

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

May 6, 2010
Date

Committee on Judiciary.

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

SB10-199 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend reengrossed bill, page 9, after line 24 insert:

2 "SECTION 13. 15-12-203 (1) (b.5), Colorado Revised Statutes,
3 is amended to read:

4 **15-12-203. Priority among persons seeking appointment as**
5 **personal representative.** (1) Whether the proceedings are formal or
6 informal, persons who are not disqualified have priority for appointment
7 in the following order:

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

11 Renumber succeeding sections accordingly.

12 Page 12, after line 14 insert:

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

15 **15-14-310. Who may be guardian - priorities - prohibition of**
16 **dual roles.** (1) Subject to subsection (4) of this section, the court in
17 appointing a guardian shall consider persons otherwise qualified in the

1 following order of priority:

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

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

8 **15-14-413. Who may be conservator - priorities - prohibition**
9 **of dual roles.** (1) Except as otherwise provided in subsection (4) of this
10 section, the court, in appointing a conservator, shall consider persons
11 otherwise qualified in the following order of priority:

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

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

19 **15-18.5-103. Proxy decision-makers for medical treatment**
20 **authorized.** (1) A health care provider or health care facility may rely,
21 in good faith, upon the medical treatment decision of a proxy
22 decision-maker selected in accordance with subsection (4) of this section
23 if an adult patient's attending physician determines that such patient lacks
24 the decisional capacity to provide informed consent to or refusal of
25 medical treatment and no guardian with medical decision-making
26 authority, agent appointed in a medical durable power of attorney, person
27 ~~designated as a designated beneficiary~~ with the right to act as a proxy
28 decision-maker IN A DESIGNATED BENEFICIARY AGREEMENT MADE
29 pursuant to article 22 of this title, or other known person has the legal
30 authority to provide such consent or refusal on the patient's behalf.

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

33 **15-18.5-104. Surrogate decision-makers for health care**

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

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

10 **15-19-106. Right to dispose of remains.** (1) Subject to section
11 15-19-105 (2), the right to control disposition of the last remains or
12 ceremonial arrangements of a decedent vests in and devolves upon the
13 following persons, at the time of the decedent's death, in the following
14 order:

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

20 **SECTION 23.** 15-22-106, Colorado Revised Statutes, is amended
21 to read:

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

25 **DESIGNATED BENEFICIARY AGREEMENT**
26

27 **DISCLAIMER**

28 **Warning:** While this document may indicate your wishes, certain
29 **additional documents may be needed to protect these rights.**
30 **This designated beneficiary agreement is operative in the absence of**
31 **other estate planning documents and will be superseded and set aside**
32 **to the extent it conflicts with valid instruments such as a will, power**
33 **of attorney, or beneficiary designation on an insurance policy or**

1 pension plan. This designated beneficiary agreement is superseded
2 by such other documents and does not cause any changes to be made
3 to those documents or designations. The parties understand that
4 executing and signing this agreement is not sufficient to designate the
5 other party for purposes of any insurance policy, pension plan,
6 payable upon death designation or manner in which title to property
7 is held and that additional action will be required to make or change
8 such designations. The parties understand that this designated
9 beneficiary agreement may be one component of estate planning
10 instructions and that they are encouraged to consult an attorney to
11 ensure their estate planning wishes are accomplished.
12 _____

13 We, _____, (insert full name and address) referred to as party
14 A, and _____, (insert full name and address) referred to as
15 party B, hereby designate each other as the other's designated beneficiary
16 with the following rights and protections, granted or withheld as indicated
17 by our initials:

18 TO GRANT ONE OR MORE OF THE RIGHTS OR PROTECTIONS
19 SPECIFIED IN THIS FORM, INITIAL THE LINE TO THE LEFT OF
20 EACH RIGHT OR PROTECTION YOU ARE GRANTING. TO
21 WITHHOLD A RIGHT OR PROTECTION, INITIAL THE LINE TO
22 THE RIGHT OF EACH RIGHT OR PROTECTION YOU ARE
23 WITHHOLDING.

24 A DESIGNATED BENEFICIARY AGREEMENT SHALL BE
25 PRESUMED TO GRANT ALL OF THE RIGHTS AND PROTECTIONS
26 LISTED IN THIS FORM UNLESS THE PARTIES WITHHOLD A
27 RIGHT OR PROTECTION IN THE MANNER SET FORTH
28 IMMEDIATELY ABOVE.

29	TO GRANT A RIGHT	TO WITHHOLD A RIGHT
30	OR PROTECTION	OR PROTECTION
31	INITIAL	INITIAL
32	Party A Party B	Party A Party B
33	___ ___ The right to acquire, hold title to, own	___ ___
34	jointly, or transfer inter vivos or at death real or personal property as a	
35	joint tenant with me with right of survivorship or as a tenant in common	
36	with me;	

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

4 ___ ___ The right to be designated by me as a ___ ___
5 beneficiary and recognized as a dependent in an insurance policy for life
6 insurance;

7 ___ ___ The right to be designated by me as a ___ ___
8 beneficiary and recognized as a dependent in a health insurance policy if
9 my employer elects to provide health insurance coverage for designated
10 beneficiaries;

11 ___ ___ The right to be designated by me as a ___ ___
12 beneficiary in a retirement or pension plan;

13 ___ ___ The right to petition for and have ___ ___
14 priority for appointment as a conservator, guardian, or personal
15 representative for me;

16 ___ ___ The right to visit me in a hospital, ___ ___
17 nursing home, hospice, or similar health care facility in which a party to
18 a designated beneficiary agreement resides or is receiving care;

19 ___ ___ The right to initiate a formal ___ ___
20 complaint regarding alleged violations of my rights as a nursing home
21 patient as provided in section 25-1-120, Colorado Revised Statutes;

22 ___ ___ The right to act as a proxy ___ ___
23 decision-maker or surrogate decision-maker to make medical care
24 decisions for me pursuant to section 15-18.5-103 or 15-18.5-104,
25 Colorado Revised Statutes;

26 ___ ___ The right to notice of the withholding ___ ___
27 or withdrawal of life-sustaining procedures for me pursuant to section
28 15-18-107, Colorado Revised Statutes;

29 ___ ___ The right to challenge the validity of ___ ___
30 a declaration as to medical or surgical treatment of me pursuant to section
31 ~~15-18-107~~ 15-18-108, Colorado Revised Statutes;

1 ___ ___ The right to act as my agent to make, ___ ___
2 revoke, or object to anatomical gifts involving my person pursuant to the
3 "Revised Uniform Anatomical Gift Act", part 1 of article 34 of title 12,
4 Colorado Revised Statutes;

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

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

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

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

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

28 _____
29 Signature of designated beneficiary Signature of designated beneficiary

30 STATE OF COLORADO
31 County of _____

32 This document was ~~subscribed, sworn to,~~ and acknowledged before me
33 on _____ date

1 by
2 _____
3 My commission expires _____
4 [Seal]

5 _____
6 Notary Public

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

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

14 (4) A party to a designated beneficiary agreement may limit the
15 scope of a designated beneficiary agreement by the terms of the
16 agreement or by executing a superseding legal document that controls and
17 supersedes part or all of the designated beneficiary agreement."

18 Renumber succeeding sections accordingly.

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