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BILL



ANALYSIS

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House Bill 4113 (as passed by the House)
Sponsor: Representative Tom Alley
House Committee: Commerce
Senate Committee: Financial Services

Date Completed: 2-13-96

CONTENT

The bill would create a new act to provide for the registration of a “security” in “beneficiary form” and the transfer of the security to the beneficiary upon the death of the owner. The bill would apply to registrations of securities in beneficiary form made before or after its effective date, by owners of securities who died on or after that date.

“Security” would mean a share, participation, or other interest in property, a business, or an obligation of an enterprise or other issuer, and would include a certificated or uncertificated security and a “security account”. “Security account” would mean both of the following:

- A reinvestment account associated with a security, a securities account with a broker, 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.
- A cash balance or other property held for or due to the owner of a security as a replacement for or product of a security account, whether or not credited to the account before the owner’s death.

“Beneficiary form” would mean a registration of a security that indicated the owner of the security and the owner’s intention to have title to the security transfer to another person upon his or her death.

Registration

Except for security held in “tenants in common”, an individual whose registration of a security showed ownership by one individual or multiple ownership by two or more individuals could obtain registration of the security in beneficiary form. To register a security in beneficiary form if the security were held by multiple owners, the interest of the owners would have to be as “joint tenants” with right of survivorship, “tenants by the entireties”, or as owners of community property held in survivorship. (According to Black’s Law Dictionary, “tenants in common” are tenants who hold the same property together by several and distinct titles; “joint tenants” are persons who own property by a joint title created expressly by one and the same deed or will; and a “tenancy by the entirety” is created by a conveyance to husband and wife, whereupon each becomes seized and possessed of the entire estate, and after the death of one the survivor takes the whole.)

A security could be registered in beneficiary form if the form were authorized by the bill or a similar act of the state in which the issuer or registering entity was organized; the state of the registering entity's principal office or the office of its transfer agent; or the state in which the office making the registration was located. A registration made in a state without a similar act or in which a similar act was not in force when a registration in beneficiary form was made would be presumed to be valid and enforceable under contract law.

A security would be registered in beneficiary form when the registration included a designation of a beneficiary to take ownership of the security on the death of the owner or the deaths of multiple owners. Registration in beneficiary form could be shown by the words "transfer on death" or "TOD", or by the words "pay on death" or "POD", after the name of the registered owner and before the name of a beneficiary. A registration in beneficiary form would have no effect on ownership until the owner's death. A registration of a security in beneficiary form could be canceled or changed at any time by the owner or owners without the consent of the beneficiary.

Transfer of Ownership

On the death of the owner or of the last of the multiple owners, ownership of securities registered in beneficiary form would pass to the surviving beneficiary or beneficiaries. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form could be reregistered in the name of the beneficiary or beneficiaries.

Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners would hold their interests as tenants in common. If no beneficiary survived the death of all owners, the security would belong to the estate of the deceased owner or the estate of the last of the multiple owners to die.

A transfer on death resulting from a registration in beneficiary form would not be testamentary. ("Testamentary" means pertaining to a will or a disposition of personal property to take place after the owner's death.) The bill would not limit the rights of creditors of security owners against beneficiaries and other transferees under other Michigan laws.

Protections and Obligations

A registering entity would not be required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form were offered by a registering entity, however, an owner requesting registration would agree to the protections given to the registering entity under the bill. By accepting a request for registration in beneficiary form, the registering entity would agree that the registration would be implemented on the death of the owner as provided in the bill.

A registering entity would be discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner, if it registered a transfer of the security in accordance with the bill and did so in good faith reliance on the registration and information provided to it by affidavit of the personal representative of the deceased owner. The bill's protections would not extend to a reregistration or payment made after a registering entity had received written notice from a claimant to an interest in security. The protections provided by the bill to the registering entity of a security would not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of a transferred security or the security's value or proceeds.

Terms and Conditions

A registering entity offering to accept registrations in beneficiary form could establish the terms and conditions under which it would receive requests for registrations in beneficiary form and for implementation of registrations, including requests for cancellation of previously registered beneficiary designations and requests for reregistration to effect a change of beneficiary. The established terms and conditions could 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 the place of the named beneficiary in the event of the beneficiary's death.

Substitution could be indicated by appending to the name of the primary beneficiary the letters "LDPS", standing for "lineal descendants per stirpes". This designation would substitute a deceased beneficiary's descendants who survived the owner for a beneficiary who failed to survive the owner. The descendants would have to share in accordance with the law of the beneficiary's domicile governing inheritance by descendants of an intestate (someone without a valid will).

A registering entity could include in its terms and conditions other forms of identifying beneficiaries who were to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy registering entities' reasonable concerns regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: M. Barsch

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.