

Judiciary 3/29

Senate File 443
Coleman, Chairman
Shaw
Riley

SENATE FILE

443

By RILEY
(Hill)

FILLED MAR 28 1973

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to nonprobate transfers.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Chapter six hundred thirty-three (633), Code
2 1973, is amended by adding sections two (2) through twenty-
3 two (22) of this Act as a new division.

4 NONPROBATE TRANSFERS

5 PART 1

6 DEFINITIONS

7 Sec. 2. NEW SECTION. DEFINITIONS. As used in this di-
8 vision, unless the context otherwise requires:

9 1. "Account" means a contract of deposit or an arrange-
10 ment for investment of funds between a person and a financial
11 institution and includes checking and savings accounts, share
12 accounts, certificates of deposit, contracts with regulated
13 investment companies, accounts with brokers and investment
14 bankers, and other like arrangements, but not certificates
15 of stock.

16 2. "Financial institution" means an organization autho-
17 rized to do business in this state under state or federal
18 laws relating to financial institutions, including but not
19 limited to banks, trust companies, building and loan asso-
20 ciations, savings and loan associations, credit unions, regu-
21 lated investment companies, brokers and investment bankers.

22 3. "Debts" includes both "debts" and "charges" as those
23 terms are defined in the Iowa probate code.

24 4. "Person" means a natural person.

25 5. "Party" means a person who is a party to an agreement
26 with a financial institution for establishment of a survivor-
27 ship account.

28 6. "Contribution" of each party to an account means the
29 party's proportionate share of all money or property deposited
30 or invested in the account, adjusted for all of the following:

31 a. His withdrawals from the account.

32 b. His proportionate share of any income retained in the
33 account.

34 c. His proportionate share of any gain or loss in the
35 value of the account during the period he was a party to

1 the account.

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PART 2

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SURVIVORSHIP ACCOUNTS

4 Sec. 3. NEW SECTION. ESTABLISHMENT. On or after January
5 1, 1974, a survivorship account may be established with a
6 financial institution in the name of two or more persons pay-
7 able to any one or more of the persons or the survivor or
8 survivors of them, only when all parties have signed a writ-
9 ten agreement, either on the signature card or in a separate
10 instrument, expressly providing for the right of survivor-
11 ship. The agreement shall be in substantially the following
12 form:

13 We hereby agree that all sums deposited or invested
14 at any time in this joint account in or with _____
15 (name of financial institution) shall be
16 held by the undersigned as co-owners with the right
17 of survivorship regardless of whose funds are de-
18 posited or invested in the account and regardless
19 of who made the deposits or investments. Any of us
20 may draw upon the account without limit, and in case
21 of the death of any of us, the survivors shall be the
22 sole owners of the entire account subject to the sta-
23 tutory liability of the survivors for the payment of
24 the debts of the deceased party.

25 Signed this _____ day of _____, 19__.

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28 Sec. 4. NEW SECTION. INCIDENTS. On or after January
29 1, 1974, all survivorship accounts, whether created before
30 or after the effective date of this division, have the fol-
31 lowing incidents:

32 1. A party may add to or draw upon all or any part of
33 the account during his lifetime, and a withdrawal by, or up-
34 on the order of, a party is a complete discharge of the fi-
35 nancial institution with respect to the sums withdrawn.

1 of the person named as beneficiary, if he is then
2 living, subject to the statutory liability of the
3 beneficiary for the payment of my debts.
4 Signed this _____ day of _____, 19__.

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6 Sec. 6. NEW SECTION. INCIDENTS. On or after January
7 1, 1974, all accounts payable on death to a named benefi-
8 cary, whether created before or after the effective date of
9 this division, have the following incidents:

10 1. The party creating the account may add to or draw up-
11 on the account during his lifetime and a withdrawal by him,
12 or on his order, shall be a complete discharge of the finan-
13 cial institution with respect to the money and property with-
14 drawn.

15 2. During the lifetime of the party creating the account,
16 it is subject to his debts.

17 3. Upon the death of the party creating the account, the
18 entire remaining account is the property of the person named
19 as beneficiary, if he is then living, subject to the statu-
20 tory liability of the beneficiary for the payment of the debts
21 of the deceased party.

22 4. Upon the death of the party creating the account, un-
23 less demand for payment has been made by the personal repre-
24 sentative, the financial institution may pay the entire ac-
25 count or any part of the account to the beneficiary. Such
26 payment to the beneficiary shall be a complete discharge of
27 the financial institution with respect to the sums paid.

28 5. If the person named as beneficiary does not survive
29 the party creating the account, the beneficiary's interest
30 in the account is terminated on the date of the beneficiary's
31 death.

32 PART 4

33 RIGHTS OF CREDITORS

34 Sec. 7. NEW SECTION. DURING LIFETIME. During the life-
35 time of a person who is the settlor of a revocable trust,

1 who owns an account payable on his death to another, or who
2 owns property jointly with right of survivorship with any
3 other person, the interest of each settlor, owner, or joint
4 owner may be attached, made subject to a mechanic's lien,
5 judgment lien, or other lien authorized by law, or sold on
6 execution, in the same manner and to the same extent as if
7 the settlor, owner, or joint owner held his interest sepa-
8 rately. The interest of each owner of property or accounts
9 jointly owned with right of survivorship is his contribution
10 thereto, and in the absence of satisfactory proof of the
11 amount of each contribution, the amount of the interest of
12 the owners is presumed to be equal. The interest of each
13 owner of an account payable on death is one hundred percent
14 of the account. The interest of the settlor of one-grantor
15 revocable trust is one hundred percent of the trust estate.
16 The interest of each settlor of a multiple-grantor revocable
17 trust is the amount of the contribution of each settlor.

18 Sec. 8. NEW SECTION. AFTER DEATH--LIENS. Upon the death
19 of a person who is the settlor of a revocable trust, who owns
20 an account payable on his death to another, or who owns prop-
21 erty jointly with right of survivorship with another person,
22 the property in the hands of the beneficiary or the survivor
23 is subject to any lien authorized by law or created by the
24 deceased owner or joint owner which existed at the time of
25 the death of the owner or joint owner to the same extent the
26 property was subject to the lien when the deceased owner or
27 joint owner was alive.

28 Sec. 9. NEW SECTION. AFTER DEATH--LIABILITY. A person
29 succeeding to the ownership of property as beneficiary of
30 a revocable trust, as beneficiary of an account payable to
31 him on the death of another, by reason of survivorship rights
32 associated with joint ownership, or through any other sur-
33 vivorship arrangement under which the property was held, is
34 personally liable to the decedent's estate for the debts of
35 the deceased owner or joint owner to the extent the decedent's

1 contribution to the property would have been subject to debts
2 if included in the assets of the probate estate of the de-
3 cedent.

4 PART 5

5 ENFORCEMENT OF STATUTORY RIGHTS OF CREDITORS

6 Sec. 10. NEW SECTION. VESTED IN PERSONAL REPRESENTATIVE.
7 The right and duty to enforce the statutory liability of per-
8 sons succeeding to the ownership of property which has been
9 the subject of a nonprobate transfer, is vested exclusively
10 in the personal representative of the deceased owner, joint
11 owner, or settlor, and shall be invoked only when the assets
12 of the probate estate of the deceased owner or joint owner
13 are not sufficient to pay in full all debts and charges of
14 the estate, and then only to the extent necessary to pay the
15 debts and charges.

16 Sec. 11. NEW SECTION. FILING AND BARRING OF CLAIMS.
17 In order to enforce the statutory liability of a person suc-
18 ceeding to the ownership of property, for the payment of the
19 debts of the deceased owner, joint owner, or settlor of a
20 revocable trust, the creditor shall file a claim against the
21 estate of the deceased owner, joint owner, or settlor within
22 the time and in the manner provided in the Iowa probate code
23 and, if no administration has been commenced, the creditor
24 has the right to petition for the administration of the es-
25 tate in the manner provided in the Iowa probate code.

26 Sec. 12. NEW SECTION. DUTY OF PERSONAL REPRESENTATIVE.
27 The personal representative shall make a reasonable effort
28 to enforce the statutory liability created by this division,
29 and the court may appoint a temporary administrator as a
30 substitute for the personal representative to enforce the
31 statutory liability in a manner prescribed by the court.

32 Sec. 13. NEW SECTION. PAYMENT TO PERSONAL REPRESENTA-
33 TIVE. At any time before payment in full by a financial in-
34 stitution to the beneficiary or survivor, the personal repre-
35 sentative of the deceased owner, joint owner, or settlor of

1 a revocable trust may demand payment to himself in his repre-
2 sentative capacity of so much of the account of the deceased
3 owner, joint owner, or settlor of a revocable trust as he
4 reasonably determines to be necessary to pay that portion
5 of the debts of the decedent not paid in full because the
6 assets of the estate are not sufficient. Payment to the per-
7 sonal representative pursuant to such demand shall be a com-
8 plete discharge of the financial institution with respect
9 to the sums paid.

10 Sec. 14. NEW SECTION. HANDLING AND DISPOSITION OF PROP-
11 ERTY. The personal representative shall refund to the bene-
12 ficiary or survivor all money or property received by him
13 from the beneficiary or survivor or from the account of the
14 deceased owner, joint owner, or settlor not needed for the
15 payment of that portion of the debts which are the statutory
16 liability of the beneficiary or survivor.

17 PART 6

18 GENERAL PROVISIONS

19 Sec. 15. NEW SECTION. EFFECT OF USE OF TERMS. Unless
20 accompanied by a written agreement sufficient to establish
21 an express trust, on and after January 1, 1974, the designa-
22 tion "trustee", "trustee for the benefit of _____",
23 and words of similar import following the name of the owner
24 of property are not sufficient to create a trust, and the
25 property or account of the owner continues to be his prop-
26 erty.

27 Sec. 16. NEW SECTION. EFFECT OF TRANSFER BY SURVIVOR
28 OR BENEFICIARY. The transfer by a surviving owner or bene-
29 ficiary to a third person for value, of property made subject
30 to the debts of a deceased owner, joint owner, or settlor
31 of a revocable trust by this division is free and clear of
32 the debts of the deceased owner, joint owner, or settlor,
33 subject to liens existing at the time of the transfer.

34 Sec. 17. NEW SECTION. DISCLAIMER BY SURVIVOR OR BENE-
35 FICIARY. A person succeeding to the ownership of property

1 transferred under a nonprobate arrangement as provided in
2 this division, may, before making a transfer to a third per-
3 son, renounce or disclaim any interest in the property and
4 is then released from liability for the payment of the debts
5 of the decedent. The property which has been renounced or
6 disclaimed by a beneficiary or by all persons with a survi-
7 vorship interest is the exclusive property of the estate of
8 the decedent and is subject to the debts of the decedent.

9 Sec. 18. NEW SECTION. CREATION OF ACCOUNTS AND WITH-
10 DRAWALS THEREFROM BY OR FOR MINORS. Survivorship accounts
11 and accounts payable on death may be established by a minor
12 upon his signature to the written agreement provided for in
13 this division or upon the signature to the agreement in the
14 minor's behalf by one of his parents or by his legal guardian
15 or conservator. The financial institution may pay any part
16 or all of such accounts to the minor upon his signature or
17 upon the signature in the minor's behalf by one of his parents
18 or by his legal guardian or conservator and such payment shall
19 be a complete discharge of the financial institution with
20 respect to the sums paid.

21 Sec. 19. NEW SECTION. LACK OF KNOWLEDGE OF DEATH OF
22 PARTY. Payment may be made by the financial institution as
23 provided in this division without regard to the death of a
24 party to a survivorship account before the institution has
25 actual knowledge of the death. When payment of an account
26 payable on death is demanded by a person because of the death
27 of the party creating the account, the financial institution
28 may demand proof of the death.

29 Sec. 20. NEW SECTION. NOT REQUIRED TO ESTABLISH ACCOUNTS.
30 A financial institution is not required to accept and establish
31 survivorship accounts or accounts payable on death.

32 Sec. 21. NEW SECTION. RIGHT OF SETOFF. When a party
33 to a survivorship account or account payable on death is in-
34 debted to the financial institution, the financial institu-
35 tion has the right to setoff against the account in which

1 the party has, or had immediately before his death, a present
2 right of withdrawal, and the amount of the account subject
3 to setoff is that portion which is, or was immediately be-
4 fore his death, subject to his debts under the provisions
5 of this division.

6 Sec. 22. NEW SECTION. EFFECT OF PROVISIONS OF THIS DI-
7 VISION. Except to the extent otherwise stated, the provi-
8 sions in this division are not the exclusive method for the
9 nonprobate transfer of property.

10 Sec. 23. Section five hundred thirty-four point eleven
11 (534.11), Code 1973, is amended by striking subsection eight
12 (8).

13 EXPLANATION

14 This bill provides for a division of chapter 633 dealing
15 with nonprobate transfers and is modeled after article 6 of
16 the Uniform Probate Code.

17 This division will fill in some of the voids and eliminate
18 some of the uncertainties now existing in the use of so-called
19 "nonprobate transfers". These nonprobate transfers are being
20 used, in many instances, as "will substitutes". They quite
21 often result in confusion, litigation and sometimes disas-
22 trous consequences.

23 This division provides the manner in which joint and sur-
24 vivorship accounts may be established, and makes for more
25 certainty that the parties understand the nature of the ac-
26 count. Payment on death accounts are authorized by any fi-
27 nancial institution and the manner in which payable on death
28 accounts can be established is provided. Informal trust ac-
29 counts, which simply recite "A" as trustee for "B" (Totten
30 trust), are eliminated. Where a trust is desired, a written
31 agreement sufficient to establish a trust is required.

32 The relationship between the parties to the account on
33 one hand and the relationship of the financial institution
34 on the other, are specifically spelled out.

35 Survivorship accounts and accounts payable on death may

1 be established by a minor and financial institutions may pay
2 all or any part of such accounts to a minor.

3 Financial institutions are given the right to set off,
4 against the amount, any debt owing to it by a deceased party.

5 The financial institutions are absolved from all liability
6 by payment of the account or any part thereof, to one of the
7 parties or their personal representative. The financial in-
8 stitutions are absolved from any liability because of lack
9 of knowledge of the death of one of the parties.

10 A rebuttable presumption is created that the parties con-
11 tributed equally to joint accounts. However, the actual con-
12 tributions of the respective parties may be shown.

13 The rights of the creditors of any of the parties during
14 the lifetime of the parties is not changed. However, in the
15 event of the death of one of the parties to a joint tenancy
16 account, the contributions of the decedent to the account
17 may be subjected to the payment of the decedent's debts.
18 This would change the law on this point as established by
19 court decisions. The decedent's share in the joint account
20 would not be subject to the payment of his debts until all
21 of the other assets owned by the decedent had been exhausted.

22 The personal representative is charged with the duty of
23 enforcing the liability for the decedent's debts against the
24 nonprobate account.

25 Payable on death accounts and informal trust accounts are
26 subject to payment of the decedent's debts.

27 Third persons acquiring nonprobate property from the sur-
28 viving owner or beneficiary take the same free and clear of
29 debts and claims against the decedent, except such liens as
30 existed at the time of transfer.

31 Provisions are made for disclaimer by a survivor or bene-
32 ficiary without being subject to gift tax.

33 The only section of the Code presently dealing with non-
34 probate transfers is section 534.11(8) which authorizes sav-
35 ings and loan associations to establish payable on death

1 accounts. This division repeals the above subsection and
2 all financial institutions under the terms of this division,
3 are authorized to establish such accounts.

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