

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 112 2nd Edition

SHORT TITLE: Securities Transfer on Death

SPONSOR(S): Rep. Barefoot, et al.

FISCAL IMPACT

Yes () No (X) No Estimate Available (X)

FY 1999-00 FY 2000-01 FY 2001-02 FY 2002-03 FY 2003-04

REVENUES

EXPENDITURES

Anticipate slight reduction in General Fund revenues collected.

POSITIONS: none

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:** Judicial Branch

EFFECTIVE DATE: October. 1, 1999

BILL SUMMARY: TO ENACT THE UNIFORM TRANSFER ON DEATH (TOD) SECURITY REGISTRATION ACT. Changes the title of ch. 41 of the General Statutes to “Estates and Interests in Property” and enacts new art. 4, ch. 41, to provide for the transfer of securities on death of the owner. Provides for the registration of securities in beneficiary form, which means that in the registration the owner designates the person who will become the owner at his or her death. Registration in beneficiary form can only be done if the registration shows sole ownership or multiple ownership by two or more individuals with right of survivorship, such as joint tenants with right of survivorship, tenants by the entireties, or owners of community property held in survivorship form, but not as tenants in common. A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity’s principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner’s address at the time of registration. A registering entity, which means a person who originates or transfers a security title, including brokers and transfer agents, is not required to offer or accept a request for security registration in beneficiary form. If it does accept such registration, it may place terms and conditions on the form of registration. On the death of the sole owner or the last to die of all multiple owners,

ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive the owners. Transfer on death is effective by virtue of the contract between the owner and the registering entity and this statute and is not testamentary. The interest of the decedent, however, remains liable for his or her debts in the same manner as personal property included in the decedent's estate. The act applies to registration of securities in beneficiary form made before, on, or after the effective date of the act, which is Oct. 1, 1999, by decedents dying on or after the effective date.

Source: Institute of Government, February 22, 1999.

SECURITIES TRANSFER ON DEATH. Intro. 2/22/99. House committee substitute makes the following changes to 1st edition. Changes title to reflect that the bill was recommended by the General Statutes Commission. Revises new GS 41-48(c) to clarify that the Article does not repeal or modify any provision of law relating to estate or inheritance taxes. Deletes proposed language in GS 28A-15-10(a) in original bill relating to sources from which assets may be acquired.

Source: Institute of Government, March 9, 1999.

ASSUMPTIONS AND METHODOLOGY:

Department of Revenue

According to the department, the addition of a new article to Chapter 41 to allow a change in ownership of a security resulting from a "transfer on death" will not affect inheritance or estate taxes. The provisions of G. S. 105-2 (taxation of assets) and G. S. 105-24 (tax waiver requirements) are clear, and the new section G. S. 41-48 (c) preserves the requirements of the two provisions.

Administrative Office of the Courts (AOC)

Summary

This legislation would change the way some securities and security accounts are handled during the administration of estates. Specifically, it would allow the owner of a security or account to pass the security or account directly to the named beneficiary, without passing under the owner's will or under the laws of intestacy (applies when owner has no will). As a result, the value of the securities or accounts would not be included as part of the state for probate.

The principal court-related fiscal impact would be a reduction in revenues to the General Fund from the General Court of Justice Fees dealing with estates [G. S. 7A-307(a)(2)]. Currently, the clerk collects a flat \$26 fee, other fees pursuant to G. S. 7A-307, and forty cents per \$100 of the gross value of personal property in the estate (referred to as ad valorem fee), up to \$3,000. The ad valorem fee on securities would no longer be collected by clerks if the securities were registered in accordance with this legislation.

Revised Estimate Based on Brief AOC Research

The Administrative Office of the Courts (AOC) does have limited information that indicates the fiscal impact may NOT be substantial. While the clerks do collect and account for all the estate fees, they do not separately account for the types of personal property to which the ad valorem fee applies. Although an inventory is kept for each estate, it is not known how much of the ad

valorem fee was applied to each type of property listed. Furthermore, the AOC does not keep a running total of the collections for each fee. Fiscal Year 1997-98 data shows a total of 54,768 estate cases were filed statewide and \$10.9 million was collected in estate costs. However, it is not possible for the judicial department to accurately identify how much of the \$10.9 million in total estates costs are derived from each fee under G. S. 7A-307.

Based on newly obtained, additional information from interviews with several clerks, it appears that few of the estate cases involve the ad valorem fee on securities. According to the AOC, approximately 17,000 estates, or about 30 percent, were probated with a will or required appointment of an administrator without a will in 1998 and therefore would be expected to have substantial assets which may include securities. Many of the estate cases that would pay the ad valorem fee instead qualify for exemption under the right of survivorship. There are indications from the clerks that property of all types has been set up as a survivorship more frequently in the past few years. Also, the ad valorem fee is capped at \$3,000 for all types of personal property to which it applies. Therefore, the cap may be reached under current law before the fee is ever collected on any securities.

The AOC requested the Wake County clerk's office to research their most recent estate cases and provide their results within a week. While the results are inconclusive, they suggest that the collections on the ad valorem fee on securities may not be significant. Out of the 40 cases they had time to retrieve, 20 did not have securities, 15 had substantial securities, and 5 had some securities. Of the 15 cases with significant security values, most would not collect much, if any, of the ad valorem fee on securities because the \$3,000 cap could be reached with the value of real property. The value of securities in the last 5 estates averaged about \$20,000 which translates into \$80 in ad valorem fees.

Even if the total amount of ad valorem fees collected on securities were known, it is unknown how many individuals who now would be paying the fee would take advantage of this bill. The Fiscal Research Division believes that based on the limited data available to the AOC, the amount collected in ad valorem fees on securities is minimal and would result in only a minor revenue loss to the General Fund. Neither the AOC, nor the Fiscal Research Division is able to calculate a precise amount or provide a reliable estimate.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION

733-4910

PREPARED BY: Charles Perusse, Tammy Lester, Michele Nelson

APPROVED BY: Tom Covington

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