

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0327.01 Richard Sweetman x4333

SENATE BILL 16-108

SENATE SPONSORSHIP

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Senate Committees

State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 CONCERNING MAKING CERTAIN PUBLIC ADMINISTRATORS EMPLOYEES
102 OF THE STATE JUDICIAL SYSTEM, AND, IN CONNECTION
103 THEREWITH, PROHIBITING SUCH PUBLIC ADMINISTRATORS FROM
104 COLLECTING ADDITIONAL COMPENSATION FOR THE
105 PERFORMANCE OF THEIR DUTIES.

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 requires the state court administrator to hire and employ a staff of full-time public administrators, to be assigned as necessary to

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.

each court. Such a public administrator is an employee of the state of Colorado and shall not charge a fee or collect additional compensation for the performance of his or her duties as a public administrator. Additionally, each district or probate court in each judicial district may appoint a private attorney to act as a public administrator in a particular case if such an appointment is the preference of the parties.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby declares that making public administrators employees of the state
4 judicial system serves the best interests of the people of the state by:

- 5 (a) Reducing conflicts of interest;
- 6 (b) Increasing options;
- 7 (c) Reducing the costs associated with probate matters;
- 8 (d) Eliminating financial motives for public administrators; and
- 9 (e) Expanding access to public administrators.

10 **SECTION 2.** In Colorado Revised Statutes, **add** 13-3-116 as
11 follows:

12 **13-3-116. Public administrators - assignment to judicial**
13 **districts - oath.** (1) ON AND AFTER THE EFFECTIVE DATE OF THIS
14 SECTION, THE STATE COURT ADMINISTRATOR SHALL HIRE AND EMPLOY A
15 STAFF OF FULL-TIME PUBLIC ADMINISTRATORS, AS DESCRIBED IN SECTION
16 15-12-619, C.R.S., TO BE ASSIGNED AS NECESSARY TO EACH JUDICIAL
17 DISTRICT AND TO THE PROBATE COURT OF THE CITY AND COUNTY OF
18 DENVER.

19 (2) EACH PUBLIC ADMINISTRATOR MUST BE A QUALIFIED ELECTOR
20 TWENTY-ONE YEARS OF AGE OR OLDER AND A RESIDENT OF THE JUDICIAL
21 DISTRICT IN WHICH THE PUBLIC ADMINISTRATOR IS ASSIGNED TO ACT AS A
22 PUBLIC ADMINISTRATOR. UNLESS AUTHORIZED BY THE APPOINTING COURT,

1 THE PUBLIC ADMINISTRATOR MUST REMAIN A RESIDENT OF THE JUDICIAL
2 DISTRICT WHILE HE OR SHE HOLDS THE OFFICE OF PUBLIC ADMINISTRATOR.

3 (3) A PUBLIC ADMINISTRATOR HIRED BY THE STATE COURT
4 ADMINISTRATOR PURSUANT TO SUBSECTION (1) OF THIS SECTION IS AN
5 EMPLOYEE OF THE STATE OF COLORADO AND SHALL NOT CHARGE A FEE OR
6 COLLECT ADDITIONAL COMPENSATION FOR THE PERFORMANCE OF HIS OR
7 HER DUTIES AS A PUBLIC ADMINISTRATOR.

8 (4) BEFORE PERFORMING ANY DUTIES AS A PUBLIC
9 ADMINISTRATOR, EACH PUBLIC ADMINISTRATOR SHALL TAKE AND
10 SUBSCRIBE AN OATH BEFORE A DISTRICT OR PROBATE JUDGE OF THE
11 JUDICIAL DISTRICT TO WHICH THE PUBLIC ADMINISTRATOR IS ASSIGNED, OR
12 BY WHICH THE PUBLIC ADMINISTRATOR IS APPOINTED PURSUANT TO
13 SECTION 15-12-619 (1), C.R.S., IN THE FOLLOWING FORM:

14 I, _____, IN ACCEPTING THE POSITION OF PUBLIC
15 ADMINISTRATOR IN AND FOR THE _____ JUDICIAL
16 DISTRICT OF THE STATE OF COLORADO, DO SOLEMNLY
17 SWEAR (OR AFFIRM) THAT I WILL SUPPORT THE
18 CONSTITUTION OF THE UNITED STATES AND OF THE STATE
19 OF COLORADO, AND THAT I WILL FAITHFULLY PERFORM THE
20 DUTIES OF THE OFFICE OF PUBLIC ADMINISTRATOR AS
21 REQUIRED BY LAW. I RECOGNIZE THAT AS A PUBLIC
22 ADMINISTRATOR, I ASSUME CERTAIN FIDUCIARY DUTIES TO
23 THE PERSONS AND ESTATES WHOSE AFFAIRS I ADMINISTER.
24 I ATTEST THAT I DO NOT HAVE ANY PERSONAL OR
25 FINANCIAL INTERESTS THAT CONFLICT WITH THE DUTIES
26 AND POWERS THAT ARE INCUMBENT UPON THE OFFICE OF
27 PUBLIC ADMINISTRATOR, AND I SOLEMNLY SWEAR TO AVOID

1 ANY SUCH CONFLICT OF INTEREST IN EACH CASE THAT
2 REQUIRES MY ADMINISTRATION.

3 (5) THE STATE COURT ADMINISTRATOR MAY ASSIGN A PUBLIC
4 ADMINISTRATOR TO MORE THAN ONE JUDICIAL DISTRICT OR PROBATE
5 COURT.

6 **SECTION 3.** In Colorado Revised Statutes, 15-12-619, **amend**
7 (1), (4), and (5); and **repeal** (2), (6), and (7) as follows:

8 **15-12-619. Public administrator - appointment - bond.** (1) ~~The~~
9 IN ADDITION TO REQUESTING THE ASSIGNMENT OF SUFFICIENT PUBLIC
10 ADMINISTRATORS FROM THE STATE COURT ADMINISTRATOR'S OFFICE
11 PURSUANT TO SECTION 13-3-116, C.R.S., EACH district or probate court in
12 each judicial district may appoint a ~~person who shall be known as the~~
13 PRIVATE ATTORNEY TO ACT AS A public administrator IN A PARTICULAR
14 CASE IF SUCH AN APPOINTMENT IS THE PREFERENCE OF THE PARTIES. The
15 appointee shall be a qualified elector over twenty-one years of age and
16 shall be a resident of or maintain a principal place of business in the
17 judicial district in which the appointee is to act as public administrator.
18 Unless authorized by the appointing court, the appointee shall remain a
19 resident of or maintain a principal place of business in the judicial district
20 in which the appointee has been appointed during the period in which the
21 appointee holds the office of public administrator. ~~The~~ A person
22 appointed as ~~the~~ A public administrator ~~shall serve~~ SERVES at the pleasure
23 of the appointing court until discharged by the court or until such person's
24 resignation is accepted by the appointing court. Any person appointed as
25 a public administrator ~~shall not be~~ PURSUANT TO THIS SECTION IS NOT
26 considered an employee of either the state of Colorado or of the judicial
27 district or the city or the county in which such person has been appointed

1 public administrator because of his or her appointment as public
2 administrator. BEFORE PERFORMING ANY DUTIES AS A PUBLIC
3 ADMINISTRATOR, THE APPOINTEE SHALL TAKE AND SUBSCRIBE THE OATH
4 DESCRIBED IN SECTION 13-3-116 (4), C.R.S.

5 ~~(2) Before taking office, a public administrator shall take and~~
6 ~~subscribe an oath, before a district or probate judge of the appointing~~
7 ~~judicial district, in the following form:~~

8 I, _____, in accepting the position of the public
9 administrator in and for the _____ judicial district of
10 the state of Colorado, do solemnly swear (or affirm) that I
11 will support the constitution of the United States and of the
12 state of Colorado, and that I will faithfully perform the
13 duties of the office of public administrator as required by
14 law.

15 (4) ~~Every~~ EACH PRIVATE ATTORNEY WHO IS APPOINTED TO ACT AS
16 A public administrator PURSUANT TO SUBSECTION (1) OF THIS SECTION
17 shall procure and maintain a general bond in the sum of twenty-five
18 thousand dollars covering the public administrator's performance and the
19 performance of the public administrator's employees to the people of the
20 state of Colorado. Such bond ~~shall~~ MUST be conditioned on the faithful
21 discharge of the duties of the ~~office of the~~ public administrator and ~~shall~~
22 MUST be filed in the office of the secretary of state. If the Colorado
23 attorney general finds reasonable grounds to believe that a PRIVATE
24 ATTORNEY APPOINTED TO ACT AS A public administrator has improperly
25 administered a ~~public administrator's~~ AN estate, the attorney general may
26 sue upon such bond in the name of the people of the state of Colorado to
27 compensate any party harmed by any neglect or wrongful act by a THE

1 public administrator or the public administrator's employees. In addition
2 to the ~~above~~ general bond DESCRIBED IN THIS SUBSECTION (4), a public
3 administrator may ~~also~~ be required to give such bonds as are required of
4 other fiduciaries.

5 (5) ~~The~~ A public administrator ~~is authorized to~~ MAY act as
6 provided in this section and ~~section~~ SECTIONS 15-12-620, 15-12-621, AND
7 15-12-622 ~~and 15-12-623~~ and as directed by the ~~appointing~~ court. A
8 public administrator may also be appointed as a fiduciary in other cases
9 in any judicial district in the state of Colorado or elsewhere as needed.

10 (6) ~~Subject to the approval and confirmation by the district or~~
11 ~~probate court in each judicial district, the public administrator may also~~
12 ~~appoint one or more deputy public administrators. Deputy public~~
13 ~~administrators shall be qualified electors over the age of twenty-one. Any~~
14 ~~deputy public administrator shall serve at the pleasure of the appointing~~
15 ~~court and the public administrator in that judicial district until such time~~
16 ~~as the deputy public administrator is discharged by the court or the public~~
17 ~~administrator or until the deputy public administrator resigns. No~~
18 ~~resignation of a deputy public administrator shall be effective until it is~~
19 ~~filed with and approved by the appointing court. The deputy public~~
20 ~~administrator shall act as directed by the public administrator in the~~
21 ~~deputy public administrator's judicial district.~~

22 (7) ~~Any acting public administrator or deputy public administrator~~
23 ~~who was appointed prior to July 1, 1991, shall be exempt from the~~
24 ~~appointment criteria required by this section.~~

25 **SECTION 4.** In Colorado Revised Statutes, 15-12-620, **amend**
26 (3) as follows:

27 **15-12-620. Public administrator - responsibility for protecting**

1 **decedent's estate - duty of persons holding property.** (3) IF A PUBLIC
2 ADMINISTRATOR IS A PRIVATE ATTORNEY APPOINTED BY A COURT TO ACT
3 AS A PUBLIC ADMINISTRATOR PURSUANT TO SECTION 15-12-619 (1),
4 reasonable administration fees and costs including reasonable attorney
5 fees incurred in efforts to protect the decedent's property ~~shall~~ MUST be
6 paid to the public administrator at the time such property is released by
7 the public administrator. Upon the presentation or mailing of an itemized
8 statement of fees and costs to the person assuming responsibility for the
9 case, the public administrator ~~shall be entitled to~~ MAY deduct such fees
10 and costs from any cash assets of the decedent's estate that are in the
11 public administrator's possession. Any fee dispute regarding a public
12 administrator's fees and costs ~~shall~~ MUST be resolved by petition to the
13 district or probate court that has jurisdiction over the estate.

14 **SECTION 5.** In Colorado Revised Statutes, 15-12-621, **amend**
15 (6) and (9) as follows:

16 **15-12-621. Public administrator - decedents' estates - areas of**
17 **responsibility.** (6) ~~Small estates, as defined in section 15-12-1201 may~~
18 ~~be administered by the~~ A public administrator MAY ADMINISTER A SMALL
19 ESTATE, AS DESCRIBED IN SECTION 15-12-1203, using an affidavit as
20 provided in section 15-12-1201, with the same effect as provided in
21 section 15-12-1202. The claims period ~~shall end~~ ENDS one year from the
22 date of the decedent's death. At the end of the claims period, the public
23 administrator shall summarily ~~make distribution of~~ DISTRIBUTE estate
24 assets ~~by distribution~~ to allowed claimants pursuant to the priorities set
25 forth in section 15-12-805. The PUBLIC ADMINISTRATOR SHALL
26 DISTRIBUTE THE remainder of the estate's funds, if any, ~~shall be~~
27 ~~distributed~~ to the decedent's heirs or devisees as determined under the

1 Colorado Probate Code. In determining who is entitled to an estate's
2 funds, a public administrator may rely on affidavits by persons who set
3 forth facts to establish their claims, heirship, or the validity of a
4 testamentary document. The public administrator ~~shall not be~~ IS NOT
5 liable for any improper distributions made in reasonable reliance on
6 information contained in such affidavits. All estates administered by a
7 public administrator pursuant to the small estate procedure ~~shall~~ MUST be
8 closed by the filing of a public administrator's statement of account with
9 the ~~appointing~~ district or probate court. The statement of account ~~shall~~
10 MUST set forth all receipts and disbursements made during the
11 administration of the estate, including, IF THE PUBLIC ADMINISTRATOR IS
12 A PRIVATE ATTORNEY APPOINTED BY A COURT TO ACT AS A PUBLIC
13 ADMINISTRATOR PURSUANT TO SECTION 15-12-619(1), C.R.S., the public
14 administrator's fees and costs, and the fees and costs of the public
15 administrator's staff and investigators. Upon filing of the public
16 administrator's statement of account, THE COURT SHALL DISCHARGE THE
17 public administrator ~~shall be discharged and released~~ RELEASE THE PUBLIC
18 ADMINISTRATOR from all further responsibility and all liability with
19 regards to the estate.

20 (9) A public administrator may act as a special administrator in a
21 decedent's estate when a creditor or claimant requests such an
22 appointment for the purpose of having the public administrator represent
23 the estate in an action to be brought by the creditor or claimant against the
24 estate. A public administrator requested to act as a special administrator
25 in such cases need act only if the creditor or claimant makes advance
26 arrangements, satisfactory to the public administrator, to pay TO THE
27 OFFICE OF THE STATE COURT ADMINISTRATOR OR, IF THE PUBLIC

1 ADMINISTRATOR IS A PRIVATE ATTORNEY APPOINTED BY A COURT TO ACT
2 AS A PUBLIC ADMINISTRATOR PURSUANT TO SECTION 15-12-619 (1),
3 C.R.S., TO THE PUBLIC ADMINISTRATOR, all reasonable fees and costs
4 likely to be incurred by the public administrator in the public
5 administrator's performance as special administrator regardless of the
6 outcome of the creditor's or claimant's claim or litigation against the
7 estate.

8 **SECTION 6.** In Colorado Revised Statutes, 15-12-622, **amend**
9 (1) and (2) as follows:

10 **15-12-622. Public administrator - acting as conservator or**
11 **trustee.** (1) ~~When appointed by a court of appropriate jurisdiction, the A~~
12 public administrator may act as a conservator, temporary conservator,
13 special conservator, trustee, or other fiduciary of any estate that has assets
14 requiring protection. A PUBLIC ADMINISTRATOR MAY ALSO BE APPOINTED
15 BY A COURT, IN ITS DISCRETION, TO MANAGE THE FINANCIAL AFFAIRS OF
16 A PROTECTED PERSON, AS DEFINED IN SECTION 15-14-102 (11), OR A
17 WARD, AS DEFINED IN SECTION 15-14-102 (15). Each county department
18 of HUMAN OR social services may refer any resident of that county, or any
19 nonresident located in that county, to that county's public administrator
20 for appropriate protective proceedings if ~~such~~ THE department determines
21 that ~~such person~~ THE RESIDENT OR NONRESIDENT meets the standards
22 required for court protective action.

23 (2) Any case referred to ~~the~~ A public administrator pursuant to this
24 section by a county department of HUMAN OR social services ~~shall~~ MUST
25 be presented to the court of appropriate jurisdiction by a petition ~~which~~
26 ~~shall state~~ THAT STATES to the court that the COUNTY DEPARTMENT OF
27 HUMAN OR SOCIAL SERVICES HAS REQUESTED A public administrator ~~has~~

1 ~~been requested by the county department of social services to act as a~~
2 ~~conservator or other fiduciary for the person in need of protection, that~~
3 ~~the public administrator is the nominee of that department, and that the~~
4 ~~public administrator is not acting as an attorney for that department. The~~
5 ~~public administrator may prepare and file such a petition if requested to~~
6 ~~do so by the county department of HUMAN OR social services. The fact~~
7 ~~that a public administrator has been requested by a county department of~~
8 ~~social services to act as a conservator or other fiduciary shall not be~~
9 ~~construed by the court as granting any priority for his appointment, and~~
10 ~~the court shall make that determination solely upon the best interests of~~
11 ~~the person in need of protection. If the public administrator is not~~
12 ~~appointed as conservator or other fiduciary and the court determines that~~
13 ~~another individual should act as the conservator or fiduciary, the court~~
14 ~~may award reasonable fees and costs to the public administrator if the~~
15 ~~court determines that the efforts of the public administrator were~~
16 ~~beneficial to the estate or contributed to the protection of the protected~~
17 ~~person's assets. In cases where the court awards fees and costs to the~~
18 ~~public administrator, to the extent that such funds are available, such fees~~
19 ~~shall be paid from the protected person's estate. In cases in which the~~
20 ~~public administrator is not compensated from the protected person's~~
21 ~~estate, the court may approve the payment of such fees from state funds~~
22 ~~designated for the payment of court-appointed counsel or fiduciaries. The~~
23 ~~court may determine the amount of fees to be paid from such state funds~~
24 ~~as it deems to be just.~~

25 **SECTION 7.** In Colorado Revised Statutes, **amend** 15-12-623 as
26 follows:

27 **15-12-623. Public administrator - administration - reports -**

1 **fees.** (1) ~~In the~~ ANY case ~~of~~ INVOLVING A PRIVATE ATTORNEY WHO HAS
 2 BEEN APPOINTED BY A COURT TO ACT AS A PUBLIC ADMINISTRATOR
 3 PURSUANT TO SECTION 15-12-619 (1), C.R.S., the following court docket
 4 fees shall be charged:

5 (a) Public administrator statements of account in small estates, as
 6 "small estates" is defined in section 15-12-1201, having gross assets:

	Fee	Tax	Total
8 (I) Less than \$500.00	fee waived		
9 (II) \$500.00 or more, 10 but less than \$2,000.00	\$ 9.00	1.00	10.00
11 (III) \$2,000.00 or more	\$ 89.00	1.00	90.00

12 (b) The docket fee charged in all other decedent, trust, or
 13 conservatorship estates filed by a PRIVATE ATTORNEY WHO HAS BEEN
 14 APPOINTED BY A COURT TO ACT AS A public administrator shall be the
 15 same fee as those charged to the general public filing a similar type of
 16 action.

17 (2) On or before March 1 of each year, each PRIVATE ATTORNEY
 18 WHO HAS BEEN APPOINTED BY A COURT TO ACT AS A public administrator
 19 PURSUANT TO SECTION 15-12-619 (1), C.R.S., shall file with the
 20 appointing court such reports concerning the administration of public
 21 administrator cases during the previous calendar year as the appointing
 22 court shall direct.

23 (3) ~~The office of the~~ A PRIVATE ATTORNEY WHO HAS BEEN
 24 APPOINTED BY A COURT TO ACT AS A public administrator ~~shall only~~
 25 PURSUANT TO SECTION 15-12-619 (1), C.R.S., MAY charge ONLY fees and
 26 costs that are reasonable and proper for similar services in the
 27 community. ~~The~~ A PRIVATE ATTORNEY WHO HAS BEEN APPOINTED BY A

1 COURT TO ACT AS A public administrator shall maintain detailed time
2 records for all charged services. ~~The~~ A PRIVATE ATTORNEY WHO HAS
3 BEEN APPOINTED BY A COURT TO ACT AS A public administrator shall
4 attempt to minimize fees while providing quality fiduciary,
5 administrative, and legal services to all assigned estates. ~~The~~ A PRIVATE
6 ATTORNEY WHO HAS BEEN APPOINTED BY A COURT TO ACT AS A public
7 administrator may charge the estates under his or her administration for
8 the services of attorneys, paralegals, bookkeepers, certified public
9 accountants, investigators, tax counsel, or any other professional or
10 nonprofessional who provides necessary services which further the
11 cost-effective administration of the estates. A PRIVATE ATTORNEY WHO
12 HAS BEEN APPOINTED BY A COURT TO ACT AS A public administrator AND
13 who is a member of a law firm may use the legal services of that firm to
14 assist the public administrator in his or her duties as the public
15 administrator or as a fiduciary. All fees of ~~the~~ A PRIVATE ATTORNEY WHO
16 HAS BEEN APPOINTED BY A COURT TO ACT AS A public administrator or of
17 ~~the~~ SUCH A public administrator's agents and employees are subject to
18 review by the court having jurisdiction over the estate in which the fees
19 were incurred. The payment of public administrators' administrative fees
20 and costs ~~shall have~~ HAS priority over all other claims and exempt
21 property or family allowances. In cases in which ~~the~~ A PRIVATE
22 ATTORNEY IS APPOINTED BY A COURT TO ACT AS A public administrator ~~is~~
23 ~~appointed~~ to administer an estate, and a more suitable person is
24 subsequently located and such person is then appointed to continue the
25 administration of the estate, the PRIVATE ATTORNEY WHO INITIALLY
26 ACTED AS public administrator ~~shall be~~ IS entitled to receive the prompt
27 payment of his fees and costs for the period of his OR HER administration

1 of the estate.

2 (4) Cash assets collected by ~~the~~ A public administrator in small
3 decedent estates may be combined into a single public administrator's
4 trust account which shall be held in a federally insured bank or savings
5 and loan association located in this state. The total amount of the funds
6 in a single public administrator's trust account ~~shall~~ MAY not exceed the
7 federal deposit insurance limits for such accounts. When an additional
8 account is required, such account ~~shall~~ MUST be opened in a different
9 Colorado bank or savings and loan association ~~which~~ THAT has the
10 required federal deposit insurance protection. Regardless of whether the
11 public administrator is an attorney, all estate funds under the control of
12 a public administrator ~~shall be~~ ARE governed by the rules set forth by the
13 Colorado supreme court in the code of professional responsibility, DR
14 9-102, dealing with trust accounts, unless otherwise modified by this
15 section. Any public administrator's trust account may be utilized as the
16 temporary depository for any public administrator funds. When letters are
17 issued in an estate, the funds belonging to such an estate ~~shall~~ MUST be
18 promptly transferred to an account or accounts in the individual estate's
19 name.

20 **SECTION 8. Act subject to petition - effective date.** This act
21 takes effect at 12:01 a.m. on the day following the expiration of the
22 ninety-day period after final adjournment of the general assembly (August
23 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
24 referendum petition is filed pursuant to section 1 (3) of article V of the
25 state constitution against this act or an item, section, or part of this act
26 within such period, then the act, item, section, or part will not take effect
27 unless approved by the people at the general election to be held in

- 1 November 2016 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.