

Representative Jim Bird proposes the following substitute bill:

INSURANCE BENEFICIARY CHANGES

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jim Bird

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill requires a life insurance or annuity policyholder to change a beneficiary according to the insurer's requirements after a divorce or annulment.

Highlighted Provisions:

This bill:

- ▶ exempts life insurance policies and annuity contracts from the operation of Section 75-2-804;
- ▶ requires a policyholder or contract holder to follow the insurer's requirements for changing beneficiaries after a divorce;
- ▶ requires a judge in a divorce to ask parties about insurance or annuities; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30-3-5, as last amended by Laws of Utah 2010, Chapter 285



26 **31A-22-413**, as last amended by Laws of Utah 2006, Chapter 62
27 **75-2-804**, as repealed and reenacted by Laws of Utah 1998, Chapter 39



29 *Be it enacted by the Legislature of the state of Utah:*

30 Section 1. Section **30-3-5** is amended to read:

31 **30-3-5. Disposition of property -- Maintenance and health care of parties and**
32 **children -- Division of debts -- Court to have continuing jurisdiction -- Custody and**
33 **parent-time -- Determination of alimony -- Nonmeritorious petition for modification.**

34 (1) When a decree of divorce is rendered, the court may include in it equitable orders
35 relating to the children, property, debts or obligations, and parties. The court shall include the
36 following in every decree of divorce:

37 (a) an order assigning responsibility for the payment of reasonable and necessary
38 medical and dental expenses of the dependent children including responsibility for health
39 insurance out-of-pocket expenses such as co-payments, co-insurance, and deductibles;

40 (b) (i) if coverage is or becomes available at a reasonable cost, an order requiring the
41 purchase and maintenance of appropriate health, hospital, and dental care insurance for the
42 dependent children; and

43 (ii) a designation of which health, hospital, or dental insurance plan is primary and
44 which health, hospital, or dental insurance plan is secondary in accordance with the provisions
45 of Section 30-3-5.4 which will take effect if at any time a dependent child is covered by both
46 parents' health, hospital, or dental insurance plans;

47 (c) pursuant to Section 15-4-6.5:

48 (i) an order specifying which party is responsible for the payment of joint debts,
49 obligations, or liabilities of the parties contracted or incurred during marriage;

50 (ii) an order requiring the parties to notify respective creditors or obligees, regarding
51 the court's division of debts, obligations, or liabilities and regarding the parties' separate,
52 current addresses; ~~and~~

53 (iii) provisions for the enforcement of these orders; and

54 (d) provisions for income withholding in accordance with Title 62A, Chapter 11,
55 Recovery Services[-]; and

56 (e) if either party owns a life insurance policy or an annuity contract, an

57 acknowledgment by the court that the owner has:

58 (i) reviewed and updated, where appropriate, the list of beneficiaries; and

59 (ii) affirmed that those listed as beneficiaries are in fact the intended beneficiaries after
60 the divorce becomes final.

61 (2) The court may include, in an order determining child support, an order assigning
62 financial responsibility for all or a portion of child care expenses incurred on behalf of the
63 dependent children, necessitated by the employment or training of the custodial parent. If the
64 court determines that the circumstances are appropriate and that the dependent children would
65 be adequately cared for, it may include an order allowing the noncustodial parent to provide
66 child care for the dependent children, necessitated by the employment or training of the
67 custodial parent.

68 (3) The court has continuing jurisdiction to make subsequent changes or new orders for
69 the custody of the children and their support, maintenance, health, and dental care, and for
70 distribution of the property and obligations for debts as is reasonable and necessary.

71 (4) Child support, custody, visitation, and other matters related to children born to the
72 mother and father after entry of the decree of divorce may be added to the decree by
73 modification.

74 (5) (a) In determining parent-time rights of parents and visitation rights of grandparents
75 and other members of the immediate family, the court shall consider the best interest of the
76 child.

77 (b) Upon a specific finding by the court of the need for peace officer enforcement, the
78 court may include in an order establishing a parent-time or visitation schedule a provision,
79 among other things, authorizing any peace officer to enforce a court-ordered parent-time or
80 visitation schedule entered under this chapter.

81 (6) If a petition for modification of child custody or parent-time provisions of a court
82 order is made and denied, the court shall order the petitioner to pay the reasonable attorneys'
83 fees expended by the prevailing party in that action, if the court determines that the petition
84 was without merit and not asserted or defended against in good faith.

85 (7) If a petition alleges noncompliance with a parent-time order by a parent, or a
86 visitation order by a grandparent or other member of the immediate family where a visitation or
87 parent-time right has been previously granted by the court, the court may award to the

88 prevailing party costs, including actual attorney fees and court costs incurred by the prevailing
89 party because of the other party's failure to provide or exercise court-ordered visitation or
90 parent-time.

91 (8) (a) The court shall consider at least the following factors in determining alimony:

92 (i) the financial condition and needs of the recipient spouse;

93 (ii) the recipient's earning capacity or ability to produce income;

94 (iii) the ability of the payor spouse to provide support;

95 (iv) the length of the marriage;

96 (v) whether the recipient spouse has custody of minor children requiring support;

97 (vi) whether the recipient spouse worked in a business owned or operated by the payor
98 spouse; and

99 (vii) whether the recipient spouse directly contributed to any increase in the payor
100 spouse's skill by paying for education received by the payor spouse or allowing the payor
101 spouse to attend school during the marriage.

102 (b) The court may consider the fault of the parties in determining alimony.

103 (c) As a general rule, the court should look to the standard of living, existing at the
104 time of separation, in determining alimony in accordance with Subsection (8)(a). However, the
105 court shall consider all relevant facts and equitable principles and may, in its discretion, base
106 alimony on the standard of living that existed at the time of trial. In marriages of short
107 duration, when no children have been conceived or born during the marriage, the court may
108 consider the standard of living that existed at the time of the marriage.

109 (d) The court may, under appropriate circumstances, attempt to equalize the parties'
110 respective standards of living.

111 (e) When a marriage of long duration dissolves on the threshold of a major change in
112 the income of one of the spouses due to the collective efforts of both, that change shall be
113 considered in dividing the marital property and in determining the amount of alimony. If one
114 spouse's earning capacity has been greatly enhanced through the efforts of both spouses during
115 the marriage, the court may make a compensating adjustment in dividing the marital property
116 and awarding alimony.

117 (f) In determining alimony when a marriage of short duration dissolves, and no
118 children have been conceived or born during the marriage, the court may consider restoring

119 each party to the condition which existed at the time of the marriage.

120 (g) (i) The court has continuing jurisdiction to make substantive changes and new
121 orders regarding alimony based on a substantial material change in circumstances not
122 foreseeable at the time of the divorce.

123 (ii) The court may not modify alimony or issue a new order for alimony to address
124 needs of the recipient that did not exist at the time the decree was entered, unless the court
125 finds extenuating circumstances that justify that action.

126 (iii) In determining alimony, the income of any subsequent spouse of the payor may not
127 be considered, except as provided in this Subsection (8).

128 (A) The court may consider the subsequent spouse's financial ability to share living
129 expenses.

130 (B) The court may consider the income of a subsequent spouse if the court finds that
131 the payor's improper conduct justifies that consideration.

132 (h) Alimony may not be ordered for a duration longer than the number of years that the
133 marriage existed unless, at any time prior to termination of alimony, the court finds extenuating
134 circumstances that justify the payment of alimony for a longer period of time.

135 (9) Unless a decree of divorce specifically provides otherwise, any order of the court
136 that a party pay alimony to a former spouse automatically terminates upon the remarriage or
137 death of that former spouse. However, if the remarriage is annulled and found to be void ab
138 initio, payment of alimony shall resume if the party paying alimony is made a party to the
139 action of annulment and his rights are determined.

140 (10) Any order of the court that a party pay alimony to a former spouse terminates
141 upon establishment by the party paying alimony that the former spouse is cohabitating with
142 another person.

143 Section 2. Section **31A-22-413** is amended to read:

144 **31A-22-413. Designation of beneficiary.**

145 (1) Subject to Subsection 31A-22-412(2), no life insurance policy or annuity contract
146 may restrict the right of a policyholder or certificate holder:

147 (a) to make an irrevocable designation of beneficiary effective immediately or at some
148 subsequent time; or

149 (b) if the designation of beneficiary is not explicitly irrevocable, to change the

150 beneficiary without the consent of the previously designated beneficiary. Subsection
151 75-6-201(1)(c) applies to designations by will or by separate writing.

152 (2) (a) An insurer may prescribe formalities to be complied with for the change of
153 beneficiaries, but those formalities may only be designed for the protection of the insurer.
154 [~~The~~] Notwithstanding Section 75-2-804, the insurer discharges its obligation under the
155 insurance policy or certificate of insurance if it pays the properly designated beneficiary unless
156 it has actual notice of either an assignment or a change in beneficiary designation made
157 pursuant to Subsection (1)(b) [~~or Section 75-2-804~~].

158 (b) The insurer has actual notice if the formalities prescribed by the policy are
159 complied with, or if the change in beneficiary has been requested in the form prescribed by the
160 insurer and delivered to an agent representing the insurer at least three days prior to payment to
161 the earlier properly designated beneficiary.

162 Section 3. Section **75-2-804** is amended to read:

163 **75-2-804. Definitions -- Revocation of probate and nonprobate transfers by**
164 **divorce -- Effect of severance -- Revival -- Protection of payors, third parties, and bona**
165 **fide purchasers -- Personal liability of recipient -- No revocation by other changes of**
166 **circumstances -- No revocation of life insurance beneficiary.**

167 (1) As used in this section:

168 (a) "Disposition or appointment of property" includes a transfer of an item of property
169 or any other benefit to a beneficiary designated in a governing instrument.

170 (b) "Divorce or annulment" means any divorce or annulment, or any dissolution or
171 declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse
172 within the meaning of Section 75-2-802. A decree of separation that does not terminate the
173 status of husband and wife is not a divorce for purposes of this section.

174 (c) "Divorced individual" includes an individual whose marriage has been annulled.

175 (d) "Governing instrument" means a governing instrument executed by the divorced
176 individual before the divorce or annulment of [~~his~~] the individual's marriage to [~~his~~] the
177 individual's former spouse.

178 (e) "Relative of the divorced individual's former spouse" means an individual who is
179 related to the divorced individual's former spouse by blood, adoption, or affinity and who, after
180 the divorce or annulment, is not related to the divorced individual by blood, adoption, or

181 affinity.

182 (f) "Revocable," with respect to a disposition, appointment, provision, or nomination,
183 means one under which the divorced individual, at the time of the divorce or annulment, was
184 alone empowered, by law or under the governing instrument, to cancel the designation in favor
185 of ~~[his]~~ the individual's former spouse or former spouse's relative, whether or not the divorced
186 individual was then empowered to designate ~~himself~~ another in place of ~~[his]~~ the individual's
187 former spouse or in place of ~~[his]~~ the individual's former spouse's relative and whether or not
188 the divorced individual then had the capacity to exercise the power.

189 (2) Except as provided by the express terms of a governing instrument, a court order,
190 or a contract relating to the division of the marital estate made between the divorced
191 individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a
192 marriage:

193 (a) revokes any revocable:

194 (i) disposition or appointment of property made by a divorced individual to ~~[his]~~ the
195 individual's former spouse in a governing instrument and any disposition or appointment
196 created by law or in a governing instrument to a relative of the divorced individual's former
197 spouse;

198 (ii) provision in a governing instrument conferring a general or nongeneral power of
199 appointment on the divorced individual's former spouse or on a relative of the divorced
200 individual's former spouse; and

201 (iii) nomination in a governing instrument, ~~[nominating]~~ which nominates a divorced
202 individual's former spouse or a relative of the divorced individual's former spouse to serve in
203 any fiduciary or representative capacity, including a personal representative, executor, trustee,
204 conservator, agent, or guardian; and

205 (b) severs the interests of the former spouses in property held by them at the time of the
206 divorce or annulment as joint tenants with the right of survivorship, transforming the interests
207 of the former spouses into tenancies in common.

208 (3) This section does not apply to the designation of a beneficiary of a life insurance
209 policy or annuity contract. A policyholder or certificate holder who obtains a divorce or
210 annulment shall request a beneficiary change in the form required by the insurer in accordance
211 with Section 31A-22-413.

212 ~~[(3)]~~ (4) A severance under Subsection (2)(b) does not affect any third-party interest in
213 property acquired for value and in good faith reliance on an apparent title by survivorship in the
214 survivor of the former spouses unless a writing declaring the severance has been noted,
215 registered, filed, or recorded in records appropriate to the kind and location of the property,
216 which are relied upon, in the ordinary course of transactions involving such property, as
217 evidence of ownership.

218 ~~[(4)]~~ (5) Provisions of a governing instrument are given effect as if the former spouse
219 and relatives of the former spouse disclaimed all provisions revoked by this section or, in the
220 case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse
221 and relatives of the former spouse died immediately before the divorce or annulment.

222 ~~[(5)]~~ (6) Provisions revoked solely by this section are revived by the divorced
223 individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

224 ~~[(6)]~~ (7) No change of circumstances other than as described in this section and in
225 Section 75-2-803 effects a revocation.

226 ~~[(7)]~~ (8) (a) A payor or other third party is not liable for having made a payment or
227 transferred an item of property or any other benefit to a beneficiary designated in a governing
228 instrument affected by a divorce, annulment, or remarriage, or for having taken any other
229 action in good faith reliance on the validity of the governing instrument, before the payor or
230 other third party received written notice of the divorce, annulment, or remarriage. A payor or
231 other third party is liable for a payment made or other action taken after the payor or other third
232 party received written notice of a claimed forfeiture or revocation under this section.

233 (b) Written notice of the divorce, annulment, or remarriage under Subsection ~~[(7)]~~
234 (8)(a) shall be mailed to the payor's or other third party's main office or home by registered or
235 certified mail, return receipt requested, or served upon the payor or other third party in the
236 same manner as a summons in a civil action. Upon receipt of written notice of the divorce,
237 annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or
238 deposit any item of property held by it to or with the court having jurisdiction of the probate
239 proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or
240 with the court having jurisdiction of probate proceedings relating to the decedent's estates
241 located in the county of the decedent's residence. The court shall hold the funds or item of
242 property and, upon its determination under this section, shall order disbursement or transfer in

243 accordance with the determination. Payments, transfers, or deposits made to or with the court
244 discharge the payor or other third party from all claims for the value of amounts paid to or
245 items of property transferred to or deposited with the court.

246 ~~[(8)]~~ (9) (a) A person who purchases property from a former spouse, relative of a
247 former spouse, or any other person for value and without notice, or who receives from a former
248 spouse, relative of a former spouse, or any other person a payment or other item of property in
249 partial or full satisfaction of a legally enforceable obligation, is neither obligated under this
250 section to return the payment, item of property, or benefit, nor is liable under this section for
251 the amount of the payment or the value of the item of property or benefit. But a former spouse,
252 relative of a former spouse, or other person who, not for value, received a payment, item of
253 property, or any other benefit to which that person is not entitled under this section is obligated
254 to return the payment, item of property, or benefit, or is personally liable for the amount of the
255 payment or the value of the item of property or benefit, to the person who is entitled to it under
256 this section.

257 (b) If this section or any part of this section is preempted by federal law with respect to
258 a payment, an item of property, or any other benefit covered by this section, a former spouse,
259 relative of the former spouse, or any other person who, not for value, received a payment, item
260 of property, or any other benefit to which that person is not entitled under this section is
261 obligated to return that payment, item of property, or benefit, or is personally liable for the
262 amount of the payment or the value of the item of property or benefit, to the person who would
263 have been entitled to it were this section or part of this section not preempted.