

## CHAPTER 114

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**PROBATE, TRUSTS, AND FIDUCIARIES**

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HOUSE BILL 06-1137

BY REPRESENTATIVE(S) Judd, Buescher, and Cerbo;  
also SENATOR(S) Shaffer.**AN ACT****CONCERNING AMENDMENTS TO THE COLORADO PROBATE CODE.***Be it enacted by the General Assembly of the State of Colorado:***SECTION 1.** 15-12-104, Colorado Revised Statutes, is amended to read:

**15-12-104. Claims against decedent.** NO CLAIM MAY BE PRESENTED AND no proceeding to enforce a claim against the estate of a decedent or his OR HER successors may be revived or commenced before the appointment of a personal representative, EXCEPT AS PERMITTED BY SECTION 15-12-804. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this article. After distribution, a creditor whose claim has not been barred may recover from the distributees as provided in section 15-12-1004 or from a former personal representative individually liable as provided in section 15-12-1005. This section has no application to a proceeding by a secured creditor of the decedent to enforce his OR HER right to his OR HER security except as to any deficiency judgment ~~which~~ THAT might be sought therein.

**SECTION 2.** The introductory portions to 15-12-803 (1) (a) and (2), Colorado Revised Statutes, are amended, and the said 15-12-803 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

**15-12-803. Limitations on presentation of claims.** (1) (a) All claims against a decedent's estate ~~which~~ THAT arose before the death of the decedent, including claims of the state of Colorado and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statutes of limitations, are

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

barred against the estate, the personal representative, ANY TRANSFEREE OR OTHER PERSON INCURRING LIABILITY UNDER SECTION 15-15-103, and the heirs and devisees of the decedent, unless presented as follows:

(2) All claims against a decedent's estate ~~which~~ THAT arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, ANY TRANSFEREE OR OTHER PERSON INCURRING LIABILITY UNDER SECTION 15-15-103, and the heirs and devisees of the decedent, unless presented as follows:

(4) THIS SECTION IS A NONCLAIM STATUTE THAT CANNOT BE WAIVED OR TOLLED, AND IT SHALL NOT BE CONSIDERED A STATUTE OF LIMITATIONS.

(5) UNLESS SECTION 15-10-106 IS DETERMINED TO APPLY, AND, SUBJECT TO THE PROVISIONS OF SUBSECTION (3) OF THIS SECTION, CLAIMS THAT ARE NOT PRESENTED IN ACCORDANCE WITH SUBSECTIONS (1) AND (2) OF THIS SECTION ARE BARRED EVEN IF ADDRESSING THE MERITS OF THE CLAIM WOULD NOT DELAY THE SETTLEMENT AND DISTRIBUTION OF THE ESTATE.

**SECTION 3.** 15-12-804, Colorado Revised Statutes, is amended to read:

**15-12-804. Manner of presentation of claims.** (1) ~~A claimant against a decedent's estate may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative, or the filing of the claim with the court. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.~~ BEFORE A CLAIM MAY BE PRESENTED, THE DECEDENT'S ESTATE MUST FIRST HAVE BEEN COMMENCED IN A COURT OF APPROPRIATE JURISDICTION BY THE FILING OF AN APPLICATION OR PETITION PURSUANT TO PART 3 OR 4 OF THIS ARTICLE. A CLAIMANT MAY THEREAFTER PRESENT A CLAIM ONLY BY:

(a) FILING A WRITTEN STATEMENT OF THE CLAIM WITH THE CLERK OF THE COURT, IN THE FORM APPROVED BY THE SUPREME COURT, WHETHER OR NOT A PERSONAL REPRESENTATIVE HAS BEEN APPOINTED;

(b) DELIVERING OR MAILING A WRITTEN STATEMENT OF THE CLAIM TO THE COURT-APPOINTED PERSONAL REPRESENTATIVE; OR

~~(2)~~ (c) IN THE CASE OF a claimant ~~having~~ WHO HAS a claim described in section 15-12-803 (1), ~~may present~~ PRESENTING a claim by commencing a proceeding against the personal representative in the court where the personal representative was appointed to obtain payment of ~~his or her~~ THE claim. A claimant having a claim described in section 15-12-803 (2) may present a claim by commencing a

proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction under the rules of civil procedure or statutes of this state to obtain payment of his or her claim against the estate. In order to constitute a timely presentation of a claim, the commencement of any proceeding under this ~~subsection (2)~~ PARAGRAPH (c) must occur within the time limited for presenting the claim. Time limits on proceedings to enforce timely presented claims are determined by section 15-12-806 (1) and not by this ~~subsection (2)~~. ~~The personal representative shall inform any interested person, upon request, as to the existence, amounts, and nature of all claims against the estate that are known to him or her, but he or she shall not be required to express any opinion as to the probable outcome thereof~~ PARAGRAPH (c).

(2) UNLESS PRESENTATION IS MADE PURSUANT TO PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION, A CLAIM AGAINST A DECEDENT'S ESTATE IS NOT VALIDLY PRESENTED BY DELIVERING OR MAILING A CLAIM TO ANY PERSON UNLESS THAT PERSON HAS BEEN APPOINTED BY THE COURT OR REGISTRAR OF THE COURT AS THE PERSONAL REPRESENTATIVE OF THE DECEDENT'S ESTATE PRIOR TO THE TIME THE PRESENTATION IS ATTEMPTED.

~~(3) If a claim is presented under subsection (1) of this section, no proceeding thereon may be commenced more than sixty days after the personal representative has mailed a notice of disallowance; but, in the case of a claim that is not presently due or that is contingent or unliquidated, the personal representative may consent to an extension of the sixty-day period, or, to avoid injustice, the court, on petition, may order an extension of the sixty-day period, but in no event shall the extension run beyond the applicable statute of limitations. A PERSONAL REPRESENTATIVE'S KNOWLEDGE THAT A CREDITOR COULD BRING A CLAIM AGAINST AN ESTATE SHALL NOT BE TREATED AS A VALID SUBSTITUTE FOR THE PROPER PRESENTATION OF A WRITTEN CLAIM AUTHORIZED BY SUBSECTION (1) OF THIS SECTION.~~

(4) EACH WRITTEN STATEMENT OF A CLAIM SHALL INCLUDE:

(a) A REQUEST OR DEMAND FOR PAYMENT FROM THE DECEDENT OR THE ESTATE;  
AND

(b) SUFFICIENT INFORMATION TO ALLOW THE PERSONAL REPRESENTATIVE TO INVESTIGATE AND RESPOND TO THE CLAIM, INCLUDING THE BASIS OF THE CLAIM, THE NAME AND ADDRESS OF THE CLAIMANT, AND THE AMOUNT CLAIMED.

(5) EXCEPT IN THE SITUATION WHERE A SPECIAL ADMINISTRATOR HAS BEEN FORMALLY APPOINTED WITH SPECIFIC POWERS TO DEAL WITH THE SPECIFIC CLAIM BEING PRESENTED OR HAS BEEN FORMALLY APPOINTED TO DEAL WITH CLAIMS GENERALLY UNDER THIS PART 8, A SPECIAL ADMINISTRATOR APPOINTED IN INFORMAL PROCEEDINGS, OR A SPECIAL ADMINISTRATOR WHO LACKS THE POWERS AND AUTHORITY OF A GENERAL PERSONAL REPRESENTATIVE, IS NOT A PERSONAL REPRESENTATIVE TO WHOM PRESENTATION OF A CLAIM MAY PROPERLY BE MADE.

(6) A CLAIM SHALL BE DEEMED PRESENTED ON THE DATE THAT THE COURT-APPOINTED PERSONAL REPRESENTATIVE RECEIVES THE WRITTEN STATEMENT OF CLAIM OR THE DATE THE CLAIM IS FILED WITH THE COURT, WHICHEVER IS EARLIER. IF A CLAIM IS NOT YET DUE, THE CLAIM SHALL STATE THE DATE WHEN IT

WILL BECOME DUE. IF THE CLAIM IS CONTINGENT OR UNLIQUIDATED, THE CLAIM SHALL STATE THE NATURE OF THE UNCERTAINTY. IF THE CLAIM IS SECURED, THE CLAIM SHALL DESCRIBE THE SECURITY. FAILURE TO DESCRIBE CORRECTLY THE SECURITY, THE NATURE OF ANY UNCERTAINTY, OR THE DUE DATE OF A CLAIM NOT YET DUE DOES NOT INVALIDATE THE PRESENTATION MADE.

(7) THE PERSONAL REPRESENTATIVE SHALL INFORM ANY INTERESTED PERSON, UPON REQUEST, AS TO THE EXISTENCE, AMOUNTS, AND NATURE OF ALL CLAIMS AGAINST THE ESTATE THAT ARE KNOWN TO HIM OR HER, BUT THE PERSONAL REPRESENTATIVE SHALL NOT BE REQUIRED TO EXPRESS ANY OPINION AS TO THE PROBABLE OUTCOME OF ANY CLAIM.

(8) IF A CLAIM IS PRESENTED UNDER SUBSECTION (1) OF THIS SECTION, A PROCEEDING THEREON MAY NOT BE COMMENCED MORE THAN SIXTY DAYS AFTER THE PERSONAL REPRESENTATIVE HAS MAILED A NOTICE OF DISALLOWANCE; EXCEPT THAT, IN THE CASE OF A CLAIM THAT IS NOT PRESENTLY DUE OR THAT IS CONTINGENT OR UNLIQUIDATED, THE PERSONAL REPRESENTATIVE MAY CONSENT TO AN EXTENSION OF THE SIXTY-DAY PERIOD, OR, TO AVOID INJUSTICE, THE COURT, ON PETITION, MAY ORDER AN EXTENSION OF THE SIXTY-DAY PERIOD, BUT IN NO EVENT SHALL THE EXTENSION RUN BEYOND THE APPLICABLE STATUTE OF LIMITATIONS.

**SECTION 4.** 15-12-806 (1), Colorado Revised Statutes, is amended to read:

**15-12-806. Allowance of claims.** (1) ~~As to claims presented in the manner described in section 15-12-804 within the time limit prescribed in section 15-12-803;~~ The personal representative may mail a notice to any claimant stating that the claim has been disallowed. If the personal representative fails to mail notice to a claimant of action on his OR HER claim within sixty days after the time for original presentation of the claim has expired, the claim shall be deemed to be allowed. After any claim has been DEEMED TO BE allowed or disallowed, the personal representative may change the STATUS OF THE allowance or disallowance OF THE CLAIM by notice to the claimant; ~~however,~~ EXCEPT THAT the personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim ~~which~~ THAT is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than sixty days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar.

**SECTION 5.** 15-14-429 (1) and (2), Colorado Revised Statutes, are amended, and the said 15-14-429 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**15-14-429. Presentation and allowance of claims.** (1) A conservator may pay, or secure by encumbering assets of the estate, claims against the estate or against the protected person arising before or during the conservatorship upon their presentation and allowance in accordance with the priorities stated in subsection (4) of this section. A claimant may present a claim by:

(a) ~~Sending or~~ Delivering OR MAILING to the COURT-APPOINTED conservator a written statement of the claim, indicating its basis, the name and address of the claimant, and the amount claimed; or

(b) Filing a written statement of the claim ~~in a form prescribed by rule~~, with the clerk of the court, IN THE FORM APPROVED BY THE SUPREME COURT, and ~~sending or~~ delivering OR MAILING a copy of the statement to the conservator.

(2) A claim is deemed presented on receipt of the written statement of claim by the conservator or the filing of the claim with the court, whichever first occurs. A presented claim is DEEMED allowed if it is not disallowed by written statement sent or delivered by the conservator to the claimant within sixty days after its presentation. The conservator before payment may change an allowance OR DEEMED ALLOWANCE to a disallowance in whole or in part, but not after allowance under a court order or judgment or an order directing payment of the claim. The presentation of a claim tolls the running of any statute of limitations relating to the claim until thirty days after its disallowance. If a claim is not yet due, THE CLAIM SHALL STATE the date when it will become due. ~~shall be stated~~. If a claim is contingent or unliquidated, THE CLAIM SHALL STATE the nature of the uncertainty or the anticipated due date of the claim. ~~shall be stated~~.

(9) EACH WRITTEN STATEMENT OF A CLAIM SHALL INCLUDE:

(a) A REQUEST OR DEMAND FOR PAYMENT FROM THE PROTECTED PERSON OR THE CONSERVATORSHIP ESTATE; AND

(b) SUFFICIENT INFORMATION TO ALLOW THE CONSERVATOR TO INVESTIGATE AND RESPOND TO THE CLAIM, INCLUDING ITS BASIS, THE NAME AND ADDRESS OF THE CLAIMANT, AND THE AMOUNT CLAIMED.

**SECTION 6.** 15-12-619 (1), Colorado Revised Statutes, is amended to read:

**15-12-619. Public administrator - appointment - oath - bond - deputy.**

(1) The district or probate court in each judicial district may appoint ~~a resident of such judicial district~~ A PERSON who shall be known as the public administrator. The appointee shall be a qualified elector over twenty-one years of age and shall ~~have been~~ BE a resident of OR MAINTAIN A PRINCIPAL PLACE OF BUSINESS IN the judicial district in which the appointee is to act as public administrator. ~~for at least five years prior to the appointment~~. Unless authorized by the appointing court, the appointee shall remain a resident of OR MAINTAIN A PRINCIPAL PLACE OF BUSINESS IN the judicial district in which the appointee has been appointed during the period in which the appointee holds the office of public administrator. The person appointed as the public administrator shall serve at the pleasure of the appointing court until discharged by the court or until such person's resignation is accepted by the appointing court. Any person appointed as a public administrator shall not be considered an employee of either the state of Colorado or of the judicial district or the city or THE county in which such person has been appointed public administrator because of his OR HER appointment as public administrator.

**SECTION 7.** 15-11-1102, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

**15-11-1102. Statutory rule against perpetuities - applicability - repeal.**

(6) PURSUANT TO SECTION 15-11-1106.5, SUBSECTIONS (1) TO (5) OF THIS SECTION SHALL APPLY TO AN INTEREST IN A TRUST OR A POWER OF APPOINTMENT OVER ALL OR ANY PART OF A TRUST, WHICH INTEREST OR POWER WAS CREATED BEFORE JULY 1, 2006, ONLY IN THE EVENT THAT A PERSON WHO OWNS OR HOLDS SUCH INTEREST OR POWER DELIVERS A WRITTEN NOTICE OF SUCH PERSON'S ELECTION AGAINST THE RETROACTIVE APPLICATION OF SECTION 15-11-1102.5.

(7) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2008.

**SECTION 8.** Part 11 of article 11 title 15, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**15-11-1102.5. Statutory rule against perpetuities. (1) Year 2001 rule.**

(a) PARAGRAPH (b) OF THIS SUBSECTION (1) SHALL APPLY TO INTERESTS IN TRUST AND POWERS OF APPOINTMENT WITH RESPECT TO ALL OR ANY PART OF A TRUST, WHICH INTEREST OR POWER IS CREATED AFTER MAY 31, 2001.

(b) (I) A NONVESTED PROPERTY INTEREST IS INVALID UNLESS IT EITHER VESTS OR TERMINATES WITHIN ONE THOUSAND YEARS AFTER ITS CREATION.

(II) A GENERAL POWER OF APPOINTMENT NOT PRESENTLY EXERCISABLE BECAUSE OF A CONDITION PRECEDENT IS INVALID UNLESS THE CONDITION PRECEDENT EITHER IS SATISFIED OR BECOMES IMPOSSIBLE TO SATISFY WITHIN ONE THOUSAND YEARS AFTER ITS CREATION.

(III) A NONGENERAL POWER OF APPOINTMENT OR A GENERAL TESTAMENTARY POWER OF APPOINTMENT IS INVALID UNLESS THE POWER IS IRREVOCABLY EXERCISED OR OTHERWISE TERMINATES WITHIN ONE THOUSAND YEARS AFTER ITS CREATION.

(2) **Year 1991 rule.** (a) PARAGRAPH (b) OF THIS SUBSECTION (2) SHALL APPLY TO INTERESTS AND POWERS CREATED ON OR AFTER MAY 31, 1991, OTHER THAN INTERESTS AND POWERS SUBJECT TO PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION.

(b) (I) A NONVESTED PROPERTY INTEREST IS INVALID UNLESS:

(A) WHEN THE INTEREST IS CREATED, IT IS CERTAIN TO VEST OR TERMINATE NO LATER THAN TWENTY-ONE YEARS AFTER THE DEATH OF AN INDIVIDUAL WHO IS THEN ALIVE; OR

(B) THE INTEREST EITHER VESTS OR TERMINATES WITHIN NINETY YEARS AFTER ITS CREATION.

(II) A GENERAL POWER OF APPOINTMENT NOT PRESENTLY EXERCISABLE BECAUSE OF A CONDITION PRECEDENT IS INVALID UNLESS:

(A) WHEN THE POWER IS CREATED, THE CONDITION PRECEDENT IS CERTAIN TO BE SATISFIED OR BECOME IMPOSSIBLE TO SATISFY NO LATER THAN TWENTY-ONE YEARS AFTER THE DEATH OF AN INDIVIDUAL WHO IS THEN ALIVE; OR

(B) THE CONDITION PRECEDENT EITHER IS SATISFIED OR BECOMES IMPOSSIBLE TO SATISFY WITHIN NINETY YEARS AFTER ITS CREATION.

(III) A NONGENERAL POWER OF APPOINTMENT OR A GENERAL TESTAMENTARY POWER OF APPOINTMENT IS INVALID UNLESS:

(A) WHEN THE POWER IS CREATED, IT IS CERTAIN TO BE IRREVOCABLY EXERCISED OR TO OTHERWISE TERMINATE NO LATER THAN TWENTY-ONE YEARS AFTER THE DEATH OF AN INDIVIDUAL WHO IS THEN ALIVE; OR

(B) THE POWER IS IRREVOCABLY EXERCISED OR OTHERWISE TERMINATES WITHIN NINETY YEARS AFTER ITS CREATION.

(IV) IN DETERMINING WHETHER A NONVESTED PROPERTY INTEREST OR A POWER OF APPOINTMENT IS VALID UNDER SUBPARAGRAPHS (I) TO (III) OF PARAGRAPH (b) OF THIS SUBSECTION (2), THE POSSIBILITY THAT A CHILD WILL BE BORN TO AN INDIVIDUAL AFTER THE INDIVIDUAL'S DEATH IS DISREGARDED.

(V) IF, IN MEASURING A PERIOD FROM THE CREATION OF A TRUST OR OTHER PROPERTY ARRANGEMENT FOR PURPOSES OF INTERESTS, POWERS, AND TRUSTS SUBJECT TO THIS PARAGRAPH (b), LANGUAGE IN A GOVERNING INSTRUMENT SEEKS TO DISALLOW THE VESTING OR TERMINATION OF ANY INTEREST OR TRUST BEYOND, SEEKS TO POSTPONE THE VESTING OR TERMINATION OF ANY INTEREST OR TRUST UNTIL, OR SEEKS TO OPERATE IN EFFECT IN ANY SIMILAR FASHION UPON THE LATER OF THE EXPIRATION OF A PERIOD OF TIME NOT EXCEEDING TWENTY-ONE YEARS AFTER THE DEATH OF THE SURVIVOR OF SPECIFIED LIVES IN BEING AT THE CREATION OF THE TRUST OR OTHER PROPERTY ARRANGEMENT OR THE EXPIRATION OF A PERIOD OF TIME THAT EXCEEDS OR MIGHT EXCEED TWENTY-ONE YEARS AFTER THE DEATH OF THE SURVIVOR OR LIVES IN BEING AT THE CREATION OF THE TRUST OR OTHER PROPERTY ARRANGEMENT, THAT LANGUAGE IS INOPERATIVE TO THE EXTENT IT PRODUCES A PERIOD OF TIME THAT EXCEEDS TWENTY-ONE YEARS AFTER THE DEATH OF THE SURVIVOR OF THE SPECIFIED LIVES.

(3) **Nonvested interest or power created by the exercise of a power.** (a) FOR THE PURPOSES OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION, PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION, AND SUBPARAGRAPH (II) OF PARAGRAPH (c) OF THIS SUBSECTION (3), A NONVESTED PROPERTY INTEREST OR A POWER OF APPOINTMENT CREATED BY THE EXERCISE OF A POWER OF APPOINTMENT IS CREATED WHEN THE POWER IS IRREVOCABLY EXERCISED OR WHEN A REVOCABLE EXERCISE BECOMES IRREVOCABLE.

(b) FOR THE PURPOSES OF PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION AND PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION, A POWER OF APPOINTMENT CREATED BY THE EXERCISE OF A NONGENERAL POWER OF APPOINTMENT SHALL BE CONSIDERED AS CREATED WHEN THE FIRST POWER OF APPOINTMENT IS CREATED. THIS PARAGRAPH (b) SHALL BE APPLIED AND CONSTRUED IN A MANNER THAT IS CONSISTENT WITH THE TREATMENT OF THE EXERCISE OF A NONGENERAL POWER OF APPOINTMENT AS NONTAXABLE FOR PURPOSES OF THE ESTATE AND GIFT TAX UNDER THE FEDERAL INTERNAL REVENUE LAWS.

(c) (I) PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION SHALL NOT APPLY

WITH RESPECT TO NONVESTED PROPERTY INTERESTS AND POWERS OF APPOINTMENT CREATED BY THE EXERCISE OF A NONGENERAL POWER OF APPOINTMENT OVER ALL OR ANY PART OF A TRUST THAT WAS IRREVOCABLE ON SEPTEMBER 25, 1985.

(II) NONVESTED PROPERTY INTERESTS AND POWERS OF APPOINTMENT, WHICH INTERESTS OR POWERS ARE SO CREATED ON OR AFTER MAY 31, 1991, SHALL BE SUBJECT TO PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION.

(III) THIS PARAGRAPH (c) SHALL BE APPLIED AND CONSTRUED IN A MANNER THAT IS CONSISTENT WITH THE TREATMENT OF SUCH A TRUST AS EXEMPT FROM THE GENERATION-SKIPPING TRANSFER TAX UNDER THE FEDERAL INTERNAL REVENUE LAWS.

**SECTION 9.** 15-11-1104, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

**15-11-1104. Reformation - repeal.** (2) PURSUANT TO SECTION 15-11-1106.5, SUBSECTION (1) OF THIS SECTION SHALL APPLY ONLY TO AN INTEREST IN A TRUST OR A POWER OF APPOINTMENT OVER ALL OR ANY PART OF A TRUST CREATED BEFORE JULY 1, 2006, ONLY IN THE EVENT THAT A PERSON WHO OWNS OR HOLDS SUCH INTEREST OR POWER DELIVERS A WRITTEN NOTICE OF SUCH PERSON'S ELECTION AGAINST THE RETROACTIVE APPLICATION OF SECTION 15-11-1104.5.

(3) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2008.

**SECTION 10.** Part 11 of article 11 of title 15, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**15-11-1104.5. Reformation.** (1) **Year 2001 rule.** UPON THE PETITION OF AN INTERESTED PERSON, A COURT SHALL REFORM A DISPOSITION IN THE MANNER THAT MOST CLOSELY APPROXIMATES THE TRANSFEROR'S MANIFESTED PLAN OF DISTRIBUTION AND IS WITHIN THE ONE THOUSAND YEARS ALLOWED BY SECTION 15-11-1102.5 (1) (b) (I), (1) (b) (II), OR (1) (b) (III) IF:

(a) A NONVESTED PROPERTY INTEREST OR A POWER OF APPOINTMENT BECOMES INVALID UNDER SECTION 15-11-1102.5 (1) (b); OR

(b) A CLASS GIFT IS NOT, BUT MIGHT BECOME, INVALID UNDER SECTION 15-11-1102.5 (1) (b), AND THE TIME HAS ARRIVED WHEN THE SHARE OF ANY CLASS MEMBER IS TO TAKE EFFECT IN POSSESSION OR ENJOYMENT.

(2) **Year 1991 rule.** UPON THE PETITION OF AN INTERESTED PERSON, A COURT SHALL REFORM A DISPOSITION IN THE MANNER THAT MOST CLOSELY APPROXIMATES THE TRANSFEROR'S MANIFESTED PLAN OF DISTRIBUTION AND IS WITHIN THE NINETY YEARS ALLOWED BY SECTION 15-11-1102.5 (2) (b) (I) (B), (2) (b) (II) (B), OR (2) (b) (III) (B) IF:

(a) A NONVESTED PROPERTY INTEREST OR A POWER OF APPOINTMENT BECOMES INVALID UNDER SECTION 15-11-1102.5 (2) (b);

(b) A CLASS GIFT IS NOT, BUT MIGHT BECOME, INVALID UNDER SECTION

15-11-1102.5 (2) (b), AND THE TIME HAS ARRIVED WHEN THE SHARE OF ANY CLASS MEMBER IS TO TAKE EFFECT IN POSSESSION OR ENJOYMENT; OR

(c) A NONVESTED PROPERTY INTEREST THAT IS NOT VALIDATED BY SECTION 15-11-1102.5 (2) (b) (I) (A) CAN VEST BUT NOT WITHIN NINETY YEARS AFTER ITS CREATION.

**SECTION 11.** 15-11-1103 (1), Colorado Revised Statutes, is amended to read:

**15-11-1103. When nonvested property interest or power of appointment created.** (1) Except as provided in subsections (2) and (3) of this section and in ~~section~~ SECTIONS 15-11-1102.5 (3) (a) AND 15-11-1106 (1), the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

**SECTION 12.** The introductory portion to 15-11-1105 (1) and 15-11-1105 (1) (a), Colorado Revised Statutes, are amended to read:

**15-11-1105. Exclusions from statutory rule against perpetuities.** (1) ~~Section~~ THE STATUTORY RULE AGAINST PERPETUITIES, AS SET FORTH IN SECTIONS 15-11-1102 AND 15-11-1102.5, does not apply to INVALIDATE:

(a) A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:

(I) A premarital or postmarital agreement;

(II) A separation or divorce settlement;

(III) A spouse's election;

(IV) A similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties;

(V) A contract to make or not to revoke a will or trust;

(VI) A contract to exercise or not to exercise a power of appointment; OR

(VII) A transfer in satisfaction of a duty of support. ~~or~~

(VIII) ~~A reciprocal transfer.~~

**SECTION 13.** 15-11-1106 (1), Colorado Revised Statutes, is amended to read:

**15-11-1106. Prospective application.** (1) Except as extended by subsection (2) of this section, this part 11 applies to a nonvested property interest or a power of appointment that is created on or after May 31, 1991. For purposes of this section AND SECTION 15-11-1107, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

**SECTION 14.** 15-11-1107 (2), Colorado Revised Statutes, is amended to read:

**15-11-1107. Uniformity of application and construction.** (2) This part 11 supersedes AND ABOLISHES the rule of the common law known as the rule against perpetuities FOR NONVESTED INTERESTS CREATED AFTER MAY 31, 1991.

**SECTION 15.** 15-1-404.5 (1), (2), (3), and (4), the introductory portion to 15-1-404.5 (5), and 15-1-404.5 (5) (a), (5) (b), (5) (g) (III) (C), (5) (h), (6) (a), (6) (b) (I), (7) (a), (8), (9), (11) (b), and (13), Colorado Revised Statutes, are amended, and the said 15-1-404.5 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**15-1-404.5. Conversion - unitrusts - administration.** (1) **Conversion by trustee.** Unless expressly prohibited by the governing instrument, a trustee may release the power to adjust described in section 15-1-404 and convert a trust to a ~~total return trust~~ UNITRUST as described in this section if all of the following apply:

(a) The trust describes the amount that may or must be distributed to a beneficiary by referring to the trust's income and the trustee determines that conversion to a ~~total return trust~~ UNITRUST will enable the trustee to better carry out the purposes of the trust;

(b) The trustee sends a written notice of the trustee's decision to convert the trust to a ~~total return trust~~ UNITRUST specifying a prospective effective date for the conversion, which may not be sooner than sixty days after the notice is sent, and including a copy of this section to the qualified beneficiaries, determined as of the date the notice is sent and assuming nonexercise of all powers of appointment;

(c) There are one or more legally competent beneficiaries described in section 15-1-402 (10.5) (a), and one or more legally competent remainder beneficiaries described in either section 15-1-402 (10.5) (b) or 15-1-402 (10.5) (c), determined as of the date the notice is sent; and

(d) No beneficiary has objected in writing to the conversion to a ~~total return trust~~ UNITRUST and delivered such objection to the trustee within sixty days after the notice was sent.

(2) **Conversion, reconversion, and adjustment of the distribution percentage by agreement.** Conversion to a ~~total return trust~~ UNITRUST or reconversion to an income trust may be made by agreement between the trustee and all qualified beneficiaries of the trust. The trustee and all qualified beneficiaries may also agree to modify the distribution percentage; except that the trustee and the qualified beneficiaries may not agree to a distribution percentage less than three percent or greater than five percent. The agreement may include any other actions a court could properly order pursuant to subsection (7) of this section.

(3) **Conversion or reconversion by court.** (a) The trustee may, for any reason, elect to petition the court to order conversion to a ~~total return trust~~ UNITRUST, including without limitation the reason that conversion under subsection (1) of this section is unavailable because:

(I) A beneficiary timely objects to the conversion to a ~~total return trust~~ UNITRUST;

(II) There are no legally competent beneficiaries described in section 15-1-402 (10.5) (a); or

(III) There are no legally competent beneficiaries described in section 15-1-402 (10.5) (b) or (10.5) (c).

(b) A beneficiary may request the trustee to convert to a ~~total return trust~~ UNITRUST or adjust the distribution percentage pursuant to this subsection (3). If the trustee declines or fails to act within six months after receiving a written request from a beneficiary to do so, the beneficiary may petition the court to order the conversion or adjustment.

(c) The trustee may petition the court prospectively to ~~reconvert~~ CONVERT from a ~~total return trust~~ UNITRUST TO AN INCOME TRUST or to adjust the distribution percentage if the trustee determines that the reconversion or adjustment will enable the trustee to better carry out the purposes of the trust. A beneficiary may request the trustee to petition the court prospectively to reconvert from a ~~total return trust~~ UNITRUST TO AN INCOME TRUST or adjust the distribution percentage. If the trustee declines or fails to act within six months after receiving a written request from a beneficiary to do so, the beneficiary may petition the court to order the reconversion or adjustment.

(d)(I) In a judicial proceeding instituted under this subsection (3), the trustee may present opinions and reasons concerning:

(A) The trustee's support for, or opposition to, a conversion to a ~~total return trust~~ UNITRUST, a reconversion from a ~~total return trust~~ UNITRUST TO AN INCOME TRUST, or an adjustment of the distribution percentage of a ~~total return trust~~ UNITRUST, including whether the trustee believes conversion, reconversion, or adjustment of the distribution percentage would enable the trustee to better carry out the purposes of the trust; and

(B) Any other matter relevant to the proposed conversion, reconversion, or adjustment of the distribution percentage.

(II) A trustee's actions undertaken in accordance with this subsection (3) shall not be deemed improper or inconsistent with the trustee's duty of impartiality unless the court finds from all the evidence that the trustee acted in bad faith.

(e) The court shall order conversion to a ~~total return trust~~ UNITRUST, reconversion prospectively from a ~~total return trust~~ UNITRUST TO AN INCOME TRUST, or adjustment of the distribution percentage of a ~~total return trust~~ UNITRUST if the court determines that the conversion, reconversion, or adjustment of the distribution percentage will enable the trustee to better carry out the purposes of the trust.

(f) If a conversion to a ~~total return trust~~ UNITRUST is made pursuant to a court order, the trustee may reconvert the ~~trust~~ UNITRUST to an income trust only:

(I) Pursuant to a subsequent court order; or

(II) By filing with the court an agreement made pursuant to subsection (2) of this section to reconvert to an income trust.

(g) Upon a reconversion, the power to adjust, as described in section 15-1-404 and as it existed before the conversion, shall be revived.

(h) An action may be taken under this subsection (3) no more frequently than every two years, unless the court for good cause orders otherwise.

(4) **Administration of a unitrust.** During the time that a trust is a ~~total return trust~~ UNITRUST, the trustee shall administer the trust in accordance with the provisions of this subsection (4) as follows, unless otherwise expressly provided by the terms of the trust:

(a) The trustee shall invest the trust assets seeking a total return without regard to whether the return is from income or appreciation of principal;

(b) The trustee shall make income distributions in accordance with the governing instrument subject to the provisions of this section;

(c) The distribution percentage for any trust converted to a ~~total return trust~~ UNITRUST by a trustee in accordance with subsection (1) of this section shall be four percent, unless a different percentage has been determined in an agreement made pursuant to subsection (2) of this section or ordered by the court pursuant to subsection (3) of this section;

(d) (I) The trustee shall pay to a beneficiary in the case of an underpayment within a reasonable time, and shall recover from a beneficiary in the case of an overpayment, either by repayment by the beneficiary or by withholding from future distributions to the beneficiary:

(A) An amount equal to the difference between the amount properly payable and the amount actually paid; and

(B) Interest compounded annually at a rate per annum equal to the distribution percentage in the year or years during which the underpayment or overpayment occurs.

(II) For purposes of this paragraph (d), accrual of interest may not commence until the beginning of the trust year following the year in which the underpayment or overpayment occurs.

(e) A CHANGE IN THE METHOD OF DETERMINING A REASONABLE CURRENT RETURN BY CONVERTING TO A UNITRUST IN ACCORDANCE WITH THIS SECTION AND SUBSTITUTING THE DISTRIBUTION AMOUNT FOR NET TRUST ACCOUNTING INCOME IS A PROPER CHANGE IN THE DEFINITION OF TRUST INCOME AND SHALL BE GIVEN EFFECT NOTWITHSTANDING ANY CONTRARY PROVISION OF THIS PART 4. THE DISTRIBUTION AMOUNT SHALL IN ALL CASES BE DEEMED A REASONABLE CURRENT RETURN THAT FAIRLY APPORTIONS THE TOTAL RETURN OF A UNITRUST.

(5) **Determination of matters in administration of unitrust.** The trustee may

determine any of the following matters in administering a ~~total return trust~~ UNITRUST as the trustee deems necessary or helpful for the proper functioning of the trust:

(a) The effective date of a conversion to a ~~total return trust~~ UNITRUST pursuant to subsection (1) of this section;

(b) The manner of prorating the distribution amount for a short year in which a beneficiary's interest commences or ceases, or if the trust is a ~~total return trust~~ UNITRUST for only part of the year, or the trustee may elect to treat the trust year as two separate years, the first of which ends at the close of the day on which the conversion or reconversion occurs and the second of which ends at the close of the trust year;

(g) Valuation decisions concerning any asset for which there is no readily available market value, including:

(III) Whether to exclude the value of such an asset from the net fair market value of the trust's assets for purposes of determining the distribution amount. For purposes of this section, any such asset so excluded shall be referred to as an "excluded asset", and the trustee shall distribute any net income received from the excluded asset as provided for in the governing instrument, subject to the following principles:

(C) By way of example and not by way of limitation, assets for which there is a readily available market value include cash and cash equivalents; stocks, bonds, and other securities and instruments for which there is an established market on a stock exchange, in an over-the-counter market, or otherwise; and any other property that can reasonably be expected to be sold within one week of the decision to sell without extraordinary efforts by the seller. By way of example and NOT by way of limitation, assets for which there is no readily available market value include stocks, bonds, and other securities and instruments for which there is no established market on a stock exchange, in an over-the-counter market, or otherwise; real property; tangible personal property; and artwork and other collectibles.

(h) Any other administrative matter that the trustee determines is necessary or helpful for the proper functioning of the ~~total return trust~~ UNITRUST.

(6) **Allocations.** (a) Expenses, taxes, and other charges that would otherwise be deducted from income if the trust was not a ~~total return trust~~ UNITRUST may not be deducted from the distribution amount.

(b) Unless otherwise provided by the governing instrument, the distribution amount each year shall be deemed to be paid from the following sources for that year in the following order:

(I) Net income determined as if the trust was not a ~~total return trust~~ UNITRUST;

(7) **Court orders.** (a) The court may order any of the following actions in a proceeding brought by a trustee or a beneficiary pursuant to paragraph (a), (b), or (c) of subsection (3) of this section:

(I) Select a distribution percentage other than four percent, except that the court may not order a distribution percentage less than three percent or greater than five percent;

(II) Average the valuation of the trust's net assets over a period other than three years;

(III) Reconvert prospectively from a ~~total return trust~~ UNITRUST, or adjust the distribution percentage of a ~~total return trust~~ UNITRUST;

(IV) Direct the distribution of net income, determined as if the trust were not a ~~total return trust~~ UNITRUST, in excess of the distribution amount as to any or all trust assets if the distribution is necessary to preserve a tax benefit; or

(V) Change or direct any administrative procedure as the court determines is necessary or helpful for the proper functioning of the ~~total return trust~~ UNITRUST.

(8) **Restrictions.** CONVERSION TO A UNITRUST SHALL NOT AFFECT ANY PROVISION IN THE GOVERNING INSTRUMENT THAT:

(a) ~~The distribution amount may not be less than the net income of the trust, determined without regard to the provisions of this section, either:~~

~~(I) For a trust for which an estate tax or a gift tax marital deduction was claimed or may be claimed, in whole or in part, but only during the lifetime of the spouse for whom the trust was created; or~~

~~(II) For a trust that was exempt, in whole or in part, from generation-skipping transfer tax on the effective date of this section by reason of any effective date or transition rule.~~ DIRECTS OR AUTHORIZES THE TRUSTEE TO DISTRIBUTE THE PRINCIPAL;

(b) ~~Conversion to a total return trust shall not affect any provision in the governing instrument:~~

~~(i) That directs or authorizes the trustee to distribute principal;~~

~~(ii) That directs or authorizes the trustee to distribute a fixed annuity or a fixed fraction of the value of trust assets;~~

~~(iii) That authorizes a beneficiary to withdraw a portion or all of the principal;~~  
OR

~~(iv) That in any manner diminishes an amount permanently set aside for charitable purposes under the governing instrument unless both income and principal are set aside.~~ DIRECTS OR AUTHORIZES THE TRUSTEE TO DISTRIBUTE A FIXED ANNUITY OR A FIXED FRACTION OF THE VALUE OF TRUST ASSETS;

(c) AUTHORIZES A BENEFICIARY TO WITHDRAW A PORTION OR ALL OF THE PRINCIPAL; OR

(d) DIMINISHES IN ANY MANNER AN AMOUNT PERMANENTLY SET ASIDE FOR CHARITABLE PURPOSES UNDER THE GOVERNING INSTRUMENT UNLESS BOTH INCOME AND PRINCIPAL ARE SET ASIDE.

(9) **Tax limitations.** If a particular trustee is also a beneficiary of the trust and conversion or failure to convert would enhance or diminish the beneficial interest of that trustee, or if possession or exercise of the conversion power by a particular trustee alone would cause any individual to be treated as owner of a part of the trust for federal income tax purposes or cause a part of the trust to be included in the gross estate of any individual for federal estate tax purposes, then that particular trustee may not participate as a trustee in the exercise of the conversion power; except that:

(a) The trustee may petition the court under paragraph (a) of subsection (3) of this section to order conversion in accordance with this section; and

(b) A co-trustee or co-trustees to whom this subsection (9) does not apply may convert the trust to a ~~total return trust~~ UNITRUST in accordance with subsection (1) or (2) of this section.

(11) **Remedies.** (b) If a trustee reasonably and in good faith takes or omits to take any action under this section and a person interested in the trust opposes the act or omission, the person's exclusive remedy shall be to seek an order of the court directing the trustee to:

(I) Convert the trust to a ~~total return trust~~ UNITRUST;

(II) Reconvert from a ~~total return trust~~ UNITRUST;

(III) Change the distribution percentage; or

(IV) Order any administrative procedures the court determines are necessary or helpful for the proper functioning of the trust.

(13) **Application.** (a) This section shall apply to trusts in existence on May 22, 2003, and to trusts created on or after that date.

(b) This section shall be construed to apply to the administration of a trust that is administered in Colorado under Colorado law or that is governed by Colorado law with respect to the meaning and effect of its terms unless:

(I) The trust is a trust described in the FEDERAL "Internal Revenue Code of 1986", section ~~170 (f) (2) (B)~~ 642 (c) (5), 664 (d), ~~1361 (d)~~, OR 2702 (a) (3); ~~or 2702 (b)~~;

(II) The governing instrument expressly prohibits the use of this section by specific reference to one or more provisions of this part 4;

(III) The terms of a trust in existence on May 22, 2003, incorporate provisions that operate as a ~~total return trust~~ UNITRUST. The trustee or a beneficiary of such a trust may proceed under section 15-1-405 to adopt provisions in this section that do not contradict provisions in the governing instrument.

(14) **Application to express trusts.** (a) THIS SUBSECTION (14) DOES NOT APPLY TO A CHARITABLE REMAINDER UNITRUST AS DEFINED BY SECTION 664 (d), FEDERAL "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 664, AS AMENDED.

(b) AS USED IN THIS SECTION:

(I) "UNITRUST" MEANS A TRUST, THE TERMS OF WHICH REQUIRE OR PERMIT DISTRIBUTION OF A UNITRUST AMOUNT, WITHOUT REGARD TO WHETHER THE TRUST HAS BEEN CONVERTED TO A UNITRUST IN ACCORDANCE WITH THIS SECTION OR WHETHER THE TRUST IS ESTABLISHED BY EXPRESS TERMS OF THE GOVERNING INSTRUMENT.

(II) "UNITRUST AMOUNT" MEANS AN AMOUNT EQUAL TO A PERCENTAGE OF A UNITRUST'S ASSETS THAT MAY OR ARE REQUIRED TO BE DISTRIBUTED TO ONE OR MORE BENEFICIARIES ANNUALLY IN ACCORDANCE WITH THE TERMS OF THE UNITRUST. THE UNITRUST AMOUNT MAY BE DETERMINED BY REFERENCE TO THE NET FAIR MARKET VALUE OF THE UNITRUST'S ASSETS AS OF A PARTICULAR DATE EACH YEAR OR AS AN AVERAGE DETERMINED ON A MULTIPLE-YEAR BASIS.

**SECTION 16.** 15-1-404 (3) (i), Colorado Revised Statutes, is amended to read:

**15-1-404. Trustee's power to adjust.** (3) A trustee may not make an adjustment:

(i) If the trust is a ~~total return trust~~ UNITRUST.

**SECTION 17.** Part 1 of article 15 of title 15, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**15-15-103. Liability of nonprobate transferees for creditor claims and statutory allowances.** (1) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (1), AS USED IN THIS SECTION, "NONPROBATE TRANSFER" MEANS A VALID TRANSFER EFFECTIVE AT DEATH BY A TRANSFEROR WHOSE LAST DOMICILE WAS IN THIS STATE TO THE EXTENT THAT THE TRANSFEROR IMMEDIATELY BEFORE DEATH HAD POWER, ACTING ALONE, TO PREVENT THE TRANSFER BY REVOCATION OR WITHDRAWAL AND INSTEAD TO USE THE PROPERTY FOR THE BENEFIT OF THE TRANSFEROR OR APPLY IT TO DISCHARGE CLAIMS AGAINST THE TRANSFEROR'S PROBATE ESTATE.

(b) THIS SECTION SHALL NOT APPLY TO:

(I) A SURVIVORSHIP INTEREST IN JOINT TENANCY REAL ESTATE; AND

(II) PROPERTY TRANSFERRED BY THE EXERCISE OR DEFAULT IN THE EXERCISE OF A POWER OF APPOINTMENT, INCLUDING A POWER OF WITHDRAWAL, CREATED BY A PERSON OTHER THAN THE TRANSFEROR.

(III) PROCEEDS TRANSFERRED PURSUANT TO A BENEFICIARY DESIGNATION UNDER A LIFE INSURANCE, ACCIDENT INSURANCE, OR ANNUITY POLICY CONTRACT; AND

(IV) PROPERTY OR FUNDS HELD IN OR PAYABLE FROM A PENSION OR RETIREMENT

PLAN, INDIVIDUAL RETIREMENT ACCOUNT, DEFERRED COMPENSATION PLAN, INTERNAL REVENUE CODE SECTION 529 PLAN, OR OTHER SIMILAR ARRANGEMENT.

(2) EXCEPT AS OTHERWISE PROVIDED BY PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION, A TRANSFEREE OF A NONPROBATE TRANSFER IS SUBJECT TO LIABILITY TO ANY PROBATE ESTATE OF THE DECEDENT FOR ALLOWED CLAIMS AGAINST THE DECEDENT'S PROBATE ESTATE AND STATUTORY ALLOWANCES TO THE DECEDENT'S SPOUSE AND CHILDREN TO THE EXTENT THE ESTATE IS INSUFFICIENT TO SATISFY THOSE CLAIMS AND ALLOWANCES. THE LIABILITY OF A NONPROBATE TRANSFEREE MAY NOT EXCEED THE VALUE OF NONPROBATE TRANSFERS RECEIVED OR CONTROLLED BY THAT TRANSFEREE.

(3) NONPROBATE TRANSFEREES ARE LIABLE FOR THE INSUFFICIENCY DESCRIBED IN SUBSECTION (2) OF THIS SECTION IN THE FOLLOWING ORDER OF PRIORITY:

(a) A TRANSFEREE DESIGNATED IN THE DECEDENT'S WILL OR ANY OTHER GOVERNING INSTRUMENT, AS PROVIDED IN THE INSTRUMENT;

(b) THE TRUSTEE OF A TRUST SERVING AS THE PRINCIPAL NONPROBATE INSTRUMENT IN THE DECEDENT'S ESTATE PLAN AS SHOWN BY ITS DESIGNATION AS DEVISEE OF THE DECEDENT'S RESIDUARY ESTATE OR BY OTHER ACTS OR CIRCUMSTANCES, TO THE EXTENT OF THE VALUE OF THE NONPROBATE TRANSFER RECEIVED OR CONTROLLED;

(c) OTHER NONPROBATE TRANSFEREES, IN PROPORTION TO THE VALUES RECEIVED.

(4) UNLESS OTHERWISE PROVIDED BY THE TRUST INSTRUMENT, INTERESTS OF BENEFICIARIES IN ALL TRUSTS INCURRING LIABILITIES UNDER THIS SECTION ABATE AS NECESSARY TO SATISFY THE LIABILITY, AS IF ALL OF THE TRUST INSTRUMENTS WERE A SINGLE WILL AND THE INTERESTS WERE DEVISEES UNDER THAT WILL.

(5) A PROVISION MADE IN ONE INSTRUMENT MAY DIRECT THE APPORTIONMENT OF THE LIABILITY AMONG THE NONPROBATE TRANSFEREES TAKING UNDER THAT OR ANY OTHER GOVERNING INSTRUMENT. IF A PROVISION IN ONE INSTRUMENT CONFLICTS WITH A PROVISION IN ANOTHER INSTRUMENT, THE PROVISION OF THE LATER INSTRUMENT SHALL PREVAIL.

(6) UPON DUE NOTICE TO A NONPROBATE TRANSFEREE, THE LIABILITY IMPOSED BY THIS SECTION IS ENFORCEABLE IN PROCEEDINGS IN THIS STATE, WHETHER OF NOT THE TRANSFEREE IS LOCATED IN THIS STATE.

(7) A PROCEEDING UNDER THIS SECTION MAY NOT BE COMMENCED UNLESS THE PERSONAL REPRESENTATIVE OF THE DECEDENT'S ESTATE HAS RECEIVED A WRITTEN DEMAND FOR THE PROCEEDING FROM THE DECEDENT'S SURVIVING SPOUSE OR A CHILD OF THE DECEDENT, TO THE EXTENT THAT STATUTORY ALLOWANCES ARE AFFECTED, OR A CREDITOR. IF THE PERSONAL REPRESENTATIVE DECLINES OR FAILS TO COMMENCE A PROCEEDING AFTER DEMAND, A PERSON MAKING DEMAND MAY COMMENCE THE PROCEEDING IN THE NAME OF THE DECEDENT'S ESTATE, AT THE EXPENSE OF THE PERSON MAKING THE DEMAND AND NOT OF THE ESTATE. A PERSONAL REPRESENTATIVE WHO DECLINES IN GOOD FAITH TO COMMENCE A

REQUESTED PROCEEDING INCURS NO PERSONAL LIABILITY FOR DECLINING.

(8) A PROCEEDING UNDER THIS SECTION SHALL BE COMMENCED WITHIN ONE YEAR AFTER THE DECEDENT'S DEATH, BUT A PROCEEDING ON BEHALF OF A CREDITOR WHOSE CLAIM WAS ALLOWED AFTER PROCEEDINGS CHALLENGING DISALLOWANCE OF THE CLAIM MAY BE COMMENCED WITHIN SIXTY DAYS AFTER FINAL ALLOWANCE OF THE CLAIM.

(9) UNLESS A WRITTEN NOTICE ASSERTING THAT A DECEDENT'S PROBATE ESTATE IS NONEXISTENT OR INSUFFICIENT TO PAY ALLOWED CLAIMS AND STATUTORY ALLOWANCES HAS BEEN RECEIVED FROM THE DECEDENT'S PERSONAL REPRESENTATIVE, THE FOLLOWING RULES APPLY:

(a) PAYMENT OR DELIVERY OF ASSETS BY A FINANCIAL INSTITUTION, REGISTRAR, OR OTHER OBLIGOR TO A NONPROBATE TRANSFEREE IN ACCORDANCE WITH THE TERMS OF THE GOVERNING INSTRUMENT CONTROLLING THE TRANSFER RELEASES THE OBLIGOR FROM ALL CLAIMS FOR AMOUNTS PAID OR ASSETS DELIVERED.

(b) A TRUSTEE RECEIVING OR CONTROLLING A NONPROBATE TRANSFER IS RELEASED FROM LIABILITY UNDER THIS SECTION WITH RESPECT TO ANY ASSETS DISTRIBUTED TO THE TRUST'S BENEFICIARIES. EACH BENEFICIARY, TO THE EXTENT OF THE DISTRIBUTION RECEIVED, BECOMES LIABLE FOR THE AMOUNT OF THE TRUSTEE'S LIABILITY ATTRIBUTABLE TO ASSETS RECEIVED BY THE BENEFICIARY.

(10) THE RECEIPT OF FUNDS DERIVED FROM NONPROBATE TRANSFEREES BY A PERSON AS PROVIDED IN THIS SECTION IN SATISFACTION OF SUCH PERSON'S CLAIM FOR A DEBT OR STATUTORY ALLOWANCES DOES NOT CONSTITUTE THE RECEIPT OF NONPROBATE PROPERTY BY SUCH PERSON FOR PURPOSES OF THIS SECTION OR PART 2 OF ARTICLE 11 OF THIS TITLE.

(11) IN THE EVENT OF ANY CONFLICT IN THE PROVISIONS OF THIS SECTION WITH THE PROVISIONS OF PARTS 2 AND 4 OF ARTICLE 11 OF THIS TITLE, THE PROVISIONS OF THIS SECTION SHALL CONTROL.

**SECTION 18.** 15-15-101 (5), Colorado Revised Statutes, is amended to read:

**15-15-101. Nonprobate transfers on death.** (5) Payment of the benefits due or the transfer of the rights given in accordance with a designation under the provisions of subsection (2) of this section shall not cause such benefits or rights to be included in the property administered as part of the designator's estate under this code or to be subject to the claims of his OR HER creditors, except as provided in section 15-11-202 AND 15-15-103.

**SECTION 19.** 15-15-101 (6), Colorado Revised Statutes, is amended to read:

**15-15-101. Nonprobate transfers on death.** (6) EXCEPT AS OTHERWISE PROVIDED IN SECTIONS 15-11-202 AND 15-15-103, the express provisions of the trust agreement, declaration of trust, or testamentary trust shall control and regulate the extent to which the benefits or rights payable or transferable under such a designation shall be subject to the debts of the designator if paid or transferred under the provisions of subsection (2) of this section.

**SECTION 20. Repeal.** 15-15-101 (7), Colorado Revised Statutes, is repealed as follows:

**15-15-101. Nonprobate transfers on death.** (7) ~~This section does not limit rights of creditors under other laws of this state.~~

**SECTION 21. Repeal.** 15-15-215, Colorado Revised Statutes, is repealed as follows:

**15-15-215. Rights of creditors and others.** (1) ~~If other assets of the estate are insufficient, a transfer resulting from a right of survivorship or POD designation under this part 2 is not effective against the estate of a deceased party to the extent needed to pay claims against the estate and statutory allowances to the surviving spouse and children.~~

~~(2) A surviving party or beneficiary who receives payment from an account after death of a party is liable to account to the personal representative of the decedent for a proportionate share of the amount received to the extent necessary to discharge the claims and allowances described in subsection (1) remaining unpaid after application of the decedent's estate. A proceeding to assert the liability may not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent. The proceeding must be commenced within one year after death of the decedent.~~

~~(3) A surviving party or beneficiary against whom a proceeding to account is brought may join as a party to the proceeding a surviving party or beneficiary of any other account of the decedent.~~

~~(4) Sums recovered by the personal representative must be administered as part of the decedent's estate. This section does not affect the protection from claims of the personal representative or estate of a deceased party provided in section 15-15-226 for a financial institution that makes payment in accordance with the terms of the account.~~

**SECTION 22.** 15-15-214, Colorado Revised Statutes, is amended to read:

**15-15-214. Accounts and transfers nontestamentary.** Except as provided in part 2 of article 11 of this title (elective share of surviving spouse), ~~or as a consequence of, and to the extent directed by, section 15-15-215;~~ a transfer resulting from the application of section 15-15-212 is effective by reason of the terms of the account involved and this part 2 and is not testamentary or subject to articles 10 to 13 of this title (estate administration).

**SECTION 23. Repeal.** 15-15-309 (2), Colorado Revised Statutes, is repealed as follows:

**15-15-309. Nontestamentary transfer on death.** (2) ~~This part 3 does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.~~

**SECTION 24.** 15-10-201, Colorado Revised Statutes, is amended BY THE

ADDITION OF A NEW SUBSECTION 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:

(16.5) "DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE" MEANS A PERSONAL REPRESENTATIVE APPOINTED BY ANOTHER JURISDICTION IN WHICH THE DECEDENT WAS DOMICILED AT THE TIME OF THE DECEDENT'S DEATH.

**SECTION 25.** 15-13-204, Colorado Revised Statutes, is amended to read:

**15-13-204. Proof of authority.** If no local administration or application or petition therefor is pending in this state, a domiciliary foreign personal representative may file with a court in this state, in a county in which property belonging to the decedent is located, authenticated copies of ~~his~~ THE appointment DOCUMENTS.

**SECTION 26.** 15-14-433, Colorado Revised Statutes, is amended to read:

**15-14-433. Foreign conservator - proof of authority - bond - powers.** If a conservator has not been appointed in this state and a petition in a protective proceeding is not pending in this state, a conservator appointed in the state in which the protected person resides may file in a district or probate court of this state, in a county in which property belonging to the protected person is located, authenticated copies of ~~letters of~~ THE CONSERVATOR'S appointment DOCUMENTS and of any bond. Thereafter, the conservator may exercise all powers of a conservator appointed in this state as to property in this state and may maintain actions and proceedings in this state subject to any conditions otherwise imposed upon nonresident parties.

**SECTION 27.** Part 11 of article 11 of title 15, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**15-11-1106.5. Retroactive application of certain provisions - notice of election.** (1) SECTIONS 15-11-1102.5 AND 15-11-1104.5 SHALL APPLY RETROACTIVELY WITH RESPECT TO AN INTEREST IN A TRUST OR A POWER OF APPOINTMENT OVER ALL OR ANY PART OF A TRUST, WHICH INTEREST OR POWER WAS CREATED BEFORE JULY 1, 2006, UNLESS A PERSON WHO OWNS OR HOLDS SUCH INTEREST OR POWER MAKES AND DELIVERS A NOTICE OF ELECTION AS PROVIDED IN THIS SECTION.

(2) (a) THE NOTICE OF ELECTION PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL BE A WRITTEN STATEMENT OF SUCH PERSON'S ELECTION AGAINST THE RETROACTIVE APPLICATION OF SECTIONS 15-11-1102.5 AND 15-11-1104.5. THE NOTICE OF ELECTION SHALL INCLUDE A REFERENCE TO THIS SECTION, THE NAME AND DATE OF THE TRUST, THE NAMES OF THE SETTLOR AND THE TRUSTEE OF THE TRUST, A DESCRIPTION OF THE INTEREST OR POWER, AND THE NAME AND ADDRESS OF THE PERSON MAKING THE ELECTION. THE NOTICE OF ELECTION SHALL BE SIGNED AND ACKNOWLEDGED BY SUCH PERSON.

(b) THE NOTICE OF ELECTION SHALL BE DELIVERED TO A TRUSTEE OF SUCH TRUST

ON OR BEFORE JULY 1, 2008. IF THERE IS NO PERSON SERVING AS TRUSTEE AT THE TIME DELIVERY IS TO BE MADE, THE NOTICE OF ELECTION MAY INSTEAD BE DELIVERED TO A PERSON AUTHORIZED TO APPOINT A SUCCESSOR TRUSTEE OF THE TRUST. WHEN THE SUCCESSOR TRUSTEE IS APPOINTED, THE PERSON TO WHOM THE NOTICE OF ELECTION WAS DELIVERED SHALL DELIVER IT TO THE SUCCESSOR TRUSTEE.

(c) THE NOTICE OF ELECTION SHALL BE CONSIDERED DELIVERED TO THE PERSON TO WHOM DELIVERY IS REQUIRED TO BE MADE WHEN THE NOTICE OF ELECTION OR A COPY THEREOF IS DELIVERED IN PERSON OR WHEN MAILED BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO SUCH PERSON.

(d) THE TRUSTEE OF THE TRUST SHALL FILE THE NOTICE OF ELECTION WITH THE RECORDS MAINTAINED BY THE TRUSTEE FOR THE TRUST. THERE SHALL BE A REBUTTABLE PRESUMPTION THAT THE NOTICE OF ELECTION WAS NOT DELIVERED AS PROVIDED IN THIS SECTION UNLESS THE NOTICE OF ELECTION OR A COPY OF SUCH NOTICE IS IN THE RECORDS OF THE TRUST MAINTAINED BY THE TRUSTEE.

(3) NO FIDUCIARY FOR ANY TRUST, ESTATE, INDIVIDUAL, OR OTHER PERSON WITH AN INTEREST, RIGHT, OR POWER AFFECTED BY THE RETROACTIVE APPLICATION OF SUCH AMENDMENTS SHALL BE REQUIRED TO MAKE SUCH ELECTION, NOR SHALL SUCH FIDUCIARY BE HELD RESPONSIBLE FOR NOT MAKING SUCH ELECTION.

**SECTION 28.** 15-11-702 (4) (c), Colorado Revised Statutes, is amended to read:

**15-11-702. Requirement of survival by one hundred twenty hours.**

(4) **Exceptions.** Survival by one hundred twenty hours is not required if:

(c) The imposition of a one-hundred-twenty-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under section 15-11-1102 (1) (a), (2) (a), or (3) (a) OR SECTION 15-11-1102.5 (1) (b) (I), (1) (b) (II), (1) (b) (III), (2) (b) (I) (A), (2) (b) (II) (A), OR (2) (b) (III) (A), or to become invalid under section 15-11-1102 (1) (b), (2) (b), or (3) (b) OR SECTION 15-11-1102.5 (1) (b) (I), (1) (b) (II), OR (1) (b) (III); but survival shall be established by clear and convincing evidence; or

**SECTION 29. Repeal.** 15-15-409, Colorado Revised Statutes, is repealed.

**SECTION 30. Effective date.** This act shall take effect July 1, 2006.

**SECTION 31. 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 6, 2006