

1 **INSURANCE BENEFICIARY CHANGES**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Jim Bird**

5 Senate Sponsor: _____

6

LONG TITLE

7 **General Description:**

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

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ exempts life insurance policies and annuity contracts from the operation of Section
- 13 75-2-804;
- 14 ▶ requires a policyholder or contract holder to follow the insurer's requirements for
- 15 changing beneficiaries after a divorce; and
- 16 ▶ makes technical corrections.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **31A-22-413**, as last amended by Laws of Utah 2006, Chapter 62

24 **75-2-804**, as repealed and reenacted by Laws of Utah 1998, Chapter 39

25

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



28 Section 1. Section 31A-22-413 is amended to read:

29 **31A-22-413. Designation of beneficiary.**

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

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

34 (b) if the designation of beneficiary is not explicitly irrevocable, to change the
35 beneficiary without the consent of the previously designated beneficiary. Subsection
36 75-6-201(1)(c) applies to designations by will or by separate writing.

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

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

47 Section 2. Section 75-2-804 is amended to read:

48 **75-2-804. Definitions -- Revocation of probate and nonprobate transfers by**
49 **divorce -- Effect of severance -- Revival -- Protection of payors, third parties, and bona**
50 **fide purchasers -- Personal liability of recipient -- No revocation by other changes of**
51 **circumstances -- No revocation of life insurance beneficiary.**

52 (1) As used in this section:

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

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

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

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

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

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

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

78 (a) revokes any revocable:

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

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

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

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

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

97 [~~(3)~~] (4) A severance under Subsection (2)(b) does not affect any third-party interest in
98 property acquired for value and in good faith reliance on an apparent title by survivorship in the
99 survivor of the former spouses unless a writing declaring the severance has been noted,
100 registered, filed, or recorded in records appropriate to the kind and location of the property,
101 which are relied upon, in the ordinary course of transactions involving such property, as
102 evidence of ownership.

103 [~~(4)~~] (5) Provisions of a governing instrument are given effect as if the former spouse
104 and relatives of the former spouse disclaimed all provisions revoked by this section or, in the
105 case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse
106 and relatives of the former spouse died immediately before the divorce or annulment.

107 [~~(5)~~] (6) Provisions revoked solely by this section are revived by the divorced
108 individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

109 [~~(6)~~] (7) No change of circumstances other than as described in this section and in
110 Section 75-2-803 effects a revocation.

111 [~~(7)~~] (8) (a) A payor or other third party is not liable for having made a payment or
112 transferred an item of property or any other benefit to a beneficiary designated in a governing
113 instrument affected by a divorce, annulment, or remarriage, or for having taken any other
114 action in good faith reliance on the validity of the governing instrument, before the payor or
115 other third party received written notice of the divorce, annulment, or remarriage. A payor or
116 other third party is liable for a payment made or other action taken after the payor or other third
117 party received written notice of a claimed forfeiture or revocation under this section.

118 (b) Written notice of the divorce, annulment, or remarriage under Subsection [~~(7)~~]
119 (8)(a) shall be mailed to the payor's or other third party's main office or home by registered or
120 certified mail, return receipt requested, or served upon the payor or other third party in the

121 same manner as a summons in a civil action. Upon receipt of written notice of the divorce,
122 annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or
123 deposit any item of property held by it to or with the court having jurisdiction of the probate
124 proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or
125 with the court having jurisdiction of probate proceedings relating to the decedent's estates
126 located in the county of the decedent's residence. The court shall hold the funds or item of
127 property and, upon its determination under this section, shall order disbursement or transfer in
128 accordance with the determination. Payments, transfers, or deposits made to or with the court
129 discharge the payor or other third party from all claims for the value of amounts paid to or
130 items of property transferred to or deposited with the court.

131 ~~[(8)]~~ (9) (a) A person who purchases property from a former spouse, relative of a
132 former spouse, or any other person for value and without notice, or who receives from a former
133 spouse, relative of a former spouse, or any other person a payment or other item of property in
134 partial or full satisfaction of a legally enforceable obligation, is neither obligated under this
135 section to return the payment, item of property, or benefit, nor is liable under this section for
136 the amount of the payment or the value of the item of property or benefit. But a former spouse,
137 relative of a former spouse, or other person who, not for value, received a payment, item of
138 property, or any other benefit to which that person is not entitled under this section is obligated
139 to return the payment, item of property, or benefit, or is personally liable for the amount of the
140 payment or the value of the item of property or benefit, to the person who is entitled to it under
141 this section.

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

Legislative Review Note
as of 1-9-13 6:38 AM

Office of Legislative Research and General Counsel