

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 10-1050.01 Richard Sweetman

SENATE BILL 10-199

SENATE SPONSORSHIP

Carroll M.,

HOUSE SPONSORSHIP

Court,

Senate Committees
Judiciary

House Committees
Judiciary

A BILL FOR AN ACT

101 CONCERNING CLARIFYING REVISIONS TO CERTAIN PROVISIONS OF THE
102 COLORADO PROBATE CODE.

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 revisor of statutes to include in the publication of the "Colorado Probate Code" as nonstatutory matter, following each amended or added section, the full text of the official comments to that section contained in the 2008 official text of "Amendments to Uniform Probate Code" issued by the national conference of commissioners on

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.

HOUSE
Am ended 2nd Reading
May 7, 2010

SENATE
3rd Reading Unam ended
May 3, 2010

SENATE
Am ended 2nd Reading
April 30, 2010

uniform state laws, with any changes in the official comments or Colorado comments to correspond to Colorado changes in the uniform probate code.

The bill requires cost-of-living adjustments of certain dollar amounts to be rounded to one-thousand-dollar increments, rather than one-hundred-dollar increments, for purposes of the Colorado probate code.

The bill provides that a "will" does not include a designated beneficiary agreement for purposes of the Colorado probate code.

The bill removes statutory language awarding a part or all of an intestate estate to a designated beneficiary who was designated by the decedent to be his or her designated beneficiary for purposes of intestate succession. The bill adds new statutory language concerning the rights of a designated beneficiary to receive all or part of an intestate estate.

The bill removes statutory language awarding a share of an intestate estate for a decedent's stepchildren when there are no blood relatives of the decedent available to receive an intestate share.

A child who is in the process of being adopted by a second adult in a second-parent adoption when the second adult dies is treated as adopted by the second adult if the child's parent survives the second adult by 120 hours.

The bill reduces the degree of evidence required to overcome a presumption that a deceased spouse has a parent-child relationship with a child born using assisted reproduction technologies.

The bill revises the scope of the rules of construction applicable to wills and other governing instruments to specify that new class gift rules apply only to documents executed or re-published on or after the effective date of the applicable statute.

Terms of relationship in a governing instrument that do not differentiate relationships by blood from those by marriage, such as uncles, aunts, nieces, or nephews, are construed to exclude relatives by marriage.

A personal representative is protected from potential surcharges and liability as a result of the personal representative making distributions of assets without knowledge that an individual intends or may intend to use a decedent's genetic material to create a child and that the birth of such a child would affect the asset distribution formula.

The bill amends the effective date-applicability clause of House Bill 09-1287, enacted in 2009.

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

2 **SECTION 1.** 2-5-102, Colorado Revised Statutes, is amended BY

1 THE ADDITION OF A NEW SUBSECTION to read:

2 **2-5-102. Inclusions - nonstatutory.** (11) THERE SHALL BE
3 INCLUDED IN THE PUBLICATION OF THE "COLORADO PROBATE CODE" AS
4 NONSTATUTORY MATTER, FOLLOWING EACH AMENDED OR ADDED
5 SECTION, THE FULL TEXT OF THE OFFICIAL COMMENTS TO THAT SECTION
6 CONTAINED IN THE 2008 OFFICIAL TEXT OF "AMENDMENTS TO UNIFORM
7 PROBATE CODE" ISSUED BY THE NATIONAL CONFERENCE OF
8 COMMISSIONERS ON UNIFORM STATE LAWS, WITH ANY CHANGES IN THE
9 OFFICIAL COMMENTS TO CORRESPOND TO COLORADO CHANGES IN THE
10 "UNIFORM PROBATE CODE". THE COMMENTS SHALL BE PREPARED BY THE
11 REVISOR OF STATUTES AND APPROVED FOR PUBLICATION BY THE
12 COMMITTEE ON LEGAL SERVICES.

13 **SECTION 2.** 15-10-112 (1) (b), (2), and (3), Colorado Revised
14 Statutes, as they will become effective July 1, 2010, are amended to read:

15 **15-10-112. Cost of living adjustment of certain dollar**
16 **amounts.** (1) As used in this section, unless the context otherwise
17 requires:

18 (b) "Reference base index" means the CPI for the calendar year
19 ~~2009~~ 2010.

20 (2) The dollar amounts stated in sections 15-11-102, 15-11-201
21 (2), 15-11-403, ~~and~~ 15-11-405, AND 15-12-1201 apply to the estate of a
22 decedent who died during or after 2010, but for the estate of a decedent
23 who died after 2011, these dollar amounts must be increased or decreased
24 if the CPI for the calendar year immediately preceding the year of death
25 exceeds or is less than the reference base index. The amount of any
26 increase or decrease is computed by multiplying each dollar amount by
27 the percentage by which the CPI for the calendar year immediately

1 preceding the year of death exceeds or is less than the reference base
2 index. If ~~any~~ THE AMOUNT OF THE increase or decrease produced by the
3 computation is not a multiple of one ~~hundred~~ THOUSAND dollars, THEN the
4 AMOUNT OF THE increase or decrease is rounded down if IT IS an increase,
5 or ROUNDED up if IT IS a decrease, to the next multiple of one ~~hundred~~
6 THOUSAND dollars, but for the purpose of section 15-11-405, the periodic
7 installment amount is the lump-sum amount divided by twelve. If the CPI
8 for ~~2009~~ 2010 is changed by the bureau of labor statistics, the reference
9 base index must be revised using the rebasing factor reported by the
10 bureau of labor statistics, or other comparable data if a rebasing factor is
11 not reported.

12 (3) Before ~~February 1, 2011~~ FEBRUARY 1, 2012, and before
13 February 1 of each succeeding year, the department of revenue shall
14 publish a cumulative list, beginning with the dollar amounts effective for
15 the estate of a decedent who died in ~~2011~~ 2012 of each dollar amount as
16 increased or decreased under this section.

17 **SECTION 3.** 15-10-201 (59), Colorado Revised Statutes, is
18 amended to read:

19 **15-10-201. General definitions.** Subject to additional definitions
20 contained in the subsequent articles that are applicable to specific articles,
21 parts, or sections, and unless the context otherwise requires, in this code:

22 (59) "Will" includes any codicil and any testamentary instrument
23 that merely appoints an executor, revokes or revises another will,
24 nominates a guardian, or expressly excludes or limits the right of an
25 individual or class to succeed to property of the decedent passing by
26 intestate succession. "WILL" DOES NOT INCLUDE A DESIGNATED
27 BENEFICIARY AGREEMENT THAT IS EXECUTED PURSUANT TO ARTICLE 22

1 OF THIS TITLE.

2 **SECTION 4.** Part 1 of article 11 of title 15, Colorado Revised
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
4 read:

5 **15-11-102.5. Share of designated beneficiary.** (1) IF THE
6 DECEDENT IS SURVIVED BY A PERSON WITH THE RIGHT TO INHERIT REAL OR
7 PERSONAL PROPERTY FROM THE DECEDENT IN A DESIGNATED BENEFICIARY
8 AGREEMENT EXECUTED PURSUANT TO ARTICLE 22 OF THIS TITLE, THE
9 INTESTATE SHARE OF THE DECEDENT'S DESIGNATED BENEFICIARY IS:

10 (a) THE ENTIRE ESTATE IF NO DESCENDENT OF THE DECEDENT
11 SURVIVES THE DECEDENT; OR

12 (b) ONE HALF OF THE INTESTATE ESTATE IF ONE OR MORE
13 DESCENDANTS OF THE DECEDENT SURVIVE THE DECEDENT.

14 **SECTION 5.** The introductory portion to 15-11-103 and
15 15-11-103 (1) and (7), Colorado Revised Statutes, as they will become
16 effective July 1, 2010, are amended to read:

17 **15-11-103. Share of heirs other than surviving spouse and**
18 **designated beneficiary.** Any part of the intestate estate not passing to
19 the decedent's surviving spouse under section 15-11-102, OR TO THE
20 DECEDENT'S SURVIVING DESIGNATED BENEFICIARY UNDER SECTION
21 15-11-102.5, or the entire intestate estate if there is no surviving spouse
22 AND NO SURVIVING DESIGNATED BENEFICIARY WITH THE RIGHT TO INHERIT
23 REAL OR PERSONAL PROPERTY FROM THE DECEDENT THROUGH INTESTATE
24 SUCCESSION, passes in the following order to the individuals who survive
25 the decedent:

26 (1) ~~To a designated beneficiary who was designated by the~~
27 ~~decedent to be his or her designated beneficiary for purposes of intestate~~

1 ~~succession pursuant to a designated beneficiary agreement that has been~~
2 ~~executed and recorded with a county clerk and recorder as provided in~~
3 ~~article 22 of this title; except that, if the decedent has surviving children,~~
4 ~~then the designated beneficiary shall receive one-half of the intestate~~
5 ~~estate and the surviving children shall receive one-half of the intestate~~
6 ~~estate;~~

7 ~~(7) If there is no taker under subsections (1) to (6) of this section,~~
8 ~~but the decedent has:~~

9 ~~(a) One deceased spouse who has one or more descendants who~~
10 ~~survive the decedent, the estate or part thereof passes to that spouse's~~
11 ~~descendants per capita at each generation; or~~

12 ~~(b) More than one deceased spouse who has one or more~~
13 ~~descendants who survive the decedent, an equal share of the estate or part~~
14 ~~thereof passes to each set of descendants per capita at each generation.~~

15 **SECTION 6.** 15-11-118 (3), Colorado Revised Statutes, as it will
16 become effective July 1, 2010, is amended, and the said 15-11-118, as it
17 will become effective July 1, 2010, is further amended BY THE
18 ADDITION OF A NEW SUBSECTION, to read:

19 **15-11-118. Adoptee and adoptee's adoptive parent or parents.**
20 **(2.5) Individual in process of being adopted by second parent.** FOR
21 PURPOSES OF SUBSECTION (1) OF THIS SECTION, A CHILD WHO IS IN THE
22 PROCESS OF BEING ADOPTED BY A SECOND ADULT IN A SECOND-PARENT
23 ADOPTION WHEN THE SECOND ADULT DIES IS TREATED AS ADOPTED BY THE
24 SECOND ADULT IF THE CHILD'S PARENT SURVIVES THE SECOND ADULT BY
25 ONE HUNDRED TWENTY HOURS.

26 **(3) Child of assisted reproduction or gestational child in**
27 **process of being adopted.** If, after a parent-child relationship is

1 established between a child of assisted reproduction and a parent under
2 section 15-11-120 or between a gestational child and a parent under
3 section 15-11-121, the child is in the process of being adopted by the
4 parent's spouse OR ANOTHER INDIVIDUAL when that spouse OR INDIVIDUAL
5 dies, the child is treated as adopted by the deceased spouse OR
6 INDIVIDUAL for the purpose of paragraph (b) of subsection (2) of this
7 section.

8 **SECTION 7.** 15-11-119 (2.5) (a) and (2.5) (b), Colorado Revised
9 Statutes, as they will become effective July 1, 2010, are amended to read:

10 **15-11-119. Adoptee and adoptee's genetic parents. (2.5) Child**
11 **of a second-parent adoption.** A parent-child relationship exists between
12 an individual who is adopted by a second parent and:

13 (a) ~~The~~ A genetic parent who consented to a second-parent
14 adoption; and

15 (b) ~~The other~~ ANOTHER genetic parent WHO IS NOT A THIRD-PARTY
16 DONOR, but only for the purpose of the right of the adoptee or a
17 descendant of the adoptee to inherit from or through the other genetic
18 parent.

19 **SECTION 8.** 15-11-120 (8), Colorado Revised Statutes, as it will
20 become effective July 1, 2010, is amended to read:

21 **15-11-120. Child conceived by assisted reproduction other**
22 **than child born to gestational carrier. (8) Presumption - birth**
23 **mother is married or surviving spouse.** For the purpose of paragraph
24 (b) of subsection (6) of this section, the following rules apply:

25 (a) If the birth mother is married AT THE TIME OF CONCEPTION and
26 no divorce proceeding is THEN pending, ~~in the absence of clear and~~
27 ~~convincing evidence to the contrary,~~ her spouse ~~satisfies~~ IS PRESUMED TO

1 SATISFY the requirements of subparagraph (I) or (II) of paragraph (b) of
2 subsection (6) of this section.

3 (b) If the birth mother is a surviving spouse and at her deceased
4 spouse's death no divorce proceeding was pending, ~~in the absence of clear~~
5 ~~and convincing evidence to the contrary~~, her deceased spouse satisfies IS
6 PRESUMED TO SATISFY the requirements of subparagraph (II) or (III) of
7 paragraph (b) of subsection (6) of this section.

8 **SECTION 9.** 15-11-502, Colorado Revised Statutes, is amended
9 BY THE ADDITION OF A NEW SUBSECTION to read:

10 **15-11-502. Execution - witnessed or notarized wills -**
11 **holographic wills.** (5) FOR PURPOSES OF THIS PART 5, "WILL" DOES NOT
12 INCLUDE A DESIGNATED BENEFICIARY AGREEMENT THAT IS EXECUTED
13 PURSUANT TO ARTICLE 22 OF THIS TITLE.

14 **SECTION 10.** 15-11-503, Colorado Revised Statutes, is amended
15 BY THE ADDITION OF A NEW SUBSECTION to read:

16 **15-11-503. Writings intended as wills.** (4) SUBSECTION (1) OF
17 THIS SECTION SHALL NOT APPLY TO A DESIGNATED BENEFICIARY
18 AGREEMENT UNDER ARTICLE 22 OF THIS TITLE.

19 **SECTION 11.** 15-11-701 (1), Colorado Revised Statutes, is
20 amended, and the said 15-11-701 is further amended BY THE
21 ADDITION OF A NEW SUBSECTION, to read:

22 **15-11-701. Scope.** For the purposes of this part 7, the term
23 "governing instrument" shall be as defined in section 15-10-201 (22);
24 except:

25 (1) "Governing instrument" shall not include a deed ~~which~~ THAT
26 transfers any interest in real property; however, section 15-11-712 shall
27 apply to such deeds. ~~and~~

1 (3) IN THE ABSENCE OF A FINDING OF A CONTRARY INTENTION, THE
2 RULES OF CONSTRUCTION IN SECTION 15-11-705 APPLY TO A GOVERNING
3 INSTRUMENT EXECUTED OR REPUBLISHED OR REAFFIRMED ON OR AFTER
4 JULY 1, 2010, AND THE RULES OF CONSTRUCTION UNDER SECTION
5 15-11-705, AS IT EXISTED PRIOR TO JULY 1, 2010, APPLY TO A GOVERNING
6 INSTRUMENT EXECUTED PRIOR TO JULY 1, 2010, AND NOT REPUBLISHED OR
7 REAFFIRMED AFTER THAT DATE.

8 **SECTION 12.** 15-11-705 (3) and (4), Colorado Revised Statutes,
9 as they will become effective July 1, 2010, are amended to read:

10 **15-11-705. Class gifts construed to accord with intestate**
11 **succession.** (3) **Relatives by marriage.** Terms of relationship in a
12 governing instrument that do not differentiate relationships by blood from
13 those by marriage, such as uncles, aunts, nieces, or nephews, ~~are~~
14 STANDING ALONE SHALL BE construed to exclude relatives by marriage.
15 ~~unless:~~

16 ~~(a) When the governing instrument was executed, the class was~~
17 ~~then and foreseeably would be empty; or~~

18 ~~(b) The language or circumstances otherwise establish that~~
19 ~~relatives by marriage were intended to be included.~~

20 (4) **Half-blood relatives.** Terms of relationship in a governing
21 instrument that do not differentiate relationships by the half blood from
22 those by the whole blood, such as brothers, sisters, nieces, or nephews,
23 ~~are~~ STANDING ALONE SHALL BE construed to include both types of
24 relationships.

25 **SECTION 13.** 15-12-203 (1) (b.5), Colorado Revised Statutes,
26 is amended to read:

27 **15-12-203. Priority among persons seeking appointment as**

1 **personal representative.** (1) Whether the proceedings are formal or
2 informal, persons who are not disqualified have priority for appointment
3 in the following order:

4 (b.5) A person ~~nominated~~ GIVEN PRIORITY to be a personal
5 representative ~~by a power conferred~~ in a designated beneficiary
6 agreement MADE PURSUANT TO ARTICLE 22 OF THIS TITLE;

7 **SECTION 14.** 15-12-703, Colorado Revised Statutes, is amended
8 BY THE ADDITION OF A NEW SUBSECTION to read:

9 **15-12-703. General duties - relation and liability to persons**
10 **interested in estate - standing to sue.** (3.5) A PERSONAL
11 REPRESENTATIVE SHALL NOT BE SURCHARGED FOR DISTRIBUTIONS MADE
12 THAT DO NOT TAKE INTO CONSIDERATION THE POSSIBLE BIRTH OF A
13 POSTHUMOUSLY CONCEIVED CHILD UNLESS PRIOR TO SUCH DISTRIBUTION:

14 (a) THE PERSONAL REPRESENTATIVE HAS RECEIVED NOTICE OR HAS
15 ACTUAL KNOWLEDGE THAT A PARTY INTENDS TO USE AN INDIVIDUAL'S
16 GENETIC MATERIAL TO CREATE A CHILD OR HAS RECEIVED WRITTEN
17 NOTICE THAT A PARTY MAY INTEND TO USE AN INDIVIDUAL'S GENETIC
18 MATERIAL TO CREATE A CHILD; AND

19 (b) THE BIRTH OF THE CHILD COULD AFFECT THE DISTRIBUTION OF
20 THE DECEDENT'S ESTATE.

21 **SECTION 15.** 15-12-705 (1) (g) and (1) (h), Colorado Revised
22 Statutes, are amended, and the said 15-12-705 (1) is further amended BY
23 THE ADDITION OF A NEW PARAGRAPH, to read:

24 **15-12-705. Duty of personal representative - information to**
25 **heirs and devisees.** (1) Not later than thirty days after appointment,
26 every personal representative, except any special administrator, shall give
27 information of his or her appointment to the heirs and devisees, including,

1 if there has been no formal testacy proceeding and if the personal
2 representative was appointed on the assumption that the decedent died
3 intestate, the devisees in any will mentioned in the application for
4 appointment of a personal representative. The information shall be
5 delivered or sent by ordinary mail to each of the heirs and devisees whose
6 address is reasonably available to the personal representative. The duty
7 does not extend to require information to persons who have been
8 adjudicated in a prior formal testacy proceeding to have no interest in the
9 estate. The information shall:

10 (g) Indicate that, because a court will not routinely review or
11 adjudicate matters unless it is specifically requested to do so by a
12 beneficiary, creditor, or other interested person, all interested persons,
13 including beneficiaries and creditors, have the responsibility to protect
14 their own rights and interests in the estate in the manner provided by the
15 provisions of this code by filing an appropriate pleading with the court by
16 which the estate is being administered and serving it on all interested
17 persons pursuant to section 15-10-401; ~~and~~

18 (h) Indicate that all interested parties have the right to obtain
19 information about the estate by filing a demand for notice pursuant to
20 section 15-12-204; AND

21 (i) INDICATE THAT ANY PERSON WHO HAS KNOWLEDGE THAT A
22 PARTY INTENDS OR MAY INTEND TO USE AN INDIVIDUAL'S GENETIC
23 MATERIAL TO CREATE A CHILD AND THAT THE BIRTH OF THE CHILD COULD
24 AFFECT THE DISTRIBUTION OF THE DECEDENT'S ESTATE SHOULD GIVE
25 WRITTEN NOTICE OF SUCH KNOWLEDGE TO THE PERSONAL
26 REPRESENTATIVE OF THE DECEDENT'S ESTATE.

27 **SECTION 16.** 15-12-808, Colorado Revised Statutes, is amended

1 BY THE ADDITION OF A NEW SUBSECTION to read:

2 **15-12-808. Individual liability of personal representative.**

3 (5) A PERSONAL REPRESENTATIVE IS NOT INDIVIDUALLY LIABLE FOR
4 MAKING DISTRIBUTIONS THAT DO NOT TAKE INTO CONSIDERATION THE
5 POSSIBLE BIRTH OF A POSTHUMOUSLY CONCEIVED CHILD IF THE PERSONAL
6 REPRESENTATIVE MADE THE DISTRIBUTION PRIOR TO RECEIVING NOTICE OR
7 ACQUIRING ACTUAL KNOWLEDGE THAT:

8 (a) A PARTY INTENDS OR MAY INTEND TO USE AN INDIVIDUAL'S
9 GENETIC MATERIAL TO CREATE A CHILD; AND

10 (b) THE BIRTH OF THE CHILD COULD AFFECT THE DISTRIBUTION OF
11 THE DECEDENT'S ESTATE.

12 **SECTION 17.** 15-16-306, Colorado Revised Statutes, is amended
13 BY THE ADDITION OF A NEW SUBSECTION to read:

14 **15-16-306. Personal liability of trustee to third parties.** (7) A
15 TRUSTEE IS NOT PERSONALLY LIABLE FOR MAKING DISTRIBUTIONS OF
16 PROPERTY THAT DO NOT TAKE INTO CONSIDERATION THE POSSIBLE BIRTH
17 OF A POSTHUMOUSLY CONCEIVED CHILD UNLESS, PRIOR TO THE
18 DISTRIBUTION, THE PERSONAL REPRESENTATIVE RECEIVED NOTICE OR
19 ACQUIRED ACTUAL KNOWLEDGE THAT:

20 (a) A PARTY INTENDS OR MAY INTEND TO USE AN INDIVIDUAL'S
21 GENETIC MATERIAL TO CREATE A CHILD; AND

22 (b) THE BIRTH OF THE CHILD COULD AFFECT THE DISTRIBUTION OF
23 THE TRUST ASSETS.

24 **SECTION 18.** 15-14-310 (1) (b), Colorado Revised Statutes, is
25 amended to read:

26 **15-14-310. Who may be guardian - priorities - prohibition of**
27 **dual roles.** (1) Subject to subsection (4) of this section, the court in

1 appointing a guardian shall consider persons otherwise qualified in the
2 following order of priority:

3 (b) A person nominated as guardian by the respondent, including
4 the respondent's specific nomination of a guardian made in a durable
5 power of attorney or GIVEN PRIORITY TO BE A GUARDIAN in a designated
6 beneficiary agreement made pursuant to article 22 of this title;

7 **SECTION 19.** 15-14-413 (1) (b), Colorado Revised Statutes, is
8 amended to read:

9 **15-14-413. Who may be conservator - priorities - prohibition**
10 **of dual roles.** (1) Except as otherwise provided in subsection (4) of this
11 section, the court, in appointing a conservator, shall consider persons
12 otherwise qualified in the following order of priority:

13 (b) A person nominated as conservator by the respondent,
14 including the respondent's specific nomination of a conservator made in
15 a durable power of attorney or GIVEN PRIORITY TO BE A CONSERVATOR in
16 a designated beneficiary agreement MADE pursuant to article 22 of this
17 title, if the respondent has attained twelve years of age;

18 **SECTION 20.** 15-18.5-103 (1), Colorado Revised Statutes, is
19 amended to read:

20 **15-18.5-103. Proxy decision-makers for medical treatment**
21 **authorized.** (1) A health care provider or health care facility may rely,
22 in good faith, upon the medical treatment decision of a proxy
23 decision-maker selected in accordance with subsection (4) of this section
24 if an adult patient's attending physician determines that such patient lacks
25 the decisional capacity to provide informed consent to or refusal of
26 medical treatment and no guardian with medical decision-making
27 authority, agent appointed in a medical durable power of attorney, person

1 ~~designated as a designated beneficiary~~ with the right to act as a proxy
2 decision-maker IN A DESIGNATED BENEFICIARY AGREEMENT MADE
3 pursuant to article 22 of this title, or other known person has the legal
4 authority to provide such consent or refusal on the patient's behalf.

5 **SECTION 21.** 15-18.5-104 (1), Colorado Revised Statutes, is
6 amended to read:

7 **15-18.5-104. Surrogate decision-makers for health care**
8 **benefits.** (1) A proxy decision-maker for medical treatment selected in
9 accordance with section 15-18.5-103 or a person ~~designated as a~~
10 ~~designated beneficiary~~ with the right to act as a surrogate decision-maker
11 IN A DESIGNATED BENEFICIARY AGREEMENT MADE pursuant to article 22
12 of this title shall have authority to make health care benefit decisions on
13 behalf of an adult patient and may be known additionally as a surrogate
14 decision-maker for health care benefits.

15 **SECTION 22.** 15-19-106 (1) (c.5), Colorado Revised Statutes, is
16 amended to read:

17 **15-19-106. Right to dispose of remains.** (1) Subject to section
18 15-19-105 (2), the right to control disposition of the last remains or
19 ceremonial arrangements of a decedent vests in and devolves upon the
20 following persons, at the time of the decedent's death, in the following
21 order:

22 (c.5) A ~~designated beneficiary who was designated in a designated~~
23 ~~beneficiary agreement pursuant to article 22 of this title as having~~ PERSON
24 WITH the right to direct the disposition of the decedent's last remains IN A
25 DESIGNATED BENEFICIARY AGREEMENT MADE PURSUANT TO ARTICLE 22
26 OF THIS TITLE;

27 **SECTION 23.** 15-22-106, Colorado Revised Statutes, is amended

1 to read:

2 **15-22-106. Statutory form of a designated beneficiary**
3 **agreement.** (1) The following statutory form shall be the standard form
4 for a designated beneficiary agreement:

5 **DESIGNATED BENEFICIARY AGREEMENT**

6

7 **DISCLAIMER**

8 **Warning: While this document may indicate your wishes, certain**
9 **additional documents may be needed to protect these rights.**

10 **This designated beneficiary agreement is operative in the absence of**
11 **other estate planning documents and will be superseded and set aside**
12 **to the extent it conflicts with valid instruments such as a will, power**
13 **of attorney, or beneficiary designation on an insurance policy or**
14 **pension plan. This designated beneficiary agreement is superseded**
15 **by such other documents and does not cause any changes to be made**
16 **to those documents or designations. The parties understand that**
17 **executing and signing this agreement is not sufficient to designate the**
18 **other party for purposes of any insurance policy, pension plan,**
19 **payable upon death designation or manner in which title to property**
20 **is held and that additional action will be required to make or change**
21 **such designations. The parties understand that this designated**
22 **beneficiary agreement may be one component of estate planning**
23 **instructions and that they are encouraged to consult an attorney to**
24 **ensure their estate planning wishes are accomplished.**

25

26 We, _____, (insert full name and address) referred to as party
27 A, and _____, (insert full name and address) referred to as

1 party B, hereby designate each other as the other's designated beneficiary
2 with the following rights and protections, granted or withheld as indicated
3 by our initials:

4 TO GRANT ONE OR MORE OF THE RIGHTS OR PROTECTIONS
5 SPECIFIED IN THIS FORM, INITIAL THE LINE TO THE LEFT OF
6 EACH RIGHT OR PROTECTION YOU ARE GRANTING. TO
7 WITHHOLD A RIGHT OR PROTECTION, INITIAL THE LINE TO
8 THE RIGHT OF EACH RIGHT OR PROTECTION YOU ARE
9 WITHHOLDING.

10 A DESIGNATED BENEFICIARY AGREEMENT SHALL BE
11 PRESUMED TO GRANT ALL OF THE RIGHTS AND PROTECTIONS
12 LISTED IN THIS FORM UNLESS THE PARTIES WITHHOLD A
13 RIGHT OR PROTECTION IN THE MANNER SET FORTH
14 IMMEDIATELY ABOVE.

15 TO GRANT A RIGHT	TO WITHHOLD A RIGHT
16 OR PROTECTION	OR PROTECTION
17 INITIAL	INITIAL

18 Party A	Party B	Party A	Party B
------------	---------	---------	---------

19 ___ ___ The right to acquire, hold title to, own ___ ___
20 jointly, or transfer inter vivos or at death real or personal property as a
21 joint tenant with me with right of survivorship or as a tenant in common
22 with me;

23 ___ ___ The right to be designated by me as a ___ ___
24 beneficiary, payee, or owner as a trustee named in an inter vivos or
25 testamentary trust for the purposes of a nonprobate transfer on death;

26 ___ ___ The right to be designated by me as a ___ ___
27 beneficiary and recognized as a dependent in an insurance policy for life

1 insurance;

2 ___ ___ The right to be designated by me as a ___ ___

3 beneficiary and recognized as a dependent in a health insurance policy if

4 my employer elects to provide health insurance coverage for designated

5 beneficiaries;

6 ___ ___ The right to be designated by me as a ___ ___

7 beneficiary in a retirement or pension plan;

8 ___ ___ The right to petition for and have ___ ___

9 priority for appointment as a conservator, guardian, or personal

10 representative for me;

11 ___ ___ The right to visit me in a hospital, ___ ___

12 nursing home, hospice, or similar health care facility in which a party to

13 a designated beneficiary agreement resides or is receiving care;

14 ___ ___ The right to initiate a formal ___ ___

15 complaint regarding alleged violations of my rights as a nursing home

16 patient as provided in section 25-1-120, Colorado Revised Statutes;

17 ___ ___ The right to act as a proxy ___ ___

18 decision-maker or surrogate decision-maker to make medical care

19 decisions for me pursuant to section 15-18.5-103 or 15-18.5-104,

20 Colorado Revised Statutes;

21 ___ ___ The right to notice of the withholding ___ ___

22 or withdrawal of life-sustaining procedures for me pursuant to section

23 15-18-107, Colorado Revised Statutes;

24 ___ ___ The right to challenge the validity of ___ ___

25 a declaration as to medical or surgical treatment of me pursuant to section

26 ~~15-18-107~~ 15-18-108, Colorado Revised Statutes;

27 ___ ___ The right to act as my agent to make, ___ ___

1 revoke, or object to anatomical gifts involving my person pursuant to the
2 "Revised Uniform Anatomical Gift Act", part 1 of article 34 of title 12,
3 Colorado Revised Statutes;

4 ___ ___ The right to inherit real or personal ___ ___
5 property from me through intestate succession;

6 ___ ___ The right to have standing to receive ___ ___
7 benefits pursuant to the "Workers' Compensation Act of Colorado",
8 article 40 of title 8, Colorado Revised Statutes, in the event of my death
9 on the job;

10 ___ ___ The right to have standing to sue for ___ ___
11 wrongful death in the event of my death; and

12 ___ ___ The right to direct the disposition of ___ ___
13 my last remains pursuant to article 19 of title 15, Colorado Revised
14 Statutes.

15 THIS DESIGNATED BENEFICIARY AGREEMENT IS EFFECTIVE
16 WHEN RECEIVED FOR RECORDING BY THE COUNTY CLERK
17 AND RECORDER OF THE COUNTY IN WHICH ONE OF THE
18 DESIGNATED BENEFICIARIES RESIDES. THIS DESIGNATED
19 BENEFICIARY AGREEMENT WILL CONTINUE IN EFFECT UNTIL
20 ONE OF THE DESIGNATED BENEFICIARIES REVOKES THIS
21 AGREEMENT BY RECORDING A REVOCATION OF DESIGNATED
22 BENEFICIARY FORM WITH THE COUNTY CLERK AND
23 RECORDER OF THE COUNTY IN WHICH THIS AGREEMENT
24 WAS RECORDED OR UNTIL THIS AGREEMENT IS SUPERSEDED
25 IN PART OR IN WHOLE BY A SUPERSEDING LEGAL
26 DOCUMENT.

27 _____

1 Signature of designated beneficiary Signature of designated beneficiary

2 STATE OF COLORADO

3 County of _____

4 This document was ~~subscribed, sworn to, and~~ acknowledged before me
5 on _____ date

6 by
7 _____

8 My commission expires _____

9 [Seal]

10 _____

11 Notary Public

12 (2) The instructions to each party regarding how to grant or
13 withhold a right or protection by initialing and the words "Party A" and
14 "Party B" shall appear at the top of each page of the statutory form above
15 the columns for the initials of the designated beneficiaries.

16 (3) A designated beneficiary agreement shall be presumed to
17 extend all of the rights and protections listed in the statutory form unless
18 the parties to the agreement explicitly exclude a right or protection.

19 (4) A party to a designated beneficiary agreement may limit the
20 scope of a designated beneficiary agreement by the terms of the
21 agreement or by executing a superseding legal document that controls and
22 supersedes part or all of the designated beneficiary agreement.

23 **SECTION 24.** Section 17 of chapter 310, Session Laws of
24 Colorado 2009, is amended to read:

25 Section 17. **Effective date - applicability.** (1) This act takes
26 effect on July 1, 2010.

27 (2) This act applies on or after July 1, 2010, to:

1 (a) Governing instruments executed by decedents dying on or after
2 July 1, 2010; AND

3 (b) Any proceedings in court then pending or thereafter
4 commenced regardless of the time of death of the decedent except to the
5 extent that, in the opinion of the court, the former ~~procedure~~ STATUTE
6 should be made applicable in a particular case in the interest of justice or
7 because of infeasibility of application of ~~the procedure of the "Colorado~~
8 ~~Probate Code"~~, articles 10 to 17 of title 15, Colorado Revised Statutes A
9 PROVISION OF THIS ACT.

10 (c) ~~An act done before the effective date of this act in any~~
11 ~~proceeding and any accrued right is not impaired by this act. If a right is~~
12 ~~acquired, extinguished, or barred upon the expiration of a prescribed~~
13 ~~period of time which has commenced to run by the provisions of any~~
14 ~~statute before the effective date of this act, the provisions shall remain in~~
15 ~~force with respect to that right; and~~

16 (d) ~~Any rule of construction or presumption provided in this act~~
17 ~~applies to governing instruments executed before the effective date of this~~
18 ~~act unless there is a clear indication of a contrary intent.~~

19 (3) THIS ACT SHALL NOT APPLY TO:

20 (a) AN ACTION PERFORMED BEFORE THE EFFECTIVE DATE OF THIS
21 ACT IN ANY PROCEEDING;

22 (b) AN ACCRUED RIGHT;

23 (c) A RIGHT THAT IS ACQUIRED, EXTINGUISHED, OR BARRED UPON
24 THE EXPIRATION OF A PRESCRIBED PERIOD OF TIME THAT HAS COMMENCED
25 TO RUN BY THE PROVISIONS OF ANY STATUTE BEFORE JULY 1, 2010; OR

26 (d) A PROVISION OF A GOVERNING INSTRUMENT THAT WAS
27 EXECUTED BEFORE JULY 1, 2010, AND INCLUDES A CLEAR INDICATION OF

1 A CONTRARY INTENT.

2 **SECTION 25. Specified effective date - applicability.** (1) This
3 act shall take effect July 1, 2010.

4 (2) This act shall apply to:

5 (a) Governing instruments executed by decedents who die on or
6 after July 1, 2010; and

7 (b) Any proceeding in court then pending or thereafter
8 commenced regardless of the time of death of the decedent except to the
9 extent that, in the opinion of the court, the former statute should be made
10 applicable in a particular case in the interest of justice or because of
11 infeasibility of application of a provision of this act.

12 (3) This act shall not apply to:

13 (a) An action performed before the effective date of this act in any
14 proceeding;

15 (b) An accrued right;

16 (c) A right that is acquired, extinguished, or barred upon the
17 expiration of a prescribed period of time that has commenced to run by
18 the provisions of any statute before July 1, 2010; or

19 (d) A provision of a governing instrument that was executed
20 before July 1, 2010, and includes a clear indication of a contrary intent.

21 **SECTION 26. Safety clause.** The general assembly hereby finds,
22 determines, and declares that this act is necessary for the immediate
23 preservation of the public peace, health, and safety.