

Second Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments  
Adopted in the House of Introduction*

LLS NO. 10-0596.01 Richard Sweetman

HOUSE BILL 10-1105

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HOUSE SPONSORSHIP

Roberts,

SENATE SPONSORSHIP

Steadman,

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House Committees  
Judiciary

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING CLARIFICATION OF PROVISIONS IN THE "COLORADO  
102 PROBATE CODE" CONCERNING COMPENSATION OF CERTAIN  
103 PARTIES.

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Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>)*

The bill creates a new part in the "Colorado Probate Code" concerning the compensation of fiduciaries, lawyers, and third parties. The bill sets forth the conditions by which compensation and costs may be recovered, factors that a court shall use in determining the

Shading, denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*



21 TRANSFERS TO MINORS ACT", ARTICLE 50 OF TITLE 11, C.R.S.;

22 (c) A CUSTODIAL TRUSTEE AS DESCRIBED IN THE "COLORADO

23 UNIFORM CUSTODIAL TRUST ACT", ARTICLE 1.5 OF THIS TITLE; AND

24 (d) AN AGENT AS DEFINED IN SECTIONS 15-10-201 (1), 15-14-602; AND

25 (e) A PUBLIC ADMINISTRATOR AS DEFINED BY SECTION  
15-12-619.

1 (3), AND 15-14-702 (1).

2 (3) (a) "GOVERNING INSTRUMENT" MEANS A WILL OR TRUST OR A  
3 DONATIVE, APPOINTIVE, OR NOMINATIVE INSTRUMENT OF ANY OTHER  
4 TYPE, INCLUDING:

5 (I) AN INSTRUMENT THAT CREATES A CUSTODIAL TRANSFER AS  
6 DESCRIBED IN THE "COLORADO UNIFORM TRANSFERS TO MINORS ACT",  
7 ARTICLE 50 OF TITLE 11, C.R.S.;

8 (II) A CUSTODIAL TRUST AS DESCRIBED IN THE "COLORADO  
9 UNIFORM CUSTODIAL TRUST ACT", ARTICLE 1.5 OF THIS TITLE;

10 (III) A MEDICAL DURABLE POWER OF ATTORNEY AS DESCRIBED IN  
11 SECTION 15-14-506;

12 (IV) AN AGENCY INSTRUMENT AS DEFINED IN SECTION 15-14-602  
13 (2);

14 (V) A POWER OF ATTORNEY AS DEFINED IN SECTION 15-14-702 (7);

15 (VI) A COURT ORDER APPOINTING A GUARDIAN AS DESCRIBED IN  
16 PART 2 OR 3 OF ARTICLE 14 OF THIS TITLE; AND

17 (VII) A COURT ORDER APPOINTING A CONSERVATOR AS DESCRIBED  
18 N PART 4 OF ARTICLE 14 OF THIS TITLE.

19 (b) "GOVERNING INSTRUMENT" DOES NOT INCLUDE A DEED; AN  
20 INSURANCE OR ANNUITY POLICY; A MULTIPLE-PARTY ACCOUNT; A  
21 SECURITY REGISTERED IN BENEFICIARY FORM; A PENSION; A  
22 PROFIT-SHARING, RETIREMENT, OR SIMILAR BENEFIT PLAN; OR AN  
23 INDIVIDUAL RETIREMENT ACCOUNT.

24 (4) "RESPONDENT" MEANS AN INDIVIDUAL FOR WHOM THE  
25 APPOINTMENT OF A GUARDIAN OR CONSERVATOR OR OTHER PROTECTIVE  
26 ORDER IS SOUGHT.

27 (5) "WARD" MEANS AN INDIVIDUAL FOR WHOM A GUARDIAN HAS

1 BEEN APPOINTED.

2 **15-10-602. Recovery of reasonable compensation and costs.**

3 (1) A FIDUCIARY AND HIS OR HER LAWYER ARE ENTITLED TO REASONABLE  
4 COMPENSATION FOR SERVICES RENDERED ON BEHALF OF AN ESTATE.

5 (2) A LAWYER HIRED BY A RESPONDENT, WARD, OR PROTECTED  
6 PERSON IS ENTITLED TO REASONABLE COMPENSATION AND COSTS  
7 INCURRED FOR THE LEGAL REPRESENTATION THE LAWYER PROVIDES FOR  
8 THE RESPONDENT, WARD, OR PROTECTED PERSON.

9 (3) A THIRD PARTY WHO PERFORMS SERVICES AT THE REQUEST OF  
10 A COURT IS ENTITLED TO REASONABLE COMPENSATION.

11 (4) A PERSON'S ENTITLEMENT TO COMPENSATION OR COSTS SHALL  
12 NOT LIMIT OR REMOVE A COURT'S INHERENT AUTHORITY, DISCRETION, AND  
13 RESPONSIBILITY TO DETERMINE THE REASONABLENESS OF COMPENSATION  
14 AND COSTS WHEN APPROPRIATE.

15 (5) EXCEPT AS LIMITED OR OTHERWISE RESTRICTED BY A COURT  
16 ORDER, COMPENSATION AND COSTS THAT MAY BE RECOVERED PURSUANT  
17 TO THIS SECTION MAY BE PAID DIRECTLY OR REIMBURSED WITHOUT A  
18 COURT ORDER. A COURT MAY ORDER A PERSON WHO RECEIVES EXCESSIVE  
19 COMPENSATION, OR PAYMENT FOR INAPPROPRIATE COSTS, TO MAKE  
20 APPROPRIATE REFUNDS.

21 (6) EXCEPT AS PROVIDED IN SECTION 15-10-605 (4), IF A  
22 FIDUCIARY OR PERSON WITH PRIORITY FOR APPOINTMENT AS PERSONAL  
23 REPRESENTATIVE, CONSERVATOR, GUARDIAN, AGENT, CUSTODIAN, OR  
24 TRUSTEE DEFENDS OR PROSECUTES A PROCEEDING IN GOOD FAITH,  
25 WHETHER SUCCESSFULLY OR NOT, THE FIDUCIARY OR PERSON IS ENTITLED  
26 TO RECEIVE FROM THE ESTATE REIMBURSEMENT FOR NECESSARY COSTS  
27 AND DISBURSEMENTS, INCLUDING BUT NOT LIMITED TO REASONABLE

1 ATTORNEY FEES.

2 (7) (a) EXCEPT AS OTHERWISE PROVIDED IN PART 5 OF THIS  
3 ARTICLE OR IN THIS PART 6, A NONFIDUCIARY OR HIS OR HER LAWYER IS  
4 NOT ENTITLED TO RECEIVE COMPENSATION FROM AN ESTATE.

5 (b) IF A LAWYER OR ANOTHER PERSON NOT APPOINTED BY A COURT  
6 PROVIDES SERVICES THAT RESULT IN THE COURT ENTERING AN ORDER  
7 THAT IS BENEFICIAL TO AN ESTATE, RESPONDENT, WARD, OR PROTECTED  
8 PERSON, THE LAWYER OR OTHER PERSON MAY REQUEST REASONABLE  
9 COMPENSATION FOR THE SERVICES FROM THE ESTATE AS FOLLOWS:

10 (I) THE LAWYER OR OTHER PERSON SHALL FILE A REQUEST FOR  
11 COMPENSATION FOR SERVICES OR COSTS ALLEGED TO HAVE RESULTED IN  
12 THE ORDER WITHIN FIFTEEN DAYS AFTER THE ENTRY OF THE ORDER, OR  
13 WITHIN A GREATER OR LESSER TIME AS THE COURT MAY DIRECT. AN  
14 OBJECTION THERETO SHALL BE FILED WITHIN FIFTEEN DAYS AFTER THE  
15 FILING OF THE REQUEST, OR WITHIN SUCH GREATER OR LESSER TIME AS THE  
16 COURT MAY DIRECT.

17 (II) AFTER A REQUEST FOR COMPENSATION OR COSTS, OR AN  
18 OBJECTION TO SUCH A REQUEST, HAS BEEN FILED, THE COURT, ~~UNLESS IT~~  
19 ~~DIRECTS OTHERWISE,~~ SHALL DETERMINE ~~WITHOUT~~ AFTER NOTICE AND A  
20 HEARING, THE  
21 BENEFIT, IF ANY, THAT THE ESTATE RECEIVED AS A RESULT OF THE  
22 SERVICES PROVIDED.

23 (III) IF THE COURT DETERMINES THAT A COMPENSABLE BENEFIT  
24 RESULTED FROM THE SERVICES, THEN THE PERSON REQUESTING  
25 COMPENSATION OR COSTS SHALL SUBMIT TO THE COURT FOR APPROVAL  
26 ONLY THOSE FEES OR COSTS PURPORTEDLY INCURRED IN PROVIDING THE  
27 BENEFICIAL SERVICES. THE COURT, ~~WITHOUT A HEARING OR~~ AFTER NOTICE  
~~AND A HEARING IF REQUESTED BY A PARTY AND FOR GOOD CAUSE SHOWN,~~

1 SHALL THEN DETERMINE THE AMOUNT OF COMPENSATION OR COSTS TO BE  
2 AWARDED FOR THE BENEFIT.

3 (IV) AN INTERESTED PERSON DISPUTING THE REASONABLENESS OF  
4 THE AMOUNT OF COMPENSATION OR COSTS REQUESTED FOR THE  
5 BENEFICIAL SERVICES MAY FILE AN OBJECTION. IF AN OBJECTION IS FILED,  
6 THE PROCEEDINGS TO RESOLVE THE DISPUTE SHALL BE GOVERNED BY  
7 SECTION 15-10-604.

8 (c) IN DETERMINING A REASONABLE AMOUNT OF COMPENSATION  
9 OR COSTS, THE COURT MAY TAKE INTO ACCOUNT, IN ADDITION TO THE  
10 FACTORS SET FORTH IN SECTION 15-10-603 (3):

11 (I) THE VALUE OF THE BENEFIT TO THE ESTATE, RESPONDENT,  
12 WARD, OR PROTECTED PERSON;

13 (II) THE NUMBER OF PARTIES INVOLVED IN ADDRESSING THE ISSUE;

14 (III) THE EFFORTS MADE BY THE LAWYER OR COURT-APPOINTED  
15 PERSON TO REDUCE AND MINIMIZE ISSUES; AND

16 (IV) ANY ACTIONS BY THE LAWYER OR PERSON NOT APPOINTED BY  
17 THE COURT THAT UNNECESSARILY EXPANDED ISSUES OR DELAYED OR  
18 HINDERED THE EFFICIENT ADMINISTRATION OF THE ESTATE.

19 (d) FOR THE PURPOSES OF THIS SUBSECTION (7), SERVICES  
20 RENDERED BY A LAWYER OR A PERSON NOT APPOINTED BY A COURT THAT  
21 CONFER A BENEFIT TO AN ESTATE, RESPONDENT, WARD, OR PROTECTED  
22 PERSON ARE THOSE SIGNIFICANT, DEMONSTRABLE, AND GENERALLY  
23 NONCUMULATIVE SERVICES THAT ASSIST THE COURT IN RESOLVING  
24 MATERIAL ISSUES IN THE ADMINISTRATION OF AN ESTATE. BY WAY OF  
25 EXAMPLE AND NOT LIMITATION, SUCH BENEFITS MAY RESULT IN  
26 SIGNIFICANTLY INCREASING OR PREVENTING A SIGNIFICANT DECREASE IN  
27 THE SIZE OF THE ESTATE, PREVENTING OR EXPOSING MALADMINISTRATION

1 OR A MATERIAL BREACH OF FIDUCIARY DUTY, OR CLARIFYING AND  
2 UPHOLDING A DECEDENT'S, SETTLOR'S, PRINCIPAL'S, RESPONDENT'S,  
3 WARD'S, OR PROTECTED PERSON'S INTENT WITH RESPECT TO A MATERIAL  
4 ISSUE IN DISPUTE.

5 (8) A FIDUCIARY WHO IS A MEMBER OF A LAW FIRM MAY USE THE  
6 SERVICES OF THE LAW FIRM AND CHARGE FOR THE REASONABLE VALUE OF  
7 THE SERVICES OF THE MEMBERS AND STAFF OF THE FIRM THAT ASSIST THE  
8 FIDUCIARY IN PERFORMING HIS OR HER DUTIES.

9 **15-10-603. Factors in determining the reasonableness of**  
10 **compensation and costs. (1) A COURT MAY REVIEW AND DETERMINE:**

11 (a) THE REASONABLENESS OF THE COMPENSATION OF A FIDUCIARY,  
12 LAWYER, OR OTHER PERSON WHO:

13 (I) IS EMPLOYED ON BEHALF OF AN ESTATE, FIDUCIARY,  
14 RESPONDENT, WARD, OR PROTECTED PERSON;

15 (II) IS APPOINTED BY THE COURT; OR

16 (III) PROVIDES BENEFICIAL SERVICES TO AN ESTATE, RESPONDENT,  
17 WARD, OR PROTECTED PERSON; AND

18 (b) THE APPROPRIATENESS OF ANY COST SOUGHT TO BE PAID BY OR  
19 RECOVERED FROM AN ESTATE.

20 (2) IN CONSIDERING THE REASONABLENESS OF THE  
21 COMPENSATION, THERE SHALL BE NO PRESUMPTION THAT ANY METHOD OF  
22 CHARGING A FEE, INCLUDING BUT NOT LIMITED TO A PERCENTAGE OR FLAT

23 OR FIXED FEE FOR SERVICES RENDERED TO AN ESTATE, FIDUCIARY,  
24 PRINCIPAL, RESPONDENT, WARD, OR PROTECTED PERSON, IS PER SE

25 UNREASONABLE. REGARDLESS OF THE METHOD USED FOR CHARGING A  
26 FEE, IN DETERMINING APPROPRIATE COMPENSATION, THE COURT SHALL

27 APPLY THE STANDARD OF REASONABLENESS IN LIGHT OF ALL RELEVANT



1     FACTS AND CIRCUMSTANCES.

2             (3) THE COURT SHALL CONSIDER ALL OF THE FACTORS DESCRIBED  
3     IN THIS SUBSECTION (3) IN DETERMINING THE REASONABLENESS OF ANY  
4     COMPENSATION OR COST. THE COURT MAY DETERMINE THE WEIGHT TO BE  
5     GIVEN TO EACH OF THE FOLLOWING FACTORS AND ANY OTHER FACTORS  
6     THE COURT CONSIDERS RELEVANT IN REACHING ITS DECISION:

7             (a) THE TIME AND LABOR REQUIRED, THE NOVELTY AND  
8     DIFFICULTY OF THE QUESTIONS INVOLVED, AND THE SKILL REQUIRED TO  
9     PERFORM THE SERVICE PROPERLY;

10            (b) THE LIKELIHOOD, IF APPARENT TO THE FIDUCIARY, THAT THE  
11     ACCEPTANCE OF THE PARTICULAR EMPLOYMENT WILL PRECLUDE THE  
12     PERSON EMPLOYED FROM OTHER EMPLOYMENT;

13            (c) (I) THE COMPENSATION CUSTOMARILY CHARGED IN THE  
14     COMMUNITY FOR SIMILAR SERVICES WITH DUE CONSIDERATION AND  
15     ALLOWANCE FOR THE COMPLEXITY OR UNIQUENESS OF ANY  
16     ADMINISTRATIVE OR LITIGATED ISSUES, THE NEED FOR AND LOCAL  
17     AVAILABILITY OF SPECIALIZED KNOWLEDGE OR EXPERTISE, AND THE NEED  
18     FOR AND ADVISABILITY OF RETAINING OUTSIDE FIDUCIARIES OR LAWYERS  
19     TO AVOID POTENTIAL CONFLICTS OF INTEREST.

20            (II) FOR PURPOSES OF THIS SUBSECTION (3), THE "COMMUNITY" IS  
21     THE GENERAL GEOGRAPHICAL AREA IN WHICH THE ESTATE IS BEING  
22     ADMINISTERED OR IN WHICH THE RESPONDENT, WARD, OR PROTECTED  
23     PERSON RESIDES.

24            (d) THE NATURE AND SIZE OF THE ESTATE, THE LIQUIDITY OR  
25     ILLIQUIDITY OF THE ESTATE, AND THE RESULTS OBTAINED DURING THE  
26     ADMINISTRATION OF THE ESTATE;

27            (e) WHETHER AND TO WHAT EXTENT ANY LITIGATION HAS TAKEN

1 PLACE AND THE RESULTS OF THE LITIGATION;

2 (f) THE LIFE EXPECTANCY AND NEEDS OF THE RESPONDENT, WARD,  
3 PROTECTED PERSON, DEVISEE, BENEFICIARY, OR PRINCIPAL;

4 (g) THE TIME LIMITATIONS IMPOSED ON OR BY THE FIDUCIARY OR  
5 BY THE CIRCUMSTANCES OF THE ADMINISTRATION OF THE ESTATE;

6 (h) THE ADEQUACY OF ANY DETAILED BILLING STATEMENTS UPON  
7 WHICH THE COMPENSATION IS BASED;

8 (i) WHETHER THE FIDUCIARY HAS CHARGED VARIABLE RATES THAT  
9 REFLECT COMPARABLE PAYMENT STANDARDS IN THE COMMUNITY FOR  
10 LIKE SERVICES;

11 (j) THE EXPERTISE, REPUTATION, AND ABILITY OF THE PERSON  
12 PERFORMING THE SERVICES AND, IN THE CASE OF A FIDUCIARY, WHETHER  
13 AND TO WHAT EXTENT THE FIDUCIARY HAS HAD ANY PRIOR EXPERIENCE  
14 IN ADMINISTERING ESTATES SIMILAR TO THOSE FOR WHICH COMPENSATION  
15 IS SOUGHT; AND

16 (k) THE TERMS OF A GOVERNING INSTRUMENT; AND

(l) TAKE INTO ACCOUNT THE VARIOUS POSSIBLE COURSES OF ACTION  
AVAILABLE TO A FIDUCIARY OR AN INDIVIDUAL SEEKING COMPENSATION  
FOR A PARTICULAR SERVICE OR ALLEGED BENEFIT AND EVALUATE WHETHER  
THE COURSE OF ACTION ACTUALLY FOLLOWED BY THE FIDUCIARY OR THE  
PERSON SEEKING COMPENSATION AS PART OF THE PROCESS TO DETERMINE  
THE APPROPRIATENESS OF THE RESULTING ACTION; AND

(m) TAKE INTO ACCOUNT THE VARIOUS POSSIBLE COURSES OF  
ACTION AVAILABLE TO A FIDUCIARY OR AN INDIVIDUAL SEEKING  
COMPENSATION FOR A PARTICULAR SERVICE OR ALLEGED BENEFIT AND  
EVALUATE THE COST-EFFECTIVENESS OF THE ACTION ACTUALLY FOLLOWED  
CONSIDERING THE CIRCUMSTANCES PRESENT AT THE TIME THE ACTION WAS  
ACCOMPLISHED.

17 (4) IF A GOVERNING INSTRUMENT PROVIDES THAT A FIDUCIARY IS  
18 ENTITLED TO RECEIVE COMPENSATION IN ACCORDANCE WITH A PUBLISHED

19 FEE SCHEDULE IN EFFECT AT THE TIME THE SERVICES ARE PERFORMED,  
20 FEES CHARGED IN ACCORDANCE WITH THE PUBLISHED FEE SCHEDULE  
21 SHALL BE PRESUMED TO BE REASONABLE. THE ABSENCE OF SUCH A  
22 PROVISION IN A GOVERNING INSTRUMENT SHALL NOT PRECLUDE THE  
23 FIDUCIARY FROM RECEIVING COMPENSATION IN ACCORDANCE WITH A  
24 PUBLISHED FEE SCHEDULE IN EFFECT AT THE TIME THE SERVICES ARE  
25 PERFORMED.

26 (5) NOTHING IN THIS SECTION SHALL BE INTERPRETED TO PROHIBIT  
27 MEMBERS OR EMPLOYEES OF A PROFESSIONAL FIDUCIARY'S ORGANIZATION

1 OR LAW FIRM, INCLUDING PARTNERS, ASSOCIATES, PARALEGALS, LAW  
2 CLERKS, TRUST OFFICERS, CAREGIVERS, AND SOCIAL WORKERS, FROM  
3 COLLABORATING ON THE SAME SERVICE SO LONG AS THE COLLABORATION  
4 IS REASONABLE AND THE TOTAL COMPENSATION CHARGED FOR THE  
5 SERVICE IN THE AGGREGATE IS REASONABLE UNDER THE CIRCUMSTANCES.

6 **15-10-604. Fee disputes - process and procedure. (1) A**  
7 DISPUTE OVER THE REASONABLENESS OF A REQUEST FOR COMPENSATION  
8 OR COSTS AUTHORIZED BY THIS PART 6 SHALL BE RESOLVED IN  
9 ACCORDANCE WITH THE FACTORS SET FORTH IN SECTION 15-10-603 (3)  
10 AND THE PROCESS AND PROCEDURE SET FORTH IN THIS SECTION.

11 (2) FOR THE PURPOSES OF THIS SECTION, A FEE DISPUTE SHALL BE  
12 DEEMED TO HAVE ARISEN WHEN AN OBJECTION TO A REQUEST FOR  
13 COMPENSATION OR COSTS HAS BEEN FILED IN A PROCEEDING.

14 (3) AFTER AN OBJECTION TO A REQUEST FOR COMPENSATION OR  
15 COSTS HAS BEEN FILED, THE PERSON REQUESTING COMPENSATION OR  
16 COSTS SHALL HAVE THIRTY DAYS AFTER THE FILING DATE OF THE  
17 OBJECTION, OR A GREATER OR LESSER TIME AS THE COURT MAY DIRECT, TO  
18 MAKE AVAILABLE TO THE OBJECTOR FOR INSPECTION AND COPYING ALL  
19 DOCUMENTATION THAT THE PERSON DEEMS NECESSARY TO ESTABLISH THE  
20 REASONABLENESS OF THE COMPENSATION AND COSTS IN CONSIDERATION  
21 OF THE FACTORS SET FORTH IN SECTION 15-10-603 (3) AND TO CERTIFY TO  
22 THE COURT THAT THE DOCUMENTATION WAS MADE AVAILABLE TO THE  
23 OBJECTOR ON A CERTAIN DATE. THE OBJECTOR SHALL THEN HAVE FIFTEEN  
24 DAYS, OR A GREATER OR LESSER TIME AS THE COURT MAY DIRECT, TO FILE  
25 SPECIFIC WRITTEN OBJECTIONS TO THE REQUEST FOR COMPENSATION AND  
26 COSTS BASED ON THE FACTORS SET FORTH IN SECTION 15-10-603 (3). THE  
27 FIFTEEN DAYS SHALL COMMENCE ON THE DATE THAT THE PERSON MAKES

1 THE DOCUMENTATION AVAILABLE TO THE OBJECTOR OR UPON THE FILING  
2 OF THE PERSON'S CERTIFICATION, WHICHEVER IS LATER. UNLESS  
3 OTHERWISE DIRECTED BY THE COURT OR MUTUALLY AGREED TO BY THE  
4 PARTIES, THE REASONABLE COSTS OF COPYING THE DOCUMENTATION  
5 SHALL BE BORNE BY THE OBJECTOR. THE COURT MAY PERMIT FURTHER  
6 DISCOVERY ON THE COMPENSATION AND COST ISSUES RAISED BY THE  
7 PLEADINGS ONLY UPON GOOD CAUSE SHOWN.

8 (4) THE COURT SHALL DETERMINE ~~WITHOUT A HEARING, OR AFTER~~  
9 ~~NOTICE AND A HEARING IF REQUESTED BY A PARTY AND FOR GOOD CAUSE~~  
10 ~~SHOWN~~, THE AMOUNT OF COMPENSATION AND COSTS IT CONSIDERS TO BE  
11 REASONABLE AND SHALL ISSUE ITS FINDINGS OF FACT AND CONCLUSIONS  
12 OF LAW REFERENCING THE FACTORS SET FORTH IN SECTION 15-10-603 (3)  
13 AND ANY OTHER FACTORS IT DEEMS RELEVANT TO ITS DECISION.

14 **15-10-605. Compensation and costs - assessment - limitations.**

15 (1) IF THE COURT DETERMINES THAT ANY PROCEEDINGS PURSUANT TO  
16 THIS CODE OR ANY PLEADINGS FILED IN SUCH PROCEEDINGS WERE  
17 BROUGHT, DEFENDED, OR FILED IN BAD FAITH, THE COURT MAY ASSESS THE  
18 FEES AND COSTS, INCLUDING REASONABLE ATTORNEY FEES, INCURRED BY  
19 THE FIDUCIARY AND OTHER AFFECTED PARTIES IN RESPONDING TO THE  
20 PROCEEDINGS OR PLEADINGS, AGAINST AN ESTATE, PARTY, PERSON, OR  
21 ENTITY THAT BROUGHT OR DEFENDED THE PROCEEDINGS OR FILED THE  
22 PLEADINGS IN BAD FAITH. NOTHING IN THIS SECTION IS INTENDED TO LIMIT  
23 ANY OTHER REMEDY, SANCTION, OR SURCHARGE PROVIDED BY LAW.

24 (2) IF A PERSON ENTITLED TO COMPENSATION UNDER THIS PART 6  
25 IS REQUIRED TO DEFEND THE REASONABLENESS OF COMPENSATION OR  
26 COSTS IN A PROCEEDING, THE COURT MAY REVIEW THE FEES AND COSTS  
27 INCURRED BY THE PERSON IN DEFENDING THE COMPENSATION OR COSTS,

1 AND THE FEES INCURRED IN CHALLENGING THE COMPENSATION AND  
2 COSTS, AND MAY ASSESS THE REASONABLE FEES AND COSTS INCURRED IN  
3 THE PROCEEDING AS THE COURT DEEMS EQUITABLE. THE COURT MAY  
4 ALLOCATE FEES OR COSTS ASSESSED PURSUANT TO THIS SUBSECTION (2)  
5 IN FAVOR OF OR AGAINST THE ESTATE OR ANY PARTY, PERSON, OR ENTITY  
6 INVOLVED IN THE PROCEEDING AS JUSTICE AND EQUITY MAY REQUIRE.

7 (3) A PERSON WHO IS UNSUCCESSFUL IN DEFENDING THE  
8 REASONABLENESS OF COMPENSATION OR COSTS AT A HEARING SHALL NOT  
9 BE ENTITLED TO RECOVER THE FEES OR COSTS OF THAT DEFENSE TO THE  
10 EXTENT THAT THE COMPENSATION IS DETERMINED TO HAVE BEEN  
11 UNREASONABLE.

12 (4) A FIDUCIARY WHO IS UNSUCCESSFUL IN DEFENDING THE  
13 PROPRIETY OF THE FIDUCIARY'S CONDUCT IN A PROCEEDING PURSUANT TO  
14 THIS CODE ALLEGING BREACH OF FIDUCIARY DUTY SHALL NOT RECOVER  
15 THE FEES OR COSTS OF THAT DEFENSE TO THE EXTENT OF ANY MATTER IN  
16 WHICH A BREACH OF FIDUCIARY DUTY IS FOUND.

17 **15-10-606. Applicability.** (1) THIS PART 6 APPLIES TO:

18 (a) AN ESTATE EXISTING BEFORE, ON, OR AFTER THE EFFECTIVE  
19 DATE OF THIS PART 6; AND

20 (b) PROCEEDINGS TO DETERMINE THE REASONABLENESS OF  
21 COMPENSATION AND COSTS COMMENCED ON OR AFTER THE EFFECTIVE  
22 DATE OF THIS PART 6.

23 (2) THIS PART 6 DOES NOT APPLY TO PROCEEDINGS TO DETERMINE  
24 THE REASONABLENESS OF COMPENSATION AND COSTS COMMENCED  
25 BEFORE THE EFFECTIVE DATE OF THIS PART 6 UNLESS THE COURT  
26 DETERMINES THAT THE APPLICATION OF THIS PART 6 WOULD NOT  
27 PREJUDICE THE RIGHTS OF A PARTY AND THE COURT DIRECTS OTHERWISE.

1           **SECTION 2.** 15-14-318, Colorado Revised Statutes, is amended  
2 BY THE ADDITION OF A NEW SUBSECTION to read:

3           **15-14-318. Termination or modification of guardianship -**  
4 **resignation or removal of guardian.** (6) WHEN A WARD DIES, ALL FEES,  
5 COSTS, AND EXPENSES OF THE ADMINISTRATION OF THE GUARDIANSHIP  
6 INCLUDING ANY UNPAID GUARDIAN FEES AND COSTS AND THOSE OF HIS OR  
7 HER COUNSEL MAY BE SUBMITTED TO THE COURT FOR COURT APPROVAL  
8 IN CONJUNCTION WITH THE TERMINATION OF THE GUARDIANSHIP.

9           THEREAFTER, ALL COURT-APPROVED FEES, COSTS, AND EXPENSES OF  
10 ADMINISTRATION ARISING FROM THE GUARDIANSHIP SHALL BE PAID AS  
11 COURT-APPROVED CLAIMS FOR COSTS AND EXPENSES OF ADMINISTRATION  
12 IN THE DECEDENT'S ESTATE. IN THE EVENT THAT THERE ARE INSUFFICIENT  
13 MONEYS TO PAY ALL CLAIMS IN THE DECEDENT'S ESTATE IN FULL, THE  
14 FEES, COSTS, AND EXPENSES OF ADMINISTRATION ARISING FROM THE  
15 GUARDIANSHIP SHALL RETAIN THEIR CLASSIFICATION AS "COSTS AND  
16 EXPENSES OF ADMINISTRATION" IN THE DECEDENT'S ESTATE AND SHALL BE  
17 PAID PURSUANT TO SECTION 15-12-805.

18           **SECTION 3.** 15-14-428, Colorado Revised Statutes, is amended  
19 BY THE ADDITION OF A NEW SUBSECTION to read:

20           **15-14-428. Death of protected person.** (3) WHEN A PROTECTED  
21 PERSON DIES, ALL FEES, COSTS, AND EXPENSES OF ADMINISTRATION OF THE  
22 CONSERVATORSHIP INCLUDING ANY UNPAID CONSERVATOR FEES AND  
23 COSTS AND THOSE OF HIS OR HER COUNSEL MAY BE SUBMITTED TO THE  
24 COURT FOR COURT APPROVAL IN CONJUNCTION WITH THE TERMINATION OF  
25 THE CONSERVATORSHIP. THEREAFTER, ALL COURT-APPROVED FEES, COSTS,  
26 AND EXPENSES OF ADMINISTRATION ARISING FROM THE CONSERVATORSHIP  
27 SHALL BE PAID AS COURT-APPROVED CLAIMS FOR COSTS AND EXPENSES OF

1 ADMINISTRATION IN THE DECEDENT'S ESTATE. IN THE EVENT THAT THERE  
2 ARE INSUFFICIENT MONEYS TO PAY ALL CLAIMS IN THE DECEDENT'S ESTATE  
3 IN FULL, THE FEES, COSTS, AND EXPENSES OF ADMINISTRATION ARISING  
4 FROM THE CONSERVATORSHIP SHALL RETAIN THEIR CLASSIFICATION AS  
5 "COSTS AND EXPENSES OF ADMINISTRATION" IN THE DECEDENT'S ESTATE  
6 AND SHALL BE PAID PURSUANT TO SECTION 15-12-805.

7 **SECTION 4. Repeal.** 15-12-719, 15-12-720, 15-12-721, and  
8 15-14-417, Colorado Revised Statutes, are repealed.

9 **SECTION 5.** 15-10-504 (2) (b), Colorado Revised Statutes, is  
10 amended to read:

11 **15-10-504. Surcharge - contempt - sanctions against**  
12 **fiduciaries. (2) Surcharge.** (b) In awarding attorney fees and costs  
13 pursuant to this section, a court may consider the provisions of sections  
14 , 15-12-720, and 15-14-417 PART 6 OF THIS ARTICLE.

15 **SECTION 6.** 15-12-805 (1) (a), Colorado Revised Statutes, is  
16 amended to read:

17 **15-12-805. Classification of claims.** (1) The allowed claims  
18 against the estate of a decedent shall be paid by the personal  
19 representative in the following order:

20 (a) Property held by or in the possession of the deceased person  
21 as fiduciary or trustee of a trust, which shall include a resulting trust, as  
22 long as the reasonable expenses of administering such property and of  
23 investigating and determining such claim, as provided by s \_\_\_\_\_  
24 15 -12-720 SECTIONS 15-10-602 AND 15-10-605 (2), (3), AND (4), shall be  
25 paid from such property as determined by the court;

26 **SECTION 7. Act subject to petition - effective date.** This act  
27 shall take effect at 12:01 a.m. on the day following the expiration of the



1 ninety-day period after final adjournment of the general assembly (August  
2 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a  
3 referendum petition is filed pursuant to section 1 (3) of article V of the  
4 state constitution against this act or an item, section, or part of this act  
5 within such period, then the act, item, section, or part shall not take effect  
6 unless approved by the people at the general election to be held in  
7 November 2010 and shall take effect on the date of the official  
8 declaration of the vote thereon by the governor.