

First Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 15-0668.01 Richard Sweetman x4333

SENATE BILL 15-174

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SENATE SPONSORSHIP

Steadman,

HOUSE SPONSORSHIP

(None),

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Senate Committees  
Judiciary

House Committees

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A BILL FOR AN ACT

101 CONCERNING THE "COLORADO UNIFORM SUBSTITUTE  
102 DECISION-MAKING DOCUMENTS ACT".

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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>.)*

**Colorado Commission on Uniform State Laws.** The bill adopts, with amendments, the "Uniform Substitute Decision-making Documents Act" as Colorado law.

The bill establishes the circumstances under which a substitute decision-making document (document) executed outside this state is valid in this state. A person may assume in good faith that a document is

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.*

genuine, valid, and still in effect and that the decision-maker's authority is genuine, valid, and still in effect.

A person who is asked to accept a document shall do so within a reasonable amount of time. The person may not require an additional or different form of document for authority granted in the document presented. A person who refuses to accept a substitute document is subject to:

- ! A court order mandating acceptance of the document; and
- ! Liability for reasonable attorney's fees and costs incurred in an action or proceeding that mandates acceptance of the document.

A person is not required to accept a substitute document under certain described conditions.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 23 to title  
3 15 as follows:

4 **ARTICLE 23**

5 **Substitute Decision-making Documents**

6 **15-23-101. Short title.** THIS ARTICLE SHALL BE KNOWN AND MAY  
7 BE CITED AS THE "COLORADO UNIFORM RECOGNITION OF SUBSTITUTE  
8 DECISION-MAKING DOCUMENTS ACT".

9 **15-23-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE  
10 CONTEXT REQUIRES OTHERWISE:

11 (1) "DECISION-MAKER" MEANS A PERSON AUTHORIZED TO ACT FOR  
12 AN INDIVIDUAL UNDER A SUBSTITUTE DECISION-MAKING DOCUMENT,  
13 WHETHER DENOMINATED A DECISION-MAKER, AGENT, ATTORNEY-IN-FACT,  
14 PROXY, OR REPRESENTATIVE, OR BY ANOTHER TITLE. THE TERM INCLUDES  
15 AN ORIGINAL DECISION-MAKER, A CO-DECISION-MAKER, A SUCCESSOR  
16 DECISION-MAKER, AND A PERSON TO WHOM A DECISION-MAKER'S  
17 AUTHORITY IS DELEGATED.

18 (2) "GOOD FAITH" MEANS HONESTY IN FACT.

1 (3) "HEALTH CARE" MEANS A SERVICE OR PROCEDURE TO  
2 MAINTAIN, DIAGNOSE, TREAT, OR OTHERWISE AFFECT AN INDIVIDUAL'S  
3 PHYSICAL OR MENTAL CONDITION.

4 (4) "PERSON" MEANS AN INDIVIDUAL, ESTATE, BUSINESS OR  
5 NONPROFIT ENTITY, PUBLIC CORPORATION, GOVERNMENT OR  
6 GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR OTHER  
7 LEGAL ENTITY.

8 (5) "PERSONAL CARE" MEANS AN ARRANGEMENT OR SERVICE TO  
9 PROVIDE AN INDIVIDUAL SHELTER, FOOD, CLOTHING, TRANSPORTATION,  
10 EDUCATION, RECREATION, SOCIAL CONTACT, OR ASSISTANCE WITH THE  
11 ACTIVITIES OF DAILY LIVING.

12 (6) "PROPERTY" MEANS ANYTHING THAT MAY BE SUBJECT TO  
13 OWNERSHIP, WHETHER REAL OR PERSONAL OR LEGAL OR EQUITABLE, OR  
14 ANY INTEREST OR RIGHT THEREIN.

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

18 (8) "SUBSTITUTE DECISION-MAKING DOCUMENT" MEANS A RECORD  
19 CREATED BY AN INDIVIDUAL TO AUTHORIZE A DECISION-MAKER TO ACT  
20 FOR THE INDIVIDUAL WITH RESPECT TO PROPERTY, HEALTH CARE, OR  
21 PERSONAL CARE.

22 **15-23-103. Validity of substitute decision-making document.**

23 (1) A SUBSTITUTE DECISION-MAKING DOCUMENT FOR PROPERTY  
24 EXECUTED OUTSIDE THIS STATE IS VALID IN THIS STATE IF, WHEN THE  
25 DOCUMENT WAS EXECUTED, THE EXECUTION COMPLIED WITH THE LAW OF  
26 THE JURISDICTION INDICATED IN THE DOCUMENT OR, IF NO JURISDICTION  
27 IS INDICATED, THE LAW OF THE JURISDICTION IN WHICH THE DOCUMENT

1 WAS EXECUTED.

2 (2) A SUBSTITUTE DECISION-MAKING DOCUMENT FOR HEALTH  
3 CARE OR PERSONAL CARE EXECUTED OUTSIDE THIS STATE IS VALID IN THIS  
4 STATE IF, WHEN THE DOCUMENT WAS EXECUTED, THE EXECUTION  
5 COMPLIED WITH:

6 (a) THE LAW OF THE JURISDICTION INDICATED IN THE DOCUMENT  
7 OR, IF NO JURISDICTION IS INDICATED, THE LAW OF THE JURISDICTION IN  
8 WHICH THE DOCUMENT WAS EXECUTED; OR

9 (b) THE LAW OF THIS STATE.

10 (3) EXCEPT AS OTHERWISE PROVIDED BY LAW, A PHOTOCOPY OR  
11 ELECTRONICALLY TRANSMITTED COPY OF AN ORIGINAL SUBSTITUTE  
12 DECISION-MAKING DOCUMENT HAS THE SAME EFFECT AS THE ORIGINAL.

13 **15-23-104. Meaning and effect of substitute decision-making**  
14 **document.** THE MEANING AND EFFECT OF A SUBSTITUTE  
15 DECISION-MAKING DOCUMENT AND THE AUTHORITY OF THE  
16 DECISION-MAKER ARE DETERMINED BY THE LAW OF THE JURISDICTION  
17 INDICATED IN THE DOCUMENT OR, IF NO JURISDICTION IS INDICATED, THE  
18 LAW OF THE JURISDICTION IN WHICH THE DOCUMENT WAS EXECUTED.

19 **15-23-105. Reliance on substitute decision-making document.**

20 (1) EXCEPT AS OTHERWISE PROVIDED BY LAW, A PERSON WHO IN GOOD  
21 FAITH ACCEPTS A SUBSTITUTE DECISION-MAKING DOCUMENT WITHOUT  
22 ACTUAL KNOWLEDGE THAT THE DOCUMENT IS VOID, INVALID, OR  
23 TERMINATED, OR THAT THE AUTHORITY OF THE PURPORTED  
24 DECISION-MAKER IS VOID, INVALID, OR TERMINATED, MAY ASSUME  
25 WITHOUT INQUIRY THAT THE DOCUMENT IS GENUINE, VALID, AND STILL IN  
26 EFFECT AND THAT THE DECISION-MAKER'S AUTHORITY IS GENUINE, VALID,  
27 AND STILL IN EFFECT.

1           (2) A PERSON WHO IS ASKED TO ACCEPT A SUBSTITUTE  
2 DECISION-MAKING DOCUMENT MAY REQUEST AND WITHOUT FURTHER  
3 INVESTIGATION RELY ON:

4           (a) THE DECISION-MAKER'S ASSERTION OF A FACT CONCERNING  
5 THE INDIVIDUAL FOR WHOM A DECISION WILL BE MADE, THE  
6 DECISION-MAKER, OR THE DOCUMENT;

7           (b) A TRANSLATION OF THE DOCUMENT IF THE DOCUMENT  
8 CONTAINS, IN WHOLE OR IN PART, LANGUAGE OTHER THAN ENGLISH; AND

9           (c) AN OPINION OF COUNSEL REGARDING ANY MATTER OF LAW  
10 CONCERNING THE DOCUMENT IF THE PERSON PROVIDES IN A RECORD THE  
11 REASON FOR THE REQUEST.

12           **15-23-106. Obligation to accept substitute decision-making**  
13 **document.** (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OF  
14 THIS SECTION OR BY ANOTHER LAW OF THIS STATE, A PERSON WHO IS  
15 ASKED TO ACCEPT A SUBSTITUTE DECISION-MAKING DOCUMENT SHALL  
16 ACCEPT WITHIN A REASONABLE TIME A DOCUMENT THAT PURPORTEDLY  
17 MEETS THE VALIDITY REQUIREMENTS OF SECTION 15-23-103. THE PERSON  
18 MAY NOT REQUIRE AN ADDITIONAL OR DIFFERENT FORM OF DOCUMENT FOR  
19 AUTHORITY GRANTED IN THE DOCUMENT PRESENTED.

20           (2) A PERSON WHO IS ASKED TO ACCEPT A SUBSTITUTE  
21 DECISION-MAKING DOCUMENT IS NOT REQUIRED TO ACCEPT THE  
22 DOCUMENT IF:

23           (a) THE PERSON OTHERWISE WOULD NOT BE REQUIRED IN THE  
24 SAME CIRCUMSTANCES TO ACT IF REQUESTED BY THE INDIVIDUAL WHO  
25 EXECUTED THE DOCUMENT;

26           (b) THE PERSON HAS ACTUAL KNOWLEDGE OF THE TERMINATION  
27 OF THE DECISION-MAKER'S AUTHORITY OR THE DOCUMENT;

1 (c) THE PERSON'S REQUEST UNDER SECTION 15-23-105 (2) FOR THE  
2 DECISION-MAKER'S ASSERTION OF FACT, A TRANSLATION, OR AN OPINION  
3 OF COUNSEL IS REFUSED;

4 (d) THE PERSON IN GOOD FAITH BELIEVES THAT THE DOCUMENT IS  
5 NOT VALID OR THE DECISION-MAKER DOES NOT HAVE THE AUTHORITY TO  
6 REQUEST A PARTICULAR TRANSACTION OR ACTION; OR

7 (e) THE PERSON MAKES, OR HAS ACTUAL KNOWLEDGE THAT  
8 ANOTHER PERSON HAS MADE, A REPORT TO A LAW ENFORCEMENT AGENCY  
9 OR TO A COUNTY DEPARTMENT OF SOCIAL SERVICES STATING A BELIEF  
10 THAT THE INDIVIDUAL FOR WHOM A DECISION WILL BE MADE MAY BE  
11 SUBJECT TO ABUSE, NEGLECT, EXPLOITATION, OR ABANDONMENT BY THE  
12 DECISION-MAKER OR A PERSON ACTING FOR OR WITH THE  
13 DECISION-MAKER.

14 (3) A PERSON WHO, IN VIOLATION OF THIS SECTION, REFUSES TO  
15 ACCEPT A SUBSTITUTE DECISION-MAKING DOCUMENT IS SUBJECT TO:

16 (a) A COURT ORDER MANDATING ACCEPTANCE OF THE DOCUMENT;  
17 AND

18 (b) LIABILITY FOR REASONABLE ATTORNEY'S FEES AND COSTS  
19 INCURRED IN AN ACTION OR PROCEEDING THAT MANDATES ACCEPTANCE  
20 OF THE DOCUMENT.

21 **15-23-107. Remedies under other law.** THE REMEDIES UNDER  
22 THIS ARTICLE ARE NOT EXCLUSIVE AND DO NOT ABROGATE ANY OTHER  
23 RIGHT OR REMEDY AVAILABLE UNDER THE LAW OF THIS STATE.

24 **15-23-108. Uniformity of application and construction.** IN  
25 APPLYING AND CONSTRUING THIS UNIFORM ACT, COURTS SHALL GIVE  
26 CONSIDERATION TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH  
27 RESPECT TO ITS SUBJECT MATTER AMONG THE STATES THAT ENACT IT.

1           **15-23-109. Relation to the "Electronic Signatures in Global**  
2           **and National Commerce Act"**. THIS ARTICLE MODIFIES, LIMITS, OR  
3           SUPERSEDES THE "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL  
4           COMMERCE ACT", 15 U.S.C. SECTION 7001 ET SEQ., BUT DOES NOT  
5           MODIFY, LIMIT, OR SUPERSEDE SECTION 101 (c) OF THAT ACT, 15 U.S.C.  
6           SECTION 7001(c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE  
7           NOTICES DESCRIBED IN SECTION 103(b) OF THAT ACT, 15 U.S.C. SECTION  
8           7003(b).

9           **15-23-110. Applicability.** THIS ARTICLE APPLIES TO A SUBSTITUTE  
10          DECISION-MAKING DOCUMENT CREATED BEFORE, ON, OR AFTER THE  
11          EFFECTIVE DATE OF THIS ARTICLE.

12          **SECTION 2.** In Colorado Revised Statutes, 2-5-102, **add** (13) as  
13          follows:

14          **2-5-102. Inclusions - nonstatutory.** (13) THE REVISOR OF  
15          STATUTES SHALL INCLUDE IN THE PUBLICATION OF THE "COLORADO  
16          UNIFORM RECOGNITION OF SUBSTITUTE DECISION-MAKING DOCUMENTS  
17          ACT", AS NONSTATUTORY MATTER, FOLLOWING EACH SECTION OF THE  
18          ARTICLE, THE FULL TEXT OF THE OFFICIAL COMMENTS TO THAT SECTION  
19          CONTAINED IN THE OFFICIAL VOLUME CONTAINING THE 2014 OFFICIAL  
20          TEXT OF THE "UNIFORM RECOGNITION OF SUBSTITUTE DECISION-MAKING  
21          DOCUMENTS ACT" ISSUED BY THE NATIONAL CONFERENCE OF  
22          COMMISSIONERS ON UNIFORM STATE LAWS, WITH ANY CHANGES IN THE  
23          OFFICIAL COMMENTS OR COLORADO COMMENTS TO CORRESPOND TO  
24          COLORADO CHANGES IN THE UNIFORM ACT. THE REVISOR OF STATUTES  
25          SHALL PREPARE THE COMMENTS AND APPROVE THEM FOR PUBLICATION BY  
26          THE COMMITTEE ON LEGAL SERVICES.

27          **SECTION 3. Act subject to petition - effective date.** This act

1 takes effect at 12:01 a.m. on the day following the expiration of the  
2 ninety-day period after final adjournment of the general assembly (August  
3 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a  
4 referendum petition is filed pursuant to section 1 (3) of article V of the  
5 state constitution against this act or an item, section, or part of this act  
6 within such period, then the act, item, section, or part will not take effect  
7 unless approved by the people at the general election to be held in  
8 November 2016 and, in such case, will take effect on the date of the  
9 official declaration of the vote thereon by the governor.