

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0128.01 Richard Sweetman x4333

SENATE BILL 16-084

SENATE SPONSORSHIP

Steadman,

HOUSE SPONSORSHIP

(None),

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING THE "COLORADO UNIFORM RECOGNITION OF
102 SUBSTITUTE HEALTH CARE DECISION-MAKING DOCUMENTS
103 ACT".

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 Recognition of Substitute Health Care Decision-making Documents Act" as Colorado law.

The bill establishes the circumstances under which a substitute health care decision-making document (document) is valid in this state.

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

22 (b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (8),
23 "SUBSTITUTE HEALTH CARE DECISION-MAKING DOCUMENT" DOES NOT
24 INCLUDE A RECORD CREATED BY AN INDIVIDUAL TO AUTHORIZE A
25 DECISION-MAKER TO ACT FOR THE INDIVIDUAL WITH RESPECT TO
26 FINANCIAL OR PROPERTY MATTERS, INCLUDING THE EXPENDITURE OF
27 MONEYS OF SUCH INDIVIDUAL.

1 **15-23-103. Validity of substitute health care decision-making**

2 **document.** (1) A SUBSTITUTE HEALTH CARE DECISION-MAKING
3 DOCUMENT EXECUTED OUTSIDE THIS STATE IS VALID IN THIS STATE IF,
4 WHEN THE DOCUMENT WAS EXECUTED, THE EXECUTION COMPLIED WITH:

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

8 (b) THE LAW OF THIS STATE.

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

13 **15-23-104. Meaning and effect of substitute health care**

14 **decision-making document.** THE MEANING AND EFFECT OF A SUBSTITUTE
15 HEALTH CARE 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 health care decision-making**

20 **document.** (1) EXCEPT AS OTHERWISE PROVIDED BY LAW, A PERSON WHO
21 IN GOOD FAITH ACCEPTS A SUBSTITUTE HEALTH CARE DECISION-MAKING
22 DOCUMENT WITHOUT ACTUAL KNOWLEDGE THAT THE DOCUMENT IS VOID,
23 INVALID, OR 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 HEALTH
2 CARE DECISION-MAKING DOCUMENT MAY REQUEST AND WITHOUT
3 FURTHER 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 health care**
13 **decision-making document.** (1) EXCEPT AS OTHERWISE PROVIDED IN
14 SUBSECTION (2) OF THIS SECTION OR BY ANOTHER LAW OF THIS STATE, A
15 PERSON WHO IS ASKED TO ACCEPT A SUBSTITUTE HEALTH CARE
16 DECISION-MAKING DOCUMENT SHALL ACCEPT WITHIN A REASONABLE TIME
17 A DOCUMENT THAT PURPORTEDLY MEETS THE VALIDITY REQUIREMENTS
18 OF SECTION 15-23-103. THE PERSON MAY NOT REQUIRE AN ADDITIONAL OR
19 DIFFERENT FORM OF DOCUMENT FOR AUTHORITY GRANTED IN THE
20 DOCUMENT PRESENTED.

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

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

27 (b) THE PERSON HAS ACTUAL KNOWLEDGE OF THE TERMINATION

1 OF THE DECISION-MAKER'S AUTHORITY OR THE DOCUMENT;

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

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

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

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

18 (a) A COURT ORDER MANDATING ACCEPTANCE OF THE DOCUMENT;
19 AND

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

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

26 **15-23-108. Uniformity of application and construction.** IN
27 APPLYING AND CONSTRUING THIS UNIFORM ACT, COURTS SHALL GIVE

1 CONSIDERATION TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH
2 RESPECT TO ITS SUBJECT MATTER AMONG THE STATES THAT ENACT IT.

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

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

14 **SECTION 2. Inclusion of official comments.** The revisor of
15 statutes shall include in the publication of the "Colorado Uniform
16 Recognition of Substitute Health Care Decision-making Documents Act",
17 as nonstatutory matter, following each section of the act, the full text of
18 the official comments to that section contained in the official volume
19 containing the 2014 official text of the "Uniform Recognition of
20 Substitute Decision-making Documents Act" issued by the Uniform Law
21 Commission, with any changes in the official comments or Colorado
22 comments to correspond to Colorado changes in the uniform act. The
23 revisor shall prepare the comments for approval by the committee on
24 legal services.

25 **SECTION 3. Act subject to petition - effective date.** This act
26 takes effect at 12:01 a.m. on the day following the expiration of the
27 ninety-day period after final adjournment of the general assembly (August

1 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
2 referendum petition is filed pursuant to section 1 (3) of article V of the
3 state constitution against this act or an item, section, or part of this act
4 within such period, then the act, item, section, or part will not take effect
5 unless approved by the people at the general election to be held in
6 November 2016 and, in such case, will take effect on the date of the
7 official declaration of the vote thereon by the governor.