

## CHAPTER 77

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**PROBATE, TRUSTS, AND FIDUCIARIES**

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## SENATE BILL 11-016

BY SENATOR(S) Grantham, Roberts, Steadman;  
also REPRESENTATIVE(S) Barker, Brown, Conti, Gardner B., Labuda, Priola, Todd, Wilson.

**AN ACT**

**CONCERNING INCREASES IN THE AMOUNTS ALLOCATED TO CERTAIN FAMILY MEMBERS DURING THE  
ADMINISTRATION OF A DECEDENT'S ESTATE.**

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

**SECTION 1.** 15-11-403, Colorado Revised Statutes, is amended to read:

**15-11-403. Exempt property.** (1) (a) PRIOR TO JANUARY 1, 2012, the decedent's surviving spouse is entitled to exempt property from the estate in the form of cash in the amount of or other property of the estate in the value of twenty-six thousand dollars in excess of any security interests therein. If there is no surviving spouse, the decedent's dependent children are entitled jointly to the same exempt property. Rights to exempt property have priority over all claims against the estate, except claims for the costs and expenses of administration, and reasonable funeral and burial, interment, or cremation expenses, which shall be paid in the priority and manner set forth in section 15-12-805. The right to exempt property shall abate as necessary to permit payment of the family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or dependent children by the decedent's will, unless otherwise provided, by intestate succession, or by way of elective-share.

(b) ON AND AFTER JANUARY 1, 2012, THE DECEDENT'S SURVIVING SPOUSE IS ENTITLED TO EXEMPT PROPERTY FROM THE ESTATE IN THE FORM OF CASH IN THE AMOUNT OF OR OTHER PROPERTY OF THE ESTATE IN THE VALUE OF THIRTY THOUSAND DOLLARS IN EXCESS OF ANY SECURITY INTERESTS THEREIN. IF THERE IS NO SURVIVING SPOUSE, THE DECEDENT'S DEPENDENT CHILDREN ARE ENTITLED JOINTLY TO THE SAME EXEMPT PROPERTY. RIGHTS TO EXEMPT PROPERTY HAVE PRIORITY OVER ALL CLAIMS AGAINST THE ESTATE, EXCEPT CLAIMS FOR THE COSTS AND EXPENSES OF ADMINISTRATION, AND REASONABLE FUNERAL AND BURIAL,

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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.*

INTERMENT, OR CREMATION EXPENSES, WHICH SHALL BE PAID IN THE PRIORITY AND MANNER SET FORTH IN SECTION 15-12-805. THE RIGHT TO EXEMPT PROPERTY SHALL ABATE AS NECESSARY TO PERMIT PAYMENT OF THE FAMILY ALLOWANCE. THESE RIGHTS ARE IN ADDITION TO ANY BENEFIT OR SHARE PASSING TO THE SURVIVING SPOUSE OR DEPENDENT CHILDREN BY THE DECEDENT'S WILL, UNLESS OTHERWISE PROVIDED, BY INTESTATE SUCCESSION, OR BY WAY OF ELECTIVE-SHARE.

(2) The dollar amount stated in PARAGRAPH (a) OR (b) OF subsection (1) of this section shall be increased or decreased based on the cost of living adjustment as calculated and specified in section 15-10-112; EXCEPT THAT, WHEN THE INCREASE IN THE DOLLAR AMOUNT STATED IN PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION, AS ENACTED IN SENATE BILL 11-016, ENACTED IN 2011, TAKES EFFECT, THE NEXT REGULARLY SCHEDULED COST OF LIVING ADJUSTMENT WILL BE SUSPENDED FOR ONE YEAR.

**SECTION 2.** 15-11-405 (1), Colorado Revised Statutes, is amended to read:

**15-11-405. Source, determination, and documentation.** (1)(a)(I) If the estate is otherwise sufficient, property specifically devised or disposed of by memorandum under section 15-11-513 to any person other than a person entitled to exempt property may not be used to satisfy rights to exempt property. Subject to this restriction, the surviving spouse, the guardians of minor children, or dependent children who are adults may select property of the estate as their exempt property. The personal representative may make these selections if the surviving spouse, the dependent children, or the guardians of the minor children are unable or fail to do so within a reasonable time or there is no guardian of a minor child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as exempt property allowance. PRIOR TO JANUARY 1, 2012, the personal representative may determine the family allowance in a lump sum not exceeding twenty-four thousand dollars or periodic installments not exceeding two thousand dollars per month for one year and may disburse funds of the estate in payment of the family allowance. The personal representative or an interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may provide a family allowance other than that which the personal representative determined or could have determined.

(II) IF THE ESTATE IS OTHERWISE SUFFICIENT, PROPERTY SPECIFICALLY DEVISED OR DISPOSED OF BY MEMORANDUM UNDER SECTION 15-11-513 TO ANY PERSON OTHER THAN A PERSON ENTITLED TO EXEMPT PROPERTY MAY NOT BE USED TO SATISFY RIGHTS TO EXEMPT PROPERTY. SUBJECT TO THIS RESTRICTION, THE SURVIVING SPOUSE, THE GUARDIANS OF MINOR CHILDREN, OR DEPENDENT CHILDREN WHO ARE ADULTS MAY SELECT PROPERTY OF THE ESTATE AS THEIR EXEMPT PROPERTY. THE PERSONAL REPRESENTATIVE MAY MAKE THESE SELECTIONS IF THE SURVIVING SPOUSE, THE DEPENDENT CHILDREN, OR THE GUARDIANS OF THE MINOR CHILDREN ARE UNABLE OR FAIL TO DO SO WITHIN A REASONABLE TIME OR THERE IS NO GUARDIAN OF A MINOR CHILD. THE PERSONAL REPRESENTATIVE MAY EXECUTE AN INSTRUMENT OR DEED OF DISTRIBUTION TO ESTABLISH THE OWNERSHIP OF PROPERTY TAKEN AS EXEMPT PROPERTY ALLOWANCE. ON AND AFTER JANUARY 1, 2012, THE PERSONAL REPRESENTATIVE MAY DETERMINE THE FAMILY ALLOWANCE IN A LUMP SUM NOT EXCEEDING THIRTY THOUSAND DOLLARS OR PERIODIC

INSTALLMENTS NOT EXCEEDING TWO THOUSAND FIVE HUNDRED DOLLARS PER MONTH FOR ONE YEAR AND MAY DISBURSE FUNDS OF THE ESTATE IN PAYMENT OF THE FAMILY ALLOWANCE. THE PERSONAL REPRESENTATIVE OR AN INTERESTED PERSON AGGRIEVED BY ANY SELECTION, DETERMINATION, PAYMENT, PROPOSED PAYMENT, OR FAILURE TO ACT UNDER THIS SECTION MAY PETITION THE COURT FOR APPROPRIATE RELIEF, WHICH MAY PROVIDE A FAMILY ALLOWANCE OTHER THAN THAT WHICH THE PERSONAL REPRESENTATIVE DETERMINED OR COULD HAVE DETERMINED.

(b) The dollar amount stated in SUBPARAGRAPH (I) OR (II) OF paragraph (a) of this subsection (1) shall be increased or decreased based on the cost of living adjustment as calculated and specified in section 15-10-112; EXCEPT THAT, WHEN THE INCREASE IN THE DOLLAR AMOUNT STATED IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS SUBSECTION (1), AS ENACTED IN SENATE BILL 11-016, ENACTED IN 2011, TAKES EFFECT, THE NEXT REGULARLY SCHEDULED COST OF LIVING ADJUSTMENT WILL BE SUSPENDED FOR ONE YEAR.

**SECTION 3. Act subject to petition - 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 (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.

(2) The provisions of this act shall apply to estates for decedents dying on or after January 1, 2012, or the applicable effective date of this act, whichever is later.

Approved: March 29, 2011