

**Second Regular Session  
Sixty-ninth General Assembly  
STATE OF COLORADO**

**PREAMENDED**

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

LLS NO. 14-0126.01 Jerry Barry x4341

**HOUSE BILL 14-1353**

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**HOUSE SPONSORSHIP**

**Gardner,**

**SENATE SPONSORSHIP**

**Johnston,**

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**House Committees**  
Judiciary

**Senate Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING POWERS OF APPOINTMENT.**

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**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 enacts the "Uniform Powers of Appointment Act" as recommended by the national conference of commissioners on uniform state laws. It repeals existing law on powers of appointment and makes conforming amendments.

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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.*

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 2.5 to title  
3 15 as follows:

4 **ARTICLE 2.5**

5 **Uniform Powers of Appointment Act**

6 **PART 1**

7 **GENERAL PROVISIONS**

8 **15-2.5-101. Short title.** THIS ARTICLE MAY BE CITED AS THE  
9 "COLORADO UNIFORM POWERS OF APPOINTMENT ACT".

10 **15-2.5-102. Definitions.** IN THIS ARTICLE:

11 (1) "APPOINTEE" MEANS A PERSON TO WHOM A POWERHOLDER  
12 MAKES AN APPOINTMENT OF APPOINTIVE PROPERTY.

13 (2) "APPOINTIVE PROPERTY" MEANS PROPERTY OR PROPERTY  
14 INTEREST SUBJECT TO A POWER OF APPOINTMENT.

15 (3) "BLANKET-EXERCISE CLAUSE" MEANS A CLAUSE IN AN  
16 INSTRUMENT, WHICH CLAUSE EXERCISES A POWER OF APPOINTMENT AND  
17 IS NOT A SPECIFIC-EXERCISE CLAUSE. THE TERM INCLUDES A CLAUSE THAT:

18 (a) EXPRESSLY USES THE WORDS "ANY POWER" IN EXERCISING ANY  
19 POWER OF APPOINTMENT THE POWERHOLDER HAS;

20 (b) EXPRESSLY USES THE WORDS "ANY PROPERTY" IN APPOINTING  
21 ANY PROPERTY OVER WHICH THE POWERHOLDER HAS A POWER OF  
22 APPOINTMENT; OR

23 (c) DISPOSES OF ALL PROPERTY SUBJECT TO DISPOSITION BY THE  
24 POWERHOLDER.

25 (4) "DONOR" MEANS A PERSON WHO CREATES A POWER OF  
26 APPOINTMENT.

27 (5) "EXCLUSIONARY POWER OF APPOINTMENT" MEANS A POWER OF

1 APPOINTMENT EXERCISABLE IN FAVOR OF ANY ONE OR MORE OF THE  
2 PERMISSIBLE APPOINTEES TO THE EXCLUSION OF THE OTHER PERMISSIBLE  
3 APPOINTEES.

4 (6) "GENERAL POWER OF APPOINTMENT" MEANS A POWER OF  
5 APPOINTMENT EXERCISABLE IN FAVOR OF THE POWERHOLDER, THE  
6 POWERHOLDER'S ESTATE, A CREDITOR OF THE POWERHOLDER, OR A  
7 CREDITOR OF THE POWERHOLDER'S ESTATE.

8 (7) "GIFT-IN-DEFAULT CLAUSE" MEANS A CLAUSE IDENTIFYING A  
9 TAKER IN DEFAULT OF APPOINTMENT.

10 (8) "IMPERMISSIBLE APPOINTEE" MEANS A PERSON WHO IS NOT A  
11 PERMISSIBLE APPOINTEE.

12 (9) "INSTRUMENT" MEANS A RECORD.

13 (10) "NONGENERAL POWER OF APPOINTMENT" MEANS A POWER OF  
14 APPOINTMENT THAT IS NOT A GENERAL POWER OF APPOINTMENT.

15 (11) "PERMISSIBLE APPOINTEE" MEANS A PERSON IN WHOSE FAVOR  
16 A POWERHOLDER MAY EXERCISE A POWER OF APPOINTMENT.

17 (12) "PERSON" MEANS AN INDIVIDUAL; ESTATE; TRUST; BUSINESS  
18 OR NONPROFIT ENTITY; PUBLIC CORPORATION; GOVERNMENT OR  
19 GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY; OR OTHER  
20 LEGAL ENTITY.

21 (13) "POWERHOLDER" MEANS A PERSON IN WHOM A DONOR  
22 CREATES A POWER OF APPOINTMENT.

23 (14) "POWER OF APPOINTMENT" MEANS A POWER THAT ENABLES  
24 A POWERHOLDER ACTING IN A NONFIDUCIARY CAPACITY TO DESIGNATE A  
25 RECIPIENT OF AN OWNERSHIP INTEREST IN OR ANOTHER POWER OF  
26 APPOINTMENT OVER THE APPOINTIVE PROPERTY. THE TERM DOES NOT  
27 INCLUDE A POWER OF ATTORNEY.

1           (15) "PRESENTLY EXERCISABLE POWER OF APPOINTMENT" MEANS  
2 A POWER OF APPOINTMENT EXERCISABLE BY THE POWERHOLDER AT THE  
3 RELEVANT TIME. THE TERM:

4           (a) INCLUDES A POWER OF APPOINTMENT NOT EXERCISABLE UNTIL  
5 THE OCCURRENCE OF A SPECIFIED EVENT, THE SATISFACTION OF AN  
6 ASCERTAINABLE STANDARD, OR THE PASSAGE OF A SPECIFIED TIME ONLY  
7 AFTER:

8           (I) THE OCCURRENCE OF THE SPECIFIED EVENT;

9           (II) THE SATISFACTION OF THE ASCERTAINABLE STANDARD; OR

10          (III) THE PASSAGE OF THE SPECIFIED TIME; AND

11          (b) DOES NOT INCLUDE A POWER EXERCISABLE ONLY AT THE  
12 POWERHOLDER'S DEATH.

13          (16) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A  
14 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER  
15 MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

16          (17) "SPECIFIC-EXERCISE CLAUSE" MEANS A CLAUSE IN AN  
17 INSTRUMENT, WHICH CLAUSE SPECIFICALLY REFERS TO AND EXERCISES A  
18 PARTICULAR POWER OF APPOINTMENT.

19          (18) "TAKER IN DEFAULT OF APPOINTMENT" MEANS A PERSON WHO  
20 TAKES ALL OR PART OF THE APPOINTIVE PROPERTY TO THE EXTENT THE  
21 POWERHOLDER DOES NOT EFFECTIVELY EXERCISE THE POWER OF  
22 APPOINTMENT.

23          (19) "TERMS OF THE INSTRUMENT" MEANS THE MANIFESTATION OF  
24 THE INTENT OF THE MAKER OF THE INSTRUMENT REGARDING THE  
25 INSTRUMENT'S PROVISIONS AS EXPRESSED IN THE INSTRUMENT OR AS MAY  
26 BE ESTABLISHED BY OTHER EVIDENCE THAT WOULD BE ADMISSIBLE IN A  
27 LEGAL PROCEEDING.



1           (2) SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (1) OF  
2 THIS SECTION DOES NOT APPLY TO THE CREATION OF A POWER OF  
3 APPOINTMENT BY THE EXERCISE OF A POWER OF APPOINTMENT.

4           (3) A POWER OF APPOINTMENT MAY NOT BE CREATED IN A  
5 DECEASED INDIVIDUAL.

6           (4) SUBJECT TO AN APPLICABLE RULE AGAINST PERPETUITIES, A  
7 POWER OF APPOINTMENT MAY BE CREATED IN AN UNBORN OR  
8 UNASCERTAINED POWERHOLDER.

9           **15-2.5-202. Nontransferability.** A POWERHOLDER MAY NOT  
10 TRANSFER A POWER OF APPOINTMENT. IF A POWERHOLDER DIES WITHOUT  
11 EXERCISING OR RELEASING A POWER, THE POWER LAPSES.

12           **15-2.5-203. Presumption of unlimited authority.** (1) SUBJECT  
13 TO SECTION 15-2.5-205, AND UNLESS THE TERMS OF THE INSTRUMENT  
14 CREATING A POWER OF APPOINTMENT MANIFEST A CONTRARY INTENT, THE  
15 POWER IS:

16           (a) PRESENTLY EXERCISABLE;

17           (b) EXCLUSIONARY; AND

18           (c) EXCEPT AS OTHERWISE PROVIDED IN SECTION 15-2.5-204,  
19 GENERAL.

20           **15-2.5-204. Exception to presumption of unlimited authority.**

21 (1) UNLESS THE TERMS OF THE INSTRUMENT CREATING A POWER OF  
22 APPOINTMENT MANIFEST A CONTRARY INTENT, THE POWER IS  
23 NONGENERAL IF:

24           (a) THE POWER IS EXERCISABLE ONLY AT THE POWERHOLDER'S  
25 DEATH; AND

26           (b) THE PERMISSIBLE APPOINTEES OF THE POWER ARE A DEFINED  
27 AND LIMITED CLASS THAT DOES NOT INCLUDE THE POWERHOLDER'S

1 ESTATE, THE POWERHOLDER'S CREDITORS, OR THE CREDITORS OF THE  
2 POWERHOLDER'S ESTATE.

3 **15-2.5-205. Rules of classification - definitions.** (1) IN THIS  
4 SECTION, "ADVERSE PARTY" MEANS A PERSON WITH A SUBSTANTIAL  
5 BENEFICIAL INTEREST IN PROPERTY, WHICH INTEREST WOULD BE AFFECTED  
6 ADVERSELY BY A POWERHOLDER'S EXERCISE OR NONEXERCISE OF A POWER  
7 OF APPOINTMENT IN FAVOR OF THE POWERHOLDER, THE POWERHOLDER'S  
8 ESTATE, A CREDITOR OF THE POWERHOLDER, OR A CREDITOR OF THE  
9 POWERHOLDER'S ESTATE.

10 (2) IF A POWERHOLDER MAY EXERCISE A POWER OF APPOINTMENT  
11 ONLY WITH THE CONSENT OR JOINDER OF AN ADVERSE PARTY, THE POWER  
12 IS NONGENERAL.

13 (3) IF THE PERMISSIBLE APPOINTEES OF A POWER OF APPOINTMENT  
14 ARE NOT DEFINED AND LIMITED, THE POWER IS EXCLUSIONARY.

15 **15-2.5-206. Power of the donor to revoke or amend.** (1) A  
16 DONOR MAY REVOKE OR AMEND A POWER OF APPOINTMENT ONLY TO THE  
17 EXTENT THAT:

18 (a) THE INSTRUMENT CREATING THE POWER IS REVOCABLE BY THE  
19 DONOR; OR

20 (b) THE DONOR RESERVES A POWER OF REVOCATION OR  
21 AMENDMENT IN THE INSTRUMENT CREATING THE POWER OF APPOINTMENT.

## 22 PART 3

### 23 EXERCISE OF POWER OF APPOINTMENT

24 **15-2.5-301. Requisites for exercise of power of appointment.**

25 (1) A POWER OF APPOINTMENT MAY BE EXERCISED ONLY:

26 (a) IF THE INSTRUMENT EXERCISING THE POWER IS VALID UNDER  
27 APPLICABLE LAW;

- 1 (b) IF THE TERMS OF THE INSTRUMENT EXERCISING THE POWER:  
2 (I) MANIFEST THE POWERHOLDER'S INTENT TO EXERCISE THE  
3 POWER; AND  
4 (II) SUBJECT TO SECTION 15-2.5-304, SATISFY THE REQUIREMENTS  
5 OF EXERCISE, IF ANY, IMPOSED BY THE DONOR; AND  
6 (c) TO THE EXTENT THE APPOINTMENT IS A PERMISSIBLE EXERCISE  
7 OF THE POWER.

8 **15-2.5-302. Intent to exercise - determining intent from**  
9 **residuary clause.** (1) IN THIS SECTION:

10 (a) "RESIDUARY CLAUSE" DOES NOT INCLUDE A RESIDUARY  
11 CLAUSE CONTAINING A BLANKET-EXERCISE CLAUSE OR A  
12 SPECIFIC-EXERCISE CLAUSE.

13 (b) "WILL" INCLUDES A CODICIL AND A TESTAMENTARY  
14 INSTRUMENT THAT REVISES ANOTHER WILL.

15 (2) A RESIDUARY CLAUSE IN A POWERHOLDER'S WILL, OR A  
16 COMPARABLE CLAUSE IN THE POWERHOLDER'S REVOCABLE TRUST,  
17 MANIFESTS THE POWERHOLDER'S INTENT TO EXERCISE A POWER OF  
18 APPOINTMENT ONLY IF:

19 (a) THE TERMS OF THE INSTRUMENT CONTAINING THE RESIDUARY  
20 CLAUSE DO NOT MANIFEST A CONTRARY INTENT;

21 (b) THE POWER IS A GENERAL POWER EXERCISABLE IN FAVOR OF  
22 THE POWERHOLDER'S ESTATE;

23 (c) THERE IS NO GIFT-IN-DEFAULT CLAUSE OR THE CLAUSE IS  
24 INEFFECTIVE; AND

25 (d) THE POWERHOLDER DID NOT RELEASE THE POWER.

26 **15-2.5-303. Intent to exercise - after-acquired power.**

27 (1) UNLESS THE TERMS OF THE INSTRUMENT EXERCISING A POWER OF



1 APPOINTMENT MANIFEST A CONTRARY INTENT:

2 (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS  
3 SUBSECTION (1), A BLANKET-EXERCISE CLAUSE EXTENDS TO A POWER  
4 ACQUIRED BY THE POWERHOLDER AFTER EXECUTING THE INSTRUMENT  
5 CONTAINING THE CLAUSE; AND

6 (b) IF THE POWERHOLDER IS ALSO THE DONOR OF THE POWER, THE  
7 CLAUSE DOES NOT EXTEND TO THE POWER UNLESS THERE IS NO  
8 GIFT-IN-DEFAULT CLAUSE OR THE GIFT-IN-DEFAULT CLAUSE IS  
9 INEFFECTIVE.

10 **15-2.5-304. Substantial compliance with donor-imposed**  
11 **formal requirement.** (1) A POWERHOLDER'S SUBSTANTIAL COMPLIANCE  
12 WITH A FORMAL REQUIREMENT OF APPOINTMENT IMPOSED BY THE DONOR,  
13 INCLUDING A REQUIREMENT THAT THE INSTRUMENT EXERCISING THE  
14 POWER OF APPOINTMENT MAKE REFERENCE OR SPECIFIC REFERENCE TO  
15 THE POWER, IS SUFFICIENT IF:

16 (a) THE POWERHOLDER KNOWS OF AND INTENDS TO EXERCISE THE  
17 POWER; AND

18 (b) THE POWERHOLDER'S MANNER OF ATTEMPTED EXERCISE OF  
19 THE POWER DOES NOT IMPAIR A MATERIAL PURPOSE OF THE DONOR IN  
20 IMPOSING THE REQUIREMENT.

21 **15-2.5-305. Permissible appointment.** (1) A POWERHOLDER OF  
22 A GENERAL POWER OF APPOINTMENT THAT PERMITS APPOINTMENT TO THE  
23 POWERHOLDER OR THE POWERHOLDER'S ESTATE MAY MAKE ANY  
24 APPOINTMENT, INCLUDING AN APPOINTMENT IN TRUST OR CREATING A NEW  
25 POWER OF APPOINTMENT, THAT THE POWERHOLDER COULD MAKE IN  
26 DISPOSING OF THE POWERHOLDER'S OWN PROPERTY.

27 (2) A POWERHOLDER OF A GENERAL POWER OF APPOINTMENT THAT

1 PERMITS APPOINTMENT ONLY TO THE CREDITORS OF THE POWERHOLDER OR  
2 OF THE POWERHOLDER'S ESTATE MAY APPOINT ONLY TO THOSE CREDITORS.

3 (3) UNLESS THE TERMS OF THE INSTRUMENT CREATING A POWER  
4 OF APPOINTMENT MANIFEST A CONTRARY INTENT, THE POWERHOLDER OF  
5 A NONGENERAL POWER MAY:

6 (a) MAKE AN APPOINTMENT IN ANY FORM, INCLUDING AN  
7 APPOINTMENT IN TRUST, IN FAVOR OF A PERMISSIBLE APPOINTEE;

8 (b) CREATE A GENERAL OR NONGENERAL POWER IN A PERMISSIBLE  
9 APPOINTEE; OR

10 (c) CREATE A NONGENERAL POWER IN AN IMPERMISSIBLE  
11 APPOINTEE TO APPOINT TO ONE OR MORE OF THE PERMISSIBLE APPOINTEES  
12 OF THE ORIGINAL NONGENERAL POWER.

13 **15-2.5-306. Appointment to deceased appointee or permissible**  
14 **appointee's descendant.** (1) AN APPOINTMENT TO A DECEASED  
15 APPOINTEE IS INEFFECTIVE.

16 (2) UNLESS THE TERMS OF THE INSTRUMENT CREATING A POWER  
17 OF APPOINTMENT MANIFEST A CONTRARY INTENT, A POWERHOLDER OF A  
18 NONGENERAL POWER MAY EXERCISE THE POWER IN FAVOR OF, OR CREATE  
19 A NEW POWER OF APPOINTMENT IN, A DESCENDANT OF A DECEASED  
20 PERMISSIBLE APPOINTEE, WHICH DECEASED APPOINTEE IS A DESCENDANT  
21 OF ONE OR MORE OF THE GRANDPARENTS OF THE DONOR, REGARDLESS OF  
22 WHETHER THE DESCENDANT IS DESCRIBED BY THE DONOR AS A  
23 PERMISSIBLE APPOINTEE.

24 **15-2.5-307. Impermissible appointment.** (1) EXCEPT AS  
25 OTHERWISE PROVIDED IN SECTION 15-2.5-306, AN EXERCISE OF A POWER  
26 OF APPOINTMENT IN FAVOR OF AN IMPERMISSIBLE APPOINTEE IS  
27 INEFFECTIVE.

1 (2) AN EXERCISE OF A POWER OF APPOINTMENT IN FAVOR OF A  
2 PERMISSIBLE APPOINTEE IS INEFFECTIVE TO THE EXTENT THE APPOINTMENT  
3 IS A FRAUD ON THE POWER.

4 **15-2.5-308. Selective allocation doctrine.** IF A POWERHOLDER  
5 EXERCISES A POWER OF APPOINTMENT IN A DISPOSITION THAT ALSO  
6 DISPOSES OF PROPERTY THE POWERHOLDER OWNS, THE OWNED PROPERTY  
7 AND THE APPOINTIVE PROPERTY MUST BE ALLOCATED IN THE PERMISSIBLE  
8 MANNER THAT BEST CARRIES OUT THE POWERHOLDER'S INTENT.

9 **15-2.5-309. Capture doctrine - disposition of ineffectively**  
10 **appointed property under general power.** (1) TO THE EXTENT A  
11 POWERHOLDER OF A GENERAL POWER OF APPOINTMENT, OTHER THAN A  
12 POWER TO WITHDRAW PROPERTY FROM, REVOKE, OR AMEND A TRUST,  
13 MAKES AN INEFFECTIVE APPOINTMENT:

14 (a) THE GIFT-IN-DEFAULT CLAUSE CONTROLS THE DISPOSITION OF  
15 THE INEFFECTIVELY APPOINTED PROPERTY; OR

16 (b) IF THERE IS NO GIFT-IN-DEFAULT CLAUSE, OR TO THE EXTENT  
17 THE CLAUSE IS INEFFECTIVE, THE INEFFECTIVELY APPOINTED PROPERTY:

18 (I) PASSES TO:

19 (A) THE POWERHOLDER IF THE POWERHOLDER IS A PERMISSIBLE  
20 APPOINTEE AND LIVING; OR

21 (B) IF THE POWERHOLDER IS AN IMPERMISSIBLE APPOINTEE OR  
22 DECEASED, THE POWERHOLDER'S ESTATE IF THE ESTATE IS A PERMISSIBLE  
23 APPOINTEE; OR

24 (II) IF THERE IS NO TAKER UNDER SUBPARAGRAPH (I) OF THIS  
25 PARAGRAPH (b), PASSES UNDER A REVERSIONARY INTEREST TO THE DONOR  
26 OR TO THE DONOR'S TRANSFEREE OR SUCCESSOR IN INTEREST.

27 **15-2.5-310. Disposition of unappointed property under**

1     **released or unexercised general power.** (1) TO THE EXTENT A  
2     POWERHOLDER RELEASES OR FAILS TO EXERCISE A GENERAL POWER OF  
3     APPOINTMENT OTHER THAN A POWER TO WITHDRAW PROPERTY FROM,  
4     REVOKE, OR AMEND A TRUST:

5             (a) THE GIFT-IN-DEFAULT CLAUSE CONTROLS THE DISPOSITION OF  
6     THE UNAPPOINTED PROPERTY; OR

7             (b) IF THERE IS NO GIFT-IN-DEFAULT CLAUSE OR TO THE EXTENT  
8     THE CLAUSE IS INEFFECTIVE:

9             (I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF  
10    THIS PARAGRAPH (b), THE UNAPPOINTED PROPERTY PASSES TO:

11            (A) THE POWERHOLDER IF THE POWERHOLDER IS A PERMISSIBLE  
12    APPOINTEE AND LIVING; OR

13            (B) IF THE POWERHOLDER IS AN IMPERMISSIBLE APPOINTEE OR  
14    DECEASED, THE POWERHOLDER'S ESTATE IF THE ESTATE IS A PERMISSIBLE  
15    APPOINTEE; OR

16            (II) TO THE EXTENT THE POWERHOLDER RELEASED THE POWER, OR  
17    IF THERE IS NO TAKER UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (b),  
18    THE UNAPPOINTED PROPERTY PASSES UNDER A REVERSIONARY INTEREST  
19    TO THE DONOR OR TO THE DONOR'S TRANSFEREE OR SUCCESSOR IN  
20    INTEREST.

21            **15-2.5-311. Disposition of unappointed property under**  
22    **released or unexercised nongeneral power.** (1) TO THE EXTENT A  
23    POWERHOLDER RELEASES, INEFFECTIVELY EXERCISES, OR FAILS TO  
24    EXERCISE A NONGENERAL POWER OF APPOINTMENT:

25            (a) THE GIFT-IN-DEFAULT CLAUSE CONTROLS THE DISPOSITION OF  
26    THE UNAPPOINTED PROPERTY; OR

27            (b) IF THERE IS NO GIFT-IN-DEFAULT CLAUSE, OR TO THE EXTENT

1 THE CLAUSE IS INEFFECTIVE, THE UNAPPOINTED PROPERTY:

2 (I) PASSES TO THE PERMISSIBLE APPOINTEES IF:

3 (A) THE PERMISSIBLE APPOINTEES ARE DEFINED AND LIMITED; AND

4 (B) THE TERMS OF THE INSTRUMENT CREATING THE POWER DO NOT  
5 MANIFEST A CONTRARY INTENT; OR

6 (II) IF THERE IS NO TAKER UNDER SUBPARAGRAPH (I) OF THIS  
7 PARAGRAPH (b), PASSES UNDER A REVERSIONARY INTEREST TO THE DONOR  
8 OR THE DONOR'S TRANSFEREE OR SUCCESSOR IN INTEREST.

9 **15-2.5-312. Disposition of unappointed property if partial**  
10 **appointment to taker in default.** UNLESS THE TERMS OF THE  
11 INSTRUMENT CREATING OR EXERCISING A POWER OF APPOINTMENT  
12 MANIFEST A CONTRARY INTENT, IF THE POWERHOLDER MAKES A VALID  
13 PARTIAL APPOINTMENT TO A TAKER IN DEFAULT OF APPOINTMENT, THE  
14 TAKER IN DEFAULT OF APPOINTMENT MAY SHARE FULLY IN UNAPPOINTED  
15 PROPERTY.

16 **15-2.5-313. Appointment to taker in default.** IF A  
17 POWERHOLDER MAKES AN APPOINTMENT TO A TAKER IN DEFAULT OF  
18 APPOINTMENT AND THE APPOINTEE WOULD HAVE TAKEN THE PROPERTY  
19 UNDER A GIFT-IN-DEFAULT CLAUSE HAD THE PROPERTY NOT BEEN  
20 APPOINTED, THE POWER OF APPOINTMENT IS DEEMED NOT TO HAVE BEEN  
21 EXERCISED AND THE APPOINTEE TAKES THE PROPERTY UNDER THE CLAUSE.

22 **15-2.5-314. Powerholder's authority to revoke or amend**  
23 **exercise.** (1) A POWERHOLDER MAY REVOKE OR AMEND AN EXERCISE OF  
24 A POWER OF APPOINTMENT ONLY TO THE EXTENT THAT:

25 (a) THE POWERHOLDER RESERVES A POWER OF REVOCATION OR  
26 AMENDMENT IN THE INSTRUMENT EXERCISING THE POWER OF  
27 APPOINTMENT AND, IF THE POWER IS NONGENERAL, THE TERMS OF THE

1 INSTRUMENT CREATING THE POWER OF APPOINTMENT DO NOT PROHIBIT  
2 THE RESERVATION; OR

3 (b) THE TERMS OF THE INSTRUMENT CREATING THE POWER OF  
4 APPOINTMENT PROVIDE THAT THE EXERCISE IS REVOCABLE OR  
5 AMENDABLE.

6 PART 4  
7 DISCLAIMER OR RELEASE; CONTRACT  
8 TO APPOINT OR NOT TO APPOINT

9 **15-2.5-401. Disclaimer.** (1) SUBJECT TO THE "UNIFORM  
10 DISCLAIMER OF PROPERTY INTERESTS ACT", PART 12 OF ARTICLE 11 OF  
11 THIS TITLE:

12 (a) A POWERHOLDER MAY DISCLAIM ALL OR PART OF A POWER OF  
13 APPOINTMENT; AND

14 (b) A PERMISSIBLE APPOINTEE, APPOINTEE, OR TAKER IN DEFAULT  
15 OF APPOINTMENT MAY DISCLAIM ALL OR PART OF AN INTEREST IN  
16 APPOINTIVE PROPERTY.

17 **15-2.5-402. Authority to release.** A POWERHOLDER MAY RELEASE  
18 A POWER OF APPOINTMENT, IN WHOLE OR IN PART, EXCEPT TO THE EXTENT  
19 THE TERMS OF THE INSTRUMENT CREATING THE POWER PREVENT THE  
20 RELEASE.

21 **15-2.5-403. Method of release.** (1) A POWERHOLDER OF A  
22 RELEASABLE POWER OF APPOINTMENT MAY RELEASE THE POWER IN WHOLE  
23 OR IN PART:

24 (a) BY SUBSTANTIAL COMPLIANCE WITH A METHOD PROVIDED IN  
25 THE TERMS OF THE INSTRUMENT CREATING THE POWER; OR

26 (b) IF THE TERMS OF THE INSTRUMENT CREATING THE POWER DO  
27 NOT PROVIDE A METHOD, OR THE METHOD PROVIDED IN THE TERMS OF THE

1 INSTRUMENT IS NOT EXPRESSLY MADE EXCLUSIVE, BY:

2 (I) DELIVERING A WRITING DECLARING THE EXTENT TO WHICH THE  
3 POWER IS RELEASED TO A PERSON WHO COULD BE ADVERSELY AFFECTED  
4 BY AN EXERCISE OF THE POWER;

5 (II) JOINING WITH SOME OR ALL OF THE TAKERS IN DEFAULT IN  
6 MAKING AN OTHERWISE-EFFECTIVE TRANSFER OF AN INTEREST IN THE  
7 PROPERTY THAT IS SUBJECT TO THE POWER, IN WHICH CASE THE POWER IS  
8 RELEASED TO THE EXTENT THAT A SUBSEQUENT EXERCISE OF THE POWER  
9 WOULD DEFEAT THE INTEREST TRANSFERRED;

10 (III) CONTRACTING WITH A PERSON WHO COULD BE ADVERSELY  
11 AFFECTED BY AN EXERCISE OF THE POWER NOT TO EXERCISE THE POWER,  
12 IN WHICH CASE THE POWER IS RELEASED TO THE EXTENT THAT A  
13 SUBSEQUENT EXERCISE OF THE POWER WOULD VIOLATE THE TERMS OF THE  
14 CONTRACT; OR

15 (IV) COMMUNICATING IN ANY OTHER APPROPRIATE MANNER AN  
16 INTENT TO RELEASE THE POWER, IN WHICH CASE THE POWER IS RELEASED  
17 TO THE EXTENT THAT A SUBSEQUENT EXERCISE OF THE POWER WOULD BE  
18 CONTRARY TO MANIFESTED INTENT.

19 **15-2.5-404. Revocation or amendment of release.** (1) A  
20 POWERHOLDER MAY REVOKE OR AMEND A RELEASE OF A POWER OF  
21 APPOINTMENT ONLY TO THE EXTENT THAT:

22 (a) THE INSTRUMENT OF RELEASE IS REVOCABLE BY THE  
23 POWERHOLDER; OR

24 (b) THE POWERHOLDER RESERVES A POWER OF REVOCATION OR  
25 AMENDMENT IN THE INSTRUMENT OF RELEASE.

26 **15-2.5-405. Power to contract - presently exercisable power of**  
27 **appointment.** (1) A POWERHOLDER OF A PRESENTLY EXERCISABLE

1 POWER OF APPOINTMENT MAY CONTRACT:

2 (a) NOT TO EXERCISE THE POWER IF THE CONTRACT, WHEN MADE,  
3 DOES NOT CONFER A BENEFIT ON A PERSON OTHER THAN A TAKER IN  
4 DEFAULT OR A PERMISSIBLE APPOINTEE; OR

5 (b) TO EXERCISE THE POWER IF THE CONTRACT, WHEN MADE, DOES  
6 NOT CONFER A BENEFIT ON AN IMPERMISSIBLE APPOINTEE.

7 **15-2.5-406. Power to contract - power of appointment not**  
8 **presently exercisable.** (1) A POWERHOLDER OF A POWER OF  
9 APPOINTMENT THAT IS NOT PRESENTLY EXERCISABLE MAY CONTRACT TO  
10 EXERCISE OR NOT TO EXERCISE THE POWER ONLY IF THE POWERHOLDER:

11 (a) IS ALSO THE DONOR OF THE POWER; AND

12 (b) HAS RESERVED THE POWER IN THE INSTRUMENT CREATING THE  
13 POWER.

14

15 PART 5

16

[Reserved]

17

PART 6

18

MISCELLANEOUS PROVISIONS

19 **15-2.5-601. Uniformity of application and construction.** IN  
20 APPLYING AND CONSTRUING THIS ARTICLE, CONSIDERATION MUST BE  
21 GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT  
22 TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

23 **15-2.5-602. Relation to electronic signatures in global and**  
24 **national commerce act.** THIS ARTICLE MODIFIES, LIMITS, OR SUPERSEDES  
25 THE FEDERAL "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL  
26 COMMERCE ACT", 15 U.S.C. SECTION 7001 ET SEQ., BUT DOES NOT  
27 MODIFY, LIMIT, OR SUPERSEDE SECTION 101 (c) OF THAT ACT, 15 U.S.C.



1 SECTION 7001 (c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE  
2 NOTICES DESCRIBED IN SECTION 103 (b) OF THAT ACT, 15 U.S.C. SECTION  
3 7003 (b).

4 **15-2.5-603. Application to existing relationships.** (1) EXCEPT  
5 AS OTHERWISE PROVIDED IN THIS ARTICLE, ON THE EFFECTIVE DATE OF  
6 THIS ARTICLE OR OF ANY AMENDMENT TO THIS ARTICLE:

7 (a) THIS ARTICLE OR ANY AMENDMENT TO THIS ARTICLE APPLIES  
8 TO A POWER OF APPOINTMENT CREATED BEFORE, ON, OR AFTER THE  
9 EFFECTIVE DATE OF THIS ARTICLE OR ANY AMENDMENT TO THIS ARTICLE;

10 (b) THIS ARTICLE OR ANY AMENDMENT TO THIS ARTICLE APPLIES  
11 TO ANY PROCEEDINGS IN COURT THEN PENDING OR THEREAFTER  
12 COMMENCED CONCERNING A POWER OF APPOINTMENT, EXCEPT TO THE  
13 EXTENT THAT IN THE OPINION OF THE COURT THE FORMER PROCEDURE  
14 SHOULD BE MADE APPLICABLE IN A PARTICULAR CASE IN THE INTEREST OF  
15 JUSTICE OR BECAUSE OF INFEASIBILITY OF APPLICATION OF THE  
16 PROCEDURE OF THIS ARTICLE OR ANY AMENDMENT TO THIS ARTICLE, IN  
17 WHICH CASE THE PARTICULAR PROVISION OF THIS ARTICLE DOES NOT  
18 APPLY AND THE SUPERSEDED LAW APPLIES;

19 (c) A RULE OF CONSTRUCTION OR PRESUMPTION PROVIDED IN THIS  
20 ARTICLE OR ANY AMENDMENT TO THIS ARTICLE APPLIES TO AN  
21 INSTRUMENT EXECUTED BEFORE THE EFFECTIVE DATE OF THIS ARTICLE  
22 UNLESS THERE IS A CLEAR INDICATION OF A CONTRARY INTENT IN THE  
23 TERMS OF THE INSTRUMENT;

24 (d) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPHS (a) TO (c) OF  
25 THIS SUBSECTION (1), AN ACTION DONE BEFORE THE EFFECTIVE DATE OF  
26 THIS ARTICLE IS NOT AFFECTED BY THIS ARTICLE OR ANY AMENDMENT TO  
27 THIS ARTICLE; AND


1 (e) NO PROVISION OF THIS ARTICLE OR OF ANY AMENDMENT TO  
2 THIS ARTICLE SHALL APPLY RETROACTIVELY IF THE COURT DETERMINES  
3 THAT SUCH APPLICATION WOULD CAUSE THE PROVISIONS TO BE  
4 RETROSPECTIVE IN ITS OPERATION IN VIOLATION OF SECTION 11 OF  
5 ARTICLE II OF THE STATE CONSTITUTION.

6 (2) IF A RIGHT IS ACQUIRED, EXTINGUISHED, OR BARRED ON THE  
7 EXPIRATION OF A PRESCRIBED PERIOD THAT COMMENCED UNDER LAW OF  
8 THIS STATE OTHER THAN THIS ARTICLE OR ANY AMENDMENT TO THIS  
9 ARTICLE BEFORE THE EFFECTIVE DATE OF THIS ARTICLE, THE LAW  
10 CONTINUES TO APPLY TO THE RIGHT.

11 **SECTION 2.** In Colorado Revised Statutes, **repeal** article 2 of  
12 title 15, 15-11-608, and 15-11-704.

13 **SECTION 3.** In Colorado Revised Statutes, **add** 15-1-201.5 as  
14 follows:

15 **15-1-201.5. Definitions.** AS USED IN THIS PART 2, "DONEE" HAS  
16 THE SAME MEANING AS "POWERHOLDER" AS SET FORTH IN SECTION  
17 15-2.5-102 (13).

18 **SECTION 4.** In Colorado Revised Statutes, 15-10-201, **add**  
19 (16.7)  as follows:

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

24 (16.7) "DONEE", AS USED IN THE CONTEXT OF POWERS OF  
25 APPOINTMENT, HAS THE SAME MEANING AS "POWERHOLDER" AS SET FORTH  
26 IN SECTION 15-2.5-102 (13).

27 

1           **SECTION 5. Act subject to petition - effective date.** This act  
2 takes effect July 1, 2015; except that, if a referendum petition is filed  
3 pursuant to section 1 (3) of article V of the state constitution against this  
4 act or an item, section, or part of this act within the ninety-day period  
5 after final adjournment of the general assembly, then the act, item,  
6 section, or part will not take effect unless approved by the people at the  
7 general election to be held in November 2014 and, in such case, will take  
8 effect on July 1, 2015, or on the date of the official declaration of the vote  
9 thereon by the governor, whichever is later.