

HB1198\_L.009

## SENATE COMMITTEE OF REFERENCE REPORT

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 Chairman of Committee

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 Date
Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB09-1198 be amended as follows:

- 1 Amend reengrossed bill, page 5, line 3, after "**durable.**", insert "(1)";
- 2 line 4, strike "UNDER THIS PART 7" and substitute "ON AND AFTER
- 3 JANUARY 1, 2010,";
- 4 strike line 6, and substitute the following:
- 5 "(2) A POWER OF ATTORNEY EXISTING ON DECEMBER 31, 2009,";
- 6 line 7, strike "DATE OF THIS PART 7";
- 7 line 8, strike "SECTIONS" and substitute "SECTION", and strike "and
- 8 15-14-502." and substitute "OR SECTION 15-14-745 (2).";
- 9 line 18, strike "THE EFFECTIVE DATE OF";
- 10 line 19, strike "THIS PART 7" and substitute "JANUARY 1, 2010,";
- 11 line 21, strike "THE";
- 12 line 22, strike "EFFECTIVE DATE OF THIS PART 7" and substitute "JANUARY
- 13 1, 2010,".
- 14 Page 6, line 16, strike "OR GUARDIAN";
- 15 line 24, strike "OR GUARDIAN".



- 1 Page 15, line 25, after "15-14-720", insert a comma.
- 2 Page 16, strike line 16 and substitute the following:
- 3 "INVESTIGATION, ONE OR MORE OF THE FOLLOWING:";
- 4 line 22, strike "AND" and substitute "OR".
- 5 Page 17, line 4, strike "15-1-720," and substitute "15-14-720,".
- 6 Page 21, line 22, strike "authority." and substitute "authority -  
7 incorporation by reference.".
- 8 Page 22, after line 4, insert the following:
- 9 "(2.5) IN ADDITION TO THE INCORPORATION OF AUTHORITY AS  
10 PROVIDED IN SUBSECTIONS (1) AND (2) OF THIS SECTION, A WRITING OR  
11 OTHER RECORD IN EXISTENCE WHEN A POWER OF ATTORNEY IS EXECUTED  
12 MAY BE INCORPORATED BY REFERENCE IF THE LANGUAGE OF THE POWER  
13 OF ATTORNEY MANIFESTS THIS INTENT AND DESCRIBES THE WRITING OR  
14 OTHER RECORD SUFFICIENTLY TO PERMIT ITS IDENTIFICATION. A WRITING  
15 OR OTHER RECORD SO INCORPORATED BY REFERENCE IS CONSIDERED AS  
16 SET OUT IN FULL IN THE POWER OF ATTORNEY.";
- 17 line 5, after "AUTHORITY", insert "OR A WRITING OR OTHER RECORD".
- 18 Page 48, strike lines 5 and 6 and substitute the following:
- 19 " DISCLAIM, REFUSE, OR RELEASE AN INTEREST IN PROPERTY OR A  
20 POWER OF APPOINTMENT
- 21  EXERCISE A POWER OF APPOINTMENT OTHER THAN: (1) THE  
22 EXERCISE OF A GENERAL POWER OF APPOINTMENT FOR THE BENEFIT  
23 OF THE PRINCIPAL WHICH MAY, IF THE SUBJECT OF ESTATES,  
24 TRUSTS, AND OTHER BENEFICIAL INTERESTS IS AUTHORIZED ABOVE,  
25 BE EXERCISED AS PROVIDED UNDER THE SUBJECT OF ESTATES,  
26 TRUSTS, AND OTHER BENEFICIAL INTERESTS; OR (2) THE EXERCISE  
27 OF A GENERAL POWER OF APPOINTMENT FOR THE BENEFIT OF  
28 PERSONS OTHER THAN THE PRINCIPAL WHICH MAY, IF THE MAKING  
29 OF A GIFT IS SPECIFICALLY AUTHORIZED ABOVE, BE EXERCISED



1 UNDER THE SPECIFIC AUTHORIZATION TO MAKE GIFTS

2 ( ) EXERCISE POWERS, RIGHTS, OR AUTHORITY AS A PARTNER,  
3 MEMBER, OR MANAGER OF A PARTNERSHIP, LIMITED LIABILITY  
4 COMPANY, OR OTHER ENTITY THAT THE PRINCIPAL MAY EXERCISE  
5 ON BEHALF OF THE ENTITY AND HAS AUTHORITY TO DELEGATE  
6 EXCLUDING THE EXERCISE OF SUCH POWERS, RIGHTS, AND  
7 AUTHORITY WITH RESPECT TO AN ENTITY OWNED SOLELY BY THE  
8 PRINCIPAL WHICH MAY, IF OPERATION OF ENTITY OR BUSINESS IS  
9 AUTHORIZED ABOVE, BE EXERCISED AS PROVIDED UNDER THE  
10 SUBJECT OF OPERATION OF THE ENTITY OR BUSINESS".

11 Page 49, line 6, strike "OR";

12 line 7, strike "GUARDIAN";

13 line 9, strike "OR GUARDIAN".

14 Page 56, line 22, strike "THE EFFECTIVE DATE OF THIS" and substitute  
15 "JANUARY 1, 2010:";

16 strike line 23.

17 Page 57, line 2, strike "THE EFFECTIVE DATE OF THIS PART 7;" and  
18 substitute "JANUARY 1, 2010:";

19 line 4, strike "THE EFFECTIVE DATE" and substitute "JANUARY 1, 2010,";

20 strike line 5;

21 line 7, strike "THE EFFECTIVE DATE OF THIS";

22 line 8, strike "PART 7" and substitute "JANUARY 1, 2010,";

23 line 13, strike "THE EFFECTIVE DATE OF THIS PART 7" and substitute  
24 "JANUARY 1, 2010,";

25 after line 14, insert the following:

26 "(2) (a) A POWER OF ATTORNEY IS DURABLE AS DETERMINED  
27 PURSUANT TO SECTION 15-14-704(1) AND IS OTHERWISE CONSTRUED AND



1 APPLIED IN ACCORDANCE WITH THIS PART 7 PRIOR TO JANUARY 1, 2010, IF  
2 THE POWER OF ATTORNEY:

3 (I) IS SIGNED ON OR AFTER THE DATE THIS PART 7 BECOMES LAW  
4 AND BEFORE JANUARY 1, 2010;

5 (II) IS EITHER:

6 (A) SUBSTANTIALLY IN THE FORM SET FORTH IN SECTION  
7 15-14-741; OR

8 (B) STATES THAT IT IS SUBJECT TO THE "UNIFORM POWER OF  
9 ATTORNEY ACT" OR TO THIS PART 7.

10 (b) TO THE EXTENT OF ANY CONFLICT BETWEEN THIS SUBSECTION  
11 (2) AND EITHER PART 13 OF ARTICLE 1 OF THIS TITLE OR SECTION  
12 15-14-501, THIS SUBSECTION (2) SHALL CONTROL."

13 Page 58, after line 23, insert the following:

14 "SECTION 5. Part 5 of article 14 of title 15, Colorado Revised  
15 Statutes, is amended BY THE ADDITION OF A NEW SECTION  
16 CONTAINING RELOCATED PROVISIONS, WITH AMENDMENTS,  
17 to read:

18 **15-14-500.3. [Formerly 15-14-601.] Legislative declaration.**

19 (1) The general assembly hereby recognizes that each adult individual  
20 has the right as a principal to appoint an agent to deal with property or  
21 make personal decisions for the individual, but that this right cannot be  
22 fully effective unless the principal may empower the agent to act  
23 throughout the principal's lifetime, including during periods of disability,  
24 and be sure that any third party will honor the agent's authority at all  
25 times.

26 (2) The general assembly hereby finds, determines, and declares  
27 that:

28 (a) In light of modern financial needs, the statutory recognition of  
29 the right of delegation in Colorado must be restated, among other things,  
30 to expand its application and the permissible scope of the agent's  
31 authority, to clarify the power of the individual to authorize an agent to



1 make financial decisions for the individual, and to better protect any third  
2 party who relies in good faith on the agent so that reliance will be  
3 assured.

4 (b) The public interest requires a standard form affidavit of  
5 ~~agency~~ FOR CERTIFICATION OF AGENCY that any third party may use to  
6 assure that an agent's authority under an agency has not been altered or  
7 terminated.

8 (3) The general assembly hereby finds, determines, and declares  
9 that nothing in this ~~part 6~~ PART 5 OR PARTS 6 OR 7 OF THIS ARTICLE shall  
10 be deemed to authorize or encourage any course of action that violates the  
11 criminal laws of this state or the United States. Similarly, nothing in this  
12 ~~part 6~~ PART 5 OR PARTS 6 OR 7 OF THIS ARTICLE shall be deemed to  
13 authorize or encourage any violation of any civil right expressed in the  
14 constitution, statutes, case law, or administrative rulings of this state or  
15 the United States or any course of action that violates the public policy  
16 expressed in the constitution, statutes, case law, or administrative rulings  
17 of this state or the United States.

18 (4) The general assembly hereby recognizes each adult's  
19 constitutional right to accept or reject medical treatment, artificial  
20 nourishment, and hydration and the right to create advanced medical  
21 directives and to appoint an agent to make health care decisions under a  
22 medical durable power of attorney. The "Colorado Patient Autonomy  
23 Act", sections 15-14-503 to 15-14-509, is intended to assist the exercise  
24 of such rights.

25 (5) In the event of a conflict between the provisions of ~~this part 6~~  
26 PART 7 OF THIS ARTICLE and the "Colorado Patient Autonomy Act" or  
27 between the provisions of powers of attorney prepared pursuant to ~~this~~  
28 ~~part 6~~ PART 7 OF THIS ARTICLE and the "Colorado Patient Autonomy Act",  
29 the provisions of the "Colorado Patient Autonomy Act" or provisions of  
30 powers of attorney prepared pursuant to the "Colorado Patient Autonomy  
31 Act" shall prevail.

32 (6) ~~This part 6 does~~ PARTS 6 AND 7 OF THIS ARTICLE DO not  
33 abridge the right of any person to enter into a verbal principal and agent  
34 relationship. A brokerage relationship between a real estate broker and  
35 a seller, landlord, buyer, or tenant in a real estate transaction established  
36 pursuant to part 8 of article 61 of title 12, C.R.S., shall be governed by the



1 provisions of part 8 of article 61 of title 12, C.R.S., and not by ~~this part~~  
2 ~~6 PARTS 6 AND 7 OF THIS ARTICLE.~~

3 (7) ~~This part 6 does PARTS 6 AND 7 OF THIS ARTICLE DO not create~~  
4 ~~any power or right in an agent that the agent's principal does not hold or~~  
5 ~~possess and does not abridge contracts existing between principals and~~  
6 ~~third parties."~~

7 Renumber succeeding sections accordingly.

8 Page 59, strike lines 5 through 7, and substitute the following:

9 "ALSO INCLUDES A POWER OR DELEGATION THAT IS:

10 (I) EXCLUDED FROM THE APPLICATION OF PART 7 OF THIS ARTICLE  
11 PURSUANT TO SECTION 15-14-703;

12 (II) NOT A POWER TO MAKE HEALTH CARE DECISIONS; AND

13 (III) NOT EFFECTIVE WITHOUT APPLICATION OF SECTION  
14 15-14-502."

15 Page 60, after line 8, insert the following:

16 "SECTION 8. Repeal. 15-14-603 (2) (b), (3) (b), and (4),  
17 Colorado Revised Statutes, are repealed as follows:

18 **15-14-603. Applicability.** ~~(2) (b) The statutory power of attorney~~  
19 ~~for property form set forth in section 15-1-1302 does not limit the~~  
20 ~~applicability of the provisions of this part 6. It is the general assembly's~~  
21 ~~intent that every agency instrument, including but not limited to statutory~~  
22 ~~agency instruments, shall have the benefit of and be governed by all of~~  
23 ~~the general provisions of this part 6, except as otherwise provided in this~~  
24 ~~part 6 or to the extent the terms of the agency instrument are inconsistent~~  
25 ~~with the provisions of this part 6.~~

26 (3) (b) ~~Any durable power of attorney executed under this part 6~~  
27 ~~may also have a document with a written statement as provided in section~~  
28 ~~12-34-105 (b), C.R.S., or a statement in substantially similar form,~~  
29 ~~indicating a decision regarding organ and tissue donation. Such a~~  
30 ~~document shall be executed in accordance with the provisions of the~~

1 ~~"Revised Uniform Anatomical Gift Act", part 1 of article 34 of title 12,~~  
2 ~~C.R.S. Such a written statement may be in the following form:~~

3 ~~I hereby make an anatomical gift, to be effective upon my~~  
4 ~~death, of:~~

5 ~~A. \_\_\_\_\_ Any needed organs/tissues~~

6 ~~B. \_\_\_\_\_ The following organs/tissues:~~

7 \_\_\_\_\_  
8 ~~Donor signature: \_\_\_\_\_~~

9 ~~(4) A principal must be at least eighteen years of age to execute an~~  
10 ~~agency instrument under the provisions of this part 6. A natural person~~  
11 ~~must be at least twenty-one years of age to be appointed as an agent under~~  
12 ~~an agency instrument.~~

13 **SECTION 9.** 15-14-604, Colorado Revised Statutes, is amended  
14 to read:

15 **15-14-604. Duration of agency - amendment and revocation -**  
16 **resignation of agent.** (1) ~~Where an agency instrument contains the~~  
17 ~~language specified in section 15-14-501 (1) or otherwise specifies that the~~  
18 ~~agent designated therein may exercise the authority conferred~~  
19 ~~notwithstanding the principal's disability, such agent may exercise such~~  
20 ~~authority notwithstanding the principal's later disability or incapacity or~~  
21 ~~later uncertainty as to whether the principal is dead.~~

22 (2) Any agency created by an agency instrument continues until  
23 the death of the principal ~~CEASED TO EXIST~~, regardless of the length of  
24 time that elapses, unless the agency instrument states an earlier  
25 termination date. The principal may amend or revoke the agency  
26 instrument at any time and in any manner that is communicated to the  
27 agent or to any other person who is related to the subject matter of the  
28 agency. Any agent who acts in good faith on behalf of the principal  
29 within the scope of an agency instrument is not liable for any acts that are  
30 no longer authorized by reason of an amendment or revocation of the  
31 agency instrument until the agent receives actual notice of the amendment  
32 or revocation. An agency may be temporarily continued under the  
33 conditions specified in section 15-14-607.

34 (3) ~~All acts of the agent that are within the scope of the agency~~  
35 ~~and are committed during any period of disability, incapacity, or~~



1 ~~incompetency of the principal have the same effect and inure to the~~  
2 ~~benefit of and bind the principal and his or her successors in interest as~~  
3 ~~if the principal were competent and not disabled.~~

4 (4) Any agent acting on behalf of a principal under an agency  
5 instrument has the right to resign under the terms and conditions stated in  
6 the agency instrument. If the agency instrument does not specify the  
7 terms and conditions of resignation, an agent may resign by notifying the  
8 principal, or the principal's ~~guardian or conservator~~ RECEIVER,  
9 CUSTODIAN, TRUSTEE IN BANKRUPTCY, LIQUIDATING TRUSTEE, OR SIMILAR  
10 REPRESENTATIVE if one has been appointed, in writing of the agent's  
11 resignation. The agent shall also notify in writing the successor agent, if  
12 any, and all reasonably ascertainable third parties who are affected by the  
13 resignation. In all cases, any party who receives notice of the resignation  
14 of an agent is bound by such notice.

15 **SECTION 10.** 15-14-606, Colorado Revised Statutes, is amended  
16 to read:

17 **15-14-606. Duty - standard of care - record-keeping -**  
18 **exoneration.** Unless otherwise agreed by the principal and agent in the  
19 agency instrument, an agent is under no duty to exercise the powers  
20 granted by the agency or to assume control of or responsibility for any of  
21 the principal's property care; or affairs. ~~regardless of the principal's~~  
22 ~~physical or mental condition.~~ Whenever the agent exercises the powers  
23 granted by the agency, the agent shall use due care to act in the best  
24 interests of the principal in accordance with the terms of the agency. Any  
25 agent who acts under an agency instrument shall be liable for any breach  
26 of legal duty owed by the agent to the principal under Colorado law. The  
27 agent shall keep a record of all receipts, disbursements, and significant  
28 actions taken under the agency. The agent shall not be liable for any loss  
29 due to the act or default of any other person. ~~When exercising any~~  
30 ~~powers under an agency, during any period of disability of the principal,~~  
31 ~~the agent shall be held to the standard of care of a fiduciary as specified~~  
32 ~~in sections 15-16-302 and 15-14-418.~~

33 **SECTION 11.** 15-14-607 (1) (b) (I), Colorado Revised Statutes,  
34 is amended to read:

35 **15-14-607. Reliance on an agency instrument.** (1) (b) (I) Any  
36 third party who deals with an agent may presume, in the absence of actual



1 knowledge to the contrary, that:

2 (A) The agency instrument naming the agent was validly  
3 executed;

4 (B) The principal ~~was competent~~ HAD AUTHORITY TO ACT at the  
5 time of execution; and

6 (C) At the time of reliance, the principal ~~is alive~~ EXISTS, the  
7 agency instrument and the relevant powers of the agent have not  
8 terminated or been amended, and the acts of the agent conform to the  
9 standards of this part 6."

10 Renumber succeeding sections accordingly.

11 Page 61, strike lines 3 through 21.

12 Renumber succeeding sections accordingly.

13 Page 66, strike lines 6 through 15, and substitute the following:

14 **"SECTION 19. Repeal of provisions being relocated in this**  
15 **act.** 15-14-601, Colorado Revised Statutes, is repealed.

16 **SECTION 20. Effective date.** Sections 2 through 19 of this act  
17 shall take effect on January 1, 2010, and the remainder of this act shall  
18 take effect upon passage.

19 **SECTION 21. Safety clause.** The general assembly hereby finds,  
20 determines, and declares that this act is necessary for the immediate  
21 preservation of the public peace, health, and safety."

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