

CHAPTER 203

PROBATE, TRUSTS, AND FIDUCIARIES

SENATE BILL 11-166

BY SENATOR(S) Johnston;
also REPRESENTATIVE(S) Wilson, Kagan, Labuda, Waller.

AN ACT**CONCERNING THE "UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT".**

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

SECTION 1. Article 11 of title 15, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 12
UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT

15-11-1201. Short title. THIS PART 12 SHALL BE KNOWN AND MAY BE CITED AS THE "UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT".

15-11-1202. Definitions. AS USED IN THIS PART 12, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "DISCLAIMANT" MEANS THE PERSON TO WHOM A DISCLAIMED INTEREST OR POWER WOULD HAVE PASSED IF THE DISCLAIMER HAD NOT BEEN MADE.

(2) "DISCLAIMED INTEREST" MEANS THE INTEREST THAT WOULD HAVE PASSED TO THE DISCLAIMANT IF THE DISCLAIMER HAD NOT BEEN MADE.

(3) "DISCLAIMER" MEANS THE REFUSAL TO ACCEPT AN INTEREST IN OR POWER OVER PROPERTY.

(4) "FIDUCIARY" MEANS A PERSONAL REPRESENTATIVE, TRUSTEE, AGENT ACTING UNDER A POWER OF ATTORNEY, OR OTHER PERSON AUTHORIZED TO ACT AS A FIDUCIARY WITH RESPECT TO THE PROPERTY OF ANOTHER PERSON.

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

(5) "JOINTLY HELD PROPERTY" MEANS PROPERTY HELD IN THE NAME OF TWO OR MORE PERSONS UNDER AN ARRANGEMENT IN WHICH ALL HOLDERS HAVE CONCURRENT INTERESTS AND UNDER WHICH THE LAST SURVIVING HOLDER IS ENTITLED TO THE WHOLE OF THE PROPERTY.

(6) "PERSON" MEANS AN INDIVIDUAL; CORPORATION; BUSINESS TRUST; ESTATE; TRUST; PARTNERSHIP; LIMITED LIABILITY COMPANY; ASSOCIATION; JOINT VENTURE; GOVERNMENT; GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY; PUBLIC CORPORATION; OR ANY OTHER LEGAL OR COMMERCIAL ENTITY.

(7) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS, OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES. THE TERM INCLUDES AN INDIAN TRIBE OR BAND OR AN ALASKAN NATIVE VILLAGE RECOGNIZED BY FEDERAL LAW OR FORMALLY ACKNOWLEDGED BY A STATE.

(8) "TRUST" MEANS:

(a) AN EXPRESS TRUST, CHARITABLE OR NONCHARITABLE, WITH ADDITIONS THERETO, WHENEVER AND HOWEVER CREATED; AND

(b) A TRUST CREATED PURSUANT TO A STATUTE, JUDGMENT, OR DECREE THAT REQUIRES THE TRUST TO BE ADMINISTERED IN THE MANNER OF AN EXPRESS TRUST.

15-11-1203. Scope. THIS PART 12 APPLIES TO DISCLAIMERS OF ANY INTEREST IN OR POWER OVER PROPERTY, WHENEVER CREATED.

15-11-1204. Part supplemented by other law. (1) UNLESS DISPLACED BY A PROVISION OF THIS PART 12, THE PRINCIPLES OF LAW AND EQUITY SUPPLEMENT THIS PART 12.

(2) THIS PART 12 DOES NOT LIMIT ANY RIGHT OF A PERSON TO WAIVE, RELEASE, DISCLAIM, OR RENOUNCE AN INTEREST IN OR POWER OVER PROPERTY UNDER A LAW OTHER THAN THIS PART 12.

15-11-1205. Power to disclaim - general requirements - when irrevocable.

(1) A PERSON MAY DISCLAIM, IN WHOLE OR IN PART, ANY INTEREST IN OR POWER OVER PROPERTY, INCLUDING A POWER OF APPOINTMENT. A PERSON MAY DISCLAIM THE INTEREST OR POWER EVEN IF ITS CREATOR IMPOSED A SPENDTHRIFT PROVISION OR SIMILAR RESTRICTION ON TRANSFER OR A RESTRICTION OR LIMITATION ON THE RIGHT TO DISCLAIM.

(2) EXCEPT TO THE EXTENT A FIDUCIARY'S RIGHT TO DISCLAIM IS EXPRESSLY RESTRICTED OR LIMITED BY ANOTHER STATUTE OF THIS STATE OR BY THE INSTRUMENT CREATING THE FIDUCIARY RELATIONSHIP, A FIDUCIARY MAY DISCLAIM, IN WHOLE OR IN PART, ANY INTEREST IN OR POWER OVER PROPERTY, INCLUDING A POWER OF APPOINTMENT, WHETHER ACTING IN A PERSONAL OR REPRESENTATIVE CAPACITY. A FIDUCIARY MAY DISCLAIM THE INTEREST OR POWER EVEN IF ITS CREATOR IMPOSED A SPENDTHRIFT PROVISION OR SIMILAR RESTRICTION ON TRANSFER OR A RESTRICTION OR LIMITATION ON THE RIGHT TO DISCLAIM, OR IF AN

INSTRUMENT OTHER THAN THE INSTRUMENT THAT CREATED THE FIDUCIARY RELATIONSHIP IMPOSED A RESTRICTION OR LIMITATION ON THE RIGHT TO DISCLAIM.

(3) TO BE EFFECTIVE, A DISCLAIMER SHALL BE IN WRITING OR OTHER RECORD, DECLARE THE DISCLAIMER, DESCRIBE THE INTEREST OR POWER DISCLAIMED, BE SIGNED BY THE PERSON MAKING THE DISCLAIMER, AND BE DELIVERED OR FILED, AND, WITH REGARD TO AN INTEREST IN REAL PROPERTY, BE RECORDED IN THE MANNER PROVIDED FOR IN SECTION 15-11-1212. IN THIS SUBSECTION (3), "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

(4) A PARTIAL DISCLAIMER MAY BE EXPRESSED AS A FRACTION, PERCENTAGE, MONETARY AMOUNT, TERM OF YEARS, LIMITATION OF A POWER, OR ANY OTHER INTEREST OR ESTATE IN THE PROPERTY.

(5) A DISCLAIMER BECOMES IRREVOCABLE WHEN IT IS DELIVERED OR FILED AND, WITH REGARD TO AN INTEREST IN REAL PROPERTY, RECORDED PURSUANT TO SECTION 15-11-1212, OR WHEN IT BECOMES EFFECTIVE AS PROVIDED FOR IN SECTIONS 15-11-1206 THROUGH 15-11-1211, WHICHEVER OCCURS LATER.

(6) A DISCLAIMER MADE PURSUANT TO THIS PART 12 IS NOT A TRANSFER, ASSIGNMENT, OR RELEASE.

(7) NO PERSON OBLIGATED TO DISTRIBUTE AN INTEREST DISCLAIMED UNDER THIS PART 12 SHALL BE LIABLE TO ANY PERSON FOR DISTRIBUTING THE INTEREST AS IF THE INTEREST WERE NOT DISCLAIMED UNLESS THE PERSON OBLIGATED TO DISTRIBUTE THE INTEREST RECEIVES A COPY OF THE DISCLAIMED PRIOR TO DISTRIBUTING THE INTEREST.

15-11-1206. Disclaimer of interest in property. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "FUTURE INTEREST" MEANS AN INTEREST THAT TAKES EFFECT IN POSSESSION OR ENJOYMENT, IF AT ALL, LATER THAN THE TIME OF ITS CREATION.

(b) "METHOD OF REPRESENTATION" INCLUDES ANY METHOD OF DIVISION DESCRIBED IN SECTION 15-11-709.

(c) "TIME OF DISTRIBUTION" MEANS THE TIME WHEN A DISCLAIMED INTEREST WOULD HAVE TAKEN EFFECT IN POSSESSION OR ENJOYMENT.

(2) EXCEPT FOR A DISCLAIMED GOVERNED BY SECTION 15-11-1207 OR 15-11-1208, THE FOLLOWING RULES APPLY TO A DISCLAIMED OF AN INTEREST IN PROPERTY:

(a) THE DISCLAIMED TAKES EFFECT AS OF THE TIME THE INSTRUMENT CREATING THE INTEREST BECOMES IRREVOCABLE, OR, IF THE INTEREST AROSE UNDER THE LAW OF INTESATE SUCCESSION, AS OF THE TIME OF THE INTESATE'S DEATH.

(b) THE DISCLAIMED INTEREST PASSES ACCORDING TO ANY PROVISION IN THE INSTRUMENT CREATING THE INTEREST, PROVIDING FOR THE DISPOSITION OF THE

INTEREST, SHOULD IT BE DISCLAIMED, OR OF DISCLAIMED INTERESTS IN GENERAL.

(c) IF THE INSTRUMENT DOES NOT CONTAIN A PROVISION DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (2), THE FOLLOWING RULES APPLY:

(I) IF THE DISCLAIMED IS NOT AN INDIVIDUAL, THE DISCLAIMED INTEREST PASSES AS IF THE DISCLAIMED HAD CEASED TO EXIST IMMEDIATELY BEFORE THE TIME OF DISTRIBUTION.

(II) IF THE DISCLAIMED IS AN INDIVIDUAL, EXCEPT AS OTHERWISE PROVIDED FOR IN SUBPARAGRAPHS (III) AND (IV) OF THIS PARAGRAPH (c), THE DISCLAIMED INTEREST PASSES AS IF THE DISCLAIMED HAD DIED IMMEDIATELY BEFORE THE TIME OF DISTRIBUTION.

(III) IF, BY LAW OR UNDER THE INSTRUMENT, THE DESCENDANTS OF THE DISCLAIMED WOULD SHARE IN THE DISCLAIMED INTEREST BY ANY METHOD OF REPRESENTATION HAD THE DISCLAIMED DIED IMMEDIATELY BEFORE THE TIME OF DISTRIBUTION, THE DISCLAIMED INTEREST PASSES ONLY TO THE DESCENDANTS OF THE DISCLAIMED WHO SURVIVE THE TIME OF DISTRIBUTION.

(IV) (A) IF THE DISCLAIMED INTEREST WOULD PASS AS PART OF THE DISCLAIMED'S ESTATE HAD THE DISCLAIMED DIED IMMEDIATELY BEFORE THE TIME OF DISTRIBUTION, THE DISCLAIMED INTEREST INSTEAD PASSES AS IF BY REPRESENTATION TO THE DESCENDANTS OF THE DISCLAIMED WHO ARE LIVING AT THE TIME OF DISTRIBUTION.

(B) IF THE DISCLAIMED INTEREST WOULD PASS AS PART OF THE DISCLAIMED'S ESTATE HAD THE DISCLAIMED DIED IMMEDIATELY BEFORE THE TIME OF DISTRIBUTION AND NO DESCENDANT OF THE DISCLAIMED SURVIVES THE TIME OF DISTRIBUTION, THE DISCLAIMED INTEREST PASSES TO THOSE PERSONS, INCLUDING THE STATE TO WHICH SUCH INTEREST WOULD ESCHEAT, BUT EXCLUDING THE DISCLAIMED, AND IN SUCH SHARES AS SUCH PERSONS WOULD SUCCEED TO THE TRANSFEROR'S INTESTATE ESTATE UNDER THE APPLICABLE LAW HAD THE TRANSFEROR DIED AT THE TIME OF DISTRIBUTION. HOWEVER, FOR PURPOSES OF THIS SUB-SUBPARAGRAPH (B), IF THE TRANSFEROR'S SURVIVING SPOUSE IS LIVING BUT REMARRIED AT THE TIME OF DISTRIBUTION, THE TRANSFEROR IS DEEMED TO HAVE DIED UNMARRIED AT THE TIME OF DISTRIBUTION.

(C) AS USED IN SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (IV), "APPLICABLE LAW" REFERS TO THE INTESTATE SUCCESSION LAW OF THE TRANSFEROR'S DOMICILE WITH RESPECT TO A DISCLAIMER OF AN INTEREST IN PERSONAL PROPERTY AND REFERS TO THE INTESTATE SUCCESSION LAW OF THIS STATE WITH RESPECT TO A DISCLAIMED INTEREST THAT IS REAL PROPERTY LOCATED IN THIS STATE.

(D) IN ADDITION TO OTHER APPLICATIONS OF THIS SUB-SUBPARAGRAPH (D) THAT ARE APPARENT, THE GENERAL ASSEMBLY DECLARES ITS INTENT TO HAVE THE RULES OF THIS SUB-SUBPARAGRAPH (D) APPLY WITH RESPECT TO PRESENT INTERESTS IN REAL PROPERTY AND PERSONAL PROPERTY THAT ARE TRANSFERRED OUTRIGHT OR IN TRUST TO AN INDIVIDUAL BY A TRANSFEROR DURING THE LIFETIME OF THE TRANSFEROR WHERE THE INTEREST DISCLAIMED WOULD, IF NOT DISCLAIMED, HAVE

VESTED IN THE INDIVIDUAL TO WHOM THE PROPERTY IS TRANSFERRED AND WOULD BE PART OF THAT INDIVIDUAL'S ESTATE IF HE OR SHE HAD DIED IMMEDIATELY AFTER THE TRANSFER. ACCORDINGLY, THIS SUB-SUBPARAGRAPH (D) SHALL BE SO CONSTRUED TO DETERMINE THE DISPOSITION OF THE PRESENT INTEREST. FOR PURPOSES OF THE APPLICATION OF THE RULES TO SUCH PRESENT INTERESTS, THE REFERENCE TO "IMMEDIATELY BEFORE THE TIME OF DISTRIBUTION" IN SUB-SUBPARAGRAPHS (A) AND (B) OF THIS SUBPARAGRAPH (IV) SHALL INSTEAD BE CONSIDERED AS REFERENCES TO "IMMEDIATELY AFTER THE TIME OF DISTRIBUTION".

(E) IN SUB-SUBPARAGRAPH (D) OF THIS SUBPARAGRAPH (IV), "PRESENT INTEREST" MEANS AN INTEREST THAT TAKES EFFECT IN POSSESSION OR ENJOYMENT, IF AT ALL, AT THE TIME OF ITS CREATION.

(d) UPON THE DISCLAIMER OF A PRECEDING INTEREST, A FUTURE INTEREST HELD BY A PERSON OTHER THAN THE DISCLAIMANT TAKES EFFECT AS IF THE DISCLAIMANT HAD DIED OR CEASED TO EXIST IMMEDIATELY BEFORE THE TIME OF DISTRIBUTION, BUT A FUTURE INTEREST HELD BY THE DISCLAIMANT IS NOT ACCELERATED IN POSSESSION OR ENJOYMENT.

15-11-1207. Disclaimer of rights of survivorship in jointly held property.

(1) UPON THE DEATH OF A HOLDER OF JOINTLY HELD PROPERTY, A SURVIVING HOLDER MAY DISCLAIM, IN WHOLE OR IN PART, THE INCREMENTAL PORTION OF THE JOINTLY HELD PROPERTY DEVOLVING TO THE SURVIVING HOLDER BY RIGHT OF SURVIVORSHIP.

(2) A DISCLAIMER PURSUANT TO SUBSECTION (1) OF THIS SECTION TAKES EFFECT AS OF THE DEATH OF THE HOLDER OF JOINTLY HELD PROPERTY TO WHOSE DEATH THE DISCLAIMER RELATES.

(3) IN THE EVENT OF A DISCLAIMER PURSUANT TO SUBSECTION (1) OF THIS SECTION WITH ONLY ONE HOLDER SURVIVING THE DEATH OF THE HOLDER TO WHOSE DEATH THE DISCLAIMER RELATES, THE INCREMENTAL PORTION DISCLAIMED SHALL, AS A CONSEQUENCE OF THE DISCLAIMER, PASS AS PART OF THE ESTATE OF THE DECEASED HOLDER.

(4) IN THE EVENT OF A DISCLAIMER PURSUANT TO SUBSECTION (1) OF THIS SECTION WITH TWO OR MORE OF THE HOLDERS SURVIVING THE DEATH OF THE HOLDER TO WHOSE DEATH THE DISCLAIMER RELATES:

(a) THE DISCLAIMER DOES NOT SEVER THE JOINT TENANCY WITH RESPECT TO THE JOINTLY HELD PROPERTY AS AMONG THE SURVIVING HOLDERS;

(b) THE INCREMENTAL PORTION DISCLAIMED SHALL, AS A CONSEQUENCE OF A DISCLAIMER, DEVOLVE TO THE SURVIVING HOLDERS IN PROPORTION TO THEIR RESPECTIVE INTERESTS IN THE JOINTLY HELD PROPERTY EXCLUDING THE DISCLAIMANT AND ANY OTHER SURVIVING HOLDER WHO DISCLAIMS TO THE EXTENT OF HIS OR HER DISCLAIMER OF THE INCREMENTAL PORTION;

(c) AN INCREMENTAL PORTION DEVOLVING TO A SURVIVING HOLDER, AS A CONSEQUENCE OF ONE OR MORE DISCLAIMERS, MAY BE DISCLAIMED BY THE SURVIVING HOLDER;

(d) TO THE EXTENT THAT ALL OF THE SURVIVING HOLDERS DISCLAIM AN INCREMENTAL PORTION DEVOLVING TO THEM, THE PORTION SHALL INSTEAD PASS AS PART OF THE ESTATE OF THE DECEASED HOLDER; AND

(e) THE PROPORTION OF EACH OF THE SURVIVING HOLDERS WITH RESPECT TO THE JOINTLY HELD PROPERTY SHALL BE ADJUSTED TO TAKE INTO ACCOUNT THE DEVOLUTION OF THE INCREMENTAL PORTION TO THE EXTENT THAT THE PORTION IS DISCLAIMED.

15-11-1208. Disclaimer of interest by trustee. IF A TRUSTEE DISCLAIMS AN INTEREST IN PROPERTY THAT OTHERWISE WOULD HAVE BECOME TRUST PROPERTY, THE INTEREST DOES NOT BECOME TRUST PROPERTY.

15-11-1209. Disclaimer of power of appointment or other power not held in fiduciary capacity. (1) IF A HOLDER DISCLAIMS A POWER OF APPOINTMENT OR OTHER POWER NOT HELD IN A FIDUCIARY CAPACITY, THE DISCLAIMER APPLIES ONLY TO THAT HOLDER, AND THE FOLLOWING RULES APPLY:

(a) IF THE HOLDER HAS NOT EXERCISED THE POWER, THE DISCLAIMER TAKES EFFECT AS OF THE TIME THE INSTRUMENT CREATING THE POWER BECOMES IRREVOCABLE;

(b) IF THE HOLDER HAS EXERCISED THE POWER AND THE DISCLAIMER IS OF A POWER OTHER THAN A PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT, THE DISCLAIMER TAKES EFFECT IMMEDIATELY AFTER THE LAST EXERCISE OF THE POWER; AND

(c) THE INSTRUMENT CREATING THE POWER IS CONSTRUED AS IF THE POWER EXPIRED WHEN THE DISCLAIMER BECAME EFFECTIVE.

15-11-1210. Disclaimer by appointee, object, or taker in default of exercise of power of appointment. (1) A DISCLAIMER OF AN INTEREST IN PROPERTY BY AN APPOINTEE OF A POWER OF APPOINTMENT TAKES EFFECT AS OF THE TIME THE INSTRUMENT BY WHICH THE HOLDER EXERCISES THE POWER BECOMES IRREVOCABLE.

(2) A DISCLAIMER OF AN INTEREST IN PROPERTY BY AN OBJECT OR TAKER IN DEFAULT OF AN EXERCISE OF A POWER OF APPOINTMENT TAKES EFFECT AS OF THE TIME THE INSTRUMENT CREATING THE POWER BECOMES IRREVOCABLE.

15-11-1211. Disclaimer of power held in fiduciary capacity. (1) IF A FIDUCIARY DISCLAIMS A POWER HELD IN A FIDUCIARY CAPACITY THAT HAS NOT BEEN EXERCISED, THE DISCLAIMER TAKES EFFECT AS OF THE TIME THE INSTRUMENT CREATING THE POWER BECOMES IRREVOCABLE.

(2) IF A FIDUCIARY DISCLAIMS A POWER HELD IN A FIDUCIARY CAPACITY THAT HAS BEEN EXERCISED, THE DISCLAIMER TAKES EFFECT IMMEDIATELY AFTER THE LAST EXERCISE OF THE POWER.

(3) A DISCLAIMER PURSUANT TO THIS SECTION IS EFFECTIVE AS TO ANOTHER FIDUCIARY IF THE DISCLAIMER SO PROVIDES AND THE FIDUCIARY DISCLAIMING HAS THE AUTHORITY TO BIND THE ESTATE, TRUST, OR OTHER PERSON FOR WHOM THE

FIDUCIARY IS ACTING.

15-11-1212. Delivery or filing. (1) AS USED IN THIS SECTION, "BENEFICIARY DESIGNATION" MEANS AN INSTRUMENT, OTHER THAN AN INSTRUMENT CREATING A TRUST, NAMING THE BENEFICIARY OF:

- (a) AN ANNUITY OR INSURANCE POLICY;
- (b) AN ACCOUNT WITH A DESIGNATION FOR PAYMENT ON DEATH;
- (c) A SECURITY REGISTERED IN BENEFICIARY FORM;
- (d) A PENSION, PROFIT-SHARING, RETIREMENT, OR OTHER EMPLOYMENT-RELATED BENEFIT PLAN; OR
- (e) ANY OTHER NONPROBATE TRANSFER AT DEATH.

(2) SUBJECT TO SUBSECTIONS (3) TO (15) OF THIS SECTION, DELIVERY OF A DISCLAIMER MAY BE EFFECTED BY PERSONAL DELIVERY, FIRST CLASS MAIL, OR ANY OTHER METHOD LIKELY TO RESULT IN ITS RECEIPT.

(3) IN THE CASE OF AN INTEREST CREATED UNDER THE LAW OF INTESTATE SUCCESSION OR AN INTEREST CREATED BY WILL, OTHER THAN AN INTEREST IN A TESTAMENTARY TRUST:

(a) A DISCLAIMER SHALL BE DELIVERED TO THE PERSONAL REPRESENTATIVE OF THE DECEDENT'S ESTATE; OR

(b) IF NO PERSONAL REPRESENTATIVE IS THEN SERVING, A DISCLAIMER SHALL BE FILED WITH A COURT HAVING JURISDICTION TO APPOINT A PERSONAL REPRESENTATIVE.

(4) IN THE CASE OF AN INTEREST IN A TESTAMENTARY TRUST:

(a) A DISCLAIMER SHALL BE DELIVERED TO THE TRUSTEE THEN SERVING OR, IF NO TRUSTEE IS THEN SERVING, TO THE PERSONAL REPRESENTATIVE OF THE DECEDENT'S ESTATE; OR

(b) IF NO PERSONAL REPRESENTATIVE IS THEN SERVING, THE DISCLAIMER SHALL BE FILED WITH A COURT HAVING JURISDICTION TO ENFORCE THE TRUST.

(5) IN THE CASE OF AN INTEREST IN AN INTER VIVOS TRUST:

(a) A DISCLAIMER SHALL BE DELIVERED TO THE TRUSTEE THEN SERVING;

(b) IF NO TRUSTEE IS THEN SERVING, THE DISCLAIMER SHALL BE FILED WITH A COURT HAVING JURISDICTION TO ENFORCE THE TRUST; OR

(c) IF THE DISCLAIMER IS MADE BEFORE THE TIME THE INSTRUMENT CREATING THE TRUST BECOMES IRREVOCABLE, IT SHALL BE DELIVERED TO THE SETTLOR OF A REVOCABLE TRUST OR THE TRANSFEROR OF THE INTEREST.

(6) IN THE CASE OF AN INTEREST CREATED BY A BENEFICIARY DESIGNATION MADE BEFORE THE TIME THE DESIGNATION BECOMES IRREVOCABLE, A DISCLAIMER SHALL BE DELIVERED TO THE PERSON MAKING THE BENEFICIARY DESIGNATION.

(7) IN THE CASE OF AN INTEREST CREATED BY A BENEFICIARY DESIGNATION MADE AFTER THE TIME THE DESIGNATION BECOMES IRREVOCABLE, A DISCLAIMER SHALL BE DELIVERED TO THE PERSON OBLIGATED TO DISTRIBUTE THE INTEREST.

(8) IN THE CASE OF A DISCLAIMER BY A SURVIVING HOLDER OF JOINTLY HELD PROPERTY, THE DISCLAIMER SHALL BE DELIVERED TO THE PERSON TO WHOM THE DISCLAIMED INTEREST PASSES.

(9) IN THE CASE OF A DISCLAIMER BY AN OBJECT OR TAKER IN DEFAULT OF EXERCISE OF A POWER OF APPOINTMENT AT ANY TIME AFTER THE POWER WAS CREATED:

(a) THE DISCLAIMER SHALL BE DELIVERED TO THE HOLDER OF THE POWER OR TO THE FIDUCIARY ACTING UNDER THE INSTRUMENT THAT CREATED THE POWER; OR

(b) IF NO FIDUCIARY IS THEN SERVING, THE DISCLAIMER SHALL BE FILED WITH A COURT HAVING AUTHORITY TO APPOINT A FIDUCIARY.

(10) IN THE CASE OF A DISCLAIMER BY AN APPOINTEE OF A NONFIDUCIARY POWER OF APPOINTMENT:

(a) THE DISCLAIMER SHALL BE DELIVERED TO THE HOLDER, THE PERSONAL REPRESENTATIVE OF THE HOLDER'S ESTATE, OR TO THE FIDUCIARY UNDER THE INSTRUMENT THAT CREATED THE POWER; OR

(b) IF NO FIDUCIARY IS THEN SERVING, THE DISCLAIMER SHALL BE FILED WITH A COURT HAVING AUTHORITY TO APPOINT A FIDUCIARY.

(11) IN THE CASE OF A DISCLAIMER BY A FIDUCIARY OF A POWER OVER A TRUST OR ESTATE, THE DISCLAIMER SHALL BE DELIVERED AS PROVIDED FOR IN SUBSECTION (3), (4), OR (5) OF THIS SECTION, AS IF THE POWER DISCLAIMED WERE AN INTEREST IN PROPERTY.

(12) IN THE CASE OF A DISCLAIMER OF A POWER BY AN AGENT, THE DISCLAIMER SHALL BE DELIVERED TO THE PRINCIPAL OR THE PRINCIPAL'S AGENT, GUARDIAN, OR CONSERVATOR.

(13) IN THE CASE OF A DISCLAIMER OF A POWER NOT HELD IN A FIDUCIARY CAPACITY, THE DISCLAIMER SHALL BE DELIVERED TO THE FIDUCIARY UNDER THE INSTRUMENT THAT CREATED THE POWER, OR TO THE PERSON OBLIGATED TO DISTRIBUTE THE PROPERTY.

(14) EXCEPT AS PROVIDED FOR IN SUBSECTIONS (3) TO (8) OF THIS SECTION, IN THE CASE OF AN INTEREST THE DISPOSITION OF WHICH IS DETERMINED PURSUANT TO SECTION 15-11-1206 (2) (c) (IV), THE DISCLAIMER SHALL BE DELIVERED OR FILED AS FOLLOWS:

(a) DELIVERED TO THE TRANSFEROR OF THE INTEREST IF THE TRANSFEROR IS THEN LIVING;

(b) DELIVERED TO THE PERSONAL REPRESENTATIVE OF THE ESTATE OF THE TRANSFEROR, IF THE TRANSFEROR IS NOT THEN LIVING; OR

(c) FILED WITH A COURT HAVING JURISDICTION TO APPOINT A PERSONAL REPRESENTATIVE FOR THE ESTATE OF THE TRANSFEROR, IF THE TRANSFEROR IS NOT THEN LIVING AND A PERSONAL REPRESENTATIVE OF THE ESTATE OF THE TRANSFEROR IS NOT THEN SERVING.

(15) IN THE CASE OF A DISCLAIMER OF AN INTEREST IN REAL PROPERTY IN WHICH THE DISCLAIMANT HAS A RECORDED INTEREST, A COPY OF THE DISCLAIMER SHALL BE RECORDED IN THE OFFICE OF THE CLERK AND RECORDER OF THE COUNTY IN WHICH THE INTEREST DISCLAIMED IS LOCATED. FOR PURPOSES OF THIS SUBSECTION (15) AND SECTION 15-11-1215, "RECORDED INTEREST" MEANS AN INTEREST IN REAL PROPERTY THAT HAS BEEN RECORDED IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED.

15-11-1213. When disclaimer barred or limited. (1) A DISCLAIMER IS BARRED BY A WRITTEN WAIVER OF THE RIGHT TO DISCLAIM.

(2) A DISCLAIMER OF AN INTEREST IN PROPERTY IS BARRED IF ANY OF THE FOLLOWING EVENTS OCCUR BEFORE THE DISCLAIMER BECOMES EFFECTIVE:

(a) THE DISCLAIMANT ACCEPTS THE INTEREST SOUGHT TO BE DISCLAIMED;

(b) THE DISCLAIMANT VOLUNTARILY ASSIGNS, CONVEYS, ENCUMBERS, PLEDGES, OR TRANSFERS THE INTEREST SOUGHT TO BE DISCLAIMED OR CONTRACTS TO DO SO; OR

(c) A JUDICIAL SALE OF THE INTEREST SOUGHT TO BE DISCLAIMED OCCURS.

(3) A DISCLAIMER, IN WHOLE OR IN PART, OF THE FUTURE EXERCISE OF A POWER HELD IN A FIDUCIARY CAPACITY IS NOT BARRED BY ITS PREVIOUS EXERCISE.

(4) A DISCLAIMER, IN WHOLE OR IN PART, OF THE FUTURE EXERCISE OF A POWER NOT HELD IN A FIDUCIARY CAPACITY IS NOT BARRED BY ITS PREVIOUS EXERCISE UNLESS THE POWER IS EXERCISABLE IN FAVOR OF THE DISCLAIMANT.

(5) A DISCLAIMER IS BARRED OR LIMITED IF SO PROVIDED BY LAW OTHER THAN THIS PART 12.

(6) A DISCLAIMER OF A POWER OVER PROPERTY THAT IS BARRED BY THIS SECTION IS INEFFECTIVE. A DISCLAIMER OF AN INTEREST IN PROPERTY THAT IS BARRED BY THIS SECTION TAKES EFFECT AS A TRANSFER OF THE INTEREST DISCLAIMED TO THE PERSONS WHO WOULD HAVE TAKEN THE INTEREST UNDER THIS PART 12 HAD THE DISCLAIMER NOT BEEN BARRED.

(7) NOTWITHSTANDING ANY OTHER PROVISION IN THIS PART 12, THIS PART 12 SHALL NOT MODIFY THE CONSTRUCTION OF LAW OR APPLICATION OF LAW WITH

RESPECT TO:

(a) A DISQUALIFICATION OF MEDICAL ASSISTANCE BENEFITS UNDER TITLE 25.5, C.R.S., TO A DISCLAIMANT WHO IS OR WAS AN APPLICANT FOR OR RECIPIENT OF SUCH BENEFITS; OR

(b) A RECOVERY FROM THE ESTATE OF A DECEASED RECIPIENT OF SUCH MEDICAL ASSISTANCE BENEFITS.

15-11-1214. Tax-qualified disclaimer. NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 12, IF, AS A RESULT OF A DISCLAIMER OR TRANSFER, THE DISCLAIMED OR TRANSFERRED INTEREST IS TREATED PURSUANT TO THE PROVISIONS OF TITLE 26 OF THE UNITED STATES INTERNAL REVENUE CODE, AS NOW OR HEREAFTER AMENDED, OR ANY SUCCESSOR STATUTE THERETO, AND THE REGULATIONS PROMULGATED THEREUNDER, AS NEVER HAVING BEEN TRANSFERRED TO THE DISCLAIMANT, THEN THE DISCLAIMER OR TRANSFER IS EFFECTIVE AS A DISCLAIMER PURSUANT TO THIS PART 12.

15-11-1215. Filing or registering of disclaimer. IF AN INSTRUMENT TRANSFERRING AN INTEREST IN OR POWER OVER PROPERTY SUBJECT TO A DISCLAIMER IS REQUIRED OR PERMITTED BY LAW TO BE FILED OR REGISTERED, THE DISCLAIMER MAY BE FILED OR REGISTERED. FAILURE TO FILE OR REGISTER THE DISCLAIMER DOES NOT AFFECT ITS VALIDITY AS BETWEEN THE DISCLAIMANT AND PERSONS TO WHOM THE PROPERTY INTEREST OR POWER PASSES BY REASON OF THE DISCLAIMER, PROVIDED, HOWEVER, THAT A DISCLAIMER OF AN INTEREST IN REAL PROPERTY IN WHICH THE DISCLAIMANT HAS A RECORDED INTEREST IS NOT EFFECTIVE AND THEREFORE IS NOT VALID AS BETWEEN ANY PERSONS UNTIL A COPY OF THE DISCLAIMER IS RECORDED IN SECTION 15-11-1212 (14).

15-11-1216. Application to existing relationships. EXCEPT AS OTHERWISE PROVIDED FOR IN SECTION 15-11-1213, AN INTEREST IN OR POWER OVER PROPERTY EXISTING ON THE EFFECTIVE DATE OF THIS PART 12 FOR WHICH THE TIME FOR DELIVERING OR FILING A DISCLAIMER UNDER LAW SUPERSEDED BY THIS PART 12 HAS NOT EXPIRED MAY BE DISCLAIMED AFTER THE EFFECTIVE DATE OF THIS PART 12.

15-11-1217. Uniformity of application and construction. IN APPLYING AND CONSTRUING THIS PART 12, CONSIDERATION SHALL BE GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT TO ITS SUBJECT MATTER AMONG THE STATES THAT ENACT IT.

15-11-1218. Severability. IF ANY PROVISION OF THIS PART 12 OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY SHALL NOT AFFECT ANY OTHER PROVISION OR APPLICATION OF THIS PART 12 THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION.

SECTION 2. Repeal. 15-11-801, Colorado Revised Statutes, is repealed.

SECTION 3. 11-50-119 (1), Colorado Revised Statutes, is amended to read:

11-50-119. Renunciation, resignation, death, or removal of custodian - designation of successor custodian. (1) A person nominated under section

11-50-104 or designated under section 11-50-110 as custodian may decline to serve by delivering a valid disclaimer in the form provided in ~~section 15-11-801~~ PART 12 OF ARTICLE 11 OF TITLE 15, C.R.S., to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under section 11-50-104, the person who made the nomination may nominate a substitute custodian under section 11-50-104; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under section 11-50-110 (1). The custodian so designated has the rights of a successor custodian.

SECTION 4. Act subject to petition - effective date. 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 (August 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2012 and shall take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 23, 2011