

2016 Regular Session

HOUSE BILL NO. 72

BY REPRESENTATIVE PEARSON

SUCCESSIONS: Provides for transfer on death securities

1 AN ACT

2 To enact Chapter 4 of Code Title I of Code Book III of Title 9 of the Louisiana Revised
3 Statutes of 1950, to be comprised of R.S. 9:1711 through 1722, relative to
4 investment securities; to provide for uniform transfer on death of securities; to
5 provide definitions; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Chapter 4 of Code Title I of Code Book III of Title 9 of the Louisiana
8 Revised Statutes of 1950, comprised of R.S. 9:1711 through 1722, is hereby enacted to read
9 as follows:

10 CHAPTER 4. UNIFORM TRANSFER ON DEATH

11 SECURITY REGISTRATION ACT

12 §1711. Definitions

13 In this Chapter, unless the context otherwise requires:

14 (1) "Beneficiary form" means a registration of a security which indicates the
15 present owner of the security and the intention of the owner regarding the person
16 who will become the owner of the security upon the death of the owner.

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

19 (3) "Heirs" means those persons, including the surviving spouse, who are
20 entitled in an intestate succession to the property of a decedent.

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

3 (5) "Personal representative" includes an executor, administrator, successor,
4 personal representative, special administrator, and any other person who performs
5 substantially the same function under the law governing their status.

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

8 (7) "Register", including its derivatives, means to issue a certificate showing
9 the ownership of a certificated security or, in the case of an uncertificated security,
10 to initiate or transfer an account showing ownership of securities.

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

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

17 (10) "Security account" means (a) a reinvestment account associated with
18 a security, a securities account with a broker, a cash balance in a brokerage account,
19 cash, interest, earnings, or dividends earned or declared on a security in an account,
20 a reinvestment account, or a brokerage account, whether or not credited to the
21 account before the owner's death, or (b) a cash balance or other property held for or
22 due to the owner of a security as a replacement for or product of an account security,
23 whether or not credited to the account before the owner's death.

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

27 §1712. Registration in beneficiary form; sole or joint tenancy ownership

28 Only individuals whose registration of a security shows sole ownership by
29 one individual or multiple ownership by two or more with right of survivorship,

1 rather than as tenants in common, may obtain registration in beneficiary form.

2 Multiple owners of a security registered in beneficiary form hold as joint tenants

3 with right of survivorship, as tenants by the entireties, or as owners of community

4 property held in survivorship form, and not as tenants in common.

5 §1713. Registration in beneficiary form; applicable law

6 A security may be registered in beneficiary form if the form is authorized by

7 this or a similar statute of the state of organization of the issuer or registering entity,

8 the location of the registering entity's principal office, the office of its transfer agent

9 or its office making the registration, or by this or a similar statute of the law of the

10 state listed as the owner's address at the time of registration. A registration governed

11 by the law of a jurisdiction in which this or similar legislation is not in force or was

12 not in force when a registration in beneficiary form was made is nevertheless

13 presumed to be valid and authorized as a matter of contract law.

14 §1714. Origination of registration in beneficiary form

15 A security, whether evidenced by certificate or account, is registered in

16 beneficiary form when the registration includes a designation of a beneficiary to take

17 the ownership at the death of the owner or the deaths of all multiple owners.

18 §1715. Form of registration in beneficiary form

19 Registration in beneficiary form may be shown by the words "transfer on

20 death" or the abbreviation "TOD", or by the words "pay on death" or the abbreviation

21 "POD", after the name of the registered owner and before the name of a beneficiary.

22 §1716. Effect of registration in beneficiary form

23 The designation of a TOD beneficiary on a registration in beneficiary form

24 has no effect on ownership until the owner's death. A registration of a security in

25 beneficiary form may be canceled or changed at any time by the sole owner or all

26 then surviving owners without the consent of the beneficiary.

27 §1717. Ownership on death of owner

28 On the death of a sole owner or the last to die of all multiple owners,

29 ownership of securities registered in beneficiary form passes to the beneficiary or

1 beneficiaries who survive all owners. On proof of death of all owners and
2 compliance with any applicable requirements of the registering entity, a security
3 registered in beneficiary form may be re-registered in the name of the beneficiary or
4 beneficiaries who survived the death of all owners. Until division of the security after
5 the death of all owners, multiple beneficiaries surviving the death of all owners hold
6 their interests as tenants in common. If no beneficiary survives the death of all
7 owners, the security belongs to the estate of the deceased sole owner or the estate of
8 the last to die of all multiple owners.

9 §1718. Protection of registering entity

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

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

17 C. A registering entity is discharged from all claims to a security by the
18 estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the
19 security in accordance with R.S. 9:1717 and does so in good faith reliance (i) on the
20 registration, (ii) on this Chapter, and (iii) on information provided to it by affidavit
21 of the personal representative of the deceased owner, or by the surviving beneficiary
22 or by the surviving beneficiary's representatives, or other information available to the
23 registering entity. The protections of this Chapter do not extend to a re-registration
24 or payment made after a registering entity has received written notice from any
25 claimant to any interest in the security objecting to implementation of a registration
26 in beneficiary form. No other notice or other information available to the registering
27 entity affects its right to protection under this Chapter.

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

4 §1719. Nontestamentary transfer on death

5 A. In this Section, "nonprobate transfer" means a transfer described in
6 Subsection B of this Section by an owner whose last domicile was in this state.

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

10 C. A transferee of a nonprobate transfer is subject to liability to any probate
11 estate of the decedent for allowed claims against that estate and statutory allowances
12 to the decedent's spouse and children to the extent the estate is insufficient to satisfy
13 those claims and allowances. The liability of a nonprobate transferee may not
14 exceed the value of nonprobate transfers received by that transferee.

15 D. Nonprobate transferees are liable for the insufficiency described in
16 Subsection C of this Section in the following order of priority:

17 (1) A transferee designated in the decedent's will or any other governing
18 instrument, as provided in the instrument.

19 (2) The trustee of a trust serving as the principal nonprobate instrument in
20 the decedent's estate plan as shown by its designation as devisee of the decedent's
21 residuary estate or by other facts or circumstances, to the extent of the value of the
22 nonprobate transfer received.

23 (3) Other nonprobate transferees, in proportion to the values received.

24 E. A provision made in one instrument may direct the apportionment of the
25 liability among the nonprobate transferees taking under that or any other governing
26 instrument. If a provision in one instrument conflicts with a provision in another, the
27 later one prevails.

1 F. Upon due notice to a nonprobate transferee, the liability imposed by this
2 Section is enforceable in proceedings in this state, whether or not the transferee is
3 located in this state.

4 G. A proceeding under this Section may not be commenced unless the
5 personal representative of the decedent's estate has received a written demand for the
6 proceeding from the surviving spouse or a child, to the extent that statutory
7 allowances are affected, or a creditor. If the personal representative declines or fails
8 to commence a proceeding after demand, a person making demand may commence
9 the proceeding in the name of the decedent's estate, at the expense of the person
10 making the demand and not of the estate. A personal representative who declines in
11 good faith to commence a requested proceeding incurs no personal liability for
12 declining.

13 H. A proceeding under this Section shall be commenced within one year
14 after the decedent's death, but a proceeding on behalf of a creditor whose claim was
15 allowed after proceedings challenging disallowance of the claim may be commenced
16 within sixty days after final allowance of the claim.

17 I. Unless a written notice asserting that a decedent's estate is insufficient to
18 pay allowed claims and statutory allowances has been received from the decedent's
19 personal representative, a trustee receiving a nonprobate transfer is released from
20 liability under this Section with respect to any assets distributed to the trust's
21 beneficiaries. Each beneficiary to the extent of the distribution received becomes
22 liable for the amount of the trustee's liability attributable to those assets received by
23 the beneficiary.

24 §1720. Terms, conditions, and forms for registration

25 A. A registering entity offering to accept registrations in beneficiary form
26 may establish the terms and conditions under which it will receive requests (1) for
27 registrations in beneficiary form, and (2) for implementation of registrations in
28 beneficiary form, including requests for cancellation of previously registered TOD
29 beneficiary designations and requests for re-registration to effect a change of

beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. 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. 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.

B. 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.

§1721. Short title; rules of construction

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

1 B. This Chapter shall be liberally construed and applied to promote its
2 underlying purposes and policy and to make uniform the laws with respect to the
3 subject of this Chapter among states enacting it.

4 C. Unless displaced by the particular provisions of this Chapter, the
5 principles of law and equity supplement its provisions.

6 §1722. Application of Chapter

7 This Chapter applies to registrations of securities in beneficiary form made
8 before or after January 1, 2017, by decedents dying on or after January 1, 2017.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 72 Original

2016 Regular Session

Pearson

Abstract: Provides for transfer of certain investment securities upon the death of the owner.

Proposed law adopts the Uniform Transfer on Death Security Registration Act which provides for the transfer of certain securities to a beneficiary on the death of the owner of such securities.

Proposed law provides for registration of securities in beneficiary form and defines "beneficiary form" to be 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. Provides that the designation of a "transfer on death" beneficiary has no effect on ownership until the owner's death.

Proposed law provides that upon death of the owner, ownership of the securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive or to the estate of the deceased owner if no such beneficiaries survive.

Proposed law provides that the transfer on death resulting from registration of securities in beneficiary form is effective as a contract between the owner and the registering entity and is not to be considered testamentary.

Proposed law applies to registrations of securities in beneficiary form made before or after Jan. 1, 2017, by decedents dying on or after Jan. 1, 2017.

(Adds R.S. 9:1711-1722)