

CHAPTER 166

PROBATE, TRUSTS, AND FIDUCIARIES

SENATE BILL 10-047

BY SENATOR(S) King K., Boyd, Brophy, Cadman, Carroll M., Foster, Gibbs, Heath, Keller, Kester, Kopp, Lundberg, Mitchell, Morse, Newell, Renfroe, Sandoval, Scheffel, Schultheis, Schwartz, Shaffer B., Spence, Tapia, Tochtrop, White, Whitehead, Williams;
also REPRESENTATIVE(S) Looper, Apuan, Balmer, Casso, Court, DelGrosso, Gerou, Labuda, Lambert, Middleton, Nikkel, Rice, Schafer S., Soper, Todd, Vigil.

AN ACT**CONCERNING RIGHTS RELATING TO THE DISPOSITION OF THE LAST REMAINS OF MEMBERS OF THE ARMED FORCES.**

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

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) It is a tragic and unavoidable fact that men and women from Colorado serving in the United States armed forces may lose their lives in the service of our country;

(b) The family members of those brave men and women should not have to experience uncertainty or strife with respect to the disposition of the last remains of their loved ones;

(c) The existence of a statutory procedure in Colorado for designating a person to be responsible for decisions relating to the disposition of last remains in addition to a separate, mandatory federal record of emergency data has created unnecessary confusion with respect to determining who is legally authorized to care for a fallen service member's remains; and

(d) This confusion has resulted in expensive and emotionally damaging litigation concerning the disposition of the last remains of service members; and

(e) Uniformity in resolving this issue among the states is both possible and appropriate.

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

(2) The general assembly therefore finds and declares that Colorado's statutory provisions concerning the disposition of last remains of persons serving in the United States armed forces should recognize the existence and legal superiority of the mandatory federal record of emergency data.

SECTION 2. 15-19-103 (3), Colorado Revised Statutes, is amended, and the said 15-19-103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

15-19-103. Definitions. As used in this article, unless the context otherwise requires:

(3) "Declaration" means a written instrument directing the lawful disposition of the declarant's last remains and the ceremonies planned after a declarant's death, in accordance with this article. A declaration may be made within a will; prepaid funeral, burial, or cremation contract; durable or medical power of attorney; a designated beneficiary agreement as described in article 22 of this title; A FEDERAL RECORD OF EMERGENCY DATA; or any other written document, including, but not limited to, a document governing the disposition of last remains under part 7 of article 11 of this title.

(3.5) "FEDERAL RECORD OF EMERGENCY DATA" MEANS THE UNITED STATES DEPARTMENT OF DEFENSE RECORD OF EMERGENCY DATA, DD FORM 93, OR ANY SUCCESSOR FORM.

SECTION 3. 15-19-104 (3) (a), Colorado Revised Statutes, is amended to read:

15-19-104. Declaration of disposition of last remains. (3) (a) (I) The provisions of the most recent declaration shall control over any other document regarding the disposition of the declarant's last remains.

(II) (A) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), IF THE DECLARANT IS A MEMBER OF THE UNITED STATES ARMED FORCES OR THE UNITED STATES RESERVE FORCES OR A MEMBER OF A STATE NATIONAL GUARD CALLED INTO FEDERAL SERVICE AND THE DECLARANT HAS EXECUTED A FEDERAL RECORD OF EMERGENCY DATA THAT IS VALID AND ENFORCEABLE AT THE TIME OF THE DECLARANT'S DEATH, THEN THE FEDERAL RECORD OF EMERGENCY DATA SHALL CONTROL OVER ANY OTHER DECLARATION CONCERNING THE PERSON AUTHORIZED TO DIRECT THE DISPOSITION OF THE DECLARANT'S LAST REMAINS, EVEN IF THE FEDERAL RECORD OF EMERGENCY DATA WAS EXECUTED PRIOR TO THE EXECUTION OF THE MOST RECENT DECLARATION PURSUANT TO THIS ARTICLE. THE PERSON AUTHORIZED TO DIRECT DISPOSITION OF THE DECEDENT'S LAST REMAINS PURSUANT TO THE FEDERAL RECORD OF EMERGENCY DATA SHALL DO SO IN ACCORDANCE WITH THE PROVISIONS FOR THE DISPOSITION OF THE REMAINS AND THE CEREMONIAL ARRANGEMENTS MADE BY THE DECLARANT IN HIS OR HER MOST RECENT DECLARATION CONCERNING SUCH DISPOSITION AND CEREMONIAL ARRANGEMENTS.

(B) FOR PURPOSES OF SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (II), A FEDERAL RECORD OF EMERGENCY DATA IS VALID AND ENFORCEABLE FOR ANY

DECLARANT WHO IS A COVERED DECEDENT AT THE TIME OF HIS OR HER DEATH, PURSUANT TO 10 U.S.C. SEC. 1481, OR ANY SUCCESSOR SECTION CONCERNING RECOVERY, CARE, AND DISPOSITION OF REMAINS.

SECTION 4. 15-19-106 (1) (a), Colorado Revised Statutes, is amended to read:

15-19-106. Right to dispose of remains. (1) Subject to section 15-19-105 (2), the right to control disposition of the last remains or ceremonial arrangements of a decedent vests in and devolves upon the following persons, at the time of the decedent's death, in the following order:

(a) The decedent if acting through a declaration pursuant to section 15-19-104, SUBJECT TO THE PROVISIONS OF SECTION 15-19-104 (3) (a) (II);

SECTION 5. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on the date of the official declaration of the vote thereon by the governor.

Approved: April 29, 2010