

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 41
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Short Title: Securities Transfer on Death. (Public)

Sponsors: Representatives Barefoot; Alexander, Allen, Allred, Arnold, Bell, Bonner, Buchanan, Coates, Cox, Crawford, Culpepper, Cunningham, Davis, Dedmon, Esposito, Fox, Gibson, Goodwin, Haire, Hall, Hill, Holliman, Insko, Jarrell, Jeffus, Kiser, Luebke, McAllister, McComas, McComb, McLawhorn, Michaux, Mitchell, Oldham, Owens, Pope, Rayfield, Rogers, Shubert, Smith, Sutton, Tolson, Tucker, Underhill, Wainwright, Walend, Warner, Warren, Warwick, West, C.Wilson, G.Wilson, Wright, and Yongue.

Referred to: Rules, Calendar, and Operations of the House.

February 1, 2001

A BILL TO BE ENTITLED

1 AN ACT TO ENACT THE UNIFORM TRANSFER ON DEATH (TOD) SECURITY
2 REGISTRATION ACT AS RECOMMENDED BY THE GENERAL STATUTES
3 COMMISSION.
4

5 The General Assembly of North Carolina enacts:

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

9 "Article 4.

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

12 **"§ 41-40. Definitions.**

13 In this Article, unless the context otherwise requires:

- 14 (1) 'Beneficiary form' means a registration of a security which indicates
15 the present owner of the security and the intention of the owner
16 regarding the person who will become the owner of the security upon
17 the death of the owner.
- 18 (2) 'Devisee' means any person designated in a will to receive a
19 disposition of real or personal property.
- 20 (3) 'Heirs' means those persons, including the surviving spouse, who are
21 entitled under Chapter 29 of the General Statutes or the statutes of

1 intestate succession of other states to take the property of a decedent
2 by intestate succession.

3 (4) 'Person' means an individual, a corporation, an organization, or other
4 legal entity.

5 (5) 'Personal representative' includes executor, administrator, collector,
6 successor personal representative, special administrator, and persons
7 who perform substantially the same function under the law governing
8 their status.

9 (6) 'Property' includes both real and personal property or any interest in
10 real or personal property and means anything that may be the subject
11 of ownership.

12 (7) 'Register', including its derivatives, means to issue a certificate
13 showing the ownership of a certificated security or, in the case of an
14 uncertificated security, to initiate or transfer an account showing
15 ownership of securities.

16 (8) 'Registering entity' means a person who originates or transfers a
17 security title by registration and includes a broker maintaining security
18 accounts for customers and a transfer agent or other person acting for
19 or as an issuer of securities.

20 (9) 'Security' means a share, participation, or other interest in property, in
21 a business, or in an obligation of an enterprise or other issuer, and
22 includes a certificated security, an uncertificated security, a security
23 account, and a security entitlement as defined in G.S. 25-8-102.

24 (10) 'Security account' means (i) a reinvestment account associated with a
25 security, a securities account with a broker, a cash balance in a
26 brokerage account, cash, interest, earnings, or dividends earned or
27 declared on a security in an account, a reinvestment account, or a
28 brokerage account, whether or not credited to the account before the
29 owner's death, or (ii) a cash balance or other property held for or due
30 to the owner of a security as a replacement for or product of an
31 account security, whether or not credited to the account before the
32 owner's death.

33 (11) 'State' includes any state of the United States, the District of Columbia,
34 the Commonwealth of Puerto Rico, and any territory or possession
35 subject to the legislative authority of the United States.

36 **"§ 41-41. Registration in beneficiary form; sole or joint tenancy ownership.**

37 Only individuals whose registration of a security shows sole ownership by one
38 individual or multiple ownership by two or more individuals with right of survivorship,
39 rather than as tenants in common, may obtain registration in beneficiary form. Multiple
40 owners of a security registered in beneficiary form hold as joint tenants with right of
41 survivorship, as tenants by the entireties, or as owners of community property held in
42 survivorship form, and not as tenants in common.

43 **"§ 41-42. Registration in beneficiary form; applicable law.**

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

9 **"§ 41-43. Origination of registration in beneficiary form.**

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

13 **"§ 41-44. Form of registration in beneficiary form.**

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

17 **"§ 41-45. Effect of registration in beneficiary form.**

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

22 **"§ 41-46. Ownership on death of owner.**

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

32 **"§ 41-47. Protection of registering entity.**

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

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

40 (c) A registering entity is discharged from all claims to a security by the estate,
41 creditors, heirs, or devisees of a deceased owner if it registers a transfer of a security in
42 accordance with G.S. 41-46 and does so in good faith reliance (i) on the registration, (ii)
43 on this Article, and (iii) on information provided to it by affidavit of the personal
44 representative of the deceased owner, or by the surviving beneficiary or by the surviving

1 beneficiary's representatives, or other information available to the registering entity. The
2 protections of this Article do not extend to a reregistration or payment made after a
3 registering entity has received written notice from any claimant to any interest in the
4 security objecting to implementation of a registration in beneficiary form. No other
5 notice or other information available to the registering entity affects its right to
6 protection under this Article.

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

10 **"§ 41-48. Nontestamentary transfer on death.**

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

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

22 (c) This Article does not repeal or modify any provision of law relating to estate
23 or inheritance taxes.

24 **"§ 41-49. Terms, conditions, and forms for registration.**

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

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

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

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

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

4 **"§ 41-50. Short title; rules of construction.**

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

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

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

11 **"§ 41-51. Application of Article.**

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

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

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

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

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

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

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

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

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

33 **SECTION 4.** This act becomes effective October 1, 2001.