

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 58
Committee Substitute Favorable 4/12/05

Short Title: Securities Transfer on Death.

(Public)

Sponsors:

Referred to:

February 3, 2005

A BILL TO BE ENTITLED

AN ACT TO ENACT THE UNIFORM TRANSFER ON DEATH (TOD) SECURITY
REGISTRATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by rewriting the title of Chapter 41 of the General Statutes to read "Estates and Interests in Property", and Chapter 41 of the General Statutes is amended by adding a new Article to read:

"Article 4.

"The Uniform Transfer on Death (TOD) Security Registration Act.

§ 41-40. Definitions.

In this Article, unless the context otherwise requires:

- (1) 'Beneficiary form' means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.
- (2) 'Devisee' means any person designated in a will to receive a disposition of real or personal property.
- (3) 'Heirs' means those persons, including the surviving spouse, who are entitled under Chapter 29 of the General Statutes or the statutes of intestate succession of other states to take the property of a decedent by intestate succession.
- (4) 'Person' means an individual, a corporation, an organization, or other legal entity.
- (5) 'Personal representative' includes executor, administrator, collector, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

- 1 (6) 'Property' includes both real and personal property or any interest in
2 real or personal property and means anything that may be the subject
3 of ownership.
- 4 (7) 'Register', including its derivatives, means to issue a certificate
5 showing the ownership of a certificated security or, in the case of an
6 uncertificated security, to initiate or transfer an account showing
7 ownership of securities.
- 8 (8) 'Registering entity' means a person who originates or transfers a
9 security title by registration and includes a broker maintaining security
10 accounts for customers and a transfer agent or other person acting for
11 or as an issuer of securities.
- 12 (9) 'Security' means a share, participation, or other interest in property, a
13 business, or an obligation of an enterprise or other issuer, and includes
14 a certificated security, an uncertificated security, a security account,
15 and a security entitlement as defined in G.S. 25-8-102.
- 16 (10) 'Security account' means (i) a reinvestment account associated with a
17 security, a securities account with a broker, a cash balance in a
18 brokerage account, cash, interest, earnings, or dividends earned or
19 declared on a security in an account, a reinvestment account, or a
20 brokerage account, whether or not credited to the account before the
21 owner's death, or (ii) a cash balance or other property held for or due
22 to the owner of a security as a replacement for or product of an
23 account security, whether or not credited to the account before the
24 owner's death.
- 25 (11) 'State' includes any state of the United States, the District of Columbia,
26 the Commonwealth of Puerto Rico, and any territory or possession
27 subject to the legislative authority of the United States.

28 **"§ 41-41. Registration in beneficiary form; sole or joint tenancy ownership.**

29 Only individuals whose registration of a security shows sole ownership by one
30 individual or multiple ownership by two or more individuals with right of survivorship,
31 rather than as tenants in common, may obtain registration in beneficiary form. Multiple
32 owners of a security registered in beneficiary form hold as joint tenants with right of
33 survivorship, as tenants by the entireties, or as owners of community property held in
34 survivorship form, and not as tenants in common.

35 **"§ 41-42. Registration in beneficiary form; applicable law.**

36 A security may be registered in beneficiary form if the form is authorized by this or
37 a similar statute of the state of organization of the issuer or registering entity, the
38 location of the registering entity's principal office, the office of its transfer agent or its
39 office making the registration, or by this or a similar statute of the law of the state listed
40 as the owner's address at the time of registration. A registration governed by the law of a
41 jurisdiction in which this or similar legislation is not in force or was not in force when a
42 registration in beneficiary form was made is nevertheless presumed to be valid and
43 authorized as a matter of contract law.

44 **"§ 41-43. Origination of registration in beneficiary form.**

1 A security, whether evidenced by certificate or account, is registered in beneficiary
2 form when the registration includes a designation of a beneficiary to take the ownership
3 at the death of the owner or the deaths of all multiple owners.

4 **"§ 41-44. Form of registration in beneficiary form.**

5 Registration in beneficiary form may be shown by the words 'transfer on death' or
6 the abbreviation 'TOD', or by the words 'pay on death' or the abbreviation 'POD', after
7 the name of the registered owner or owners and before the name of a beneficiary.

8 **"§ 41-45. Effect of registration in beneficiary form.**

9 The designation of a TOD beneficiary on a registration in beneficiary form has no
10 effect on ownership of the security until the owner's death. A registration of a security
11 in beneficiary form may be cancelled or changed at any time by the sole owner or all
12 then-surviving owners, without the consent of the beneficiary.

13 **"§ 41-46. Ownership on death of owner.**

14 On death of a sole owner or the last to die of all multiple owners, ownership of
15 securities registered in beneficiary form passes to the beneficiary or beneficiaries who
16 survive all owners. On proof of death of all owners and compliance with any applicable
17 requirements of the registering entity, a security registered in beneficiary form may be
18 reregistered in the name of the beneficiary or beneficiaries who survive the death of all
19 owners. Until division of the security after the death of all owners, multiple
20 beneficiaries surviving the death of all owners hold their interests as tenants in common.
21 If no beneficiary survives the death of all owners, the security belongs to the estate of
22 the deceased sole owner or the estate of the last to die of all multiple owners.

23 **"§ 41-47. Protection of registering entity.**

24 (a) A registering entity is not required to offer or to accept a request for security
25 registration in beneficiary form. If a registration in beneficiary form is offered by a
26 registering entity, the owner requesting registration in beneficiary form assents to the
27 protections given to the registering entity by this Article.

28 (b) By accepting a request for registration of a security in beneficiary form, the
29 registering entity agrees that the registration will be implemented on death of the
30 deceased owner as provided in this Article.

31 (c) A registering entity is discharged from all claims to a security by the estate,
32 creditors, heirs, or devisees of a deceased owner if it registers a transfer of a security in
33 accordance with G.S. 41-46 and does so in good faith reliance (i) on the registration, (ii)
34 on this Article, and (iii) on information provided to it by affidavit of the personal
35 representative of the deceased owner, or by the surviving beneficiary or by the surviving
36 beneficiary's representatives, or other information available to the registering entity. The
37 protections of this Article do not extend to a reregistration or payment made after a
38 registering entity has received written notice from any claimant to any interest in the
39 security objecting to implementation of a registration in beneficiary form. No other
40 notice or other information available to the registering entity affects its right to
41 protection under this Article.

42 (d) The protection provided by this Article to the registering entity of a security
43 does not affect the rights of beneficiaries in disputes between themselves and other
44 claimants to ownership of the security transferred or its value or proceeds.

1 **"§ 41-48. Nontestamentary transfer on death.**

2 (a) A transfer on death resulting from a registration in beneficiary form is
3 effective by reason of the contract regarding the registration between the owner and the
4 registering entity and this Article and is not testamentary.

5 (b) The interest of a deceased owner when there are one or more surviving
6 owners remains liable for the debts of the decedent in the same manner as the personal
7 property included in the decedent's estate, and recovery of that interest shall be made
8 from the surviving owner or owners when the decedent's estate is insufficient to satisfy
9 the debts. The interest of a deceased sole owner, or the last to die of several owners,
10 remains liable for the debts of the decedent in the same manner as the personal property
11 included in the decedent's estate, and recovery of that interest shall be made from the
12 TOD beneficiary when the decedent's estate is insufficient to satisfy the debts.

13 (c) This Article does not repeal or modify any provision of law relating to estate
14 taxes.

15 **"§ 41-49. Terms, conditions, and forms for registration.**

16 (a) A registering entity offering to accept registrations in beneficiary form may
17 establish the terms and conditions under which it will receive requests (i) for
18 registrations in beneficiary form, and (ii) for implementation of registrations in
19 beneficiary form, including requests for cancellation of previously registered TOD
20 beneficiary designations and requests for reregistration to effect a change of beneficiary.
21 The terms and conditions established may provide for proving death, avoiding or
22 resolving any problems concerning fractional shares, and designating primary or
23 contingent beneficiaries. Forms of identifying beneficiaries who are to take on one or
24 more contingencies, and rules for providing proofs and assurances needed to satisfy
25 reasonable concerns by registering entities regarding conditions and identities relevant
26 to accurate implementation of registrations in beneficiary form, may be contained in a
27 registering entity's terms and conditions.

28 (b) The following are illustrations of registrations in beneficiary form that a
29 registering entity may authorize:

30 (1) Sole owner-sole beneficiary: 'John S. Brown TOD (or POD) John S.
31 Brown, Jr.'

32 (2) Multiple owners-sole beneficiary: 'John S. Brown, Mary B. Brown JT
33 TEN WROS TOD John S. Brown, Jr.'

34 (3) Multiple owners-primary and secondary (substituted) beneficiaries:
35 'John S. Brown, Mary B. Brown JT TEN WROS TOD John S. Brown,
36 Jr. SUB BENE Peter O. Brown'.

37 **"§ 41-50. Short title; rules of construction.**

38 (a) This Article shall be known as and may be cited as the 'Uniform TOD
39 Security Registration Act'.

40 (b) This Article shall be applied and construed to effectuate its general purposes
41 and to make uniform the laws with respect to the subject of this Article among states
42 enacting it.

43 (c) This Article does not repeal G.S. 41-2.2. G.S. 41-2.2 applies in determining
44 whether a right of survivorship exists among multiple owners of a security.

1 **"§ 41-51. Application of Article.**

2 This Article applies to registrations of securities in beneficiary form made before,
3 on, or after the effective date of this Article, by decedents dying on or after the effective
4 date of this Article."

5 **SECTION 2.** G.S. 28A-15-10(a) reads as rewritten:

6 "(a) When needed to satisfy claims against a decedent's estate, assets may be
7 acquired by a personal representative or collector from the following sources:

8 (1) Tentative trusts created by the decedent in savings accounts for other
9 ~~persons;~~ persons.

10 (2) Gifts causa mortis made by the ~~decedent;~~ decedent.

11 (3) Joint deposit accounts with right of survivorship created by decedent
12 pursuant to the provisions of G.S. 41-2.1 or otherwise; and joint
13 tenancies with right of survivorship created by decedent in corporate
14 stocks or other investment securities.

15 (4) An interest in a security passing to a beneficiary pursuant to the
16 provisions of Article 4 of Chapter 41 of the General Statutes.

17 Such assets shall be acquired solely for the purpose of satisfying such claims, however,
18 and shall not be available for distribution to heirs or devisees."

19 **SECTION 3.** G.S. 41-2.2 reads as rewritten:

20 **"§ 41-2.2. Joint ownership of ~~corporate stock and investment securities.~~**

21 (a) In addition to other forms of ownership, ~~shares of corporate stock or~~
22 ~~investment securities~~ may be owned by any parties as joint tenants with rights of
23 survivorship, and not as tenants in common, in the manner provided in this section.

24 (b) (1) A joint tenancy in ~~shares of corporate stock or investment securities~~ as
25 provided by this section shall exist when such ~~shares or securities~~
26 indicate that they are owned with the right of survivorship, or
27 otherwise clearly indicate an intention that upon the death of either
28 party the interest of the decedent shall pass to the surviving party.

29 (2) Such a joint tenancy may also exist when a broker or custodian holds
30 the ~~shares or securities~~ for the joint tenants and by book entry or
31 otherwise indicates (i) that the ~~shares or securities~~ are owned with the
32 right of survivorship, or (ii) otherwise clearly indicates that upon the
33 death of either party, the interest of the decedent shall pass to the
34 surviving party. Money in the hands of such broker or custodian
35 derived from the sale of, or held for the purpose of, such ~~shares or~~
36 securities shall be treated in the same manner as such ~~shares or~~
37 securities.

38 (c) Upon the death of a joint tenant his interest shall pass to the surviving joint
39 tenant. The interest of the deceased joint tenant, even though it has passed to the
40 surviving joint tenant, remains liable for the debts of the decedent in the same manner as
41 the personal property included in his estate, and recovery thereof shall be made from the
42 surviving joint tenant when the decedent's estate is insufficient to satisfy such debts.

43 (d) This section does not repeal or modify any provisions of the law relating to
44 estate or inheritance taxes.

1 (e) As used in this section, "securities" has the same meaning as in G.S. 41-40(9)
2 and includes "security account" as that term is defined in G.S. 41-40(10)."

3 **SECTION 4.** The Revisor of Statutes shall cause to be printed along with
4 this act all relevant portions of the Official Commentary to the Uniform TOD Security
5 Registration Act and all explanatory comments of the drafters of this act as the Revisor
6 may deem appropriate.

7 **SECTION 5.** This act becomes effective October 1, 2005.