

LEGISLATIVE BILL 250

Approved by the Governor May 6, 1993

Introduced by Landis, 46; Lindsay, 9

AN ACT relating to the Nebraska Probate Code; to amend section 30-2201, Reissue Revised Statutes of Nebraska, 1943; to provide for nonprobate transfers on death; to define terms; to provide forms; to eliminate provisions relating to nonprobate transfers on death; and to repeal the original section, and also sections 30-2701 to 30-2714, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. (a) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, marital property agreement, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that:

(1) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later;

(2) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(3) any property controlled by or owned by the decedent before death which is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.

(b) This section does not limit rights of creditors under other laws of this state.

Sec. 2. In sections 2 to 19 of this act:

(1) Account means a contract of deposit between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, and share account.

(2) Agent means a person authorized to make account transactions for a party.

(3) Beneficiary means a person named as one to whom sums on deposit in an account are payable on request after death of all parties or for whom a party is named as trustee.

(4) Financial institution means an organization authorized

to do business under state or federal laws relating to financial institutions, and includes a bank, trust company, savings bank, building and loan association, savings and loan company or association, and credit union.

(5) Multiple-party account means an account payable on request to one or more of two or more parties, whether or not a right of survivorship is mentioned.

(6) Party means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent.

(7) Payment of sums on deposit includes withdrawal, payment to a party or third person pursuant to check or other request, and a pledge of sums on deposit by a party, or a setoff, reduction, or other disposition of all or part of an account pursuant to a pledge.

(8) POD designation means the designation of (i) a beneficiary in an account payable on request to one party during the party's lifetime and on the party's death to one or more beneficiaries, or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries, or (ii) a beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established by the terms of the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned.

(9) Receive, as it relates to notice to a financial institution, means receipt in the office or branch office of the financial institution in which the account is established, but if the terms of the account require notice at a particular place, in the place required.

(10) Request means a request for payment complying with all terms of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but, for purposes of sections 2 to 19 of this act, if terms of the account condition payment on advance notice, a request for payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for payment.

(11) Sums on deposit means the balance payable on an account, including interest and dividends earned, whether or not included in the current balance, and any deposit life insurance proceeds added to the account by reason of death of a party.

(12) Terms of the account include the deposit agreement and other terms and conditions, including the form, of the contract of deposit.

Sec. 3. Sections 2 to 19 of this act do not apply to (i) an account established for a partnership, joint venture, or other organization for a business purpose, (ii) an account controlled by one or more persons as an agent or trustee for a corporation, unincorporated association, or charitable or civic organization, or (iii) a fiduciary or trust account in which the relationship is established other than by the terms of the account.

Sec. 4. (a) An account may be for a single party or

multiple parties. A multiple-party account may be with or without a right of survivorship between the parties. Subject to subsection (c) of section 9 of this act, either a single-party account or a multiple-party account may have a POD designation, an agency designation, or both.

(b) An account established before, on, or after the effective date of this act, whether in the form prescribed in section 5 of this act or in any other form, is either a single-party account or a multiple-party account, with or without right of survivorship, and with or without a POD designation or an agency designation, within the meaning of sections 2 to 19 of this act, and is governed by such sections.

Sec. 5. (a) A contract of deposit that contains provisions in substantially the form provided in this subsection establishes the type of account provided, and the account is governed by the provisions of sections 2 to 19 of this act applicable to an account of that type.

UNIFORM SINGLE- OR MULTIPLE-PARTY ACCOUNT FORM PARTIES (Name One Or More Parties):

.....
OWNERSHIP (Select One And Initial):

..... SINGLE-PARTY ACCOUNT

..... MULTIPLE-PARTY ACCOUNT

Parties own account in proportion to net contributions unless there is clear and convincing evidence of a different intent.

RIGHTS AT DEATH (Select One And Initial):

..... SINGLE-PARTY ACCOUNT

At death of party, ownership passes as part of party's estate.

..... SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH) DESIGNATION

(Name One Or More Beneficiaries):

.....
At death of party, ownership passes to POD beneficiaries and is not part of party's estate.

..... MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

At death of party, ownership passes to surviving parties.

..... MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND POD (PAY ON DEATH) DESIGNATION

(Name One Or More Beneficiaries):

.....
At death of last surviving party, ownership passes to POD beneficiaries and is not part of last surviving party's estate.

..... MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP

At death of party, deceased party's ownership passes as part of deceased party's estate.

AGENCY (POWER OF ATTORNEY) DESIGNATION (Optional)

Agents may make account transactions for parties but have no ownership or rights at death unless named as POD beneficiaries. (To Add Agency Designation To Account, Name One Or More Agents):

.....
 (Select One And Initial):

..... AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES

..... AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF PARTIES

(b) A contract of deposit that does not contain provisions in substantially the form provided in subsection (a) of this section is governed by the provisions of sections 2 to 19 of this act applicable to the type of account that most nearly conforms to the depositor's intent.

Sec. 6. (a) By a writing signed by all parties, the parties may designate as agent of all parties on an account a person other than a party.

(b) Unless the terms of an agency designation provide that the authority of the agent terminates on disability or incapacity of a party, the agent's authority survives disability and incapacity. The agent may act for a disabled or incapacitated party until the authority of the agent is terminated.

(c) Death of the sole party or last surviving party terminates the authority of an agent.

Sec. 7. The provisions of sections 8 to 12 of this act concerning beneficial ownership as between parties or as between parties and beneficiaries apply only to controversies between those persons and their creditors and other successors, and do not apply to the rights of those persons to payment as determined by the terms of the account. Sections 13 to 19 of this act govern the liability and setoff rights of financial institutions that make payments pursuant to such sections.

Sec. 8. (a) In this section, net contribution of a party means the sum of all deposits to an account made by or for the party, less all payments from the account made to or for the party which have not been paid to or applied to the use of another party and a proportionate share of any charges deducted from the account, plus a proportionate share of any interest or dividends earned, whether or not included in the current balance. The term includes deposit life insurance proceeds added to the account by reason of death of the party whose net contribution is in question.

(b) During the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent. As between parties married to each other, in the absence of proof otherwise, the net contribution of each is presumed to be an equal

amount.

(c) A beneficiary in an account having a POD designation has no right to sums on deposit during the lifetime of any party.

(d) An agent in an account with an agency designation has no beneficial right to sums on deposit.

Sec. 9. (a) Except as otherwise provided in sections 2 to 19 of this act, on death of a party sums on deposit in a multiple-party account belong to the surviving party or parties. If two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under section 8 of this act belongs to the surviving spouse. If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under such section belongs to the surviving parties in equal shares, and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under section 8 of this act, and the right of survivorship continues between the surviving parties.

(b) In an account with a POD designation:

(1) On death of one of two or more parties, the rights in sums on deposit are governed by subsection (a) of this section.

(2) On death of the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries. If two or more beneficiaries survive, sums on deposit belong to them in equal and undivided shares, and there is no right of survivorship in the event of death of a beneficiary thereafter. If no beneficiary survives, sums on deposit belong to the estate of the last surviving party.

(c) Sums on deposit in a single-party account without a POD designation, or in a multiple-party account that, by the terms of the account, is without right of survivorship, are not affected by death of a party, but the amount to which the decedent, immediately before death, was beneficially entitled under section 8 of this act is transferred as part of the decedent's estate. A POD designation in a multiple-party account without right of survivorship is ineffective. For purposes of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.

(d) The ownership right of a surviving party or beneficiary, or of the decedent's estate, in sums on deposit is subject to requests for payment made by a party before the party's death, whether paid by the financial institution before or after death, or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.

Sec. 10. (a) Rights at death under section 9 of this act are determined by the type of account at the death of a party. The type of account may be altered by written notice given by a party to the financial institution to change the type of account or to stop or vary payment under

the terms of the account. The notice must be signed by a party and received by the financial institution during the party's lifetime.

(b) A right of survivorship arising from the express terms of the account, section 9 of this act, or a POD designation, may not be altered by will.

Sec. 11. Except as provided in sections 30-2313 to 30-2319 (elective share of surviving spouse) or as a consequence of, and to the extent directed by, section 12 of this act, a transfer resulting from the application of section 9 of this act is effective by reason of the terms of the account involved and sections 2 to 19 of this act and is not testamentary or subject to sections 30-2201 to 30-2512 (estate administration).

Sec. 12. (a) If other assets of the estate are insufficient, a transfer resulting from a right of survivorship or POD designation under sections 2 to 19 of this act is not effective against the estate of a deceased party to the extent needed to pay claims against the estate, statutory allowances to the surviving spouse and children, taxes, and expenses of administration.

(b) A surviving party or beneficiary who receives payment from an account after death of a party is liable to account to the personal representative of the decedent for a proportionate share of the amount received to which the decedent, immediately before death, was beneficially entitled under section 8 of this act, to the extent necessary to discharge the amounts described in subsection (a) of this section remaining unpaid after application of the decedent's estate. A proceeding to assert the liability for claims against the estate and statutory allowances may not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent. The proceeding must be commenced within one year after death of the decedent.

(c) A surviving party or beneficiary under sections 2 to 19 of this act against whom a proceeding to account is brought may join as a party to the proceeding a surviving party or beneficiary of any other account of the decedent or a surviving owner or beneficiary under sections 20 to 31 of this act of any securities or securities account of the decedent or proceeds thereof.

(d) Sums recovered by the personal representative must be administered as part of the decedent's estate. This section does not affect the protection from claims of the personal representative or estate of a deceased party provided in section 18 of this act for a financial institution that makes payment in accordance with the terms of the account.

Sec. 13. A financial institution may enter into a contract of deposit for a multiple-party account to the same extent it may enter into a contract of deposit for a single-party account, and may provide for a POD designation and an agency designation in either a single-party account or a multiple-party account. A financial institution need not inquire as to the source of a deposit to an account or as to the proposed application of a payment from an account.

Sec. 14. A financial institution, on request, may pay sums

on deposit in a multiple-party account to:

(1) one or more of the parties, whether or not another party is disabled, incapacitated, or deceased when payment is requested and whether or not the party making the request survives another party; or

(2) the personal representative, if any, or, if there is none, the heirs or devisees of a deceased party in accordance with sections 30-24,125 and 30-24,126 if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account either as a party or beneficiary, unless the account is without right of survivorship under section 9 of this act.

Sec. 15. A financial institution, on request, may pay sums on deposit in an account with a POD designation to:

(1) one or more of the parties, whether or not another party is disabled, incapacitated, or deceased when the payment is requested and whether or not a party survives another party;

(2) the beneficiary or beneficiaries, if proof of death is presented to the financial institution showing that the beneficiary or beneficiaries survived all persons named as parties; or

(3) the personal representative, if any, or, if there is none, the heirs or devisees of a deceased party, if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account either as a party or beneficiary.

Sec. 16. Subject to the provisions of section 18, a financial institution, on request of an agent under an agency designation for an account, may pay to the agent sums on deposit in the account, whether or not a party is disabled, incapacitated, or deceased when the request is made or received, and whether or not the authority of the agent terminates on the disability or incapacity of a party.

Sec. 17. If a financial institution is required or permitted to make payment pursuant to sections 2 to 19 of this act to a minor designated as a beneficiary, payment may be made pursuant to the Nebraska Uniform Transfers to Minors Act or pursuant to any other laws of this state.

Sec. 18. (a) Payment made pursuant to sections 2 to 19 of this act in accordance with the type of account discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries, or their successors. Payment may be made whether or not a party, beneficiary, or agent is disabled, incapacitated, or deceased when payment is requested, received, or made.

(b) Protection under this section does not extend to payments made after a financial institution has received written notice from a party, or from the personal representative, surviving spouse, or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the account, including one having an agency designation, should not be permitted, and the financial institution has had a reasonable opportunity to act on it when the payment is made. Unless the notice is

withdrawn by the person giving it, the successor of any deceased party must concur in a request for payment if the financial institution is to be protected under this section. Unless a financial institution has been served with process in an action or proceeding, no other notice or other information shown to have been available to the financial institution affects its right to protection under this section.

(c) A financial institution that receives written notice pursuant to this section or otherwise has reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the account.

(d) Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in accounts or payments made from accounts.

Sec. 19. Without qualifying any other statutory right to setoff or lien and subject to any contractual provision, if a party is indebted to a financial institution, the financial institution has a right to setoff against the account. The amount of the account subject to setoff is the proportion to which the party is, or immediately before death was, beneficially entitled under section 8 of this act or, in the absence of proof of that proportion, an equal share with all parties.

Sec. 20. In sections 20 to 31 of this act:

(1) Beneficiary form means 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.

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

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

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

(5) Security account means (i) 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, or (ii) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(6) The words transfer on death or the abbreviation TOD and the words pay on death or the abbreviation POD are used without

regard for whether the subject is a money claim against an insurer, such as its own note or bond for money loaned, or is a claim to securities evidenced by conventional title documentation.

Sec. 21. Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common.

Sec. 22. A security may be registered in beneficiary form if the form is authorized by sections 20 to 31 of this act or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by sections 20 to 31 of this act or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which sections 21 to 31 of this act or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

Sec. 23. A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

Sec. 24. Registration in beneficiary form may be shown by the words transfer on death or the abbreviation TOD, or by the words pay on death or the abbreviation POD, after the name of the registered owner and before the name of a beneficiary.

Sec. 25. The designation of a TOD or POD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then-surviving owners without the consent of the beneficiary.

Sec. 26. On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. 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.

Sec. 27. (a) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner

requesting registration in beneficiary form assents to the protections given to the registering entity by sections 20 to 31 of this act.

(b) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in sections 20 to 31 of this act.

(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with section 26 of this act and does so in good faith reliance (i) on the registration, (ii) on sections 20 to 31 of this act, and (iii) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of sections 20 to 31 of this act do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under sections 20 to 31 of this act.

(d) The protection provided by sections 20 to 31 of this act to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

Sec. 28. (a) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and sections 20 to 31 of this act and is not testamentary.

(b) Sections 20 to 31 of this act do not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

Sec. 29. (a) If other assets of the estate are insufficient, a transfer resulting from a right of survivorship, POD designation or TOD registration under sections 20 to 31 of this act is not effective against the estate of a deceased owner to the extent needed to pay claims against the estate, statutory allowances to the surviving spouse and children, taxes, and expenses of administration.

(b) A surviving owner or beneficiary who receives registered or reregistered securities or securities accounts or proceeds thereof after the death of a party is liable to account to the personal representative of the decedent for a proportionate share of the amount received to which the decedent, immediately before death, was beneficially entitled, to the extent necessary to discharge the amounts described in subsection (a) of this section remaining unpaid after application of the decedent's estate. A proceeding to assert the liability for claims against the estate and statutory allowances may not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent.

The proceeding must be commenced within one year after the death of the decedent.

(c) A surviving owner or beneficiary against whom a proceeding to account is brought may join as a party to the proceeding a surviving owner or beneficiary under sections 20 to 31 of this act or any other security or securities account of the decedent or proceeds thereof or a surviving party or beneficiary of any account under sections 2 to 19 of this act.

(d) Sums recovered by the personal representative must be administered as a part of the decedent's estate. This section does not affect the protection from claims of the personal representative or estate of a deceased owner provided in section 27 of this act for an issuer or registering entity that makes payment in accordance with the terms of the security registration.

Sec. 30. (a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (i) for registrations in beneficiary form, and (ii) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration 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.

Sec. 31. Sections 20 to 31 of this act apply to registrations

of securities in beneficiary form made before, on, or after the effective date of this act, by decedents dying on or after such date.

Sec. 32. Sections 1 to 32 of this act shall be so construed as to effectuate their general purpose to make uniform the law of those states which enact them.

Sec. 33. That section 30-2201, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2201. Sections 30-2201 to 30-2902 and sections 1 to 32 of this act shall be known and may be cited as the Nebraska Probate Code.

Sec. 34. That original section 30-2201, Reissue Revised Statutes of Nebraska, 1943, and also sections 30-2701 to 30-2714, Reissue Revised Statutes of Nebraska, 1943, are repealed.