

(P.142) 1-27-97 Referred to Judiciary

JAN 23 1997
COMMERCE AND REGULATION

HOUSE FILE 68
BY BLODGETT

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act adopting the uniform transfer on death security
2 registration Act.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

HF 68

1 Section 1. NEW SECTION. 633.800 SHORT TITLE -- RULES OF
2 CONSTRUCTION.

3 1. This division shall be known and may be cited as the
4 uniform transfer on death security registration Act.

5 2. The provisions of this division shall be liberally
6 construed and applied to promote its underlying purposes and
7 policy and to make uniform the laws with respect to the
8 subject of its provisions among states enacting this uniform
9 Act.

10 3. Unless displaced by the particular provisions of this
11 division, the principles of law and equity supplement the
12 provisions of this division.

13 Sec. 2. NEW SECTION. 633.801 DEFINITIONS.

14 As used in this division, unless the context otherwise
15 requires:

16 1. "Beneficiary form" means a registration of a security
17 which indicates the present owner of the security and the
18 intention of the owner regarding the person who will become
19 the owner of the security upon the death of the owner.

20 2. "Devisee" means any person designated in a will to
21 receive a disposition of real or personal property.

22 3. "Heir" means a person, including the surviving spouse,
23 who is entitled under the statutes of intestate succession to
24 the property of a decedent.

25 4. "Register" means to issue a certificate showing the
26 ownership of a certificated security or, in the case of an
27 uncertificated security, to initiate or transfer an account
28 showing ownership of the security.

29 5. "Registering entity" means a person who originates or
30 transfers a security title by registration, including a broker
31 maintaining security accounts for customers and a transfer
32 agent or other person acting for or as an issuer of
33 securities.

34 6. "Security" means a share, participation, or other
35 interest in property, in a business, or in an obligation of an

1 enterprise or other issuer, including a certificated security,
2 an uncertificated security, and a security account.

3 7. "Security account" means either of the following:

4 a. Any of the following:

5 (1) A reinvestment account associated with a security.

6 (2) A securities account with a broker.

7 (3) A cash balance in a brokerage account.

8 (4) Cash, interest, earnings, or dividends earned or
9 declared on a security in an account, a reinvestment account,
10 or a brokerage account, whether or not credited to the account
11 before the owner's death.

12 b. A cash balance or other property held for or due to the
13 owner of a security as a replacement for or product of an
14 account security, whether or not credited to the account
15 before the owner's death.

16 8. "State" includes any state of the United States, the
17 District of Columbia, the Commonwealth of Puerto Rico, and any
18 territory or possession subject to the legislative authority
19 of the United States.

20 Sec. 3. NEW SECTION. 633.802 REGISTRATION IN BENEFICIARY
21 FORM -- SOLE OR JOINT TENANCY OWNERSHIP.

22 Only an individual whose registration of a security shows
23 sole ownership by one individual or multiple ownership by two
24 or more individuals with a right of survivorship, rather than
25 as tenants in common, may obtain registration in beneficiary
26 form. Multiple owners of a security registered in beneficiary
27 form shall hold as joint tenants with rights of survivorship,
28 tenants by the entireties, or owners of community property
29 held in survivorship form and not as tenants in common.

30 Sec. 4. NEW SECTION. 633.803 REGISTRATION IN BENEFICIARY
31 FORM -- APPLICABLE LAW.

32 1. A security may be registered in beneficiary form if the
33 form is authorized by this division or a similar statute of
34 the state of any of the following:

35 a. The state of organization of the issuer or registering

1 entity.

2 b. The state of location of the registering entity's
3 principal office.

4 c. The state of location of the office of the entity's
5 transfer agent or the office of the entity making the
6 registration.

7 d. The state of the address listed as the owner's at the
8 time of registration.

9 2. A registration governed by the law of a jurisdiction in
10 which this division or a similar statute is not in force or
11 was not in force when a registration in beneficiary form was
12 made is presumed to be valid and authorized as a matter of
13 contract law.

14 Sec. 5. NEW SECTION. 633.804 ORIGINATION OF REGISTRATION
15 IN BENEFICIARY FORM.

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

21 Sec. 6. NEW SECTION. 633.805 FORM OF REGISTRATION IN
22 BENEFICIARY FORM.

23 Registration in beneficiary form may be shown by any of the
24 following, appearing after the name of the registered owner
25 and before the name of a beneficiary:

26 1. The words "transfer on death" or the abbreviation
27 "TOD".

28 2. The words "pay on death" or the abbreviation "POD".

29 Sec. 7. NEW SECTION. 633.806 EFFECT OF REGISTRATION IN
30 BENEFICIARY FORM.

31 The designation of a transfer on death or pay on death
32 beneficiary on a registration in beneficiary form has no
33 effect on ownership until the owner's death. A registration
34 of a security in beneficiary form may be canceled or changed
35 at any time by the sole owner or all surviving owners without

1 the consent of the beneficiary.

2 Sec. 8. NEW SECTION. 633.807 UNPAID CLAIMS.

3 1. If other assets of the estate of a deceased owner are
4 insufficient, a transfer at death of a security registered in
5 beneficiary form is not effective against the estate of the
6 deceased owner to the extent needed to pay claims against the
7 estate and statutory allowances to the surviving spouse and
8 children.

9 2. A beneficiary of a transfer on death security
10 registration under this chapter is liable to account to the
11 personal representative of the deceased owner for the value of
12 the security as of the time of the deceased owner's death to
13 the extent necessary to discharge these unpaid claims and
14 allowances. A proceeding against a beneficiary to assert
15 liability shall not be commenced unless the personal
16 representative has received a written demand by the surviving
17 spouse, a creditor, a child, or a person acting for a minor
18 child of the deceased owner. The proceeding must be commenced
19 within one year after the death of the owner.

20 3. A beneficiary against whom a proceeding to account is
21 brought may join a beneficiary of any other security
22 registered in beneficiary form by the deceased owner as a
23 party to the proceeding.

24 Sec. 9. NEW SECTION. 633.808 DEATH OF THE OWNER.

25 On the death of a sole owner or on the death of the sole
26 surviving owner of multiple owners, the ownership of
27 securities registered in beneficiary form passes to the
28 beneficiary or beneficiaries who survive all owners. On proof
29 of death of all owners and compliance with any applicable
30 requirements of the registering entity, a security registered
31 in beneficiary form may be reregistered in the name of the
32 beneficiary or beneficiaries who survived the death of all
33 owners. A registering entity shall provide notice to the
34 department of revenue and finance of all reregistrations made
35 pursuant to this division. The notice shall include the name,

1 address, and social security number of the descendant and all
2 transferees. Until the division of the security after the
3 death of all owners, multiple beneficiaries surviving the
4 death of all owners hold their interests as tenants in common.
5 If no beneficiary survives the death of all owners, the
6 security belongs to the estate of the deceased sole owner or
7 the estate of the last to die of multiple owners.

8 Sec. 10. NEW SECTION. 633.809 PROTECTION OF REGISTERING
9 ENTITY.

10 1. A registering entity is not required to offer or to
11 accept a request for security registration in beneficiary
12 form. If a registration in beneficiary form is offered by a
13 registering entity, the owner requesting registration in
14 beneficiary form assents to the protections provided to the
15 registering entity by this division.

16 2. By accepting a request for registration of a security
17 in beneficiary form, the registering entity agrees that the
18 registration in beneficiary form shall be implemented on the
19 death of the deceased owner as provided in this division.

20 3. A registering entity is discharged from all claims to a
21 security by the estate, creditors, heirs, or devisees of a
22 deceased owner if the registering entity registers a transfer
23 of the security in accordance with section 633.808 and does so
24 in good faith reliance on all of the following:

25 a. The registration.

26 b. The provisions of this division.

27 c. Information provided by affidavit of the personal
28 representative of the deceased owner, the surviving
29 beneficiary, or the surviving beneficiary's representative, or
30 other information available to the registering entity.

31 The protections of this division do not extend to a
32 reregistration or payment made after a registering entity has
33 received written notice from any claimant to any interest in
34 the security objecting to implementation of a registration in
35 beneficiary form. No other notice or other information

1 available to the registering entity affects its right to
2 protection under this division.

3 4. The protection provided by this division to the
4 registering entity of a security does not affect the rights of
5 beneficiaries in disputes between themselves and other
6 claimants to ownership of the transferred security, its value,
7 or its proceeds.

8 Sec. 11. NEW SECTION. 633.810 NONTESTAMENTARY TRANSFER
9 ON DEATH.

10 1. A transfer on death resulting from a registration in
11 beneficiary form shall be effective by reason of the contract
12 regarding the registration between the owner and the
13 registering entity under the provisions of this division, and
14 is not testamentary.

15 2. The provisions of this division do not limit the rights
16 of creditors or security owners against beneficiaries and
17 other transferees under other laws of this state.

18 Sec. 12. NEW SECTION. 633.811 TERMS, CONDITIONS, AND
19 FORMS FOR REGISTRATION.

20 1. A registering entity offering to accept registrations
21 in beneficiary form may establish the terms and conditions
22 under which the registering entity receives requests for
23 either of the following:

24 a. Registration in beneficiary form.

25 b. Implementation of registrations in beneficiary form,
26 including requests for cancellation of previously registered
27 transfer on death or pay on death beneficiary designations and
28 requests for reregistration to effect a change of beneficiary.

29 2. a. The terms and conditions established by the
30 registering entity may provide for proving death, avoiding or
31 resolving problems concerning fractional shares, designating
32 primary and contingent beneficiaries, and substituting a named
33 beneficiary's descendants to take in place of the named
34 beneficiary in the event of the beneficiary's death.

35 Substitution may be indicated by appending to the name of the

1 beneficiary the letters "LDPS" standing for "lineal
2 descendants per stirpes". This designation shall substitute a
3 deceased beneficiary's descendants who survive the owner for a
4 beneficiary who fails to survive, with the descendants to be
5 identified and to share in accordance with the law of the
6 beneficiary's domicile at the owner's death governing
7 inheritance by descendants of an intestate. Other forms of
8 identifying beneficiaries who are to take on one or more
9 contingencies, and rules for providing proofs and assurances
10 needed to satisfy reasonable concerns by registering entities
11 regarding conditions and identities relevant to accurate
12 implementation of registrations in beneficiary form, may be
13 contained in a registering entity's terms and conditions.

14 b. The following are illustrations of registrations in
15 beneficiary form which a registering entity may authorize:

16 (1) Sole owner-sole beneficiary: OWNER'S NAME transfer on
17 death (TOD) or pay on death (POD) to BENEFICIARY'S NAME.

18 (2) Multiple owners-sole beneficiary: OWNERS' NAMES, as
19 joint tenants or tenants in the entirety, transfer on death
20 (TOD) or pay on death (POD) to BENEFICIARY'S NAME.

21 (3) Multiple owners-primary and secondary (substituted)
22 beneficiaries: OWNERS' NAMES as joint tenants or tenants in
23 the entirety, transfer on death (TOD) or pay on death (POD) to
24 BENEFICIARY'S NAME, or lineal descendants per stirpes.

25 Sec. 13. APPLICATION. The provisions of this division
26 apply to registrations of securities in beneficiary form made
27 before, on, or after the effective date of this Act, by
28 decedents dying on or after the effective date of this Act.

29 EXPLANATION

30 This bill adopts the uniform transfer on death (TOD)
31 security registration Act as approved and recommended by the
32 national conference of commissioners on uniform state laws at
33 its annual conference on July 28 - August 4, 1989. The bill
34 allows the owner of securities to register the title in
35 "transfer-on-death" (TOD) form. The bill provides that a

1 person (e.g., an issuer or broker) may transfer the securities
2 directly to the designated transferee on the owner's death,
3 passing outside the probate process. The registration
4 provides a nonprobate transfer option without providing for
5 joint tenancy form of title. The registration form does not
6 affect the registered owner's control of the affected security
7 during the lifetime of the owner. The bill provides for the
8 right of survivorship by registered owners and the rights of
9 beneficiaries to take the asset upon the death of the last
10 surviving owner. An issuer is not required to implement the
11 procedure, and the bill provides protections to the
12 registering entity who acts in good faith.

13 Specifically, the bill includes the following new Code
14 sections:

15 Section 633.800 provides for citation of the Act as the
16 Uniform Transfer on Death Security Registration Act and for
17 liberal construction of the Act to achieve uniformity among
18 states enacting this Act.

19 Section 633.801 provides definitions of relevant terms used
20 in TOD registration including "beneficiary form", "heir",
21 "register", "registering entity", "security", "security
22 account", and "state".

23 Terms such as "beneficiary form", "register", "registering
24 entity", "security", and "security account" are new terms to
25 the probate code and relate to securities products generally
26 and the companies that sell them. The term "security" is
27 defined similarly to the term defined in the Uniform
28 Commercial Code (chapter 554) and is similar to section
29 554.8102. The bill defines the term "heir" differently than
30 provided in the probate code, to include a surviving spouse.

31 Section 633.802 provides that a sole owner or multiple
32 owners of a security held in survivorship form may elect to
33 register their ownership in beneficiary form. This
34 registration is not available to persons holding as tenants in
35 common.

1 Section 633.803 provides circumstances which must exist
2 before a security may be registered in beneficiary form and
3 recognized under the bill's provisions. Further, the bill
4 provides general rights under Iowa contract law for Iowa
5 residents who elect beneficiary form registration of products
6 issued from or held in states that have not adopted the
7 Uniform Transfer on Death Security Registration Act.

8 Section 633.804 defines how registration in beneficiary
9 form takes place.

10 Section 633.805 adopts certain words and abbreviations
11 which will show registration in beneficiary form. These are
12 "transfer on death", "TOD", "pay on death", and "POD".

13 Section 633.806 explains that a designation of a "TOD" or
14 "POD" beneficiary has no effect until death of the owner or
15 the death of the last multiple owner and can be changed
16 without consent of the beneficiary.

17 Section 633.807 provides for the payment of unpaid claims.

18 Section 633.808 provides that on proof of death and
19 compliance with any requirements of the registering entity,
20 the security may be reregistered in the name of the designated
21 beneficiary. The bill requires the registering entity to
22 provide notice of reregistrations to the department of revenue
23 and finance. On the death of the owner, multiple
24 beneficiaries will hold as tenants in common. The bill also
25 provides guidelines for circumstances when no beneficiary
26 survives.

27 Section 633.809 provides that a registering entity which
28 elects to provide registration of securities in beneficiary
29 form agrees to the conditions of this division. The
30 registering entity is discharged from other claims to the
31 security if it acts in good faith reliance on the registration
32 and information provided by affidavit. The section provides
33 that it does not provide protection to a registering entity
34 which reregisters or distributes a security after receiving
35 written notice of an objection to registration in beneficiary

1 form. The bill does not attempt to regulate the rights or
2 claims of beneficiaries in disputes among themselves.

3 Section 633.810 provides that transfers made under the
4 bill's provisions are not testamentary and do not limit the
5 rights of creditors against beneficiaries.

6 Section 633.811 provides that the registering entity may
7 define the precise forms and conditions for registration in
8 beneficiary form. This includes examples of recommended
9 registrations to be used by registering entities to resolve
10 questions regarding fractional shares.

11 Section 13 of the bill provides for application of the
12 provisions of the bill to registrations of securities in
13 beneficiary form which predate or postdate adoption of the
14 bill for decedents dying on or after the effective date of the
15 bill.

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35