

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 2122

By: Bryant (James), Bryant
(John), Isaac and Johnson
(Glen) of the House

and

Hendrick of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to securities; creating the Oklahoma Uniform TOD Security Registration Act; providing short title; defining terms; providing rules governing registration in beneficiary form; stating applicable law; providing for origination of registration in beneficiary form; providing form of registration in beneficiary form; stating effect of registration in beneficiary form; making designations subject to provisions for revocation upon divorce; providing rules governing ownership on death of the owner; providing for rights of creditors; providing protections of the registering entity; making certain transfers nontestamentary; providing for revocation of beneficiary by will; providing for terms, conditions and forms for registration; stating rules of construction and application; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 901 of Title 71, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Uniform TOD Security Registration Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 902 of Title 71, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Uniform TOD Security Registration Act, 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 the statutes of intestate succession to the property of a decedent;

4. "Person" means an individual, a corporation, a limited liability company, an organization, or other legal entity;

5. "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status;

6. "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership;

7. "Register", including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security or a certificated security held in the name of a registering entity or its nominee on behalf of the beneficial owner, to initiate or transfer an account showing ownership of securities;

8. "Registering entity" means a person who originates or transfers a security title by registration, and includes a broker or a bank maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities;

9. "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account;

10. "Security account" means:

- a. a reinvestment account associated with a security, a securities account with a broker or a bank, 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, or

- b. a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death; and

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

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 903 of Title 71, unless there is created a duplication in numbering, reads as follows:

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

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 904 of Title 71, unless there is created a duplication in numbering, reads as follows:

A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is

not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 905 of Title 71, unless there is created a duplication in numbering, reads as follows:

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

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 906 of Title 71, unless there is created a duplication in numbering, reads as follows:

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

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 907 of Title 71, unless there is created a duplication in numbering, reads as follows:

The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary. The designation of a TOD beneficiary on a registration in beneficiary form shall be subject to the provisions of Section 178 of Title 15 of the Oklahoma Statutes.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 908 of Title 71, unless there is created a duplication in numbering, reads as follows:

A. On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security

registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common.

B. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners. A beneficiary fails to survive if the beneficiary is treated as having predeceased an owner by operation of Section 178 of Title 15 of the Oklahoma Statutes.

C. 1. A registration in beneficiary form is not effective against an estate of a deceased sole owner or a deceased last to die of multiple owners to transfer to a beneficiary or beneficiaries sums needed to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse, minor children, and dependent children, if other assets of the estate are insufficient. A TOD beneficiary in whose name a security is registered after the death of the owner is liable to account to the deceased owner's personal representative for securities so registered or their proceeds to the extent necessary to discharge such claims and charges remaining unpaid after the application of the assets of the decedent's estate. A proceeding to assert this liability may not be commenced unless the personal representative has received a written demand by a surviving spouse, a creditor, or one acting for a minor dependent child of the decedent, and a proceeding may not be commenced later than two (2) years following the death of the decedent. A beneficiary against whom the proceeding is brought may elect to transfer to the personal representative the security registered in the name of the beneficiary after the death of the deceased owner if the beneficiary still owns the security, or the net proceeds received by the beneficiary upon disposition of the security by the beneficiary, and that transfer fully discharges the beneficiary from all liability under this subsection. Amounts or securities

recovered by the personal representative must be administered as part of the deceased owner's estate.

2. This subsection does not affect the right of a registering entity to register a security in the name of the beneficiary, or make a registering entity liable to the estate of a deceased owner, except for a reregistration after a registering entity has received written notice from any claimant to an interest in the security objecting to implementation of a registration in beneficiary form.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 909 of Title 71, unless there is created a duplication in numbering, reads as follows:

A. A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this act.

B. By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the owner as provided in this act.

C. 1. A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with Section 7 of this act and does so in good faith reliance on:

- a. the registration,
- b. this act, and
- c. information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity;

2. The protections of this act do not extend to a reregistration or payment made after a registering entity has

received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this act.

D. The protection provided by this act to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 910 of Title 71, unless there is created a duplication in numbering, reads as follows:

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

B. This act does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

C. A registration in beneficiary form may be canceled by specific reference to the security or the securities account in the will of the sole owner or the last to die of multiple owners, but the terms of the revocation are not binding on the registering entity unless it has received written notice from any claimant to an interest in the security objecting to implementation of a registration in beneficiary form prior to the registering entity reregistering the security. If the beneficiary designation is canceled, the security belongs to the estate of the deceased sole owner or the estate or the last to die of all multiple owners.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 911 of Title 71, unless there is created a duplication in numbering, reads as follows:

A. A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under

which it will receive requests for registrations in beneficiary form, and for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for, but need not be limited to, the following:

1. Proving death;
2. Avoiding or resolving problems created by the divorce or death of a beneficiary in compliance with Section 178 of Title 15 of the Oklahoma Statutes;
3. Avoiding or resolving any problems concerning fractional shares;
4. Designating primary and contingent beneficiaries; and
5. Substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death.

B. Substitution may be indicated by appending to the name of the primary beneficiary the letters "LDPS", standing for "lineal descendants per stirpes". This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate.

C. Other forms of identifying beneficiaries who are to take on one or more contingencies, and 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, may be contained in a registering entity's terms and conditions.

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

1. Sole owner-sole beneficiary: John S Brown TOD (or POD)
John S Brown Jr.
2. Multiple owners-sole beneficiary: John S Brown Mary B Brown JT TEN TOD John S Brown Jr.

3. Multiple owners-primary and secondary (substituted) beneficiaries: John S Brown Mary B Brown JT TEN TOD John S Brown Jr SUB BENE Peter Q Brown or John S Brown Mary B Brown JT TEN TOD John S Brown Jr LDPS.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 912 of Title 71, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Uniform TOD Security Registration Act shall be liberally construed and applied to promote its underlying purposes and policy and to make uniform the laws with respect to the subject of this act among states enacting it.

B. Unless displaced by the particular provisions of this act, the principles of law and equity supplement its provisions.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 913 of Title 71, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Uniform TOD Security Registration Act applies to registrations of securities in beneficiary form made before or after the effective date of this act by decedents dying on or after the effective date of this act.

SECTION 14. This act shall become effective September 1, 1994.

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