

NOTE: The governor signed this measure on 4/16/2015.

An Act

SENATE BILL 15-097

BY SENATOR(S) Aguilar, Baumgardner, Carroll, Cooke, Crowder, Donovan, Grantham, Guzman, Heath, Hodge, Holbert, Jahn, Johnston, Jones, Kefalas, Kerr, Lambert, Marble, Martinez Humenik, Merrifield, Neville T., Newell, Roberts, Scheffel, Scott, Sonnenberg, Steadman, Todd, Ulibarri, Woods, Cadman;
also REPRESENTATIVE(S) Landgraf, Arndt, Becker K., Court, Garnett, Ginal, Kagan, Lontine, Melton, Mitsch Bush, Pabon, Primavera, Rosenthal, Roupe, Salazar, Van Winkle, Williams, Wilson, Young.

CONCERNING THE ELIGIBILITY OF A SUPPLEMENTAL NEEDS TRUST TO RECEIVE CERTAIN PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION BENEFITS.

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

SECTION 1. Legislative declaration. The general assembly hereby finds and declares that it is in the best interests of the people of the state of Colorado to ensure that disabled dependents of PERA members and retirees are not penalized by provisions of the law governing the designation of cobeneficiaries and the provision of survivor benefits. Currently, PERA retirees seeking to provide for the well-being of their dependents who are disabled by naming such dependents as cobeneficiaries risk that the dependents will lose the right to needs-based government benefits as a

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

result of such designation. Additionally, eligible survivors who are entitled to survivor benefits under the law currently risk losing the right to needs-based government benefits as a result of such entitlement. Allowing the designation of a supplemental needs trust as a cobeneficiary and providing that a supplemental needs trust is an eligible survivor for the purpose of receiving survivor benefits corresponds with the state's interests in ensuring that persons with disabilities receive the care and assistance necessary and is consistent with the state's vested public policy interest in ensuring financial stability for surviving dependents of PERA members and retirees.

SECTION 2. In Colorado Revised Statutes, 24-51-101, **amend** (10); and **add** (46.5) as follows:

24-51-101. Definitions. As used in this article, unless the context otherwise requires and except as otherwise defined in part 17 of this article:

(10) "Cobeneficiary" means:

(a) The person OR SUPPLEMENTAL NEEDS TRUST selected by the member or ordered by court decree prior to retirement to be the person selected under option 2 or 3 pursuant to the provisions of section 24-51-801 to receive a continuing benefit upon the retiree's death; or

(b) The person OR SUPPLEMENTAL NEEDS TRUST designated by a member eligible for service retirement or ordered by a court decree prior to retirement to be the person selected to receive option 3 upon the member's death pursuant to the provisions of section 24-51-906.

(46.5) "SUPPLEMENTAL NEEDS TRUST" MEANS A VALID THIRD-PARTY SPECIAL NEEDS TRUST ESTABLISHED FOR A MEMBER'S OR RETIREE'S CHILD AS THE BENEFICIARY OF THE TRUST THAT COMPLIES WITH THE "COLORADO MEDICAL ASSISTANCE ACT", ARTICLES 4 TO 6 OF TITLE 25.5, C.R.S., AND THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED. THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING SHALL REVIEW ANY TRUST ESTABLISHED DURING THE DETERMINATION OR REDETERMINATION OF AN INDIVIDUAL'S ELIGIBILITY FOR MEDICAL ASSISTANCE AND SPECIFICALLY AS TO THE EFFECT OF ANY TRUST ON SUCH ELIGIBILITY FOR MEDICAL ASSISTANCE. THE TRUST MUST BE FOR THE BENEFIT OF A SINGLE BENEFICIARY AND MUST BE COTERMINOUS WITH THE LIFETIME OF SUCH

BENEFICIARY.

SECTION 3. In Colorado Revised Statutes, 24-51-801, **add** (5) as follows:

24-51-801. Benefit options. (5) (a) UPON THE TERMINATION OF A SUPPLEMENTAL NEEDS TRUST DUE TO THE DEATH OF THE BENEFICIARY OF SUCH TRUST PRIOR TO THE DEATH OF THE RETIREE, AN OPTION 1 BENEFIT BECOMES PAYABLE TO THE RETIREE.

(b) IF A SUPPLEMENTAL NEEDS TRUST IS DETERMINED TO BE INVALID OR IS TERMINATED DURING THE LIFE OF THE RETIREE, THE BENEFICIARY THAT WAS NAMED IN THE TRUST IS THE COBENEFICIARY.

(c) IF A SUPPLEMENTAL NEEDS TRUST IS NOT ESTABLISHED BEFORE OR WITHIN NINETY DAYS AFTER THE DEATH OF THE RETIREE, IS DETERMINED TO BE INVALID, OR IS TERMINATED ON OR AFTER THE DEATH OF THE RETIREE, THE BENEFICIARY THAT WAS NAMED IN THE TRUST IS THE COBENEFICIARY.

SECTION 4. In Colorado Revised Statutes, 24-51-802, **add** (5) as follows:

24-51-802. Change in option or cobeneficiary. (5) NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, A RETIREE MAY CHANGE THE COBENEFICIARY THAT WAS NAMED BY SUCH RETIREE AND DESIGNATE A SUPPLEMENTAL NEEDS TRUST AS A COBENEFICIARY IN PLACE OF THE PREVIOUSLY NAMED COBENEFICIARY IF:

(a) THE BENEFICIARY OF THE SUPPLEMENTAL NEEDS TRUST IS THE SAME PERSON AS THE PREVIOUSLY NAMED COBENEFICIARY; AND

(b) THE RETIREE FILES AN APPLICATION AND ANY REQUIRED DOCUMENTS IN A FORM AS DESIGNATED BY THE ASSOCIATION.

SECTION 5. In Colorado Revised Statutes, 24-51-911, **add** (8) as follows:

24-51-911. Commencement of survivor benefits or single payment. (8) IF AT THE TIME OF THE DEATH OF THE MEMBER THERE IS A SUPPLEMENTAL NEEDS TRUST ESTABLISHED BEFORE OR WITHIN NINETY DAYS

AFTER THE DEATH OF THE MEMBER FOR THE BENEFIT OF THE QUALIFIED CHILD ELIGIBLE FOR SURVIVOR BENEFITS, SURVIVOR BENEFITS PAYABLE PURSUANT TO THIS PART 9 TO THE BENEFICIARY OF THE SUPPLEMENTAL NEEDS TRUST ARE PAYABLE TO THE TRUST.

SECTION 6. In Colorado Revised Statutes, 24-51-912, **add** (6) as follows:

24-51-912. Termination of survivor benefits. (6) IF THE ASSOCIATION IS PAYING A SUPPLEMENTAL NEEDS TRUST PURSUANT TO SECTION 24-51-911 (8), SUCH PAYMENT TERMINATES AND THE PROVISIONS OF THIS SECTION AND SECTION 24-51-913 APPLY WHEN THE BENEFICIARY OF SUCH SUPPLEMENTAL NEEDS TRUST IS NO LONGER ELIGIBLE TO RECEIVE SURVIVOR BENEFITS. IF A SUPPLEMENTAL NEEDS TRUST IS DETERMINED TO BE INVALID OR TERMINATES AFTER THE ASSOCIATION COMMENCES PAYMENT TO THE SUPPLEMENTAL NEEDS TRUST, THE SURVIVOR BENEFIT, FROM THEN ON, IS PAID TO THE BENEFICIARY OF THE SUPPLEMENTAL NEEDS TRUST SO LONG AS THAT BENEFICIARY IS ELIGIBLE FOR SURVIVOR BENEFITS.

SECTION 7. In Colorado Revised Statutes, 24-51-1204, **add** (2) as follows:

24-51-1204. Health care program - eligibility. (2) IF A SUPPLEMENTAL NEEDS TRUST IS RECEIVING BENEFIT PAYMENTS PURSUANT TO THIS ARTICLE, THE SUPPLEMENTAL NEEDS TRUST IS NOT ELIGIBLE TO ENROLL IN THE HEALTH CARE PROGRAM; HOWEVER, THE BENEFICIARY OF SUCH TRUST IS ELIGIBLE TO ENROLL IN THE HEALTH CARE PROGRAM IN THE SAME MANNER THAT THE BENEFICIARY WOULD BE ALLOWED TO ENROLL IF THE BENEFICIARY WAS THE DIRECT BENEFIT RECIPIENT.

SECTION 8. In Colorado Revised Statutes, 24-51-1206, **add** (7) as follows:

24-51-1206. Premium subsidy. (7) IF A SUPPLEMENTAL NEEDS TRUST IS RECEIVING BENEFIT PAYMENTS PURSUANT TO THIS ARTICLE, THE SUPPLEMENTAL NEEDS TRUST IS NOT ELIGIBLE FOR A PREMIUM SUBSIDY; HOWEVER, THE BENEFICIARY OF SUCH TRUST IS ELIGIBLE FOR A PREMIUM SUBSIDY IN THE SAME MANNER THAT THE BENEFICIARY WOULD RECEIVE A PREMIUM SUBSIDY IF THE BENEFICIARY WAS THE DIRECT BENEFIT RECIPIENT. IF THE ELIGIBILITY OF THE PREMIUM SUBSIDY CAUSES THE BENEFICIARY OF THE SUPPLEMENTAL NEEDS TRUST TO BE DISQUALIFIED FROM RECEIVING

PUBLIC BENEFITS, THE BENEFICIARY IS NOT ELIGIBLE FOR SUCH PREMIUM SUBSIDY SO LONG AS SUCH CONDITION EXISTS.

SECTION 9. In Colorado Revised Statutes, 24-51-1702, **amend** (19) (c); and **add** (19) (f) as follows:

24-51-1702. Definitions. As used in this part 17, unless the context otherwise requires:

(19) "Membership" means the relationship a regular or casual employee has in the DPS plan and shall consist of the following:

(c) "Beneficiary" means a person OR SUPPLEMENTAL NEEDS TRUST who has received, receives, or is designated to receive benefits accruing as a result of an employee's membership.

(f) "SUPPLEMENTAL NEEDS TRUST" MEANS A VALID THIRD-PARTY SPECIAL NEEDS TRUST ESTABLISHED FOR A MEMBER'S OR RETIREE'S CHILD AS THE BENEFICIARY OF THE TRUST THAT COMPLIES WITH THE "COLORADO MEDICAL ASSISTANCE ACT", ARTICLES 4 TO 6 OF TITLE 25.5, C.R.S., AND THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED. THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING SHALL REVIEW ANY TRUST ESTABLISHED DURING DETERMINATION OR REDETERMINATION OF AN INDIVIDUAL'S ELIGIBILITY FOR MEDICAL ASSISTANCE AND SPECIFICALLY AS TO THE EFFECT OF ANY TRUST ON SUCH ELIGIBILITY FOR MEDICAL ASSISTANCE. THE TRUST MUST BE FOR THE BENEFIT OF A SINGLE BENEFICIARY AND MUST BE COTERMINOUS WITH THE LIFETIME OF SUCH BENEFICIARY.

SECTION 10. In Colorado Revised Statutes, **amend** 24-51-1719 as follows:

24-51-1719. Option C. (1) Any contributing member or affiliate member choosing or having chosen option C through December 31, 2009, will be governed by the DPS plan document. As of January 1, 2010, option C will no longer be a permissible payment choice.

(2) NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, AN ANNUITANT MAY CHANGE THE CO-ANNUITANT THAT WAS NAMED BY SUCH ANNUITANT AND DESIGNATE A SUPPLEMENTAL NEEDS TRUST AS A

CO-ANNUITANT IN PLACE OF THE PREVIOUSLY NAMED CO-ANNUITANT IF:

(a) THE BENEFICIARY OF THE SUPPLEMENTAL NEEDS TRUST IS THE SAME PERSON AS THE PREVIOUSLY NAMED CO-ANNUITANT; AND

(b) THE RETIREE FILES AN APPLICATION AND ANY REQUIRED DOCUMENTS IN A FORM AS DESIGNATED BY THE ASSOCIATION.

(3) IF A SUPPLEMENTAL NEEDS TRUST IS NOT ESTABLISHED BEFORE OR WITHIN NINETY DAYS AFTER THE DEATH OF THE ANNUITANT, IS DETERMINED TO BE INVALID, OR IS TERMINATED ON OR AFTER THE DEATH OF THE ANNUITANT, THE BENEFICIARY THAT WAS NAMED IN THE TRUST IS THE CO-ANNUITANT.

SECTION 11. In Colorado Revised Statutes, **amend** 24-51-1721 as follows:

24-51-1721. Option E. (1) Any contributing member or affiliate member choosing or having chosen option E through December 31, 2009, will be governed by the DPS plan document. As of January 1, 2010, option E will no longer be a permissible payment choice.

(2) NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, AN ANNUITANT MAY CHANGE THE CO-ANNUITANT THAT WAS NAMED BY SUCH ANNUITANT AND DESIGNATE A SUPPLEMENTAL NEEDS TRUST AS A CO-ANNUITANT IN PLACE OF THE PREVIOUSLY NAMED CO-ANNUITANT IF:

(a) THE BENEFICIARY OF THE SUPPLEMENTAL NEEDS TRUST IS THE SAME PERSON AS THE PREVIOUSLY NAMED CO-ANNUITANT; AND

(b) THE RETIREE FILES AN APPLICATION AND ANY REQUIRED DOCUMENTS IN A FORM AS DESIGNATED BY THE ASSOCIATION.

(3) IF A SUPPLEMENTAL NEEDS TRUST IS NOT ESTABLISHED BEFORE OR WITHIN NINETY DAYS AFTER THE DEATH OF THE ANNUITANT, IS DETERMINED TO BE INVALID, OR IS TERMINATED ON OR AFTER THE DEATH OF THE ANNUITANT, THE BENEFICIARY THAT WAS NAMED IN THE TRUST IS THE CO-ANNUITANT.

SECTION 12. In Colorado Revised Statutes, 24-51-1723, **add** (3) and (4) as follows:

24-51-1723. Option P2. (3) NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, AN ANNUITANT MAY CHANGE THE CO-ANNUITANT THAT WAS NAMED BY SUCH ANNUITANT AND DESIGNATE A SUPPLEMENTAL NEEDS TRUST AS A CO-ANNUITANT IN PLACE OF THE PREVIOUSLY NAMED CO-ANNUITANT IF:

(a) THE BENEFICIARY OF THE SUPPLEMENTAL NEEDS TRUST IS THE SAME PERSON AS THE PREVIOUSLY NAMED CO-ANNUITANT; AND

(b) THE RETIREE FILES AN APPLICATION AND ANY REQUIRED DOCUMENTS IN A FORM AS DESIGNATED BY THE ASSOCIATION.

(4) IF A SUPPLEMENTAL NEEDS TRUST IS NOT ESTABLISHED BEFORE OR WITHIN NINETY DAYS AFTER THE DEATH OF THE ANNUITANT, IS DETERMINED TO BE INVALID, OR IS TERMINATED ON OR AFTER THE DEATH OF THE ANNUITANT, THE BENEFICIARY THAT WAS NAMED IN THE TRUST IS THE CO-ANNUITANT.

SECTION 13. In Colorado Revised Statutes, 24-51-1724, **add** (5) and (6) as follows:

24-51-1724. Option P3. (5) NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, AN ANNUITANT MAY CHANGE THE CO-ANNUITANT THAT WAS NAMED BY SUCH ANNUITANT AND DESIGNATE A SUPPLEMENTAL NEEDS TRUST AS A CO-ANNUITANT IN PLACE OF THE PREVIOUSLY NAMED CO-ANNUITANT IF:

(a) THE BENEFICIARY OF THE SUPPLEMENTAL NEEDS TRUST IS THE SAME PERSON AS THE PREVIOUSLY NAMED CO-ANNUITANT; AND

(b) THE RETIREE FILES AN APPLICATION AND ANY REQUIRED DOCUMENTS IN A FORM AS DESIGNATED BY THE ASSOCIATION.

(6) IF A SUPPLEMENTAL NEEDS TRUST IS NOT ESTABLISHED BEFORE OR WITHIN NINETY DAYS AFTER THE DEATH OF THE ANNUITANT, IS DETERMINED TO BE INVALID, OR IS TERMINATED ON OR AFTER THE DEATH OF THE ANNUITANT, THE BENEFICIARY THAT WAS NAMED IN THE TRUST IS THE CO-ANNUITANT.

SECTION 14. In Colorado Revised Statutes, 24-51-1737, **add** (3)

as follows:

24-51-1737. Eligible beneficiaries. (3) IF AT THE TIME OF THE DEATH OF THE MEMBER THERE IS A SUPPLEMENTAL NEEDS TRUST ESTABLISHED BEFORE OR WITHIN NINETY DAYS AFTER THE DEATH OF THE MEMBER FOR THE BENEFIT OF THE CHILD ELIGIBLE FOR SURVIVOR BENEFITS, SURVIVOR BENEFITS PAYABLE PURSUANT TO SECTIONS 24-51-1736 TO 24-51-1746 TO THE BENEFICIARY OF THE SUPPLEMENTAL NEEDS TRUST ARE PAYABLE TO THE TRUST SO LONG AS THAT BENEFICIARY IS ELIGIBLE FOR SURVIVOR BENEFITS. IF A SUPPLEMENTAL NEEDS TRUST IS DETERMINED TO BE INVALID OR TERMINATES AFTER THE ASSOCIATION COMMENCES PAYMENT TO THE SUPPLEMENTAL NEEDS TRUST, THE SURVIVOR BENEFIT, FROM THEN ON, IS PAID TO THE BENEFICIARY OF THE SUPPLEMENTAL NEEDS TRUST SO LONG AS THAT BENEFICIARY IS ELIGIBLE FOR SURVIVOR BENEFITS.

SECTION 15. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 16. Applicability. This act applies to members and retirees of the public employees' retirement association who are living on or after the effective date of this act.

SECTION 17. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Bill L. Cadman
PRESIDENT OF
THE SENATE

Dickey Lee Hullinghorst
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO