

HOUSE BILL REPORT

HB 1068

As Passed Legislature

Title: An act relating to registration of transfer on death securities.

Brief Description: Providing for registration of transfer on death securities.

Sponsors: Representatives Padden, Appelwick, Ludwig, Riley, Chappell, Campbell, Schmidt, Long, Tate, Ballasiotes, Dyer, Johanson and Thomas.

Brief History:

Reported by House Committee on:
Judiciary, February 2, 1993, DP;
Passed House, February 12, 1993, 95-0;
Amended by Senate;
Passed Legislature, April 19, 1993, 96-0.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 17 members:
Representatives Appelwick, Chair; Ludwig, Vice Chair;
Padden, Ranking Minority Member; Ballasiotes, Assistant
Ranking Minority Member; Campbell; Chappell; Forner;
Johanson; Locke; Long; Mastin; H. Myers; Riley; Schmidt;
Scott; Tate; and Wineberry.

Staff: Margaret Allen (786-7191).

Background: Under current Washington law, two means by which securities can be transferred upon the death of an owner, without first going through probate, is to hold the securities in joint tenancy with right of survivorship or to make them part of a community property agreement.

If the securities are held in joint tenancy, the surviving joint tenant or tenants become the owner(s). If two spouses enter into a community property agreement, securities covered by that agreement become the sole property of the surviving spouse.

These methods permit the automatic transfer of ownership upon an owner's death, but require shared ownership during the owner's lifetime.

The American Bar Association has approved model legislation, the Uniform TOD Security Registration Act (UTODA), that enables a security owner, while retaining all normal rights of ownership during his or her lifetime, to designate an individual or other entity that will automatically become the security owner upon the current owner's death. The UTODA or similar legislation recently has been adopted in the states of Colorado, Missouri, New Mexico, North Dakota, Oregon, and Wisconsin. Such legislation reportedly also is under consideration in the states of Alaska, Minnesota, and New York.

Summary of Bill: A new form of security ownership is created, enabling a security owner to designate one or more beneficiaries who will become the security owner or owners upon the current owner's death. The ownership of the security, whether certificated or noncertificated, passes to the designated beneficiary or beneficiaries outside of probate.

Any natural person or natural persons holding as joint tenants with rights of survivorship, either as separate or community property, may own a security registered in such beneficiary form. Security owners other than natural persons are ineligible since such owners may have perpetual existence.

Any person or entity except a custodian under the Uniform Gifts to Minors Act (UGMA) or the Uniform Transfers to Minors Act (UGTA) may be a designated beneficiary. A custodian under the UGMA or the UTMA may not be a designated beneficiary due to uncertainty the custodian or minor will survive the owner.

The designation of a "transfer-on-death" (TOD) or "pay on death" (POD) beneficiary on a security registration has no effect on ownership prior to the death of the owner or owners. Before then, the owner or owners may cancel or change the designation at any time, without the consent of the beneficiary.

Nor does the designation of a TOD or POD beneficiary have an effect on the community property rights and obligations of owners.

A registration made at a time or location where this or a substantially identical law was not in effect is presumed valid and authorized as a matter of contract law.

A registering entity, such as either a broker maintaining security accounts or a transfer agent, is not required to offer security registrations in beneficiary form, and may establish the terms and conditions under which it will do so.

On proof of death of all owners, and compliance with any requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the surviving beneficiary or beneficiaries. 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.

Upon the death of the owner or owners, the registering entity is not liable to adverse claimants to a security, provided the entity acts in good faith, and without written objection from an adverse claimant.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The act would allow more Washington citizens to avoid probate at minimal cost and inconvenience. Because Oregon has adopted the uniform act, this act would prevent securities brokers in Washington from being disadvantaged in competing for business in the Portland-Vancouver area.

Testimony Against: None.

Witnesses: Michael D. Carrico, Washington State Bar Association Probate and Trust Council (neutral), private attorney (supports); and Mark Greenberg, Securities Industry Association (supports).