

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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SENATE BILL 290

Short Title: Securities Transfer on Death. (Public)

Sponsors: Senators Hoyle; Albertson, Allran, Apodaca, Berger of Rockingham, Bingham, Blake, Brock, Brown, Dalton, East, Forrester, Garwood, Goodall, Hartsell, Holloman, Horton, Hunt, Jacumin, Malone, Nesbitt, Pittenger, Presnell, Purcell, Shaw, Smith, Soles, Stevens, Swindell, Thomas, Tillman, and Weinstein.

Referred to: Judiciary I.

March 2, 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 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.
- (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

1 who perform substantially the same function under the law governing
2 their status.

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

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

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

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

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

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

30 **"§ 41-41. Registration in beneficiary form; sole or joint tenancy ownership.**

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

37 **"§ 41-42. Registration in beneficiary form; applicable law.**

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

1 registration in beneficiary form was made is nevertheless presumed to be valid and
2 authorized as a matter of contract law.

3 **"§ 41-43. Origination of registration in beneficiary form.**

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

7 **"§ 41-44. Form of registration in beneficiary form.**

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

11 **"§ 41-45. Effect of registration in beneficiary form.**

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

16 **"§ 41-46. Ownership on death of owner.**

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

26 **"§ 41-47. Protection of registering entity.**

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

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

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

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

4 **"§ 41-48. Nontestamentary transfer on death.**

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

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

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

18 **"§ 41-49. Terms, conditions, and forms for registration.**

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

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

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

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

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

40 **"§ 41-50. Short title; rules of construction.**

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

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

4 (c) This Article does not repeal G.S. 41-2.2. G.S. 41-2.2 applies in determining
5 whether a right of survivorship exists among multiple owners of a security interest in
6 beneficiary form.

7 **"§ 41-51. Application of Article.**

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

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

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

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

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

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

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

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

25 **SECTION 3.** G.S. 41-2.2 is amended by adding a new subsection to read:

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

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

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