

CHAPTER 197

PROBATE, TRUSTS, AND FIDUCIARIES

HOUSE BILL 04-1280

BY REPRESENTATIVE(S) Stafford, Welker, Borodkin, Carroll, Coleman, Frangas, McFadyen, and Mitchell;
also SENATOR(S) Johnson S. and Arnold.

AN ACT

CONCERNING AUTHORIZATION TO ISSUE A DEATH CERTIFICATE IF DEATH IS PRESUMED BUT THE BODY IS NOT FOUND.

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

SECTION 1. 15-10-106.5, Colorado Revised Statutes, is amended to read:

15-10-106.5. Petition to determine cause and date of death resulting from disaster - body unidentifiable or missing. (1) ~~When~~ IF the occurrence of a disaster has been declared by proclamation of the governor under section 24-32-2104, C.R.S., and it appears that a person has died as a direct result, ~~thereof~~, but ~~his~~ THE remains have ~~disappeared~~ NOT BEEN LOCATED or are unidentifiable, the coroner, sheriff, or district attorney for the county in which ANY PART OF such disaster ~~or any part thereof~~ has occurred, ~~or the spouse, next of kin, heir at law, devisee, or personal representative named in a will, or a creditor or debtor of such person~~ OR PUBLIC ADMINISTRATOR FOR SUCH COUNTY, OR, THIRTY DAYS AFTER THE DISASTER WAS DECLARED, ANY OTHER PERSON, may ~~file in~~ APPLY TO the ~~district court~~ THE CORONER of such county ~~or the probate court, if occurring in the city and county of Denver, a petition~~ asking that the ~~court~~ CORONER determine the cause, MANNER, and date of death of ~~such person~~ THE ALLEGED DECEDENT.

(2) (a) Such ~~petition~~ APPLICATION shall ~~set forth~~ CONTAIN the facts and circumstances concerning the disaster, the reasons for the belief that the ~~person~~ THE ALLEGED DECEDENT perished, ~~therein~~, A STATEMENT that ~~such person is~~ THE ALLEGED DECEDENT'S REMAINS HAVE NOT BEEN LOCATED OR ARE unidentifiable, ~~or has disappeared~~, and the names and addresses of all persons known or believed to be heirs at law of ~~such person~~ THE ALLEGED DECEDENT.

(b) ~~Upon the filing of the petition, the court shall fix the time and place for hearing,~~

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

~~and the petitioner shall cause notice thereof to be given pursuant to section 15-10-401.~~ THE APPLICATION SHALL CONTAIN AN AFFIDAVIT IN WHICH THE APPLICANT STATES THE FOLLOWING INFORMATION TO THE EXTENT OF THE APPLICANT'S PERSONAL KNOWLEDGE, INFORMATION, AND BELIEF:

(I) THE FULL NAME OF THE ALLEGED DECEDENT;

(II) THE ALLEGED DECEDENT'S RESIDENTIAL ADDRESS, INCLUDING CITY, COUNTY, AND ZIP CODE;

(III) THE ALLEGED DECEDENT'S DATE AND PLACE OF BIRTH;

(IV) THE ALLEGED DECEDENT'S SEX, RACE, ETHNICITY, AND SOCIAL SECURITY NUMBER;

(V) THE FULL NAMES OF THE ALLEGED DECEDENT'S PARENTS AND THE MOTHER'S MAIDEN NAME;

(VI) THE APPLICANT'S NAME, ADDRESS, TELEPHONE NUMBER, AND RELATIONSHIP TO THE ALLEGED DECEDENT;

(VII) THE IDENTIFICATION NUMBER OF ANY MISSING PERSON REPORT FILED CONCERNING THE ALLEGED DECEDENT;

(VIII) THE DATE AND TIME OF THE APPLICANT'S LAST CONTACT WITH THE ALLEGED DECEDENT AND A DESCRIPTION OF THAT CONTACT;

(IX) THE BASIS FOR THE BELIEF THAT THE ALLEGED DECEDENT WAS PHYSICALLY PRESENT AT THE TIME AND PLACE OF AN OCCURRENCE DECLARED UNDER SECTION 24-32-2104, C.R.S.;

(X) A DESCRIPTION OF THE EFFORTS UNDERTAKEN BY THE APPLICANT, AND EFFORTS THE APPLICANT KNOWS OTHERS TO HAVE UNDERTAKEN, TO LOCATE OR IDENTIFY THE ALLEGED DECEDENT;

(XI) WHETHER THE ALLEGED DECEDENT SERVED IN THE ARMED FORCES OF THE UNITED STATES AND, IF SO, THE BRANCH AND DATES OF SERVICE;

(XII) IF THE ALLEGED DECEDENT WAS EMPLOYED, THE NAME OF THE ALLEGED DECEDENT'S EMPLOYER AND THE EMPLOYER'S ADDRESS AND TELEPHONE NUMBER; AND

(XIII) THE ALLEGED DECEDENT'S MARITAL STATUS, THE NAME OF SPOUSE, AND WIFE'S MAIDEN NAME, IF APPLICABLE.

~~(c) At the hearing upon the petition, the court upon its own motion may, and upon motion of any interested party shall, impanel a jury as provided by section 15-10-306.~~ THE APPLICANT SHALL PAY AN APPLICATION FEE OF TWENTY-FIVE DOLLARS WHEN FILING THE APPLICATION.

(d) THE CORONER SHALL ASSIGN AN APPLICATION NUMBER TO THE APPLICATION.

(3) If the ~~jury, or the court if there is no jury,~~ CORONER finds ~~from~~ sufficient evidence that a disaster occurred ~~in which such person~~ AND THAT THE ALLEGED DECEDENT named in the ~~petition was killed or~~ APPLICATION may be presumed to have ~~met death~~ DIED, then the ~~court~~ CORONER shall ~~enter an order which shall find the site of the disaster, the date, and, if possible, the time thereof and that such person met death in such disaster~~ ISSUE A CERTIFICATE OF DEATH UNDER THIS SECTION.

(4) A certified copy of ~~such~~ AN order ISSUED PURSUANT TO SUBSECTION (7) OF THIS SECTION shall be sufficient when presented to the coroner or other person acting in ~~his stead~~ PLACE OF THE CORONER for the issuance of a certificate of death under this section.

(5) ~~No petition~~ AN APPLICATION for the finding of death ~~as provided in~~ UNDER this section shall NOT be filed ~~within one year nor~~ later than ~~three~~ FIVE years following ~~the occurrence of~~ THE INITIAL PROCLAMATION OF the disaster.

(6) ~~The provisions of~~ This section shall ~~be applicable~~ APPLY only under the circumstances specified in subsection (1) of this section. In all other cases and ~~in cases brought under this section in which the court~~ IF THE CORONER finds the evidence insufficient to support the ~~requested order~~ ISSUANCE OF A DEATH CERTIFICATION, the provisions of section 15-10-107 with respect to determination of death and status ~~are applicable~~ APPLY.

(7) IF THE CORONER DENIES OR FAILS TO ACT WITHIN THIRTY DAYS ON AN APPLICATION THAT COMPLIES WITH SUBSECTION (2) OF THIS SECTION, THE APPLICANT MAY FILE A PETITION, IN THE DISTRICT COURT FOR THE COUNTY IN WHICH ANY PART OF THE DISASTER OCCURRED OR IN THE DENVER PROBATE COURT IF ANY PART OF THE DISASTER OCCURRED IN THE CITY AND COUNTY OF DENVER, FOR AN EXPEDITED DETERMINATION OF DEATH IN ACCORDANCE WITH THIS SECTION. IF THE COURT DETERMINES THE ALLEGED DECEDENT DIED, A CERTIFIED COPY OF THE COURT'S ORDER SHALL CONSTITUTE SUFFICIENT EVIDENCE FOR THE CORONER UNDER SUBSECTION (4) OF THIS SECTION.

SECTION 2. The introductory portion to 15-10-107 (1) and 15-10-107 (1) (e), Colorado Revised Statutes, is amended to read:

15-10-107. Evidence of death or status. (1) In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a COURT determination of death and status apply:

(e) An individual whose death is not established under paragraphs (a) to (d) of this subsection (1) OR UNDER SECTION 15-10-106.5 who is absent for a continuous period of five years, during which he or she has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. His or her death is presumed to have occurred at the end of the period unless there is sufficient evidence, ~~for determining~~ INCLUDING, WITHOUT LIMITATION, A DETERMINATION UNDER SECTION 15-10-106.5 that death occurred earlier.

SECTION 3. 30-10-606 (4), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

30-10-606. Coroner - inquiry - grounds - postmortem - jury - certificate of death. (4) (c) A COPY OF THE CERTIFICATE OF DEATH OR AFFIDAVIT OF PRESUMED DEATH, INCLUDING ANY RELATED DOCUMENTS AND STATEMENTS OF FACT, SHALL BE RETAINED IN THE APPLICABLE COUNTY IN A SECURE LOCATION IN AN APPROPRIATE COUNTY FACILITY ACCESSIBLE ONLY TO THE COUNTY CORONER OR THE CORONER'S DESIGNEE AND IN A MANNER THAT IS CONSISTENT WITH THE COUNTY'S RECORD RETENTION POLICY AND FEDERAL LAW.

SECTION 4. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 4, 2004, if adjournment sine die is on May 5, 2004); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to applications and certificates of death filed on or after the applicable effective date of this act.

Approved: April 23, 2004