DWELLING UNIT FOR ANY PERIOD AFTER THE DATE THE LEASE TERMINATES IN ACCORDANCE WITH ITS TERMS OR THIS ARTICLE. THE TERM DOES NOT INCLUDE AN AMOUNT, INCLUDING RENT, OWED TO THE
LANDLORD FOR A PERIOD BEFORE OR AFTER THE DATE THE LEASE TERMINATES DURING WHICH THE TENANT IS IN PHYSICAL POSSESSION OF THE PREMISES.

(37) "WILLFUL" MEANS INTENTIONAL PERFORMANCE OF AN ACT THE ACTOR KNOWS TO BE PROHIBITED BY THIS ARTICLE OR A LEASE, INTENTIONAL FAILURE TO PERFORM AN ACT THE ACTOR KNOWS TO BE REQUIRED BY THIS ARTICLE OR THE LEASE, OR DELIBERATE INDIFFERENCE TO WHETHER THE PERFORMANCE OR FAILURE TO PERFORM VIOLATES THIS ARTICLE OR THE LEASE. "WILLFULLY" HAS A CORRESPONDING MEANING.

<{Legislative Note: This act uses the term "lease" rather than "rental agreement," which was used in the 1972 Act, because in many states the lawyers and courts prefer the word lease. However, the mere use of the term "lease" is not meant as a substantive change. If a state prefers "rental agreement," the term can be substituted in place of the word "lease."}>

38-12-103. Scope. (a) In this section:

(1) "OCCUPANCY AS A VACATION RENTAL" MEANS OCCUPANCY THAT HAS THE FOLLOWING CHARACTERISTICS:

(A) THE TENANT RENTS THE DWELLING UNIT FOR VACATION PURPOSES ONLY AND HAS A PRINCIPAL RESIDENCE OTHER THAN THE UNIT;

(B) THE UNIT IS FURNISHED WITH PERSONAL PROPERTY NECESSARY TO MAKE THE UNIT READY FOR IMMEDIATE OCCUPANCY BY THE TENANT;

AND

(C) THE OCCUPANCY DOES NOT EXCEED THIRTY CONSECUTIVE DAYS.

(2) "TRANSIENT OCCUPANCY" MEANS OCCUPANCY IN A ROOM OR SUITE OF ROOMS THAT HAS THE FOLLOWING CHARACTERISTICS:
(A) The cost of occupancy is charged on a daily basis;

(B) The operator of the room or suite provides housekeeping and linen service as part of the regularly charged cost of occupancy; and

(C) The occupancy does not exceed thirty consecutive days.

(b) Except as otherwise provided in subsection (c) of this section, this article applies to a lease of a dwelling unit in this state.

(c) The following arrangements are not governed by this article:

(1) Residence at a public or private facility, if incidental to detention or the provision of medical, mental health, geriatric, counseling, educational, religious, disability, personal safety, or similar service;

(2) Occupancy under a contract of sale of, or an option to purchase, a dwelling unit or the building of which it is a part, if the occupant is the purchaser or optionee or an individual who has succeeded to the interest of the purchaser or optionee;

(3) Occupancy by a member of a fraternal or social organization in a part of a structure operated for the benefit of the organization;

(4) Transient occupancy;

(5) Occupancy by an employee of a landlord when the employee's right to occupancy is conditioned on employment in or about the premises;

(6) Occupancy by a holder of a proprietary lease in a
COOPERATIVE;

(7) OCCUPANCY UNDER A LEASE COVERING PREMISES USED BY THE OCCUPANT FOR AGRICULTURAL PURPOSES;
(8) OCCUPANCY AS A VACATION RENTAL; AND
(9) A GROUND LEASE OF REAL PROPERTY, WHICH LEASE DOES NOT INCLUDE A DWELLING UNIT.

38-12-104. Enforcement - duty to mitigate. (a) A RIGHT OR OBLIGATION UNDER THIS ARTICLE IS ENFORCEABLE BY AN ACTION UNLESS THE PROVISION CREATING THE RIGHT OR OBLIGATION PROVIDES OTHERWISE.

(b) A PARTY SEEKING RELIEF UNDER THIS ARTICLE HAS A DUTY TO MITIGATE DAMAGES.

38-12-105. Obligation of good faith. EVERY LEASE OR DUTY UNDER THIS ARTICLE IMPOSES AN OBLIGATION OF GOOD FAITH IN ITS PERFORMANCE AND ENFORCEMENT.

38-12-106. Unconscionability. (a) IF A COURT, AS A MATTER OF LAW, FINDS A LEASE OR ANY PROVISION OF THE LEASE WAS UNCONSCIONABLE AT THE TIME IT WAS MADE, THE COURT MAY REFUSE TO ENFORCE THE LEASE, ENFORCE THE REMAINDER OF THE LEASE WITHOUT THE UNCONSCIONABLE PROVISION, OR LIMIT APPLICATION OF THE UNCONSCIONABLE PROVISION TO AVOID AN UNCONSCIONABLE RESULT.

(b) IF A COURT, AS A MATTER OF LAW, FINDS A SETTLEMENT AGREEMENT IN WHICH A PARTY WAIVED OR AGREED TO FOREGO A CLAIM OR RIGHT UNDER A LEASE OR THIS ARTICLE WAS UNCONSCIONABLE AT THE TIME IT WAS MADE, THE COURT MAY REFUSE TO ENFORCE THE AGREEMENT, ENFORCE THE REMAINDER OF THE AGREEMENT WITHOUT THE UNCONSCIONABLE PROVISION, OR LIMIT APPLICATION OF THE
UNCONSCIONABLE PROVISION TO AVOID AN UNCONSCIONABLE RESULT.

(c) If a party or the court puts unconscionability in issue under subsection (a) or (b) of this section, the court shall allow the parties to present evidence of the setting, purpose, and effect of the lease or settlement agreement to aid the court in making the determination of unconscionability.

38-12-107. Knowledge and notice - notice in a record. (a) In this article, a person has notice of a fact if the person:

(1) has actual knowledge of the fact;

(2) received notice of the fact under subsection (d) of this section; or

(3) has reason to know the fact exists from all facts known to the person at the time in question.

(b) Except as otherwise provided in section 38-12-1001 (c), if this article requires notice in a record to a landlord or tenant, the notice must be signed by the person giving it and:

(1) delivered personally to the landlord or tenant;

(2) deposited in the mail with proper postage and properly addressed if:

(A) sent to the tenant, to the mailing address specified under section 38-12-109; or

(B) no address is specified, to an address reasonable under the circumstances; or

(3) unless the landlord or tenant notifies the other at any time that notice may be given only by personal delivery or by mail as provided in paragraph (2) of this subsection (b), delivered by another means of communication with cost of
TRANSMISSION PROVIDED FOR AND PROPERLY ADDRESSED IF:

(A) SENT TO THE LANDLORD, TO AN ADDRESS SPECIFIED UNDER SECTION 38-12-108; AND

(B) SENT TO THE TENANT, TO AN ADDRESS SPECIFIED UNDER SECTION 38-12-109; OR

(C) NO ADDRESS IS SPECIFIED, TO AN ADDRESS REASONABLE UNDER THE CIRCUMSTANCES.

(c) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (b) OF THIS SECTION, A PERSON GIVES NOTICE OF A FACT TO ANOTHER PERSON BY TAKING STEPS REASONABLY CALCULATED TO INFORM THE OTHER PERSON, WHETHER OR NOT THE OTHER PERSON LEARNS OF THE FACT.

(d) IN THIS ARTICLE, A PERSON RECEIVES NOTICE OF A FACT WHEN:

(1) THE FACT COMES TO THE PERSON'S ATTENTION; OR

(2) IF NOTICE IN A RECORD IS REQUIRED, THE NOTICE IS:

(A) PERSONALLY DELIVERED UNDER PARAGRAPH (1) OF SUBSECTION (b) OF THIS SECTION; OR

(B) SENT OR DELIVERED UNDER PARAGRAPH (2) OR (3) OF SUBSECTION (b) OF THIS SECTION.

38-12-108. Required disclosures by landlord. (a) BEFORE ACCEPTING AN APPLICATION FEE, THE PROSPECTIVE LANDLORD SHALL DISCLOSE TO THE PROSPECTIVE TENANT IN A RECORD THE CRITERIA THE LANDLORD USES TO DETERMINE THE LANDLORD'S WILLINGNESS TO ENTER INTO A LEASE WITH A TENANT.

(b) BEFORE ACCEPTING FUNDS TO BE APPLIED TO A SECURITY DEPOSIT, PREPAID RENT, OR FEES OTHER THAN AN APPLICATION FEE, OR BEFORE ENTERING INTO A LEASE, A PROSPECTIVE LANDLORD SHALL DISCLOSE TO THE PROSPECTIVE TENANT IN A RECORD THE FOLLOWING:
(1) Any condition of the premises that the landlord knows
or on a reasonable inspection of the premises should have known
would constitute a noncompliance under section 38-12-302 and
would materially interfere with the health or safety of the
tenant or immediate family member or would materially
interfere with the use and enjoyment of the premises by the
tenant or immediate family member;

(2) Whether, to the knowledge of the landlord, a
foreclosure action or nonjudicial foreclosure proceeding has
been commenced against the premises;

(3) If rent is prepaid, the month or other period of the
lease to which the rent is to be applied; and

(4) The rules affecting the tenant's use and enjoyment of
the premises, whether adopted by the landlord or another
person.

(c) At or before commencement of the term of a lease, the
landlord shall give the tenant notice in a record specifying:

(1) The name of:

(A) The landlord;

(B) Any person authorized to manage the premises;

(C) The owner of the premises;

(D) Any person authorized to act for the owner for
service of process; and

(E) Any person authorized to receive a notice or demand
for the owner;

(2) The mailing address and any address to be used for the
receipt of electronic communications by the landlord or any
PERSON DESIGNATED BY THE LANDLORD TO WHICH A NOTICE OR DEMAND MUST BE SENT; AND

(3) THE ADDRESS TO, OR THE METHOD BY, WHICH THE TENANT MUST DELIVER RENT.

(d) A LANDLORD SHALL KEEP CURRENT THE INFORMATION REQUIRED BY SUBSECTION (c) OF THIS SECTION.

(e) IF THE PREMISES WERE IN FORECLOSURE BEFORE A LANDLORD AND TENANT ENTERED INTO A LEASE AND THE DISCLOSURE REQUIRED BY PARAGRAPH (2) OF SUBSECTION (b) OF THIS SECTION WAS NOT MADE, THE TENANT MAY RECOVER ACTUAL DAMAGES RESULTING FROM THE FORECLOSURE.

38-12-109. Required disclosures by tenant. (a) At or before commencement of the term of a lease, the tenant shall give the landlord notice in a record specifying the tenant's mailing address and any address to be used for the receipt of electronic communications by the tenant.

(b) At the request of a landlord, the tenant shall designate a contact person to act for the tenant on the tenant's death, by giving the landlord a record specifying the name and, if known, the mailing address, any address to be used for the receipt of electronic communications, and the telephone number of the contact person. In the absence of a request by the landlord, the tenant may designate a contact person in the same manner.

(c) A tenant shall keep current the information required by subsections (a) and (b) of this section. On termination of the lease, the tenant shall provide the landlord a forwarding
ADDRESS TO WHICH THE LANDLORD MUST SEND THE TENANT'S SECURITY
DEPOSIT AND UNEARNED RENT, OR OTHER COMMUNICATIONS.

38-12-110. Principles of law and equity. Unless displaced by
the particular provisions of this article, the principles of law
and equity supplement this article.

PART 2

GENERAL PROVISIONS APPLICABLE TO LEASE

38-12-201. Terms and conditions of lease - delivery of lease to
tenant. (a) A lease may include terms and conditions not
prohibited by this article or law other than this article.
(b) Unless a lease or law other than this article
otherwise provides:
(1) The tenant shall pay rent for the dwelling unit for
the term of the lease in an amount comparable to the rent paid
for other dwelling units of similar size and condition in the same
or a comparable location, determined at the commencement of
the term;
(2) Rent is:
(A) Payable without demand or notice:
(i) At the address or place the landlord designates under
section 38-12-108 (c) (3) or, if no designation is made, at the
landlord’s place of business at the time the lease was made; and
(ii) On the first day of each month or at the beginning of
the term if the term is less than one month; and
(B) Uniformly apportioned from day to day; and
(3) A rental period is on a monthly basis beginning with
the first day of the month for a tenancy for a fixed term of more
THAN ONE MONTH OR A PERIODIC TENANCY OF MONTH TO MONTH AND,
FOR ALL OTHER TENANCIES, THE RENTAL PERIOD BEGINS ON THE FIRST DAY
RENT IS PAID.

(c) EXCEPT AS OTHERWISE PROVIDED IN SECTION 38-12-202,
UNLESS THE LEASE CREATES A TENANCY FOR A FIXED TERM, THE TENANCY
IS A PERIODIC TENANCY FOR WEEK TO WEEK IF THE TENANT PAYS RENT
WEEKLY AND OTHERWISE IS A PERIODIC TENANCY FOR MONTH TO MONTH.

(d) A LANDLORD SHALL PROVIDE THE TENANT A COPY OF ANY
LEASE THAT IS SIGNED BY THEM OR, IF THE LEASE IS ENFORCEABLE UNDER
SECTION 38-12-202, SIGNED BY EITHER OF THEM.

(e) IF A LANDLORD WILLFULLY FAILS TO COMPLY WITH SUBSECTION
(d) OF THIS SECTION, THE TENANT MAY RECOVER ACTUAL DAMAGES OR
ONE MONTH'S PERIODIC RENT, WHICHEVER IS GREATER.

38-12-202. EFFECT OF UNSIGNED LEASE - IMPLIED LEASE. (a)

SUBJECT TO SUBSECTION (b) OF THIS SECTION:

(1) IF A LEASE SIGNED BY THE TENANT IS DELIVERED TO THE
LANDLORD AND THE LANDLORD FAILS TO SIGN THE LEASE AND RETURN IT
TO THE TENANT, ACCEPTANCE OF RENT BY THE LANDLORD WITHOUT A
RESERVATION OF RIGHTS GIVES THE LEASE THE SAME EFFECT AS IF THE
LEASE HAD BEEN SIGNED BY THE LANDLORD AND RETURNED TO THE
TENANT; AND

(2) IF A LEASE SIGNED BY THE LANDLORD IS DELIVERED TO THE
TENANT AND THE TENANT FAILS TO SIGN THE LEASE AND RETURN IT TO THE
LANDLORD, ACCEPTANCE OF POSSESSION AND PAYMENT OF RENT WITHOUT
A RESERVATION OF RIGHTS GIVES THE LEASE THE SAME EFFECT AS IF THE
LEASE HAD BEEN SIGNED BY THE TENANT AND RETURNED TO THE
LANDLORD.
(b) If a lease given effect under subsection (a) of this section provides for a tenancy for a fixed term longer than one year, the lease is effective for one year.

(c) Absent a lease signed by the landlord or tenant that is delivered to the other, if the tenant accepts possession and pays rent to the landlord without a reservation of rights and the landlord accepts rent from the tenant without a reservation of rights, the tenancy created is a periodic tenancy for week to week if the tenant pays rent weekly and in all other cases a periodic tenancy for month to month.

38-12-203. Prohibited provisions in lease. (a) A lease may not require the tenant to:

(1) Unless permitted by this article, waive or forego a right or remedy under this article;

(2) Authorize a person to confess judgment on a claim arising out of the lease or this article;

(3) Perform a duty imposed on the landlord by section 38-12-302;

(4) Agree to pay attorney's fees and costs of the landlord other than those provided by this article or law other than this article; or

(5) Agree to exculpate or limit a liability of the landlord arising under this article or law other than this article or indemnify the landlord for the liability and the costs connected with the liability.

(b) A provision in a lease prohibited by subsection (a) of this section or law other than this article is unenforceable. If
THE LANDLORD SEeks TO ENFORCE THE PROVISION OR ACCEPTS THE 
TENANT’S VOLUNTARY COMPLIANCE WITH THE PROVISION, THE COURT 
MAY AWARD THE TENANT AN AMOUNT NOT TO EXCEED THREE TIMES THE 
PERIODIC RENT.

38-12-204. Separation of rent from landlord duties prohibited.
A LEASE, ASSIGNMENT, SUBLEASE, CONVEYANCE, TRUST DEED, OR 
SECURITY INSTRUMENT MAY NOT AUTHORIZE A PERSON TO RECEIVE RENT 
WITHOUT ASSUMING THE DUTIES IMPOSED ON THE LANDLORD BY THE 
LEASE AND SECTION 38-12-302.

38-12-205. Attorney fees and costs. (a) IN THIS SECTION, 
"PREVAILING PARTY" MEANS A PARTY THAT:

(1) INITIATED THE ENFORCEMENT OF A RIGHT OR REMEDY UNDER 
A LEASE OR THIS ARTICLE AND SUBSTANTIALLY PREVAILED ON THE RIGHT 
OR REMEDY ASSERTED; OR

(2) SUBSTANTIALLY PREVAILED IN DEFENDING AGAINST A RIGHT 
OR REMEDY ASSERTED BY THE OTHER PARTY.

(b) IN AN ACTION TO ENFORCE A RIGHT OR REMEDY ARISING UNDER 
A LEASE OR THIS ARTICLE, THE COURT SHALL AWARD THE PREVAILING 
PARTY COSTS. THE COURT MAY AWARD THE PREVAILING PARTY 
REASONABLE ATTORNEY FEES IF THE COURT DETERMINES THAT THE OTHER 
PARTY DID NOT ACT IN GOOD FAITH, WILLFULLY PERFORMED AN ACT 
PROHIBITED BY THE LEASE OR THIS ARTICLE, OR WILLFULLY REFRAINED 
FROM PERFORMING AN ACT REQUIRED BY THE LEASE OR THIS ARTICLE.

(c) A COURT MAY NOT AWARD A LANDLORD ATTORNEY’S FEES OR 
COSTS IN AN UNCONTESTED ACTION TO RECOVER POSSESSION OF A 
DWELLING UNIT.

PART 3
LANDLORD DUTIES

38-12-301. Delivery of possession of dwelling unit to tenant. A landlord shall deliver physical possession of the dwelling unit to the tenant at the commencement of the term of the lease.

38-12-302. Landlord duty to maintain premises in habitable condition. (a) A landlord has a nonwaivable duty to maintain the premises in a habitable condition, including making necessary repairs. The duty requires the landlord to ensure that the premises:

(1) Comply with all obligations imposed on the landlord by any applicable building, housing, fire, or health code or other law;

(2) Have effective waterproofing and weather protection of the roof and exterior walls, including windows and doors;

(3) Have plumbing facilities that conform to law and are maintained in good working order;

(4) Have access to a water supply approved under law that can provide hot and cold running water;

(5) Have adequate ventilation and heating facilities that conform to law and are maintained in good working order;

(6) Have electrical lighting, with wiring and equipment that conform to law and are maintained in good working order;

(7) Have reasonable measures in place to control the presence of rodents, bedbugs, and other vermin and to prevent exposure to unsafe levels of radon, lead paint, asbestos, toxic mold, and other hazardous substances;

(8) To the extent the premises include a common area or
OTHER AREAS UNDER THE LANDLORD’S CONTROL, HAVE REASONABLE MEASURES IN PLACE TO MAKE THE AREA:

(A) Clean and sanitary;

(B) Safe for normal and reasonably foreseeable use consistent with the lease and in good repair; and

(C) Reasonably free of debris, filth, rubbish, garbage, and the items listed in paragraph (7) of this subsection (a);

(9) Have an adequate number of appropriate receptacles in reasonably clean condition if the landlord is obligated to provide trash removal or recycling service by law or an agreement in a record signed by the landlord and tenant;

(10) Have in good repair floors, doors, windows, walls, ceilings, stairways, and railings;

(11) Have in good repair other facilities and appliances supplied or required to be supplied by the landlord;

(12) Have in good repair locks or other security devices on all exterior doors and on windows that open and close, including those of the dwelling unit and other parts of the premises; and

(13) Have in good working order any safety equipment required by law.

(b) A landlord has the duty to ensure the premises have access to essential services, but the lease may require an account with a utility provider of an essential service to the dwelling unit be in the name of the tenant and the tenant pay the periodic cost for the service. If the service is not provided because the tenant fails to pay for the service, the landlord
DOES NOT FAIL TO COMPLY WITH THIS SUBSECTION (b).

(c) If a sublessor is a landlord for purposes of this article, the sublessor has the duty to comply with subsection (a) of this section except for duties that would require the sublessor to access parts of the premises beyond the sublessor’s control.

(d) A landlord and tenant may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(1) The agreement is in a record, other than the lease, signed by the parties and supported by adequate consideration;

(2) The work is not necessary to cure the landlord’s noncompliance with paragraph (1) of subsection (a) of this section; and

(3) The agreement does not affect the obligation of the landlord to other tenants on the premises.

(e) A landlord may not treat performance of an agreement described in subsection (d) of this section as a condition to the performance of any obligation under the lease or this section.

38-12-303. Limitations on landlord liability. (a) Except to the extent a landlord and tenant otherwise agree in a signed record, if the landlord, in a good-faith sale to a bona fide purchaser, conveys premises that include a dwelling unit subject to a lease, the following rules apply:

(1) Except as otherwise provided in paragraph (2) of this subsection (a), the landlord is relieved of liability under the
LEASE AND THIS ARTICLE AS TO AN EVENT THAT OCCURS AFTER THE LATER
OF THE CONVEYANCE TO THE PURCHASER OR NOTICE IN A RECORD BY THE
LANDLORD TO THE TENANT OF THE CONVEYANCE.

(2) EXCEPT AS OTHERWISE PROVIDED IN SECTION 38-12-1205, THE
LANDLORD REMAINS LIABLE TO THE TENANT FOR THE AMOUNT OF ANY
SECURITY DEPOSIT AND UNEARNED RENT.

38-12-304. Rules of landlord governing use and enjoyment of
premises. (a) EXCEPT AS OTHERWISE PROVIDED IN SECTION 38-12-305 (a)
OR AS REQUIRED BY LAW OTHER THAN THIS ARTICLE, A LANDLORD MAY
ENFORCE A RULE OF THE LANDLORD IN EXISTENCE AT THE TIME THE LEASE
COMMENCED ONLY IF THE RULE WAS DISCLOSED TO THE TENANT UNDER
SECTION 38-12-108.

(b) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (c) AND (d)
OF THIS SECTION, AFTER COMMENCEMENT OF THE TERM OF A LEASE, THE
LANDLORD MAY ADOPT OR MODIFY A RULE CONCERNING THE TENANT'S
USE AND ENJOYMENT OF THE PREMISES, BUT THE RULE OR MODIFICATION
MAY NOT TAKE EFFECT EARLIER THAN THIRTY DAYS AFTER THE LANDLORD
GIVES THE TENANT NOTICE IN A RECORD OF THE RULE OR MODIFICATION.

(c) IN A PERIODIC TENANCY FOR MONTH TO MONTH, A RULE OR
MODIFICATION ADOPTED UNDER SUBSECTION (b) OF THIS SECTION MAY
NOT TAKE EFFECT BEFORE THE EXPIRATION OF THE PERIOD IN SECTION
38-12-801 (b)(2) DURING WHICH THE TENANT OR LANDLORD COULD HAVE
EXERCISED THE RIGHT TO TERMINATE THE TENANCY.

(d) IN A TENANCY FOR A FIXED TERM, IF A RULE OR MODIFICATION
ADOPTED UNDER SUBSECTION (b) OF THIS SECTION SUBSTANTIALLY
MODIFIES THE TENANT'S BENEFIT OF THE BARGAIN AND IS NOT REQUIRED
BY LAW OTHER THAN THIS ARTICLE, THE RULE IS NOT ENFORCEABLE
AGAINST THE TENANT UNLESS THE TENANT CONSENTS IN A SIGNED RECORD.

38-12-305. Rules of third parties governing use and enjoyment of the premises. (a) If, before the commencement of the term of a lease, the landlord fails to disclose a rule adopted by a person other than the landlord that substantially modifies the tenant's benefit of the bargain and is not required by law other than this article, and the rule is enforced against the tenant, the tenant may:

(1) Recover actual damages from the landlord; or

(2) Terminate the lease by giving the landlord notice in a record that the lease will terminate on a date specified in the notice that must be at least thirty days after the notice is given.

(b) Except as otherwise provided in subsection (c) of this section, if, after the commencement of the term of a lease, a person other than the landlord adopts or modifies a rule that substantially modifies the tenant's benefit of the bargain and is not required by law other than this article and the rule is enforced against the tenant, the tenant of a tenancy for a fixed term may terminate the lease by giving the landlord notice in a record that the lease will terminate on a date specified in the notice that must be at least thirty days after the notice is given or, in the case of a periodic tenancy, terminate the tenancy in accordance with section 38-12-801.

(c) A tenant may not terminate a lease under subsection (b) of this section if the lease provides the dwelling unit is
SUBJECT TO RULES OF A PERSON OTHER THAN THE LANDLORD AND THE
PERSON MAY MODIFY THE RULES AFTER THE COMMENCEMENT OF THE
TERM OF THE LEASE.

PART 4

TENANT REMEDIES

38-12-401. Notice and opportunity to remedy. (a) Except as
otherwise provided in section 38-12-403, if a landlord fails to
comply with the lease or section 38-12-302, the tenant has the
remedies under section 38-12-402 if the tenant gives the
landlord:

(1) Notice in a record of the noncompliance; and

(2) An opportunity to remedy the noncompliance within

the following periods:

(A) Subject to subparagraph (B) of this paragraph (2), not
later than fourteen days after the tenant gave the notice; and

(B) If the noncompliance involves failure to provide an
essential service or materially interferes with the health or
safety of the tenant or immediate family member, the landlord
shall remedy the noncompliance as soon as practicable but not
later than five days after the tenant gave the notice.

38-12-402. Noncompliance by landlord generally. (a) Except
as otherwise provided in section 38-12-403, if a landlord’s
noncompliance with the lease or section 38-12-302 results in the
tenant not receiving an essential service, materially interferes
with the health or safety of the tenant or immediate family
member, or materially interferes with the use and enjoyment of
the premises by the tenant or immediate family member and the
NONCOMPLIANCE IS NOT REMEDIED DURING THE APPLICABLE PERIOD SPECIFIED IN SECTION 38-12-401, THE TENANT MAY:

(1) TERMINATE THE LEASE, AS PROVIDED IN SECTION 38-12-404;

OR

(2) CONTINUE THE LEASE AND ELECT ONE OR MORE OF THE FOLLOWING REMEDIES:

(A) SUBJECT TO SECTION 38-12-408, WITHHOLD RENT FOR THE PERIOD OF NONCOMPLIANCE BEGINNING ON THE DATE THE TENANT GAVE NOTICE UNDER SECTION 38-12-401;

(B) RECOVER ACTUAL DAMAGES;

(C) OBTAIN INJUNCTIVE RELIEF, SPECIFIC PERFORMANCE, OR OTHER EQUITABLE RELIEF;

(D) MAKE REPAIRS AND DEDUCT THE COST FROM THE RENT, AS PROVIDED IN SECTION 38-12-406; OR

(E) SECURE AN ESSENTIAL SERVICE THE LANDLORD IS OBLIGATED TO PROVIDE OR COMPARABLE SUBSTITUTE HOUSING DURING THE PERIOD OF NONCOMPLIANCE, AS PROVIDED IN SECTION 38-12-407.

(b) IF A LANDLORD'S NONCOMPLIANCE WITH THE LEASE OR SECTION 38-12-302 DOES NOT MATERIALLY INTERFERE WITH THE HEALTH OR SAFETY OF THE TENANT OR IMMEDIATE FAMILY MEMBER OR THE USE AND ENJOYMENT OF THE PREMISES BY THE TENANT OR IMMEDIATE FAMILY MEMBER, THE TENANT MAY ELECT ONE OR MORE OF THE REMEDIES PROVIDED IN SUBPARAGRAPHS (B), (C), AND (D) OF PARAGRAPH (2) OF SUBSECTION (a) OF THIS SECTION.

(c) A TENANT IS NOT ENTITLED TO A REMEDY UNDER THIS SECTION TO THE EXTENT:

(1) THE LANDLORD'S NONCOMPLIANCE WAS CAUSED BY AN ACT OR
OMISSION OF THE TENANT, IMMEDIATE FAMILY MEMBER, OR GUEST; OR

(2) The tenant, immediate family member, or guest prevented the landlord from having access to the dwelling unit to remedy the act or omission described in the notice under section 38-12-401.

38-12-403. Limitations on remedies. (a) If a dwelling unit or other part of the premises is substantially damaged or destroyed by a fire, other casualty, or natural disaster and:

(1) the unit or other part of the premises is uninhabitable or inaccessible or continued occupancy of the unit is unlawful, the tenant may vacate the unit immediately and, not later than fourteen days after vacating the unit, give the landlord notice in a record of the tenant's intent to terminate the lease, in which case the lease terminates as of the date the tenant vacates the unit; or

(2) if continued occupancy of the unit is lawful, subject to the landlord's right to terminate the lease under subsection (b) of this section, the tenant, after complying with section 38-12-401, may continue the lease and seek the remedies provided in section 38-12-402 (a) (2) (A), (a) (2) (B), (a) (2) (C), and (a) (2) (D).

(b) if a dwelling unit or other part of the premises is substantially damaged by a fire, other casualty, or natural disaster and continued occupancy of the unit is unlawful or dangerous or requires repairs that can be made only if the tenant vacates the unit, the landlord may terminate the lease by giving the tenant notice in a record that the lease will terminate on a specified date, which must be at least five days

-27-
AFTER THE NOTICE IS GIVEN.

(c) If a landlord’s noncompliance with the lease or Section 38-12-302 materially interferes with the health or safety of a tenant or immediate family member or the use and enjoyment of the premises by the tenant or immediate family member and it is impossible for the landlord to remedy the noncompliance within the applicable period specified in Section 38-12-401, the tenant may terminate the lease as provided in Section 38-12-404 (b) or, subject to subsection (d) of this section, continue the lease and recover actual damages limited to diminution in the value of the dwelling unit.

(d) If a landlord’s noncompliance with the lease or Section 38-12-302 materially interferes with the health or safety of a tenant or immediate family member or the use and enjoyment of the premises by the tenant or immediate family member and it is impossible for the landlord to remedy the noncompliance not later than thirty days after receiving the notice under Section 38-12-401, the landlord may terminate the lease by giving the tenant notice in a record that the lease will terminate on a specified date, which must be at least thirty days after the landlord gives the notice. The landlord may not rent the unit for ninety days after termination of the lease.

(e) If a lease is terminated under this section, the landlord shall return any security deposit and unearned rent to which the tenant is entitled under Section 38-12-1204.

(f) This section does not preclude:

(1) A landlord from seeking actual damages from the
TENANT UNDER LAW OTHER THAN THIS ARTICLE FOR DAMAGE TO THE
PREMISES CAUSED BY AN ACT OR OMISSION OF THE TENANT, IMMEDIATE
FAMILY MEMBER, OR GUEST; OR

(2) A TENANT FROM SEEKING ACTUAL DAMAGES FROM THE
LANDLORD UNDER LAW OTHER THAN THIS ARTICLE IF THE FIRE OR OTHER
CASUALTY WAS CAUSED BY AN ACT OR OMISSION OF THE LANDLORD OR
LANDLORD’S AGENT.

38-12-404. Material noncompliance by landlord - termination
of lease. (a) If a landlord's noncompliance with the lease or
section 38-12-302 materially interferes with the health or
safety of the tenant or immediate family member and the
noncompliance is not remedied within the period specified in
section 38-12-401 (a) (2) (B), the tenant may terminate the lease
by giving the landlord notice in a record of the tenant's intent
to terminate the lease immediately or on a specified date, which
is not later than thirty days after the date of the notice.

(b) If a landlord's noncompliance with the lease or
section 38-12-302 materially interferes with the use and
enjoyment of the premises unrelated to the health or safety of
the tenant or immediate family member and the noncompliance
is not remedied within the period specified in section 38-12-401 (a)
(2) (A), the tenant may terminate the lease by giving the
landlord notice in a record of the tenant’s intent to terminate
the lease on a specified date, which must be at least fourteen
days after the expiration of the period allowed under section
38-12-401 for the remedy of the noncompliance.

(c) In addition to terminating a lease as provided in
SUBSECTION (a) OR (b) OF THIS SECTION, THE TENANT MAY RECOVER ACTUAL DAMAGES.

(d) IF A TENANT TERMINATES A LEASE UNDER THIS SECTION, THE LANDLORD SHALL RETURN ANY SECURITY DEPOSIT AND UNEARNED RENT TO WHICH THE TENANT IS ENTITLED UNDER SECTION 38-12-1204.

38-12-405. Landlord failure to deliver possession to tenant.
(a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (d) OF THIS SECTION, IF A LANDLORD DOES NOT DELIVER PHYSICAL POSSESSION OF THE DWELLING UNIT TO THE TENANT UNDER SECTION 38-12-301, THE TENANT IS NOT REQUIRED TO PAY RENT UNTIL POSSESSION IS DELIVERED AND MAY:

(1) TERMINATE THE LEASE BY GIVING NOTICE IN A RECORD TO THE LANDLORD AT ANY TIME BEFORE THE LANDLORD DELIVERS POSSESSION OF THE UNIT TO THE TENANT; OR

(2) DEMAND PERFORMANCE OF THE LEASE BY THE LANDLORD AND:

(A) RECOVER ACTUAL DAMAGES AND OBTAIN POSSESSION OF THE UNIT FROM THE LANDLORD; OR

(B) OBTAIN POSSESSION OF THE UNIT FROM ANY PERSON WRONGFULLY IN POSSESSION BY ANY LAWFUL MEANS THE LANDLORD COULD HAVE USED.

(b) IF A TENANT TERMINATES THE LEASE UNDER PARAGRAPH (1) OF SUBSECTION (a) OF THIS SECTION, THE LANDLORD SHALL RETURN ANY AMOUNTS RECEIVED FROM THE TENANT BEFORE THE COMMENCEMENT OF THE TERM OF THE LEASE.

(c) IN ADDITION TO THE RIGHTS OF A TENANT UNDER SUBSECTIONS (a) AND (b) OF THIS SECTION, IF A LANDLORD'S FAILURE TO DELIVER POSSESSION TO THE TENANT UNDER SECTION 38-12-301 IS WILLFUL, THE TENANT MAY RECOVER THREE TIMES THE PERIODIC RENT OR THREE TIMES
(d) If a tenant seeks possession under subparagraph (B) of paragraph (2) of subsection (a) of this section, the tenant is liable to the landlord for rent and may recover from the person wrongfully in possession the damages provided in section 38-12-802.

38-12-406. Repair by tenant. (a) Subject to subsection (d) of this section, if a landlord fails to comply with the lease or section 38-12-302, the tenant may give notice to the landlord under section 38-12-401 specifying the noncompliance. If the landlord fails to remedy the noncompliance within the applicable period specified in section 38-12-401 and the reasonable cost to remedy the noncompliance does not exceed one month's periodic rent, the tenant may make repairs to remedy the noncompliance at the landlord's expense.

(b) A tenant that makes repairs under subsection (a) of this section is entitled to recover the actual and reasonable cost incurred or the reasonable value of the work performed to remedy the noncompliance, not exceeding one month's periodic rent. Unless the tenant has been reimbursed by the landlord, the tenant may deduct the cost or value from rent after submitting to the landlord an itemized statement, accompanied by receipts for purchased items and services.

(c) A repair under subsection (a) of this section must be made in a professional manner and in compliance with applicable law.

(d) A tenant may not repair a noncompliance at the
LANDLORD'S EXPENSE UNDER SUBSECTION (a) OF THIS SECTION TO THE EXTENT:

(1) THE NONCOMPLIANCE WAS CAUSED BY AN ACT OR OMISSION OF THE TENANT, IMMEDIATE FAMILY MEMBER, OR GUEST; OR

(2) THE LANDLORD WAS UNABLE TO REMEDY THE NONCOMPLIANCE WITHIN THE APPLICABLE PERIOD SPECIFIED IN SECTION 38-12-401 BECAUSE THE TENANT, IMMEDIATE FAMILY MEMBER, OR GUEST DENIED THE LANDLORD ACCESS TO THE DWELLING UNIT.

(e) A TENANT'S USE OF THE REMEDY UNDER THIS SECTION IS LIMITED TO ONE MONTH'S PERIODIC RENT DURING ANY TWELVE-MONTH PERIOD.

38-12-407. Failure of essential service. (a) Except as otherwise provided in section 38-12-403, if a tenant fails to receive an essential service the landlord has a duty to provide under section 38-12-302 (b), the tenant may give notice to the landlord under section 38-12-401 specifying the failure. If the landlord fails to provide the essential service within the applicable period specified in section 38-12-401, the tenant may:

(1) Take appropriate measures to secure the essential service during the period of the landlord's noncompliance and deduct the actual and reasonable cost from the rent; or

(2) Procure comparable substitute housing at the landlord's expense during the period of the noncompliance and recover actual damages.

(b) This section does not apply if the tenant's failure to receive the essential service was caused by an act or omission of the tenant, immediate family member, or guest.
38-12-408. Landlord noncompliance as defense to action for possession or nonpayment of rent - escrow account. (a) If a landlord fails to comply with the lease or section 38-12-302 and the tenant has complied with section 38-12-401, the tenant may defend an action by the landlord based on nonpayment of rent on the ground that no rent was due because of the noncompliance and counterclaim for any amount the tenant may recover under the lease or this article.

(b) If a tenant is in possession of the dwelling unit when the landlord files an action based on nonpayment of rent, either party may seek a court order directing the tenant to pay all or part of the unpaid rent and all additional rent as it accrues into an escrow account with the court or a bank or other entity authorized by the court to hold funds in escrow.

(c) If rent has been paid into escrow under this section and the court determines the landlord fully complied with the lease and section 38-12-302, the court shall order the immediate release to the landlord of rent held in escrow and enter judgment for any remaining rent owed.

(d) If rent has been paid into escrow under this section and the court determines that the landlord's noncompliance with the lease or section 38-12-302 materially interferes with the health or safety of a tenant or an immediate family member or the use and enjoyment of the premises by the tenant or an immediate family member, the court may order one or more of the following:

(1) Release to the landlord of all or part of the rent held
IN ESCROW TO BE USED ONLY TO BRING THE PREMISES INTO COMPLIANCE
WITH THE LEASE OR SECTION 38-12-302;

(2) RETURN TO THE TENANT OF ALL OR PART OF THE RENT HELD IN
ESCROW IN COMPENSATION FOR:

(A) A REPAIR MADE BY THE TENANT IN COMPLIANCE WITH SECTION
38-12-406; OR

(B) ACTUAL DAMAGES;

(3) THE TENANT’S CONTINUED PAYMENT OF RENT INTO ESCROW AS
RENT BECOMES DUE OR ABATEMENT OF FUTURE RENT UNTIL THE
LANDLORD BRINGS THE PREMISES INTO COMPLIANCE WITH THE LEASE OR
SECTION 38-12-302; OR

(4) PAYMENT TO THE LANDLORD OF ANY RENT HELD IN ESCROW
NOT OTHERWISE PAYABLE TO THE TENANT.

(e) IF RENT HAS NOT BEEN PAID INTO ESCROW UNDER THIS SECTION
AND THE COURT DETERMINES THAT THE LANDLORD COMPLIED WITH THE
LEASE AND SECTION 38-12-302, THE COURT SHALL RENDER JUDGMENT FOR
UNPAID RENT.

(f) IF RENT HAS NOT BEEN PAID INTO ESCROW UNDER THIS SECTION
AND THE COURT DETERMINES THAT THE LANDLORD’S NONCOMPLIANCE
WITH THE LEASE OR SECTION 38-12-302 MATERIALLY INTERFERES WITH
THE HEALTH OR SAFETY OF A TENANT OR IMMEDIATE FAMILY MEMBER OR
THE USE AND ENJOYMENT OF THE PREMISES BY THE TENANT OR AN
IMMEDIATE FAMILY MEMBER, THE COURT SHALL RENDER JUDGMENT FOR
UNPAID RENT LESS ANY AMOUNT EXPENDED BY THE TENANT IN
COMPLIANCE WITH SECTION 38-12-406 TO REPAIR THE PREMISES AND
ACTUAL DAMAGES.

(g) IN ADDITION TO THE OTHER REMEDIES PROVIDED IN THIS
SECTION, THE COURT MAY AWARD POSSESSION OR OTHER APPROPRIATE RELIEF IF THE COURT DETERMINES THE TENANT:

(1) Acted in bad faith in withholding rent; or

(2) Failed to comply with an order to pay rent into escrow under subsection (b) of this section or to pay rent or other amounts owed to the landlord under this section.

(h) The court may not award possession if the court determines that the tenant withheld rent in good faith and the tenant complies with an order to pay unpaid rent into escrow or to the landlord under this section.

Legislative Note: State laws may differ on whether a landlord can bring a claim for both possession and rent in an expedited summary-eviction proceeding. If a state limits a summary-eviction proceeding to a claim for possession, the state will need to revise this section accordingly to conform to that state’s practice.

38-12-409. Unlawful removal - exclusion - interruption of essential service. (a) If a landlord unlawfully removes or excludes the tenant from the premises or willfully interrupts or causes the interruption of an essential service the landlord has the duty to provide to the tenant, the tenant may recover three times the periodic rent or three times damages, whichever is greater, and:

(1) Recover possession; or

(2) Terminate the lease by giving the landlord notice in a record of the tenant’s intent to terminate the lease immediately or on a later specified date.

(b) If a tenant terminates the lease under paragraph (2) of
SUBSECTION (a) OF THIS SECTION, THE LANDLORD SHALL RETURN ANY
SECURITY DEPOSIT AND UNEARNED RENT TO WHICH THE TENANT IS
ENTITLED UNDER SECTION 38-12-1204.

PART 5
TENANT DUTIES

38-12-501. Tenant duties - definition. (a) IN THIS SECTION,
"NORMAL WEAR AND TEAR" MEANS DETERIORATION THAT RESULTS FROM
THE INTENDED USE OF A DWELLING UNIT, INCLUDING BREAKAGE OR
MALFUNCTION DUE TO AGE OR DETERIORATED CONDITION. THE TERM
DOES NOT INCLUDE DETERIORATION THAT RESULTS FROM NEGLIGENCE,
CARELESSNESS,ACCIDENT, OR ABUSE OF THE UNIT, FIXTURES, EQUIPMENT,
OR OTHER TANGIBLE PERSONAL PROPERTY BY THE TENANT, IMMEDIATE
FAMILY MEMBER, OR GUEST.

(b) A TENANT:
   (1) SHALL COMPLY WITH THE OBLIGATIONS IMPOSED ON THE
       TENANT BY THE LEASE AND THIS ARTICLE;
   (2) SHALL COMPLY WITH THE OBLIGATIONS IMPOSED ON A TENANT
       BY ANY BUILDING, HOUSING, FIRE, OR HEALTH CODE OR OTHER LAW;
   (3) EXCEPT WITH RESPECT TO DUTIES IMPOSED ON THE LANDLORD
       BY THE LEASE, THIS ARTICLE, OR LAW OTHER THAN THIS ARTICLE, SHALL
       KEEP THE DWELLING UNIT REASONABLY SAFE AND SANITARY;
   (4) SHALL REMOVE ALL GARBAGE, RUBBISH, AND OTHER DEBRIS
       FROM THE UNIT IN A CLEAN AND SAFE MANNER;
   (5) SHALL KEEP ALL PLUMBING FIXTURES IN THE UNIT
       REASONABLY CLEAN;
   (6) SHALL USE IN A REASONABLE MANNER ALL ELECTRICAL,
       PLUMBING, HEATING, VENTILATING, AND AIR-CONDITIONING SYSTEMS AND
OTHER FACILITIES AND APPLIANCES ON THE PREMISES;

(7) Without the landlord’s consent, may not intentionally or negligently:

(A) Destroy, deface, damage, impair, remove, or render inoperative any part of the premises;

(B) Destroy, deface, damage, impair, remove, or render inoperative any safety equipment on the premises; or

(C) Permit an immediate family member or guest to do any of the acts specified in this paragraph (7);

(8) May not disturb the use and enjoyment of the premises by another tenant or permit an immediate family member or guest to do the same;

(9) May not engage in or permit an immediate family member or guest to engage in criminal activity;

(10) Shall notify the landlord within a reasonable time of any condition of the premises that requires repair by the landlord under the lease or section 38-12-302;

(11) Shall return the dwelling unit to the landlord at the termination of the lease in the same condition as it was at the commencement of the term of the lease, with the premises free of any damage caused by the tenant, immediate family member, or guest, except for:

(A) Normal wear and tear;

(B) Damage resulting from a cause beyond the control of the tenant, immediate family member, or guest; and

(C) Any addition and improvement installed on the premises with the landlord’s consent; and
(12) Unless the landlord and tenant otherwise agree, shall use the dwelling unit only for residential purposes.

PART 6

LANDLORD REMEDIES

38-12-601. Tenant failure to pay rent - other noncompliance with lease. (a) Except as otherwise provided by law other than this article and subject to subsection (b) of this section:

(1) A landlord may terminate a lease for nonpayment of rent when the rent is unpaid when due by giving the tenant notice in a record stating that if the rent remains unpaid fourteen days after the notice is given, the lease will terminate on expiration of the fourteen-day period or a later specified date; or

(2) If there is a material noncompliance with a lease or this article by the tenant, other than nonpayment of rent, the landlord may give the tenant notice in a record specifying the act or omission constituting the noncompliance and stating that if the noncompliance is not remedied not later than fourteen days after the landlord gives the notice, the lease will terminate on a specified date that must be at least thirty days after the landlord gives the notice.

(b) A landlord may terminate the lease without giving the tenant an opportunity to remedy a noncompliance by giving the tenant the notice described in subsection (c) of this section if:

(1) The tenant failed to pay rent in a timely manner on at least two occasions within the four-month period preceding the notice to terminate the lease;
(2) The tenant committed substantially the same act or omission for which notice under paragraph (2) of subsection (a) of this section was given within six months preceding the latest noncompliance;

(3) The noncompliance by the tenant, immediate family member, or guest poses an actual and imminent threat to the health or safety of any individual on the premises or the landlord or landlord’s agent; or

(4) Subject to subsection (e) of this section, the tenant, immediate family member, or guest has committed a criminal act.

(c) Notice in a record terminating a lease under subsection (b) of this section must specify the reason for the termination and state that:

(1) For a termination under paragraph (1) or (2) of subsection (b) of this section, the lease will terminate on a specified date, which must be at least fourteen days after the landlord gave the notice; or

(2) For a termination under paragraph (3) or (4) of subsection (b) of this section, the lease will terminate immediately or on a later specified date.

(d) Except as otherwise provided in this article, if a tenant fails to comply with section 38-12-501, the landlord may:

(1) Obtain injunctive relief or specific performance; or

(2) Regardless of whether the lease terminates as a result of the tenant’s noncompliance, recover actual damages or liquidated damages as provided by the lease.

(e) A landlord may not terminate a lease under
Paragraph (4) of subsection (b) of this section if the criminal act was the act of an immediate family member or guest, and the tenant:

(1) Neither knew nor should have known the act was going to be committed; and

(2) Took reasonable steps to ensure that there will not be a repeated criminal act on the premises by the immediate family member or guest.

38-12-602. Waiver of landlord right to terminate. (a) Subject to subsection (b) of this section, acceptance by a landlord of rent for two or more successive rental periods with knowledge of noncompliance by the tenant with the lease or this article or acceptance by the landlord of the tenant's performance that varies from the terms of the lease or this article is a waiver of the landlord's right to terminate the lease for the noncompliance, unless the landlord and tenant otherwise agree after the noncompliance occurs.

(b) This section does not prevent a landlord or tenant from exercising a right under section 38-12-801 to terminate a periodic tenancy.

38-12-603. Distraint for rent abolished - lien prohibited. (a) Distraint for rent is abolished.

(b) A landlord may not create, perfect, or enforce a lien or security interest on a tenant's tangible personal property to secure the tenant's performance under the lease or this article. This subsection (b) does not apply to a lien or security interest created or perfected before the effective date of this article, as
38-12-604. Abandonment - definition - remedy after termination. (a) In this section, "reasonable efforts" means steps a landlord would take to rent a dwelling unit if the unit is vacated at the end of a term, including showing the unit to a prospective tenant or advertising the availability of the unit.

(b) A tenant abandons a dwelling unit if:

(1) The tenant delivers possession of the unit to the landlord before the end of the term by returning the keys or other means of access or otherwise notifies the landlord the unit has been vacated; or

(2) Rent that is due was not paid for at least five days and the tenant has:

(A) Vacated the unit by removing substantially all of the tenant's personal property from the unit and the premises; and

(B) Caused the termination of an essential service or otherwise indicated by words or conduct that the tenant has no intention to return to the unit.

(c) If a tenant abandons the dwelling unit before the end of the term of the lease, the landlord may recover possession of the unit without a court order and may:

(1) Accept the tenant's abandonment of the unit by notice in a record given to the tenant, in which case:

(A) The lease terminates on the date of abandonment;

(B) The landlord and tenant are liable to each other under the lease only for a noncompliance with the lease or this article that occurred before the lease terminates; and
(C) The landlord shall return any security deposit and unearned rent to which the tenant is entitled under Section 38-12-1204; or

(2) Treat the abandonment as wrongful.

(d) If a landlord treats abandonment of a dwelling unit as wrongful under paragraph (2) of subsection (c) of this section, the tenant remains liable under the lease, and the landlord has a duty to mitigate by making a reasonable effort to rent the unit, subject to the following rules:

(1) The landlord's duty to mitigate does not take priority over the landlord's right to lease first any other dwelling unit the landlord has available to lease.

(2) If the landlord leases the abandoned unit to another person for a term beginning before the expiration of the term of the lease of the abandoning tenant, the lease terminates as of the date of the new tenancy and the landlord may recover actual damages from the abandoning tenant.

(3) If the landlord makes a reasonable effort to lease the abandoning tenant's unit but is unable to lease it or is able to lease it only for an amount less than the rent payable by the abandoning tenant, the landlord may recover actual damages from the abandoning tenant.

(4) If the landlord fails to make a reasonable effort to lease the abandoning tenant's unit, the lease terminates as of the date of abandonment, and the landlord and tenant are liable to each other under the lease or this article only for a noncompliance with the lease or this article that occurred
BEFORE THE DATE OF ABANDONMENT.

(5) After deducting the landlord’s actual damages, the landlord shall return any security deposit and unearned rent to which the tenant is entitled under section 38-12-1204.

38-12-605. Limitation on self-help recovery. (a) Except as otherwise provided in section 38-12-604, a landlord:

(1) May not recover or take possession of a dwelling unit by an act of self-help, including willful interruption or causing the willful interruption of an essential service to the unit; and

(2) May recover possession of a dwelling unit following termination of a lease only through an action permitted by law other than this article.

PART 7

ACCESS TO DWELLING UNIT

38-12-701. Landlord access to dwelling unit. (a) Except as otherwise provided in this section, a landlord may not enter a dwelling unit unless:

(1) Entry is permitted by the lease or the tenant otherwise agrees;

(2) Entry is under a court order;

(3) The tenant has abandoned the unit under section 38-12-604; or

(4) Permitted by law other than this article.

(b) A tenant may not unreasonably withhold consent for the landlord to enter the dwelling unit to:

(1) Inspect the unit;

(2) Make a necessary or agreed-to repair, alteration, or
IMPROVEMENT;

(3) SUPPLY A NECESSARY OR AGREED-TO SERVICE; OR

(4) EXHIBIT THE UNIT TO A PROSPECTIVE OR ACTUAL PURCHASER, MORTGAGEE, TENANT, WORKER, OR CONTRACTOR OR A PUBLIC OFFICIAL RESPONSIBLE FOR ENFORCING A BUILDING, HOUSING, FIRE, OR HEALTH CODE OR OTHER LAW.

(c) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (d) OR (e) OF THIS SECTION, A LANDLORD MAY ENTER A DWELLING UNIT ONLY AT A REASONABLE TIME AND WITH THE TENANT'S CONSENT AND SHALL GIVE THE TENANT AT LEAST TWENTY-FOUR HOURS' NOTICE OF THE INTENT TO ENTER THE UNIT.

(d) FOR ROUTINE MAINTENANCE OR PEST CONTROL, A LANDLORD MAY ENTER THE DWELLING UNIT WITHOUT THE TENANT'S CONSENT IF THE LANDLORD GIVES THE TENANT:

(1) AT LEAST SEVENTY-TWO HOURS' NOTICE OF THE INTENT TO ENTER THE UNIT; OR

(2) A FIXED SCHEDULE FOR MAINTENANCE OR PEST CONTROL AT LEAST SEVENTY-TWO HOURS BEFORE THE FIRST SCHEDULED ENTRY INTO THE UNIT.

(f) When notice is given under this section before the landlord enters the unit, the notice must state the intended purpose for the entry and the date and a reasonable period during which the landlord anticipates making the entry.

(g) A landlord may not abuse the right under this section to enter a tenant’s dwelling unit or use the right to harass the tenant.

38-12-702. Remedies for abuse of access. (a) If a tenant unreasonably refuses to allow the landlord access to the dwelling unit, the landlord may recover actual damages or one month’s periodic rent, whichever is greater, and:

(1) The court may compel the tenant to grant the landlord access to the unit; or

(2) The landlord may terminate the lease by giving the tenant notice in a record stating that if the tenant fails to grant the landlord access to the unit not later than fourteen days after the notice, the lease will terminate on expiration of the fourteen-day period or on a later specified date.

(b) If a landlord unlawfully enters a tenant’s dwelling unit, lawfully enters but in an unreasonable manner, or makes repeated demands to enter that are otherwise lawful but have the effect of harassing the tenant, the tenant may recover actual damages or one month’s periodic rent, whichever is greater, and:

(1) Seek injunctive relief to prevent the recurrence of the conduct; or

(2) Terminate the lease by giving the landlord notice in a
RECORD THAT THE LEASE WILL TERMINATE IMMEDIATELY OR ON A LATER
SPECIFIED DATE WHICH IS NOT LATER THAN THIRTY DAYS AFTER NOTICE IS
GIVEN.

PART 8
PERIODIC AND HOLDOVER TENANCY;
DEATH OF TENANT

38-12-801. Termination of periodic tenancy. (a) A PERIODIC
TENANCY CONTINUES UNTIL THE LANDLORD OR TENANT GIVES THE OTHER
THE NOTICE UNDER SUBSECTION (b) OF THIS SECTION.

(b) Except as otherwise provided in this article, a
LANDLORD OR TENANT MAY TERMINATE A PERIODIC TENANCY:

(1) FOR WEEK TO WEEK, BY GIVING THE OTHER AT LEAST FIVE
DAYS' NOTICE IN A RECORD OF THE PARTY'S INTENT TO TERMINATE THE
TENANCY ON A SPECIFIED DATE; AND

(2) FOR MONTH TO MONTH, BY GIVING THE OTHER AT LEAST ONE
MONTH'S NOTICE IN A RECORD OF THE PARTY'S INTENT TO TERMINATE THE
TENANCY AT THE END OF THE MONTHLY PERIOD.

38-12-802. Holdover tenancy. (a) Except as otherwise
provided in subsection (b) of this section and section 38-12-405 (a)
(2)(B), IF A TENANT REMAINS IN POSSESSION WITHOUT THE LANDLORD'S
CONSENT AFTER EXPIRATION OF A TENANCY FOR A FIXED TERM OR
TERMINATION OF A PERIODIC TENANCY, THE LANDLORD MAY BRING AN
ACTION FOR POSSESSION. IF THE TENANT'S HOLDOVER IS WILLFUL, THE
LANDLORD MAY RECOVER THREE TIMES THE PERIODIC RENT OR THREE
TIMES THE ACTUAL DAMAGES, WHICHEVER IS GREATER.

(b) Unless a landlord and tenant otherwise agree in a
record, if the tenant remains in possession with the landlord's
CONSENT AFTER EXPIRATION OF A TENANCY FOR A FIXED TERM, A
PERIODIC TENANCY FOR MONTH TO MONTH ARISES UNDER THE SAME
TERMS AS THE EXPIRED LEASE.

38-12-803. Death of tenant. (a) If a sole tenant under a
lease dies before the end of a tenancy for a fixed term or a
periodic tenancy, the tenant's surviving spouse, partner in a civil
union, or domestic partner who resides in the dwelling unit may
assume the lease by giving the landlord notice in a record not
later than twenty days after the tenant's death stating the
intent of the spouse or partner to assume the lease. On assuming
the lease, the spouse or partner becomes the tenant under the
lease.

(b) Except as otherwise provided in this section or law
other than this article, a landlord or tenant representative
may terminate the lease of a deceased tenant by giving to the
other and to a surviving spouse, partner in a civil union, or
domestic partner of the tenant who resides in the dwelling unit
notice in a record. The notice must state the lease will
terminate on a specified date, which must be at least thirty days
after the notice in the case of a tenancy for a fixed term or a
specified date consistent with section 38-12-801 (b) in the case of
a periodic tenancy. Notice sent to a surviving spouse or partner
must also state that the surviving spouse or partner has twenty
days after receipt of the notice to assume the lease. If the spouse
or partner assumes the lease, the spouse or partner becomes the
tenant under the lease.

(c) If a deceased tenant is survived by a spouse or partner
IN A CIVIL UNION OR DOMESTIC PARTNER WHO RESIDES IN THE DWELLING UNIT, NOTICE TO TERMINATE A LEASE UNDER SUBSECTION (b) OF THIS SECTION MAY NOT BE GIVEN BEFORE THE TIME SPECIFIED IN SUBSECTION (a) OF THIS SECTION EXPIRES.

(d) IF A LANDLORD IS UNABLE TO CONTACT A DECEASED TENANT'S SURVIVING SPOUSE, PARTNER IN A CIVIL UNION, OR DOMESTIC PARTNER WHO RESIDES IN THE DWELLING UNIT OR TENANT REPRESENTATIVE FOR THE PURPOSE OF TERMINATING THE LEASE UNDER SUBSECTION (b) OF THIS SECTION, THE LANDLORD MAY TERMINATE THE LEASE WITHOUT NOTICE IF RENT THAT WAS DUE HAD NOT BEEN PAID FOR AT LEAST TWENTY-FIVE DAYS.

PART 9

RETAIATION

38-12-901. Retaliation prohibited. (a) A LANDLORD MAY NOT ENGAGE IN CONDUCT DESCRIBED IN SUBSECTION (b) OF THIS SECTION IF THE LANDLORD'S PURPOSE IS TO RETALIATE AGAINST A TENANT THAT:

(1) Complained to a governmental agency responsible for enforcement of a building, housing, fire, or health code or other law, alleging a violation applicable to the premises materially affecting the health or safety of the tenant or immediate family member;

(2) Complained to a governmental agency responsible for enforcement of laws prohibiting discrimination in rental housing;

(3) Complained to the landlord of noncompliance with the lease or section 38-12-302;

(4) Organized or became a member of a tenant's union or
SIMILAR ORGANIZATION;

(5) EXERCISED OR ATTEMPTED TO EXERCISE A RIGHT OR REMEDY UNDER THE LEASE, THIS ARTICLE, OR LAW OTHER THAN THIS ARTICLE; OR

(6) PURSUED AN ACTION OR ADMINISTRATIVE REMEDY AGAINST THE LANDLORD OR TESTIFIED AGAINST THE LANDLORD IN COURT OR AN ADMINISTRATIVE PROCEEDING.

(b) CONDUCT THAT MAY BE RETALIATORY UNDER SUBSECTION (a) OF THIS SECTION INCLUDES DOING OR THREATENING TO DO ANY OF THE FOLLOWING:

(1) INCREASING THE RENT OR FEES;

(2) DECREASING SERVICES, INCREASING THE TENANT'S OBLIGATIONS, IMPOSING DIFFERENT RULES ON, OR SELECTIVELY ENFORCING THE LANDLORD'S RULES AGAINST, THE TENANT OR IMMEDIATE FAMILY MEMBER, OR OTHERWISE MATERIALLY ALTERING THE TERMS OF THE LEASE;

(3) BRINGING AN ACTION FOR POSSESSION ON A GROUND OTHER THAN NONPAYMENT OF RENT;

(4) REFUSING TO RENEW A TENANCY FOR A FIXED TERM UNDER A LEASE CONTAINING A RENEWAL OPTION THAT IS EXERCISABLE BY THE TENANT WITHOUT NEGOTIATION WITH THE LANDLORD, FOR ANY PERIOD AFTER THE LEASE WOULD OTHERWISE TERMINATE;

(5) TERMINATING A PERIODIC TENANCY; OR

(6) COMMITTING A CRIMINAL ACT AGAINST THE TENANT, IMMEDIATE FAMILY MEMBER, OR GUEST.

(c) A LANDLORD IS NOT LIABLE FOR RETALIATION UNDER SUBSECTION (a) OF THIS SECTION IF:

(1) THE VIOLATION OF WHICH THE TENANT COMPLAINED UNDER
Paragraph (1) or (2) of subsection (a) of this section was caused primarily by the tenant, immediate family member, or guest;

(2) The tenant's conduct described in subsection (a) of this section was in an unreasonable manner or at an unreasonable time or was repeated in a manner harassing the landlord;

(3) The tenant was in default in the payment of rent at the time notice of the action described in paragraph (3) of subsection (b) of this section was sent;

(4) The tenant, immediate family member, or guest engaged in conduct that threatened the health or safety of another tenant on the premises;

(5) The tenant, immediate family member, or guest engaged in a criminal act;

(6) The landlord is seeking to recover possession based on a notice to terminate the lease, and the notice was given to the tenant before the tenant engaged in conduct described in subsection (a) of this section; or

(7) The landlord is complying or complied with a building, housing, fire, or health code or other law by making a required repair, alteration, remodeling, or demolition that effectively deprives the tenant of the use and enjoyment of the premises.

38-12-902. Tenant remedies for retaliatory conduct. (a) If a landlord's purpose for engaging in conduct described in section 38-12-901 (b) is to retaliate against the tenant for conduct described in section 38-12-901 (a):

(1) The tenant has a defense against an action for possession, may recover possession, or may terminate the lease;
AND

(2) The tenant may recover three times the periodic rent or three times the actual damages, whichever is greater.

(b) If a tenant terminates a lease under subsection (a) of this section, the landlord shall return any security deposit and unearned rent to which the tenant is entitled under Section 38-12-1204.

(c) A tenant's exercise of a right under this section does not release the landlord from liability under Section 38-12-402.

38-12-903. Presumption of retaliatory conduct. (a) Except as otherwise provided in subsection (b) of this section, evidence that a tenant engaged in conduct described in Section 38-12-901 (a) within six months before the landlord's alleged retaliatory conduct creates a rebuttable presumption that the purpose of the landlord's conduct was retaliation.

(b) A presumption does not arise under subsection (a) of this section if the tenant engaged in conduct described in Section 38-12-901 (a) after the landlord gave the tenant notice of the landlord's intent to engage in conduct described in Section 38-12-901 (b) (1) to (b) (5).

(c) A landlord may rebut a presumption under subsection (a) of this section by a preponderance of evidence showing that the landlord had sufficient justification for engaging in the conduct that created the presumption and would have engaged in the conduct in the same manner and at the same time whether or not the tenant engaged in conduct described in Section 38-12-901 (a).
38-12-904. Landlord remedies for bad faith action of tenant.

If a tenant engages in conduct described in section 38-12-901 (a) (1) or (a) (5) knowing there is no factual or legal basis for the conduct, the landlord may recover actual damages and the court may award the landlord up to three times the periodic rent.

PART 10

DISPOSITION OF TENANT'S PERSONAL PROPERTY

38-12-1001. Disposition of tenant's personal property on termination or abandonment. (a) For purposes of this part 10, possession of a dwelling unit is relinquished to the landlord if:

(1) The tenant vacates the unit at the termination of the tenancy; or

(2) The tenant abandons the unit under section 38-12-604.

(b) If personal property remains on the premises after possession of a dwelling unit is relinquished to the landlord and the landlord and tenant do not agree otherwise at the time of relinquishment, the landlord shall:

(1) Subject to subsection (c) of this section, give the tenant notice in a record of the tenant's right to retrieve the property; and

(2) Leave the property in the unit or store the property on the premises or in another place of safekeeping and exercise reasonable care in moving or storing the property.

(c) The notice required by paragraph (1) of subsection (b) of this section must be posted at the dwelling unit and:

(1) Sent to any forwarding address the tenant provided
TO THE LANDLORD OR AN ADDRESS PROVIDED UNDER SECTION 38-12-109
OR, IF NO ADDRESS IS PROVIDED, TO THE ADDRESS OF THE UNIT;

(2) INFORM THE TENANT OF THE RIGHT TO CONTACT THE
LANDLORD TO CLAIM THE PROPERTY WITHIN THE PERIOD SPECIFIED IN
SUBSECTION (d) OF THIS SECTION, SUBJECT TO PAYMENT OF THE
LANDLORD’S INVENTORYING, MOVING, AND STORAGE COSTS; AND

(3) PROVIDE A TELEPHONE NUMBER, ELECTRONIC-MAIL ADDRESS,
OR MAILING ADDRESS AT WHICH THE LANDLORD MAY BE CONTACTED.

(d) IF A TENANT CONTACTS THE LANDLORD TO CLAIM PERSONAL
PROPERTY NOT LATER THAN EIGHT DAYS AFTER THE LANDLORD GIVES
NOTICE UNDER PARAGRAPH (1) OF SUBSECTION (b) OF THIS SECTION, THE
LANDLORD SHALL PERMIT THE TENANT TO RETRIEVE PERSONAL PROPERTY
NOT LATER THAN FIVE DAYS AFTER THE DATE OF CONTACT OR WITHIN A
LONGER PERIOD TO WHICH THE PARTIES AGREE.

(e) A LANDLORD MAY REQUIRE THE TENANT TO PAY REASONABLE
INVENTORYING, MOVING, AND STORAGE COSTS BEFORE RETRIEVING
PERSONAL PROPERTY UNDER SUBSECTION (d) OF THIS SECTION.

(f) THIS SECTION DOES NOT PROHIBIT A LANDLORD FROM
IMMEDIATELY DISPOSING OF PERISHABLE FOOD, HAZARDOUS MATERIAL,
GARBAGE, AND TRASH OR TRANSFERRING AN ANIMAL TO AN
ANIMAL-CONTROL OFFICER, HUMANE SOCIETY, OR OTHER PERSON WILLING
TO CARE FOR THE ANIMAL.

(g) UNLESS A LANDLORD AND TENANT OTHERWISE AGREE, IF THE
TENANT FAILS TO CONTACT THE LANDLORD OR RETRIEVE PERSONAL
PROPERTY AS PROVIDED IN SUBSECTION (d) OF THIS SECTION, THE
PROPERTY IS DEEMED ABANDONED AND:

(1) IF A SALE IS ECONOMICALLY FEASIBLE, THE LANDLORD SHALL

(2) IF A SALE IS NOT ECONOMICALLY FEASIBLE, THE LANDLORD MAY DISPOSE OF THE PROPERTY IN ANY MANNER THE LANDLORD CONSIDERS APPROPRIATE.

(h) A LANDLORD THAT COMPLIES WITH THIS SECTION IS NOT LIABLE TO THE TENANT OR ANOTHER PERSON FOR A CLAIM ARISING FROM REMOVAL OF PERSONAL PROPERTY FROM THE PREMISES.

(i) A LANDLORD THAT RECOVERS POSSESSION OF A DWELLING UNIT UNDER A COURT ORDER IS NOT REQUIRED TO COMPLY WITH THIS SECTION.

IF A LANDLORD COMPLIES WITH THIS SECTION, THE LANDLORD IS NOT LIABLE TO THE TENANT OR ANOTHER PERSON FOR A CLAIM ARISING FROM REMOVAL OF PERSONAL PROPERTY FROM THE PREMISES.

38-12-1002. Removal of personal property of deceased tenant by tenant representative. (a) IF A LANDLORD KNOWS THAT A TENANT WHO WAS THE SOLE OCCUPANT OF THE DWELLING UNIT HAS DIED, THE LANDLORD:

(1) SHALL NOTIFY A TENANT REPRESENTATIVE OF THE DEATH;

(2) SHALL GIVE THE REPRESENTATIVE ACCESS TO THE PREMISES AT A REASONABLE TIME TO REMOVE ANY PERSONAL PROPERTY FROM THE UNIT AND OTHER PERSONAL PROPERTY OF THE TENANT ELSEWHERE ON THE PREMISES;

(3) MAY REQUIRE THE REPRESENTATIVE TO PREPARE AND SIGN AN INVENTORY OF THE PROPERTY BEING REMOVED; AND

(4) SHALL PAY THE REPRESENTATIVE THE DECEASED TENANT’S
SECURITY DEPOSIT AND UNEARNED RENT TO WHICH THE TENANT
OTHERWISE WOULD HAVE BEEN ENTITLED UNDER SECTION 38-12-1204.

(b) A CONTACT PERSON OR HEIR ACCEPTS APPOINTMENT AS A
TENANT REPRESENTATIVE BY EXERCISING AUTHORITY UNDER THIS
ARTICLE OR OTHER ASSERTION OR CONDUCT INDICATING ACCEPTANCE.

(c) THE AUTHORITY OF A CONTACT PERSON OR HEIR TO ACT UNDER
THIS ARTICLE TERMINATES WHEN THE PERSON, HEIR, OR LANDLORD KNOWS
THAT A PERSONAL REPRESENTATIVE HAS BEEN APPOINTED FOR THE
DECEASED TENANT’S ESTATE.

(d) A LANDLORD THAT COMPLIES WITH THIS SECTION IS NOT LIABLE
TO THE TENANT’S ESTATE OR ANOTHER PERSON FOR UNEARNED RENT, A
SECURITY DEPOSIT, OR A CLAIM ARISING FROM REMOVAL OF PERSONAL
PROPERTY FROM THE PREMISES.

(e) A LANDLORD THAT WILLFULLY VIOLATES SUBSECTION (a) OF
THIS SECTION IS LIABLE TO THE ESTATE OF THE DECEASED TENANT FOR
ACTUAL DAMAGES.

(f) IN ADDITION TO THE RIGHTS PROVIDED IN THIS SECTION, A
TENANT REPRESENTATIVE HAS THE DECEASED TENANT’S RIGHTS AND
RESPONSIBILITIES UNDER SECTION 38-12-1001.

38-12-1003. Disposition of personal property of deceased
tenant without tenant representative. (a) IF A LANDLORD KNOWS OF
THE DEATH OF A TENANT WHO, AT THE TIME OF DEATH, WAS THE SOLE
OCCUPANT OF THE DWELLING UNIT, AND THE LANDLORD TERMINATES THE
LEASE UNDER SECTION 38-12-803 (d) BECAUSE THE LANDLORD IS UNABLE
TO CONTACT A TENANT REPRESENTATIVE, THE LANDLORD:

(1) SHALL MAIL NOTICE TO THE TENANT AT THE TENANT’S
LAST-KNOWN ADDRESS OR OTHER ADDRESS OF THE TENANT KNOWN TO
THE LANDLORD AND TO ANY PERSON THE TENANT HAS TOLD THE
LANDLORD TO CONTACT IN THE CASE OF AN EMERGENCY STATING:

(A) THE NAME OF THE TENANT AND ADDRESS OF THE DWELLING
UNIT;

(B) THE APPROXIMATE DATE OF THE TENANT'S DEATH;

(C) THAT, IF THE PERSONAL PROPERTY ON THE PREMISES IS NOT
CLAIMED WITHIN SIXTY DAYS AFTER THE NOTICE WAS SENT, THE PROPERTY
IS SUBJECT TO DISPOSAL BY THE LANDLORD; AND

(D) THE LANDLORD'S NAME, TELEPHONE NUMBER, AND MAIL OR
ELECTRONIC-MAIL ADDRESS AT WHICH THE LANDLORD MAY BE
CONTACTED TO CLAIM THE PROPERTY; AND

(2) WITH THE EXERCISE OF REASONABLE CARE, MAY LEAVE THE
PROPERTY IN THE DWELLING UNIT OR INVENTORY THE PROPERTY AND
STORE IT ON THE PREMISES OR IN ANOTHER PLACE OF SAFEKEEPING.

(b) IF A TENANT REPRESENTATIVE IS SUBSEQUENTLY IDENTIFIED,
THE REPRESENTATIVE MAY RETRIEVE THE DECEASED TENANT'S PERSONAL
PROPERTY FROM THE LANDLORD NOT LATER THAN SIXTY DAYS AFTER THE
NOTICE UNDER SUBSECTION (a) OF THIS SECTION. THE LANDLORD MAY
REQUIRE THE REPRESENTATIVE TO PAY THE REASONABLE INVENTORYING,
MOVING, AND STORAGE COSTS BEFORE RETRIEVING THE PROPERTY.

(c) IF A DECEASED TENANT'S PERSONAL PROPERTY IS NOT
RETRIEVED WITHIN THE TIME SPECIFIED IN SUBSECTION (b) OF THIS
SECTION, THE LANDLORD MAY DISPOSE OF THE PROPERTY IN COMPLIANCE
WITH SECTION 38-12-1001 (g).

(d) A LANDLORD THAT COMPLIES WITH THIS SECTION IS NOT LIABLE
TO THE TENANT'S ESTATE OR ANOTHER PERSON FOR A CLAIM ARISING FROM
REMOVAL OF PERSONAL PROPERTY FROM THE PREMISES.
PART 11

EFFECT OF DOMESTIC VIOLENCE, DATING VIOLENCE,

STALKING, OR SEXUAL ASSAULT

38-12-1101. Definitions. In this Part 11:

(1) "Attesting third party" means a law enforcement

official, licensed health care professional, victim advocate, or

victim-services provider.

(2) "Dating violence" means dating violence as defined in

[insert reference to definition in other state law]. <{COLORADO

does not distinguish dating violence from domestic violence.}>

(3) "Domestic violence" means domestic violence as

defined in section 18-6-800.3 (1), C.R.S.

(4) "Perpetrator" means an individual who commits an act

of domestic violence, dating violence, stalking, or sexual

assault on a tenant or immediate family member.

(5) "Sexual assault" means sexual assault as defined in

section 18-3-402, C.R.S.

(6) "Stalking" means stalking as defined in section

18-3-602, C.R.S.

(7) "Victim advocate" means an individual, whether paid

or serving as a volunteer, who provides services to victims of

domestic violence, dating violence, stalking, or sexual assault

under the auspices or supervision of a victim-services provider,

court, or law enforcement or prosecution agency.

(8) "Victim-services provider" means a person that assists

victims of domestic violence, dating violence, stalking, or

sexual assault. The term includes a rape crisis center, domestic

-57-
VIOLENCE SHELTER, OR FAITH-BASED ORGANIZATION OR OTHER ORGANIZATION WITH A HISTORY OF WORK CONCERNING DOMESTIC VIOLENCE, DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT.

<{Legislative Note: If an enacting jurisdiction has no legislation on dating violence, it may either retain dating violence in this act and draft its own definition of dating violence or delete dating violence as one of the types of domestic violence under this act and delete other references to dating violence in this section. A jurisdiction that does not use the phrase "domestic violence", "dating violence", "stalking", or "sexual assault" should replace the phrases used in this act with the appropriate phrases used in the jurisdiction.}>

38-12-1102. Early release or termination of lease. (a) Subject to subsection (e) of this section, if a victim of an act of domestic violence, dating violence, stalking, or sexual assault is a tenant or immediate family member and has a reasonable fear of suffering psychological harm or a further act of domestic violence, dating violence, stalking, or sexual assault if the victim continues to reside in the dwelling unit, the tenant, without the necessity of the landlord's consent, is released from the lease if the tenant gives the landlord a notice that complies with subsection (b) of this section and:

(1) A copy of a court order that restrains a perpetrator from contact with the tenant or immediate family member;

(2) Evidence of the conviction or adjudication of a perpetrator for an act of domestic violence, dating violence, stalking, or sexual assault against the tenant or immediate family member; or
(3) A verification that complies with Section 38-12-1104.

(b) To be released from a lease under subsection (a) of this section, the tenant must give the landlord notice in a record that:

(1) States the tenant's intent to be released from the lease on a date that must be at least thirty days from the date of the notice or, if the perpetrator is a cotenant of the dwelling unit, an earlier date;

(2) States facts giving rise to the fear of psychological harm or suffering a further act of domestic violence, dating violence, stalking, or sexual assault if the victim continues to reside in the unit; and

(3) Is given to the landlord:

(A) Not later than ninety days after an act of domestic violence, dating violence, stalking, or sexual assault against the tenant or immediate family member;

(B) When a court order exists that restrains a perpetrator from contact with the tenant or immediate family member because of an act of domestic violence, dating violence, stalking, or sexual assault; or

(C) If the perpetrator was incarcerated, not later than ninety days after the tenant acquired knowledge that the perpetrator is no longer incarcerated.

(c) If there is only one individual tenant of the dwelling unit:

(1) A release under subsection (a) of this section terminates the lease on the date specified in the notice under
SUBSECTION (b) OF THIS SECTION IF THE TENANT VACATES THE DWELLING UNIT ON OR BEFORE THAT DATE; AND

(2) THE TENANT IS NOT LIABLE FOR RENT ACCRUING AFTER THE LEASE TERMINATES OR OTHER ACTUAL DAMAGES RESULTING FROM TERMINATION OF THE LEASE, BUT THE TENANT REMAINS LIABLE TO THE LANDLORD FOR RENT AND OTHER AMOUNTS OWED TO THE LANDLORD BEFORE TERMINATION OF THE LEASE.

(d) IF THERE ARE MULTIPLE INDIVIDUAL TENANTS OF THE DWELLING UNIT:

(1) THE TENANT WHO GAVE NOTICE UNDER SUBSECTION (b) OF THIS SECTION IS RELEASED FROM THE LEASE AS OF THE DATE SPECIFIED IN THE NOTICE IF THE TENANT VACATES THE DWELLING UNIT ON OR BEFORE THE SPECIFIED DATE, BUT THE RELEASE OF ONE TENANT UNDER THIS SECTION DOES NOT TERMINATE THE LEASE WITH RESPECT TO OTHER TENANTS;

(2) THE TENANT RELEASED FROM THE LEASE IS NOT LIABLE TO THE LANDLORD OR ANY OTHER PERSON FOR RENT ACCRUING AFTER THE TENANT’S RELEASE OR ACTUAL DAMAGES RESULTING FROM THE TENANT’S RELEASE;

(3) ANY OTHER TENANT UNDER THE LEASE MAY RECOVER FROM THE PERPETRATOR ACTUAL DAMAGES RESULTING FROM THE TERMINATION; AND

(4) THE LANDLORD IS NOT REQUIRED TO RETURN TO THE TENANT RELEASED FROM THE LEASE OR A REMAINING TENANT ANY SECURITY DEPOSIT OR UNEARNED RENT TO WHICH THE TENANT IS OTHERWISE ENTITLED UNDER SECTION 38-12-1204 UNTIL THE LEASE TERMINATES WITH RESPECT TO ALL TENANTS.
(e) This section does not apply if a tenant seeking the release from the lease is a perpetrator.

38-12-1103. Landlord obligations on early release or termination. (a) If a tenant is released from a lease under section 38-12-1102, the landlord:

(1) Except as otherwise provided in section 38-12-1102 (d) (4), shall return any security deposit and unearned rent to which the tenant is entitled under section 38-12-1204 after the tenant vacates the dwelling unit;

(2) May not assess a fee or penalty against the tenant for exercising a right granted under section 38-12-1102; and

(3) May not disclose information required to be reported to the landlord under section 38-12-1102 unless:

(A) The tenant provides specific, time-limited, and contemporaneous consent to the disclosure in a record signed by the tenant; or

(B) The information is required to be disclosed by a court order or law other than this article.

38-12-1104. Verification. (a) A verification given by a tenant under section 38-12-1102 (a) (3) must be under oath and include the following:

(1) From the tenant:

(A) The tenant's name and the address of the dwelling unit;

(B) The approximate dates on which an act of domestic violence, dating violence, stalking, or sexual assault occurred;

(C) The approximate date of the most recent act of
1 DOMESTIC VIOLENCE, DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT;

2     (D) A STATEMENT THAT BECAUSE OF AN ACT OF DOMESTIC
3 VIOLENCE, DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT, THE
4 TENANT OR IMMEDIATE FAMILY MEMBER HAS A REASONABLE FEAR THAT
5 THE TENANT OR FAMILY MEMBER WILL SUFFER PSYCHOLOGICAL HARM OR
6 A FURTHER ACT OF DOMESTIC VIOLENCE, DATING VIOLENCE, STALKING, OR
7 SEXUAL ASSAULT IF THE TENANT OR FAMILY MEMBER CONTINUES TO
8 RESIDE IN THE UNIT; AND
9
10     (E) A STATEMENT THAT THE REPRESENTATIONS IN THE
11 VERIFICATION ARE TRUE AND ACCURATE TO THE BEST OF THE TENANT'S
12 KNOWLEDGE AND THE TENANT UNDERSTANDS THAT THE VERIFICATION
13 COULD BE USED AS EVIDENCE IN COURT; AND
14
15     (2) FROM AN ATTESTING THIRD PARTY:
16     (A) THE NAME, BUSINESS ADDRESS, AND BUSINESS TELEPHONE
17 NUMBER OF THE PARTY;
18
19     (B) THE CAPACITY IN WHICH THE PARTY RECEIVED THE
20 INFORMATION REGARDING THE ACT OF DOMESTIC VIOLENCE, DATING
21 VIOLENCE, STALKING, OR SEXUAL ASSAULT;
22
23     (C) A STATEMENT THAT THE PARTY HAS READ THE TENANT'S
24 VERIFICATION AND BEEN ADVISED BY THE TENANT THAT THE TENANT OR
25 IMMEDIATE FAMILY MEMBER IS THE VICTIM OF AN ACT OF DOMESTIC
26 VIOLENCE, DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT AND HAS
27 A REASONABLE FEAR THAT THE TENANT OR FAMILY MEMBER WILL SUFFER
28 PSYCHOLOGICAL HARM OR A FURTHER ACT OF DOMESTIC VIOLENCE,
29 DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT IF THE TENANT OR
30 FAMILY MEMBER CONTINUES TO RESIDE IN THE DWELLING UNIT; AND
31
32     (D) A STATEMENT THAT THE PARTY, BASED ON THE TENANT'S
VERIFICATION, BELIEVES THE TENANT AND UNDERSTANDS THAT THE
VERIFICATION MAY BE USED AS THE GROUND FOR RELEASING THE TENANT
FROM A LEASE OR TERMINATING THE TENANT'S INTEREST UNDER THE
LEASE.

(b) IF A VERIFICATION GIVEN TO A LANDLORD BY A TENANT UNDER
SECTION 38-12-1102 (a) (3) CONTAINS A REPRESENTATION OF A MATERIAL
FACT KNOWN BY THE TENANT TO BE FALSE, THE LANDLORD MAY RECOVER
AN AMOUNT NOT TO EXCEED THREE TIMES THE PERIODIC RENT OR THREE
TIMES ACTUAL DAMAGES, WHICHEVER IS GREATER.

38-12-1105. Perpetrator liability for damages. (a) A LANDLORD
MAY RECOVER FROM A PERPETRATOR ACTUAL DAMAGES RESULTING FROM
A TENANT'S EXERCISE OF A RIGHT UNDER SECTION 38-12-1102 AND, IF THE
PERPETRATOR IS A PARTY TO THE LEASE WHO REMAINS IN POSSESSION OF
THE DWELLING UNIT, HOLD THE PERPETRATOR LIABLE ON THE LEASE FOR
ALL OBLIGATIONS UNDER THE LEASE OR THIS ARTICLE.

(b) A PERPETRATOR MAY NOT RECOVER ACTUAL DAMAGES OR
OTHER RELIEF RESULTING FROM THE EXERCISE OF A RIGHT BY A TENANT
UNDER SECTION 38-12-1102 OR A LANDLORD UNDER THIS SECTION.

38-12-1106. Change of lock or other security device.
(a) SUBJECT TO SUBSECTIONS (b) AND (c) OF THIS SECTION, IF A TENANT
OR IMMEDIATE FAMILY MEMBER IS A VICTIM OF AN ACT OF DOMESTIC
VIOLENCE, DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT, AND THE
TENANT HAS A REASONABLE FEAR THAT THE PERPETRATOR OR OTHER
PERSON ACTING ON THE PERPETRATOR'S BEHALF MAY ATTEMPT TO GAIN
ACCESS TO THE DWELLING UNIT, THE TENANT, WITHOUT THE LANDLORD'S
CONSENT, MAY CAUSE THE LOCKS OR OTHER SECURITY DEVICES FOR THE
UNIT TO BE CHANGED OR REKEYED IN A PROFESSIONAL MANNER AND
SHALL GIVE A KEY OR OTHER MEANS OF ACCESS FOR THE NEW LOCKS OR 
SECURITY DEVICES TO THE LANDLORD AND ANY OTHER TENANT, OTHER 
THAN THE PERPETRATOR, THAT IS A PARTY TO THE LEASE.

(b) If locks or other security devices are changed or 
rekeyed under subsection (a) of this section, the landlord may 
change or rekey them, at the tenant's expense, to ensure 
compatibility with the landlord's master key or other means of 
access or otherwise accommodate the landlord's reasonable 
commercial needs.

(c) If a perpetrator is a party to the lease, locks or other 
security devices may not be changed or rekeyed under 
subsection (a) of this section unless a court order, other than an 
ex parte order, expressly requires that the perpetrator vacate 
the dwelling unit or restrains the perpetrator from contact 
with the tenant or an immediate family member and a copy of the 
order has been given to the landlord.

(d) A perpetrator may not recover actual damages or 
other relief against a landlord or tenant resulting from the 
exercise of a right by the landlord or tenant under this section.

38-12-1107. Effect of court order to vacate. (a) On issuance 
of a court order requiring a perpetrator to vacate a dwelling 
unit because of an act of domestic violence, dating violence, 
stalking, or sexual assault, other than an ex parte order, 
neither the landlord nor tenant has a duty to:

(1) allow the perpetrator access to the unit unless 
accompanied by a law enforcement officer; or

(2) provide the perpetrator with any means of access to
11.20.15

1 THE UNIT.

(b) If a perpetrator is a party to the lease, on issuance of
2 a court order requiring the perpetrator to vacate the dwelling
3 unit, other than an ex parte order, the perpetrator's interest
4 under the lease terminates, and the landlord and any remaining
5 tenant may recover from the perpetrator actual damages
6 resulting from the termination.

(c) Termination of a perpetrator's interest under a lease
7 under this section does not terminate the interest of any other
8 tenant under the lease or alter the obligations of any other
9 tenant under the lease.

(d) A landlord is not required to return to a perpetrator
10 whose interest under the lease terminates under this section or
11 to any remaining tenant any security deposit or unearned rent
12 until the lease terminates with respect to all tenants.

38-12-1108. Termination of tenancy of perpetrator without
court order. (a) If a landlord has a reasonable belief that a
1 tenant or immediate family member is the victim of an act of
2 domestic violence, dating violence, stalking, or sexual assault
3 and another tenant of the same landlord who resides in the
4 same building as the tenant is the perpetrator, the landlord may
5 terminate the perpetrator's interest in the lease by giving the
6 perpetrator notice in a record that the perpetrator's interest
7 will terminate immediately or on a later specified date, which is
8 not later than thirty days after notice is given. The notice must
9 state that the landlord has a reasonable belief that the
10 perpetrator has committed an act of domestic violence, dating

-65-
VIOLENCE, STALKING, OR SEXUAL ASSAULT AND THE APPROXIMATE DATE
OF THE ACT.

(b) BEFORE GIVING NOTICE TO A PERPETRATOR UNDER SUBSECTION
(a) OF THIS SECTION, THE LANDLORD SHALL GIVE NOTICE OF THE
LANDLORD’S INTENT TO TERMINATE THE PERPETRATOR’S INTEREST TO THE
TENANT WHO WAS THE VICTIM OF THE ACT OF DOMESTIC VIOLENCE,
DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT OR WHOSE IMMEDIATE
FAMILY MEMBER WAS THE VICTIM. THIS NOTICE MAY BE GIVEN BY ANY
MEANS REASONABLY CALCULATED TO REACH THE TENANT, INCLUDING
ORAL COMMUNICATION, NOTICE IN A RECORD, OR NOTICE SENT TO THE
TENANT AT ANY OTHER ADDRESS AT WHICH THE LANDLORD REASONABLY
BELIEVES THE TENANT IS LOCATED.

(c) FAILURE OF A TENANT TO RECEIVE THE NOTICE OF THE
LANDLORD’S INTENT TO TERMINATE THE PERPETRATOR’S INTEREST UNDER
SUBSECTION (b) OF THIS SECTION DOES NOT AFFECT THE LANDLORD’S
RIGHT TO TERMINATE UNDER THIS SECTION OR EXPOSE THE LANDLORD TO
ANY LIABILITY.

(d) IF A LANDLORD TERMINATES A PERPETRATOR’S INTEREST
UNDER A LEASE UNDER THIS SECTION, ANY OTHER TENANT UNDER THE
LEASE MAY RECOVER FROM THE PERPETRATOR ACTUAL DAMAGES
RESULTING FROM THE TERMINATION.

(e) TERMINATION OF A PERPETRATOR’S INTEREST UNDER A LEASE
UNDER THIS SECTION DOES NOT TERMINATE THE INTEREST OF ANY OTHER
TENANT UNDER THE LEASE OR ALTER THE OBLIGATIONS OF ANY OTHER
TENANT UNDER THE LEASE.

(f) A LANDLORD IS NOT REQUIRED TO RETURN TO A PERPETRATOR
WHOSE INTEREST UNDER A LEASE IS TERMINATED UNDER THIS SECTION OR
TO ANY OTHER TENANT UNDER THE LEASE ANY SECURITY DEPOSIT OR
UNEARNED RENT UNTIL THE LEASE TERMINATES WITH RESPECT TO ALL
TENANTS.

(g) IN AN ACTION BETWEEN A LANDLORD AND TENANT INVOLVING
THE RIGHT OF THE LANDLORD TO TERMINATE THE TENANT'S INTEREST
UNDER THIS SECTION, THE LANDLORD MUST PROVE BY A PREPONDERANCE
OF THE EVIDENCE THAT THE LANDLORD HAD A REASONABLE BELIEF THAT
THE TENANT WAS A PERPETRATOR.

38-12-1109. Landlord conduct with respect to victim. (a) In
this section, "tenant" includes an applicant seeking to enter into
a lease with a landlord.

(b) Except as otherwise provided in subsections (d) and (e)
of this section, a landlord may not do or threaten to do any act
in section 38-12-901 (b) if the landlord's purpose for engaging in
the conduct is that:

(1) An act of domestic violence, dating violence, stalking,
or sexual assault committed against the tenant or immediate
family member resulted in a violation of the lease or this
article by the tenant; or

(2) A complaint of an act of domestic violence, dating
violence, stalking, or sexual assault committed against the
tenant or immediate family member resulted in a law
enforcement or emergency response.

(c) Except as otherwise provided in subsection (d) of this
section, a landlord may not refuse or threaten to refuse to rent
a dwelling unit if the landlord's purpose for the refusal or
threat is that a tenant or an immediate family member is or has
BEEN THE VICTIM OF AN ACT OF DOMESTIC VIOLENCE, DATING VIOLENCE, STALKING, OR SEXUAL ASSAULT.

(d) Evidence that any of the events described in subsection (b) or (c) of this section occurred within six months before the landlord's conduct creates a presumption that the purpose of the landlord's conduct was retaliation. The landlord may rebut the presumption by a preponderance of evidence showing that the landlord had sufficient justification for engaging in the conduct described in subsection (b) or (c) of this section and would have engaged in the conduct in the same manner and at the same time regardless of whether the events described in subsection (b) or (c) of this section occurred.

(e) A landlord may terminate the lease of a tenant by giving the tenant notice in a record that the lease will terminate on a date specified in the notice, which must be at least thirty days after notice is given if:

(1) Without the landlord's permission, the tenant invited a perpetrator onto the premises or allowed a perpetrator to occupy the dwelling unit:

(A) After the landlord gave the tenant notice in a record to refrain from inviting the perpetrator onto the premises; or

(B) During a time the tenant knows the perpetrator is subject to a no-contact court order or a court order barring the perpetrator from the premises; and

(2) The landlord demonstrates that:

(A) There is an actual and imminent threat to the health or safety of any individual on the premises, the landlord, or the
LANDLORD'S AGENT IF THE LEASE IS NOT TERMINATED; OR

(B) THE PERPETRATOR HAS DAMAGED THE PREMISES.

(f) IF A LANDLORD WILLFULLY VIOLATES SUBSECTION (b) OR (c)

OF THIS SECTION, THE TENANT OR PROSPECTIVE TENANT MAY RECOVER
THREE TIMES THE PERIODIC RENT OR THREE TIMES ACTUAL DAMAGES,
WHICHEVER IS GREATER, AND:

(1) TERMINATE THE LEASE;

(2) DEFEND AN ACTION FOR POSSESSION ON THE GROUND THAT
THE LANDLORD VIOLATED SUBSECTION (b) OF THIS SECTION; OR

(3) OBTAIN APPROPRIATE INJUNCTIVE RELIEF.

PART 12
SECURITY DEPOSITS, FEES, AND UNEARNED RENT

38-12-1201. Payment required at the commencement of term
of lease - definition. (a) IN THIS PART 12, "BANK ACCOUNT" MEANS A
CHECKING, DEMAND, TIME, SAVINGS, PASSBOOK, OR SIMILAR ACCOUNT
MAINTAINED AT A BANK.

(b) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (c) AND (d)
OF THIS SECTION, A LANDLORD MAY NOT REQUIRE THE TENANT TO PAY OR
AGREE TO PAY A SECURITY DEPOSIT, PREPAID RENT, OR ANY COMBINATION
THEREOF, IN AN AMOUNT THAT EXCEEDS TWO TIMES THE PERIODIC RENT.

(c) THE LIMIT ESTABLISHED IN SUBSECTION (b) OF THIS SECTION
DOES NOT INCLUDE THE FIRST MONTH'S RENT OR FEES.

(d) EXCEPT AS OTHERWISE PROVIDED BY LAW OTHER THAN THIS
ARTICLE, IF A TENANT KEEPS A PET ON THE PREMISES OR IS PERMITTED BY
THE LEASE TO MAKE ALTERATIONS TO THE PREMISES, THE LANDLORD MAY
REQUIRE THE TENANT TO PAY AN ADDITIONAL SECURITY DEPOSIT IN AN
AMOUNT COMMENSURATE WITH THE ADDITIONAL RISK OF DAMAGE TO THE
38-12-1202. Landlord, tenant, and third-party interests in security deposit. (a) The following rules apply to a landlord’s interest in a security deposit:

(1) The landlord’s interest is limited to a security interest.

(2) Notwithstanding law other than this article, the landlord’s security interest is effective against and has priority over each creditor of and transferee from the tenant.

(3) Subject to subsection (c) of this section, a creditor of and transferee from the landlord can acquire no greater interest in a security deposit than the interest of the landlord.

(b) The following rules apply to a tenant’s interest in a security deposit:

(1) Notwithstanding law other than this article, the tenant’s interest has priority over any right of setoff the bank in which the account is maintained may have for obligations owed to the bank other than charges normally associated with the bank’s maintenance of the account.

(2) The tenant’s interest is not adversely affected if the deposit is commingled with the deposits of other tenants.

(3) The effect of commingling other than that allowed in paragraph (2) of this subsection (b) is determined by law other than this article.

(c) Paragraph (3) of subsection (a) of this section does not abrogate generally applicable rules of law enabling a transferee of funds to take the funds free of competing claims.
38-12-1203. Safekeeping of security deposit. (a) With respect to funds constituting a security deposit, a landlord:

(1) Shall maintain the ability to identify the funds:

(A) By holding the funds in a bank account that is used exclusively for security deposits, that is maintained with a bank doing business in this state, and the title of which indicates that it contains security deposits; and

(B) By maintaining records that indicate at all times the amount of the funds attributable to each tenant whose funds are being held in the account; and

(2) May commingle the funds received from other tenants as security deposits in the same bank account but may not commingle other funds, including the landlord's personal or business funds, in the account.

(b) If a landlord fails to comply with subsection (a) of this section, the tenant may recover actual damages or one times the periodic rent, whichever is greater.

(c) A bank in which a landlord deposits funds constituting a security deposit has no duty to ensure that the landlord properly applies the funds.

(d) Unless a lease provides otherwise, the landlord is not required to deposit a security deposit into an interest-bearing account or to pay the tenant interest on the deposit.

<{Legislative Note: A state that wishes to require interest on a security deposit should delete subsection (d) and replace it with a provision governing the parties' rights regarding the interest.}>

38-12-1204. Disposition of security deposit and unearned rent
on termination of lease. (a) After termination of a lease, the tenant is entitled to the amount by which the security deposit and any unearned rent exceeds the amount the landlord is owed under the lease or this article.

(b) Not later than thirty days after a lease terminates and the tenant vacates the premises, the landlord shall determine the amount the landlord believes the tenant is entitled to under subsection (a) of this section and:

(1) Tender that amount to the tenant or, if the tenant has died, the tenant representative;

(2) Send that amount by first-class mail, postage prepaid, to an address provided by the tenant or, if the tenant has died, the tenant representative or, in the absence of that address, to the relevant address specified in section 38-12-109; or

(3) Cause a funds transfer in that amount to be made, with the cost of transfer paid, to a bank account designated by the tenant or, if the tenant has died, the tenant representative.

(c) If the amount under subsection (b) of this section is less than the sum of the tenant’s security deposit and any unearned rent, the landlord shall provide the tenant or tenant representative, within the period specified under subsection (b) of this section, a record specifying each item of property damage or other unfulfilled obligation of the tenant to which the security deposit or unearned rent was applied and the amount applied to each item.

(d) If the amount to which the tenant is entitled under subsection (a) of this section is greater than the amount paid to
THE TENANT OR TENANT REPRESENTATIVE, THE TENANT OR TENANT REPRESENTATIVE MAY RECOVER THE DIFFERENCE.

(e) If a landlord fails to comply with subsection (b) or (c) of this section, the court may award the tenant or tenant representative, in addition to any amount recoverable under subsection (d) of this section, two hundred fifty dollars or two times the amount recoverable under subsection (d) of this section, whichever is greater, unless the landlord's only noncompliance was the failure to comply with paragraph (2) of subsection (b) of this section as a result of the inadvertent failure to pay the cost of postage or transmission or to use the proper address.

(f) If a security deposit and unearned rent held by a landlord are insufficient to satisfy the tenant's obligations under the lease and this article, the landlord may recover from the tenant the amount necessary to satisfy those obligations.

38-12-1205. Disposition of security deposit on termination of landlord interest in premises. (a) When a landlord's interest in the premises terminates, the landlord:

(1) If the lease continues, not later than thirty days after the termination of the landlord's interest, shall transfer to the person succeeding the landlord's interest in the premises any security deposit being held by the landlord and notify the tenant in a record of the successor's name and address, the amount transferred, and any claim previously made against the security deposit; or

(2) If the lease terminates as a result of the termination
OF THE LANDLORD'S INTEREST, SHALL COMPLY WITH SECTION 38-12-1204.

(b) If a landlord dies before the termination of the lease, the personal representative of the landlord's estate becomes the landlord until the premises are distributed to the successor. If the premises are distributed to the successor before the termination of the lease, the security deposit held by the representative must be transferred to the successor and the representative shall notify the tenant in a record of the successor's name and address, the amount transferred to the successor, and any claim previously made against the security deposit. If the premises are not distributed to the successor before the termination of the lease, the representative shall comply with section 38-12-1204.

(c) If a landlord or personal representative of the landlord's estate complies with subsection (a) or (b) of this section, the landlord or the estate has no further liability with respect to the security deposit.

(d) Except as otherwise provided in subsection (e) of this section, a successor to a landlord's interest in the premises has all rights and obligations of the landlord under this article with respect to any security deposit held by the predecessor landlord which has not been returned to the tenant, whether or not the security deposit was transferred or distributed to the successor.

(e) If a landlord's interest is terminated by foreclosure, the successor's liability under subsection (d) of this section is limited to the security deposit received by the successor.
PART 13

MISCELLANEOUS PROVISIONS

38-12-1301. Uniformity of application and construction. In applying and construing this article, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

38-12-1302. Relation to "Electronic Signatures in Global and National Commerce Act". This article modifies, limits, or supersedes the "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).

38-12-1303. Application. This article applies only to a lease made on or after the effective date of this article, as amended.

SECTION 2. 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 10, 2016, if adjournment sine die is on May 11, 2016); 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 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.
COLORADO COMMISSION ON UNIFORM STATE LAWS

A BILL FOR AN ACT

CONCERNING THE "COLORADO UNIFORM TRUST DECANTING 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. “Decanting” is a term used to describe the distribution of assets from one trust into a second trust. The bill enacts the "Colorado Uniform Trust Decanting Act" (act), which allows a trustee to reform an irrevocable trust document within reasonable limits that ensure the trust will achieve the settlor’s original intent. The act prevents decanting when it would defeat a charitable or tax-related purpose of the settlor.

Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.
Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, add part 9 of article 16 of title 15 as follows:

15-16-901. Short title. The short title of this part 9 is the "COLORADO UNIFORM TRUST DECANTING ACT."

15-16-902. Definitions. As used in this part 9, unless the context requires otherwise:

(1) "APPOINTEE PROPERTY" means the property or property interest subject to a power of appointment.

(2) "ASCERTAINABLE STANDARD" means a standard relating to an individual’s health, education, support, or maintenance within the meaning of 26 U.S.C. sec. 2041(b)(1)(A), as amended, or 26 U.S.C. sec. 2514(c)(1), as amended, and any applicable regulations.

(3) "AUTHORIZED FIDUCIARY" means:

(a) A trustee or other fiduciary, other than a settlor, that has discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust to one or more current beneficiaries;

(b) A special fiduciary appointed under Section 9; or

(c) A special-needs fiduciary under Section 13.

(4) "BENEFICIARY" means a person that:

(a) Has a present or future, vested or contingent, beneficial interest in a trust;

(b) Holds a power of appointment over trust property; or

(c) Is an identified charitable organization that will or
MAY RECEIVE DISTRIBUTIONS UNDER THE TERMS OF THE TRUST.

(5) "Charitable interest" means an interest in a trust which:

(a) is held by an identified charitable organization and makes the organization a qualified beneficiary;

(b) benefits only charitable organizations and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary; or

(c) is held solely for charitable purposes and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary.

(6) "Charitable organization" means:

(a) a person, other than an individual, organized and operated exclusively for charitable purposes; or

(b) a government or governmental subdivision, agency, or instrumentality, to the extent it holds funds exclusively for a charitable purpose.

(7) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, a municipal or other governmental purpose, or another purpose the achievement of which is beneficial to the community.

(8) "Court" means the court in this state having jurisdiction in matters relating to trusts.

(9) "Current beneficiary" means a beneficiary that on the date the beneficiary's qualification is determined is a distributee or permissible distributee of trust income or principal. The term includes the holder of a presently exercisable general power of
APPOINTMENT BUT DOES NOT INCLUDE A PERSON THAT IS A BENEFICIARY
ONLY BECAUSE THE PERSON HOLDS ANY OTHER POWER OF APPOINTMENT.

(10) "Decanting power" or "the decanting power" means
the power of an authorized fiduciary under this part 9 to
distribute property of a first trust to one or more second trusts
or to modify the terms of the first trust.

(11) "Expanded distributive discretion" means a
discretionary power of distribution that is not limited to an
ascertainable standard or a reasonably definite standard.

(12) "First trust" means a trust over which an authorized
fiduciary may exercise the decanting power.

(13) "First-trust instrument" means the trust instrument
for a first trust.

(14) "General power of appointment" means a power of
appointment exercisable in favor of a powerholder, the
powerholder's estate, a creditor of the powerholder, or a
creditor of the powerholder's estate.

(15) "Jurisdiction", with respect to a geographic area,
includes a state or country.

(16) "Person" means an individual, estate, business or
nonprofit entity, public corporation, government or
governmental subdivision, agency, or instrumentality, or other
legal entity.

(17) "Power of appointment" means a power that enables
a powerholder acting in a nonfiduciary capacity to designate a
recipient of an ownership interest in or another power of
appointment over the appointive property. The term does not
INCLUDE A POWER OF ATTORNEY.

(18) "Powerholder" means a person in which a donor creates a power of appointment.

(19) "Presently exercisable power of appointment" means a power of appointment exercisable by the powerholder at the relevant time. The term:

(a) includes a power of appointment exercisable only after the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time only after:

(I) the occurrence of the specified event;

(II) the satisfaction of the ascertainable standard; or

(III) the passage of the specified time; and

(b) does not include a power exercisable only at the powerholder's death.

(20) "Qualified beneficiary" means a beneficiary that on the date the beneficiary's qualification is determined:

(a) is a distributee or permissible distributee of trust income or principal;

(b) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph (a) of this subsection (20) terminated on that date without causing the trust to terminate; or

(c) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(21) "Reasonably definite standard" means a clearly measurable standard under which a holder of a power of
DISTRIBUTION IS LEGALLY ACCOUNTABLE WITHIN THE MEANING OF 26
U.S.C. SEC. 674(b)(5)(A), AS AMENDED, AND ANY APPLICABLE
REGULATIONS.

(22) "Record" means information that is inscribed on a
tangible medium or that is stored in an electronic or other
medium and is retrievable in perceivable form.

(23) "Second trust" means:
(a) A first trust after modification under this Part 9; or
(b) A trust to which a distribution of property from a first
trust is or may be made under this Part 9.

(24) "Second-trust instrument" means the trust
instrument for a second trust.

(25) "Settlor", except as otherwise provided in Section
15-16-925, 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 the person's
contribution except to the extent another person has power to
revoke or withdraw that portion.

(26) "Sign" means, with present intent to authenticate or
adopt a record:
(a) To execute or adopt a tangible symbol; or
(b) To attach to or logically associate with the record an
electronic symbol, sound, or process.

(27) "State" means a state of the United States, the
District of Columbia, Puerto Rico, the United States Virgin
Islands, or any territory or insular possession subject to the
JURISDICTION OF THE UNITED STATES.

(28) "Terms of the trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument, as may be established by other evidence that would be admissible in a judicial proceeding, or as may be established by court order or nonjudicial settlement agreement.

(29) "Trust instrument" means a record executed by the settlor to create a trust or by any person to create a second trust which contains some or all of the terms of the trust, including any amendments.

15-16-903. Scope. (1) Except as otherwise provided in subsections (2) and (3) of this section, this part 9 applies to an express trust that is irrevocable or revocable by the settlor only with the consent of the trustee or a person holding an adverse interest.

(2) This part 9 does not apply to a trust held solely for charitable purposes.

(3) Subject to section 15-16-915, a trust instrument may restrict or prohibit exercise of the decanting power.

(4) This part 9 does not limit the power of a trustee, powerholder, or other person to distribute or appoint property in further trust or to modify a trust under the trust instrument, law of this state other than this part 9, common law, a court order, or a nonjudicial settlement agreement.

(5) This part 9 does not affect the ability of a settlor to provide in a trust instrument for the distribution of the trust
PROPERTY OR APPOINTMENT IN FURTHER TRUST OF THE TRUST PROPERTY
OR FOR MODIFICATION OF THE TRUST INSTRUMENT.

15-16-904. Fiduciary duty. (1) In exercising the decanting
power, an authorized fiduciary shall act in accordance with its
fiduciary duties, including the duty to act in accordance with
the purposes of the first trust.

(2) This part 9 does not create or imply a duty to exercise
the decanting power or to inform beneficiaries about the
applicability of this part 9.

(3) Except as otherwise provided in a first-trust
instrument, for purposes of this part 9 [and sections 801 and
802(a) of the Uniform Trust Code], the terms of the first trust are deemed to
include the decanting power.

15-16-905. Application - governing law. (1) This part 9 applies
to a trust created before, on, or after the effective date of this
act which:

(a) Has its principal place of administration in this state,
including a trust whose principal place of administration has
been changed to this state; or

(b) Provides by its trust instrument that it is governed by
the law of this state or is governed by the law of this state for
the purpose of:

(I) Administration, including administration of a trust
whose governing law for purposes of administration has been
changed to the law of this state;

(II) Construction of terms of the trust; or
(III) Determining the meaning or effect of terms of the trust.

15-16-906. Reasonable reliance. A trustee or other person that reasonably relies on the validity of a distribution of part or all of the property of a trust to another trust, or a modification of a trust, under this Part 9, law of this state other than this Part 9, or the law of another jurisdiction is not liable to any person for any action or failure to act as a result of the reliance.

15-16-907. Notice - exercise of decanting power. (1) In this section, a notice period begins on the day notice is given under subsection (3) of this section and ends 63 days after the day notice is given.

Note: The Uniform Act actually indicates "59 days" above, but it brackets this number in apparent recognition that different state courts use different calendars. In Colorado, we have recently passed several bills to amend our statutory language relating to court dates to uniformly reflect a seven-day week (i.e., we use multiples of 7 for court dates and schedules). So, would you like this to read "56 days" or "63 days"?

(2) Except as otherwise provided in this Part 9, an authorized fiduciary may exercise the decanting power without the consent of any person and without court approval.

(3) Except as otherwise provided in subsection (6) of this section, an authorized fiduciary shall give notice in a record of the intended exercise of the decanting power not later than [60]

{63?} days before the exercise to:
(a) Each settlor of the first trust, if living or then in existence;
(b) Each qualified beneficiary of the first trust;
(c) Each holder of a presently exercisable power of appointment over any part or all of the first trust;
(d) Each person that currently has the right to remove or replace the authorized fiduciary;
(e) Each other fiduciary of the first trust;
(f) Each fiduciary of the second trust; and
(g) [The Attorney General], if subsection (2) of section 15-16-914 applies.

(4) [An authorized fiduciary is not required to give notice under subsection (3) of this section to a qualified beneficiary who is a minor and has no representative or] [An authorized fiduciary is not required to give notice under subsection (3) of this section] to a person that is not known to the fiduciary or is known to the fiduciary but cannot be located by the fiduciary after reasonable diligence.

(5) A notice under subsection (3) of this section must:
(a) Specify the manner in which the authorized fiduciary intends to exercise the decanting power;
(b) Specify the proposed effective date for exercise of the power;
(c) Include a copy of the first-trust instrument; and
(d) Include a copy of all second-trust instruments.

(6) The decanting power may be exercised before expiration of the notice period under subsection (1) of this
SECTION IF ALL PERSONS ENTITLED TO RECEIVE NOTICE WAIVE THE PERIOD IN A SIGNED RECORD.

(7) The receipt of notice, waiver of the notice period, or expiration of the notice period does not affect the right of a person to file an application under Section 15-16-909 asserting that:

(a) An attempted exercise of the decanting power is ineffective because it did not comply with this Part 9 or was an abuse of discretion or breach of fiduciary duty; or

(b) Section 15-16-922 applies to the exercise of the decanting power.

(8) An exercise of the decanting power is not ineffective because of the failure to give notice to one or more persons under subsection (3) of this section if the authorized fiduciary acted with reasonable care to comply with subsection (3) of this section.

15-16-908. Representation. (1) Notice to a person with authority to represent and bind another person under a first-trust instrument or [THIS STATE'S TRUST CODE] has the same effect as notice given directly to the person represented.

(2) Consent of or waiver by a person with authority to represent and bind another person under a first-trust instrument or [THIS STATE'S TRUST CODE] is binding on the person represented unless the person represented objects to the representation before the consent or waiver otherwise would become effective.
(3) A person with authority to represent and bind another person under a first-trust instrument or [THIS STATE'S TRUST CODE] may file an application under SECTION 15-16-909 on behalf of the person represented.

(4) A settlor may not represent or bind a beneficiary under this Part 9.

15-16-909. Court involvement. (1) On application of an authorized fiduciary, a person entitled to notice under subsection (3) of Section 15-16-907, a beneficiary, or with respect to a charitable interest the [ATTORNEY GENERAL] or other person that has standing to enforce the charitable interest, the court may:

(a) Provide instructions to the authorized fiduciary regarding whether a proposed exercise of the decanting power is permitted under this Part 9 and consistent with the fiduciary duties of the authorized fiduciary;

(b) Appoint a special fiduciary and authorize the special fiduciary to determine whether the decanting power should be exercised under this Part 9 and to exercise the decanting power;

(c) Approve an exercise of the decanting power;

(d) Determine that a proposed or attempted exercise of the decanting power is ineffective because:

(e) After applying Section 15-16-922, the proposed or attempted exercise does not or did not comply with this Part 9; or

(f) The proposed or attempted exercise would be or was an abuse of the fiduciary's discretion or a breach of fiduciary duty;
(g) Determine the extent to which Section 15-16-922 applies to a prior exercise of the decanting power;

(h) Provide instructions to the trustee regarding the application of Section 15-16-922 to a prior exercise of the decanting power; or

(i) Order other relief to carry out the purposes of this part 9.

(2) On application of an authorized fiduciary, the court may approve:

(a) An increase in the fiduciary's compensation under Section 15-16-916; or

(b) A modification under Section 15-16-918 of a provision granting a person the right to remove or replace the fiduciary.

15-16-910. Formalities. An exercise of the decanting power must be made in a record signed by an authorized fiduciary. The signed record must, directly or by reference to the notice required by Section 15-16-907, identify the first trust and the second trust or trusts and state the property of the first trust being distributed to each second trust and the property, if any, that remains in the first trust.

15-16-911. Decanting power under expanded distributive discretion. (1) In this section: "Noncontingent right" means a right that is not subject to the exercise of discretion or the occurrence of a specified event that is not certain to occur. The term does not
INCLUDE A RIGHT HELD BY A BENEFICIARY IF ANY PERSON HAS DISCRETION TO DISTRIBUTE PROPERTY SUBJECT TO THE RIGHT TO ANY PERSON OTHER THAN THE BENEFICIARY OR THE BENEFICIARY'S ESTATE.

(b) "Presumptive remainder beneficiary" means a qualified beneficiary other than a current beneficiary.

(c) "Successor beneficiary" means a beneficiary that is not a qualified beneficiary on the date the beneficiary's qualification is determined. The term does not include a person that is a beneficiary only because the person holds a nongeneral power of appointment.

(d) "Vested interest" means:

(I) A right to a mandatory distribution that is a noncontingent right as of the date of the exercise of the decanting power;

(II) A current and noncontingent right, annually or more frequently, to a mandatory distribution of income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(III) A current and noncontingent right, annually or more frequently, to withdraw income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(IV) A presently exercisable general power of appointment; or

(V) A right to receive an ascertainable part of the trust property on the trust's termination which is not subject to the
EXERCISE OF DISCRETION OR TO THE OCCURRENCE OF A SPECIFIED EVENT THAT IS NOT CERTAIN TO OCCUR.

(2) Subject to subsection (3) of this section and section 15-16-914, an authorized fiduciary that has expanded distributive discretion over the principal of a first trust for the benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(3) Subject to section 15-16-913, in an exercise of the decanting power under this section, a second trust may not:

   (a) include as a current beneficiary a person that is not a current beneficiary of the first trust, except as otherwise provided in subsection (4) of this section;

   (b) include as a presumptive remainder beneficiary or successor beneficiary a person that is not a current beneficiary, presumptive remainder beneficiary, or successor beneficiary of the first trust, except as otherwise provided in subsection (4) of this section; or

   (c) reduce or eliminate a vested interest.

(4) Subject to section 15-16-914 and paragraph (c) of subsection (3) of this section, in an exercise of the decanting power under this section, a second trust may be a trust created or administered under the law of any jurisdiction and may:

   (a) retain a power of appointment granted in the first trust;

   (b) omit a power of appointment granted in the first trust, other than a presently exercisable general power of appointment;
(c) Create or modify a power of appointment if the powerholder is a current beneficiary of the first trust and the authorized fiduciary has expanded distributive discretion to distribute principal to the beneficiary; and

(d) Create or modify a power of appointment if the powerholder is a presumptive remainder beneficiary or successor beneficiary of the first trust, but the exercise of the power may take effect only after the powerholder becomes, or would have become if then living, a current beneficiary.

(5) A power of appointment described in paragraph (a), (b), (c), or (d) of subsection (4) of this section may be general or nongeneral. The class of permissible appointees in favor of which the power may be exercised may be broader than or different from the beneficiaries of the first trust.

(6) If an authorized fiduciary has expanded distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has expanded distributive discretion.

15-16-912. Decanting power under limited distributive discretion. (1) In this section, "limited distributive discretion" means a discretionary power of distribution that is limited to an ascertainable standard or a reasonably definite standard.

Again, as this term is not defined any differently in the Definitions section proper (i.e., section 15-16-902, above), I propose that we move it there.
(2) An authorized fiduciary that has limited distributive discretion over the principal of the first trust for benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(3) Under this section and subject to section 15-16-914, a second trust may be created or administered under the law of any jurisdiction. Under this section, the second trusts, in the aggregate, must grant each beneficiary of the first trust beneficial interests which are substantially similar to the beneficial interests of the beneficiary in the first trust.

(4) A power to make a distribution under a second trust for the benefit of a beneficiary who is an individual is substantially similar to a power under the first trust to make a distribution directly to the beneficiary. A distribution is for the benefit of a beneficiary if:

(a) The distribution is applied for the benefit of the beneficiary;

(b) The beneficiary is under a legal disability or the trustee reasonably believes the beneficiary is incapacitated, and the distribution is made as permitted under [this state’s trust code]; or

(c) The distribution is made as permitted under the terms of the first-trust instrument and the second-trust instrument for the benefit of the beneficiary.

(5) If an authorized fiduciary has limited distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this
SECTION OVER THAT PART OF THE PRINCIPAL OVER WHICH THE
AUTHORIZED FIDUCIARY HAS LIMITED DISTRIBUTIVE DISCRETION.

15-16-913. Trust for beneficiary with disability. (1) In this
SECTION:

(a) "Beneficiary with a disability" means a beneficiary of
a first trust who the special-needs fiduciary believes may
qualify for governmental benefits based on disability, whether
or not the beneficiary currently receives those benefits or is an
individual who has been adjudicated [incompetent].

(b) "Governmental benefits" means financial aid or
services from a state, federal, or other public agency.

(c) "Special-needs fiduciary" means, with respect to a
trust that has a beneficiary with a disability:

(I) A trustee or other fiduciary, other than a settlor,
that has discretion to distribute part or all of the principal of
a first trust to one or more current beneficiaries;

(II) If no trustee or fiduciary has discretion under
paragraph (a) of this subsection (3), a trustee or other fiduciary,
other than a settlor, that has discretion to distribute part or
all of the income of the first trust to one or more current
beneficiaries; or

(III) If no trustee or fiduciary has discretion under
paragraph (a) or (b) of this subsection (3), a trustee or other
fiduciary, other than a settlor, that is required to distribute
part or all of the income or principal of the first trust to one or
more current beneficiaries.
(IV) "SPECIAL-NEEDS TRUST" MEANS A TRUST THE TRUSTEE BELIEVES WOULD NOT BE CONSIDERED A RESOURCE FOR PURPOSES OF DETERMINING WHETHER A BENEFICIARY WITH A DISABILITY IS ELIGIBLE FOR GOVERNMENTAL BENEFITS.

<{Again, because none of these terms are defined any differently in the Definitions section proper (i.e., section 15-16-902, above), I propose that we move them there.}>}

(2) A SPECIAL-NEEDS FIDUCIARY MAY EXERCISE THE DECANTING POWER DESCRIBED IN SECTION 15-16-911 OVER THE PRINCIPAL OF A FIRST TRUST AS IF THE FIDUCIARY HAD AUTHORITY TO DISTRIBUTE PRINCIPAL TO A BENEFICIARY WITH A DISABILITY SUBJECT TO EXPANDED DISTRIBUTIVE DISCRETION IF:

(a) A SECOND TRUST IS A SPECIAL-NEEDS TRUST THAT BENEFITS THE BENEFICIARY WITH A DISABILITY; AND

(b) THE SPECIAL-NEEDS FIDUCIARY DETERMINES THAT EXERCISE OF THE DECANTING POWER WILL FURTHER THE PURPOSES OF THE FIRST TRUST.

(3) IN AN EXERCISE OF THE DECANTING POWER UNDER THIS SECTION, THE FOLLOWING RULES APPLY:

(a) NOTWITHSTANDING SECTION 15-15-911 (3) (b), THE INTEREST IN THE SECOND TRUST OF A BENEFICIARY WITH A DISABILITY MAY:

(I) BE A POOLED TRUST AS DEFINED BY MEDICAID LAW FOR THE BENEFIT OF THE BENEFICIARY WITH A DISABILITY UNDER 42 U.S.C. SEC. 1396p (d)(4)(C), AS AMENDED; OR

(II) CONTAIN PAYBACK PROVISIONS COMPLYING WITH REIMBURSEMENT REQUIREMENTS OF MEDICAID LAW UNDER 42 U.S.C. SEC. 1396p (d)(4)(A), AS AMENDED.
(b) Section 15-16-911 (3)(c) does not apply to the interests of the beneficiary with a disability.

(c) Except as affected by any change to the interests of the beneficiary with a disability, the second trust, or if there are two or more second trusts, the second trusts in the aggregate, must grant each other beneficiary of the first trust beneficial interests in the second trusts which are substantially similar to the beneficiary's beneficial interests in the first trust.

15-16-914. Protection of charitable interest. (1) In this section:

(a) "Determinable charitable interest" means a charitable interest that is a right to a mandatory distribution currently, periodically, on the occurrence of a specified event, or after the passage of a specified time and which is unconditional or will be held solely for charitable purposes.

(b) "Unconditional" means not subject to the occurrence of a specified event that is not certain to occur, other than a requirement in a trust instrument that a charitable organization be in existence or qualify under a particular provision of the United States Internal Revenue Code of 1986, as amended, on the date of the distribution, if the charitable organization meets the requirement on the date of determination.

Again, because neither of these terms are defined any differently in the Definitions section proper (i.e., section 15-16-902, above), I propose that we move them there.
(2) If a first trust contains a determinable charitable interest, [the Attorney General] has the rights of a qualified beneficiary and may represent and bind the charitable interest.

(3) If a first trust contains a charitable interest, the second trust or trusts may not:

   (a) diminish the charitable interest;

   (b) diminish the interest of an identified charitable organization that holds the charitable interest;

   (c) alter any charitable purpose stated in the first-trust instrument; or

   (d) alter any condition or restriction related to the charitable interest.

(4) If there are two or more second trusts, the second trusts shall be treated as one trust for purposes of determining whether the exercise of the decanting power diminishes the charitable interest or diminishes the interest of an identified charitable organization for purposes of Subsection (3) of this section.

(5) If a first trust contains a determinable charitable interest, the second trust or trusts that include a charitable interest pursuant to Subsection (3) of this section must be administered under the law of this state unless:

   (a) [the Attorney General], after receiving notice under Section 7, fails to object in a signed record delivered to the authorized fiduciary within the notice period;
(b) [The Attorney General] consents in a signed record to the second trust or trusts being administered under the law of another jurisdiction; or

(c) the court approves the exercise of the decanting power.

(6) This part does not limit the powers and duties of the Attorney General under law of this state other than this part 9.

15-16-915. Trust limitation on decanting. (1) An authorized fiduciary may not exercise the decanting power to the extent the first-trust instrument expressly prohibits exercise of:

(a) the decanting power; or

(b) a power granted by state law to the fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

(2) Exercise of the decanting power is subject to any restriction in the first-trust instrument that expressly applies to exercise of:

(a) the decanting power; or

(b) a power granted by state law to a fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

(3) A general prohibition of the amendment or revocation of a first trust, a spendthrift clause, or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest does not preclude exercise of the decanting power.
(4) Subject to subsections (1) and (2) of this section, an authorized fiduciary may exercise the decanting power under this part 9 even if the first-trust instrument permits the authorized fiduciary or another person to modify the first-trust instrument or to distribute part or all of the principal of the first trust to another trust.

(5) If a first-trust instrument contains an express prohibition described in subsection (1) of this section or an express restriction described in subsection (2) of this section, the provision must be included in the second-trust instrument.

15-16-916. Change in compensation. (1) If a first-trust instrument specifies an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation above the specified compensation unless:

(a) All qualified beneficiaries of the second trust consent to the increase in a signed record; or

(b) The increase is approved by the court.

(2) If a first-trust instrument does not specify an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation above the compensation permitted by [this state's trust code] unless:

(a) All qualified beneficiaries of the second trust consent to the increase in a signed record; or

(b) The increase is approved by the court.
(3) A change in an authorized fiduciary's compensation which is incidental to other changes made by the exercise of the decanting power is not an increase in the fiduciary's compensation for purposes of subsections (1) and (2) of this section.

15-17-917. Relief from liability and indemnification.

(1) Except as otherwise provided in this section, a second-trust instrument may not relieve an authorized fiduciary from liability for breach of trust to a greater extent than the first-trust instrument.

(2) A second-trust instrument may provide for indemnification of an authorized fiduciary of the first trust or another person acting in a fiduciary capacity under the first trust for any liability or claim that would have been payable from the first trust if the decanting power had not been exercised.

(3) A second-trust instrument may not reduce fiduciary liability in the aggregate.

(4) Subject to subsection (3) of this section, a second-trust instrument may divide and reallocate fiduciary powers among fiduciaries, including one or more trustees, distribution advisors, investment advisors, trust protectors, or other persons, and relieve a fiduciary from liability for an act or failure to act of another fiduciary as permitted by law of this state other than this part 9.

15-16-918. Removal or replacement of authorized fiduciary.

(1) An authorized fiduciary may not exercise the decanting
POWER TO MODIFY A PROVISION IN A FIRST-TRUST INSTRUMENT GRANTING ANOTHER PERSON POWER TO REMOVE OR REPLACE THE FIDUCIARY UNLESS:

(a) The person holding the power consents to the modification in a signed record and the modification applies only to the person;

(b) The person holding the power and the qualified beneficiaries of the second trust consent to the modification in a signed record and the modification grants a substantially similar power to another person; or

(c) The court approves the modification and the modification grants a substantially similar power to another person.

15-16-919. Tax-related limitations. (1) In this section:

(a) "Grantor trust" means a trust as to which a settlor of a first trust is considered the owner under 26 U.S.C. secs. 671-677, as amended, or 26 U.S.C. sec. 679, as amended.

(b) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended.

(c) "Nongrantor trust" means a trust that is not a grantor trust.

(d) "Qualified benefits property" means property subject to the minimum distribution requirements of 26 U.S.C. sec. 401(a)(9), as amended, and any applicable regulations, or to any similar requirements that refer to 26 U.S.C. sec. 401(a)(9) or the regulations.

(2) An exercise of the decanting power is subject to the following limitations:
(a) If a first trust contains property that qualified, or would have qualified but for provisions of this part 9 other than this section, for a marital deduction for purposes of the gift or estate tax under the Internal Revenue Code or a state gift, estate, or inheritance tax, the second-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(b) If the first trust contains property that qualified, or would have qualified but for provisions of this part 9 other than this section, for a charitable deduction for purposes of the income, gift, or estate tax under the Internal Revenue Code or a state income, gift, estate, or inheritance tax, the second-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(c) If the first trust contains property that qualified, or would have qualified but for provisions of this part 9 other than this section, for the exclusion from the gift tax described in 26
U.S.C. sec. 2503(b), as amended, the second-trust instrument must not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. sec. 2503(b), as amended. If the first trust contains property that qualified, or would have qualified but for provisions of this part 9 other than this section, for the exclusion from the gift tax described in 26 U.S.C. sec. 2503(b), as amended, by application of 26 U.S.C. sec. 2503(c), as amended, the second-trust instrument must not include or omit a term that, if included or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. sec. 2503(c), as amended.

(d) If the property of the first trust includes shares of stock in an S corporation, as defined in 26 U.S.C. sec. 1361, as amended, and the first trust is, or but for provisions of this part 9 other than this section would be, a permitted shareholder under any provision of 26 U.S.C. sec. 1361, as amended, an authorized fiduciary may exercise the power with respect to part or all of the S-corporation stock only if any second trust receiving the stock is a permitted shareholder under 26 U.S.C. sec. 1361(c)(2), as amended. If the property of the first trust includes shares of stock in an S corporation and the first trust is, or but for provisions of this part 9 other than this section would be, a qualified subchapter-S trust within the meaning of 26 U.S.C. sec. 1361(d), as amended, the second-trust instrument
MUST NOT INCLUDE OR OMIT A TERM THAT PREVENTS THE SECOND TRUST FROM QUALIFYING AS A QUALIFIED SUBCHAPTER-S TRUST.

(e) If the first trust contains property that qualified, or would have qualified but for provisions of this Part 9 other than this section, for a zero inclusion ratio for purposes of the generation-skipping transfer tax under 26 U.S.C. Sec. 2642(c), as amended, the second-trust instrument must not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the transfer to the first trust from qualifying for a zero inclusion ratio under 26 U.S.C. Sec. 2642(c), as amended.

(f) If the first trust is directly or indirectly the beneficiary of qualified benefits property, the second-trust instrument may not include or omit any term that, if included in or omitted from the first-trust instrument, would have increased the minimum distributions required with respect to the qualified benefits property under 26 U.S.C. Sec. 401(a)(9), as amended, and any applicable regulations, or any similar requirements that refer to 26 U.S.C. Sec. 401(a)(9), as amended or the regulations. If an attempted exercise of the decanting power violates the preceding sentence, the trustee is deemed to have held the qualified benefits property and any reinvested distributions of the property as a separate share from the date of the exercise of the power, and Section 15-16-922 applies to the separate share.

(g) If the first trust qualifies as a grantor trust because of the application of 26 U.S.C. Sec. 672(f)(2)(A), as amended, the
SECOND TRUST MAY NOT INCLUDE OR OMIT A TERM THAT, IF INCLUDED IN OR OMITTED FROM THE FIRST-TRUST INSTRUMENT, WOULD HAVE PREVENTED THE FIRST TRUST FROM QUALIFYING UNDER 26 U.S.C. SEC. 672(f)(2)(A), AS AMENDED.

(h) In THIS PARAGRAPH (h), "TAX BENEFIT" MEANS A FEDERAL OR STATE TAX DEDUCTION, EXEMPTION, EXCLUSION, OR OTHER BENEFIT NOT OTHERWISE LISTED IN THIS SECTION, EXCEPT FOR A BENEFIT ARISING FROM BEING A GRANTOR TRUST. SUBJECT TO PARAGRAPH (I) OF THIS SUBSECTION (2), A SECOND-TRUST INSTRUMENT MAY NOT INCLUDE OR OMIT A TERM THAT, IF INCLUDED IN OR OMITTED FROM THE FIRST-TRUST INSTRUMENT, WOULD HAVE PREVENTED QUALIFICATION FOR A TAX BENEFIT IF:

(I) THE FIRST-TRUST INSTRUMENT EXPRESSLY INDICATES AN INTENT TO QUALIFY FOR THE BENEFIT OR THE FIRST-TRUST INSTRUMENT CLEARLY IS DESIGNED TO ENABLE THE FIRST TRUST TO QUALIFY FOR THE BENEFIT; AND

(II) THE TRANSFER OF PROPERTY HELD BY THE FIRST TRUST OR THE FIRST TRUST QUALIFIED, OR BUT FOR PROVISIONS OF THIS PART 9 OTHER THAN THIS SECTION, WOULD HAVE QUALIFIED FOR THE TAX BENEFIT.

(i) Subject to PARAGRAPH (d) OF THIS SUBSECTION (2):

(I) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (g) OF THIS SUBSECTION (2), THE SECOND TRUST MAY BE A NONGRANTOR TRUST, EVEN IF THE FIRST TRUST IS A GRANTOR TRUST; AND

(II) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (j) OF THIS SUBSECTION (2), THE SECOND TRUST MAY BE A GRANTOR TRUST, EVEN IF THE FIRST TRUST IS A NONGRANTOR TRUST.
(j) An authorized fiduciary may not exercise the decanting power if a settlor objects in a signed record delivered to the fiduciary within the notice period and either:

   (I) The first trust and a second trust are both grantor trusts, in whole or in part, the first trust grants the settlor or another person the power to cause the second trust to cease to be a grantor trust, and the second trust does not grant an equivalent power to the settlor or other person; or

   (II) The first trust is a nongrantor trust and a second trust is a grantor trust, in whole or in part, with respect to the settlor, unless:

      (A) The settlor has the power at all times to cause the second trust to cease to be a grantor trust; or

      (B) The first-trust instrument contains a provision granting the settlor or another person a power that would cause the first trust to cease to be a grantor trust and the second-trust instrument contains the same provision.

15-16-920. Duration of second trust. (1) Subject to subsection (2) of this section, a second trust may have a duration that is the same as or different from the duration of the first trust.

(2) To the extent that property of a second trust is attributable to property of the first trust, the property of the second trust is subject to any rules governing maximum perpetuity, accumulation, or suspension of the power of alienation which apply to property of the first trust.
15-16-921. Need to distribute not required. An authorized fiduciary may exercise the decanting power regardless of whether under the first trust’s discretionary distribution standard the fiduciary would have made or could have been compelled to make a discretionary distribution of principal at the time of the exercise.

15-16-922. Saving provision. (1) If exercise of the decanting power would be effective under this part 9 except that the second-trust instrument in part does not comply with this part 9, the exercise of the power is effective and the following rules apply with respect to the principal of the second trust attributable to the exercise of the power:

   (a) A provision in the second-trust instrument which is not permitted under this part 9 is void to the extent necessary to comply with this part 9.

   (b) A provision required by this part 9 to be in the second-trust instrument which is not contained in the instrument is deemed to be included in the instrument to the extent necessary to comply with this part 9.

(2) If a trustee or other fiduciary of a second trust determines that subsection (1) of this section applies to a prior exercise of the decanting power, the fiduciary shall take corrective action consistent with the fiduciary’s duties.

15-16-923. Trust for care of animal. (1) In this section:

   (a) "Animal trust" means a trust or an interest in a trust created to provide for the care of one or more animals.
(b) "Protector" means a person appointed in an animal trust to enforce the trust on behalf of the animal or, if no such person is appointed in the trust, a person appointed by the court for that purpose.

(2) The decanting power may be exercised over an animal trust that has a protector to the extent the trust could be decanted under this Part 9 if each animal that benefits from the trust were an individual, if the protector consents in a signed record to the exercise of the power.

(3) A protector for an animal has the rights under this Part 9 of a qualified beneficiary.

(4) Notwithstanding any other provision of this Part 9, if a first trust is an animal trust, in an exercise of the decanting power, the second trust must provide that trust property may be applied only to its intended purpose for the period the first trust benefitted the animal.

15-16-924. Terms of second trust. A reference in [This State's Trust Code] to a trust instrument or terms of the trust includes a second-trust instrument and the terms of the second trust.

15-16-925. Settlor. (1) For purposes of law of this state other than this Part 9 and subject to Subsection (2) of this section, a settlor of a first trust is deemed to be the settlor of the second trust with respect to the portion of the principal of the first trust subject to the exercise of the decanting power.

(2) In determining settlor intent with respect to a second trust, the intent of a settlor of the first trust, a settlor of the second trust, and the authorized fiduciary may be considered.
15-16-926. Later-discovered property. (1) Except as otherwise provided in subsection (3) of this section, if exercise of the decanting power was intended to distribute all the principal of the first trust to one or more second trusts, later-discovered property belonging to the first trust and property paid to or acquired by the first trust after the exercise of the power is part of the trust estate of the second trust or trusts.

(2) Except as otherwise provided in subsection (3) of this section, if exercise of the decanting power was intended to distribute less than all the principal of the first trust to one or more second trusts, later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power remains part of the trust estate of the first trust.

(3) An authorized fiduciary may provide in an exercise of the decanting power or by the terms of a second trust for disposition of later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power.

15-16-927. Obligations. A debt, liability, or other obligation enforceable against property of a first trust is enforceable to the same extent against the property when held by the second trust after exercise of the decanting power.

15-16-928. 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.
15-16-929. Relation to electronic signatures in global and national commerce act. This part 9 modifies, limits, or supercedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. sec. 7001 et seq., but does not modify, limit, or supercede 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).

15-16-930. Severability. If any provision of this part 9 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this part 9 which can be given effect without the invalid provision or application, and to this end the provisions of this part 9 are severable.

<{Conforming amendments?}>

SECTION 2. 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 10, 2016, if adjournment sine die is on May 11, 2016); 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 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor. <{Do you want to specify another effective date for this act?}>
BILLET TOPIC: "Canadian DV Protection Order Enforcement"

A BILL FOR AN ACT

CONCERNING CREATION OF THE "UNIFORM RECOGNITION AND ENFORCEMENT OF CANADIAN DOMESTIC VIOLENCE PROTECTION ORDERS 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 enacts the "Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act" as recommended by the national conference of commissioners on uniform state laws. The bill allows a peace officer to enforce a Canadian domestic violence protection order.

Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.
The bill allows a court to enter an order enforcing or refusing to enforce a Canadian domestic violence protection order. The bill provides immunity for a person who enforces a Canadian domestic violence protection order.

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

SECTION 1. In Colorado Revised Statutes, add part 2 to article 14 of title 13 as follows:

PART 2
UNIFORM RECOGNITION AND ENFORCEMENT OF
CANADIAN DOMESTIC VIOLENCE PROTECTION ORDERS

13-14-201. Short title. The short title of this part 2 is the "Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act".

13-14-202. Definitions. In this part 2:

(1) "Canadian domestic violence protection order" means a judgment or part of a judgment or order issued in a civil proceeding by a court of Canada under law of the issuing jurisdiction which relates to domestic violence and prohibits a respondent from:

(a) Being in physical proximity to a protected individual or following a protected individual;

(b) Directly or indirectly contacting or communicating with a protected individual or other individual described in the order;

(c) Being within a certain distance of a specified place or location associated with a protected individual; or

(d) Molesting, annoying, harassing, or engaging in
THREATENING CONDUCT DIRECTED AT A PROTECTED INDIVIDUAL.

(2) "DOMESTIC PROTECTION ORDER" MEANS AN INJUNCTION OR
OTHER ORDER ISSUED BY A TRIBUNAL WHICH RELATES TO DOMESTIC OR
FAMILY VIOLENCE LAWS TO PREVENT AN INDIVIDUAL FROM ENGAGING IN
VIOLENT OR THREATENING ACTS AGAINST, HARASSMENT OF, DIRECT OR
INDIRECT CONTACT OR COMMUNICATION WITH, OR BEING IN PHYSICAL
PROXIMITY TO ANOTHER INDIVIDUAL.

(3) "ISSUING COURT" MEANS THE COURT THAT ISSUES A CANADIAN
DOMESTIC VIOLENCE PROTECTION ORDER.

(4) "LAW ENFORCEMENT OFFICER" MEANS AN INDIVIDUAL
AUTHORIZED BY LAW OF THIS STATE OTHER THAN THIS PART 2 TO ENFORCE
A DOMESTIC PROTECTION ORDER.

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

(6) "PROTECTED INDIVIDUAL" MEANS AN INDIVIDUAL PROTECTED
BY A CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER.

(7) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER
MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

(8) "RESPONDENT" MEANS AN INDIVIDUAL AGAINST WHOM A
CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER IS ISSUED.

(9) "STATE" MEANS A STATE OF THE UNITED STATES, THE
DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN
ISLANDS, OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE
JURISDICTION OF THE UNITED STATES.
"Tribunal" means a court, agency, or other entity authorized by law of this state other than this part 2 to establish, enforce, or modify a domestic protection order.

13-14-203. Enforcement of Canadian domestic violence protection order by law enforcement officer. (1) If a law enforcement officer determines under subsection (2) or (3) of this section that there is probable cause to believe a valid Canadian domestic violence protection order exists and the order has been violated, the officer shall enforce the terms of the Canadian domestic violence order as if they were in an order of a tribunal. Presentation to a law enforcement officer of a certified copy of a Canadian domestic violence protection order is not required for enforcement.

(2) Presentation to a law enforcement officer of a record of a Canadian domestic violence protection order that identifies both a protected individual and a respondent and on its face is in effect constitutes probable cause to believe that a valid order exists.

(3) If a record of a Canadian domestic violence protection order is not presented as provided in subsection (2) of this section, a law enforcement officer may consider other information in determining whether there is probable cause to believe that a valid Canadian domestic violence protection order exists.

(4) If a law enforcement officer determines that an otherwise valid Canadian domestic violence protection order cannot be enforced because the respondent has not been notified...
OF OR SERVED WITH THE ORDER, THE OFFICER SHALL NOTIFY THE
PROTECTED INDIVIDUAL THAT THE OFFICER WILL MAKE REASONABLE
EFFORTS TO CONTACT THE RESPONDENT, CONSISTENT WITH THE SAFETY OF
THE PROTECTED INDIVIDUAL. AFTER NOTICE TO THE PROTECTED
INDIVIDUAL AND CONSISTENT WITH THE SAFETY OF THE INDIVIDUAL, THE
LAW ENFORCEMENT OFFICER SHALL MAKE A REASONABLE EFFORT TO
INFORM THE RESPONDENT OF THE ORDER; NOTIFY THE RESPONDENT OF THE
TERMS OF THE ORDER; PROVIDE A RECORD OF THE ORDER, IF AVAILABLE,
TO THE RESPONDENT; AND ALLOW THE RESPONDENT A REASONABLE
OPPORTUNITY TO COMPLY WITH THE ORDER BEFORE THE OFFICER
ENFORCES THE ORDER.

(5) IF A LAW ENFORCEMENT OFFICER DETERMINES THAT AN
INDIVIDUAL IS A PROTECTED INDIVIDUAL, THE OFFICER SHALL INFORM THE
INDIVIDUAL OF AVAILABLE LOCAL VICTIM SERVICES.

13-14-204. Enforcement of Canadian domestic violence
protection order by tribunal. (1) A TRIBUNAL MAY ISSUE AN ORDER
ENFORCING OR REFUSING TO ENFORCE A CANADIAN DOMESTIC VIOLENCE
PROTECTION ORDER ON APPLICATION OF:

(a) A PERSON AUTHORIZED BY LAW OF THIS STATE OTHER THAN
THIS PART 2 TO SEEK ENFORCEMENT OF A DOMESTIC PROTECTION ORDER;
OR

(b) A RESPONDENT.

(2) IN A PROCEEDING UNDER SUBSECTION (1) OF THIS SECTION, THE
TRIBUNAL SHALL FOLLOW THE PROCEDURES OF THIS STATE FOR
ENFORCEMENT OF A DOMESTIC PROTECTION ORDER. AN ORDER ENTERED
UNDER THIS SECTION IS LIMITED TO THE ENFORCEMENT OF THE TERMS OF
THE CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER AS DESCRIBED
IN SECTION 13-14-202 (1).

(3) A Canadian domestic violence protection order is enforceable under this section if:

(a) The order identifies a protected individual and a respondent;

(b) The order is valid and in effect;

(c) The issuing court had jurisdiction over the parties and the subject matter under law applicable in the issuing court; and

(d) The order was issued after:

(I) The respondent was given reasonable notice and had an opportunity to be heard before the court issued the order; or

(II) In the case of an ex parte order, the respondent was given reasonable notice and had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the right of the respondent to due process.

(4) A Canadian domestic violence protection order valid on its face is prima facie evidence of its enforceability under this section.

(5) A claim that a Canadian domestic violence protection order does not comply with subsection (3) of this section is an affirmative defense in a proceeding seeking enforcement of the order. If the tribunal determines that the order is not enforceable, the tribunal shall issue an order that the Canadian domestic violence protection order is not enforceable under this section and section 13-14-203 and may not be
REGISTERED UNDER SECTION 13-14-205.

(6) This section applies to enforcement of a provision of a Canadian domestic violence protection order against a party to the order in which each party is a protected individual and respondent only if:

(a) the party seeking enforcement of the order filed a pleading requesting the order from the issuing court; and

(b) the court made specific findings that entitled the party to the enforcement sought.

13-14-205. Registration of a Canadian domestic violence protection order. (1) An individual may register a Canadian domestic violence protection order in this state. To register the order, the individual must present a copy of the order to:

(a) a tribunal or other agency responsible for the registration of domestic protection orders; or

(b) an agency designated by the state, which shall present the Canadian domestic violence protection order to the tribunal responsible for the registration of domestic protection orders.

(2) On receipt of a certified copy of a Canadian domestic violence protection order, the tribunal or other agency responsible for the registration of the domestic protection orders shall register the order in accordance with this section.

(3) An individual registering a Canadian domestic violence protection order under this section shall file an affidavit stating that, to the best of the individual’s knowledge, the order is valid and in effect.
(4) After a Canadian domestic violence protection order is registered under this section, the responsible tribunal or other agency shall provide the individual registering the Canadian order a certified copy of the registered order.

(5) A Canadian domestic violence protection order registered under this section may be entered in a state or federal registry of protection orders in accordance with applicable law.

(6) An inaccurate, expired, or unenforceable Canadian domestic violence protection order may be corrected or removed from the registry of protection orders maintained in this state in accordance with law of this state other than this part 2.

(7) A fee may not be charged for the registration of a Canadian domestic violence protection order.

(8) Registration in this state or filing under law of this state other than this part 2 of a Canadian domestic violence protection order is not required for its enforcement under this part 2.

13-14-206. Immunity. The state, a state agency, a local governmental agency, law enforcement officer, prosecuting attorney, clerk of court, and state or local governmental official acting in an official capacity are immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a Canadian domestic violence protection order or the detention or arrest of an alleged violator of a Canadian domestic violence protection order if
THE ACT OR OMISSION WAS A GOOD FAITH EFFORT TO COMPLY WITH THIS
PART 2.

13-14-207. Other remedies. An individual who seeks a
remedy under this Part 2 may seek other legal or equitable
remedies.

13-14-208. 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.

13-14-209. Relation to electronic signatures in global and
national commerce act. This Part 2 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).

13-14-210. Transition. This Part 2 applies to a Canadian
domestic violence protection order issued before, on, or after
the effective date of this Part 2 and to a continuing action for
enforcement of a Canadian domestic violence protection order
commenced before, on, or after the effective date of this Part 2.
A request for enforcement of a Canadian domestic violence
protection order made on or after the effective date of this Part
2 for a violation of the order occurring before, on, or after the
effective date of this Part 2 is governed by this Part 2.

13-14-211. Severability. If any provision of this Act or its
application to any person or circumstance is held invalid, the
INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS PART 2 WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS PART 2 ARE SEVERABLE.

SECTION 2. Inclusion of official comments. The revisor shall include in the publication of the "Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act", as nonstatutory matter, following each section of the article, the full text of the official comments to that section contained in the official volume containing the 2015 official text of the "Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act" issued by the Uniform Law Commission, with any changes in the official comments or Colorado comments to correspond to Colorado changes in the uniform act. The revisor of statutes shall prepare the comments for approval by the committee on legal services for publication.

<?Do you want an safety clause or petition clause? Do you want a specific effective date?>