

- SUBJECT:** Uniform Transfer on Death Security Registration Act
- COMMITTEE:** Judicial Affairs — favorable, with amendment
- VOTE:** 8 ayes — Thompson, Hartnett, Clark, Crabb, Garcia, Luna, Shields, Solis
0 nays
1 absent — Zbranek
- WITNESSES:** For — Charles D. Kirkham, Jr., Merrill Lynch Private Client Group; Debra Perelman, National Conference of Commissioners on Uniform State Laws; Hugh D. Shine
Against — Alvin J. Golden, Texas Academy of Probate and Trust Lawyers
- BACKGROUND :** The Uniform Transfer on Death Security Registration Act was approved by the National Conference of Commissioners on Uniform State Laws in 1989 and has been adopted by 29 states. The act provides for the automatic nonprobate transfer of a security to a registered beneficiary upon the owner's death.
- DIGEST:** HB 411, as amended, would adopt the Uniform Transfer on Death Security Registration Act, with some changes. Major provisions of the bill include:
- A security would be registered in “beneficiary form” if the registration included a designation of a beneficiary to take ownership upon death of the owner. This could be done by using one of the phrases “transfer on death” or “pay on death” or one of the corresponding abbreviations “TOD” or “POD” after the name of the owner and before the name of the beneficiary. Only a sole owner or multiple owners with right of survivorship would be able to register in beneficiary form.
 - Registering a security in beneficiary form would not affect ownership until the owner's death. The owner could change or cancel the beneficiary designation at any time without the consent of the beneficiary.

- Upon the owner's death, the security would pass to the surviving beneficiary, and the security would be reregistered in the beneficiary's name. This transfer would result from the contract between the owner and the entity registering the security rather than from any instructions in the owner's will.
- Security accounts created with community property funds would be subject to the Texas Constitution, and registration of such accounts in beneficiary form would not alter community property rights.
- Entities registering securities would not be required to offer or accept registration in beneficiary form, but if they did so, they could establish the terms and conditions of requests for and implementation of such registrations. Registering entities would be required to provide to owners registering in beneficiary form a written notice describing the legal effects of the registration. Owners would have to sign the notice at the time of registration.
- Registering entities would be required to implement the registration upon the owner's death and would be discharged from all claims to a security by the deceased owner's estate, creditors, heirs or beneficiaries to a will so long as the registering entity transferred the security to the deceased owner's designated beneficiary in good faith and without prior written notice of an objection.
- Securities could be used to pay debts, taxes or administration expenses, including statutory family allowances, owed by the estate of the deceased owner that exceeded the other assets of the estate regardless of their registration in beneficiary form.

HB 411 would take effect September 1, 1997, and apply to registrations of securities in beneficiary form made before, on or after that date by decedents dying on or after that date.

**SUPPORTERS
SAY:**

HB 411 would provide a simple mechanism to transfer securities on the death of the owner by registration of beneficiaries. A transfer on death registration is simple to create because it only requires a line on the instrument designating the beneficiary. There is no need for an extensive

written instrument or involvement by an attorney. A transfer on death registration is also easy to implement. All a beneficiary has to do to receive the security is to show proof of identity and the owner's death.

This mechanism would give security owners in Texas a much better option than they currently have with wills or joint tenancies. With wills, there are often long delays and expenses, not to mention the cumbersome and often intimidating probate process. Joint tenancies, on the other hand, force owners to share control and ownership of a security during their lifetimes when all they really want to do is provide a beneficiary with the security after their death. Registration in beneficiary form solves all these problems because it allows the owner to keep lifetime control of the security while providing a quick, easy and inexpensive method of transferring the security to a beneficiary upon the owner's death.

HB 411 is constitutional because it explicitly states that securities created with community property funds would be subject to the requirements of the Texas Constitution and that registration of such securities in beneficiary form would not alter community property rights in any form or manner.

The Uniform Transfer on Death Security Registration Act has worked well in the 29 states that have already adopted it, including neighboring states such as Arkansas, New Mexico and Oklahoma. Many Texans, especially those who have moved from states where the act has already been adopted, have asked for registration of securities in beneficiary form. Texans should have the benefit of this act.

In Texas, the transfer on death mechanism can already be used with bank deposits and other assets not subject to a will. It should be available for securities as well.

**OPPONENTS
SAY:**

HB 411 may be unconstitutional because one of its sections declares that a community property security registered in beneficiary form would be held as community property with right of survivorship. This could sidestep the requirement of the Texas Constitution that community property with right of survivorship be created only by a written agreement between the spouses. Although a later section of the bill broadly proclaims that securities created with community property funds would be subject to the requirements of the

Texas Constitution, it conflicts with the previous section and may not be enough to save the bill from being unconstitutional.

The bill would interfere with many estate plans because of the real possibility of conflicts between such nontestamentary transfers and estate planning through a will. Securities owners often do not understand the ramifications of designating a transfer on death beneficiary, and the form notice required by the bill would not be sufficient to warn registering owners of potential problems because they probably would not read it in the process of the transaction. In addition, securities owners would be assisted in these transactions by brokers and bank officers, who are not qualified to advise them about the transmission or disposition of property under Texas laws.

OTHER
OPPONENTS
SAY:

HB 411 is not necessary because contract law already provides a mechanism for transfer on death. In addition, the Probate Code contains a section that could provide the transfer on death mechanism by statute if it were amended to include securities in the list of instruments to which it applies. This complicated procedure could supersede the simpler means already available that are just as effective.

NOTES:

HB 411 would add to the uniform act provisions addressing the required notice to securities owners about the effects of registration in beneficiary form, the effects of registering in beneficiary form on community property rights, and the rights of a deceased owner's estate creditors.

The committee amendment would require that the written notice a registering entity would have to give an owner requesting registration of a security in beneficiary form be in capital letters in 12 point boldface with a heading and space for the registering owner to sign.

The companion bill, SB 504 by Harris, was approved by the Senate by 31-0 on the Local and Uncontested Calendar on March 13. SB 504 was reported favorably, without amendment, by the House Judicial Affairs Committee on March 26, making it eligible to be considered in lieu of HB 411.

Last session, a similar bill, HB 422 by Thompson, passed the House and was reported favorably from the Senate Jurisprudence Committee, but was not considered by the full Senate.