MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

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No. 1328

H.P. 965

House of Representatives, March 4, 1997

An Act to Enact the Uniform Transfer on Death Security Registration Act.

Reference to the Committee on Judiciary suggested and ordered printed.

JOSEPH W. MAYO, Clerk

Presented by Representative NASS of Acton. Cosponsored by Senator CAREY of Kennebec and Senator LIBBY of York and Representative CARLETON of Wells.

Sec. 1. 18-A MRSA Art. VI, Pt. 3 is enacted to read:
PART 3
UNIFORM TRANSFER ON DEATH SECURITY REGISTRATION ACT
\$6-301. Short title
30-501. Daore exerc
This Part may be known and cited as the "Uniform Transfer or Death Security Registration Act."
§6-302. Definitions
As used in this Part, unless the context otherwise indicates, the following terms have the following meanings.
(a) "Beneficiary form" means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who becomes the owner
of the security upon the death of the owner.
(b) "Devisee" means any person designated in a will to
receive a disposition of real or personal property.
(c) "Heirs" means those persons, including the surviving
spouse, who are entitled under the statutes of intestate succession to the property of a decedent.
(d) "Person" means an individual, a corporation, ar organization or other legal entity.
(e) "Personal representative" includes executor,
administrator, successor personal representative, special administrator and persons who perform substantially the same
function under the law governing their status.
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(f) "Property" includes both real and personal property of
any interest in real and personal property and means anything
that may be the subject of ownership.
(g) "Register," including its derivatives, means to issue
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.

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. (i) "Security" means a share, participation or other 6 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. 10 (j) "Security account" means: 12 (1) A reinvestment account associated with a security, a securities account with a broker, a cash balance in a 14 brokerage account, cash, interest, earnings or dividends 16 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 1.8 20 (2) 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 22 before the owner's death. 24 (k) "State" includes any state of the United States, the 26 District of Columbia, the Commonwealth of Puerto Rico and any territory or possession subject to the legislative authority of 28 the United States. 30 UNIFORM COMMENT 32 "Security" is defined as provided in UCC \S 8-102 and includes shares of mutual funds and other investment companies. 34 The defined term "security account" is not intended to include securities held in the name of a bank or similar institution as 36 nominee for the benefit of a trust. 38 "Survive" is not defined. No effort is made in this Act to define survival as it is for purposes of intestate succession in 40 UPC \S 2-104 which requires survival by an heir of the ancestor for 120 hours. For purposes of this Act, survive is used in its 42 common law sense of outliving another for any time interval no 44 matter how brief. The drafting committee sought to avoid imposition of a new and unfamiliar meaning of the term on

(h) "Registering entity" means a person who originates or

The definitions of "devisee," "heirs," "person," "personal representative," "property," and "state" are taken from Section

intermediaries familiar with the meaning of "survive" in joint

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tenancy registrations.

1-201 of the Uniform Probate Code which, as revised in 1989, includes this Act as Part 3 of Article VI.

§6-303. Registration in beneficiary form; sole or joint tenancy ownership

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Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by 2 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.

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section designed to prevent co-owners This is designating any death beneficiary other than one who is to take only upon survival of all co-owners. It coerces co-owning registrants to signal whether they hold as joint tenants with right of survivorship (JT TEN), as tenants by the entireties (T ENT), or as owners of community property. Also, it imposes survivorship on co-owners holding in a beneficiary form that fails to specify a survivorship form of holding. Tenancy in common and community property otherwise than in a survivorship setting is negated for registration in beneficiary form because persons desiring to signal independent death beneficiaries for each individual's fractional interest in a co-owned security normally will split their holding into separate registrations of the number of units previously constituting their fractional share. Once divided, each can name his or her own choice of death beneficiary.

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The term "individuals," as used in this section, limits those who may register as owner or co-owner of a security in beneficiary form to natural persons. However, the section does not restrict individuals using this ownership form as to their choice of death beneficiary. The definition of "beneficiary form" in Section 1 [Me. cite section 6-302] indicates that any "person" may be designated beneficiary in a registration in beneficiary form. "Person" is defined so that a church, trust company, family corporation, or other entity, as well as any individual, may be designated as a beneficiary.

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§6-304. Registration in beneficiary form; applicable law

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

UNIFORM COMMENT

This section encourages registrations in beneficiary form to be made whenever a state with which either of the parties to a registration has contact has enacted this or a similar statute. Thus, a registration in beneficiary form of X Company shares might rely on an enactment of this Act in X Company's state of incorporation, or in the state of incorporation of X Company's transfer agent. Or, an enactment by the state of the issuer's principal office, the transfer agent's principal office, or of the issuer's office making the registration also would validate the registration. An enactment of the state of the registering owner's address at time of registration also might be used for validation purposes.

The last sentence of this section is designed, as is UPC \S 6-101 (Rev. 1989), to establish a statutory presumption that a general principle of law is available to achieve a result like that made possible by this Act.

§6-305. Origination of registration in beneficiary form

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.

UNIFORM COMMENT

As noted above in commentary to Section 2 [Me. cite section 6-303], this Act places no restriction on who may be designated beneficiary in a registration in beneficiary form.

§6-306. Form of registration in beneficiary form

Registration in beneficiary form may 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.

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The abbreviation POD is included for use without regard for whether the subject is a money claim against an issuer, such as its own note or bond for money loaned, or is a claim to securities evidenced by conventional title documentation. The use of POD in a registration in beneficiary form of shares in an investment company should not be taken as a signal that the investment is to be sold or redeemed on the owner's death so that the sums realized may be "paid" to the death beneficiary. Rather, only a transfer on death, not a liquidation on death, is indicated. The committee would have used only the abbreviation TOD except for the familiarity, rooted in experience with certificates of deposit and other deposit accounts in banks, with the abbreviation POD as signalling a valid nonprobate death benefit or transfer on death.

§6-307. Effect of registration in beneficiary form

The designation of a TOD 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.

UNIFORM COMMENT

This section simply affirms the right of a sole owner, or the right of all multiple owners, to end a TOD beneficiary registration without the assent of the beneficiary. The section says nothing about how a TOD beneficiary designation may be canceled, meaning that the registering entity's terms and conditions, if any, may be relevant. See Section 10 [Me. cite section 6-311]. If the terms and conditions have nothing on the point, cancellation of a beneficiary designation presumably would be effected by a reregistration showing a different beneficiary or omitting reference to a TOD beneficiary.

§6-308. Ownership on death of owner

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.

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Even though multiple owners holding in the beneficiary form here authorized hold with right of survivorship, no survivorship rights attend the positions of multiple beneficiaries who become entitled to securities by reason of having survived the sole owner or the last to die of multiple owners. Issuers (and registering entities) who decide to accept registrations in beneficiary form involving more than one primary beneficiary also should provide by rule whether fractional shares registered in the names of surviving beneficiaries where the number of shares held by the deceased owner does not divide without remnant among the survivors. If fractional shares are not desired, the issuer may wish to provide for sale of odd shares and division of proceeds, for an uneven distribution with the first or last named to receive the odd share, or for other resolution. Section 8 [Me. cite section 6-309] deals with whether intermediaries have any obligation to offer beneficiary registrations of any sort; Section 10 [Me. cite section 6-311] enables issuers to adopt terms and conditions controlling the details of applications for registrations they decide to accept and procedures for implementing such registrations after an owner's death.

The reference to surviving, multiple TOD beneficiaries as tenants in common is not intended to suggest that a registration form specifying unequal shares, such as "TOD A (20%), B (30%), C (50%)," would be improper. Though not included beneficiary forms described for illustrative purposes in Section 10 [Me. cite section 6-311], the Act enables a registering entity to accept and implement a TOD beneficiary designation like the one just suggested. If offered, such a registration form should implemented by registering entity terms and conditions providing for disposition of the share of a beneficiary who predeceases the owner when two or more of a group of multiple

beneficiaries survive the owner. For example, the terms might direct the share of the predeceased beneficiary to the survivors in the proportion that their original shares bore to each other.

Unless unequal shares are specified in a registration in beneficiary form designating multiple beneficiaries, the shares

of the beneficiaries would, of course, be equal.

The statement that a security registered in beneficiary form is in the deceased owner's estate when no beneficiary survives the owner is not intended to prevent application of any anti-lapse statute that might direct a nonprobate transfer on death to the surviving issue of a beneficiary who failed to survive the owner. Rather, the statement is intended only to indicate that the registering entity involved should transfer or reregister the security as directed by the decedent's personal representative.

See the Comment to Section 1 [Me. cite section 6-302] regarding the meaning of "survive" for purposes of this Act.

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§6-309. Protection of registering entity

(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 this Part.

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- (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 this Part.
- (c) A registering entity is discharged from all claims to a 36 security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in 38 accordance with section 6-308 and does so in good faith reliance on the registration, on this Part and on information provided to 40 it by affidavit of the personal representative of the deceased 42 owner or by the surviving beneficiary or by the surviving beneficiary's representatives or other information available to 44 the registering entity. The protections of this Part do not extend to a reregistration or payment made after a registering 46 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 48 information available to the registering entity affects its right to protection under this Part. 50

2	(d) The protection provided by this Part to the registering
	entity of a security does not affect the rights of beneficiaries
4	in disputes between themselves and other claimants to ownership
	of the security transferred or its value or proceeds.
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8	UNIFORM COMMENT
10	It is to be noted that the "request" for a registration in
	beneficiary form may be in any form chosen by a registering
12	entity. The Act does not prescribe a particular form and does
	not impose record- keeping requirements. Registering entities'
14	business practices, including any industry standards or rules of
	transfer agent associations, will control.
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18	The written notice referred to in subsection (c) would qualify as a notice under UCC \S 8-403.
20	"Good faith" as used in this section is intended to mean
	"honesty in fact and the observance of reasonable commercial
22	standards of fair dealing in the trade," as specified in UCC \S 2-103(1)(b).
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	The protections described in this section are designed to
26	meet any questions regarding registering entity protection that may not be foreclosed by issuer protections provided in the
28	Uniform Commercial Code. Because persons interested in this Act [Me. cite Part 3] may wish to be reminded of relevant UCC
30	provisions, a brief summary follows.
	racination, a saled dammed a community
32	"U.C.C. § 8-403, 'Issuer's Duty as to Adverse Claims' contains detailed provisions regarding duties of inquiry by an
3 4	issuer of a certificated or uncertificated security who is requested to effect a transfer, and the availability and use of
36	30 day notices to force adverse claimants to start litigation if
	further delay in transfer is desired. U.C.C. § 8-201's
38	definition of 'issuer' for purposes of 'registration of
	transfer' is simply 'a person on whose behalf transfer books
40	are maintained'. U.C.C. \S 8-403 is among the sections dealing with registration of transfers.
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	"U.C.C. sections 8-308 and 8-404(1) appear to exonerate an
44	issuer who acts in response to transfer directions signalled by
	the 'necessary indorsement' on or with a certificated security or

Page 8-LR0919(1)

in response to 'an instruction originated by an appropriate

person' in the case of an uncertificated security. Section 8--308 describes the meaning of 'appropriate person' in the case of a

certificated security as 'the person specified by the certificated security . . . to be entitled to the security.'

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U.C.C. § 8-308(6) (1978). In the case of an uncertificated security, 'appropriate person' means the 'registered owner.' <u>Id.</u> § 8-308(7). The survivor of owners listed as joint tenants with right of survivorship is specifically defined as an authorized person. <u>Id.</u> § 8-308(8)(d). The U.C.C. aspect of the problem could be met by an additional sub-paragraph to section 8-308(8) that would include a TOD beneficiary as an 'appropriate person' when the beneficiary has survived the owner.

"No U.C.C. addition would be necessary if a TOD beneficiary designation were viewed as a contingent order for transfer at the owner's death that may be safely implemented as a direction from the owner as an 'authorized person.' The owner's death before completion of the transfer would not pose U.C.C. problems because section 8-308(10) provides: 'Whether the person signing is appropriate is determined as of the date of signing and an indorsement made by or an instruction originated by him does not become unauthorized for the purposes of this Article by virtue of any subsequent change of circumstances.'

"It might be questioned whether a TOD direction, which may be revoked before it is carried into effect and is also contingent on the beneficiary's survival of the registrant, is within the transfer directions contemplated by the U.C.C. framers for purposes of issuer protection. However, since section 8-202 explicitly protects issuers against problems arising because of restrictions or conditions on transfers, only the novelty of revocable directions for transfer on death gives pause.

"In general, article 8 of the U.C.C. reflects a careful attempt to protect implementation of a wide range of transfer instructions so long as the signatures are genuine and are those of owners acting in conformity with duly imposed rules of the issuer organization. ... Hence, existing U.C.C. protections should be adequate," Wellman, Transfer-On-Death Securities Registration: A New Title Form, 21 Ga. L. Rev. 789, 823 n.90 (1987).

§6-310. Nontestamentary transfer on death

- (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 this Part and is not testamentary.
- (b) This Part does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this State.

UNIFORM COMMENT

Subsection (a) is comparable to UPC § 6-214 (Rev. 1989). Subsection (b) is similar to UPC § 6-101(b) (Rev. 1989).

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Consideration should be given to the desirability of adapting the section as necessary to fit local principles regarding the rights of a surviving spouse to protection against disinheritance by nonprobate transfers effective at death.

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§6-311. Terms, conditions and forms for registration

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(a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it receives requests for registrations in beneficiary form and 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 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.

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- The following are illustrations of registrations in beneficiary form that a registering entity may authorize:
 - (1) Sole owner-sole beneficiary: John S. Brown TOD (or POD) John S. Brown Jr.
- 48 (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)
2	beneficiaries: John S. Brown, Mary B. Brown, JT TEN TOD John
	S. Brown Jr SUB BENE Peter Q. Brown or John S. Brown, Mary
4	B. Brown JT TEN TOD John S. Brown Jr LDPS.
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	Use of "and" or "or" between the names of persons registered
10	as co-owners is unnecessary under the Act and should be
	discouraged. If used, the two words should have the same meaning
12	insofar as concerns a title form; i.e., that of "and" to indicate
	that both named persons own the asset.
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1.6	Descendants of a named beneficiary who take by virtue of a
16	"LDPS" designation appended to a beneficiary's name take as TOD beneficiaries rather than as intestate successors. If no
18	beneficiaries rather than as intestate successors. If no descendant of a predeceased primary beneficiary survives the
10	owner, the security passes as a part of the owner's estate as
20	provided in Section 7 [Me. cite section 6-308].
20	provided in bección / [Me. erec sección 0-500].
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_	Sec. 2. Rules of construction.
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	1. This Act must be liberally construed and applied to
26	promote its underlying purposes and policy and to make uniform
	the laws with respect to the subject of this Act among states
28	enacting it.
30	2. Unless displaced by the particular provisions of this
	Act, the principles of law and equity supplement its provisions.
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	Sec. 3. Application of Act. This Act applies to registrations
34	of securities in beneficiary form made before or after the
	effective date of this Act by decedents dying on or after the
36	effective date of this Act.
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30	SUMMARY
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* V	This bill establishes the Uniform Transfer on Death Security
	or contract of our country

Registration Act.