

1989 Senate Bill 337

Date of enactment: **April 26, 1990**
Date of publication*: **May 10, 1990**

1989 WISCONSIN ACT 331

AN ACT *to renumber* chapter 705; *to amend* 186.10 (1), 215.14 (7), chapter 705 (title), 705.01 (intro.), (1) and (10), 705.02 (1) (intro.), (2) and (3), 705.06 (1) (intro.), 705.06 (2), 705.08, 710.05 (2) and 859.18 (5) (c); *to repeal and recreate* 705.06 (1) (intro.); and *to create* subchapter I (title) of chapter 705 and subchapter II of chapter 705 of the statutes, **relating to:** transfer on death security registration and nonprobate transfers at death.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 186.10 (1) of the statutes is amended to read:

186.10 (1) Shares may be issued in the name of a minor, and may be withdrawn by such minor or by his agent under subch. I of ch. 705. Minors' eligibility to vote at the meetings of the members is at the discretion of the board of directors.

SECTION 2. 215.14 (7) of the statutes is amended to read:

215.14 (7) VOTING RIGHTS OF JOINT SAVINGS ACCOUNTS. When a savings account in a mutual association is a multiple-party account under subch. I of ch. 705, the right to vote such account shall be no greater than if the account were held by an individual.

SECTION 3. Chapter 705 (title) of the statutes is amended to read:

CHAPTER 705
MULTIPLE-PARTY AND AGENCY
ACCOUNTS;
NONPROBATE TRANSFERS AT DEATH;
TRANSFER ON DEATH SECURITY REGISTRATION

SECTION 4. Chapter 705 of the statutes is renumbered subchapter I of chapter 705.

SECTION 5. Subchapter I (title) of chapter 705 of the statutes is created to read:

CHAPTER 705

SUBCHAPTER I

MULTIPLE-PARTY AND AGENCY ACCOUNTS
(TO PRECEDE S. 705.01)

SECTION 6. 705.01 (intro.), (1) and (10) of the statutes are amended to read:

705.01 Definitions. (intro.) As used in this ~~chapter~~ subchapter, unless the context otherwise requires:

(1) "Account" means a contract of deposit of funds between a depositor and a financial institution, and includes a checking or savings account, certificate of deposit, share account and other like arrangement. All such contracts in which there are 2 or more parties or one or more agents shall be evidenced by a writing signed by each party making a deposit to the account, prior to or within a reasonable time after such deposit, containing language in substantially the form set forth in s. 705.02. For purposes of this ~~chapter~~ subchapter, the term "account" does not include contracts established for the deposit of funds of a partnership, joint venture, or other association for business purposes, accounts controlled by one or more persons as the duly authorized agents or trustees for a corporation, unincorporated association, or charitable or civic organization, or regular fiduciary or trust accounts where the relationship is established other than by deposit agreement.

(10) "Request" means a proper request for withdrawal, or a check or other order for payment, which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution. Unless the

signature card, passbook, contract or instrument evidencing the account clearly provides to the contrary, a request by all parties to a joint or marital account is required for payment if the account is designated with their names conjunctively joined by the word "and". If the financial institution conditions withdrawal or payment on advance notice, for purposes of this ~~chapter~~ subchapter the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

SECTION 7. 705.02 (1) (intro.), (2) and (3) of the statutes are amended to read:

705.02 (1) (intro.) Provisions in substantially the following form contained in a signature card, passbook, contract or instrument evidencing an account shall be effective to create the multiple-party accounts described in this ~~chapter~~ subchapter when conspicuously printed or typewritten immediately above or adjacent to the place for the signatures of the parties to the account:

(2) Provisions in substantially the following form contained in a signature card, passbook, contract or instrument evidencing an account shall be effective to create the agency relationship described in this ~~chapter~~ subchapter when conspicuously printed or typewritten immediately above or adjacent to the place for the designation of the agent or agents, which designation shall be separately subscribed or initialed by all of the parties to the account: "TRANSACTIONS REGARDING THIS ACCOUNT/CERTIFICATE OF DEPOSIT MAY BE MADE BY THE AGENT(S) NAMED HEREON. NO PRESENT OR FUTURE OWNERSHIP OR RIGHT OF SURVIVORSHIP IS CONFERRED BY THIS DESIGNATION." In addition, if such designation makes specific reference to s. 705.05 (3) or otherwise provides that the authority of an agent shall be exercisable notwithstanding the legal disability of any party to the account, or if the designated agent is the spouse of a party, then the authority of such agent shall be governed by s. 705.05 (3).

(3) Any deposit made to an account created on or after July 1, 1975, and within the scope of this ~~chapter~~ subchapter, which account is not evidenced by an agreement containing language in substantial conformity with this section, signed by the depositor in accordance with s. 705.01 (1), shall nonetheless be deemed to create either a single-party relationship, with agency, or a joint or P.O.D. relationship, with or without the designation of one or more agents, or a marital relationship if the account is created after January 1, 1986, in accordance with whatever competent evidence is available concerning the depositor's intent at the time the account was created. Such relationship may differ from that established by any other depositor. A deposit which is made in conformity with the language and signature requirements of this section and s. 705.01 (1) shall be deemed to create an account in accordance with this ~~chapter~~ subchapter, with respect to such deposit and all other depos-

its by the same person, notwithstanding whatever relationships may be established by other depositors.

SECTION 8. 705.06 (1) (intro.) of the statutes is amended to read:

705.06 (1) (intro.) In accordance with the terms of an account, and subject to this ~~chapter~~ subchapter, ch. 112 and s. 72.29 and unless otherwise ordered by a court of competent jurisdiction:

SECTION 9. 705.06 (1) (intro.) of the statutes, as affected by 1987 Wisconsin Act 27, is repealed and recreated to read:

705.06 (1) (intro.) In accordance with the terms of an account, and subject to this subchapter, ch. 112 and the duties prescribed for personal representatives in ch. 72 and unless otherwise ordered by a court of competent jurisdiction:

SECTION 10. 705.06 (2) of the statutes is amended to read:

705.06 (2) Payment made under this ~~chapter~~ subchapter discharges the financial institution from all claims for amounts so withdrawn. If the institution has reason to believe that a dispute exists as to the rights of the parties to an account or their successors it may, but shall not be required to, refuse to pay funds in the account to any persons. An institution may but need not recognize the authority of an agent, other than one with continuing authority under s. 705.05 (3), until it knows of the fact of death or adjudication of incompetence of all parties appointing such agent and has reasonable opportunity to act. The protection provided by this section shall have no bearing on the rights of parties or their successors in disputes concerning the beneficial ownership of funds in or withdrawn from an account.

SECTION 11. 705.08 of the statutes is amended to read:

705.08 Construction. This ~~chapter~~ subchapter shall be construed in such a manner as to ensure reasonable certainty of legal result for those who establish a multiple-party or agency account.

SECTION 12. Subchapter II of chapter 705 of the statutes is created to read:

CHAPTER 705

SUBCHAPTER II

NONPROBATE TRANSFERS AT DEATH; TRANSFER

ON DEATH SECURITY REGISTRATION

705.20 Nonprobate transfers on death. (1) 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, employe benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary. This subsection governs a written provision that:

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(a) Money or other benefits due, 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;

(b) 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

(c) Any property controlled by or owned by the decedent before death which is the subject of the instrument passes 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) This section does not limit rights of creditors under other laws of this state.

705.21 Definitions; transfer on death security registration. In ss. 705.21 to 705.30:

(2) "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.

(5) "Devisee" means any person designated in a will to receive a disposition of real or personal property.

(6) "Heir" has the meaning given in s. 851.09.

(7) "Personal representative" has the meaning given in s. 851.23.

(8) "Property" has the meaning given in s. 851.27.

(9) "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.

(10) "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.

(11) "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.

(12) "Security account" means any of the following:

(a) 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.

(b) 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.

(13) "State" includes any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

705.22 Registration in beneficiary form; sole or joint tenancy ownership. 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 entirety, or as owners of community property held in survivorship form, and not as tenants in common.

705.23 Registration in beneficiary form; applicable law. A security may be registered in beneficiary form if the form is authorized by ss. 705.21 to 705.30 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 ss. 705.21 to 705.30 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 ss. 705.21 to 705.30 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.

705.24 Origination of registration in beneficiary form. A security, whether evidenced by certificate or account, is registered in beneficiary form if 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.

705.25 Form of registration in beneficiary form. 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.

705.26 Effect of registration in beneficiary form. The designation of a TOD beneficiary on a registration in beneficiary form does not affect 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.

705.27 Ownership on death of owner. On death of a sole owner or the last to die of 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 survive 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 multiple owners.

705.28 Protection of registering entity. (1) 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 ss. 705.21 to 705.30.

(2) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented upon death of the deceased owner as provided in ss. 705.21 to 705.30.

(3) A registering entity is discharged from all claims to a security by the estate, creditors, heirs or devisees of the deceased owner if it registers a transfer of a security in accordance with s. 705.27 and does so in good faith reliance on the registration, on ss. 705.21 to 705.30, and 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 ss. 705.21 to 705.30 do not extend to a reregistration or payment made after a registering entity has received written notice from a claimant to an 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 ss. 705.21 to 705.30.

(4) The protection provided by ss. 705.21 to 705.30 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.

705.29 Nontestamentary transfer on death. (1) 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 ss. 705.21 to 705.30 and is not testamentary.

(2) Sections 705.21 to 705.30 do not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

705.30 Terms, conditions and forms for registration. (1) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests for registration 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 a problem 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.

(2) The following are illustrations of registrations in beneficiary form which a registering entity may authorize:

(a) Sole owner — sole beneficiary: John S Brown TOD (or POD) John S Brown Jr.

(b) Multiple owners — sole beneficiary: John S Brown Mary B Brown JT TEN TOD John S Brown Jr.

(c) 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.

SECTION 13. 710.05 (2) of the statutes is amended to read:

710.05 (2) Except as provided in ch. 112 or subch. I of ch. 705, notice to a financial institution of a claim to all or part of an account by any person other than a depositor of the account or the financial institution has no effect upon the rights and duties of the depositor or financial institution with respect to the account, and notwithstanding such notice or claim the financial institution may honor the orders and instructions of its depositor regarding the account without liability to the claimant until otherwise ordered by a court or administrative agency of appropriate jurisdiction.

SECTION 14. 859.18 (5) (c) of the statutes is amended to read:

859.18 (5) (c) The availability of an account governed under subch. I of ch. 705 is subject to s. 705.07.

SECTION 15. Initial applicability. This act first applies to registrations of securities in beneficiary form made before, on or after the effective date of this SECTION by descendants dying after the effective date of this SECTION.

SECTION 16. Effective dates. This act takes effect on the day after publication, except as follows:

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(1) The repeal and recreation of section 705.06 (1) (intro.) of the statutes takes effect on January 1, 1992.
