

BENEFICIARY SECURITIES

House Bill 4113 as introduced
First Analysis (2-16-95)

Sponsor: Rep. Tom Alley
Committee: Commerce

THE APPARENT PROBLEM:

Current laws governing ownership of certain kinds of asset accounts generally permit the owner of an account to name someone else as a beneficiary of those assets in the event the owner should die. For instance, owners of savings and checking accounts, certificates of deposit, individual retirement accounts (IRAs), and certain other retirement accounts (401K, 457, etc.) generally may--and in some cases, must--name a beneficiary for the assets, which prevents ownership of the assets from having to be determined in probate court if the original owner dies. Apparently, however, state law is silent about whether a person may name one or more beneficiaries for securities purchased simply as investments, as opposed to securities purchased for retirement purposes via an IRA or some other retirement account. Thus, if a person wishes to purchase shares in a mutual fund, for instance, simply as an investment, the only way the purchaser can ensure that a particular person would be the rightful owner of the assets if he or she dies would be to have the other person(s) agree to co-sign on the original purchase. This, of course, would require every transaction involving the mutual fund account to have multiple signatures before it could occur, a rather absurd situation if the real purpose is merely to ensure the safe transfer of the assets to a beneficiary when the primary owner dies. Twenty-two states reportedly have enacted laws that give owners of securities the option to have securities registered in "beneficiary form," and some people believe Michigan should do the same.

THE CONTENT OF THE BILL:

The bill would create a new act to give owners of securities the option to register the title of those securities in "beneficiary form," meaning their ownership would transfer upon the original owner's death to a named beneficiary or beneficiaries. (The bill would define a "security" as "a share, participation, or other investment in property, a business, or an obligation of an enterprise or other

issuer, [including] a certificated or uncertificated security and a security account.") The bill would apply to registrations of securities in beneficiary form that were made before or after the bill's effective date by securities owners who died on or after the bill's effective date.

Registration. A security could be registered in beneficiary form if the form was authorized by the bill or a similar law of the state 1) in which the issuer or registering entity was organized, 2) where the registering entity's principal office or the office of its transfer agent was located, or 3) where the office making the registration was located. A registration made in a state where a similar law was not in force or had not been in force when a registration in beneficiary form had been made would be presumed to be valid and enforceable under contract law. However, the bill would not require a registering entity to offer or accept a request for security registration in beneficiary form.

A security would be registered in beneficiary form when the registration included a designation of a beneficiary to take ownership of the security on the death(s) of the owner(s). Registration in beneficiary form could be shown by the words "transfer on death" or "TOD," or by the words "pay on death" or "POD," which would appear after the registered owner's name and before the beneficiary's name. A registration in beneficiary form would not effect ownership until the owner's death, and a security registered in beneficiary form could be canceled or changed at any time by the owner or owners without the beneficiary's consent.

Individual, multiple owners. Except for security held in tenants in common, an individual (or individuals) whose registration of a security showed ownership by one person (or multiple ownership by two or more persons) could obtain registration of the security in beneficiary form. For a security held by

multiple owners to be registered in beneficiary form, the bill specifies that the interest of the owners would have to be as joint tenants with right of survivorship, tenants by the entirety, or as owners of community property held in survivorship form.

Transfer of ownership. On the death of the owner or the death of the last of multiple owners, ownership of beneficiary securities would pass to the surviving beneficiary or beneficiaries. On proof of death of the owner--or, in the case of multiple owners, of all owners--and compliance with any applicable requirements of the registering entity, a beneficiary security could be reregistered in the name(s) of the beneficiary or beneficiaries.

Until division of the security after the death of all owners, multiple beneficiary survivors would hold their interests as tenants in common. If no beneficiary survived the death(s) of the owner(s), the security would belong to the estate of the deceased owner or the estate of the last of the multiple owners to die. A transfer on death resulting from a registration in beneficiary form would not be testamentary.

Protections, obligations. If a registration in beneficiary form was offered by a registering entity, the owner requesting beneficiary registration would agree to the protections given to the registering entity by the bill's provisions. Also, the registering entity, by accepting a request for registration of a security in beneficiary form, would be agreeing to the registration's implementation when the security's owner(s) died.

A registering entity would be discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registered a transfer of the security according to the bill's provisions, and did so in good faith reliance on the registration and information provided to it by affidavit of the personal representative of the deceased owner.

The bill's protections, however, would not extend to a reregistration or payment made after a registering entity had received written notice from a claimant to an interest in the security, and protections provided to a security's registering entity would not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or the security's value or

proceeds. The bill would not limit the rights of creditors of security owners against beneficiaries and other transferees under other Michigan laws.

Terms and conditions. A registering entity offering to accept registrations in beneficiary form could establish the terms and conditions under which it would receive requests for beneficiary security registrations and implement them, including requests to cancel previously registered TOD beneficiary designations or to reregister a security in order to change its beneficiary. The terms and conditions established could provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take possession of a security in the named beneficiary's place in case he or she died.

Substitution could be indicated by appending to the name of the primary beneficiary the letters LDPS, which would refer to "lineal descendants per stirpes." Such a designation would substitute a deceased beneficiary's descendants who survived the owner(s) for a beneficiary who did not, and descendants would share according to the law of the beneficiary's domicile (at the owner's death) governing inheritance by descendants of an intestate. A registering entity could include in its terms and conditions other forms of identifying beneficiaries who were to take on one or more contingencies and, in addition, rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form.

FISCAL IMPLICATIONS:

The House Fiscal Agency says the bill would not affect state or local budget expenditures. (2-15-95)

ARGUMENTS:

For:

Michigan law currently is silent about whether a person may register securities he or she owns in "beneficiary form," which allows the owner to name a beneficiary who would become the rightful owner of the securities upon the owner's death. Other asset accounts, including those involving securities purchased for retirement purposes, may be set up with a named beneficiary, but some people purchase

securities to invest for reasons other than retirement. If they wish to establish one or more "beneficiaries" for these securities, their only recourse is to have them co-sign on the original purchase; but this is an inconvenient way to establish transfer-on-death rights as the co-owners would be signatories for every transaction involving the securities. The bill would solve the problem by giving owners of securities the option to have them registered in beneficiary form and name one or more beneficiaries. The bill includes numerous provisions governing the registration of such securities, how they would transfer upon the owner's or owners' death(s), multiple ownership and beneficiary designations, and various protections for and obligations of owners and named beneficiaries. By giving securities owners the option to name one or more beneficiaries, the bill would ensure that ownership of these particular assets would be secure when the owner(s) died, avoiding the complications of probate.

POSITIONS:

The Department of Commerce has no position on the bill. (2-15-95)