

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 12-0629.02 Debbie Haskins x2045

SENATE BILL 12-131

SENATE SPONSORSHIP

Guzman, Steadman

HOUSE SPONSORSHIP

Pabon,

Senate Committees
Judiciary

House Committees
Judiciary

A BILL FOR AN ACT

101 **CONCERNING THE RESPONSIBILITIES OF A FIDUCIARY WITH REGARD TO**
102 **THE ESTATE OF A PERSON WHO MAY HAVE EXECUTED A**
103 **DESIGNATED BENEFICIARY AGREEMENT.**

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>.)

A personal representative in any probate proceeding regarding a decedent's estate shall not be surcharged for making distributions to devisees or heirs at law that do not take into consideration a designated beneficiary agreement (DBA) if:

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.

SENATE
3rd Reading Unamended
February 16, 2012

SENATE
2nd Reading Unamended
February 15, 2012

- ! The personal representative has made a search in every county in which the personal representative has actual knowledge that the decedent was domiciled at any time during the 3 years prior to the decedent's death for a recorded, unrevoked DBA in which the decedent granted the right of intestate succession; and
- ! The personal representative has not received actual notice nor has actual knowledge of the existence of a valid, unrevoked DBA in which the decedent granted the right of intestate succession.

A personal representative or trustee is not individually or personally liable for making a distribution of property to devisees or heirs at law that does not take into consideration the right of a party to a DBA to inherit property due to a valid, unrevoked DBA if the personal representative or trustee complied with the fiduciary duty to search for the existence of a DBA and does not have actual notice or actual knowledge of the existence of a valid, unrevoked DBA in which the decedent granted a right of intestate succession.

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

2 **SECTION 1.** In Colorado Revised Statutes, 15-12-703, **add** (5)
3 as follows:

4 **15-12-703. General duties - relation and liability to persons**
5 **interested in estate - duty to search for a designated beneficiary**
6 **agreement - standing to sue.** (5) A PERSONAL REPRESENTATIVE SHALL
7 NOT BE SURCHARGED FOR DISTRIBUTIONS MADE THAT DO NOT TAKE INTO
8 CONSIDERATION A DESIGNATED BENEFICIARY AGREEMENT IF:

9 (a) THE PERSONAL REPRESENTATIVE HAS REVIEWED THE RECORDS
10 OF THE COUNTY CLERK AND RECORDER'S OFFICE IN EVERY COUNTY IN
11 COLORADO IN WHICH THE PERSONAL REPRESENTATIVE HAS ACTUAL
12 KNOWLEDGE THAT THE DECEDENT WAS DOMICILED AT ANY TIME DURING
13 THE THREE YEARS PRIOR TO THE DECEDENT'S DEATH FOR A **VALID,**
14 UNREVOKED DESIGNATED BENEFICIARY AGREEMENT IN WHICH THE
15 DECEDENT GRANTED THE RIGHT OF INTESTATE SUCCESSION; AND

1 (b) THE PERSONAL REPRESENTATIVE HAS NOT RECEIVED ACTUAL
2 NOTICE NOR HAS ACTUAL KNOWLEDGE OF THE EXISTENCE OF A VALID,
3 UNREVOKED DESIGNATED BENEFICIARY AGREEMENT IN WHICH THE
4 DECEDENT GRANTED THE RIGHT OF INTESTATE SUCCESSION.

5 **SECTION 2.** In Colorado Revised Statutes, 15-12-808, **add** (6)
6 as follows:

7 **15-12-808. Individual liability of personal representative.**

8 (6) IF A PERSONAL REPRESENTATIVE HAS REVIEWED THE RECORDS OF THE
9 COUNTY CLERK AND RECORDER IN EVERY COUNTY IN COLORADO IN WHICH
10 THE PERSONAL REPRESENTATIVE HAS ACTUAL KNOWLEDGE THAT THE
11 DECEDENT WAS DOMICILED AT ANY TIME DURING THE THREE YEARS PRIOR
12 TO THE DECEDENT'S DEATH AND THE PERSONAL REPRESENTATIVE DOES
13 NOT HAVE ACTUAL NOTICE OR ACTUAL KNOWLEDGE OF THE EXISTENCE OF
14 A VALID, UNREVOKED DESIGNATED BENEFICIARY AGREEMENT IN WHICH
15 THE DECEDENT GRANTED THE RIGHT OF INTESTATE SUCCESSION, THE
16 PERSONAL REPRESENTATIVE SHALL NOT BE INDIVIDUALLY LIABLE FOR
17 DISTRIBUTIONS MADE TO DEVISEES OR HEIRS AT LAW THAT DO NOT TAKE
18 INTO CONSIDERATION THE DESIGNATED BENEFICIARY AGREEMENT.

19 **SECTION 3.** In Colorado Revised Statutes, 15-16-306, **add** (8)
20 as follows:

21 **15-16-306. Personal liability of trustee to third parties.** (8) IF

22 A TRUSTEE HAS REVIEWED THE RECORDS OF THE COUNTY CLERK AND
23 RECORDER IN EVERY COUNTY IN COLORADO IN WHICH THE TRUSTEE HAS
24 ACTUAL KNOWLEDGE THAT THE DECEDENT WAS DOMICILED AT ANY TIME
25 DURING THE THREE YEARS PRIOR TO THE DECEDENT'S DEATH AND THE
26 TRUSTEE DOES NOT HAVE ACTUAL NOTICE OR ACTUAL KNOWLEDGE OF THE
27 EXISTENCE OF A VALID, UNREVOKED DESIGNATED BENEFICIARY

1 AGREEMENT IN WHICH THE DECEDENT GRANTED THE RIGHT OF INTESTATE
2 SUCCESSION, THE TRUSTEE SHALL NOT BE INDIVIDUALLY LIABLE FOR
3 DISTRIBUTIONS MADE TO DEVISEES OR HEIRS AT LAW THAT DO NOT TAKE
4 INTO CONSIDERATION THE DESIGNATED BENEFICIARY AGREEMENT.

5 **SECTION 4. Safety clause.** The general assembly hereby finds,
6 determines, and declares that this act is necessary for the immediate
7 preservation of the public peace, health, and safety.