

AMENDED IN ASSEMBLY FEBRUARY 26, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1683

Introduced by Assembly Member Kuykendall

(Coauthors: Assembly Members Alby, Ashburn, Baugh, Campbell, Cunneen, House, Leach, Machado, and Morrissey)

January 16, 1998

An act to amend Section 8107 of the Commercial Code, and to add Part 3 (commencing with Section 5500) to Division 5 of the Probate Code, relating to the Uniform TOD Security Registration Act.

LEGISLATIVE COUNSEL'S DIGEST

AB 1683, as amended, Kuykendall. Uniform TOD Security Registration Act.

Existing law provides that investment securities may be transferred or redeemed by an endorsement, instruction, or entitlement order by an appropriate person, as defined.

This bill would specify that the beneficiary of a security registered in beneficiary form is an appropriate person for these purposes if the beneficiary has survived the death of the registered owner or owners; and would enact the Uniform TOD Security Registration Act providing for the transfer of ownership or proceeds of a security, as defined, upon the death of the owner without probate or estate administration, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8107 of the Commercial Code is
2 amended to read:
3 8107. (a) “Appropriate person” means any of the
4 following:
5 (1) With respect to an endorsement, the person
6 specified by a security certificate or by an effective
7 special endorsement to be entitled to the security.
8 (2) With respect to an instruction, the registered
9 owner of an uncertificated security.
10 (3) With respect to an entitlement order, the
11 entitlement holder.
12 (4) If the person designated in paragraph (1), (2), or
13 (3) is deceased, the designated person’s successor taking
14 under other law or the designated person’s personal
15 representative acting for the estate of the decedent, or
16 the beneficiary of a security, *as defined in subdivision (d)*
17 *of Section 5501 of the Probate Code*, registered in
18 beneficiary form, as defined in subdivision (a) of Section
19 5501 of the Probate Code, if the beneficiary has survived
20 the death of the registered owner or all registered
21 owners.
22 (5) If the person designated in paragraph (1), (2), or
23 (3) lacks capacity, the designated person’s guardian,
24 conservator, or other similar representative who has
25 power under other law to transfer the security or
26 financial asset.
27 (b) An endorsement, instruction, or entitlement order
28 is effective if it is made by any of the following:
29 (1) It is made by the appropriate person.
30 (2) It is made by a person who has power under the law
31 of agency to transfer the security or financial asset on
32 behalf of the appropriate person, including, in the case of
33 an instruction or entitlement order, a person who has
34 control under paragraph (2) of subdivision (c) or
35 paragraph (2) of subdivision (d) of Section 8106.



1 (3) The appropriate person has ratified it or is
2 otherwise precluded from asserting its ineffectiveness.

3 (c) An endorsement, instruction, or entitlement order
4 made by a representative is effective even if:

5 (1) The representative has failed to comply with a
6 controlling instrument or with the law of the state having
7 jurisdiction of the representative relationship, including
8 any law requiring the representative to obtain court
9 approval of the transaction.

10 (2) The representative's action in making the
11 endorsement, instruction, or entitlement order or using
12 the proceeds of the transaction is otherwise a breach of
13 duty.

14 (d) If a security is registered in the name of or specially
15 endorsed to a person described as a representative, or if
16 a securities account is maintained in the name of a person
17 described as a representative, an endorsement,
18 instruction, or entitlement order made by the person is
19 effective even though the person is no longer serving in
20 the described capacity.

21 (e) Effectiveness of an endorsement, instruction, or
22 entitlement order is determined as of the date the
23 endorsement, instruction, or entitlement order is made,
24 and an endorsement, instruction, or entitlement order
25 does not become ineffective by reason of any later change
26 of circumstances.

27 SEC. 2. Part 3 (commencing with Section 5500) is
28 added to Division 5 of the Probate Code, to read:

29

30 PART 3. UNIFORM TOD SECURITY
31 REGISTRATION ACT

32

33 5500. (a) This part shall be known as and may be
34 cited as the Uniform TOD Security Registration Act.

35 (b) This part shall be liberally construed and applied
36 to promote its underlying purposes and policy.

37 (c) The underlying purposes and policy of this act are
38 to (1) encourage development of a title form for use by
39 individuals that is effective, without probate and estate
40 administration, for transferring property at death in



1 accordance with directions of a deceased owner of a
2 security as included in the title form in which the security
3 is held and (2) protect issuers offering and implementing
4 the new title form.

5 (d) Unless displaced by the particular provisions of this
6 part, the principles of law and equity supplement its
7 provisions.

8 5501. In this part:

9 (a) “Beneficiary form” means a registration of a
10 security that indicates the present owner of the security
11 and the intention of the owner regarding the person who
12 will become the owner of the security upon the death of
13 the owner.

14 (b) “Register,” including its derivatives, means to
15 issue a certificate showing the ownership of a certificated
16 security or, in the case of an uncertificated security, to
17 initiate or transfer an account showing ownership of
18 securities.

19 (c) “Registering entity” means a person who
20 originates or transfers a security title by registration, and
21 includes a broker maintaining security accounts for
22 customers and a transfer agent or other person acting for
23 or as an issuer of securities.

24 (d) “Security” means a share, participation, or other
25 interest in property, in a business, or in an obligation of
26 an enterprise or other issuer, and includes a certificated
27 security, an uncertificated security, and a security
28 account.

29 (e) “Security account” means (1) a reinvestment
30 account associated with a security, a securities account
31 with a broker, a cash balance in a brokerage account, cash,
32 interest, earnings, or dividends earned or declared on a
33 security in an account, a reinvestment account, or a
34 brokerage account, whether or not credited to the
35 account before the owner’s death, or (2) a cash balance
36 or other property held for or due to the owner of a
37 security as a replacement for or product of an account
38 security, whether or not credited to the account before
39 the owner’s death.



1 5502. Only individuals whose registration of a security
2 shows sole ownership by one individual or multiple
3 ownership by two or more individuals with right of
4 survivorship, rather than as tenants in common, may
5 obtain registration in beneficiary form. Multiple owners
6 of a security registered in beneficiary form hold as joint
7 tenants with right of survivorship, as tenants by the
8 entirety, or as owners of community property held in
9 survivorship form, and not as tenants in common.

10 5503. A security may be registered in beneficiary
11 form if the form is authorized by this or a similar statute
12 of the state of organization of the issuer or registering
13 entity, the location of the registering entity's principal
14 office, the office of its transfer agent or its office making
15 the registration, or by this or a similar statute of the law
16 of the state listed as the owner's address at the time of
17 registration. A registration governed by the law of a
18 jurisdiction in which this or similar legislation is not in
19 force or was not in force when a registration in
20 beneficiary form was made is nevertheless presumed to
21 be valid and authorized as a matter of contract law.

22 5504. A security, whether evidenced by certificate or
23 account, is registered in beneficiary form when the
24 registration includes a designation of a beneficiary to take
25 the ownership at the death of the owner or the deaths of
26 all multiple owners.

27 5505. Registration in beneficiary form may be shown
28 by the words "transfer on death" or the abbreviation
29 "TOD," or by the words "pay on death" or the
30 abbreviation "POD," after the name of the registered
31 owner and before the name of a beneficiary.

32 5506. The designation of a TOD beneficiary on a
33 registration in beneficiary form has no effect on
34 ownership until the owner's death. A registration of a
35 security in beneficiary form may be canceled or changed
36 at any time by the sole owner or all then surviving owners
37 without the consent of the beneficiary.

38 5507. On death of a sole owner or the last to die of all
39 multiple owners, ownership of securities registered in
40 beneficiary form passes to the beneficiary or beneficiaries



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

12 5508. (a) A registering entity is not required to offer
13 or to accept requests for security registration in
14 beneficiary form. If a registration in beneficiary form is
15 offered by a registering entity, the owner requesting
16 registration in beneficiary form assents to the protections
17 given to the registering entity by this part.

18 (b) By accepting a request for registration of a security
19 in beneficiary form, the registering entity agrees that the
20 registration will be implemented as provided in this part.

21 (c) A registering entity is discharged from all claims to
22 a security by the estate, creditors, heirs, or devisees of a
23 deceased owner if it registers a transfer of the security in
24 accordance with Section 5507 and does so in good faith
25 reliance (1) on the registration, (2) on this part, and (3)
26 on information provided to it by affidavit of the personal
27 representative of the deceased owner, or by the surviving
28 beneficiary or the surviving beneficiary's
29 representatives, or other information available to the
30 registering entity. The protections of this part do not
31 extend to a reregistration or payment made after a
32 registering entity has received written notice from any
33 claimant to any interest in the security objecting to
34 implementation of a registration in beneficiary form. No
35 other notice or other information available to the
36 registering entity shall affect its right to protection under
37 this part.

38 (d) The protection provided by this part to the
39 registering entity of a security does not affect the rights
40 of beneficiaries in disputes between themselves and



1 other claimants to ownership of the security transferred
2 or its value or proceeds.

3 5509. (a) Any transfer on death resulting from a
4 registration in beneficiary form is effective by reason of
5 the contract regarding the registration between the
6 owner and the registering entity and this part and is not
7 testamentary.

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

11 5510. (a) A registering entity offering to accept
12 registrations in beneficiary form may establish the terms
13 and conditions under which it will receive requests for
14 (1) registrations in beneficiary form, and (2)
15 implementation of registrations in beneficiary form,
16 including requests for cancellation of previously
17 registered TOD beneficiary designations and requests for
18 reregistration to effect a change of beneficiary.

19 (b) The terms and conditions established pursuant to
20 subdivision (a) may provide for (1) proving death, (2)
21 avoiding or resolving any problems concerning fractional
22 shares, (3) designating primary and contingent
23 beneficiaries, and (4) substituting a named beneficiary's
24 descendants to take in the place of the named beneficiary
25 in the event of the beneficiary's death. Substitution may
26 be indicated by appending to the name of the primary
27 beneficiary the letters LDPS, standing for "lineal
28 descendants per stirpes." This designation substitutes a
29 deceased beneficiary's descendants who survive the
30 owner for a beneficiary who fails to so survive, the
31 descendants to be identified and to share in accordance
32 with the law of the beneficiary's domicile at the owner's
33 death governing inheritance by descendants of an
34 intestate. Other forms of identifying beneficiaries who
35 are to take on one or more contingencies, and rules for
36 providing proofs and assurances needed to satisfy
37 reasonable concerns by registering entities regarding
38 conditions and identities relevant to accurate
39 implementation of registrations in beneficiary form, may



1 be contained in a registering entity's terms and
2 conditions.

3 (c) The following are illustrations of registrations in
4 beneficiary form that a registering entity may authorize:

5 (1) Sole owner-sole beneficiary: John S. Brown TOD
6 (or POD) John S. Brown Jr.

7 (2) Multiple owners-sole beneficiary: John S. Brown
8 Mary B. Brown, JT TEN TOD John S. Brown Jr.

9 (3) Multiple owners-primary and secondary
10 (substituted) beneficiaries: John S. Brown Mary B.
11 Brown, JT TEN TOD John S. Brown Jr. SUB BENE Peter
12 Q. Brown or, John S. Brown Mary B. Brown JT TEN TOD
13 John S. Brown Jr. LDPS.

14 5511. Nothing in this part alters the community
15 character of community property or community rights in
16 community property.

17 5512. This part applies to registrations of securities in
18 beneficiary form made before, on, or after January 1, 1999,
19 by decedents dying on or after January 1, 1999.

