

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 163

Short Title: Securities Transfer on Death.

(Public)

Sponsors: Senators Hartsell, Odom; and Carpenter.

Referred to: Commerce.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ENACT THE UNIFORM TRANSFER ON DEATH (TOD) SECURITY
REGISTRATION ACT AS RECOMMENDED BY THE GENERAL STATUTES
COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by rewriting the title of Chapter 41 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 which 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.

- 1 (3) 'Heirs' means those persons, including the surviving spouse, who are
2 entitled under Chapter 29 of the General Statutes or the statutes of
3 intestate succession of other states to take the property of a decedent by
4 intestate succession.
- 5 (4) 'Person' means an individual, a corporation, an organization, or other
6 legal entity.
- 7 (5) 'Personal representative' includes executor, administrator, collector,
8 successor personal representative, special administrator, and persons
9 who perform substantially the same function under the law governing
10 their status.
- 11 (6) 'Property' includes both real and personal property or any interest in real
12 or personal property and means anything that may be the subject of
13 ownership.
- 14 (7) 'Register', including its derivatives, means to issue a certificate showing
15 the ownership of a certificated security or, in the case of an
16 uncertificated security, to initiate or transfer an account showing
17 ownership of securities.
- 18 (8) 'Registering entity' means a person who originates or transfers a security
19 title by registration and includes a broker maintaining security accounts
20 for customers and a transfer agent or other person acting for or as an
21 issuer of securities.
- 22 (9) 'Security' means a share, participation, or other interest in property, in a
23 business, or in an obligation of an enterprise or other issuer, and
24 includes a certificated security, an uncertificated security, and a security
25 account.
- 26 (10) 'Security account' means (i) a reinvestment account associated with a
27 security, a securities account with a broker, a cash balance in a
28 brokerage account, cash, interest, earnings, or dividends earned or
29 declared on a security in an account, a reinvestment account, or a
30 brokerage account, whether or not credited to the account before the
31 owner's death, or (ii) a cash balance or other property held for or due to
32 the owner of a security as a replacement for or product of an account
33 security, whether or not credited to the account before the owner's
34 death.
- 35 (11) 'State' includes any state of the United States, the District of Columbia,
36 the Commonwealth of Puerto Rico, and any territory or possession
37 subject to the legislative authority of the United States.

38 **"§ 41-41. Registration in beneficiary form; sole or joint tenancy ownership.**

39 Only individuals whose registration of a security shows sole ownership by one
40 individual or multiple ownership by two or more individuals with right of survivorship,
41 rather than as tenants in common, may obtain registration in beneficiary form. Multiple
42 owners of a security registered in beneficiary form hold as joint tenants with right of

1 survivorship, as tenants by the entireties, or as owners of community property held in
2 survivorship form, and not as tenants in common.

3 **"§ 41-42. Registration in beneficiary form; applicable law.**

4 A security may be registered in beneficiary form if the form is authorized by this or a
5 similar statute of the state of organization of the issuer or registering entity, the location
6 of the registering entity's principal office, the office of its transfer agent or its office
7 making the registration, or by this or a similar statute of the law of the state listed as the
8 owner's address at the time of registration. A registration governed by the law of a
9 jurisdiction in which this or similar legislation is not in force or was not in force when a
10 registration in beneficiary form was made is nevertheless presumed to be valid and
11 authorized as a matter of contract law.

12 **"§ 41-43. Origination of registration in beneficiary form.**

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

16 **"§ 41-44. Form of registration in beneficiary form.**

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

20 **"§ 41-45. Effect of registration in beneficiary form.**

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

25 **"§ 41-46. Ownership on death of owner.**

26 On death of a sole owner or the last to die of all multiple owners, ownership of
27 securities registered in beneficiary form passes to the beneficiary or beneficiaries who
28 survive all owners. On proof of death of all owners and compliance with any applicable
29 requirements of the registering entity, a security registered in beneficiary form may be
30 reregistered in the name of the beneficiary or beneficiaries who survive the death of all
31 owners. Until division of the security after the death of all owners, multiple beneficiaries
32 surviving the death of all owners hold their interests as tenants in common. If no
33 beneficiary survives the death of all owners, the security belongs to the estate of the
34 deceased sole owner or the estate of the last to die of all multiple owners.

35 **"§ 41-47. Protection of registering entity.**

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

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

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

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

15 **"§ 41-48. Nontestamentary transfer on death.**

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

19 (b) The interest of a deceased owner when there are one or more surviving owners,
20 remains liable for the debts of the decedent in the same manner as the personal property
21 included in the decedent's estate, and recovery of that interest shall be made from the
22 surviving owner or owners when the decedent's estate is insufficient to satisfy the debts.
23 The interest of a deceased sole owner, or the last to die of several owners, remains liable
24 for the debts of the decedent in the same manner as the personal property included in the
25 decedent's estate, and recovery of that interest shall be made from the TOD beneficiary
26 when the decedent's estate is insufficient to satisfy the debts.

27 (c) Nothing in this Article shall be construed to repeal or modify any provision of
28 Article 1 of Chapter 105 of the General Statutes relating to the administration of the
29 inheritance tax laws of this State or any other law relating to inheritance taxes.

30 **"§ 41-49. Terms, conditions, and forms for registration.**

31 (a) A registering entity offering to accept registrations in beneficiary form may
32 establish the terms and conditions under which it will receive requests (i) for registrations
33 in beneficiary form, and (ii) for implementation of registrations in beneficiary form,
34 including requests for cancellation of previously registered TOD beneficiary designations
35 and requests for reregistration to effect a change of beneficiary. The terms and
36 conditions established may provide for proving death, avoiding or resolving any
37 problems concerning fractional shares, and designating primary and contingent
38 beneficiaries. Forms of identifying beneficiaries who are to take on one or more
39 contingencies, and rules for providing proofs and assurances needed to satisfy reasonable
40 concerns by registering entities regarding conditions and identities relevant to accurate
41 implementation of registrations in beneficiary form, may be contained in a registering
42 entity's terms and conditions.

1 (b) The following are illustrations of registrations in beneficiary form which a
2 registering entity may authorize:

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

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

7 (3) Multiple owners-primary and secondary (substituted) beneficiaries:
8 'John S. Brown, Mary B. Brown JT TEN TOD John S. Brown, Jr. SUB
9 BENE Peter Q. Brown'.

10 **"§ 41-50. Short title; rules of construction.**

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

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

16 (c) This Article does not repeal G.S. 41-2.2.

17 **"§ 41-51. Application of Article.**

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

21 Section 2. G.S. 28A-15-10(a) reads as rewritten:

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

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

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

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

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

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

35 Section 3. If the 1997 General Assembly enacts Senate Bill 87 or House Bill
36 134, G.S. 41-40(9), as enacted by this act, reads as rewritten:

37 "(9) 'Security' means a share, participation, or other interest in property, in a
38 business, or in an obligation of an enterprise or other issuer, and
39 includes a certificated security, an uncertificated security, ~~and a security~~
40 ~~account.~~ account, and a security entitlement as defined in G.S. 25-8-
41 102."

42 Section 4. The Revisor of Statutes shall cause to be printed along with this act
43 all relevant portions of the Official Commentary to the Uniform TOD Security

1 Registration Act and all explanatory comments of the drafters of this act as the Revisor
2 may deem appropriate.

3 Section 5. This act is effective when it becomes law, except that Section 3 of
4 this act becomes effective on the later of the effective dates of this act or House Bill 134
5 or Senate Bill 87.