

HB# 4101

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

HOUSE BILL No. 4101

(By Delegate Lethel)



Passed March 10, 1994

In Effect 90 Days From Passage

ENROLLED
H. B. 4101

(By DELEGATE PETHTEL)

[Passed March 10, 1994: in effect ninety days from passage.]

AN ACT to amend chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten, relating to enacting the uniform transfer on death security registration act; definitions; registration in beneficiary form, sole or joint tenancy ownership; applicable law; origination of registration in beneficiary form; form of registration in beneficiary form; effect of registration in beneficiary form; ownership on death of owner; protection of registering entity; nontestamentary transfer on death; terms, conditions and forms for registration; short title; rules of construction; and application of act.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article ten, to read as follows:

ARTICLE 10. UNIFORM TRANSFER ON DEATH SECURITY REGISTRATION ACT.

§36-10-1. Definitions.

1 In this article, unless the context otherwise requires:

2 (1) "Beneficiary form" means a registration of a
3 security which indicates the present owner of the
4 security and the intention of the owner regarding the

5 person who will become the owner of the security upon
6 the death of the owner.

7 (2) "Devisee" means any person designated in a will
8 to receive a disposition of real or personal property.

9 (3) "Heirs" means those persons, including the
10 surviving spouse, who are entitled under the statutes of
11 intestate succession to the property of a decedent.

12 (4) "Person" means an individual, a corporation, an
13 organization or other legal entity.

14 (5) "Personal representative" includes executor,
15 administrator, successor personal representative, special
16 administrator and persons who perform substantially
17 the same function under the law governing their status.

18 (6) "Property" includes both real and personal
19 property or any interest therein and means anything
20 that may be the subject of ownership.

21 (7) "Register," including its derivatives, means to issue
22 a certificate showing the ownership of a certificated
23 security or, in the case of an uncertificated security, to
24 initiate or transfer an account showing ownership of
25 securities.

26 (8) "Registering entity" means a person who originates
27 or transfers a security title by registration, and includes
28 a broker maintaining security accounts for customers
29 and a transfer agent or other person acting for or as an
30 issuer of securities.

31 (9) "Security" means a share, participation, or other
32 interest in property, in a business, or in an obligation
33 of an enterprise or other issuer, and includes a certifi-
34 cated security, an uncertificated security and a security
35 account.

36 (10) "Security account" means (i) a reinvestment
37 account associated with a security, a securities account
38 with a broker, a cash balance in a brokerage account,
39 cash, interest, earnings, or dividends earned or declared
40 on a security in an account, a reinvestment account, or
41 a brokerage account, whether or not credited to the
42 account before the owner's death, or (ii) a cash balance

43 or other property held for or due to the owner of a
44 security as a replacement for or product of an account
45 security, whether or not credited to the account before
46 the owner's death.

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

**§36-10-2. Registration in beneficiary form; sole or joint
tenancy ownership.**

1 Only individuals whose registration of a security
2 shows sole ownership by one individual or multiple
3 ownership by two or more with right of survivorship,
4 rather than as tenants in common, may obtain registra-
5 tion in beneficiary form. Multiple owners of a security
6 registered in beneficiary form hold as joint tenants with
7 right of survivorship, as tenants by the entireties, or as
8 owners of community property held in survivorship
9 form, and not as tenants in common.

**§36-10-3. Registration in beneficiary form; applicable
law.**

1 A security may be registered in beneficiary form if
2 the form is authorized by this or a similar statute of the
3 state of organization of the issuer or registering entity,
4 the location of the registering entity's principal office,
5 the office of its transfer agent or its office making the
6 registration, or by this or a similar statute of the law
7 of the state listed as the owner's address at the time of
8 registration. A registration governed by the law of a
9 jurisdiction in which this or similar legislation is not in
10 force or was not in force when a registration in
11 beneficiary form was made is nevertheless presumed to
12 be valid and authorized as a matter of contract law.

§36-10-4. Origination of registration in beneficiary form.

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

§36-10-5. Form of registration in beneficiary form.

1 Registration in beneficiary form may be shown by the
2 words “transfer on death” or the abbreviation “TOD,” or
3 by the words “pay on death” or the abbreviation “POD,”
4 after the name of the registered owner and before the
5 name of a beneficiary.

§36-10-6. Effect of registration in beneficiary form.

1 The designation of a TOD beneficiary on a registra-
2 tion in beneficiary form has no effect on ownership until
3 the owner’s death. A registration of a security in
4 beneficiary form may be canceled or changed at any
5 time by the sole owner or all then surviving owners
6 without the consent of the beneficiary.

§36-10-7. Ownership of death of owner.

1 On death of a sole owner or the last to die of all
2 multiple owners, ownership of securities registered in
3 beneficiary form passes to the beneficiary or beneficiar-
4 ies who survive all owners. On proof of death of all
5 owners and compliance with any applicable require-
6 ments of the registering entity, a security registered in
7 beneficiary form may be reregistered in the name of the
8 beneficiary or beneficiaries who survived the death of
9 all owners. Until division of the security after the death
10 of all owners, multiple beneficiaries surviving the death
11 of all owners hold their interests as tenants in common.
12 If no beneficiary survives the death of all owners, the
13 security belongs to the estate of the deceased sole owner
14 or the estate of the last to die of all multiple owners.

§36-10-8. Protection of registering entity.

1 (a) A registering entity is not required to offer or to
2 accept a request for security registration in beneficiary
3 form. If a registration in beneficiary form is offered by
4 a registering entity, the owner requesting registration
5 in beneficiary form assents to the protections given to
6 the registering entity by this article.

7 (b) By accepting a request for registration of a
8 security in beneficiary form, the registering entity
9 agrees that the registration will be implemented on

10 death of the deceased owner as provided in this article.

11 (c) A registering entity is discharged from all claims
12 to a security by the estate, creditors, heirs or devisees
13 of a deceased owner if it registers a transfer of the
14 security in accordance with section seven of this article
15 and does so in good faith reliance (i) on the registration,
16 (ii) on this article, and (iii) on information provided to
17 it by affidavit of the personal representative of the
18 deceased owner, or by the surviving beneficiary or by
19 the surviving beneficiary's representatives, or other
20 information available to the registering entity. The
21 protections of this article do not extend to a reregistra-
22 tion or payment made after a registering entity has
23 received written notice from any claimant to any
24 interest in the security objecting to implementation of
25 a registration in beneficiary form. No other notice or
26 other information available to the registering entity
27 affects its right to protection under this article.

28 (d) The protection provided by this article to the
29 registering entity of a security does not affect the rights
30 of beneficiaries in disputes between themselves and
31 other claimants to ownership of the security transferred
32 or its value or proceeds.

§36-10-9. Nontestamentary transfer on death.

1 (a) A transfer on death resulting from a registration
2 in beneficiary form is effective by reason of the contract
3 regarding the registration between the owner and the
4 registering entity and this article and is not
5 testamentary.

6 (b) This article does not limit the rights of creditors
7 of security owners against beneficiaries and other
8 transferees under other laws of this state.

§36-10-10. Terms, conditions and forms for registration.

1 (a) A registering entity offering to accept registrations
2 in beneficiary form may establish the terms and
3 conditions under which it will receive requests (i) for
4 registrations in beneficiary form, and (ii) for implemen-
5 tation of registrations in beneficiary form, including
6 requests for cancellation of previously registered TOD

7 beneficiary designations and requests for reregistration
8 to effect a change of beneficiary. The terms and
9 conditions so established may provide for proving death,
10 avoiding or resolving any problems concerning frac-
11 tional shares, designating primary and contingent
12 beneficiaries, and substituting a named beneficiary's
13 descendants to take in the place of the named benefi-
14 ciary in the event of the beneficiary's death. Substitution
15 may be indicated by appending to the name of the
16 primary beneficiary the letters LDPS, standing for
17 "lineal descendants per stirpes." This designation
18 substitutes a deceased beneficiary's descendants who
19 survive the owner for a beneficiary who fails to so
20 survive, the descendants to be identified and to share in
21 accordance with the law of the beneficiary's domicile at
22 the owner's death governing inheritance by descendants
23 of an intestate. Other forms of identifying beneficiaries
24 who are to take on one or more contingencies, and rules
25 for providing proofs and assurances needed to satisfy
26 reasonable concerns by registering entities regarding
27 conditions and identities relevant to accurate implemen-
28 tation of registrations in beneficiary form, may be
29 contained in a registering entity's terms and conditions.

30 (b) The following are illustrations of registrations in
31 beneficiary form which a registering entity may
32 authorize: (1) Sole owner-sole beneficiary: John S Brown
33 TOD (or POD) John S Brown Jr. (2) Multiple owners-
34 sole beneficiary: John S Brown Mary B Brown JT TEN
35 TOD John S Brown Jr. (3) Multiple owners-primary and
36 secondary (substituted) beneficiaries: John S Brown
37 Mary B Brown JT TEN TOD John S Brown Jr SUB
38 BENE Peter Q Brown or John S Brown Mary B Brown
39 JT TEN TOD John S Brown Jr LDPS.

§36-10-11. Short title; rules of construction.

1 (a) This article shall be known as and may be cited
2 as the Uniform TOD Security Registration Act.

3 (b) This article shall be liberally construed and
4 applied to promote its underlying purposes and policy
5 and to make uniform the laws with respect to the subject
6 of this article among states enacting it.

7 (c) Unless displaced by the particular provisions of
8 this article the principles of law and equity supplement
9 its provisions.

§36-10-12. Application of act.

1 This article applies to registrations of securities in
2 beneficiary form made before or after its initial
3 enactment, by decedents dying on or after its initial
4 enactment.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled

[Handwritten Signature]
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Handwritten Signature]
.....
Clerk of the Senate

Donald T. Slapp
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker of the House of Delegates

The within *is approved* this the *29th*
day of *March* 1994.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/25/94

Time 9:58 am