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SENATE BILL 26-118

BY SENATOR(S) Coleman and Simpson, Ball, Cutter, Daugherty, Frizell, Gonzales J., Jodeh, Kipp, Kolker, Marchman, Snyder;
also REPRESENTATIVE(S) Clifford, Bacon, Boesenecker, Camacho, Froelich, Lindsay, Nguyen, Rutinel.

CONCERNING THE PAYMENT OF DESIGNATED BENEFITS TO A CHARITABLE ORGANIZATION UPON THE DEATH OF A DONOR.

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

SECTION 1. In Colorado Revised Statutes, **add** 15-15-104 as follows:

15-15-104. Payment of designated benefits to charitable organizations - timeline - affidavits - conditional requirements prohibited - enforcement - definitions.

(1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "BENEFITS" MEANS:

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(I) PROCEEDS PAYABLE UPON DEATH PURSUANT TO AN ANNUITY OR INSURANCE POLICY;

(II) A SAVINGS OR CHECKING ACCOUNT WITH A PAYABLE-UPON-DEATH DESIGNATION;

(III) A SECURITY REGISTERED IN BENEFICIARY FORM WITH A PAYABLE-UPON-DEATH DESIGNATION; OR

(IV) PROCEEDS PAYABLE UPON DEATH PURSUANT TO A PENSION OR A PROFIT-SHARING, A RETIREMENT, OR OTHER EMPLOYMENT-RELATED BENEFIT PLAN.

(b) "CHARITABLE ORGANIZATION" HAS THE MEANING SET FORTH IN SECTION 39-26-102 (2.5).

(c) "COVERED ENTITY" MEANS:

(I) A BANK, AS DEFINED IN SECTION 11-51-201 (1);

(II) A BROKER-DEALER, AS DEFINED IN SECTION 11-51-201 (2);

(III) A DEPOSITORY INSTITUTION, AS DEFINED IN SECTION 11-51-201 (5);

(IV) A CREDIT UNION, AS DEFINED IN SECTION 11-30-101 (1)(a); OR

(V) A FINANCIAL OR INSTITUTIONAL INVESTOR, AS DEFINED IN SECTION 11-51-201 (6).

(d) "DESIGNATED BENEFITS" MEANS BENEFITS THAT ARE DESIGNATED TO BE TRANSFERRED TO A CHARITABLE ORGANIZATION UPON THE DEATH OF AN INDIVIDUAL.

(e) "IRS" MEANS THE FEDERAL INTERNAL REVENUE SERVICE.

(2) (a) UNLESS A COURT HAS ORDERED OTHERWISE, AND EXCEPT AS MAY BE PROVIDED OTHERWISE BY FEDERAL LAW AND BY SUBSECTION (2)(c) OF THIS SECTION, A COVERED ENTITY THAT HOLDS DESIGNATED BENEFITS SHALL PAY THE DESIGNATED BENEFITS TO THE CHARITABLE ORGANIZATION

NOT LATER THAN SIXTY CALENDAR DAYS AFTER THE CHARITABLE ORGANIZATION SUBMITS TO THE COVERED ENTITY AN AFFIDAVIT THAT ATTESTS TO THE DEATH OF THE DONOR AND INCLUDES THE FOLLOWING INFORMATION:

(I) THE DONOR'S NAME AND LAST-KNOWN ADDRESS;

(II) A GENERAL DESCRIPTION OF THE DESIGNATED BENEFITS;

(III) THE CHARITABLE ORGANIZATION'S NAME, ADDRESS, TELEPHONE NUMBER, AND INTERNET WEBSITE ADDRESS, IF ANY;

(IV) A COPY OF THE CHARITABLE ORGANIZATION'S IRS DETERMINATION LETTER;

(V) A COPY OF THE CHARITABLE ORGANIZATION'S IRS FORM W-9, SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF THE CHARITABLE ORGANIZATION;

(VI) A REQUEST THAT THE DESIGNATED BENEFITS BE PAID OR TRANSFERRED TO THE CHARITABLE ORGANIZATION IN ACCORDANCE WITH THIS SECTION, INCLUDING INSTRUCTIONS ON WHERE AND HOW TO REMIT PAYMENT;

(VII) A COPY OF THE DEATH CERTIFICATE; EXCEPT THAT, IF THE COVERED ENTITY HAS ALREADY RECEIVED NOTICE OF THE DONOR'S DEATH, THIS REQUIREMENT DOES NOT APPLY;

(VIII) A STATEMENT THAT THE INFORMATION PROVIDED IN THE AFFIDAVIT IS TRUE AND CORRECT;

(IX) A SIGNATURE FROM A DULY AUTHORIZED REPRESENTATIVE OF THE CHARITABLE ORGANIZATION;

(X) A COPY OF THE CHARITABLE ORGANIZATION'S CORPORATE RESOLUTIONS CERTIFYING THAT THE SIGNATORY OF THE AFFIDAVIT IS AUTHORIZED TO ACT ON BEHALF OF THE CHARITABLE ORGANIZATION; AND

(XI) A WAIVER SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF THE CHARITABLE ORGANIZATION, STATING THAT THE CHARITABLE

ORGANIZATION ACKNOWLEDGES AND AGREES TO THE FOLLOWING:

(A) THE DESIGNATED BENEFITS MAY CONCERN CREDITOR CLAIMS AGAINST THE DONOR'S PROBATE ESTATE AND STATUTORY ALLOWANCES TO THE DONOR'S SPOUSE AND CHILDREN, FOR WHICH CLAIMS AND ALLOWANCES THE CHARITABLE ORGANIZATION MAY BE LIABLE IF THE DONOR'S ESTATE IS INSUFFICIENT TO SATISFY THOSE CLAIMS AND ALLOWANCES, UNLESS THE DESIGNATED BENEFITS ARE SPECIFICALLY EXCEPTED UNDER SECTION 15-15-103 (1)(b);

(B) THE DESIGNATED BENEFITS MAY CONCERN THE UNSATISFIED BALANCE OF A SURVIVING SPOUSE'S ELECTIVE-SHARE OR SUPPLEMENTAL ELECTIVE-SHARE CLAIM UNDER SECTION 15-11-209 (3), FOR WHICH CLAIM THE CHARITABLE ORGANIZATION MAY BE LIABLE IF THE DONOR'S ESTATE IS INSUFFICIENT TO PAY SUCH CLAIM; AND

(C) A PROCEEDING UNDER SECTION 15-15-103 MUST BE COMMENCED WITHIN THE TIME FRAME DESCRIBED IN SECTION 15-15-103 (8), AND A SURVIVING SPOUSE MUST FILE AN ELECTION FOR AN ELECTIVE-SHARE CLAIM WITHIN THE TIME LIMITS SET FORTH IN SECTION 15-11-211.

(b) IF AN INDIVIDUAL WHO IS THE SIGNATORY OF AN AFFIDAVIT DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION SUBMITS THE AFFIDAVIT TO A COVERED ENTITY IN PERSON, THE COVERED ENTITY MAY REQUIRE THE INDIVIDUAL TO PRESENT A VALID, GOVERNMENT-ISSUED FORM OF IDENTIFICATION THAT IDENTIFIES THE INDIVIDUAL AS THE SIGNATORY OF THE AFFIDAVIT.

(c) IF A COVERED ENTITY THAT HOLDS DESIGNATED BENEFITS IS UNABLE TO PAY THE DESIGNATED BENEFITS TO A CHARITABLE ORGANIZATION AS REQUIRED BY SUBSECTION (2)(a) OF THIS SECTION BECAUSE FEDERAL LAW REQUIRES THE COVERED ENTITY TO TAKE CERTAIN ACTIONS OR SATISFY CERTAIN CRITERIA IN ORDER TO PAY THE DESIGNATED BENEFITS, THE COVERED ENTITY SHALL TAKE SUCH ACTIONS OR SATISFY SUCH CRITERIA AND COMPLY WITH SUBSECTION (2)(a) OF THIS SECTION NOT LESS THAN ONE HUNDRED TWENTY DAYS AFTER THE CHARITABLE ORGANIZATION SUBMITS TO THE COVERED ENTITY AN AFFIDAVIT THAT SATISFIES THE REQUIREMENTS OF SUBSECTION (2)(a) OF THIS SECTION.

(3) IF A CHARITABLE ORGANIZATION RECEIVES DESIGNATED

BENEFITS FOR WHICH THE CHARITABLE ORGANIZATION IS LIABLE UNDER SECTION 15-15-103 OR 15-11-209, THE CHARITABLE ORGANIZATION SHALL RETURN TO THE DONOR'S ESTATE A PORTION OR ALL OF THE DESIGNATED BENEFITS IN ORDER TO SATISFY THE ALLOWED CLAIMS, STATUTORY ALLOWANCES, OR UNSATISFIED BALANCE OF THE ELECTIVE-SHARE OR SUPPLEMENTAL ELECTIVE-SHARE CLAIM WITHIN SIXTY DAYS AFTER RECEIVING WRITTEN NOTICE FROM THE PERSONAL REPRESENTATIVE OF THE DONOR'S ESTATE. IF THE CHARITABLE ORGANIZATION FAILS TO COMPLY WITH THE PROVISIONS OF THIS SUBSECTION (3), THE CHARITABLE ORGANIZATION SHALL PAY STATUTORY INTEREST, AS DESCRIBED IN SECTION 5-12-102, TO THE DONOR'S ESTATE FOR EACH DAY THE UNRETURNED AMOUNT REMAINS OUTSTANDING. MOREOVER, THE CHARITABLE ORGANIZATION MAY BE SUBJECT TO ONE OR MORE OF THE FOLLOWING:

(a) AN ACTION TO AVOID THE INITIAL PAYOUT TO THE EXTENT NECESSARY TO SATISFY THE ALLOWED CLAIMS, STATUTORY ALLOWANCES, OR UNSATISFIED BALANCE OF THE ELECTIVE-SHARE OR SUPPLEMENTAL ELECTIVE-SHARE CLAIM;

(b) AN INJUNCTION AGAINST THE CHARITABLE ORGANIZATION'S DISPOSITION OF THE DESIGNATED BENEFITS, OR ANY PORTION THEREOF, OR ANY ASSET OR PROPERTY OF THE CHARITABLE ORGANIZATION;

(c) AN ATTACHMENT OR OTHER PROVISIONAL OR JUDICIAL REMEDY AGAINST THE DESIGNATED BENEFITS OR ANY OTHER ASSET OR PROPERTY OF THE CHARITABLE ORGANIZATION; AND

(d) ANY OTHER RELIEF THE COURT DETERMINES IS APPROPRIATE, INCLUDING THE AWARDING OF REASONABLE ATTORNEY FEES.

(4) UPON THE CHARITABLE ORGANIZATION'S RECEIPT OF WRITTEN NOTICE OF A POTENTIAL UNSATISFIED CLAIM, STATUTORY ALLOWANCE, OR ELECTIVE-SHARE OR SUPPLEMENTAL ELECTIVE-SHARE CLAIM FROM THE PERSONAL REPRESENTATIVE OF THE DONOR'S ESTATE, THE CHARITABLE ORGANIZATION SHALL HOLD THE DESIGNATED BENEFITS RECEIVED, OR THE PORTION THEREOF NEEDED TO COVER THE PENDING CLAIM, STATUTORY ALLOWANCE, OR ELECTIVE-SHARE OR SUPPLEMENTAL ELECTIVE-SHARE CLAIM, IN A CONSTRUCTIVE TRUST PENDING THE DETERMINATION OF THE CLAIM, STATUTORY ALLOWANCE, OR ELECTIVE-SHARE OR SUPPLEMENTAL ELECTIVE-SHARE CLAIM.

(5) A COVERED ENTITY THAT HOLDS DESIGNATED BENEFITS SHALL NOT:

(a) REQUIRE THE CHARITABLE ORGANIZATION TO ESTABLISH AN ACCOUNT WITH THE COVERED ENTITY AS A CONDITION OF RECEIVING THE DESIGNATED BENEFITS; OR

(b) REQUIRE AN INDIVIDUAL EMPLOYED BY, OR SERVING ON THE BOARD OF, THE CHARITABLE ORGANIZATION TO SUBMIT ANY PERSONAL INFORMATION, INCLUDING A SOCIAL SECURITY NUMBER, A DRIVER'S LICENSE NUMBER, OR PERSONAL FINANCIAL INFORMATION, AS A CONDITION OF RECEIVING DESIGNATED BENEFITS, EXCEPT AS REQUIRED BY SUBSECTION (2) OF THIS SECTION.

(6) THIS SECTION MAY BE ENFORCED BY ANY OF THE FOLLOWING ENTITIES, AS APPROPRIATE:

(a) THE DIVISION OF BANKING CREATED IN SECTION 11-102-101;

(b) THE FINANCIAL SERVICES BOARD CREATED IN SECTION 11-44-101.6; OR

(c) THE DIVISION OF SECURITIES CREATED IN SECTION 11-51-701, PURSUANT TO ITS AUTHORITY UNDER PART 4 OF ARTICLE 51 OF TITLE 11.

SECTION 2. Act subject to petition - effective date - applicability. (1) This act takes 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 12, 2026, if adjournment sine die is on May 13, 2026); 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 will not take effect unless approved by the people at the general election to be held in November 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to conduct occurring on or after the applicable effective date of this act.

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO