

HB0065S02 compared with HB0065S01

~~{deleted text}~~ shows text that was in HB0065S01 but was deleted in HB0065S02.

inserted text shows text that was not in HB0065S01 but was inserted into HB0065S02.

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~~{Senator Stuart C. Reid}~~ Representative Jim Bird proposes the following substitute bill:

INSURANCE BENEFICIARY CHANGES

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jim Bird

Senate Sponsor: _____

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:

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None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

31A-22-413, as last amended by Laws of Utah 2006, Chapter 62

75-2-804, as repealed and reenacted by Laws of Utah 1998, Chapter 39

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

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

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

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

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

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

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

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

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

(ii) an order requiring the parties to notify respective creditors or obligees, regarding

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the court's division of debts, obligations, or liabilities and regarding the parties' separate, current addresses; ~~and~~

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

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

(e) if either party owns a life insurance policy or an annuity contract, an acknowledgment by the court that the owner has:

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

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

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

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

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

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

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

(6) If a petition for modification of child custody or parent-time provisions of a court

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order is made and denied, the court shall order the petitioner to pay the reasonable attorneys' fees expended by the prevailing party in that action, if the court determines that the petition was without merit and not asserted or defended against in good faith.

(7) If a petition alleges noncompliance with a parent-time order by a parent, or a visitation order by a grandparent or other member of the immediate family where a visitation or parent-time right has been previously granted by the court, the court may award to the prevailing party costs, including actual attorney fees and court costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation or parent-time.

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

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

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

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

(iv) the length of the marriage;

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

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

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

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

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

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

(e) When a marriage of long duration dissolves on the threshold of a major change in the income of one of the spouses due to the collective efforts of both, that change shall be

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considered in dividing the marital property and in determining the amount of alimony. If one spouse's earning capacity has been greatly enhanced through the efforts of both spouses during the marriage, the court may make a compensating adjustment in dividing the marital property and awarding alimony.

(f) In determining alimony when a marriage of short duration dissolves, and no children have been conceived or born during the marriage, the court may consider restoring each party to the condition which existed at the time of the marriage.

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

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

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

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

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

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

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

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

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

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31A-22-413. Designation of beneficiary.

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

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

(b) if the designation of beneficiary is not explicitly irrevocable, to change the beneficiary without the consent of the previously designated beneficiary. Subsection 75-6-201(1)(c) applies to designations by will or by separate writing.

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

(a) revokes any revocable:

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

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

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

(b) severs the interests of the former spouses in property held by them at the time of the

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divorce or annulment as joint tenants with the right of survivorship, transforming the interests of the former spouses into tenancies in common.

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

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

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

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

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

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

(b) Written notice of the divorce, annulment, or remarriage under Subsection ~~[(7)]~~ (8)(a) shall be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce,

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annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to the decedent's estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

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

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