



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4113 (as reported without amendment)
 Sponsor: Representative Tom Alley
 House Committee: Commerce Senate
 Committee: Financial Services

Date Completed: 10-16-96

RATIONALE

The Uniform Nonprobate Transfers on Death Act was drafted by a committee of the National Conference of Commissioners on Uniform State Laws. Part 3 of the Act provides for the transfer on death (TOD) of securities, such as mutual fund shares and accounts maintained by brokers and others. These provisions essentially permit the owner of a security to register it in "beneficiary form"; this allows the issuer of the security to transfer it to the designated beneficiary upon the owner's death, without going through the probate process. Under current law in Michigan and elsewhere, this TOD arrangement is available for bank deposits and other types of assets, such as certificates of deposit and individual retirement accounts. Michigan law is silent, however, on the nonprobate transfer of securities purchased for investment purposes, although 26 other states reportedly have adopted some version of Part 3 of the Uniform Nonprobate TOD Act. It has been suggested that Michigan also should give owners of securities the option to register them in beneficiary form.

- A reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death.
- A cash balance or other property held for or due to the owner of a security as a replacement for or product of a security account, whether or not credited to the account before the owner's death.

"Beneficiary form" would mean a registration of a security that indicated the owner of the security and the owner's intention to have title to the security transfer to another person upon his or her death.

Registration

Except for security held in "tenants in common", an individual whose registration of a security showed ownership by one individual or multiple ownership by two or more individuals could obtain registration of the security in beneficiary form. To register a security in beneficiary form if the security were held by multiple owners, the interest of the owners would have to be as "joint tenants" with right of survivorship, "tenants by the entirety", or owners of community property held in survivorship. (According to Black's Law Dictionary, "tenants in common" are persons who hold the same property together by several and distinct titles; "joint tenants" own property by a joint title created expressly by one and the same deed or will; and a "tenancy by the entirety" is created by a conveyance to husband and wife, whereupon each becomes seized and possessed of the entire estate, and after the death of one the survivor takes the whole.)

CONTENT

The bill would create a new act to provide for the registration of a "security" in "beneficiary form" and the transfer of the security to the beneficiary upon the death of the owner. The bill would apply to registrations of securities in beneficiary form made before or after its effective date, by owners of securities who died on or after that date.

"Security" would mean a share, participation, or other interest in property, a business, or an obligation of an enterprise or other issuer, and would include a certificated or uncertificated security and a "security account". "Security account" would mean both of the following:

A security could be registered in beneficiary form if the form were authorized by the bill or a similar act of the state in which the issuer or registering entity was organized; the state of the registering entity's principal office or the office of its transfer agent; or the state in which the office making the registration was located. A registration made in a state without a similar act or in which a similar act was not in force when a registration in beneficiary form was made would be presumed to be valid and enforceable under contract law.

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 of the owner or the deaths of multiple owners. Registration in beneficiary form could be shown by the words "transfer on death" or "TOD", or by the words "pay on death" or "POD", after the name of the registered owner and before the name of a beneficiary. A registration in beneficiary form would have no effect on ownership until the owner's death. A registration of a security in beneficiary form could be canceled or changed at any time by the owner or owners without the consent of the beneficiary.

Transfer of Ownership

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

Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners would hold their interests as tenants in common. If no beneficiary survived the death of all owners, 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. ("Testamentary" means pertaining to a will or a disposition of personal property to take place after the owner's death. Thus, the requirements for determining the validity of a will would not apply to such a TOD.)

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

Protections and Obligations

A registering entity would not be required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form were offered by a registering entity, however, an owner requesting registration would agree to the protections given to the registering entity under the bill. By accepting a request for registration in beneficiary form, the registering entity would agree that the registration would be implemented on the death of the owner as provided in the bill.

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

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 registrations in beneficiary form and for implementation of registrations, including requests for cancellation of previously registered beneficiary designations and requests for reregistration to effect a change of beneficiary. The established terms and conditions 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 the place of the named beneficiary in the event of the beneficiary's death.

Substitution could be indicated by appending to the name of the primary beneficiary the letters "LDPS", standing for "lineal descendants per stirpes". This designation would substitute a deceased beneficiary's descendants who survived the owner for a beneficiary who failed to survive the owner. The descendants would have to share in accordance with the law of the beneficiary's domicile governing inheritance by descendants of an intestate (someone without a valid will).

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 rules for providing proofs and assurances needed to satisfy registering entities' reasonable concerns regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill is patterned after Part 3 of the Uniform Nonprobate Transfers on Death Act, which enables an issuer, broker, transfer agent, or other such intermediary to transfer securities directly to a designated beneficiary upon the owner's death. According to the National Conference of Commissioners on Uniform State Laws, TOD registration achieves for securities a certain parity with existing TOD and pay-on-death facilities for bank deposits and other assets passing at death outside the probate process.

In addition, according to the National Conference, use of TOD registration has no effect on the registered owner's full control of the affected security during his or her lifetime. A TOD designation and any beneficiary interest arising under it end whenever the registered asset is transferred, or whenever the owner otherwise complies with the issuer's conditions for changing the title form of the investment.

Further, the National Conference reports that TOD registration gives the owner of securities who wishes to arrange for a nonprobate transfer at death, an alternative to the frequently troublesome joint tenancy form of title. Apparently, because joint tenancy registration of securities normally entails a sharing of lifetime entitlement and control, it works satisfactorily only as long as the co-owners cooperate. Difficulties can arise when co-owners fall into disagreement, or when one becomes disabled or insolvent.

Avoiding probate can simplify and expedite a transfer and reduce costs for beneficiaries and issuers. By allowing securities owners to name one or more beneficiaries, the bill would add a good estate planning tool to Michigan law.

Legislative Analyst: S. Margules

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: M. Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.