

CHAPTER 115

PROBATE, TRUSTS, AND FIDUCIARIES

SENATE BILL 95-043

BY SENATORS Mares and Meiklejohn;
also REPRESENTATIVE Kaufman.**AN ACT****CONCERNING REVISIONS TO THE "COLORADO PROBATE CODE".***Be it enacted by the General Assembly of the State of Colorado:*

SECTION 1. 15-11-102, Colorado Revised Statutes, 1987 Repl. Vol., as amended, as it will become effective July 1, 1995, is amended to read:

15-11-102. Share of spouse. The various possible circumstances describing the decedent, his or her surviving spouse, and their surviving descendants, if any, are set forth in this section to be utilized in determining the intestate share of the decedent's surviving spouse. If more than one circumstance is applicable, the circumstance that produces the ~~smallest~~ **LARGEST** share for the surviving spouse shall be applied.

(1) If:

(a) No descendant or parent of the decedent survives the decedent, then the surviving spouse receives the entire intestate estate; or

(b) All of the decedent's surviving descendants are also descendants of the surviving spouse and there are no other descendants of the surviving spouse who survive the decedent, then the surviving spouse receives the entire intestate estate;

(2) If no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent, then the surviving spouse receives the first two hundred thousand dollars, plus three-fourths of any balance of the intestate estate;

(3) If all of the decedent's surviving descendants are also descendants of the surviving spouse, and the surviving spouse has one or more surviving descendants

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

who are not descendants of the decedent, then the surviving spouse receives the first one hundred fifty thousand dollars, plus one-half of any balance of the intestate estate;

(4) If one or more of the decedent's surviving descendants are not descendants of the decedent's surviving spouse, and all of such surviving descendants WHO ARE CHILDREN OF THE DECEDENT are adults, then the surviving spouse receives the first one hundred thousand dollars, plus one-half of any balance of the intestate estate;

(5) If one or more of the decedent's surviving descendants are not descendants of the decedent's surviving spouse, and if one or more of such descendants WHO ARE CHILDREN OF THE DECEDENT are minors, then the surviving spouse receives one-half of the intestate estate.

SECTION 2. 15-11-103, Colorado Revised Statutes, 1987 Repl. Vol., as amended, as it will become effective July 1, 1995, is amended to read:

15-11-103. Share of heirs other than surviving spouse. Any part of the intestate estate not passing to the decedent's surviving spouse under section 15-11-102, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals designated who survive the decedent:

(1) To the decedent's descendants ~~by representation~~ PER CAPITA AT EACH GENERATION;

(2) If there is no surviving descendant, to the decedent's parents equally if both survive, or to the decedent's surviving parent;

(3) If there is no surviving descendant or surviving parent, to the surviving descendants of the decedent's parents or either of them ~~by representation~~ PER CAPITA AT EACH GENERATION;

(4) If there is no surviving descendant, surviving parent, or surviving descendant of a parent, to the decedent's surviving grandparents, or any of them, in equal shares;

(5) If there is no surviving descendant, surviving parent, surviving descendant of a parent, or surviving grandparent, to the surviving descendants of the decedent's grandparents ~~by representation~~ PER CAPITA AT EACH GENERATION;

(6) If there is no surviving heir under subsections (1) to (5) of this section, and if a birth child or birth children file a claim for inheritance with the court having probate jurisdiction for the decedent's estate within ninety days of decedent's death, to the decedent's surviving birth child or children ~~by representation~~ PER CAPITA AT EACH GENERATION. FOR PURPOSES OF THIS SUBSECTION (6), THE TERM "BIRTHCHILD" MEANS A CHILD WHO WAS BORN TO, BUT ADOPTED AWAY FROM, HIS OR HER NATURAL PARENT.

(7) If there is no surviving heir OR BIRTHCHILD under subsections (1) to (6) of this section, and if a birth parent or birth parents file a claim for inheritance with the court having probate jurisdiction for the decedent's estate within ninety days of decedent's death, to the decedent's birth parents equally if both survive, or to the surviving birth

parent. FOR PURPOSES OF THIS SUBSECTION (7), THE TERM "BIRTH PARENT" MEANS THE NATURAL PARENT OF A CHILD WHO WAS BORN TO, BUT ADOPTED AWAY FROM, THE NATURAL PARENT.

SECTION 3. 15-11-106 (2) and (3), Colorado Revised Statutes, 1987 Repl. Vol., as amended, as they will become effective July 1, 1995, are amended to read:

15-11-106. Per capita at each generation. (2) Decedent's descendants. If, under section 15-11-103 (1), a decedent's intestate estate or a part thereof passes "~~by representation~~" "PER CAPITA AT EACH GENERATION" to the decedent's descendants, the estate or part thereof is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the decedent which contains one or more surviving descendants and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who are allocated a share and their surviving descendants had predeceased the decedent.

(3) **Descendants of parents or grandparents.** If, under section 15-11-103 (3) or (5), a decedent's intestate estate or a part thereof passes "~~by representation~~" "PER CAPITA AT EACH GENERATION" to the descendants of the decedent's deceased parents or either of them, or to the descendants of the decedent's deceased grandparents or any of them, the estate or part thereof is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the deceased parents or either of them, or the deceased grandparents or any of them, that contains one or more surviving descendants and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

SECTION 4. 15-11-202 (2) (b) (I) (A), (3) (a), (3) (e), and (3) (h), Colorado Revised Statutes, 1987 Repl. Vol., as amended, as they will become effective July 1, 1995, are amended to read:

15-11-202. Augmented estate. (2) Property included in augmented estate. The augmented estate consists of the sum of:

(b) The value of the decedent's nonprobate transfers to others, which are composed of all property, whether real or personal, movable or immovable, wherever situated, not included in the decedent's probate estate, of any of the following types:

(I) Property of any of the following types that passed outside probate at the decedent's death:

(A) Property over which the decedent alone, immediately before death, held or retained a presently exercisable general power of appointment; the amount included is the value of the property subject to the power, to the extent that the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise to, or for

the benefit of, any person other than the decedent's estate or surviving spouse; except that property over which the decedent had ONLY a testamentary power of appointment is not included. Property over which the decedent had a general *inter vivos* power of appointment or withdrawal created in the decedent by a third party is includable unless the governing instrument contains a provision for its termination or lapse, in full or in part, during the life of the decedent.

(3) **Exclusions.** Notwithstanding anything stated in subsection (2) of this section, the following exclusions shall control:

(a) The value of any property is excluded from the decedent's nonprobate transfers to others (i) to the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property; or (ii) if the property was transferred with the written joinder of, or if the transfer was consented to in writing by, the surviving spouse; OR (iii) IF THE PROPERTY WAS TRANSFERRED TO A BONA FIDE PURCHASER. FOR PURPOSES OF THIS SECTION, IN THE ABSENCE OF A FINDING OF A CONTRARY INTENT, JOINDER IN THE FILING OF A GIFT TAX RETURN DOES NOT CONSTITUTE CONSENT OR JOINDER.

~~(e) Except with respect to joint tenancies and other interests in real estate between the decedent and the surviving spouse, joint tenancy and other interests in real estate created by the decedent prior to marriage to the surviving spouse are excluded as decedent's nonprobate transfers to others.~~ THE DECEDENT'S FRACTIONAL INTEREST IN REAL PROPERTY HELD IN JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP, IF SUCH JOINT TENANCY WAS CREATED BY A TRANSFER BY THE DECEDENT PRIOR TO MARRIAGE TO THE SURVIVING SPOUSE, IS EXCLUDED FROM THE DECEDENT'S NONPROBATE TRANSFERS TO OTHERS.

~~(h) Except with respect to joint tenancies and other interests in real estate between the decedent and the surviving spouse, joint tenancies and other interests in real estate created by the surviving spouse prior to marriage to the decedent are excluded from the augmented estate.~~ EXCEPT WITH RESPECT TO JOINT TENANCIES BETWEEN THE SURVIVING SPOUSE AND THE DECEDENT, THE SURVIVING SPOUSE'S FRACTIONAL INTEREST IN REAL PROPERTY HELD IN JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP, IF SUCH JOINT TENANCY WAS CREATED BY A TRANSFER BY THE SURVIVING SPOUSE PRIOR TO MARRIAGE TO THE DECEDENT, IS EXCLUDED FROM THE AUGMENTED ESTATE.

SECTION 5. 15-11-513, Colorado Revised Statutes, 1987 Repl. Vol., as amended, as it will become effective July 1, 1995, is amended to read:

15-11-513. Separate writing or memorandum identifying devise of certain types of tangible personal property. Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money. To be admissible under this section as evidence of the intended disposition, the writing shall be EITHER IN THE HANDWRITING OF THE TESTATOR OR BE signed by the testator and shall describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing that has no

significance apart from its effect on the dispositions made by the will.

SECTION 6. 15-11-601, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

15-11-601. Scope. In the absence of a finding of a contrary intention, the rules of construction in this part 6 control the construction of a will. In the absence of a finding of a contrary intention, the provisions of sections 15-11-603 ~~And~~ and 15-11-604 shall apply to wills and codicils executed or republished or reaffirmed on or after July 1, 1995, and prior law (sections 15-11-605 and 15-11-606) shall apply to wills and codicils executed prior to July 1, 1995, and not republished or reaffirmed on or after that date. IN THE PROCESS OF DETERMINING WHETHER A CONTRARY INTENTION EXISTS, THE RULES OF CONSTRUCTION OF THIS PART 6 SHALL NOT APPLY.

SECTION 7. 15-11-603 (2) (a) and (2) (b), Colorado Revised Statutes, 1987 Repl. Vol., as amended, as they will become effective July 1, 1995, are amended to read:

15-11-603. Antilapse; deceased devisee; class gifts. (2) Substitute gift. If a devisee fails to survive the testator and is a grandparent or a descendant of a grandparent of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:

(a) Except as provided in paragraph (d) of this subsection (2), if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take ~~by representation~~ PER CAPITA AT EACH GENERATION the property to which the devisee would have been entitled had the devisee survived the testator.

(b) Except as provided in paragraph (d) of this subsection (2), if the devise is in the form of a class gift, other than a devise to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family", or a class described by language of similar import, a substitute gift is created in the deceased ~~devisee or devisee's~~ DEVISEE'S OR DEVISEES' surviving descendants. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which he or she would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee takes ~~by representation~~ PER CAPITA AT EACH GENERATION the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For the purposes of this paragraph (b), "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants.

SECTION 8. 15-11-701 (2), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

15-11-701. Scope. For the purposes of this part 7, the term "governing instrument" shall be as defined in section 15-10-201 (22); except:

(2) As the application of a particular section is limited by its terms to a specific

type of provision or governing instrument. In the absence of a finding of a contrary intention, the rules of construction in this part 7 control the construction of a governing instrument executed or republished or reaffirmed on or after July 1, 1995, and the rules of construction under prior law control the construction of a governing instrument executed prior to July 1, 1995, and not a governing instrument republished or reaffirmed after that date. IN THE PROCESS OF DETERMINING WHETHER A CONTRARY INTENTION EXISTS, THE RULES OF CONSTRUCTION OF THIS PART 7 SHALL NOT APPLY.

SECTION 9. 15-11-706 (2), Colorado Revised Statutes, 1987 Repl. Vol., as amended, as it will become effective July 1, 1995, is amended to read:

15-11-706. Nonprobate transfers; deceased beneficiary. (2) Substitute gift. If a beneficiary fails to survive the decedent and is a grandparent, or a descendant of a grandparent of the decedent, the following apply:

(a) Except as provided in paragraph (d) of this subsection (2), if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take ~~by representation~~ PER CAPITA AT EACH GENERATION the property to which the beneficiary would have been entitled had the beneficiary survived the decedent.

(b) Except as provided in paragraph (d) of this subsection (2), if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family", or a class described by language of similar import, a substitute gift is created in the deceased beneficiary's or beneficiaries' surviving descendants. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which he or she would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take ~~by representation~~ PER CAPITA AT EACH GENERATION the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For the purposes of this paragraph (b), "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants.

(c) Except as otherwise provided in a governing instrument, for the purposes of this part 7, words of survivorship, such as in a beneficiary designation to an individual "if he survives me", or in a beneficiary designation to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. The use of language such as "and if he does not survive ME the gift shall lapse" or "to a A and not to a's A's descendants" shall be sufficient indication of an intent contrary to the application of this section.

(d) If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by paragraph (a) or (b) of this subsection (2), the substitute gift is superseded by the alternative beneficiary designation only if an expressly designated beneficiary of the alternative

beneficiary designation is entitled to take.

SECTION 10. 15-11-707 (2) (a) and (2) (b), Colorado Revised Statutes, 1987 Repl. Vol., as amended, as they will become effective July 1, 1995, are amended to read:

15-11-707. Survivorship with respect to future interests under terms of trust; substitute takers. (2) Survivorship required; substitute gift. A future interest under the terms of a trust is contingent on the beneficiary's surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following apply:

(a) Except as provided in paragraph (d) of this subsection (2), if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take ~~by representation~~ PER CAPITA AT EACH GENERATION the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.

(b) Except as provided in paragraph (d) of this subsection (2), if the future interest is in the form of a class gift, other than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family", or a class described by language of similar import, a substitute gift is created in the deceased beneficiary's or beneficiaries' surviving descendants. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which he or she would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take ~~by representation~~ PER CAPITA AT EACH GENERATION the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For the purposes of this paragraph (b), "deceased beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants.

SECTION 11. 15-11-709, Colorado Revised Statutes, 1987 Repl. Vol., as amended, as it will become effective July 1, 1995, is amended to read:

15-11-709. By representation; per capita at each generation; per stirpes.

(1) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "Deceased child" or "deceased descendant" means a child or a descendant who either predeceased the distribution date or is deemed to have predeceased the distribution date under section 15-11-702.

(b) "Distribution date", with respect to an interest, means the time when the interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but may occur at a time during the course of a day.

(c) "Surviving ancestor", "surviving child", or "surviving descendant" means an

ancestor, a child, or a descendant who neither predeceased the distribution date nor is deemed to have predeceased the distribution date under section 15-11-702.

(2) **Per capita at each generation.** If an applicable statute or a governing instrument calls for property to be distributed ~~"by representation" or~~ "per capita at each generation", the property is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the designated ancestor which contains one or more surviving descendants and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.

(3) **Per stirpes.** If a governing instrument calls for property to be distributed "per stirpes", the property is divided into as many equal shares as there are (i) surviving children of the designated ancestor and (ii) deceased children who left surviving descendants. Each surviving child, if any, is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(4) **Deceased descendant with no surviving descendant disregarded.** For the purposes of subsections (2), ~~and~~ (3), AND (5) of this section, an individual who is deceased and left no surviving descendant is disregarded, and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.

(5) **By representation.** For all governing instruments executed before, ON, OR AFTER July 1, 1995, unless the governing instrument provides otherwise, the following definition of "by representation" shall apply: If "by representation" is called for, ~~by this code, the estate~~ PROPERTY is divided into as many EQUAL shares as there are (i) surviving ~~heirs in the nearest degree of kinship~~ DESCENDANTS IN THE GENERATION NEAREST TO THE DESIGNATED ANCESTOR WHICH CONTAINS ONE OR MORE SURVIVING DESCENDANTS and (ii) deceased ~~persons~~ DESCENDANTS in the same ~~degree~~ GENERATION who left ~~issue who survive the decedent,~~ SURVIVING DESCENDANTS, IF ANY. Each surviving ~~heir~~ DESCENDANT in the nearest ~~degree receiving~~ GENERATION IS ALLOCATED one share and the share of each deceased ~~person~~ DESCENDANT in the same ~~degree being~~ GENERATION IS divided among his or her descendants in the same manner.

SECTION 12. The introductory portion to 15-11-713 (1), Colorado Revised Statutes, 1987 Repl. Vol., as amended, as it will become effective July 1, 1995, is amended to read:

15-11-713. Construction of wills and trusts containing formula marital clauses. (1) If a decedent dies leaving a will that was executed or a trust that was created before September 12, 1981, which will or trust contains a formula expressly providing that the decedent's spouse or a qualifying trust is to receive the maximum amount of property qualifying for the marital deduction allowable by federal law, such formula provision shall be construed as referring to the amount of property

which, after utilization of the credits available to the decedent's estate, produces the least possible federal estate tax AND is eligible for the marital deduction as allowed under the federal "Internal Revenue Code", as amended by section 403 (a) of the federal "Economic Recovery Tax Act of 1981", P. L. No. 97-34, in effect at the time of the decedent's death; except that such construction shall not be made if its effect is to reduce the amount of property passing to the surviving spouse or a qualifying trust. Such construction shall only be made if the following requirements are met:

SECTION 13. 15-11-801 (4), Colorado Revised Statutes, 1987 Repl. Vol., as amended, as it will become effective July 1, 1995, is amended to read:

15-11-801. Disclaimer of property interests. (4) Effect of disclaimer. The effects of a disclaimer are:

(a) If property or an interest therein devolves to a disclaimant under a testamentary instrument, under a power of appointment exercised by a testamentary instrument, or under the laws of intestacy, and the decedent has not provided for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the decedent, but if by law or under the testamentary instrument the descendants of the disclaimant would share in the disclaimed interest ~~by representation~~ PER CAPITA AT EACH GENERATION or otherwise were the disclaimant to predecease the decedent, then the disclaimed interest passes ~~by representation~~ PER CAPITA AT EACH GENERATION or passes as directed by the governing instrument to the descendants of the disclaimant who survive the decedent. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest disclaimed takes effect as if the disclaimant had predeceased the decedent. A disclaimer relates back for all purposes to the date of death of the decedent.

(b) If property or an interest therein devolves to a disclaimant under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the effective date of the instrument or contract, but if by law or under the nontestamentary instrument or contract the descendants of the disclaimant would share in the disclaimed interest ~~by representation~~ PER CAPITA AT EACH GENERATION or otherwise were the disclaimant to predecease the effective date of the instrument, then the disclaimed interest passes ~~by representation~~ PER CAPITA AT EACH GENERATION, or passes as directed by the governing instrument to the descendants of the disclaimant who survive the effective date of the instrument. A disclaimer relates back for all purposes to that date. A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the effective date of the instrument or contract that transferred the disclaimed interest.

(c) The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and all persons claiming through or under either of them.

SECTION 14. 15-11-804 (2) (a), Colorado Revised Statutes, 1987 Repl. Vol., as amended, as it will become effective July 1, 1995, is amended to read:

15-11-804. Revocation of probate and nonprobate transfers by divorce; no revocation by other changes of circumstances. (2) Revocation upon divorce.

Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(a) Revokes any revocable (i) disposition or appointment of property made by a divorced individual to his or her former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse, (ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse, AND (iii) NOMINATION IN A GOVERNING INSTRUMENT NOMINATING A DIVORCED INDIVIDUAL'S FORMER SPOUSE OR A RELATIVE OF THE DIVORCED INDIVIDUAL'S FORMER SPOUSE to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and

SECTION 15. 15-11-901 (2), Colorado Revised Statutes, 1987 Repl. Vol., as amended, as it will become effective July 1, 1995, is amended to read:

15-11-901. Honorary trusts; trusts for pets. (2) Trust for pets. Subject to this subsection (2) and subsection (3) of this section, a trust for the care of designated domestic or pet animals and the animals' offspring in gestation is valid. FOR PURPOSES OF THIS SUBSECTION (2), THE DETERMINATION OF THE "ANIMALS' OFFSPRING IN GESTATION" IS MADE AT THE TIME THE DESIGNATED DOMESTIC OR PET ANIMALS BECOME PRESENT BENEFICIARIES OF THE TRUST. Unless the trust instrument provides for an earlier termination, the trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this subsection (2), to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent. Any trust under this subsection (2) shall be an exception to any statutory or common law rule against perpetuities.

SECTION 16. 15-10-201 (11), Colorado Revised Statutes, 1987 Repl. Vol., as amended, as it will become effective July 1, 1995, is amended to read:

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

(11) "Descendant" means all of the individual's LINEAL descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this code.

SECTION 17. 15-14-607 (2) and (4), Colorado Revised Statutes, 1987 Repl. Vol., as amended, are amended to read:

15-14-607. Reliance on an agency instrument. (2) Any person to whom the agent, operating under a duly notarized agency instrument, communicates a direction

that is in accordance with the terms of the agency instrument shall comply with such direction. Any person who arbitrarily or without reasonable cause fails to comply with such direction shall be subject to the costs, expenses, and reasonable attorney fees required to appoint a conservator for the principal, to obtain a declaratory judgment, or to obtain an order pursuant to section 15-14-409. THIS SUBSECTION (2) SHALL NOT APPLY TO THE SALE, TRANSFER, ENCUMBRANCE, OR CONVEYANCE OF REAL PROPERTY.

(4) Any third party may require an agent to present, as proof of the agency, either the original agency instrument naming such agent or a facsimile thereof certified by a notary. ~~The agent~~ THIRD PARTY has discretion to determine whether ~~to~~ THE AGENT SHALL provide the original agency instrument or a certified facsimile.

SECTION 18. Effective date - applicability. This act shall take effect July 1, 1995, and shall apply to decedents dying on or after said date.

SECTION 19. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 27, 1995